IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH DISTRICT, DIVISION THREE

FRIENDS OF THE CHILDREN'S POOL, Respondent and Petitioner, **v.** **THE CITY OF SAN DIEGO AND CALIFORNIA COASTAL COMMISSION,** Appellants and Respondents.	Case No. G053709 & G053725

Orange County Superior Court, Case No. 37-2015-00778153
The Hon. Frederick Horn, Judge

CALIFORNIA COASTAL COMMISSION'S REPLY BRIEF

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INTRODUCTION

Respondent Friends of the Children's Pool cannot meet its burden to demonstrate that it was Congress's clear and manifest purpose to preclude state and local governments from regulating public access to the coast. Respondent does not dispute that that the regulation of public trust parklands is a core function of California's sovereignty, and that the presumption against preemption applies. The seasonal closure of Children's Pool was consistent with the Marine Mammal Protection Act ("MMPA" or "Act"), and the City of San Diego and Coastal Commission's actions were not preempted by the Act.

Respondent argues that the closure is preempted because it "related to" the take of harbor seals. It so concludes because the Commission believed its action would benefit the animals. Respondent is mistaken. The Commission was concerned about the protection of the seals, but the record also shows the closure was a necessary public safety measure. Respondent does not dispute the evidence of public safety problems at the beach, yet it wants to restrict the Commission's ability to address those problems.

In approving this action, the Commission did not directly regulate human-seal interactions or otherwise step into the shoes of the federal government; rather, it approved a limitation on public access to a City park and state tidelands during the time of year when seals were most likely to be present. The seasonal closure was consistent with the MMPA and furthered its purpose. The judgment should be reversed.

ARGUMENT

I. THIS COURT SHOULD APPLY THE SUBSTANTIAL EVIDENCE STANDARD OF REVIEW TO THE COMMISSION'S APPROVAL OF THE SEASONAL CLOSURE

Respondent argues that this Court should review questions of law de novo, but should review the trial court's factual determinations—rather than those of the Commission—for substantial evidence. (Respondent's Brief at pp. 21-23.) Respondent is incorrect. This Court's scope of review of the Commission's decision "is identical to that of the trial court." (*Ross v. California Coastal Com.* (2011) 199 Cal.App.4th 900, 922.) Thus, the Commission's approval of the seasonal closure should be upheld if supported by substantial evidence. The Court should independently review legal questions, but give the Commission's interpretation of the Coastal Act "great weight." (*Id*. at p. 938 ["Courts must defer to an administrative agency's interpretation of a statute or regulation involving its area of expertise unless the challenged construction contradicts the clear language and purpose of the interpreted provision"].) The scope of review in this administrative mandate case therefore differs from other civil appeals and appeals of writs of traditional mandate issued pursuant to Code of Civil Procedure section 1085. (Compare *id*. at p. 922 with *Outfitter Properties, LLC v. Wildlife Conservation Bd*. (2012) 207 Cal.App.4th 237, 243 [in ordinary mandate, appellate court reviews trial court's factual findings for substantial evidence].)

II. THE MARINE MAMMAL PROTECTION ACT DID NOT PREEMPT THE SEASONAL CLOSURE OF THE BEACH

A. Congress's Use of the Words "Related to" Was Not a Clear and Manifest Statement of Its Intent to Preempt State and Local Regulation of Coastal Access

Because management of public trust lands is a traditional state function (*Marks v. Whitney* (1971) 6 Cal.3d 251, 260), respondent must demonstrate that preemption was the clear and manifest purpose of Congress. (*Dowhal v. SmithKline Beecham Consumer Healthcare* (2004) 32 Cal.4th 910, 923.) Respondent claims that the text of title 16 of the United States Code, section 1379, subdivision (a) ("section 1379(a)") clearly expresses Congress's intent that state actions which "have a connection with or reference to" the taking of harbor seals are preempted, and any regulation touching on marine mammals is therefore an exclusively federal concern.[1] (Respondent's Brief at p. 27.) Respondent is mistaken.

