CALIFORNIA COASTAL COMMISSION 455 MARKET STREET, SUITE 300 SAN FRANCISCO, CA 94105 VOICE & T D D (415) 904-5200 FAX (415) 904-5400 WWW.COASTAL.CA.GOV



ADDENDUM

- DATE: November 5, 2020
- **TO:** Commissioners and Interested Parties
- FROM: John Ainsworth, Executive Director
- **SUBJECT:** Agenda Item 5, California Coastal Commission Proposed Final Five-Year Strategic Plan for 2021-2025, Friday, November 6, 2020

The purpose of this addendum is to (1) make revisions to the Proposed Final Strategic Plan (Exhibit 1 of the staff report), (2) attach correspondence received to date (Exhibit 2), and (3) address a specific item received as part of the correspondence.

A. <u>Revisions to the Proposed Final Strategic Plan</u>

The following revisions to the Proposed Final Strategic Plan are made as follows (language to be inserted is shown **bold** and **<u>underlined</u>** and language to be deleted is shown in strikeout):

1. Modify Section I.A. A Strategic Plan for Coastal Act Implementation, 3rd Paragraph on page 2 as follows:

Planning for growth and development that avoids or mitigates impacts to coastal resources **and maintains the community character of our unique coastal places** has supported California's burgeoning coast and ocean economy while allowing its habitats to flourish, coastal agriculture lands to produce, **communities to thrive** and iconic scenery to endure.

2. Modify Section III.C. Coastal Resources, 1st Paragraph on page 18 as follows:

The Commission implements strong Coastal Act policies to protect and restore environmentally sensitive habitats ("ESHA"), wetlands, and the marine environment along the coast. The Coastal Act also protects public access and recreation (see Goal 2: Public Access), coastal agriculture, **special communities**, scenic and cultural resources, and priority coastal dependent and related land uses.

3. Modify *Section III.F.* Coastal Planning and Permitting, 2nd Paragraph on page 31 as follows:

To address these challenges, the Strategic Plan focuses on a few key areas to achieve the goal of enhancing and expanding the LCP Program. First, it is critical to continue the Commission's on-going efforts to improve communication and collaboration with local governments on LCP implementation as well as key coastal planning concerns <u>in</u> recognition of the local governments' responsibility to balance development that provides vibrant and diverse communities while protecting coastal resources and priority uses under the Coastal Act (Objective 6.1). Continued coordination on issues related to climate change planning is critical for success of future LCPs and updates. Additional actions are proposed in Goal 9, Information Management and E-Government, related to online access and electronic posting of LCP information that complement the actions below for improved communications (See also Information Management Actions 9.4.1, 9.5.3, and 9.5.6).

4. Modify Strategic Plan Action 6.1.5 on page 32 as follows:

6.1.5 Increase training and information on the LCP program and key coastal policy issues for local staff and officials which may include topics of housing density, housing affordability, environmental justice and equity, climate change, <u>development</u> <u>compatible with community character,</u> or other topics of local concern. (See also <u>Agency Capacity Action 1.3.1</u>)

C. Append Additional Correspondence Received to Exhibit 2

The Commission received correspondence from 10 members of the public which will be attached to Exhibit 2: Correspondence, of the staff report. Staff recommends some changes to the Final Proposed Strategic Plan as shown above.

B. Response to email from Jana Zimmer dated October 30, 2020

Staff wanted to respond to some issues raised in a public comment regarding Section 7.1.1 of the Strategic Plan. The commenter, Ms. Jana Zimmer, sent an email message on October 31 (dated October 30, 2020) (see #10 of the attached correspondence), in which she argues against the potential expansion of the Commission's ability to assess penalties administratively for violations of the Coastal Act, which it currently can do pursuant to Section 30821¹ to address violations of the public access provisions of the Coastal Act. The root of Ms. Zimmer's contentions is her belief that the procedures used to implement Section 30821 are inadequate to ensure due process, and thus, the authority granted by that section should not be expanded. This is not accurate, and no court has ruled that the law is as Ms. Zimmer would suggest.

¹ All further section references are to the California Public Resources Code, and thus, to the Coastal Act, unless otherwise specified.

When considering the assessment of administrative penalties, the Commission, pursuant to the direction in Section 30821(b), relies on the long-standing regulations that govern other types of enforcement proceedings; procedural requirements for orders are found in Sections 30810 and 30811 and the corresponding sections of the Commission's regulations, found at Cal. Code Regs. tit. 14, §13180-13197. Pursuant to those sections, cumulatively, a respondent to an action for an administrative penalty is guaranteed adequate notice of a violation, the right to a hearing before the full Commission, a record of the legal and factual bases for the Commission's actions, and the right to judicial review of the Commissions' decisions.

During the legislative process for Assembly Bill 976, the bill by which the Commission was granted the authority to impose penalties administratively for public access violations, the legislature took up this very question regarding due process protections that would apply during the process of the Commission considering the assessment of administrative penalties, and heard testimony from legal experts on the issue of due process in administrative proceedings, and it found that the existing regulations in place, i.e. those referenced above, provide sufficient protections.

In addition, as was also noted during the legislative process, there are many other agencies with similar authority, which conduct similar administrative proceedings, including but not limited to the Bay Conservation and Development Commission (BCDC), State Lands Commission, California Energy Commission, California Air Resources Board, Regional Air Pollution Control Districts, Oil Spill Response Administrator, State Water Resources Control Board, Regional Water Quality Control Boards, and the Integrated Waste Management Board. All of the Commission's actions, including imposition of civil penalties, are subject to judicial review, just as with these other environmental protection agencies that have long had administrative penalty authority. Courts have specifically upheld using administrative means similar to these, that clearly differ from the procedures employed by courts in litigated matters to which Ms. Zimmer cites.

Moreover, in addition to seeking to inhibit the expansion of the Commission's ability to address violations of the Coastal Act to better protect coastal resources, Ms. Zimmer's proposals would diminish rather than enhance the Commission's current ability to protect coastal resources, not to mention its ability to assess administrative penalties. For instance, Ms. Zimmer proposes both a new, higher threshold for initiating administrative penalty actions to enforce a local coastal program (i.e. upon receipt of a formal resolution of the local government requesting that the Commission enforce the local coastal program), and to restrict the cases that the Commission can pursue (in addition to enforcing a local coastal program when requested by the local government, the Commission may also enforce a local coastal program if the local government fails to take action after the Commission requests that it do so or when the local government is party to the violation – both circumstances Ms. Zimmer's proposal would strip away).

Furthermore, Ms. Zimmer suggests that the Commission focus on assessing administrative penalties to enforce permits that the Commission has approved, as opposed to local permits. Local coastal programs are, by definition, designed to ensure

compliance with the Chapter 3 policies of the Coastal Act, including the public access policies, so any local permits that implement public access provisions of local coastal programs are entirely within the scope of Section 30821 to enforce. The scope of Coastal Commission jurisdiction, and enforcement jurisdiction was extensively considered in the passage of the original law, and the role of the Coastal Commission as a statewide backup was one of the main motivations for the law in the first place. Moreover, the statute very specifically set out a different, broader, jurisdictional scope for enforcement than for permitting matters as is reflected in Chapter 9. In addition to the practical, political and other reasons behind the legislature considering the original Coastal Act concluding that there should be broader CCC jurisdiction over enforcement actions, local governments often lack the staff and resources to undertake enforcement actions. Some local governments have permit staff but simply cannot undertake enforcement steps, and often face some difficulties even requesting CCC involvement. These suggested amendments would severely restrict the Commission's ability to address many violations. Thus, this suggestion also would reduce the authority of the Commission to protect public access granted to it by the legislature.

In addition to commenting on implementation of Section 30821 and potential expansion of the Commission's ability to assess penalties administratively for Coastal Act violations, we note that, in her comments, Ms. Zimmer addresses a specific pending Commission enforcement matter. A hearing on the Commission's strategic plan is clearly not the forum established by the Coastal Act and the Commission's regulations for Ms. Zimmer to discuss a specific enforcement matter. Moreover, in her comments on that specific matter, she raises issues regarding what procedures she feels should be employed in a formal hearing before the Commission. Without discussing the specifics of the case, or attempting to correct the record on the facts and law at issue here, we note only that the case to which she refers has not come to the Commission for formal action, which is the time during which administrative hearing procedures would be applied. She raises issues having to do with her current experience in connection with that matter, which, in fact, does not include any administrative hearing procedures at all, since the matter remains in the informal discussion period. Moreover, although staff has initiated what are currently informal enforcement proceedings to address the case, this matter may indeed come before the Commission for formal action, either as a consent or unilateral order at an upcoming meeting. At any such hearing, Ms. Zimmer's client will be afforded the due process rights afforded by the Coastal Act. To ensure the integrity of that process, commissioners should not be delving into the issues (whether substantive or procedural) involved in that matter through this separate process. For those reasons, as well as others, the staff is not forwarding the attachment to Ms. Zimmer's letter, which is specific to the enforcement matter and part of the alleged violator's statement of defense.

CALIFORNIA COASTAL COMMISSION 455 MARKET STREET, SUITE 300 SAN FRANCISCO, CA 94105 VOICE (415) 904-5200 FAX (415) 904-5400



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COASTAL COMMISSION PUBLIC REVIEW DRAFT 2021 – 2025 STRATEGIC PLAN November 6, 2020

PUBLIC COMMENTS

- 1. Comment from Douglas Deitch, dated 10/30/2020
- 2. Comment from Poison Free Malibu, dated 10/30/2020
- 3. Comment from Member of the Public that would like the CZ to be redrawn as a smaller area, dated 10/30/2020
- 4. Comment from Member of the Public wanting mention of coastal railroad issues, dated 11/2/2020
- 5. Comment from Beach Cities Preservation Alliance, dated 11/3/2020
- Comment from County of Marin Board of Supervisors Dennis Rodoni, dated 11/4/2020
- 7. Comment from Alliance of Coastal Marin Villages, dated 11/4/2020
- 8. Comment from League of California Cities, dated 11/4/2020
- Comment from Member of the Public regarding Environmental Justice, dated 11/4/2020
- 10. Comment from Attorney/Government Relations Consulting, dated 10/30/2020

From: Douglas Deitch <<u>ddeitch@got.net</u>>
Sent: Friday, October 30, 2020 2:34 AM
To: ExecutiveStaff@Coastal <<u>ExecutiveStaff@coastal.ca.gov</u>; Ddeitch <<u>ddeitch@pogonip.org</u>>;
Subject: Public Comment on November 2020 Agenda Item Friday 5 - California Coastal Commission 2021 – 2025 Strategic Plan

Dear CCC,

Your strategic plan is wholly inadequate in the area of sea level rise. Immediate and much more effective attention must be given to the protection of the vast majority of the food, water, and real estate resources of the World's fifth biggest economy, California's.

In my estimation, this can and will only be accomplished by eventual damming of the Golden Gate, which I run down for you @ www.sipodemos.democrat and @ www.sanfranciscorealestate.com , www.sandiegorealestate.com , www.sacramentorealestate.com , etc ...

Also, in the connection of new "recycling" water supply, coastside recycling projects involving cleaned water injection must be abandoned and/or not approved in the first instance in favor of "DPR"-Direct Potable Reuse projects instead of illusory and infeasible (but already CCC approved projects like "Pure Water" Monterey and Soquel) which will not rely on recharging coastside depleted/below rising sea levels aquifers which are projected by CCC to be continually rising at a rate of 1.2 inches per year over the next 30 years. I hope you can understand why?

Respectfully,

Douglas Deitch

ED/Monterey Bay Conservancy

----- Forwarded Message ------

Subject:Unpublished Letter to Editor, Santa Cruz Sentinel and Monterey Herald re: Pure Water Monterey and Soquel Water Supply Alternative by Monterey Bay Conservancy/ Douglas Deitch Date:Wed, 21 Oct 2020 04:49:38 -0700 From:Douglas Deitch <ddeitch@got.net> To:To: Ddeitch <ddeitch@pogonip.org>, bruced@soquelcreekwater.org, bruce daniels

Unpublished Letter to Editor, Santa Cruz Sentinel and Monterey Herald re: Pure Water Monterey and Soquel Water Supply Alternative by Monterey Bay Conservancy/Douglas Deitch

"SqCWD's "Pure Water Soquel" and "Pure Water Monterey" recycling projects both plan and depend on injecting, mixing, and "recycling" so called "cleaned" sewage and other waste water into our aquifer(s) to recharge them, to raise their level above sea level to address/ prevent/remediate sea water intrusion, and to continue to pump and to use this water. For your information, our California Coastal Commission has just projected and uses an estimate of 3 feet of SLR in the next 30 years or 1.2 inches SLR per year, a shocking but accurate projection.

There is another process that allows for direct/non injected recycling and use of this "cleaned" sewage and waste water called "DPR"-Direct Potable Reuse. DPR allows for direct non injected use of this water but is not currently allowed ONLY BECAUSE our DWR, SWRCB, SqCWD, etc. have been grossly negligent, as in so many other matters, in not developing the laws, standards, and necessary regulations to safely allow this direct use of this "cleaned", "pure", and "safe" water they now want to inject into our already safe, pure, and clean local ground water commons.

DPR avoids many risks of injection, such as, for example, the possible permanent contamination of our aquifers with injected COVID19 (see https://www.sciencedaily.com/releases/2020/04/200403132347.htm), micro plastics (see https://www.mercurynews.com/2015/05/17/plastic-pollution-california-lawmakers-to-vote-on-banning-microbeads-from-personal-care-products/) Arsenic/residual medicines (see Doug testifying @ CCC @ 12:12 @CCC @ https://cal-span.org/unipage/?site=cal-span&owner=CCC&date=2020-03-12&mode=large&fbclid=IwAR340BXpXZ79-h1HZm_Uy4aB68COmrn7nuFyRZrPSAG6nh5clNVbGCNgdvc , https://www.latimes.com/science/sciencenow/la-sci-sn-arsenic-water-20150904-story.html), etc., well as the massive and, as we see, escalating costs in the hundreds of millions of dollars for the necessary injection plant facilities.

My 25 year old but ignored DPR/Direct Potable Reuse Project/Alternative, the 21000 acre Monterey Bay Estuarine National Monument, INCLUDING all the 31,000 acre feet of recycled water per year potentially produced by the currently online but grossly underutilized Castroville Reclamation Plant repurposed from exclusively ag use to urban use, will provide ALL the urban water needed in the entire Monterey Bay Region for both the counties of Santa Cruz and Monterey present and future. My alternative project will completely and permanently cease all coastal aquifers' pumping for urban uses in perpetuity, massively and in perpetuity yearly both conserve AND effectively recharge our coastal aquifers with minimaly 63,000 acre feet of water, and require no dollars, not hundreds of millions, for either recharge facilities or electrical charges or any "Coastal Permits" either.

All will be paid for by "OPM", other people's money ..., in this case \$2.1 billion of reallocated now surplus rail bond money to pay for, buy, and fallow, @ \$100,000 per acre, the 21000 acres of currently irrigated coastal Santa Cruz and Monterey farmlands which will be converted back to the wetlands and estuarine coastside resources and habitats these 21000 once were, run down for you Folks @ www.dougdeitch.info and www.dougdeitch.com , facebook pages, for you information.

Respectfully submitted,

Douglas Deitch

ED/Monterey Bay Conservancy-a Monterey Bay and California Water Policy Thinktank 545 Hudson Lane, Aptos, Ca. 831.476.7662 APTOS, CALIFORNIA



Colleen Lucille (McInerney) Meagher August 2, 1926 - October 2, 2020 La Selva Beach, CA

Colleen Lucille (McInerney) Meagher was born August 2, 1926 in Hollywood, California and passed away peacefully on October 2, 2020 in Fresno California. Colleen was the second daughter of John Enright and Blanche Lucille (Ketchum) McInerney. She and her sister, Elaine, spent their early years in southern California where they attended school, rode horses and played polo. At age twelve, she moved with her mother and sister to Windy Hill Farm, an eighty-acre horse ranch in Santa Cruz, California, and became a member of the Pogonip women's polo team. The team won the State Championship seven years in a row and made an impression on Colleen that would last a lifetime.

Having moved to San Francisco to finish high school and begin a career, Colleen was courted by a Minnesota-born WWII pilot, Frederick Hemingway Waldron III, whom she married in San Francisco on May 26, 1950. Together they moved to Los Altos, California and raised three children, Wendy Waldron (Dan Miller), Sharon (Kevin Whitlock) and Ted Waldron (Michele). After her divorce, she went back to work and earned her real estate license. She later met Edward N. Meagher and the two were married in Los Altos California on October 12, 1974. Colleen and Edward retired to La Selva Beach, California in the early-1980's.

Colleen's return to Santa Cruz County spurred an interest in her past. She became an honorary member of the Pogonip Polo Club and spent many years researching and writing about Pogonip's history and the initiation of the United States Women's Polo Association, culminating in the publication of "Comin' Thru: The Golden Age of Women's Polo 1834-1941". She also volunteered for over twenty years as a docent at Elkhorn Slough National Estuarine Research Reserve in Moss Landing. She loved her community at La Selva Beach and living near the Pacific Ocean. In May 2018, Colleen moved to Atria Senior Living in Fresno, California, to be near her son. Ted was a wonderful caregiver the last few years of her life and she always spoke about her Sunday night dinners at Ted and Michele's where she loved Ted's cooking.

