

**S284378**

No. \_\_\_\_\_

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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SHEAR DEVELOPMENT CO., LLC,

Petitioner,

v.

CALIFORNIA COASTAL COMMISSION,

Respondent.

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Court of Appeal of the State of California  
Second Appellate District, Division Six, Case No. B319895

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Superior Court of California  
County of San Luis Obispo  
The Honorable Rita Federman  
Civil Case No. 20CV-0431

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**PETITION FOR REVIEW**

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## Questions Presented for Review

Every local government in the coastal zone—which is home to nearly 27 million people—is required to author a Local Coastal Program consisting of a land-use plan, maps, and other implementing ordinances. The LCP must be certified by the California Coastal Commission as consistent with Chapter 3 of the Coastal Act, but the local government otherwise has broad authority to determine the contents and implementation of its LCP. Once an LCP is certified, land-use permitting authority is delegated to the local government and, by statutory design, the Commission retains very limited appeal jurisdiction over certain projects. Nevertheless, the Commission notoriously has pushed for ever-expansive appeal jurisdiction, in contravention of its governing statute and LCPs. The questions presented here are:

1. Whether the courts must exercise independent judgment when deciding whether the Commission has exceeded its jurisdiction, as some courts of appeal have held and contrary to the decision below?
2. Whether courts must defer to the author of an LCP—the local government—when the local government and California

Coastal Commission offer conflicting interpretations of ambiguous provisions within a certified Local Coastal Program?

### **Introduction**

Pursuant to California Rule of Court 8.500(a)(1), Petitioner Shear Development Company, LLC (Shear), petitions this Court to review the unpublished decision of the Court of Appeal, Second Appellate District, Division Six, filed February 21, 2024, entitled *Shear Development Company, LLC v. California Coastal Commission*, case number B319895, a copy of which is attached hereto as Exhibit A (Opinion).<sup>1</sup>

### **Reasons for Granting Review**

The Court should grant this petition so that it can resolve a festering conflict among the lower courts as to what standard of review governs the adjudication of legal questions in the interpretation of a Commission-certified Local Coastal Program (LCP). The issue is particularly important when, as here, the proper interpretation of an LCP determines whether the Coastal Commission's exercise of jurisdiction to appeal a local

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<sup>1</sup> 2024 WL 700176 (Cal. Ct. App. Feb. 21, 2024), *reh'g denied* (Mar. 19, 2024). Citations to the Opinion are to the Westlaw cite.

government's issuance of a permit is consistent with the Coastal Act. The Court should also grant review to provide guidance to the lower courts as to whether the local government or Commission is entitled to deference when they offer conflicting interpretations of ambiguous elements of a certified Local Coastal Program. These questions presented are central to the Coastal Act's mandate to "rely heavily on local government and local land use planning procedures" to achieve "maximum responsiveness to local conditions, accountability, and public accessibility . . . ." Pub. Res. Code § 30004(a). They are of outsized importance, given that the coastal zone—the area where these questions arise—contains about 68% of California's population.

### **Facts and Procedural History**

In 2003, Shear Development Company, LLC, acquired eight undeveloped lots zoned for single-family homes in unincorporated San Luis Obispo County. Opinion at \*1. The County approved a coastal development permit to develop eight homes on the lots in two phases, with the caveat that the second phase homes would be required to be connected to a then-planned community sewer system and subject to a separate coastal development permit. *Id.* Shear built the first four in Phase I without issue. In 2019, the

County granted a second, final permit for a revised plan to build three homes on the Phase II lots, finding in particular that the project had the right to access water and wastewater services. Opinion at \*2. However, the Commission appealed that permit decision to itself, disagreeing with the County's application of its own certified LCP, and eventually denied the coastal development permit. *Id.* Shear filed the instant lawsuit to defend its County-approved permit. *Id.*

### *The Coastal Act Framework*

The Coastal Act requires local governments within the coastal zone to prepare a Local Coastal Program. Pub. Res. Code § 30500(a). Each LCP is comprised of a Land Use Plan (LUP), zoning ordinances, zoning district maps, and other implementing actions. *Id.* §§ 30512, 30513. The Commission reviews each proposed LUP for conformance with the Act. *Id.* § 30512. So long as the LUP meets the requirements of the Act and is in conformance with it, the Commission “shall certify” the LUP. *Id.* The Commission also certifies the zoning ordinances, zoning district maps, and other implementing actions. *Id.* § 30513. It may reject them only if they do not conform with, or are inadequate to carry out, the provisions of the certified LUP. *Id.*

Significantly, the Commission does not determine the specific contents of the LCP; the local government is the exclusive author of its plan, maps, and other implementing ordinances.

Once the Commission certifies an LCP, the Coastal Act “emphasizes local control.” *City of Malibu v. Cal. Coastal Comm’n*, 206 Cal. App. 4th 549, 563 (2012), *as modified on denial of reh’g* (June 5, 2012). The Act instructs that parties undertaking development within a coastal area governed by a certified LCP must get a Coastal Development Permit (CDP), which “shall be obtained from the local government.” Pub. Res. Code § 30600(d).

The LCP serves “as the standard for proposed development and the issuance of new coastal development permits.” *Sierra Club v. Dep’t of Parks & Recreation*, 202 Cal. App. 4th 735, 742 (2012), *as modified on denial of reh’g* (Feb. 2, 2012). If the proposed development is in conformity with the objective requirements of the LCP, the issuing agency *must* issue a coastal development permit to the applicant. *Douda v. Cal. Coastal Comm’n*, 159 Cal. App. 4th 1181, 1192 (2008), *as modified on denial of reh’g* (Mar. 4, 2008) (“Once a local coastal program is certified, the issuing agency has *no choice* but to issue a coastal

development permit as long as the proposed development is in conformity with the local coastal program.” (emphasis added)).

In certain, limited circumstances, local government-approved permits may be appealed to the Commission. *City of Malibu*, 206 Cal. App. 4th at 563 (the Commission retains only “limited rights of appeal”); Pub. Res. Code § 30603(a). When this occurs, the Commission must first make a “substantial issue” determination, during which the Commission decides whether it can accept appellate jurisdiction. Relevant here, the Coastal Act provides that

an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments : . . . (3) Developments approved by the local government . . . that are located in a sensitive coastal resource area. (4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map . . . .

Pub. Res. Code § 30603(a).

