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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES

14 PUVUNGA WETLANDS PROTECTORS, et al.,

15 Petitioner,

16 v.

17 CALIFORNIA COASTAL COMMISSION, et al.,

18 Respondents.

19 BEACH OIL MINERALS, LLC, et al.,

20 Real Parties-in-Interest.

Case No.: 19STCP00435

PETITIONERS' OPENING BRIEF

Judge: Hon. Mary H. Strobel

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1 **I. INTRODUCTION**

2 The 150-acre Synergy property is comprised of an outdated and low-yield oil field that will be
3 inundated with rising sea levels by the end of the century. Despite historical oil production activities,
4 special status plant and animal species continue to dominate the landscape, which includes
5 Environmentally Sensitive Habitat Areas (ESHA). (Pub. Res. Code §30107.5). Constrained by this
6 sensitive habitat, new or expanded oil production thereon is unlikely. Therefore, Real Parties in
7 Interest Beach Oil Minerals, LLC, Lyon Housing (Pumpkin Patch) XLV, LLC, Los Cerritos Wetlands,
8 LLC, and Los Cerritos Wetlands Authority (collectively “BOM”) willingly swapped the Synergy site
9 for a coastal development permit (CDP) for a new oil and gas development (the Project) nearby.

10 The Project not only provides for new oil and gas development on two additional sites,
11 resulting in an 8,000 percent increase in production, but also allows continued oil production at the
12 Synergy site and an adjacent site owned by the City of Long Beach (City) for twenty years. All oil
13 production would occur within the sensitive Los Cerritos Wetlands complex, slated for eventual
14 restoration by Real Party Los Cerritos Wetlands Authority (LCWA).

15 Because the Commission improperly invoked a Coastal Act “override” provision to approve
16 the Project, Petitioners Puvunga Wetlands Protectors and Anna Christensen (Petitioners) challenge the
17 Commission’s approval of the CDP.

18 **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

19 **A. The Oil and Gas Development Project**

20 Once a 2,400-acre wetland complex (AR151), the Los Cerritos Wetlands Complex has been
21 filled and severely degraded by various urban developments, including oil production activities.
22 (AR609). Only a few remnant wetlands remain. (AR49). One such wetland, the relatively pristine
23 Steamshovel Slough, lies within the northern part of the Synergy oil field property. (*Id.*). The 150-acre
24 Synergy site is divided into a 76.5-acre northern section and 73.1-acre southern section. (AR49, AR153
25 [Figure of northern and southern sites]). All existing oil production facilities are located on the southern
26 site, interspersed among wetlands and wildlife. (AR49). Synergy also operates eleven active oil wells on
27 the nearby 33-acre City site owned by the City of Long Beach. (AR50).

28 Oil production at the Synergy site has steadily declined. When BOM’s predecessor attempted

1 to revive the oil field with new wells twenty years ago, the Coastal Commission denied the permit.
2 (AR3, 607). At that time, production was averaging 405 barrels a day. (AR614 [148,000 barrels per
3 year]). Current production levels are closer to 300 barrels of oil per day. (AR120). With sea levels
4 rising and a slim prospect of obtaining a CDP to install new drilling infrastructure onsite, BOM look to
5 other nearby parcels for exploitation. (AR113-117, AR184-187[Figures], AR143). Nearby, the 7-acre
6 Pumpkin Patch site and 5-acre LCWA site offer access to the oil and gas reservoir on either side of an
7 earthquake fault zone. (AR154 [figure]; AR160 [pipeline figure]). At these new locations, as part of the
8 Project, BOM proposes to drill 120 new wells over twenty years and build associated infrastructure,
9 including a new office building, new well cellars, storage tanks, and other equipment. (AR52).

10 The LCWA and Pumpkin Patch sites lie just 200 feet northeast and 1000 feet southwest of the
11 Newport-Inglewood fault zone, respectively. (AR98). To connect the two sites, BOM proposes a
12 2,200-foot above-ground pipeline that crosses directly over the fault line. (AR54). The close proximity
13 of the fault line adds an element of uncertainty and risk that cannot be fully mitigated. (AR90).
14 Movement along this fault has generated a number of earthquakes in recent history, most notably the
15 magnitude 6.4 Long Beach earthquake in 1933. (AR98). The Project's worst-case oil spill would
16 release 2.8 million gallons or approximately 66,740 barrels of oil into adjacent wetland habitat.
17 (AR87). The existing worst-case spill scenario on the Synergy and City sites is estimated to be
18 approximately 105,150 gallons or 2,504 barrels. (AR87).

