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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN LUIS OBISPO**

14 FRIENDS OF OCEANO DUNES, INC.,
15 Petitioner and Plaintiff,
16 v.
17 CALIFORNIA COASTAL COMMISSION;
and DOES 1 through 50, inclusive,
18 Respondents and Defendants,
19 CALIFORNIA DEPARTMENT OF PARKS
AND RECREATION; and DOES 1 through
20 50, inclusive,
21 Respondents and Defendants as
22 to the First Cause of Action,
Count 4, and, as Real Parties-
23 in-Interest, as the remaining
counts, and
24 COUNTY OF SAN LUIS OBISPO; and
25 DOES 1 through 50, inclusive,
26 Real Parties-in-Interest.

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 FRIENDS OF
OCEANO DUNES' OPENING BRIEF**

Assigned for All Purposes to:
Hon. Tana L. Coates, Dept. 4
Action Filed: April 12, 2021
Trial Date: June 15, 2023
Time: 10:00 a.m.

27 And consolidated actions

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1 **INTRODUCTION**

2 At issue in this case is the ecological fate of the Guadalupe-Nipomo Dunes Complex—thought to
3 be the largest intact coastal dune ecosystem on Earth and widely acknowledged as an “ecological
4 treasure which provides important habitats for hundreds of coastal species.” AR13200.¹ In 1974, the
5 U.S. Secretary of the Interior designated the dunes complex a National Natural Landmark, and the U.S.
6 Fish and Wildlife Service subsequently described it as “the most unique and fragile ecosystem in the
7 state.” *Id.*

8 That same year, California acquired part of the northern component of this beach and dune
9 complex—an area popular with dune buggy riders now known as “Oceano Dunes”— for inclusion in the
10 state park system. Shortly thereafter, the State Parks and Recreation Commission designated a portion of
11 Oceano Dunes a “State Vehicular Recreation Area” (or “SVRA”). AR36165. Today, roughly 3.5 miles
12 of beach and approximately 1,350 acres of adjacent dunes are open to off-highway vehicle (“OHV”)
13 riding. AR432.

14 Since acquiring Oceano Dunes, California has worked to protect the park’s environmentally
15 sensitive habitat while accommodating OHV use. In its 1975 management plan for the new park, the
16 State Department of Parks and Recreation (“State Parks”) recognized the ecological damage wrought by
17 OHV riding and sought to address it through additional access and use controls. *See* AR36174-76,
18 36179, 36195-203. The following year, the California Legislature enacted the Coastal Act of 1976,
19 creating the California Coastal Commission (“Commission”) and investing it with a strong overarching
20 mandate to protect coastal resources. The Coastal Act directs the Commission to maximize public access
21 to the shoreline, but only when consistent with the statute’s paramount requirement to protect the coast’s
22 environmentally sensitive habitat areas (“ESHA”). Applying these new legal mandates, the Commission
23 issued a coastal development permit (“CDP”) for Oceano Dunes that imposed certain immediate
24 restrictions aimed at the most visible resource damage from OHV use. Importantly, the CDP provided
25 for annual Commission review to accommodate evolving scientific knowledge and to develop additional
26 restrictions on OHV access, as necessary, that would protect ESHA and bring the CDP into compliance

27
28 ¹ Citations to the Administrative Record are designated by “AR” followed by the Bates page number.

1 with the Coastal Act.

2 Unfortunately, none of State Parks’ or the Commission’s early efforts resolved the deteriorating
3 situation. To the contrary, better information about the ecological condition of the habitat made it
4 increasingly clear, over the years, that OHV use at Oceano Dunes is simply not consistent with the
5 protection of the park’s ESHA. The long interagency and public process exploring how to achieve
6 compliance with the Coastal Act’s legal mandates culminated in the Commission’s March 2021 permit
7 decision at issue in these cases. To protect ESHA, the amended CDP phases out OHV riding on the
8 ecologically fragile dunes, but retains beach driving and camping in the northern end of the park.

9 Petitioner Friends of Oceano Dunes (“Friends”) does not challenge the scientific basis for the
10 Commission’s decision. It is undisputed that most of the Oceano Dunes SVRA—and all of the area
11 where OHV riding takes place—is designated as ESHA in the applicable Local Coastal Program
12 (“LCP”)², a designation that has been confirmed by comprehensive ecological analysis. *See* AR81-95,
13 297-353, 13097-107. Nor does Friends contest the Commission’s conclusion, based on substantial
14 scientific evidence in the record, that ongoing OHV use significantly degrades and disrupts the park’s
15 ESHA and the many rare and imperiled species that depend on it. *Id.* These facts are dispositive. The
16 Coastal Act elevates protection of ESHA above other concerns, strictly prohibiting activities that
17 degrade or disrupt such habitat. Pub. Resources Code (“PRC”), § 30240; *see, e.g., McAllister v.*
18 *California Coastal Com.* (2008) 169 Cal. App. 4th 912, 923.

19 Instead, Friends’ claims turn on the erroneous notion that the law governing State Parks’
20 management of SVRAs removed the Commission’s legal authority to phase out OHV activities in the
21 entire park, regardless of their impacts on ESHA. This argument is mistaken. The Coastal Act’s
22 protection mandates—and the Commission’s legal authority to implement them—apply to *all* property
23 in the coastal zone, including state park lands. The law governing SVRAs says *nothing* about exempting
24 SVRAs in the coastal zone from Coastal Act permitting requirements. On the contrary, responding to
25 concerns about environmental damage caused by OHVs, the Legislature recently amended that law to,

26 _____
27 ² Because the majority of the Oceano Dunes SVRA—and the entire OHV riding area—lies within the
28 San Luis Obispo County LCP, references to the “LCP” herein refer to the County’s LCP. The
northernmost portion of the SVRA is included in the Grover Beach LCP, which is separately identified
where referenced herein.

1 among other things, expressly affirm that the law creates *no* exceptions for SVRAs from compliance
2 with other state laws and regulations, “*including permit requirements.*” PRC § 5090.39(b) (emphasis
3 added).

4 Friends’ alternative argument—that the San Luis Obispo County’s LCP bars the Commission
5 from excluding OHV use in the park—fares no better. The LCP’s policies are clear and unequivocal:
6 Significant disruption of ESHA is prohibited. To be sure, the LCP recognized the interim OHV use
7 occurring in the park under the original CDP, which predated the LCP’s certification. But in designating
8 most of the park as ESHA, it set a clear policy for the Commission to apply in future actions—a policy
9 that is consistent with the Coastal Act’s mandate to protect ESHA.

10 Nor does the CDP itself restrict the Commission’s authority to terminate OHV use, as Friends
11 claims. From the beginning, the CDP has been clear that its original terms were provisional and that
12 OHV use in the dunes was subject to future restriction to ensure protection of ESHA. A 2001
13 amendment to the permit authorized annual review by the Commission and the imposition of alternative
14 management measures if necessary to protect ESHA from harm. The permit did not create a “vested
15 right” to perpetual OHV riding in the park’s ESHA.

16 Finally, Petitioner’s California Environmental Quality Act (“CEQA”) claims are meritless. The
17 assertion that closing one park entrance will cause traffic congestion at the other is belied by the
18 evidence, which showed that traffic would be *reduced* at the remaining entrance by the permit’s daily
19 vehicle limits, and in any event traffic congestion is not an environmental impact under CEQA.

20 At bottom, Friends’ claims are rooted not in the law or the evidence, but in its steadfast belief
21 that because OHV use in ESHA was allowed to continue for many years, the Commission may not now
22 apply ESHA requirements to bar that use. Friends’ narrative of the decades-long conflict over OHV use
23 in the park is not only inaccurate and one-sided, but irrelevant to the matter now before the Court. Prior
24 public statements by former Commission staff and similar historic anecdotes do not dictate the outcome
25 of this case. The only relevant question is whether the Commission has the legal authority—and in fact,
26 the legal mandate—to phase out a destructive use of coastal parkland that is incompatible with the
27 protection of ESHA. The clear answer to that question is “yes.” Accordingly, the Commission
28 respectfully requests that the Court deny the pending petitions for writ of mandate in their entirety.

1 **FACTUAL AND LEGAL BACKGROUND**

2 **I. The Rare, Unique, and Invaluable Oceano Dunes Landscape**

3 Oceano Dunes comprises an eight-mile strip of California public land and other non-state
4 property along the San Luis Obispo County coast that is managed by State Parks as an integrated park
5 unit and includes Oceano Dunes SVRA. AR26, fn. 2, 207-12. Directly to the south lies the federally-
6 managed Guadalupe-Nipomo National Wildlife Refuge. AR433. Oceano Dunes is an integral part of the
7 larger 18-mile Guadalupe-Nipomo Dunes Complex, which extends southward to Point Conception and
8 has been identified by the Nature Conservancy as the world’s largest intact coastal dune ecosystem.
9 AR27, 303-05.

10 Such dune-backed beaches are among California’s rarest landscapes. AR302-03, 13100. Both
11 vegetated and barren sand surfaces contribute to the overall functioning of the dunes habitat system,
12 which supports a variety of sensitive species. AR13100. The Guadalupe-Nipomo Dunes Complex, in
13 particular, supports “hundreds of plants and animals, many of which are rare and some that are endemic
14 (found nowhere else in the world).” AR303. It is home to 25 species of endangered, threatened, or
15 limited distribution plant species. *Id.* Among the 321 bird species documented in this dunes complex, 11
16 are federally listed as endangered or threatened, 39 are considered rare under California’s standards, and
17 72 use the dunes as important breeding habitat. *Id.* Some 42 mammal species reside in or frequent the
18 Guadalupe-Nipomo Dunes Complex, including several rare species, and 25 reptiles and amphibians also
19 make a home there. *Id.* Conservation International identified the dunes complex as one of the world’s 36
20 biodiversity hotspots – biologically rich, but threatened, terrestrial regions. *Id.*

21 The rich biology of the Guadalupe-Nipomo Dunes Complex results from its mosaic of
22 interconnected habitats, which provide resilience and promote gene flow that contributes to the diversity
23 and persistence of dune species. AR304. In addition to dry sandy habitats (sandy beach, coastal strand,
24 foredunes, and back dunes), the area is interspersed with wetlands, ponds, creeks, and lakes (including
25 Oso Flaco Lake), creating a juxtaposition of wet and dry habitat to support species that would otherwise
26 not exist there. AR302, 304, 13102. Oceano Dunes is a unique and important component of this dunes
27 system, containing several important landscape elements that are found nowhere else in the larger
28 complex. AR305. Both the California least tern (state and federally listed) and the western snowy plover

1 (federally listed) nest at Oceano Dunes, and the federally listed Tidewater goby and Central Coast
2 steelhead both spend part of their lifecycle in the Arroyo Grande Creek and Lagoon, which cuts through
3 the park to the ocean and sits directly in the path of park users who drive their vehicles through it to
4 reach the OHV riding area. AR13101-03, 13107. Given the area’s importance, the U.S. Fish and
5 Wildlife Service has designated portions of Oceano Dunes as “critical habitat” for snowy plover and
6 steelhead trout. AR13103. And the least tern breeding colony at Oceano Dunes is pivotal to statewide
7 recovery goals for this highly fragmented species. AR12763.

8 **II. The Applicable Law**

9 **A. The Coastal Act of 1976**

10 The Commission’s legal authority and regulatory mandate derive from the Coastal Act of 1976.
11 Born of a citizen initiative, the original Coastal Zone Conservation Act of 1972 articulated California
12 policy to “preserve, protect, and where possible, to restore the resources of the coastal zone for the
13 enjoyment of the current and succeeding generations.” *Billings v. California Coastal Com.* (1980) 103
14 Cal.App.3d 729, 739, fn. 12 (quoting former PRC § 27001). When that initiative sunset by its own
15 terms, the Legislature replaced it with the permanent Coastal Act. *Roscco Holdings Inc. v. State of*
16 *California* (1989) 212 Cal.App.3d 642, 650-51. The permanent law declared that (1) “the California
17 coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people”;
18 (2) “the permanent protection of the state’s natural and scenic resources is a paramount concern to
19 present and future residents of the state and nation”; and (3) it is “necessary to protect the ecological
20 balance of the coastal zone and prevent its deterioration and destruction.” PRC § 30001. To achieve
21 these goals, the Legislature directed the Commission to “[p]rotect, maintain, and, where feasible,
22 enhance and restore the overall quality of the coastal zone environment and its natural and artificial
23 resources” and to “[m]aximize public access to and along the coast and maximize public recreational
24 opportunities in the coastal zone consistent with sound resources conservation principles.” PRC §
25 30001.5(a), (c).

26 The Coastal Act implements these legislative directives primarily through Chapter 3. *See* PRC §§
27 30200-270 (setting forth “Coastal Resource Planning and Management Policies”). Chapter 3’s
28 mandatory provisions embody the “coastal zone values” articulated in the legislative findings and

1 constitute the standards governing all development in the coastal zone. *Id.* § 30200. Most relevant here
2 are the Public Access (Article 2) and Land Resources (Article 5) provisions of Chapter 3. With respect
3 to public access, the Coastal Act provides that maximum access and recreation shall be provided for all
4 the people consistent with public safety needs, that development shall not interfere with this access, and
5 that low-cost visitor recreational opportunities shall be encouraged and, where feasible, provided. *Id.* §§
6 30210, 30211, 30213. Notably, these public access provisions must be implemented in a manner that
7 takes account of the “capacity of the site to sustain use and at what level of intensity.” *Id.* § 30214.

8 Consistent with the Legislature’s concern for sustainable use and resource capacity limits, the
9 Coastal Act elevates protections for “environmentally sensitive habitat area”—that is, habitat that is rare
10 or especially valuable and easily disturbed or degraded by human activity. PRC § 30107.5 (defining
11 ESHA). Where ESHA exists, it “shall be protected against *any* significant disruption of habitat values.”
12 *Id.* § 30240(a) (emphasis added); *see also id.* § 30240(b) (development adjacent to ESHA “shall be sited
13 and designed to prevent impacts which would significantly degrade those areas, and shall be compatible
14 with the continuance of those habitat and recreation areas”). When construing the Coastal Act, “[t]he
15 highest priority must be given to environmental consideration[s]” and courts have recognized that the
16 law “provides heightened protection to ESHA[.]” *Bolsa Chica Land Trust v. Superior Court* (1999) 71
17 Cal.App.4th 493, 506 (citations omitted); *McAllister*, 169 Cal.App.4th at 928.

18 The Legislature conveyed broad authority on the Commission to operationalize the Coastal Act’s
19 goals and standards through a “comprehensive scheme to govern land use planning for the entire coastal
20 zone of California.” *Yost v. Thomas* (1984) 36 Cal.3d 561, 565. The Commission “is designated as the
21 state coastal zone planning and management agency for any and all purposes” and exercises “primary
22 responsibility for the implementation of the [Coastal Act] provisions.” PRC § 30330. But the law also
23 requires each local government to “prepare a local coastal program for that portion of the coastal zone
24 within its jurisdiction.” *Id.* § 30500(a). The LCP consists of a coastal land use plan and a local
25 implementation plan. *Id.* § 30108.6. The Commission reviews proposed LCPs to determine whether they
26 comport with the policies of the Coastal Act and approves, partially approves, or disapproves LCPs on
27 that basis. *Hagopian v. State of California* (2014) 223 Cal.App.4th 349, 362 (citing PRC §§ 30500-
28 30522).

