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*NO FEE REQUIRED
Government Code section 6103*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

Coastal Rights Coalition,

Petitioner and Plaintiff,

v.

California Coastal Commission,

Respondent and Defendant.

Case No. 30-2018-00994285-CU-WM-CJC
**NOTICE OF MOTION AND MOTION
FOR JUDGMENT ON THE
PLEADINGS; MEMORANDUM OF
LAW**

Date: April 25, 2019
Time: 2:00 p.m.
Dept.: C12
Judge: Hon. Layne H. Melzer

Reservation no. 72996219

Trial Date: None set
Action Filed: May 22, 2018

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1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on April 25, 2019, at 2:00 p.m. in Department C12 of the
3 above-entitled court located at 700 Civic Center Drive West, Santa Ana, California 92701,
4 respondent and defendant California Coastal Commission (the Commission) will move for
5 judgment on the pleadings in the Commission’s favor on petitioner Coastal Rights Coalition’s
6 Petition for Writ of Mandate and Complaint for Declaratory Relief.

7 The Commission brings this motion pursuant to Code of Civil Procedure section 438 and
8 applicable case law on the grounds that the Petition, and each of the two causes of action alleged
9 in the Petition, fail to state facts sufficient to constitute causes of action against the Commission,
10 for the following reasons:

11 1. The First Cause of Action for Declaratory Relief fails to state facts sufficient to
12 constitute a cause of action because (a) a petition for writ of administrative mandate under Code
13 of Civil Procedure section 1094.5 constitutes the exclusive remedy for challenging discretionary,
14 quasi-judicial decisions by the Commission; and, (b) this cause of action, which alleges that the
15 Commission adopted an “underground regulation” in violation of the Administrative Procedure
16 Act (APA), pleads no cognizable claim under the APA.

17 2. The Second Cause of Action for Writ of Traditional Mandate under Code of Civil
18 Procedure section 1085 fails to state facts sufficient to constitute a cause of action because (a) a
19 petition for writ of administrative mandate under Code of Civil Procedure section 1094.5
20 constitutes the exclusive remedy for challenging discretionary, quasi-judicial decisions by the
21 Commission; (b) no action for a writ of traditional mandate can lie to control the Commission’s
22 discretion; and, (c) this cause of action, which alleges that the Commission adopted an
23 “underground regulation” in violation of the APA, pleads no cognizable claim under the APA.

24 The Commission bases this motion on this Notice of Motion and Motion, the attached

25 ///

26 ///

27 ///

28

1 Memorandum of Law, the pleadings and papers on file in this action, and on such other evidence
2 as the Court may consider on this matter.

3
4 Dated: February 28, 2019

Respectfully Submitted,

5 XAVIER BECERRA
6 Attorney General of California
7 CHRISTINA BULL ARNDT
8 Supervising Deputy Attorney General

9 /s/ Andrew M. Vogel

10 ANDREW M. VOGEL
11 Deputy Attorney General
12 *Attorneys for Respondent and Defendant*
13 *California Coastal Commission*

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1 **INTRODUCTION**

2 Petitioner Coastal Rights Coalition (CRC) alleges that since 2010, the Coastal Commission
3 has approved 160 permits for beachfront development, and that in 139 of those permits, the
4 Commission imposed a condition requiring that the landowner forfeit the right to construct a
5 seawall or shoreline protective device. CRC contends that this alleged pattern evidences a
6 Commission rule in which it generally conditions oceanfront permits on this waiver. According to
7 CRC, this so-called “Waiver Rule” constitutes an underground regulation that the Commission
8 adopted without first following the Administrative Procedure Act (APA).

9 But, given the way the Commission is required to evaluate coastal development permit
10 applications under the Coastal Act – and evidenced by the fact that the waiver is not, in fact,
11 uniformly applied – there can be no “Waiver Rule.” The Commission decides each coastal
12 development permit application in a quasi-judicial proceeding, applying governing law on a case-
13 by-case basis. Commission staff first analyzes each permit application and recommends to the
14 Commission whether to grant or deny it. When staff recommends approving a permit, it also
15 recommends whether to impose conditions – and what type of conditions to impose – on the
16 permit. But the Commission is the ultimate decision maker. It holds discretion to follow or
17 disregard staff’s recommendations. When approving permit applications, the Commission may
18 modify, add to, or delete conditions that staff recommends.