19 In addition to a greater oil spill risk to the wetlands, the Project would also produce a dramatic
20 increase in oil production and resultant greenhouse gas (GHG) emissions. The 120 new wells would
21 produce 24,000 barrels of oil per day. (AR2). Existing production from 33 active wells is 300 barrels
22 of oil per day. (AR120). Annual GHG emissions from the Project would increase from approximately
23 1,636 metric tons to 70,592 metric tons. (AR120-122). Over the 20-year span of the Development, this
24 represents 2,753,520 metric tons of GHG emissions. (AR122).

25 The Project allows BOM to build new oil and gas infrastructure on higher ground, increase oil
26 production 8,000 percent operate the new wells indefinitely. (AR52, 21 [provision to remove all oil
27 and gas equipment within 20-years applies to existing wells only, not "new facilities approved under
28 this Permit"]]).

1 In exchange for this new land, infrastructure and oil and gas, BOM will abandon the Synergy
2 and City sites over a twenty-year period and enhance or restore 30 acres of the northern portion of the
3 site, adjacent to the Steamshovel Slough. (AR57). BOM expects to develop a mitigation bank on the
4 northern part of the site, separating it from the southern site by a new berm, and removing segments of
5 an existing berm to establish tidal connections between the Steamshovel Slough and create new tidal
6 flows on the remainder of the northern site. (AR57, AR164-166 [Restoration Plan Figures]).
7 Breaching the berms will transform valuable existing low and mid marsh habitat into tidal marsh,
8 which will turn into less valuable mudflats and subtidal areas as sea levels rise. (AR68, AR115).
9 Despite the Project’s introduction of increased tidal flows, the Commission found the “substantial
10 changes to the restored habitat types over time” were “unavoidable.” (*Id.*).

11 Many of the Project’s impacts were not fully analyzed at the time of the Commission’s
12 approval. For example, breaching the berms on the Synergy site has the potential to introduce new
13 sediment flows and result in negative impacts to sensitive coastal and marine habitats in Steamshovel
14 Slough. (AR79). As a result, the Commission required BOM to prepare a Pollution Prevention Plan
15 specific to the Slough subsequent to the Project approval but prior to issuance of the CDP. (*Id.*, AR22-
16 23 [Special Condition 10]). Further, construction activities related to the new oil and gas
17 infrastructure, as well as restoration activities in the northern Synergy site may cause significant light,
18 noise and vibration impacts to the existing and restored wetlands. (AR77). This was one of the main
19 reasons BOM’s predecessor’s CDP application was denied in 1998. (AR609). The Commission
20 imposed Special Condition 14, requiring BOM to develop (again for Executive Director review and
21 approval prior to CDP issuance) a Revised Nuisance Minimization Plan to reduce such impacts.
22 (AR77, AR29-30 [Special Condition 14]).

23 The Project will also result in significant impacts to cultural resources. Centuries ago, the
24 indigenous Tongva (Gabrieleno) people settled along the local wetlands in Long Beach. (AR124).
25 Their historical village of Povuu’ngna (Puvungna/Puvunga) lies near the geographical center of the
26 Tongva’s historical territory, two miles north of the Pacific coast and half a mile inland from Alamitos
27 Bay. (AR17413.). Today, many Tongva regard Puvungna as the center of their cultural and spiritual
28 universe (AR17413). The Los Cerritos Wetlands are located in between Puvungna and

1 Motuucheyngna, a Tongva settlement in Seal Beach, and are thus considered to be part of the larger
2 cultural landscape of Puvungna and the surrounding villages. (AR127). By altering the Synergy site
3 and introducing new oil drilling, the Project will result in significant impacts to this cultural landscape.

4 **B. Procedural History**

5 The Project and its associated Environmental Impact Report were approved by the City of
6 Long Beach in January 2018. (AR15235). The City also amended its land use plan, the Southeast Area
7 Development and Improvement Plan (SEADIP) to enable oil drilling on the Pumpkin Patch and
8 LCWA sites. (AR15229). In August 2018, the Commission modified the City’s Land Use Plan (LUP)
9 and Implementation Plan (IP) policies within SEADIP and the City’s Oil Code, both components of
10 the City of Long’s Beach’s LCP to enable oil drilling on the LCWA and Pumpkin Patch sites. (AR60).
11 Because the Synergy and City sites are within the Commission’s original jurisdiction (AR59) the
12 Commission processed a consolidated CDP for the Project pursuant to Coastal Act Section 30601.3.
13 (AR59-60).