She was preceded in death by her parents, sister and husband. She is survived by her three children and their spouses and five grandchildren Megan Miller, Chris and Margaret Whitlock and Brooke and John Waldron. 0 🖉 dougforsupervisor.com/dougsoldwebsite/new_page_10.htm

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SAM FARR

September 17th, 1992

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Thank you for contacting my office recently with your concerns regarding the Willoughby property, adjacent to Smudowski State Beach.

A member of my staff spoke to Jim Sorro of the Wildlife Conservation Board regarding the possibility of State acquisition of the 43 acres Willoughby property. Mr. Sorro stated that he had already spoken with you and suggested you send all the relevant information to the Department of Fish and Game for their biologically based recommendations. Mr. Sorro will contact you if Fish and Game recommends acquisition.

Thank you again for contacting my office. If I can be of any assistance to you in the future, please do not hesitate to contact me.

Since

Member of the Assembly



From:	Poison Free Malibu	
To:	Coastal Strategic Plan Comments	
Subject:	November Item F5: Strategic Plan - Include Pesticide Prohibitions	
Date:	Friday, October 30, 2020 1:53:40 PM	
Attachments:	Malibu LCP-A PFM comments.docx	
	AttachmentsToCoastalEmailFromPFM.zip	

Dear Coastal Staff,

The city of Malibu has submitted an LCP amendment to prohibit toxic pesticides in the Malibu Coastal Zone to be considered at a hearing in the near future.

Los Angeles County has already done this in the unincorporated Los Angeles County Santa Monica Mountains LCP in 2014.

Several other LCPs also include prohibitions, possibly starting with Santa Cruz County in 1994.

Prohibitions are necessary due to the growing recognition of the threat to the coastal wildlife and ecosystem from pesticides.

Please consider adding the goal of encouraging LCPs and LCP amendments that encourage similar prohibitions in the Strategic Plan.

For example, the following could be added to Section 3.1.1 or as a separate item under 3.1: "Encourage LCPs to incorporate prohibitions on toxic pesticides to protect wildlife and marine resources."

Attached are documents we submitted in support of the Malibu LCP amendment which go into detail supporting pesticide prohibitions.

Malibu LCP-A PFM comments.docx is the email to Coastal Staff on July 30, 2020. *AttachmentsToCoastalEmailFromPFM.zip* are supporting documents referred to in the email

Thank you,

Joel

Joel Schulman PhD Poison Free Malibu Email: <u>PoisonFreeMalibu@gmail.com</u> Website: <u>PoisonFreeMalibu.org</u> Facebook: Poison Free Malibu Phone: 310-456-0654 To: Ventura Office Coastal Commission Staff - Barbara Carey, Denise Venegas, Deanna Christensen, Jonna Engel: <u>dchristensen@coastal.ca.gov</u> <u>Barbara.Carey@coastal.ca.gov</u> <u>Denise.Venegas@coastal.ca.gov</u> Jonna.Engel@coastal.ca.gov

July 30, 2020

From: Poison Free Malibu <u>PoisonFreeMalibu@gmail.com</u> Subject: July 9, 2020 Telecon: Malibu LCP amendment restricting pesticides

Thank you for the Zoom meeting with us on July 9. We deeply appreciate the concern of the Coastal Commission for wildlife and the environment in the Coastal Zone. It was useful to learn of your concerns on the call. The purpose of this document is to contribute to your decision making with information we have acquired over the years.

The Malibu LCP amendment is based on General Provision 30001(c) of the Coastal Act requiring –

"That to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction."

It is well documented that wildlife in the Coastal Zone, from insect pollinators to the largest predator species, have been suffering from rat poison and other pesticides. The Coastal Commission has the mandate and charter to protect wildlife. By "pesticides" is meant the overarching term that includes rodenticides, insecticides, and herbicides.

The current Coastal Development Permit rodenticide restrictions for new development applications will do nothing to fix the already existing widespread damage. Prohibitions against the use of pesticides everywhere in Malibu must be utilized to reverse the poisoning of our wildlife in the Santa Monica mountains.

We believe that our campaign from 2012 to the present to stop the poisoning of wildlife in the Santa Monica mountains, and then throughout California, has provided extensive background information that could contribute to your deliberations concerning the Malibu LCP amendment.

We would like to make the following points as a follow up to our July 9 discussion. The pdf files referred to are attached to this email.

• National Park Service, UCLA and others - summary of the effects of rat poison on wildlife in the Santa Monica mountains

We are fortunate in the Santa Monica mountains to have world class scientists from the National Park Service and the UCLA Department of Ecology and Evolutionary Biology documenting the effects of rodenticides on wildlife.

A. Dr. Seth Riley of the NPS and Adjunct Professor at UCLA has stated concerning mountain lions (see link) - <u>"Just about every mountain lion we've tested throughout our study has had exposure to these poisons, generally multiple compounds and often at high levels."</u>

B. Please read the attached two letters to the city of Malibu from Santa Monica Mountains NPS Superintendent David Szymanski from July 2013 and December 2019 - *NPSLetterToMalibuCityCouncil 8July2013.pdf* and *NPS LCP Amendment Letter 6Dec2019.pdf*.

Quotes from the second letter include:

"In addition, five mountain lions have now died directly from anticoagulant rodenticide poisoning during our long-term study of the behavior and ecology of this species, the last remaining large carnivore in the region."

"In a recent analysis of survival and mortality causes across the 17 years of our study since 2002, death from anticoagulant poisoning has become an important cause of death for mountain lions"

"Overall, our studies have shown widespread exposure to these chemicals across the carnivores in our region that we have studied. We found a greater than 90% exposure rate of bobcats to anticoagulant rodenticides (Riley et al. 2007, Riley et al. 2010, Serieys et al. 2015b), a 96% exposure rate in mountain lions (23 of 24 have tested positive), and an 83% exposure rate in coyotes (Gehrt and Riley 2010). Moreover, for all of these species, 2/3 or more of the exposed animals had evidence of multiple different rodenticide compounds and sometimes in large amounts, indicating multiple exposure events."

C. Dr. Laurel Serieys of UCLA, working with the National Park Service, studied 304 bobcats, mostly in the vicinity of the Santa Monica mountains with some in the Orange County Santa Ana mountains.

She found multiple rodenticides in 92% of bobcats whose blood and livers were both examined. See L. Serieys, et al, **Anticoagulant rodenticides in urban bobcats: exposure, risk factors and potential effects based on a 16-year study**, Ecotoxicology (2015) **24**:844–862.

D. Pollinators are major victims of herbicides. For several days around Thanksgiving and New Years, the Xerces Society sponsors an annual count of the Monarch butterflies overwintering along the California coast, much of it within the Coastal Zone. In January, after carefully tallying the results of the last count (2019-2020) there were only 29,418 Monarchs at 240 overwintering sites—less than 1% of the population existing in the 1980s and nearly identical to last year's alarming numbers. In both years the population has been less than 30,000 monarch butterflies, the threshold below which the migration may collapse.

Two of the major reasons for this collapse of the Monarch population, and of bees as well as other pollinators and beneficial insects, is land development over the past few decades that destroyed many of the native wildflowers found in meadows / prairie and other areas where

native wildflowers once grew, and widespread pesticides use including insecticides, herbicides and fungicides in these now developed areas.

• Mountain Lions Endangered Species Listing

Mountain lions, as the largest and least abundant predator, are especially vulnerable in the Santa Monica mountains. The California Fish and Game Commission at its April 2020 meeting accepted for consideration the Center for Biological Diversity and Mountain Lion Foundation petition to list mountain lions in southern and central coastal California as threatened or endangered under the California Endangered Species Act.

The Santa Monica mountains population was identified as one of six especially endangered groups statewide. Rodenticide exposure was one of the primary justifications for the endangered status.

The California Department of Fish & Wildlife wrote in support of the petition ("SGAR" is second generation anticoagulant rodenticides, "FGAR" is first generation) –

"The results of Wildlife Investigation Laboratory recent analyses found anticoagulant rodenticide exposure in 241 of the 252 (95.6%) of mountain lion livers tested from 2016 to 2018). SGARs were more commonly detected than FGARs, despite a 2014 regulatory change restricting SGAR use to certified pesticide applicators. Past and ongoing work by WIL demonstrates widespread exposure to both FGARs and SGARs in California's mountain lions."

• Legal support for LCPs regulating pesticides

A. Ruling by Superior Court Judge Chalfant supporting LCP pesticide regulation. See page 20 in *Chalfant Ruling.pdf.*

A legal objection to the Santa Monica Mountains LCP was made in a lawsuit by Mountainlands Conservancy, LLC. It included a challenge to LCP pesticide bans. The case was argued by the Office of the Attorney General of California. Superior Court Judge Chalfant ruled against the plaintiffs. They appealed on other grounds, but dropped the objection to pesticide bans, recognizing the weakness of their arguments. Their appeal in total was rejected in April 2020.

This victory should not be discarded! The decision clearly states that BANS, not just development permits conditions, are appropriate to protect the environment:

This argument fares better. The Commission does not have the power to delegate to the County implementation of a ban on pesticide use in the coastal zone (F&A Code §11501.1, §30005.5), unless it does so as a function of its administration of the Coastal Act. The Commission is authorized to administer the Coastal Act, and to regulate land use in the coastal zone. §30330. The Commission may impose land use restrictions to ensure application of Chapter 3 policies. §30512.2. The Commission found that a ban on the use of pesticides in the Santa Monica Mountains coastal region is necessary to avoid impacting the biological productivity and quality of coastal waters. AR 1910. In banning pesticide use in the certified LCP, the Commission is not compelling the County to exercise power that it does not have under state law. Instead, the Commission is requiring a pesticide ban for the County's LCP, to be administered by the County, because the Commission has the authority to do so as part of its administration of the Coastal Act. F&A Code section 11501.1(c) permits the Commission to require the County to conform to this ban in administering the LCP.

The Commission did not fail to proceed in the manner required by law by certifying the LCP with a ban on pesticides.

B. Los Angeles County Counsel letter in support of Malibu LCP Amendment – *LA CountyCounselLettertoCHogin.pdf*

C. Los Angeles County Santa Monica Mountains LCP pesticide prohibitions. Amy Bodek, Director of Los Angeles County Regional Planning, and Nicole Englund, Planning Deputy for Supervisor Sheila Kuehl, are knowledgeable about ongoing implementation and enforcement of the SMMLCP provisions. The provisions are enforced in the same way as other similar provisions in their LCP. Please contact them to get the details directly.

D. Coastal Commission staff, Barbara Carey, letter – *CoastalCommissionSupportsMalibuLCPAmendment.pdf*

"In order to avoid these impacts, the Coastal Commission has consistently prohibited the use of anticoagulant rodenticides as a condition of coastal development permits approved in the Santa Monica Mountains. Additionally, policies and provisions prohibiting the use of anticoagulant rodenticides were included as part of the Los Angeles County Santa Monica Mountains Local Coastal Program certified in 2014."

Note that the letter points out that the Commission had already been imposing rodenticide prohibitions in the Santa Monica mountains with CDPs, but then recognizes that "additionally" the SMMLCP policies and provisions go further to prohibit their use. This can only be understood as imposing prohibitions <u>beyond</u> the already utilized CDP mechanism.

E. The December 9, 2019 Malibu city council meeting which passed the LCP amendment produced several supporting documents.

1. Video of Malibu Planning Director Bonnie Blue's presentation - <u>https://youtu.be/LOys2e7dHFA?t=3621</u>.

She described how to amend the sections in the current Malibu LCP to apply to all pesticides <u>throughout</u> the city and to include existing development. She contacted Los Angeles County Regional Planning to verify that their prohibitions were to apply everywhere and were indeed enforced.

2. Video of Attorney Michelle Black – <u>https://youtu.be/LOys2e7dHFA?t=7496</u>. She summarized the Poison Free Malibu position on the intent of the LCP amendment language, reiterating that it is to emulate the SMMLCP with the generalization to all rodenticides.

3. Attorney Michelle Black letter – Michelle Black Item 4A Pesticide Letter.pdf

4. National Resources Defense Council letter – *NRDC.rodenticide letter.nov 26 2019.final.pdf*

5. Center for Biological Diversity letter – 2017-12-5.CBD.Malibu LCP-rodenticides.pdf

6. State Senator Henry Stern letter – Henry Stern 120619.pdf –

"Specifically, I support going beyond the staff proposal before you {meaning choose the Poison Free Malibu version} and enacting a ban on all pesticides, including herbicides, insecticides, rodenticides, and toxic chemical species. Anti-coagulant rodenticides are just one element of the larger problem of long-lasting poisons introduced to our coastal environment that place biological resources and sensitive habitats at risk."

• Alternatives to pesticides

Poison Free Malibu has been compiling alternative methods for pest control and archiving them at <u>https://poisonfreemalibu.org/repel-exclude-deter/</u>.

Jonna Engel mentioned the use of owl boxes and raptor perches at our July 9 meeting in the context of reducing burrows that damage water channeling dams and levees. Ventura County has made a study of this method. Please see our website https://poisonfreemalibu.org/#owls on the Ventura County demonstration project. A report from the Ventura County Watershed Protection District found that "Weekly monitoring and recording of new squirrel burrows found that the Raptor Site incurred 66% less new burrows than the Control Site" which had the rat poisons!

Our website contains dozens of poison-free pest control methods for many situations too numerous to summarize here. <u>Please take a look.</u>

• Educational and other efforts by Poison Free Malibu

Jonna Engel suggested that education is important as the public is not generally aware of the harm from using poisons. This is absolutely true, and we have worked hard doing this since 2012. It is clear that education alone is insufficient.

The following is a summary of our educational efforts over the years. It indeed has contributed to raising the level of consciousness in the citizenry in the Santa Monica mountains neighborhood. A common reaction we encounter from people is – why aren't these poisons illegal already, and what can they do to help get them to be banned by regulations such as we are now requesting from the Coastal Commission.

Here are some of our efforts directed at increasing awareness of pesticides.

A. Resolutions by cities against rodenticides

A main emphasis of our educational campaign has been to alert cities to the issue and encourage them to pass Resolutions opposing the use of rodenticides. The language of the Resolutions is similar to Malibu's, passed July 8, 2013:

"The City Council urges businesses in Malibu to no longer use or sell anticoagulant rodenticides, urges all property owners to cease purchasing or using anticoagulant rodenticides on their properties in Malibu and commits the City of Malibu to not use anticoagulant rodenticides as part of its maintenance program for City-owned parks and facilities."

The cities in southern California in the greater Santa Monica Mountains Recreation Area who have passed Resolutions include Agoura Hills, Calabasas, Camarillo, Hidden Hills, Malibu, Moorpark, Ojai, Simi Valley, Thousand Oaks, and Westlake Village. Laguna Beach and Whittier have passed similar Resolutions.

In addition, Malibu went further. In 2016 it mandated removing all pesticides from city property. Then, in 2019 it adopted a detailed <u>Earth Friendly Management Policy</u> that promoted a green pesticide-free approach. The policy promotes a problem-solving strategy that mandates the use of preventative practices and enrichment strategies that promote healthy soil, plant life, wildlife and safeguarding of structures. This policy addresses issues critical to sustainability, clean air and water, managing carbon through regenerative soil management, and eliminating fossil fuel dependent fertilizers and pesticides.

In addition to banning pesticides, it is essential to implement **REAL** solutions instead. To this end, Malibu has recently passed an ordinance requiring that dumpster lids be closed and locked to prevent overstuffing, and unauthorized access. This deprives rodents of the food supply and stops the breeding of rodents!

B. State Legislation

Our educational efforts, including the city Resolutions, have helped raise the consciousness among a significant portion of the population in the Santa Monica mountains neighborhood for the essential next step – legislation and regulations. On its own, the pest control

industry is not interested in risking its lucrative poison dispensing business and has a powerful lobbying organization, the Pest Control Operators of California. It is headed by the former eight-year Chief Deputy Director of the California Department of Pesticide Regulation! They are fighting restrictions at every step of the way. There is no meaningful cooperation from them.

We initiated a campaign for state legislation to restrict rodenticides with our partner organization up north, Raptors are the Solution. This has grown to a much larger coalition, including significant funding from the Animal Legal Defense Fund. Our current bill, AB 1788, passed the State Assembly and two Senate committees, but was stalled at another Senate committee and has been delayed by the ongoing pandemic. It is our third attempt at passing such a bill and its fate is unknown.

At the same time, pressure from this legislation, and a lawsuit that we supported brought by Raptors are the Solution, forced the California Department of Pesticide Regulation to act in November 2018. The CDPR had previously recognized the harm to wildlife and created stricter regulations in 2014 forbidding consumer user of second-generation anticoagulant rodenticides.

As we and other groups informed them at the time, this would fail to protect wildlife because most of the poisons affecting wildlife came from the pest control companies, not consumers. Data collected by the Department of Fish and Wildlife and others indeed showed no decrease in poisoning cases since 2014. This is true in the Santa Monica mountains as well. The evidence forced the hand of CDPR to begin a new reevaluation process which is ongoing with no deadline. We expect history to repeat itself and that the entrenched interests at CDPR will protect their pest control business allies.

