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**NO FEE PURSUANT TO  
GOVERNMENT CODE § 6103**

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SAN DIEGO, CENTRAL BRANCH

14 **CITIZENS OVERSIGHT, INC., a  
15 California non-profit corporation;  
16 PATRICIA BORCHMANN, an individual,**

Petitioner and Plaintiff,

17 v.

19 **CALIFORNIA COASTAL COMMISSION;  
20 SOUTHERN CALIFORNIA EDISON  
COMPANY, Real Party in Interest; and  
21 DOES 1 to 100,**

22 Respondents and  
Defendants.

Case No. 37-2015-00037137-CU-WM-CTL

**OPPOSITION TO MOTION FOR WRIT  
OF ADMINISTRATIVE MANDAMUS  
AND DECLARATORY RELIEF**

Date: 3/30/17  
Time: 10:30 a.m.  
Dept: C-68  
Judge: The Honorable Judith F. Hayes  
Trial Date: 3/30/17  
Action Filed: November 3, 2015

[IMAGED FILE]

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1 **INTRODUCTION**

2 Following an extensive review by its staff and a duly noticed and well attended public  
3 hearing, Respondent California Coastal Commission (Commission) approved real party in interest  
4 Southern California Edison Company’s (SCE) and its co-permittees’ application for a coastal  
5 development permit to construct and operate an independent spent fuel storage installation  
6 (ISFSI). The permit includes multiple conditions to ensure the project will be consistent with all  
7 applicable policies of the Coastal Act. The Commission also fully complied with the California  
8 Environmental Quality Act (CEQA) by considering a reasonable range of alternatives to the  
9 project and imposing feasible mitigation measures to mitigate any significant impacts the project  
10 may have on the environment.

11 Petitioners raise a number of due process challenges for the first time in their petition.  
12 Because they failed to raise these concerns to the Commission, they are barred from raising them  
13 here. Even if such claims are considered, they fail on the merits. The Commission held a public  
14 hearing at which Petitioners and their attorney spoke. The coastal commissioners properly  
15 disclosed their ex parte communications pursuant to the Coastal Act’s procedures and the  
16 commissioners’ deliberations on the permit were conducted transparently at the public hearing.

17 Petitioners also make a number of perfunctory arguments regarding the Commission’s  
18 findings of consistency with the Coastal Act. Petitioners utterly fail to meet their burden to  
19 overcome the presumption of correctness afforded the Commission’s decision. Nonetheless, the  
20 Commission provides a response pointing out the substantial evidence in the record that supports  
21 the Commission’s findings. The Commission’s findings and supporting evidence, including  
22 numerous technical studies and reports, encompass thousands of pages in the record. Petitioners  
23 fail to establish that evidence supporting the Commission’s decision is lacking.

24 To avoid repetition, the Commission does not address issues, including the alternatives  
25 analysis, addressed by SCE in its trial brief. Instead, the Commission joins in and incorporates by  
26 reference SCE’s brief.

27 For all of these reasons and as discussed more fully below, the Court should deny  
28 Petitioners’ petition for writ of mandate in its entirety.

1 **FACTUAL AND ADMINISTRATIVE BACKGROUND**

2 **I. COMMUNITY ENGAGEMENT PANEL (CEP)**

3 Even before SCE submitted its application, members of the community engaged in  
4 discussions regarding decommissioning of the San Onofre Nuclear Generating Station (SONGS)  
5 and the proposed ISFSI. (See PAR 110-111.)<sup>1</sup> A Community Engagement Panel (CEP), chaired  
6 by a professor from the University of California, San Diego, was established in early 2014 to  
7 open a conduit between SCE and the local communities that will be affected by the process of  
8 decommissioning. (PAR 110.) The CEP includes representation from multiple entities including  
9 the City of San Clemente, the Ocean Institute, the past president of the American Nuclear Society,  
10 the City of Oceanside, and Orange County Coastkeeper. (PAR 40, 111, 41, 123.)

11 **II. SCE’S COASTAL DEVELOPMENT PERMIT APPLICATION**

12 On February 20, 2015, SCE, San Diego Gas and Electric Company, and the Cities of  
13 Riverside and Anaheim applied to construct and operate an additional ISFSI to increase  
14 temporary spent fuel storage capacity at the site. (RSAR 4271.)<sup>2</sup> SCE currently operates an ISFSI  
15 at SONGS under a permit approved by the Commission in 2001. (RSAR 553, 1060-1063, 8097.)

16 The application included five technical reports and appendices: a geology, seismology, and  
17 geotechnical engineering report (RSAR 4368-4659); certificate of compliance for the spent fuel  
18 storage casks (RSAR 6542-6586); Final Safety Analysis Report on the HI-STORM UMAX  
19 Canister Storage System (RSAR 6674-6773); Environmental Report on the HI-STORM UMAX  
20 System (RSAR 6587-6673); and a registered professional engineer certification of structural  
21 integrity of the storage system. (RSAR 4271.)

