

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST DISTRICT
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800



Th9b

City of Malibu LCP Amendment

LCP-4-MAL-19-0164-3

May 13, 2021

Exhibits

Table of Contents

Exhibit 1 – City of Malibu Resolution No. 19-54

Exhibit 2 – Public Comment Letters

RESOLUTION NO. 19-54

A RESOLUTION OF THE CITY OF MALIBU DETERMINING LOCAL COASTAL PROGRAM AMENDMENT NO. 14-001 IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND AMENDING THE LOCAL COASTAL PROGRAM LAND USE PLAN TO MODIFY POLICY 3.18 IN CHAPTER 3 PERTAINING TO A CITYWIDE PROHIBITION OF ANTICOAGULANT RODENTICIDES (CITYWIDE)

The City Council of the City of Malibu does hereby find, order and resolve as follows:

SECTION 1. Recitals.

A. On July 8, 2013, the City Council adopted Resolution No. 13-28 urging businesses in Malibu to no longer use or sell anticoagulant rodenticides and all property owners to cease the purchase of and use of these products, and committing the City of Malibu not to use them in City-owned parks and facilities.

B. On December 8, 2014, in compliance with Local Coastal Program (LCP) Local Implementation Plan (LIP) Section 19.2.1, the City Council adopted Resolution No. 14-73 to initiate a Local Coastal Program Amendment (LCPA) to consider changes to the LCP pertaining to a citywide prohibition on anticoagulant rodenticides for development subject to a Coastal Development Permit.

C. The Malibu Zoning Ordinance Revisions and Code Enforcement Subcommittee (ZORACES) met on August 11, 2015, and on September 21, 2015 to discuss the regulatory context in which the use of anticoagulant rodenticides may be regulated.

D. On November 4, 2015, a Notice of Planning Commission Public Hearing and Notice of Availability was published in a newspaper of general circulation within the City of Malibu and was mailed to all interested parties.

E. On January 19, 2016 and February 16, 2016, the Planning Commission held public hearings and adopted Resolution No. 16-23 recommending the City Council approve LCPA No. 14-001, amending the LCP with provisions to prohibit the use of anticoagulant rodenticides, take additional actions to promote rodent control methods that do not involve the use of poisons, and lobby the California Legislature to either eliminate local preemption or ban use of anticoagulant rodenticides statewide.

F. On May 29, 2018, the City Council authorized Councilmember Rosenthal to request that the League of California Cities Environmental Quality Policy Committee consider adding the potential banning of pesticides, herbicides, rodenticides and insecticides throughout California as a priority issue and directed staff to proceed with a LCPA regarding the use of pesticides, herbicides, rodenticides and insecticides.

G. On March 25, 2019, the City Council authorized the Mayor to send a letter in support of AB 1788, a bill that would expand current regulations prohibiting the use of pesticides containing one or more anticoagulants to the entire State, including State-owned property, unless the Department of Public Health determines there is a public health emergency or California Environmental Protection Agency determines there is an environmental emergency.

H. On June 24, 2019 the City Council approved an update to the City's Earth Friendly Management Policy. The policy governs pest management on City-owned, managed or leased property and prohibits all poisons, including anticoagulant rodenticides.

I. On November 14, 2019, a Notice of Public Hearing and Notice of Availability of LCP Documents for LCPA No. 14-001 was published in a newspaper of general circulation within the City of Malibu.

J. On December 9, 2019, the City Council held a duly noticed public hearing on LCPA No. 14-001, considered the recommendation by the Planning Commission, reviewed and considered written reports, public testimony, and related information in the record.

SECTION 2. Environmental Review.

Pursuant to Public Resources Code Section 21080.9, the California Environmental Quality Act (CEQA) does not apply to activities and approvals by the City as necessary for the preparation and adoption of an LCPA and therefore, does not apply to this application. This application is for an amendment to the LCP, which must be certified by the California Coastal Commission (CCC) before it takes effect

SECTION 3. Local Coastal Program Amendment Findings.

Based on evidence in the whole record, the City Council hereby finds that the proposed LCPA No. 14-001 meets the requirements of and is in conformance with the policies and requirements of Chapter 3 of the California Coastal Act as follows:

1. One of the main objectives of the Coastal Act is the preservation, protection, and enhancement of coastal resources, including land and marine habitats, and water quality. Chapter 3 of the Coastal Act states that environmentally sensitive habitat areas shall be protected against disruption of habitat values and that development should be designed to prevent impacts and be compatible with the continuance of those habitats. The use of pesticides can have a negative effect on habitat values by impacting the viability of plant and animal species in the City. Preserving and enhancing plant and animal species throughout the City will help ensure ESHA habitats are protected and enhanced.

2. LCP Land Use Plan (LUP) Policy 3.18 currently states that "[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, except where necessary to protect or enhance the habitat itself, such as eradication of invasive plant species, or habitat restoration.” The LCPA will amend Policy 3.18 to expand the list of poisons that can degraded biological resources by adding rodenticides and making the prohibition against pesticides citywide.

3. The language included in the LCPA fulfills and promotes the objectives of the Coastal Act by ensuring that toxic chemical substances that degrade coastal resources are prohibited within the City of Malibu’s jurisdiction. The LCPA is protective of wildlife and riparian habitat, marine resources, and water quality. Therefore, the LCPA meets the requirements of, and is in conformance with the goals, objectives and purposes of the LCP.

SECTION 4. Local Coastal Program Amendment No. 14-001.

LCPA No. 14-001 includes the following amendment to Policy 3.18 in LUP Chapter 3 (Marine and Land Resources):

A. Amend LUP Chapter 3, Section C (Land Use Policies), Policy 3.18 to read as follows:

3.18 The use of pesticides, including insecticides, herbicides, rodenticides or any toxic chemical substance which has the potential to significantly degrade biological resources shall be prohibited throughout the City of Malibu. The eradication of invasive plant species or habitat restoration shall consider first the use of non-chemical methods for prevention and management such as physical, mechanical, cultural, and biological controls. Herbicides may be selected only after all other non-chemical methods have been exhausted. Herbicides shall be restricted to the least toxic product and method, and to the maximum extent feasible, shall be biodegradable, derived from natural sources, and use for a limited time.

SECTION 5. Approval.

Subject to the contingency set forth in Section 8, the City Council hereby adopts LCPA No. 14-001, amending the LCP.

SECTION 6. Submittal to California Coastal Commission.

The City Council hereby directs staff to submit LCPA No. 14-001 to the CCC for certification, in conformance with the submittal requirements specified in California Code of Regulations, Title 14, Division 5.5., Chapter 8, Subchapter 2, Article 7 and Chapter 6, Article 2 and Code of Regulations section 13551, et. seq.

SECTION 7. Effectiveness.

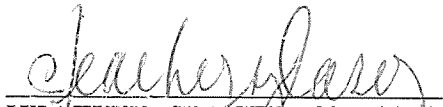
The LCP amendment approved in this Resolution shall become effective only upon its certification by the CCC.

SECTION 8. The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 9th day of December 2019.


KAREN FARRER, Mayor

ATTEST:


HEATHER GLASER, City Clerk
(seal)

Date: December 9, 2019

APPROVED AS TO FORM:


CHRISTI HUGIN, City Attorney

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 19-54 was passed and adopted by the City Council of the City of Malibu at the regular meeting thereof held on the 9th day of December 2019 by the following vote:

AYES: 5 Councilmembers: Mullen, Peak, Wagner, Pierson, Farrer
NOES: 0
ABSTAIN: 0
ABSENT: 0



HEATHER GLASER, City Clerk
(seal)

Venegas, Denise@Coastal

From: Poison Free Malibu <poisonfreemalibu@gmail.com>
Sent: Wednesday, February 17, 2021 9:32 AM
To: Venegas, Denise@Coastal; Carey, Barbara@Coastal; Christensen, Deanna@Coastal
Cc: Richard Mollica; Mikke Pierson; Patt Healy; John Mazza
Subject: Summary of support for general pesticide bans in LCPs
Attachments: LCP Pesticide Amendment summary.docx; California Att General Brief to Mountainlands Petition.pdf; Chalfant Ruling red.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Hi Denise, Barbara, and Deanna,

Here is a summary of our case for pesticide bans in LCPs, not just in new CDPs - *LCP Pesticide Amendment summary.docx* with two documents mentioned also attached.

A big mystery for us is that this **WAS actually challenged in court**, and the Coastal Commission **WON** in 2017!

So why is Coastal staff ignoring this, backtracking, and not fulfilling the Coastal Act requirement to protect the environment? Please read and explain this to us.

We are now working on scheduling the telecon as you suggested, hopefully tomorrow.

Thank you,
Joel
Poison Free Malibu

LCP Pesticide Amendment summary
February 17, 2021
Poison Free Malibu

There is strong support for pesticide bans in the Coastal Zone with no reference to Coastal Development Permits.

Main topics are indicated by the “•” bullets.

Blue text is for quotations.

The four points made here and detailed below are:

- The Coastal Commission has full power to regulate pesticides with LCPs. There is **no conflict** with other pesticide regulations or the Department of Pesticide Regulation.
- The pesticide prohibitions in the Los Angeles County Santa Monica Mountains LCP apply **throughout the unincorporated Coastal Zone** and are **NOT** restricted to landscaping permits.
- The California Attorney General’s office ruled that **LCPs with pesticide regulations can be necessary, with no restriction or mention of CDPs**. This directly contradicts the Department of Pesticide Regulation’s view.
- Superior Court Judge Chalfant ruled that **pesticide bans can be appropriate and necessary**. No reference to CDPs.

Two documents are referred to and attached –

California Att General Brief to Mountainlands Petition.pdf
Chalfant ruling.pdf

IN DETAIL

- The law preventing cities and counties from regulating pesticides explicitly exempts ALL state agencies. There is **no conflict** between the Coastal Commission and the Department of Pesticide Regulation or any other pesticide regulation.

Here is the relevant language from California Code, Food and Agricultural Code FAC § 11501.1 referring to the ban on localities from regulating pesticides **on their own**:

(c) Neither this division nor Division 7 (commencing with Section 12501) is a limitation on the authority of a state agency or department to enforce or administer any law that the agency or department is authorized or required to enforce or administer.

