CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

MOUNTAINLANDS CONSERVANCY, LLC, et al., Plaintiffs and Appellants, v. CALIFORNIA COASTAL COMMISSION, Defendant and Respondent.	B287079 (Los Angeles County Super. Ct. No. BS149063) (Filed Apr. 1, 2020)
COUNTY OF LOS ANGELES, Real Party in Interest and Respondent.	

APPEAL from a judgment of the Superior Court of Los Angeles County, James C. Chalfant, Judge. Affirmed.

Bradley & Gmelich, Barry A. Bradley, Lena J. Marderosian and Dawn Cushman for Plaintiffs and Appellants.

Damien M. Schiff for Pacific Legal Foundation as Amicus Curiae on behalf of Plaintiffs and Appellants.

Xavier Becerra, Attorney General, Daniel A. Olivas, Assistant Attorney General, Christina Bull Arndt, Supervising Deputy Attorney General, and David Edsall, Jr., Deputy Attorney General, for Defendant and Respondent.

No appearance for Real Party in Interest and Respondent.

SUMMARY

This is an appeal from a decision of the California Coastal Commission certifying a local coastal program for the Santa Monica Mountains that prohibits any new vineyards in the Santa Monica Mountains coastal zone.

Three limited liability companies that own land subject to the local coastal program sought a writ of mandate to vacate the certification, challenging the commission's decision on both procedural and substantive grounds. The trial court denied the writ petition.

We affirm the judgment.

LEGAL AND FACTUAL BACKGROUND

1. The Legal Background: General Principles

The California Coastal Act (the Coastal Act) was passed in 1976. (Pub. Resources Code, § 30000 et seq.)[1]

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[1] Unless otherwise specified, further statutory references are to the Public Resources Code.

It is "a comprehensive scheme to govern land use planning for the entire coastal zone of California." (*Yost v. Thomas* (1984) 36 Cal.3d 561, 565 (*Yost*).) The Coastal Act requires "all local governments lying in whole or in part within the coastal zone . . . to prepare and submit to the Commission a local coastal plan." (*Yost*, at p. 566, citing § 30500, subd. (a).)

A local coastal program (or LCP) is defined as "a local government's (a) land use plans, (b) zoning ordinances, (c) zoning district maps, and (d) within sensitive coastal resources areas, other implementing actions. . . ." (§ 30108.6.) "The precise content of each local coastal program shall be determined by the local government . . . in full consultation with the commission and with full public participation." (§ 30500, subd. (c).)

The local coastal program may be submitted to the commission all at once or in two phases. The two phases are, first, the land use plan (or LUP), and second, the zoning ordinances, zoning maps and any other implementing actions (§ 30511). (The parties refer to these zoning ordinances and other implementing actions as a "local implementation plan" or LIP.)

The commission will certify a land use plan, or any amendments to it, if the land use plan "meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200)." (§ 30512, subd. (c); see *Yost, supra*, 36 Cal.3d at p. 566.) These

are referred to as "chapter 3 policies." They include policies on land resources (§§ 30240-30244), a category that includes environmentally sensitive habitat areas (§ 30240) and agricultural lands. The latter policies include a section on prime agricultural land (§ 30241) and a section on all other lands suitable for agricultural use (§ 30242).[2] Conflicts between one or more policies of the Coastal Act are to be resolved "in a manner which on balance is the most protective of significant coastal resources." (§ 30007.5.)

The commission's review of a local government's land use plan is expressly limited to its determination that the plan "does, or does not, conform with" the requirements of chapter 3. (§ 30512.2, subd. (a).) As for the second-phase implementing actions (the local implementation plan), "[t]he Commission may only reject zoning ordinances on the grounds that they do not conform, or are inadequate to carry out the provisions of the certified land use plan." (*Yost, supra*, 36 Cal.3d at p. 566, citing § 30513.)

"A certified local coastal program and all local implementing ordinances, regulations, and other actions may be amended by a local government, but no such amendment shall take effect until it has been certified by the commission." (§ 30514, subd. (a).)

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[2] Other chapter 3 policies include policies on public access, recreation, marine environment, development, and industrial development. (§§ 30210-30236, 30250-30265.5.)

2. The Factual and Procedural Background

Los Angeles County (the county) has divided its coastal zone into three areas. One of these is the Santa Monica Mountains.

In 1986, the commission certified the land use plan portion of a proposed local coastal program for the Santa Monica Mountains. (This is referred to as the 1986 Malibu land use plan.) No zoning ordinances or other implementing actions were adopted or certified, so the county did not have a complete certified local coastal program for the Santa Monica Mountains. (This meant that the commission retained jurisdiction over land use in the Santa Monica Mountains, and applicants for any development project in that coastal zone had to obtain permits from the commission rather than from the county.)

In 2007, the county's regional planning commission recommended approval of a proposed local coastal program that included an "updated land use plan . . . to replace the Malibu LUP" as well as a proposed local implementation plan. The Board of Supervisors (the board) indicated its intent to approve the proposed program with modifications, but the commission never considered or certified it.

In 2012, the commission began to encourage certification of uncertified areas and to work with local agencies to update existing coastal plans. After negotiations between commission staff and the county, clarifications and amendments were made to the 2007 proposed local coastal program.

a. The county's proposed local coastal program

On January 2, 2014, the county gave notice the board would consider a proposed local coastal program for the Santa Monica Mountains at a public hearing on February 11, 2014.

The county's proposed program included a land use plan replacing the 1986 Malibu land use plan, and an implementation plan with amendments to the zoning code and a zone change ordinance. The county summarized the major differences between the 1986 Malibu land use plan and "the current amendment to the land use plan," and stated that "this amendment will replace the 1986 LUP in its entirety."

Among the significant differences was that "[a]gricultural uses are proposed for restriction in the proposed [local coastal program]." For reasons the county enumerated, "the County has elected to respect the vineyards and crop areas already in existence, and to prohibit further establishment of such uses in the future." Another significant difference involved critical habitat; in the 1986 plan, "there was a far smaller designation of critical habitat than is now presented as H1." ("H1" is the designation for "[t]he most sensitive and geographically constrained habitats.")

The board held a public hearing, and on February 18, 2014, approved a resolution stating its intent to approve the proposed program and submit it to the commission.

b. The commission staff's March 27 report

On March 27, 2014, the commission staff issued a report on the county's proposed land use plan amendment. The staff recommended denial as submitted, but recommended approval subject to 60 suggested modifications. Most were clarifications and refinements, but several modifications were suggested as necessary to ensure the land use plan was in conformity with chapter 3 policies.

As relevant here, in modification No. 27, the staff clarified the provision prohibiting new crop, orchard, vineyard, and other crop-based nonlivestock agricultural uses, adding that existing agricultural uses "may not be expanded." The staff also suggested a new policy (modification No. 28) stating that "[e]xisting, legally-established, economically-viable crop-based agricultural uses on lands suitable for agricultural use shall not be converted to non-agricultural use" unless certain requirements were met. (This modification tracked a policy stated in section 30242 of the Coastal Act, described *post.*) The staff also suggested (modification No. 29) deleting a provision that limited "existing commercial or 'hobby' agricultural uses such as vineyards, orchards, and field or row crops," but again specified that existing agricultural uses may not be expanded.

The commission staff's report reviewed sections 30241 and 30242 of the Coastal Act (the policies on agricultural land). Section 30241 specifies that the "maximum amount of prime agricultural land shall be

maintained in agricultural production to assure the protection of the areas' agricultural economy, and conflicts shall be minimized between agricultural and urban land uses" through several stated policies. Section 30242 governs other agricultural land, and states that 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 [other specified policies]."

The staff report concluded section 30241's mandate to maintain the maximum amount of prime agricultural land in agricultural production did not apply. This was because the "limited lands within the plan area that contain prime agricultural soils are either State or Federal public parkland or are developed with existing uses and not in agricultural production."[3]

Further, "other lands in existing agricultural use and suitable for agricultural use are very limited in area. [A] large percentage of the plan area consist[s] of very steep slopes and poor soils, which are unsuitable for agriculture. . . . The steep slopes, poor soils, limited

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[3] The staff report explains in detail the meaning of "prime agricultural land" under the Coastal Act. The definition (§ 30113) includes four categories described in Government Code section 51201, one of which is "[l]and 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 return "not less than two hundred dollars ($200) per acre" on an annual basis. (Gov. Code, § 51201, subd. (c)(4).)

water availability, and other constraints within the Santa Monica Mountains make . . . the cultivation of vineyards and other crops either infeasible, or extremely difficult and costly." In addition, "[a]ctivities such as vineyards or other intensive crop cultivation can have significant adverse impacts on the biological integrity of the surrounding mountain environment and receiving waterbodies." The staff described a "confluence of factors—including steep slopes, poor soils, scenic considerations, sensitive watersheds, abundant [environmentally sensitive habitat areas], and lot size limitations—[t]hat render the vast majority of the land in the Santa Monica Mountains unsuitable for agricultural use." Consequently, "the prohibition on the conversion of lands suitable for agricultural use to non-agricultural use" in section 30242 "does not apply in most cases in this unique plan area."

The report stated that the only areas in existing agricultural production were "very limited vineyard areas, encompassing a very small percentage of the plan area." The "very limited areas where agriculture is possible" were "the one or two areas that are already in active agricultural production," and these were to be protected by modification No. 28. These two vineyard areas encompassed approximately 50 acres. "Otherwise, the remaining vineyards in the plan area are a very limited number of very small, 'hobby' vineyard plots (less than 2 acres) that are accessory to single-family residences," and "these areas are very limited and often not commercially viable."

