CASE NO. A168645

IN THE COURT OF APPEAL, STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION THREE

CASA MIRA HOMEOWNERS ASSOCIATION, ET AL,

Respondents - Petitioners,

vs.

CALIFORNIA COASTAL COMMISSION,
a California public agency,

Appellant - Respondent,

San Mateo County Superior Court, Case Nos. 19-CIV-04677
The Honorable Marie S. Weiner

AMICI CURIAE BRIEF OF CITY OF DEL MAR, CITY OF DANA POINT, CAPISTRANO BAY DISTCRICT, GARY GROSSMAN, PAJARO DUNES ASSOCIATION, PAJARO DUNES NORTH ASSOCIATION, COASTAL PROPERTY OWNERS ASSOCIATION OF SANTA CRUZ COUNTY, ALLIANCE OF COASTAL MARIN VILLAGES, AND SMART COAST CALIFORNIA IN SUPPORT OF RESPONDENT CASA MIRA HOMEOWNERS ASSOCIATION

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INTRODUCTION

California's 1100-mile coastline is marked by beautiful beaches alongside a myriad of private and public structures – single-family homes and condominiums, hotels, motels, commercial and industrial structures, and public buildings, public access and recreation facilities, such as campgrounds, beach-related structures, trails, and boardwalks, and transportation infrastructure, including roads, streets, sidewalks, and parking lots. This case is enormously consequential to the fate of those existing structures approved by the Coastal Commission or local governments after January 1, 1977.

To manage development along the coast, the voters approved Proposition 20, which both enacted the California Coastal Zone Conservation Act of 1972 and gave the Legislature the deadline of December 31, 1976, to replace the placeholder law enacted by the voters. The Legislature wrestled with no fewer than 10 bills introduced which addressed coastal regulation. What finally emerged was Senate Bill 1277 (Smith), enacting the California Coastal Act of 1976 ("Coastal Act" or "Act"; Pub. Resources Code, § 30000 et seq.)[1], effective January 1, 1977, a "comprehensive scheme to govern land use planning for the entire Coastal Zone of California." (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 793.)

Not surprisingly, the process leading to adoption of the Coastal Act involved broad compromises and tradeoffs intended to balance an array of competing interests. Such is the very nature of the legislative process, and it was well on display here. While the Coastal Act aimed at protecting the State's coastal resources, the Legislature also sought to maximize public

[1] Unless otherwise stated, all statutory references are to the Public Resources Code.

access and to advance these twin goals of preservation and access in a manner consistent with the social and economic needs of the people of the State, as well as the constitutionally protected rights of private property owners. (§§ 30001.5, subds. (b), (c).) Simply put, the Legislature structured the Coastal Act to balance competing interests.

The balancing of these competing interests is directly reflected in Section 30235 of the Coastal Act, which provides, in relevant part:

> "Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes *shall be permitted when required to . . . protect existing structures . . . in danger from erosion*, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply."

(Italics added.)

In plain and mandatory terms, Section 30235 broadly applies to protect existing private and public structures in danger from coastal erosion, provided they are designed to eliminate or mitigate the adverse effects on local shoreline sand supply.

The question presented in this appeal is: What did the Legislature intend in Section 30235 by "existing structure"?

The trial court found Section 30235 to be unambiguous, and it concluded that the terms "existing structure" necessarily mean "presently existing" and rejected the Commission's effort to reinterpret the statute to apply only to structures that existed before the Coastal Act was enacted in 1976. The trial court was correct. We demonstrate below that the trial court's conclusion is well supported by the plain language of Section 30235 and beyond that, the legislative history of the provision, which the Commission ignores, its construction consistent with constitutional requirements, and the consistent usage by the Legislature of the term "existing" throughout the Coastal Act.

It is noteworthy that despite the multiple legislative efforts which culminated with Senate Bill 1277, there was no debate or controversy regarding Section 30235. For all that appears, the provision was not even discussed. When Senate Bill 1277 was first introduced, the word "existing" was not included in the Section. The word "existing" was added to distinguish that Section from policy applying to proposed "new development." Section 30253 of the Coastal Act provided that "new development" not "in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs." Clarifying Section 30235's different policy for protective structures needed for existing structures, on August 2, 1976, the many amendments made to Senate Bill 1277 also inserted the word "existing" before "structure." The amendments further eliminated any conflict between Sections 30235 and 30253 by deleting the mandated protection extended to "development" and for "cliffs." One policy would apply to "existing" structures, having already been permitted under the Coastal Act (or predating it); the other would apply to "new" development, setting the design standards required to qualify for a permit. At no time did the Legislature qualify the coastal policy in the Section regarding protective devices to limit its application only to existing structures "as of January 1, 1977."

This was crystal clear to the Coastal Commission from the start. For 38 years, the Commission well understood and even vigorously litigated that the Legislature meant the plain meaning of "existing structures" in Section 30235. (*See* 3 CT 1696-1730.) The correctness of this conclusion is further evidenced by the Act's consistent reference to every other unqualified use of the term "existing" in the Coastal Act to mean existing at the time an application for coastal development permit is made. When the Legislature intended to limit "existing" to a precise date, including the effective date of

the Coastal Act, it expressly did so. In 2015, however, the Commission adopted a guidance document to address its new concerns regarding sea level rise, and for the first time in that document it reversed course and adopted its staff's reinterpretation of "existing structure" to read existing structure "as of January 1, 1977" or "as of the effective date of the Coastal Act." This resulted in a major change in policy, instantly robbing numerous private and public structures of protection expressly given by the Legislature.

The Commission's continued effort to rewrite Section 30235 under the guise of "reinterpretation" is misguided and it is improper. To be sure, the Legislature intended Section 30235 to protect coastal resources. However, Section 30235 also protects the legitimate interests of both private landowners and public entities whose existing structures face danger from coastal erosion.

The Coastal Act coexists with the fundamental constitutional right of private property owners to protect their shoreline properties. The very first provision in the California Constitution, Article I, section 1, declares that "[a]ll people . . . have inalienable rights," which include "protecting property." The Legislature also assured cities, counties, and other public entities that coastal public buildings, public access and recreation facilities, and essential infrastructure, which surely would be valued in the millions, if not billions, of dollars would be afforded protection from coastal erosion. California taxpayers would not be saddled with the enormous costs, burdens, and disruptions of damaged or destroyed public structures, where the structures might be saved by using protective devices designed to mitigate impacts to beaches. Finally, Section 30235 addressed coastal resource protection by providing that revetments, seawalls, and other shoreline protection shall be permitted but only "when designed to eliminate or mitigate adverse impacts on local shoreline sand supply."