19 The conditions that the Commission imposes on a permit often have the same or similar
20 language compared to permits issued for development in similar locations, with similar
21 properties, and with similar impacts on coastal resources. But the process is not formulaic. The
22 Commission evaluates each permit application individually. If the Court were to allow this action
23 to proceed, and if it were to review 160 administrative records for each of the permits the
24 Commission issued, it would know no more than what the Commission did in those 160 separate
25 proceedings based on the facts presented by each permit application.

26 The quasi-judicial, discretionary nature of the Commission’s permit proceedings renders
27 CRC’s claims legally untenable for several reasons:
28

1 First, CRC's action is an improper collateral attack on the 139 past permit decisions dating
2 back to 2010 and an attempt to curtail the Commission's discretion in deciding future permit
3 applications. The Coastal Act codifies the exclusive remedy for challenging the Commission's
4 permit decisions. An aggrieved applicant must petition for a writ of administrative mandate under
5 Code of Civil Procedure section 1094.5 within 60 days after the Commission's decision becomes
6 final. Those 139 prior decisions are final, and cannot be the basis for this action. Nor can future
7 decisions be challenged based solely on CRC's speculation here, and this Court may not restrain
8 the Commission's discretion over future permit applications.

9 Second, the Court similarly need not entertain the merits of CRC's claim for a writ of
10 traditional mandate under Code of Civil Procedure section 1085 because no such relief can lie to
11 challenge discretionary agency decisions like the Commission's permit decisions.

12 Third, even if the Court considers the merits of CRC's attack on the so-called Waiver Rule
13 as an underground regulation that violates the APA, the APA does not apply here. It applies only
14 to *quasi-legislative* agency actions, not quasi-judicial actions like the Commission's permit
15 decisions. Additionally, even accepting as true CRC's allegation that the Commission's permit
16 decisions evidence an underground regulation, the Legislature expressly exempted from the APA
17 the Commission's authority to adopt regulations interpreting Chapter 3 of the Coastal Act, which
18 the alleged Waiver Rule implements.

19 The quasi-judicial nature of the Commission's decision-making process renders both of
20 CRC's causes of action incurably defective on their face. The Court should dismiss CRC's
21 Petition.

22 THE COASTAL ACT FRAMEWORK

23 The Coastal Act (Pub. Resources Code, § 30000 et seq.)¹ serves to “[p]rotect, maintain,
24 and, where feasible, enhance and restore the overall quality of the coastal zone environment and
25 its natural and artificial resources.” (§ 30001.5, subd. (a).) The Act contains policies governing
26 development in the coastal zone. (§§ 30200-30265.5.) New development within California's
27 coastal zone generally requires a coastal development permit. (§ 30600, subd. (a).)

28 ¹ Statutory references that follow are to the Public Resources Code unless otherwise stated.

1 Chapter 3 of the Coastal Act sets forth the “standards by which . . . the permissibility of
2 proposed developments subject to the provisions of [the Coastal Act] are determined.” (§§ 30200,
3 subd. (a); see § 30604, subd. (a); Cal. Code Regs., tit. 14, § 13096, subd. (a).) These Chapter 3
4 policies protect, among other things, public coastal access, recreational uses, lower cost visitor-
5 serving accommodations, and marine and upland biological resources. (§§ 30210-30244.)
6 Chapter 3 also includes provisions that regulate seawalls and similar shoreline protective devices.
7 (§§ 30235, 30253, subd. (b).) The Commission may grant, deny, or condition permits based on all
8 applicable Chapter 3 policies. (*LT-WR, L.L.C. v. California Coastal Com.* (2007) 152
9 Cal.App.4th 770, 794-795.)

10 The Commission acts quasi-judicially when considering permit applications. (*McAllister*
11 *v. California Coastal Com.* (2008) 169 Cal.App.4th 912, 953 (*McAllister*); *Pacifica Corp. v. City*
12 *of Camarillo* (1983) 149 Cal.App.3d 168, 177 (*Pacifica*)). For example, in *McAllister*, the court
13 rejected a permit applicant’s contention that the Commission’s permit decision functionally
14 amended the applicable land use plan. Rather, it stated that the Commission “simply applies
15 existing rules to a specific set of facts.” (*McAllister*, 169 Cal.App.4th at p. 953.) It noted that
16 although the application of rules “may at times require the Commission to interpret their meaning,
17 by no stretch of the imagination can those interpretations be considered amendments to [a land
18 use plan]; rather the Commission's interpretations are simply its legal opinions, subject to
19 independent judicial review.” (*Ibid.*) In other words, the Commission isn’t making the rules in its
20 permit decisions, it is simply applying them. “This is the essence of an adjudicatory
21 determination.” (*Patterson v. Central Coast Regional Com.* (1976) 58 Cal.App.3d 833, 842.)

