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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES
11

12
13 **PUVUNGA WETLANDS PROTECTORS,**
a California non-profit public benefit
14 **corporation; and ANNA CHRISTENSEN,**
an individual,

15 Plaintiffs and Petitioners,

16 v.

17
18 **CALIFORNIA COASTAL COMMISSION,**
a California public agency; and DOES 1
19 **through 20, inclusive,**

20 Respondent and Defendant.

21
22 **BEACH OIL MINERALS, LLC, a**
California limited liability company; LOS
23 **CERRITOS WETLANDS AUTHORITY, a**
joint powers governmental entity; CITY OF
24 **LONG BEACH, a municipal corporation;**
LYON HOUSING (PUMPKIN PATCH),
25 **XLV, LLC, a Delaware limited liability**
company; LOS CERRITOS WETLANDS,
26 **LLC, a California limited liability company;**
and DOES 21 through 40, inclusive,

27 Real Parties in Interest.
28

Case No. 19STCP00435

**RESPONDENT CALIFORNIA
COASTAL COMMISSION'S
OPPOSITION TO PETITION FOR WRIT
OF MANDATE**

Trial Date: March 11, 2021
Time: 1:30 p.m.
Dept: 82
Judge: The Honorable Mary H. Strobel
Action Filed: February 11, 2019

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1 **INTRODUCTION**

2 Petitioners Puvunga Wetlands Protectors and Anna Christensen (together, Puvunga)
3 challenge the California Coastal Commission’s decision approving a coastal development permit
4 for consolidation of an oil and gas development and wetlands restoration. The Commission
5 concluded that the permit was consistent with the Coastal Act’s resource protection policies with
6 the exception of two areas: Oil Spill and Visual Resources. With respect to those impacts, the
7 Commission found that the Coastal Act’s override provision applied, which allows coastal-
8 dependent industrial facilities to be permitted, despite other Coastal Act inconsistencies, under
9 certain circumstances including maximum feasible mitigation. After imposing 26 detailed
10 conditions, the Commission found that the permit was consistent with the Coastal Act based on
11 substantial evidence in the record.

12 Puvunga asserts arguments here that it did not present to the Commission—and, in one
13 instance, did not include in its petition—and therefore it has failed to exhaust its administrative
14 remedies and the Court should proceed no further as to those issues. If the Court does consider
15 the merits, it will be apparent that the Commission’s actions were in accordance with the Coastal
16 Act and supported by substantial evidence. Puvunga seeks to impose its own evaluation of the
17 evidence rather than the Commission’s, which it is not entitled to do. The writ petition should be
18 denied.

19 **STATEMENT OF FACTS¹**

20 On December 13, 2018, in a lengthy public hearing, the Coastal Commission considered an
21 application by Beach Oil Minerals (BOM) and the Los Cerritos Wetlands Authority (LCWA) to
22 cease oil production and remove existing aging oil infrastructure on two sites within the Los
23 Cerritos Wetlands Complex, restore wetlands on one of these sites, and construct and operate two
24 new oil production facilities on two different but smaller sites, all within the City of Long Beach
25 (City). (AR 19855, 150 [project site].)²

26 _____
27 ¹ The Commission incorporates by reference the more comprehensive factual summary
from the real party Beach Oil Minerals (BOM) memorandum.

28 ² AR refers to the Commission’s 4-volume administrative record. Citations are in the form
“AR [page #].”

1 The Commission's initial staff report recommended twenty-five special conditions to
2 mitigate the environmental impacts of the project. (AR 2568-2607.) The Commission received
3 70-80 comments, approximately one-half supporting the project, and one-half objecting. (AR
4 19855.) An addendum added a twenty-sixth special condition (AR 2715), and responded to
5 comments about the project. (AR 2701-2716.) Commission staff presented its recommendations
6 orally during the hearing and described the main benefits to the public: the restoration of a small
7 area of wetlands and the ability to restore a much larger area in the future, and the certainty of a
8 timeline for removal of the existing aging and outdated oil infrastructure. (AR 19873.)

9 After hearing from the applicant, tribal leaders, conservation groups, and members of the
10 public, the Commission voted 6-3 to approve the project's coastal development permit. (AR 1-
11 146 [final adopted findings]; AR 19854-20103 [hearing transcript].) The Commission imposed 26
12 special conditions on the project. (AR 20175-20217.) The Commission approved the project
13 despite its inconsistency with the Oil Spill and Visual Resources policies of the Coastal Act,
14 finding that the project was subject to the override provision in section 30260 and that it met the
15 three part test of that provision. (Pub. Resources Code, § 30260.)³ Puvunga then filed this lawsuit
16 challenging the Commission's decision.