The Department of Pesticide Regulation has its job to do and the Coastal Commission must follow its mandate in regard to protecting wildlife, water quality, and the environment.

- The pesticide prohibitions in the Los Angeles County Santa Monica Mountains LCP are NOT restricted to landscaping. They cover the whole area and both existing and new development. CDPs are not mentioned.

The LA County pesticide policy is in three places in the LCP documents.
The three places are as follows:

1) Local Implementation Program. 22.44.1240 Vegetation Management and Landscaping
B. Landscaping. These provisions, along with those found in Section 22.44.1800 et seq. shall apply to new developments and to existing developments in which landscaping is proposed or required.
13. The use of insecticides, herbicides, anti-coagulant rodenticides or any toxic chemical substance which has the potential to significantly degrade biological resources in the Santa Monica Mountains shall be prohibited, ...

Note the explicit mention of EXISTING development. This is indication right there that existing development can and should be covered. Yes, it is in reference to landscaping wherever it is required. It is very appropriate to put it in the landscaping section, but there is no indication it is limited to landscaping.

2) Local Implementation Program. 22.44.1910 Land Planning and Development Standards
H. Chemicals and Mosquito Abatement.
1. The use of insecticides, herbicides, anti-coagulant rodenticides, and any other toxic chemical substance which has the potential to significantly degrade biological resources in the Coastal Zone, shall be prohibited, except where necessary to protect or enhance the habitat itself, ...

This is another section which has nothing to do with new development, CDPs, or landscaping. Chemicals and Mosquito abatement is an ongoing maintenance process, obviously including existing developed properties. It is a blanket ban EVERYWHERE. Insecticides, herbicides, anticoagulant rodenticides and other toxic chemicals cannot be used for pest control maintenance. Couldn't be clearer from this section.

3) Land Use Plan. Biological Resources Goals and Policies
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, ...

Again, no mention of CDPs or landscaping. It is for EVERYWHERE.

- The California Attorney General's office determined categorically that the Department of Pesticide Regulation's view that cities cannot regulate pesticides in LCPs is wrong. See pages 18-19 of [*California Att General Brief to Mountainlands Petition.pdf*](#) attached. The "code section" discussed is the same law cited by the Department of Pesticide Regulation that restricts cities on their own from regulating pesticides, Food and Agricultural Code FAC § 11501.1:

This code section is inapplicable on its face, as it is a restriction on local governments, and here, the Commission - a state agency- was implementing a state law in certifying the LCP. Even though the LCP was submitted by a local government, the County acted only pursuant to

"authority ... delegated by the Commission." (*Pratt Construction Co., supra*, 162, Cal.App.4th at p. 1075.) "The Commission has the ultimate authority to ensure that coastal development conforms to the policies embodied in the state's Coastal Act." (*Ibid.*) Therefore, this code section restricting local government action does not apply here.

Also, in the same section –

The Commission has express authority under the Coastal Act to regulate land use in the coastal zone and ensure coastal development conforms to the policies of the Coastal Act. (Pub. Resources Code, § 30330; *Pratt Construction Co., supra*, 162 Cal.App.4th at pp. 1075-1076.) To carry this out, it has express authority to impose modifications on the specific land use restrictions and implementing actions submitted by local governments to ensure they comply with the Coastal Act. (§§ 30511, 30512.)

There is no restriction to CDPs mentioned anywhere.

Also from that section:

One of the primary objectives of the Coastal Act is to protect, maintain, enhance, and restore the overall quality of the coastal zone environment and its natural resources, ... The Coastal Act also requires that the biological productivity and quality of coastal waters be maintained.

Here, the Commission found that the use of pesticides can adversely impact "the biological productivity of coastal waters and human health," as well as "coast streams and riparian habitat." (8 AR 1910.) Because the Commission acted under its authority to administer the Coastal Act to protect natural coastal resources, including ESHA and water quality, it falls within the exception to section 11501.1(c).

This says that the Coastal Commission **MUST** do something about the existing documented threat to wildlife.

- Superior Court Judge Chalfant in a ruling upholding the Los Angeles County LCP provisions prohibiting pesticides affirmed the requirement that pesticides can and should be banned everywhere, with no mention of CDPs. See page 20 of [Chalfant ruling.pdf](#).

The Commission may impose land use restrictions to ensure application of Chapter 3 policies. 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. The Commission is requiring a pesticide ban for the County's LCP, to be administered by the County.

Again, bans are called for, not just CDP restrictions, because the threat to wildlife is due to EXISTING pesticide use.

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KAMALA D. HARRIS
Attorney General of California
CHRISTINA BULL ARNDT
Supervising Deputy Attorney General
DAVID EDSALL JR.
Deputy Attorney General
State Bar No. 266883
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2693
Fax: (213) 897-2801
E-mail: David.Edsall@doj.ca.gov
Attorneys for Respondent and Defendant
California Coastal Commission

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Superior Court of California
County of Los Angeles

SEP 16 2016

Sherri A. Carter, Executive Officer/Clerk
By: Gloria Robinson, Deputy

No filing fee pursuant to
Government Code § 6103.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Case No. BS149063 [related to BS149044]

MOUNTAINLANDS CONSERVANCY,
LLC; THIRD DISTRICT PARKLANDS,
LLC; and THIRD DISTRICT
MEADOWLANDS, LLC,

Petitioners and Plaintiffs,

v.

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

Respondent and Defendant.

COASTAL COMMISSION'S
OPPOSITION TO PETITIONERS'
VERIFIED FIRST AMENDED
PETITION FOR WRIT OF MANDATE

Date: TBD
Time: TBD
Dept: unassigned

Trial Date: TBD
Action Filed: BS149063 – June 9, 2014
BS149044 – June 4, 2014

RAMIREZ CANYON PRESERVATION
FUND,

Petitioner and Plaintiff,

v.

CALIFORNIA COASTAL COMMISSION;
and DOES 1-10, inclusive,

Respondent and Defendant.

COUNTY OF LOS ANGELES; and ROES
1-10, inclusive,

Real Party in Interest.

BY FAX

TABLE OF CONTENTS

| | Page |
|--|------|
| Introduction..... | 1 |
| The Coastal Act and Local Coastal Programs | 2 |
| Statement of Facts..... | 3 |
| Standard of Review..... | 6 |
| Argument | 8 |
| I. The Commission Properly Followed All Procedures and Proceeded in the Manner Required by Law in Certifying the LCP | 8 |
| A. The Commission Timely Submitted Its Final Staff Report and Any Revisions Were Entirely Proper Because They Were Made in Response to Public Comments Received Subsequent to the Final Staff Report..... | 8 |
| B. The Commission Was Not Required to Provide a Separate Hearing on the Issues Raised by Petitioners..... | 11 |
| 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 | 13 |
| II. Substantial Evidence Supports the Commission's Determination That the LCP, as Modified, Conformed to the Coastal Act..... | 14 |
| A. Substantial Evidence Supports the Commission's Findings That the Plan Area Had Minimal Prime Agricultural Lands and That the Non-prime Agricultural Lands Were Not Suitable or Feasible for Agricultural Use..... | 14 |
| B. The Commission Relied on Relevant Evidence in the Record to Restrict Agricultural Uses..... | 21 |
| C. It Was Proper for the Commission to Provide Additional Detail in the LIP to Restrictions Already Sufficiently Identified in the LCP..... | 22 |
| Conclusion | 23 |

TABLE OF AUTHORITIES

| | <u>Page</u> |
|--|-------------|
| CASES | |
| <i>Anthony v. Snyder</i> (2004) 116 Cal.App.4th 643 | 8 |
| <i>Barrie v. California Coastal Com.</i> (1987) 196 Cal.App.3d 8 | 7 |
| <i>Boreta Enterprises, Inc. v. Department of Alcoholic Bev. Control</i> (1970) 2 Cal.3d 85 | 7 |
| <i>Citizens of Goleta Valley v. Board of Supervisors</i> (1990) 52 Cal.3d 553 | 2 |
| <i>City of Chula Vista v. Superior Court</i> (1982) 133 Cal.App.3d 472 | 8 |
| <i>City of Malibu v. California Coastal Com.</i> (2004) 121 Cal.App.4th 989 | 2 |
| <i>City of San Diego v. California Coastal Com.</i> (1981) 119 Cal.App.3d 228 | 7 |
| <i>Coastal Southwest Dev. Corp. v. California Coastal Zone Conservation Commission</i> (1976) 55 Cal.App.3d 525 | 8, 22 |
| <i>Ibarra v. California Coastal Com.</i> (1986) 182 Cal.App.3d 687 | 2 |
| <i>McAllister v. California Coastal Com.</i> (2008) 169 Cal.App.4th 912 | 2 |
| <i>Ocean Harbor House Homeowners Assn. v. California Coastal Com.</i> (2008) 163 Cal.App.4th 215 | 7 |
| <i>Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles</i> (2012) 55 Cal.4th 783 | 2 |
| <i>Paoli v. California Coastal Com.</i> (1986) 178 Cal.App.3d 544 | 7, 14, 22 |
| <i>Pescosolido v. Smith</i> (1983) 142 Cal.App.3d 964 | 7, 20 |

TABLE OF AUTHORITIES
(continued)

| | <u>Page</u> |
|---|-------------|
| <i>Pratt Construction Co., Inc. v. California Coastal Com.</i> (2008) 162 Cal.App.4th 1068 | 2, 13 |
| <i>Reddell v. California Coastal Com.</i> (2009) 180 Cal.App.4th 956 | 8 |
| <i>Ross v. California Coastal Com.</i> (2011) 199 Cal.App.4th 900 | passim |
| <i>Whaler's Village Club v. California Coastal Com.</i> (1985) 173 Cal.App.3d 240 | 8 |
| <i>Young v. Gannon</i> (2002) 97 Cal.App.4th 209 | 7 |
| STATUTES | |
| Code of Civil Procedure § 1094.5 | 6 |
| Food and Agricultural Code | |
| § 11501.1 | 13 |
| § 11501.1, subd. (c) | 13 |
| Public Resources Code | |
| § 30000 et seq. | passim |
| § 30001.5, subd. (a) | 2, 14 |
| § 30001.5, subd. (e) | 2 |
| § 30108 | 19, 20 |
| § 30108.4 | 22 |
| § 30108.5 | 22 |
| § 30108.6 | 2, 22 |
| § 30200 | 3 |
| § 30230 | 12, 14 |
| § 30231 | 12, 14, 18 |
| § 30240 | 12, 14, 18 |