Another approach we have been working on is to reverse "preemption." This is the 1984 state law promoted by the pest control lobby that forbids local government from regulating pesticides. We worked with the city of Malibu in 2018 to obtain a unanimous Resolution from the League of California Cities opposing preemption in regard to anticoagulant rodenticides, but the required lobbying campaign has not yet been initiated to realize the Resolution.

C. Local Coastal Program campaign

We have been encouraging LCP clauses restricting pesticides since 2014. The Las Virgenes Homeowners Federation helped us obtain the clauses in the Los Angeles County Santa Monica Mountains LCP. We worked intensely for five years with a series of Malibu city councils to pass the Malibu LCP amendment now before you. Ventura County planning staff is currently considering similar clauses as a part of their ongoing LCP revision.

Former Coastal Commission chairperson Sara Wan was instrumental in a 2017 project sponsored by the Animal Legal Defense Fund to promote LCPs incorporating pesticide

language. She worked with us to come up with a generic clause to provide a starting basis for other localities.

It included herbicides, insecticides, and rodenticides, and promoted invasive species control, if necessary, with natural sources and biodegradable substances only.

This language is the basis of the Malibu LCP amendment proposed and we prefer that it NOT be changed.

D. Educational Outreach

We have an active continuing busy educational campaign. This includes attending local events such as school environmental fairs, Earth Day events, forums, high school presentations, and, increasingly, homeowner association board or membership meetings.

Malibu, Ojai, Newbury Park, Simi Valley, Agoura Hills, Oak Park, Thousand Oaks, Ventura, Calabasas, Altadena, Santa Clarita, Brentwood, Laguna Beach, and Griffith Park are some of the local areas we have traveled to for these kinds of educational expositions.

We have given talks at conferences including the California Council of Wildlife Rehabilitators Annual Symposium, the International Urban Wildlife Conference, and the National Pesticide Forum.

Schools we have given talks at include Malibu, Calabasas, and Simi Valley Royal High Schools, Pepperdine University and a seminar at UCLA. Environmental groups who have asked for presentations include Sierra Club and Audubon chapters.

We had multiple meetings with Pepperdine University's Center for Sustainability. This resulted in a green policy and the removal of all rodent poison boxes and weed control chemicals from their turf area.

We also had meetings with the National Park Service Division of Planning, Science and Resource Management. They agreed to stop using RoundUp/Glyphosate for weed control and adopted non-poisonous methods in Malibu.

In addition, we have been interviewed on KFI radio twice, and also were featured in a segment for the Spectrum News television network. Last March 2019 we traveled to the Covina headquarters of the Lorden Management Company, one of the largest homeowner association companies in southern California, to give a seminar to their top staff.

We were one of the featured environmental groups in a movie about Griffith Park mountain lion P-22, "<u>The Cat That Changed America</u>". We gave talks at many of the showings including the Santa Barbara Film Festival, UCLA, Oak Park High School, Pasadena, Ojai, TCL Chinese Theatre, Downtown Los Angeles Film Festival, UC Irvine, Debs Park Audubon Center, King Gillette Ranch, Malibu/Pepperdine, Topanga Film Institute, Santa Cruz, Laguna Beach, Silver Lake Neighborhood Council, Thousand Oaks Civic Arts Plaza, San Luis Obispo Film Festival, Mount Washington, Altadena, and, as far as the University of North Carolina-Asheville.

Even under the current restrictive circumstances, just this month we spoke on Zoom at a Laguna Beach city council meeting in support of their Resolution against rodenticides and gave a one-hour seminar to the top management of Rancho Mission Viejo, a 23,000-acre community with 37,000 residents. Unfortunately canceled due to the pandemic were talks at the University of California, Santa Barbara Sedgwick Reserve in Santa Ynez and at the Santa Barbara Natural History Museum. The latter was just re-scheduled as a Zoom meeting.

Promotional and educational material to give away is an essential component of our campaign. We distribute hundreds of pamphlets to people at all events we attend, who then further distribute the material to their communities.

E. Outreach to sellers and consumers of pesticides in Malibu

Poison Free Malibu has made a special emphasis on educating Malibu businesses to stop selling poisons, and residents, business, and schools to stop using the poisons. Our educational campaign resulted in Malibu merchants removing all rodent poison products from their shelves. There had been six – Ralphs, CVS Pharmacy, Pavilions, Malibu Hardware, A&B Plumbing, and Malibu Ranch Market.

The following shopping centers have stopped <u>using</u> the poisons altogether in Malibu: all of Malibu Village except Chipotle, Malibu Country Mart, Malibu Lumberyard, The Park at Cross Creek, Zuma Beach Plaza, Trancas Country Market, and Pt. Dume Plaza. Restaurants outside shopping centers include Paradise Cove, Sparrow Café, Cholada Thai, Nobu, and V's. These businesses are rodent-free, without using any rodent poisons, and achieve this by simple sanitation practices, especially maintaining the dumpsters closed and locked, and the surrounding areas clean.

Unfortunately, several shopping centers and businesses still have more than enough poisons to harm wildlife. Homeowners, and especially homeowner associations, use hundreds of poison bait boxes, many adjacent to open space. Property management companies routinely and thoughtlessly contract to pest management services, who have no interest in abandoning this very lucrative business.

• Rodenticides reaching aquatic species

Rodenticides in bodies of water have not been studied systematically until recently. The Coastal Commission should be alerted, and steps taken before it seriously affects wildlife

and people. The data on rodenticides found in fish and other aquatic life comes from Germany. These new 2018-2020 research papers document the findings.

A. J. Regnery, et al, 2018, **Rating the risks of anticoagulant rodenticides in the aquatic environment: a review** - *Regnery2018_RatingTheRisksOfARsAquatic.pdf*:

"Recent findings of anticoagulant rodenticides in raw and treated wastewater, sewage sludge, estuarine sediments, suspended particulate matter, and liver tissue of freshwater fish demonstrate that the aquatic environment experiences a greater risk of anticoagulant rodenticide exposure than previously thought."

B. M. Kotthoff, et al, 2018, **First evidence of anticoagulant rodenticides in fish and** suspended particulate matter: spatial and temporal distribution in German freshwater aquatic systems - *Kotthoff2018_FirstEvidenceOfARsFish.pdf*:

In summary, our findings demonstrate that contamination of wildlife with anticoagulant rodenticides, especially second-generation anticoagulant rodenticides, also involves aquatic species and is not confined to predatory birds or mammals of the terrestrial food web. We detected residues of SGARs in fish samples from almost every Environmental Specimen Bank sampling site, including the rivers Rhine, Elbe, and Danube. The ubiquitous exposure of fish is in contrast to the rather low concentrations of SGARs in biocidal products which ranged from 25 mg kg–1 (difethialone) to 75 mg kg–1 (difenacoum). An amount of approximately 50 kg of anticoagulant rodenticide active substance is used annually for rat control in sewers and above ground by municipal authorities in Germany, with approximately 75% were used exclusively for sewer baiting (Krüger and Solas 2010). Given this relatively moderate amount of use, the prevalence of detectable rodenticide residues in fish samples appears surprisingly high.

C. See also *Heavy_rainfall_provokes_anticoagulant_rodenticides.pdf* and *Regnery* et al.2019_AR Wastewater exposure limnic fish_Germany.pdf

• Summary

After these many years of educational outreach and campaigning for regulatory reform, the harm being done to the wildlife, watershed, and environment in the Santa Monica Mountains Coastal Zone continues. There are hundreds of poison containing bait boxes throughout Malibu, much more than enough to continuing the poisoning at the current 90% exposure rate among predator species.

The Coastal Act demands special protection within the Coastal Zone. It needs to be a refuge for wildlife away from the poisons. How else can the wildlife obtain protection without appropriately strong prohibitions? This must include prohibitions on the extensive usage in <u>existing</u> developed properties which are the source of the <u>existing</u> documented problem!

Similarly, banning pesticides only in and near ESHA is pointless. The poisons are predominantly used <u>outside</u> ESHA, not in it. The poisons cross ESHA boundaries easily, aided by the 63 Malibu watersheds making the connection from the mountains to the ocean. Rodenticides are transported transparently across ESHA both by the poisoned animals (poisoned coyotes and raccoons are eaten by mountain lions), and by the predators themselves who easily travel throughout Malibu.

We hope this has provided information for you to make a strong determination for the Coastal Commission to certify the LCP Amendment.

Sincerely,

Poison Free Malibu Joel Schulman PhD Kian Schulman RN,MSN

Email: <u>PoisonFreeMalibu@gmail.com</u> Website: <u>PoisonFreeMalibu.org</u> Facebook: <u>Poison Free Malibu</u> Phone: 310-456-0654

ATTACHMENTS

<u>National Park Service</u> NPSLetterToMalibuCityCouncil 8July2013.pdf NPS LCP Amendment Letter 6Dec2019.pdf

Legal Documentation LA CountyCounselLettertoCHogin.pdf CoastalCommissionSupportsMalibuLCPAmendment.pdf Michelle Black Item 4A Pesticide Letter.pdf NRDC.rodenticide letter.nov 26 2019.final.pdf 2017-12-5.CBD.Malibu LCP-rodenticides.pdf Henry Stern 120619.pdf Chalfant Ruling.pdf

<u>Aquatic Rodenticides</u> Regnery2018_RatingTheRisksOfARsAquatic.pdf Kotthoff2018_FirstEvidenceOfARsFish.pdf Heavy_rainfall_provokes_anticoagulant_rodenticides.pdf Regnery et al.2019_AR Wastewater exposure limnic fish_Germany.pdf



via electronic mail

December 5, 2019

Mayor Karen Farrer, <u>KFarrer@malibucity.org</u> Mayor Pro Tem Mikke Pierson, <u>MPierson@malibucity.org</u> Councilmember Rick Mullen, <u>RMullen@malibucity.org</u> Councilmember Skylar Peak, <u>SPeak@malibucity.org</u> Councilmember Jefferson Wagner, <u>JWagner@malibucity.org</u>

RE: Malibu LCP Amendment No. 14-001 re Anticoagulant Rodenticides Council Meeting, December 9, 2019, Agenda Item 4.A.

Dear Honorable Mayor and City Councilmembers,

The Center for Biological Diversity urges you to amend the Local Coastal Plan ("LCP") to prohibit dangerous anticoagulant rodenticides in all existing and future development.

The legality of regulating pesticides via the Coastal Act's implementation of an LCP has been approved by the County of Los Angeles, the California Coastal Commission, the California Attorney General's office, and the Los Angeles Superior Court. The November 18, 2019, memorandum from the City Attorney runs contrary to the affirmation of the legality of restricting pesticides via the Coastal Act by state and local agencies and, strangely, contradicts Malibu's existing prohibitions on pesticides that already exist in the LCP.

The Center for Biological Diversity is a non-profit environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law, which has over 1.6 million members and supporters throughout the United States, including residents of Malibu.

Malibu would be adopting a pesticide prohibition similar to one that has already been adopted, and upheld in Court, by neighboring Los Angele County. "*The use of* insecticides, herbicides, *anti-coagulant rodenticides* or any toxic chemical substance that has the potential to significantly degrade biological resources in the Santa Monica Mountains *shall be prohibited*..." (Attachment 1 - Santa Monica Mountains LCP, Policy CO-58 (emphasis added)). The California Coastal Commission affirmed the validity of that provision when it implemented the Coastal Act—a state law—and certified the LCP.

The California Attorney General's office has also affirmed the Coastal Act's ability to regulate pesticides via the LCP. In supporting the Coastal Act's ability to regulate pesticides via the LCP the Attorney General's office rejected the arguments put forward in the City Attorney's November 18, 2019 memo that restrictions on local governments in Food and Agriculture Code

Arizona • California • Colorado • Florida • Hawaii • Mexico • Minnesota • New York • Oregon • Washington • Washington D.C.

section 11501.1 also preempted the Coastal Commission from enacting prohibitions on pesticide use via the Coastal Act. As the Attorney General's office noted "Food and Agriculture Code, section 11501.1, which restricts local governments from regulating pesticide use... is inapplicable on its face... the [Coastal] Commission—a state agency—was implementing a state law in certifying the LCP." (Attachment 2 – Coastal Commission's Opposition to Petitioners' Verified First Amended Petition for Writ of Mandate at 13-14). The Attorney General's office went on to explain that the Food and Agriculture code explicitly allows for the Coastal Commission to exercise its authority "under the Coastal Act to regulate land use in the coastal zone" as it does when it affirms LCPs to restrict pesticide use. *Id*.

The legality of regulating pesticides via the Coastal Act's adoption of an LCP was also upheld by the Los Angeles Superior Court.

the [Coastal] Commission is requiring a pesticide ban for the County's LCP, to be administered by the County, because the Commission has the authority to do so as part of its administration of the Coastal Act. F&A Code section 11501.1(c) permits the commission to require [Los Angeles County] to conform to this ban in administering the LCP.

Mountainlands Conservancy LLC v. California Coastal Commission, Case No. BS 149063, decision on petition for writ of mandate:denied (Sept. 5, 2017) at 20. Malibu has the same authority via the Coastal Act as the County of Los Angeles and should implement the prohibition on anticoagulant rodenticides.

Malibu has *already enacted* restrictions on pesticides through the Coastal Act when its existing LCP was adopted by the Coastal Commission. Malibu LCP Land Use Plan Policy 3.18 states:

[t]he *use of insecticides, herbicides*, or any toxic chemical substance which has the potential to significantly degrade Environmentally Sensitive Habitat Areas (ESHA), *shall be prohibited* within and adjacent to ESHAs, where application of such substances would impact the ESHA (emphasis added)

If the Malibu City Council were to now decide that the Coastal Act does not provide the authority to restrict pesticides then it would contradict its previous decisions and undercut existing protections in the LCP.

The Coastal Act's ability to regulate pesticides via Malibu's LCP would only go into effect after adoption by the Coastal Commission. (Ordinance 459, Resolution 19-54 ["The LCP amendment approved in this Ordinance shall become effective only upon its certification by the CCC"]). Like the legal challenge to Los Angeles County's LCP revision Malibu's LCP amendment would be defended by the California Attorney General's office from any potential legal challenge. The California Attorney General's office has already demonstrated the effective ability to defend against arguments of preemption. *Mountainlands Conservancy LLC v*.

California Coastal Commission, Case No. BS 149063, decision on petition for writ of mandate:denied (Sept. 5, 2017).

We urge the City of Malibu to follow the path that the County of Los Angeles, the Coastal Commission, and the California Attorney General's office has already established in relying upon the Coastal Act to restrict some of the most dangerous pesticides impacting coastal resources. Anticoagulant rodenticides are having a devastating effect on a range of wildlife species at rates of exposure above 70% and Malibu has the clear opportunity to take a significant step to protect biological resources in California's important coastal areas.

Sincerely,

brathan trans Environmental Health Legal Director

cc:

City Clerk Heather Glaser, <u>HGlaser@malibucity.org</u> City Attorney Christi Hogin, <u>Christi.Hogin@bbklaw.com</u>

Attachment 1

Amended February 2018

Santa Monica Mountains Land Use Plan

A Component of The Santa Monica Mountains Local Coastal Program County of Los Angeles Department of Regional Planning





extent feasible, and unavoidable impacts are minimized and mitigated; (4) equestrian pasture outside of the fuel modification zone, consistent with the requirements of the LCP, where the development is sited and designed to ensure that no required fuel modification extends into H1 habitat or H1 buffer, it will not significantly degrade H1 habitat, and will not adversely affect wildlife usage, including movement patterns, of the local area or region. Additionally, if existing fuel modification for the principal use is located within the Quiet Zone, confined animal facilities may be established within the Quiet Zone on slopes of 3:1 or less only if the facilities will not require fuel modification to extend into H1 habitat or the H1 habitat buffer, and subject to ERB review. Furthermore, public recreational facilities may also be located within this quiet zone, if it is developed and/or disturbed by historic use (e.g., recreational).

- CO-58 The use of insecticides, herbicides, anti-coagulant rodenticides or any toxic chemical substance that has the potential to significantly degrade biological resources in the Santa Monica Mountains shall be prohibited, except where necessary to protect or enhance the habitat itself, such as for eradication of invasive plant species or habitat restoration, and where there are no feasible alternatives that would result in fewer adverse effects to the habitat value of the site. Application of such chemical substances shall not take place during the winter season or when rain is predicted within a week of application. Herbicide application necessary to prevent regrowth of highly-invasive exotic vegetation such as giant reed/cane (*Arundo donax*) shall be restricted to the best available and least-toxic product and method in order to minimize adverse impacts to wildlife and the potential for introduction of herbicide into the aquatic environment or onto adjacent non-targeted vegetation. In no instance shall herbicide application occur if wind speeds on site are greater than five miles per hour or 48 hours prior to predicted rain. In the event that rain does occur, herbicide application shall not resume again until 72 hours after rain.
- CO-59 Work toward a poison free Santa Monica Mountains by exploring the feasibility of eliminating the use of all rodenticides at the soonest practicable date, and identify and promote rodent control methods that do not involve the use of poisons.
- CO-60 Mosquito abatement within or adjoining H1 habitat shall be limited to the implementation of the minimum measures necessary to protect human health, and shall minimize adverse impacts to H1 habitat. Larvacides shall be used that are specific to mosquito larvae and will not have any adverse impacts to non-target species, including fish, frogs, turtles, birds, or other insects or invertebrates. The use of mosquitofish shall be prohibited throughout the Coastal Zone.
- CO-61 Wildfire burn areas shall be allowed to revegetate naturally, except where re-seeding is necessary to minimize risks to public health or safety. Where necessary, re-seeding shall utilize a mix of locally-indigenous native plant seeds collected in a similar habitat within the Santa Monica Mountains. Wildfire burn areas that were previously subject to fuel modification or brush clearance for existing structures pursuant to the requirements of the Los Angeles County Fire Department may be revegetated to pre-fire conditions.
- CO-62 Interpretive signage may be used in H1 or H2 habitat accessible to the public to provide information about the value and need to protect sensitive resources.