14 In September 2017, the City approved a new specific plan for the applicable area, the Southeast
15 Area Specific Plan (SEASP), replacing SEADIP. (AR4659). Under SEASP, the Synergy and City sites
16 would be designated Coastal Habitat/Wetlands/Recreation. (AR4715). Instead of processing the
17 SEASP first, the Commission modified the outdated SEADIP to enable processing of the Project’s
18 CDP. (AR14754).

19 On December 13, 2018 the Commission held a hearing on the Project CDP. (AR6). Despite the
20 Project’s inconsistency with Coastal Act Sections 30232 (oil spill) and 30251 (visual resources), the
21 Commission approved the Project with resort to a coastal-dependent industrial facility “override
22 provision.” (Pub. Res. Code §30260). Petitioners provided extensive written and oral comments
23 against the Project before and at the hearing. (See, e.g. AR3222; AR19956). Following the
24 Commission’s approval of the Project at the hearing, on February 11, 2019, Petitioners instituted this
25 action.

26 **III. STANDARD OF REVIEW**

27 An “aggrieved person,” may file a mandate petition seeking judicial review under Code of
28 Civil Procedure section 1094.5. (Pub. Resources Code, § 30801; *La Costa Beach Homeowners' Assn.*

1 *v. California Coastal Com.* (2002) 101 Cal.App.4th 804, 814, 124 Cal.Rptr.2d 618). “In reviewing an
2 agency’s decision under Code of Civil Procedure section 1094.5, the trial court determines whether (1)
3 the agency proceeded without, or in excess of, jurisdiction; (2) there was a fair hearing; and (3) the
4 agency abused its discretion.” (Code Civ. Proc. § 1094.5(b); *McAllister v. California Coastal Com.*
5 (2008) 169 Cal.App.4th 912, 921, 87 Cal.Rptr.3d 365). Code of Civil Procedure section 1094.5,
6 subdivision (b) defines any abuse of discretion thusly, “Abuse of discretion is established if the
7 respondent has not proceeded in the manner required by law, the order or decision is not supported by
8 the findings, or its findings are not supported by substantial evidence.” (See, *McAllister v. California*
9 *Coastal Com., supra*, 169 Cal.App.4th at p. 921).

10 **IV. ARGUMENT**

11 **A. The Coastal Commission is Responsible for Implementation of the Coastal Act**

12 The California Coastal Act was passed in 1976. (Pub. Res. Code §§30000 *et. seq.*). “The
13 [Coastal] Commission’s primary responsibility is the implementation of the Coastal Act. It is
14 designated the state coastal zone planning and management agency for any and all purposes.” (*Charles*
15 *A. Pratt Construction Co., Inc. v. California Coastal Com.* (2008) 162 Cal.App.4th 1068, 1075, citing
16 Pub. Res. Code §30330).

17 The Coastal Act’s goals are binding on both the Coastal Commission and local governments
18 and include: (1) maximizing, expanding and maintaining public access (Pub. Res. Code, §§30210-
19 30214); (2) expanding and protecting public recreation opportunities (Pub. Res. Code §§30220-
20 30224); (3) protecting and enhancing marine resources (Pub. Res. Code §§ 30230-30236); and (4)
21 protecting and enhancing land resources (Pub. Res. Code §§ 30240-30244). Chapter 3 of the Coastal
22 Act (Pub. Res. Code §§ 30200-30265.5) describes the policies that “shall constitute the standards by
23 which the adequacy of local coastal programs ... and the permissibility of proposed developments
24 subject to [the Coastal Act] are determined.” (Pub. Res. Code §30200(a)).

25 If the Commission finds a project is in conformity with the general development provisions of
26 Coastal Act Chapter 3, it must issue a CDP. (Pub. Res. Code §30604(a); *Citizens of Goleta Valley v.*
27 *Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1187). The Commission has the ultimate authority
28 to ensure that coastal development conforms to the policies embodied in the Coastal Act. (*Charles A.*

1 *Pratt Construction Co., Inc., supra*, 162 Cal.App.4th at p. 1075).