The staff report also stated that the "protection and preservation of the environmentally sensitive habitats in the Santa Monica Mountains is the most significant issue in this LUP." The report described the plan's "biological resource protection approach" and the three categories of habitat designated in the plan (H1, H2 and H3). "H1 and H2 habitats are collectively described as Sensitive Environmental Resource Areas (SERA's)." As noted earlier, the designation "H1" is for the "most sensitive and geographically constrained habitats." "H2 habitat consists of areas of high biological significance, rarity, and sensitivity that are important for the ecological vitality and diversity of the Santa Monica Mountains Mediterranean Ecosystem." "H3 habitats are developed or legally disturbed areas that may retain some residual habitat values, but are not considered to be ESHA [environmentally sensitive habitat areas]."[4] More than 87 percent of the 50,000 acres in the land use plan is designated either H1 or H2.

c. Public comments

On April 7, 2014, plaintiffs—Mountainlands Conservancy, LLC; Third District Parklands, LLC; and Third District Meadowlands, LLC – submitted their comments. They contended the proposed land use plan,

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[4] The Coastal Act defines "'[e]nvironmentally sensitive area'" 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.)

even with the staff's proposed modifications, "raises substantial issues as to conformity with" chapter 3 policies, in particular the "policy of preserving land in the Coastal Zone for agriculture." Plaintiffs asked the commission either to decline certification or to "set an additional hearing on all matters that raise such 'substantial issues.' " (§ 30512 requires an additional hearing under specified circumstances, as we discuss *post.*)

Specifically, plaintiffs first challenged the staff's finding that the only prime agricultural soils were located in public parkland areas or developed with existing uses. Plaintiffs said they were "aware of at least one property within the Coastal Zone containing a deed restriction indicating the presence of 'prime agricultural land' on that property." (Plaintiffs did not identify or document this property.)

Plaintiffs also challenged the staff's conclusion that the vast majority of land in the Santa Monica Mountains was unsuitable for agricultural use. Plaintiffs contended these findings were "purely speculative"; and the report contained "no information on the amount of land . . . that is currently under cultivation," and no persuasive explanation of why there is no further land suitable for agriculture.

Plaintiffs attached an expert report from Daryl Koutnik on agricultural use opportunities in the Santa Monica Mountains. Mr. Koutnik, who stated he was a principal in "Biological and Environmental Compliance," provided a list of soil types in the Santa Monica Mountains suitable for agriculture. He concluded the

staff report's dismissal of agricultural uses "based solely on soils being too rocky and steeply sloping . . . does not correspond to current successful agricultural operations in the area." With modern practices, various crops "may be successful on a variety of soil types and slope steepness," and "[f]arming and engineering techniques are available to address water quality and erosional concerns." The limitation of agricultural uses to only those designated by the Department of Conservation based on soil types and recent or current operation "while prohibiting such use for properties that have been historical[ly] used for such practices is a substantial change from the current zoning designations that allow these agricultural activities."

Plaintiffs submitted a soil survey of the Santa Monica Mountains National Recreation Area (as well as other soil surveys, soil maps and related materials). The Santa Monica Mountains survey stated that "[a]bout 3,470 acres, or less than 2 percent of the survey area, would meet the requirements for prime farmland if an adequate and dependable supply of irrigation water were available."

Plaintiffs also submitted an opinion from geologist Scott Hogrefe, to refute the staff's assertion that the Santa Monica Mountains, because of steep topography, poor soils, limited water availability, and constrained access, have never been an area particularly conducive for agriculture. Mr. Hogrefe, who has been a consulting geologist on many properties in the area during the past 30 years, opined that the "vast majority of sites

across the Santa Monica Mountains do contain good to excellent soil conditions for agricultural purposes."

d. The commission staff's April 9 addendum

On April 9, 2014, the commission staff issued an addendum to its March 27 report, one day in advance of the April 10 public hearing. Among other matters, the April 9 addendum responded to concerns raised by the public, including by plaintiffs, about the proposed prohibition of all new crop-based agriculture. The addendum stated the commission staff had conferred with county staff and agreed on some proposed changes, including its recommendations on modifications Nos. 27 and 29, "to temper the wholesale prohibition on new crop-based agriculture that appears in the County's original proposal."

The trial court aptly summarized the recommended changes. "In light of the comments received," commission staff recommended a modification "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." The commission staff "removed the prohibition on expanding agricultural uses, and recommended that existing legal agricultural uses may be expanded consistent with" the three criteria just mentioned. The commission staff "recognized that the continuation of agricultural uses" is

encouraged under the Coastal Act if those uses "can be accomplished consistent with other Chapter 3 policies."

The commission staff's new findings "justified the allowance for new agriculture because 'small-scale crop-based agricultural operations (with the exceptions of vineyards) can avoid adverse impact to biological resources and water quality,' if 'organic and biodynamic farming practices are followed.'" The 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.'" 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."

e. Plaintiffs' response

Plaintiffs responded to the April 9 addendum on April 10, the date of the public hearing.

First, plaintiffs contended that allowing affected parties less than 24 hours to respond to the proposed revisions would violate section 30503. (§ 30503 requires the public to be provided with "maximum opportunities to participate" during the preparation, approval, certification, and amendment of any local coastal program.)

Second, plaintiffs argued that even as revised, the proposed land use plan "still raises substantial issues as to its compliance" with chapter 3 policies, so that the commission "must set an additional hearing to discuss those issues." Plaintiffs cited three "substantial issues."

Plaintiffs said the revised proposal "would still exclude new agriculture from the vast majority of land" in the Santa Monica Mountains coastal zone. This was because new agriculture was allowed, with two limited exceptions, "only in certain H3 habitat areas," and "the bulk of the area in the Coastal Zone is designated H1 or H2." Plaintiffs cited Dr. Hogrefe's report that the vast majority of land was suitable for agricultural use. Plaintiffs asserted that "[t]o the extent that land that had potentially been available for agricultural use would now be unavailable due to its classification as H1 or H2 habitat, the proposed [land use plan] as revised by the Staff's Addendum conflicts with the policy expressed in Section 30242 of the Coastal Act against conversion of land suitable for agricultural use to non-agricultural land."

Plaintiffs also challenged the staff's justification for the prohibition of new vineyards, contending the staff's statements (reproduced in the next footnote)[5]

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[5] "Vineyards require the removal of all native vegetation and the soils must be scarified which results in increased erosion and sedimentation of streams which adversely impact riparian areas and water quality. In addition, vineyards typically require the application of pesticides that can also adversely impact coast streams and riparian habitat. Furthermore, vineyards require

were "newly presented . . . without substantiation and without the benefit of public comment." (Plaintiffs similarly challenged the limitation of additional agriculture solely to organic and biodynamic farming methods, but they do not pursue this point on appeal.)

In addition, plaintiffs submitted two documents for the record. The one relevant to this appeal is a June 2012 study prepared by researchers at the UCLA Institute of the Environment & Sustainability, entitled "Potential Extent of Vineyard Development in the Santa Monica Mountain National Recreation Area [SMMNRA]" (the UCLA study). The UCLA study sought to identify "areas where vineyard development could potentially occur given current zoning and land use regulations," and stated that, of the 48,394 acres in the study site, 62.5 percent had favorable physical conditions and appropriate zoning for development. In addition to potential vineyard development, the report identified existing vineyards in the area (38, some with slopes greater than 33 percent). These included "large commercial vineyards, as well as small hobby vineyards." (We will describe the UCLA study further in connection with our legal discussion of plaintiffs' substantial evidence claim.)

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large amounts of water that can require agricultural wells that can draw down ground water and adversely impact streams and seeps and their associated habitats. Moreover, County staff asserts that grapevines can be an invasive type of vegetation in riparian areas. Finally, given that grapevines must be supported by trellises in a linear, unnatural pattern, vineyards can adversely impact scenic views."

f. The April 10 hearing and subsequent proceedings

After presentations by county and commission staff, the commission heard from many members of the public. Counsel for plaintiffs argued the commission had a duty to determine whether there were any substantial issues concerning the compliance of the land use plan with chapter 3 policies, and that there were such issues, "especially with compliance with section 30242."

Counsel also expressed agreement with much of the position presented by a representative of the California Coalition of Coastal Farmers (Mr. Don Schmitz), who spoke at some length about prime agricultural land in the Santa Monica Mountains and against the restriction on vineyards. Mr. Schmitz reported that the entire Santa Monica Mountains area had been approved by federal authorities as a fine wine growing region (designated an AVA or American Viticultural Area).

The commission voted unanimously to approve the land use plan with the modifications suggested by the commission staff.

Three months later, after a staff report, objections from plaintiffs, and a public hearing, the commission approved the county's proposed local implementation plan, with modifications. On August 26, 2014, the board issued a resolution adopting the local coastal program, consisting of the land use plan and the local implementation plan, both as modified by the

commission. Final commission certification took place at its meeting on October 10, 2014.

g. The writ petition proceedings

In June 2014, after the commission's approval of the land use plan, plaintiffs filed a petition for writ of mandate. The amended petition filed December 9, 2014, is the operative pleading. Plaintiffs alleged the commission did not proceed in the manner required by law, because it did not make a "substantial issues" determination under section 30512. Even with the modifications in the April 9 addendum, they alleged, the proposed land use plan raised substantial issues of conformity with sections 30241 and 30242. They claimed the plan "converted lands suitable for agricultural use to non-agricultural use in violation of Section 30242." They asserted that all lands of greater than 3:1 slope were converted to nonagricultural use, as were "all lands in the 87.9% of the Coastal Zone designated as H1 or H2," with limited exceptions. Plaintiffs alleged the commission was required to conduct a further hearing on those issues.

Plaintiffs also alleged that, by considering the addendum made available to the public the day before the hearing, the commission denied them a meaningful opportunity to address the findings that "new vineyards deserved to be separated from other forms of agriculture for categorical prohibition."

Plaintiffs further alleged the commission's findings were not supported by substantial evidence,

including insufficient evidence to justify a categorical prohibition of vineyards as opposed to other types of agriculture.

The trial court denied plaintiffs' petition, issuing two comprehensive rulings.

In its first ruling, the court rejected plaintiffs' claim that the April 9 addendum was required to be distributed at least seven days before the public hearing, and ruled that even if there were such a requirement, plaintiffs could not show they were prejudiced by the addendum's timing. The court further concluded the commission was not required under section 30512 to hold a separate hearing on the matters claimed by plaintiffs to raise "substantial issues." The proposed land use plan was an amendment of the 1986 Malibu plan, so that the amendment procedure under section 30514 applied, not section 30512. In addition, the court found the commission correctly concluded that section 30241—requiring that the maximum amount of prime agricultural land be maintained in production—did not apply. And, the court found substantial evidence supported 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."

The trial court continued the hearing and ordered further briefing, limited to the question whether the total ban on vineyards was supported by substantial evidence. Along with their supplemental brief, plaintiffs filed a motion to augment the record with

documents relating to the federal designation of the Santa Monica Mountains coastal region as an American Viticultural Area. At the continued hearing, the court denied the motion as unauthorized and untimely.

In its second ruling, the court described and analyzed the evidence in great detail, concluding there was substantial evidence that vineyards are harmful to the Santa Monica Mountains ecology "because they require clearing and scarification, increase erosion and sedimentation, require pesticide use, and constitute an invasive monoculture." Further, "[o]f these harms, many are inherent to the nature of viticulture, and there is no evidence that they could be mitigated."