Nothing in the Coastal Act or its legislative history states or suggests that on the first day of the Coastal Act, the Legislature intended that structures permitted under the Act should be allowed to fall off bluffs, into the ocean, or wash out to sea should they later face catastrophic coastal erosion. No one – not the Commission, private property owners, or public entities – believed that to be the case. But that is the consequence of the Commission's effort in this case to rewrite Section 30235. Indeed, the plain words of the Coastal Act demonstrate that the Legislature meant to avoid exactly that catastrophe.

It is, and has been, wholly disruptive to private and public applicants and others implementing the Act for the Commission to make a sudden sea change like this in policy. Interested parties rely on the plain words being adhered to and the long-standing interpretations being maintained to make their investments and decisions. That is why policy changes must go through the public legislative process to be legitimate. Otherwise, it seems like the Commission operates in an unaccountable vacuum.

ARGUMENT

I. THE CLEAR AND PLAIN LANGUAGE OF THE WORDS "EXISTING STRUCTURES" IN SECTION 30235 NECESSARILY MEANS STRUCTURES EXISTING AT THE TIME THE COMMISSION ACTS ON A PERMIT APPLICATION

The "touchstone" of statutory interpretation is legislative intent. (*California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist*. (1997) 14 Cal.4th 627, 632.) In evaluating the meaning of a statute, "the aim . . . should be the ascertainment of legislative intent so that the purpose of the law may be effectuated." (*Select Base Materials, Inc. v. Board of Equalization* (1959) 51 Cal.2d 640, 645.) "In construing a statute, the court's first task is to look to the language of the statute itself. When the language

is clear and there is no uncertainty as to the legislative intent, the court looks no further and simply enforces the statute according to its terms." (*DuBois v. W.C.A.B.* (1993) 5 Cal.4th 382, 387; citations omitted.

Section 30235 is couched in mandatory terms – revetments and seawalls "shall be permitted." It is clear, unambiguous, and unqualified. It does not state "existing structures as of January 1, 1977" or "existing structure as of the effective date of the Coastal Act," although it could have if that were the Legislature's intent. Instead, the Section draws a sharp contrast between (a) standards considered for permit applications for "new development," structures merely proposed by an applicant (for which seawall protection is not mandated), and (b) those structures that are "existing" and require protection because they have come to be in danger from erosion. Section 30235 makes clear that its mandate of approving shoreline protection applies only to the latter.

The Commission's new construction of Section 30235 would rewrite the Section to add to "existing structure" the words "as of January 1, 1977" or "as of the effective date of the Act." Courts, however, are loathe to construe a statute which has the effect of "adding" language to a statute. (*Schneider v. California Coastal Com.* (2006) 140 Cal.App.4th 1339, 1345 [rejecting the Coastal Commission's addition of words in support its erroneous interpretation of Coastal Act section 30251 as providing an ocean boater's right to a view of the coastline]; *People v. Buena Vista Mines, Inc.* (1996) 48 Cal.App.4th 1030, 1034.) Courts may add language to a statute in extreme cases where they are convinced the Legislature inadvertently failed to utilize the words that would give purpose to its pronouncements. (*Id.* at p. 1034.) This is not such a case.

Nothing in the Coastal Act or its legislative history supports the conclusion that the Legislature intended the coastal policy in Section 30235

to apply only to pre-Coastal Act structures. Moreover, neither the statute nor its history supports the brutal notion that the Legislature intended that existing post-Coastal Act private and public structures, all of which would have been approved and permitted in accordance with the Coastal Act, be left to fall from bluffs or on to the beach or wash out to sea.

II. SECTION 30235 ALSO MUST BE UNDERSTOOD IN TERMS OF ITS LEGISLATIVE HISTORY AND THE CONSTITUTIONAL LIMITS UNDERLYING THE LEGISLATURE'S ENACTMENT OF THE SECTION

The Commission must implement the Coastal Act as enacted by the Legislature, which made policy choices reflected in the provisions of the Act. In support of its rewrite-by-reinterpretation of Section 30235, the Commission makes the baseless assertion that the shoreline protection policy set forth in that Section is no more than an "override" provision and, despite its obvious plain and mandatory language, somehow is "anti-armoring." (Com. AOB 14, 27.) The Commission's characterization has no support in the text of the Section, the context provided by numerous other provisions of the Coastal Act that employ the term "existing," or in the legislative history which led to the final adopted version of the provision.

Section 30235 recognizes the fundamental right of private property owners to protect property under the State Constitution, which provides in its very first provision, Article I, Section 1: "All people . . . have inalienable rights," and "among these are acquiring, possessing, and *protecting property*." (Italics added.) The California Supreme Court has explained:

> "The right of 'acquiring, possessing, and protecting property' is anchored in the first section of the first article of our Constitution. This right is as old as Magna Charta. It lies at the foundation of our constitutional government, and 'is necessary to the existence of civil liberty and free institutions.'"

(*Miller v. McKenna* (1944) 23 Cal.2d 774, 783, quoting *Billings v. Hall* (1857) 7 Cal. 1, 6.) "Courts presume that the Legislature understands the constitutional limits on its power and intends that legislation respect those limits. (*Kraus v. Trinity Management Services, Inc.* (2000) 23 Cal.4th 116, 129, superseded by statute on other grounds; *City of Cerritos v. State of California* (2015) 239 Cal.App.4th 1020, 1025.) Section 30235 also recognizes the important right and obligation of local government to protect the vast array of public structures and infrastructure that exist to facilitate the public's enjoyment of the coast. This includes, for example, roads, highways, streets, harbor and marina-related structures, public structures and utilities, parking lots, beach-adjacent structures, campgrounds and parks, trails, and sidewalks. Statewide, this amounts to countless dollars in public investment which the Commission's "reinterpretation" of the Section and its efforts to retroactively apply it dramatically impact.