2 As detailed below, in reviewing the Project, the Commission abused its discretion by
3 misapplying the Section 30260 override provision, failing to require adverse environmental impacts be
4 mitigated to the maximum extent feasible, and impermissibly delegating its quasi-judicial function to
5 its Executive Director.

6 **B. The Override Provision is Inapplicable**

7 **1. Denying the Project Would Not Be Against the Public Welfare**

8 Because the proposed new oil and gas development is inconsistent with several provisions of
9 the Coastal Act, the Commission resorted to the Act's "override" provision (AR138), which states:

10 **Coastal-dependent industrial facilities** shall be encouraged to locate or expand within
11 existing sites and shall be permitted reasonable long-term growth where consistent with
12 this division. However, **where new or expanded coastal-dependent industrial facilities**
13 **cannot feasibly be accommodated consistent with other policies of this division, they may**
14 **nonetheless be permitted** in accordance with this section and Sections 30261 and 30262
15 if (1) alternative locations are infeasible or more environmentally damaging; (2) **to do**
16 **otherwise would adversely affect the public welfare**; and (3) adverse environmental
17 effects are mitigated to the maximum extent feasible. (Pub. Res. Code §30260, emphasis
18 added).

19 There is only one published decision which deals with this Coastal Act override provision. It too
20 involved the Commission balancing the protection of natural resources against the need for oil and gas
21 development. (*Gherini v. California Coastal Com.* (1988) 204 Cal.App.3d 699, 707). In *Gherini*,
22 however, the Commission found the project could not satisfy the public welfare criterion of the
23 override. (*Id.*) Upholding the Commission's decision, the Court focused not only on the Coastal Act's
24 Legislative intent to promote the public health, safety and welfare by protecting the ecological balance
25 of the coastal zone and preventing its destruction (*Id.* at pp. 707-780), it also acknowledged the
26 Commission's duty to assess the necessity of the coastal-dependent industrial facility. (See, Pub. Res.
27 Code §30260).

28 It is clear from these express legislative findings that a determination of what will adversely
affect the public welfare requires consideration of the preservation and protection of the
state's natural resources and the ecological balance of the coastal zone as well as the need
for a particular type of coastal-dependent development. The Commission quite properly
balanced the risk of harm to the highly sensitive and unique natural resources in and around
Santa Cruz Island against the public's need to permit oil and gas development in

1 ascertaining whether refusal to permit such hydrocarbon development would adversely
2 affect the public welfare. (*Gherini, supra*, 204 Cal.App.3d at p. 708).

3 Here, the Commission found there is little need for the coastal-dependent industrial
4 development – the oil and gas infrastructure and facilities – but approved the Project nonetheless.
5 “Although there will be continued need for petroleum products in California in the future, that need is
6 rapidly shrinking.” (AR142). The policy of the State is unequivocally to progress away from fossil
7 fuels. (AR142). With this in mind, the Commission noted the Project’s oil and gas development
8 component, if not developed, would not likely adversely affect the public. (*Id.*). “[I]f the proposed
9 project were not to move forward, it is likely that the loss of the proposed oil products to the market
10 would not be significant. Furthermore, the public would receive an indirect benefit by avoidance of the
11 greenhouse gas emissions associated with extraction and consumption of the extracted oil and gas.”
12 (*Id.*).

13 And though there would be a benefit to decommissioning existing (older) oil infrastructure,
14 this is dwarfed by the Project’s increased potential spill risk (for which the Commission found the
15 Project inconsistent with the Coastal Act). (AR142-143; Pub. Res. Code §30232).

16 As discussed earlier, although the project would upgrade the existing facilities and employ
17 state-of-the-art oil spill prevention measures, it is impossible to fully eliminate the potential
18 for an oil spill. **And in the event of a catastrophic spill, the increase in production
19 proposed by BOM results in a significantly larger worst case [sic] spill scenario.** As
20 described earlier in this report, the Commission has conditioned the permit to address these
21 concerns as thoroughly as possible. **But, although the risk of an oil spill would be
22 minimized, it cannot be fully eliminated.** (AR143, emphasis added).