1 The Coastal Act’s policies are implemented through its coastal development permit program.
2 Any person seeking to undertake development in the coastal zone must first obtain a coastal
3 development permit. PRC § 30600. “Person” expressly includes agencies of the state (PRC § 30600(a)),
4 and “development” is broadly defined to include any “change in the density or intensity of use of land.”³
5 PRC § 30106; *11 Lagunita, LLC v. California Coastal Com.* (2020) 58 Cal.App.5th 904, 919. In most
6 cases, until an LCP has been certified, the Commission is responsible for issuing coastal development
7 permits. PRC § 30600(c), 30601. After LCP certification, permitting authority for “new developments”
8 shifts to the local jurisdiction, but the Commission decides appeals of such permits. *Id.* §§ 30519,
9 30600(d), 30603(a). “The Commission has the ultimate authority to ensure that coastal development
10 conforms to the policies embodied in the state’s Coastal Act. In fact, a fundamental purpose of the
11 Coastal Act is to ensure that state policies prevail over the concerns of local government.” *Charles A.*
12 *Pratt Constr. Co. v. California Coastal Com.* (2008) 162 Cal.App.4th 1068, 1075.

13 **B. State Parks’ Enabling Act and the Off Highway Motor Vehicle Recreation Act of**
14 **1982**

15 The protection of environmentally sensitive resources is especially important on public lands,
16 like Oceano Dunes, that are part of the state park system. The Legislature has recognized that
17 “California’s state parks are a true reflection of our state’s collective history, natural and cultural
18 heritage, and ideals[,] can be models of healthy, natural, and sustainable ecosystems[,] and . . . can also
19 commemorate important cultural traditions or historic events.” PRC § 5001(a)(1).

20 The Legislature charged State Parks with “management and administration of the state park
21 system” and authorized it to “administer, protect, develop, and interpret the property under its
22 jurisdiction for the use and enjoyment of the public.” *Id.* §§ 5001(a)(2), (b), 5003. The enabling
23 legislation directs State Parks to “promote and regulate the use of the state park system in a manner that
24 conserves the scenery, natural and historic resources, and wildlife in the individual units of the system
25 for the enjoyment of future generations.” PRC § 5001.2. To carry out these functions, State Parks may

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27 ³ Very recently, the court again confirmed that nonphysical activity negatively impacting access to the
28 beach may qualify as development under the Coastal Act. *Spencer v. City of Palos Verdes Estates*, Case
No. B309225, 2023 WL 2237502, at *896 (Cal. Ct. App. Feb. 27, 2023). Petitioners do not dispute here
that OHV recreation is “development” under the Coastal Act.

1 adopt rules, but only to the extent that they are “*not inconsistent with law for the government and*
2 *administration of the property under its jurisdiction.*” PRC § 5003 (emphasis added).

3 The State Park and Recreation Commission (“Parks Commission”), an appointed body separate
4 from State Parks, is charged with classifying units of the state park system. *Id.* § 5019.50. One of those
5 classifications is “state vehicle recreation area.” *Id.* § 5090.43(a). In 1982, the Legislature enacted the
6 Off-Highway Motor Vehicle Recreation Act (“OHV Act”) in large part to rein in the “indiscriminate and
7 uncontrolled use” of OHVs, which “may have a deleterious impact on the environment, wildlife
8 habitats, native wildlife, and native flora.” *Id.* § 5090.02(a)(3); *see also* Cal. Atty. Gen., Opinion Letter,
9 No. 11-601 (Jun. 12, 2013) (noting the “central purpose of this legislation was to protect public safety
10 and to protect, repair, and restore public lands and natural resources, while facilitating the appropriate
11 use of off-highway vehicles”). Recognizing the increasing popularity of OHV recreation, the Act
12 declared that “effectively managed” OHV facilities are essential to providing “ecologically balanced
13 recreation” and sustainable use. PRC § 5090.02(a)(1), (b)-(c). To this end, the Act requires existing and
14 new off-highway motor vehicle recreational areas to be managed consistent with its provisions.⁴ *Id.* §
15 5090.02(c)(1)-(2).

16 In the years after its passage, the OHV Act has been amended several times to strengthen its
17 environmental protections. In 1987, the Legislature amended the Act to require State Parks⁵ to adopt soil
18 loss standards, prepare a wildlife habitat protection program, perform annual compliance monitoring,
19 and close to OHV use any area that is not meeting the standards or program. Stats. 1987, ch. 1027, § 11
20 (enacting PRC §§ 5090.35(b)-(e)). These amendments made clear that environmental protection trumps
21 continued OHV use: “When areas or trails or portions thereof cannot be maintained to appropriate
22 established standards for sustained long-term use, they should be closed to use and repaired” and they
23 should either “remain closed until they can be managed within the soil conservation standard” or be
24 permanently “closed and restored.” *Id.* § 5090.2(c)(4); *see also* PRC § 5090.43(c) (requiring
25

26 ⁴ “Off-highway motor vehicle” is defined broadly to include not only OHVs but also street legal vehicles
27 that are used off-highway on SRVA lands. PRC § 5090.07; Vehicle Code §§ 38006, 38001, 4000.

28 ⁵ State Parks’ responsibilities under the OHV Act are carried out by the Division of Off-Highway Motor
Vehicle Recreation. PRC §§ 5090.30, 5090.32.

1 rehabilitation of OHV-damaged natural resources). Amendments in 2002 required, among other things,
2 that State Parks complete a strategic planning process to explore new OHV opportunities “away from
3 illegal or environmentally sensitive areas.” Stats. 2002, c. 563, § 15 (enacting PRC § 5090.32(n)).

4 The most recent amendments in 2017 reflected the Legislature’s increasing urgency around the
5 deleterious effects of OHV use on sensitive parklands. *See* SB 249 Senate Floor Analysis 9/14/17
6 (finding that “more needs to be done to improve conservation and restoration efforts”); Stats. 2017, ch.
7 459, Legislative Counsel’s Digest (the amendments in SB 249 significantly “revise and recast various
8 provisions of the act”). Among other things, the 2017 amendments clarified that areas selected,
9 developed, and operated for OHV use should be limited to those where “the need . . . to protect natural
10 and cultural resources is minimized” and where “the terrain is capable of withstanding motorized vehicle
11 impacts.” PRC § 5090.43(a). Particularly relevant here, the amendments erased any doubt that the OHV
12 Act’s environmental requirements represent only the *minimum* standards for SVRAs, expressly
13 providing that the SVRA program must also comply with *all* other state regulatory and permitting
14 requirements. PRC § 5090.39(b) (“Nothing in this chapter relieves the division [of Off-Highway Motor
15 Vehicle Recreation within State Parks] from compliance with state and federal laws and regulations,
16 including permit requirements”).

17 In short, the OHV Act, as it exists today, fully recognizes the importance of protecting and
18 preserving natural resource areas from degradation, even if it means closing those areas to OHV use, and
19 clarifies that State Parks must *additionally* comply with all other state laws and permitting requirements.

20 **III. The History of the Oceano Dunes CDP**

21 **A. The Initial 1975 General Management Plan**

22 In 1974, State Parks acquired the first 847 acres⁶ in what is now Oceano Dunes (then called
23 “Pismo Beach”), and shortly thereafter—before either the Coastal Act or the OHV Act had become
24 law—the Parks Commission⁷ designated a portion of the park as an SVRA. AR432, 36165. Pursuant to
25

26 _____
27 ⁶ State Parks later expanded the park by leasing additional lands from the County and Phillips 66. *See*
AR209 (map of State-owned and non-State-owned lands).

28 ⁷ Contrary to the Response Brief of California State Parks (State Parks Brief (“SPB”) at 22), the SVRA
was *not* designated by the Legislature; the OHV Act would not be enacted for another 8 years.

1 its general management and planning authority, State Parks drafted the first general management plan
2 for the park in 1975. That plan recognized that overcrowded conditions were destroying natural
3 resources, creating recreational conflicts for non-vehicular users of the park, and threatening the health
4 and safety of all parkgoers. *See, e.g.*, AR36143, 36176 (finding that “[r]esource protection is also a
5 problem at Pismo Beach” and uncontrolled vehicle use “continues to destroy unprotected natural
6 areas”), 36179 (concluding that the “automobile is the dominant element [on the] beach[]” and that
7 “[s]ome beach uses are incompatible with the auto, and . . . remain secondary to beach vehicle
8 pressures”). The plan’s primary recommendations were to implement “[c]ontrolled vehicle access” and
9 “[r]eduction in vehicle traffic on the beach.” AR36147.

10 As an early step toward implementing the 1975 plan, State Parks developed a vehicle carrying
11 capacity for the park using a methodology that was based on similar capacity figures developed for other
12 park units across the state. AR36205. That methodology resulted, on paper, in a maximum day use
13 capacity of 4,280 vehicles (OHV and street legal) for the SVRA and the adjacent Pismo State Beach
14 combined. AR36204. Because OHV use was a relatively new activity, State Parks noted that its capacity
15 number was “not infallible” and that it was “imperative that these recommended carrying capacities be
16 carefully monitored, studied, and adjusted as determined necessary to maintain environmental integrity
17 of the resource and a quality experience for the visitor.” AR36205.

18 Soon after State Parks issued the 1975 plan, the California Coastal Zone Conservation
19 Commission, the predecessor of the Coastal Commission under the earlier 1972 voter initiative, gave its
20 “conceptual approval” of the plan. AR39964. That body made clear that the conceptual approval “does
21 not extend to any of the actual development contemplated pursuant to the plan,” which would require a
22 separate permitting process, and was expressly conditioned on the requirement that State Parks, in
23 coordination with the County, conduct a survey of dune structure “to determine the extent of vegetation
24 damage” and limit access points “to allow vegetative recovery.” AR39964-65. With the passage of the
25 Coastal Act the following year, the conceptual approval was ultimately supplanted by the CDP now at
26 issue.

1 **B. The 1982 Coastal Development Permit and Proposed County LCP**

2 State Parks did not begin active management of Oceano Dunes until 1982. AR35120. By then,
3 the permanent Coastal Act had become law and the relatively new Coastal Commission was in the
4 process of reviewing San Luis Obispo County’s proposed LCP. *See* AR39899. The LCP was intended to
5 guide development and land use, pursuant to the standards of the Coastal Act, within that part of the
6 coastal zone under the County’s jurisdiction. *Id.* In reviewing a proposed LCP for certification, the
7 Commission must determine whether any part of the program raises a “substantial issue as to
8 conformity” with the Coastal Act’s Chapter 3 policies. PRC § 30512. In February 1982, the
9 Commission’s staff identified numerous “substantial issues” raised by the County’s proposed LCP,
10 including concerns about “sensitive resource areas” and related concerns about OHV use at Oceano
11 Dunes SVRA. AR39899, 39911-63.

12 With respect to the County’s “sensitive resource areas overlay zone,” Commission staff found
13 that the LCP did not conform to the Coastal Act’s policies and standards because it did not distinguish
14 ESHA from other sensitive areas, did not require a consistency finding for development in sensitive
15 habitat, and did not allow for identification of new ESHA as part of the environmental review process
16 for new development. AR39931. Relatedly, and with respect to Oceano Dunes in particular, the
17 Commission identified “sensitive resource protection” as a “paramount concern.” AR39957. Noting the
18 existence of “fragile vegetated dunes, with unique plant communities, unique dune lakes system,
19 streams, wetlands, and rare and endangered plant species” at Oceano Dunes, the Commission identified
20 as “substantial issues” that: (1) “the basic approach which the County has selected to address the
21 resource issues . . . may not be appropriate under the provisions of the Coastal Act”; and (2) “the
22 proposed policies and standards pertaining to the access, operational, and land use aspects of Pismo
23 State Beach Park and [Oceano] Dunes State Vehicle Recreational Area are not sufficiently protective of
24 sensitive coastal resources” and “do not insure the protection of public recreational areas and the
25 provision of maximum public access consistent with public health and safety.” *Id.*

26 The Commission’s findings noted that in the years since adoption of the 1975 general
27 management plan for the park, OHV use increased at a rate not foreseen by State Parks. AR39958-59.
28 “Consequently, the intensity of OHV use within the [Oceano] Dunes SVRA has exceeded the capability

1 of the Parks Department to manage the activity consistent with the protection of . . . the sensitive
2 biological resources on lands within State holdings and on adjacent private lands.” AR39959. The
3 Commission concluded that “[t]he existing level of OHV intensity associated with the State Park is
4 causing” destruction of vegetated dunes, which are “considered sensitive habitats . . . and contain rare,
5 endangered and uncommon plant species” requiring protection under the Coastal Act. *Id.* The
6 destruction of vegetated dunes was also causing non-vegetated dunes to migrate landward and filling in
7 the biologically important Oso Flaco dune lake complex. *Id.* Separately, the Commission’s findings
8 explained that unmanaged OHV activity had resulted in deaths and severe injuries, as well as trespass
9 and habitat destruction on adjacent public and private property. *Id.*

10 Unable to approve the LCP due to the finding of “substantial issues,” AR39840, the Commission
11 directed its staff to work with the County and State Parks on finding another way to resolve the
12 immediate environmental and safety conflicts in the park, in particular “the problem of siting a staging
13 area in a manner consistent with both natural resource protection and the protection of adjacent private
14 and community interests.” AR36126. This process ultimately led State Parks to seek a CDP from the
15 Coastal Commission authorizing an interim OHV staging area and interim fencing program as part of a
16 phased program to address impacts of OHV use in Oceano Dunes. *Id.* The resulting permit—CDP 4-82-
17 300—contained detailed terms and conditions addressing both park improvements and control of
18 vehicular uses in the park. AR36116-20. The permit recognized that because the issues are extremely
19 complex, certain needed remedies would have to be implemented over time. AR36126. For example, it
20 authorized an interim OHV staging area, subject to review for effectiveness, but required State Parks
21 within 18 months to identify, based on an environmental impact analysis, the “least environmentally
22 damaging alternative” as a permanent staging area and to complete the improvement within three years,
23 or else the permit would be subject to “review and modification.” AR36117. Such staging area still has
24 not been identified.⁸

25
26 ⁸ Today, Oceano Dunes still has two interim vehicular entry points, at West Grand Avenue in Grover
27 Beach and at Pier Avenue in the unincorporated Oceano community, and entering vehicles then drive
28 two miles south along the beach to the interim staging area. AR28. In the process, they cross Arroyo
Grande Creek, which provides habitat for listed Tidewater goby, steelhead trout, and California red-
legged frog. *Id.*

1 The CDP was also clear that its authorization was interim. Accordingly, the permit required an
2 *annual review* of the effectiveness of the permit conditions. AR36117, 36120. If that annual review finds
3 that OHV use “is not occurring in a manner which protects environmentally sensitive habitats and
4 adjacent community values consistent with the requirement of the San Luis Obispo County Local
5 Coastal Program Land Use Plan, then OHV access may be further limited pursuant to the access and
6 habitat protection policies of the County certified Land Use Plan.” AR36120. In granting minor permit
7 amendments a few months later, the Commission reiterated that the CDP application and permit
8 measures were intended to be “a preliminary step by [State Parks] to undertake both planning and
9 operational measures” to regulate OHV use consistent with the pending County LCP, and it
10 acknowledged that further protections might be necessary once the LCP was approved. AR36106.

11 C. The Certified County LCP

12 In October 1986, roughly four years after the CDP was issued, the Commission first certified the
13 County’s LCP. AR38302-03.⁹ Consistent with the Coastal Act section 30240, the LCP provides that
14 “new development within or adjacent to locations of environmentally sensitive habitats . . . shall not
15 significantly disrupt the resource.” AR36983. The LCP’s Land Use Plan includes an area plan for the
16 South County Planning Area, which covers most of Oceano Dunes. AR37404, 37410; 38133. The area
17 plan identifies nearly the entirety of the park as containing “environmentally sensitive habitats.” *See*
18 AR37470 (current plan), 38199 (1988 plan), 249-50, 54, 13105.