If the Commission accepts jurisdiction, the agency then reviews the underlying permit application *de novo*, applying the applicable Coastal Act and LCP rules. *See generally McAllister v. County of Monterey*, 147 Cal. App. 4th 253, 273–74 (2007). On appeal, the Commission may consider only whether the

development conforms to the standards of the certified LCP and the Coastal Act's public access policies. Pub. Res. Code § 30603(b)(1); see *Kaczorowski v. Mendocino Cnty. Bd. of Supervisors*, 88 Cal. App. 4th 564, 569 (2001), and *Sec. Nat'l Guar., Inc. v. Cal. Coastal Comm'n*, 159 Cal. App. 4th 402, 421 (2008). And as with the local government, the Commission *must* issue a coastal development permit if the proposed development is in conformity with the requirements of the LCP. *Douda*, 159 Cal. App. 4th at 1192.

*The San Luis Obispo Local Coastal Program  
and Estero Area Plan*

San Luis Obispo has a certified LCP comprised of the County's Coastal Zone Land Use Ordinance (CZLUO), several local area plans for different geographic regions in the County, official maps, and other policy and planning documents. Opinion at \*2. Los Osos, including Shear's lots, are located within the geographic region covered by the development policies, programs, and standards contained within the Estero Area Plan (EAP). *Id.*

The EAP creates "combining designations," which identify "sensitive, scenic and other special features of the environment." Opinion at \*4. One such combining designation is the "Sensitive

Resource Area,” which is defined as “ecologically important areas, such as wetlands, marshes, sand dunes, natural plant communities, habitat for rare and endangered plants [sic] and animals, and sensitive watershed.” *Id.*

The EAP further states that all combining designations “are shown on the combining designation maps at the end of Chapter 7 and on the official maps, Part III of the Land Use Element, on file in the County Department of Planning and Building.” EAP 6-4. The County’s Coastal Zone Framework for Planning declares: “The official maps *must be used* to determine precisely what land use designations apply to particular properties.” *See* Respondent’s Motion Requesting Judicial Notice, Exh. 1, at 1–7 (emphasis added). And, the County Code states: “The Sensitive Resource Area combining designation is applied by the Official Maps (Part III) of the Land Use Element . . . .” County Code § 23.07.160 (defining “Sensitive Resource Area (SRA)”).

Chapter 6 of the EAP identifies the “Los Osos Dune Sands Habitat” as an SRA. Opinion at \*4. The EAP states that the Los Osos Dune Sands Habitat is

“comprised of sandy soils – primarily ‘Baywood fine sands,’ as identified by the Natural Resources Conservation Service in the Soil Survey of San Luis Obispo County, Coastal Part (See Figure 6-3). These sands also underlie some areas outside of Los Osos, and occur in the city of Morro Bay. The areas underlain by these sands outside of Los Osos are included in the Sensitive Resource Area combining designation and are also an Environmentally Sensitive Habitat (Terrestrial Habitat).”

*Id.*

The EAP assigns the Los Osos Dune Sands Habitat SRA to a specific community: “Cayucos and Vicinity.” EAP 6-9. It is not listed within the “Los Osos and Vicinity” community containing Shear’s lots. EAP 6-8. The EAP also states that the standards contained in the Los Osos Dune Sands Habitat SRA apply only to the “rural area” lying “outside of urban and village reserve lines.” EAP 7-18, 7-22, 7-23. The Los Osos Urban Reserve Area Combining Designations Map—the official map for the area covering the area where Shear’s lots are located—does not depict an SRA on Shear’s properties. Opinion at \*4. Nor does any other portion of the LCP. *Id.*

The San Luis Obispo County Code (in conformance with the Coastal Act) details the specific instances under which a County-issued CDP may be appealed to the Commission. Opinion at \*2.

Under that ordinance, a CDP may be appealed if the proposed development is “located in a Sensitive Coastal Resource Area, which includes: (i) Special marine and land habitat areas, wetlands, lagoons, and estuaries mapped and designated as Environmentally Sensitive Habitats (ESHA) in the Local Coastal Plan. Does not include resource areas determined by the County to be Unmapped ESHA.” County Code § 23.01.043(c)(3)(i). Additionally, it authorizes appellate jurisdiction for “[a]ny approved development not listed in Coastal Table O, Part I of the Land Use Element as a Principal Permitted (P) Use.” *Id.* § 23.01.043(c)(4).

*Shear’s attempts to develop its property*

In 2004, the County approved a Coastal Development Permit that authorized the development of the eight lots with single-family homes. Opinion at \*1. However, the construction was to occur in two phases. *Id.* The first phase allowed for development of four of the homes. *Id.* The remaining four lots were to be developed in Phase II, only once the four lots could be “served by the new community sewer system.” *Id.* On appeal from that County approval, the Commission further required that the

Phase II development be “subject to a separate coastal development permit.” *Id.*

Under the initial CDP approval, Shear was entitled to—and did—improve all eight lots in preparation for residential development. Opinion at \*1. This included grading, landscaping, retaining walls, roads, sidewalks, storm drainage, and underground utilities. *Id.* These underground utilities included water and sewer mains and sewer laterals. *Id.* All eight lots have active water meters and unrestricted access to water supplied through those meters. *Id.* at \*5. Shear built the first four homes as Phase I under the 2004 CDP. *Id.* at \*1.

In 2010, the County and Commission granted a CDP authorizing the construction of the Los Osos Wastewater Project. Opinion at \*1. The Commission imposed several special conditions on the CDP, including Special Condition No. 6, which states: “Wastewater service to undeveloped properties within the service area shall be prohibited unless and until the Estero Area Plan is amended to identify appropriate and sustainable buildout limits,” and requires that there be conclusive evidence that “adequate water” would be available for any such development. *Id.*

Following construction of the Wastewater Project, the four houses built during Phase I of the 2004 CDP were connected to the community sewer. Opinion at \*1.

