No. S284378

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SHEAR DEVELOPMENT CO., LLC,

Plaintiff and Appellant,

v.

CALIFORNIA COASTAL COMMISSION,

Defendant and Respondent.

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

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

APPELLANT'S REPLY BRIEF

PAUL J. BEARD II
No. 210563
Pierson Ferdinand LLP
453 S. Spring St.
Suite 400-1458
Los Angeles, CA 90013
Telephone: (818) 216-3988
paul.beard@pierferd.com

*JEREMY TALCOTT, No. 311490
LAWRENCE SALZMAN, No. 224727
Pacific Legal Foundation
555 Capitol Mall, Suite 1290
Sacramento, CA 95814
Telephone: (916) 419-7111
JTalcott@pacificlegal.org
LSalzman@pacificlegal.org

Attorneys for Plaintiff and Appellant Shear Development Co., LLC

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Introduction

The Commission's Answer Brief confirms what Appellant Shear Development Company, LLC (Shear) has maintained throughout this litigation: The Commission improperly exercised appellate jurisdiction over Shear's locally-approved development permit by disregarding both the plain language of San Luis Obispo County's Local Coastal Program (LCP) and the County's long-standing interpretation of its own land use regulations. The Commission attempts to salvage its jurisdictional overreach by arguing that (1) the County's recent LCP amendments allow this Court to avoid resolving the questions presented, (2) substantial evidence supports its finding of jurisdiction based on sensitive resource area designations, and (3) courts should defer to its interpretation of local coastal programs rather than the interpretation of the local governments that drafted them. None of these arguments has merit.

First, the Commission's avoidance argument misreads the context of the relevant precedent. While the County has recently amended its LCP to modify certain sensitive resource area designations and resolve the outstanding sewer connection issues, those amendments have no bearing on whether the Commission properly exercised jurisdiction under the previous version of the LCP, and were not intended to apply retroactively—to Shear or any other individual in the County. The Court should review and resolve this important question of administrative law that is likely to recur, as

evidenced by the Commission's pattern of expanding its appellate jurisdiction beyond the bounds set by certified LCPs.

Second, the Commission's attempt to ground jurisdiction in a single illustrative figure within the County's Estero Area Plan misreads both the LCP's designation scheme and the proper standard for reviewing jurisdictional determinations. Even if substantial evidence review were appropriate—which it is not—the Commission cannot establish jurisdiction by cherry-picking provisions while ignoring the LCP's explicit method of designating sensitive coastal resource areas.

Third, the Commission's claim to interpretive primacy over certified LCPs contradicts both the text and structure of the Coastal Act. While the Act grants the Commission authority to review and certify LCPs to ensure consistency with state coastal policies, it explicitly preserves local control over coastal development permitting once an LCP is certified. *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles*, 55 Cal. 4th 783, 794 (2012). When courts review the Commission's exercise of appellate jurisdiction under a certified LCP, they must exercise independent judgment and, to the extent deference is warranted, defer to the interpretation of the local government that authored and implements the LCP. *Yamaha Corp. v. State Bd. of Equalization*, 19 Cal. 4th 1, 12 (1998).

Argument

I. This Court should rule on the questions presented

The Commission contends that the Court need not reach the issues of standard of review for jurisdictional questions and deference to local government interpretations of LCPs because the County's recent LCP amendments would potentially allow Shear to obtain a development permit under the new rules. Ans. Br. at 29–32. Though the Commission concedes that this does not render the case moot, Ans. Br. at 31, it nonetheless argues that this Court should avoid answering the very questions upon which it has granted review. This attempt to sidestep judicial review of the Commission's jurisdictional overreach must be rejected for several reasons.

A. *Make UC a Good Neighbor* Does Not Support Avoiding the Merits

The Commission's reliance on *Make UC a Good Neighbor v. Regents of Univ. of Cal.*, 16 Cal. 5th 43 (2024) (*Make UC*), to suggest the Court need not reach the standard of review question fundamentally misunderstands both the procedural posture of this case and the nature of the Commission's jurisdictional overreach. Unlike *Make UC*, which involved the factual question of the application of amended California Environmental Quality Act (CEQA) regulations to a specific permit decision, this case presents the threshold question of whether the Commission could properly assert appellate jurisdiction in the first

instance. The distinction is crucial because it goes to the Commission's very authority to act, not the standards it applies when exercising legitimate jurisdiction. Indeed, but for the Commission's improper exercise of appellate jurisdiction, Shear would *already have* lawfully-issued permits under the previous LCP provisions, because the Commission lacked entirely the power to intervene and overturn the decision of the County.

Even where regulations are amended, a case is not moot, and the controversy remains live, if any material portion of the regulation remains at issue. *See In re Schuster*, 42 Cal. App. 5th 943, 953 (2019) ("Nevertheless, if the repealing statute or regulation re-enacts a material portion of the repealed statute or regulation which forms a part of the basis for the lower court's determination the matter is not moot since the determination by the lower court inheres after, as well as before, the change." (quoting *Montalvo v. Madera Unified Sch. Dist. Bd. of Educ.*, 21 Cal. App. 3d 323, 329 (1971))). At minimum, the Commission's alternate theory of appealability as to the "principal permitted use" issue would remain live in the lower courts on remand, notwithstanding the earlier decision of the court of appeal, which found it unnecessary to address at that time. *See* Opinion at 11.

