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13 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
14 IN AND FOR THE COUNTY OF SAN LUIS OBISPO

15 SIERRA CLUB

16 Petitioner,

17 v.

18 CALIFORNIA DEPARTMENT OF PARKS
19 AND RECREATION, an agency of the State
20 of California, OFF-HIGHWAY VEHICLE
21 RECREATION DIVISION, RUTH
22 COLEMAN, an individual in her official
23 capacity, DAPHNE GREEN, an individual in
24 his official capacity, ANDREW ZILKE, an
25 individual in his official capacity, and DOES
26 1-25

27 Respondents:

28 COUNTY OF SAN LUIS OBISPO, and SAN
29 LUIS OBISPO BOARD OF SUPERVISORS,
30 CALIFORNIA COASTAL COMMISSION,
31 and DOES 26-50

32 Real Parties in Interest

) Case No. 080344
)
) VERIFIED PETITION FOR WRIT OF
) MANDATE AND COMPLAINT FOR
) DECLARATORY AND INJUNCTIVE
) RELIEF

1 **I. INTRODUCTION**

2 1. By this action, Sierra Club, seeks a declaration that the Department of Parks and
3 Recreation's ("DPR") operation of the Oceano Dunes State Vehicular Recreational Area
4 ("ODSVRA") in San Luis Obispo is subject to the County's Local Coastal Program ("LCP").

5 2. Sierra Club also petitions this Court for a Writ of Mandate pursuant to California
6 Code of Civil Procedure §§ 1084 and 1085 ordering DPR and individually named
7 defendants/respondents, Ruth Coleman, Daphne Green and Andrew Zilke, each in her his official
8 capacity, immediately (1) to follow the LCP's mandate by immediately beginning the process of
9 revising the General Development Plan ("GDP") to make it consistent with the LCP, and (2) to
10 cease any and all attempts to purchase or renew the lease for the County-owned "La Grande"
11 tract, unless and until the LCP has been revised to permit off-road recreation on the La Grande
12 Tract.

13 3. Respondents have had a nondiscretionary duty to revise the GDP for the
14 ODSVRA to conform with San Luis Obispo County's certified LCP. Respondents have failed to
15 revise or amend the GDP to reflect the provision of the LCP that designates the La Grande tract
16 as a buffer closed to ORV use. Respondents, and their predecessors, have therefore been in
17 violation of the County's LCP, as certified by the California Coastal Commission.

18 4. The GDP must be revised to bring it into consistency with the LCP immediately
19 because the GDP fails to designate a portion of the ODSVRA, known as the La Grande Tract, as
20 a natural buffer area. Because the GDP fails to designate the La Grande tract as a buffer area,
21 Respondents have continuously permitted off-road vehicle operators to ride their vehicles in this
22 buffer area.

23 5. Petitioner also seeks a declaration that, notwithstanding the inclusion of the LCP
24 within the County's General Plan, as a matter of law, the LCP is not a purely "local" regulatory
25 mechanism, and therefore the LCP is not preempted by state law, and operation of the ODSVRA
26 is subject to San Luis Obispo's LCP Act (the "Act")
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II. THE STRUCTURE OF THE COASTAL ACT AND THE ROLE OF LOCAL COASTAL PLANS

6. Enacted in 1976, The California Coastal Act (Pub. Res. Code ("PRC") §§30000 et seq.) replaced the California Coastal Zone Conservation Act of 1972. The Act regulates development in the coastal zone, which includes the ocean within the state's jurisdiction and the land area generally extending inland 1,000 feet, subject to minor modifications by the California Coastal Commission ("Commission" or "CCC"), which is the agency designated to implement the Act. PRC §30103.

7. The legislative findings contained in the Coastal Act unambiguously recognize that the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people of the state, and exists as a delicately balanced ecosystem. PRC §30001 and 3001.5. The Coastal Act seeks to permanently protect the state's natural and scenic resources as a paramount concern as it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction. Ibid.

8. The Legislative goals for the Coastal Act include the following:

- Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources;
- Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people;
- Maximize public access and recreational activities along the coastline, subject to and consistent with "sound resource conservation principles and constitutionally protected right of private property owners;"
- Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses.

PRC §30001.5(a)-(d).