23 The Project EIR described the cumulative worst-case scenario for the proposed project as a simultaneous
24 failure on all four sites. (AR87). This would result in a 2.8 million-gallon spill. (*Id.*). For comparison,
25 the existing worst-case spill scenario on the Synergy and City sites is estimated to be approximately
26 105,150 gallons (27 times less than the Project volume). (*Id.*). Thus, the coastal-dependent development,
27 the oil and gas production component itself is arguably *against* the public interest. Indeed, in 1998 the
28 Commission denied a permit for twelve new wells within the Synergy site (AR608) because it could not
29 find the development compatible with the continuation of adjacent ESHA, the project would reduce
30 restoration opportunities and degrade the value of future restored habitat in its vicinity, the project would

1 delay restoration more than 20 years, a potential oil spill could have significant adverse impacts to
2 surrounding habitat, and maximum consolidation with existing facilities was not established. (AR612).

3 Today, oil and gas development in this location remains contrary to the Coastal Act and public
4 welfare. It is a necessary evil to accomplish the true goal. Rather, the “principal public benefit from the
5 proposed project would be the restoration of a small area of wetlands and the ability to restore a much
6 larger area in the future.” (AR142).

7 What the proposed project accomplishes is providing **certainty as to availability of the**
8 **land and the timeline for wetlands restoration.** To leave the restoration potential of these
9 wetlands in limbo, with the prospect of maintaining oil development on potentially
10 valuable biological, cultural and scenic areas, would adversely affect the public welfare.
At this time, the only way to ensure restoration of these wetlands on an established timeline
would be to approve the proposed project. (AR143).

11 Thus, the Commission, enticed by the prospect of freeing the Synergy site from the shackles of
12 oil and gas development, approved the very thing that may devastate the wetlands, an 8000 percent
13 increase in oil production from 300 barrels to 24,000 barrels of oil per day (AR2, 120) and a new half-
14 mile pipeline across a fault line. (AR84). The Commission did not (and could not) articulate a reason
15 why denial of the coastal-dependent industrial development (as opposed to the land swap and
16 restoration) would be against the public interest, as *Gherini* instructs. (*Gherini, supra*, 204 Cal.App.3d
17 at p. 708). Rather, the Commission justified the new oil and gas development as a necessary means to
18 facilitate a land swap. (See, AR12). Thus, the Commission improperly weighed the public benefit of
19 removing the pre-existing oil and gas development as opposed to the approval of the new and
20 expanded oil and gas development.

21 Because the Commission did not find denial of the coastal-dependent industrial facility would
22 adversely impact the public welfare, the Commission failed to proceed in the manner required by law
23 and its decision is not supported by substantial evidence.

24 **2. The Project Does Not Mitigate Environmental Impacts to the Maximum** 25 **Extent Feasible**

26 In addition to the public welfare component of the override provision, Section 30260 also
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1 requires all adverse environmental effects be mitigated to the maximum extent feasible.¹ It contains no
2 qualifications. Nonetheless, in assessing the Project’s impacts to cultural resources, the Commission
3 did not apply this stringent standard.

4 Interpreting the meaning of statutes, a court’s fundamental task is to ascertain the intent of the
5 lawmakers so as to effectuate the purpose of the statute. (*Torres v. Automobile Club of So. California*
6 (1997) 15 Cal.4th 771, 777). The court begins by examining the statutory language, giving the words
7 their usual and ordinary meaning. (*Id.*). If there is no ambiguity, the court presumes that the lawmakers
8 meant what they said, and the plain meaning of the language governs. (*Day v. City of Fontana* (2001)
9 25 Cal.4th 268, 272). If, on the other hand, the statutory language is unclear or ambiguous and permits
10 more than one reasonable interpretation, the court may consider various extrinsic aids to help us
11 ascertain the lawmakers' intent, including legislative history, public policy, settled rules of statutory
12 construction, and an examination of the evils to be remedied and the legislative scheme encompassing
13 the statute in question. (*Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 749). In such
14 circumstances, the court must select the construction that comports most closely with the aim and goal
15 of the Legislature to promote rather than defeat the statutes general purpose and avoid an interpretation
16 that would lead to absurd and unintended consequences. (*McAllister v. California Coastal Com.*
17 (2008) 169 Cal.App.4th 912, 928).

18 “When a provision of the Coastal Act is at issue, we are enjoined to construe it liberally to
19 accomplish its purposes and objectives, giving the highest priority to environmental considerations.”
20 (*Id.*, citing Pub. Res. Code § 30009; *Dunn v. County of Santa Barbara* (2006) 135 Cal.App.4th 1281,
21 1294, 38 Cal.Rptr.3d 316).

22 Here, the Commission readily acknowledged the Project’s adverse impacts to cultural resource.
23 As a Tribal Cultural Landscape, the Project area would be adversely impacted by the Project.