Shear next applied for the additional CDP required to complete the remaining four houses identified as Phase II of the development. Opinion at \*2. It later modified the application, reducing the number of houses to three. *Id.* In 2019, the County granted Shear the permit to develop the three houses. *Id.*

The Commission appealed the CDP to itself. Opinion at \*2. It found substantial issue with the County permits, and ultimately denied the permits entirely. *Id.* In addition to other arguments, Shear disputed that the Commission had jurisdiction to take the appeal. The Commission’s theory of jurisdiction was that the three lots were in a “sensitive coastal resource area.”<sup>2</sup> *Id.* It then determined both that the proposed development was inconsistent with the ESHA policies of the LCP, and that the

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<sup>2</sup> The Commission further asserted that it had jurisdiction under the theory that any project in a zoning category that has more than one principal permitted use is appealable, because there is not a single “*the* principal permitted use” in any such zone. Opinion at \*2 (emphasis added). However, the Superior Court rejected that argument, and the Court of Appeal declined to address it. Opinion at \*2, 5.

properties lacked access to water and wastewater services, as required by Special Condition No. 6 of the Los Osos Wastewater Project permits. *Id.*

*The Superior Court and Court of Appeal uphold the Commission's jurisdiction and permit denial*

Shear filed a petition for writ of mandate to overturn the Commission's decision and reinstate the County-issued CDP. Opinion at \*2.<sup>3</sup> The Superior Court denied the writ. *Id.* The Superior Court rejected the Commission's argument that the single-family residential projects were not a principally permitted use for the applicable land-use category. *Id.* It further held that the three lots were not located in a mapped and designated ESHA. *Id.* Accordingly, the court held that the Commission lacked substantial evidence to support its finding that the project was inconsistent with the ESHA policies in the County's LCP. However, the Superior Court determined that the project site *was*

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<sup>3</sup> The petition also argued that—assuming arguendo the Commission did have jurisdiction to review Shear's permit—it wrongly denied the permit because Shear's proposed development was consistent with all requirements contained within the LCP. In the alternative, Shear alleged that the denial of development constituted a taking without just compensation.

located in an SRA, and that the project site lacked access to water and wastewater services. *Id.*

Shear timely appealed, again asserting that the Commission lacked jurisdiction to appeal the County's permit approvals, and that the proposed development was consistent with all policies contained in the certified LCP. Opinion at \*3. The Commission cross-appealed, asserting both that the three lots were in an ESHA, and that single-family residential development was not *the* principal permitted use in the applicable zoning area. *Id.*

As the LCP's author, the County of San Luis Obispo participated as amicus curiae, noting that the three lots were not within an SRA according to its consistent past interpretation of the LCP. *See* County of San Luis Obispo's Application and Amicus Curiae Brief in Support of Petitioner and Appellant Shear Development Company, LLC at 12–19 (County's Amicus Curiae Brief). The County argued an illustration contained in the EAP as "Figure 6-3" (and EAP Chapter 6 as a whole) "generally describe[s] the environmental and cultural resources of the area" but "*does not* formally designate any areas as SRA." *Id.* at 14. Moreover, the County argued that the project was not appealable

on the grounds that its LCP designates multiple Principally Permitted (P) Use categories for particular zones. The County noted that the Commission’s contrary interpretation was both inconsistent with “decades worth of interpretation” and would lead to the absurd result of opening “*every single development project* within the coastal zone” to Commission appellate jurisdiction. *Id.* at 20–21.

The Court of Appeal affirmed the opinion of the Superior Court. First, the Court of Appeal applied the “substantial evidence” test to the legal question of whether the Commission’s interpretation of the LCP supported its jurisdiction. Opinion at \*4. The court reviewed the LCP—and in particular the EAP—and determined that Figure 6-3 alone was sufficient to convert the area containing the three lots into a sensitive coastal resource area for purposes of the Commission’s appellate jurisdiction. *Id.* at \*4–5. Although the Opinion appeared to acknowledge that no map officially “designates” the area as an SRA, Figure 6-3 constituted “substantial evidence” to support the Commission’s finding that the project was located within an SRA. *Id.* at \*4. It did so despite the fact there was no evidence in the record that

the Commission ever had used said figure to claim jurisdiction over any project. The Commission's interpretation was new.<sup>4</sup>

Significantly, the court completely ignored the *County's* interpretation of the very provisions and map that *it* authored. See *County's Amicus Curiae Brief* at 12–19. No mention was made of, let alone deference given to, the County's contrary and correct interpretation that made clear the Commission had no appellate jurisdiction to review the project. *Id.*

Having concluded that the Commission had jurisdiction, the Court of Appeal proceeded to the merits of the permit. The court ruled that the Commission did not abuse its discretion by determining that Special Condition No. 6 to the Los Osos Wastewater Project permit worked to halt development on Shear's lots. Opinion at \*5–6. Moreover, it reached this conclusion on the basis that those lots were “undeveloped” and did not have “adequate water and wastewater service” notwithstanding the fact that Shear had previously and with permission of both the County and Commission substantially

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<sup>4</sup> The Court of Appeal concluded that it was unnecessary to consider the Commission's argument on cross-appeal that it had independent jurisdiction in any zoning category that contained more than one principal permitted use. Opinion at \*5.

developed the lots by grading and installing improvements, including active water meters and underground utilities. *Id.*

Again, the Court of Appeal did not address the County's longstanding interpretations as articulated in its amicus brief. It deferred to the Commission's interpretations of the LCP without addressing the contradiction between those interpretations and the County's view or the previous longstanding practice of the County and Commission. Nor did it address whether the County's interpretations should be entitled to deference as the drafter and primary authority tasked with applying and enforcing the LCP on a day-to-day basis within its jurisdiction.

Shear filed a petition for rehearing, raising the "standard of review" issues that this petition raises. The court below summarily denied rehearing, attached as Exhibit B.

### **Argument**

The Court of Appeal applied a deferential "substantial evidence" standard on the *legal* question of whether the LCP designated Shear's property as an SRA, a core question of Commission appellate jurisdiction over the CPD. This is inconsistent with this Court's precedent, *see Yamaha Corp. of America v. State Bd. of Equalization*, 19 Cal. 4th 1, 11 n.4 (1998),

as well as other courts of appeal, *see Lindstrom v. Cal. Coastal Comm'n*, 40 Cal. App. 5th 73, 96 (2019) (exercising independent judgment without deference when interpreting plain language within an LCP). The question of how the various portions of the LCP work together to designate areas within the County as ESHA or SRA is a question of statutory interpretation. And this is an important legal question with substantial consequences, because a designation of ESHA or SRA often confers appellate jurisdiction to the Commission over an otherwise unappealable permit. The courts below are divided on the correct standard to be applied when making these core jurisdictional determinations, and definitive guidance from this Court is warranted.

The Court of Appeal also deferentially adopted the Commission's interpretations of the San Luis Obispo LCP over the consistent, long-term application and *express contrary interpretation* of that law by the County, the entity that drafted the LCP and is tasked under the Coastal Act with primary authority for its implementation. To date, no court has resolved the important legal question of which entity—if any—is entitled to deference when a local government and the Commission offer

competing, inconsistent interpretations of a certified LCP. This Court should resolve that uncertainty.