Nor do the changes to the LCP constitute a material change from the previous provisions as to Shear, given that Shear contends it was *already* entitled to its permit under the previous LCP. One of Shear's arguments

below was that its projects were entirely consistent with the governing LCP, and therefore that the Commission (like the County before it) was *required* to issue a CDP. *See* Appellant's Opening Brief at 42–54 (Cal. Ct. App. Dec. 14, 2022); Appellant's Reply Brief at 40–46 (Cal. Ct. App. July 27, 2023); *see also 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)). That the project is *also* in conformity with new LCP amendments is simply irrelevant as to whether the Commission could lawfully take jurisdiction over Shear's County-issued coastal development permit (CDP)—or a future CDP approval that is similarly situated—and whether it was proper to both find a substantial issue with that CDP and subsequently deny the CDP entirely.

In *Make UC*, this Court considered whether subsequent amendments to CEQA's substantive requirements affected the validity of an environmental impact report. *See Make UC*, 16 Cal. 5th at 48. The amendments there directly targeted the substantive standards at issue in the case—specifically, whether certain noise impacts should be analyzed in an environmental impact report under CEQA—and were passed by the legislature as emergency legislation directly after and in response to the

decision of the lower court in the same case. *Id.* That situation materially differs from the present case, where the Commission now attempts to evade review of its jurisdictional overreach through subsequent unrelated amendments to the County's LCP. The amendments here cannot validate the Commission's improper assertion of jurisdiction over Shear's permit because the Commission's authority to act must be evaluated under the regulations it relied upon to exercise that authority, not the provisions governing the nature and necessary circumstances for permissible development under the certified LCP.

Further, the Court in *Make UC* was in the relatively unprecedented situation where there was no room for factual dispute over the applicability of the new regulations. In other words, the Court held—and Make UC conceded—that the new legislation unambiguously removed the core arguments it had granted review to consider. *Make UC*, 16 Cal. 5th at 49. Accordingly, the Court held that although the legislature had not entirely prohibited effective relief—which would have mooted the issue—it had legislatively commanded that one party could not prevail. *Id.* at 65.

The current situation is simply inapposite. While it is heartening that the Commission believes that Shear could "apply for and *likely* obtain" a CDP for its desired development, Ans. Br. at 29 (emphasis added), that is far different than a particular outcome being definitively required under subsequent legislation. *Make UC*, 16 Cal. 5th at 65. That any question

remains under the new amendments brings this matter outside of the framework in *Make UC*.

B. The Commission's actions must be judged under then-existing regulations

It is generally presumed that legislative enactments are intended to apply prospectively only. *McClung v. Emp. Dev. Dep't*, 34 Cal. 4th 467, 475 (2004); *see also W. Sec. Bank v. Superior Ct.*, 15 Cal. 4th 232, 243 (1997) ("A basic canon of statutory interpretation is that statutes do not operate retrospectively unless the Legislature plainly intended them to do so."). This principle applies generally in review of administrative actions as well, including in the permit context. *San Francisco Plan. Ass'n v. Central Permit Bureau*, 30 Cal. App. 3d 920, 929–30 (1973). As that court explained, a permit is "lawfully granted as of the date of completion of all administrative action," and subsequent amendments to governing regulations do not apply retroactively to determine the validity of the agency's decision. *Id.* at 930 n.2.

To the extent that *Make UC* held otherwise, it was likely dispositive that the amendments were passed in direct response to the outcome of a particular decision of the court of appeal, and passed as emergency measures intended to clarify the rights and obligations of *those particular parties*. *Make UC*, 16 Cal. 5th at 1066. Even before *Make UC*, this Court held that certain legislative enactments may instead be treated either as

clarifications of existing law or as explicit attempts to abrogate a judicial opinion, and thus entitled to retroactive treatment in related cases. *See, e.g.*, *W. Sec. Bank*, 15 Cal. 4th at 252–53 (retroactive treatment warranted when emergency legislation passed in response to a court of appeal opinion and clearly intended to resolve the obligations of two parties in a pending case). In other words, contrary to the Commission's assertion, those cases do not create a broad exception to the general rule of prospectivity in mandamus actions, but a specific analytical framework under which the clear intention of the legislature to allow retroactivity can be determined, and therefore apply to a pending matter, even where it predated those enactments.

No such intentions can be claimed here. The LCP Amendments at issue were drafted and submitted before the opinion issued in this case. Further, while the LCP Amendments may have the ultimate result that Shear could now return to the County, apply for, and obtain a CDP to develop its property free from the threat of Commission interference, there is no argument to be made that the intent of those amendments was to achieve a particular result between the parties involved in this matter. Nor is there any evidence presented by the Commission that these amendments were intended to—or even could—be considered retroactive as to any other party in Los Osos.

In short, while this Court has found certain limited instances in which it can be appropriate for courts to depart from the general rule that

legislation is to apply prospectively—even in the absence of an explicit legislative declaration of retroactivity—it requires finding sufficient evidence to discern that the lawmaker intended that result. *None* of those unique circumstances are present here. Accordingly, this Court should resolve the questions presented and upon which it granted review.

C. Even if this Court could order review under the new LCP amendments, it should exercise its discretion to answer the questions presented

Even if this Court believes that it could order the courts below to apply the LCP Amendments retroactively to Shear's CDP, it should nonetheless exercise discretion to resolve the questions presented here. *Cf. Make UC*, 16 Cal. 5th at 65. Even where cases are moot—and as conceded by the Commission, this case is not—the courts retain discretion to reach the merits under several exceptions. Courts retain jurisdiction over even moot actions where "the case presents an issue of broad public interest that is likely to recur," "when there may be a recurrence of the controversy between the parties," or "when a material question remains for the court's determination." *In re D.P.*, 14 Cal. 5th 266, 282 (2023) (quoting *Cucamongans United for Reasonable Expansion v. City of Rancho Cucamonga*, 82 Cal. App. 4th 473, 479–80 (2000)).