19 The area plan’s recreational standards recognized that OHV use and related camping in Oceano
20 Dunes were already regulated by the Commission’s CDP, and the standards required compliance with
21 the CDP’s restrictions. *See* AR37449 (Standard 4), 37449-50 (Standards 5, 7), 37450 (Standard 8). But
22 the plan goes further, anticipating that the CDP may not be sufficient: “Should the terms and conditions
23 of the coastal permit not be enforced or accomplished or should they not be sufficient to regulate the use
24

25 _____
26 ⁹ The Commission certified the land use plan elements of the LCP in April 1984, AR38834, but did not
27 certify the full LCP until 1986. After the Commission approved and certified updates to the originally
28 certified LCP in 1988, the County assumed permit-issuing authority over new development. *See*
AR39378, 37966, 37967. The updated Land Use Plan certified in 1988, which serves as the general plan
“Land Use Element” for the coastal zone, consists of (1) the Coastal Zone Framework for Planning, (2)
four area plans, and (3) Coastal Plan Policies. AR54.

1 in a manner consistent with the protection of resources, public health and safety and community values,
2 then under the county’s police powers, imposition of an interim moratorium on ORV use may be
3 necessary to protect resources.” AR37449 (Standard 4).

4 The LCP’s general “Coastal Plan Policies” were even more explicit about the ongoing problem
5 of the OHV-related resource damage issues. That document explained that the park attracted over three
6 million visitors each year and that this intensity of use raised concerns “ranging from habitat protection
7 and defining appropriate areas and types of recreation use, to controlling public access and protection of
8 nearby private property.” AR36928. The Coastal Plan Policies discussed at length both the resource
9 damage issues and the incompatible recreational use concerns, noting that visitor use of the park had
10 increased by 50 percent in a mere three years’ time. AR36930-34. That document also explained the
11 difficulties that State Parks encountered in trying to alleviate this overuse by expanding the park.
12 AR36935-37. In the final analysis, the County recognized that “[d]ocumented research has clearly
13 shown” that vehicle activities “can eliminate critical areas of vegetation” and thereby destabilize the
14 entire dunes and wetlands ecosystem—posing difficult management choices. AR36937.

15 To address these significant consequences, the LCP concluded that a “determination of the level
16 and type of access (foot trails, restricted vehicular, etc.) which an environmentally sensitive habitat can
17 tolerate is an essential element in planning access.” AR36912. To this end, the Coastal Plan Policies
18 document admonished that more study was contemplated and must be done:

19 A final concern must be addressed in determining the appropriate level of
20 recreational use: recreation carrying capacity. (The total use a recreational
21 site can tolerate without a deterioration of the physical and biological
22 environment or the visitors’ enjoyment.) To adequately protect these
23 resources, this concept should be utilized in location, siting and
24 development of all recreational areas and facilities. The Coastal Act gives
25 priority to preservation of environmentally sensitive habitat areas over the
26 provision of recreational opportunities; however, many highly used
27 recreational areas within the coastal zone are in or adjacent to sensitive
28 habitat areas, including Morro Bay, Oso Flaco and Dunes Lake and the
Pismo Dunes. . . .

26 The determination of carrying capacity is a complex process, requiring
27 consideration of many variables. While some habitat areas (such as dry
28 sandy beaches) can tolerate a high intensity of daytime recreational use,
others (such as wetlands) can tolerate only a very low level of use. *It is*

1 *necessary that the recreational carrying capacity of all recreation areas*
2 *be determined, monitored, and adjusted as conditions warrant.*

3 AR36928 (emphasis added).

4 **D. The 1998 Carrying Capacity Study**

5 Several years after the Commission certified the updated LCP, the carrying capacity analysis
6 called for by the County had not been completed. Concerned about overuse, the County requested a
7 decrease in the number of camper units, prompting the Commission to initiate a CDP compliance review
8 in 1994. AR35635. As Commission staff explained at the time, the 1982 CDP included temporary and
9 permanent conditions intended to place limits on the number of camping units and on OHV day use “in
10 the fragile dune environment,” yet State Parks continued to allow “unlimited OHV day use.” AR35637.
11 As part of the 1994 compliance review, staff concluded that State Parks’ prior “carrying capacity”
12 analysis for the 1975 general management plan, which merely estimated maximum use, “did not address
13 the constraints of the park’s infrastructure, the sensitivity of the dune environment, or the potential
14 conflict between cars and pedestrians.” *Id.*

15 To address this data deficit, staff recommended, and the Commission approved, a requirement
16 that State Parks “perform and submit a carrying capacity study so that appropriate limits can be
17 determined for day use and overnight use, as required by Coastal Development Permit No. 4-82-300
18 conditions #3 and #6.” AR35638. This study, the Commission explained, “should address the
19 capabilities of the park’s infrastructure, conflicts between user groups along the shoreline, and carrying
20 capacity of the area’s environmentally sensitive habitats” and “will be used as a guideline to determine
21 the appropriate limits on day use, OHV use, and camper units.” AR35642. In the meantime, the
22 Commission adjusted the CDP to limit overnight camping and established an interim OHV day use limit
23 of 1,200 vehicles. AR35638.

24 In 1998, State Parks submitted a carrying capacity study that reflected “the maximum amount of
25 OHV day use that [State Parks] believes it can manage without degradation of coastal resources.”
26 AR35284. That analysis offered the same carrying capacity number initially articulated in the 1975
27 general management plan—4,300 day use vehicles, including OHVs (AR35293), notwithstanding the
28 fact that the 1975 plan itself raised questions about the derivation of that number. *See* AR36205.

1 In response, Commission staff recommended that “further research and monitoring be conducted
2 to better determine actual impact thresholds, particularly with respect to ecosystem carrying capacity.”
3 AR35284. As staff explained, State Parks’ carrying capacity number was “based primarily on
4 recreational capacity analysis from other State Parks units, with a particular focus on the appropriate
5 threshold number of vehicles that would maintain a beneficial visitor experience” and “was not based on
6 a comprehensive ecological analysis of the Oceano Dunes environment in relation to the appropriate
7 number of OHVs.” AR35123. The Commission expressed particular concern about State Parks’
8 assumption that the temporary fencing of certain sensitive vegetated areas (as prescribed by the original
9 CDP) was adequately mitigating OHV impacts when, in fact, riding in unvegetated dune areas also
10 adversely affects the overall ecosystem. AR35306-09.

11 **E. The 2001 CDP Amendment and the Failed Technical Review Team Process**

12 Three years later, with no resolution of these concerns, the Commission undertook its own
13 analysis in 2001 to better understand the dune ecosystem. *See* AR35124-69. Its evaluation of dune
14 dynamics revealed that more was necessary for long-term habitat protection than the temporary fencing
15 of vegetated dune areas required by the original CDP. The science shows that unvegetated (visibly bare)
16 areas form an integral part of dynamic dune systems because the underground roots of native dune
17 plants hold the sand in place, resist wind erosion, and promote dune ecosystem formation. AR35134.
18 This deeper ecological understanding of dune dynamics explains why “the overall growing area
19 (‘habitat’) needed over the long run is vastly larger than the area occupied by the lands at any one
20 ‘snapshot’ in time.” *Id.* For this reason, Commission staff confirmed that “the entire dune surface—not
21 just the location where the plants (and animals) are found in one particular year—must be considered
22 ESHA” (AR35134-35) and concluded that use limits alone would not meet Coastal Act requirements.
23 Instead, long-term dune protection requires management measures that consider “not just how much use
24 should occur but when and how such use should be managed to protect the sensitive habitats beyond the
25 vegetation enclosures.” AR35123.

26 To jumpstart the development of better measures, the Commission amended the CDP in 2001,
27 this time incorporating State Parks’ proposed day use limits on vehicles but specifying that the limits
28 were *interim* and subject to annual renewal by the Commission. AR35114 (Special Conditions 1, 2). The

1 amended permit created an interagency/stakeholder Technical Review Team (“TRT”) to provide
2 ongoing natural resource restoration and management recommendations. AR35118. The TRT was
3 broadly composed of representatives from federal, state, and local government agencies, as well as
4 interested stakeholders from the local business, environmental, and OHV communities, including
5 Friends’ representative Jim Suty. AR35118-19. The CDP directed the TRT to take a science-based
6 approach in developing recommendations for future management action and required the creation of a
7 scientific subcommittee to “identify, develop, and evaluate the scientific information needed by
8 decision-makers to ensure that [Oceano Dunes’] natural resources are adequately managed and
9 protected.” AR35115. The TRT was to submit annual reports to the Commission summarizing annual
10 use and habitat trends, as well as the TRT’s major accomplishments, projects, and recommendations for
11 future park management. AR35116.

12 The amended CDP also put all stakeholders on notice that continued OHV use depended on a
13 successful outcome from the TRT process. It provided that the Commission would annually review the
14 TRT’s effectiveness, and if the Commission was not satisfied with the results, the Commission could
15 prescribe an “alternative approach to resource management, or set of management measures.” AR35114
16 (Special Condition 2).

17 The TRT got off to a slow start and, almost from the beginning, its efforts proved problematic.
18 After its first annual review, for instance, Commission staff recommended a CDP amendment that
19 would focus the TRT’s work on the collection and analysis of *technical* information needed to manage
20 the park’s resources, an action made especially urgent by the dismal 2001 snowy plover nesting season.
21 AR34592-609. By the third annual review in 2004, Commission staff expressed frustration that “the
22 TRT has failed to satisfy the terms of Coastal Development Permit 4-82-300-A5 because it has not
23 finalized the work programs needed to address priority research and management questions, and, as a
24 result, has not made any progress in completing priority research tasks.” AR34391. Staff was concerned,
25 as well, that the TRT’s progress was hampered by “the unwillingness of some of its members to endorse
26 any modifications to park management techniques that would diminish recreational opportunities.”
27 AR34392. Finally, staff noted that the TRT’s purely advisory role limited its ability to see the scientific
28 subcommittee’s recommendations executed by park management. *Id.* For example, the scientific

1 subcommittee found that year-round, rather than seasonal, closures of snowy plover breeding areas were
2 “very successful” at improving breeding habitat and recommended that this action be taken, but such
3 measures were never implemented. AR34393-95. In the interest of comity with its sister agency, the
4 Commission refrained from amending the CDP but did repeatedly notify State Parks of these concerns.
5 *See, e.g.*, AR34426 (2004 letter regarding Oceano Dunes’ “failure to effectively implement the
6 recommendations of the scientific subcommittee”), 34247 (2005 letter noting that “the TRT has not
7 made progress in obtaining and evaluating the scientific information needed to make informed resource
8 management decisions”).¹⁰

9 The Commission “consistently sought to resolve management issues in coordination with State
10 Parks, the County and other interested parties, rather than mandate management changes through the
11 permit review process,” but it became clear by 2007 that the TRT process, like the prior carrying
12 capacity study, was not likely to satisfy the Coastal Act’s mandate to protect and restore the park’s
13 coastal resources, especially ESHA. AR33952. For instance, the TRT scientific subcommittee
14 recommended a study on the year-round closure of plover and tern habitat, but State Parks “remains
15 opposed to studying any option that results in reductions in riding or camping areas.” AR33953.
16 Similarly unresolved was the development of a permanent vehicle access route required by the 1982
17 CDP—an important outstanding issue given “user conflicts and public safety issues” and concerns about
18 vehicles traveling through the mouth of Arroyo Grande Creek, with its Tidewater goby, red-legged frog
19 and steelhead trout habitat. AR33953-54. After six years of meetings, the TRT had never developed
20 management recommendations as originally envisioned in the 2001 permit amendment, and “the level of
21 participation is clearly on the decline, as exemplified by the fact that” key state and federal wildlife
22 agencies “have not participated on the TRT for the past two years.” AR33957. As a result, there was
23 apparent consensus among remaining TRT participants to phase out their existing activity and “refocus
24 the park management and feedback process” on the Habitat Conservation Plan that the U.S. Fish and
25 Wildlife Service was then developing to address Endangered Species Act issues. AR33957-58. Seeing
26 the writing on the wall, the Commission wrote a letter to State Parks, encouraging the agency to seek a

27
28 ¹⁰ At roughly the same time, the San Luis County Air Pollution Control District began to raise concerns
about the contribution of OHV activities to the area’s elevated fine particulate matter levels. AR34010.

1 CDP amendment that shifted away from the TRT process and toward the “long awaited” Habitat
2 Conservation Plan. AR33988.

3 State Parks did not, however, submit an application for a permit amendment, and the TRT
4 remained in place. Nor did the Habitat Conservation Plan move forward in a timely way.¹¹ Given the
5 futility of its efforts to date, the Commission chose to focus its limited staff resources on more
6 productive priorities and did not hold hearings on TRT annual reports from 2008 to 2014. AR26121,
7 25144.

8 **F. The Proposed Public Works Plan**

9 The Commission reinstated its TRT review process in 2015 and its staff undertook a
10 comprehensive evaluation of coastal resource management activities at Oceano Dunes, in part to bring
11 the many new Commissioners up to speed. AR26121-22. At the hearing, staff apprised the Commission
12 of the numerous longstanding and new challenges facing Oceano Dunes, including the still-interim
13 nature of the access entrances and staging area (AR26136-38), the still interim-status of vehicle limits
14 and the growth in OHV use and footprint during special events like “Huckfest” (AR26138-41), air
15 quality and fugitive dust emissions emanating from Oceano Dunes (AR26141-46), inaction on the
16 scientific subcommittee’s recommendation for a year-round snowy plover and least tern enclosure
17 (AR26147-50), the still-incomplete Habitat Conservation Plan (AR26150-51), and the future of the TRT
18 (AR26151-53).

19 Although Commission staff continued to work with State Parks and interested stakeholders on
20 resolving these outstanding problems, little changed. AR25166-67. In its 2017 compliance review, the
21 Commission identified many of the same issues it had raised in 2015, including the protection of ESHA
22 from OHV-related damage. AR25181; *see also* AR25167, 25170, 25176, 25185, 25187, 25188.

23 To address long-standing issues at the park, staff recommended that the Commission make
24 several changes to the CDP, including reduced vehicle use limits, new methods for enforcing day-to-day
25 park operations, and new conditions for fence control and monitoring. AR25152-53. In lieu of adopting
26 these staff recommendations and amending the CDP, the Commission chose instead to cooperate with a
27

28 ¹¹ State Parks began developing the Habitat Conservation Plan to authorize its management activities at
the SVRA in 2001 (AR283) but that plan was not released for public review until 2020 (*see* AR30114).

1 request by State Parks to develop a Public Works Plan (“PWP”) for the park.¹² AR31067. As
2 conceptualized by State Parks, the PWP would take “a fresh look at Park operations in light of current
3 realities and legal requirements” and would replace the CDP. AR17415.