17 STANDARD OF REVIEW

18 Commission decisions may be reviewed by petition for writ of administrative mandate
19 under Code of Civil Procedure section 1094.5. (§ 30801.) The standard of review is whether
20 substantial evidence supports the Commission's decision, and California law presumes that it
21 does. (Code Civ. Proc., § 1094.5, subds. (b), (c); *Ocean Harbor House Homeowners Assn. v.*
22 *California Coastal Com.* (2008) 163 Cal.App.4th 215, 227.) Petitioners bear the burden of
23 demonstrating the contrary here. (*Ocean Harbour House*, 163 Cal.App.4th at p. 227.)

24 In reviewing the Commission's decision under the substantial evidence standard, the Court
25 considers all record evidence. (*La Costa Beach Homeowners Assn. v. California Coastal Com.*
26 (2002) 101 Cal.App.4th 804, 814 (*La Costa*.) The Court must resolve reasonable doubts in favor

27 _____
28 ³ Subsequent statutory references are to the Public Resources Code unless otherwise indicated.

1 of the Commission’s decision. (*Paoli v. California Coastal Com.* (1986) 178 Cal.App.3d 544,
2 550.) The Court may reverse only if, based on the evidence before the Commission, no
3 reasonable person could have reached the Commission’s conclusion. (*La Costa*, 101 Cal.App.4th
4 at p. 814.) The Court may not overturn a Commission finding because a contrary finding would
5 have been equally or more reasonable. (*Ibid.*) Substantial evidence on which the Commission
6 may rely includes expert opinions, photographs, and observations from Commissioners,
7 Commission staff, and the public. (*Id.* at p. 819; *LT-WR, LLC v. California Coastal Com.* (2007)
8 152 Cal.App.4th 770, 793-794.)

9 This Court reviews questions of law de novo. But California law affords the Commission’s
10 interpretation of the Coastal Act and regulations under which it operates “great weight,” given the
11 Commission’s special familiarity with its regulatory and legal issues. (*Ross v. California Coastal*
12 *Com.* (2011) 199 Cal.App.4th 900, 922, 938.)

13 THE CALIFORNIA COASTAL ACT

14 The Coastal Act serves as a comprehensive land use planning scheme for California’s
15 coastal zone. (§ 30000 et seq.; *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles*
16 (2012) 55 Cal.4th 783, 793 (*Pacific Palisades Bowl*)). New development in the coastal zone
17 generally requires a coastal development permit. (§ 30600, subd. (a).) The Act contains policies
18 governing development in the coastal zone known as Chapter 3 policies. (§§ 30200-30265.5).

19 Local governments and the Commission share coastal planning powers. (*Pacific Palisades*
20 *Bowl, supra*, 55 Cal.4th at p. 794, citing § 30004.) The Coastal Act requires local governments to
21 prepare local coastal programs governing coastal development within their jurisdictions.
22 (§ 30500.) Once its local coastal program is certified by the Commission, a local government
23 generally assumes the role of issuing permits. (§ 30519, subd. (a).) Some land, such as tidelands,
24 are in the Commission’s original jurisdiction, however, and it retains permitting authority.
25 (§ 30519, subd. (b).)

26 BOM’s proposed project in Long Beach includes development on four sites within both the
27 City’s jurisdiction and the Commission’s original jurisdiction. (AR 59.) Under the Coastal Act,
28 therefore, proposed development in this area would require permits from both the City and the

1 Commission, or one consolidated permit from the Commission. (§§ 30519, 30601.3; AR 12.)
2 Instead of processing two different coastal development permits for the project, the applicant and
3 the City agreed to a consolidated permit. (AR 59; § 30601.3.) Thus, the entire project was before
4 the Commission with the Coastal Act as the standard of review, and the City’s local coastal
5 program serving as guidance. (AR 60.)