This is especially so where the cases involve an important legal issue of statewide importance. *State of Cal. ex rel. State Lands Comm'n v. Superior Ct.*, 11 Cal. 4th 50, 62 (1995). The courts have "inherent

discretion" to resolve matters of great public interest, regardless of subsequent developments. *Konig v. Fair Emp. & Hous. Comm'n*, 28 Cal. 4th 743, 745 n.3 (2002). This discretion is not limited solely to issues of mootness. *United Farm Workers of Am. v. Superior Ct.*, 14 Cal. 3d 902, 906–07 (1975) (exercising inherent discretion to resolve an issue of great public importance, and noting that expiration of an order did not moot the case when the question of its validity remained).

Questions of the jurisdiction and operation of state agency authority are uniquely important questions of public interest that are likely to recur. *See Malaga Cnty. Water Dist. v. Cent. Valley Reg'l Water Quality Control Bd.*, 58 Cal. App. 5th 396, 409 (2020) (questions of Water Board jurisdiction and delegated authority are issues of "broad public interest" that are "likely to recur"); *California Water Curtailment Cases*, 83 Cal. App. 5th 164, 182 (2022), *as modified on denial of reh'g* (Sept. 29, 2022) (same).[1] Here, the Court has granted review to resolve the open question of how an LCP should be interpreted to determine the limits of Commission appellate jurisdiction, and whether the Commission or local government should receive deference (if any) when they offer conflicting interpretations of a certified LCP. The lower courts are divided on these questions, and

[1] Courts have found that they may exercise such discretion to review moot cases even where the issue is not likely to evade later review. *In re Schuster*, 42 Cal. App. 5th 943, 952 (2019).

failing to resolve at this time is likely to lead to continued confusion and uncertainty. These issues are also essential to maintaining the Coastal Act's intended balance between state and local authority.

These conflicts will continue to arise throughout California's coastal zone, affecting countless property owners and local governments. *See* Petition for Review at 32–34.[2] They go to the heart of the relationship between state and local authority under the Coastal Act. The Court should not allow the Commission to evade review of its novel jurisdictional theories through post hoc reliance on LCP amendments that were not in effect when it acted, especially given the acknowledged uncertainty of how those new amendments might *actually* apply to Shear's property. This Court would be empowered to resolve these important issues of statewide concern even if Shear's case was moot, and it is not. It is certainly therefore entitled to exercise its discretion to answer the important questions upon which it has granted review.

[2] Courts have also held that the mootness exception applies even where subsequent questions of scope and jurisdiction may be similar, though not identical. *See Ghost Golf, Inc. v. Newsom*, 102 Cal. App. 5th 88, 101 (2024), *review denied* (Sept. 11, 2024) (holding that the public interest exception to mootness applied when reviewing the scope of Emergency Services Act powers, even though subsequent questions may involve very different types of emergencies).

II. Courts Must Exercise Independent Judgment When Reviewing the Commission's Jurisdictional Claims

The Commission contends that its determination of jurisdiction warrants substantial evidence review, or at minimum, significant deference to its interpretation of relevant LCP provisions. This position fundamentally misconstrues the nature of jurisdictional questions, the proper role of judicial review, and the carefully structured relationship between state and local authority under the Coastal Act.

When a Court reviews a legal question of LCP interpretation, it must exercise independent judgment. *See Reddell v. Cal. Coastal Comm'n*, 180 Cal. App. 4th 956, 965 (2009), *as modified on denial of reh'g* (Dec. 29, 2009) ("[W]e exercise our independent judgment in reviewing the Commission's interpretation of the Coastal Act and LCP policies[.]"). Deference to agency interpretation is inappropriate when the relevant provision is plain and unambiguous. *Lindstrom v. Cal. Coastal Comm'n*, 40 Cal. App. 5th 73, 96 (2019); *McAllister v. County of Monterey*, 147 Cal. App. 4th 253, 288 (2007). A court does not defer to an agency's view when deciding whether a regulation lies within the scope of the authority delegated by the Legislature. *Schneider v. Cal. Coastal Comm'n*, 140 Cal. App. 4th 1339, 1344 (2006).

A. The jurisdictional question here is predominantly legal

The Commission's argument conflates two distinct inquiries: (1) the *legal* question of what criteria establish jurisdiction under the relevant LCP, and (2) the factual question of whether those criteria are met in a particular case. As exhaustively detailed in Shear's Opening Brief, the legal mechanism of the County LCP for designating SCRA is limited to specific categories, and the only relevant category to Shear's property is mapped Environmentally Sensitive Habitat Areas (ESHA), which is designated on official maps. Opening Br. at 44–66. Figure 6-3 is not an official map, and is not intended to officially designate mapped ESHA (or any other sensitive resource designation). *Id.* Accordingly, the sole factual question relevant to Commission jurisdiction over Shear's CDP was whether Shear's property physically lies within the boundaries of an official map designating a category of SCRA. *Id.* It does not.