TABLE OF AUTHORITIES
(continued)

Page

Public Resources Code (cont'd)

| | |
|--------------------------|---------------|
| § 30241 | <i>passim</i> |
| § 30242 | <i>passim</i> |
| § 30250 | 4, 18 |
| § 30251 | 12, 18 |
| § 30265.5 | 3 |
| § 30330 | 13 |
| § 30333 | 2 |
| § 30500, subd. (a) | 2 |
| § 30501 | 2 |
| § 30511 | 13 |
| § 30511, subd. (a) | 2 |
| § 30512 | 11, 13 |
| § 30512, subd. (a) | 3, 11 |
| § 30512, subd. (b) | 3 |
| § 30512, subd. (c) | 3 |
| § 30513 | 3 |
| § 30514 | 3, 11, 13 |
| § 30514, subd. (b) | 3, 12 |
| § 30625, subd. (c) | 8 |
| § 30801 | 6 |

OTHER AUTHORITIES

California Code of Regulations, Title 14

| | |
|--------------------------|-----------|
| § 13525 | 9 |
| § 13532 | 9, 10, 11 |
| § 13533 | 9, 10 |
| § 13536 | 10, 11 |
| § 13542, subd. (c) | 22 |
| § 13544 | 6 |

INTRODUCTION

The California Coastal Commission's approval of the Los Angeles County local coastal program (LCP) for the Santa Monica Mountains complied with the requirements of the Coastal Act, both procedural and substantive. Petitioners Mountainlands Conservancy LLC, Third District Parklands LLC, and Third District Meadowlands LLC challenge the provisions of the LCP that place restrictions on any new agricultural uses in the plan area. Petitioners first allege that the Commission did not proceed in a manner required by law by submitting an addendum to the final staff report the day before the hearing, by not holding a separate hearing on the issues Petitioners raised, and by including restrictions on pesticide use in the approved LCP. Petitioners' claims fail, however, because all of these actions were in accordance with the procedures established in the Coastal Act. The addendum was directly responding to comments submitted in response to the timely-issued final staff report, no separate hearing was required because LCP amendments do not require a "substantial issue" determination meriting additional hearings, and any restrictions on pesticide use were within the Commission's powers to regulate land use to ensure compliance with the Coastal Act.

Petitioners are also incorrect in claiming that the LCP's restrictions on development (properly designed to protect coastal resources), including agriculture, constitute impermissible "conversions" of agricultural land to nonagricultural use in violation of sections 30241 and 30242 of the Coastal Act, or that the Commission's findings explaining why those sections are inapplicable or justifying the restrictions were not supported by substantial evidence. As to the first claim, nothing in sections 30241 and 30242 precludes restricting agricultural uses as necessary to protect the resources the Coastal Act requires be protected, and the restrictions on agricultural use are similar to restrictions on all other types of development. As to the second, substantial evidence supports the Commission's findings that no prime agricultural land existed that warranted additional protection, and that the remaining land was not suitable or feasible for agricultural use. By protecting existing agricultural uses and placing restrictions on any new agricultural uses in the plan area, the Commission acted in accordance with the Coastal Act. The Commission's approval of the LCP is supported by its findings and those findings are supported

1 by substantial evidence in the record. For all of these reasons, the Court should deny the petition.

2 THE COASTAL ACT AND LOCAL COASTAL PROGRAMS

3 The California Coastal Act serves to “[p]rotect, maintain, and, where feasible, enhance and
4 restore the overall quality of the coastal zone environment and its natural and artificial resources.”
5 (Pub. Resources Code, § 30001.5, subd. (a)¹.) The Act is a comprehensive scheme to govern land
6 use planning for the entire coastal zone of California. (See § 30000 et seq.; *Pacific Palisades*
7 *Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 793.)

8 Because local areas within the coastal zone may have unique land use issues not fully
9 amenable to centralized administration, the Act “encourage[s] state and local initiatives and
10 cooperation in preparing procedures to implement coordinated planning and development” in the
11 coastal zone. (§ 30001.5, subd. (e); see generally *Ibarra v. California Coastal Com.* (1986) 182
12 Cal.App.3d 687, 694-696.) To that end, the Act requires that “[e]ach local government lying, in
13 whole or in part, within the coastal zone” prepare a local coastal program (LCP). (§ 30500, subd.
14 (a).) An LCP is comprised of two principal components: a land use plan (LUP), which assigns
15 specific land uses or use restrictions to specific areas, and the implementing actions, such as
16 zoning district maps and ordinances, often referred to as a local implementation plan (LIP). (§§
17 30108.6, 30511, subd. (a); *McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912,
18 922.)

19 Like a local government’s general plan, the LCP strives to ensure planned, comprehensive
20 development within the coastal zone to preserve the overall quality of the coastal zone
21 environment and its natural and artificial resources. (*Citizens of Goleta Valley v. Bd. of*
22 *Supervisors* (1990) 52 Cal.3d 553, 571.) The Coastal Act requires the Commission to adopt
23 regulations specifying the procedures for review, adoption, and certification of LCP’s. (§§ 30501,
24 30333.)

25 While local governments typically retain considerable authority over the contents of their
26 programs, LCP’s still embrace matters of statewide concern. (*Pratt Construction Co., Inc. v.*

27
28 ¹ Subsequent code citations are to the Public Resources Code unless otherwise noted.

1 *California Coastal Com.* (2008) 162 Cal.App.4th 1068, 1075-1076; *City of Malibu v. California*
2 *Coastal Com.* (2004) 121 Cal.App.4th 989, 995-996.) Accordingly, the Commission must certify
3 that the LCP is consistent with the Coastal Act before it can take effect. The Commission
4 reviews the LUP component of an LCP for conformity with the Chapter 3 policies of the Coastal
5 Act. (§§ 30512, subd. (c); 30200-30265.5.) Upon submittal of an initial LUP, the Commission
6 determines whether to certify it as submitted, or whether it raises “substantial issues” that
7 necessitate further hearings. (§ 30512, subd. (a).) For any aspects of the LUP that are not
8 certified as submitted, the Commission may certify them conditioned upon the incorporation of
9 suggested modifications. (§ 30512, subd. (b).) For any future amendments to an already-certified
10 LUP, the Commission proceeds in nearly the same manner, except that LUP amendments
11 specifically do not require any “substantial issue” determinations. (§ 30514, subd. (b).)
12 Similarly, the Commission reviews the LIP and any amendments to the LIP for conformity with
13 the LUP. It may reject an LIP only if it does not conform with or is inadequate to carry out the
14 LUP. (§§ 30513, 30514.)

15 **STATEMENT OF FACTS**

16 Los Angeles County adopted its LCP in stages, with different programs developed for
17 different geographic areas. In 1986, it submitted, and the Commission certified, an LUP for the
18 Santa Monica Mountains area. (Volume 33, Administrative Record (AR) 9403.) This area,
19 between the City of Los Angeles, the City of Malibu, and the County of Ventura, lies in the
20 unincorporated County of Los Angeles. But the County did not get a certified LIP for that area at
21 that time, so the Commission retained permit-issuing authority. (*Ibid.*)

22 In 2007, the County adopted an updated amended LUP for this area, with an accompanying
23 LIP, but it never submitted them to the Commission for consideration. (*Id.* at 9403-04.)
24 However, the County revisited it in 2012, and on February 19, 2014, it submitted a proposed LCP
25 to the Commission, which included an updated amended LUP from what had previously been
26 certified, with an accompanying LIP. (*Ibid.*; 1 AR 3.) The Commission considered the LUP
27 amendment and the LIP separately. On March 27, 2014, Commission staff circulated a staff
28 report (March 27 Report) analyzing the LUP and recommending that the Commission approve it

1 subject to modifications. (7 AR 1532.)

2 The County's proposed LUP would have prohibited new agricultural uses in the plan area
3 entirely, while allowing existing agricultural uses to continue. The March 27 Report largely
4 supported the County's proposed provisions. (7 AR 1557-58.) In the report, Commission staff
5 reviewed sections 30241 and 30242 of the Coastal Act, which limit the ability to convert
6 agricultural lands to nonagricultural use within the coastal zone. (*Id.* at p. 1618.) The report first
7 addressed section 30241's mandate that the maximum amount of "prime agricultural land" be
8 "maintained" in agricultural production. (*Ibid.*) It spelled out the four prongs of the definition of
9 "prime agricultural land" in the Coastal Act, two of which relate to soil quality and two of which
10 relate to current productivity of the land, and analyzed to what extent any land in the plan area fell
11 within these prongs. (*Ibid.*) It determined that less than 2% of the plan area met the soil
12 requirements for "prime agricultural land," and that the majority of these soils were contained
13 within existing public parkland areas or on an existing golf course. (*Ibid.*) As for the
14 productivity requirements, it found that the only areas in agricultural production are very limited
15 vineyard areas, encompassing a very small percentage of the plan area. (*Id.* at p. 1619.) Only
16 two commercial vineyards actually met the productivity requirements for prime agricultural land,
17 with the remaining vineyards in the plan area being a very limited number of very small, "hobby"
18 vineyard plots (less than 2 acres) that are accessory to single-family residences, and not
19 commercially viable. (*Ibid.*) Given that the limited prime agricultural land within the plan area
20 was mostly either public parkland or developed with existing uses and not in agricultural
21 production (other than the two identified commercial vineyards), it found that the mandate of
22 section 30241 to maintain the maximum amount of prime agricultural land in agricultural
23 production was not applicable in the plan area. (*Id.* at p. 1620.)

