

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

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INTRODUCTION

This Court has ordered supplemental briefing on whether the Commission properly exercised appellate jurisdiction over Shear Development Co.'s coastal development permit on the ground that single-family residential development was not designated as the sole principal permitted use under San Luis Obispo County's Local Coastal Program. Pub. Res. Code § 30603(a)(4). The answer, under both the LCP in effect at the time the Commission asserted jurisdiction and the LCP currently in effect, is no. The Commission's exercise of jurisdiction was improper for several independent and mutually reinforcing reasons.

First, none of the amendments to the San Luis Obispo County LCP since its original certification in 1988 have altered the "principal permitted use" language that governs appealability to the Commission. Section 23.01.043(c)(4) of the County Code has consistently provided that only developments "not listed in Coastal Table O, Part I of the Land Use Element as a Principal Permitted (P) Use" for the relevant parcel are appealable. Under this language, single-family residential development has been, and remains, a principal permitted use in the Residential Single-Family land use category pertaining to Shear's property. Accordingly, the analysis is identical under both the LCP in effect when the Commission exercised jurisdiction and the LCP currently in effect, and this Court need

not engage in any comparative analysis between different versions of the LCP.

Second, the certified LCP adopts language that is more specific than the general Coastal Act provision governing principal permitted uses. Public Resources Code section 30603(a)(4) speaks generally of developments “not designated as the principal permitted use,” whereas the County’s LCP specifically identifies which developments are appealable by reference to Coastal Table O’s express designation of uses with a “P.” The Commission’s certification of the County’s LCP language necessarily signifies that the Commission determined the LCP’s specific formulation was consistent with section 30603 and the broader policies of the Coastal Act. Pub. Res. Code §§ 30512, 30513. Having certified that specific language, the Commission cannot now disregard it in favor of a novel interpretation of the general statutory provision, nor can it invoke the general Coastal Act language to override the specific LCP terms. The entire structure of the Coastal Act reflects a legislative design wherein local governments, operating under certified LCPs, exercise primary permitting authority with only limited appellate oversight by the Commission. Pub. Res. Code § 30603(b)(1).

Single-family residential development is unambiguously designated as a principal permitted use under the San Luis Obispo County LCP. Coastal Table O expressly designates “Single Family Dwelling” with a “P”

in the Residential Single-Family land use category. AR 1866, 1868. Because Shear's property falls within that category, it is a principal permitted use and not appealable to the Commission absent some independent basis for jurisdiction.

Finally, as an additional matter bearing on the appropriate disposition of this case, permit approvals are reviewed under the law existing at the time of the final permit approval and hearing. Although the Commission has no jurisdiction over Shear's permit under either the old or new LCP, this Court should apply the law as it existed when the County approved Shear's permit and when the Commission purported to exercise appellate jurisdiction. Holding otherwise would upend longstanding precedent governing permit decisions and create perverse incentives for jurisdictions to manipulate governing law to retroactively ratify wrongful agency action.

ARGUMENT

I. The Amendments to the San Luis Obispo County LCP Have Not Altered the Principal Permitted Use Language, and the Analysis Is Therefore Identical Under Both the Former and Current Versions of the LCP

This Court's two questions ask whether the Commission properly exercised appellate jurisdiction under the LCP "in effect at the time" of the Commission's action and under the LCP "currently in effect." These questions can be answered together because the LCP as a whole has not

been replaced. Rather, only certain provisions of the LCP were amended, while the provisions as to the categories of appealable projects have remained materially unchanged throughout the relevant period and, indeed, since the LCP's original certification in 1988.

Section 23.01.043(c)(4) of the San Luis Obispo County Code has, since the LCP's original certification, provided that appealable development includes “[a]ny approved development not listed in Coastal Table O, Part I of the Land Use Element as a Principal Permitted (P) Use.” *See* County of San Luis Obispo's Application and Supplemental Amicus Curiae Brief in Support of Plaintiff and Appellant Shear Development Company, LLC (Filed Jan. 13, 2026), at 7. This language has not been amended in any manner that would affect the analysis in this case. *Id.* The provision's operative terms—“not listed,” “Coastal Table O,” and “Principal Permitted (P) Use”—have remained constant since 1988. *Id.* Coastal Table O has similarly designated “Single Family Dwelling” as a principal permitted use (indicated by the letter “P”) within the Residential Single-Family land use category since the LCP's original certification. *Id.* at 10; AR 1865-71.