At the same time, Section 30235 also reasonably regulates to protect the coastal resource which may be affected by requiring the design of shoreline protective devices to eliminate or mitigate adverse impacts on local shoreline sand supply.[2]

Simply put, as written by the Legislature, the coastal policy balances the need to protect private and public property with the equal need to protect shoreline sand supply. As "reinterpreted" by the Commission, the policy

[2] While the Commission asserts that revetments and seawalls necessarily create erosion and adversely impact sand supply (AOB 13-14), it would be more accurate to state that "[r]evetments and seawalls may have different effects at different beaches." (*Surfside Colony, Ltd v. California Coastal Com*. (1991) 226 Cal.App.3d 1260, 1268.) In *Surfside Colony*, rejecting the same generalized assertion made here, the Court invalidated a Commission-imposed lateral access condition as lacking the requisite *Nollan* "nexus" because site-specific expert evidence demonstrated that the revetment protecting a 250-home community tended to mitigate or reverse erosion. (*Id*. at 1268-1272.)

creates a lopsided result leading to needless and unintended waste and destruction.

The plain meaning of the words that the Legislature chose make clear the Commission's "reinterpretation" departs from the mandate in the Section. As discussed above, the inquiry could stop there. Nevertheless, the legislative history bolsters this conclusion.

The analysis of what the Legislature intended in Section 30235 and by "existing structures" begins with the legislative history of the Section, which the Commission's briefs ignores. On February 10, 1976, with the 1972 Coastal Initiative, Proposition 20, set to expire at the end of the year, Senate Bill 1579 (Beilenson) was introduced as a comprehensive bill to create the "California Coastal Conservation Act of 1976." (Amici Request for Judicial Notice ("ARJN", Exh. 1.) SB 1579 included a shoreline protection policy that was amended several times in the Senate. Its initial version was framed in limiting language and provided the new proposed Commission would have discretion to determine whether to authorize shoreline protective devices to protect principal structures of existing developments:

> "Revetments, breakwaters, groins, harbor channels, seawalls, cliff-retaining walls, and other such construction that alters natural shoreline processes shall be permitted only when designed to eliminate or mitigate adverse impacts on shoreline sand systems and when required (1) to maintain public recreation areas or to serve necessary public service, commercial fishing, energy, or transportation facilities (including ports) where there is no less environmentally harmful alternative, or (2) to protect principal structures of existing developments that are in danger from present erosion where the commission determines that the public interest would be better served by protecting the existing interest would be better served by protecting the existing structures than in protecting natural shoreline processes."

(Amici Request for Judicial Notice (*Id.*, pp. 22-23.)

SB 1579 was amended several times but ultimately failed. (*Id.*, Exh. 3.) On June 1, 1976, the final version of the shoreline protection policy

affirmatively mandated approval of shoreline protection for not only structures, but also for "developments" and "cliffs" in danger from erosion:

> "Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal dependent uses or to protect structures, *developments,* beaches, *or cliffs* in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where possible."[3]

(*Id*., Exhs. 2, pp. 16-17; italics added.)

SB 1579 was defeated in the Senate Finance Committee by a vote of 6 to 5, one short of the seven votes needed to clear the Committee. (*Id*., Exhs. 3, p. 2, and 14, p. 1.) Given the impending termination date of Proposition 20, within a week, the coastal legislation was revived by amending a bill, Senate Bill 1277 (Smith), that had already passed the Senate. As introduced on June 19, 1976, SB 1277 carried over the last version of SB 1579, including its shoreline protection policy. (*Id.*, Exh. 4, p. 21.) At the outset, in Section 30001, the Legislature found and declared:

> "(c) That to promote the public safety, health, and welfare, and *to protect public and private property*, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction."

(*Id., pp. 4-5*; italics added.)

SB 1277 was amended on August 2, 1976, and shoreline protection policy was renumbered as Section 30235 and rewritten, without discussion, to its current language, with the three important changes – the word "existing"

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[3] Under the Coastal Act, "structures" and "developments" are not synonymous. Section 30106 defines "development" broadly to include, among other types of development, includes "the placement or erection of any . . . structure." The Section provides: "As used in this section, 'structure' includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line."

was added before "structures" and the reference to mandated protection of "developments" and "cliffs" was deleted:

> "Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures, ~~developments,~~ or public beaches~~, or cliffs~~ in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where possible."

(*Id.*, Exh. 6, p. 18.)

These three changes were necessary to distinguish Section 30235 from another provision, Section 30253, which at the time and now provides, in relevant part, that "*New development* shall . . . [not] in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and *cliffs*." (*Id.*, p. 21; italics added.) First, the edits clarified that Section 30235 would apply to "existing structures," while Section 30253 would apply to "new development." Second, the word "development" was deleted to eliminate confusion with the regulation of "new development" in Section 30253. Finally, the deletion of "cliffs" from this version of the Section was necessary to further eliminate conflict between the two provisions. Without it, Section 30235 would have mandated protection of "cliffs," while Section 30253 would prohibit it. This version of the Section also did not qualify the terms "existing structures" to state "existing as of January 1, 1977" or "existing as of the effective date of the Act," although the Bill's author also could have made a further such edit if agitated for by an interest group or if that was what the author or committee members intended.

This version of SB 1277 also added findings and declarations for basic goals of the State for the coastal zone. Mindful of the constitutionally

protected rights of private property owners, the Legislature included the goal of maximizing public access to and along the coast and public recreational opportunities "consistent with sound resources conservation principles and *constitutionally protected rights of private property owners*." (§ 30001.5, subd. (c); *see* ARJN, Exh. 6, p. 5; italics added.) A further goal was included to "assure orderly, balanced utilization and conservation of coastal zone resources *taking into account the social and economic needs of the people of the state*." (§ 30001.5, subd. (b); *see* ARJN, Exh. 6, p. 5; italics added.)

After approval of SB 1277 on August 23, 1976 (ARJN, Exh. 9, p.2), the Legislature additionally approved a trailer bill, AB 2948 (Hart), also effective January 1, 1977, which further amended the Coastal Act to expressly reinforce the constitutionally protected rights of private property owners. It added Section 30010, which states:

> "The Legislature hereby finds and declares that this division [the Act] is not intended, and shall not be construed as authorizing the regional commissions, the commission, port governing body, or local government to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor. . . ."

(Id., Exh. 11, pp. 5-6; Exh. 12, p. 2.)