4 **G. The Commission’s Attempt to Chart a Better Course**

5 The inability, over nearly four decades, to resolve the worsening problems at Oceano Dunes led
6 the Commission to articulate a new vision during its next compliance review in 2019. The staff report
7 explained that “what is appropriate development within the coastal zone necessarily changes and
8 evolves over time, including with advancing scientific knowledge regarding impacts to sensitive
9 habitats, species, and other coastal resources.” AR17416. Most concerning to the Commission, “OHV
10 use in ESHA, and the amount of problems engendered by it, is not an appropriate use in this setting in
11 light of the serious Coastal Act and LCP coastal resource issues and constraints.” *Id.*

12 In addition to addressing emerging environmental justice and tribal issues¹³ (AR17430-69) the
13 staff report explained:

14 Although the Commission has to date used its discretion through the
15 annual review process to allow [Oceano Dunes] SVRA activities to
16 continue based on temporary and interim use parameters (as adjusted most
17 recently in 2001) for decades, it has become clear that the coastal resource
18 issues and constraints affecting vehicular operations at the Park are only
19 becoming more acute, and have reached a point where it is not consistent
20 with the CDP, the Coastal Act, or the LCP for the Commission to continue
21 to allow for ongoing OHV use without changes as it has in the past. In
22 fact, fundamental issues and constraints related [to] the CDP and its
23 relation to LCP compliance, air quality and public health, rare and
24 endangered species and habitats, environmental justice, and tribal
25 concerns all point to the need for the Commission to act to exercise the
26 discretion provided to it by the CDP to help start to resolve the significant
27 coastal resource problems associated with ongoing uses at [Oceano
28 Dunes] SVRA. The above discussion of issues and constraints affecting

23 ¹² To promote efficiency, a state agency may submit a PWP for consideration and certification by the
24 Commission in lieu of project-by-project applications for a coastal development permit. PRC § 30605. If
25 there is a certified LCP for the area covered by the proposed public works plan, the Commission may
26 approve it “only if it finds, after full consultation with the affected local governments, that the proposed
27 plan for public works is in conformity with certified local coastal programs.” *Id.*

27 ¹³ In August 2018, the Commission adopted its Tribal Consultation Policy, and in March 2019, it
28 adopted its Environmental Justice Policy to comply with state law and emerging state policy. Applying
these policies, the staff report concluded that Oceano Dunes has been operating for many years without
adequately accounting for the concerns of tribes and adjacent disadvantaged communities. AR17465-67.

1 [Oceano Dunes] SVRA operations makes clear that changes are needed,
2 and they are needed immediately.

3 AR17469-70.

4 Concluding that Oceano Dunes “cannot continue to operate as it has in the past,” staff signaled
5 that the ongoing unresolved problems “suggest that it is time to start thinking about ways to transition
6 the park away from high-intensity OHV use to other forms of public access and recreation that better
7 respond to the current realities.” AR17470. Coastal resource issues at the park had reached a point where
8 it was “simply not appropriate for the Commission to continue to allow for use to continue as it has in
9 the past, as this would not be consistent with underlying permit conditions and coastal resource
10 protection parameters, interpretation of which must be consistent with the Coastal Act and LCP.”
11 AR17413. “In short,” staff concluded, “a Park that is fully consistent with on-the-ground realities and
12 with today’s laws and requirements, does *not* include OHV use.” *Id.* Instead, it was time for “a
13 contemporary Park plan, as envisioned and required under the CDP and LCP, for Oceano Dunes that
14 recognizes current science, contemporary legal requirements, and good public policy that is in the best
15 interests of all people.”¹⁴ AR17471.

16 At the same time, Commission staff expressed concern about projects State Parks was
17 considering for inclusion in its PWP. For instance, the early PWP included a proposal for a vehicle
18 entrance, OHV staging and riding area, and a new campground around Oso Flaco Lake—potentially
19 taking park management in a direction that the Commission rejected decades ago as incompatible with
20 that area’s resource values and inconsistent with governing law. AR17467; *see also* AR31031
21 (Commission letter to State Parks explaining the proposal “presents what appear to be serious LCP
22 inconsistencies related to agricultural conversion and ESHA degradation, at a minimum . . . [and]
23 increase OHV use and related coastal resource impacts”).

24 _____
25 ¹⁴ The temporary closure of Oceano Dunes to motor vehicles during the early months of the COVID-19
26 pandemic provided a natural experiment that allowed large numbers of local residents and visitors to
27 walk, run, ride bikes and horses, fly kites, picnic, and play in the sand and surf without being overtaken
28 by OHV use. AR116. Habitat activity also increased during this period and “sensitive species thrived.”
AR15, 88, 168, 320. The closure thus provided a unique but brief window into what the park could be
without vehicles. See, e.g., AR2755, 2759, 2763, 2784.

1 For this reason, staff recommended that the Commission adopt several CDP amendments to
2 effectuate operational changes at the park, including reduced daily OHV limits and prohibitions on
3 Arroyo Grande Creek crossing and night riding. AR17414-15. Even so, the Commission again opted to
4 allow State Parks the opportunity to incorporate these necessary management actions into its developing
5 PWP, rather than take immediate action to amend the CDP, but with the proviso that the PWP be
6 completed for Commission consideration by the summer of 2020. AR17339, 17340, 17346 (letter from
7 Coastal Commission Executive Director to State Parks Director explaining “the strong intent of the
8 Commission” that State Parks “take seriously” the recommended changes and reflect them in the PWP),
9 17347-51 (post-hearing letter from Commission Chairperson to State Parks Director identifying
10 outstanding Coastal Act compliance issues and reaffirming the Commission’s commitment to work with
11 State Parks and interested parties in resolving those issues). In doing so, it strongly urged State Parks “to
12 consider, for example, lower-impact alternatives such as beach camping (including potentially via some
13 street-legal vehicles) and more traditional beach activities . . . consistent with both agencies’ goals and
14 legal constraints at this environmentally sensitive shoreline location.” AR17348.

15 Staff for the Commission and State Parks continued to discuss the PWP and necessary next
16 steps; Commission staff reiterated its concerns that “continuing OHV in dune ESHA is inconsistent with
17 both Coastal Act and LCP provisions regarding the protection of sensitive dune habitats, and a PWP that
18 continues long term OHV use cannot be found consistent with the LCP.” AR17244-45. State Parks
19 notified Commission staff in early 2020 that it was planning on *expanding* OHV activities and
20 intensities of use at Oceano Dunes. AR16896-97. “Nonetheless, and critically, the two staffs continued
21 to work towards meeting what the Commission had required and State Parks had committed to, namely
22 a hearing on the PWP in summer 2020 that would allow the Commission to deliberate and decide
23 whether the PWP was consistent or not with the LCP, as required by the Coastal Act.” AR16897.
24 Consistent with that continuing effort, State Parks agreed to share the draft PWP with the Commission
25 in July 2020 and release a public review draft at the end of August, which would allow the Commission
26 time to review and consider it at a special meeting on October 15, 2020. *Id.* Commission staff worked
27 with State Parks to place the matter on the Commission’s October 2020 agenda, but for a variety of
28 reasons, State Parks was unable to submit a draft PWP in time for that meeting. AR16893.

1 **H. The Commission’s Decision to Amend the CDP**

2 State Parks released a draft PWP and accompanying draft Environmental Impact Report on
3 December 31, 2021. AR142. In February 2021, the Commission released a staff report that expressed
4 major reservations about the contents of the PWP. AR1946. For the reasons previously conveyed to
5 State Parks, Commission staff concluded that the proposed PWP was not consistent with the Coastal Act
6 or with the City of Grover Beach and San Luis Obispo County LCPs. *Id.* The Commission had requested
7 that State Parks to address 15 specific harms and Coastal Act requirements and explore transitioning
8 Oceano Dunes away from OHV uses that cause those harms, but the draft PWP proposed to maintain
9 and expand OHV use within the park, including to undertake OHV-related infrastructure development in
10 ESHA that is currently off-limits to such activities. AR1953.

11 This proposed new development only added to the growing list of Commission staff’s resource
12 protection concerns. For example, the draft PWP proposed a new road through the dunes, multiple new
13 entrances through ESHA, hundreds of new camping, RV, and cabin spaces, an OHV museum, and a
14 new weapons range, among other things. AR8-9. At the same time, the Commission found that the draft
15 PWP did not prohibit vehicular crossing at Arroyo Grande Creek or nighttime riding, did not make
16 seasonal habitat exclosures year-round, reduced the spatial extent of exclosures by 109 acres, and
17 opened an additional 40 acres of ESHA to OHV riding. AR10.

18 Given the inconsistency of the draft PWP with the Coastal Act and related LCPs, and nearly four
19 decades of impasse and deteriorating resources, and as discussed with numerous stakeholder groups in
20 December 2020 and January 2021, the Commission set a special meeting on March 18, 2021, to amend
21 the CDP. AR15, 168, 190. As the Commission could neither act on the PWP, given the lack of a final
22 CEQA document, nor legally certify the PWP under Public Resources Code section 30605, the
23 Commission instead provided comments on the draft PWP. *See* AR362-79

24 The staff report for the March hearing included nearly 200 pages of background information,
25 legal analysis, impacts discussion, and recommendations. *See* AR1946-2126. Staff’s detailed analysis,
26 which was ultimately incorporated into the Commission’s approved findings, found that continued OHV
27 use in the park’s ESHA to be inconsistent with Coastal Act and LCP policies, and that the proposed
28 amendment was consistent with those polices. AR42-75. The Commission also analyzed the effects of

1 its proposed action on the environment, and found those effects would not be significant or would be an
2 improvement over the status quo. AR190, 75-127. Supporting this expansive analysis were thousands
3 of pages of relevant reports and other exhibits. AR204-833. The 600-page transcript from the March 18
4 hearing documents an extensive public process in which the Commission heard and considered all
5 stakeholders who came forward to speak on the CDP amendments. AR1332-1930.

6 At the end of that very long hearing, the Commission voted unanimously to amend the Oceano
7 Dunes CDP. In pertinent part, this amendment revoked the prior interim permit conditions designed to
8 try to address ongoing resource damage from OHV use and replaced them with permanent special
9 conditions. Those special conditions phase out OHV use over a three-year period but continue to allow
10 street-legal vehicles and overnight vehicular camping at the north end of Ocean Dunes. AR22. As the
11 staff report explained, “the Commission’s modifications to the permit do not result in closure of the
12 park, and it would continue to remain open and available both for general public use (including activities
13 associated with beach day use, ocean activities, equestrian use, biking, hiking, fishing, birdwatching,
14 etc.), and for vehicular/camping use in its northern reach.” AR1-2. The new special conditions were
15 necessary to bring Oceano Dunes into compliance with the Coastal Act and applicable LCPs, to resolve
16 40 years of permit noncompliance, to prevent further resource damage to the beach and dune ecosystem,
17 and to make these unique resources more available and attractive for a variety of low-cost coastal-
18 dependent recreation uses. AR2.

19 STANDARD OF REVIEW

20 Judicial challenges to coastal development permit decisions proceed in administrative mandamus
21 pursuant to California Code of Civil Procedure section 1094.5. PRC § 30801; *Lent v. California Coastal*
22 *Com.* (2021) 62 Cal.App.5th 812, 831. Judicial review of the Commission’s compliance with CEQA is
23 likewise reviewed under section 1094.5. PRC § 21168. The inquiry in an administrative writ proceeding
24 is whether the agency “has proceeded without, or in excess of, jurisdiction; whether there was a fair
25 trial; and whether there was any prejudicial abuse of discretion.” Code Civ. Proc. § 1094.5(b). “An
26 abuse of discretion is established if the [Commission] has not proceeded in a manner required by law,
27 the order . . . is not supported by the findings, or the findings are not supported by the evidence.” *II*
28 *Lagunita, LLC*, 58 Cal.App.5th at 918 (citations omitted).

1 In assessing the Commission’s March 18, 2021, decision to amend the CDP, the Court reviews
2 the record for substantial evidence to support the action and does not substitute its own findings or
3 inferences for that of the Commission. *Id.* “Courts presume the Commission's findings are supported by
4 substantial evidence; it is the appellant's burden to demonstrate to the contrary.” *Id.*

5 Claims that the Commission acted outside the scope of its authority are reviewed independently
6 by the Court, applying “well-settled rules of statutory construction.” *Hubbard v. California Coastal*
7 *Com.* (2019) 38 Cal.App.5th 119, 135. In resolving allegations of statutory conflict, the Court “must,
8 where reasonably possible, harmonize statutes, reconcile seeming inconsistencies in them, and construe
9 them to give force and effect to all of their provisions.” *State Dept. of Public Health v. Superior Court*
10 (2015) 60 Cal.4th 940, 955 (internal quotations omitted).

11 ARGUMENT

12 I. Friends’ Statutory Authority Arguments Are Meritless.

13 Many of Friends’ arguments are grounded in the mistaken notion that the Commission lacks
14 authority to prohibit deleterious OHV use in legally protected ESHA that exists throughout much of
15 Oceano Dunes. The Coastal Act does not say that. The OHV Act does not say that. In fact, both laws say
16 the opposite. But the absence of statutory support for its arguments has not deterred Friends from
17 making the same assertion in page after page of its brief.

18 So what, precisely, is the basis for Friends’ *ultra vires* arguments? Highlighted snatches of
19 statutory text taken out of context, a misleading narrative that omits decades of effort by the
20 Commission to coax coastal resource protection at Oceano Dunes, and lots of redundancy. But Friends
21 cannot make up in volume what it lacks in merit. The bottom line is this: After decades of study,
22 analysis, collaboration, and public discourse, the Commission properly exercised its plenary permitting
23 authority to bring the park into compliance with law by phasing out damaging OHV activity in fragile
24 coastal habitat. There is no legal (or factual) basis to reverse the Commission’s well-reasoned decision.

25 A. The Commission Has Broad Authority to Enforce Coastal Act Standards in the 26 Coastal Zone, Including on Public Parkland Managed by State Parks.

27 Friends’ “jurisdictional” arguments turn on a fundamental mischaracterization of State Parks’
28 and the Coastal Commission’s respective roles under applicable laws. When these laws are considered

1 in their entirety, there is no serious dispute that the Commission’s adoption of permit conditions to
2 protect ESHA and other coastal resources at Oceano Dunes was entirely within its legal authority and,
3 indeed, mandated by the Coastal Act.

4 Under its general authority, State Parks is charged with the statutory duty to “administer, protect,
5 develop, and interpret the property under its jurisdiction for the use and enjoyment of the public,” PRC §
6 5003, but it must carry out that charge in a manner “not inconsistent” with the law that governs this
7 property. PRC § 5003. With respect to SVRAs in particular, the OHV Act gives State Parks the statutory
8 responsibility for “[m]anagement, maintenance, administration, and operation” of these areas, as well as
9 the obligation to “[p]rovide for law enforcement and appropriate public safety activities.” PRC §
10 5090.32(b)-(c). In fulfilling these responsibilities, State Parks not only must comply with the OHV Act’s
11 environmental requirements (PRC §§ 5090.32, 5090.35, 5090.39(a), 5090.43), but it is also subject to all
12 state and federal regulations, including all permit requirements. PRC § 5090.39(b). In short, State Parks
13 manages and protects state parklands and resources, subject to the requirements of applicable state law,
14 including the Coastal Act.