The Commission has not previously identified, and Shear is unaware of, any amendment to either section 23.01.043(c)(4) or Coastal Table O that would alter the appealability analysis for single-family residential development in the Residential Single-Family zone. The record before this

Court contains no evidence of any intervening amendment that would affect the outcome. Accordingly, whether this Court applies the LCP as it existed when the Commission asserted jurisdiction in 2019 or the LCP as it currently exists in 2026, the result is the same: single-family residential development is expressly listed as a principal permitted use, and the County’s approval of such development is therefore not appealable to the Commission under the LCP’s plain terms.

This Court should therefore answer both of its questions regarding the former and current versions of the LCP together and in the negative. The relevant LCP provisions are materially identical, and under either version, the Commission did not—and could not—properly exercise appellate jurisdiction on principal permitted use grounds.

II. The Certified LCP’s Specific Language Controls over the General Coastal Act Provision

Under the California Coastal Act, once an LCP has been certified by the Commission, primary permitting authority is returned to the local government. However, Public Resources Code section 30603(a)(4)(A) states that the Commission retains appellate jurisdiction over developments “not designated as the principal permitted use under the zoning ordinance or zoning district map.” For the first several decades of the Coastal Act, this was consistently interpreted by the Commission and all coastal counties to mean any development designated as a principal permitted use. In recent

years (and in its action and briefing below), the Commission has now contended that the word “the” in 30603(a)(4)(A) limits all coastal counties to a single principal permitted use per zoning category, or the Commission will have appellate jurisdiction over all principal permitted uses. This interpretation is foreclosed by the relationship between general Coastal Act provisions and specific certified LCP language in SLO, as well as the fundamental structure of the Coastal Act’s delegation of permitting authority to local governments.

When the Commission certifies an LCP, it determines that the LCP’s provisions are consistent with, and adequate to carry out, the policies of the Coastal Act. Pub. Res. Code §§ 30512, 30513. The certification process necessarily involves review of the LCP’s appealability provisions to ensure they conform to section 30603 and adequately implement the jurisdictional framework established by the Legislature. By certifying the County’s LCP—including section 23.01.043(c)(4)’s specific formulation that appealable development is that development “not listed in Coastal Table O . . . as a Principal Permitted (P) Use”—the Commission necessarily determined that this formulation adequately implements section 30603(a)(4). AR 1865-71.

The County’s LCP language is more specific than the general Coastal Act provision. The Coastal Act speaks abstractly of developments “not designated as the principal permitted use,” without specifying how

such designation occurs or what form it must take. The County’s LCP, by contrast, specifically provides that appealability turns on whether a use is “listed in Coastal Table O . . . as a Principal Permitted (P) Use.” This creates a clear, administrable mechanism: if a use appears in Coastal Table O with a “P” designation in the relevant land use category, it is a principal permitted use and County approval is non-appealable. Under fundamental principles of statutory construction, specific provisions control over general ones when both address the same subject matter. *State Dep’t of Pub. Health v. Superior Ct.*, 60 Cal. 4th 940, 955 (2015) (emphasizing “the importance of harmonizing potentially inconsistent statutes” and construing them “to give force and effect to all of their provisions”); *Fontana Unified Sch. Dist. v. Burman*, 45 Cal. 3d 208, 218 (1988) (courts should give significance to “every word, phrase, sentence and part of an act”). The SLO LCP’s specific mechanism for identifying principal permitted uses—designation with a “P” in Coastal Table O—supersedes any broader reading of section 30603(a)(4) that would ignore that mechanism.

The Commission cannot now disavow the implications of its own certification. Having reviewed and approved the County’s LCP language, the Commission implicitly determined that the County’s approach—identifying multiple principal permitted uses within each land use category and making County approvals of such uses non-appealable—was consistent with the Coastal Act. If the Commission had believed that section

30603(a)(4) prohibited this approach, the time to raise that objection was during the certification process in 1988. For any other party, the sole mechanism to challenge was through administrative mandamus immediately following that certification. *Beach & Bluff Conservancy v. City of Solana Beach*, 28 Cal. App. 5th 244, 260–61 (2018) (Once an LCP is certified, the sole avenue to challenge an LCP provision as inconsistent with the Coastal Act is under Code of Civil Procedure Section 1094.5 within the applicable, 60-day statute of limitations.). If the Commission now believes the LCP is inconsistent with section 30603(a)(4), its recourse is to recommend amendments through the proper channels—not to unilaterally assert jurisdiction in contradiction of the certified LCP’s plain terms. *City of Malibu v. Cal. Coastal Comm’n*, 206 Cal. App. 4th 549, 563 (2012); Pub. Res. Code § 30514(a).