The constitutional right to protect private property, recognized in Section 30235, also must be read in light of Section 30010. Section 30010 enjoins the Commission and local government from granting or denying a coastal development permit, including one requesting shoreline protection, in a manner that violates the "Takings" Clause in the Fifth Amendment to the United States Constitution or the broader provision in Article 1, section 19 of the California Constitution, which prohibits both the "taking or damaging" of private property for a public purpose, without payment of just compensation. The Commission's rewrite-by-reinterpretation of Section 30235 arises from its own 2015 Sea Level Rise guidance (AOB 34), which accordingly states that

post-1977 structures are not entitled to shoreline protection and must be left to damage or destruction for an expressly avowed public purpose – protecting shoreline sand supply. (6 CT 1683; AR 28, fn. 1.) That interpretation cannot stand. Its application by the Commission or local government as such would constitute an inverse condemnation. (*Pacific Shores Property Owners Assn. v. Department of Fish and Wildlife* (2016) 244 Cal.App.4th 12, 19, 49 [Department of Fish and Wildlife held strictly liable in inverse condemnation to flooding plaintiff's lands intentionally where necessary to protect environmental resources].)

The Commission's reinterpretation would further serve to destroy one of the fundamental sticks in the bundle of rights that inhere in property ownership – the right to protect property. The United States Supreme Court instructs that the antecedent inquiry in determining whether the State seeks to sustain a regulation, or interpretation as here, that would deprive land of all economically beneficial use is whether the proscribed use interests were part of the landowner's title to begin. (*Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1027.) For that purpose, the Court directs that one must look to background principles of the State's law of property and nuisance. (*Id*. at 1029.) In California, a landowner's "inalienable right" to "protecting property" is expressly enshrined Article I, Section 1, of the State Constitution. While that right may be subject to reasonable regulation, and Section 30235 deftly does so by requiring that adverse impacts to local sand supply be addressed, the mandatory right to protect existing structures set forth in Section 30235 may not be abrogated altogether, which would be the consequence of the Commission's elimination of protection for existing post-1977 private structures. That would violate the Fifth Amendment "Taking" Clause. It is well established that a statute must be construed, if reasonably

possible, in a manner that avoids a serious constitutional question. (*People v. Engram* (2010) 50 Cal.4th 1131, 1161.) That must the case here.

Beyond its plain language, consistent with its legislative history, constitutional requirements, and Section 30010, Section 30235 must be read as its language states to permit shoreline protective devices to protect existing private and public structures in danger from coastal erosion, without regard to whether the structures were existing as of January 1, 1977, or not, provided they are designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

III. THE CONTEXT AND UNIFORM TREATMENT OF THE TERM "EXISTING" IN THE COASTAL ACT COMPELS THE CONCLUSION THAT "EXISTING" MEANS EXISTING AT THE TIME THE COMMISSION ACTS ON A PERMIT APPLICATION

A. The Commission's "Reinterpretation" of Section 30235 is Inconsistent with Use of the Word "Existing" in All Other Coastal Act Policies and Other Provisions of the Act.

The legislative intent underlying Section 30235 also can be discerned from review of the Coastal Act as a whole. A statute must be read "with reference to the entire scheme of which it is a part so that the whole may be harmonized and retain effectiveness." (*People v. Pieters* (1991) 62 Cal.3d 894, 899.) *See also Calatayud v. State of California* (1998) 18 Cal.4th 1057, 1064.) "[I]t is a well-established rule of construction that when a word or phrase has been given a particular scope or meaning in one part or portion of a law it shall be given the same scope and meaning in other parts or portions of the law." (*Stillwell v. State Bar of California* (1946) 29 Cal.2d 119, 123.)

The word "existing" is not defined in the Coastal Act. There are, however, numerous other policy provisions in Chapter 3 of the Coastal Act (commencing with Section 30200 *et seq.*), enacted at the same time, that

uniformly use the word "existing," which can only be interpreted as meaning existing at the time the application for coastal development permit is made. It is abundantly clear that the Legislature did not intend to freeze those coastal policies as of an artificial date 47 years ago. These include:

- Section 30224: "Increased recreational boating use of coastal waters shall be encouraged . . . by [among other things] providing additional berthing space in "*existing* harbors."
- Section 30233, subd. (a)(2): "Permitting diking, filling, or dredging of wetlands where "[m]aintaining *existing*, or restoring previously dredged, depths in "*existing* navigational channels . . .."
- Section 30233, subd. (a)(5): "Permitting diking, filling, or dredging of wetlands for "[i]ncidental public services purposes, including, but not limited to, burying cables and pipes or inspection of piers and maintenance of *existing* intake lines and outfall lines."
- Section 30233, subd. (c): ". . . [D]iking, filling, or dredging in *existing* estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary."
- Section 30234: "*Existing* commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists, or adequate substitute spaces has been provided."
- Section 30236: "Channelizations, dams, or other substantial alteration of rivers and streams shall incorporate the best mitigation measures as feasible, and be limited to . . . [among other things] flood control projects where no other method for protecting "*existing* structures" in the flood plain is feasible and where protection is necessary for public safety or to protect "*existing* development . . . ."
- Section 30241/30241.5: "The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas' agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through . . . [among other things] limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of *existing* agricultural land use is already severely limited by conflicts with urban uses . . . ."
- Section 30250, subd. (a): "New . . . development . . . shall be located within, contiguous with, or in close proximity to, *existing* developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources."

- Section 30250, subd. (b): "Where feasible, new hazardous industrial development shall be located away from "*existing* developed areas."

- Section 30250, subd. (c): "Visitor-serving development that cannot feasibly be located in "*existing* developed areas shall be located in *existing* isolated developments or at selected points of attraction for visitors."

- Section 30254: "Where *existing* or planned public works facilities can accommodate only a limited amount of new development [certain types of uses] shall not be precluded by other development."

- Section 30261: "Multicompany use of *existing* and new tanker facilities shall be encouraged to the maximum extent feasible and legally permissible . . . and [n]ew tanker terminals outside of existing terminal areas shall be situated as to avoid risk to environmentally sensitive areas and shall use a monobuoy system, unless an alternative type of system can be shown to be environmentally preferable for a specific site."

