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April 26, 2024

The Honorable Chief Justice Patricia Guerrero
and Honorable Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

RE: *Shear Development Co. LLC v. California Coastal Commission,* No. S284378
Amicus Curiae Letter in Support of Petition for Review

Dear Chief Justice Guerrero and Associate Justices,

The County of San Luis Obispo ("County") respectfully submits this letter in support of Shear Development Company, LLC's ("Shear") Petition for the California Supreme Court's review of the Court of Appeal's decision in *Shear Development Co. LLC v. California Coastal Commission*. While the County was not a party to the underlying lawsuit in the Superior Court, it did file an Amicus Curiae Brief with the Court of Appeals and participated in oral argument and post decision briefings. The County did this because of the potentially significant impacts that the case could have on the County's land use authority within the Coastal Zone. Although the Court of Appeals' Opinion in this case is unpublished, the decision provides a prime opportunity for the California Supreme Court to resolve existing conflicts among the lower courts and clarify an important rule of law for local governmental agencies with jurisdiction along California's coastline.

By answering the questions presented in the Petition, the Supreme Court can clarify that the courts of this State are to (1) exercise their independent judgment, as opposed to the substantial evidence test, when deciding whether the California Coastal Commission ("Commission") has exceeded its jurisdiction; and (2) defer to the actual author and primary implementor of a Local Coastal Plan ("LCP") where there are conflicting interpretations between the local agency and the Commission. Specifically, this case allows the California Supreme Court to (1) extend its decision in *Yost v. Thomas,* (1984) 36 Cal. 3d 561, which discussed the role of the Commission when a certified Local Coastal Plan is in place, and held the Commission's function is quasi-judicial in nature (not legislative);

and (2) harmonize it with cases like *Anderson First Coalition v. City of Anderson*, (2005) 130 Cal. App.4th 1173, which recognizes that the local agency is in the best position to interpret its own legislation and as such, courts should defer to the interpretation of the local agency. At present, there is confusion in these areas of law across the Courts of Appeal, and the confusion impacts a large swath of the State's population that owns property in the coastal zone.

Not only is there legal support for this proposition as laid out in the Petition, but there is public policy support as well and corresponding principles of democracy. The County respectfully offers the following explanation and viewpoint of these principles: This is a land use case. Land use and zoning is derivative of a local agency's constitutionally provided police power. *DeVita v. County of Napa*, (1995) 9 Cal. 4th 763, 782. Almost 50 years ago, the United States Supreme Court recognized that "The police power is not confined to elimination of filth, stench and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people." *Village of Belle Terre v. Boraas*, (1974) 416 U.S. 1, 9. Importantly, there is ***direct accountability*** between a local agency and the land use decisions that it makes. A decision may be challenged judicially by writ of mandamus under either Code of Civil Procedure §§ 1085 or 1094.5, by referendum (Elections Code §§ 9235 et seq.), or more democratically through the elections process – if the people don't like the decisions that its elected officials are making, they can be voted out.

With respect to the Commission, the ***only*** remedy is the judicial one because the Commission does not enact law and its members are established by statute or appointed by the Governor. (see Pub. Res. Code § 30301). As discussed in *Yost,* (*supra* at p. *572*), the Commission's role in the development and certification of an LCP is "limited to its administrative determination that the land use plan ... does, or does not, conform with the [policies of the act]" and that "once an LCP has been approved by the Commission, a local government has discretion to choose what action to take to implement its LCP..." In other words, the Commission does not perform any legislative function as their role is simply to ensure that the legislation ***that a local agency proposes*** conforms to the Coastal Act (i.e. a quasi-judicial function) and, if a development project is properly appealed to the Commission, whether the development conforms to the standards of the certified LCP and the Coastal Act's public access policies (again, quasi-judicial). (see Pub. Res. Code §30603(b)(1).

The above contentions support a rule of law that directs courts to defer to the actual author of a LCP if there are conflicting interpretations between the local agency and the Commission. As articulated in *Anderson First Coalition, (supra),* these land use disputes often reflect competing legislative policy interests based on either a General Plan, as in the