1 9. Although the primary responsibility for administering and implementing the
2 Coastal Act is placed in the CCC (PRC §30330, Marine Forests Societ v. Cal. Coastal
3 Commission (2005) 36 Cal.4th 1, 20), each local government lying in whole or in part within the
4 coastal zone is required to prepare a local coastal program or LCP for the portion of the coastal
5 zone within its jurisdiction. PRC §30500. A local government may, however, request the
6 Commission to prepare all or part of its LCP. The content of the LCP is determined by the local
7 government in full consultation with the commission and with full public participation. PRC
8 §30500.1. The LCP must comply with the minimum standards set forth in the Coastal Act. Yost
9 v. Thomas (1984) 36 Cal.3d 561.

10 10. The LCP must contain a land use plan, as well as zoning ordinances, zoning
11 district maps, and any other ordinances or regulations. PRC §30108.6. The local agency may
12 submit the LCP to the Commission for consideration and final certification, after it has
13 conducted a public hearing and certifies that the LCP is intended to be carried out in conformity
14 with the Coastal Act, and that it contains sufficient information for a complete review. PRC
15 §30510.

16 11. The Act contains procedures for Commission review of proposed LCPs. The
17 Commission must certify the land use plan as proposed within 90 days unless the Commission
18 identifies areas of the plan that raise "substantial issues" as to conformity with the policies of the
19 Coastal Act. PRC §30512. The Commission must support its decision not to certify the LCP in
20 whole or in part with a written explanation and suggest modifications. Alternatively, the local
21 government may resubmit a revised LCP to the Commission.

22 12. The local government must also submit zoning or other ordinances and zoning
23 district maps as part of the LCP. PRC §30513. The Commission must accept or reject zoning
24 proposals within 60 days.

25 13. Any person undertaking any development within the coastal zone must obtain a
26 coastal development permit ("CDP"). PRC §30600(a). Development is broadly defined, and
27 includes construction of any structure, discharge or discharge of any waste material, grading or
28 other land manipulations, and a change in the density or intensity of use of land, including but

1 not limited to subdivisions. PRC §30106.

2 14. For areas that are not covered by an LCP, applications for CDP must be made to
3 the Coastal Commission. PRC §30519(a). After the Commission has certified an LCP, the local
4 government assumes the responsibility for issuing CDPs. *Id.* Thus, after certification of an LCP,
5 the authority to administer the state-wide Coastal Act permitting authority is delegated to the
6 local government. Certain local government approvals are subject to an appeal to the Coastal
7 Commission. PRC §30603.

8 15. Both the Commission and the executive director of the Commission may issue a
9 cease and desist order if he or she determines that a person or governmental agency has
10 undertaken, or is threatening to undertake, an activity that may require a CDP from the
11 commission and for which the person or agency has no permit or any activity which may be
12 inconsistent with an already issued CDP, or "The order may be also issued to enforce any
13 requirements of a certified local coastal program or port master plan, or any requirements of this
14 division which are subject to the jurisdiction of the certified program or plan" at the request of
15 the local agency, or if the local agency is a party to, or refuses to take appropriate action to stop,
16 the violation. PRC §§ 30809 and 30810.

17 16. The LCP is a program that is mandated by state law to implement a state law. A
18 state agency, the Coastal Commission, may in some circumstances prepare an LCP, and in all
19 circumstances must approve it before it can become effective. The structure of the Coastal Act
20 and the program created thereby demonstrates that an LCP is not a purely local program.

21 **III Oceano Dunes State Vehicular Recreation Area**

22 17. ODSVRA is located within the Oceano Dunes coastal dunes complex, which
23 according to State Parks' website, "is recognized by scientists, conservationists, government
24 agencies, and the public as the finest, most extensive coastal dunes remaining in California."
25 http://ohv.parks.ca.gov/?page_id=1207.

26 18. At issue in this case is a 584-acre tract of land known as the La Grande Tract,
27 which at present comprises about one-third of the riding area within the ODSVRA. DPR has
28 permitted ORV use on the La Grande Tract after it entered into a lease and Operating Agreement

1 with the County in 1982. The lease and Operating Agreement will expire on June 20, 2008.
2 DPR has been attempting to purchase La Grande Tract outright since 2005. Petitioner contends
3 that the lease or sale of the La Grande Tract to DPR would be contrary to and violate the
4 County's LCP.

