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In the

Supreme Court

of the

State of California

CASA MIRA HOMEOWNERS ASSOCIATION,
Plaintiff and Respondent,

v.

CALIFORNIA COASTAL COMMISSION,
Defendant and Appellant.

REVIEW OF A DECISION BY THE COURT OF APPEAL
FIRST APPELLATE DISTRICT, CASE NO. A168645
SAN MATEO COUNTY SUPERIOR COURT
THE HONORABLE MARIE S. WEINER · CASE NO. 19-CIV-04677

PETITION FOR REVIEW

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To the Honorable Chief Justice Patricia Guerrero, Chief Justice of California, and the Honorable Associate Justices of the California Supreme Court:

STATUTORY INTERPRETATION QUESTION OF FIRST IMPRESSION PRESENTED FOR REVIEW

Whether the Coastal Act's right to build a seawall to protect private or public property under Public Resources Code § 30235 is limited to structures that existed at the time that the Coastal Act was enacted on January 1, 1977, or extends to all structures "in danger from erosion"?

INTRODUCTION

Pursuant to California Rule of Court 8.500(a)(1) and (b)(1), Casa Mira Homeowners' Association ("Casa Mira") timely petitions this Honorable Court for review of the published opinion of the California Court of Appeal, First Appellate District, Division Three ("First District"), in Case No. A168645, *Casa Mira Homeowners' Ass'n v. California Coastal Commission*, filed on December 12, 2024 (the "Opinion"), as modified on December 30, 2024, in denial of a motion for rehearing.

A copy of the Opinion and modification thereof is attached hereto. Petitioner Casa Mira prays that this Court grant review,

and, on review, reverse the Opinion as to the First District's re-interpretation of the phrase "existing structures" set forth in Public Resources Code ("PRC") § 30235.

REASONS FOR GRANTING REVIEW

Review should be granted under Cal. Rule of Ct. 8.500(b)(1) to settle an important question of law in a matter of statewide concern and first impression. *People v. Garcia* (2002) 97 Cal.App.4th 847, 854.

This case concerns the most important and consequential legal issue in the nearly 50-year history of the Coastal Act.

The December 12, 2024 published Opinion, as modified, involves an issue of great public significance – whether the Coastal Act entitles public and private owners of *presently existing* and *lawfully permitted* manmade structures adjacent to the ocean to protect those structures from immediate coastal erosion by seeking a coastal development permit ("CDP") to build a seawall or similar device (so long as the seawall complies with the other environmental and resource protection requirements in PRC § 30235).[1]

[1] Throughout this Petition, Casa Mira uses the word "seawall" as a shorthand way to refer to the range of shoreline protective devices (footnote continued)

This Court previously granted review and heard a petition in *Lynch v. California Coastal Com*. (2017) 3 Cal.5th 470, where the Court held that if a property owner proceeds with construction of a protective seawall after receiving a CDP, he or she forfeits any right to challenge that permit's conditions of approval.

This case concerns an **even more fundamental issue under the Coastal Act** – *which structures* have a right to a conditional CDP to build a protective seawall – only the ever-diminishing number of structures that existed as of January 1, 1977, or any structure that is presently "in danger from erosion."

The issue presented to this Court is purely one of statutory interpretation – what did the Legislature mean by the phrase "existing structures" in PRC § 30235?

Section 30235 provides as follows:

"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** 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."

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listed in PRC § 30235, including revetments, breakwaters, groins, harbor channels, and cliff retaining walls.

Section 30235 is the only statutory provision governing whether "existing structures" are conditionally entitled to a permit to build a seawall for protection against coastal erosion.

The First District reversed the trial court on this question and ruled that the phrase "existing structures" in PRC § 30235 means only those structures that existed as of January 1, 1977. Under the First District's reading, if any such structure was built after that date, it is not entitled to any seawall protection, regardless of how threatened the structure is, or what conditions are added to the CDP to protect coastal resources and the environment.

The First District's ruling, if allowed to stand, will leave hundreds, if not thousands, of *public and private* property owners with existing structures next to the ocean helpless to defend the structures from coastal erosion, bluff collapses and severe storms. Such structures that presently exist range from people's homes to vital public infrastructure including water and sewer lines, water treatment plants and highways. (Administrative Record ["AR"] 859.) The Opinion will devastate the California coast, and cause the ruin of billions of dollars of *previously approved and authorized* homes, buildings and public works simply because they were constructed after January 1, 1977.

The First District is the *first and only* appellate court to interpret, in a published opinion, the meaning of "existing

structures" in § 30235 – and, as such, this is an issue of first impression.

While "[o]ne Court of Appeal's decisions do not control decisions from other districts," *Pompey v. Bank of Stockton* (2024) 105 Cal.App.5th 1079, 1091, fn. 8, the First District's decision will likely set the standard statewide (since there is no other published decision), and thus, effectively will block all efforts to protect existing structures up and down the California coastline, from Eureka to Monterey to San Diego. Even if another appellate district ruled differently on the question eventually, the result on the ground will be chaotic, with some post-1977 structures allowed to have a seawall and other not.

The First District's interpretation of the Coastal Act is a 180-degree reversal of how the Appellant California Coastal Commission ("CCC") – the agency which implements the Coastal Act – interpreted and applied § 30235 when the Act was adopted and for the first 38 years of the Act. For nearly four decades, the CCC agreed that the seawall protection in § 30235 extends to *any* structure in danger from coastal erosion that exists *at the time of the seawall permit application*.

Because the CCC interpreted the provision for nearly 40 years to require properly designed seawalls for all structures in

danger from erosion,[2] it can be reasonably inferred that private and public property owners purchased and maintained their ocean-front structures with the understanding that they would have the right to obtain a conditional permit to build a seawall for protection so long as they met all of the other conditions set forth in § 30235. Evid. Code §§ 600(b), 604 [a court may make reasonable inferences].

The idea that § 30235 granted such a right was reinforced by the CCC's policy and practice, beginning sometime after the year 2000, to require property owners to *waive their rights* under § 30235 before the CCC granted a permit to develop structures on their property. (7 CT 1871; AR 1579, 4th ¶ [CCC policy to require waiver of § 30235 rights].) As the trial court held, why would the CCC demand a waiver of such rights if no such rights existed? (7 CT 1871 ["If Section 30235 allegedly only applies to structures 'existing' prior to 1976, then why is CCC requiring applicants to affirmatively waive Section 30235 in order to obtain approval to build *new* structures post-1976? The waiver condition makes no

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[2] The Coastal Act does not define when a structure is "in danger from erosion." PRC § 30235. Under the CCC's long-standing practice, a structure is deemed "in danger from erosion" when it would be unsafe to use or occupy in the next two or three storm season cycles (a couple of years at most) if no protective action is taken. (AR 29; Caldwell and Segall, *No Day at the Beach: Sea Level Rise, Ecosystem Loss, and Public Access Along the California Coast*, 34 Ecology L.Q. 533, 560 (2007).)

practical sense unless Section 30235 applies in the first place."].)(Emphasis in original.)

In this particular case, the CCC *never* required Casa Mira to waive its right to § 30235 protection. (AR 506-507.)

In addition to placing the Casa Mira homes in danger of destruction, the First District's *re-interpretation* of § 30235 has sent shock waves through coastal communities up and down the California coast, which will be forced to watch coastal wave action and bluff erosion destroy their homes, offices, businesses and public infrastructure, most of which have existed for decades. Interpreting § 30235 correctly is thus absolutely critical to ocean-side residents, property owners and local governments in California.

Given the enormous consequences to ocean-side structures, including local government-owned public infrastructure, the First District's Opinion on an issue of first impression should not be the final word. This statutory interpretation issue is too important and has enormous statewide consequences. The case begs for the state's highest Court to weigh in on the controversy to settle this important question of law.

FACTUAL BACKGROUND

Casa Mira consists of ten townhomes on the coast in Half Moon Bay. (AR 167; AR 132.) In 1984, the CCC granted a CDP to

build the townhomes. (AR 503-508; AR 2; AR 296.) The CDP included coastal erosion estimates that anticipated that the townhomes would be safe from erosion for 75 years, or until the year 2059. (AR 510, ¶ 4.)

To everyone's disappointment, the long-term erosion estimates blessed by the CCC in 1984 turned out to be wrong. After severe storms (and an El Nino) in the winter of 2016, a large area (20 feet inland) on a bluff in front of the Casa Mira homes collapsed. (AR 116-121; AR 430; AR 419; AR 432; AR 434; AR 104; AR 150-151; AR 156; AR 152-153; AR 639; AR 1188-89.) The bluff collapse threatened, *inter alia*, the foundations of the Casa Mira homes, a sewer line servicing the area, and a renowned section of the Coastal Trail. (Id., and AR 167.) In 2016 and 2017, the CCC granted two emergency CDPs for about 200 feet of rip rap to protect the bluff from further collapse. (AR 133-139; AR 669; AR 176; AR 193-199.)

The emergency rip rap remains in place and is presently protecting the homes and the Coastal Trail. (AR 427; AR 1426, ¶ 9; AR 1427.) If the First District's published decision is the final word, then the CCC will demand that the existing emergency rip rap be removed, which would place the Casa Mira homes in immediate danger of total destruction, and would deprive the owners of all economic value. (AR 427, AR 1426 ¶9, AR 1427, AR 1405-1410, AR 1550 ¶9.)

In 2018, Casa Mira applied for a regular CDP to construct a 257-foot long seawall (in place of the emergency rip rap) to stabilize permanently the collapsing bluff and to protect the townhomes. The City of Half Moon Bay and the Granada Community Services District supported Casa Mira's application to protect the homes, the sewer line, and the popular section of the Coastal Trail. (AR 385, AR 455.)

In July 2019, after a 20-minute public hearing, the CCC effectively denied the CDP application (only approving a small 50-foot section that would not protect the townhomes at all), largely on the basis that the homes did not pre-date the Coastal Act, and therefore, had no right to a protective seawall. (AR 29.)