Judgment was entered on November 20, 2017, and this appeal followed.

DISCUSSION

With minor variations, plaintiffs make the same claims they made to the trial court: that section 30512 applied and mandated a further hearing; that the commission failed to enforce the agricultural protection policies of the Coastal Act; that the hearing was unfair and denied due process because the April 9 addendum was issued the day before the hearing; and that no substantial evidence supported the decision "to isolate vineyards for prohibition." None of these contentions has merit.

1. The Standard of Review

Under Code of Civil Procedure section 1094.5, the trial court reviews the commission's decision to determine whether the commission "proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the [commission] has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (*Id.*, subd. (b); see *Ross v. California Coastal Com.* (2011) 199 Cal.App.4th 900, 921 (*Ross*).) "The [commission's] findings and actions are presumed to be supported by substantial evidence," and plaintiffs have the burden of demonstrating otherwise. (*Ross*, at p. 921.)

The trial court considers all relevant evidence, but does not substitute its own findings and inferences for those of the commission. (*Ross, supra*, 199 Cal.App.4th at pp. 921-922.) The trial court may reverse the commission's decision "'only if, based on the evidence before it, a reasonable person could not have reached the conclusion reached by [the commission].'" (*Id.* at p. 922.) "Our scope of review is identical to that of the trial court. [Citations.] We, like the trial court, examine all relevant materials in the entire administrative record to determine whether the [commission's] decision is supported by substantial evidence." (*Ibid.*)

When interpreting a statute, our review is de novo, but the commission's interpretation of its governing

statutes "is entitled to great weight." (*Ross, supra*, 199 Cal.App.4th at p. 922.)

2. Section 30512 Versus Section 30514

Plaintiffs contend the commission was required to proceed under section 30512, rather than under section 30514 (governing amendments). As already noted, section 30512 requires the commission to determine, after a public hearing, whether the land use plan of a proposed local coastal program "raises no substantial issue as to conformity with" chapter 3 policies. If the plan does raise a substantial issue, the commission must identify the issues and hold at least one public hearing on the matters identified.[6]

The commission, on the other hand, says that it properly proceeded under section 30514, which has no

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[6] Specifically, section 30512 requires the commission, after submission of the land use plan and after public hearing, to "either certify or refuse certification, in whole or in part," under specified procedures. (*Id.*, subd. (a).) The commission must determine, after the public hearing, "whether the land use plan, or a portion thereof applicable to an identifiable geographic area, raises no substantial issue as to conformity with the policies of Chapter 3." (*Id.*, subd. (a)(1).) If the commission determines no substantial issue is raised, the land use plan "shall be deemed certified as submitted." (*Ibid.*) If the commission determines that one or more portions of a land use plan raise no substantial issue, the remainder of the land use plan "shall be deemed to raise one or more substantial issues," and the commission must identify each substantial issue for each geographic area. (§ 30512, subd. (a)(2).) The commission must hold at least one public hearing "on the matter or matters that have been identified as substantial issues." (*Id.*, subd. (a)(3).)

such requirement. Under section 30514, "[a]ny proposed amendments to a certified local coastal program" must be submitted and processed under sections 30512 and 30513,[7] "except that the commission *shall make no determination* as to whether a proposed amendment raises a substantial issue as to conformity" with chapter 3 policies "as would otherwise be required by Section 30512." (§ 30514, subd. (b), italics added.) There is no limitation on the number of amendments included in a submittal. (*Ibid.*) And the scope of section 30514 is broad: "A certified local coastal program and all local implementing ordinances, regulations, and other actions may be amended. . . ." (§ 30514, subd. (a).)

The record shows the county identified its February 14, 2014 submission to the commission with a caption that begins with the words, "formal submittal of amendment to the 1986 land use plan." The submission included a "summary of the major differences between 1986 Malibu LCP, LUP and the current submittal." Similarly, the commission staff's March 27 report describing the county's proposed local coastal program stated that, "[f]or the Land Use Plan portion, the County is requesting an amendment to its existing certified Land Use Plan, consisting of a comprehensive update to replace the existing Land Use Plan with a new proposed Land Use Plan."

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[7] Section 30513 describes the procedures that govern submission and approval of zoning ordinances and other implementing actions (the local implementation plan).

In the trial court, plaintiffs argued that section 30514 applies only when the local government is seeking "a minor change to its already-certified LCP." They relied on subdivision (e) of section 30514, which states that " 'amendment of a certified local coastal program' includes, but is not limited to, any action . . . that authorizes the use of a parcel of land other than a use that is designated in the certified local coastal program as a permitted use of the parcel." The trial court disagreed, pointing out that plaintiffs' argument was inconsistent with the plain language of section 30514, which specifies that an amendment "is not limited to" parcel use changes. (§ 30514, subd. (e).)

On appeal, plaintiffs take a different tack, telling us that section 30514 only applies to amendment of "[a] certified local coastal program" (§ 30514, subd. (a)), and in this case there was no certified local coastal program (only the 1986 certified land use plan).[8] We are not persuaded. A local coastal program does consist, as plaintiff observes, of both a land use plan and an implementation plan. But the only basis for rejection of an implementation plan is that it does not conform to or is inadequate to carry out a certified land use plan. (§ 30513, subd. (b).) The substance and prerequisite of a local coastal program is the certified land use plan; there cannot be any implementation plan without the

[8] The trial court observed that plaintiffs "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."

land use plan. Plaintiffs' limited view of the scope of section 30514 as permitting amendment of a local coastal program but not a land use plan is not supported by a sensible construction of its words nor by any legal authority. To the extent legal authority exists, it is to the contrary. (Cf. *Yost, supra*, 36 Cal.3d at p. 573, fn. 9 ["A local government can amend a certified LCP [local coastal program] or LUP [land use plan] (§ 30514)."].)

Plaintiffs insist that when a land use plan entirely replaces an existing land use plan, it is not an amendment. The cases plaintiffs cite do not support that proposition. For example, plaintiffs tell us that the repeal and replacement of a statute "supersedes all prior statutes," rendering them "annulled, repealed and void." For this rule, plaintiffs cite *Wood v. Roach* (1932) 125 Cal.App. 631, 638. The aptness of plaintiffs' analogy is questionable, but in any event *Wood v. Roach* repeatedly refers to the enactments at issue, which established "a new and complete scheme," as the "amendments." (*Id.* at pp. 636-638.)

In short, we see no basis in legal authority or sound reasoning for concluding that an amendment to a land use plan must do something less extensive than to replace the plan entirely. This is a circumstance where it is entirely appropriate to defer to the commission's interpretation of its own procedures. (See *Hines v. California Coastal Com.* (2010) 186 Cal.App.4th 830, 849 [" 'it is well established that great weight must be given to the administrative construction of those charged with the enforcement and interpretation of a

statute. [Citations.] We will not depart from the Commission's interpretation unless it is clearly erroneous' "].) We note as well that the commission has used the amendment process in analogous circumstances in the past. (Cf. *Headlands Reserve, LLC v. Center for Natural Lands Management* (C.D.Cal. 2007) 523 F.Supp.2d 1113, 1120-1121 [referring to the commission's certification of an amendment to a local coastal program where "[t]he new amendment replaced the pre-existing 1986 [local coastal program] and covered [a] previously uncertified . . . area"].)

In sum, the commission proceeded properly under section 30514, and therefore was not required to make the "substantial issue" determination otherwise required by section 30512. (§ 30514, subd. (b).)

3. The "Blanket Determination" Issue: Agricultural Policies in Sections 30241 and 30242

Plaintiffs next argue the commission failed to proceed in the manner required by law because "it made a blanket determination that the Santa Monica Mountains are not suitable for agriculture." Plaintiffs say that sections 30241 and 30242 of the Coastal Act contemplate a determination of the feasibility of agriculture "in relation to a specific parcel of property," on "a case-by-case basis." We disagree. Plaintiffs misconstrue sections 30241 and 30242, mischaracterize what the commission did, and apparently misunderstand the point of a land use plan.

First, plaintiffs cite no authority for their "case-by-case basis" claim. As the commission points out, the whole point of a local coastal program is to allow local governments to do area-wide planning in conformity with the policies of the Coastal Act.

Second, sections 30241 and 30242 do not "contemplate" a case-by-case or parcel-by-parcel determination of the feasibility of agriculture. The commission properly considered these provisions, finding section 30241 does not apply, and appropriately protecting other lands suitable for agriculture as required by section 30242, as we now explain.

a. Section 30241

As we have said, section 30241 specifies that the "maximum amount of prime agricultural land shall be maintained in agricultural production."[9] The commission found this provision did not apply, because prime agricultural lands in the plan area were either public parkland, or were developed with existing uses and not in agricultural production. (The areas containing prime soils "represent less than 2 percent of the entire plan area," and the only areas in agricultural production "are very limited vineyard areas.") Plaintiffs have identified no basis for disagreement with the commission's conclusion (and completely misstate the basis for finding § 30241 inapplicable). As the trial court

[9] Section 30241 also specifies six ways in which conflicts between agricultural and urban land uses must be minimized. (§ 30241, subds. (a)-(f).) Such conflicts are not at issue here.

pointed out, the commission's finding that section 30241 did not apply was "supported by all the evidence in the record, not just substantial evidence."

b. Section 30242

As we also said earlier, section 30242 states that "[a]ll other lands suitable for agricultural use shall not be converted to nonagricultural uses" unless "continued or renewed agricultural use is not feasible." (§ 30242.)

Plaintiffs contend it was "arbitrary and capricious" to find, as stated in the staff report, that a "confluence of factors—including steep slopes, poor soils, scenic considerations, sensitive watersheds, abundant [environmentally sensitive habitat areas], and lot size limitations—render the vast majority of the land in the Santa Monica Mountains unsuitable for agricultural use." Plaintiffs point to Mr. Hogrefe's testimony that the "vast majority of sites" contain good to excellent soil conditions for agricultural purposes, and that topographic conditions allow sustainable agricultural uses.

We see nothing arbitrary or capricious about the commission's conclusion.

First, there was ample evidence in the staff report that the plan area *is* generally unsuitable for agriculture. In addition to steep slopes and poor soils, water availability is limited, and the area contains significant biological and scenic resources. "Activities such as vineyards or other intensive crop cultivation can have

significant adverse impacts on the biological integrity of the surrounding mountain environment and receiving waterbodies."