15 The Coastal Commission, on the other hand, has broad plenary authority to implement and
16 enforce special coastal resource protection standards—those set forth in Chapter 3 of the Coastal Act—
17 for all private and public property within the coastal zone. PRC §§ 30200(a), 30003, 30330. Much like
18 California’s endangered species and clean water laws, the Coastal Act imposes unique resource
19 protection requirements on top of any other general requirements for use and development of coastal
20 property. The Commission carries out these heightened protection responsibilities by certifying local
21 coastal programs for consistency with all Chapter 3 standards and by ensuring that those standards are
22 enshrined in enforceable coastal development permits. *See* PRC §§ 30510-26, 30600. In performing
23 these core functions, the Commission “shall have the primary responsibility for the implementation of
24 the provisions of [the Coastal Act] and is designated as the state coastal zone planning and management
25 agency for *any and all purposes*.” PRC § 30330 (emphasis added). And this statutory authority must be
26 “liberally construed to accomplish [the Coastal Act’s] purposes and objectives.” PRC § 30009; *Pacific*
27 *Palisades Bowl Mobile Estates LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 793-94. Accordingly,
28 the courts have repeatedly confirmed that the Commission is the “ultimate authority to ensure that

1 coastal development conforms to the policies embodied in the . . . Coastal Act.” *San Diego Navy*
2 *Broadway Complex Coal. v. California Coastal Com.* (2019) 40 Cal.App.5th 563, 571 (citation
3 omitted); *City of Dana Point v. California Coastal Com.* (2013) 217 Cal.App.4th 170, 186; *Charles A.*
4 *Pratt Constr.*, 162 Cal.App.4th at 1075.

5 Friends’ theory here is that the Commission has overstepped its broad statutory authority to
6 protect coastal resources because only State Parks can decide whether and how to manage OHV use at
7 Oceano Dunes. The Coastal Act, however, says otherwise. Section 30003 provides: “All public agencies
8 . . . shall comply with the provisions of this division.” PRC § 30003. And section 30402 reiterates: “All
9 state agencies shall carry out their duties and responsibilities in conformity with this division.” PRC §
10 30402. Thus, every public agency, including State Parks, must comply with the Coastal Act’s rigorous
11 coastal protection standards, as implemented by the Commission through the LCP certification and
12 coastal development permit process. Notably, neither of Petitioners’ opening briefs even acknowledge
13 sections 30003 and 30402.

14 Equally remarkable, Friends fails to mention section 5090.39(b) of the OHV Act, which states
15 unequivocally: “Nothing in this chapter relieves the [OHV] division from compliance with state and
16 federal laws and regulations, *including permit requirements.*” PRC § 5090.39(b) (emphasis added).
17 Added in 2017, section 5090.39 puts to rest any notion that the Legislature intended Oceano Dunes—or
18 SVRAs more generally—to be exempt from the Coastal Act’s resource protection standards or the
19 Commission’s permitting jurisdiction. To the contrary, in the face of continuing conflict over OHV-
20 related damage at Oceano Dunes, the Legislature saw fit not only to strengthen the OHV Act’s
21 environmental protection standards, but also to clarify the primacy of other resource protection laws,
22 like the Coastal Act, in managing SVRAs.

23 These critical statutory provisions wholly undermine Friends’ whimsical argument that the law
24 “**forbids** the CCC from playing in a sister agency’s sandbox.” Friends’ Opening Brief (“FOB”) at 2
25 (emphasis in original). Confronted with substantial and increasing evidence that OHV use is
26 fundamentally incompatible with the protection of ESHA in the park, the Commission reasonably acted
27 to ensure that the CDP—which had always contemplated the possibility of future restrictions on OHV
28 use—is consistent with applicable LCP policies and the Coastal Act mandate that ESHA “shall be

1 protected against any significant disruption of habitat values.” *See Sierra Club v. California Coastal*
2 *Com.* (1993) 12 Cal.App.4th 602 (finding that Commission must protect ESHA); *see also Bolsa Chica,*
3 *71 Cal.App.4th at 508.* The Commission did so under the Coastal Act and LCP, *not* by attempting to
4 enforce the OHV Act or in any way displacing State Parks’ organic authority.

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

8 Ignoring the Commission’s clear authority to implement the Coastal Act through coastal
9 development permit conditions, Friends spins a highly misguided legal theory from a handful of words
10 in section 30401, claiming that allowing the Commission to bar OHVs in ESHA would impermissibly
11 “decrease, duplicate, or supersede” State Park’s authority to manage SVRAs. *See* FOB at 25. As
12 explained below, those words, plucked from their statutory context, do not say what Friends wishes they
13 did. And when stripped of this faulty underpinning, Friends’ repetitive legal arguments crumble.

14 As a threshold matter, context matters. Section 30401 does not exist in isolation; rather, it is part
15 of a larger chapter devoted to “minimiz[ing] duplication and conflicts among existing state agencies
16 carrying out their regulatory duties and responsibilities.” *See* PRC §§ 30400-421. The bookends for
17 section 30401 are the immediately adjacent sections 30400 and 30402. Section 30400 clarifies that the
18 Coastal Commission has *sole* authority for implementing the Coastal Act’s special requirements: “In the
19 absence of a specific authorization set forth in this division or any other provision of law or in an
20 agreement entered into with the commission, *no state agency . . . shall exercise any powers or carry out*
21 *any duties or responsibilities established by [the Coastal Act].*” PRC § 30400 (emphasis added). And its
22 mirror-image section 30402 commands: “*All state agencies shall carry out their duties and*
23 *responsibilities in conformity with [the Coastal Act].*” PRC § 30402 (emphasis added). In other words,
24 no other state agency may enforce the Coastal Act and every other state agency must comply with it.
25 The intervening language of section 30401 must be read in the context of these twin legislative
26 directives. *Nahrstedt v. Lakeside Vill. Condo. Assn.* (1994) 8 Cal. 4th 361, 379.

27 What does section 30401 actually say? First, it states that “[e]xcept as otherwise specifically
28 provided in this division,” “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

1 followed by a directive: The Commission may not “set standards or adopt regulations that *duplicate*
2 *regulatory controls established* by any existing state agency *pursuant to specific statutory requirements*
3 *or authorizations.*” *Id.* (emphasis added). Section 30401 also provides: “This chapter shall *not* be
4 construed to limit *in any way* the regulatory controls over development pursuant to [the Commission’s
5 permitting authority].” *Id.* (emphasis added). When all of this language is read together, section 30401
6 provides that where another state agency is charged by law with establishing regulatory controls through
7 standards or regulations, the Commission cannot displace those controls with its own duplicative
8 standards or regulations, but it may nevertheless use its permitting authority to impose additional
9 requirements necessary to implement Chapter 3’s resource protection standards. The section cannot
10 reasonably be read to create an exemption from those standards.

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

18 The remainder of the chapter in which section 30401 sits delineates relevant statutory
19 responsibilities where a potential conflict could arise. *See* PRC §§ 30410-21. In these sections, the
20 Legislature includes specific provisions governing the relationship between the Commission and certain
21 other agencies. For example, one section clarifies that the State Water Resources Control Board and
22 regional water quality control boards “are the state agencies with primary responsibility for the
23 coordination and control of water quality” and that the Commission “shall not, except as provided in
24 subdivision (c), modify, adopt conditions, or take any action in conflict with any determination by the
25 State Water Resources Control Board or any California regional water quality control board in matters
26 relating to water quality.” PRC § 30412(b). Another makes clear that the Commission cannot displace
27 the authority of air pollution control districts to set ambient air quality or emission standards. PRC §
28 30414(a). Still others provide coordinating directives for other permitting and resource agencies, such as

1 the Department of Conservation (which issues oil and gas drilling permits), the Department of Fish and
2 Wildlife (which regulates fish, wildlife, and wetlands development), and the Board of Forestry (which
3 regulates and permits logging). PRC §§ 30418, 30411, 30417. Thus, where the Legislature intended that
4 the Commission defer to the general standards or regulatory controls established by other state agencies
5 under their authorizing legislation, it said so clearly and spelled out precisely how the agencies should
6 coordinate their efforts.¹⁵

7 Conspicuously absent from this chapter is any mention of, or restriction related to, State Parks,
8 which is neither a regulatory nor a permitting agency. The Commission does not dispute that State Parks
9 has autonomy to manage and protect the lands under its jurisdiction. But like any land management
10 entity, it must do so consistent with all applicable state laws. PRC §§ 5003; 5090.39(b). Had the
11 Legislature intended to carve out an exception from the Commission’s jurisdiction or permitting
12 authority specifically for SVRAs, as Friends now claims, it could and would have done so. It did not.
13 There is absolutely no basis for the Court to read into the Coastal Act (or the OHV Act) an exception
14 that the Legislation did not include. *Soto v. Motel 6 Operating, L.P.* (2016) 4 Cal.App.5th 385, 393
15 (affirming that courts must not rewrite statutes to read into it an exception that will materially affect its
16 operation to conform with litigant’s view of what the law should be).

17 To be sure, the Commission does not dispute that State Parks possesses the statutory authority to
18 protect natural resources on state parklands, including on designated SVRAs, but that authority does not
19 displace the Commission’s jurisdiction. Under the OHV Act, State Parks must protect “public safety, the
20 appropriate utilization of lands, and the conservation of natural and cultural resources” as the “highest
21 priority” in managing SVRAs. PRC § 5090.35(a). But the Commission has an independent mandate to
22 ensure compliance with the rigorous coastal resource protection requirements of the Coastal Act (or of a
23 certified LCP implementing Coastal Act requirements). And in particular, the Commission is charged
24 with protecting ESHA “against any significant disruption of habitat values”—an obligation the courts
25

26 _____
27 ¹⁵ See, e.g., PRC §§ 30103(a) (“coastal zone” excludes jurisdiction of BCDC), 30412(b) (Commission
28 shall not “adopt conditions, or take any action in conflict with any determination by the [state water
boards] in matters relating to water quality”), 30600(e) (“[t]his section does not apply” to disaster
response or emergency projects), 30610(g) (exception for Sea Ranch).

1 have repeatedly held to be a paramount concern under the Coastal Act. *E.g., McAllister*, 169
2 Cal.App.4th at 923; *Douda v. California Coastal Com.* (2008) 159 Cal.App.4th 1181, 1193; *Sierra Club*
3 12 Cal.App.4th at 613. Thus, when efforts to protect the park’s deteriorating ESHA were unsuccessful,
4 the Commission could meet its statutory mandate only by exercising its reserved authority under the
5 2001 CDP to prescribe an alternative approach to resource management that would protect ESHA from
6 further harm.

7 In sum, the express language of the Coastal Act provides that its highly protective Chapter 3
8 resource standards, as implemented through the Commission’s LCP certification and permitting
9 authority, must be implemented in addition to—and are not superseded by—other state-level
10 requirements. That State Parks has its own delegated authority and requirements for managing SVRAs
11 “simply creates a system of overlapping jurisdiction, an uncontroversial concept under our law.” *See*
12 *Linovitz Capo Shores LLC v. California Coastal Com.* (2021) 65 Cal. App. 5th 1106, 1117-18 (citation
13 omitted) (holding Coastal Act’s permitting authority is concurrent with, and not displaced by, state
14 housing department’s permitting authority); *Pacific Palisades*, 55 Cal.4th at 793-94 (CDP requirements
15 are “in addition to obtaining any other permit required by law from any local government or from any
16 state, regional, or local agency”). Nothing in either the OHV Act or the Coastal Act—and certainly
17 nothing in section 30401—suggests that State Parks is exempt from the Commission’s permitting
18 authority to protect ESHA in the coastal zone. To the contrary, the OHV Act specifically requires State
19 Parks to comply with all permitting requirements.

20 **C. The OHV Act Does Not Conflict With or Place Limits on the Commission’s**
21 **Permitting Authority over ESHA.**

22 The foregoing, more fulsome understanding of both the Coastal Act and the OHV Act—and of
23 their relationship to each other—reveals that there is *no* ambiguity or conflict which this Court must
24 resolve. The Coastal Act expressly provides that state agencies are subject to Coastal Act requirements
25 and that section 30401 does not restrict the Commission’s permitting authority. The OHV Act expressly
26 provides that in managing SVRAs, State Parks is subject to all other state regulations and permitting
27 requirements. PRC § 5090.39(b). That should end the inquiry.

28 Nevertheless, Friends insists that various provisions of the OHV Act must be read as creating an

1 exception to the Coastal Act’s ESHA protection requirement for OHV use in SVRAs. Friends claims
2 that OHV riding in an SVRA cannot be eliminated from the park, regardless of its impacts on ESHA.
3 But none of the OHV Act provisions does the work that Friends attributes to them.

4 **Section 5090.43.** Friends relies heavily on OHV Act section 5090.43 for its claims that State
5 Parks and only State Parks may protect ecologically sensitive resources areas and that any such
6 protections must be limited to selective physical barriers because State Parks has an obligation to
7 “operate” SVRAs and to provide the “fullest” appropriate public use of OHV recreation opportunities.
8 FOB at 27-32. But section 5090.43 says no such thing.

9 Section 5090.43 sets forth factors for “selection, designation, management, and protection” of
10 SVRAs. The first operative sentence guides future acquisition of SVRAs, limiting their selection to
11 those lands where (1) the need to protect sensitive natural and cultural resources is “minimized” (*i.e.*,
12 lands that do not have such resources), (2) the terrain is capable of withstanding motorized vehicle
13 impacts, *and* (3) there are quality recreational opportunities for OHVs. PRC § 5090.43(a). Oceano
14 Dunes, if it were designated today, would not satisfy the first two selection criteria. In any event, the
15 Coastal Commission plays no role in the acquisition or classification of Oceano Dunes; it has merely
16 exercised its permitting authority to protect the fragile coastal resources contained on state public land
17 and the adjacent non-state parcels.

18 The next sentence of section 5090.43(a)—that such acquired areas “shall be developed,
19 managed, and operated for the purpose of providing the fullest appropriate public use of the vehicular
20 recreational opportunities present . . . while providing for the conservation of cultural resources and the
21 conservation and improvement of natural values over time”—is no more helpful to Friends. Friends
22 focuses on the word “fullest,” but ignores the word “appropriate” and the critical concluding clause
23 “while providing for the . . . conservation and improvement of natural values over time.” *See* FOB at 28-
24 29. And, of course, none of these words have relevance to the *Commission’s* separate and distinct legal
25 obligations under the Coastal Act, although they do confirm that the Legislature contemplated OHV use
26 only where “appropriate.” OHV-related use that disrupts ESHA in violation of the Coastal Act is plainly
27 not an “appropriate” use.

28 Friends misfires again in claiming that the amended CDP somehow amounts to the illicit

1 establishment by the wrong agency of a “sensitive area” for which only limited physical barriers are
2 allowed. FOB at 30-31. Whether or not State Parks considers the southern portion of Oceano Dunes to
3 be a “sensitive area” under the OHV Act—and whatever the scope of its remedial authority to protect
4 these resources—the Commission is not bound by section 5090.43. Its authority flows from the Coastal
5 Act, and its detailed analysis and conclusions concerning ESHA are unchallenged in these cases.¹⁶

6 **Section 5090.35.** Friends turns next to OHV Act section 5090.35, which provides State Parks
7 with authority to develop soil erosion standards and habitat protections plans and to close SVRAs to
8 vehicle use where those requirements cannot be met. PRC § 5090.35(b)-(c). Under Friends’ theory,
9 section 5090.35 provides the exclusive authority to manage coastal resources on SVRAs and effectively
10 supersedes the Commission’s legal mandate to protect ESHA. Friends seeks to bolster this theory by
11 references to section 5090.32, which conveys State Parks’ general authority to manage and maintain
12 SVRAs, and section 5090.02, which includes the legislative declaration that existing SVRAs should be
13 maintained and expanded in a manner that is consistent with the OHV Act. The language of these
14 sections, in Friends’ view, implies that the OHV Act displaces the Commission’s mandate to protect
15 ESHA, although the OHV Act contains no express exception to that effect. *See* FOB at 33-37.