The issues presented stand to affect a large portion of the State’s population, because approximately 68%—nearly 27 million individuals—live in the coastal zone. *See* NOAA, California Coastal Management, <https://coast.noaa.gov/states/california.html> (last visited Apr. 1, 2024). Thus, the issues are important for this Court’s review.

**I. Review is necessary to ensure uniformity in the standard of review applied by courts in a challenge to the legal interpretation of an LCP or the Commission’s jurisdiction**

The Coastal Act gives limited powers to the Commission. It may not legislate. *See City of Chula Vista v. Superior Ct.*, 133 Cal. App. 3d 472, 488 (1982) (“[T]he Commission . . . does not create or originate any land use rules and regulations. It can approve or disapprove but it cannot itself draft any part of the coastal plan.”). And when it exercises appellate adjudicatory power over a local government’s CDP approval under a certified local coastal plan, it may only ensure “that the development” conforms “to the standards set forth *in the certified local coastal program . . .*” *Sec. Nat’l Guar., Inc.*, 159 Cal. App. 4th at 421

(quoting Pub. Res. Code § 30603, subd. (b)(1)). In other words, while the Commission may have some role in interpreting and applying the language contained in certified LCPs, it may not interpret the LCP in any way that would add words to or remove words from the LCP. *Id.*

But lower courts have used different methods and reached inconsistent conclusions when determining whether the Commission is correctly interpreting an LCP or improperly legislating. For example, the Second District Court of Appeal interpreted language within the San Luis Obispo LCP requiring protection of “major public view corridors” during development, and held that the Commission was prohibited from denying a permit based on its desire to protect “an ocean-based view corridor . . . .” *Schneider v. Cal. Coastal Comm’n*, 140 Cal. App. 4th 1339, 1348 (2006).<sup>5</sup> Because the Commission had to read *additional words* into the LCP to sustain that interpretation of its authority, the court held that the Commission acted in excess

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<sup>5</sup> The panel in *Schneider* also considered—and rejected—a Commission-asserted interpretation of Section 30251 of the Coastal Act. *Schneider*, 140 Cal. App. 4th at 1345–46. The interpretation sought to include public views “from” the ocean within the language requiring development to “*protect views to and along the ocean and scenic coastal areas . . . .*” *Id.* at 1345.

of its jurisdiction and its actions were void. *Id.* The *Schneider* court did not apply the substantial evidence test.

Similarly, the First District Court of Appeal found that the Commission was prohibited from declaring the existence of a new ESHA (not recognized by an existing LCP), and bootstrapping the new ESHA to sustain its jurisdiction to appeal a permit, during a CDP appeal. *Sec. Nat'l Guar., Inc.*, 159 Cal. App. 4th at 425. The court stressed that questions of Commission jurisdiction were to be reviewed *de novo*, and without deference to the agency's view of its own authority. *Id.* at 414. It noted the "express limitation" on the Commission's jurisdiction in CDP appeals, allowing it to consider *only* whether the development did not conform to the standards of the certified LCP. *Id.* at 422. Next, it reiterated that any attempt to add an ESHA designation to the existing, certified LCP would constitute impermissible legislation by the Commission. *Id.* at 422–23. Third, the Court of Appeal held that the Commission similarly could not ignore explicit language within the LCP that required an ESHA to be designated "on the Coastal Resources Map . . . ." *Id.* at 423. Because it was undisputed that the property at issue did not appear on the relevant map, the Commission's actions were inconsistent with

the certified LCP, and it acted without, or in excess of, jurisdiction. *Id.* at 425.

In both *Schneider* and *Security National Guaranty*, the courts applied independent, *de novo* review to core questions of Commission jurisdiction. Neither court applied the lax “substantial evidence” standard.

Here, however, the Court of Appeal below treated the core question of Commission jurisdiction as—at best—a mixed question of law and fact. And, in the end, it held that the Commission needed only to point to “substantial evidence” in the record to support its jurisdictional claim that the property was within an SRA. Opinion at \*4.

It was only by abandoning independent, *de novo* review in favor of deference to the Commission’s interpretation of the LCP that the panel was able to reach this conclusion. First, the panel appeared to acknowledge that the Commission’s jurisdictional determination required it to *add* language not otherwise contained within the certified LCP. Though the map relied upon by the Commission did not purport by its language to designate an SRA, the Court of Appeal deemed that it constituted “substantial evidence” for the Commission to determine that the

LCP *did* intend to designate that region as an SRA. Opinion at \*4.

Next, the Court of Appeal acknowledged that the Commission's jurisdictional determination similarly required it to ignore or read out other, explicit language within the certified LCP. For example, it acknowledged that Shear's three lots were not designated as SRAs by the LCP's official map. Opinion at \*4. Further, the panel noted that the language of the EAP purported to designate the areas "outside of Los Osos" in the Los Osos Dune Sands SRA. Opinion at \*5 n.2. Nonetheless, the panel read the language to "define the SRA as the entire area underlain by dune sands, including areas outside of Los Osos." *Id.*

The *Schneider* and *Security National Guaranty* courts conflict with the court below concerning the standard of review applicable to legal questions about the meaning of the County's certified LCP. This Court should grant review to resolve the conflict. *See Schneider*, 140 Cal. App. 4th at 1349 (refusing to defer to the Commission's interpretation of an LCP because its role "is interpretative not quasi-legislative"), and *Sec. Nat'l Guar., Inc.*, 159 Cal. App. 4th at 417–18 (noting that no deference

is due to the Commission’s view of its own jurisdiction under an LCP).

**II. Review is necessary to resolve the important legal question of whether deference is due to local governments or the Commission when interpreting ambiguous provisions within an LCP**

This Court has not conclusively addressed the question of whether a local government—as author and primary enforcer of its own LCP—or the Commission is entitled to deference when they offer competing interpretations of a certified LCP. This has manifested in inconsistent lower court opinions and created great uncertainty among local governments and landowners in the coastal zone. Because of the outsized importance of the Coastal Act in decisions of land use and planning all along the California coast, guidance from this Court is warranted.