Second, as the trial court pointed out, "[t]he mere possibility of successful agricultural use," as presented in the comments of plaintiffs' experts, is not sufficient. Plaintiffs did not show that land in the plan area is actually suitable or feasible for agricultural uses. The Coastal Act defines "feasible" 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, italics added.)

The staff report found that, in combination with the relatively steep topography, "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." And plaintiffs completely ignore the requirement for protection of environmentally sensitive habitat areas. (Recall that more than 87 percent of the 50,000 acres in the land use plan is designated either H1 or H2 (sensitive environmental resource areas), making those areas unsuitable for agriculture.) An assessment of "feasibility" requires consideration of these factors. Further, the Legislature recognized there would be conflicts between the policies of the Coastal Act, and declared that "such conflicts be resolved in a manner

which on balance is the most protective of significant coastal resources." (§ 30007.5.)

Third, section 30242 protects against the conversion of lands to nonagricultural uses. This necessarily means, as the words of the statute demonstrate, that the lands being protected either are now in agricultural use, or have been in agricultural use in the past. The prohibition on conversion to nonagricultural uses does not apply where "*continued or renewed* agricultural use is not feasible." (§ 30242, italics added.) As the trial court put it, "[t]his 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."

Thus the trial court correctly gave no credence to testimony that the Santa Monica Mountains area has been zoned for agriculture "[f]or nearly 100 years." The pertinent point was that "[t]here simply is no evidence that the [local coastal program] converts to a non-agricultural use any land that actually has been used for agricultur[e] anytime within the past 100 years." The local coastal program approved by the commission fully protects areas currently in agricultural production, as dictated by section 30242.

There is no doubt that the preservation of agricultural land uses is an important public policy in California. (§§ 10201, subd. (c), 31050, 31051.) But so is the preservation of coastal resources, including environmentally sensitive habitat areas. (§ 30240, subd. (a)

["Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas."].) We find no error in the commission's construction and application of the agricultural protections embodied in sections 30241 and 30242.

4. The Fair Trial Issue

Our inquiry extends to "whether there was a fair trial." (Code Civ. Proc., § 1094.5, subd. (b).) "[T]he 'fair trial' requirement is equivalent to a prescription that there be a fair administrative hearing." (*Pomona College v. Superior Court* (1996) 45 Cal.App.4th 1716, 1730.)

Plaintiffs contend the April 10 hearing was unfair and denied them due process because the commission "gave less than 24-hours' notice of a new [land use plan] that would completely ban vineyards." Plaintiffs are referring to the staff's April 9 addendum, which responded to the public comments on the staff's March 27 report. The staff responded by proposing modifications to the land use plan that would allow new agriculture (but not vineyards), subject to slope and "organic or biodynamic farming" requirements.

To be clear, the April 9 addendum was not a "new" land use plan, nor did it propose a new treatment of vineyards. The addendum was issued in response to public comments, including those of plaintiffs, and it addressed their arguments opposing the agriculture

ban by allowing some new agriculture, subject to significant restrictions. The addendum was issued the day before the public hearing, and complied with the pertinent regulations, as did the March 27 report. That is the way the process is supposed to work. Specifically:

Several regulations govern commission action on land use plans. (Cal. Code Regs., tit. 14, §§ 13530-13541.) As pertinent here, section 13532 of the regulations governs the staff recommendation. It requires the executive director to prepare the recommendation, which must set forth specific findings, including facts, legal conclusions, suggested modifications, and so on. "In order to assure adequate notification," the regulation specifies the distribution of "the final staff recommendation" to interested persons and organizations, "within a reasonable time but in no event less than 7 calendar days prior to the scheduled public hearing." (*Id.*, subd. (b).) As the trial court pointed out, the March 27 report was the "final staff recommendation" meeting the criteria in section 13532 of the regulations.

The succeeding section of the regulations (Cal. Code Regs., tit. 14, § 13533) provides for comments from the public and others on the staff recommendation. (Cal. Code Regs., tit. 14, § 13533, subd. (a).) Notably, section 13533, subdivision (b) states: "The staff shall respond to significant environmental points raised during evaluation of the [local coastal program]. The response may be included within the staff report and shall be distributed to the Commission and the person making the comment. The response shall be available

at the hearing on the [local coastal program] for all persons in attendance."

The April 9 addendum was the staff's response to the comments received concerning the agricultural ban, taking them into account and recommending the modified policy described above. As the trial court found, the staff response and recommendation "met the requirements of 14 CCR section 13533, which only requires that it be 'available at the hearing on the [local coastal program] for all persons in attendance.' "

Plaintiffs assert the commission's compliance with the regulations "is of no moment," citing a case that states an affected person "might well be able, in the circumstances of a given case," to demonstrate a denial of procedural due process notwithstanding full compliance with all applicable regulations. (*Laupheimer v. State of California* (1988) 200 Cal.App.3d 440, 456, 449 [rejecting claim that a statute and rules (on forest resources) as written denied procedural due process].) Plaintiffs have made no such demonstration, nor could they in the circumstances of this case. (Cf. *Ryan v. California Interscholastic Federation-San Diego Section* (2001) 94 Cal.App.4th 1048, 1072 [due process " '"varies according to specific factual contexts" ' "; in some cases, " '"due process may require only that the administrative agency comply with the statutory limitations on its authority" ' "].)

Instead, all plaintiffs do is insist that the April 9 addendum "significantly altered the fundamental premise" of the land use plan and was a "complete

change in position without any advance knowledge" that "flies in the face of due process 'dignity' and fairness." Plaintiffs' rhetoric does not comport with the facts or the law.

Nothing about the proposed modifications—responsive to public comment on the plan—altered the plan's original objective: "Agricultural uses are proposed for restriction in the proposed [local coastal plan]." The modification merely eased, to a very limited extent, the categorical restriction on new agriculture. To call this a "complete change in position" is simply wrong.

Plaintiffs repeatedly protest that they had no time to refute the "special, distinct prohibition of all new vineyards." But the prohibition on new vineyards never changed, and plaintiffs present no rational explanation of their assertion that the "complete and singular vineyard ban" would generate a significantly different response from the original ban on "[n]ew crop, orchard, vineyard, and other crop-based non-livestock agricultural uses." Moreover, plaintiffs in fact responded to the "new" ban on vineyards in the April 9 addendum, both in writing (by letter and with the submission of two research reports), and at the hearing.

In addition, there is precedent for the issuance of a staff addendum under similar circumstances. In *Ross*, the court rejected a claim that availability of a staff report 13 days before the hearing was unreasonable, observing it was nearly twice the period (seven days) required by the regulations. (*Ross, supra*, 199

Cal.App.4th at p. 939.) As relevant here, an addendum to the staff report was issued two days before the hearing. The court held the addendum was "not subject to the notice requirement under Code of Regulations, title 14, section 13532." (*Ibid.*) The court observed that, "[i]n the addendum, the commission responded to public comments; recommended modification of the view corridors in response to public comments; and discussed additional biological information specific to the subject property's proposed subdivision." (*Ibid.*) The same is true here: the staff responded to public comments with a modification of the ban on new agriculture.

Plaintiffs argue *Ross* does not apply because the addendum in that case "made minor changes to the prior commission staff report" (*Ross, supra*, 199 Cal.App.4th at p. 915), and did not involve a proposed new local coastal plan, but rather was directed primarily at a particular beach-front property. These are distinctions that make no difference. *Ross* did not base its analysis on a minor-versus-major basis. Nor do we consider the continued ban on vineyards to be a major change.

Further, we note that the commission's regulations permit a local government to amend its land use plan "prior to the commencement of the vote" on the plan as submitted, and the commission then determines whether or not the amendment "is material and includes changes that have not been the subject of public review and comment before the Commission." (Cal. Code Regs., tit. 14, § 13536.) If the amendments are

minor, or if they are material but have been the subject of adequate public comment at the public hearing, the commission is to consider the amendment and act on the plan as amended rather than as initially submitted. (*Ibid.*) That is analogous to the circumstances here. Plaintiffs have not demonstrated either the materiality of the changes made in the April 9 addendum or that they were not the subject of adequate public comment at the hearing.

Plaintiffs' final argument on its due process claim is that the trial court erred in refusing to augment the record with documents relating to the federal designation of the Santa Monica Mountains coastal region as an American Viticultural Area. But plaintiffs did not even seek augmentation of the record until after the September 5, 2017 hearing on the merits of their writ petition. At that hearing, the court resolved all other issues, and the vineyard ban was briefed and argued. The court requested supplemental briefing, solely on whether the ban on vineyards was supported by substantial evidence. Plaintiffs did not request augmentation until a month later, contemporaneously with filing their supplemental brief.

The court denied the motion as unauthorized and untimely. The court stated that plaintiffs "did not ask, and the court did not authorize, a motion to augment the record," and plaintiffs provided "no excuse for their failure to bring this motion at the original writ hearing." The court further stated that the documents could have been obtained in time for the commission hearing had plaintiffs exercised reasonable diligence. Indeed,

plaintiffs "admit that many of the documents they seek to add to the Administrative Record existed at the time of the Commission's April 10, 2014 hearing."

Plaintiffs do not explain why the court's ruling was an abuse of discretion, and of course it was not. They simply assert—again—that they were "misled" and could have produced more evidence to challenge the vineyard ban if more than 24 hours' notice had been given, and thus they "were prejudiced by the denial of due process." As we have seen, there was no failure of due process. There was likewise no error in the court's denial of plaintiffs' motion to augment the record.

5. The Substantial Evidence Issue

Plaintiffs contend, in essence, there is no evidence vineyards are any worse than other crops that are not subject to a total ban: They contend "there was no substantial evidence that vineyards were deserving of isolation or distinction as being uniquely disruptive of watersheds, erosion, [environmentally sensitive habitat areas], scenic views or of any other coastal resource." Our review of the record, like the trial court's, leads to a contrary conclusion.

There are, in particular, two pieces of evidence—the UCLA study (mentioned in the fact section) and expert testimony from Dr. Jonna Engel, the commission's staff ecologist—that directly support the commission's conclusion that vineyards pose a threat to

coastal resources and therefore should be banned.[10] The evidence plaintiffs cite, on the other hand, while it supports the suitability of lands in the Santa Monica Mountains for vineyards, does nothing to counter the evidence of environmental harm caused by vineyards. As the trial court pointed out, it is feasibility, not suitability of the land, that is critical, and feasibility as defined in the Coastal Act requires the consideration of environmental factors.