24 The construction and operation of oil facilities on the Pumpkin Patch and LCWA sites
25 would add additional industrial development that could block views, contribute to noise
26 and light pollution, and preclude restoration or access to these sites indefinitely. These

27 ¹ “Feasible” means capable of being accomplished in a successful manner within a reasonable period of
28 time, taking into account economic, environmental, social, and technological factors. (Pub. Res. Code
§30108).

1 factors would make it more difficult for tribal members to connect or reconnect to this
2 place, especially in the larger context of the surrounding wetlands. Furthermore, if an
3 oil spill were to occur, it could result in devastating impacts to wetland and upland
4 areas that are part of the existing landscape. (AR131 [Cultural Resource Findings])

5 In an effort to mitigate the Development’s adverse impact on cultural and tribal resources, the
6 Commission imposed Special Conditions 10, 11, 14, 19, 23 and 24. (AR132). Nonetheless, the
7 Commission only imposed “reasonable mitigation measures” pursuant to Coastal Act Section 30244,
8 as opposed to mitigation to the “maximum extent feasible” as required by the Section 30260 override
9 provision. (*Id.*). Cultural resource impacts were therefore not eliminated (AR132) and additional
10 feasible mitigation measures were in fact available. (See, e.g., AR3493-3496 [LCWA Cultural
11 Resources Plan suggesting incorporation of Tongva advisors in restoration planning and potential salt
12 panne landscape as unique habitat for cultural and educational activity] AR3496 [same, suggesting
13 meetings and workshops with Tongva representatives for wetlands restoration design work]).

14 Because the Commission applied a less stringent standard to the Project’s adverse cultural
15 resources impacts, it failed to proceed in the manner required by law and the Project did not meet this
16 additional aspect of the Section 30260 override provision.

17 **3. The Commission Improperly Delegated Its Duties**

18 In reviewing the Project, the Commission found numerous impacts required further analysis.
19 (See, AR3-6). As a result, the Commission imposed 26 Special Conditions, most of which require
20 preparation of a plan or study and mitigation measures based thereon, subject to Executive Director
21 review and approval. (AR9-48). Such delegation and deferral subvert the Commission’s open
22 government and public participation goals and are inconsistent with the Commission’s quasi-judicial
23 obligations.

24 The Commission has the ultimate authority to ensure that coastal development conforms to the
25 policies embodied in the Coastal Act. (*Charles A. Pratt Construction Co., Inc., supra*, 162 Cal.App.4th
26 at p. 1075). The Commission, not staff, is ultimately responsible for interpreting and applying the
27 Coastal Act. (See, *McAllister, supra*, 169 Cal.App.4th at p. 953).

28 The Commission’s delegation of its duty to review development projects for Coastal Act
consistency frustrates the Act’s public disclosure policies. The Coastal Act includes a finding and

1 declaration that the “duties, responsibilities, and quasi-judicial actions of the commission are sensitive
2 and extremely important for the well-being of current and future generations and that the public
3 interest and principles of fundamental fairness and due process of law require that the commission
4 conduct its affairs in an open, objective, and impartial manner...” (Pub. Res. Code §30320(a)).
5 Further, “in a democracy, due process, fairness, and the responsible exercise of authority are all
6 essential elements of good government which require that the public's business be conducted in public
7 meetings, with limited exceptions...” (Pub. Res. Code §30320(b)). Coastal Act Section 30006 includes
8 a Legislative declaration that the public has a right to fully participate in decisions affecting coastal
9 planning, conservation and development; that achievement of sound coastal conservation and
10 development is dependent upon public understanding and support; and that the continuing planning
11 and implementation of programs for coastal conservation and development should include the widest
12 opportunity for public participation. However, the public’s ability to provide input and oversight is
13 hindered when the Commission delegates its primary decision-making responsibilities to its staff.

14 Though the Coastal Act envisions some level of delegation to the Executive Director, such
15 instances must be specifically enumerated. (Pub. Res. Code §30335 [The commission shall prescribe
16 the duties and salaries of the executive director]). In that regard, the Commission’s regulations are
17 replete with references to the Executive Director’s authority. (See, e.g. 14 Cal. Code Regs. §§13053(a)
18 [Executive Director may waive requirement for preliminary agency approvals]; §13238.1 [Executive
19 Director may issue waiver from permit requirements for de minimis development]; §13169 [Executive
20 Director determines whether permit extension request requires hearing, subject to Commission
21 review]). However, neither the Coastal Act nor the Commission’s regulations authorize delegation of
22 the Commission’s primary quasi-judicial role to review development permits for Coastal Act
23 consistency.