16 These arguments are meritless. The California Supreme Court has articulated just how difficult it
17 is to find a repeal by implication: “[A]ll presumptions are against a repeal by implication. . . . Absent an
18 express declaration of legislative intent, we will find an implied repeal only when there is no rational
19 basis for harmonizing two potentially conflicting statutes . . . and the statutes are irreconcilable, clearly
20 repugnant, *and so inconsistent that the two cannot have concurrent operation.*” *Pacific Palisades*, 55
21 Cal.4th at 805 (internal citations and quotes omitted; emphasis added). In that case, the Court held that
22 there is no implied exemption for mobile home conversions from the requirement to obtain a CDP under
23 the Coastal Act, “even if not fully consistent with the Legislature’s expressed desire . . . to encourage or
24 facilitate conversions.” *Id.* at 806; *see also Kalnel Gardens, LLC v. City of Los Angeles* (2016) 3

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26 _____
27 ¹⁶ Nor is the OHV Act’s prohibition on designating “new natural or cultural preserves” in SRVAs after
28 1988 applicable here. Natural preserves and cultural preserves are defined classifications of park units,
designated by the Parks Commission. PRC §§ 5019.71, 5019.74. The park’s ESHA designation is not a
“natural preserve,” and in any event, it was designated prior to 1988.

1 Cal.App.5th 927, 943-46 (density bonus statutes for affordable housing do not create an exemption from
2 the Coastal Act, despite “legislative provisions declaring the vital importance of encouraging affordable
3 housing.”). Here, of course, there is no conflict with the Coastal Act because the OHV Act expressly
4 makes SVRAs subject to other state permitting requirements. But even absent that express provision, the
5 two statutes would in no way be “irreconcilable.”

6 Friends’ statutory construction arguments are infused with the notion that even if the
7 Commission has *some* authority to regulate OHV impacts to ESHA, precluding *all* OHV use from the
8 park on environmental grounds is not reasonable and will not be tolerated by the OHV Act. *See* FOB at
9 24-25. But nowhere does that Act require that OHV use must be maintained in an SRVA regardless of
10 its environmental cost. On the contrary, as discussed in Argument Section II.B. above, the OHV Act’s
11 environmental protection provisions expressly contemplate that SVRAs may have to suspend or be
12 closed to OHV use in order to effectuate the statutory priority for preserving natural resources. PRC §§
13 5090.02, 5090.35. If State Parks can close SVRAs to OHV use in order to protect natural resources, then
14 there simply is no statutory conflict—let alone an “irreconcilable” one—when the Commission exercises
15 its similarly clear and powerful authority to achieve the same result under its separate Coastal Act
16 authority.¹⁷ *Garcia v. McCutchen* (1997)16 Cal.4th 469, 476 (“[w]hen two statutes touch upon a
17 common subject,’ [courts] must construe them ‘in reference to each other, so as to ‘harmonize the two in
18 such a way that no part of either becomes surplusage.’”) (citations omitted).

19 Moreover, in exercising its permitting authority here, the Commission did not act arbitrarily, but
20 sought to preserve vehicle recreation opportunities in the park to the greatest extent possible consistent
21 with applicable LCP policies and the Coastal Act’s mandate. Based on hundreds of pages of thorough
22 and deliberate analysis, supported by thousands of pages of evidence, the Commission concluded that
23

24 ¹⁷ Indeed, the author of the 2017 OHV Act amendments has affirmed the Commission’s authority to act.
25 State Senator Ben Allen, urging the Commission to move forward with the CDP amendment to phase
26 out OHV use, explained that “[i]n passing SB 249, the Legislature expressed its clear intent that OHV
27 parks management activities place a higher priority on environmental protection, by avoiding impacts in
28 in the first instance, protecting sensitive habitat and cultural sites, and mitigating fully for unavoidable
impacts.” AR12651. Senator Allen accurately noted that “California is a very different place than it was
in 1982 when the original permit was issued for temporary, interim activities that were supposed to have
been resolved long ago It is well past time for the Commission to address such issues.” *Id.*

1 OHV riding, all of which takes place in the park’s ESHA, has proved incompatible with LCP and
2 Coastal Act standards.¹⁸ AR12-13. But the Commission also recognized that north of Pier Avenue, the
3 park contains non-ESHA sandy beach which could be suitable for “recreation types that might be more
4 intensive than general beach use,” such as beach driving and beach camping by street-legal vehicles.
5 AR13-14. The amended permit accommodates these uses by continuing to allow street-legal vehicles on
6 the beach between Pier and West Grand Avenues *and*, for the first time, allowing camping on this long
7 stretch of beach. AR16, 22-26. The amended CDP thus reflects a thoughtful and legally defensible
8 approach to bring the park into compliance with the Grover Beach and County LCPs and the Coastal
9 Act, while continuing to allow off-highway motor vehicle recreation as defined in the OHV Act to the
10 fullest extent feasible consistent with applicable ESHA policies.

11 **D. Friends’ Remaining Jurisdictional Arguments Are Entirely Specious.**

12 Friends’ remaining jurisdictional arguments are equally meritless. Friends argues that only the
13 Parks Commission can classify or reclassify an SVRA. FOB at 26. True enough, but entirely irrelevant
14 to this lawsuit. Through its CDP amendment, the Commission imposed conditions to implement the
15 Coastal Act; it did not purport to classify or reclassify the park. Indeed, the northern part of the park
16 remains uniquely available for off-highway motor vehicle recreation in the form of beach driving and
17 camping by street-legal vehicles.¹⁹ Whether the OHV Commission chooses to formally reclassify
18 Oceano Dunes under these circumstances is a matter for that body’s consideration, not a live issue
19 before the Commission or this Court.

20 It is worth noting, however, that the State Parks and Recreation Commission originally classified
21 the SVRA in 1975, *before* adoption of the Coastal Act and its stringent ESHA standards (AR36165), and
22 *before* the evolving scientific knowledge identified use on unvegetated dunes as contributing to the
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24 _____
25 ¹⁸ Although Friends mentions in passing that coastal development permit conditions must be
26 “reasonable” (FOB at 39), neither opening brief challenges the factual basis for the Commission’s
27 scientific analysis and findings on ESHA, and any such challenge is now waived. But to be clear, the
28 Commission’s conclusions are supported by overwhelming evidence in the record, and Petitioners do
not point to any contradictory evidence. AR297-354, 13097-107.

¹⁹ As discussed above, street legal vehicles, when driven in the park, are within the OHV’s definition of
off-highway motor vehicles. *See supra* Factual and Legal Background Section II.B, fn. 4.

1 destruction of ESHA (*see* AR35134-35). Moreover, while Friends points to State Park’s 1970s finding
2 that Oceano Dunes is “uniquely suited” to dune buggy riding (FOB at 27), the reality is that Oceano
3 Dunes is one of nine SRVAs across the state which, collectively, make at least 145,000 acres available
4 for OHV riding. AR432-36.²⁰ What *is* truly unique about Oceano Dunes is its contribution to the
5 continuing integrity of one of the world’s largest intact coastal dunes ecosystems (*see* AR27, AR303-
6 05), and its location in the California coastal zone, which the Supreme Court has recognized “is a
7 distinct and valuable natural resource of vital and enduring interest to all the people.” *Pacific Palisades*,
8 55 Cal.4th at 793 (quotation and citation omitted).

9 Finally, Friends’ insistence that the Commission’s CDP amendment decision effectively “closes”
10 the park, or closes it to recreational use and public access, is patently untrue. *See* FOB at 32-33. While
11 destructive motorized use in ESHA will be phased out, the amended CDP will, in many ways, allow for
12 an expanded range of recreational opportunities that are currently untenable due to OHV use, such as
13 typical beach day use activities, as well as increased hiking, biking, and equestrian access to thousands
14 of parklands previously dominated by OHV use. AR855. At the same time, the amended CDP will
15 continue “car camping on the beach, hike-in/bike-in camping, vehicle/ADA access, and similar uses”
16 unique to Oceano Dunes. *Id.* These new or expanded opportunities are in line with Coastal Act
17 policies, which preference lower cost recreation. *See* PRC § 30213. In short, Oceano Dunes will
18 become more open to a diversity of public recreation than it has been in decades.

19 **E. There Is No Case Law Support for Friends’ Arguments.**

20 Friends builds its legal theory that the Commission lacks jurisdiction to phase out OHV use on
21 SVRAs primarily on the flawed statutory construction arguments discussed above, but it also relies on
22 *City of Malibu v. California Coastal Com.* (2012) 206 Cal.App.4th 549. FOB at 40-41. In that case, the
23 Commission, after declining to certify an LCP amendment adopted by the city, certified the
24 Commission’s preferred LCP amendment instead. *City of Malibu*, 206 Cal.App.4th at 556-60. The court
25 held that the Coastal Act expressly reserves the power to propose LCP amendments to local
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27

28 ²⁰ While Oceano Dunes provides only 1,350 acres of dune riding, some of the other SVRAs are much larger, covering tens of thousands of acres. *See* https://ohv.parks.ca.gov/?page_id=1170.

1 governments, with the exception of a special “override” provision²¹ that, on its face, requires a specific
2 public works project, which was not present in that case. *Id.* at 562-64. That case was construing the
3 specific language of the Act’s LCP and override provisions and has no bearing on the Commission’s
4 permitting authority and obligation to protect ESHA, which admit no exceptions for SVRAs.

5 **F. There Is No Limiting Principle to Friends’ Baseless “Balancing” Theory.**

6 Friends is at pains to suggest that the jurisdictional question raised in its brief is a narrow and
7 simple one that does not “invite the Court to determine the precise contours of the CCC’s authority.”
8 FOB at 25. But that is precisely what it does. Conceding, as it must, that the Commission has permitting
9 authority over SVRAs in the coastal zone (FOB at 24), yet scrupulously avoiding any challenge to the
10 substantial factual evidence supporting the Commission’s CDP amendment decision, Friends asks the
11 Court instead to determine *as a matter of law* that the Commission does not have the authority “to ban
12 **all** OHV recreation” at Oceano Dunes. *Id.* at 25 (emphasis in original). But if not “all,” then how much?
13 Friends asserts the key principle is “balance.” FOB at 1. But the Commission has already found the *any*
14 amount of OHV riding in ESHA would be significantly disruptive. *See, e.g.*, AR7-8. What level of
15 ESHA destruction must the Commission tolerate to allow “some” OHV riding to occur? Providing an
16 answer to this and myriad other questions raised by Friends’ theory presents an unworkable task for the
17 Court because Friends’ argument is untethered to any provision in the County’s LCP or the Coastal Act
18 that would provide a limiting principle, much less one that can be reconciled with the uncompromising
19 directive to prioritize the protection of ESHA. PRC § 30240; AR36983; *Bolsa Chica*, 71 Cal.App.4th at
20 506. Friends is thus wrong that “the Court’s task here is easy” if it adopts Friends’ novel legal theory.
21 FOB at 25. Instead, the “easy” path is also the correct one: The Court should assume the Legislature
22 meant what it said in Coastal Act section 30402 and OHV Act section 5090.39(b) and, like so many
23 other courts, read the Coastal Act as conveying broad plenary authority on the Commission to impose
24 permit conditions that fully protect ESHA and other coastal resources.

25
26
27 ²¹ Section 30515 is a narrow and highly specific provision; it allows the Commission to override denial
28 by a local government of a coastal development permit for a public works project that would meet
public needs not previously anticipated when the LCP was certified. PRC § 30515.

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

3 Friends next claims that the Commission’s action to exclude OHVs from ESHA is inconsistent
4 with the County’s certified LCP and, therefore, invalid. FOB at 41-46. On the contrary, the LCP’s
5 ESHA policies *flatly prohibit* any uses within or adjacent to ESHA that would “significantly disrupt”
6 ESHA. AR36983. The Commission’s finding that OHV use is significantly disrupting the park’s ESHA
7 is supported by overwhelming evidence in the record—evidence which Petitioners do not contest. Nor
8 do Petitioners point to any policy or standard in the LCP creating an exception to the ESHA policies for
9 OHV use. In light of the Commission’s finding of significant disruption, it was required by the LCP to
10 prohibit OHVs in the park.

11 **A. The Commission’s Undisputed Finding that OHV Use Significantly Disrupts ESHA**
12 **Is Dispositive.**

13 It is telling that the key LCP policy language at issue in this case is mentioned just once in
14 Friends’ brief. *See* FOB at 45. ESHA Policy 1 makes clear that development “within or adjacent to
15 locations of environmentally sensitive habitats *shall not significantly disrupt the resource.*” AR36983
16 (emphasis added); *see also* AR36986 (Policy 7, coastal wetlands), 36992 (Policy 21, coastal streams),
17 36994 (Policy 29, terrestrial habitats). The LCP’s ESHA policy mirrors the language of the Coastal Act,
18 which provides that ESHA “shall be protected against any significant disruption of habitat values.” PRC
19 § 30240(a). As courts have made clear, this provision “unambiguously establishes. . . there can be no
20 significant disruption of habitat values” in ESHA. *McAllister*, 169 Cal.App.4th at 928.

21 Friends does not dispute that the portion of the park subject to the Commission’s motorized
22 vehicle restriction is designated as ESHA in the LCP. *See* FOB at 44 (“Friends agrees that the land at
23 issue appears to be ESHA under the LCP”). Nor does it dispute the Commission’s finding that
24 continued OHV activity would significantly disrupt the ESHA that comprises the dunes, or any of the
25 voluminous evidence upon which that finding is based. *See, e.g.*, AR4 (“evidence demonstrates that
26 vehicular/OHV activity in dunes is one of the most disruptive activities that could be pursued therein”),
27 80-95 (discussing the numerous ways OHV use has degraded ESHA), 277-84 (resource agency
28 documentation of vehicles killing least terns and snowy plovers), 297-354 (detailed study of OHV
impacts on ESHA in the park), 344 (map showing how OHV riding has disrupted habitat linkages),

1 15615-26 (study finding OHV use is a stressor on dune ecosystems), 15699-703 (study noting the
2 “highly detrimental” impact on sandy beaches of “inappropriate [recreational] uses such as off-road
3 vehicles driven on beaches”), 37542 (fragile vegetation in the dunes “has been severely damaged . . . by
4 increasing numbers of [OHVs]”). This finding is dispositive: Continued OHV use in the park’s ESHA is
5 barred under the LCP because it significantly disrupts the resource.

6 Rather than challenging the Commission’s findings of significant disruption of ESHA, Friends
7 argues that the Commission “failed to apply the LCP’s methodology for evaluating whether ESHA was
8 being protected.” FOB at 45. According to Friends, “the LCP requires a more incremental approach,”
9 i.e., the Commission may not ban *all* OHV but may only impose “incrementally tighter” limits on the
10 park’s OHV “carrying capacity.” *See* FOB at 45-46. Nowhere does the LCP contain such limitation.