22  
23  
24 <sup>1</sup> PAR refers to the 3-volume Petitioners’ Administrative Record lodged by Petitioners  
25 with their opening brief. Because the PAR does not contain a complete record of the  
26 Commission’s proceedings, Respondents prepared a supplement to it, the Respondents’  
27 Supplemental Administrative Record (RSAR). The Commission lodged a combined electronic  
28 copy of the PAR and RSAR and a hard copy of the index to both with the Court on February 17,  
2017.

<sup>2</sup> Petitioners included an incomplete version of SCE’s application at PAR 501-520. A  
complete application with attachments is at RSAR 4271-5690.

1 **III. STAFF’S ANALYSIS OF SCE’S PERMIT APPLICATION**

2 In the months following SCE’s submission of its application, Commission staff compiled  
3 and analyzed an extensive substantive file for the Commission’s review of the permit application.  
4 The file included: geotechnical, seismic, slope stability, environmental, tsunami hazard, water  
5 quality, and spill prevention studies. (See, e.g., RSAR 1466-1717, 4017-4062, 11914-11986,  
6 1718-1933, 1934-1993, 2064-2068, 2069, 2943, 11987, 12013, 2944-3030, 3031-3033, 12076-  
7 12078, 3946-3989, 3990-4016).

8 Commission staff also requested additional information from SCE, including an analysis of  
9 the measures the SCE will take if no permanent offsite waste facility becomes available within  
10 the design life of the ISFSI components or the anticipated life of the proposed project site; an  
11 expanded analysis of the “no project” alternative, i.e., of continued storage in spent fuel pools,  
12 and of off-site and on-site alternatives. (RSAR 7762-7768.) Staff also requested more information  
13 on technological alternatives; the ISFSI’s structural integrity; seismic hazards; slope stability;  
14 hydrology; coastal hazards; and water quality and construction impacts. (*Ibid.*)

15 On May 13, 2015, SCE responded to staff’s questions and provided additional information.  
16 (RSAR 8042-8889.) SCE provided more information regarding offsite and onsite alternatives.  
17 (RSAR 8095-8108.) SCE also submitted additional geotechnical and seismic hazard analyses  
18 (RSAR 8117-8332, 8333-8496, 8498-8592), an hydrologic engineering report (RSAR 8593-  
19 8737), flooding analyses (RSAR 8738), and waste discharge and stormwater permits (RSAR  
20 8742-8889). Staff continued to have extensive written and in person communications with SCE.  
21 (E.g., RSAR 8890-8896, 8915, 8925-8932, 8942-8944, 8945-9208, 9209-9212, 9221-9323.) Staff  
22 eventually deemed SCE’s application complete on June 11, 2015. (RSAR 9807.)

23 Staff also had extensive communications with project opponents. (E.g., RSAR 8897-8901,  
24 7871-7927.)

25 **IV. THE EXECUTIVE DIRECTOR’S STAFF REPORT**

26 Staff’s analysis culminated in a 68-page staff report. (PAR 309-377.) The staff report  
27 included a 4½ page, single-spaced list of substantive file documents, which among other  
28 information, staff relied upon in making its recommendation. (PAR 356-360 [List]; RSAR 617-



1 5831 [Documents].) The staff report recommended the Commission find, with 5 standard  
2 conditions and 6 special conditions, that SCE’s proposed development complied with the Coastal  
3 Act and CEQA. (PAR 313-316.) The staff report contained detailed findings in support of the  
4 recommendation. (PAR 316-355.)

5 **V. THE EXECUTIVE DIRECTOR’S STAFF REPORT ADDENDUM**

6 Following the Executive Director’s publishing of the staff report, numerous individuals and  
7 entities submitted comments to the Commission. The Executive Director issued an addendum to  
8 the staff report to provide correspondence on the original staff report, written disclosures of ex  
9 parte communications, proposed revisions to the staff report, and responses to comments. (PAR  
10 1-308.) Staff noted that “[t]he proposed modifications to the staff report do not change staff’s  
11 recommendation that the Commission **approve** CDP # 9-15-0228, as conditioned.” (PAR 1,  
12 emphasis in original.)

13 The City of Oceanside (PAR 41-42); the Union of Concerned Scientists (PAR 43-64); the  
14 CEP leadership consisting of David Victor, UCSD Professor, Tim Brown, City of San Clemente  
15 Councilman, and Daniel Stetson, President Emeritus, the Ocean Institute (PAR 110-111); Orange  
16 County Coastkeeper (PAR 123); the Sierra Club Task Force on San Onofre (PAR 125-126); the  
17 Industrial Environmental Association (PAR 131-132); and Edward Quinn, Past President of the  
18 American Nuclear Society (PAR 40) submitted letters in support of the staff recommendation of  
19 conditional approval. SCE submitted comments and technical clarifications and corrections on the  
20 staff report and voiced its support of staff’s recommendation. (PAR 112-116.)