Attachment 2

	1	Kamala D. Harris	CONFORMER OF	
		Attorney General of California	Superior Court of California	
	2	CHRISTINA BULL ARNDT Supervising Deputy Attorney General		
	3	DAVID EDSALL JR.	SEP 16 2016	
	4	Deputy Attorney General State Bar No. 266883		
		300 South Spring Street, Suite 1702	Sherti R. Carter, Executive Officer/Clark By: Glorietta Bobiasen, Desuitation	
	5	Los Angeles, CA 90013 Telephone: (213) 897-2693		
	6	Fax: (213) 897-2801		
	7	E-mail: David Edsall@doj.ca.gov	No filing fee pursuant to Government Code & 6103	
		California Coastal Commission	Government Code y 0200.	
	8	SUPERIOR COURT OF TH	E STATE OF CALIFORNIA	
	9	SUPERIOR COURT OF THE STATE OF CALIFORNIA		
	10	COUNTY OF 1	LOS ANGELES	
	10	· · · · · ·		
	11		Case No. BS140063 [related to BS140044]	
	12	MOUNTAINLANDS CONSERVANCY,		
	12	LLC; THIRD DISTRICT PARKLANDS,	COASTAL COMMISSION'S	
	15	MEADOWLANDS, LLC,	VERIFIED FIRST AMENDED	
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	16	ν.	Time: TBD	
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	26	COUNTY OF LOS ANGELES; and ROES		
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		Coastar Commission's Opposition to returners' verifie	u Filst Autonided Fertion for Wilt of Manuale (B3143005)	

agricultural use in part to the building site area allowed by Policy CO-51, a non-agricultural specific policy, demonstrating that CO-102's agricultural restriction is similar to CO-51's
 restriction on all other types of development, and not singling out agriculture. (8 AR 1909; 7 AR
 1548.) The amended LUP as approved is not contrary to the agricultural protection policies cited
 by Petitioners, and the Commission proceeded properly under section 30514.

6 7

C. The Commission's Action Restricting the Use of Pesticides Is Consistent With Its Powers to Regulate Land Use Activities for Compliance with the Coastal Act

8 Petitioners argue that the Commission did not proceed in a manner required by law because 9 it certified the LCP with a preempted ban on the use of pesticides. (Pet. Brief at p. 12:1-17.) 10 Petitioners cite to Food and Agriculture Code, section 11501.1, which restricts local governments 11 from regulating pesticide use. This code section is inapplicable on its face, as it is a restriction on 12 local governments, and here, the Commission-a state agency-was implementing a state law in 13 certifying the LCP. Even though the LCP was submitted by a local government, the County acted 14 only pursuant to "authority... delegated by the Commission." (Pratt Construction Co., supra, 15 162 Cal.App.4th at p. 1075.) "The Commission has the ultimate authority to ensure that coastal 16 development conforms to the policies embodied in the state's Coastal Act." (Ibid.) Therefore, 17 this code section restricting local government action does not apply here.

18 Furthermore, Food and Agriculture Code section 11501.1 explicitly recognizes its limits in 19 an important exception. It states that it is not "a limitation on the authority of a state agency or 20 department to enforce or administer any law that the agency or department is authorized or 21 required to enforce or administer." (Food & Agr. Code, § 11501.1, subd. (c).) This exception 22 applies to the Commission's authority over agricultural lands in the coastal zone. The 23 Commission has express authority under the Coastal Act to regulate land use in the coastal zone 24 and ensure coastal development conforms to the policies of the Coastal Act. (Pub. Resources 25 Code, § 30330; Pratt Construction Co., supra, 162 Cal.App.4th at pp. 1075-1076.) To carry this 26 out, it has express authority to impose modifications on the specific land use restrictions and 27 implementing actions submitted by local governments to ensure they comply with the Coastal 28 Act. (§§ 30511, 30512.) One of the primary objectives of the Coastal Act is to protect, maintain, 13

Coastal Commission's Opposition to Petitioners' Verified First Amended Petition for Writ of Mandate (BS149063)

enhance, and restore the overall quality of the coastal zone environment and its natural resources, 1 2 including the protection of environmentally sensitive habitat area (ESHA). (§ 30001.5, subd. (a), see also §§ 30240, 30230, 30231.) The Coastal Act also requires that the biological productivity 3 4 and quality of coastal waters be maintained. (§ 30231.) Here, the Commission found that the use 5 of pesticides can adversely impact "the biological productivity of coastal waters and human 6 health," as well as "coast streams and riparian habitat." (8 AR 1910.) Because the Commission 7 acted under its authority to administer the Coastal Act to protect natural coastal resources, 8 including ESHA and water quality, it falls within the exception to section 11501.1(c).

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II. SUBSTANTIAL EVIDENCE SUPPORTS THE COMMISSION'S DETERMINATION THAT THE LCP, AS MODIFIED, CONFORMED TO THE COASTAL ACT

11 Petitioners argue that the Commission abused its discretion by approving the LCP as 12 modified because the provisions restricting the use of agriculture are somehow tantamount to 13 requiring "conversion" of agricultural land to nonagricultural uses in violation of sections 30241 14 and 30242, and that the findings explaining why those sections were inapplicable and justifying 15 the restrictions were not supported by substantial evidence. (Pet. Brief at p. 13:5-9.) In fact, the 16 LCP does not "convert" agricultural lands, and substantial evidence supports the Commission's 17 findings that the LCP, as modified, conforms to the policies of Chapter 3 of the Coastal Act. 18 Petitioners bear the burden to demonstrate that the Commission's decision is not based on 19 substantial evidence, and that no reasonable person could have reached the decision even when 20 resolving all doubts in favor of the Commission. (Ross v. California Coastal Com., supra, 199 21 Cal.App.4th at p. 921-22; Paoli v. California Coastal Com., supra, 178 Cal.App.3d at p. 550.) 22 They cannot meet that burden, and accordingly, the Court should reject Petitioners' claims. 23 Substantial Evidence Supports the Commission's Findings That the Plan Α. Area Had Minimal Prime Agricultural Lands and that the Non-Prime 24 Agricultural Lands Were Not Suitable or Feasible For Agricultural Use 25 Petitioners contend that the Commission's findings that the plan area contains no prime agricultural lands³ and that the non-prime agricultural lands are not suitable or feasible for 26

³ Petitioners' claim that the Commission found "no prime agricultural land" in the plan area is simply false, and ignores that the Commission specifically found that the two commercial (continued...)

14

Coastal Commission's Opposition to Petitioners' Verified First Amended Petition for Writ of Mandate (BS149063)

Mountainlands Conservancy, LLC, et al. v. California Coastal Commission, BS 149063

Tentative decision on petition for writ of mandate: denied

Petitioners Mountainlands Conservancy, LLC ("Conservancy"), Third District Parklands, LLC ("Parklands"), and Third District Meadowlands, LLC ("Meadowlands") seek a writ of mandate to compel Respondent California Coastal Commission ("Coastal Commission" or "Commission") to set aside its certification of the Santa Monica Mountains Local Coastal Program ("LCP").

The court has read and considered the moving papers, opposition,¹ and reply, and renders the following tentative decision.

A. Statement of the Case

Petitioners commenced this proceeding on June 9, 2014. The operative pleading is the First Amended Petition ("FAP"), filed December 9, 2014. The FAP alleges in pertinent part as follows.

In 2012 and 2013, the Commission and Los Angeles County ("County") engaged in conversations to draft a proposed LCP. On January 3, 2014, the County gave notice that a draft LCP would be made available to the public in advance of County hearings to be held on February 11 and 18, 2014. The draft LCP categorically prohibited all new agriculture in the coastal zone. At the February 11 and 18, 2014 hearings, the County Board of Supervisors ("Board") voted to submit the draft LCP to the Commission for certification.

On March 27, 2014, the Commission staff issued a report on the submission of the proposed LCP (the "Staff Report"). The Staff Report acknowledged that "[t]he biological resource protection approach proposed in the County's Land Use Plan ("LUP") designates three habitat categories: H1, H2, and H3 Habitat. H1 and H2 habitats are designated by the proposed LUP as Sensitive Environmental Resource Areas ("SERA"), but the LUP does not explicitly define these areas as Environmentally Sensitive Habitat Areas ("ESHA") as defined by the Coastal Act. The LUP considers H3 areas to be developed or legally disturbed areas that are not ESHA. Approximately 87.9% of the 50,000 acres subject to the LUP is designated either H1 or H2. Only about 12.1% of the 50,000 acres is designated H3.

The Staff Report's findings indicated that "there are very limited areas where agriculture is possible" and those areas "are limited to the one or two areas in active agricultural production." The Staff Report recommended that the Commission deny certification of the LUP as submitted by the County but approve the LUP subject to sixty suggested modifications. One of the changes

¹ Petitioners' opening brief and the Commissions opposition are 20 and 23 pages, respectively. These oversized briefs were permitted by court order dated June 6, 2016.

The parties also lodged a four-volume Joint Appendix, utterly defeating the purpose of a Joint Appendix – which is to include in a single volume the pages of the Administrative Record upon which the parties actually rely -- by citing to and including the entirety of lengthy documents. This requires the parties to pin cite, not block cite, in their briefs. Counsel are directed to follow a practice of pin citing in future mandamus cases.

recommended in the Staff Report reiterated the LUP's prohibition of new agricultural uses, but clarified that existing non-livestock agricultural uses would be allowed to continue but not expand.

On April 7, 2014, Petitioners submitted a letter to the Commission explaining why they believed the proposed LUP was not consistent with Chapter 3 of the Coastal Act. The letter presented evidence that large portions of the area governed by the proposed LUP were suitable for agriculture.

On April 9, 2014 — the day before the scheduled hearing on the LUP — the Commission's staff issued an addendum to its Staff Report ("Addendum"). The Addendum recommended new modifications to the previously categorical ban on new agriculture. The Addendum retained a categorical ban on new vineyards, but recommend that some new agricultural uses be permitted subject to a series of onerous conditions. The Addendum recommended that new agriculture would be allowed only if organic or biodynamic farming practices were followed. New agriculture would be allowed only in extremely restricted areas, including natural slopes of 3:1 or less in H3 habitat areas and slopes of 3:1 or less in the building site area allowed by Policy CO-51 and Fuel Modification Zones A and B.

On April 10, 2014 Petitioners submitted a letter to the Commission and appeared at the Commission hearing on the same date to state their opposition to the LUP. Petitioners indicated that various parties had raised substantial issues with respect to the proposed LUP's conformity to Chapter 3 of the Coastal Act and that certification of the LUP without an additional hearing before the full Commission would be premature and a violation of the Coastal Act. The Commission then approved and certified the proposed LUP subject to the modifications suggested in the Staff Report, the modifications suggested in the Addendum, and a few additional modifications developed at the hearing.

On June 26, 2014, the Commission Staff issued a report on the proposed Local Implementation Program ("LIP") for the LCP. This report recommended that the Commission reject the LIP as presented by the County and certify it with some mostly minor modifications.

On July 7, 2014, counsel for Petitioners submitted a letter to the Commission objecting to the proposed LIP. This letter contended that the proposed LIP was inadequate to carry out the provisions relating to agriculture because the proposed LIP provided no definition of "biodynamic farming" and was imprecise as to provisions such as its ban on the use of "synthetic" pesticides. The Commission subsequently approved the LIP subject to the recommended modifications.

On August 26, 2014, the County issued a resolution adopting the both the LUP and LIP portions of the LCP as modified by the Commission and directing the transmittal of the LCP to the Commission for final certification. On October 10, 2014, the Commission issued its final certification of the LCP.

Petitioners allege that the Commission's decision to certify the LCP was an abuse of discretion because it failed to proceed in the manner required by law. Even with the modifications suggested by the April 9, 2014 Addendum to the Staff Report, there were substantial issues raised as to the proposed LUP's conformity with the policies of Chapter 3 of the Coastal Act. As a result, the Commission was required to conduct a further hearing on those issues and failed to do so.

The Commission further failed to proceed in a manner required by law when it considered the Addendum, which was made available to the public less than 24 hours prior to the April 10, 2014 hearing. Petitioners allege that this action by the Commission deprived the public of a meaningful opportunity to address the new findings and policies in the Addendum. Petitioners further allege that the Commission's decision to certify the LUP also was invalid because the findings are not supported by the evidence. The Staff Report's findings indicate that "there are very limited areas where agriculture is possible" and that those areas "are limited to the one or two areas in active agricultural production." Petitioners and others submitted evidence that large areas other than areas in current agricultural production are suitable for agriculture. Moreover, the Commission was not presented with sufficient evidence on which to allow only organic or biodynamic farming and prohibit conventional forms of agriculture. The Commission also was not been presented with sufficient evidence to justify a categorical prohibition of vineyards as opposed to other types of agriculture.

B. Standard of Review

CCP section 1094.5 is the administrative mandamus provision which structures the procedure for judicial review of adjudicatory decisions rendered by administrative agencies. <u>Topanga Ass'n for a Scenic Community v. County of Los Angeles</u>, ("<u>Topanga</u>") (1974) 11 Cal.3d 506, 514-15.

CCP section 1094.5 does not in its face specify which cases are subject to independent review, leaving that issue to the courts. Fukuda v. City of Angels, (1999)20 Cal.4th 805, 811. In cases reviewing decisions which affect a vested, fundamental right the trial court exercises independent judgment on the evidence. Bixby v. Pierno, (1971) 4 Cal.3d 130, 143. See CCP §1094.5(c). In other cases, the substantial evidence test applies. Mann v. Department of Motor Vehicles, (1999) 76 Cal.App.4th 312, 320; Clerici v. Department of Motor Vehicles, (1990) 224 Cal.App.3d 1016, 1023. Decisions of the Coastal Commission are governed by the substantial evidence standard. Ross v. California Coastal Comm., ("Ross") (2011) 199 Cal.App.4th 900, 921.

"Substantial evidence" is relevant evidence that a reasonable mind might accept as adequate to support a conclusion (<u>California Youth Authority v. State Personnel Board</u>, ("<u>California Youth Authority</u>") (2002) 104 Cal.App.4th 575, 585) or evidence of ponderable legal significance, which is reasonable in nature, credible and of solid value. <u>Mohilef v. Janovici</u>, (1996) 51 Cal.App.4th 267, 305, n.28. The petitioner has the burden of demonstrating that the agency's findings are not supported by substantial evidence in light of the whole record. <u>Young v. Gannon</u>, (2002) 97 Cal.App.4th 209, 225. The trial court considers all evidence in the administrative record, including evidence that detracts from evidence supporting the agency's decision. <u>California Youth</u> Authority, *supra*, 104 Cal.App.4th at 585.

The agency's decision must be based on the evidence presented at the hearing. <u>Board of</u> <u>Medical Quality Assurance v. Superior Court</u>, (1977) 73 Cal.App.3d 860, 862. The Commission is only required to issue findings that give enough explanation so that parties may determine whether, and upon what basis, to review the decision. <u>Topanga</u>, *supra*, 11 Cal.3d at 514-15. Implicit in CCP section 1094.5 is a requirement that the agency set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. <u>Topanga</u>, 11 Cal.3d at 515.

The court may reverse the Commission's fact decision only if, based on the evidence before it, a reasonable person could not have reached the Commission's conclusion. <u>Ross</u>, *supra*, 199 Cal.App.4th at 922; <u>Bolsa Chica Land Trust v. Superior Court</u>, ("<u>Bolsa Chica</u>") (1999) 71 Cal.App.4th 493, 503. The court may not disregard or overturn an administrative finding of fact simply because it considers that a contrary finding would have been equally or more reasonable. Boreta Enterprises, Inc. v. Department of Alcoholic Bev. Control, (1970) 2 Cal.3d 85, 94. Any reasonable doubts must be resolved in favor of the Commission. <u>Paoli v. California Coastal</u> <u>Comm.</u>, (1986) 178 Cal.App.3d 544, 550; <u>City of San Diego v. California Coastal Comm.</u>, (1981) 119 CalApp.3d 228, 232.

The court independently reviews questions of law, including statutory interpretation. <u>McAllister v. California Coastal Commission</u>, ("<u>McAllister</u>") (3008) 169 CalApp.4th 912, 921-22. Given its Commission's special familiarity with the regulatory and legal issues, the Commission's interpretation of the statutes and regulations under which it operates is entitled to deference. <u>Ross</u> <u>v. California Coastal Comm.</u>, *supra*, 199 Cal.App.4th at 938; <u>Hines v. California Coastal Comm.</u>, (2010) 186 Cal.App.4th 830, 849.