The UCLA study

The UCLA study sought to identify areas where vineyard development could potentially occur, and to identify existing vineyards in the area. Plaintiffs cited the study to the trial court as "directly on point" and characterized it as "an unbiased report." They emphasized its finding that 62.5 percent of the land in the Santa Monica Mountains is favorable for vineyard development.

Remarkably, however, plaintiffs completely ignored the substance of the report. (They do not refer to it at all in their appellate briefing.) The abstract of the study begins with the observation that, despite conservation efforts, urbanization "has already contributed to widespread disturbance throughout the [Santa Monica

[10] There was other evidence as well, including letters and statements from various groups and public officials, that supported the vineyard ban. The trial court found these documents were "not particularly persuasive" because there was no discussion of the evidence underlying their conclusions, so they were "not sufficient on their own to constitute substantial evidence."

Mountains National Recreation Area (SMMNRA)], and recent trends in the development of vineyards could pose further threats. Additional vineyard development has the potential to severely disturb natural areas, which could result in fragmentation and loss of native species."

The abstract of the study summarizes: "Analysis indicated that unprotected areas in the SMMNRA are at risk of being disturbed by vineyard development. Of the 48,394 acres in the study site, 62.5% had favorable physical conditions and appropriate zoning for development. A land cover analysis underscored the potential effects of widespread development *as 74.5% of native vegetation in the study site was at risk.*" (Italics added.)

The report explained in its introduction that an increasing number of private landowners were beginning to explore opportunities for developing hobby vineyards, and "[w]e attempted to identify potential areas for vineyard development in order to distinguish habitats at risk of disturbance and improve land use policy." The report identified "vegetation types that were at high risk of being displaced or disturbed by development." The study explained that "[t]he extent of maximum development and displaced vegetation are important due to the adverse effects that vineyard development may have on an ecosystem." The authors cited other studies showing that "[d]isplacement of natural vegetation is a direct cause of habitat loss and is disruptive to ecosystem health," and that "[d]evelopment effects include fragmentation and increased edge

effects[,] decreases in habitat size and complexity, changes in predominant vegetation types, effects on local hydrology, water pollution, soil erosion, and air pollution [citations]."

Dr. Engel's rebuttal statement

Testimony at the April 10 hearing likewise supported the ban on vineyards. Dr. Engel testified that vineyards present "numerous significant adverse impacts upon the native Mediterranean habitats" in the Santa Monica Mountains, including habitat loss, habitat fragmentation, disruption of wildlife corridors, and a significant reduction of biodiversity. "From myriad species of plants and animals, to a near monoculture of non-native species, peer reviewed research has demonstrated that the insect community associated with vineyards tends to support more non-native species, and that the modified insect community spills over to the adjacent native habitats."

Further, "[d]ue to the inherent biology of grapevines, vineyards in particular introduce significant negative changes to the soil chemistry from the perspective of Mediterranean plant communities." Dr. Engel also testified that, while vineyards in general "may not require much fertilization, they typically require pesticides and fungicides, which are introduced into the surrounding native habitats, including the creeks and

streams, and watersheds with vineyards." Other points in her testimony are reproduced in the next footnote.[11]

Dr. Engel concluded by citing a recent paper in the proceedings of the National Academy of Sciences, in which the author stated: " 'Vineyards have long lasting effects on habitat quality, and may significantly impact fresh water resources. In addition to introducing sterilizing chemicals and fertilizer, which remake the ecosystem, mature vineyards have low habitat value for native species, and are visited more often by non-native species.' "

As noted above, plaintiffs do not address the evidence in the UCLA study, and they refer to Dr. Engel's testimony only to challenge her statement that vineyards "typically require pesticides and fungicides," and to wrongly characterize her testimony as "inherently untrustworthy." Instead, plaintiffs contend the

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[11] Dr. Engel countered testimony from Mr. Schmitz of the California Coalition of Coastal Farmers that vineyards increase soil fertility through nitrogen fixation and mineral depositing. She agreed, but observed "[t]his is not a positive for Santa Monica Mountains plant communities that are adapted to porous, nutrient poor acidic soil. More nutrient rich soils, such as those created by vineyards, also tend to facilitate the invasion of non-native species." Dr. Engel also responded to Mr. Schmitz's testimony that wine grapes have deep roots that may serve to stabilize slopes. "While grapevines may have deep roots, the native woodland, coastal sage scrub and chaparral communities have plant species that exhibit root stratification. That is plants with shallow roots, moderately deep roots, and deep roots. This pattern of root distribution naturally provides great soil stability. It is also thought that this is an adaptation of these species to limited water resources."

evidence "that was specifically related to vineyards" was "undisputed that vineyards were ideally suited for the Santa Monica Mountains," as vineyards require much less water and thrive on steep slopes and in poor soils. That evidence misses the point: As the trial court observed, "suitability does not make vineyard development feasible," because feasibility requires an evaluation of environmental, social, and economic factors. (§ 30108.) And there is no evidence in the record that counters the evidence that vineyards are harmful to the ecosystem and coastal resources in the Santa Monica Mountains.[12]

In short, we are in complete agreement with the trial court's summary of the substantial evidence in the record: "[V]ineyards are harmful to the Santa Monica Mountains ecology because they require clearing and scarification, increase erosion and sedimentation, require pesticide use, and constitute an invasive monoculture. Of these harms, many are inherent in the nature of viticulture, and there is no evidence that they could be mitigated. Vineyards increase erosion because the hillsides are planted with grapes where the hillsides are bare during winter months and lack the root stratification of native vegetation. . . . They create air pollution from dust. Grapevines are an invasive

[12] The evidence with which plaintiffs sought to augment the record would not help. As the trial court pointed out, the federal "American Viticultural Area" designation "makes no findings about the environmental harms caused by vineyards or the appropriateness of their use," and "does not counter [the] Commission's evidence that viticulture is harmful to the ecosystem and coastal resources of the Santa Monica Mountains."

monoculture species that impact all of the surrounding vegetation and harm riparian habitat. . . . They create water runoff and sedimentation of streams. The only impacts that could be mitigated [are] the use of pesticides, which is already banned under the [local coastal plan], and water usage. Under these circumstances, substantial evidence supports the Commission's decision to ban new vineyards."

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

GRIMES, Acting P. J.

WE CONCUR:

STRATTON, J.

WILEY, J.

Mountainlands Conservancy, LLC, et al. v. California Coastal Commission, BS 149063	Tentative decision after continued hearing on petition for writ of mandate: denied

[Filed: Oct. 31, 2017]

Petitioners Mountainlands Conservancy, LLC, Third District Parklands, LLC and Third District Meadowlands, LLC (collectively, Petitioners") and Respondent California Coastal Commission ("Commission") submit supplemental briefing on the issue of whether there is substantial evidence in the record to support the Santa Monica Mountains Local Coastal Program's ban on vineyards. Petitioners additionally move to augment the administrative record in this matter.

The court has read and considered the supplemental briefs and renders the following tentative decision.

A. Statement of the Case

1. Petition

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 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.

2. Course of Proceedings

The hearing on the FAP was held on September 5, 2017. At the hearing, the court found as follows. The Addendum satisfied the procedural requirements of 14 CCR section 13533 and was not subject to the seven day notice requirement of 14 CCR section 13532. The Commission was not required under the Coastal Act to hold a separate hearing on any substantial issues alleged by Petitioners. The Commission did not fail to proceed in the manner required by law by certifying the LCP with a ban on pesticides. Substantial evidence supported the Commission's findings that a large percentage of the plan area was not suitable for agricultural use and not subject to section 30242's restriction on the conversion of lands suitable for agricultural use. Finally, 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.

The court continued the hearing to the instant date for further briefing on the question of whether the LCP's total ban on vineyards is supported by substantial evidence.

B. Standard of Review

Code of Civil Procedure ("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 CalApp.3d 228, 232.

The court independently reviews questions of law, including statutory interpretation. McAllister v. California Coastal Commission, ("McAllister") (3008) 169 CalApp.4th 912, 921-22. Given its Commission's special familiarity with the regulatory and legal issues,

the Commission's interpretation of the statutes and regulations under which it operates is entitled to deference. 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. Code[1] §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

[1] All further statutory references are to the Public Resources Code unless otherwise stated.

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.

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

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

3. The LCP

Because local areas within the coastal zone may have unique issues not amenable to centralized administration, the Coastal Act "encourage[s] state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development" in the coastal zone. §30001.5; 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 LUP[2] 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).

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[2] The 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."

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. Motion to Augment

Petitioners move to augment the record in this action with the Malibu Coast's application and supporting documents for designation as an American Viticulture Area, submitted in July 2013 to the U.S. Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau ("TTB").[3]

CCP section 1094.5(e) provides: "[w]here the court finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before respondent, it may enter judgment as provided in subdivision (f) remanding the case to be reconsidered in the light of that evidence; or, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, the court may

[3] Petitioner asks the court to judicially notice all of its exhibits in support of the motion. The mere fact that a document was downloaded from a government cite does not authenticate it and the request is denied. *See* Evid. Code §452(c).

admit the evidence at the hearing on the writ without remanding the case."

Petitioners argue that, at all times relevant to the issues in dispute here, the Administrative Record shows that the Commission was on notice that an application had been made to the TTB to have the Santa Monica Mountain coastal area designated as an American Viticulture Area ("AVA"). Mot. at 7. On April 8, 2014, the Commission received two emails referring to the TTB's publication of a proposed rule designating the Santa Monica Mountain Coastal area as an AVA. AR 9017, 9022. At the April 10, 2014 hearing, a member of the Coastal Coalition of Family Farmers mentioned that the AVA application has been approved and the TTB is designating the Santa Monica Mountains coastal area as a fine wine growing region. AR 12998-99. Petitioners admit that many of the documents they seek to add to the Administrative Record existed at the time of the Commission's April 10, 2014 hearing, they contend that they could not have identified and submitted these documents in the short, 24 hour period between the issuance of the Addendum proposing to ban only vineyards and the April 10 hearing. Mot. at 9. Moreover, the TTB's approval of the Santa Monica Mountain coastal area as a designated AVA actually occurred after the April 10, 2014 hearing, as did an August 25, 2014 letter from Koutnik to the County contending that there is no credible scientific study that vineyards cause greater environmental harm than any other agriculture crop. Mot. at 10-11.