22 Commission staff initially analyzes each application and prepares a staff report that
23 recommends to the Commission whether to grant, deny, or condition the requested permit. (Cal.
24 Code Regs., tit. 14, §§ 13057, 13059.) The Commission considers staff’s recommendations,
25 comments from the public, and testimony from the applicant and then votes on the application at
26 a public meeting. (Cal. Code Regs., tit. 14, §§ 13060, 13063, 13066, 13090, 13092, 13094.)
27 Staff’s recommendations do not bind the Commission, and the Commission retains discretion
28 whether or not to follow them in deciding permit applications. (Cal. Code Regs., tit. 14, §§ 13090,

1 subd. (d), 13092, subd. (b), 13096, subd. (b); *Benson v. California Coastal Com.* (2006) 139
2 Cal.App.4th 348, 356; *McAllister, supra*, 169 Cal.App.4th at p. 953; *Ocean Harbor House*
3 *Homeowners Assn. v. California Coastal Com.* (2008) 163 Cal.App.4th 215, 225 n. 6.) As to
4 permit conditions in particular, the Commission may modify or delete staff’s recommended
5 conditions or add its own. (Cal. Code Regs., tit. 14, §§ 13090, subd. (d), 13092, subd. (b), 13096,
6 subd. (b).) The Commission must have substantial evidence to support permit conditions it
7 imposes. (*Natural Resources Defense Council, Inc. v. California Coastal Zone Conservation*
8 *Com.* (1976) 57 Cal.App.3d 76, 92; Cal. Code Regs., tit. 14, § 13057(c)(5).) A Commission
9 decision is final as soon as the Commission chair announces the tally of the voting
10 Commissioners. (Cal. Code Regs., tit. 14, § 13094, subd. (c).)

11 The Coastal Act authorizes aggrieved persons to seek judicial review of permit decisions by
12 petition for writ of administrative mandate under Code of Civil Procedure section 1094.5.
13 (§ 30801.) Such an action must be filed within 60 days after the Commission decision becomes
14 final. (*Ibid.*) An action under section 1094.5 constitutes the sole means of judicial review of
15 Commission decisions. (*State of California v. Superior Court* (1974) 12 Cal.3d 237, 249, 251
16 (*State of California*); *Walter H. Leimert Co. v. California Coastal Com.* (1983) 149 Cal.App.3d
17 222, 230-231 (*Walter H. Leimert*); *Beach & Bluff Conservancy v. City of Solana Beach* (2018)
18 28 Cal.App.5th 244, 262 (*Beach & Bluff Conservancy*).)

19 STANDARD OF REVIEW

20 A motion for judgment on the pleadings presents the same grounds as a demurrer. (*Barker*
21 *v. Hull* (1987) 191 Cal.App.3d 221, 224.) Specifically, it tests whether the challenged pleading on
22 its face states facts sufficient to constitute a legally cognizable claim. (*Colberg, Inc. v. State ex*
23 *rel. Dept. of Public Works* (1967) 67 Cal.2d 408, 411-412.) In reviewing a motion for judgment
24 on the pleadings, the court ““admits all material and issuable facts pleaded.”” (*Id.* at p. 412,
25 citation omitted.) But the court does not accept as true, and need not consider, “conclusions of
26 fact or law, opinions, speculation, or allegations contrary to law or judicially noticed facts.” (*Shea*
27 *Homes Limited Partnership v. County of Alameda* (2003) 110 Cal.App.4th 1246, 1254.)
28

1 **ARGUMENT**

2 **I. THE PETITION REPRESENTS AN IMPROPER COLLATERAL ATTACK ON THE**
3 **COMMISSION’S NOW-FINAL DECISIONS**

4 CRC alleges that, since 2010, the Commission issued 160 coastal development permits for
5 oceanfront development and conditioned 139 of those permits on a waiver of any future
6 development of shoreline protective devices. (Petition, ¶¶ 2, 11, 15; Exh. 4.) This, CRC contends,
7 constitutes an underground regulation that it calls the “Waiver Rule,” and CRC speculates that the
8 Commission will apply this alleged Rule in deciding potential future permit applications. (*Id.*,
9 ¶¶ 2, 4, 32.)