PROCEDURAL HISTORY

A. Trial Court Proceedings.

On August 12, 2019, Casa Mira filed a petition for writ of administrative mandamus in San Mateo County Superior Court. After a hearing on the writ petition, the trial court entered judgment and granted the writ in favor of Casa Mira on July 31, 2023. (7 CT 1853.) The trial court concluded that the CCC's newly minted interpretation of the phrase "existing structures" in § 30235 was incorrect and "contrary to the stated purposes of the Coastal Act." (Id., 1870.) The trial court reasoned: "It is [the CCC's] position that all structures along the coast that become

endangered or unstable or damaged due to erosion should be allowed to deteriorate and collapse. [The CCC] takes the position that the erosion of sea-side cliffs creates beach sand, and that continued creation of sandy beach is the ultimate goal – and private property rights are insignificant. That is an unreasonable interpretation of the Coastal Act." (7 CT 1870-71.) "Accordingly, [the CCC's] interpretation of Section 30235 is rejected as erroneous and unreasonable." (Id., 1871.) The trial court granted the writ of administrative mandamus and ordered the CCC to vacate its denial of the seawall application. (Id., 1859.)

B. Court of Appeal Proceedings.

The CCC appealed the trial court decision on September 5, 2023.

On October 23, 2024, the First District Court of Appeal, Division 3, issued a "tentative decision" proposing to reverse the trial court's interpretation of "existing structures" in § 30235, but affirming the trial court's holding on a different issue, concluding that the CCC lacked substantive evidence to support a finding that shoreline armoring was unnecessary to protect *the Coastal Trail*. On December 12, 2024, one day after oral argument, the First District issued its final opinion that tracked its tentative ruling with very few changes.

On December 23, 2024, Casa Mira filed a Petition for Rehearing, which the First District denied with slight modifications to the Opinion on December 30, 2024.

ARGUMENT

A. The Meaning of "Existing Structures" in Public Resources Code § 30235 Presents a Legal Question of Great Public Importance and First Impression.

The statutory interpretation question presented in this case is a pure legal question of great public importance and first impression.

1. *Given the Concentration of the California Population on the Coast, Interpreting the Coastal Act Correctly Is Critical to the Welfare of California.*

The Coastal Act "was enacted by the Legislature as a comprehensive scheme to govern land use planning for the entire Coastal Zone of California." *Yost v. Thomas* (1984) 36 Cal.3d 561, 565. "[T]he Coastal Act reflects 'a strong rule of policy, adopted for the benefit of the public' that implicate matters of vital interest." *McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912, 923. ". . . [A] fundamental purpose of the Coastal Act is to ensure that state policies prevail over the concerns of local government." *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 794.

Hence, the Coastal Act's land use policies directly impact everyone living in the coastal zone and are a matter of statewide concern.

"Roughly **seventy percent** of the state's 38.8 million inhabitants live in coastal communities." Sivas, *California Coastal Democracy at Forty: Time For a Tune-up*, 36 Stan. Envtl. L.J. 109, 114 (2016). Nineteen of the state's fifty-eight counties include coastal communities. Id., 114, fn 7.

Accordingly, Coastal Act land use regulation impacts and governs the majority of Californians – tens of millions of people.

It is therefore critical that the courts interpret key provisions of the Coastal Act as the Legislature intended – in a way that does not lead to unintended, adverse and catastrophic impacts to the "social and economic needs of the people of the state." PRC § 30001.5(b).

2. *The Conditional Right to Seawall Protection in PRC § 30235 Is an Issue of Great Public Importance and Statewide Concern.*

People living on the coast have *lawfully* constructed thousands, if not tens of thousands, of structures close to the ocean since the Coastal Act was enacted nearly 50 years ago. Whether the private and public owners of these structures have a conditional right to protect them from sometimes unpredictable coastal erosion and ocean wave action is of great public

importance and great economic significance. (AR 859 [$100 billion worth of property is at risk from sea level rise and flooding].)

Coastal erosion affecting *presently existing* structures is an issue that will arise with *increasing frequency* for at least two reasons.

First, sea level rise is projected to impact increasingly more California coastal structures. (AR 834-1140; AR 885 ["Continued and accelerated sea level rise will have widespread adverse consequences for California's coastal resources . . . ."] AR 885-86 ["The main physical effects of sea level rise include increased flooding, inundation, wave impacts, coastal erosion, changes in sediment dynamics, and saltwater intrusion"]; AR 886 ["Large sections of the California coast consist of oceanfront bluffs that are often highly susceptible to erosion. With higher sea levels, the amount of time that bluffs are pounded by waves would increase, causing greater erosion (NRC 2012). This erosion could lead to landslides and loss of structural and geologic stability of bluff top development such as homes, infrastructure, the California Coastal Trail, Highway 1, and other roads and public utilities."]; AR 886 ["In southern California, higher sea level rise could result in a two-fold increase in bluff retreat rates over historic rates, causing a total land loss of 62 – 135 feet by 2100 . . . ."]; AR 886 ["Wave impacts can cause some of the more long-lasting

consequences of coastal storms, resulting in high amounts of erosion and damage or destruction of structures. The increase in the extent and elevation of flood waters from sea level rise will also increase wave impacts and move the wave impacts farther inland. Erosion rates of coastal cliffs, beaches, and dunes will increase with rising sea level and are likely to further increase if waves become larger or more frequent (NRC 2012)."]; Fuentes, *Rising Sea Levels Will Become California's Greatest Land Use Challenge: How the State of California Must Take a Stronger Role in Requiring Local Governments to Adopt Adaptive Land Use Controls in Order to Prevent Economic and Environmental Destruction Resulting from Sea Level Rise*, 44 Environs Envtl. L. & Pol'y J. 89, 102 (2020) [". . . structures . . . on the coast will continue to face threats as the impacts of sea level rise continue to threaten California's coast."].)

Second, professional estimates of coastal erosion at specific sites made 30 or 40 years ago have a significant likelihood of miscalculation of the actual erosion rate and threat today. (6 CT 1682, lines 15-16 [CCC admission].) That means many, many structures along the California coast will face the same issue that Casa Mira now faces.

If left unprotected from coastal erosion and sea level rise, an increasing number of presently existing structures face likely ruin. The issue affects, and places at great risk, not only private

property owners, *but also* local governments and public utilities that own and operate public infrastructure next to the ocean, including "[s]even wastewater treatment plants, commercial fishery facilities, marine terminals, Coastal Highway One, 14 power plants, . . . and other important development and infrastructure." (AR 859.)

PRC § 30235 directly addresses the right of the people of the state to protect these public and private structures from coastal erosion. The First District decided that the Coastal Act *does not* bestow any right whatsoever to protect a lawfully constructed structure in danger from erosion unless that structure existed on or before January 1, 1977.

As a result, as the law presently exists per the First District, any structure built during the last **48 years**, **even in accordance with a lawful permit**, has **no right** to a protective seawall, and instead, is condemned to fall into the sea if coastal erosion, wave action, or a bluff collapse threatens it.[3]

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[3] Under the CCC's regulations, even many structures built *before 1977* would *not* be entitled to seawall protection from erosion under the First District's ruling when more than 50 percent of the structure is redeveloped or replaced. 14 Cal. Code Regs. § 13252(b) [greater than 50 percent replacement is deemed to be a *new*, "replacement structure."] Deemed a "new, replacement"" structure, it would no longer qualify as "existing" under the Opinion.

This case presents a vitally important issue for the Court's consideration given the devastating adverse social and economic impact of the First District's interpretation of § 30235, which will result in the loss of **critically needed** housing and public infrastructure.

In other statutes, the Legislature has repeatedly emphasized the need for *more housing* in the state, and so interpreting § 30235 in a way that mandates that nature take its course and wipeout thousands of presently existing homes runs counter to that state goal. Gov. Code § 65580(a) ["the availability of housing is of vital statewide importance"]; § 65589.5(g) ["the Legislature finds that the lack of housing … is a critical statewide problem"]; *Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 218 [citation omitted] ["California has a housing supply . . . crisis of historic proportions affecting millions of citizens . . . ."]

Likewise, the importance of protecting public infrastructure needed to secure the social and economic well-being of the people of the state is obvious and cannot be overstated. *Infrastructure in the Context of Human Development: Editor's Note*, 18 Sustainable Dev. L. & Pol'y 2, 2 (2018).

The First District's reversal also presents an important issue for the Court given that the CCC initially in 1977 and consistently for 40 years thereafter interpreted § 30235 in *exactly*

the opposite way – as conditionally authorizing seawalls to protect structures whether they were built before or after 1977. Such a drastic reversal in the interpretation of the law after such a long time undermines the public's trust and confidence in California's governance, and demands that the state's highest court weigh in. *Unger v. Superior Court* (1984) 37 Cal.3d 612, 640 ["preserving the individual citizens' confidence in government" is a factor "of the highest importance."]

These factors make the interpretation of § 30235 an issue of great public importance.

3. *The Extent of the Conditional Right to Seawall Protection in PRC § 30235 Is an Issue of First Impression.*

Until the First District's December 12, 2024 Opinion, no court had issued a published opinion defining what the phrase "existing structures" in PRC § 30235 means. Thus, the issue presented to this Court for review in this case is one of first impression.

4. *The First District's Interpretation of § 30235 Vastly Expands the CCC's Power, and That Expansion Is an Issue of Great Public Importance.*

Another reason that review by this Honorable Court is warranted as an issue of great public significance is that the

First District's re-interpretation of § 30235 vastly expands the CCC's power in a way that defeats a land owner's ability to protect its property.

As previously interpreted by the CCC for nearly 40 years, § 30235 granted a right to a property owner (both public and private) to secure a seawall to protect a structure on its property as long as the CCC determined that (1) the structure is "in danger from erosion," and (2) the proposed seawall is "designed to eliminate or mitigate adverse impacts on local shoreline sand supply." PRC § 30235.