6 The Commission found that as conditioned the proposed project is consistent with the
7 applicable Chapter 3 policies of the Coastal Act except for two areas of inconsistency, visual
8 resources and oil spill impacts, where the Act’s override provision applied to allow approval of
9 the permit. (§ 30620.) The override provision allows permitting of coastal-dependent industrial
10 facilities, even where inconsistent with other policies of the Coastal Act, if three conditions are
11 applicable: “(1) alternative locations are infeasible or more environmentally damaging; (2) to do
12 otherwise would adversely affect the public welfare; and (3) adverse environmental effects are
13 mitigated to the maximum extent feasible.” (*Ibid.*)

14 ARGUMENT

15 I. PETITIONERS DID NOT EXHAUST THEIR ADMINISTRATIVE REMEDIES

16 The Coastal Act provides that an “aggrieved person” may seek judicial review of a
17 Commission action. (§ 30801.) Section 30801 defines an “aggrieved person” as someone who
18 either appeared at the Commission meeting or communicated concerns to the Commission
19 beforehand. Thus, section 30801 codifies the well-established requirement that before resorting to
20 judicial review, a person challenging an administrative decision must first present the issue at the
21 administrative level. Accordingly, Puvunga was required to present the specific grounds for its
22 challenge to the Commission’s decision first to the Commission in order to preserve its claim for
23 judicial review. (*Walter H. Leimert Co. v. California Coastal Com.* (1983) 149 Cal.App.3d 222,
24 232; *Whaler’s Village Club v. California Coastal Com.* (1985) 173 Cal.App.3d 240, 252; *South*
25 *Coast Regional Com. v. Gordon* (1977) 18 Cal.3d 832, 838.)

26 Exhaustion of administrative remedies is a jurisdictional prerequisite to judicial action and
27 bars the Court from addressing issues not raised to the agency. (*Johnson v. City of Loma Linda*
28 (2000) 24 Cal.4th 61, 69.) Application of the exhaustion doctrine is not discretionary; rather, “it is

1 a fundamental rule of procedure . . . binding upon all courts.” (*Abelleira v. District Court of*
2 *Appeal* (1941) 17 Cal.2d 280, 293.) It allows the administrative agency with final review
3 authority to correct errors or mistakes made at earlier stages of the administrative process.
4 (*McAllister v. County of Monterey* (2007) 147 Cal.App.4th 253, 287.) It also provides the court
5 with a full record of the relevant facts and issues. (*Id.* at p. 275.) A court will excuse a litigant
6 from exhaustion only in the most extraordinary circumstances. (*Service Employees International*
7 *Union v. Department of Personnel Admin.* (2006) 142 Cal.App.4th 866, 870-873.)

8 Puvunga claims that the Commission improperly applied the Coastal Act override provision
9 by considering the benefit of the land swap in its determination that denying the permit would
10 adversely affect the public welfare (“public welfare issue”). (Petr. Op. Br., pp. 8-10.) It further
11 contends that the Commission applied the wrong standard to the project’s cultural resources
12 impacts and therefore the impacts were not minimized to the maximum extent feasible (“cultural
13 resources issue”). (*Id.* at pp. 10-12.) Finally, Puvunga claims that the Commission improperly
14 delegated its duties by requiring 26 mitigation measures to be enforced by its staff (“improper
15 delegation issue”). (*Id.* at pp. 12-15.) The Court should dispense with the petition without
16 reaching its merits as to at least the latter two arguments because Puvunga failed to exhaust its
17 administrative remedies with respect to these arguments by not raising them to the Commission.

18 Puvunga availed itself of numerous opportunities to make its concerns known to the
19 Commission. Commission staff received information from Puvunga’s representatives when it was
20 preparing the staff report prior to the public hearing. (Correspondence: AR 2760, 2775-2789,
21 3271, 3404-05, 3424, 3493-96, 3541, 3542-47, 3555, 3557-3826, 3827-3850, 3851-3867, 4287,
22 4300-4302, 4521-23, 4525-28, 4531-33, 4608-09, 4617-19, 4620; Staff Report: AR 126-28
23 [Tribal Consultation].) The Commission’s staff report was circulated prior to the December 13,
24 2018 hearing (AR 2560, 4521-23 [staff report circulated December 4], 4620 [addendum
25 circulated December 12]; see Petr. Op. Br., at p. 6:22-23), and Puvunga’s Anna Christensen
26 reviewed and commented upon it before the hearing. (AR 2760 [December 7, 2018 email to
27 Commissioners commenting on staff report].) Ms. Christensen also attended and testified at the
28

1 hearing. (AR 19773 [speaker slip]; 19943-44, 19956-60 [testimony].) As such, Puvunga had a full
2 opportunity to address its concerns to the Commission.

3 Despite Puvunga’s numerous communications, it never raised to the Commission the
4 specific cultural resources and improper delegation issues before the Court.⁴ In the course of the
5 public hearing, Ms. Christensen raised general issues including: the project remains inconsistent
6 with the cultural resources and tribal consultation policies (AR 19956-57); oil spill risk and visual
7 impacts cannot be mitigated (AR 19944, ln. 6-9); and drilling near an active fault could create an
8 oil spill. (AR 19930, ln. 1-11). But no objection was made to those two issues.