Petitioners' attempt to augment the record is improper. The Commission is correct that Petitioners' motion to augment is unauthorized. Opp. at 8. The court's September 5 order continued the hearing solely for supplemental briefing on the issue of whether there is substantial evidence in the Administrative Record to support the vineyard ban. Petitioners did not ask, and the court did not authorize, a motion to augment the record. Therefore, the motion is outside the scope of permissible briefing.

Petitioners' belated attempt to augment the record also is untimely. A motion to augment should normally be calendared for hearing concurrently with the hearing on the writ. Mejia v. City of Los Angeles, ("Mejia") (2005) 130 Cal.App.4th 322, 336, n. 5. The Petition was filed on June 9, 2014. The Commission sent a draft index of the Administrative Record to Petitioners, who determined "that all documents pertaining to [the] case" had been included and therefore Petitioners had no objection to it. Opp. at 2, Ex. B. Petitioners filed their opening brief on July 15, 2016, and the hearing occurred on September 5, 2017. Petitioners raised the vineyard ban in their briefs, and yet failed to file a motion to augment the record to add the AVA application documents for the September 5, hearing.

In reply, Petitioners assert that the motion to augment was timely filed and calendared prior to the continued hearing, and that there was no delay. Reply at 7-8. Petitioners argue that Mejia, *supra*, 130 Cal.App.4th at 336, n. 5, merely states that motions to augment should normally be calendared for hearing

concurrent with the writ, but does not hold that a motion filed after the writ hearing is untimely. Reply at 8. While this is true, that does not mean that a petitioner may file a motion to augment after the hearing without good reason. Petitioners provide no excuse for their failure to bring this motion at the original writ hearing. The issue of the vineyard ban was briefed and argued at that hearing, and the evidence Petitioners now seek to introduce would have been relevant at that hearing. Petitioners' attempt to augment the record now is untimely. Petitioners also fail to address the fact that the motion is beyond the scope of permissible supplemental briefing.

Even if *arguendo* the court were to consider the motion, Petitioners have not shown that they could not, in the exercise of reasonable diligence, have presented the AVA application and supporting documents for the Commission's April 10, 2014 hearing. As the Commission correctly points out, Petitioners were on notice at least as of January 6, 2014 that vineyards and grape growing were expressly restricted in the draft LUP. AR 68. The County's February 19, 2014 submission to the Commission further stated that the proposed regulations would cause the "elimination of new vineyards". AR 808, 817. Written comments referencing the AVA application were submitted to the Commission at least two days before the hearing. AR 9017, 9022. Had Petitioners exercised reasonable diligence, they could have obtained the AVA application in the time between February 2014 and April 2014.

Petitioners' contend that they had only 24 hours in which to develop their strategy of opposing the vineyard ban because they initially chose to fight the general agriculture ban and not focus on vineyard uses. Mot. at 8; Reply at 5. This is not sufficient to meet the standard under CCP section 1094.5(e). Petitioners knew about the AVA application prior to the hearing. They knew that the County was expressly targeting vineyards in the draft LUP. Had Petitioners exercised reasonable diligence, they could have submitted the AVA application at the hearing.[4]

The motion to augment is denied.

E. Statement of Facts[5]

The Draft LUP dated January 6, 2014 states that "new crop, orchard, vineyard, or other agricultural use is prohibited." AR 68. LU-11 in this same document states that the LUP will "prohibit new agricultural uses, and limit existing commercial or "hobby" agricultural uses such as vineyards, orchards, and field or row crops in order to preserve natural topography and

[4] The TTB's approval of the Santa Monica Mountains coastal area as a designated AVA occurred, and the August 25, 2014 Koutnik letter was written, after the April 10, 2014 hearing. The court might have augmented the Administrative Record with the TTB approval, but not the Koutnik letter, had the motion been timely presented.

[5] The court instructed the parties to attach all relevant pages regarding the vineyard ban from the Administrative Record to their supplemental briefs. The following statement of facts addresses only the vineyard ban that is the subject of the supplemental briefing.

locally-indigenous vegetation, and to prevent the loading of soil and chemicals into drainage courses." AR 124.

1. Scientific Studies

a. Biota Study

The Biota Study included as part of the County's submission to the Commission on February 19, 2014 was conducted in order to determine and delineate environmentally sensitive habitat areas ("ESHA"). AR 582-83. The Biota Study states that there are no scientific studies conducted in Mediterranean ecosystems to determine the range and magnitude of effects that vineyards may have on local ecology. AR 616. Resource agencies in other states have recommended placing a buffer radius around the habitat of certain sensitive species in which pesticides are not used, which could impact vineyard development. AR 617.

The Biota Study states that the increased use of pesticides, herbicides, and fungicides for certain development, especially viticulture, has "inevitably led to various forms of degradation of natural communities in adjacent areas." AR 645-46. The Biota Study warns against the increased use of pesticides, especially for viticulture, which is becoming an important land use in the Santa Monica Mountains. AR 646.

b. UCLA Study

A June 2012 study from the UCLA Institute of the Environment & Sustainability, titled "Potential Extent of Vineyard Development in the Santa Monica Mountain National Recreation Area" ("UCLA Study") states that additional vineyard development has the potential to severely disturb natural areas. AR 8940. 62.5% of the land in the Santa Monica Mountains is "favorable" for vineyard development. AR 8940. In the unincorporated section of the Santa Monica Mountains, the land suitable for vineyard development increases to 68%. AR 8959. There are 38 existing vineyards in the Santa Monica Mountains, and 6 of them have land whose slopes exceed 33%. AR 8960-62.

As an increasing number of private landowners in the Santa Monica Mountains plan area explore hobby vineyards, the consequences for habitat disturbance and improved land use policy should be understood. AR 8941. Vineyards displace native vegetation, which is a direct cause of habitat loss and is disruptive to ecosystem health. AR 8942. Other studies have also shown that vineyards have adverse effects on ecosystems due to displacement and fragmentation of natural vegetation, effects on local hydrology, water pollution, soil erosion, and air pollution. AR 8942 (citations omitted). Unprotected areas in the Santa Monica Mountains are at risk of being disturbed by new vineyards, and 74.5% of the native vegetation is at risk. AR 8940.

c. Koutnik Report

The Koutnik report, submitted by Petitioners, states that none of the soil types for the Malibu-Newton vineyard area match the soil mapping units listed by DOC. AR 7266. Vineyards can be successfully grown in Solstice Canyon, which has Cotharin clay loam and 30 to 75 percent slopes. AR 7267. They can also be grown in Malibu Canyon, which has a Chumash-Boades-Malibu association, and 30 to 75 percent slopes. AR 7267. Thus, the Commission report dismissing agricultural uses based on soil type and soils too steeply sloping does not correspond to current successful agricultural operations in the area. AR 7267.

d. Hogrefe Report

The report by Scott J. Hogrefe ("Hogrefe"), submitted by Petitioners, states that the Mediterranean climate of the Santa Monica Mountains region is ideally suited to agriculture, and that the soil conditions and topographic conditions allow sustainable agricultural use. AR 8730.

2. The County's Submissions

The County's submission to the Commission proposes the ban on vineyards, stating that there will be no new vineyards in the Coastal Zone following approval of the LCP. AR 808. The elimination of new vineyards and new crop areas would reduce the demand on the scarce water supply in the Santa Monica Mountains. AR 817. It would also improve water quality and

visual resources. AR 808. The County acknowledged that many residents of the Santa Monica Mountains have planted grape vines on their property in the fuel modification area. AR 818. The vines from these vineyards have escaped into natural areas where they interfere with native plants, and are consumed by native animals, which then spread the vines even further. AR 818. Wine grapes have been observed growing wild in Encinal Creek, some distance from the nearest vineyard. AR 818.

In an April 8, 2014 email, the County further stated that the spread of invasive plants in the Santa Monica Mountains is a serious problem that threatens the biological diversity of the unique biome. AR 8707. Grapevines have been found in areas outside of established vineyards, and pose a serious threat to the riparian vegetation found along the region's streams. Id. The fact that grapevines are already spreading outside established vineyards, when such vineyards have existed for less than 20 years, is an indicator that the plat will become invasive. Id. Where grapevines grow, native vegetation does not. Id. Establishing new vineyards would require a number of activities that unavoidably adversely impact the Coastal Zone resources, such as water quality, riparian area, water availability, and scenic views. AR 9407.

3. Comments on the LUP

a. Heal the Bay Letter

A letter from Heal the Bay stated that Heal the Bay's science monitoring program has collected data to assess the health of the Malibu Creek Watershed, since 1998. AR 1934. A March 2013 report found that local pollution sources include runoff from vineyards and equestrian facilities, and expressed concern regarding the recent increase in viticulture. AR 1935-36. Heal the Bay stated that it was particularly concerned that vineyards are associated with excess water use, sedimentation, polluted runoff, and habitat loss and damage. AR 1936. The letter also cited amphibian studies conducted since the early 1990s by professors at Pepperdine University, which showed that in-stream habitat has declined in Newton Creek, which is downstream from several vineyards. Id. The amphibian studies attributed the increase in sediment in one of the study pools to an upstream vineyard. AR 1936-37. Finally, three sites downstream from vineyards showed high levels of phosphate and nitrate, as compared to reference sites located downstream from open land. AR 1938.

The Heal the Bay letter acknowledged that 62.5% of the land in the Santa Monica Mountains is suitable for vineyard development. AR 1939. Much of the potential for vineyard development is on private land, and such development would be in direct contradiction to the goals of the Santa Monica Mountains Natural Recreation Area, which includes the preservation and

protection of the natural resources and assets of the park. AR 1939.

b. Other Public Comments

County Supervisor Zev Yaroslaysky submitted a letter in support of the LUP, stating that it would protect coastal resources by prohibiting new vineyards. AR 2082, 2414. Yaroslaysky stated that vineyards lead to soil erosion, stream and beach pollution, the spread of invasive species, the removal of natural habitat, and the introduction of highly visible changes to the landforms and natural landscape of the Santa Monica Mountains. Id.

Representatives from Heal the Bay met with Commissioner Jana Zimmer and stated that they were particularly concerned about the adverse effects of vineyards. AR 1918. Yaroslaysky met with Commissioners and stated that the vineyard ban was responsive to demonstrated damage to resources caused by existing vineyards, especially on steep slopes. AR 1919. These include water quality and air quality impacts from pesticides, erosion, visual impacts, and over use of well water. AR 1919.

California State Senator Fran Pavley wrote a letter in support of the vineyard ban on April 1, 2014, stating that the increase in agricultural uses, including vineyards, was of concern due to the use of pesticides, terracing and grading, runoff of polluted soil, and consumption of water. AR 1924-25.