Some cases have suggested that the Commission is due deference when it interprets an LCP *without* any conflicting interpretation offered by the local government. *See, e.g., Reddell v. Cal. Coastal Comm’n*, 180 Cal. App. 4th 956, 965 (2009), *as modified on denial of reh’g* (Dec. 29, 2009) (the court would exercise independent judgment when interpreting an LCP, but “giv[e] *deference* to the determination of the agency” because of its

“special familiarity with satellite legal and regulatory issues . . .” (citations removed)). Those cases are in tension with the Coastal Act’s policy of local control, apparently applicable precedent from this Court, and other courts of appeal. As this Court stated in *Yost v. Thomas*, 36 Cal. 3d 561, 572–73 (1984), local governments are given “wide discretion” to determine the contents of their LCP, as well as in choosing which actions they will take to implement it. *Id.* Accordingly, the Second District Court of Appeal has previously held that a local government’s interpretation of a certified LCP should be “entitled to great weight . . .” *Dunn v. Cnty. of Santa Barbara*, 135 Cal. App. 4th 1281, 1289 (2006), *as modified on denial of reh’g* (Feb. 23, 2006). Further, this Court’s precedent indicates that courts should accord deference in the interpretation of a regulation, if any, to the agency that drafted it. *See Yamaha Corp.*, 19 Cal. 4th at 12 (an agency’s interpretation of its own regulation is entitled to more deference because it “is likely to be intimately familiar with regulations it authored”). In the case of a certified LCP, that is always the local government. Moreover, a long-accepted general rule of construction is that a local government is entitled to deference in construing its own ordinances. *See, e.g., A Local &*

*Regional Monitor v. City of Los Angeles*, 16 Cal App. 4th 630, 648 (1993); *Greenebaum v. City of Los Angeles*, 153 Cal. App. 3d 391, 407 (1984). Finally, a policy of deference to the County concerning its own LCP is recognized by California Code of Regulations, title 14, section 13569, which states that whether development is appealable is a determination that “*shall* be made *by the local government*” with reference to the “certified Local Coastal Program.” Cal. Code Regs. tit. 14, § 13569 (emphasis added).

The Fourth District Court of Appeal highlighted the unresolved issue in 2019, in the case *Lindstrom v. California Coastal Commission*. 40 Cal. App. 5th at 94–96. The court collected cases suggesting that Commission interpretations of LCPs should receive deference from the courts. *Id.* at 95–96 (quoting *Alberstone v. Cal. Coastal Comm’n*, 169 Cal. App. 4th 859, 864 (2008) (“we grant broad deference to the Commission’s interpretation of the [Malibu] LCP since it is well established that great weight must be given to the administrative construction of those charged with the enforcement and interpretation of a statute”); *Hines v. Cal. Coastal Comm’n*, 186 Cal. App. 4th 830, 849 (2010) (“[W]e grant broad deference to the

Commission’s interpretation of the [Sonoma County LCP] since it is well established that great weight must be given to the administrative construction of those charged with the enforcement and interpretation of a statute.”); *Reddell*, 180 Cal. App. 4th at 968 (in disagreement with project applicant as to whether building height and setbacks should be calculated using the city’s general laws or the city’s LCP, “we must defer to the Commission’s interpretation because it is reasonable and in keeping with the purposes of the LCP”)).

However, the Fourth District panel noted that all such cases held “limited persuasive value” because none had involved “a purported *disagreement* between the Commission and the local government as to how the local government’s LCP should be interpreted . . . .” *Lindstrom*, 40 Cal. App. 5th at 95–96. Because the court found that the language of the LCP was plain, it declined to resolve the question of “whether it is more appropriate to defer to the Commission or the [local government] when interpreting the [local government]’s LCP, or what degree of deference, if any, would be appropriate.” *Id.* at 96.

This question is more than merely academic. Though the California Coast is just 22% of the state’s land mass, it contains

roughly 68% of California's population, and generates more than 80% of the state's GDP. See The California State University, Coastal and Ocean Research, <https://www.calstate.edu/impact/Pages/research/coastal-and-ocean-research.aspx> (last visited Mar. 30, 2024). Conflicts continue to arise between the Commission and local governments over important questions of local development and legal questions concerning LCP implementation and interpretation. See, e.g., Bulbul Rajagopal, *Coastal Commission fights Pismo Beach over private seawalls*, New Times SLO (Dec. 30, 2021), <https://www.newtimeslo.com/news/coastal-commission-fights-pismo-beach-over-private-seawalls-11894769>; Adriana Heldiz, *San Diego Explained: The Coastal Commission vs. the City Council*, Voice of San Diego (Aug. 24, 2017), <https://voiceofsandiego.org/2017/08/24/san-diego-explained-coastal-commission-vs-city-council/>; Andrew Keatts, *Coastal Commission Could Halt Homelessness Project*, Voice of San Diego (June 29, 2017), <https://voiceofsandiego.org/2017/06/29/coastal-commission-could-halt-homelessness-project/>; and Phil Diehl, *Coastal Commission threatens to stop railroad fence in Del Mar*, San Diego Union-Tribute (Mar. 7, 2022),

<https://www.sandiegouniontribune.com/communities/north-county/del-mar/story/2022-03-07/coastal-commission-threatens-enforcement-to-stop-railroad-fence-in-del-mar>.

Because the question of whether to afford local government or Commission interpretations of LCPs deference when they conflict is a matter of statewide importance, squarely at issue in this case, in apparent tension among lower courts, and because uncertainty plagues local government and coastal property owners, this Court should grant review to resolve this question and provide necessary guidance.

### **Conclusion**

For the foregoing reasons, this Court should grant this petition.

Dated: April 1, 2024.

Respectfully submitted,

\*JEREMY TALCOTT  
LAWRENCE SALZMAN  
PAUL J. BEARD II

By: /s/ Jeremy Talcott  
JEREMY TALCOTT

*Attorneys for Petitioner Shear  
Development Co., LLC*

## **Certificate of Compliance**

The text of this petition consists of 5,534 words according to the word count feature of the computer program used to prepare this brief.

Dated: April 1, 2024

/s/ Jeremy Talcott  
JEREMY TALCOTT

## Declaration of Service

I, Tawnda Dyer, declare:

I am a citizen of the United States and employed in Sacramento County, California. I am over the age of eighteen years and not a party to this action. My business address is 555 Capitol Mall, Suite 1290, Sacramento, California 95814.

On April 1, 2024, I caused a true copy of the Petition for Review to be electronically delivered via Truefiling upon the following:

Mitchell Elliott Rishe                      mitchell.rishe@doj.ca.gov  
Christina B. Arndt                          christina.arndt@doj.ca.gov  
Office of the Attorney General  
300 South Spring Street, Suite 1702  
Los Angeles, CA 90013  
*Counsel for Respondent California Coastal Commission*


Clerk of the Court                              Via U.S. Mail  
Second Appellate District, Div. 6  
Court Place  
200 East Santa Clara Street  
Ventura, CA 93001

Clerk of the Court                              Via U.S. Mail  
San Luis Obispo County Superior Court  
1050 Monterey Street, Room 220  
San Luis Obispo, CA 93408

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

I declare that I am employed in the office of a member of  
the bar of this Court at whose direction the service was made.