The Commission attempts to blur this crucial distinction by characterizing its jurisdictional determination as mixed questions of law and fact, with predominantly factual questions warranting substantial evidence review. Ans. Br. at 33–36. Contradictorily, it first claims that the court of appeal's interpretation of the LCP framework was largely conducted under the independent review standard, while "just one specific issue" of location was reviewed using substantial evidence. *Id.* at 35. Yet just one paragraph later, the Commission betrays this framing by arguing

that the Commission was entitled to "weigh[] site-specific factual evidence relevant to the SCRA determination, such as . . . what type of soil underlay the development, and what endangered plant and animal species the site's habitat supported." *Id.* at 36. But this is decidedly *not* how the legal framework of the LCP is designed. The LCP defines SCRA using official maps—not characteristics. County Code § 23.01.043(c)(3)(i); *id.* § 23.07.160. Therefore the *only* factual finding relevant to Shear's CDP is *whether it is located within the boundary of the official maps*. "[R]ecord-intensive, expert-driven analysis of ecological conditions," *see* Ans. Br. at 36, may be the type of factual question that normally receives substantial evidence review, but it is *not relevant at all* to the core jurisdictional question at issue here.

The Commission's approach would effectively eliminate true independent judicial review of agency jurisdiction by allowing it to convert predominantly legal questions into factual determinations simply because the Commission simultaneously makes irrelevant factual findings during its jurisdictional analysis. Indeed, its argument for why Figure 6-3 should be treated as an official designation of SCRA similarly ignores the language of the LCP that limits such designation to "the Official Maps (Part III) of the Land Use Element," *see* County Code § 23.07.160, and "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." Appellant's Mot. for Jud. Notice (MJN), Ex. 2, Estero Area Plan (EAP) at 6-4 (Cal. Ct. App. Dec. 15, 2022). Rather, it focuses on the "*ecological characteristics*" of the sands at issue and the "*vulnerable species*" that might reside in such areas. Ans. Br. at 45–50 (emphasis added). To belabor the point, such factual findings may support a recommendation that the County *legislatively* designates such areas as ESHA or SCRA in its LCP, but they cannot serve to alter the language and structure of the existing, certified LCP. *See, e.g.*, *Sec. Nat'l Guar. v. Cal. Coastal Comm'n*, 159 Cal. App. 4th 402, 407 (2008).

The Commission fails entirely to grapple with the fact that *other areas of the EAP* create, designate, and map the Los Osos Dune Sands SRA, MJN, Ex. 2, EAP at 6-9, while Figure 6-3 shows a portion of those areas that is simultaneously both under and overinclusive. Opening Br. at 63–65; *see also* Cnty. Amicus Br. at 14–16 (Cal. Ct. App. Nov. 7, 2023) (Chapter 6 "generally describe[s] the . . . resources of the area" but "*does not* formally designate any areas as SRA[s]" and "Chapter 7 takes the information and recommendations in Chapter 6 . . . and implements them into real and precise land use regulation."). Nor does the Commission acknowledge that its interpretation would put large previously unappealable areas of urban Los Osos under the Commission's appellate jurisdiction. Cnty. Amicus Br. at 18–19.

The determination of jurisdiction requires courts to engage in statutory interpretation of both the Coastal Act and local implementing regulations. This interpretive task cannot be delegated to the agency whose authority is at issue. *See, e.g.*, *Schneider*, 140 Cal. App. 4th at 1344 ("A court does not . . . defer to an agency's view when deciding whether a regulation lies within the scope of the authority delegated by the Legislature."). The Commission now asks for precisely that—deference to its jurisdictional determinations simply because it has engaged in factual findings, despite those findings being irrelevant to the language and structure of the governing LCP.

B. SRA and SCRA are not synonymous under the Coastal Act and LCP

The Commission and court of appeal improperly conflated the distinct terms "Sensitive Resource Area" (SRA) and "Sensitive Coastal Resource Area" (SCRA) to justify the Commission's jurisdictional reach. While these terms sound similar, they serve different purposes under the County's Local Coastal Program (LCP) and the Coastal Act, and their conflation below obscures a critical legal distinction.[3]

[3] The Commission argues that Shear failed to present this argument below, and that it is therefore waived. Ans. Br. at 42–43. Below, Shear repeatedly argued that the critical issue was whether its property was mapped as ESHA, the sole jurisdictional hook asserted by the Commission. *See, e.g.*, Opening Br. at 11–30. Regardless, because this question is a purely legal issue of statutory interpretation, and because it is one of great public

But the Commission now argues that "areas designated as SRAs in the [County's] LCP . . . are included as SCRAs under the *Coastal Act*." Ans. Br. at 41–43 (emphasis added). However, this argument represents a significant departure from the Commission's position during the administrative proceedings, where it relied exclusively on the assertion that the project site was in "mapped and designated ESHA" (the relevant designated category of SCRA under the LCP). AR 642; *see also* AR 533, 537. Indeed, the Commission was previously unequivocal that the only type of SRA it was relying on to justify its jurisdiction was the "mapped and designated . . . ESHA" described in subsection (i) of County Code § 23.01.043(c)(3). *See, e.g.*, AR 642 (exclusively quoting the "Mapped ESHA" language in subsection (i) to justify its jurisdiction).

The Commission's position ignores the careful structure of the County's LCP, which treats SRAs and SCRAs as distinct designations with different legal consequences. Under the LCP, an SRA is a combining designation that identifies "areas with special environmental qualities, or areas containing unique or endangered vegetation or habitat resources."