9 Puvunga did not tell the Commission that it did not properly mitigate impacts to cultural
10 resources to the maximum extent feasible under section 30260’s override provision. (Petr. Op.
11 Br., pp. 10-12.) (See *Greene v. California Coastal Com.* (2019) 40 Cal.App.5th 1227, 1238
12 [general objections are insufficient; rather, “to satisfy the exhaustion requirement, [petitioners]
13 were required to present the “exact issue” to the administrative agency”].) In fact, during the
14 Commission hearing, the opposite argument was made by a member of the public regarding the
15 override provision. (AR 19963.)

16 Puvunga did not put before the Commission its argument here that that the Commission
17 “delegated its quasi-judicial function and deferred analysis of numerous Project mitigation
18 measures.” (Petr. Op. Br., p. 13:24-25.) In written correspondence relevant to the improper
19 delegation issue, Puvunga objected that plans for the 25 special conditions should be submitted to
20 the Commission before approving the project. (AR 2777-79, 2749, 4544.) This objection was part
21 of a request to postpone the hearing, stating that the “plans should be submitted and agreed to by
22 both parties before this project is approved.” (AR 2775, 2777-78.) Nowhere did Puvunga argue
23 that the special conditions were inadequate because they lacked specific criteria,

24 Because Puvunga did not raise these issues at the administrative level, the Commission had
25 no opportunity to address them, and therefore this Court should not consider them now.

26 _____
27 ⁴ In addition, Puvunga has not met its burden to identify records showing that it exhausted
28 the specific contention that the Commission improperly weighed the public welfare benefit of the
land swap. (Petr. Op. Br., pp. 8-10.) The Real Parties in Interest take the position that this
argument is unexhausted, but the Commission leaves this to the discretion of the Court.

1 (*Abelleira v. District Court of Appeal, supra*, 17 Cal.2d at p. 292.) Should the Court desire to
2 consider these issues, however, notwithstanding Puvunga’s failure to exhaust its administrative
3 remedies, the arguments below address the merits.

4 **II. SUBSTANTIAL EVIDENCE SUPPORTS THE ISSUANCE OF THE COASTAL**
5 **DEVELOPMENT PERMIT**

6 **A. The Coastal Act’s Override Provision Was Properly Applied Because**
7 **Substantial Evidence Shows that Denying the Project Would Be Against**
8 **the Public Welfare**

9 In determining that the Coastal Act’s override provision applied to the Project, the
10 Commission made in-depth findings concerning the three-prong test required under section
11 30260. Substantial evidence supports the Commission’s decision to grant BOM’s permit.

12 The Commission invoked the override provision to allow permitting of the proposed oil
13 production despite its findings of Coastal Act inconsistencies in two areas. First, the proposed
14 project was inconsistent with the oil spill response policies because, despite the project’s removal
15 of aging oil infrastructure from 106 acres of wetlands and implementation of state-of-the-art
16 construction methods, there is no way to effectively remove oil from the wetlands and adjacent
17 waterways in the event of an accidental spill. (AR 90-92, 19867-68, citing § 30232.) Second, the
18 project could not be found to be consistent with the visual resources policies because drill rigs
19 would remain on the sites for a number of years. (AR 95-97, 19869, citing § 30251.) The
20 Commission found that the override provision applied because “(1) alternative locations are
21 infeasible or more environmentally damaging; (2) to do otherwise [than issue the permit] would
22 adversely affect the public welfare; and (3) adverse environmental effects are mitigated to the
23 maximum extent feasible.” (§ 30260; see AR 139-141 [alternative locations]; 141-43 [public
24 welfare]; 143-45 [mitigation].)

25 Puvunga argues that the Commission abused its discretion by misapplying the second part
26 of the test, which is the determination that “to do otherwise would adversely affect the public
27 welfare.” Puvunga contends that the Commission’s finding that denying the project would be
28 against the public interest was improperly based on the benefits of the land swap and the wetlands
restoration rather than the expanded oil and gas development alone. (Petr. Op. Br., p. 10:18-20.)

1 Puvunga argues that the Commission should have denied the oil and gas project because (1) there
2 is little need for oil and gas infrastructure due to the decrease in use of fossil fuels, and (2) the
3 benefit to decommissioning older infrastructure is outweighed by the “increased potential spill
4 risk.” (Petr. Op. Br., pp. 9:3-4, 9:13-15.)