An agency is presumed to have regularly performed its official duties (Evid. Code §664), and the petitioner therefore has the burden of proof. <u>Steele v. Los Angeles County Civil Service</u> <u>Commission</u>, (1958) 166 Cal.App.2d 129, 137. "[T]he burden of proof falls upon the party attacking the administrative decision to demonstrate wherein the proceedings were unfair, in excess of jurisdiction or showed prejudicial abuse of discretion. <u>Afford v. Pierno</u>, (1972) 27 Cal.App.3d 682, 691.

C. Coastal Act

1. Purpose

The Coastal Act of 1976 (Pub. Res. Code² §30000 *et seq.*,) (the "Coastal Act" or the "Act") is the legislative continuation of the coastal protection efforts commenced when the People passed Proposition 20, the 1972 initiative that created the Coastal Commission. *See Ibarra v. California Coastal Comm.*, ("Ibarra") (1986) 182 Cal.App.3d 687, 693. One of the primary purposes of the Coastal Act is the avoidance of deleterious consequences of development on coastal resources. Pacific Legal Foundation v. California Coastal Comm., (1982) 33 Cal.3d 158, 163. The Supreme Court described the Coastal Act as a comprehensive scheme to govern land use planning for the entire coastal zone of California. Yost v. Thomas, (1984) 36 Cal.3d 561, 565. The Act must be liberally construed to accomplish its purposes and objectives. §30009.

The Coastal Act's goals are binding on both the Commission and local government and include: (1) maximizing, expanding and maintaining public access (§§ 30210-14); (2) expanding and protecting public recreation opportunities (§§ 30220-24); 3) protecting and enhancing marine resources including biotic life (§§ 30230-37); and (4) protecting and enhancing land resources (§§ 30240-44). The supremacy of these statewide policies over local, parochial concerns is a primary purpose of the Coastal Act, and the Commission is therefore given the ultimate authority under the Act and its interpretation. <u>Pratt Construction Co. v. California Coastal Comm.</u>, (2008) 162 Cal.App.4th 1068, 1075-76.

2. Chapter 3 Policies

The Coastal Act includes a number of coastal protection policies, commonly referred to as "Chapter 3 policies," which are the standards by which the permissibility of proposed development is determined. §30200(a). The Coastal Act must be liberally construed to accomplish its purposes (§30009), and any conflict between the Chapter 3 policies should be resolved in a manner which on balance is the most protective of significant coastal resources. §30007.5.

² All further statutory references are to the Public Resources Code unless otherwise stated.

The Coastal Act provides for heightened protection of ESHAs, defined as "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments." §30107.5. ESHAs "shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. §30240(a). Development in areas adjacent to EHSAs shall be sited and designed to prevent impacts which would significant degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas. Id. Thus, the Coastal Act places strict limits on the uses which may occur in an ESHA and carefully controls the manner in which uses around the ESHA are developed. Bolsa Chica, supra, 71 Cal.App.4th at 506-08. See also Feduniak v. California Coastal Commission, (2007) 148 Cal.App.4th 1346, 1376.

Other pertinent Chapter 3 policies include the protection of marine life (§30230), the biological productivity and quality of coastal waters, streams, lands, and estuaries (§30231), and the scenic and visual qualities of coastal areas. §30251. Where conflicts occur between one or more Chapter 3 policies of the Coastal Act, the conflict shall be resolved in a manner which on balance is the most protective of significant coastal resources. §30007.5.

3. The LCP

Because local areas within the coastal zone may have unique issues not amenable to centralized administration, the Coastal Act "encourage[s] state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development" in the coastal zone. §30001.5; <u>Ibarra</u>, *supra*, 182 Cal.App.3d at 694-96. To that end, the Act requires that "each local government lying, in whole or in part, within the coastal zone" prepare a LCP. §30500(a). The Coastal Act defines a LCP as:

"a local government's (a) land use plans, (b) zoning ordinances, (c) zoning district maps, and (d) within sensitive coast resource areas, other implementing actions, which, when taken together, meet the requirements of, and implement the provisions and policies of this division [the Coastal Act] at the local level." §30108.6.

Similar to a local government's general plan, the LCP provides a comprehensive plan for development within the coastal zone with a focus on preserving and enhancing the overall quality of the coastal zone environment as well as expanding and enhancing public access. <u>Citizens of Goleta Valley v. Board of Supervisors</u>, (1990) 52 Cal.3d 553, 571. A local government must prepare its LCP in consultation with the Commission and with full public participation. §§ 30500(a), (c), 30503; <u>McAllister</u>, *supra*, 169 Cal.App.4th at 930, 953. The LCP consists of a LUP³

³The LUP is defined in section 30108.5 as: "[T]he relevant portions of a local government's general plan, or local coastal element which are sufficiently detailed to indicate the kinds, location, and intensity of land uses, the applicable resource protection and development policies and, where necessary, a listing of implementing actions."

and the implementing actions of zoning ordinances, district maps, and other implementing actions (LIP). <u>Yost v. Thomas</u>, *supra*, 36 Cal.3d at 571-72. These may be prepared together or sequentially, and may be prepared separately for separate geographical areas or "segments" of a local coastal zone. §30511.

When a local government completes its draft LCP, it is submitted to the Commission for certification. §30510. The Coastal Commission reviews the LUP for consistency with the Chapter 3 Coastal Act policies, §§ 30512(c), 30512.2. The Commission determines whether to certify the proposed LUP as submitted, or whether it raises "substantial issues" that necessitate further hearing. §30512(a). For any aspects of the LUP that are not certified as submitted, the Commission may certify them conditioned upon the incorporation of suggested modifications. §30512(b). Where amendments are made to an already-certified LUP, the Commission proceeds in nearly the same manner except that the Commission shall make no determination whether a proposed LUP amendment raises a substantial issue of conformance with Chapter 3 policies. §30514(b).

The Coastal Commission reviews the LIP, and any amendments to a certified-LIP, for conformity with the LUP. §30513. It may reject an LIP only if it does not conform with or is inadequate to carry out the LUP. §§ 30513, 30514.

Once the Commission has certified the LCP, the Commission delegates its permit-issuing authority to the local government. §30519.

D. Statement of Facts⁴

⁴ In reply, Petitioners ask the court to judicially notice pages from two websites: (1) a USDA National Agricultural Statistics Service document for the 2013 Crop Year (Ex. 1), (2) a California Department of Food and Agriculture statistical review document for 2012-13 (Ex. 2). Petitioners do not ask the court to judicially notice Exhibit 3, a page from a John Dunham & Associates website entitled "2015 Economic Impact Report on Wine", although it is referred to in an authenticating declaration.

The court may judicially notice a government website page depending on the nature of the document. Evid. Code §452(c); *see* <u>Ampex Corp. v. Cargle</u>, (2005) 128 Cal.App.4th 1569, 1573, n.2 (Internet documents amenable to judicial review to the extent the records are "...not reasonably subject to dispute and [are] capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy."). Exhibits 1 and 2 are such documents. Exhibit 3 is a trade document from a company website. The existence of a company's website may be judicially noticed. Ev. Code §452(h); <u>Gentry v. eBay, Inc.</u>, (2002) 99 Cal.App.4th 816, 821 n.1. But the court may not accept its contents as true. *See* <u>Ragland v. U.S. Bank Nat. Assn.</u>, (2012) 209 Cal.App.4th 182, 193.

The court would judicially notice Exhibits 1 and 2, but not Exhibit 3, except that they are offered for the first time in reply. Nothing in Exhibits 1 and 2 is responsive to an issue raised in the Commission's opposition. Rather, all three exhibits are presented as an offer of proof as to what Petitioners would have shown in part if given an additional Commission hearing and opportunity to respond to the Addendum. New evidence/issues raised for the first time in a reply brief are not properly presented to a trial court and may be disregarded. <u>Regency Outdoor</u> Advertising v. Carolina Lances, Inc., (1995) 31 Cal.App.4th 1323, 1333. The requests for judicial

1. Background

The County's Santa Monica Mountains coastal region is an unincorporated area between the city of Los Angeles, the City of Malibu, and the County of Ventura. In 1986, the County's Board of Supervisors ("Board of Supervisors") adopted an LUP for Santa Monica Mountains area as part of a proposed LCP. AR 9403. The Coastal Commission subsequently certified the LUP, but no LIP was certified. AR 9403-04.

Without a complete and certified LCP, the Commission retained jurisdiction over development and land use in the Santa Monica Mountains. All applicants for coastal development permits ("CDPs") in the region were required to do so directly from the Coastal Commission, not from the County. AR 9403.

In 2007, the County's Regional Planning Commission recommended approval of a proposed LCP for the Santa Monica Mountains region, including an updated LUP and a proposed LIP. AR 9403-04. The County's Board of Supervisors conducted a public hearing, indicating its intent to approve the LCP with modifications. AR 9404. The County did not submit the 2007 proposal to the Commission, and it was never certified. AR 9404.

In 2012, the Coastal Commission encouraged certification of previously uncertified portions of the state's coastal regions and began working with local agencies to update existing coastal plans. AR 9404. The Commission and the County engaged in a series of negotiations to reformulate the County's 2007 proposed Santa Monica Mountains LCP to be more consistent with current Commission practices. AR 9404.

2. Draft LCP

a. Procedural Process

On January 3, 2014, the County gave public notice that the Board of Supervisors would consider a draft LCP at a public hearing to be held in February 2014. AR 1024-25. On February 11, 2014, the Board of Supervisors held a public hearing on the proposal and, on February 18th, voted to approve the LCP and submit it to the Commission for certification. AR 9404.

On February 19, 2014, the County formally submitted to the Commission a proposed Santa Monica Mountains area LCP. AR 3. The Board of Supervisors Resolution found that no Statedesignated prime agricultural land existed in the relevant area on private land; all prime agricultural land was publicly owned. AR 10.

b. County's Findings

The County's discussion of the proposed LCP states that agricultural uses are proposed for restriction. AR 818. The Coastal Act protects prime agricultural lands and lands which are suitable for agricultural use. AR 818. There are no significant areas of prime farmland in the LCP area. AR 818. The majority of the prime farmland is located on publicly owned King Gillette Ranch, which will not be developed with agricultural uses. AR 818. As for suitable agriculture use, a number of factors accompany the determinate of suitability, including land use compatibility, water availability, detrimental secondary effects, and economic feasibility. AR 818. The water

notice are denied.

scarcity in the Santa Monica Mountains alone would dictate caution in allowing agricultural uses. AR 818. Agricultural species also interfere with native plants and are consumed by native animals when their spread cannot be controlled. AR 818. For these reasons, the County elected to respect the vineyards and crop areas already in existence, but to prohibit any expansion of agricultural uses in the future. AR 818.

c. Technical Studies

As part of the LCP, the County submitted a "Proposed Santa Monica Mountains Appendices" dated January 2014 ("Appendices"). AR 578. The Appendices contained studies prepared specially for the LCP, including reports on: (1) ESHA ("Biota Report")(AR 582-724); (2) Significant Watersheds (AR 725-34); (3) Historical and Cultural Resources (AR 735-39); (4) Geotechnical Resources (AR 740-50); (5) Significant Ridgelines (AR 751-57); (6) Air Quality (AR 758-66); (7) Transportation (AR 767-69); and (8) Stormwater Pollution Mitigation Best Management Practices (AR 770-72).

The County commissioned the Biota Report to review the EHSA designations in the Santa Monica Mountains area and to ensure that the land-use restrictions in the LCP reflect actual environmental conditions. AR 587. The findings and recommendations of the Biota Report were incorporated into the LCP. AR 592.

The Biota Report noted that the Santa Monica Mountains are an arid environment, where seeps and springs provide scarce water to support rare plants and amphibians. AR 600. Six ecological communities fully met the ESHA criteria in the Coastal Act, while most of the remaining habitats satisfied at least one ESHA criterion. AR 632. Years of scattered development in the plan area had led to various forms of degradation of natural communities, including replacement of native plants with exotic landscaping, irrigation facilitating invasion of natural areas by harmful exotic ants, and increased use of pesticides, particularly for viticulture. AR 645- / 46. Maintaining the ecological integrity of the plan area "requires the development, adoption, and enforcement of a wide range of appropriate policies and regulations... to lessen the impact of human disturbance." AR 646.

The Biota Report acknowledged that, for the past decade, the Commission has delineated nearly all undeveloped land in the Santa Monica Mountains coastal zone as ESHA. AR 583. However, after performing a comprehensive analysis of the biodiversity in the Santa Monica Mountains, the Biota Report determined that only "roughly 6,000 acres... in the Study Area satisfy the ESHA criteria in Section 30107.5." AR 583. In addition to the ESHA designation, the Biota Report proposed two additional resource-protection designations: (1) "stewardship habitat", meaning areas that are not ESHA but still provide high ecological value; and (2) "restoration habitat", meaning habitat that likely satisfied ESHA criteria in the past, but is periodically disturbed for authorized or mandated activities such as fire and flood control. "Since habitat disturbance is incompatible with the very definition of ESHA, such areas cannot be properly designated as ESHA." AR 583.

The Significant Watershed Report states that one of the primary functions of the LCP is to maintain and improve water quality. AR 726. The Santa Monica Mountains are incised by a number of drainage systems that have been organized into 19 named watersheds. AR 727. In addition to the named watersheds, there are a potentially incalculable number of drainages leading to the ocean. AR 727.

The Significant Ridgelines Report states that the natural beauty of the Santa Monica Mountains is one of its most distinctive and valuable attributes. AR 751. The topography, including sandstone peaks, chaparral-covered hillsides, and extensive ridgelines, is a valuable scenic resource. AR 751. Any form of physical alteration on or close to the top of a Significant Ridgeline has immediate and noticeable effect. AR 751.

3. The LUP

a. Staff Report

On March 27, 2014, the Commission's staff issued a Staff Report recommending denial of the LUP as submitted, but approval of the LUP subject to 60 suggested modifications. AR 1532.

i. Introduction

The Staff Report noted that the proposed LUP prohibits any new crop-based agriculture in the Santa Monica Mountains. AR 1536. The LUP also does not designate any areas for exclusive agricultural use. AR 1536.

A very large percentage of soils in the Santa Monica Mountains are rocky and steeply sloping, contain sensitive habitat, and are therefore not suitable for crop-based agriculture. AR 1536. The only areas containing suitable prime agricultural soils are located within existing public parkland areas. AR 1536. The confluence of factors within the Santa Monica Mountains -- including the steep slope, poor soil, scenic considerations, sensitive watersheds, abundant ESHA, and lot size limitations -- render the majority of land unsuitable for agricultural use. AR 1537.

The Department of Conservation designates Farmlands of Statewide Importance, which is similar to Prime Farmland but with minor shortcomings. There are no designated Farmlands of Statewide Importance in the Santa Monica Mountains area. AR 1536. Another Department of Conservation designation is Unique Farmland, which is a designation for lesser quality soils used for the production of agricultural crops. AR 1536. The Staff report identified one small area that is Unique Farmland – à commercial vineyard planted in the 1980's and encompassing approximately 25 acres. AR 1536. There is another area of commercial vineyards that straddles the coastal zone boundary, but the majority of vineyards on this ranch are outside the coastal zone. AR 1536. There are also small scale hobby vineyards located within irrigated fuel modification zones that are not economically viable and do not warrant protection under the Coastal Act. AR 1537.

ii. Suggested Modifications

The Staff Report's Suggested Modification 27 was to revise Policy CO-102 to state that "New crop, orchard, vineyard, and other crop-based non-livestock agricultural uses are prohibited. Existing, legally-established agricultural uses shall be allowed to continue, but may not be expanded." AR 1557.

Suggested Modification 28 was to add a new policy that would provide as follows: "Existing, legally-established, economically-viable crop-based agricultural uses on lands suitable for agricultural use shall not be converted to non-agricultural use unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land on concentrate development consistent with Policy LU-1." AR 1557-58.

Suggested Modification 29 would revise Policy LU-11 to read as follows: "Prohibit new

crop, orchard, vineyard, and other crop-based non-livestock agricultural uses, however, existing, legally-established agricultural uses shall be allowed to continue, but may not be expanded in order to preserve natural topography and locally-indigenous vegetation, and to prevent the loading of soil and chemicals into drainage courses." AR 1558.

iii. Agriculture Findings

The Staff Report reviewed sections 30241 and 30242 of the Coastal Act, which protect agricultural lands within the coastal zone by, in part, requiring that the maximum amount of prime agricultural land be maintained in production. AR 1618. The Coastal Act defines "prime agricultural land" as land meeting the criteria set forth in the Government Code. AR 1618. The four prongs are: (1) All land that qualifies for rating as class l or class II in the Natural Resources Conservation Service land use capability classifications; (2) Land which qualifies for rating 80 through 100 in the Stone Index Rating; (3) Land which supports livestock used for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture; and (4) Land planted with fruit or nut bearing trees, vines, bushes, or crops which have a nonbearing period of less than five years and which will normally yield at least \$200 per acre annually from the production of unprocessed agricultural plant production. AR 1618.