11 The LCP’s discussion of carrying capacity is focused not on minimizing restrictions on OHV use
12 in the park, but on addressing the many “issues and concerns” raised by that use. AR36928. As the LCP
13 explains, “[h]igh intensity recreational use of the [SRVA] has led to. . . degradation of the environment,”
14 and the “*overriding concern* within the dunes is resource protection, because the unique flora of much of
15 the inland dunes is being severely degraded by recreational vehicle use.” AR36932-33 (emphasis
16 added). To protect these resources, the LCP provides that OHV use must be limited to the park’s
17 recreational carrying capacity—i.e., the “total use a recreational site can tolerate without a deterioration
18 of the physical and biological environment”—because “[t]he Coastal Act gives priority to preservation
19 of environmentally sensitive habitat areas *over the provision of recreational opportunities.*” AR36928
20 (emphasis added). These limits must be regularly monitored and readjusted to account for new
21 conditions.²² *Id.* Nothing in the LCP’s discussion of carrying capacities remotely suggests that the
22

23 ²² Friends cites to the carrying capacity limits from State Park’s 1975 General Development Plan. FOB
24 at 45 (citing AR36934). But those limits, included for informational purposes, were not endorsed by the
25 LCP; on the contrary, the LCP expressly stated that the 1975 plan “raises several issues which must be
26 further evaluated” including the fact that “[c]ontinued use of the dunes by off-road vehicles has led to
27 environmental degradation.” AR36933. Friends also states, wrongly, that the Commission “accepted”
28 the OHV limits in State Park’s 1998 carrying capacity study. *See* FOB at 45. As the Commission
explained, “[t]hese interim use limits were never anticipated to establish the ultimate carrying capacity
for the Park.” AR135. Indeed, in its 2001 staff report, the Commission stated that the 1998 study “was
not based on a comprehensive ecological analysis,” includes “no specific data . . . that correlates actual
(footnote continued on next page)

1 Commission may make only “incremental” adjustments or is precluded from barring OHV use in ESHA
2 where, as here, it has found that such use is significantly disrupting the resource.

3 Friends nevertheless asserts that the Commission should have taken an approach “narrowly
4 tailored to the type of ESHA being impacted,” pointing to language in the LCP suggesting that “open
5 sand sheets” in the park may have a greater tolerance for OHV use than other sensitive habitats. FOB at
6 46 (citing AR36928). But the Commission specifically looked at OHV’s impacts to *all* habitat types in
7 the park’s ESHA, including sandy beaches and unvegetated dunes, and found them significant. *See, e.g.*,
8 AR308-17 (describing habitat types, including sandy beach), 318-22 (describing significant OHV
9 impacts to sandy beaches and dunes²³), 82 (“both vegetated and barren sand surfaces contribute to the
10 overall functioning of the dunes habitat system—even when these areas are to one degree or another
11 degraded”), *id.* (park’s rare and important native dune habitats include “the significant extent of bare
12 sand habitat, which provide nesting areas for the threatened western snowy plover”); *see also* AR101,
13 294, 13254, 16302-03.

14 In other words, as the Commission found, “no carrying capacity has been identified that would
15 adequately protect coastal resources.” AR7-8. Because the uncontested evidence indicates OHV use in
16 any amount would significantly disrupt ESHA, and because the LCP unambiguously prohibits such
17 activities in ESHA, the Commission’s action was mandated by the LCP. *Bolsa Chica*, 71 Cal.App.4th at
18 50.

19 **B. The LCP’s OHV Recreation Policies Do Not Override the LCP’s Protection of**
20 **ESHA from Significant Disruption.**

21 Friends argues that the LCP’s recognition of ongoing OHV use in unfenced areas of the park
22 somehow overrides the LCP’s mandatory policy prohibiting uses that significantly disrupt ESHA. FOB
23 at 12-13. But the fact that LCP “acknowledges” and “recognizes” the existence of OHV use at the park

24 _____
25 OHV use levels with environmental impacts,” and “does not adequately address management issues or
alternative management measures.” AR35123.

26 ²³ These impacts include compacting sand, killing macro-invertebrates, destroying wrack, preventing
27 vegetation reestablishment, killing snowy plovers and least terns, and breaking up the stiff surface layer
28 or crust on the sand’s surface, leading to downwind dune erosion. AR318-22; *see also* AR35133-35
(explaining the importance of microcrust and that the entire dunes system, “including the OHV riding
areas,” are ESHA).

1 does not mean it allows that use regardless of its impacts. As discussed in II.A above, the cited LCP
2 passages actually express a high level of concern about the environmental impacts of OHV use in the
3 park, explain that the Coastal Act gives priority to protecting ESHA over recreational uses, and make
4 clear that recreational uses in the park must be further restricted if environmental impacts warrant.
5 AR36928.

6 Indeed, the more specific policies governing OHV use in the park, which are found in the
7 recreation standards in the South County Area Plan, are all framed in terms of *limiting* the extent of
8 OHV use to protect ESHA, and expressly defer to the Commission’s CDP to establish those limits.
9 AR37449 (Standard 4: State Parks shall commit sufficient resources to enforce access restrictions in the
10 CDP), 37450 (Standard 7: camping “may” be appropriate “subject to the numerical limitations of the
11 [CDP],” adjusted based on the impacts of the use), 37450-51 (Standards 8 and 9: ORV use is prohibited
12 outside habitat areas fenced per the CDP, within any vegetated areas, or east of the Sand Highway). The
13 LCP goes further, recognizing that even the CDP’s restrictions may not be “sufficient to regulate [OHV]
14 use in a manner consistent with the protection of resources,” and that the County reserves the ability to
15 impose an “interim *moratorium on ORV use*” as may be necessary “to protect resources.” AR37449
16 (Standard 7) (emphasis added). Consistent with the LCP’s “overriding concern” of resource protection,
17 these policies make clear that OHV use in the park is secondary to protection of ESHA.

18 Friends also cites to the LCP’s general recreational policy of protecting and encouraging “coastal
19 recreation and visitor-serving facilities, especially lower-coast facilities” and of giving priority to
20 existing holdings. FOB at 13 (citing LCP Policy 1 and Policy 5 at AR36932-29). But again, Friends
21 points to nothing in these general policies that would elevate recreational uses over protection of ESHA.
22 The LCP is clear that the opposite is true—Recreation Policy 2 states: “*All uses shall be consistent with*
23 *protection of significant coastal resources.*” AR36928 (emphasis added). This follows the Coastal Act’s
24 policy of maximizing recreational opportunities “consistent with. . . the need to protect . . . natural
25 resource areas from overuse.” PRC § 30210; *see also id.* §§ 30212(a)(1), 30214(a)(2).

26 Moreover, the phasing out of OHVs will result in new or expanded opportunities for other forms
27 of recreation such as general beach use, fishing, hiking, and bird-watching, which had previously been
28 “overtaken by the vehicular uses that predominate the Park” due to “incompatibility between vehicular

1 recreation and these other forms of recreation.” AR30; *see* AR76-80. The Commission found that most
2 camping in the park has occurred in RVs, which is considered a “higher cost” activity. AR76-77; *see*
3 *also* AR2184-85 (ATV costs between \$2,000 and \$17,000, whereas median household income of
4 Oceano residents is \$28,277). The Commission’s action will provide new opportunities for traditional
5 tent camping and other forms of “lower cost” recreation and will be especially attractive “for families
6 looking for unique lower cost recreational and outdoor opportunities.” AR 2, 16. And the park will
7 continue to provide unique off-highway motor vehicle recreation in the form of beach driving and
8 camping for street-legal vehicles outside of ESHA. AR22-23. Thus, the Commission’s action is not only
9 compelled by the LCP’s ESHA policies, but also promotes the LCP’s policies of expanding lower cost
10 and passive recreational opportunities. *See, e.g.*, AR36928 (Recreation Policy 1), 37451 (Recreation
11 Standard 13: “Non-ORV-dependent uses such as camping, hiking trails, and passive use areas shall be
12 identified and developed”).

13 **C. The Commission’s Finding that OHV Use Is Not “Resource Dependent” Is**
14 **Consistent with the LCP and Is an Independent Ground for the OHV Restriction.**

15 Friends’ main argument regarding LCP consistency—that the Commission erred in finding that
16 OHV use is not “resource dependent” and thus not permitted in ESHA (FOB at 41-44)—is a red herring
17 because the LCP clearly prohibits uses that significantly disrupt ESHA *even if* they are resource
18 dependent. But in any case, Friends’ claim fails. OHV recreation is not a resource dependent use
19 because it does not depend on ESHA, thus providing an independent ground for the Commission’s
20 action.

21 The LCP’s ESHA Policy 1 provides that within ESHA, “only those uses dependent on such
22 resources shall be allowed within the area.” AR36983. This requirement mirrors that in the Coastal
23 Act’s ESHA provision, which provides “only uses dependent on those resources shall be allowed within
24 those areas.” PRC § 30240(a). The courts have held that the statute’s reference to “those resources”
25 means “the resources that make an area a protected habitat — i.e., ‘plant or animal life or their habitats
26 [that] are either rare or especially valuable because of their special nature or role in an ecosystem.’”
27 *McAllister*, 169 Cal.App.4th at 928-9. The LCP must be construed consistent with the Coastal Act. *Id.* at
28 930-31 (LCP is presumed to incorporate Coastal Act requirements).

1 The Commission found that OHV recreation is not resource dependent because it does not
2 depend on the “rare or especially valuable” plants, animal life, or their habitats comprising the park’s
3 ESHA. AR185; *see also* AR61-62. Friends does not seriously contend that OHV depends on ESHA
4 resources,²⁴ but rather argues that the LCP must have “implicitly determined that OHV recreation is
5 resource dependent” because it “allows” OHV use in the park’s ESHA. FOB at 41. But the cited ORV
6 policies do not compel Friend’s interpretation. When the LCP was adopted, OHV use in the park was
7 already allowed under the CDP, so the LCP had little choice but to recognize the existing, permitted use.
8 But it also adopted ESHA standards consistent with the Coastal Act, including the resource dependent
9 use requirement—standards that would apply to future amendments of the CDP. That the LCP allowed
10 OHV use in the park to the extent permitted by the CDP in no way constitutes an implicit determination
11 that such use is “resource dependent.” “Resource dependency is not such a malleable concept.”
12 *McAllister*, 169 Cal.App.4th at 935 (rejecting claim that LCP’s housing designation in ESHA broadened
13 meaning of “resource dependent”).

14 Because the Commission’s interpretation of “resource dependent” is consistent with the LCP, it
15 is not a “de facto amendment” of the LCP as Friends claims. This case is not at all like the case cited by
16 Friends, *Security National Guaranty Inc. v. California Coastal Com.* (2008) 159 Cal.App.4th 402.
17 There, the Commission had directly contradicted the LCP by designating a proposed development site as
18 ESHA, even though the LCP had *expressly* found that the area contained *no ESHA*. *Id.* at 423. In
19 contrast, the Commission here is applying the *plain language* of the ESHA requirement.

20 At the end of the day, Friends’ is aggrieved at what it argues is a sudden change in the
21 Commission’s interpretation of the resource-dependent requirement, barring an activity that “has been
22 allowed for 40 years.” FOB at 42. But Friends cites nothing in the record indicating that the Commission
23 has ever considered OHV riding to be a “resource dependent” use.²⁵ Indeed, as discussed above, the
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25 ²⁴ In a footnote, Friends contends that the test for whether an activity is resource dependent “has to be
26 more sophisticated than whether you can engage in the activity at a different location.” FOB at 44, fn. 8.
27 But the Commission’s finding was not just that OHV recreation can occur in another location, but that it
28 need not occur in *sensitive habitat*. AR185.

²⁵ Contrary to the assertion in State Parks’ response brief, the 2001 staff report said nothing about OHV
being resource dependent. SPB at 9; *see* AR 035135.

1 Commission issued the original permit before the County designated the entire riding area as ESHA. To
2 be sure, the Commission continued to permit the use on an interim basis for many years after the LCP
3 was certified, and it is a fair question to ask whether the Commission should have enforced the LCP’s
4 resource dependent and other ESHA requirements at the park much sooner than it did. But that question
5 is not pertinent to this case. A prior failure to enforce the law—even over an extended period—cannot
6 prevent the Commission from enforcing it now.²⁶ *Feduniak v. California Coastal Com.* (1997) 148 Cal.
7 App.4th 1346, 1369 (Commission was not barred from requiring permittee to remove a golf course and
8 restore ESHA on the site, despite failure to enforce permit requirement for 18 years); *see also City of*
9 *Fontana v. Atkinson* (1963) 212 Cal.App.2d 499, 509 (failure to enforce a zoning ordinance did not
10 preclude later enforcement).

11 In short, an LCP “must, at a minimum, conform to and not conflict with the resource
12 management standards and policies of the [Coastal] Act.” *McAllister*, 169 Cal. App. 4th at 930.
13 Consistent with the Coastal Act, the LCP’s clear, unambiguous ESHA policy prohibits any activity in
14 ESHA that would significantly disrupt the resource, *or* any activity that is not dependent on the resource.
15 Because OHV recreation is barred under either requirement, the Commission’s action is consistent with
16 the LCP.

17 **III. The Commission Has the Authority Under the CDP to Restrict OHV Use as Necessary to**
18 **Protect ESHA.**

19 Friends contends that the Commission lacked the authority to “unilaterally” amend the CDP to
20 eliminate OHV use in the dunes because, it claims, the amendment interferes with a perpetual “vested
21 right” to continue that use. FOB at 47-49. As a threshold matter, Friends cites no authority that it may
22 maintain a vested rights claim—which arises from property rights—on behalf of State Parks or the
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27 ²⁶ Moreover, even if the Commission’s action had been based on a changed interpretation of the coastal
28 dependent requirement, it would be free to apply the new interpretation. “An administrative agency may
change its interpretation of a statute, rejecting an old construction and adopting a new.” *Henning v.*
Industrial Welfare Com. (1988) 46 Cal.3d 1262, 1269.

1 County, the actual *owners* of the property, and the Court may dispose of its vested rights argument on
2 this ground alone.²⁷ But standing aside, Friends’ vested rights contention has no merit.

3 Friends claims that the issuance of the CDP, together with State Parks’ expenditure of funds in
4 reliance on the CDP, conferred in State Parks a permanent “vested right” to allow OHV use in the park,
5 and that, therefore, the Commission lacked authority to amend the permit to eliminate that use. FOB at
6 47-48. But this argument fails because the CDP itself expressly states that the daily OHV use limits are
7 subject to annual renewal following review by the Commission, and that the Commission may impose
8 alternative management measures if necessary to protect coastal resources, including ESHA.

9 The vested rights doctrine provides that “if a property owner has performed substantial work and
10 incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires
11 a vested right to complete construction in accordance with the terms of the permit.” *Avco Community*
12 *Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 791. However, “the rights which
13 may ‘vest’ through reliance on a government permit are *no greater than those specifically granted by the*
14 *permit itself.*” *Blue Chip Properties v. Permanent Rent Control Bd.* (1985) 170 Cal.App.3d 648, 660
15 (citation omitted; emphasis added); *accord Russ Bldg. P’ship v. City & Cnty. of San Francisco* (1988) 44
16 Cal.3d 839, 853-54; *Golden State Homebuilding Assocs. v. City of Modesto* (1994) 26 Cal.App.4th 601,
17 607.

18 Here, the CDP expressly provided that the Commission may impose restrictions to protect
19 coastal resources, such as ESHA, including restrictions on OHV use. Thus, any vested CDP right
20 claimed by Friends incorporates such permit terms, including annual review and the possibility of
21 unilateral Commission changes to the CDP. As noted by Commission staff in 2001, the CDP’s approach

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23 ²⁷ A party lacks standing to assert a claim involving the alleged violation of another’s property rights.
24 *Martin v. Bridgeport Cmty. Assn., Inc.* (2009) 173 Cal.App.4th 1024, 1032 (“ownership in the Property
25 is a prerequisite to standing to assert each of the causes of action as each seeks redress for violations of
26 rights of the owners of the Property, for which the causes of action are not assignable.”); *see Davis v.*
27 *California Coastal Zone Conservation Com.* (1976) 57 Cal.App.3d 700, 708 (vested rights claim arises
28 only where restrictions on the use of a landowner’s property “constitute an uncompensated taking . . . or
damaging of the property.”). Nor does Friends contend that its own interest in OHV use (or that of the
public) is sufficient to give them an independent vested right, and any such 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).