Moreover, once an LCP is certified, the general provisions of the Coastal Act cannot serve as an independent basis of jurisdiction that overrides or contradicts the specific terms of the certified LCP. The Coastal Act establishes a carefully calibrated division of authority between state and local governments. Before an LCP is certified, the Commission exercises original permit jurisdiction over development in the coastal zone. Once an LCP is certified, however, permit authority transfers to the local government, and the Commission’s role is reduced to limited appellate oversight. *Yost v. Thomas*, 36 Cal. 3d 561, 572 (1984) (explaining that “the

Commission in approving or disapproving an LCP 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.”); *City of Malibu*, 206 Cal. App. 4th at 563.

Critically, the scope of the Commission’s appellate jurisdiction in areas with certified LCPs is defined by the LCP itself, not by abstract Coastal Act provisions applied independently of the LCP. Public Resources Code section 30603(b)(1) makes this clear: “The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.” This provision confirms that, for purposes of Commission appeals, the certified LCP is the governing standard. The Commission may not expand its jurisdiction by looking past the LCP to general Coastal Act provisions, nor may it use general statutory language to override specific LCP terms.

The Court of Appeal in *Security National Guaranty* addressed precisely this structural issue in the context of ESHA (Environmentally Sensitive Habitat Area) designations. There, the Commission attempted to impose ESHA restrictions on property that was not designated as ESHA under Sand City’s certified LCP. The court rejected the Commission’s effort, holding that “the Commission exceeded its authority” and

“improperly assumed powers reserved to the local government” by attempting to enforce standards “not found in Sand City’s LCP.” *Sec. Nat’l Guaranty, Inc. v. Cal. Coastal Comm’n*, 159 Cal. App. 4th 402, 422-23 (2008). The court emphasized the primacy of the certified LCP over general Coastal Act provisions, noting that “while LUP section 4.3.20 requires that ESHA’s be protected, it is directed specifically at the ESHA’s mapped *in the LCP*,” forbidding the Commission from identifying it under the Coastal Act generally on a permit appeal. *Id.* at 423 (emphasis added); *see also LT-WR, L.L.C. v. Cal. Coastal Comm’n*, 151 Cal. App. 4th 427, 434 (2007), *as modified* (June 21, 2007) (holding that the Commission can identify ESHA on a permit appeal when the controlling LCP expressly allows undesignated areas to be identified during review).

The same principle applies with equal force here. Just as the Commission in *Security National Guaranty* could not invoke general ESHA policies under the Coastal Act to declare property to be ESHA when the certified LCP did not allow it, the Commission here cannot invoke general appellate jurisdiction provisions to declare developments appealable when the certified LCP specifically provides they are not.

Allowing the Commission to bypass certified LCP provisions by invoking general Coastal Act language would effectively nullify the entire certification process and defeat the legislative purpose in establishing the LCP regime. Local governments would have no assurance that their

carefully negotiated LCPs would govern permit decisions. Property owners could not rely on LCP provisions in planning their development activities and ordering their affairs. The Commission could, at any time and for any project, assert jurisdiction by reinterpreting general Coastal Act provisions in ways that contradict specific LCP terms. This is not the regime the Legislature established. *See* Pub. Res. Code § 30004(a) (“To achieve maximum responsiveness to local conditions, accountability, and public accessibility, it is necessary to rely heavily on local government and local land use planning procedures and enforcement.”).

III. Single-Family Residential Development Is a Principal Permitted Use Under the San Luis Obispo County LCP, and Therefore Was Not and Is Not Appealable to the Commission

Under the plain terms of the San Luis Obispo County LCP, single-family residential development in the Residential Single-Family zone is a principal permitted use and is therefore not appealable to the Commission. Section 23.01.043(c)(4) provides that appealable development includes “[a]ny approved development not listed in Coastal Table O, Part I of the Land Use Element as a Principal Permitted (P) Use.” Coastal Table O expressly designates “Single Family Dwelling” with a “P”—indicating principal permitted use—in the Residential Single-Family land use category. AR 1866, 1868. Shear’s proposed development of single-family dwellings on lots zoned Residential Single-Family is therefore “listed . . . as a Principal Permitted (P) Use” and is not appealable under the LCP’s

unambiguous terms. AR 536 (County finding the lots are “zoned Residential single family, which allows for one residence per legal parcel”). The analysis begins and ends with the text of section 23.01.043(c)(4), which this development satisfies.

Coastal Table O identifies “Single Family Dwellings,” “Coastal Accessways,” and “Passive Recreation” as principal permitted uses in the Residential Single-Family category. AR 1866, 1868. The Commission below contended that because no single use is designated as “the” principal permitted use to the exclusion of all others, all uses must be appealable regardless of their designation. This reasoning should be rejected.