24 The staff report next examined whether any agricultural land in the plan area nevertheless
25 qualified under section 30242's provisions that "[a]ll other lands suitable for agricultural use shall
26 not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not
27 feasible, or (2) such conversion would preserve prime agricultural land or concentrate
28 development consistent with Section 30250." (§ 30242; 7 AR 1620.) The staff report described a

1 number of factors, including steep slopes, poor soils, scenic considerations, sensitive watersheds,
2 abundant ESHA (environmentally sensitive habitat areas), and lot size limitations, and concluded
3 that these factors “render the vast majority of the land in the Santa Monica Mountains unsuitable
4 for agricultural use.” (7 AR 1620.) Therefore, it found that section 30242’s provisions would not
5 apply in most cases in the plan area. (*Ibid.*) It did note, however, that section 30242’s protections
6 would apply to those very limited areas in the plan area in active agricultural production, which is
7 why provisions protecting existing agricultural use would be necessary. (*Ibid.*)

8 After receiving public comment on the March 27 Report, Commission staff issued an
9 addendum on April 9, 2014 (April 9 Addendum) recommending some modifications to address
10 concerns raised by members of the public and various groups regarding the County’s proposed
11 prohibition of new crop-based agriculture in the plan area. (8 AR 1906, 1908-09.) In this
12 addendum, Commission staff attached correspondence it received since issuance of the March 27
13 Report, including the April 7, 2014 letter Petitioners submitted and other comments regarding the
14 agricultural restrictions. (*Id.* at pp. 1906, 1993.) Because of the volume of comments received,
15 the April 9 Addendum was more than 170 pages, but more than 90% of that was correspondence.
16 (*Id.* at pp. 1906-2084.) The substantive changes comprised less than 12 pages. (*Ibid.*)

17 In light of the comments received, Commission staff revised the recommended LUP
18 provisions prohibiting new agricultural uses to allow new agricultural uses that met the following
19 criteria: (1) the new agricultural uses are limited to specified areas on natural slopes of 3:1 or less
20 steep, or areas currently in legal agricultural use; (2) new vineyards are prohibited; and (3)
21 organic or biodynamic farming practices are followed. (*Id.* at p. 1909.) In its revised findings,
22 Commission staff justified the allowance for new agriculture because “small-scale crop-based
23 agricultural operations (with the exceptions of vineyards) can avoid adverse impacts to biological
24 resources and water quality,” and that “organic and biodynamic farming practices are required to
25 prevent the use of pesticides, herbicides, and fertilizers, which can adversely impact the
26 biological productivity of coastal waters and human health.” (*Id.* at p. 1910.) New vineyards
27 would remain prohibited, as they already were in the March 27 Report, due to a number of
28 identified adverse impacts attributed specifically to those operations, including increased erosion

1 from removal of all vegetation, use of pesticides, large amounts of water required, their invasive
2 nature, and their adverse impact to scenic views. (*Id.* at pp. 1910-11.)

3 The Commission considered the LUP in a public meeting on April 10, 2014. (46 AR
4 12955-13087.) After Commission staff and the County presented the LUP, the Commission
5 heard from the public. (*Ibid.*) Many speakers commented on the importance of restricting the
6 expansion of agricultural uses or restricting them to organic practices, given the adverse effects
7 and strain on the scarce water supply in the Santa Monica Mountains. (E.g., 46 AR 12986-87,
8 12994, 13014, 13021.) Counsel for Petitioners, all of which are landowners in the Santa Monica
9 Mountains, also addressed the Commission. (46 AR 13046.) The Commission then voted to
10 approve the LUP with the suggested modifications. (46 AR 13056, 13085.)

11 The Commission next considered the County's proposed LIP, and Commission staff
12 submitted a report on June 26, 2014 (June 26 Report) recommending approval conditioned on
13 additional modifications. (40 AR 11067.) In relevant part, Commission staff provided additional
14 details on the criteria required to allow for new agricultural uses, in particular the requirement for
15 organic and biodynamic farming practices. (40 AR 11093-94, 11393-11399.)

16 The Commission considered the LIP at its public hearing on July 10, 2014. (33 AR 9404.)
17 Its staff and the County made presentations, and the public commented. (46 AR 13088-13119.)
18 The Commission voted to approve the LIP with proposed modifications. (46 AR 13118.)

19 The County adopted the Commission's proposed modifications. (33 AR 9403-9409.) At
20 the Commission's meeting on October 10, 2014, the Commission's Executive Director reported
21 the County's acceptance. (46 AR 13120.) Under the Commission's regulations, this action
22 resulted in the effective certification of the LCP. (Cal. Code Regs., tit. 14, § 13544.)

23 STANDARD OF REVIEW

24 Public Resources Code section 30801 provides for judicial review of Commission decisions
25 by way of a petition for writ of administrative mandamus pursuant to Code of Civil Procedure
26 section 1094.5. In reviewing a Commission decision, the trial court determines whether (1) the
27 agency proceeded without, or in excess of, jurisdiction; (2) there was a fair hearing; and (3) the
28 agency abused its discretion. (*Ross v. California Coastal Com.* (2011) 199 Cal.App.4th 900,

1 921.) Abuse of discretion is established if the Commission has not proceeded in the manner
2 required by law, the decision is not supported by the findings, or the findings are not supported by
3 the evidence. (*Ibid.*) The Commission's findings and actions are presumed to be supported by
4 substantial evidence. (*Ibid.*) A person challenging the Commission's decision bears the burden
5 of showing the Commission's findings are not supported by substantial evidence. (*Ibid.*)

6 When reviewing the Commission's decision, the court examines the whole record and
7 considers all relevant evidence, including that which detracts from the decision. (*Ibid.*) Although
8 this task involves some weighing to fairly estimate the worth of the evidence, this limited
9 weighing does not constitute independent review where the court substitutes its own findings and
10 inferences for those of the Commission. (*Id.* at p. 922.) Rather, it is for the Commission to weigh
11 the preponderance of conflicting evidence, and the court may reverse the Commission's decision
12 only if, based on the evidence before it, a reasonable person could not have reached the
13 conclusion the Commission reached. (*Ibid.*; accord, *Ocean Harbor House Homeowners Assn. v.*
14 *California Coastal Com.* (2008) 163 Cal.App.4th 215, 227.) In determining whether substantial
15 evidence supports the Commission's decision, the court must resolve any reasonable doubts in
16 favor of the Commission. (*Paoli v. California Coastal Com.* (1986) 178 Cal.App.3d 544, 550;
17 *City of San Diego v. California Coastal Com.* (1981) 119 Cal.App.3d 228, 232.)

18 The court may not disregard or overturn a finding of fact of an agency simply because it
19 believes that a contrary finding would have been equally or more reasonable. (*Boreta*
20 *Enterprises, Inc. v. Department of Alcoholic Bev. Control* (1970) 2 Cal.3d 85, 94.) The court may
21 overturn the factual findings of the agency only if the evidence is insufficient as a matter of law to
22 sustain the findings. (*Barrie v. California Coastal Com.* (1987) 196 Cal.App.3d 8, 14.)

23 Substantial evidence has been defined as evidence of ponderable legal significance,
24 reasonable in nature, credible, and of solid value, and relevant evidence that a reasonable mind
25 might accept as adequate to support a conclusion. (*Young v. Gannon* (2002) 97 Cal.App.4th 209,
26 225.) The Commission is the sole arbiter of the evidence and sole judge of the credibility of the
27 witnesses. (*Pescosolido v. Smith* (1983) 142 Cal.App.3d 964, 970-971.) Substantial evidence
28 upon which a decision of the Commission may be based includes opinion evidence of experts and

1 staff, oral presentations at the public hearing, photographic evidence, and staff-prepared written
2 materials and testimony. (*Anthony v. Snyder* (2004) 116 Cal.App.4th 643, 660-61; *Whaler's*
3 *Village Club v. California Coastal Com.* (1985) 173 Cal.App.3d 240, 261; *City of Chula Vista v.*
4 *Superior Court* (1982) 133 Cal.App.3d 472, 491; *Coastal Southwest Dev. Corp. v. California*
5 *Coastal Zone Conservation Commission* (1976) 55 Cal.App.3d 525, 532, 535-36.)

6 While the Court reviews questions of law de novo, the Commission's interpretation of the
7 statutes and regulations under which it operates is entitled to deference, given the Commission's
8 special familiarity with the regulatory and legal issues. (*Ross v. California Coastal Com.*, *supra*,
9 199 Cal.App.4th at p. 938; *Reddell v. California Coastal Com.* (2009) 180 Cal.App.4th 956, 965-
10 966; § 30625, subd. (c) [Commission decisions to guide future actions of local governments].)

11 ARGUMENT

12 I. THE COMMISSION PROPERLY FOLLOWED ALL PROCEDURES AND PROCEEDED IN 13 THE MANNER REQUIRED BY LAW IN CERTIFYING THE LCP

14 A. The Commission Timely Submitted Its Final Staff Report and Any 15 Revisions Were Entirely Proper Because They Were Made in Response to Public Comments Received Subsequent to the Final Staff Report

16 Petitioners first assert that the Commission did not proceed in a manner required by law
17 because it purportedly adopted the LUP with "substantial" last-minute modifications in violation
18 of the public's statutory right to meaningfully participate in the process. (Petitioners' Brief at p.
19 6:8-9.) Petitioners are incorrect for a number of reasons.