Respondent's position stretches the "relating to" language beyond a logical conclusion because "everything is related to everything else." (*Cal. Division of Labor Standards Enforcement v. Dillingham Construction* (1997) 519 U.S. 316, 336 (conc. opn. of Scalia, J.), cited with approval in *Gobeille v. Liberty Mutual Ins. Co.* (2016) 136 S.Ct. 936, 943; accord *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.* (1995) 514 U.S. 645, 655.) There are some 34,000 harbor seals in California. (22 AR 6084.) By using the words "relating to," Congress could not have intended to displace state land use regulations whenever harbor seals are present. Nor could Congress have intended to preempt

[1] Section 1379(a) provides in pertinent part that "no State may enforce, or attempt to enforce, any State law or regulation relating to the taking of any . . . marine mammal within the State."

other measures referencing or having a connection with marine mammals, such as laws impacting the speed of watercraft, the placement of hiking trails, the establishment of environmentally protected habitats, or the setting of water pollution standards, by using the "relating to" language in section 1379(a). (See *Godfrey v. Oakland Port Services Corp.* (2014) 230 Cal.App.4th 1267, 1276 ["the breadth of the words 'related to' does not mean the sky is the limit"].) Yet, that is the logical result of respondent's position.

Instead of setting forth a test for preemption, section 1379(a) should be interpreted as identifying the field in which ordinary field preemption applies—or as indicating that conflict preemption should apply—and here, the relevant field is the "taking of any species of marine mammal" within California. (See *Cal. Division of Labor Standards*, *supra*, 519 U.S. at p. 335 ["'a relate to' clause of [a] preemption provision is meant, not to set forth a *test* for preemption, but rather to identify the field in which ordinary *field* preemption . . . and of course, ordinary conflict preemption" applies.] (emphasis in original).) That is particularly so because the presumption against preemption applies to the "existence as well as the scope" of any preemption. (*In re Farm Raised Salmon Cases* (2008) 42 Cal.4th 1077, 1088.) Accordingly, the seasonal closure itself should be examined to determine whether it improperly intruded on federal regulation of the take of marine mammals. (See *Gobeille v. Liberty Mutual Ins. Co.*, *supra*, 136 S.Ct. at p. 943 [rejecting "uncritical literalism" when applying "relate to" provision, and looking to whether state provision "acts immediately and exclusively" on preempted topic, "governs a central matter" of topic, or "interferes with nationally uniform" administration].)

The seasonal closure was a land use regulation addressing the time and manner of access to a city park. (1 AR 11-12.) As a condition for the Commission's approval of the City's ordinance, the City was required to

submit a monitoring plan addressing whether the seasonal closure reduced the flushing of harbor seals into the water. (22 AR 6179-6180.) But the ordinance did not establish rules about how people interact with the seals or establish penalties for behavior that disturbs seals. (*Ibid*.) Thus, although related to marine mammals in a sense, the closure did not immediately and exclusively relate to marine mammals, did not govern the take of marine mammals, and did not interfere with a uniform federal policy on marine mammals. (*Gobeille, supra,* 136 S.Ct. at p. 945 [Vermont reporting regime for health plans preempted by ERISA]; cf. *Togiak v. U.S.* (D. D.C. 1974) 470 F.Supp. 1341, 1360 [state law banning seal hunting preempted by MMPA].) It therefore was not a law "relating to" the taking of a marine mammal species within the meaning of section 1379(a), it did not fall into the "field of laws" regulating the take of marine mammals, nor did it conflict with any law regulating the take of marine mammals.

Lacking a direct connection between the language of the beach closure and the taking of marine mammals, respondent argues the intent behind the closure shows it was preempted. Specifically, respondent contends that evidence in the record showing the City and Commission were concerned about the harassment of seals by beachgoers proves the closure was an impermissible regulation of take. (Respondent's Brief at pp. 31-32.) Respondent is correct that the Commission expressed a protective purpose for the seasonal closure. (See 22 AR 6077.) But, the Commission also justified the closure by stating that "the conflicts between people and seals at the Children's Pool Beach has a long history," and found that escalating problems at the Children's Pool necessitated the closure because the harassment of seals continued even after installation of a rope barrier and the stationing of a park ranger at the beach. (*Id*. at 6089.) And, the record shows the Commission was concerned with the serious public safety consequences that accompanied human-seal interaction as well as the drain

on police resources caused by conflict between people in support of unrestricted access and those in support of protection of seals. (*Id*. at 6095-6096.)