An interpretation rendering all County approvals appealable leads to absurd results that the County and Commission could not have intended when the LCP was drafted and certified. Every category of land listed in Coastal Table O designates more than one use with a “P” (including “Coastal Accessways” in every category) and, therefore, the Commission’s reading of the ordinance would make every County-approved development appealable to the Commission. AR 1865-71. This would transform the Commission’s “limited rights of appeal,” *City of Malibu*, 206 Cal. App. 4th at 555, into unlimited appellate jurisdiction over all County permit decisions. It would render the detailed appealability provisions in section 23.01.043(c)(1)-(5) entirely superfluous—why would the County enumerate specific categories of appealable developments if all

developments are appealable regardless of category? And it would defeat the fundamental purpose of the LCP certification regime, which is to transfer final permit authority to local governments operating under Commission-certified plans.

Courts must “‘apply reason, practicality, and common sense’ to make the words of the statute ‘workable and reasonable’” and avoid any interpretation that would lead to an “absurd result.” *People v. Avila*, 212 Cal. App. 4th 819, 828 (2013) (quoting *Halbert’s Lumber, Inc. v. Lucky Stores Inc.*, 6 Cal. App. 4th 1233, 1239 (1992)). An interpretation requiring all County-approved developments to be appealable produces precisely such consequences. Indeed, prior litigation over this precise issue in the San Luis Obispo Superior Court, *Crowther v. California Coastal Commission*, reached the same conclusion, with the court holding that the interpretation urged here “would contravene the purpose of Local Coastal Plans, since virtually every developmental approval would be appealable, thereby defeating the transfer of final approval authority to local jurisdictions following adoption (and certification) of Local Coastal Plans.” Appellant’s Am. Supp. Mot. for Jud. Notice (2d DCA filed Aug. 2, 2023), Ex. 6 (*Crowther v. Cal. Coastal Comm’n*, No. CV 050453 (San Luis Obispo Superior Ct.), Statement of Decision at 2). The Commission chose not to appeal that decision, and the judgment became final. It has consistently abided by that interpretation of the County’s LCP until recently. The

County’s interpretation—that developments designated with a “P” in Coastal Table O are principal permitted uses and are therefore non-appealable—is the only interpretation consistent with the LCP’s text, the Coastal Act’s structure, and three decades of administrative practice.

The County, as the author and primary implementer of its LCP, has also consistently interpreted section 23.01.043(c)(4) to mean that developments designated as principal permitted uses in Coastal Table O are not appealable. AR 1950, 1963. This longstanding interpretation is entitled to significant weight. *See Yamaha Corp. of America v. State Bd. of Equalization*, 19 Cal. 4th 1, 12 (1998) (“A court is more likely to defer to an agency’s interpretation of its own regulation . . . since the agency is likely to be intimately familiar with regulations it authored and sensitive to the practical implications of one interpretation over another.”); *Anderson First Coal. v. City of Anderson*, 130 Cal. App. 4th 1173, 1193 (2005) (a local government’s interpretation of its own ordinance “is entitled to great weight”). A contrary interpretation, by contrast, would be novel, inconsistent with decades of administrative practice, contrary to the LCP’s plain language, and was previously rejected by the Superior Court in a judgment that became final and binding.

IV. Permit Approvals Are Reviewed Under the Law Existing at the Time of Final Approval, and This Court Should Apply the Law as It Existed When Shear's Permit Was Approved

As an additional matter bearing on the proper disposition of the Court's questions, this Court should not disrupt the rule that permit approvals are to be reviewed under the law existing at the time of the final permit approval and hearing, and later amendments are irrelevant to a reviewing court's analysis. *San Francisco Plan. & Urban Renewal Ass'n v. Central Permit Bureau*, 30 Cal. App. 3d 920, 930 n.2 (1973) (“[A] permit is lawfully granted as of the date of completion of all administrative action. Thus section 150(d) is controlling here and *the subsequent amendments to the Planning Code are not applicable.*” (emphasis added)). The County approved Shear's coastal development permit in July 2019. AR 486. The Commission purported to exercise appellate jurisdiction the following month. AR 521. Any analysis of the Commission's jurisdiction should apply the LCP as it existed at the time the County approved the permit, not as it was subsequently amended or might be amended in the future. *McClung v. Emp. Dev. Dep't*, 34 Cal. 4th 467 (2004) (“Generally, statutes operate prospectively only.” (quoting *Myers v. Philip Morris Cos.*, 28 Cal. 4th 828, 840 (2002))).