5 Puvunga simply wishes to substitute its judgment for the Commission’s. But the Court may
6 not overturn a Commission finding because a contrary finding would have been equally or even
7 more reasonable. (*La Costa Beach Homeowners Assn. v. California Coastal Com, supra*, 101
8 Cal.App.4th at p. 814.). Puvunga’s burden is to canvas all of the relevant evidence, and show that
9 the Commission’s findings lacked *any* substantial evidence. (*Citizens for a Megaplex-Free*
10 *Alameda v. City of Alameda* (2007) 149 Cal.App.4th 91, 112.) It has not done either. In fact, the
11 flaw with Puvunga’s argument is that it would require that the Commission consider the Project
12 in a fragmented manner, rather than as a whole. The Commission’s findings are not focused
13 solely on the wetlands or the oil development alone, but properly considered all aspects of the
14 project.

15 There was substantial evidence before the Commission to support its decision that denying
16 the permit would be against the public interest. The Commission found that the principal public
17 benefits from the project would be: the cessation of oil and gas operations, and removal of
18 associated infrastructure, in a fragile wetland ecosystem within a time certain; restoration of a
19 small area of wetlands; public and tribal access to open space; and the ability to restore a much
20 larger area in the future:

21 The proposed project would result in the immediate restoration of 29.66 acres of salt
22 marsh and mudflat habitat and about 6 acres of wetlands buffer areas. It would also
23 lead to the preservation of 32 acres of relatively pristine salt marsh, mudflat and
24 subtidal habitat in Steamshovel Slough. The construction of a Visitor’s Center and a
25 trail on the adjacent upland would allow the public to access a valuable biological
26 resource that has been locked away on private land for almost 100 years. Tribal
27 communities would have the opportunity to educate the public on their culture and
28 connection to the wetlands and to experience a small part of their cultural landscape
returned to a natural state. Perhaps more significantly, the proposed project would
open up the possibility of restoring up to 106 additional acres after the 20 year
decommissioning period is completed.

(AR 142.) The operations on the Synergy, Pumpkin Patch, and City sites consist of 53 wells and
equipment that is several decades old and not constructed to current seismic standards, making it

1 vulnerable to leaks or breaches even with normal use. (AR 143.) The equipment is spread out and
2 not shielded from public view, creating a significant visual impact. (AR 143.) “Removing these
3 facilities will eliminate a potential oil spill risk and a visual blight from the Los Cerritos Wetlands
4 area.” (AR 143.) While the risk of an oil spill with the new oil and gas infrastructure could not be
5 fully eliminated, the project, as conditioned, addressed the concerns as thoroughly as possible.
6 (AR 143, 87-90 [applying conditions].) Importantly, the Commission found that leaving “the
7 restoration potential of these wetlands in limbo, with the prospect of maintaining oil development
8 on potentially valuable biological, cultural and scenic areas, would adversely affect the public
9 welfare.” (AR 143, 19873:9-24 [summarizing findings].) The Commission approved the proposed
10 project to allow for wetlands restoration, public access, and oil infrastructure improvement.

11 In *Gherini v. Commission*, the Commission considered whether to certify a Land Use Plan
12 that allowed oil and gas development on Santa Cruz Island pursuant to the section 30260 override
13 provision. (*Gherini v. California Coastal Com.* (1988) 204 Cal.App.3d 699, 704-05.) Similar to
14 Puvunga’s argument here that the Commission improperly considered only the benefits of the
15 wetlands restoration, the petitioner claimed the Commission should have considered solely the
16 adverse impact on the public welfare of prohibiting the oil and gas development, rather than
17 weighing the environmental effects of such development against the public benefit in prohibiting
18 it. (*Id.* at p. 707.) *Gherini* held that section 30260 should not be read so narrowly. (*Ibid.*) Instead,
19 the Court held that, in ascertaining whether refusal to permit the development would adversely
20 affect the public welfare, the Commission properly balanced the risk of harm to the highly
21 sensitive island natural resources against the public’s need to permit energy development. (*Id.* at
22 p. 708.) The Court concluded that a determination of what will adversely affect the public welfare
23 requires consideration of the preservation and protection of the state’s natural resources as well as
24 the need for a particular type of coastal development. (*Ibid.*)

25 Here, the Commission did exactly what *Gherini* instructs. The Commission considered both
26 the preservation and protection of the state’s natural resources—the wetlands—and the need for
27 the oil and gas infrastructure. (See *Gherini v. California Coastal Com.*, *supra*, 204 Cal.App.3d at
28 p. 708 [a determination of what will adversely affect public welfare requires both the protection