Without citation to authority, respondent appears to argue that the Commission waived or forfeited its argument that the closure served a public safety purpose because it did not assert that argument in the trial court. (Respondent's Brief at pp. 32-33.) Respondent is mistaken. The Commission argued at trial was that the seasonal closure was not preempted because it furthered the MMPA's purpose, and therefore was not subject to field or conflict preemption. And the Commission did point out in the trial court the public safety issues that had arisen at the beach. (See 1 AA 486 ["seasonal beach closure does not conflict with the MMPA"]; 489 [noting vandalizing of rope barrier; conflict between people seeking public access and those protecting seals; and related police calls], 494; 1 RT 12.) The Commission asserts the same argument here, while providing a more elaborate recitation of the substantial evidence showing the closure was a necessary public safety measure. Thus, the Commission did not reinvent its position before this Court nor did it forfeit its claim that the seasonal closure could be reconciled with the MMPA. (Cf. *Sumner Hill Homeowners' Assn., Inc. v. Rio Mesa Holdings* (2012) 205 Cal.App.4th 999, 1025 [disregarding "eleventh hour turnabout" not presented to the trial court that reinvented the case on appeal].)

B. The Context and Purpose of the MMPA Shows Congress Did Not Intend to Preempt Land Use Regulations Such as the Seasonal Closure

Respondent argues that whether a state regulation is consistent with a federal law is irrelevant to a preemption analysis when Congress uses the phrase "relates to." (Respondent's Brief at p. 28.) Mindful that the

touchstone of preemption analysis is Congressional intent, the Commission disagrees. In assessing whether such language preempts a state law, courts should examine a preemption provision's "text, context, and purpose." (*Coventry Health Care of Missouri, Inc. v. Nevils* (2017) 137 S.Ct. 1190, 1197.)

The "major objective" of the MMPA is the protection of marine mammals within their ecosystems. (16 U.S.C. § 1361(2).) Its purpose is to protect marine mammals "to the greatest extent feasible." (16 U.S.C. § 1361(6) ["it is the sense of the Congress that they should be protected and encouraged to develop to the greatest extent feasible"].) And, the Act emphasizes that specific efforts should be made to protect marine mammals' "essential habitats including rookeries." (16 U.S.C. § 1361(2).) The plain language of the statute thus indicates the central purpose of the Act is to protect marine mammals from harmful takings, and particularly to protect rookeries. Therefore, the seasonal beach closure at issue—which had an effect of protecting the only mainland harbor seal rookery south of Point Mugu—furthered the primary purpose of the MMPA. (22 AR 6084.)

Citing to the MMPA's preemption provision, respondent contends the purpose of the MMPA was to establish a unified system of federal regulation, and argues that if the Commission and City wanted to close the beach, they were required to obtain management authority under the MMPA. (See Respondent's Brief at pp. 34-37.)[2] But, there are no "strong

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[2] Respondent claims the Commission argued at trial that the letters from the National Marine Fisheries Service (NMFS) qualified as transfers of management authority under the MMPA. (Respondent's Brief at p. 34.) Not so. The Commission stated NMFS "administers and enforces the MMPA," and at the hearing on the writ petition explained that NMFS had approved and supported the seasonal closure. (1 AA 495; 1 RT 6-10.) The Commission did not and does not dispute that there was no

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and distinctly federal interests" involved "in uniform administration" of the regulation of public access to beaches inhabited by marine mammals, and while the federal government provides guidelines for the safe viewing of marine mammals, it alters those guidelines based on the circumstances. (See 22 AR 6085 [NMFS guidelines established 300-foot minimum distance for viewing seals and sea lions in California, but it recommended 50-foot minimum distance at Children's Pool Beach].) Nor is there any history of federal involvement in regulating public access to beaches where marine mammals are present. (See 9 AR 2279 [NMFS letter stating that MMPA "does not mandate set distances" for people to view harbor seals]; cf. *Coventry Health Care of Missouri, Inc. v. Nevils*, *supra*, 137 S.Ct. at p. 1199 [federal employee benefit plans are an area with "long history of federal involvement" and state laws interfering with plans preempted].) Accordingly, as NMFS wrote, "state and local governments are free to implement and enforce ordinances, such as the closure of a beach, which may have a side effective of preventing harassment of a marine mammal." (21 AR 5667; see *Wyeth v. Levine* (2009) 555 U.S. 555, 566 [agencies "have a unique understanding of the statutes they administer and an attendant ability to make informed determinations about how state requirements may pose 'an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'"].)