Executed on April 1, 2024, at Roseville, California.

  
\_\_\_\_\_  
TAWNDA DYER

# **Exhibit A**

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

SHEAR DEVELOPMENT  
CO., LLC,

Plaintiff and Appellant,

v.

CALIFORNIA COASTAL  
COMMISSION,

Defendant and Respondent.

2d Civil No. B319895  
(Super. Ct. No. 20CV-0431)  
(San Luis Obispo County)

The California Coastal Commission (the Commission) has limited jurisdiction to consider an appeal from a decision by San Luis Obispo County (the County) to grant a coastal development permit. (Pub. Resources Code, § 30603, subd. (a).)<sup>1</sup> Here, the County granted a development permit allowing appellant Shear Development Co. to build three single family homes in Los Osos.

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<sup>1</sup> All statutory references are to the Public Resources Code unless otherwise stated.

The Commission appealed that decision to itself and denied the permit. Shear Development filed a petition for writ of mandate to reverse the Commission's denial. The Superior Court denied the writ. On appeal, Shear Development contends the Commission lacked jurisdiction to hear the appeal and abused its discretion in denying the permit. We affirm.

### *Facts*

In 2003, appellant Shear Development acquired eight lots in Los Osos. The lots are located near properties developed with single family homes, although there are also undeveloped vacant lots nearby. Appellant's lots are zoned for single family homes. Appellant performed grading work and installed improvements including landscaping, retaining walls, roads, sidewalks, storm drainage and underground utilities. The utilities include water and sewer mains and sewer laterals.

In 2004, the County approved a coastal development permit to eventually allow the development of eight single family houses on the lots. The project was to proceed in two phases. Phase I authorized the construction of four single family houses on four of the lots. Phase II contemplated construction of single family houses on the remaining lots. The coastal development permit obtained for Phase I specified that the houses included in Phase II "are required to be served by the new community sewer system. The County placed a scenic easement on [the Phase II lots] to assure that these residences could not be developed until after sewer completion . . . ." The Commission further required appellant to submit final plans for Phase I that included a notation indicating "future development of [the Phase II lots] is subject to a separate coastal development permit."

In 2010, following County approval, the Commission granted a coastal development permit authorizing construction of the Los Osos Wastewater Project (LOWWP). As a condition of issuing the permit, the County agreed to Special Condition No. 6 which provides, “Wastewater service to undeveloped properties within the service area shall be prohibited unless and until the Estero Area Plan is amended to identify appropriate and sustainable buildout limits, and any appropriate mechanisms to stay within such limits, based on conclusive evidence indicating that adequate water is available to support development of such properties without adverse impacts to ground and surface waters, including wetlands and all related habitats.”

Appellant built the four houses authorized in Phase I. When the LOWWP was completed in 2016, those houses were connected to the community sewer.

Appellant then applied to the County for a coastal development permit to construct Phase II, the remaining four houses. It later modified the proposed development by reducing the number of houses to three. The County granted a coastal development permit for Phase II in 2019.

The Commission appealed that decision to itself and eventually denied the coastal development permit. It found the permit application was appealable because the project is located in a sensitive coastal resource area and because the proposed project is not “the principal permitted use” for the applicable zoning category. The Commission denied the permit because it found the project was inconsistent with development standards for environmentally sensitive habitat areas (ESHA) and because the project site does not have adequate access to water and wastewater services.

Appellant filed a petition for writ of mandate to overturn the Commission’s decision and reinstate the development permit. The Superior Court denied the writ after concluding the project was located in a sensitive coastal resource area (SCRA) and lacked access to water and wastewater services. It rejected the Commission’s contentions that the project was located in an ESHA and did not fall within the principally permitted use for the applicable land use category. Similarly, the Superior Court concluded the Commission lacked substantial evidence to support its finding that the project was inconsistent with ESHA policies included in the County’s local coastal program (LCP).

*Statutory and Regulatory Framework*

The Coastal Act contemplates that each local government “lying, in whole or in part, within the coastal zone shall prepare a local coastal program for that portion of the coastal zone within its jurisdiction.” (§ 30500, subd. (a).) After the Commission certifies a LCP as consistent with the Coastal Act (§ 30512), its authority to review and authorize development proposals in the coastal zone is delegated to the local government. (§ 30519, subd. (a).) The Commission then has limited statutory authority to consider appeals from development decisions made by the local government. (§ 30603.)

Section 30603 provides that, after the Commission certifies an LCP, “an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments: . . . (3) Developments approved by the local government . . . that are located in a sensitive coastal resource area. (4) Any development approved by a coastal county that is not designated as the

principal permitted use under the zoning ordinance or zoning district map . . . .” (*Id.*, subd. (a).)

San Luis Obispo County has a certified LCP comprised of the county’s Coastal Zone Land Use Ordinance (CZLUO), several local area plans governing different geographic regions in the county, official maps and other policy and planning documents. Development policies, programs and standards governing Los Osos, including the site of appellants’ proposed development, are included in the Estero Area Plan (EAP).

The San Luis Obispo County Code (County Code) provides that a county decision on an application for a coastal development permit is appealable to the Commission if, among other things, the proposed development is “located in a Sensitive Coastal Resource Area, which includes: (i) Special marine and land habitat areas, wetlands, lagoons, and estuaries mapped and designated as Environmentally Sensitive Habitats (ESHA) in the Local Coastal Plan. Does not include resource areas determined by the County to be Unmapped ESHA.” (County Code, § 23.01.043 (c)(3)(i).) The Commission’s appellate jurisdiction also extends to “Any approved development not listed in Coastal Table O, Part I of the Land Use Element as a Principal Permitted (P) Use.” (*Id.*, subd. (c)(4).)

### *Contentions*

The first question here is whether the County’s decision to issue a coastal development permit for appellant’s project is appealable to the Commission because the proposed development is situated in an SCRA or because the type of development is not the “principal permitted use” for the project site. Appellant contends the project site is not located in an SCRA because no county map shows the site as being located in a “mapped” ESHA.

Appellant further contends the permit is not appealable because the project involves the construction of three single family homes and single family residential is one of the principally permitted uses for the zoning district in which it is located.