21 A number of commenters, including Petitioners and their attorney; Rita Conn; Donna  
22 Gilmore, San Onofre Safety; Gary Headrick, San Clemente Green; Charles Langley, Public  
23 Watchdogs; Marv Lewis; Laura Lynch; Don Mosier, Del Mar City Councilman; and Dorah  
24 Shuey and Jane Swanson, San Luis Obispo Mothers for Peace submitted letters opposing staff’s  
25 recommendation. (PAR 8.) Staff responded to their comments in the addendum. (PAR 8-11.)

26 **VI. THE COMMISSION’S HEARING**

27 On October 6, 2015, the Commission held a public hearing on SCE’s application. The  
28 Commission heard staff’s presentation of its recommended findings and conditions. (PAR 379-

1 388.) Commissioners then orally disclosed ex parte communications that had taken place within 7  
2 days of the hearing. (PAR 388-391.) SCE made a presentation, including a short video and slides.  
3 (PAR 392-398.) The Commission then heard from Mark Lombard, the Director of Spent Fuel  
4 Management at the Nuclear Regulatory Commission, who spoke in favor of staff's  
5 recommendation. (PAR 399-400.) Petitioners and one of their attorneys among others testified in  
6 opposition to the project. (PAR 400-406, 406-408, 410-411.) None of the speakers opposed to the  
7 project raised any due process objections. (PAR 400-446.) SCE and Commission staff responded  
8 to comments. (PAR 447-452, 452-454.) The Commission then debated the proposed project  
9 extensively with follow-up questions to staff, SCE, and the Nuclear Regulatory Commission  
10 representative. (PAR 454-497.)

11 At the conclusion of the public hearing, the Commission voted 11-0 to approve SCE's  
12 application as conditioned in the staff recommendation. (PAR 497-499.) The Commission found  
13 that the permit "will be in conformity with the policies of Chapter 3 of the Coastal Act" and that  
14 its approval complies with CEQA "because either 1) feasible mitigation measures and/or  
15 alternatives have been incorporated to substantially lessen any significant adverse effects of the  
16 development on the environment, or 2) there are no further feasible mitigation measures or  
17 alternatives that would substantially lessen any significant adverse impacts on the environment."  
18 (RSAR 548.)

19 **SUMMARY OF THE COASTAL ACT AND THE COMMISSION'S CERTIFIED**  
20 **REGULATORY PROGRAM UNDER CEQA**

21 As a preliminary matter, the Commission's jurisdiction is limited to addressing the ISFSI's  
22 conformity to the Coastal Act and CEQA. The U.S. Nuclear Regulatory Commission (NRC) has  
23 exclusive jurisdiction over radiological aspects of the project. In *Pacific Gas and Electric Co. v.*  
24 *State Energy Commission* (1983) 461 U.S. 190, 205, the Supreme Court held that the federal  
25 government has preempted the entire field of "radiological safety aspects involved in the  
26 construction and operation of a nuclear plant, but . . . the States retain their traditional  
27 responsibility in the field of regulating electrical utilities for determining questions regarding their  
28 need, reliability, costs, and other related state concerns." (RSAR 557-558.)

1           The California Coastal Act of 1976 (Pub. Resources Code, § 30000 et seq.)<sup>3</sup> authorizes the  
2 Commission to consider many aspects of the project unrelated to nuclear safety or radiological  
3 issues. The Coastal Act is the legislative continuation of the coastal protection afforded by  
4 Proposition 20, the 1972 Coastal Initiative which created the California Coastal Zone  
5 Conservation Commission. The Legislature enacted the Coastal Act as a comprehensive scheme  
6 to govern land use planning for California’s coastal zone. (*Pacific Palisades Bowl v. City of Los*  
7 *Angeles* (2012) 55 Cal.4th 783, 793-794). The Legislature found that “‘it is necessary to protect  
8 the ecological balance of the coastal zone’ and that ‘existing developed uses, and future  
9 developments that are carefully planned and developed consistent with the policies of this  
10 division, are essential to the economic and social well-being of the people of this state. . . .’  
11 (§ 30001, subs. (a) and (d).)” (*Ibid.*)

12           The Coastal Act is to be “liberally construed to accomplish its purposes and objectives.”  
13 (§ 30009.) Under it, with exceptions not applicable here, any person wishing to perform or  
14 undertake any development in the coastal zone must obtain a coastal development permit in  
15 addition to obtaining any other permit required by law from any local government or from any  
16 state, regional or local agency. (§ 30600, subd. (a).)