1 to OHV use “[has] always been premised on revisiting periodically the question of intensity of use in
2 relation to protection of ESHA.” AR35169; *see also* AR35124 (“the 1982 permit clearly indicates that
3 overall vehicle use could be reduced if review of use showed it did not protect environmentally sensitive
4 habitats”). Amid growing concerns about the impacts of OHV activity on the park’s ESHA, the 2001
5 amendment to the CDP revised the periodic review process to set “interim vehicle (street-legal, off-
6 highway vehicle, and camping) limits,” establish the TRT to manage vehicle impacts to ESHA, and
7 authorize the Commission to annually review the effectiveness of that management. AR35114. The
8 interim vehicle limit was to be renewed each year only if the Commission “is satisfied with the review,”
9 and if it is not, the permit authorizes the Commission to institute “*an alternative approach to resource*
10 *management, or set of management measures.*” *Id.* (emphasis added). An alternative approach to
11 resource management is precisely what the Commission instituted in the 2021 amendment.

12 Friends asserts that the Commission could not “retract” its previous authorization for OHV use
13 because the CDP was not “temporary,” pointing to standard conditions in the CDP stating that its terms
14 and conditions are “perpetual” and “run with the land.” FOB at 48 (citing AR36116-17). But the
15 Commission has never contended that the *permit* is temporary. The CDP is indeed perpetual, but the
16 permit makes clear that any *authorization for vehicles* is only “interim,” is subject to annual review, and
17 may be replaced with “an alternative approach to resource management” if necessary to protect ESHA.
18 AR35114; *see also* AR35168 (2001 staff report: “If, after any annual review, the TRT’s tasks and
19 recommendations are found to be inconsistent with the intent of the Commission’s approval, an
20 alternative approach to resource management, or set of management measures, may need to be
21 instituted.”). These terms cannot reasonably be interpreted as conferring a “perpetual” authorization of
22 OHV use.

23 Friends further contends that the permit’s reference to “alternative management measures” can
24 only mean “management *of an SVRA*” and does not authorize “the total elimination of OHV recreation.”
25 FOB at 48-49 (emphasis in original). But nowhere does the permit suggest that OHV use must be
26 maintained in the park, regardless of its impacts on ESHA. On the contrary, as the staff report for the
27 2001 amendment made clear, while the permit seeks to accommodate OHV use to the extent feasible, its
28 primary concern is protection of ESHA: “*the Commission must find that the activities at the ODSVRA*

1 *protect ESHA*, and that any ‘development’ will *prevent impacts that significantly degrade or threaten*
2 *the continuance of surrounding ESHA.*” AR35166 (emphasis added); *see also* AR35122 (since the
3 original permit, Commission’s “primary concern was with the impacts of OHVs to environmentally
4 sensitive habitat”). The permit plainly does not authorize the continuation of OHV use where the
5 Commission has found—as it did here—that the use would significantly degrade ESHA.

6 Faced with the plain language of the permit, Friends asserts an alternative argument: that the
7 permit’s annual review provision is invalid. It is far too late to challenge this condition. The time for
8 challenging the validity of the annual review provision was in 2001, when the prior requirement was
9 amended by the Commission. *Serra Canyon Co. v. California Coastal Com.* (2004) 120 Cal.App.4th
10 663, 668 (all challenges to a condition placed on a coastal permit must be asserted within 60 days of
11 when the Commission approves the permit); *Ojavan Investors, Inc. v. California Coastal Com.* (1994)
12 26 Cal.App.4th 516, 525-527; PRC § 30801. A permittee is “is barred from challenging a condition
13 imposed upon the granting of a . . . permit if he has acquiesced therein by either specifically agreeing to
14 the condition or failing to challenge its validity, and accepted the benefits afforded by the permit.”
15 *County of Imperial v. McDougal* (1977) 19 Cal.3d 505, 510-11; *accord Lynch v. California Coastal*
16 *Com.* (2017) 3 Cal.5th 470, 476. Because State Parks acquiesced to the annual review provision by
17 accepting the 2001 amendment, the validity of that provision may not, 20 years later, be challenged. *Id.*

18 But even if such claim were timely, neither of the asserted grounds for invalidity have merit.
19 Friends argues the CDP should be viewed as a contract, and that contract provisions allowing a party to
20 unilaterally amend the contract are unenforceable as unconscionable. FOB at 47-48. But a permit is not a
21 contract and does not give rise to contractual rights. *Rosenblatt v. California State Bd. of Pharmacy,*
22 *Dep’t of Prof. & Vocational Standards* (1945) 69 Cal.App.2d 69, 74 (license is merely the means by
23 which state exercises its power to regulate activities for the public good, and does not confer any
24 contractual rights); *US Ecology, Inc. v. State of California* (2001) 92 Cal.App.4th 113, 128-129
25 (rejecting argument that state nuclear waste facility license gave rise to any contractual rights). Nor is a
26 permit term unenforceable where it gives the permitting agency unilateral authority to terminate the
27 rights granted by the permit. *See, e.g., Sec. Env’t Sys., Inc. v. S. Coast Air Quality Mgmt. Dist.* (1991)

1 229 Cal.App.3d 110, 127 (permittee had no vested right to continue permitted use where permit gave
2 executive officer discretion not to extend permit).

3 Finally, Friends argues that the annual review provision is invalid because, once the County’s
4 LCP was certified, permitting jurisdiction was transferred from the Commission to the County. FOB at
5 49. But the Coastal Act says only that, after LCP certification, the Commission shall no longer exercise
6 permitting authority “over any *new* development proposed within the [LCP].” PRC § 30519(a). The Act
7 does not divest the Commission of its authority to manage or amend its existing permits.²⁸

8 **IV. The Commission Complied with CEQA.**

9 Friends asserts that the Commission violated the California Environmental Quality Act
10 (“CEQA”) by failing to adequately evaluate traffic and related impacts arising from the required closure
11 of the Pier Avenue entrance. FOB at 49-55. Like its other arguments, Friends’ CEQA claims lack
12 merit.²⁹

13 **A. “Traffic” Is No Longer an Environmental Impact Under CEQA, and Friends May** 14 **Not Raise VMT or Other Issues for the First Time in this Litigation.**

15 Friends asserts the Commission failed to analyze the traffic or traffic-related impacts caused by
16 the closure of the park’s Pier Avenue entrance and resulting use of the West Grand Avenue entrance by
17 all park traffic. FOB at 49. This claim is not only factually inaccurate—the Commission did consider
18 traffic and concluded that, with the vehicle restrictions in the CDP amendment, traffic on West Grand
19 Avenue would decrease, *see* AR176—but is also legally irrelevant because CEQA no longer considers
20 traffic congestion a significant impact.

22 ²⁸ Moreover, shifting jurisdiction over amendments to the Oceano Dunes permit to the County would be
23 unworkable. Portions of the park fall within the jurisdiction of the City of Grover Beach, while other
24 portions such as Arroyo Creek are subject to neither LCP. *See* AR AR43, 323. Friends does not explain
25 how the County could have sole control over amendments to a permit that extends outside its
26 jurisdiction.

27 ²⁹ The Commission’s program for reviewing and issuing coastal development permits is a certified
28 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) 183 Cal.App.4th 1110, 1125-26.

1 As explained in the Commission’s findings, the amended CDP requires that the Pier Avenue
2 entrance be closed by July 1, 2022. AR176. Data collected by State Parks show the Pier Avenue
3 entrance accounts for about half of the park’s traffic.³⁰ *Id.* That means after closure, when all park traffic
4 will be using the West Grand Avenue entrance, the share of vehicles using that entrance could have
5 effectively doubled. *Id.* But the amended CDP also reduces the daily cap on vehicles in the park by 60
6 percent immediately (i.e., before the Pier Avenue closure), and by 72 percent in 2024. *Id.* Thus, the
7 Commission concluded that even when all park traffic is using West Grand, there will be less traffic
8 there than before the CDP amendment. *Id.* In other words, the amendment will actually result in a traffic
9 *decrease. Id.*

10 In light of those findings, Friends’ assertion that the Commission failed to evaluate traffic
11 impacts is meritless. Nor was the Commission required by CEQA to do a formal “traffic impact study,”
12 as Friends suggests. FOB at 50-51. The traffic data the Commission relied upon—which Friends does
13 not challenge—is sufficient to support its conclusion that the amendment will not increase traffic. Cal.
14 Code Regs., tit. 14, § 15384 (substantial evidence includes “a reasonable presumption predicated on
15 facts”). Friends points to no contrary evidence in the record.

16 But in any event, the issue is moot because traffic ceased to be an environmental impact under
17 CEQA in 2020. PRC § 21099(b)(2) (“automobile delay” by measure of level of service, vehicular
18 capacity, or traffic congestion “shall not be considered a significant impact on the environment.”); Cal.
19 Code Regs., tit. 14, § 15064.3(a); Stats. 2013, ch. 386. Instead, CEQA looks at vehicle miles traveled
20 (“VMT”) as a measure of transportation impacts. *Id.* § 15064.3(a). Unlike traffic, VMT—which is
21 defined as “the amount and distance of automobile travel attributable to a project”—is a measure of a
22 project’s greenhouse gas impacts. *Id.* § 15064.3(a); *see* PRC § 21099(b)(1).

23 Aware of this change in the law, Friends attempts to pivot, and it proceeds *for the first time* to
24 raise a claim that the closure of the Pier Avenue entrance will cause many users to drive a *greater*
25 *distance* to get to the park, resulting in a potential increase in VMT that the Commission should have
26 studied. FOB at 51-52. Friends fails to cite to *any* evidence in the record (other than a park map) to

27 _____
28 ³⁰ This estimate is conservative. State Parks’ internal tracking data shows that less than half of park
traffic—only about 40 percent—uses Pier Avenue. AR1718-19.

1 support this new claim (*see id.*), much less explain how a 60 to 72 percent *reduction* in total park
2 vehicles could possibly result in an increase in VMT. But in any case, the claim is barred on exhaustion
3 grounds because the issue was never presented to the Commission.

4 CEQA requires that all factual and legal theories pursued in litigation first be presented to the
5 agency before it makes its decision. PRC § 21177(a); *Tomlinson v. County of Alameda* (2012) 54
6 Cal.4th 281, 291. Generalized or unelaborated comments are not sufficient; rather, the “*exact issue* must
7 have been presented to the administrative agency” before a petitioner may raise it in litigation. *Sierra*
8 *Club v. City of Orange* (2008) 163 Cal.App.4th 523, 535 (internal quotations omitted; emphasis added).
9 Objections must be specific enough to allow the agency “the opportunity to evaluate and respond to
10 them.” *Id.* at 236. Friends bears the burden to show that a legal or factual issue has been adequately
11 exhausted. *Id.*

12 Friends has not pointed to a single comment in the record that raised the issue of VMT impacts,
13 and the Commission is aware of none. *See generally* AR1429-637 (hearing testimony), 397-402 (public
14 comments memorandum), 2154-12729 (written public comments). The public comments cited by
15 Friends make no reference to VMT, trip distance, or related GHG impacts; rather, they express only
16 generalized concerns about traffic congestion on West Grand Street or nearby areas, which as discussed
17 above, is not a CEQA impact. *See* FOB at 51 (citing AR1820, 1271, 1715-17).

18 Finally, Friends contends that the Commission failed to evaluate the “secondary” impacts arising
19 from traffic congestion, asserting that forcing traffic to Grand Avenue “may have air quality impacts,
20 noise impacts, and safety impacts (since emergency vehicle traffic would be forced to travel further from
21 Grand Avenue to the dunes).” FOB at 52. As with its VMT claim, Friends cites to no evidence in the
22 record to support these contentions; nor does it explain how *reducing* park traffic (and OHV use) could
23 exacerbate air quality, noise, or safety. And, like its VMT claim, Friends is barred from raising these
24 issues because they were not presented to the Commission before it approved the amended CDP.

25 **B. The Revised Findings Complied with the Coastal Act and CEQA.**

26 Friends’ final argument—that the Commission violated the Coastal Act and CEQA by
27 incorporating information about traffic into the final revised staff report (FOB 52-54)—is likewise
28 meritless.

1 The Coastal Act contemplates that the Commission may take an action that differs substantially
2 from that recommended by the staff report, and in such cases, staff must prepare a revised report “with
3 proposed revised findings that reflect the action of the commission” and the basis of that action. Cal.
4 Code Regs., tit. 14, § 13096(b). The revised findings must not be “post hoc rationalizations of a decision
5 that was not otherwise supported” but rather “reflect in writing the rationale that the Commissioners and
6 staff articulated on the record at the . . . public hearing.” *La Costa Beach Homeowners’ Assn. v.*
7 *California Coastal Com.* (2002) 101 Cal.App.4th 804, 819.

8 At the March 18, 2021 hearing, the issue of whether closure of the Pier Avenue entrance would
9 cause traffic congestion on West Grand Avenue was discussed by the Commission and staff. Staff
10 explained that based on “State Parks’ data, about half of the access or half of the vehicular access to the
11 park is through [West Grand Avenue] and half is through [Pier Avenue] So, with the reduced maximum
12 limits [on daily vehicle use] . . . there wouldn’t be a significant adverse impact.” AR1691-92. State
13 Parks confirmed the traffic data at the hearing. AR1718 (park superintendent testimony that 40 percent
14 of traffic uses Pier Avenue). Accordingly, in the revised staff report, the discussion of the Pier Avenue
15 closure was revised to add this information, with reference to the specific vehicle use limits approved by
16 the Commission. AR1012-13.

17 Friends asserts that the revised staff report violates the Coastal Act because “none of the
18 commissioners asked staff to add CEQA analysis regarding Pier Avenue.” FOB at 54. As discussed in
19 Argument Section IV.A. above, traffic congestion is not a “CEQA” issue nor is it required to be
20 considered under the Coastal Act. The revisions to the staff report simply memorialize and clarify “the
21 rationale that . . . staff articulated on the record at the . . . public hearing.” *La Costa Beach*, 101
22 Cal.App.4th at 819. Friends points to nothing in the revised staff report that was not already articulated
23 on the record prior to the approval of the CDP amendment.

24 Friend’s reliance on *Friends, Artists & Neighbors of Elkhorn Slough v. California Coastal Com.*,
25 (2021) 72 Cal.App.5th 666, is misplaced. FOB at 55. In that case, the revised findings *for the first time*
26 analyzed various project components, mitigations, and conditions for environmental impacts and
27 consistency with the LCP. *Id.* at 701-02. The Court held that this new analysis, which was never
28 presented to or considered by the Commission before it approved the project, did not reflect the analytic

1 route taken by the Commission at the time of approval and thus was a “post hoc” rationalization for a
2 project already approved. *Id.* at 703-05. Here, in contrast, the information on traffic in revised findings
3 was presented to and considered by the Commission *before* it approved the amended CDP.

4 Lastly, Friends asserts that the revised findings violated CEQA because they contain an
5 environmental analysis that was not presented in the original staff report. FOB at 52-55. As discussed in
6 Argument Section IV.A. above, this claim fails because traffic congestion is not an environmental effect
7 under CEQA.

8 **CONCLUSION**

9 For the foregoing reasons, the Commission respectfully requests that the Court deny Friend’s
10 petition for writ of mandate in its entirety.

11 Respectfully submitted,

12 DATED: March 28, 2023

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