Respondent argues that the legislative history of the MMPA cited by the Commission is irrelevant because it was based on a version of the Act's preemption provision that was not adopted. (Respondent's Brief at pp. 38-39.) Respondent is correct that Congress ultimately adopted a version of

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transfer of management authority to the state pursuant to title 16 of the United States Code, section 1379(b) ("section 1379(b)").

section 1379(a) different from that discussed in the House Report the Commission cited. (See Respondent's Request for Judicial Notice, Exh. A ("Exh. A") at p. 14.) But, the House Report nevertheless is relevant evidence showing that Congress intended for the MMPA to have a protective purpose. (*Jones v. Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1170-1173 [examining committee reports to ascertain legislative intent].)

Respondent cites a Conference Committee Report that it contends more accurately reflects congressional intent. (See Exh. A at p. 14.) Yet, that report, rather than supporting respondent's position, actually demonstrates that Congress did not intend to preempt land use regulations. Regarding the delegation of authority from the federal government to states pursuant to section 1379(b), the report states: "Once granted authority to implement its laws relating to marine mammals, the State concerned may issue permits, handle enforcement, and engage in research." (*Ibid*.) Thus, by implication, the scope of preempted state activities—i.e., the activities for which a transfer of management authority is required—concerns the issuance of take permits, enforcement of the MMPA, and the approval of research permits for the take of marine mammals which would otherwise be the federal government's responsibility. The report does not identify the control of access to areas where marine mammals are present as an activity that would be transferred to states pursuant to section 1379(b), and it therefore indicates that Congress did not intend to preempt such state actions. (*Jones v. Lodge at Torrey Pines Partnership, supra*, 42 Cal.4th at pp. 1170-1173.)

Moreover, here, the Commission did not attempt to step into NMFS's shoes and enforce the MMPA, and specifically stated that it "does not regulate the taking of marine mammals." (22 AR 6085.) Instead, the Commission looked to the MMPA's protective purpose and prohibition on

take in weighing whether Children's Pool beach warranted protection as an area with "special biological or economic significance." (22 AR 6086-6090 [discussing applicability of Public Resources Code section 30230].)

Respondent argues that *UFO v. UFO Chuting I* supports its position that the MMPA's preemption provision should be interpreted broadly. (Respondent's Brief at p. 33.) In that case, a federal district court held that a Hawaiian statute regulating parasailing activities was preempted under section 1379(a). (See *UFO v. UFO Chuting I* (D. Haw. 2004) 327 F.Supp. 2d 1220, 1223-1224 [dismissed on other grounds, 380 F.Supp. 2d 1166].) But Hawaii's action differed in significant respects from the seasonal closure at issue here. The Hawaii statute restricted parasailing within the Hawaiian Islands Humpback Whale National Marine Sanctuary. (*Id*. at p. 1221.) The federal government manages that sanctuary, and it appears to overlie state and federal waters. (See 15 C.F.R. §§ 922.180; 922.181.) Thus, the Hawaiian law regulated a specific activity within an area of federal control rather than regulated public access to state property. (Compare *UFO Chuting I*, *supra*, at p. 1221 with *State v. Arnariak* (Alaska 1997) 941 P.2d 154, 156 [no preemption of restriction on access to state-owned walrus sanctuary].)

In addition, although Hawaii contended it had safety and pollution concerns with parasailing beyond parasailing's effect on humpback whales, it did not demonstrate any nexus between the presence of marine mammals and a risk to public safety, as the record shows was the case at the Children's Pool Beach. (*UFO Chuting I*, *supra*, at p. 1223-1224.) And, perhaps most importantly, the federal court found that the Hawaiian law actually conflicted with a provision of the MMPA that allowed boats to approach within 100 yards of humpback whales. (*Id*. at p. 1229-1230 [citing Pub. L. No. 103-228, 1994 Stat. 1636 and 15 C.F.R. § 922.184].) Here, respondent has not identified any provision of the MMPA allowing

individuals to approach and harass harbor seals. To the contrary, the MMPA's express purpose is to protect seal rookeries. (16 U.S.C. § 1361(2).) In fact, NMFS told the Commission in 2012 that it recommended a minimum distance of 50 feet for the public to view hauled-out seals at the beach. (22 AR 6085.) Thus, the text of the MMPA and its interpretation by NMFS indicates the seasonal closure of the Children's Pool beach was consistent with the Act's purpose and did not actually conflict with the MMPA.