The Commission contends it has appellate jurisdiction because Figure 6-3 in the Estero Area Plan designates the project site as an SCRA containing ESHA. In its cross-appeal, the Commission contends the permit is also appealable under County Code section 23.01.043(c)(4) because the County has designated multiple principally permitted uses for every zoning category. Because there is no single principally permitted use, no use qualifies as *the* principally permitted use within the meaning of the Coastal Act (§ 30603, subd. (a)(4)), or the County Code.

Assuming the permit was appealable to the Commission, appellant contends the Commission abused its discretion in denying it because the project has access to water and wastewater services and is consistent with the LCP's policy regarding ESHAs. The Commission disagrees. It contends the project site lacks permitted access to water and wastewater services and that the project does not meet standards for development in an ESHA.

#### *Standard of Review*

In this appeal from the trial court's order denying a writ of mandate, we are required to determine whether the Commission acted in excess of its jurisdiction or prejudicially abused its discretion by not proceeding in the manner required by law. (Code Civ. Proc., § 1094.5, subd. (b); *Schneider v. California Coastal Com.* (2006) 140 Cal.App.4th 1339, 1343.) Where the agency's jurisdiction "involves the interpretation of a statute, regulation, or ordinance, the issue of whether the agency

proceeded in excess of its jurisdiction is a question of law.” (*Schneider v. California Coastal Com.*, *supra*, at p. 1344.) We independently review the question whether the Commission’s exercise of jurisdiction here is consistent with the Coastal Act. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 11 fn. 4; *Security National Guaranty, Inc. v. California Coastal Com.* (2008) 159 Cal.App.4th 402, 414.)

The Commission abuses its discretion if it “has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.” (Code Civ. Proc., § 1094.5, subd. (b).) In determining whether findings are supported by substantial evidence, we review the findings “in the light of the whole record.” (*Id.*, subd. (c).) This standard requires us to consider all relevant evidence in the record, both evidence that supports the Commission’s findings and evidence that detracts from those findings. (*La Costa Beach Homeowners’ Assn. v. California Coastal Com.* (2002) 101 Cal.App.4th 804, 814.) We may reverse the Commission’s decision only if, “*based on the evidence before the agency*, a reasonable person could not reach the conclusion reached by the agency.” (*Ibid.*)

#### *Discussion*

Jurisdiction: Sensitive Coastal Resource Area. Both the Coastal Act and the County’s Coastal Zone Land Use Ordinance (CZLUO) provide that a coastal development permit approved for a development located in a Sensitive Coastal Resource Area is appealable to the Commission. (§ 30603, subd. (a)(3); County Code, § 23.01.043, subd. (c)(3).) Both the statute and the ordinance define a Sensitive Coastal Resource Area as “identifiable and geographically bounded land and water areas

within the coastal zone of vital interest and sensitivity.” (§ 30116; County Code, § 23.11.030 [pp. 379, 405 of 414].) The CZLUO further provides that appealable developments are those “[a]s set forth in Public Resources Code Section 30603, [subdivision] (a), and this title . . . .” (County Code, § 23.01.043, subd. (c).) Appealable permits include those for projects “that are located in a Sensitive Coastal Resource Area, which includes: (i) Special marine and land habitat areas, wetlands, lagoons, and estuaries mapped and designated as Environmentally Sensitive Habitats (ESHA) in the Local Coastal Plan.” (*Id.*, subd. (c)(3)(i).)

The Estero Area Plan (EAP) contains “policies, programs and standards” applicable to the community of Los Osos and the site of appellant’s proposed development. Chapter 6 of the EAP “identifies special features of the environment, discusses relevant issues, sets policies, and recommends programs to implement the relevant goals and policies of this plan.” “Combining designations” included in this chapter identify sensitive, scenic and other special features of the environment. Areas that fall within these combining designations require “more detailed project review” to “avoid adverse environmental impacts.” One of the combining designations is for Sensitive Resource Area, defined as “ecologically important areas, such as wetlands, marshes, sand dunes, natural plant communities, habitat for rare and endangered plants and animals, and sensitive watershed.”

Chapter 6 of the EAP identifies the Los Osos Dune Sands Habitat as an SRA. Portions of the same area are also identified as an environmentally sensitive habitat. The EAP explains that the Los Osos Dune Sands Habitat “is comprised of sandy soils – primarily ‘Baywood fine sands,’ as identified by the Natural Resources Conservation Service in the Soil Survey of San Luis

Obispo County, Coastal Part (See Figure 6-3). These sands also underlie some areas outside of Los Osos, and occur in the city of Morro Bay. The areas underlain by these sands outside of Los Osos are included in the Sensitive Resource Area combining designation and are also an Environmentally Sensitive Habitat (Terrestrial Habitat).”

Figure 6-3 is a map of the Los Osos Dune Sands. The project site is located within the dune sands area depicted on that map. This constitutes substantial evidence supporting the Commission’s findings that the project is located in an SRA and that the development permit is therefore appealable to the Commission. (See, e.g., *Charles A. Pratt Construction Co., Inc. v. California Coastal Commission* (2008) 162 Cal.App.4th 1068, 1077 [map identifying area as a “sensitive resource area[] that [is] also environmentally sensitive habitat[]” was substantial evidence for Commission’s ESHA finding].)

Appellant contends Figure 6-3 is not sufficient to designate the project site as being within an SCRA because section 23.01.043, subdivision (c)(3)(i) of the County’s CZLUO limits SCRAs to habitat areas that are “mapped and designated as Environmentally Sensitive Habitats (ESHA) in the Local Coastal Plan.” Because there is no map in the Local Coastal Plan that designates the project site as an SRA, appellant contends the permit was not appealable. We disagree.

First, the county’s CZLUO is intended to, and must be interpreted consistently with the Coastal Act. (*McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912, 930-932 [LCP presumed to be consistent with the Coastal Act and interpreted to incorporate its ESHA protections]; County Code, § 23.01.043, subd. (c) [projects are appealable “As set forth in the

Public Resources Code Section 30603(a), and this title . . . .”].) Section 30603 does not limit the Commission’s appellate jurisdiction to projects located in mapped ESHA, but extends it to all projects located in an SCRA.

Second, Figure 6-3 in the Estero Area Plan is a map that identifies the Los Osos Dune Sands habitat as an SCRA and appellant’s proposed project is located within that area. The fact that maps included in other portions of the County’s LCP do not also identify the dune sands habitat as an SCRA is not relevant. The EAP states that, “All other county plans, policies and programs that involve the Estero Planning Area and are subject to the [County’s Local Coastal Program] are to be consistent with and implement this plan.”