This principle reflects fundamental fairness and the protection of reasonable reliance interests. Permit applicants order their affairs based on the legal framework in place when they submit applications and receive

approvals. They invest substantial resources—financial, temporal, and otherwise—in reliance on the governing legal standards. If the governing legal standards could shift *after* approval—or worse, if a regulatory agency such as the Commission could retroactively assert jurisdiction based on post-approval legal changes or novel interpretations—applicants would face intolerable uncertainty and unfair surprise, upending the traditional practice in administrative mandamus proceedings. *See Sec. Nat’l Guar., Inc.*, 159 Cal. App. 4th at 422 (“[Property owners are] entitled to have [their] development proposal[s] judged by the standards of the certified LCP *in effect at the time of [their] application.*” (emphasis added)).

A contrary rule would create additional perverse incentives that would undermine the stability of the permit process. Consider this counterfactual that illustrates the problem: Suppose a local government and the Commission wrongfully deny an applicant’s development permit in direct and unambiguous violation of the applicable LCP. The applicant challenges that denial in court and, after years of litigation, *prevails* in both the superior court and in the Court of Appeal, and this Court then grants review. However, during the pendency of the proceeding in this Court, the agencies enact a law *absolutely prohibiting* the type of development at issue during the pendency of litigation. Would this Court accept that the retroactive ratification of the *denial* would now govern the outcome of that hypothetical case?

Similarly, if an applicant receives permit approvals and challenges only certain unlawful conditions of that approval, but during the pendency of litigation the agencies amend the LCP to require substantial new additional fees—indeed, retroactively reviewing Shear’s permit under the new amendments is problematic in part because he has not paid environmental mitigation fees under the County’s new Habitat Conservation Plan that were not required at the time of his previous approval—is the reviewing court now required to order denial of the permit for failure to meet those fee requirements under the now-governing law? Or would it instead order payment of those new fees in addition to resolving the question of the challenged conditions? Agency action is required to be supported by substantial evidence and findings based on the governing regulations contained within a *closed* administrative record.¹ Holding

¹ It is notable that while *Make UC a Good Neighbor v. Regents of University of California*, 16 Cal. 5th 43, 55 (2024), apparently states broadly that “[i]n mandamus proceedings, a reviewing court applies the law that is current at the time of judgment in the reviewing court,” the citation it relies upon for that proposition is far narrower: “It is also an established rule of law that *on appeals from judgments granting or denying injunctions*, the law to be applied is that which is current at the time of judgment in the appellate court *because ‘[r]elief by injunction operates in futuro.’*” *Callie v. Bd. of Supervisors*, 1 Cal. App. 3d 13, 18 (1969) (citations removed and emphasis added). As Shear has previously detailed, Reply Brief at 12-14, *Make UC* was unique because of the clearly retroactive nature of the legislative amendments targeted at *that specific case*, and Shear has been unable to identify *any other cases* under Section 1094.5 of the Code of Civil Procedure in which the reviewing court applied law in effect at the time of the appeal instead of at the time of the agency decision.

otherwise would subject courts to the impossible task of harmonizing past agency decisions with new—and potentially substantially different—regulations and laws. Indeed, it is at least possible that the Supreme Court could be forced to rule on different law than the Court of Appeal, which had ruled on different law than the superior court, which had ruled on different law than the agency itself. This simply cannot be the state of judicial review on writ proceedings of a past agency action.

Evaluating administrative decisions under then-governing laws and regulations protects all parties' reasonable expectations. Here, the County approved Shear's permit under a legal framework that had been in place for over three decades. If the Commission or the County were to amend the LCP tomorrow in ways that would affect appealability— either by clarifying that single-family dwellings are the sole principal permitted use or by making it a conditional use— that change should not retroactively alter the analysis of the Commission's jurisdiction over the permit approved years earlier under a particular set of then-effective laws. The legal standards that governed at the time of approval are the standards against which the Commission's actions must be judged.

CONCLUSION

For the foregoing reasons, this Court should answer both questions in the negative. Under both the LCP in effect at the time the Commission exercised appellate jurisdiction and the LCP currently in effect, single-

family residential development in the Residential Single-Family zone is designated as a principal permitted use. The relevant LCP provisions have not changed in any material respect since the LCP's certification in 1988, and any contrary interpretation finds no support in the LCP's text, the Coastal Act's structure, or the decades of consistent administrative practice that followed certification.

The Commission did not properly exercise appellate jurisdiction over Shear's coastal development permit on the ground that the development was not designated as the principal permitted use. This Court should reverse the judgment of the Court of Appeal and direct that a writ of mandate issue requiring the Commission to dismiss its appeal and allow the County's approval of Shear's project to stand.

DATED: January 14, 2026.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The text of this brief consists of 4,258 words according to the word count feature of the computer program used to prepare this brief.

DATED: January 14, 2026.

/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.

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