20 First, Petitioners incorrectly claim that the final staff report was presented less than 24
21 hours before the public hearing in violation of the requirement that it be submitted at least 7 days
22 prior. (*Id.* at p. 6:21-26.) Rather, the Commission submitted the final staff report in a timely
23 manner on March 27, 2014, and it was only an addendum responding to the various public
24 comments received in response to the March 27 Report that was provided the day before the
25 hearing. (8 AR 1906.) Petitioners misleadingly characterize it as a 176-page addendum, when it
26 was actually only a 12-page addendum, with the remainder simply attaching ex parte disclosure
27 forms and public comments submitted in response to the March 27 Report. (*Ibid.*)

28 Petitioners' claim that the addendum was untimely reflects a fundamental misunderstanding

1 of how the Coastal Act's procedures are intended to operate. The Coastal Act does indeed require
2 that the final staff report be submitted at least 7 days before the hearing, but it also requires that
3 Commission staff respond to the various comments received after the final staff report is
4 submitted. (Cal. Code Regs., tit. 14, §§ 13532, 13533.) Code of Regulations section 13532 sets
5 forth the 7-day requirement, and the very next code section, section 13533, states that staff "shall
6 respond to significant environmental points raised during evaluation of the LCP The
7 response may be included within the staff report and shall be distributed to the Commission and
8 the person making the comment. The response shall be available at the hearing on the LCP . . .
9 for all persons in attendance." (Cal. Code Regs., tit. 14, § 13533.) Thus, after the final staff
10 report is submitted, which need only be at least 7 days prior to the hearing, the staff must then
11 respond to significant points that have been raised. There is no deadline to submit the response to
12 comments, but responses *may* be included within the staff report, indicating they are not required
13 to be included in the staff report. (*Ibid.*) Section 13533 also states that the response shall be
14 available at the hearing, which indicates any responses provided by the time of the hearing would
15 be timely. (*Ibid.*; see also Cal. Code Regs., tit. 14, § 13525 [requiring that the executive director
16 reproduce and distribute the text or summary of all relevant communications concerning the LCP
17 "prior to the Commission's public hearing and thereafter at any time prior to the vote."].) In sum,
18 addenda to staff reports responding to public comments are not subject to the notice requirements
19 of section 13532. (*Ross v. California Coastal Com.*, *supra*, 199 Cal.App.4th at p. 939 [holding
20 that an addendum issued two days before the Commission's public hearing was not subject to the
21 notice requirements of section 13532, even though it "responded to public comments;
22 recommended modification of the view corridors in response to public comments; and discussed
23 additional biological information specific to the subject property's proposed subdivision."].)

24 Indeed, it would be impossible for staff to respond to comments before the final staff report
25 has even been issued, as the vast majority of comments are comments *on that staff report*. And
26 because the Coastal Act requires that staff respond to submitted comments, these responses could
27 come within 7 days of the hearing after the final staff report has been timely submitted. In fact,
28 the addendum attached Petitioners' April 7, 2014 letter expressing concerns over the agricultural

1 restrictions in the March 27 Report, and noted that the changes to the suggested modifications
2 were developed “in order to address concerns raised by members of the public and various groups
3 regarding the County’s proposed prohibition of crop-based agriculture in the plan area.” (8 AR
4 1908-09, 1993.) Thus, the changes in the addendum directly addressed and responded to
5 comments received on this issue, including from Petitioners. Although Commission staff issued
6 the final staff report earlier than statutorily required, on March 27, 2014, because Petitioners did
7 not submit comments until 11 days later, on April 7, 2014, it is unclear how Commission staff
8 could have responded to such comments any sooner than it did on April 9, 2014. The
9 Commission’s final staff report was timely under Code of Regulations section 13532, and any
10 additions in the April 9 Addendum were properly made in response to submitted comments prior
11 to the hearing as required under section 13533.

12 The Commission also complied with Code of Regulations section 13536, which provides
13 that the Commission may consider late amendments or changes to an LCP if the changes are
14 minor, or if material, have been the subject of adequate public comment at the public hearing
15 before the Commission. (Cal. Code Regs., tit. 14, § 13536.) Petitioners fail to demonstrate how
16 any of the specific changes between the March 27 Report and April 9 Addendum were material,
17 or not subject to adequate public comment at the hearing.

18 Petitioners claim that changes made between the final March 27 Report and the April 9
19 Addendum constitute “major substantive changes” because they included changes such as
20 “relegating new agricultural uses to limited areas in the LCP, requiring organic or biodynamic
21 farming practices, and completely banning the development of vineyards.” (Pet. Brief at 7:16-20,
22 citing 8 AR 1909.) Petitioners’ claim that one of the “major substantive changes” was the
23 “complete[] banning [of] the development of vineyards” is either purposely misleading or an error
24 in reading comprehension. Policy CO-102 as reflected in the March 27 Report stated that “[n]ew
25 crop, orchard, *vineyard*, and other crop-based non-livestock agricultural uses *are prohibited*,” and
26 that “[e]xisting, legally-established agricultural uses shall be allowed to continue, but may not be
27 expanded.” (7 AR 1557, emphasis added.) The March 27 Report unequivocally stated that new
28 vineyards and the expansion of existing vineyards would be prohibited, yet Petitioners cite “the

1 banning [of] the development of vineyards” as a “major substantive change” from the March 27
2 Report to the April 9 Addendum. This position is nonsensical.²

3 In addition, Petitioners claim that another “major substantive change” was that the April 9
4 Addendum relegated new agricultural uses to limited areas in the LCP and required organic or
5 biodynamic farming practices, but these are rather minor changes given that the initial March 27
6 Report proposed a categorical ban on all new agricultural uses. (7 AR 1557-58.) Going from a
7 categorical ban to allowing new agricultural uses in limited locations and under limited
8 circumstances is not a material change. Furthermore, even if these changes were material (which
9 they were not), they were adequately discussed at the hearing such that the Commission could
10 properly consider them per Code of Regulations section 13536. (E.g., 46 AR 12964-65, 12982,
11 12999, 13013, 13020, 13050, 13057.) In sum, the April 9 Addendum did not violate section
12 13532’s 7-day rule nor did it prevent any meaningful public participation, and it provides no basis
13 for the Court to reverse the Commission’s decision.

14 **B. The Commission Was Not Required to Provide a Separate Hearing on the**
15 **Issues Raised by Petitioners**

16 Petitioners next argue that the Commission did not proceed in a manner required by law
17 because it did not provide a separate hearing or specifically resolve the substantial issues
18 Petitioners raised regarding the agricultural policies in the proposed LUP. (Pet. Brief at pp. 8:7-
19 11:27.) This is not what the Coastal Act requires.

20 Petitioners repeatedly cite to the procedures set forth in section 30512, which requires that
21 the Commission make a determination as to whether the LUP raises any “substantial issues” as to
22 conformity with Chapter 3 of the Coastal Act, and if so, hold at least one further hearing on such
23 issues. (§ 30512, subd. (a).) Importantly, however, Petitioners neglect to cite to section 30514
24 which governs LUP *amendments*, and is the controlling section here. Section 30514 states that
25 any LUP amendment submitted to the Commission for certification shall follow the procedures in

26 ² Petitioners may argue that it was the singling out of vineyards that was a substantial
27 change given that the initial prohibition on vineyards was lumped together with other agricultural
28 uses. This does not change the fact that new or expanded vineyards were specifically prohibited
in both the March 27 Report and the April 9 Addendum.

1 section 30512, “*except that the [C]ommission shall make no determination as to whether a*
2 *proposed amendment raises a substantial issue as to conformity with the policies of Chapter 3*
3 *[of the Coastal Act].*” (§ 30514, subd. (b), emphasis added.) Here, the Commission already
4 certified the County’s LUP for the Santa Monica Mountains in 1986, and was only evaluating an
5 *amendment* to that 1986 LUP. (E.g., 1 AR 3; 33 AR 9403.) Therefore, section 30514 very
6 explicitly did not require that the Commission make any “substantial issue” determination.
7 Petitioners’ cannot simply ignore section 30514 in order to claim that the Commission did not
8 proceed in a manner required by law.

9 Petitioners discuss the Coastal Act policies encouraging the preservation of agricultural
10 land in order to justify their demand for an additional “substantial issue” hearing. (*Id.* at pp. 8:23-
11 10:12.) The Commission does not dispute that the Coastal Act policies encourage the
12 preservation of agricultural land. However, importantly, the Commission did not ignore these
13 policies, but rather specifically addressed them and found the limitations against conversion of
14 agricultural land largely inapplicable in the plan area. (7 AR 1620.) Any agricultural land that
15 did warrant protection was in fact protected by maintaining prime agricultural land in production
16 in order to protect the agricultural economy. (*Ibid.*) To the extent these policies protect land not
17 currently in agricultural use, the Commission found that the remaining land in the plan area not
18 already being used for agriculture is not land “suitable for agricultural uses.” (*Ibid.*) What
19 Petitioners argue for is the use of agricultural land inconsistent with other Coastal Act policies,
20 which is not what the agricultural protection policies require. Contrary to Petitioners’ assertions,
21 the Commission did not “sacrific[e] agricultural lands” in any way. (Pet. Brief at p. 9:25.)

22 In addition, there was no “ban” on the use of agriculture. Rather, the Commission imposed
23 *restrictions* on the use of new and existing agriculture consistent with the Chapter 3 policies of
24 the Coastal Act requiring the protection of marine life, water quality, ESHA, and scenic
25 considerations. (§§ 30230, 30231, 30240, 30251.) Nothing in sections 30241 or 30242 precludes
26 restricting agricultural uses as necessary to protect resources the Coastal Act requires be
27 protected. Indeed, the restrictions on agricultural use are similar to restrictions on all other types
28 of development. For example, Policy CO-102 as reflected in the April 9 Addendum limits new

1 agricultural use in part to the building site area allowed by Policy CO-51, a non-agricultural-
2 specific policy, demonstrating that CO-102's agricultural restriction is similar to CO-51's
3 restriction on all other types of development, and not singling out agriculture. (8 AR 1909; 7 AR
4 1548.) The amended LUP as approved is not contrary to the agricultural protection policies cited
5 by Petitioners, and the Commission proceeded properly under section 30514.

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

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

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

1 enhance, and restore the overall quality of the coastal zone environment and its natural resources,
2 including the protection of environmentally sensitive habitat area (ESHA). (§ 30001.5, subd. (a),
3 see also §§ 30240, 30230, 30231.) The Coastal Act also requires that the biological productivity
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).

9 **II. SUBSTANTIAL EVIDENCE SUPPORTS THE COMMISSION’S DETERMINATION THAT**
10 **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 **A. Substantial Evidence Supports the Commission’s Findings That the Plan**
24 **Area Had Minimal Prime Agricultural Lands and that the Non-Prime**
25 **Agricultural Lands Were Not Suitable or Feasible For Agricultural Use**

26 Petitioners contend that the Commission’s findings that the plan area contains no prime
27 agricultural lands³ and that the non-prime agricultural lands are not suitable or feasible for

28 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...)

1 agricultural use were conclusory and not supported by substantial evidence in the record. (Pet.
2 Brief at p. 13.) Though Petitioners fault the Commission's analysis in a number of respects, they
3 fail to meet their burden to demonstrate that no reasonable person could have reached the same
4 decision based on the evidence before it.