These Chapter 3 policies all logically refer to conditions that exist on the date the Commission considers and acts on a permit application. Indeed, Coastal Act section 30236, discussed further below, is especially noteworthy because, like Section 30235, it uses exactly the same terms, "existing structures," as used in Section 30235, as well as "existing development." Substitution of the words "existing as of January 1, 1977" in any of the foregoing policies would make no sense in evaluating permit applications under conditions as they existed over 47 years ago, ignoring the considerable changes that have taken place along California's dynamic coastline since the Coastal Act took effect.

Still other provisions in the Coastal Act use the term "existing" to refer to existing conditions, such as "existing water depths" (§ 30705, subd. (b)), "existing water quality" (§ 30711, subd. (a)(3)), "existing zoning requirements (§ 30610, subd. (g)(1)), and "existing administrative methods for resolving a violation [of the Coastal Act] (§ 30812, subd. (g)).

"It is generally presumed that when a word is used in a particular sense in one part of a statute, it is intended to have the same meaning if it appears in another part of the same statute." (*People v. Dillon* (1983) 34

Cal.3d 441, 467.) Obviously, the Legislature intended in these provisions to treat "existing" as existing at the time a permit application is being considered. The Legislature could not have intended to freeze, for example, "depths in navigational channels," "intake and outfall lines," "estuaries and wetlands," "water quality," "zoning requirements," or "administrative methods" as of the effective date of the Coastal Act, January 1, 1977. Not only would that have been illogical, but it would have been diametrically opposed to the objectives and goals of the Coastal Act which intend, through a dynamic and balanced approach, to protect coastal resources (*e.g.*, estuaries and wetlands) that have emerged since January 1, 1977. (§§ 30001, 30001.5.)

B. The Commission's "Reinterpretation" is Even Inconsistent with Section 30235's Use of the Same Word, "Existing," for a Different Coastal Policy in the Section.

A further graphic example of why the Commission's interpretation has no merit is Section 30235 itself which, in the second sentence of the Section, uses the same term, "existing." As noted, Section 30235 in its entirety provides:

> "Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline process shall be permitted when required to serve coastal-dependent uses or to protect *existing structures* or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. *Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible*."

(Italics added.)

Generally, words or phrases given a particular meaning in one part of a statute must be given the same meaning in other parts of the statute. (*People v. Valencia* (2017) 3 Cal.5th 347, 381; *Reilly v. Marin Housing Authority* (2018) 23 Cal.App.5th 425, 435.) This rule of statutory construction is particularly apt here. The second sentence of Section 30235,

which pertains to "existing marine structures," was already in Senate Bill 1277 when the word "existing" was added to the portion of the policy addressing shoreline structures. The concern sought to be remedied – when such structures cause water stagnation that contribute to pollution problems and fishkills – pertains equally to post-Coastal Act and more contemporary approved and constructed "marine structures." It would be unreasonable to assume that the Legislature intended the term "existing" in the case of revetments and seawalls to have a different meaning from the identical word use elsewhere in the Section, or to apply the policy only to "existing marine structures" as of January 1, 1977, but not to "existing marine structures" approved and constructed between January 1, 1977 and 2024 or in the future. The Legislature could have defined "existing" by date if it wished to do so. Again, it did not.

In its Reply Brief, the Commission baldly asserts that it was the Legislature's intent when it drafted "all" of Section 30235 to focus only on pre-Coastal Act structures. (RB 30-32.) The argument offered makes no sense. The Chapter 3 policies of the Coastal Act, of which Section 30235 is a part, constitute the standards by which the adequacy of LCPs and post-January 1, 1977 applications for coastal development permits are to be determined. (§ 30200, subd. (a).) The only time the policy could apply is after the enactment of the Coastal Act, when an application for permit is sought involving "existing marine structures" or related development or an LCP that addresses such structures. This Section 30235 policy would come into play when "existing marine structures," pre- or post-Coastal Act, are at issue in connection with an application involving other marine structures or related development, which is not uncommon as developments are proposed or recycled, in whole or in part, over time in, for example, ports, harbors or marinas. The policy dictates that if such structures are causing water

stagnation contributing to pollution problems or fishkills, then they should be phased out or upgraded, where feasible. This ordinarily would be accomplished by a condition of approving the rest of the development. One part would be approved; one part, if not eliminated, would at the very least be phased out or upgraded. More incredible is the Commission's statement that there is no basis to believe that any post-1976 marine structures cause pollution or fishkills. (RB 31.) However existing marine structures may have been approved post-January 1, 1977 or yet approved in the future, it is always possible that over time circumstances change, including external or environmental circumstances, causing the pollution or fishkills the policy seeks to address. It is not reasonable to assume that the Legislature froze this policy so that it would only apply to pre-1977 existing marine structures. The Commission's arguments have no merit.

C. Coastal Act Section 30236 Further Demonstrates the Legislature Did Not Intend "Existing Structures" to Mean Only Private or Public Structures Existing as of January 1, 1977

As previously noted, Coastal Act section 30236, the very next policy in the Act, uses the identical terminology, "existing structures." Section 30236 provides:

> "Channelization's, dams, or other substantial alteration of rivers and streams shall incorporate the best mitigation measures as feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting *existing structures* in the flood plain is feasible and where protection is necessary for public safety or to protect "*existing* development, or (3) developments where the primary function is the improvement of fish and wildlife habitat."

(Italics added.)

No reasonable interpretation of this provision would suggest that "existing structures" or "existing" development refers only to structures or development existing as of January 1, 1977. Section 30236 applies to

structures or development existing before or after the effective date of the Coastal Act. This provision was originally introduced with its original language above by Senate Bill 1277 as Section 30205 and immediately followed Section 30204 before the word "existing" was inserted in that Section before the word "structures." (ARJN, Ex. 4, p. 21.) On August 2, 1975, when Senate Bill 1277 was amended to renumber this provision as Section 30236, Section 30204 was renumbered as Section 30235 and the word "existing" was then inserted so that the words "existing structures" in both provisions were congruent. (*Id.*, Ex. 6, p. 18.) The Commission's Reply Brief gives short shrift to this provision with good reason. (RB 33.) Section 30236 demonstrates that the Legislature intended the words "existing structures" to have the same meaning in both sections, applying to structures that, simply stated, are existing, without regard to whether they pre-date or post-date the enactment of the Coastal Act.

D. In Other Coastal Act Provisions, the Legislature Specifically Qualified "Existing" When the Legislature Intended to do so.