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importance—*see supra*, Part I—this Court is empowered to review this matter. *People v. Randle*, 35 Cal. 4th 987, 1001–02 (2005), *overruled on other grounds by People v. Chun*, 45 Cal. 4th 1172 (2009); *see also People v. Braxton*, 34 Cal. 4th 798, 809 (2004) (the Court has the power under rule 29(b)(2) of the California Rules of Court to decide any issue that the case presents, even if not raised below, especially where all parties have an opportunity to respond).

County Code § 23.07.160. In contrast, SCRAs are specifically defined jurisdictional triggers that make a County-approved project appealable to the Commission. County Code § 23.01.043(c)(3); *see also* Pub. Res. Code § 30603(b).

The Commission's argument that all SRAs automatically qualify as SCRAs would render superfluous the specific categories enumerated in County Code § 23.01.043(c)(3)(i)–(vii). If the Commission were correct that any SRA designation automatically conferred appeal jurisdiction, there would have been no need for the County to specifically enumerate which types of sensitive areas trigger appealability. *See generally* Opening Br. at 52–58. This interpretation violates the fundamental principle that courts should "give force and effect to all of their provisions" and avoid making any portion of the statute surplusage. *See State Dep't of Public Health v. Superior Court*, 60 Cal. 4th 940, 955 (2015); *and Fontana Unified Sch. Dist. v. Burman*, 45 Cal. 3d 208, 218 (1988). Similarly, where a drafter chose to use different words or phrases, it is generally presumed that they intended them to have different meanings. *Briggs v. Eden Council for Hope & Opportunity*, 19 Cal. 4th 1106, 1117 (1999).

Notably, the Commission's own actions during the administrative process belie its current position. If all SRAs automatically qualified as SCRAs, the Commission would not have needed to focus exclusively on trying to prove the property was "mapped and designated as

Environmentally Sensitive Habitats (ESHA)" under § 23.01.043(c)(3)(i). AR 642. The Commission's narrow focus on ESHA during the administrative process demonstrates its understanding that merely being in an SRA was insufficient to trigger appeal jurisdiction.

The distinction between SRAs and SCRAs is further supported by the structure of the LCP itself. The LCP's Estero Area Plan explicitly states that SRAs in the rural areas "outside of Los Osos are included in the Sensitive Resource Area combining designation and are also an Environmentally Sensitive Habitat (Terrestrial Habitat)." MJN, Ex. 2, EAP at 6-9. This language would be nonsensical if all SRAs automatically qualified as SCRAs—there would be no need to specify which SRAs also qualify as ESHA (and therefore as SCRA).

In sum, the Commission's attempt to collapse the distinction between SRAs and SCRAs represents an impermissible expansion of its appellate jurisdiction beyond what the County's LCP and the Coastal Act authorize. The careful structure of both the LCP and Coastal Act demonstrate that while all SCRAs may be sensitive resources, not all sensitive resources qualify as SCRAs *for jurisdictional purposes under the Coastal Act*. This Court should reject the Commission's attempt to bypass the specific jurisdictional requirements established by the County's LCP (certified by the Commission as consistent with the Coastal Act and

sufficient to carry out its policies) through post hoc conflation of distinct legal terms.

C. Independent review is required for statutory interpretation of jurisdictional scope of authority

The Commission contends that its jurisdictional determinations should receive the same deferential review as its routine permitting decisions, asserting that it would be "especially difficult" for courts to discern when to apply independent review to questions of Commission jurisdiction. Ans. Br. at 37–40. As detailed above, the question of scope of Commission appellate authority under the Coastal Act and a certified LCP is predominantly a *legal* question of statutory interpretation, and therefore subject to independent judgment. *See supra*, Part II.A. But more fundamentally, the Commission wrongly conflates distinct legal uses of the concept of jurisdiction.

In its strictest sense, lack of jurisdiction means "an entire absence of power to hear or determine" a matter. *Abelleira v. Dist. Ct. of Appeal, Third Dist.*, 17 Cal. 2d 280, 288 (1941).[4] But agencies are also considered to act "without, or in excess of" their jurisdiction whenever they fail to follow their governing statutes or regulations. *Id.* In other words, even where an

[4] While *Abelleira* discussed jurisdiction of a trial court, the same concept has been discussed as relevant to agency jurisdiction. *See, e.g.*, *New York Knickerbockers v. Workers' Comp. Appeals Bd.*, 240 Cal. App. 4th 1229, 1232 n.1 (2015) (discussing jurisdiction of the Workers' Compensation Appeals Board).

agency has the *fundamental* jurisdiction to act in a particular matter, it does not have the power to act in a way contrary to its governing statutes or regulations. *See Thompson Pac. Constr., Inc. v. City of Sunnyvale*, 155 Cal. App. 4th 525, 537 (2007).

The Commission wrongly dismisses entirely the rationale for increased judicial scrutiny of its overreaching assertions of appellate jurisdiction. When resolving questions of agency authority under a statute, courts will not apply rules of deference that might otherwise be granted to the agency. *PG&E Corp. v. Pub. Utilities Comm'n*, 118 Cal. App. 4th 1174, 1194 (2004) ("[T]he general rule of deference to interpretations of statutes subject to the regulatory jurisdiction of agencies does not apply when the issue is the scope of the agency's jurisdiction." (quoting *Kaiser Found. Health Plan v. Zingale*, 99 Cal. App. 4th 1018, 1028 (2002))). And the question of *fundamental* jurisdiction to act is *always* a question of law—even where it may have some factual components. *Supra*, Part II.A; *see also Burke v. Cal. Coastal Comm'n*, 168 Cal. App. 4th 1098, 1106 (2008) ("Where jurisdiction involves the interpretation of a statute, the issue of whether an agency acted in excess of its jurisdiction is a question of law reviewed de novo on appeal."); *and Schneider*, 140 Cal. App. 4th at 1344 ("[T]he issue of whether the agency proceeded in excess of its jurisdiction is a question of law.").