5 As a preliminary matter, Petitioners characterize the Commission's restrictions as
6 "conversions" of agricultural land to nonagricultural uses. However, as previously described, no
7 "conversions" took place; rather, reasonable restrictions were imposed to ensure the protection of
8 the resources the Coastal Act requires be protected. While the March 27 Report may have
9 proposed a "ban" that could arguably have resulted in a "conversion," the April 9 Addendum's
10 revisions, which allow for new agricultural uses that meet certain criteria, demonstrated that the
11 policies were mere "restrictions" rather than a "ban." (7 AR 1557-58; 8 AR 1908-09.) Nothing
12 in sections 30241 or 30242 precludes restricting agricultural uses as necessary to protect
13 resources the Coastal Act requires be protected. Regardless, the restrictions on agriculture are
14 justified however they are characterized.

15 Petitioners first take issue with what they claim is the Commission's finding that there are
16 no prime agricultural lands in the Santa Monica Mountains protected by section 30241. (Pet.
17 Brief at p. 14:3-18.) They argue that the Commission's findings that prime agricultural soils
18 represent less than two percent of the region, and that these soils are only located within existing
19 public parkland areas or not in agricultural production, does not mean that the Commission "can
20 convert prime agricultural lands to non-agricultural uses without respect to the parameters for
21 doing so set forth in section 30241." (*Id.* at p. 14:3-13.) But Petitioners' argument misinterprets
22 and misapplies the plain language of section 30241. The first sentence of section 30241 states
23 that the maximum amount of prime agricultural land shall be "maintained" in agricultural
24 production, indicating that it is protecting existing agricultural production. (§ 30241.)

25 The Commission's findings make this key distinction. The findings first spell out the
26 definition of "prime agricultural land" in the Coastal Act, defined as land meeting the criteria of

27 (...continued)
28 vineyards in current operation met the criteria and would be protected. (7 AR 1619.)

1 any one of four separate prongs. (7 AR 1618.). The four prongs are as follows:

- 2 (1) All land that qualifies for rating as class I or class II in the Natural Resources
Conservation Service land use capability classifications;
- 3 (2) Land which qualifies for rating 80 through 100 in the Storie Index Rating;
- 4 (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
- 5 (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
6 per acre annually from the production of unprocessed agricultural plant production.

7 (*Ibid.*, citing § 30113.) As shown, the first two prongs specifically define prime agricultural land
8 by the quality of soil, regardless of the use of the land. (*Ibid.*) The second two prongs focus on
9 land currently in agricultural or livestock production that meet a minimum production threshold.
10 But while the definition of “prime agricultural land” can include both lands in agricultural use and
11 those not in agricultural use, the first sentence of section 30241 makes clear that its protections
12 apply only to *existing* agricultural uses that should be *maintained*. (§ 30241.)

13 The findings of the Commission properly apply section 30241 and take this distinction into
14 account. In analyzing the first two prongs of the definition of “prime agricultural lands,” the
15 Commission found that there are no NRCS Class I soils and very few NRCS Class II and 80-100
16 Storie Index-rated soils in the plan area. (7 AR 1618.) Importantly, of these soils, “none . . . are
17 currently in existing agricultural production.” (*Ibid.*) It is these soils that account for less than 2
18 percent of the entire plan area with the majority being in existing parkland areas or on an existing
19 golf course. (*Ibid.*) The Commission then analyzed the land under the next two prongs of the
20 definition of “prime agricultural land,” which by definition only include lands currently in
21 agricultural use and which meet certain minimum production standards. (7 AR 1619.) The
22 Commission noted that “given the steep mountain topography and lack of suitable agricultural
23 soils, there are very few areas in existing agricultural use,” other than some of the currently-
24 operating vineyards, two of which the Commission found “likely meet the fourth prong of the
25 definition of prime agricultural soils.” (*Ibid.*) The Commission thus examined the land in the
26 plan area under each of the four prongs of “prime agricultural land,” and identified land meeting
27 that definition and whether or not it was currently in agricultural use. Under section 30241, the
28 Commission is only obligated to protect prime agricultural land that is currently in agricultural

1 use, which it has sufficiently done under CO-102's mandate that "[e]xisting, legally-established
2 agricultural uses shall be allowed to continue." (8 AR 1909.) The Commission correctly applied
3 section 30241 based on its plain language, and its interpretation is entitled to deference. (*Ross v.*
4 *California Coastal Com.*, *supra*, 199 Cal.App.4th at p. 938.)

5 Petitioners also argue that the Commission's finding that no prime land exists outside of
6 public parklands or areas not in agricultural production is "counter-factual." (Pet. Brief at p.
7 14:14-15.) This claim again ignores that the Commission found that two of the currently-
8 operating vineyards met the definition of "prime agricultural land." (7 AR 1619.) Regardless,
9 this finding is backed up by substantial evidence in the record, including in evidence Petitioners
10 submitted. (See, e.g., 1 AR 10, 121; 3 AR 794, 818; 8 AR 1920; 9 AR 2126-27; 46 AR 12963,
11 12983, 13081; see also 26 AR 7568 [Attachment I to Petitioners' April 7, 2014 letter stating that
12 less than 2% of the soil survey area for the Santa Monica Mountains meets the requirements for
13 "prime" farmland].) The only support Petitioners offer against this is a single purported deed
14 restriction that they are "aware of . . . indicating the presence of 'prime agricultural land' on that
15 property." (*Id.* at p. 14:15-18.) However, evidence of the actual deed restriction is nowhere to be
16 found in the record; Petitioners merely cite to their own April 7, 2014 letter which also just says
17 that they are "aware" of such a deed restriction. (*Id.* at p. 16:18, citing to 10 AR 2440.)
18 Regardless, the purported existence of such a deed restriction does nothing to support Petitioners'
19 point because Petitioners fail to allege that the land with this deed restriction is currently in
20 agricultural production, or that it actually meets the statutory definition of prime agricultural land.
21 If it is currently in agricultural production sufficient to qualify as prime agricultural land, it will
22 likely already be protected under CO-102's mandate that existing agricultural uses be allowed to
23 continue. (8 AR 1909.) If it is not currently in agricultural production, then this is consistent
24 with the Commission's findings. Either way, it does nothing to support Petitioners' point.

25 Petitioners next attempt to attack the Commission's findings relating to the applicability of
26 section 30242's restrictions on the conversion of "all other lands suitable for agricultural use," or
27 "non-prime agricultural lands." (Pet. Brief at p. 14:19-24.) Section 30242 states that "[a]ll other
28 lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1)

1 continued or renewed agricultural use is not feasible, or (2) such conversion would preserve
2 prime agricultural land or concentrate development consistent with Section 30250.” (§ 30242.)
3 Petitioners first take issue with the Commission’s findings that “the confluence of factors –
4 including steep topography, poor soils, scenic considerations, sensitive watersheds, abundant
5 ESHA, and lot size limitations – render the vast majority of the land in the Santa Monica
6 Mountains unsuitable for agricultural uses.” (Pet. Brief at p. 14:19-24, citing 7 AR 1537.) Yet
7 the record is replete with ample evidence that these factors exist in the plan area, all
8 demonstrating a lack of suitability for agricultural uses. (See, e.g., 3 AR 587, 631-638, 725-734,
9 751-757; 46 AR 12963; 8 AR 1936-1938; 9 AR 2126-27.) Such considerations are valid and
10 justified under the Coastal Act. (§§ 30240 [ESHA], 30231 [water quality], 30251 [scenic
11 protection].) Petitioners also dispute the Commission’s finding that there are only certain very
12 limited areas where agriculture is possible and that those areas are limited to the one or two areas
13 that are already in active agricultural production. (Pet. Brief at p. 14:24-27, citing 7 AR 1620.)

14 Petitioners claim that the above findings are “purely speculative and contradicted by the
15 record,” but base this on the claim that the Staff Report did not include information on the amount
16 of land in the coastal zone that is currently under cultivation, or include a “persuasive explanation
17 of why there is not further land in the Coastal Zone that is suitable for agriculture.” (*Id.* at pp.
18 14:27-15:3.) However, the Staff Report did include substantial evidence on the amount of land in
19 the coastal zone currently under cultivation, stating that “[t]he only areas in agricultural
20 production are very limited vineyard areas, encompassing a very small percentage of the plan
21 area.” (7 AR 1619.) The Commission noted that two commercially-viable vineyards in the plan
22 area encompass only about 50 acres, and any remaining vineyards are a limited number of very
23 small “hobby” vineyard plots (less than 2 acres) that are accessory to single-family residences and
24 often not commercially viable. (*Ibid.*) As for Petitioners’ desire for a “persuasive explanation of
25 why there is not further land in the Coastal Zone that is suitable for agriculture,” the Commission
26 discussed this topic in depth over multiple pages of findings, describing why the previously-listed
27 factors make the land not suitable for agricultural use. (7 AR 1618-23.) Petitioners’
28 disagreement with the conclusions does not mean that no reasonable person could have reached

1 the same conclusions based on the evidence. Furthermore, Petitioners claim the Commission's
2 findings are faulty because they "ignore the fact that crop-based agriculture, including grape-
3 growing, is already thriving in the region under those conditions." (Pet. Brief at p. 15:3-5.) But
4 the Commission very specifically discussed the existence of the plan area's commercially-viable
5 vineyards, and the limited number of other "hobby" vineyards, demonstrating that it most
6 certainly did not "ignore" the existence of grape-growing. (7 AR 1619.)

7 Petitioners next argue that the Commission ignored section 30242's mandate that no lands
8 suitable for agriculture may be converted to non-agricultural uses unless agricultural use is not
9 "feasible." (Pet. Brief at p. 15:6-9.) However, the Commission analyzed in-depth why the vast
10 majority of the lands in the plan area are not suitable for agricultural use except for the limited
11 lands already in agricultural production. (7 AR 1618-23.) Because the Commission concluded
12 that the remaining land was not "suitable for agricultural use," it need not reach the secondary
13 inquiry of section 30242 as to whether or not the land is "feasible" for agricultural use.