With respect to the first prong, there are no NRCS Class I soils in the plan area. AR 1618. For the second prong, there are very few NRCS Class II and 80-100 Storie Index rated soils in the plan area, and none are currently in existing agricultural production. AR 1618. The areas containing such prime soils constitute less than 2% of the entire plan area, and the majority of the prime farmland soils are contained within public parkland areas or an existing gold club. AR 1618. As for the third prong of the prime agricultural land definition, the Staff Report found that there are no active cattle ranches or agricultural grazing grounds within the plan area. AR 1619.

For the fourth prong, while the area has a long rural history, there are very few areas in existing agricultural use due to the steep mountain topography and lack of suitable agricultural soils. AR 1619. The only areas in agricultural production are limited vineyard areas encompassing a small percentage of the plan area. AR 1619. Only two commercial vineyards meet the productivity requirements for prime agricultural land, with the remaining vineyards in the plan area being a limited number of small "hobby" vineyard plots (less than 2 acres) that are accessory to single-family residences and not commercially viable. AR 1619.

Given that the limited prime agricultural land within the Santa Monica Mountains area is mostly either public parkland or developed with existing uses and not in agricultural production (other than the two identified commercial vineyards), Commission staff found that the mandate of section 30241 to maintain the maximum amount of prime agricultural land in agricultural production was not applicable in the plan area. AR 1620.

The Staff Report next examined whether any agricultural land in the plan area qualified for section 30242's provisions that "[a]ll other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250." AR 1620. The Staff Report found that a large percentage of the plan area consists of steep slopes and poor soils that are unsuitable for agriculture. AR 1620. Water availability in the plan area is limited. AR 1620. These factors make viable livestock grazing infeasible, and the

cultivation of vineyards either infeasible or extremely difficult and costly. AR 1620.

In addition, there are significant biological and scenic resources within the Santa Monica Mountains area. AR 1620. The majority of the plan area that is undeveloped consists of publiclyowned parkland and open space or ESHA. Activities such as vineyards can have significant adverse impacts on the biological integrity of the mountain environment and receiving waterbodies. AR 1620. Agricultural uses could also significantly impact scenic resources. AR 1620. Finally, where there are small patches of land that can support agricultural use, they are not large enough to be commercially viable. AR 1620.

There are certain limited areas where agriculture is possible, but those areas are already in active agricultural production. AR 1620. In order to provide for the continuation of agricultural uses consistent with section 30242, the Staff Report stated that those lands should not be converted into non-agricultural use. AR 1620. Suggested Modification 28 is necessary to limit the conversion of those lands to non-agricultural use. AR 1620.

b. Comments on the Staff Report

i. <u>Heal the Bay</u>

Heal the Bay expressed concern that vineyards are harmful to sensitive habitats due to water use, sediment inputs, and polluted runoff. AR 1936. Heal the Bay's expert has observed the impacts of nearby vineyards on amphibian habitats in the Santa Monica Mountains. AR 1936. Waters downstream from vineyards show increased sediment levels as compared to equivalent sites in open space. AR 1938. This sediment negatively impacts the amphibian health in the steams. AR 1938.

ii. Coastal Coalition of Family Farmers

The Coastal Coalition of Family Farmers ("Farmers Coalition") submitted a letter challenging the Staff Report's analysis of the current agricultural uses in the plan area. AR 1985. The Coalition's attorney argued that the Staff Report did not provide any data about possible agricultural expansion. AR 1985. The Commission did not consult with other state agencies in determining whether the Santa Monica Mountains contain prime agricultural land. AR 1985. The Staff Report also did not analyze the viability of agriculture in the plan area. AR 1985.

iii. Petitioners

On April 7, 2014, Petitioners submitted a letter contending that the proposed LUP was inconsistent with the Coastal Act's Chapter 3 policies because it barred agricultural development, a preferred and protected use. AR 2438. Petitioners challenged the Staff Report's finding that the only prime agricultural land within the Santa Monica Mountains is parkland or developed with existing uses. AR 2440. Petitioners claimed to be aware of at least one property within the coastal zone containing a deed restriction indicating the presence of prime agricultural land on that property. AR 2440. Petitioners challenged the Staff Report's findings as speculative, and stated that it contains no information on the amount of land within the coastal zone currently under cultivation and no persuasive explanation why there is no additional land in the plan area that is suitable for agriculture. AR 2440. Petitioners' letter requested that the Commission either deny certification or schedule an additional public hearing to consider the substantial issues Petitioners had identified regarding the proposed LUP's conflicts with Chapter 3. AR 2443.

Petitioners' letter presented an expert report by Daryl Koutnik ("Koutnik")⁵ regarding agricultural uses in the Santa Monica Mountains (AR 7165-68), a Soil Survey of Santa Monica Mountains National Recreation Area ("Soil Survey") (AR 7599-7911), a United States Department of Agriculture Soil Candidate Listing for Prime Farmland and Farmland of State Importance ("Soil Candidate Listing") (AR 7914-79171), and a National Park Service Vegetation Classification of the Santa Monica Mountains. AR 8172-8706.

The Soil Survey concluded that about 3,470 acres, or less than 2% of the survey area, would meet the requirements for prime farmland if an adequate and dependable supply of irrigation water were available. AR 7568. The Soil Candidate Listing identified nine soil units within the Santa Monica Mountains that could be considered Prime Farmland. AR 7920. The study also identified three soil units that qualified as Farmland of Statewide Importance. AR 7923.

Koutnik provided a list of soil types within the Santa Monica Mountains suitable for agriculture. AR 7265-66. He concluded that the Staff Report's dismissal of agricultural uses in the plan area based on soil type and slope does not correspond to current successful agricultural operations in the area. AR 7267. Modern agricultural practices may be successful in growing certain crops or enabling livestock to graze on a variety of the Santa Monica Mountain's soil types and slope steepness. Water quality and erosion concerns could be addressed by farming and engineering techniques. The staff's proposed limitation of agricultural uses in the Santa Monica Mountains to only those designated by the Department of Conservation based on soil types or current operation while prohibiting such use for other properties in the plan area that have been historical used for agriculture is a substantial and unwarranted change. AR 7265-68.

iv. Hogrefe

On April 7, 2014, Scott J. Hogrefe ("Hogrefe"), a consulting geologist on many properties along the Santa Monica Mountains, submitted a letter to the Commission disagreeing with the Staff Report. AR 8730-31. In Hgrefe's opinion, the vast majority of sites across the Santa Monica Mountains contain good to excellent soil conditions for agricultural purposes. AR 8730. The Mediterranean climate in the Santa Monica Mountains is ideally suited to agriculture, and soil conditions and topographic conditions allow for sustainable agriculture use. AR 8730.

c. <u>The Addendum</u>

On April 9, 2014, Commission staff issued an Addendum to the Staff Report for the LCP, which was scheduled for public hearing before the Commission the next day. AR 1906. The Addendum addressed concerns raised by members of the public and various groups regarding the LCP's proposed prohibition of new crop-based agriculture in the plan area. AR 1906. In this Addendum, Commission staff noted that it had received 66 letters concerning the Staff Report, and attached some of them, including Petitioners' April 7, 2014 letter concerning agricultural restrictions. AR 1906, 1993. Commission staff had conferred with County staff regarding these agriculture concerns, and proposed changes to Modifications 27, 29, and 54. AR 1906. Because of the volume of comments received, the Addendum was more than 170 pages long. AR 1906-2084. However, the analysis of recommended changes comprised less than 12 pages. AR 1906-

⁵ Koutnik states that he is a principal in "Biological and Environmental Compliance", but does not otherwise provide his credentials as an expert. AR 7265.

17. The remaining pages were correspondence. AR 1906-2084.

In light of the comments received, Commission staff recommended that Policy CO-102/LU-11 be modified to allow new agricultural uses that met the following criteria: (1) the new agricultural uses are limited to specified areas on natural slopes of 3:1 or less steep, or areas currently in legal agricultural use; (2) new vineyards are prohibited; and (3) organic or biodynamic farming practices are followed. AR 1909. The Commission staff removed the prohibition on expanding agricultural uses, and recommended that existing legal agricultural uses may be expanded consistent with the above criteria. AR 1909.

Commission staff recognized that the continuation of agricultural uses are encouraged under the Coastal Act if they can be accomplished consistent with other Chapter 3 policies. AR 1910. The new findings justified the allowance for new agriculture because "small-scale cropbased agricultural operations (with the exceptions of vineyards) can avoid adverse impacts to biological resources and water quality," if "organic and biodynamic farming practices are followed." AR 1910. Staff explained that "organic and biodynamic farming practices are required to prevent the use of pesticides, herbicides, and fertilizers, which can adversely impact the biological productivity of coastal waters and human health." AR 1910. New vineyards would remain prohibited due to a number of identified adverse impacts attributed specifically to those operations, including increased erosion from removal of all vegetation, use of pesticides, large amounts of water required, their invasive nature, and their adverse impact to scenic views. AR 1910-11.

d. Petitioners' Response to the Addendum

On April 10, 2014, the date of the Commission hearing, Petitioners submitted a letter in response to the Addendum. AR 8739. Petitioners argued that certification of the proposed LUP, as revised by the Commission staff's Addendum, would violate the Coastal Act's policy of maximizing public participation in the process. Allowing the public and affected parties less than 24 hours to review and respond to the Addendum does not maximize public participation as required by section 30503. AR 8739-40.

Petitioners also stated that the proposed LUP, even though modified by the Addendum to permit some agricultural use, presented substantial issues regarding conformity with the Coastal Act. The proposed LUP as revised by the Addendum would allow new agriculture only in certain H3 habitat areas, with two limited exceptions. AR 8740. A map shows that the bulk of the area in the Santa Monica Mountains area is designated H1 or H2, with only a tiny fraction of land designated as H3. AR 8740. The revised LUP would therefore still exclude new agriculture from the vast majority of the plan area. AR 8740. Yet, Petitioners' expert, Hogrefe, concludes that the vast majority of land in the plan area is suitable for agricultural use. AR 8741. By designating land available for agricultural use as H1 and H2 habitat, the revised LUP conflicts with section 30242's policy against conversion of land suitable for agriculture to non-agricultural use. AR 8741. At the very least, this is a substantial issue requiring further hearing. AR 8741.

The revised LUP also prohibits new vineyards without substantiation, and without the benefit of public comment. AR 8741. Petitioners included a survey of existing vineyards in the general Malibu area. AR 8960. This survey states that there are 38 vineyards in the area, most of which are less than two acres. AR 8960. There are some vineyards that are on a slope greater than 33%. AR 8960-62.

e. The LUP Hearing

The Commission considered the LUP in a public meeting on April 10, 2014. AR 9362-64. After Commission staff and County staff presented the LUP, the Commission heard from the public. AR 12955-13087. Some speakers commented on the importance of restricting the expansion of agricultural uses or restricting them to organic practices, given the adverse effects and strain on the scarce water supply in the Santa Monica Mountains. AR 12986-87, 12994, 13014, 13021. Counsel for Petitioners also addressed the Commission, and argued that certification of the LUP was premature because there were substantial issued that the LUP was not in compliance with section 30242. AR 13046.

The Commission voted to approve the LUP with the suggested modifications. AR 9363-64, 13056, 13085.

4. <u>The LIP</u>

a. LIP Report

On June 26, 2014, Commission staff issued a report on the County's proposed LIP. AR 11067. The report recommended that the Commission reject the LIP as presented, but certify it with minor modifications. AR 11067.

The Commission staff's LIP Report acknowledged that the proposed LIP did not reflect the revised LUP policies approved by the Commission. AR 11093. Commission staff noted that LUP Policies CO-102 and LU-11 require the use of organic or biodynamic farming practices, and therefore specific implementation measures must be added to the LIP to clarify this requirement. AR 11093. The LIP Report defines "organic farming" as "an environmentally sustainable form of agriculture that relies on natural sources of nutrients... and natural sources of crop, weed, and pest control without the use of synthetic substances." AR 11093. "Biodynamic farming" is a subset of organic farming, and reflects a "unique holistic ecosystem approach to crop production, in which lunar phases, planetary cycles, animal husbandry and unique soil preparation practices are incorporated." AR 11093.

The LIP, as modified, would allow new crop-based agriculture uses only if organic or biodynamic farming practices were followed. AR 11393. In order to qualify as organic or biodynamic, the agriculture use must comply with minimum best practices set forth in the LIP. AR 11394-99. These best practices included a prohibition on the use of pesticides, rodenticides, fumigants, and other synthetic substances. AR 11394. Integrated Pest Management techniques should be used to prevent and control pests in a manner that avoids harm to the soil and water. AR 11394. Only drip irrigation or similar types of non-aeration irrigation shall be used. AR 11395. If fencing is installed, only wildlife permeable fencing shall be used. AR 11395. Tillage practices shall be limited to those that maintain or improve the physical, chemical, and biological conditions of the soil. AR 11395-96. Cultivation practices shall be limited to those that maintain or improve the soil. AR 11396. Crop areas shall be designed utilizing the principles of low impact development. AR 11396. Site development shall implement measures to minimize runoff and transport of sediment. AR 11396.

b. Petitioners' Objections

On July 7, 2014, Petitioners sented a letter to the Commission objecting to the LIP Report.

AR 11976. Petitioners argued that the proposed LIP was inadequate to carry out the provisions of the LUP relating to agriculture because it provided no definition of "biodynamic farming." AR 11976, 11978. Petitioners argued that biodynamic farming as commonly defined is based on pseudoscience and astrology. AR 11977. Petitioners also contested the LIP's ban on pesticides as imprecise, as it did not specify whether the pesticides banned must be synthetic. AR 11977.

c. The LIP Hearing

The Commission considered the LIP at its public hearing on July 10, 2014. AR 9404. Its staff and the County made presentations, and the public commented. AR 13088-119. The Commission voted to approve the LIP with proposed modifications. AR 13118.

5. The Certification

The County adopted the Commission's proposed modifications to the LCP. AR 9403-09. On August 26, 2014, following a public hearing, the County issued a resolution adopting both the LUP and LIP portions of the Santa Monica Mountains LCP, as modified by the Commission, and directing the transmittal of the approved LCP to the Commission for final certification. AR 9405, 9408.

At the Commission's meeting on October 10, 2014, the Commission's Executive Director reported the County's acceptance. AR 13120. The Commission certified the final LCP on October 10, 2014. AR 13123.

E. Analysis

Petitioners argue that the Commission did not proceed in the manner required by law by (1) failing to provide the Addendum within the seven day minimum notice period; (2) failing to provide a hearing on the substantial issues identified by Petitioners; and (3) certifying the LCP with a preempted ban on pesticides. Petitioners further argue that the Commission's certification of the LCP was not supported by substantial evidence.

1. Late Addendum

The Coastal Act expressly recognizes that "the public has a right to fully participate in decisions affecting coastal planning, conservation, and development; that achievement of sound coastal conservation and development is dependent upon public understanding and support; and that the continuing planning and implementation of programs for coastal conservation and development should include the widest opportunity for public participation." §30006. During the preparation, approval, certification, and amendment of any local coastal program, the public... shall be provided maximum opportunities to participate." § 30503. To that end, state law requires the final staff recommendation to be distributed "within a reasonable time but in no event less than 7 calendar days prior to the scheduled public hearing." 14 CCR §13532.

The Staff Report for the proposed LUP was released on March 27, 2014. AR 1532. In the Staff Report, largely recommended adopting the proposed LUP's categorical ban on new agricultural development in the Santa Monica Mountains coastal region. AR 1557-58. Petitioners and other members of the public commented, arguing against the proposed ban. AR 1985 (Farmers Coalition), 2438-40 (Petitioners), 8730 (Hogrefe). Then, on April 9, 2014, one day before the scheduled hearing, Commission staff released the Addendum, which addressed the arguments

against a new agriculture ban, recommending new Policy CO-102/LU-11 permitting new agriculture (except vineyards) if it meets slope and "organic or biodynamic farming" requirements. AR 1909.

Petitioners argue that the Addendum, not the Staff Report, was the true "final staff recommendation". The final report must be released at least seven days before the Commission's hearing. 14 CCR §13532. Once the Commission, after consultation with the County, settled on a final set of criteria under which new development would be permitted under the LUP, the public should have been given a chance to analyze the new scheme and assess its conformity with the Coastal Act. Releasing the 176-page Addendum with substantive changes just 24-hours before the Commission's hearing did not give the public maximum opportunity to participate as required by section 30503. The Commission hearing should have been continued to provide the full sevenday notice period. Pet. Op. Br. at 7-8.

This argument ignores the law. Under pertinent regulations, the Executive Director shall prepare a staff recommendation of specific findings, including a statement of facts and legal conclusions, for a proposed LCP. 14 CCR §13532. The March 27, 2014 Staff Report supporting a categorical ban on new agricultural development was the final staff recommendation meeting this criteria. Members of the public are entitled to review and comment on a staff report, and the staff shall respond to significant comments, which may be included within the staff report and shall be available at the Coastal Commission hearing for all persons in attendance. 14 CCR \$13533. The Addendum constituted the staff's response to the comments received concerning the ban on new agricultural development. The staff changed its position on the ban, and recommended the adoption of Policy CO-102/LU-11 if it meets slope and "organic or biodynamic farming" requirements. AR 1909. This staff response and recommendation met the requirements of 14 CCR section 13533, which only requires that it be "available at the hearing on the LCP...for all persons in attendance." As the Commission points out, it would have been impossible for staff to respond to comments any earlier than April 9, as Petitioners' comments were not received until April 7 for a hearing on April 10, 2014. Opp. at 9-10. The Addendum directly addressed Petitioners' complaints. Id.