Still further, in contrast to Section 30235, the Legislature twice used specific dates when it intended "existing" to mean something other than currently existing. Section 30610.6 limits the section's application to any "legal lot existing . . . on the effective date of this section." Similarly, Section 30614 refers to "permit conditions existing as of January 1, 2002."

Thus, in enacting the Coastal Act, when the Legislature intended to limit the term "existing" to be at a certain point in time, it did so specifically. This includes when the Legislature intended to limit the term to the effective date of the Coastal Act. Section 30608 provides that no person who has obtained a vested right for development "prior to the effective date of" the Coastal Act is required to obtain approval of the development under the Act.

E. The Legislature Has Twice Rejected the Opportunity to Redefine "Existing" as "Existing as of January 1, 1977"

The Commission seeks to re-write Section 30235 to conform to its argument. It would change the Section to read "structures existing as of January 1, 1977" or "structures existing as of the effective date of the Coastal Act." However, its remedy to accomplish that result would lie, if at all, in a legislative change.

While, as previously stated, the Legislature could have written Section 30235 to qualify "existing" as the Commission would like it to read, it did not do so. It has done just the opposite. In its Opening Brief, the Commission failed to note that the Legislature twice has been presented with the opportunity to rewrite the Section to define "existing" in that manner – Assembly Bills in 2002 and 2017, but instead it rebuffed both bills. AB 2943 (2002 Wiggins) would have defined "existing structure" to mean a "structure that has obtained a vested right as of January 1, 1977." (5 CT 1242-1243.) AB 1129 (2017 Stone) similarly would have redefined "existing structure" as a "structure that is legally authorized and in existence as of January 1, 1977." (6 CT 1733-1737.)

In its Reply Brief, the Commission addresses only the 2002 Assembly Bill and argues the Legislature's failure to amend the Act in 2002 should be treated of minimal significance. (RB 34.) The Commission ignores that the Legislature failed to do so again in 2017. Where the Legislature acquiesces in a long-standing administrative construction or practice by failing to take any action towards its repeal or amendment, that is a strong factor indicating that the construction or practice is consistent with the Legislature's intent. (*El Dorado Oil Works v. Dillon* (1950) 34 Cal.2d 731, 739.)

The Commission asserts its "long-standing administrative practice" dates back to 1999, but the record in this case demonstrates otherwise.

During the 38 years between 1977 and 2015, the Commission made thousands of permit decisions. The Commission cites but five decisions, and none addressed or analyze the issue but assumed that structures were "existing" because they predated either the 1972 or 1976 Coastal Acts. Three decisions (1999, 2002, 2003) predated the 2005 lawsuit, *Surfrider Foundation v. California Coastal Com.* The *Surfrider Foundation* case involved a 2003 Commission decision that approved a seawall to protect two existing adjacent oceanfront bluff top structures – a pre-1976 home (the home of amicus Grossman) and an adjacent post-January 1, 1977 home – from a catastrophic bluff failure. Surfrider argued that "existing structure" means "existing as of January 1, 1977." The Commission argued and the property owners argued that "existing structures" means existing at the time an application for permit is made. The trial court rejected the very interpretation that the Commission now offers here. The Commission seeks to diminish the value of the 2005 case, but it bears emphasis that it arose 28 years after the effective date of the Coastal Act. Unlike here, the Commission and its counsel, the California Attorney General, argued in the trial court and again on appeal (*Surfrider Foundation v. California Coastal Com.*, No. A110033 (2006 WL 1530224) that "[t]he Commission's interpretation of section 30235 has been consistent" (6 CT 1721), and that the Court "should accord the Commission's interpretation of "existing structures" great weight because the Commission has consistently interpreted section 30235 to refer to structures at the time of the application." (6 CT 1722.) Moreover, the Commission argued that as proof, "the Commission's chief counsel confirmed at the public hearing that the Commission has 'interpreted existing structure to mean whatever structures was there legally at the time that it was making its decision.'" (*Id.*) And, the Commission added: "The Commission is not aware of a single instance in the history of the Coastal Act in which it has determined that

"existing structures" in section 30235 refers only to structures that predated the Coastal Act." (6 CT 1723.)

The Legislature's failure subsequently to repeal or amend that long-standing administrative construction of Section 30235 when it could have done so by either Assembly Bill is yet further confirmation that the Legislature did not intend the phrase "existing structures" in Section 30235 to mean structures existing as of 1976.

In essence, the Commission seeks to work around the Legislature in policy making. To address its reasonable concern regarding the loss of sandy beaches, the Commission wants to render previously approved structures flotsam and jetsam because it decided that was a better policy approach than the one memorialized in Section 30235, as adopted by the Legislature. However, the voters adopted Proposition 20 and elected representatives to set policy. If the Commission believes a policy change is warranted, the Commission must convince the Legislature, not this Court.

F. The Commission's Reinterpretation of Section 30235 Since 2015 Is Also Entitled to No Weight Because it is an Erroneous and Vacillating Interpretation that Contradicts its Original Interpretation for the First 38 Years of the Coastal Act.

The Commission cannot escape the fact that for the first 38 years after the effective date of the Coastal Act, it interpreted Section 30235 and, as noted, even litigated the position that "existing structures" necessarily means structures "existing at the time the Commission acts on an application for coastal development permit," making the very arguments urged by Casa Mira and by amici here.

The Commission manufactures a "contemporaneous administrative construction" argument, asserting that its reinterpretation of "existing

structures" has been "longstanding" because since 2015, the Commission has relied on it following issuance of its initial Sea Level Rise guidance document. It contends that reinterpretation is entitled to "great weight" under the doctrine of contemporaneous administrative construction. That is wrong. An administrative construction is not entitled to deference if it is clearly erroneous (*Mendoza v. Fonseca McElroy Grinding Co., Inc.* (2021) 11 Cal.5th 1118, 1141), which is the case here, or when the agency's construction of the statute flatly contradicts its original interpretation (*Murphy v. Kenneth Cole Productions* (2007) 40 Cal.4th 1094, 1105 fn. 7, quoting *Henning v. Industrial Welfare Com.* (1988) 46 Cal.3d 1262, 1278), which also is the case here. Still further, an agency's vacillating practice in adopting a new interpretation that contradicts a prior interpretation is entitled to little or no weight in considering a statute, especially one, as here, that is clear on its face. (*Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 13; *California Chamber of Commerce v. Brown* (2011) 196 Cal.App.4th 233, 254.)