5 19. Unregulated off-road vehicular recreation went on in the Oceano Dunes for
6 decades before this destructive practice was finally regulated subject to state law. According to a
7 State Parks 1995 Environmental Impact Report (EIR), ODSVRA was established in 1974,
8 although the General Development Plan or GDP for the ODSVRA was not adopted until 1975.
9 The park was originally only 810 acres. EIR at 21. The La Grande Tract was targeted for future
10 acquisition. Ibid. 22.

11 20. San Luis Obispo County acquired the La Grande Tract in 1944 when the title to
12 thousands of foreclosed lots was transferred to the County from Bank of America. More titles
13 were transferred to the County through tax defaults. Prior to these transfers, the County had (in
14 1937) voluntarily transferred to the State property north of the La Grande Beach. La Grande
15 Tract contains "paper" streets that were never developed. A County Staff Report admits that the
16 exact location of the lots and paper streets has never been established.

17 21. In 1982, before the County's LCP was certified, the Commission issued CDP No.
18 4-82-300 to DPR for construction of fencing to keep off-highway vehicles out of biologically
19 sensitive areas. The CDP also addresses construction of kiosks by DPR. The CDP has been
20 amended five times, and is reviewed annually by the CCC.

21 22. The operation and management of the ODSVRA results in significant harm to the
22 areas' federally and state-listed endangered and threatened species. Harm or "take" of federally
23 listed species is contrary to the Endangered Species Act ("ESA") unless the harm to the species
24 is authorized by the U.S. Fish and Wildlife Service ("Service") pursuant to a take authorization,
25 also known as a Section 10 permit. To obtain take authorization, DPR must prepare and
26 implement a Habitat Conservation Plan (HCP), which must be approved by the Service after an
27 environmental review has been completed. DPR has reportedly been developing a Habitat
28 Conservation Plan ("HCP") in order to obtain take authorization, but a draft HCP has yet to be

1 made available for the public for review and comment. Accordingly, the operation of the
2 ODSVRA, including off-road recreation on the La Grande Tract, continues in violation of the
3 ESA.

4 23. Consistent with the Coastal Act, in 1981 San Luis Obispo County submitted a
5 draft LCP to the CCC for review. After a series of negotiation sessions, the CCC certified the
6 County's Land Use Plan in 1984.

7 24. The County's South County-Coastal Planning Area Standards, which contains
8 portions of the County's LCP, contains thorough and specific standards for the development and
9 operation of the ODSVRA. Of particular relevance to Petitioner's claims are the following
10 Standards:

- 11 • 4. General Development Plan [for ODSVRA] shall be revised in accordance
12 with the Local Coastal Plan.
- 13 • 9. ORV use shall be permitted only in identified unfenced vehicular use area.
14 No ORV use will be allowed in the designated natural areas. These areas are
15 identified in Figure 4. No recreational ORV use will be allowed in the designated
16 natural areas. These buffer areas reflect areas required for habitat protection
17 ORV use is prohibited in vegetated areas.

18 25. The operation of the ODSVRA has been consistently in violation of these
19 provisions. DPR has refused to comply with South County-Coastal Planning Area Standard 4 by
20 failing to revise its GDP in accordance with the LCP. The County's lease and agreement with
21 the DPR has likewise been in direct violation of the explicit language of the LCP, which
22 prohibits ORV use on the La Grande Tract.

23 26. In anticipation of the sale of the La Grande Tract to DPR, on December 4, 2006,
24 the County Planning Staff made a determination that the sale of the La Grande Tract to DPR
25 would be consistent with the County General Plan. This determination was appealed to the
26 Planning Commission, which, after receiving testimony from the public, including the Sierra
27 Club, determined that the sale would violate the General Plan (i.e. the LCP). Specifically, the
28 Planning Commission determined that the sale would be inconsistent with Figure 4 of the

1 Coastal Area Planning Standards, which depicts the La Grande Tract as a natural buffer area.
2 The Planning Commission also concluded that the sale would be inconsistent with County
3 Agriculture and Open Space Policy 30.

4 27. DPR and some off-road special interest groups appealed the Planning
5 Department's determinations to the County Board of Supervisors ("BOS"). The BOS denied the
6 appeal in part, concluding that sale of the La Grande Tract to DPR would violate the LCP (Fig.
7 4) and Ag/Op Space Policy 30. The BOS final determination, which was never appealed to the
8 California Coastal Commission, was challenged by an individual and an off-road special interest
9 group. Friends of Oceano Dunes (FOD), et al. v. County of San Luis Obispo (Case No. 070591)
10 is currently pending in San Luis Obispo County Superior Court, before the Honorable Stephen
11 Crandall¹.