17           One of the legislative goals of the Act is to “[p]rotect, maintain, and, where feasible,  
18 enhance and restore the overall quality of the coastal zone environment and its natural and  
19 manmade resources.” (§ 30001.5, subd. (a).) To achieve this goal, the Act sets forth specific  
20 policies governing public access, recreation, the marine environment, land resources, and  
21 development along the coast. (§§ 30210–30265.5.) (*McAllister v. California Coastal Com.* (2008)  
22 169 Cal.App.4th 912, 922; see also *Landgate v. California Coastal Com.* (1998) 17 Cal. 4th 1006,  
23 1011; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 571; §§ 30001.5,  
24 30512, 30513.)

25           When the Commission considers coastal development permits, its actions are subject to the  
26 CEQA. The Secretary of the Natural Resources Agency has certified that the Commission’s

27 \_\_\_\_\_  
28           <sup>3</sup> Further statutory references are to the Public Resources Code unless otherwise indicated.

1 process for issuing coastal development permits is equivalent to the EIR process. (§ 21080.5; Cal.  
2 Code of Regs., tit. 14, § 15251, subd. (c).) As a result of the Secretary's certification of the  
3 Commission's permit program, the Commission is exempt from Chapter 3 (§§ 21100-21108),  
4 Chapter 4 (§§ 21150-21154), and section 21167 of CEQA. The Commission's staff report is  
5 deemed the functional equivalent of an environmental impact report or negative declaration.

6 The Commission's findings in connection with the approval of a coastal development  
7 permit include a description and analysis of the proposed project's environmental impacts as well  
8 as feasible alternatives and feasible mitigation measures that would substantially mitigate any  
9 significant environmental impacts that the proposed project may have on the environment.

10 (§ 21080.5, subd. (d)(2)(A).)

#### 11 **STANDARD OF REVIEW**

12 Code of Civil Procedure section 1094.5 requires this Court to determine whether substantial  
13 evidence supports the Commission's decision to conditionally approve SCE's permit application.  
14 (*Ocean Harbor House Homeowners Assn. v. California Coastal Com.* (2008) 163 Cal.App.4th  
15 215, 227.) California law presumes substantial evidence supports this decision. (*Ibid.*) Petitioners  
16 bear the burden of demonstrating the contrary. (*Ibid.*) In reviewing the Commission's decision,  
17 the Court considers all record evidence. (*La Costa Beach Homeowners Assn. v. California*  
18 *Coastal Com.* (2002) 101 Cal.App.4th 804, 814 (*La Costa*)). The Court must resolve reasonable  
19 doubts in favor of the Commission's decision. (*Paoli v. California Coastal Com.* (1986) 178  
20 Cal.App.3d 544, 550.) It may reverse only if, based on the evidence before the Commission, no  
21 reasonable person could have reached the Commission's conclusion. (*La Costa*, 101 Cal.App.4th  
22 at 814.) The Commission may rely for its decision and findings on any relevant evidence,  
23 regardless of its admissibility in civil actions. (Cal. Code Regs., tit. 14, § 13065.) Substantial  
24 evidence on which the Commission may rely includes expert opinions, photographs, and  
25 observations from Commissioners, Commission staff, and the public. (*La Costa*, 101 Cal.App.4th  
26 at 819; *LT-WR, LLC v. California Coastal Com.* (2007) 152 Cal.App.4th 770, 793-94.)

1 **ARGUMENT**

2 **I. THE COASTAL COMMISSION HELD A PROPERLY NOTICED PUBLIC HEARING ON**  
3 **SCE’S APPLICATION, AND THE COASTAL COMMISSIONERS FOLLOWED THE**  
4 **COASTAL ACT’S DISCLOSURE PROCEDURES.**

5 Petitioners argue that the Commission did not provide them a fair hearing. As a threshold  
6 matter, Petitioners’ due process claims fail as a matter of law because they failed to raise these  
7 concerns to the Commission. “[E]xhaustion of administrative remedies is generally required  
8 before resort to judicial remedies.” (*McAllister v. County of Monterey* (2007) 147 Cal.App.4th  
9 253, 284.) The exhaustion doctrine “is not a matter of judicial discretion, but a fundamental rule  
10 of procedure . . . binding upon all courts.” (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d  
11 280, 293.) If Petitioners claims are considered, they fail for the reasons discussed below.

12 **A. The Commission Provided Notice and an Opportunity to Be Heard.**

13 Petitioners suggest that the public hearing was unfair because the Commission rushed the  
14 permit to hearing and limited public discussion to three hours. (Opening Brief (OB) at 8:22-23,  
15 11:12-17.) But they offer no evidence that a longer hearing or delaying the hearing would have  
16 resulted in a different outcome, that someone who wanted to speak was not allowed to do so, or  
17 that any proffered evidence was rejected. Petitioners bear the burden of showing they suffered  
18 prejudice, substantial injury, and that a different result would have been probable if the error had  
19 not occurred. (*Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th  
20 899, 922-923; *Roberson v. City of Rialto* (2014) 226 Cal.App.4th 1499, 1508; *Lucas Valley*  
21 *Homeowners Assn. v. County of Marin* (1991) 233 Cal.App.3d 130, 147-148 [holding “[e]rror  
22 occurring in an administrative proceeding will not vitiate the ruling unless it actually prejudices  
23 the petitioner”].) They cannot do so here.