Courts are competent to parse these jurisdictional questions. Indeed, the courts already have doctrines that differ based on the type of the jurisdictional question. *See, e.g.*, *Thompson Pac. Constr., Inc.*, 155 Cal. App. 4th at 537 (holding that challenges to "fundamental jurisdiction" are not subject to waiver, while "excess of jurisdiction" arguments are). The *Thompson* court explained in detail the (in that case) "dispositive issue" of whether the trial court's order was "an act in excess of jurisdiction" or whether the trial court "completely lacked jurisdiction" as to a matter. *Id.* To be sure, the matter there was the authority of the courts, but the same doctrines are relevant to agency jurisdiction. *See, e.g.*, *New York Knickerbockers*, 240 Cal. App. 4th at 1232 n.1.

This distinction makes logical sense because jurisdictional determinations go to the very power of the agency to act. The *Security National* court emphasized that when reviewing jurisdictional questions, courts must first determine whether the Commission has stayed "within the scope of the authority delegated by the Legislature." *Security National Guaranty*, 159 Cal. App. 4th at 414 (quoting *Yamaha Corp.*, 19 Cal. 4th at 11 n.4). As the *Security National* court noted, absent a delegation of authority from the Legislature, the Commission "literally has no power to act." *Id.* at 419 (quoting *Louisiana Public Service Comm'n v. FCC*, 476 U.S. 355, 374 (1986)). Only after establishing proper jurisdiction may a

court review the merits of the Commission's decision under more deferential standards.

The Commission's argument that some questions of *fundamental* agency jurisdiction should receive only substantial evidence review would effectively allow it to define the scope of its own power. As *Security National* makes clear, "the Commission [has] no power either to make the amendments [to an LCP] itself or to compel the local government to make them." *Id.* at 421.[5] Allowing deferential review of jurisdictional determinations would permit the Commission to accomplish indirectly what it cannot do directly—expand its authority beyond statutory limits. Further, when those questions involve the fundamental question of jurisdictional power to hear a matter at all, the question is necessarily a legal one—even where, as here, it may have some minor factual components. *See Burke*, 168 Cal. App. 4th at 1110 (treating Commission jurisdiction as a pure question of law, even though it contained minor factual elements such as a fence's physical location).

[5] The Commission makes much of the fact that the Commission is consulted during the LCP process, and that it may suggest modifications or deny entirely a proposed LCP. Ans. Br. at 53–54. Regardless of these related abilities, it does not change that the Coastal Act does not give the Commission any legislative authority, and delegates such authority entirely to local governments. *Security National*, 159 Cal. App. 4th at 417 (by attempting to make an ESHA designation, the Commission "intruded upon powers that the Coastal Act expressly allocates to local governments").

Multiple courts have recognized that agency jurisdictional determinations warrant heightened scrutiny. As noted in Appellant's Opening Brief at 31–32, *Schneider v. California Coastal Commission* held that courts "do[] not . . . defer to an agency's view when deciding whether a regulation lies within the scope of the authority delegated by the Legislature." 140 Cal. App. 4th at 1344. This heightened review serves as an essential check on agency power, ensuring that administrative bodies remain within their statutory bounds.

The Commission's reliance on permitting cases involving factual determinations is therefore misplaced. Those cases presume valid *fundamental* jurisdiction and review only the proper exercise of delegated authority. Here, the threshold question is whether the Commission has jurisdiction to appeal the County's CDP decision at all—a fundamentally legal question that courts must review independently to fulfill their constitutional role in determining "what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

III. Any Deference Is Due to the County's Interpretation

The Commission's claim that it deserves greater deference than the County in interpreting LCP provisions fundamentally misunderstands both the Coastal Act's structure and basic principles of administrative law. *See* Ans. Br. at 51–58. If any deference is warranted in interpreting certified LCPs, it must be accorded to the local governments that drafted and

implement them. As detailed in Shear's opening brief (and the County's amicus brief below), the County has consistently interpreted its LCP to require formal mapping for ESHA and SCRA designations. *See* Opening Br. at 38–43; Cnty. Amicus Br. at 11–22

As the drafter and primary implementer of the LCP, the County possesses far greater expertise than the Commission in interpreting its provisions. *Yamaha Corp.*, 19 Cal. 4th at 12 (agency that authored regulation "is likely to be intimately familiar with regulations it authored and sensitive to the practical implications of one interpretation over another"); *City of Del Mar v. City of San Diego*, 133 Cal. App. 3d 401, 408 (1982) ("Local government bodies, elected to represent the various segments of that community, are appropriately constituted to accurately assess the community's general welfare which serves as the basis for the zoning accommodation."). The County's intimate familiarity stems from its role as drafter of the LCP and its day-to-day responsibility for implementation. Through continuous interaction with affected property owners and extensive experience applying the LCP to specific projects, the County has developed unmatched understanding of both the technical requirements and practical implications of its provisions.

The Commission's contrary argument rests largely on its general oversight role under the Coastal Act. Ans. Br. at 54–55. But while the Commission may possess general expertise regarding coastal resources and

development impacts, this expertise does not extend to interpreting specific provisions of local coastal programs. The Commission's staff, however qualified in *state* coastal policy matters, lacks the County's deep understanding of local land use patterns, development history, and the specific compromises and choices reflected in LCP provisions. *See* Cnty. Amicus Br. at 11–19.