12 28. The County is currently in negotiations with DPR regarding the sale of the La
13 Grande Tract. The County BOS is scheduled to consider an extension of the lease and Operating
14 Agreement with DPR on April 15, 2008.

15 **IV. The Parties**

16 29. Petitioner SIERRA CLUB, is a California non-profit membership organization
17 that is concerned with protection of the environment. Some members of the Sierra Club reside in
18 San Luis Obispo, in the vicinity of the project. Sierra Club brings this action on its own behalf,
19 for its members, and in the public interest.

20 30. Members of Sierra Club use and enjoy ODSVRA for recreation and other
21 activities including hiking, swimming, bird-watching, viewing wildlife and engage in scientific
22 study including monitoring activities.

23 31. Respondent CALIFORNIA DEPARTMENT OF PARKS AND RECREATION,
24 OFF-HIGHWAY MOTOR VEHICLE RECREATION DIVISION or DPR is now, and at all
25 times mentioned in this petition has been, a division of within the DPR, a state agency under the
26 laws of the State of California.

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Sierra Club will shortly after the filing of this petition move the court for permission to intervene in FOD v
County of San Luis Obispo.

1 32. Real Party, COUNTY OF SAN LUIS OBISPO is a local government agency and
2 subdivision of the State of California charged with authority to regulate and administer land use
3 and development within its territory, but only in compliance with the duly adopted provisions of
4 its zoning ordinances, General Plan, and all applicable provisions of state law, including the
5 California Environmental Quality Act, and the Coastal Act.

6 33. Real Party, SAN LUIS OBISPO COUNTY BOARD OF SUPERVISORS, is the
7 legislative body and highest administrative body of the County. The Board has the authority to
8 approve and is responsible for, the County's LCP.

9 34. Respondent Andrew Zilke is the Superintendent of ODSVRA. Respondent
10 Daphne Green is the Deputy Director of the State Parks Off-Highway Division. Respondent
11 Ruth Coleman is the Director of the State Parks Off-Highway Division. Each is named as a
12 Respondent in his or her official capacity. Each of these persons is directly responsible for the
13 operation of the ODSVRA and for assuring that the operation of the ODSVRA complies with the
14 Federal and State environmental laws.

15 **V. Jurisdiction and Venue**

16 35. This court has jurisdiction pursuant to Code of Civil Procedure § 1085. Section
17 1085(a) provides that "[a] writ of mandate may be issued by any court to any inferior tribunal,
18 corporation, board, or person, to compel the performance of an act which the law specially
19 enjoins, as a duty resulting from an office, trust, or station. . . ." Venue is proper in this court
20 pursuant to Code of Civil Procedure § 393 because the facilities at issue are located in San Luis
21 Obispo County and Petitioner's cause, or some part of that cause, arises in that county.

22 36. Sierra Club has exhausted all administrative remedies that may be available to it.
23 There is no discernable administrative procedure within DPR which Petitioner could employ to
24 remedy the violations encompassed by this Petition. In lieu of any available administrative
25 procedure, on February 1 and 21, 2008, Sierra Club, via certified mail, return receipt requested,
26 sent each Respondent a letter requesting that DPR comply with the County LCP. In these letters,
27 Sierra Club also notified DPR and its managing staff of Sierra Club's intent to file a petition for
28 writ of mandate to enforce the provisions of the LCP and the Coastal Act should DPR and its

1 managing staff continue to violate the LCP. In response to the February 1, 2008, letter from the
2 Sierra Club, Respondent Daphne Green, acting on behalf of DPR and the other Respondents,
3 stated that DPR is not required to comply with the County's LCP.

4 **VI Claims for Relief**

5 **FIRST CAUSE OF ACTION**

6 (DECLARATORY RELIEF)

7 37. The allegations of paragraphs 1-36 are incorporated by reference as though fully
8 set forth herein.