A letter dated February 10, 2014 by the Resource Conservation District of the Santa Monica Mountains supports the vineyard ban. AR 869. On April 8, 2014, the Surfrider Foundation submitted comments stating that expanded viticulture would be destructive to the environment and habitat in the Santa Monica Mountains. AR 1928. Other members of the public submitted comments complaining about the adverse effects of vineyards, such as visually harmful effects (AR 1962, 9010), concern for wildlife habitat (AR 1969) and concerns over the impacts on native chaparral and sage scrub (AR 1977).

4. <u>Staff Reports</u>

The Commission Staff Report on March 27, 2014 stated that there are approximately 50 acres of vineyards planted within the Coastal Zone. AR 1536. The only areas in the Santa Monica Mountains that are currently in agricultural use are the vineyard areas. AR 1619. There are two large commercial vineyards, and several small hobby vineyards of less than two acres. AR 1619. The steep slopes, poor soils, limited water availability, and other constraints make the cultivation of vineyards infeasible or extremely difficult and costly. AR 1620.

The Staff Report found that vineyards have significant adverse impacts on the biological integrity of the surrounding mountain environment and receiving bodies of water. AR 1620. Clearing land in order to plant crops requires native vegetation removal, soil

disturbance, irrigation, and chemical and fertilizer application. AR 1622-23. The areas between grapes are bare, and since grapes replace the evergreen cover of native chaparral vegetation, even more bare ground is exposed in the winter. AR 1623. The prohibition against any new crops will avoid potential adverse impacts, such as increase soil exposure, chemical/fertilizer and irrigation requirements, erosion, sedimentation, pollution, and loss of habitat. AR 1623.

In the April 9, 2014 Addendum, staff explained that vineyards require both the removal of all vegetation and scarification of the soils. AR 1910. This results in increased erosion and sedimentation. AR 1910. Vineyards typically require the application of pesticides that can adversely impact coast streams and riparian habitat. AR 1910. Vineyards also require large amounts of water, which draws down ground water and impacts streams and seeps. AR 1910. Further, grapevines can be an invasive type of vegetation in riparian areas. AR 1910-11. Finally, the trellises necessary to support the vines adversely impact scenic views. AR 1911.

5. <u>Hearing Testimony</u>

Supervisor Yaroslaysky spoke at the hearing, and stated that the Santa Monica Mountains are not the right place for new vineyards. AR 12983. Vineyards visually change the landscape in a way that is incompatible with the Santa Monica Mountains Recreation area. AR 12983. There are other issues with vineyards,

such as pesticide use and water issues. AR 12983. Vineyards use excessive water, which prevents neighboring farms from having sufficient water. AR 12983.

Representatives of Heal the Bay testified that open space in the Santa Monica Mountains has been increasingly replaced with monoculture vineyards. AR 12993. There is no permanent ground water basin in the Santa Monica Mountains, which means that viticulture uses compete with residential wells for water. AR 12993. Vineyards also scar the hillside, exposing sediment which erodes into the streams. AR 12993.

Don Schmitz ("Schmitz") appeared at the hearing on behalf of the Coalition of Family Farmers, and testified that an application had been made to have the Santa Monica Mountains certified as an American Viticultural Area. AR 12998-99. Grapevines hold the slopes better than any other type of agriculture and prevent erosion. AR 12999. Schmitz also stated that grapevines go down to an average of 21 feet, and can be as deep as 40 feet. AR 12999. 85% of California soil is moisture rich enough to need no irrigation. AR 12999.

Coastal Commission Staff Ecologist Dr. Jonna Engel ("Engel") testified about the adverse impacts specific to vineyards, which include habitat loss, habitat fragmentation, and a reduction in biodiversity. AR 13052. Dr. Engel stated that "peer reviewed research has demonstrated that the insect community associated with vineyards tends to support more non-native species . . . " AR 13052. Moreover, the biology of

grapevines introduces significant negative changes to the soil chemistry from the perspective of Mediterranean plant communities. AR 13052.

While vineyards do not require much fertilization, they do require pesticides and fungicides which are introduced into the surrounding creeks and streams, and watersheds. AR 13052. Although vineyards do increase soil fertility, this is not a positive, as the Santa Monica Mountains plant communities are ill adapted to nutrient rich soils. AR 13052. Finally, while grape vines may have deep roots, native species have a variety of root depth that provides natural soil stability. AR 13052. Overall, vineyards have long-lasting impacts on habitat quality. AR 13053.

F. Analysis

Petitioners argue that the LCP's vineyard ban is not based on concerns about erosion, steep slopes, sediment, or runoff in grape farming, but rather is a land grab so that the County can create public parkland using private property. Pet. Supp. Br. at 10. The Commission's decision to distinguish vineyards from other agricultural crops in revised Policy CO-102/LU-11 is not based on scientific evidence or studies in the Administrative Record. Pet. Supp. Br. at 2. There are no studies on farming in the coastal zone, the feasibility of vineyards, the impact of agriculture on soil erosion, or any discussion of how these concerns can be mitigated. Pet. Supp. Br. at 3. In fact, the evidence

demonstrates that vineyards are viable in the Santa Monica Mountains. Pet. Supp. Br. at 7-8.

The Commission asserts that it banned new vineyards in the LCP because vineyards have unique, harmful impacts on coastal resources. Although vineyards are clearly feasible in the Santa Monica Mountains, as indicated by the presence of several hobby vineyards and two commercial vineyards, the presence of a vineyard is uniquely harmful due to the clearing and scarification of the land, the biological makeup of the grapevines, sedimentation caused by increased soil erosion, and other impacts. Resp. Supp. Br. at 3.

In support of this argument, the Commission cites to the Biota Study, the Heal the Bay letter, and the UCLA Study. Resp. Supp. Br. at 3-4. The Biota Study includes increased viticulture use on a list of items having "inevitably led to various forms of degradation of natural communities in adjacent areas." AR 645-46. The Biota Study also warns against the increased use of pesticides, especially for viticulture. AR 646. The Heal the Bay letter cites to a study it performed, but which is not attached. AR 1934. The letter only summarizes some of the findings from that study, which showed that vineyards contribute to local pollution, sedimentation, and habitat loss. AR 1935-36.

The UCLA Study, however, directly supports the Commission's concerns about permitting new vineyards in the Santa Monica Mountains. The UCLA Study states that new vineyard development has the potential to severely disturb natural areas. AR 8940.

Vineyards displace native vegetation, which is a direct cause of habitat loss and is disruptive to ecosystem health. AR 8942. Other studies have also shown that vineyards have adverse effects on ecosystems due to displacement of natural vegetation and fragmentation of habitat, effects on local hydrology, water pollution, soil erosion, and air pollution. AR 8942 (citations omitted). Unprotected areas in the Santa Monica Mountains are at risk of being disturbed by new vineyards, and 74.5% of the native vegetation is at risk. AR 8940.

Testimony at the hearing supports the Commission's decision to ban vineyards. Coastal Commission Staff Ecologist Dr. Engel testified about the harmful effects of vineyards in the Santa Monica Mountains. AR 13052-53. Vineyards create imbalanced insect populations, impacting native vegetation. AR 13052. The biology of grapevines significantly changes the nutrient balance in the soil, also negatively impacting native vegetation. Id. The pesticides used on vineyards negatively impact habitat quality. AR 13053. Representatives from Heal the Bay testified that there is no permanent ground water basin in the Santa Monica Mountains, which means that viticulture uses compete with residential wells for water. AR 12993. Vineyards also scar the hillside, exposing sediment which erodes into the streams. AR 12993.

The Commission also cites to several letters, statements, and analysis performed by the Commission staff. These documents are not particularly persuasive, as they primarily consist of conclusions by groups in

favor of the vineyard ban without any discussion of the evidence underlying those conclusions. County Supervisor Yaroslaysky, for example, submitted a letter in support of the LUP, stating that vineyards lead to soil erosion, stream and beach pollution, the spread of invasive species, the removal of natural habitat, and the introduction of highly visible changes to the landforms and natural landscape of the Santa Monica Mountains. AR 2082, 2414. However, he does not address how he came to those conclusions. Similarly, California State Senator Pavley wrote an on April 1, 2014 letter in support of the vineyard ban, stating without any citation or support that the increase in agricultural uses, including vineyards, was of concern due to the use of pesticides, terracing and grading, runoff of polluted soil, and consumption of water. AR 1924-25. As with the Heal the Bay letter, such conclusory statements are not sufficient on their own to constitute substantial evidence.

Petitioners' supplemental brief does not address in detail the potential harms caused by new vineyards – soil erosion, stream sedimentation, habitat loss, displacement of natural vegetation, water pollution from pesticides, the spread of non-native species, and the visual impact to landforms. Instead, Petitioners dispute the draft LUP's initial ban in the Santa Monica Mountains of all agriculture, including vineyards, as infeasible. Petitioners contend that vineyards can be successfully grown in the Santa Monica Mountains. Petitioner's expert, Koutnik, expressly stated that vineyards are successfully grown on the clay loam

soil and steep slopes of the area. AR 7267. Petitioners cite to the UCLA Study, which they characterize as unbiased, which states that 62.5% of the land in the Santa Monica Mountains is suitable for vineyards. AR 8940. Even Heal the Bay, which is prejudiced against vineyards, concludes that 62.5% of the land is suitable for vineyard development. AR 1938. Pet. Supp. Br. at 7.

For protection under section 30250, land must be both suitable for an agricultural use and feasible for that use. The steep topography, poor soils, abundant ESHA, sensitive watersheds, scenic considerations, and lot size limitations render the majority of the Santa Monica Mountains plan area unusable for agriculture. However, the UCLA Study indicates that 62.5% of the plan area is suitable for vineyard development, making such development an exception to the plan area's general unsuitability for agriculture.

But suitability does not make vineyard development feasible. "Feasibility" requires an evaluation of environmental, social, and economic factors. It is not enough to show that vineyards are suitable, Petitioners must also show that the record lacks substantial evidence to support Commission's claim that vineyards are harmful to the plan area. The record contains evidence that new vineyard development would negatively impact the Santa Monica Mountains plan area. In this regard, Petitioners completely ignore the UCLA Study's statement that vineyards have the potential to severely disturb up to 74.5% of native vegetation in the Santa Monica Mountains. AR 8940.