III. THE SEASONAL CLOSURE WAS CONSISTENT WITH STATE LAW

Respondent argues that the seasonal closure violated Public Resources Code section 30211 because the public acquired its right to access Children's Pool beach through legislative authorization, and the Legislature did not restrict or eliminate public access to the beach when amending the public trust uses for the beach in 2009. (Respondent's Brief at pp. 43-51.)[3] Respondent alternatively argues that if the 2009 amendment allowed the City to limit public access to the beach to protect seals from harassment, then that legislative action was preempted by section 1379(a). (*Id*. at pp. 51-52.) Respondent is incorrect.

A. The Seasonal Closure Did Not Violate the Coastal Act or the Public Trust Doctrine

Section 30211 provides in part that "development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization . . . ." Respondent contends that public acquired a right of access to the Children's Pool beach through legislative authorization—the grant of the tidelands to the City of San Diego from the

[3] Subsequent statutory references are to the Public Resources Code unless otherwise indicated.

Legislature in 1931, and the amendment to the trust uses in 2009—and the Legislature never restricted or eliminated the public's right to access the beach. Respondent claims that the seasonal closure was development that violated section 30211. (Respondent's Brief at p. 44-45.) Respondent is mistaken.

Section 30211 is in Chapter 3 of the Coastal Act, which "describes the policies that 'shall constitute the standards by which the adequacy of local coastal programs … and the permissibility of proposed developments subject to [the Coastal Act] are determined.' (§ 30200, subd. (a).)" (*City of Malibu v. California Coastal Com.* (2012) 206 Cal.App.4th 549, 553.) Thus, when the Commission approves development or an amendment to a local coastal program, as it did here, it weighs evidence and balances competing interests in light of the Chapter 3 policies. (*Ibid.*) The Commission's findings are reviewed for substantial evidence. (*Carstens v. California Coastal Com., supra*, 182 Cal.App.3d at p. 293-294; *Ross v. California Coastal Com., supra*, 199 Cal.App.4th at p. 922; *Paoli v. California Coastal Com.* (1986) 178 Cal.App.3d 544, 550.)

Respondent argues section 30211 imposes a mandatory obligation, and is "not a policy recommendation that has to be balanced or considered." (Respondent's Brief at pp. 46-47.) Respondent neglects that 30211 is expressly limited by section 30214, which provides that "the public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case . . . ." Section 30211 is a public access policy of Article 2, Chapter 3 of the Coastal Act, accordingly its requirements are qualified by section 30214. (See *Ross v. California Coastal Com., supra*, 199 Cal.App.4th at p. 924 [Coastal Act "has myriad purposes and goals and is a comprehensive scheme to govern coastal land use planning for the entire state"].)

Respondent argues that section 30214 does not apply in this context because section 30211 uses the word "shall." But every other public access policy of Article 2 also uses that word. (See §§ 30210 ["maximum access . . . shall be provided"]; 30211 ["Development shall not interfere"]; 30212 ["Public access . . . shall be provided"]; 30212.5 ["public facilities . . . shall be distributed"]; 30213 ["Lower cost visitor and recreational facilities shall be protected"].) Indeed, nearly all the Chapter 3 policies use the word "shall." (See, e.g., §§ 30222; 30230; 30241; 30251; 30263.) Accordingly, respondent's argument that section 30214 does not apply to public access policies that use the word "shall" would make section 30214 meaningless, and would be inconsistent with the structure of the Coastal Act.