The Commission's claim that it has "long interpreted" urban Los Osos to fall within appealable sensitive resource areas, Ans. Br. at 56, is belied by the record. The Commission points to only a handful of previous instances where it asserted similar theories, most of which were not challenged. Its "principal permitted use" interpretation was explicitly rejected when tested in court. *See* Opening Br. at 16; Am. Suppl. MJN, Ex. 6 (Cal. Ct. App. Aug. 2, 2023).

The Coastal Act itself emphasizes local control after LCP certification. The legislative history confirms that the Act was designed to ensure "maximum responsiveness to local conditions" through "local government and local land use planning procedures." Pub. Res. Code § 30004(a). This policy choice reflects legislative recognition that local governments are best positioned to understand and respond to local needs while ensuring consistent and efficient coastal zone management. *See* Opening Br. at 42–43.

The Commission's suggestion that its interpretation better serves Coastal Act policies ignores that those policies are already reflected in the certified LCP. Having approved the County's implementation scheme, the Commission cannot expand its jurisdiction by reinterpreting clear LCP provisions, or by adding or subtracting language that is not contained within that certified LCP. *See, e.g.*, *Schneider*, 140 Cal. App. 4th at 1344. If the Commission believes certified LCPs inadequately protect coastal resources, its remedy lies in recommending amendments to the local government or seeking legislative action. Pub. Res. Code § 30519.5; *see also City of Malibu v. Cal. Coastal Comm'n*, 206 Cal. App. 4th 549, 563 (2012) (If the Commission "determines that a certified LCP is not being carried out in conformity with . . . the Coastal Act . . . [it's] power is limited to recommending amendments to the local government's LCP . . . [or] recommend[ing] legislative action.").

The LCP certification process provides the appropriate mechanism for ensuring adequate coastal resource protection. Through certification, the Commission reviews proposed LCP provisions, can request that local governments refine and clarify provisions, and ultimately reject an LCP if it fails to meet the needs of state coastal policy. This process establishes clear standards for future implementation while respecting local authority over day-to-day coastal development decisions. Pub. Res. Code §§ 30512,

30513; *City of Chula Vista v. Superior Court*, 133 Cal. App. 3d 472, 489 (1982).

The County's superior knowledge of local conditions and circumstances makes it better positioned to interpret ambiguous LCP provisions in light of historical development patterns, local environmental conditions, and community needs. Courts have long recognized the importance of local knowledge in land use matters. *See, e.g.*, *City of Del Mar*, 133 Cal. App. 3d at 408 ("Local government bodies, elected to represent the various segments of that community, are appropriately constituted to accurately assess the community's general welfare which serves as the basis for the zoning accommodation.").

Local governments are directly accountable to their communities for LCP implementation. This democratic accountability enhances rather than detracts from the weight that should be accorded local interpretations. *See* Pub. Res. Code § 30004(a) (emphasizing "maximum responsiveness to local conditions" through "local government and local land use planning procedures").

The Court should reject the Commission's claim to interpretive primacy over LCP provisions. Where ambiguity exists, greater weight should be accorded to the County's interpretations of its own regulations, given its role as drafter and primary implementer of the provisions, and especially where those interpretations are long-standing. This approach best

serves the Coastal Act's goals while preserving the careful balance between state oversight and local control that the Act establishes. The Commission's contrary position would effectively nullify local authority under certified LCPs, upsetting the expectations of both local government permit-granting agencies and permittees through creative Commission reinterpretation of local regulations. This result would contravene both the letter and spirit of the Coastal Act's emphasis on local control after LCP certification.

IV. The Commission Lacked Jurisdiction Under Any Standard

Even applying the deferential standard advocated by the Commission, the record cannot sustain its assertion of appellate jurisdiction over Shear's permit. Neither of the Commission's theories of jurisdiction—its reliance on Figure 6-3 for sensitive resource area jurisdiction or its "principal permitted use" argument—withstands scrutiny under any standard of review. Moreover, even if the Commission had properly exercised jurisdiction, the record demonstrates that Shear's project fully complied with all applicable LCP requirements.

The Commission's attempt to ground jurisdiction in a single illustrative figure within the County's Estero Area Plan fatally misreads both the LCP's designation scheme and the proper framework for interpreting jurisdictional provisions. As explained in Shear's opening brief, the LCP explicitly requires that sensitive resource areas be "mapped and designated as Environmentally Sensitive Habitats (ESHA) in the Local

Coastal Plan." Opening Br. at 52–55; County Code § 23.01.043(c)(3)(i). This designation can occur only through official maps in Part III of the Land Use Element or specific areas listed in Chapter 7, Section III of the Estero Area Plan. The Commission's attempt to derive jurisdiction from an illustrative figure contradicts both the letter and structure of the County's LCP.

The Commission attempts to evade this clear requirement by suggesting that any reference to sensitive resources in the LCP can establish jurisdiction. Ans. Br. at 47–49. This interpretation would render meaningless the LCP's careful distinction between mapped and unmapped sensitive resources. The County Code expressly excludes "resource areas determined by the County to be Unmapped ESHA" from the Commission's appellate jurisdiction. Opening Br. at 55–56; County Code § 23.01.043(c)(3)(i). This distinction would be superfluous if any reference to sensitive resources in the LCP could trigger jurisdiction, regardless of formal mapping and designation.