Under the First District's new interpretation of § 30235, the CCC will no longer perform that scientific, balanced analysis for the vast majority of perceived seawall needs. Instead, the CCC will simply ask whether the structure seeking protection was constructed and in place by January 1, 1977. If not, the property owner is out of luck. In other words, the new interpretation allows the CCC to summarily deny seawall applications with a simple check of a box as to the year the structure seeking protection was built.

That shift vastly expands the agency's power, giving it the unfettered ability to shut down seawall applications, and block the vast majority of property owners from protecting their structures from unpredictable and unforeseen coastal erosion.

It is vital that this Court examine that expansion of authority, not only because of the many Californians it will impact, but also because there is absolutely no indication in the text of the statute or its legislative history that such an expansion was intended. As this Court has observed, "[t]he Legislature does not … hide elephants in mouseholes." *Mendoza v. Fonseca McElroy Grinding Co., Inc.* (2021) 11 Cal.5th 1118, 1135. Stated differently, the Legislature "does not alter the fundamental details of a regulatory scheme in vague terms." *State Building & Construction Trades Council of California v. Duncan* (2008) 162 Cal.App.4th 289, 323. The First District's re-interpretation makes the phrase "existing structure" do a lot of work, without any discussion of the limits on property owner rights in the statute's text or legislative history.

Courts find it "highly unlikely that the Legislature would make . . . a significant change" in the law "without so much as a passing reference to what it was doing." *Ailanto Properties, Inc. v. City of Half Moon Bay* (2006) 142 Cal.App.4th 572, 589; *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 482 ["We are not persuaded the Legislature would have silently, or at best obscurely, decided so important . . . a public policy matter and created a significant departure from the existing law."]. Here, the trial court correctly observed that, even if legislative history is considered, "counsel for all parties conceded that there is no Legislative history

specifically regarding Section 30235 or any special meaning or purpose of the phrase 'existing structure' at the time it was enacted." (7 CT 1868.)[4]

Thus, this case represents a case of great public importance and statewide concern.

B. Review by this Court Is Necessary to Resolve an Important Question That Concerns the Coastal Act's Directive to *Balance* Resource Protection *with* the Social and Economic Interests of the People of the State.

The First District's Opinion states that the "Coastal Act was designed to "[p]rotect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources," citing PRC § 30001.5(a). (Opinion, 5.) The Opinion further reads the Coastal Act to require "giving the highest priority to environmental

[4] In the Opinion, the First District opined that the 1975 Coastal Plan, the precursor to the 1977 Coastal Act, supported its reading of "existing structure." (Opinion, 12, 13.) The Opinion notes that the Coastal Plan has similar (but different) language as § 30235. But the Coastal Plan doesn't define "existing structures" either. The same latent ambiguity that exists in § 30235 likewise exists in the Coastal Plan policies. Equally importantly, the CCC wrote the Coastal Plan, *Marine Forests Society v. California Coastal Com*. (2005) 36 Cal.4th 1, 18, but it never interpreted that plan as supporting the interpretation of "existing structures" as existing at the time of the Coastal Act's passage.

considerations," and claims that the Act's "predominant goal" is to preserve "the fragile coastal ecology from overzealous encroachment." (Id., 5, 14.)

However, even a quick reading of the Coastal Act shows that it establishes a *range of goals*, which seek a *balance* between environmental and economic interests.

PRC § 30001.5(a) seeks to protect, maintain and enhance not only natural resources, but also "*artificial* resources."[5] Thus, § 30001.5(a) mandates that such structures be "protected."

PRC § 30001.5(b) identifies the objective of ensuring "orderly, *balanced* utilization and conservation of coastal zone resources taking into account the *social and economic needs* of the people of the state." PRC § 30001.5(b); see also *Billings v. California Coastal Com.* (1980) 103 Cal.App.3d 729, 739 [legislative history confirming that the Coastal Act seeks to achieve a *balance* "between the need to protect essential coastal resources . . . and the need to assure continued economic growth and properly sited development in California's Coastal Zone."].

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[5] The original 1977 version of § 30001.5(a) used the word "manmade" instead of "artificial," but no substantive change was intended – the Legislature simply inserted a gender neutral word. The words "artificial" and "manmade" can only be read to include any non-natural structures crafted, built, or assembled by humans, including homes and public infrastructure.

Requiring that post-1977 structures collapse into the sea, as the First District opinion requires, raises an important legal question of whether that is the "balance" that the Legislature intended. Stated differently, the issue in this case asks whether the Legislature instead intended to preserve lawfully approved homes and public infrastructure by entitling those property owners the right to a protective seawall, so long as that seawall is designed to minimize or eliminate impacts on beaches, thus accounting for the "social and economic needs of the people of the state."

C. Review by this Court Is Necessary to Resolve an Important Question of Whether and To What Extent the Coastal Act Protects Private Property Rights In Accordance with the California Constitution and the U.S. Constitution.

This case presents an important issue of first impression on whether presently existing structures are constitutionally and statutorily entitled to protection from destruction.

The right to use, enjoy, and *protect* property in California is not a government privilege, but a fundamental, constitutional right. Owning and *protecting* private property is an "inalienable right" under the California Constitution. Cal. Const, Art. I § 1 ["All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and *protecting property*, and

pursuing and obtaining safety, happiness, and privacy."]; § 19 ["Private property may be *taken or damaged* for a public use and only when just compensation . . . has first been paid"].

The Coastal Act appears to enshrine and reenforce these inalienable rights.

In PRC § 30010, "[t]he Legislature . . . finds and declares that [the Coastal Act] is not intended, and *shall not be construed* . . . in a manner which will take or damage private property for public use, without the payment of just compensation therefor." Likewise PRC §§ 30001(c) and 30001.5(c) mandate protection of property rights.

This case raises the important question of what "shall not be construed" to take or damage private property means in the context of the right to construct a protective seawall, without which the home or structure will collapse into the sea.

In most situations, "existing structures" built after 1977, like the Casa Mira townhomes, have received a lawful CDP from the CCC (or an authorized local government) and have invested in that right by building, maintaining and improving the allowed structures. "Once a use permit has been properly issued the power . . . to revoke it is limited. . . . Where a permit has been properly obtained and in reliance thereon the permittee has incurred material expense, he acquires a vested property right to *the protection of which he is entitled*." *Goat Hill Tavern v. City of*

Costa Mesa (1992) 6 Cal.App.4th 1519, 1530-1531 [city's failure to renew conditional permit when owner had operated in full compliance for 35 years violated owner's fundamental vested right]. As such, Casa Mira, and similarly situated property owners, have a "vested right."

The CCC granted Casa Mira a CDP to build and occupy the townhomes. (AR 503-516.) Nothing in that permit forbid a future seawall if the structures ever were threatened by erosion, nor did the CCC interpret § 30235 in that way when the permit was issued. (Id.)

While some coastal land use regulation is obviously allowable and desirable, such regulation meets its outer limits when it results in a physical taking or deprives a property owner of all viable economic use of the property. *Beach & Bluff Conservancy v. City of Solana Beach* (2018) 28 Cal.App.5th 244, 265; *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1027; *Pacific Shores Property Owners Assn. v. Department of Fish and Wildlife* (2016) 244 Cal.App.4th 12, 19, 49.

This case raises an important legal question of whether the Coastal Act may forbid property owners from protecting lawfully permitted homes from bluff collapse *even when* doing so results in a physical taking and/or deprivation of all economic value of the property.

The case raises the equally important statutory rights question of whether mandating such a collapse is consistent with the Coastal Act's objective of protecting private property and "artificial" and "manmade" resources in a way that *fully accounts* for the *social and economic needs* of California's residents.

If this issue is not resolved now, the court system likely will be flooded with hundreds, if not thousands, of inverse condemnation cases brought by owners of long-standing and lawfully permitted post-1977 structures that will be condemned to destruction (for the alleged public good) under the First District's ruling.

D. Review by this Court Is Necessary to Resolve the Important Question of How to Address the Public's Settled Expectations That Have Arisen Given That the CCC, for Nearly 40 Years, Interpreted § 30235 to Bestow a Conditional Right to a Protective Seawall for All Structures Threatened by Coastal Erosion.

This case is being decided in an unusual posture. Section 30235 was adopted nearly 50 years, and, for the first nearly 40 years, the CCC interpreted the phrase "existing structures" to give property owners the right to a conditional, protective seawall. Until now, no court opinion ever questioned that interpretation, and even the CCC only gingerly began to step away from that interpretation in late 2015 with the publication of

a "sea level rise guidance." But even the CCC's guidance was expressly non-binding and cautioned the reader that the guidance "is *advisory* and not a regulatory document . . . ." (AR 838.)(Emphasis added.)

When the implementing agency interprets statutory language one way from the git go, and for nearly 40 years, the regulated community naturally develops certain expectations and reliance interests. When the expert agency decides and communicates that property owners have certain rights, it can be reasonably inferred that property owners will understand that to be the law and will buy, sell, and invest in coastal properties, structures and public infrastructure based on that interpretation – especially when that interpretation is virtually unchanged and unchallenged for nearly 40 years. Evid. Code §§ 600(b), 604 [Court may adopt reasonable inferences].

In 2006, the CCC represented to a court of appeal in briefing that it was "**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.) In other words, the CCC took the position that from 1977 through at least 2006, the agency never once interpreted "existing structures" to mean only pre-1977 structures. In such circumstances, there can be no doubt that the regulated

community built up expectations that it had a right to protect its coastal property and structures from the ravages of the sea.