10 Foundationally, this action is based on individual decisions, some as much as nine years
11 old, that are now long-final, or on the anticipation of other individual decisions. California law
12 bars this action, because the exclusive remedy for challenging any Commission permit decision is
13 a petition for writ of administrative mandate under Code of Civil Procedure section 1094.5, which
14 must be filed within 60 days of the Commission’s decision. (§ 30801; *State of California, supra*,
15 12 Cal.3d at pp. 249, 251; *Walter H. Leimert, supra*, 149 Cal.App.3d at pp. 230-231; *Beach &*
16 *Bluff Conservancy, supra*, 28 Cal.App.5th at p. 262.) This rule applies in particular to challenges
17 to conditions that the Commission imposes on coastal development permits. (*Lynch v. California*
18 *Coastal Com.* (2017) 3 Cal.5th 470, 476-477 [“Generally, challenges to allegedly unlawful permit
19 conditions must be litigated in administrative mandate proceedings.”].)

20 As a result, California law bars CRC’s claims. Permit applicants who did not timely seek
21 administrative mandate relief challenging the Commission’s decisions may not circumvent this
22 exclusive remedy – either individually or collectively through CRC – by an action for traditional
23 writ relief or declaratory relief. “Failure to obtain judicial review ... by a petition for writ of
24 administrative mandate renders the administrative action immune from collateral attack, either by
25 inverse condemnation action *or by any other action.*” (*Beach & Bluff Conservancy, supra*, 28
26 Cal.App.5th at p. 263, citation omitted, italics in original; accord, *California Coastal Com. v.*
27 *Superior Court* (1989) 210 Cal.App.3d 1488, 1498-1500 [res judicata and collateral estoppel
28 principles barred inverse condemnation action by landowner who failed seek administrative

1 mandate relief challenging permit condition].) Here, CRC’s claims for traditional writ and
2 declaratory relief represent precisely such a collateral attack and an end run around the Coastal
3 Act’s exclusive judicial review remedy.

4 Similarly, CRC speculates that the Commission may in the future grant permits with
5 conditions that restrict shoreline protective devices. Under the authorities cited above, those
6 applicants for such permits must challenge the Commission’s decisions, if at all, by timely
7 petition for writ of administrative mandate. They cannot circumvent the Coastal Act’s exclusive
8 remedy for judicial review by prematurely seeking traditional writ and declaratory relief to
9 preempt and control decisions the Commission has not yet made.

10 **II. NO WRIT OF MANDATE UNDER CODE OF CIVIL PROCEDURE SECTION 1085 CAN**
11 **ISSUE TO CONTROL THE COMMISSION’S DISCRETION**

12 Code of Civil Procedure section 1085 authorizes a writ of traditional mandate “to compel
13 the performance of an act which the law specifically enjoins, as a duty resulting from an
14 office,” (Code Civ. Proc., § 1085.) A petitioner must establish that the agency in question has
15 “a clear, present, and ministerial duty to act in a particular way” and that “the petitioner has a
16 clear, present, and beneficial right to performance of that duty.” (*Public Employment Relations*
17 *Bd. v. Bellflower Unified School Dist.* (2018) 29 Cal.App.5th 927, 939, citation omitted.)
18 California law defines a ministerial duty as “one that is required to be performed in a prescribed
19 manner under the mandate of legal authority *without the exercise of discretion or judgment.*”
20 (*Ibid.*, emphasis added, citation omitted.)

21 The Commission has no such ministerial duty to approve permit applications, and no writ
22 under section 1085 can issue to control whether and how the Commission decides to do so. The
23 California Supreme Court addressed this issue in *State of California, supra*, 12 Cal.3d 247. There,
24 three applicants petitioned for a writ of traditional mandate to overturn the Commission’s
25 decision denying their coastal development permit application, alleging the Commission had a
26 mandatory duty to issue the requested permit. The trial court overruled the Commission’s
27 demurrer to this claim. The California Supreme Court reversed by writ, rejecting petitioners’
28 argument that the Commission exercises “purely ministerial” duties. (*Id.* at p. 248.) The Court

1 explained that “determination of whether an applicant qualifies for a permit is entrusted to the
2 Commission’s discretion” and “requires the Commission to undertake a delicate balancing of the
3 effect of each proposed development upon the environment of the coast as a predicate to the
4 issuance of a permit.” (*Id.* at pp. 247-248.) As a result, the Court ruled that traditional mandate
5 under section 1085 “cannot be applied to control discretion as to a matter lawfully entrusted to the
6 Commission.” (*Id.* at p. 247; accord, *Beach & Bluff Conservancy, supra*, 28 Cal.App.5th at
7 pp. 258-262 (Commission’s quasi-judicial decision to certify local land use plan reviewable only
8 by petition for administrative mandate, not traditional mandate); *see also Excelsior College v.*
9 *California Bd. of Registered Nursing* (2006) 136 Cal.App.4th 1218, 1238-1239.)