It bears emphasis that the Commission's revisionist interpretation in 2015 arose from its new concerns regarding sea level rise. However, sea level rise was not an issue raised during the legislative process that led to enactment of the Coastal Act in 1976. It was not addressed in the 443-page California Coastal Plan adopted by the Commission's predecessor, the California Coastal Zone Conservation Commission, and submitted to the Legislature in 1975. (§ 30002.) It was not addressed by the Legislature in enacting the Coastal Act. It was not until 2021 that the Legislature for the first time added two provisions mandating a more explicit consideration of sea level rise. (§§ 30001.5, 30270.)

Thus, the question is <u>not</u> what the Commission now would like Section 30235 to state. It is what the <u>Legislature</u> intended in enacting Section 30235

and mandating approval of shoreline protection for structures, both private and public, in danger from coastal erosion. The plain language of the Section, its legislative history, its construction consistent with constitutional requirements, and the consistent usage of the word "existing" throughout the Coastal Act demonstrate that by "existing structures," the Legislature necessarily intended structures existing at the time the Commission acts on an application for coastal development permit application.

G. Coastal Act Sections 30235 and 30253 Are Not in Conflict and Are Readily Harmonized.

The Commission's argument for reading "January 1, 1977" into Section 30235 ignores all the foregoing, and instead asserts that Section 30235 conflicts with Section 30253, which again, in relevant part, states:

> "New development shall do all of the following: . . . [not] in any way require the construction of protective devices that would *substantially alter natural landforms along bluffs and cliffs*."

(Italics added.) From this, the Commission urges a categorical prohibition on seawalls, revetments, or other shoreline protective devices post-January 1, 1977 for existing structures in danger from erosion from wave action.

The Commission ignores the absence of symmetry that is readily evident between the two provisions. Simply put, by their terms, Section 30235 deals with "existing structures," while Section 30253 addresses proposed "new development." That, in itself, is the dispositive distinction between the two provisions. But that is not all. Section 30235 broadly applies to "existing structures" in danger from coastal erosion, while Section 30253 prohibits protective devices that substantially alter natural landforms along "bluffs and cliffs" but not the broad array of private and public structures that simply are located at ground level behind beaches and do not involve bluffs or cliffs, or new development on bluffs and cliffs that do not substantially alter natural landforms. Indeed, the Commission overplays

Section 30253 by mischaracterizing it in the Opening and Reply Briefs as "generally" prohibiting "new development that would require shoreline armoring that substantially alters natural landforms," intentionally omitting its application only to "natural landforms along bluffs and cliffs."[4] (AOB 21.) Section 30235 also is specific, mandating that seawalls, revetments, and shoreline protection be permitted when endangered by coastal erosion and further designed to eliminate or mitigate adverse impacts on local shoreline supply, while Section 30253 is not specific at all (except its reference to bluffs and cliffs) and does not address mitigation.

Basic rules of statutory construction dictate that courts do not read out one adopted provision at the expense of another. Courts harmonize the various parts of a statutory enactment by considering the particular clause or section in the context of the statutory framework as a whole. (*People v. Lewis*

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[4] To be clear, in the trial court and on appeal, the Commission has repeatedly cited Section 30253 indiscriminately to foreclose all shoreline protection whether it involves beachfront development or natural landforms along bluffs and cliffs. (*See also* 6 CT 1672 ["section 30253 shows that the Legislature in 1976 intended to prohibit the construction of new structures that would be vulnerable"]; 6 CT 1682 ["Section 30253 prohibits the construction of structures that will need shoreline protection"]; Com. AOB 21 [citing 30253, "the Coastal Act has, since its enactment in 1976, generally prohibited new development that would require shoreline armoring that substantially alters natural landforms . . . ."]; Com. AOB 27 ["Section 30253[] subdivision (b) evidences that the Legislature did not anticipate a need for hard armoring to protect post-1976 structures"]; Com. AOB 31 ["section 30253, subdivision (b), requires that new structures not be protected by shoreline armoring"]; Com. RB 25 [The most fair reading of section 30253 is that the Legislature desired to avoid the construction of any "new development" – development not already in place when the Coastal Act took effect – that would require a seawall for stability at any time"]; Com. RB 29 ["Section 30253 prohibits the siting of structures in locations that require seawalls"]; Com. RB 31 [regarding existing marine structures, "the Legislature believed, however, that section 30253 would ensure that no structures would be permitted if the structures would require seawalls"].

(2021) 11 Cal.5th 952, 961.) The plain language of both sections demonstrates that there is no conflict, and they are easily harmonized. As the legislative history of Section 30235 demonstrates, the Legislature itself undertook the exercise of ensuring that the two provisions are harmonized and given full effect. Section 30235 specifically instructs the Commission to permit seawalls, revetments, and other shoreline protection when need to protect "existing" structures in danger from coastal erosion, provided the protective device is designed to eliminate or mitigate impact to sandy beach. Section 30253 is directed at proposed "new" development and instructs the Commission to take all reasonable measures to ensure that such development will not require a shoreline protective device. (*See e.g.*, *Martin v. California Coastal Com*. (2021) 66 Cal.App.5th 622; *Lindstrom v. California Coastal Com*. (2019) 40 Cal.App.5th 73.) The legislative record demonstrates that Section 30235 was modified to add the word "existing" and delete the references to mandated protection of "developments" and "cliffs." Without those edits, the two sections would have conflicted, one requiring protection of developments and cliffs and one prohibiting their protection. The Commission itself, then represented by its counsel here, the Attorney General, perhaps said it best in its brief in the Court of Appeal in *Surfrider Foundation v. California Coastal Commission*:

> "Section 30253 requires that new development be constructed in a way that does not require the later construction of protective devices. It does not govern already existing development. Read together, sections 30235 and 30253 nicely complement each other. Section 30253 assures that new development is constructed and sited in a way that avoids the future need for a seawall. Section 30235 recognizes that, despite the best efforts to avoid the later need for seawalls, it may sometimes be necessary to protect lives and property endangered from erosion. Therefore, the Commission may approve seawalls for post-Coastal Act structures where the effort to avoid a seawall has failed and the new structure is in danger from erosion."

(6 CT 1717-1718.)