Considerations of such expectations and reliance is rooted in fundamental fairness and courts have held that such expectations are due "considerable weight." *County of Lake v. Smith* (1991) 228 Cal.App.3d 214, 236 ["Even in the uncertain context of California shorezone titles, the settled expectations of the sovereign on the one hand and the respective riparian or littoral landowners on the other are entitled to considerable weight, despite the fact that sovereign public rights . . . may be affected."]; *People v. Nevarez* (1982) 130 Cal.App.3d 388, 396 ["One of the fundamental considerations of fairness recognized in every legal system is that settled expectations honestly arrived at with respect to substantial interests ought not to be defeated."]; *Buttram v. Owens-Corning Fiberglas Corp*. (1997) 16 Cal.4th 520, 536, fn. 6, quoting *Landgraf v. USI Film Products* (1994) 511 U.S. 244, 265 ["Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted."]. Also, "[i]n cases of uncertain meaning, [the Court] may . . . consider the **consequences** of a particular interpretation, including its impact on public policy. *Riske v. Superior Court* (2016) 6 Cal.App.5th 647, 657.

This case thus raises the important question of how to treat and address thousands of property owners who developed "settled expectations" that a protective seawall would be authorized if the other statutory conditions were met. It is a matter of fundamental fairness and societal stability.

In a footnote in its Opinion, the First District held that Casa Mira "waived" any settled expectations argument (Opinion, 18, fn. 6.) Casa Mira did not waive the argument. First, Casa Mira discussed "reliance interests" in its briefing, *and the CCC responded to the argument in its briefing*. "Settled expectations" is a term that includes, or is generally interchangeable with, "reliance interests." Courts often use together the "familiar considerations" of reliance and settled expectations. See *San Bernardino County Bd. of Supervisors v. Monell* (2023) 91 Cal.App.5th 1248, 1288. Second, the First District's "tentative ruling" asserted for the first time that the CCC's prior (and opposite) interpretation of "existing structures" did not *in any way* "impact" the Court's analysis. (Opinion, 17, also in tentative ruling.) No party had made that argument in the litigation before the First District asserted it in its tentative ruling. The settled expectation argument responded directly to the First District's *new* assertion in the tentative ruling.

Forfeiture of an argument is not automatic and is largely a matter of fairness. *Velasquez v. Centrome, Inc.* (2015) 233 Cal.App.4th 1191, 1210–1211. Here, there is no unfairness whatsoever. The Deputy Attorney General did not object either

to the reliance argument or to the "settled expectations" argument, and indeed, he made extensive counter-arguments at oral argument. *People v. Hronchak* (2016) 2 Cal.App.5th 884, 892, fn. 5 [court declined to apply forfeiture rule because Attorney General's office declined to object to argument].

Even assuming, *arguendo*, that there was some type of forfeiture or waiver, multiple well-grounded exceptions apply.

First, the settled expectations argument "involves an important and purely legal issue subject to . . . independent review," the appellate court has discretion to consider the argument. *In re Anthony Q.* (2016) 5 Cal.App.5th 336, 345; *In re Brianna S.* (2021) 60 Cal.App.5th 303, 311. Considerations of such expectations and reliance are due "considerable weight." *County of Lake, supra,* 228 Cal.App.3d at 236. That clearly makes it an "important legal issue." Courts don't assign "considerable weight" to *unimportant* legal issues.

The reliance/settled expectations argument in this context is a policy argument that the regulated community, including Casa Mira, understood that § 30235 included a conditional right to a seawall to protect a structure in danger from erosion regardless when the structure was built. It can be inferred that the regulated community had such an expectation because the agency that implements and administers the Coastal Act interpreted the statute that way for nearly 40 years.

Second, "a court can decline to apply forfeiture to 'matters involving the public interest or the due administration of justice.'" *FCM Investments, LLC v. Grove Pham, LLC* (2023) 96 Cal.App.5th 545, 553-554. Whether to recognize and protect long-settled expectations because the expert agency interpreted a statute in the opposite manner for nearly 40 years concerns the public interest and administration of justice. The Court's reversal will affect not only Casa Mira but also hundreds, if not thousands, of property owners with structures next to the ocean, including *public entities* that own and operate public infrastructure. (Application of the Bay Area Council, et al. for Leave to File Amici Curiae Brief at 8.)

At the very least, it is relevant to fashioning a remedy, i.e., which, if any public and private landowners should be bound by the new and opposite interpretation of the statute. It is state policy and a principle of fundamental fairness to give considerable weight to such expectations when there is a sharp reversal in the law, as there is now in light of the First District's final, published Opinion.

This Court should take this Case to give such settled expectations fair consideration.

E. Review by this Court Is Necessary to Address Inconsistency and Disharmony Within the Coastal Act's "Shoreline Protection Management Framework."

Courts must "construe [a] statute's words in context, and harmonize statutory provisions to avoid absurd results." *In re Baby Girl R.* (2024) 106 Cal.App.5th 706, 713.

This case raises an important question of the proper harmonization of what the First District calls the Coastal Act's "shoreline protection management framework," which is the interplay between PRC §§ 30235 and 30253. (Opinion, 9.)

Within that framework, § 30235 addresses when seawalls are authorized for "existing structures," while § 30253 addresses when seawalls are allowed for "new development." Specifically, § 30253 provides in relevant part:

"New development shall do all of the following:

(b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area **or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs**."

PRC § 30253 (Emphasis added.)

The Coastal Act fails to define either "existing structures," or "new development."

The First District held that under § 30235 *only* structures that existed at the time of the Coastal Act's adoption have a right to a seawall. The First District then construed the second part of the shoreline protection framework to mean that "to the extent that *new development* is authorized, it must comply with mandatory siting and structural requirements so as to *not require the construction of destructive shoreline protection*." (Opinion, 9.)(Emphasis added.) Hence, the First District interprets § 30253 to ban all seawalls for *all* "new development," which in the view of the First District means post-1977.

That creates an issue that this Court needs to resolve. It creates disharmony within the Coastal Act's so-called shoreline protective framework.

The First District's reading of § 30253 is flatly inconsistent with the plain text of § 30253. The text of § 30253 makes clear that it bans *only* new development that "require[s] the construction of protective devices *that would substantially alter natural landforms along bluffs and cliffs*."[6] Section 30253 on its face *does not ban all seawalls for any new development*.

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[6] At appellate oral argument, the CCC asserted that was taking a "textual approach" to reading § 30253. But a textual approach shows that § 30253 is not a wholesale ban on seawalls, but only a prohibition of seawalls *that substantially alter bluffs and cliffs*. That flatly contradicts the CCC's claim that the Legislature "did (footnote continued)

The plain text reading of § 30253 is that it prohibits new development from requiring a seawall that **substantially alters natural landforms along bluffs and cliffs.** If a new development needs a seawall, and that seawall would not substantially alter natural landforms along bluffs and cliffs, § 30253 doesn't prohibit it. Another way to think about that is if the new development needs a seawall and the seawall would be built along a flat or beach area of the coast, it is allowed.

So, if § 30253 is read in accordance with its plain text, the First District's interpretation of "existing structures" in § 30235 creates an internal conflict and disharmony between §§ 30235 and 30253.

According to the First District, under § 30235, no structure built after 1977 has a right to a seawall. Yet, the plain text of § 30253 doesn't forbid seawalls for such structures built in flat or beach areas.[7] As a result, the Opinion creates a conflict within

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not anticipate a need for hard armoring to protect post-1976 structures." (CCC Opening Br. 27, 31; CCC Reply Br. 29.) Some future armoring was contemplated in cases where there is no substantial impact to bluffs and cliffs.

[7] The First District interprets the phrase "in any way" in § 30253 to include a ban on any *prospective* need for armoring. (Opinion, 12.) However, the problem that creates is that § 30253 doesn't impose an absolute ban on all prospective seawalls, but only those that substantially alter bluffs and cliffs.

the statute. Section 30235 would ban all seawalls for post-1977 structures, and § 30253 would not impose such a ban so long as the seawall is built on a flat or beach area. It is important for this Court to settle the interplay between §§ 30235 and 30253 in order to avoid further litigation and confusion regarding when seawalls are allowed and when they are banned.

There is a related disharmony that this Court needs to address as well. Assuming that the plain text of § 30253 carries the day, post-1977 "new development" will be allowed to have a protective seawall if that seawall is built in a flat or beach area. However, since the First District has held that § 30235 never applies to post-1977 structures, none of § 30235's beach and shoreline sand supply protections would apply to the new development seawall.

Thus, the interplay between these two provisions of the Coastal Act raises a vital legal question that must be resolved to avoid the current inherent inconsistency and absurdity.

This Court should grant review to untangle this errant path that will cause needless confusion and a great deal of new litigation over the Coastal Act's shoreline protection management framework. As it stands presently, there is a nonsensical ban of some seawalls and authorization of other seawalls in an patchwork, arbitrary manner that is not connected to, nor consistent with, the Coastal Act's goals and purposes.

CONCLUSION

This case presents a critically important issue of first impression and statewide concern regarding the proper interpretation of PRC § 30235, and the related interplay between §§ 30235 and 30253. A correct interpretation of the shoreline protection framework consistent with legislative intent is essential for the Coastal Act to operate properly – by striking a balance between resource conservation, and property protection and rights, while fully accounting for the social and economic needs of the state's citizenry.

Therefore, Petitioner Casa Mira respectfully requests that this Court grant review on the question of how the phrase "existing structures" in PRC § 30235 should be interpreted to effectuate legislative intent and proper implementation of the Coastal Act.

Dated: January 16, 2025

LAW OFFICES OF
THOMAS D. ROTH

By: *s/ Thomas D. Roth*
Thomas D. Roth
Attorneys for Respondent
Casa Mira Homeowners
Association and its members

CERTIFICATE OF COMPLIANCE

(Cal. Rules of Court, rule 8.204(c)(1).)

Counsel of Record hereby certifies that pursuant to Rule 8.504(d) of the California Rules of Court, the enclosed Petition for Review is produced using 13-point or greater Century Schoolbook type, including footnotes, and contains 7,556 words, which is less than the total words permitted by the rules of Court. Counsel relies on the word count of the computer program used to prepare this Petition.