Anderson First Coalition, or in an LCP—as in this case—and that the judiciary's role in those instances is to ensure that the decision "is not arbitrary, capricious, unsupported, or procedurally unfair…" *Id* at 753. Affirming such a rule resolves the conflict in the lower courts. Furthermore, such a statement of law recognizes and is congruent with the remedies available to challenge a local agency's implementation of the competing policy interests inherent in ***its*** legislation – namely, if the people are upset with how the local agency is implementing these legislative competing policy interests, it not only has the power of the judiciary to challenge the decision, but they also have the power of the electoral process to remove individuals out of office for decisions which they disagree with. On the other hand, the people do not have the power to remove the Commission members from office. They are limited to judicial challenge. This direct accountability is emblematic of why courts should defer to the authors of legislation, not agencies which simply perform a quasi-judicial role that are only accountable to the Court or the Governor. Stated a little differently, the Commission should not be able to usurp the legislative prerogatives of a local agency by simply making an interpretation of local legislation on its own which is directly contrary to the interpretation of the agency that created the legislation in the first place, and then have the benefit of the highly deferential substantial evidence standard of review.

Further, granting deference to the Commission over local agencies undermines a core structural aspect of the Coastal Act ("Act"). Under the Act, only local agencies may draft or amend an LCP, and ***they*** (not the Commission) are tasked with primary implementation of those LCPs. If the Commission is unhappy with an existing LCP, it must request that the local government modify that LCP through the amendment process. *City of Malibu v. California Coastal Comm'n*, 206 Cal. App. 4th 549, 563 (2012), *as modified on denial of reh'g* (June 5, 2012). But granting deference to the Commission over the local agency allows the Commission to effectively amend LCPs during the course of a single permit appeal, imposing new interpretations that were not originally intended, and that the local agency is powerless to counter. In other words, the County will now be left with *no choice* but to follow the Commission's new found asserted interpretations—even where it believes those interpretations are contrary to the actual text of the LCP and/or the manner in which the agency has been implementing those provisions for years (like in this case)—or to amend its LCP to foreclose any possibility of inconsistent interpretation. But this puts the process precisely backwards. Once certified, the LCP controls and local government has primary authority to implement, and the Commission may only appeal and reverse where the County action is *contrary* to the certified LCP—not where the Commission would simply prefer a different outcome.

The disagreement between the County and the Commission in the instant case illustrates the significance that such a conflict can have in the real world. In this case, the

Commission contended that the underlying project was within a Sensitive Resource Area ("SRA") contrary to the County's interpretation and as such, appealed the County's approval of the project to itself. The Commission subsequently denied the project, and by doing so, effectively transformed *all* new development within the *entirety* of the town of Los Osos into development which is now appealable to the Commission because the Commission re-interpreted a provision in the County's LCP documents to justify its own appeal. (See County of San Luis Obispo's Application and Amicus Curiae Brief in Support of Petitioner and Appellant Shear Development Company LLC, S284378 at 7-8.) With this same brush stroke, the Commission virtually eliminates any ministerial permits and permit processing because in the County's LCP, a ministerial approval automatically becomes discretionary (and a land use permit is needed) if it is in an appealable area. (*Id* at 22-23) – voila! Because of the lack of a clear standard of review, and because the Court of Appeals (and the Superior Court) used a substantial evidence test and failed to defer to the County's long-standing interpretation of its LCP, the Court of Appeals and the Superior Court allowed the Commission's interpretation to stand. By doing this, the County and its elected officials' ability to preserve the health and safety of its constituents and to frame and implement its legislative land use policies within the town of Los Osos is severely undermined.

For all of these reasons, the County supports Shear's Petition for Supreme Court review.

Sincerely,

RITA L. NEAL
County Counsel

JON ANSOLABEHERE, Bar No. 278174

Assistant County Counsel
Attorneys for Amicus Curiae
County of San Luis Obispo

DECLARATION OF SERVICE BY MAIL

I, Xochitl L. Webster, declare as follows:

I am a resident of the State of California, residing or employed in San Luis Obispo, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is my business address is County Government Center, Room D320, San Luis Obispo, California.

On April 26, 2024, true copies of LETTER AMICUS CURIAE BRIEF OF SAN LUIS OBISPO COUNTY COUNSEL IN SUPPORT OF PLAINTIFFS AND APPELLANTS were placed in envelopes addressed to:

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Fisher Broyles LLP
4470 W. Sunset Blvd., Suite 93165
Los Angeles, CA 93165
Appellate Counsel for Shear Development Company, LLC

Mitchell Elliott Rishe
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Los Angeles, CA 90013
Respondent Counsel for California Coastal Commission

which envelopes, with postage theron fully prepaid, sealed and placed for collection in a mailbox regularly maintained by the United States Postal Service in San Luis Obispo, California.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed this 26th day of April 2024 at San Luis Obispo, California.

XOCHITL L. WEBSTER
Legal Clerk III- Confidential

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