10 These principles bar the traditional mandate relief CRC seeks here. California law
11 precludes controlling the discretion that the Legislature delegated to the Commission under the
12 Coastal Act to decide permit applications. Yet the writ relief CRC seeks would have the
13 Commission promulgate CRC’s so-called Waiver Rule as a regulation, thereby depriving the
14 Commission of its quasi-judicial discretion under the Coastal Act to decide whether such
15 conditions are appropriate based on the facts presented by specific permit applications. The same
16 process could be forced on the Commission as to any number of permit conditions that it
17 regularly imposes based on the particular site conditions presented by the individual application.
18 Such a regulatory process would reduce the Commission’s permit processing authority to a
19 formulaic checklist of conditions and requirements. As a matter of law, traditional mandate under
20 section 1085 cannot lie to control the Commission’s discretion in such a manner.

21 **III. CRC ASSERTS NO VIABLE CLAIM UNDER THE ADMINISTRATIVE PROCEDURE ACT**

22 Even assuming CRC could overcome the defects discussed above that bar this action as a
23 threshold matter, CRC’s claim that the Commission adopted an “underground regulation” that
24 violates the APA fails as a matter of law.

25 The APA establishes “basic minimum procedural requirements for the adoption,
26 amendment, or repeal of administrative regulations.” (Gov. Code, § 11346.) CRC seeks a judicial
27 declaration invalidating the so-called Waiver Rule as an “underground regulation” adopted
28 without following these procedural requirements. (Petition, ¶¶ 2, 17-32; Prayer for Relief, ¶ B.)

1 CRC alleges no viable APA claim for two fundamental legal reasons: the Commission’s
2 decisions are, as a matter of law, not quasi-legislative and the Legislature has determined that the
3 APA does not apply to the Coastal Act’s Chapter 3 policies.

4 **A. The APA Does Not Apply to the Commission’s Quasi-Judicial Action.**

5 The APA applies only “to the exercise of any *quasi-legislative* power conferred by any
6 statute heretofore or hereafter enacted.” (Gov. Code, § 11346, emphasis added.) But case law is
7 clear that the Commission acts *quasi-judicially* when it decides coastal development permit
8 applications. (*McAllister, supra*, 169 Cal.App.4th at p. 953; *Pacifica, supra*, 149 Cal.App.3d at
9 p. 177.) In doing so, the Commission “applies existing rules to a specific set of facts.”
10 (*McAllister, supra*, 169 Cal.App.4th at p. 953.)

11 Agencies like the Commission therefore need not comply with the APA when exercising
12 such quasi-judicial decision-making power. (*Bendix Forest Products Corp. v. Division of*
13 *Occupational Safety & Health* (1979) 25 Cal.3d 465, 471 [Division order requiring company to
14 provide employees with protective gear was “not a quasi-legislative judgment promulgating a
15 new regulation or standard but rather a specific application of laws and existing regulations”].)
16 When the alleged rule is not used uniformly but only as a matter of discretion, it is not an
17 underground regulation. For example, in *Modesto City Schools v. Education Audits Appeals*
18 *Panel* (2004) 123 Cal.App.4th 1365, the court held that a guide that was used to audit school
19 districts’ independent study programs was not an underground regulation because it served as a
20 “tool” that auditors could use or ignore in their discretion; therefore, it was not a “rule of general
21 application.” (*Id.* at p. 1382; see also *Taye v. Coye* (1994) 29 Cal.App.4th 1339, 1345
22 [Department of Health Services method for auditing medical providers held not an underground
23 regulation; audit method was designed to fit “particular conditions” of audited providers and
24 allowed auditors “flexibility”].)