Dated: January 16, 2025

LAW OFFICES OF
THOMAS D. ROTH

By: *s/ Thomas D. Roth*
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Casa Mira Homeowners
Association and its members

OPINION

Filed 12/12/24

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

CASA MIRA HOMEOWNERS ASSOCIATION, Plaintiff and Respondent, v. CALIFORNIA COASTAL COMMISSION, Defendant and Appellant.	A168645 (County of San Mateo Super. Ct. No. 19CIV04677)

The California Coastal Act of 1976 (Coastal Act; Pub. Resources Code, § 30000 et seq., undesignated statutory references are to this code) authorizes construction — such as a seawall — that alters the natural shoreline when necessary "to serve coastal-dependent uses or to protect existing structures . . . in danger from erosion." (§ 30235.) The California Coastal Commission (Commission) construes "existing structures" to mean structures that existed prior to January 1, 1977, the effective date of the Coastal Act. On that basis, it denied the request of Casa Mira Homeowners Association (Casa Mira) and its members for a coastal development permit to build a seawall to protect a condominium complex and sewer line built in 1984. It also concluded a 50-foot — rather than a 257-foot — seawall was sufficient to protect the California Coastal Trail (Coastal Trail) and an apartment complex built in 1972, both in danger of erosion. The Commission

determined that relocating the trail inland was a feasible alternative to shoreline armoring.

Casa Mira petitioned for a writ of mandate to vacate the Commission's decision, which the trial court granted. The Commission now asks us to decide whether it correctly interpreted "existing structures" or whether, as Casa Mira argues, those words mean "existing at the time of the seawall application." We also consider whether sufficient evidence supported the Commission's finding that relocating the Coastal Trail is a feasible alternative to constructing a seawall. We conclude "existing structures," in context, means structures that existed before the Coastal Act's effective date. Because the trial court concluded otherwise, we reverse that portion of the judgment. But because we conclude the Commission's finding concerning the feasibility of protecting the trail without the requested seawall is not supported by substantial evidence, we otherwise affirm.

BACKGROUND

In 2018 Casa Mira applied for a coastal development permit to construct a 257-foot seawall that would protect several structures along a coastal bluff in Half Moon Bay in danger from erosion— a four-building condominium complex and sewer line built in 1984, a four-unit apartment building built in 1972 located seaward of the condominiums, and a segment of the Coastal Trail. The proposed seawall would completely armor and protect the bluff downcoast of the apartments. A few years prior, approximately 20 feet of the bluff eroded and collapsed during heavy rains. At the time, the Commission issued two emergency coastal development permits allowing the temporary placement of 4,000 tons of rock, known as riprap, to prevent further erosion. There is currently no formal vertical beach access available from the blufftop to the sandy beach level. The

seawall would replace the emergency riprap revetment and would include a beach access stairway with a connection to the inland Coastal Trail.

Commission staff recommended approving the 257-foot seawall. Section 30235, staff explained, permits the construction of protective shoreline works when necessary to serve coastal-dependent uses or to protect existing structures — that is, structures existing prior to the effective date of the Coastal Act on January 1, 1977 — in danger of erosion. Thus, the apartments — built in 1972 — and the Coastal Trail — a coastal-dependent use because it requires siting adjacent to the ocean to serve its purpose — qualified for armoring. The sewer line and the condominiums, all constructed in 1984, did not. Moreover, the current setbacks for the apartments and the Coastal Trail were insufficient to protect them from erosion, which would worsen due to ongoing sea level rise and predicted increase in extreme weather events. Staff further concluded there were no feasible alternatives to armoring the shoreline, and a 257-foot seawall would prevent the loss of the apartments and the Coastal Trail while minimizing impacts to coastal resources.

The Commission agreed with the staff's interpretation of section 30235, concluding only the apartments and Coastal Trail were entitled to armoring. But it only approved a 50-foot section of the seawall to protect the apartments, not the trail. According to the Commission, the trail could be relocated to loop inland of the condominiums, a feasible, less environmentally damaging alternative to the seawall.

Casa Mira petitioned for a writ of mandate to vacate the Commission's decision. The trial court rejected the Commission's interpretation of section 30235. It concluded the statute's plain language mandates a permit for a seawall or revetment if a structure *presently exists* and is in danger from

erosion. Thus, it determined the Commission prejudicially erred by finding the condominiums and the sewer line were not entitled to any seawall or other protection. In addition, the court concluded, the Commission's finding that the Coastal Trail could be relocated away from the ocean rather than protected with a seawall lacked sufficient evidence. The court entered a judgment in favor of Casa Mira and issued a peremptory writ of mandate ordering the Commission to set aside its decision on Casa Mira's coastal development permit application.

DISCUSSION

The Commission contends the trial court erred by issuing the writ of mandate. We examine whether the Commission engaged in a prejudicial abuse of discretion — i.e., not proceeding in the manner required by law, decision not supported by the findings, or findings not supported by substantial evidence. (*Friends, Artists & Neighbors of Elkhorn Slough v. California Coastal Com*. (2021) 72 Cal.App.5th 666, 692.) On appeal, we affirm the Commission's decision if supported by substantial evidence. (*City of San Diego v. California Coastal Com*. (1981) 119 Cal.App.3d 228, 232.) We presume its decision is correct and supported by substantial evidence unless petitioners produce or cite evidence to the contrary. (*Smith v. Regents of University of California* (1976) 58 Cal.App.3d 397, 404–405.) We review questions of law de novo. (*Schafer v. City of Los Angeles* (2015) 237 Cal.App.4th 1250, 1261.)

I.

The Commission contends the trial court erred by construing "existing structures" in section 30235 to mean structures that presently exist at the time an applicant seeks a coastal development permit. According to the Commission, "existing structures" refers to structures that existed prior to

January 1, 1977, the effective date of the Coastal Act. We review this question of statutory interpretation de novo, giving the statute's words their plain, ordinary meaning and considering them in the context of the entire statutory framework to effectuate the Legislature's purpose. (*Surfrider Foundation v. Martins Beach 1, LLC* (2017) 14 Cal.App.5th 238, 251; *Reddell v. California Coastal Com.* (2009) 180 Cal.App.4th 956, 965.) If the text evinces a plain, unmistakable meaning, further inquiry is unnecessary. (*Surfrider*, at p. 251.) But where the language is ambiguous or susceptible to other reasonable interpretations, we employ extrinsic aids — e.g., legislative history, contemporaneous administrative construction, public policy — to interpret the statute. (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 803.) We liberally construe Coastal Act provisions, " 'giving the highest priority to environmental considerations.' " (*Surfrider*, at p. 251.) Having engaged in that review, we agree with the Commission.

A.

The Coastal Act was designed to "[p]rotect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources." (§ 30001.5, subd. (a); *Kracke v. City of Santa Barbara* (2021) 63 Cal.App.5th 1089, 1095.) It seeks to "[m]aximize public access to and along the coast," consistent with "sound resources conservation principles and constitutionally protected rights of private property owners." (§ 30001.5, subd. (c).) Coastal zone development — broadly defined to include the construction, placement or erection of any solid material or structure — requires a coastal development permit. (§§ 30106, 30600, subd. (a).) Section 30235 addresses construction that alters the natural shoreline. That provision states, in relevant part, seawalls and other

construction altering natural shoreline processes "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." (§ 30235.) In other words, the Commission *must* issue a permit for construction of a seawall or other armoring to protect existing structures in danger of erosion, assuming the other requirements are fulfilled. (*Ibid*; *Tarrant Bell Property, LLC v. Superior Court* (2011) 51 Cal.4th 538, 542 [interpreting the term "shall" as a mandatory act].)

The text of section 30235 does not resolve the dispute here. Nothing in this section or the Coastal Act defines "existing structures." (§§ 30100 ["[u]nless the context otherwise requires, the definitions in this chapter govern the interpretation of" the Coastal Act], 30235, 30000 et seq.) Citing Dictionary.com, Casa Mira contends the ordinary meaning of "existing" is " 'already or previously in place.' " (*Busker v. Wabtec Corp.* (2021) 11 Cal.5th 1147, 1158–1159 [examining dictionary definitions for statutory interpretation].) Merriam-Webster identifies "existing" as "having being at the present time." (Merriam-Webster's Collegiate Thesaurus Online (2024) <https://unabridged.merriam-webster.com/thesaurus/existing> [as of Dec. 12, 2024].) But this begs the question of *when* the structures must be "already or previously in place" or "hav[e] being" — at the time the statute was written or at the time the statute is being applied. The statutory text does not readily answer that critical question. (*Vasquez v. State of California* (2008) 45 Cal.4th 243, 253 ["We may not rewrite the statute to conform to an assumed intention that does not appear in its language"].)

Casa Mira urges us to apply the rule "that a word given a particular meaning in one part of a law should be given the same meaning in other

parts of the same law." (*Ste. Marie v. Riverside County Regional Park & Open-Space Dist.* (2009) 46 Cal.4th 282, 289.) That canon is less useful to Casa Mira than it believes. Even though the word "existing" appears throughout the Coastal Act, Casa Mira fails to account for its inconsistent usage. (*People v. Woodhead* (1987) 43 Cal.3d 1002, 1008 [words may have "different meanings within a single statute"].)

To illustrate: one provision requires "New residential, commercial, or industrial 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 . . . ." (§ 30250, subd. (a).) The Legislature distinguished between development that existed at the time the Coastal Act was enacted — "existing developed areas" — and development that will be created after the Coastal Act's passage — new development. (*Ibid.*) Reading "existing" in this section to include *any* development renders the reference to new developments surplusage. (*Ste. Marie v. Riverside County Regional Park & Open-Space Dist.*, *supra*, 46 Cal.4th at p. 289 ["courts should, if possible, accord meaning to every word and phrase in a statute so as to better effectuate the Legislature's intent"]; §§ 30001, subd. (d) ["existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being" of the people of California], 30007 [nothing in the Coastal Act exempts local governments from "any other obligation related to housing imposed by existing law or any law hereafter enacted"]; 30261 [encouraging multicompany use of "existing and new tanker facilities" to "the maximum extent feasible and legally permissible" as well as requiring "[n]ew tanker terminals" be situated "to avoid risk to environmentally sensitive areas"].)