24 Staff spent months reviewing an extensive amount of material before the Commission held  
25 a duly noticed public hearing on the project, reviewed and responded to the extensive comments  
26 submitted prior to and at the hearing, and deliberated in an open and transparent way. At the  
27 Commission’s October 6, 2015 public hearing, Petitioners had an opportunity to and did testify.  
28 Their testimony is in the record as follows: Ray Lutz with Citizens Oversight at PAR 400-406;  
Maria Severson, Petitioners’ attorney, at PAR 406-408; and Patricia Borchmann at PAR 410-411.

1 The Commission allowed speakers to cede their time to another speaker at the hearing, allowing a  
2 project opponent additional time to present a slide presentation. (E.g., PAR 412.) None of these  
3 speakers objected to the time limits placed on their testimony. Petitioners and their counsel also  
4 submitted written materials prior to the meeting. (See, e.g., PAR 67-68, 75-103, 148-276.)

5 California law requires Petitioners to demonstrate that the Commission’s alleged error prejudiced  
6 them. (*North Pacifica LLC v. California Coastal Com.* (2008) 166 Cal.App.4th 1416, 1433-1434;  
7 *Benson v. California Coastal Com.* (2006) 139 Cal.App.4th 348, 355-356.)

8 Petitioners fail to point to any error by the Commission concerning its public hearing and  
9 have not and cannot show any prejudice.

10 **B. The Commission Complied with the Coastal Act’s Ex Parte Disclosure**  
11 **Requirements.**

12 Petitioners contend that the public discussion was marred by private discussions between  
13 SCE and coastal commissioners. (OB at 8-9, 10:18-19.) This argument ignores express provisions  
14 in the Coastal Act authorizing such communications. The commissioners fully disclosed their ex  
15 parte communications in writing and at the public hearing.

16 The Coastal Act specifically authorizes any interested person – defined to include a permit  
17 applicant as well as a representative acting on behalf of any civic, environmental, neighborhood,  
18 business, labor, trade, or similar organization – to contact and communicate with coastal  
19 commissioners about a permit action outside of a public hearing. (§§ 30321-30323.) The Act  
20 defines ex parte communications as any oral or written communication between a commissioner  
21 and an interested person about a matter within the Commission’s jurisdiction which does not  
22 occur in a public hearing or other official proceeding or on the official record of the matter.

23 (§ 30322.) The Coastal Act authorizes ex parte communications provided the commissioner  
24 “fully discloses and makes public the ex parte communication by providing a full report of the  
25 communication to the executive director within seven days after the communication or, if the  
26 communication occurs within seven days of the next commission hearing, to the commission on  
27 the record of the proceeding at that hearing.” (§ 30324, subd. (a).) Communications “cease to be  
28

1 ex parte communications when fully disclosed and placed in the commission's official record."  
2 (§ 30324, subd. (c).)

3 The commissioners disclosed their ex parte communications in writing and on record at the  
4 public hearing. (PAR 278-308, 388-391.) Petitioners do not allege any substantive or procedural  
5 deficiencies in the disclosures.

6 **C. The Commissioners Did Not Discuss the Project Among Themselves**  
7 **Outside the Public Hearing.**

8 Related to their misguided claims regarding the commissioners' ex parte communications,  
9 Petitioners contend that the Commissioners evaded the state open meeting law by using a series  
10 of private meetings and committing themselves to a decision to grant the permit before the public  
11 hearing. (OB at 11:1-6.) Petitioners provide zero evidence of this.

12 Petitioners cite one case to support their argument, *Page v. MiraCosta Community College*  
13 *Dist.* (2009) 180 Cal.App.4th 471, 503-504. This case addresses improper meetings under the  
14 Brown Act. The Brown Act applies to *local* agency public meetings, not state agencies. The  
15 Brown Act's state counterpart, the Bagley-Keene Open Meeting Law, also prohibits serial  
16 meetings. (Gov. Code, § 11122.5, subd. (b)(1).) But individual contacts or conversations between  
17 a member of a state agency and any other person do not constitute a meeting provided a majority  
18 of the members do not discuss, deliberate, or take action on any item of business outside of a  
19 properly noticed meeting. (Gov. Code, § 11122.5, subd. (c)(1).) No serial meeting took place here.  
20 SCE's representatives met with individual commissioners as authorized by the Coastal Act  
21 (§ 30324) and the Bagley-Keene Open Meeting Act (Gov. Code, § 11122.5, subd. (c)(1)).  
22 Petitioners provide no evidence, and there is nothing in the record to suggest, that a majority of  
23 the commissioners directly or through an intermediary discussed, deliberated, or took action on  
24 SCE's application outside of the publicly noticed meeting. (See Gov. Code, § 11122.5 subd.  
25 (b)(1).)