14 Petitioners' next attempt to attack the Commission's decision by pointing to the evidence
15 they submitted to claim that there is more land in the region suitable for agriculture and "feasible"
16 for agricultural use than the Commission found. (Pet. Brief at pp. 15:17-16:26.) Petitioners
17 presented written statements from Mr. Daryl Koutnick and Mr. Scott J. Hogrefe to assert that the
18 land in the plan area is suitable and feasible for agricultural uses. (*Ibid.*) Importantly, neither of
19 these experts dispute the Commission's findings on the very limited amount of land in the plan
20 area meeting the definition of "prime agricultural land," most of which is not currently in
21 agricultural production. (26 AR 7265; 31 AR 8730-34.) They also both fail to demonstrate that
22 the land is suitable or "feasible" for agricultural uses. "Feasible" is defined by statute as "capable
23 of being accomplished in a successful manner within a reasonable period of time, taking into
24 account *economic, environmental, social, and technological factors.*" (§ 30108, emphasis
25 added.) As defined, whether land is "feasible" for agricultural use depends on examining a
26 variety of factors, not simply whether agricultural use is possible.

27 Mr. Koutnick asserts that in spite of soils being too rocky or steeply sloping, agricultural
28 uses "may be successful" on a variety of soil types and slope steepness. (26 AR 7267.)

1 Similarly, while Mr. Hogrefe states that the plan area's Mediterranean climate is "ideally suited to
2 agriculture," he states that the soils conditions and topographic conditions would merely "allow"
3 sustainable agricultural uses. (31 AR 8734.) But simply because agricultural uses may be
4 possible does not mean that the land is suitable or feasible for agricultural use. In addition to the
5 soils and slopes issue that Mr. Koutnick addressed, the Commission cited numerous other factors
6 for its conclusion that the land was not "suitable" for agriculture, including "scenic
7 considerations, sensitive watersheds, abundant ESHA, and lot size limitations." (7 AR 1620; see
8 also 46 AR 12963-12965.) Moreover, the Commission identified a number of adverse impacts
9 resulting from agricultural uses which demonstrate why it is not "feasible," finding that "[i]n
10 combination with the relatively steep mountain topography in the plan area, vegetation removal,
11 increased soil exposure, and chemical/fertilizer and irrigation requirements from crop-based
12 agriculture can result in significant impacts to biological resources and water quality from
13 increased erosion, sedimentation of streams, pollution, slope instability, and loss of habitat." (7
14 AR 1623.) It further found that "[n]ew or expanded crop-based agriculture also raises significant
15 concerns about water availability and use, including protection of coastal groundwater basins and
16 coastal streams, as well as pesticide use and landform alteration." (*Ibid.*) Given these potential
17 adverse impacts to coastal resources, the Commission reasonably determined that the land was
18 not suitable or feasible for agricultural use. As the arbiter of the evidence, the Commission was
19 well within its sound discretion to discount the opinions of Mr. Koutnick and Mr. Hogrefe. (See
20 *Pescosolido v. Smith, supra*, 142 Cal.App.3d at pp. 970-71.)

21 The statements submitted by Petitioners fail to refute the potential adverse impacts of
22 agricultural use that the Commission identified. If, after examining all relevant factors,
23 successful agriculture cannot be accomplished without significant adverse impacts to coastal
24 resources, then it is not "feasible" under section 30108. Petitioners have not—and cannot—meet
25 their burden to demonstrate that the Commission lacked substantial evidence for its findings.

26 //

27 //

1 **B. The Commission Relied On Relevant Evidence in the Record to Restrict**
2 **Agricultural Uses**

3 Petitioners next argue that the Commission failed to provide any “relevant evidence” in
4 support of its restrictions on agricultural uses. (Pet. Brief at p. 17:3-5.) They claim that because
5 the scientific studies the County submitted purportedly failed to specifically address agriculture,
6 they therefore cannot support the Commission’s decision on restricting agricultural use. (*Id.* at p.
7 17:8-9.) However, merely because these various studies do not contain the word “agriculture” in
8 the title does not mean they do not provide evidence to support the Commission’s findings. For
9 example, some of the factors the Commission cited for rendering the vast majority of the land
10 unsuitable for agriculture included steep slopes, abundant ESHA, sensitive watersheds, scenic
11 considerations, and water scarcity, among other factors. (7 AR 1620.) The Biota study submitted
12 by the County provides evidence of steep slopes, abundant ESHA, and water scarcity. (See 3 AR
13 587 [describing the plan area as having “forbidding topography” given that around 80% of the
14 land is on slopes greater than 25%]; 631-638 [describing the abundant ESHA found in the plan
15 area]; 600 [“scarce water in an arid environment”].) The Significant Watersheds study and the
16 Significant Ridgelines study provide further support for the Commission’s findings of sensitive
17 watersheds and scenic considerations. (3 AR 725-734, 751-757.)

18 In addition, the Biota study also stated that years of scattered development in the plan area
19 had led to various forms of degradation of natural communities, which include factors relating to
20 agriculture. (3 AR 645-46.) It stated that maintaining the ecological integrity of the plan area
21 “requires the development, adoption, and enforcement of a wide range of appropriate policies and
22 regulations . . . to lessen the impact of human disturbance.” (3 AR 646.) Petitioners are incorrect
23 that these scientific studies are not relevant to the findings on agriculture restrictions.

24 Petitioners also take issue with the fact that water scarcity was used as a justification for the
25 restrictions on agricultural uses, claiming that this is an “unsubstantiated opinion.” (Pet. Brief at
26 pp. 17:14-18:4.) In approving the LUP, the Commission found that “water availability is limited
27 for irrigation purposes,” and that this contributes to making the cultivation of vineyards and other
28 crops “either infeasible, or extremely difficult and costly.” (7 AR 1620.) This was supported by

1 statements made in the scientific reports submitted, as well as in testimony at the hearing. (See,
2 e.g., 3 AR 600 (“scarce water in an arid environment”), 613 (listing drought as an adverse
3 regional effect); 46 AR 12983, 12987, 12993, 13014; see also *Coastal Southwest Dev. Corp. v.*
4 *California Coastal Com.*, *supra*, 55 Cal.App.3d at pp. 535-36 (oral presentations at the hearing
5 constitute substantial evidence.) Though Petitioners dispute this finding, it certainly has not
6 demonstrated that no reasonable person could have reached it based on the evidence in the record.
7 And indeed, any reasonable doubts must be resolved in favor of the administrative findings and
8 decision. (*Paoli v. California Coastal Com.*, *supra*, 178 Cal.App.3d at p. 550.) Accordingly,
9 under the substantial evidence standard, the Court must reject Petitioners’ claim.

10 **C. It Was Proper for the Commission to Provide Additional Detail in the LIP**
11 **to Restrictions Already Sufficiently Identified in the LUP**

12 Finally, Petitioners argue that the additional detail provided in the LIP regarding the
13 definitions of organic and biodynamic farming practices render the LUP defective for failing to
14 include such detail initially. (Pet. Brief at pp. 18:22-19:17.) Petitioners’ argument demonstrates
15 a lack of understanding of the relationship between the LUP and LIP. The LUP and LIP make up
16 the two parts of the overall LCP, with the LUP functioning as the general plan for the property in
17 the coastal zone, and the LIP providing the more specific ordinances, regulations, or programs to
18 implement the policies of the LUP. (§§ 30108.4; 30108.5, 30108.6; Cal. Code Regs., tit. 14, §
19 13542, subd. (c).) The LIP is made up of the “detailed zoning or implementing ordinances
20 designed to carry out the more general policies of the approved Land Use Plan.” (40 AR 11067.)
21 Thus, while the LUP must be “sufficiently detailed to indicate the kinds, location, and intensity of
22 land uses,” it need not spell out or define in detail every term used or every specific method of
23 implementation. (§ 30108.5.) It was entirely proper for the LIP to provide additional elaboration
24 upon what the LUP meant in terms of organic and biodynamic farming.

25 Petitioners complain that neither the April 9 Addendum nor any portion of the record for
26 the April 10, 2014 hearing defined the phrase “organic or biodynamic farming practice,” nor
27 provided any rationale for why such practices should be used. (Pet. Brief at pp. 18:27-19:1.) But
28 the information the Commission did provide was “sufficiently detailed” for purposes of the LUP.

1 The April 9 Addendum stated that “organic and biodynamic farming practices are required to
2 prevent the use of pesticides, herbicides, and fertilizers, which can adversely impact the
3 biological productivity of coastal waters and human health.” (8 AR 1910.) This provides
4 sufficient detail to indicate what the required practices were (those that do not use pesticides,
5 herbicides, and fertilizers) and why (to prevent adverse impacts to biological productivity of
6 coastal waters and human health). Indeed, the definitions that were provided in the LIP are
7 entirely consistent with what was stated in the April 9 Addendum. (40 AR 11093 [defining
8 organic farming as “an environmentally sustainable form of agriculture that relies on natural
9 sources of nutrients (compost, cover crops, manure) and natural sources of crop, weed, and pest
10 control without the use of synthetic substances,” and defining biodynamic farming as a “subset of
11 organic farming” that reflects a “unique holistic, ecosystem approach to crop production.”].) The
12 additional details provided in the LIP are consistent with this definition and rationale, and simply
13 provide more detail for implementing this policy from the LUP. Thus, the Commission provided
14 sufficient detail in its LUP, and the additional detail provided in the LIP was consistent with the
15 procedures set forth in the Coastal Act. Petitioners fail to demonstrate that this provides a
16 justification for vacating the LUP.

17 CONCLUSION

18 For the reasons set forth above, the Commission respectfully requests that this Court deny
19 Petitioners’ petition for writ of mandate.

20 Dated: September 16, 2016.

Respectfully Submitted,

21 KAMALA D. HARRIS
22 Attorney General of California
23 CHRISTINA BULL ARNDT
24 Supervising Deputy Attorney General

25 

26 DAVID EDSALL JR.
27 Deputy Attorney General
28 *Attorneys for Respondent and Defendant*
California Coastal Commission

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DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: **Mountainlands Conservancy, LLC, et al. v. Coastal Commission**

No.: **BS149063** [related to BS149044]

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On September 16, 2016, I served the attached **COASTAL COMMISSION'S OPPOSITION TO PETITIONERS' VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDATE** by placing a true copy thereof enclosed in a sealed envelope with **FED EX**, addressed as follows:

| | |
|---|--|
| C.D. Michel Eric M. Nakasu MICHEL & ASSOCIATES, P.C. 180 E. Ocean Blvd., Suite 200 Long Beach, CA 90802-4709 | Elaine Lemke Principal Deputy county Counsel Scott Kuhn, Senior Deputy County Counsel 648 Kenneth Hahn Hall of Administration 500 West Temple Street Los Angeles, CA 90012-2713 |
| Douglas P. Carstens Josh Chatten-Brown CHATTEN-BROWN & CARSTENS LLP 2200 Pacific Coast Highway, Suite 318 Hermosa Beach, CA 90254 | |

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 16, 2016, at Los Angeles, California.