On the other hand, other Coastal Act provisions using the term "existing" appear to refer to post-enactment activity. For example, section 30705 governs diking, filling, or dredging water areas and provides the "design and location of new or expanded facilities shall . . . take advantage of existing water depths, water circulation, siltation patterns, and means available to reduce controllable sedimentation so as to diminish the need for future dredging." (*Id*. subd. (b).) In this context, "existing" likely refers to marine conditions that exist at the time the new facility is being constructed or expanded. It makes little sense for a new constructed facility to "take advantage" of water conditions that existed when the Coastal Act was passed.

Thus, we cannot conclude use of the word "existing" in the Coastal Act answers the question presented here. (*Ste. Marie v. Riverside County Regional Park & Open-Space Dist.*, *supra*, 46 Cal.4th at p. 289.) And unlike these other provisions, the rest of section 30235 does not assist in determining the intended meaning of "existing structures." (*Ibid*.) Rather, it is susceptible to both competing interpretations. (*Joannou v. City of Rancho Palos Verdes* (2013) 219 Cal.App.4th 746, 752.)

B.

Yet when one views section 30235 in light of the Coastal Act as a whole — highlighting additional provisions governing shoreline armoring in section 30253 — it is apparent "existing structures" refers to structures existing prior to the Coastal Act's effective date. (*Surfrider Foundation v. Martins Beach 1, LLC*, *supra*, 14 Cal.App.5th at p. 251; *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 166 [" 'we consider portions of a statute in the context of the entire statute and the statutory scheme of which it is a part, giving significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose' "].) Section 30253 requires "new

development" to minimize adverse impacts in the coastal zone. Among other things, "new development" shall "[a]ssure stability and structural integrity, and neither create nor contribute significantly to erosion" of the "site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs."[1] (§ 30253, subd. (b).) Accordingly, to the extent new development is authorized, it must comply with mandatory siting and structural requirements so as to not require the construction of destructive shoreline protection. (*Ibid*; *Tarrant Bell Property, LLC v. Superior Court*, *supra*, 51 Cal.4th at p. 542.)

Together, sections 30235 and 30253 create a shoreline protection management framework. Section 30235 is designed to protect structures built prior to the enactment of section 30253's siting and structural requirements — when the Coastal Act did not yet exist. Such structures may not necessarily have been built in a manner to avoid the need for shoreline protection at some point. In those circumstances, section 30235 guarantees "existing" structures protection from coastal erosion — shoreline protection "shall be permitted when required . . . to protect existing structures or public beaches in danger from erosion." But after enactment of the Coastal Act, structures cannot be built in a manner that requires shoreline armoring — "[n]ew development shall" not "in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs." (§ 30253, subd. (b).) The statutes logically distinguish

[1] New development must also "[m]inimize risks to life and property in areas of high geologic, flood, and fire hazard"; "[b]e consistent with requirements imposed by an air pollution control district or the State Air Resources Board as to each particular development"; and "[m]inimize energy consumption and vehicle miles traveled." (§ 30253, subds. (a), (c)–(d).)

between structures that are entitled to the privilege of shoreline armoring when in danger of erosion — structures built prior to January 1, 1977 — and those that cannot require shoreline armoring — structures constructed after Coastal Act enactment that must adhere to section 30253's siting requirements for structural integrity and stability.

This interpretation effectuates the Coastal Act's goal to "[a]nticipate, assess, plan for, and, to the extent feasible, avoid, minimize, and mitigate the adverse environmental and economic effects of sea level rise within the coastal zone." (§§ 30001.5, subd. (f), 30009; *Yeager v. Blue Cross of California* (2009) 175 Cal.App.4th 1098, 1103, fn. omitted [legislative "findings and statements of purpose in a statute's preamble," though not binding, "can be illuminating if a statute is ambiguous"].) It further promotes the Coastal Act's purpose of "protect[ing] public and private property" (§ 30001, subd. (c)) by ensuring pre-1977 structures are entitled to shoreline protection when in danger of erosion under section 30235, and mandating developments built afterwards adhere to setback and structural integrity requirements in section 30253. Thereby, the Coastal Act protects both types of structures — existing structures and new developments — in different ways according to their dates of construction and accompanying building requirements. In sum, we read "existing structures" in section 30235 to refer to structures existing prior to the Coastal Act's effective date on January 1, 1977.

C.

Casa Mira proffers a series of arguments disputing this conclusion; we find none persuasive.[2] First, it suggests this interpretation renders section

[2] Casa Mira moved to strike portions of Surfrider Foundation's amicus curiae brief that are unsupported by record citations. We deny the motion to strike but will ignore the unsupported references. (*Colt v. Freedom Communications, Inc.* (2003) 109 Cal.App.4th 1551, 1560.)

30235 internally inconsistent. Specifically, the second sentence of section 30235 provides, "Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible." Defining both "existing structures" and "existing marine structures" as those existing prior to the Coastal Act's effective date on January 1, 1977, Casa Mira asserts, precludes authorities from phasing out or upgrading post-1977 marine structure such as an oil platform contributing to water pollution. Not so.

This narrow reading ignores other Coastal Act provisions governing marine resources and water pollution. (E.g., §§ 30230 ["[u]ses of the marine environment *shall* be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long–term commercial, recreational, scientific, and educational purposes"], italics added, 30231 [requiring maintenance and, where feasible, restoration of "biological productivity and the quality of coastal waters" to protect optimum marine organism populations and human health by among other things "minimizing adverse effects of waste water discharges and entrainment, controlling runoff"].) For oil and gas development in particular, new and expanded oil and gas development may be permitted if, among other things, the "development is performed safely and consistent with the geologic conditions of the well site"; pipelines transporting oil shall "ensure maximum protection of public health and safety and of the integrity and productively of terrestrial and marine ecosystems." (§ 30262, subd. (a)(1), (5).) Thus, reading the Coastal Act as a whole, any marine structure, regardless of when it was constructed, must comply with these mandates.

Next, Casa Mira contends section 30253 merely clarifies that a new development must not depend on a seawall when constructed. Casa Mira attempts to harmonize sections 30235 and 30253 by arguing they authorize shoreline protection due to threats of erosion that arise decades after a new development has been constructed. There are two flaws with this analysis. First, while we agree section 30253 prohibits the construction of a new development that depends on the simultaneous construction of a seawall, nothing in the statute limits this prohibition to the initial construction. It states that new development shall not "in any way" require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. (§ 30253, subd. (b).) The phrase "in any way" is broad, encompassing current and *prospective* need for armoring for the life of the structure, not merely short-term construction-related impacts of a new development. (*Ibid.*; *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798 [" 'Any' " is a term of broad inclusion, meaning "without limit and no matter what kind"].)

This reading comports with the legislative history of section 30253.[3] (*Becerra v. Superior Court* (2020) 44 Cal.App.5th 897, 920.) The California Coastal Plan, completed in 1975 (Coastal Plan) — a study mandated by Proposition 20 articulating policy recommendations that guided the

[3] We grant amici curiae City of Del Mar et al.'s unopposed request for judicial notice of the legislative history of Senate Bill No. 1277 (1975–1976 Reg. Sess.) — approved by the Legislature in 1976 and enacted into law as section 30000 et seq.— and Assembly Bill Nos. 2943 (2001–2002 Reg. Sess.) and 1129 (2017–2018 Reg. Sess.). (Evid. Code, § 452, subd. (c); *California School Bds. Assn. v. State Bd. of Education* (2010) 186 Cal.App.4th 1298, 1307 & fn. 4.) We deny the remainder of the request for judicial notice as other materials are not relevant to our analysis. (*Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6.)

Legislature when drafting the Coastal Act — expressly warned the "best means of avoiding the many problems associated with construction of bluff protective works . . . is to limit construction on or near bluffs that might eventually require such works." (Cal. Coastal Zone Conservation Com., Cal. Coastal Plan (1975) p. 89; *Pacific Legal Foundation v. California Coastal Com*. (1982) 33 Cal.3d 158, 162–163 [tracing the history of the Coastal Act preceded by Prop. 20, entitled the California Coastal Zone Conservation Act of 1972, Pub. Resources Code, former §§ 27000–27650]; *Surfrider Foundation v. California Coastal Com*. (1994) 26 Cal.App.4th 151, 158 [reviewing the California Coastal Plan recommendations and policies when assessing the scope of Coastal Act provisions].) The Coastal Plan recommended Policy 70 — resembling eventual section 30253 — "[b]luff and cliff developments shall be permitted if design and setback are adequate to assure stability and structural integrity *for the expected economic lifespan of the development* and if the development (including storm runoff, foot traffic, grading, irrigation, and septic tanks) will neither create nor contribute significantly to erosional problems or geologic instability of the site or surrounding area." (Cal. Coastal Zone Conservation Com., Cal. Coastal Plan, *supra*, at p. 89, italics added.) "Bluff protection works," as noted in Policy 70, "may be permitted only in accordance with Policy 19.[4] With that exception, no new

[4] Policy 19 contains language similar to current section 30235: "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," as relevant here, "to protect principal structures of *existing developments* that are in danger from present erosion where the coastal agency determines that the public interest would be better served by protecting the existing structures than in protecting natural shoreline processes." (Cal. Coastal Zone Conservation Com., Cal. Coastal Plan, *supra*, at pp. 44–45, italics added.)

lot shall be created or new structure built that would increase the need for bluff protection works." (Cal. Coastal Zone Conservation Com., Cal. Coastal Plan, at p. 89.)