24 Nevertheless, the Commission delegated its quasi-judicial function and deferred analysis of
25 numerous Project mitigation measures. The Commission imposed 40-pages of special conditions.
26 (AR20175-20217). The majority of the plans imposed therein require review and approval by the
27 Executive Director with no further oversight by the Commission. (See, e.g. AR20206 [Executive
28 Director review and approval of Seismic Analysis and Safety Plan]). These plans concern virtually

1 every Project impact, including: the development’s seismic safety (AR20178, 20206-20207); the
2 protection of wetlands, sensitive habitat areas, and special-status species (AR20184-20188);
3 construction pollution prevention (AR20190-20194); special-status plant restoration and mitigation
4 (AR20195-20196); ESHA, nuisance and cultural resources protection (AR2196-20197; public access
5 protection (AR20197-20199); water quality protection (20199-20202); contaminated soil investigation
6 and removal (AR20202-20203); land surface elevation and seismic activity monitoring and mitigation
7 (AR20203-20204); oil spill prevention and response (AR20204-20205); seismic analysis and safety
8 (AR20206-20207); archeological research and protection of cultural resources and a monitoring and
9 mitigation plan (AR20207-20213); tribal culture education (AR20213-20214); and visual
10 compensation (AR20214-20215).

11 These conditions are not mere formalities to effectuate the Commission’s direction. For
12 example, to address the Project’s seismic hazards, Special Condition 21 requires BOM to submit a
13 Seismic and Geotechnical Analysis and Hazard Mitigation Plan that requires detailed design plans,
14 site-specific geotechnical analysis for each site evaluating fault rupture hazards, and engineering
15 analysis and specific design recommendation and mitigation measures the address the aforementioned
16 hazards. (AR39-40).

17 In the California Environmental Quality Act (CEQA) context, such deferral of formulation of
18 mitigation measures is forbidden unless the agency commits itself to specific criteria for evaluating the
19 efficacy of the measures implemented. (*King & Gardiner Farms, LLC v. County of Kern* (2020) 45
20 Cal.App.5th 814, 856). “Simply stating a generalized goal for mitigating an impact does not allow the
21 measure to qualify for the exception to the general rule against the deferred formulation of mitigation
22 measures.” (*Id.*). In *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal. App. 4th 493, 506 the
23 court noted that similar considerations govern the interpretation of both CEQA and the Coastal Act:

24 In terms of the general protection the Coastal Act provides for the coastal environment, we
25 have analogized it to [CEQA]. We have found that under both the Coastal Act and CEQA:
26 “ ‘The courts are enjoined to construe the statute liberally in light of its beneficent
27 purposes. The highest priority must be given to environmental consideration in interpreting
28 the statute.’ ”

(*Id.*, disapproved on other grounds in *Dhillon v. John Muir Health* (2017) 2 Cal.5th 1109, 1114, citing

1 *Coastal Southwest Dev. Corp. v. California Coastal Zone Conservation Com.* (1976) 55 Cal.App.3d
2 525, 537, citations omitted).

3 Construing the Coastal Act liberally to accomplish its purposes and objectives, pursuant to the
4 Section 30260 override provision, the Commission must determine whether a development project is
5 mitigated to the maximum extent feasible prior to project approval. (Pub. Res. Code §30009).
6 Delegation of this important function, especially where a project is not consistent with other policies
7 of the Coastal Act, as here, is contrary to one of the Coastal Act’s primary purposes: to avoid the
8 harmful consequences of development of coastal resources. (See, Pub. Res. Code §30001).

9 As a result of the Commission’s delegation of its duties, it failed to perform its quasi-judicial
10 function to ensure the Project’s Coastal Act consistency, specifically that the Project’s adverse
11 environmental impacts were mitigated to the maximum extent feasible.

12 **V. CONCLUSION**

13 The Commission failed to uphold the Coastal Act’s resource-protection requirements,
14 accepting a fatally flawed compromise under the guise of wetland restoration. The Commission’s use
15 of the “override” provision was legally and factually flawed. Further, the Commission improperly
16 delegated and deferred its quasi-judicial function to the Executive Director. As a result, Petitioners
17 respectfully request their Petition for Writ of Mandate be granted.

18 Dated: December 4, 2020

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