25 The quasi-judicial, discretionary nature of the Commission’s permit authority distinguishes
26 the facts here from those in *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557,
27 on which CRC’s petition relies. (See Petition, ¶¶ 18, 22.) There, the Department of Labor
28 Standards Enforcement promulgated a written interpretive policy for enforcing Industrial Welfare

1 Commission wage orders. The California Supreme Court held this policy void as a regulation
2 adopted without APA compliance. The Court explained that the Department’s policy was quasi-
3 legislative, in that it “was expressly intended as a rule of general application,” it was “unrelated to
4 a specific case,” and it “predict[ed] how the agency will decide future cases.” (*Id.* at pp. 572,
5 574-575.) Here, by contrast, whether the Commission imposes conditions on coastal development
6 permits generally, and conditions restricting shoreline protective devices specifically, rests within
7 the Commission’s discretion. Even if its staff repeatedly recommended the same condition, the
8 Commission exercises independent discretion in determining whether that condition, or some
9 iteration of it, should apply to the facts of the individual permit application before it. The APA
10 does not apply to, nor can an underground regulation arise from, such quasi-judicial applications
11 of law to specific facts.

12 **B. The Alleged Waiver Rule Is Not Subject to the APA.**

13 Even accepting for argument’s sake both that the so-called Waiver Rule exists and that it
14 represents a Commission “regulation,” it would be exempt from the APA as a matter of law. The
15 Coastal Act expressly authorizes the Commission to adopt rules and regulations to carry out the
16 Act’s provisions. (§ 30333, subd. (a).) The Act requires the Commission to adopt some of these
17 regulations in accord with the APA. (§ 30333, subd. (b).) But the Act exempts from this
18 requirement interpretive guidelines that the Commission adopts to assist it in applying the Act’s
19 Chapter 3 policies to coastal development permit applications. (*Ibid.*, citing § 30620,
20 subd. (a)(3).)

21 In *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, the
22 California Supreme Court held that the APA did not apply to written guidelines that the
23 Commission adopted to carry out the Coastal Act’s Chapter 3 policies. There, Pacific Legal
24 Foundation (counsel to CRC here) contended that the Commission’s public access guidelines, in
25 which it explained and interpreted the public access provisions of the Coastal Act, were required
26 to be promulgated as regulations through the APA. The Supreme Court disagreed: “Government
27 Code section 11350, which makes declaratory relief generally available to review administrative
28 regulations ... has no application to the guidelines, however, because the Legislature specifically

1 exempted the guidelines from the provisions of the California Administrative Procedure Act.”
2 (*Id.* at p, 169, n. 4.)

3 A few years later, *California Coastal Com. v. Office of Admin. Law* (1989)
4 210 Cal.App.3d 758 addressed a similar contention and held that *Pacific Legal Foundation*
5 controlled.² There, the Office of Administrative Law ruled that the Commission’s interpretive
6 guidelines needed to be adopted pursuant to the APA, including review by that office. The court
7 disagreed, stating that the Legislature had exempted the guidelines and “relief was not available
8 under the APA.” (*Id.* at p. 763.)

9 The same principles apply here. The Coastal Act’s provisions regulating shoreline
10 protective devices comprise part of Chapter 3 of the Act and codify Chapter 3 policies. (See
11 §§ 30235, 30253, subd. (b).) If the Commission had adopted a so-called Waiver Rule as a
12 regulation or guideline, that rule would implement the Chapter 3 policies regulating shoreline
13 protective devices, and it would be exempt from the APA. California law bars CRC’s
14 underground regulation claims.

15 CONCLUSION

16 For the reasons discussed above, the Commission requests that the Court grant this motion
17 and dismiss CRC’s petition.

18 Dated: February 28, 2019

19 Respectfully Submitted,

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

24 /s/ Andrew M. Vogel

25 ANDREW M. VOGEL
26 Deputy Attorney General
27 *Attorneys for Respondent and Defendant*
28 *California Coastal Commission*

29 _____
30 ² Pacific Legal Foundation was the litigant who challenged the Commission guidelines in this
31 case as well.

DECLARATION OF ELECTRONIC SERVICE

Case Name: ***Coastal Rights Coalition v. California Coastal Commission***
Case No.: **Orange County Superior Court No. 30-2018-00994285-CU-WM-CJC**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter.

On February 28, 2019, I electronically served the attached NOTICE OF MOTION AND MOTION FOR JUDGMENT ON THE PLEADINGS; MEMORANDUM OF LAW by transmitting a true copy via One Legal's electronic filing and service system on the following recipients:

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Attorneys for Petitioner and Plaintiff
Coastal Rights Coalition

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on February 28, 2019, at Los Angeles, California

Andrew Vogel
Declarant

/s/ Andrew Vogel
Signature