Haiarpi Petrosyan
Declarant


Signature

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. Topanga Ass'n for a Scenic Community v. County of Los Angeles, ("Topanga") (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 (California Youth Authority v. State Personnel Board, ("California Youth Authority") (2002) 104 Cal.App.4th 575, 585) or evidence of ponderable legal significance, which is reasonable in nature, credible and of solid value. Mohilef v. Janovici, (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. Young v. Gannon, (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. California Youth Authority, *supra*, 104 Cal.App.4th at 585.

The agency's decision must be based on the evidence presented at the hearing. Board of Medical Quality Assurance v. Superior Court, (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. Topanga, *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. Topanga, 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. Ross, *supra*, 199 Cal.App.4th at 922; Bolsa Chica Land Trust v. Superior Court, ("Bolsa Chica") (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. Paoli v. California Coastal Comm., (1986) 178 Cal.App.3d 544, 550; City of San Diego v. California Coastal Comm., (1981) 119 Cal.App.3d 228, 232.

The court independently reviews questions of law, including statutory interpretation. McAllister v. California Coastal Commission, (“McAllister”) (3008) 169 Cal.App.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. Ross v. California Coastal Comm., *supra*, 199 Cal.App.4th at 938; Hines v. California Coastal Comm., (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. Steele v. Los Angeles County Civil Service Commission, (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. Afford v. Pierno, (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. Pratt Construction Co. v. California Coastal Comm., (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 ESHAs shall be sited and designed to prevent impacts which would significantly 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; *Ibarra, 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. *Citizens of Goleta Valley v. Board of Supervisors*, (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; *McAllister, 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). Yost v. Thomas, *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 Ampex Corp. v. Cargle*, (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); Gentry v. eBay, Inc., (2002) 99 Cal.App.4th 816, 821 n.1. But the court may not accept its contents as true. *See Ragland v. U.S. Bank Nat. Assn.*, (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. Regency Outdoor 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 State-designated 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 ESHA 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 -- a 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 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. 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 publicly-owned 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. Heal the Bay

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 streams. 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 Hogrefe'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. The Addendum

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 crop-based 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.

c. 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 issues 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. The LIP

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 sent 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 seven-day 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 Ross, *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. *Id.* 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. *Id.*

As the Commission asserts, Ross 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 Ross, 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. Ross's holding does not alter this conclusion. Ross 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 Ross, *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 "shall hold at least one public hearing on 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]ommission 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 IT Corp. v. Solano County Board of Supervisors, (1991) 1 Cal.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 of agricultural lands in the coastal zone (§§ 31050-51), any conflict between that 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 converted 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 could be used for agriculture, or for Koutnik to say that the Santa Monica Mountains has been zoned 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. *Id.*

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. All 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.

ant art

Venegas, Denise@Coastal

From: Christensen, Deanna@Coastal
Sent: Wednesday, January 13, 2021 8:37 AM
To: Venegas, Denise@Coastal
Subject: FW: City of Malibu's Pesticide Ban

Follow Up Flag: Follow up
Flag Status: Flagged

From: Julie MORISOT <morisotjulie@hotmail.fr>
Sent: Tuesday, January 12, 2021 4:01 PM
To: ExecutiveStaff@Coastal <ExecutiveStaff@coastal.ca.gov>
Subject: City of Malibu's Pesticide Ban

Dear Sir or Madam,

I am writing to inform you that I am in support of the City of Malibu's Local Coastal Program Amendment 14-001.

Pesticides are known as being harmful for the health and the environment.

Sincerely,

Julie Morisot

From: [Christensen, Deanna@Coastal](mailto:Christensen_Deanna@Coastal)
To: [Venegas, Denise@Coastal](mailto:Venegas_Denise@Coastal)
Subject: FW: City of Malibu's Pesticide Ban
Date: Wednesday, January 13, 2021 8:37:51 AM

From: ExecutiveStaff@Coastal <ExecutiveStaff@coastal.ca.gov>
Sent: Wednesday, January 13, 2021 7:29 AM
To: Christensen, Deanna@Coastal <Deanna.Christensen@coastal.ca.gov>; Carey, Barbara@Coastal <Barbara.Carey@coastal.ca.gov>
Subject: FW: City of Malibu's Pesticide Ban

From: Judith Pineda
Sent: Tuesday, January 12, 2021 11:34 PM
To: ExecutiveStaff@Coastal <ExecutiveStaff@coastal.ca.gov>
Subject: City of Malibu's Pesticide Ban

I support the City of Malibu's Local Coastal Program Amendment 14-001. Please ban the use of all pesticides in Malibu. Pesticides are horrible and toxic to every human and animal, especially bees, which are essential for our survival. They're a poison that can lead to serious illnesses or even enhance them. Pesticides travel to our oceans, even contaminating our water supplies. As a daughter of a mom who has Type 2 Diabetes, I would be and am concerned for my mom's health. Please protect Malibu's public health for the sake of future generations.

Thank you,
Judith Pineda,
CleanEarth4Kids Youth Board member

From: [Christensen, Deanna@Coastal](mailto:Christensen_Deanna@Coastal)
To: [Venegas, Denise@Coastal](mailto:Venegas_Denise@Coastal)
Subject: FW: Public Comment
Date: Wednesday, January 13, 2021 8:49:35 AM

From: Cadence C
Sent: Wednesday, January 13, 2021 8:29 AM
To: ExecutiveStaff@Coastal <ExecutiveStaff@coastal.ca.gov>
Subject: Public Comment

I support of the City of Malibu's Local Coastal Program Amendment 14-001

- The City of Malibu has proposed banning the use of all pesticides and any toxic chemical in the city that "has the potential to significantly degrade biological resources in the City."

Please protect water, soil, air, animals and all of the people who live within Malibu. The health of the public is and should always be a top priority.

Thank you!

To: California Coastal Commission

From: Cassidy Cunningham

Date: September 30th, 2020

Re: City of Malibu LCP Amendment LCP-4-MAL-19-0164-3 (Pesticide Prohibition)

Dear Coastal Commission,

The City of Malibu's request to amend their Land Use Plan(LUP) to prohibit the use of pesticides should be granted. The Commission has the authority and responsibility to regulate the health and use of coastal lands. By allowing the City of Malibu to enforce a ban on pesticides use, the health of the coastal environment can be protected and restored. Pesticides may be used for weeds or insects, but pesticides can also be toxic to beneficial insects, other plants, birds, fish and other organisms¹. While not the intended species of the pesticide used in an area, many other organisms are vulnerable to the toxicity of the chemicals used in pesticides. This can include endangered species, who may be directly or indirectly affected by widespread pesticide use. In humans, pesticides can disproportionately affect production workers, sprayers, and agricultural workers². The health of these workers should be considered when deciding on this issue. By prohibiting the use of pesticides, the City of Malibu is protecting the workers as well as all those who interact with the area. Worldwide, pesticides cause about 1 million deaths and chronic illnesses per year each year³. If there is any chance that a reduction in this number can occur, I believe the Commission should allow it to occur. The City of Malibu is pushing forward with an amendment to their Land Use Plan that has the potential to not only benefit the environment, but also the people. This type of amendment should be an obvious choice, especially because of its widespread benefits that are not in direct opposition to any one party's best interest.

While the harmful effects on humans is a concern with pesticide use, the City of Malibu really hopes that this prohibition on pesticide use will "assure that properties are maintained in a manner that avoids the use of harmful chemicals that damage habitat and wildlife, for example by preventing such chemicals from harming predators who ingest prey that has been poisoned. It will also ensure protection for plant species diversity, native habitats and water quality by

¹ Aktar, Md Wasim et al. "Impact of pesticides use in agriculture: their benefits and hazards." *Interdisciplinary toxicology* vol. 2,1 (2009): 1-12. doi:10.2478/v10102-009-0001-7

² Ibid.

³"Killer environment." *Environmental health perspectives* vol. 107,2 (1999): A62-3. doi:10.1289/ehp.107-1566330

preventing use of pesticides and their residual adverse effects on biological and marine resources”⁴. The City of Malibu wants to protect its coastal habitats, which will in turn benefit the coast and coastal communities as a whole. There is not only a direct effect from pesticides, but also an indirect effect from consumption of affected organisms. The organisms that eat plants sprayed with pesticides can in turn have accumulated effects in the environment and ecosystem food web. In terms of environmental degradation, pesticides can contaminate surface water through run off of treated plants and soil⁵. Marine pollution from pesticide runoff is harmful for organisms who inhabit the area and people who use it for recreational purposes. In addition, groundwater, soil, and non-target organisms are all vulnerable to the widespread effects of pesticides⁶.

It is important that the Commission takes into consideration the harmful effects of pesticides when deciding on this issue. This amendment will not only help alleviate adverse human health effects associated with pesticides, it will also help preserve the environment from further contamination and degradation. The City of Malibu is simply trying to protect the environment and its citizens by banning pesticides, and I believe they have the right to act on behalf of the best interests for their city. The Coastal Commission has a duty to protect the coast and supporting the City of Malibu’s proposition to prohibit the use of pesticides does just that. I urge the Commission to approve this amendment to the City of Malibu’s Land Use Plan to prohibit pesticide use.

Thank you for your time and consideration,

Cassidy Cunningham

⁴ <https://www.malibucity.org/DocumentCenter/View/26438/Staff-Response-to-January-13-2020-CCC-Letter>

⁵ Aktar, Md Wasim et al. “Impact of pesticides use in agriculture: their benefits and hazards.” *Interdisciplinary toxicology* vol. 2,1 (2009): 1-12. doi:10.2478/v10102-009-0001-7

⁶ Ibid.