Second, interpreting "existing structures" to mean "existing at the time of the seawall application" would circumvent section 30235's restrictions on constructing shoreline devices. Amici curiae California Building Industry Association and California Business Properties Association readily admit a "new development" would become an "existing structure" once construction is complete under Casa Mira's interpretation. Coastal landowners could build a structure and then file a separate permit application for a seawall under section 30235. A newly constructed building would be guaranteed shoreline armoring immediately upon completion if it is in danger of erosion. (§§ 30253, subd. (b), 30235.) The Commission would be *required* to grant an applicant a coastal development permit to construct a seawall for *any* built structure in those circumstances, regardless of when the structure was built. Such an interpretation gives no independent meaning to the term "existing," rendering it surplusage. (*Los Angeles Unified School Dist. v. Superior Court* (2023) 14 Cal.5th 758, 781–782.) It further fails to comport with the Coastal Act's predominant goal of "preservation of the fragile coastal ecology from overzealous encroachment." (*Save Oxnard Shores v. California Coastal Com.* (1986) 179 Cal.App.3d 140, 152; see also § 30001.5, subds. (a), (f).)

Indeed, section 30235's legislative history strongly suggests the Legislature considered but rejected this expansive interpretation. Early versions of Senate Bill No. 1277 (1975–1976 Reg. Sess.) — the bill ultimately enacting the Coastal Act — did not limit the construction of revetments, seawalls, and other construction altering the natural shoreline to "existing structures." (Legis. Counsel's Dig., Assem. Amends. to Sen. Bill No. 1277

(1975–1976 Reg. Sess.) Stats. 1976, ch. 1330, § 1, June 18, 1976, p. 21; Legis. Counsel's Dig., Assem. Amends. to Sen. Bill No. 1277 (1975–1976 Reg. Sess.) June 24, 1976, p. 20; *Switzer v. Wood* (2019) 35 Cal.App.5th 116, 131 [examining early versions of bill for issues of statutory interpretation].) Rather, section 30204 (later renumbered 30235) provided, in relevant part, "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. . . ." (Legis. Counsel's Dig., Assem. Amends. to Sen. Bill No. 1277 (1975–1976 Reg. Sess.) June 18, 1976, p. 21; Legis. Counsel's Dig., Assem. Amends. to Sen. Bill No. 1277 (1975–1976 Reg. Sess.) June 24, 1976, p. 20.) That broad language would have entitled *any* structure, development, beach or cliff in danger of erosion to a seawall.

But the Legislature ultimately narrowed the type of structures guaranteed seawall protection. In addition to striking from section 30235 "developments" and "cliffs," the final version of Senate Bill No. 1277 inserted the word "existing" before "structures." (Legis. Counsel's Dig., Assem. Amends. to Sen. Bill No. 1277, Stats. 1976 (1975–1976 Reg. Sess.) Aug. 12, 1976, pp. 1, 19.) If the Legislature intended to guarantee any structure shoreline protection — regardless of when it was constructed — it could have retained the broad language "shall be permitted when required . . . to protect structures. . . ." By incorporating "existing structures" into the enacted legislation, it declined to do so. Interpreting "existing structures" as structures existing prior to the effective date of the Coastal Act gives the term "existing" full force and effect. (*In re Pedro T.* (1994) 8 Cal.4th 1041, 1048 ["[i]t is axiomatic that in assessing the import of a statute, we must

concern ourselves with the Legislature's purpose at the time of the enactment"].)

That the Legislature considered but failed to pass legislation expressly defining, among other things, "existing structure" in section 30235 as structures existing as of the effective date of the Coastal Act, does not alter this conclusion. (Legis. Counsel's Dig., Assem. Amends. to Assem. Bill No. 1129 (2017–2018 Reg. Sess.) April 26, 2017, p. 3; Legis. Counsel's Dig., Sen. Amends. to Assem. Bill No. 2943 (2001–2002 Reg. Sess.) Aug. 26, 2002.) Unadopted statutory amendments have little evidentiary value regarding legislative intent. (*West Coast University, Inc. v. Board of Registered Nursing* (2022) 82 Cal.App.5th 624, 641.) The amendments "may have failed because the Legislature felt it unnecessary to accomplish the result intended" or "for any of the multitude of reasons other than consideration on the merits that exist for the failure of measures to pass." (*Burgess v. Board of Education* (1974) 41 Cal.App.3d 571, 581.) "We will not speculate, as there is too little in the record to confidently resolve the question." (*West Coast University*, at p. 641.)

Citing section 30614 — the Commission shall "take appropriate steps to ensure that coastal development permit conditions existing as of January 1, 2002, relating to affordable housing are enforced" — Casa Mira argues the Legislature knew how to express its intent to temporally limit "existing structures," but failed to do so in section 30235. (§ 30614, subd. (a).) True, "where a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different legislative intent existed with reference to the different statutes." (*People v. Norwood* (1972) 26 Cal.App.3d 148, 156.) But that interpretative principle is inapplicable here. Section 30614 —

located in the chapter addressing development controls and governing the Commission's responsibility to ensure coastal development permit conditions for affordable housing are enforced and do not expire during the term of the permit — addresses a subject unrelated to section 30235 — construction altering the natural shoreline, located in the chapter for coastal resources planning for the marine environment.

The Commission's prior coastal development permit decisions interpreting "existing structures" in section 30235 to mean "existing at the time of the seawall application" also do not impact our analysis. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7–8 [agency interpretation of a statute, "[d]epending on the context, . . . may be helpful, enlightening, even convincing. It may sometimes be of little worth"].) The administrative record reflects the Commission's interpretation has been inconsistent[5] — its " 'vacillating position . . . is entitled to no deference.' " (*Yamaha*, at p. 13.) We also fail to see how the Commission's past practice of mandating coastside builders affirmatively waive all rights to request fortifications in the future under section 30235 to obtain a coastal development permit impacts our independent assessment of the statutory

[5] The Commission asserts the trial court abused its discretion by denying its request for judicial notice of several prior determinations on shoreline armoring coastal development permit applications that included the Commission's interpretation of section 30235. We agree. (*Hubbard v. California Coastal Com*. (2019) 38 Cal.App.5th 119, 137, fn. 9 [granting request for judicial notice on appeal in writ of administrative mandate to set aside Commission's decision on a coastal development application]; Evid. Code, § 452, subd. (c) [authorizing judicial notice of official acts of state executive departments].) The documents were relevant to assessing whether the Commission's interpretation of section 30235 was entitled to any deference, and denial of the request was an abuse of discretion. (*CREED-21 v. City of San Diego* (2015) 234 Cal.App.4th 488, 520 [abuse of discretion standard of review of request for judicial notice ruling].)

text. (*Yamaha*, at pp. 8, 13 [" 'The standard for judicial review of agency interpretation of law is the *independent judgment* of the court, giving *deference* to the determination of the agency *appropriate* to the circumstances of the agency action' "].)[6]

In sum, the phrase "existing structures" in section 30235 refers to structures that existed prior to January 1, 1977, the Coastal Act's effective date. The condominiums and the sewer line, constructed in 1984, are not existing structures and are not entitled to shoreline armoring.

II.

The Commission contends substantial evidence supports its finding that armoring was unnecessary to protect the Coastal Trail, a coastal-dependent use. (*City of San Diego v. California Coastal Com.*, *supra*, 119 Cal.App.3d at p. 232.) The record, according to the Commission, reflects that rerouting the Coastal Trail inland into a residential neighborhood was a less environmentally damaging feasible alternative to shoreline armoring. Accordingly, the trial court erroneously concluded the Commission abused its discretion by only approving the construction of a 50-foot seawall to protect the apartments. After reviewing the Commission's decision, examining "the

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[6] At oral argument, respondent's counsel argued a settled expectation regarding an entitlement to shoreline armoring could arise from the Commission's prior interpretation of "existing structures" in section 30235. But the sole reference to this "argument" in Casa Mira's brief is a conclusory statement — unsupported by any legal authority or citation to the record — that "Casa Mira and its members have serious reliance interests in the [Commission's] previous, 38-year interpretation of the statute." Consequently, we do not consider this argument. (*New Plumbing Contractors, Inc. v. Nationwide Mutual Ins. Co.* (1992) 7 Cal.App.4th 1088, 1098 ["[n]ew issues cannot generally be raised for the first time in oral argument"]; *Osornio v. Weingarten* (2004) 124 Cal.App.4th 304, 316, fn. 7 [" 'Issues do not have a life of their own: if they are not raised or supported by argument or citation to authority, we consider the issues waived' "].)

whole record and consider[ing] all relevant evidence, including that evidence which detracts" from the Commission's decision, we disagree. (*Ocean Harbor House Homeowners Assn. v. California Coastal Com.* (2008) 163 Cal.App.4th 215, 227.)

As relevant here, construction of a seawall "shall be permitted when required to serve coastal-dependent uses" and "when designed to eliminate or mitigate adverse impacts on local shoreline sand supply." (§ 30235.) According to the Commission, the use of the word "required" indicates armoring is only permitted if it is the only feasible alternative capable of protecting the structure — "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (§ 30108.)

There is no dispute the Coastal Trail is a coastal-dependent use — any "use which requires a site on, or adjacent to, the sea to be able to function at all." (§ 30101.) Consistent with those requirements, the Commission staff recommended realigning the Coastal Trail *slightly* inward, roughly parallel to the shoreline, and approving the construction of a 257-foot seawall.[7] The seawall would occupy much less public beach space than the emergency riprap revetment currently installed, would minimize significant adverse impacts to coastal resources, and could be built to minimize encroachment onto the public beach.

Commission staff noted that shoreline protective structures can have a variety of negative impacts on coastal resources including adverse effects on sand supply and shoreline and beach dynamics, including the loss of sandy

[7] That seawall, according to staff, would also protect the apartments until they are redeveloped, are no longer present, or no longer require armoring.

beach. But after evaluating the necessity of proposed armoring to protect the Coastal Trail, staff concluded "there is no viable location for the Coastal Trail to be rerouted in this location while maintaining its aesthetic and recreational value adjacent to the ocean and beach." *Rerouting* the trail, staff noted, would require "loop[ing] inland of existing residential structures, such as the Casa Mira condominiums." The narrow space between the coastal bluff and the condominiums required relocating the Coastal Trail farther east of the condominium complex, thus sacrificing coastal views and a consistent shoreline path for pedestrians. (§ 30251; *McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912, 943 ["in determining whether to grant a coastal development permit, the Commission must consider and protect scenic and visual resources"].) Accordingly, the staff concluded relocation was not feasible and recommended certain measures to mitigate adverse effects of the seawall, such as constructing a new beach access stairway, dedicating a portion of the private blufftop land for public access to facilitate access to the stairway, opening an additional beach area for public recreation, and providing ongoing maintenance of these public access areas.