26 As evidence to support their argument, Petitioners cite two pages in the administrative  
27 record: PAR 165, fn. 3 and PAR 260. The cited pages provide no support for their argument.  
28 They relate to actions of the California Public Utilities Commission (CPUC), not the Coastal

1 Commission. The citation to PAR 165, fn. 3 is to a footnote in Petitioners’ brief in *Citizens*  
2 *Oversight v. California Public Utilities Com.*, discussing a meeting between CPUC President  
3 Michael Peevey and an SCE representative. It does not in anyway relate to the Coastal  
4 Commission or the Coastal Commission’s hearing. Page 260 is a page from a report prepared by  
5 Petitioners’ counsel related to alleged malfeasance of the CPUC, not the Coastal Commission.  
6 Petitioners provide *no* evidence to support their claim that the Commission violated the Bagley-  
7 Keene Open Meeting Law.

8 **II. SUBSTANTIAL EVIDENCE SUPPORTS THE COMMISSION’S FINDINGS THAT THE ISFSI**  
9 **AS CONDITIONED COMPORTS WITH APPLICABLE COASTAL ACT POLICIES.**

10 Petitioners contend that the Commission’s approval violates Coastal Act sections 30204,<sup>4</sup>  
11 30253, 30211, 30221, and 30230-30232. Petitioners provide only cursory assertions and  
12 unsupported conclusions with no citations to the administrative record and no specifics as to how  
13 the Commission’s analysis is inadequate. (OB 5:2-12, 12: 1-16.) Because of Petitioners’ failure to  
14 cite to specific evidence in the record and legal authority to support their claims, the Court may  
15 reject the claims outright. (*Saltonsall v. City of Sacramento* (2015) 234 Cal.App.4th 549, 587-588;  
16 see also *Pfeiffer v. City of Sunnyvale* (2011) 200 Cal.App.4th 1552, 1572-73 (holding “[a]s in all  
17 substantial evidence challenges, an appellant challenging an EIR for insufficient evidence must  
18 lay out the evidence favorable to the other side and show why is it lacking. Failure to do so is  
19 fatal.”) If the Court considers Petitioners’ claims, the Commission submits that substantial  
20 evidence in the record supports the Commission’s findings as discussed below.

21 **A. The Commission Properly Found the ISFSI Is Consistent with the Coastal**  
22 **Act’s Geologic Hazards Policies (§ 30253).**

23 The Commission found that as conditioned the proposed ISFSI is consistent with section  
24 30253. The Commission’s findings and supporting evidence are found at RSAR 565-583. The

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25 <sup>4</sup> The Coastal Act does not contain a section 30204. The Commission assumes Petitioners  
26 mean section 30240, which addresses development in environmentally sensitive habitat areas  
27 (ESHA). An ESHA is an area in which plant or animal life or their habitats are either rare or  
28 especially valuable because of their special nature or role in an ecosystem. (§ 30107.5.) The  
ISFSI is proposed to be built in the North Industrial Area of SONGS, a previously graded, paved,  
and developed area. (RSAR 583.) As such, it will not impact any ESHA.



1 Commission's findings refer to multiple studies and technical appendices supporting the  
2 Commission's findings, which are found at RSAR 617-5831.

3 Coastal Act section 30253 provides in relevant part:

4 New development shall:

5 (a) Minimize risks to life and property in areas of high geologic, flood, and fire  
6 hazard.

7 (b) Assure stability and structural integrity, and neither create nor contribute  
8 significantly to erosion, geologic instability, or destruction of the site or surrounding  
9 area or in any way require the construction of protective devices that would  
10 substantially alter natural landforms along bluffs and cliffs.

11 During the staff review of SCE's prior ISFSI project, the Commission's Staff Geologist  
12 conducted an extensive evaluation of geologic hazards at the SONGS site, drawing on the  
13 information that was available in early 2001. The Commission's findings of conditional approval  
14 of SCE's current application draw on that information, but also evaluate new information, data,  
15 and analytic tools related to geologic hazards that have emerged in the last 15 years. (RSAR 565.)  
16 The Commission analyzed the ISFSI's susceptibility to geologic hazards pursuant to the Coastal  
17 Act, but it did not address the consequences of these hazards in terms of nuclear safety as that is  
18 subject to the exclusive jurisdiction of the NRC. (RSAR 565.)

19 When evaluating seismic hazards, the Commission relied on studies undertaken by SCE  
20 and its consultants in 1995 (RSAR 4017-4062) and 2010 (RSAR 1718-1933) and corroborating  
21 independent evaluations by the California and U.S. geological surveys (RSAR 756) to determine  
22 the potential for and force of seismic activities. (RSAR 566-569.) The Commission found that the  
23 proposed ISFSI has been designed to withstand ground shaking of much greater magnitude than  
24 contemplated in the studies. (RSAR 569.)