The Commission relies on <u>Ross</u>, *supra*, 199 Cal.App.4th at 939. Opp. at 9-10. In that case, the staff report had been available for 13 days, and the court concluded that the public had adequate time to comment. <u>Id</u>. The court held that the addendum, issued only two days before the hearing and containing responses to public comments, recommendations for modification of the view corridors in response to public comments, and additional biological information specific to the subject property's proposed subdivision, was not subject to the notice requirement of 14 CCR section 13532. <u>Id</u>.

As the Commission asserts, <u>Ross</u> supports a conclusion that the Addendum was not subject to the seven-day notice period because it was properly made in response to comments under 14 CCR section 13533. Opp. at 9. Petitioners argue that the changes in the Addendum were not minor, unlike the changes permitted in <u>Ross</u>, and 14 CCR section 13532 does not permit the final staff recommendation to make the substantive change of a complete reversal from an agricultural ban to permitting agriculture under onerous conditions. Reply at 2.

However, 14 CCR section 13533 does not contain any restriction that the staff's responses to comments about a proposed LCP cannot propose a change, or that the proposed change must be "minor". The regulation requires only that Commission staff respond to significant environmental

points raised during evaluation of the LCP and that the response may be included in the staff report and must be available at the hearing. 14 CCR §13533. It says nothing about additional time if staff proposes substantive changes in the response to comments. <u>Ross</u>'s holding does not alter this conclusion. <u>Ross</u> held only that the addendum was not subject to the notice period of 14 CCR section 13532, and the holding was not based on a finding that the changes were minor and not significant. *See <u>Ross</u>, supra*, 199 Cal.App.4th at 939.

The parties quibble over whether the staff's recommendation change from an agricultural ban to permitting new agriculture (except vineyards) with slope and "organic or biodynamic farming" requirements is a major or minor change. *Compare* Pet. Op. Br. at 7 *with* Opp. at 10-11. Assuming that the change was substantial, the Commission correctly relies on 14 CCR section 13356, which permits a local government to amend its LUP after submission and prior to a Commission vote if the amendment is minor or, if material, has been the subject of adequate comment at the public hearing. Opp. at 10. If a material change, the Addendum met this standard because it was the subject of adequate comment at hearing. Indeed, Petitioners were able to submit a letter objecting to the Addendum's suggested modifications prior to the hearing (AR 8739), and also appeared at the hearing through counsel to object in person. AR 13046.

Petitioners weakly contend that 14 CCR section 13356 does not apply because it concerns only changes proposed by the local government (County), not Commission staff. Reply at 2. This is a meaningless distinction. The County proposed the LUP and the Commission staff issued an initial Staff Report. After consulting with the County, the Commission staff proposed the changes in the Addendum. These changes were as much authored by the County as they were by Commission staff. 14 CCR section 13356 does apply to the Addendum.

Moreover, 14 CCR section 13356 merely incorporates a lack of prejudice requirement that would otherwise exist. In other words, even if Commission staff violated a seven day notice requirement for the Addendum, the violation would not result in a legal remedy unless prejudice resulted. Petitioners cannot show that they were prejudiced by the Addendum's timing; they were able to prepare a written reply and argue against the Addendum's changes at the April 10, 2014 hearing.

In sum, the Commission was required to respond to the points raised in Petitioners' April 7, 2014 letter prior to the April 10, 2014 hearing, and did so through the issuance of the Addendum. The Addendum satisfies the procedural requirements of 14 CCR section 13533, and is not subject to the seven day notice requirement of 14 CCR section 13532. Additionally, 14 CCR section 13356 and the lack of any prejudice support the conclusion that Petitioners have no remedy. The Commission properly proceeded with the hearing on April 10, 2014.

2. The Need for a Substantial Issues Hearing

The Coastal Commission was established to review local governments' proposed LCPs for compliance with the Coastal Act. Schneider v. Cal. Coastal Comm., (2006) 140 Cal.App.4th 1339. As part of this process, the Commission must determine whether an LUP raises any "substantial issue as to conformity with Chapter 3" of the Act. §30512(a)(1). If the Commission finds no "substantial issue," the LUP will be deemed certified as submitted and the Commission must adopt findings to support its action. §30512(a)(1). Where there are "substantial issues," the Commission "substantial issues," the commission is action the matter or matters that have been identified as substantial issues,..." §30512(a)(3).

Petitioners argue that the Coastal Commission was required by section 30512(a)(2) to hold a separate hearing to address Petitioners' claims that the proposed LUP, as modified by the Addendum, raised substantial issues as to the LUP's compliance with the Coastal Act's agricultural policies, and the Commission abused its discretion by not considering those issues in a public hearing, or resolve them before certifying the LUP. Pet. Op. Br. at 8.

The Commission argues that it was not required to hold a hearing on any agricultural substantial issues raised by Petitioners because the Commission was considering the proposed LUP an amendment to the County's certified 1986 LUP. AR 3. Section 30514 governs amendments to certified LCPs, and provides that the Commission shall comply with the procedures and time limits in sections 30512 and 30513, "except that the [C]omission shall make no determination as to whether a proposed amendment raises a substantial issue as to conformity with the policies of Chapter 3." §30514(b).

Petitioners argue that section 30514(b) is explained by section 30514(e), which indicates that an "amendment of a certified local coastal program" includes, but is not limited to, "any action by a local government that authorizes the use of a parcel of land other than a use that is designated in the certified local coastal program...." §30514(e). Petitioners conclude that section 30514(b) applies when a local government wants to accommodate a change in the use of particular land parcels, not where the local government is seeking certification of its LCP. As such, section 30514(b) only applies to minor changes to a certified LCP, not its initial certification. Reply at 3-4.

This is an issue of statutory interpretation. The court must look to the language of the statute, attempting to give effect to plain meaning and seeking to avoid making any language mere surplusage. Brown v. Kelly Broadcasting Co., (1989) 48 Cal 3d 711, 724. Significance, if possible, is attributed to every word, phrase, sentence and part of an act in pursuance of the legislative purpose. Orange County Employees Assn. v. County of Orange, (1991) 234 Cal.App.3d 833, 841. The various parts of a statute must be harmonized by considering each particular clause or section in the context of the statutory framework as a whole. Lungren v. Deukmejian, (1988) 45 Cal.3d 727, 735. Id. at 735. If the statute is ambiguous, the Commission's interpretation is entitled to deference. Ross v. California Coastal Comm., *supra*, 199 Cal.App.4th at 938; Hines v. California Coastal Comm., (2010) 186 Cal.App.4th 830, 849.

Petitioners' argument is inconsistent with the plain language of section 30514. Section 30514(e) expressly states that an amendment under section 30514(b) "includes, but is not limited to," an action authorizing a new use of land. Thus, Petitioners are incorrect that Section 30514 applies only to minor changes, as section 30514(e) is broader than that. It includes not just LCP amendments for specific parcel use changes, but also an entire revision of an LCP.⁶ Section 30514(e) does not prevent the Commission from utilizing the amendment procedure set forth in section 30514(a).

The Commission was not required under the Coastal Act to hold a separate hearing on any

⁶ Section 30514(e) also operates in conjunction with section 30515, which provides that a person authorized to undertake a public works project may request a local government to amend a certified LCP if the purpose of the amendment is to meet public needs that had not been anticipated at the time the LCP was before the Commission for certification. §30515.

substantial issues alleged by Petitioners.⁷

3. Preemption of Pesticides

Petitioners argue that the Commission did not proceed in the manner required by law because it certified the LCP with a preempted ban on the use of pesticides. State law expressly preempts local governments from "prohibit[ing] or in any way attempt[ing] to regulate any matter relating to the registration, transportation, or use of pesticides." Food & Agriculture ("F&A") Code §11501.1(a). Any ordinance, law, or regulation purporting to do so is void. Id. The Commission is not authorized to require that the County exercise power that it does not have under state law. §30005.5. The County does not have the power to ban pesticide use on private property in the coastal zone, and therefore the Coastal Commission cannot give the County this power in the certified LCP. Pet. Op. Br. at 12.

F&A Code section 11501.1(a) provides:

"This division and Division 7 ... are of statewide concern and occupy the whole field of regulation regarding the registration, sale, transportation, or use of pesticides to the exclusion of all local regulation. Except as otherwise specifically provided in this code, no ordinance or regulation of local government, ... may prohibit or in any way attempt to regulate any matter relating to the registration, transportation, or use of pesticides, any of these ordinances, laws or regulations are void and of no force or effect."

See also <u>IT Corp. v. Solano County Board of Supervisors</u>, (1991) 1 Ca1.4th 81, 93, n. 9 (F&A Code scheme regulating use of "economic poisons" (herbicides) occupies whole field to exclusion of local regulation, and no local ordinance or regulation may prohibit or regulate their use in any way).

The Commission argues that F&A Code section 11501.1 is inapplicable because its language restricts local governments and the Commission implemented state law in certifying the LCP. Despite the fact that the LCP was submitted by a local government, the County acts only pursuant to authority delegated by the Commission. In submitting the LCP, the County was acting pursuant to authority delegated by the Commission and it (the Commission) has the ultimate authority to ensure that coastal development conforms to the policies embodied in the Coastal Act. Pratt Construction Co., Inc. v. California Coastal Commission, (2008) 162 Cal.App.4th 1068, 1075. Opp. at 13.

The problem with the Commission's simple delegation argument is that runs expressly counter to section 30005.5, which prohibits the Commission from requiring a local government to exercise power that it does not already have under state law. §30005.5. The County does not have the legal power to regulate pesticides. Thus, although the Commission has the power to modify the LCP, the Commission may not delegate this power to the County to justify a pesticide ban in

⁷ Petitioners do not argue that section 30514(b) applies only to amendments to a certified LCP, and the County only had a certified LUP at the time of the April 10, 2014 Commission hearing. In any event, the Commission's interpretation of section 30514(b)'s procedure as applying to an amendment to a certified LUP is entitled to deference.

the Santa Monica Mountains coastal zone in violation of section 30005.5.

The Commission also argues that F&A Code section 11501.1 does not prevent it from including a pesticide ban in the Santa Monica Mountains LCP because the statute expressly provides that it does not limit the authority of a state agency to enforce or administer any law that the agency or department is authorized to enforce or administer. F&A Code §11501.1(c). The Commission is expressly authorized by the Coastal Act to regulate land use in the coastal zone, and to ensure that coastal development conforms to the policies of the Coastal Act. §30330. In order to carry out this function, the Commission is authorized to impose modifications on the specific land use restrictions submitted by local governments to ensure that they comply with the Coastal Act. §§ 30511, 30512. The Coastal Act requires that the biological productivity and quality of coastal waters be maintained. §30231. The Commission found that the use of pesticides in the Santa Monica Mountains coastal region would adversely impact the biological productivity of coastal waters. AR 1910. Thus, the Commission asserts it was authorized to impose the pesticide restriction as part of certifying the LCP. Opp. at 14.

This argument fares better. The Commission does not have the power to delegate to the County implementation of a ban on pesticide use in the coastal zone (F&A Code §11501.1, §30005.5), unless it does so as a function of its administration of the Coastal Act. The Commission is authorized to administer the Coastal Act, and to regulate land use in the coastal zone. §30330. The Commission may impose land use restrictions to ensure application of Chapter 3 policies. §30512.2. The Commission found that a ban on the use of pesticides in the Santa Monica Mountains coastal region is necessary to avoid impacting the biological productivity and quality of coastal waters. AR 1910. In banning pesticide use in the certified LCP, the Commission is not compelling the County to exercise power that it does not have under state law. Instead, the Commission is requiring a pesticide ban for the County's LCP, to be administered by the County, because the Commission has the authority to do so as part of its administration of the Coastal Act. F&A Code section 11501.1(c) permits the Commission to require the County to conform to this ban in administering the LCP.

The Commission did not fail to proceed in the manner required by law by certifying the LCP with a ban on pesticides.

4. Prime Farmland and Lands Suitable for Agricultural Use

Petitioners argue that the Commission's findings that the region contains no Prime Agricultural lands, and that non-prime land is not feasible for agricultural use, are not supported by substantial evidence. Pet. Op. Br. at 13-16.

a. Public Policy Protection of Agricultural Land

The Legislature has repeatedly noted that the preservation of agricultural land uses in California is an important public policy. §10201(c) ("Agricultural lands near urban areas that are maintained in productive agricultural use are a significant part of California's agricultural heritage.... Conserving these lands is necessary due to increasing development pressures and the effects of urbanization on farmlands close to cities."); Govt. Code. §51220(a) ("...the preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources, and is necessary not only to the maintenance of the agricultural economy of the state, but also for the assurance of adequate, healthful and nutritious food for future

residents of this state and nation."); Civ. Code §815 ("...the preservation of land in its natural, scenic, agricultural, historical, forested, or open-space condition is among the most important environmental assets of California.").

The Coastal Act expressly finds that "agricultural lands located within the coastal zone contribute substantially to the state and national food supply and are a vital part of the state's economy." §31050. The Act further declares that agricultural lands in the coastal zone must be "protected from intrusion of nonagricultural uses, except where conversion to urban or other uses is in the long-term public interest." §§ 31050-51.

b. Prime Agricultural Land

The Coastal Act's Chapter 3 policies require that "[t]he maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas' agricultural economy...." \$30241. The Coastal Act defines "prime agricultural land" as land meeting the criteria of Government Code section 51201(c)(1)-(4). \$30113. The four prongs are as follows:

"(1) All land that qualifies for rating as class I or class II in the Natural Resources Conservation Service land use capability classifications;

(2) Land which qualifies for rating 80 through 100 in the Stone Index Rating;

(3) Land which supports livestock used for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture; and

(4) Land planted with fruit or nut bearing trees, vines, bushes, or crops which have a nonbearing period of less than five years and which will normally yield at least \$200 per acre annually from the production of unprocessed agricultural plant production." Govt. Code §51201(c).

The Commission acknowledged that sections 30241 requires that the maximum amount of prime agricultural land be maintained in production. AR 1618. The Commission found that prime agricultural land represented less than 2% of the entire plan area, and that the majority of these soils were contained within existing public parkland areas or on an existing golf course. AR 1618. The only areas meeting the definition of prime farmland that were in agricultural production were two very limited vineyard areas encompassing a very small percentage of the plan area. AR 1619. Given that the limited prime agricultural land within the plan area was mostly either public parkland or developed with existing uses and not in agricultural production the Commission found that section 30241's mandate to maintain the maximum amount of prime agricultural land in agricultural production did not apply to the Santa Monica Mountains coastal zone area. AR 1620.

Petitioners argue that this finding was conclusory and incorrect based on Petitioners' knowledge of "at least one property within Coastal Zone containing a deed restriction indicating the presence of 'prime agricultural land' on that property." Pet. Op. Br. at 14. Petitioners made this statement in their April 9, 2014 letter, but was unsupported by any identification of the property, property owner, or copy of the deed restriction. *See* AR 2440.

In contrast, the Commission Staff Report analyzed the four prongs of the Government Code section 51201(c)(1)-(4) definition of prime agricultural land. For the first prong, the Commission found that there were no NRCS Class I soils. For the second prong, the Commission found very few NRCS Class II and 80-100 Storie Index rated soils in the plan area. AR 1618. Of those soils, none were currently in existing agricultural production. AR 1618. These soils are the basis for the Commission's determination that less than two percent of the plan area consisted of prime land. AR 1618. For the third prong, the Commission found not active cattle ranches or agricultural grazing grounds. AR 1619. For the fourth prong, the Commission found that steep topography and lack of suitable soils historically prevented agricultural use. There were two existing vineyards that met the productivity requirement of the fourth prong, and those vineyards were protected and allowed to continue under Policy CO-102. AR 1619, 1909.

At least one of the studies submitted by Petitioners in support of their April 9, 2014 letter supports the Commission's finding that only 2% of the plan area is prime agricultural land. The Soil Survey concluded that about 3,470 acres, or less than 2% of the survey area, would meet the requirements for prime farmland if an adequate and dependable supply of irrigation water were available. AR 7568. Additionally, the Department of Conservation maps show that all of the "prime farmland" within the plan area is contained within the King Gillette Ranch, which is publically owned. AR 2126-27. All other "prime farmland" shown on the map is outside the Coastal Zone. AR 2126.