For that reason, as noted by the trial court in this case (7 CT 1871), in approving new development, the Commission has long imposed a special permit condition requiring the "waiver of future shoreline protection." (*See e.g.*, *Lindstrom v. California Coastal Com.,* supra*,* 40 Cal.App.5th at 102-103.) In so doing, the Commission recognized that once a structure is built, it would be entitled to protection based on the plain language of Section 30235. Otherwise, there would be no purpose in requiring an applicant to waive the "right" to subsequently apply for shoreline protection.

H. The Legislature's Addition of the "Disaster" Exemption to the Coastal Act in 1979 Further Undermines the Commission's Reinterpretation of Section 30235.

Finally, the Commission's reinterpretation would suggest that in 1976, the Legislature was somehow heartless, condemning private and public structures approved after the effective date of the Coastal Act to exposure to damage or destruction for which no protection is permitted. However, even further confirmation that the Legislature did not intend that draconian result lies in Coastal Act Section 30610, subdivision (g), the "disaster" exemption, which the Legislature added to the Coastal Act in 1979, only two years after the Act took effect. Section 30610 exempts certain types of developments from the requirement of obtaining a coastal development permit. Subdivision (g)(1) exempts:

> "The replacement of any structure, other than a public works facility, destroyed by a disaster. The replacement shall conform to applicable existing zoning requirements, shall be for the same use as the destroyed structure, shall not exceed either the floor area, height, or bulk of the destroyed structure, shall not exceed either the floor area, height, or bulk of the destroyed structure by more than 10 percent, and shall be sited in the same location on the affected property as the destroyed structure.

Subsection (g)(2)(A) defines "disaster" as "any situation in which the force or forces which destroyed the structure to be replaced were beyond the control of

its owner." Thus, if the coastal house burns down because of a catastrophic fire, it can be replaced without a coastal development permit, provided it complies with the Section. As here, if an oceanfront home is destroyed by coastal erosion or catastrophic wave damage, it can be replaced and even up to 10 percent larger, consistent with the Section, if sited "in the same location" and is consistent with existing zoning requirements.

Nothing in this Section suggests that the Legislature, which enacted the Coastal Act only two years earlier, had in mind the interpretation of Section 30235 that the Commission posits in this case.

CONCLUSION

Accordingly, for all the foregoing reasons, Amici City of Del Mar, City of Dana Point, Capistrano Bay District, Gary Grossman, Pajaro Dunes Association, Pajaro Dunes North Association, Coastal Property Owners Association of Santa Cruz, Alliance of Coastal Marin Villages, and Smart Coast California respectfully submit that the words "existing structures" in Section 30235 of the Coastal Act are necessarily and properly interpreted as private and public structures existing at the time the Commission acts on an application for coastal development permit. The judgment of the trial court should be affirmed.

Dated: September 5, 2024 Respectfully submitted,

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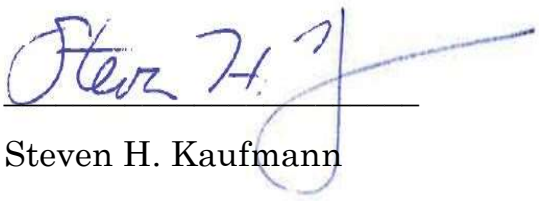
CERTIFICATE OF CONFORMITY

In accordance with Rule 8.204(c) of the California Rules of Court, I certify that the Amici Curiae Brief of City Of Del Mar, City of Dana Point, Capistrano Bay District, Gary Grossman, Pajaro Dunes Association, Pajaro Dunes North Association, Coastal Property Owners Association of Santa Cruz County, Alliance of Coastal Marin Villages, And Smart Coast California In Support of Respondent Casa Mira Homeowners Association does not exceed 14,000 words. According to the word count function on the word processing program used to generate this brief, the brief, excluding the title page and tables of contents and authorities, contains 9700 words.

Executed on September 5, 2024.



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DECLARATION OF SERVICE

I certify that on September 5, 2024, I electronically filed the following document(s) **AMICI CURIAE BRIEF OF CITY OF DEL MAR, CITY OF DANA POINT, CAPISTRANO BAY DISTRICT, GARY GROSSMAN, PAJARO DUNES ASSOCIATION, PAJARO DUNES NORTH ASSOCIATION, COASTAL PROPERTY OWNERS ASSOCIATION OF SANTA CRUZ COUNTY, SMART COAST CALIFORNIA, AND ALLIANCE FOR COASTAL MARIN VILLAGES IN SUPPORT OF RESPONDENT CASA MIRA HOMEOWNERS ASSOCIATION** with the Clerk of the California Court of Appeal, First Appellate District, Division Three, by using the Court's electronic filing service, TrueFiling. The participants listed below are registered with TrueFiling, and electronic service will be accomplished by TrueFiling as follows:

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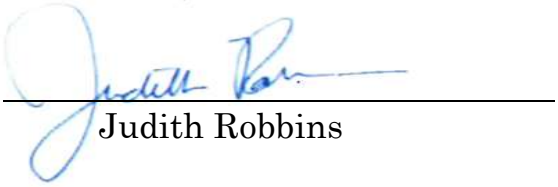

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CERTIFICATE OF SERVICE BY MAIL

On September 5, 2024, I served the **AMICI CURIAE BRIEF OF CITY OF DEL MAR, CITY OF DANA POINT, CAPISTRANO BAY DISTCRICT, GARY GROSSMAN, PAJARO DUNES ASSOCIATION, PAJARO DUNES NORTH ASSOCIATION, COASTAL PROPERTY OWNERS ASSOCIATION OF SANTA CRUZ COUNTY, ALLIANCE OF COASTAL MARIN VILLAGES, AND SMART COAST CALIFORNIA IN SUPPORT OF RESPONDENT CASA MIRA HOMEOWNERS ASSOCIATION** by first class mail as follows:

Clerk of the Court
San Mateo County Superior Court
The Honorable Marie S. Weiner
Department 2, Courtroom 2E
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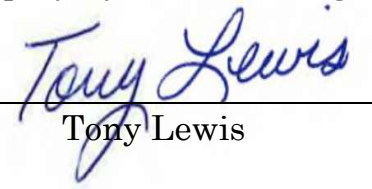
My business address is NOSSAMAN LLP, 777 S. Figueroa Street, 34th Floor, Los Angeles, California 90017.

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



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