Appellant next contends the project is not appealable to the Commission because the SCRA designation applies only to dune sands located outside the Los Osos urban reserve line. Because the project is located inside the urban reserve line, appellant contends the Commission had no jurisdiction to review it.

We are not persuaded. The EAP describes the entire Los Osos Dune Sands habitat as having “soil characteristics that support globally rare habitat in a unique composition” of biological communities. These communities “support a diversity of native plant species and a number of rare, endangered or threatened species of plants and animals” some of which “are found nowhere else in the world.” Nothing in the EAP indicates that these “globally rare” and “unique” features are limited to one side or another of the Los Osos urban reserve line. Instead, the description of the dune sands meets the definition of an SCRA under both the County CZLUO and the Coastal Act without

regard to the urban reserve line.<sup>2</sup> Because the project is located in an SCRA, the Commission had jurisdiction over the appeal from the development permit.

Having concluded that the Commission properly exercised appellate jurisdiction based on the project's location in an SCRA, it is not necessary for us to consider whether, as the Commission contends in its cross-appeal, it also has appellate jurisdiction because the project does not fall within the principal permitted use for its zoning category. (§ 30603, subd. (a)(4).)

Abuse of Discretion

Appellant contends the Commission abused its discretion when it denied the development permit because the project is consistent with the LCP's water and wastewater requirements and is consistent with the policies for development in an ESHA. The Commission found the project was inconsistent with the LCP and lacked sufficient water and wastewater service. We conclude the Commission did not abuse its discretion because its factual findings relating to water and wastewater access are supported by substantial evidence.

The County's CZLUO provides, "A land use permit for new development that requires water or disposal of sewage shall not be approved unless the applicable approval body determines that there is adequate water and sewage disposal capacity available to serve the proposed development . . . ." (County Code, § 23.04.430.) That section of the CZLUO implements groundwater

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<sup>2</sup> The EAP states that, "areas underlain by these sands *outside of Los Osos are included*" in the SRA. We do not read this statement to limit the SRA to dune sands located outside of Los Osos. Instead, we read it to define the SRA as the entire area underlain by dune sands, including areas outside of Los Osos.

policies included in the LCP that require protection of the long-term integrity of the groundwater basin.

Appellant's proposed project is located in an area served by the Los Osos Wastewater Project (LOWWP). The coastal development permit that allowed for construction of the LOWWP includes Special Condition 6 which prohibits the extension of wastewater service "to undeveloped properties within the service area . . . unless and until the Estero Area Plan is amended to identify appropriate and sustainable buildout limits, and any appropriate mechanisms to stay within such limits, based on conclusive evidence indicating that adequate water is available to support development of such properties without adverse impacts to ground and surface waters, including wetlands and all related habitats." In addition to this prohibition against new sewer hookups, the Regional Water Quality Control Board prohibits new septic installations.

The Commission denied appellant's coastal development permit, in part, because it concluded the project site did not have access to adequate water and wastewater service. It contends the project cannot be connected to water and wastewater service without violating County Code section 23.04.430 and Special Condition 6. Appellant contends the project site has access to water and wastewater because the project site is already developed with water meters, sewer mains and laterals. These improvements were constructed in connection with Phase I of the project. Since 2007, appellants have used water supplied through the water meters for landscaping purposes.

Like the Commission, we are persuaded that the project site remains "undeveloped" for purposes of Special Condition No. 6 and the CZLUO, despite the installation of water meters and

other infrastructure. The coastal development permit for Phase I expressly required appellant to obtain a separate coastal development permit for the houses at issue here. The County approved permit for Phase I only after placing a scenic easement on the lots at issue here, to insure they would not be developed until after the community sewer was completed. The Commission's coastal development permit for Phase I also mandated that "future development of [the lots at issue here] is subject to a separate coastal development permit." Even assuming appellant was authorized to install water meters, sewer mains and laterals for these lots, appellant never had authorization to connect newly constructed houses to water meters or to the community sewer.

The County is prohibited from extending wastewater service to these lots until it satisfies the terms of Special Condition No. 6. Because that has not occurred, these lots lack access to water and wastewater services. Consequently, their development would violate section 23.04.430 of the County CZLUO and the LCP's groundwater policies. This constitutes substantial evidence supporting the Commission's decision to deny a coastal development permit for the project.

*Conclusion*

The order denying the petition for writ of mandate is affirmed. Respondent shall recover its costs on appeal.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

CODY, J.

Rita Federman, Judge

Superior Court County of San Luis Obispo

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FisherBroyles and Paul J. Beard II, for Plaintiff and Appellant.

Rita L. Neal, County Counsel, Jon Ansolabehere, Assistant County Counsel, for amicus curiae on behalf of Plaintiff.

Rob Bonta, Attorney General, Daniel A. Olivas, Senior Assistant Attorney General, Christina Bull Arndt, Supervising Deputy Attorney General, Mitchell E. Rishe, Deputy Attorney General, for Defendant and Respondent.

## **Exhibit B**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT

DIVISION 6

**COURT OF APPEAL – SECOND DIST.**

**FILED**

**Mar 19, 2024**

**EVA McCLINTOCK, Clerk**

Yalitza Esparza **Deputy Clerk**

SHEAR DEVELOPMENT COMPANY, LLC,  
Petitioner and Appellant,  
v.  
CALIFORNIA COASTAL COMMISSION,  
Respondent.

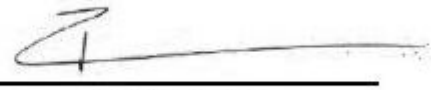
B319895  
San Luis Obispo County Super. Ct. No. 20CV-0431

THE COURT:

Petition for rehearing is denied.

  
GILBERT, P.J.

  
YEGAN, J.

  
CODY, J.

cc: File

Paul J. Beard  
Mitchell Elliott Rishe  
Christina B. Arndt  
Office of the Attorney General  
Jon Michael Ansolabehere  
Office of the County Counsel

STATE OF CALIFORNIA  
Supreme Court of California

**PROOF OF SERVICE**

STATE OF CALIFORNIA  
Supreme Court of California

Case Name: **Shear Development Company, LLC v. California Coastal  
Commission**

Case Number: **TEMP-BVLSBR8P**

Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **jt@pacificlegal.org**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
ISI_CASE_INIT_FORM_DT	Case Initiation Form
PETITION FOR REVIEW	FINAL Shear Dev Petn for Review

Service Recipients:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

4/1/2024

Date

/s/Tawnda Dyer

Signature

Talcott, Jeremy (311490)

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Last Name, First Name (PNum)

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Law Firm