The Commission's finding that section 30241's mandate to maintain the maximum amount of prime agricultural land in agricultural production did not apply to the Santa Monica Mountains coastal zone area is supported by all of the evidence in the record, not just substantial evidence.

c. Land Suitable for Agricultural Use

In addition to prime agricultural land, the Coastal Act also protects lands suitable for agricultural use:

"All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with [s]ection 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands." §30242.⁸

Petitioners argue that the Commission failed to support its findings that the majority of the land in the Santa Monica Mountains coastal zone is unsuitable for agricultural uses. Pet. Op. Br. at 14. The Commission found that "the confluence of factors – including steep topography, poor soils, scenic considerations, sensitive waterlands, abundant ESHA, and lot size limitations – render the vast majority of the land in the Santa Monica Mountains unsuitable for agricultural uses." AR 1537. The Commission also found that there are no land in the plan area where agriculture is even

⁸ "The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal dependent industry." §30222.

possible other than the "one or two areas that are already in active agricultural production." AR 1620. Petitioners describe these findings as unsupported by any information regarding the amount of land within the plan area that is currently under cultivation, or explain why no other land is suitable for agriculture. Petitioners argue that the Commission's findings ignore evidence that crop-based agriculture, including vineyards, already exist in the plan area. AR 8960-62. Pet. Op. Br. at 14-15.

Petitioners point to a memorandum by Koutnik, an expert in biology and environmental planning, which states that the Staff Report's dismissal of agricultural uses based on the soil type and slope does not correspond to current successful agricultural operations in the area. AR 7267. With modern agricultural practices to address water quality and erosion issues, various agricultural uses may be successful. To limit agricultural uses to those based on soil types or recent or current operation while prohibiting such uses for properties that have been historically used for such practices is a substantial change. AR 7267. Petitioners also provided a statement by Hogrefe, a consulting geologist, who opined that the vast majority of sites across the Santa Monica Mountains do contain good to excellent soil conditions for agricultural purposes. AR 8730. Although the land does not meet the criteria for prime agricultural land, Petitioners assert that it is still suitable for agriculture, and that agriculture is feasible in those areas. Pet. Op. Br. at 14-15.

As the Commission correctly points out, there is ample evidence that the Santa Monica Mountains coastal region is replete with steep topography, poor soils, abundant ESHA, sensitive watersheds, scenic considerations, and lot size limitations that render the vast majority of the land unusable for agriculture. Opp. at 18 (citations omitted). The Staff Report discussed the various factors that made the plan area generally unsuitable for agriculture. AR 1618-23. The Staff Report discussed the current state of agricultural uses in the plan area, finding that the two commercially viable vineyards only encompass about 50 acres, and the remaining vineyards are less than 2 acres each. AR 1619. The Biota Report discussed the steep slopes (AR 587), lack of water (AR 600) and abundant ESHA factors (AR 631-38) in the plan area. The Significant Watersheds Report describes the large number of watersheds in the plan area, all of which lead to the ocean. AR 727. The Significant Ridgelines Report discusses the steep topography and scenic considerations. AR 751-62. Thus, while there is not a map showing vineyard locations, there is substantial evidence that there are only two commercial vineyards and a number of hobby vineyards that are too small to be commercially viable. There is also evidence that the rest of the plan area is simply not suitable for agriculture.

Because the Commission found the remaining land not suitable, it did not need to address whether that land was feasible for renewed or continued agricultural use. Nor do Petitioners' experts demonstrate that the land in the plan area is actually suitable or feasible for agricultural uses. "Feasible" is defined as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." §30108. Koutnick only states that, despite the rocky soil and steep slopes, agricultural uses "may be successful." AR 7267. Hogrefe similarly states that the soils and topography would "allow" agricultural uses. AR 8734. The mere possibility of successful agricultural use is not sufficient to find that land is suitable for agriculture, or that agricultural uses are feasible. §30108. *See* Opp. at 19.

Moreover, feasibility requires an evaluation of environmental, social, and economic factors. The record contains evidence that agricultural uses would negatively impact the Santa

Monica Mountains plan area. The Staff Report found that the combination of the relatively steep mountain topography in the plan area, vegetation removal, increased soil exposure, and chemical/fertilizer and irrigation requirements from crop–based agriculture can result in significant impacts to biological resources and water quality from increased erosion, sedimentation of streams, pollution, slope instability, and loss of habitat. AR 1623. New or expanded agricultural uses would further strain already limited water availability. AR 1623. Heal the Bay submitted a comment stating that vineyards in the plan area use excessive water, and the sediment from vineyards on steep slopes impacts pools of water that form habitats for amphibian species. AR 1936. These potential adverse effects further support the Commission's decision that agricultural uses were not suitable or feasible in the plan area.

Added to this is the fact that very little of the Santa Monica Mountains plan area can be used for anything other than ESHA. The Biota Report acknowledged that, for the past decade, the Commission has delineated nearly all undeveloped land in the Santa Monica Mountains coastal zone as ESHA. AR 583. After performing a comprehensive analysis of the biodiversity in the Santa Monica Mountains, the Biota Report determined that only "roughly 6,000 acres... in the Study Area satisfy the ESHA criteria in Section 30107.5." AR 583. In addition to the ESHA designation, the Biota Report proposed two additional resource-protection designations: (1) "stewardship habitat", meaning areas that are not ESHA but still provide high ecological value; and (2) "restoration habitat", meaning habitat that likely satisfied ESHA criteria in the past, but is periodically disturbed for authorized or mandated activities such as fire and flood control. AR 583. Petitioners ignore the requirement for ESHA and ESHA-related protection, but feasibility requires consideration of these factors. Even though the Coastal Act requires protection and protection of ESHA, the conflict must be resolved in favor protecting coastal resources. §30007.5.

Finally, Petitioners' argument ignores the language of section 30242 that lands suitable for agricultural use shall not be <u>converted</u> to nonagricultural uses absent certain conditions. This plain language means that suitable lands that are feasible for "continued or renewed agricultural use" cannot be used for another purpose. It does not mean that all land suitable for agriculture must be used for agriculture. Petitioners make no showing that any lands recently or historically used for agriculture have been converted to a non-agricultural use. It is not enough for Hogrefe to say that the Santa Monica Mountains contain soil sites that <u>could</u> be used for agriculture, or for Koutnik to say that the Santa Monica Mountains has been <u>zoned</u> for agricultural use for nearly 100 years, without evidence that any property has been historically used for agriculture during that period. AR 7266-67. The LCP does protect existing agricultural uses (AR 1620), and also permits new agriculture restricted to protect coastal resources. There simply is no evidence that the LCP converts to a non-agricultural use any land that actually has been used for agricultural anytime within the past 100 years.

Petitioners argue that the Coastal Act protects agricultural land from intrusion. §31051. Petitioners also cite the Williamson Act which found that "preservation of the maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources...." Petitioners contend that these provisions include a protection against taking agricultural land out of potential production. Reply at 5. If Petitioners contend that land zoned for agriculture but never used for that purpose is protected, that argument is inconsistent with section 30242's requirement of the conversion to non-agricultural use from a "continued or renewed agricultural use".

Substantial evidence supports the Commission's findings that a large percentage of the plan area is not suitable for agricultural use and not subject to section 30242's restriction on the conversion of lands suitable for agricultural use.

5. Restriction on Vineyards

The LCP permits continued agricultural use of the existing prime agricultural land and of the small amount of existing land that is suitable for agricultural use. AR 1620. The Commission, however, imposed restrictions on new, and the expansion of existing, agriculture to protect marine life, water quality, ESHA, and scenic considerations in revised Policy CO-102/LU-11. AR 1909. The Commission also prohibited new vineyards. <u>Id</u>.

Petitioners that the Commission's decision to exclude vineyards from the revised Policy CO-102/LU-11 is not supported by substantial evidence. The Addendum based its ban on vineyard on water scarcity and did not cite to any evidence in support of the exclusion of vineyards. AR 1906-17. Nor do any of the studies in support of the LCP relate to agriculture generally, or vineyards in particular. Petitioners argue that the ban on vineyards is unsupported by anything more than mere conclusions and its findings are merely a *post-hoc* rationalization. Pet. Op. Br. at 17-18.

As Commission correctly points out, the fact that the studies in the LCP's Technical Index do not specifically address agriculture does not mean that the Commission may not rely on the data from those studies in restricting agriculture use in the LCP. Opp. at 21. The Commission is entitled to rely on any evidence before it in making its findings. This includes evidence and analysis by its staff. See Coastal Southwest Dev. Corp. v. California Coastal Comm., (1976) 55 Cal.App.3d 525, 535-36 (staff report orally presented at hearing constitutes substantial evidence).

The Addendum stated that new vineyards would be prohibited because vineyards require the removal of all native vegetation and the soils must be scarified, which results in increased erosion and sedimentation. AR 1910. In addition, vineyards require the use of pesticides, which adversely affect coast streams and riparian habitat. AR 1910. Vineyards require large amounts of water, which can adversely affect ground water and streams. AR 1910. Grapevines can be an invasive type of vegetation in riparian areas. AR 1911. Finally, grapevines require trellises, which can adversely impact scenic views. AR 1911.

As already discussed, the Biota Report provides evidence of steep slopes, abundant ESHA, and water scarcity. AR 587 (80% of the land in the plan area is on slopes greater than 25%); 631-38 (describing the abundant ESHA found in the plan area); 600 ("scarce water in an arid environment"). The Significant Watersheds study and the Significant Ridgelines study provide support for the Commission's findings of sensitive watersheds and scenic considerations. AR 725-34, 751-57. The Staff Report contains specific findings on water scarcity, stating that water availability is limited for irrigation purposes, making additional cultivation of vineyards extremely difficult. AR 1620.

One commenter, Heal the Bay, specifically identified vineyards as being harmful to sensitive habitats due to water use, sediment inputs, and polluted runoff. AR 1936. Heal the Bay has directly observed the impacts of nearby vineyards on amphibian habitats in the Santa Monica Mountains. AR 1936. Waters downstream from vineyards show increased nutrient levels as compared to equivalent sites in open space. AR 1938. These nutrients can negatively impact the

biological health of the streams. AR 1938.

Although the Petitioners are correct that no technical study in the record discusses the impact of vineyards and whether new vineyards should be banned in the LCP, the Commission was nonetheless entitled to rely on all of this evidence in concluding that vineyards present a particular danger to coastal resources. It is immaterial whether the finding that the plan area has a water shortage comes from the Biota Report or from an agriculture-specific report. The Commission need only demonstrate that there is evidence in the record sufficient to demonstrate that a reasonable person would reach the same conclusion as it did.

The Commission's decision to prevent any new vineyards within the plan area is supported by substantial evidence.

6. The LIP

Finally, the Petitioners argue that the Commission erred in certifying the LUP because it contained the phrase "organic or biodynamic farming practices" which was not defined. Specifically, the Addendum's revision to Policy CO-102/LU-11 provides that new agricultural uses are limited to those that follow organic or biodynamic farming practices. AR 1909. However, the Addendum does not define these terms and provides no rationale why such practices should be required. AR 1906-18. The Commission then admitted that these terms were undefined in the LUP, and provided definitions in the LIP. AR 11093. Petitioners argue that the Commission lacked the necessary information on the record to certify the LUP on April 10, 2014. Pet. Op. Br. at 18-19.

An LUP is the relevant portion of a local government's general plan or local coastal element, and must be "sufficiently detailed to indicate the kinds, location, and intensity of land uses, the applicable resource protection and development policies...." §30108.5. An LUP need not spell out or define in detail every term used or every specific method of implementation. This is left to the LIP, which is made up of the "detailed zoning or implementing ordinances designed to carry out the more general policies of the approved Land Use Plan." AR 11067.

The Commission argues that the LUP was sufficiently detailed because the Addendum stated that organic and biodynamic farming practices are required to prevent the use of pesticides, herbicides, and fertilizers, which can adversely impact the biological productivity of coastal waters and human health. AR 1910. Thus, the Commission claims that the Addendum defines organic and biodynamic farming as farming practices that do not use pesticides. Opp. at 23. The LIP merely elaborates on this definition by defining "organic farming" as "an environmentally sustainable form of agriculture that relies on natural sources of nutrients (compost, cover crops, and manure) and natural sources of crop, weed, and pest control without the use of synthetic substances." AR 11093. "Biodynamic farming" is defined as a "subset of organic farming" that reflects a "unique holistic, ecosystem approach to crop production." AR 11093. Thus, the Commission contends that the LUP properly filled up the detail of the LUP's meaning of these terms.

There is little doubt that Petitioners are correct that the LUP's imposition of "Organic or Biodynamic farming practices" on new private and commercial agricultural uses of plan area is vague. "Organic" is a term commonly bandied about in the media and in advertising to such an extent that it is almost meaningless. <u>All</u> farming is, by definition, organic. Farmers grow crops, and crops are "organic." The term "biodynamic farming" also sounds like New Age babble, and at a minimum is not self-defined. There is truth to Petitioners' complaint that these requirements smell of New Age pseudoscience and astrology. See AR 11977. And they are certainly vague.

The LIP defines "organic farming" as an "environmentally sustainable form of agriculture" (again more babble), but also explaining that this means farming that relies on compost and manure rather than "synthetic substances" (pesticides, herbicides, and chemical fertilizers). AR 11093. Although it could have been clearer, this description of organic farming essentially is "farming without pesticides, herbicides, or chemical fertilizers", and Petitioners do not argue that it is vague.

The LIP defines "biodynamic farming as a subset of organic farming involving a "holistic approach to crop production, in which the moon, planets, "animal husbandry and unique soil preparation practices are incorporated." AR 11093. This definition remains obviously vague. However, the LIP also states that Section 22.44.1300 of Attachment A addresses basic farming measures that should be followed that address the use of compost/manure, pest management, irrigation and water conservation, tillage and cultivation, waste management, and water quality protection measures. AR 11093-94. The court does not have Section 22.44.1300 before it, but it appears to address specific requirements for farming practice and not suffer from any vagueness. Petitioners do not disagree, and only argue that this definition should have been defined in the LUP. Pet. Op. Br. at 18-19. As the Commission argues, the LUP is a general plan and can be supplemented with more detail by the LIP. *See* Reply at 8. The LIP cures the vagueness defects (in the LUP, and it was proper to do so.

Petitioners also argue that, even if these terms are properly defined in the LIP, the Addendum is insufficient because it does not explain why the practices are necessary. Reply at 9. The Addendum provides that small-scale agricultural operations (except vineyards) can avoid impacts to biological resources and water quality if limited to slopes of 3:1 or less in H2 and H3 habitat and organic or biodynamic farming practices are followed. AR 1910. These practices are necessary to prevent the use of pesticides, herbicides, and fertilizers, which can affect the animal life in coastal waters and human health. AR 1910. This is a sufficient explanation for the requirement of organic farming, and biodynamic farming is merely a subset of organic farming.

The Commission did not err in approving the LUP prior to the development of the detailed definitions of organic and biodynamic farming in the LIP.

F. Conclusion

The petition for writ of mandate is denied. The Commission's counsel is ordered to prepare a proposed judgment and a writ, serve it on Respondent's counsel for approval as to form, wait ten days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re:/judgment is set for September 26, 2017 at 1:30 p.m.

wtont





January 14, 2016

Bonnie Blue Planning Director City of Malibu 23825 Stuart Ranch Road Malibu, CA 92605

Subject: Local Coastal Program Amendment No. 14-001 (Anticoagulant Rodenticides)

Dear Ms. Blue:

We have reviewed the January 8, 2016 staff report regarding the subject amendment. Coastal Commission staff supports the addition of LCP policies and provisions prohibiting the use of anticoagulant types of rodenticides in order to protect ESHA and wildlife.

As you are aware, anticoagulant rodenticides can cause grave injury and death to wildlife that ingest rodents that have consumed such rodenticides. In order to avoid these impacts, the Coastal Commission has consistently prohibited the use of anticoagulant rodenticides as a condition of coastal development permits approved in the Santa Monica Mountains. Additionally, policies and provisions prohibiting the use of anticoagulant rodenticides were included as part of the Los Angeles County Santa Monica Mountains Local Coastal Program certified in 2014. These policies and provisions are very important to ensure that environmentally sensitive habitat areas are protected against any significant disruption of habitat values, consistent with Section 30240 of the Coastal Act.

We also agree with the conclusions of the Los Angeles County Counsel (letter dated September 28, 2015) that the certification of the Santa Monica Mountains LCP with policies prohibiting anticoagulant rodenticides was legally proper. Specifically, the Food and Agriculture Code does not limit the authority of state agencies to administer other state laws—e.g., the Coastal Act. § 11501.1(c). See also *Ebbetts Pass Forest Watch v. California Dept. of Forestry And Fire Protection* (2008) 43 Cal.4th 936, 957 (state agency must analyze and mitigate the effects of pesticide use when conducting CEQA review, notwithstanding that pesticides are already regulated by the Department of Pesticide Regulation). Although LCPs and LCP amendments are adopted by local jurisdictions, they must be approved by the Coastal Commission, which is required to find that they conform to the Coastal Act. Accordingly, because LCPs and LCP amendments embody state law and must be certified by the Coastal Commission, we agree that local jurisdictions may adopt LCPs and LCP amendments that addresses anticoagulant rodenticides. See *Charles A. Pratt Const. Co., Inc. v. California Coastal Comm'n* (2008) 162 Cal.App.4th 1068, 1075 (LCPs "are not solely a matter of local law, but embody state policy").

Bonnie Blue, Planning Director January 14, 2016 Page 2

We appreciate the City's consideration of our comments. Please feel free to contact me if you have any questions.

Sincerely,

Barbara J. Carey /

District Manager