25 The Commission also evaluated coastal hazards, including tsunamis; coastal flooding and  
26 sea level rise; and coastal erosion and bluff retreat. (RSAR 571-576.) The Commission found that  
27 within SCE's proposed 35-year timeframe, the siting and design of the ISFSI would be sufficient  
28 to assure stability and structural integrity against geologic hazards, including seismic ground

1 shaking, slope failure, tsunamis and flooding, and coastal erosion, without requiring shoreline  
2 protection. (RSAR 545, 565-583.)

3 Crucially, however, the Commission found that it remains uncertain whether it will be  
4 possible for SCE to remove the ISFSI as planned in 2051. The Commission, therefore, based its  
5 review on the likelihood that the ISFSI will remain onsite in perpetuity, rejecting SCE's argument  
6 that the Commission should base its review on the assumption that the ISFSI would be in place  
7 only until 2051. (RSAR 7946-7947.) In the event that no permanent repository or other offsite  
8 interim storage facility emerges or if the shipment of SONGS spent fuel to an off-site facility is  
9 otherwise delayed or if the steel fuel storage casks were to degrade and become unsafe for  
10 transport, the proposed ISFSI could be required beyond 2051. In that case, the ISFSI would  
11 eventually be exposed to coastal flooding and erosion hazards beyond its design capacity or else  
12 would require replacement or expansion of the seawall for protection. In either situation, the  
13 ISFSI would have the potential to adversely affect marine and visual resources and coastal access.  
14 (RSAR 545.)

15 In order to address these uncertainties and assure that the ISFSI remains safe from geologic  
16 hazards and avoids adverse impacts to coastal resources over the actual life of the project, the  
17 Commission adopted **Special Condition 2**, which authorizes the ISFSI for 20 years and requires  
18 SCE to apply for an amendment to retain, remove, or relocate the ISFSI within that time period.  
19 (RSAR 549.) The application must include an alternatives analysis, including locations within the  
20 decommissioned Units 2 and 3 area; coastal hazards and managed retreat assessment, update on  
21 the physical condition of the storage casks, and measures to avoid/minimize impacts to visual  
22 resources. (RSRA 545-546, 549.) Within 20 years, Units 2 and 3 will be decommissioned and  
23 superior on-site locations within these areas will be available should off-site alternatives remain  
24 infeasible. (RSAR 545, 563-565, 579-582.) A number of these locations are at higher elevations  
25 and greater distances from the shoreline and may prove to be safe from coastal hazards for a  
26 longer period of time if the ISFSI must remain on-site for a longer period of time than proposed.  
27 (RSAR 579.)

28

1           The 20-year condition also assures that the spent fuel will remain transportable. (RSAR  
2 581.) The Commission explained that, in order to find the project consistent with the geologic  
3 hazards policies of the Coastal Act and in recognition that the project itself proposes interim  
4 temporary storage for eventual transport to a federal or other off-site repository, the Commission  
5 must have reasonable assurance that the spent fuel will continue to be transportable and the ISFSI  
6 itself removable. (RSAR 581.) The 20-year NRC licensing and certification of the structural  
7 adequacy of the proposed ISFSI system provides such assurance within this limited timeframe  
8 and is roughly consistent with the available evidence on when stress corrosion cracking may  
9 begin to affect certain stainless steel components in marine environments. (*Ibid.*) Thus, to foster  
10 the eventual removal of the proposed ISFSI and in light of long-term geologic conditions  
11 warranting the use of shoreline protective devices, the Commission adopted Special Condition 2.  
12 (RSAR 581.) The Commission also adopted Special Condition 7, which requires that, as soon as  
13 technologically feasible and no later than October 6, 2022, SCE provide for Commission review  
14 and approval a maintenance and inspection program designed to ensure that the ISFSI system and  
15 fuel storage casks will remain in a physical condition sufficient to allow both on-site transfer and  
16 off-site transport. (RSAR 581-582.)

17           Petitioners cite the Commission’s concerns regarding the potential long-term impacts of the  
18 ISFSI (OB 3:15-22), but they fail to mention the conditions the Commission imposed to assure  
19 the ISFSI’s long-term consistency with section 30253. The Commission properly found: “Based  
20 on the proposed project design and construction . . . , the Commission finds that the proposed  
21 project, as conditioned, is consistent with Coastal Act sections 30253(a) and (b).” (RSAR 583.)

22           **B. The Commission Properly Found that the Proposed ISFSI Is Consistent**  
23           **with the Coastal Act’s Marine Resources and Water Quality Policies**  
24           **(§§ 30230-30232).**

25           The Commission found that as conditioned the proposed ISFSI is consistent with sections  
26 30230-30232 of the Coastal Act, relating to marine resources and water quality policies. The  
27 Commission’s findings and supporting evidence are found at RSAR 583-585. Substantial  
28 evidence supports the Commission’s findings.