Petitioners address the water supply and soil erosion issues associated with vineyard development by pointing to statements in the record (author unstated) that dry farming a limited irrigation practices can encourage roots to grow deeper to search for groundwater, grapevines use 70% less water than citrus and avocado trees (AR 9150), and "cover cropping" (term not explained) reduces top soil erosion. AR 9151.

Petitioners' representative, Schmitz, also testified that grapevines hold the slopes better than any other type of agriculture and prevent erosion. AR 12999. Schmitz stated that grapevines go down to an average of 21 feet, and therefore hold the slopes better than any other type of agriculture and prevent erosion. AR 12999. He also argued that 85% of California soil is moisture rich enough to need no irrigation for grapevines. AR 12999.

Schmitz's testimony was countered by Engel's testimony. AR 13052. She stated that vineyards do not provide as much soil stability as native vegetation, and that, even if irrigation is not always necessary, vineyards still require pesticides, which pollute the air and water. AR 13052.

Petitioners also argue that the application for, and proposed designation of, the Santa Monica Mountains as an AVA constitutes substantial evidence that vineyards are feasible in the Santa Monica Mountains. Pet. Supp. Br. at 9-10. However, an AVA designation is merely a descriptive classification that an area has features such as climate, geology, or soil that make it

distinctive for viticulture. 27 CFR §4.25(e)(2). The designation makes no findings about the environmental harms caused by vineyards or the appropriateness of their use. The AVA application and proposed designation does not support Petitioners' claim that viticulture is feasible because it does not counter Commission's evidence that viticulture is harmful to the ecosystem and coastal resources of the Santa Monica Mountains.

There is substantial evidence that vineyards are harmful to the Santa Monica Mountains ecology because they require clearing and scarification, increase erosion and sedimentation, require pesticide use, and constitute an invasive monoculture. Of these harms, many are inherent to the nature of viticulture, and there is no evidence that they could be mitigated. Vineyards increase erosion because the hillsides are planted with grapes where the hillsides are bare during winter months and lack the root stratification of native vegetation. AR 13052. They create air pollution from dust. Grapevines are an invasive monoculture species that impact all of the surrounding vegetation and harm riparian habitat. AR 818, 8707. They create water runoff and sedimentation of streams. The only impacts that could be mitigated is the use of pesticides, which is already banned under the LCP, and water usage. Under these circumstances, substantial evidence supports the Commission's decision to ban new vineyards.

The Commission has provided scientific studies and the testimony of experts from the hearing to support its conclusion that vineyards pose a threat to

coastal resources and should be prohibited as part of the LCP. Petitioners provide evidence demonstrating that vineyards are suitable in the plan area, but fail to counter the evidence of environmental harm. Substantial evidence supports the LCP's ban on new vineyard uses within the plan area, and there is no evidence that would compel the Commission to impose mitigation as a lesser alternative.

G. Conclusion

The FAP is denied. Respondent Commission's counsel is ordered to prepare a proposed judgment, serve it on Petitioners' 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 November 28, 2017 at 1:30 p.m.

Mountainlands Conservancy, LLC, et al. v. California Coastal Commission, BS 149063	Tentative decision on petition for writ of mandate: denied

[Filed: Sept. 5, 2017]

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

[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.

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. HI 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 1-12. 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 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 I-13 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.AppAth 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; Balsa 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 CalApp.3d 228, 232.

The court independently reviews questions of law, including statutory interpretation. McAllister v. California Coastal Commission, ("McAllister") (3008) 169 CalApp.4th 912, 921-22, Given its Commission's special familiarity with the regulatory and legal issues, the Commission's interpretation of the statutes and regulations under which it operates is entitled to deference. 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. Code[2] §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

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

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.

The Coastal Act provides for heightened protection of ESHAs, defined as "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments." §30107.5. ESHAs "shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. §30240(a). Development in areas adjacent to EHSAs shall be sited and designed to prevent impacts which would significant degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas. Id. Thus, the Coastal Act places strict limits on the uses which may occur in an

ESHA and carefully controls the manner in which uses around the EST-IA 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, *swpra*, 169 Cal.App.4th at 930, 953. The LCP consists of a LUP[3] 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,

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[3] The 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."

§§ 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 Facts[4]

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.

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[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. Evict. 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 rare] 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 notice are denied.

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 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. <u>Technical Studies</u>

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

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

The Biota Report noted that the Santa Monica Mountains are an arid environment, where seeps and springs provide scarce water to support rare plants and amphibians. AR 600. Six ecological communities fully met the ESHA criteria in the Coastal Act, while most of the remaining habitats satisfied at least one ESHA criterion. AR 632. Years of scattered development in the plan area had led to various forms of degradation of natural communities, including replacement of native plants with exotic landscaping, irrigation facilitating invasion of natural areas by harmful exotic ants, and increased use of pesticides, particularly for viticulture. AR 64546. 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 Iimportance [sic] 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 101 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 steams. AR 1938.

ii. Coastal Coalition of Family Farmers

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

Report also did not analyze the viability of agriculture in the plan area. AR 1985.

iii. **Petitioners**

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

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

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

Koutnik provided a list of soil types within the Santa Monica Mountains suitable for agriculture. AR 7265-66. He concluded that the Staff Report's dismissal of agricultural uses in the plan area based on soil type and slope does not correspond to current successful agricultural operations in the area. AR 7267. Modern agricultural practices may be successful in growing certain crops or enabling livestock to graze on

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[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.

a variety of the Santa Monica Mountain's soil types and slope steepness. Water quality and erosion concerns could be addressed by farming and engineering techniques. The staff's proposed limitation of agricultural uses in the Santa Monica Mountains to only those designated by the Department of Conservation based on soil types or current operation while prohibiting such use for other properties in the plan area that have been historical used for agriculture is a substantial and unwarranted change. AR 7265-68.

iv. Hogrefe

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

c. 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 LCD'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 1906-17. 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.

e. <u>The LUP Hearing</u>

The Commission considered the LUP in a public meeting on April 10, 2014. AR 9362-64. After Commission staff and County staff presented the LUP, the

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

The Commission voted to approve the LUP with the suggested modifications. AR 936364, 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 sented a letter to the Commission objecting to the LIP Report. AR 11976. Petitioners argued that the proposed LIP was inadequate to carry out the provisions of the LUP relating to agriculture because it provided no definition of "biodynamic farming." AR 11976, 11978. Petitioners argued that biodynamic farming as commonly defined is based on pseudoscience and astrology. AR 11977. Petitioners also contested the LIP's ban on pesticides as imprecise, as it did not specify whether the pesticides banned must be synthetic. AR 11977.

c. The LIP Hearing

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

5. The Certification

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

Commission, and directing the transmittal of the approved LCP to the Commission for final certification. AR 9405, 9408.

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

E. Analysis

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

1. Late Addendum

The Coastal Act expressly recognizes that "the public has a right to fully participate in decisions affecting coastal planning, conservation, and development; that achievement of sound coastal conservation and development is dependent upon public understanding and support; and that the continuing planning and implementation of programs for coastal conservation and development should include the widest opportunity for public participation." §30006.

During the preparation, approval, certification, and amendment of any local coastal program, the public . . . shall be provided maximum opportunities to participate." § 30503. To that end, state law requires the final staff recommendation to be distributed "within a reasonable time but in no event less than 7 calendar days prior to the scheduled public hearing." 14 CCR §13532.

The Staff Report for the proposed LUP was released on March 27, 2014. AR 1532. In the Staff Report, largely recommended adopting the proposed LUP's categorical ban on new agricultural development in the Santa Monica Mountains coastal region. AR 1557-58. Petitioners and other members of the public commented, arguing against the proposed ban. AR 1985 (Farmers Coalition), 2438-40 (Petitioners), 8730 (Hogrefe). Then, on April 9, 2014, one day before the scheduled hearing, Commission staff released the Addendum, which addressed the arguments against a new agriculture ban, recommending new Policy CO-102/LU-11 permitting new agriculture (except vineyards) if it meets slope and "organic or biodynamic farming" requirements. AR 1909.

Petitioners argue that the Addendum, not the Staff Report, was the true "final staff recommendation". The final report must be released at least seven days before the Commission's hearing. 14 CCR § 13532. Once the Commission, after consultation with the County, settled on a final set of criteria under which new development would be permitted under the LUP, the public should have been given a chance to analyze the new scheme and assess its conformity with

the Coastal Act. Releasing the 176-page Addendum with substantive changes just 24-hours before the Commission's hearing did not give the public maximum opportunity to participate as required by section 30503. The Commission hearing should have been continued to provide the full 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 staffs 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]omission shall make no determination as to whether a proposed amendment raises a substantial issue as to conformity with the policies of Chapter 3." §30514(b).

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

This is an issue of statutory interpretation. The court must look to the language of the statute, attempting to give effect to plain meaning and seeking to avoid making any language mere surplusage. Brown v. Kelly Broadcasting Co., (1989) 48 Cal 3d 711, 724. Significance, if possible, is attributed to every word, phrase, sentence and part of an act in pursuance of the legislative purpose. Orange County Employees Assn. v. County of Orange, (1991) 234 Cal.App.3d 833, 841. The various parts of a statute must be harmonized by considering each particular clause or section in the context of the statutory framework as a whole. Lungren v.

Deukmejian, (1988) 45 Cal.3d 727, 735. Id. at 735. If the statute is ambiguous, the Commission's interpretation is entitled to deference. Ross v. California Coastal Comm., *supra*, 199 Cal.App.4th at 938; Hines v. California Coastal Comm., (2010) 186 Cal.App.4th 830, 849.

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

The Commission was not required under the Coastal Act to hold a separate hearing on any substantial issues alleged by Petitioners.[7]

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[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.

[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

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 attempting] 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,

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30514(b)'s procedure as applying to an amendment to a certified LUP is entitled to deference.

> 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

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. <u>Public Policy Protection of Agricultural Land</u>

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

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[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.

are no land in the plan area where agriculture is even 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. <u>The LIP</u>

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 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.

Court of Appeal. Second Appellate District,
Division Eight – No. B287079

S262700

IN THE SUPREME COURT OF CALIFORNIA

En Banc

[Filed: Jul. 15, 2020]

MOUNTAINLANDS CONSERVANCY, LLC, et al.,
Plaintiffs and Appellants,

v.

CALIFORNIA COASTAL COMMISSION,
Defendant and Respondent;

COUNTY OF LOS ANGELES,
Real Party in Interest and Respondent.

The petition for review is denied.

CANTIL-SAKAUYE
Chief Justice