Respondent's reliance on *Grupe v. California Coastal Commission* (1985) 166 Cal.App.3d 148 is misplaced. The court in that case did not find that section 30211 or section 30212 imposed a mandatory duty that must be enforced without regard to other applicable Coastal Act requirements, as respondent maintains. Rather, it found that those statutes "empowered" the Commission to exact public access dedications as a condition for approval of development. (*Grupe*, at p. 160.) It further found that section 30214 "expresses the intent of the Legislature regarding the implementation of public access policies, particularly with respect to the 'time, place, and manner' of particular access provisions." (*Ibid*.)

Here, consistent with the Coastal Act's public access provisions, the Commission approved a time, place, and manner restriction on access to the Children's Pool beach. (See § 30214; *Carstens v. California Coastal Com.*, *supra*, 182 Cal.App.3d at p. 924 ["Under . . . section 30212 the Commission may decline to condition a new development permit on public access where it is inconsistent with demands of public safety"].) That action was supported by substantial evidence showing there were public safety concerns at the beach, the public would benefit from observation of

the seals from a safe distance in their natural environment, and the public would still be able to access the breakwater surrounding the beach year-round. (See 8 AR 1865; 16 AR 4028.) Accordingly, the Commission's action was consistent with section 30211, and respondent fails to meet its burden to show otherwise.

Respondent's argument that the Commission's action was inconsistent with legislative grant of the beach to the City is likewise meritless. The grant allows multiple uses of the beach, including "public park," and "marine mammal park for the enjoyment and educational benefit of children," "parkway," or "highway." (Stats. 1931, Ch. 937, § 1, as amended by Stats. 2009, ch. 19 [reprinted at 16 AR 4083-4084].) It does not dictate the time and manner of access to the waters there. (*Ibid*.) Accordingly, the City and Commission actions, which were designed to maintain public access to the maximum extent possible while ensuring public safety and reducing human-seal interaction, were consistent with the legislative grant. (See *Citizens for East Shore Park v. California State Lands Com.* (2011) 202 Cal.App.4th 549, 575-576 [trustee of public trust lands can choose between conflicting public trust uses].) Moreover, respondent's argument that the Commission and City "eliminated" or "prohibited" access at the beach is misplaced, because, as discussed *ante*, the seasonal closure is limited to certain months of the year, and public access to the breakwater above the beach will remain open year-round. (See 8 AR 1865; 16 AR 4028.)

B. The 2009 Amendment to the Trust Was Not Preempted by the MMPA

Finally, respondent argues that, if the 2009 amendment to the legislation granting the lands to the City is construed to allow the City to "protect the seals from harassment," then the amendment was preempted by

section 1379(a) as a measure "relating to" the take of a marine mammal. (Respondent's Brief at pp. 51-52.) Respondent is incorrect.[4]

The 2009 amendment's allowance for a "marine mammal park" at the Children's Pool Beach did not regulate the take of marine mammals, it did not set penalties for violations of the MMPA, nor did it otherwise interfere with the federal government's role in administering the MMPA. Instead, the amendment clarified that the presence of seals at the beach was consistent with the terms of the public trust. (16 AR 4083-4084.) The Legislature's designation of uses for the State's sovereign tidelands is a core government function, and the designation of such lands to be used as a marine mammal park is consistent with the public trust doctrine. (*Marks v. Whitney*, *supra*, 6 Cal.3d at pp. 259-260 ["one of the most important public uses of the tidelands—a use encompassed within the tidelands trust—is the preservation of those lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area"].) Just as respondent has not met its burden to show that the MMPA preempted the seasonal closure of the beach, it cannot meet its burden to show the 2009 amendment interfered with federal regulation of marine mammals and was preempted by the MMPA. (See *Gobeille v. Liberty Mutual Ins. Co*., *supra*, 136 S.Ct. at p. 943.)

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[4] Respondent did not raise this claim in the trial court, but "a party may raise a constitutional issue, like preemption, for the first time on appeal." (*ReadyLink HealthCare, Inc. v. Jones* (2012) 210 Cal.App.4th 1166, 1175.) Accordingly, the claim does not appear to be forfeited.

CONCLUSION

For the foregoing reasons, the Commission respectfully requests that the judgment be reversed.

Dated: July 26, 2017

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached California Coastal Commission's Reply Brief uses a 13 point Times New Roman font and contains 5107 words.

Dated: July 20, 2017

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