1 of natural resources and the need for development].) While the Commission could not eliminate
2 all impacts of the proposed oil and gas facilities, the Commission considered the public benefits
3 of upgrading and removal of the existing infrastructure from wetlands and wetlands restoration in
4 a time certain, to determine the harm to the public if the project was not approved. The
5 Commission based its findings on extensive record evidence of the public benefits of the project,
6 including: new, safer, and more efficient oil and gas infrastructure and state-of-the-art
7 technology;⁵ the consolidation of oil facilities on a much smaller footprint; greater public access
8 and recreational opportunities with public access trails and a bike path near the wetlands; and
9 immediate restoration and preservation of a portion of the wetlands. (AR 141-43, 19876-79;
10 19886, 19895-96, 19897, 19901, 19906, 19913, 19914, 19921, 19922, 19924, 20043.)
11 Furthermore, the low carbon oil at the new site is less polluting and viewed as a bridge towards
12 renewable energies (AR 19884). Substantial evidence thus supports the Commission’s decision
13 on section 30260’s override provision.

14 **B. The Project’s Environmental Impacts Were Mitigated to the Maximum**
15 **Extent Feasible**

16 The Commission found that the proposed project was inconsistent with the Chapter 3
17 policies related to visual resources and oil spill protection. It properly found that, under the
18 section 30260 override provision, the project was conditioned to mitigate its adverse visual
19 impacts and the potential for it to cause an oil spill, to the maximum extent feasible. Substantial
20 evidence supports these determinations.

21 Puvunga contends that the Commission’s cultural resources analysis should have been
22 guided by section 30260’s standard of “maximum extent feasible” mitigation, which it contends
23 is more stringent than that of section 30244, the Chapter 3 policy addressing such impacts. (Petr.
24 Op. Br., p. 12:5-8.) Real Parties in Interest’s opposition brief discusses the standard for mitigating
25

26 ⁵ Substantial evidence before the Commission also established that the spill risk was
27 conditioned to be as consistent with section 30232 as feasible. (AR 87-90 [Oil Spill Prevention].)
28 The project was designed with state-of-the-art technology, equipped with leak detection systems,
overflow protection, and instruments to monitor temperature and pressure. (AR 87.) Estimates were
that automatic shut-offs would occur within five minutes of detecting a leak. (*Ibid.*)

1 those impacts, but the Court need not reach that argument because the Commission mitigated any
2 potential cultural resource impacts to the maximum extent feasible.

3 **1. Substantial Evidence Supports the Commission’s Findings on**
4 **Cultural Resources**

5 Section 30244 applies to cultural resources, and provides that “where development would
6 adversely impact archaeological or paleontological resources as identified by the State Historic
7 Preservation Officer, reasonable mitigation measures shall be required.” (§ 30244.) The City’s
8 local coastal program policy also requires reasonable mitigation measures. (AR 2918, § A.7.) As
9 required under section 30244, the Commission found that the reasonable mitigation standard was
10 met. (AR 132.) The Commission also found, however, that as required by the California
11 Environmental Quality Act, environmental impacts to cultural resources have been mitigated to
12 the maximum extent feasible. (AR 146, 12798-12802 [cultural resources as mitigated would
13 reduce impacts to a level of less than significant].)

14 Substantial evidence supports the Commission’s findings that any cultural resource impacts
15 were appropriately mitigated. Although no known cultural resources were discovered on any of
16 the project sites, because it was nevertheless possible that cultural resources were present, a
17 mitigation measure for Protection of Cultural Resources, consisting of six pages of mitigation,
18 was imposed. (AR 129-131, 20207-20213 [special condition 23].) Special condition 23 requires
19 an Archeological Research Plan and Archeological Monitoring and Mitigation Plan, which
20 expands and increases the records search radius from within 0.5 miles to within 1.5 miles of the
21 project sites, and includes additional soil core sampling. (AR 20207.) If any cultural deposits are
22 discovered, all work is halted until the discovery can be evaluated by a qualified archaeologist,
23 with consultation with Native American representatives for possible treatment or preservation.
24 (AR 20207-08 [special condition]; 2049, 4942-43, 8601-03 [same mitigation standard under
25 CEQA].) This condition sets forth mitigation to the maximum extent feasible. (*Ibid.*)

26 The Commission also evaluated any potential impacts to the Tribal Cultural Landscape as
27 described by members of the Gabrieleno – Tongva tribe and the Gabrieleno – Kizh Nation, and
28 imposed five special conditions to mitigate any potential impacts: 10, 11, 14, 19 and 24. (AR 130-