1 With respect to water quality, the SONGS site is currently subject to NPDES permits issued  
2 by the San Diego Regional Water Quality Control Board. (RSAR 583.) The permit includes  
3 conditions related to allowable volumes and types of non-radiological discharges from the various  
4 facilities on site and other measure to prevent adverse impacts to coastal waters. To the extent that  
5 construction of the ISFSI could lead to new discharges, it would be subject to additional review  
6 and permitting by the Regional Board. (RSAR 583.)

7 Construction related discharges must comply with existing water quality, storm water  
8 management, and spill prevention plans and their associated best management practices. These  
9 activities are similar to activities already occurring at SONGS. SONGS existing Storm Water  
10 Management Plan includes procedures regarding dust control, sediment management, and debris  
11 cleanup. (RSAR 584.) SONGS also has an existing Spill Prevention, Control and  
12 Countermeasures Plan to prevent and control spills of hazardous materials on site. (RSAR 3946-  
13 3989.)

14 To avoid the possibility that shoreline retreat and/or sea level rise will, despite the ISFSI's  
15 robust design, eventually result in a loss of stability and structural integrity and cause the  
16 discharge of debris into the ocean, the Commission imposed Special Conditions 2 and 7. These  
17 conditions afford the Commission the opportunity to re-evaluate the likelihood of SCE's  
18 proposed timeline for removal of the ISFSI before the site becomes vulnerable to coastal hazards  
19 and when potential alternative locations on and off site may be available and, if necessary, to  
20 impose conditions to mitigate and avoid adverse impacts to marine resources. (RSAR 585.)

21 **C. The Commission Properly Found that the Proposed ISFSI Is Consistent**  
22 **with the Coastal Act's Coastal Access and Recreation Policies (§§ 30210-**  
23 **30212, 30220).**

24 Petitioner failed to raise to the Commission their allegations that the proposed project is  
25 inconsistent with the Coastal Act's coastal access and recreational policies. Therefore, the Court  
26 need not consider these arguments. (See Argument I, above.) If the Court considers these  
27 arguments, they fail because substantial evidence in the record supports the Commission's  
28 findings that, as conditioned, the proposed ISFSI is consistent with these policies. The  
Commission's findings and supporting evidence are found at RSAR 585-588.

1 The Commission's findings explain that Coastal Act policies generally require that  
2 developments, such as the proposed ISFSI, which are located adjacent to the shoreline in an area  
3 with ongoing public use, must not interfere with that use and provide access to the shoreline. But  
4 the proposed ISFSI will be located within the existing SONGS restricted area, to which public  
5 access is prohibited under NRC security requirements. Thus, the project would not directly  
6 interfere with existing public access. (RSAR 586.) The Commission found, however, that the  
7 ISFSI could potentially result in a number of indirect adverse effects on coastal access and  
8 recreation through impacts to shoreline sand supply should the retention or extension of the  
9 existing seawall become necessary to protect the ISFSI from future coastal hazards. In order to  
10 mitigate these potential adverse impacts, the Commission imposed Special Condition 2, which  
11 authorizes the ISFSI only for 20 years, and Special Condition 3, which prohibits SCE from  
12 extending, enlarging, or completely replacing the existing seawall (while still, however, allowing  
13 for repair and maintenance of the wall). (RSAR 576.) With the implementation of these special  
14 conditions, the Commission found that the proposed project is consistent with the Coastal Act's  
15 public access and recreation policies. (RSAR 587-588.)

## 16 CONCLUSION

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

19 Dated: March 3, 2017

Respectfully Submitted,

20 XAVIER BECERRA  
21 Attorney General of California  
22 JAMEE JORDAN PATTERSON  
Supervising Deputy Attorney General

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**DECLARATION OF SERVICE AND OVERNIGHT COURIER**

Case Name: **Citizens Oversight, Inc. et al. v. California Coastal Commission, et al.**  
No.: **37-2015-00037137-CU-WM-CTL**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. My business office is located at 600 West Broadway, Suite 1800, San Diego, California.

On **March 3, 2017**, I served the attached

**OPPOSITION TO MOTION FOR WRIT OF ADMINISTRATIVE MANDAMUS  
AND DECLARATORY RELIEF**

by placing a true copy thereof enclosed in a sealed envelope with **Federal Express**, and in addition,

by  **ELECTRONIC SERVICE VIA ONE LEGAL**. I caused the above-entitled documents to be served electronically through One Legal at [www.onelegal.com](http://www.onelegal.com), on the parties listed below. The One Legal Service Receipt Confirmation will be maintained by this office.

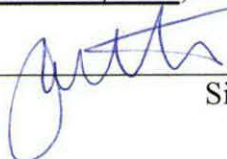
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **March 3, 2017**, at San Diego, California.

\_\_\_\_\_  
Roberta L. Matson  
Declarant

  
\_\_\_\_\_  
Signature