The Commission's reliance on Figure 6-3 is particularly problematic because the figure appears in Chapter 6 merely as an illustrative figure showing the general location of dune sands—not as a formal designation of sensitive habitat areas. The distinction between illustrative figures and official designations is not merely technical. Opening Br. at 62–63. The LCP establishes specific procedures for designation precisely to provide

clarity and certainty about which areas are subject to special protection and Commission review. *Id.* at 58–66.

As explained by the County—the author and primary implementer of the LCP—figures in Chapter 6 serve to "generally describe the . . . resources of the area" but "*do[] not* formally designate any areas as SRA[s]." Cnty. Amicus Br. at 14–16. The Commission's attempt to bootstrap jurisdiction from an illustrative figure ignores this crucial distinction between descriptive materials and formal designations. This interpretation would create precisely the kind of uncertainty and unpredictability that the LCP's formal designation requirements were designed to prevent.

The Commission's reading fundamentally misunderstands the structure of the Estero Area Plan. Chapter 7 of the Plan explicitly implements the general information and recommendations contained in Chapter 6, translating them into "real and precise land use regulation." Cnty. Amicus Br. at 14–16. By attempting to derive jurisdictional consequences directly from Chapter 6's illustrative materials, the Commission improperly bypasses this implementing function.

Moreover, the Commission effectively concedes that none of the County's official "combining designations" maps show Shear's property as existing within *any* SRA or designated ESHA. The two relevant "combining designation" maps for the area that include Shear's project site

depict the site as neither an SRA nor ESHA. AR 685, 822. This absence from official maps is particularly significant given the LCP's explicit requirements that such designations appear in official maps. County Code § 23.07.160; MJN, Ex. 2, EAP at 6-4.

The Commission's approach would effectively eliminate any meaningful distinction between mapped and unmapped sensitive resources. Under its theory, any area illustrated—or even *described*—anywhere in the LCP as containing sensitive resources could be deemed within the Commission's appellate jurisdiction, regardless of whether it had been formally designated through the required processes. This would render superfluous the LCP's careful distinction between different types of resource designations and their jurisdictional consequences.

The Commission's alternative jurisdictional theory—that it has authority over all County projects where the LCP designates more than one Principal Permitted Use in a zone—is equally flawed.[6] This interpretation

[6] The Commission does not attempt to defend its alternative theory of jurisdiction before this Court. Ans. Br. at 33 n.10. Though the Commission is correct that the court of appeal declined to reach the issue, *see* Opinion at 11, it is incorrect to argue that Shear did not raise the issue in its Petition for Review. *See* Petition for Review at 17 n.2, 19, 21 n.4. Out of an abundance of caution, Shear nonetheless briefed this issue, because this Court is empowered to consider new issues on appeal, *see People v. Braxton*, 34 Cal. 4th 798, 809 (2004) (the Court has the power under rule 29(b)(2) of the California Rules of Court to decide any issue that the case presents, even if not raised below, especially where all parties have an opportunity to respond), and because it may sustain even incorrect judgments below if

was not only rejected by the San Luis Obispo Superior Court in prior litigation but would render meaningless the jurisdictional limits in both the Coastal Act and LCP. Opening Br. at 67–74. Importantly, the Commission's interpretation conflicts with the plain language of the County's LCP, *see* County Code § 23.01.043(c)(4), which was certified by the Commission as consistent with the Coastal Act and sufficient to carry out its provisions.

The Commission's approach to both jurisdictional theories—its reliance on an illustrative figure for SCRA jurisdiction and its "principal permitted use" argument asserted below—reflects a broader pattern of attempting to expand its authority beyond statutory limits through creative interpretation rather than proper regulatory channels. If the Commission believes that its jurisdiction should be broader or that additional areas should be subject to its review, it must pursue these changes through the formal LCP amendment process. Pub. Res. Code § 30519.5(a); *see also City of Malibu*, 206 Cal. App. 4th at 563 (If the Commission "determines that a certified LCP is not being carried out in conformity with . . . the

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another legal theory may support the outcome. *Belair v. Riverside Cnty. Flood Control Dist.*, 47 Cal. 3d 550, 568 (1988) ("If correct upon any theory of law applicable to the case, the judgment will be sustained regardless of the considerations that moved the lower court to its conclusion.").

Coastal Act . . . [it's] power is limited to recommending amendments to the local government's LCP . . . [or] recommend[ing] legislative action.").

Neither of the Commission's theories of jurisdiction withstands scrutiny under any standard of review. The Commission's attempt to derive jurisdiction from an illustrative figure contradicts both the letter and structure of the LCP, while its "principal permitted use" theory would render jurisdictional limits meaningless.

Conclusion

The Court should hold that independent judgment applies when reviewing the Commission's jurisdictional determinations, with any deference due to local government interpretations of certified LCPs. Under that standard—or indeed any standard—the Commission lacked jurisdiction over Shear's permit. The judgment below should be reversed.

DATED: February 3, 2025.

Respectfully submitted,

*JEREMY TALCOTT
LAWRENCE SALZMAN
PAUL J. BEARD II

By: /s/ Jeremy Talcott
JEREMY TALCOTT

Attorneys for Plaintiff and Appellant
Shear Development Co., LLC

Certificate of Compliance

The text of this brief consists of 7,723 words according to the word count feature of the computer program used to prepare this brief.

DATED: February 3, 2025. /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 February 3, 2025, I caused a true copy of Appellant's Reply Brief 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 February 3rd, 2025, at Roseville, California.

TAWNDA DYER