9 38. A present and actual controversy has arisen and now exists between the
10 Plaintiffs/Petitioner, Sierra Club, and Respondents concerning the status of the County's LCP in
11 general, and Figure 4 and the prohibition of ORV use on County Property in particular. DPR has
12 taken the position that the LCP is merely local regulation and is preempted by state law, in
13 particular, Public Resources Code §5090, etc and ODSVRA's GDP. If this interpretation of the
14 law prevails, DPR will likely succeed in purchasing or leasing the Le Grande Tract, and continue
15 to allow ORV use of the property, in violation of the LCP.

16 39. Sierra Club has no adequate remedy at law and will suffer irreparable damage if
17 the County's LCP is judged to be preempted by PRC §5090 et seq., and ODSVRA GDP.

18 **SECOND CAUSE OF ACTION**

19 (WRIT OF MANDATE)

20 40. The allegations of paragraphs 1-39 are incorporated by reference as though fully
21 set forth herein.

22 41. At all times herein mentioned, Respondents have been able to perform the duties
23 set forth above. In particular, DPR and individually named Respondents have had the ability to
24 revise the GDP consistent with and as required by the County LCP. Notwithstanding such
25 ability, the plain duties imposed on Respondents by law, and the demand of Petitioner that
26 Respondents perform such duties, Respondents have wrongfully failed and refused, and continue
27 to fail and refuse, to revise the ODSVRA GDP consistent with the LCP. Such revision would
28 have required Respondents to ban ORV use from the La Grande Tract, as required by the LCP.

1 42. Unless compelled by this Court to do these acts required by law of their offices,
2 Respondents will continue to fail and refuse to do so. Hence, no further administrative remedies
3 are available to Petitioner for the claims in this petition.

4 43. Petitioner has no plain, speedy, or adequate remedy in the ordinary course of law
5 because, unless the Court grants the requested writ of mandate to require Respondents to comply
6 with their legal duties, Respondents will continue to proceed in violation of the law.

7 44. If Respondents continue to fail or refuse to revise the LCP and ban ORV use from
8 the La Grande Tract, violations of the LCP and the Coastal Act will continue unabated. Ongoing
9 ORV use of the La Grande Tract will continue to take a terrible and destructive toll on the
10 County's fragile coastal resources.

11 **THIRD CAUSE OF ACTION**

12 (INJUNCTIVE RELIEF)

13 45. The allegations of paragraphs 1-44 are incorporated by reference as though fully
14 set forth herein

15 46. Injunctive relief is available against official government action that is contrary to
16 state law.

17 47. Sierra Club has no speedy and adequate remedy at law if DPR maintains its offer
18 to purchase or lease the La Grande Tract, or refuses to revise the GDP consistent with the LCP.

19 **PRAYER**

20 Petitioner Sierra Club prays that this Court:

21 1. Issue a writ of mandate directing Respondents California Department of Parks
22 and Recreation and Andrew Zilke, Daphne Green, and Ruth Coleman, their officers, agents, and
23 all other persons acting on their behalf or through their orders, (1) to immediately begin the
24 preparation of revisions to the GDP consistent with the LCP, and (2) to immediately withdraw
25 their offer for purchase or lease of the La Grande Tract and not to renew any such offer unless
26 the County's LCP has been revised in a manner that would permit ORV use on the La Grande
27 Tract.
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2. For declaratory judgment, stating that the DPR's operation of the ODSVRA is subject to the County's LCP; and that the DPR must revise its GDP consistent with the LCP.

3. For injunctive relief, directing Respondents to withdraw their offer to purchase or re-lease the La Grande Tract, unless and until the LCP no longer prohibits ORV use on the La Grande Tract.

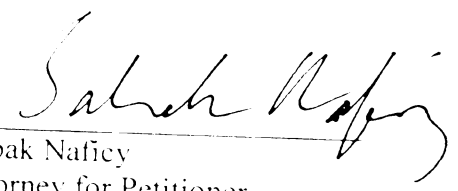
4. Award Petitioner its costs and fees pursuant to C.C.P. §1021.5; and

5. Grant such other relief as may be just and proper.

Respectfully Submitted,

Dated: April 14, 2008

LAW OFFICE OF BABAK NAFICY



Babak Naficy
Attorney for Petitioner

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VERIFICATION

I, Andrew Christie, say:

I am the Director of the Santa Lucia Chapter of the Sierra Club. I have read the foregoing petition and know its contents. The facts alleged in the above petition are within my own knowledge and I know these facts to be true.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this declaration is executed on April 14, 2008, at San Luis Obispo, California.

April 14, 2008


Andrew Christie