1 132.) This mitigation included: a Revised Nuisance Minimization Plan to meet identified lighting,
2 noise, and vibration restrictions (AR 131, 20196-97 [special condition 14]), a Pollution
3 Prevention Plan and Cultural Responsibilities Plan to verify that erosion control measures are in
4 place and are mitigated during construction (AR 132, 20189-94 [special conditions 10 & 11], an
5 Oil Spill Prevention and Response Plan to reduce the chance of a spill and respond adequately in
6 the event it occurs (AR 131-32, 20204-05 [special condition 19]), and a Tribal Cultural Education
7 Plan with direct involvement from tribal members on educational materials for the Visitor’s
8 Center (AR 132, 20213-14 [special condition 24]). No further mitigation here was feasible.

9 To address these potential impacts, the Commission also sought input from several tribal
10 representatives. (AR 126, 19870-72.) Of the representatives who spoke at the Commission
11 hearing, the Tribal Chair of the Gabrielino Band of Mission Indians – Kizh Nation, appearing on
12 behalf of 550 members, supported the project as conditioned. (AR 19902-03; see also 19906-07,
13 19912-13.) A tribal biologist also spoke in support of the project’s benefits to plants and animals,
14 including endangered species, in the wetlands. (AR 19903-05.) An archeologist testified
15 favorably that the cultural resources conditions were “comprehensive and well suited to mitigate
16 impacts to archeological deposits that might be found during the project,” and that the Tribal
17 Education Plan would “emphasiz[e] the past and present Native American contributions to the
18 local area.” (AR 19928-29.) Other than Puvunga, and a member of the Acjachem Tribe, no other
19 tribal representative lodged an objection. (AR 126-28.) The Commission properly considered all
20 of this evidence in finding that the cultural resources impacts were mitigated to the maximum
21 extent feasible.

22 **2. The Mitigation Measures Suggested by Puvunga Are Included in the**
23 **Special Conditions**

24 Puvunga does not contend that the mitigation efforts described above are not reasonable
25 under section 30244. Instead, Puvunga suggests that more mitigation measures were available
26 under section 30260’s “maximum extent feasible” standard. Puvunga cites as examples the
27 possibility of the involvement of Tongva advisors in restoration planning or a potential salt panne
28

1 landscape for cultural and educational activity, and workshops with Tongva representatives for
2 wetlands design work. (Petr. Op. Br., p. 12 [citing AR 3493-96].)

3 But similar measures are already imposed, and Puvunga does not explain how its proposals
4 provide any more protection. Special Condition 4, the Wetland Restoration and Mitigation Plan,
5 requires a restoration plan developed in consultation with Native American groups, which allows
6 for Tongva advisors to be involved in restoration planning or wetlands design. (AR 20180
7 [Special Condition 4, subd. (g)]. Special Condition 24, the Tribal Cultural Education Plan,
8 requires consultation with tribal representatives to develop an education plan, and provides notice
9 and an opportunity for Puvunga to comment on the draft plans, which will be re-evaluated every
10 five years. (AR 20213-14.) The Commission’s extensive mitigation measures cover those
11 measures that Puvunga suggests, and Puvunga therefore does not describe significant impacts to
12 cultural resources that remain unmitigated.

13 For all the reasons stated above, the Commission’s analysis of cultural resources impacts
14 complies with the Coastal Act and is supported by substantial evidence in the record.

15 **III. THE IMPROPER DELEGATION CLAIM WAS NOT RAISED IN THE PETITION OR**
16 **EXHAUSTED AND FAILS ON THE MERITS**

17 **A. The Claim is Barred Because It Was Not Pleaded in the First Amended**
18 **Petition**

19 Puvunga challenges the permit’s special conditions by arguing that they are improper
20 delegations of the Commission’s quasi-judicial function to its Executive Director. This contention
21 is not in the pleadings and the Court should refuse to consider it.

22 An issue not raised in the petition for writ of mandate should not be considered by the trial
23 court. (*Borrer v. Department of Investment* (1971) 15 Cal.App.3d 531, 547.) “It is axiomatic that
24 ‘[t]he pleadings establish the scope of an action and, absent an amendment to the pleadings,
25 parties cannot introduce evidence about issues outside the pleadings.’” (*Schweitzer v. Westminster*
26 *Investments* (2007) 157 Cal.App.4th 1195, 1214.) Furthermore, “a party cannot recover on a
27 cause of action not in the complaint.” (*Griffin Dewatering Corp. v. N. Ins. Co. of New York*
28 (2009) 176 Cal.App.4th 172, 179.)

1 Only one cause of action for violation of the Coastal Act was pleaded in this action in the
2 original petition filed almost two years ago. (Petition filed 2/11/19, pp. 10-13, ¶¶ 56, 62-72.)
3 Following a demurrer, the same cause of action was pleaded in the First Amended Petition. (FAP
4 filed 8/2/19, pp. 11-13, ¶¶ 56, 62-72.) Puvunga alleged that the Commission “abused its
5 discretion in determining the Project met all three tests of Section 30260,” and used the wrong
6 standard in evaluating cultural resources. (FAP, p. 12, ¶¶ 67-68.) In other words, this cause of
7 action only alleges violations in using the Coastal Act’s override provision to approve the coastal
8 development permit—it does not mention, include, or reference any of the special conditions as
9 being improperly delegated.

10 Any belated attempt to amend the petition to include a new cause of action for improper
11 delegation of the Commission’s authority is improper. The Commission was entitled to have
12 notice of Puvunga’s claims. The Court should decline to consider this late-developed claim.

13 **B. Even if Considered, Puvunga’s Claim Fails Because the Special Conditions**
14 **Did Not Violate the Coastal Act**

15 Even if the Court does consider Puvunga’s arguments, those claims still fail because the
16 imposition of special conditions does not improperly delegate the Commission’s authority or
17 violate the Coastal Act. Puvunga’s argument that the Commission lacked authority to impose
18 special conditions on the project for approval by the Executive Director (Petr. Op. Br., pp. 12-15)
19 is legally meritless.

20 The Coastal Act empowers the Commission to promulgate regulations and hire an
21 executive director and staff counsel to administer those regulations. (§§ 30333, 30335.) The
22 executive director is authorized to issue coastal permits in certain cases (§ 30624) and grant
23 permit extensions (Cal. Code Regs., tit. 14, § 13169, subs. (a) & (b)). Most important here, the
24 executive director is authorized to “administer the affairs of the commission.” (Cal. Code Regs.,
25 tit. 14, § 13032, subd. (a).) It would be entirely impractical for the Commission, a 12-member
26 body responsible for statewide Coastal Act compliance, to monitor compliance with each of its
27 individual decisions. Rather, the Commission made the quasi-judicial permitting determination,
28 including imposition of 26 highly detailed special conditions, and appropriately left the execution

1 of that decision, and the determination of compliance with permit conditions, to Commission
2 staff.

3 Here, 40 pages of extensive, detailed conditions were approved by the Commission. (AR 9-
4 48, 20175-20215.) Puvunga has not explained why it is unreasonable to conclude that the
5 measures will reduce the environmental impacts and adequately mitigate its impacts. To the
6 contrary, the detailed and thorough conditions ensure that BOM will provide for environmental
7 safety, cultural resource protection, and habitat restoration. The Commission included enough
8 detail in the conditions that the Executive Director's review is directed in its scope. (AR 9-48.)
9 Each of the special conditions include detailed standards and objective measures for the contents
10 of required plans, so that their contents are proscribed by the Commission itself. The Executive
11 Director simply reviews required plans for consistency with the requirements of the applicable
12 special conditions.

13 The Court should defer to the Commission's determination that the conditions were an
14 appropriate method to mitigate the project impacts, to ensure conformance with the Coastal Act's
15 policies.

16 CONCLUSION

17 For the reasons set forth above, the Commission respectfully requests that this Court deny
18 Puvunga's petition for writ of mandate.

19 Dated: January 22, 2021

Respectfully Submitted,

20 XAVIER BECERRA
21 Attorney General of California
22 CHRISTINA BULL ARNDT
23 Supervising Deputy Attorney General



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27 *California Coastal Commission*

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DECLARATION OF SERVICE BY ELECTRONIC SERVICE

Case Name: **Puvunga Wetlands Protectors v. California Coastal Commission**

Case No.: **19STCP00435**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for processing electronic correspondence. In accordance with that practice, correspondence that is submitted electronically is transmitted using the One Legal electronic filing system. Participants who are registered with One Legal will be served electronically.

On January 22, 2021, I electronically served the attached **RESPONDENT CALIFORNIA COASTAL COMMISSION'S OPPOSITION TO PETITION FOR WRIT OF MANDATE** by transmitting a true copy via this Court's One Legal system.

PLEASE SEE ATTACHED SERVICE LIST

SERVICE LIST

Case Name: **Puvunga Wetlands Protectors v. Coastal Commission**
Case No.: **19STCP00435**

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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on January 22, 2021, at Los Angeles, California.

Badia Hill
Declarant

/s/ Badia Hill
Signature