The Commission rejected its staff's recommendation; a revised staff report thereafter determined the Coastal Trail could be relocated by connecting it from the south and extending it inland of the condominiums on the Department of Parks and Recreation (Department) property. This, the Commission explained, provided pedestrians a contiguous path in "close enough proximity to the coast" while avoiding impacts to coastal resources from constructing a seawall. Accordingly, it approved a coastal development permit for the northernmost 50 feet of the proposed seawall — the length of seawall the Commission deemed necessary to protect the apartments — rather than the 257-foot seawall.

The Commission may disagree with its staff's proposed recommendation, necessitating staff to revise its report with findings to reflect the Commission's actions. (Cal. Code Regs., tit. 14, § 13090, subds. (b), (d); *Ocean Harbor House Homeowners Assn. v. California Coastal Com.*, *supra*, 163 Cal.App.4th at p. 225, fn. 6.) But the revised staff report does not include "an ample factual basis and explanation for the Commission's decision to reject the staff recommendation." (*Ocean Harbor*, at p. 245.) As Casa Mira notes, the Commission's revised staff report baldly stated that relocating the Coastal Trail avoids impacts to coastal resources and provides a path "close enough" to the coast. But the original staff report found rerouting was problematic due to the additional costs and permitting time necessary for moving the Coastal Trail. (Compare with *ibid.* [original staff report contained detailed explanation of three valuation methods for calculation of a mitigation fee providing Commission a factual basis for adopting a different methodology for assessing mitigation].) An engineering firm similarly noted the Department actually approved of the 257-foot seawall because it protected the trail. (§ 31408, subd. (a) [requiring consultation with the Department to coordinate the development of the Coastal Trail].) In the absence of any seawall, the Department must apply for a separate coastal development permit to realign the trail as well as seek new easements on the private, coastal bluff property. The firm determined both were uncertain and likely costly endeavors. Indeed, there are no estimates regarding the time the Department would require to relocate the trail. The firm also opined that removing the emergency riprap would result in the trail's imminent danger from the next major storm. Even the revised staff report expressly concedes relocation may be problematic given that Coastal Trail infrastructure would be immediately threatened without any

armoring present. On this record, it was not reasonable to conclude that relocating the Coastal Trail could be accomplished "in a successful manner within a reasonable period of time," considering the economic and environmental factors. (§ 30108.)

The Commission disputes this conclusion, mischaracterizing the record. First, it argues a Casa Mira homeowner conceded rerouting the Coastal Trail was a viable alternative to shoreline armoring. But the homeowner merely acknowledged Surfrider Foundation, an entity that opposed shoreline armoring, recommended rerouting the Coastal Trail through residential buildings. Indeed, the homeowner emphasized this alternative would eliminate coastal views. Second, the Commission suggests the Department supports relocation since it did not seek armoring here and intends to realign the Coastal Trail in the future. The record reflects the Department noted its agreement with a *slight* realignment of the Coastal Trail above Half Moon Bay State Beach, not rerouting the trail inland throughout residences, as the Commission contends. In that realignment, the Coastal Trail would remain seaward of the condominiums rather than weaving throughout the residences due to the long term threat to the Coastal Trail. Third, conclusory statements by the Surfrider Foundation — noting "less environmentally damaging alternatives have to be fully evaluated" and it "is entirely feasible to reroute the Coastal Trail around buildings as needed moving forward and as sea level rise progresses" — and a statement by the Commission's counsel — clarifying the commissioners' motion to revise final plans eliminating seawall protection for the Coastal Trail — do not constitute substantial evidence to support the Commission's findings. (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1502.)

Thus, we conclude Casa Mira has overcome the presumption that the Commission's determination is correct by identifying evidence to the contrary. (*Smith v. Regents of University of California*, *supra*, 58 Cal.App.3d at pp. 404–405.)

DISPOSITION

The judgment granting the petition for writ of mandate is reversed as to its interpretation of "existing structures" in Public Resources Code section 30235. The judgment is affirmed as to the trial court's determination that there is no substantial evidence supporting the Commission's finding that armoring was unnecessary to protect the Coastal Trail. The parties are to bear their own costs of appeal.

RODRÍGUEZ, J.

WE CONCUR:

FUJISAKI, Acting P. J.

PETROU, J.

A168645; *Casa Mira Homeowners Assoc. v. California Coastal Com.*

San Mateo County Superior Court, Hon. Marie S. Weiner.

Rob Bonta, Attorney General, Elizabeth S. St. John, Acting Assistant Attorney General, Daniel A. Olivas, Assistant Attorney General, David G. Alderson and Joel S. Jacobs, Deputy Attorneys General, for Defendant and Appellant California Coastal Commission.

Environmental Law Clinic, Mills Legal Clinic at Stanford Law School, Deborah A. Sivas and Amanda Zerbe for Surfrider Foundation as Amicus Curiae on behalf of Defendant and Appellant California Coastal Commission.

Law Offices of Thomas D. Roth and Thomas D. Roth, for Plaintiff and Respondent Casa Mira Homeowners Association.

Hanson Bridgett, Nathan A. Metcalf, Sean G. Herman and Ellis F. Raskin for Bay Area Council and Bay Planning Coalition, as Amici Curiae on behalf of Plaintiff and Respondent Casa Mira Homeowners Association.

Cox, Castle & Nicholson, Stanley W. Lamport and Morgan L. Gallagher for California Building Industry Association and California Business Properties Association, as Amici Curiae on behalf of Plaintiff and Respondent Casa Mira Homeowners Association.

Nossaman, Steven H. Kaufmann for Capistrano Bay District, Gary Grossman, Pajaro Dunes Association, Pajaro Dunes North Association, Coastal Property Owners Association of Santa Cruz County, and Smart Coast California; Devaney Pate Morris & Cameron and Leslie E. Devaney for City of Del Mar; Rutan & Tucker, A. Patrick Munoz for City of Dana Point; Seren Legal, Katrina Kasey Corbit for Alliance for Coastal Marin Villages, as Amici Curiae on behalf of Plaintiff and Respondent Casa Mira Homeowners Association.

G10 Law, Louis A. Galuppo and Daniel T. Watts for Beach Cities Preservation Alliance, as Amicus Curiae on behalf of Plaintiff and Respondent Casa Mira Homeowners Association.

Filed 12/30/24 (unmodified opn. attached)

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

CASA MIRA HOMEOWNERS ASSOCIATION, Plaintiff and Respondent, v. CALIFORNIA COASTAL COMMISSION, Defendant and Appellant.	A168645 (County of San Mateo Super. Ct. No. 19CIV04677) **ORDER MODIFYING OPINION AND DENYING REHEARING [NO CHANGE IN JUDGMENT]**

THE COURT*:

It is ordered that the published opinion filed on December 12, 2024, be modified as follows:

On page 10, in the first full paragraph, following the first sentence and parenthetical citations, add the following sentence:

It is also consistent with legislative goals identified in the Coastal Act when adopted in 1977. (Former § 30001.5, subds. (a)–(b) [to "[p]rotect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and manmade resources," and to "[a]ssure orderly, balanced utilization and conservation of coastal zone

* Fujisaki, Acting P. J., Petrou, J., and Rodríguez, J. participated in the decision.

resources taking into account the social and economic needs of the people of the state"].)

Modify the beginning of the next sentence, adding "The interpretation" so that the full sentence states:

The interpretation further promotes the Coastal Act's purpose of "protect[ing] public and private property" (§ 30001, subd. (c)) by ensuring pre-1977 structures are entitled to shoreline protection when in danger of erosion under section 30235, and mandating developments built afterwards adhere to setback and structural integrity requirements in section 30253.

There is no change in the judgment.

Respondent's petition for rehearing, filed December 23, 2024, is denied.

Dated: 12/30/2024 FUJISAKI, ACTING P.J., Acting P. J.

A168645; *Casa Mira Homeowners Assoc. v. California Coastal Com.*

San Mateo County Superior Court, Hon. Marie S. Weiner.

Rob Bonta, Attorney General, Elizabeth S. St. John, Acting Assistant Attorney General, Daniel A. Olivas, Assistant Attorney General, David G. Alderson and Joel S. Jacobs, Deputy Attorneys General, for Defendant and Appellant California Coastal Commission.

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Nossaman, Steven H. Kaufmann for Capistrano Bay District, Gary Grossman, Pajaro Dunes Association, Pajaro Dunes North Association, Coastal Property Owners Association of Santa Cruz County, and Smart Coast California; Devaney Pate Morris & Cameron and Leslie E. Devaney for City of Del Mar; Rutan & Tucker, A. Patrick Munoz for City of Dana Point; Seren Legal, Katrina Kasey Corbit for Alliance for Coastal Marin Villages, as Amici Curiae on behalf of Plaintiff and Respondent Casa Mira Homeowners Association.

G10 Law, Louis A. Galuppo and Daniel T. Watts for Beach Cities Preservation Alliance, as Amicus Curiae on behalf of Plaintiff and Respondent Casa Mira Homeowners Association.

Filed 12/12/24 (unmodified opn.)

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

CASA MIRA HOMEOWNERS ASSOCIATION, Plaintiff and Respondent, v. CALIFORNIA COASTAL COMMISSION, Defendant and Appellant.	A168645 (County of San Mateo Super. Ct. No. 19CIV04677)

The California Coastal Act of 1976 (Coastal Act; Pub. Resources Code, § 30000 et seq., undesignated statutory references are to this code) authorizes construction — such as a seawall — that alters the natural shoreline when necessary "to serve coastal-dependent uses or to protect existing structures . . . in danger from erosion." (§ 30235.) The California Coastal Commission (Commission) construes "existing structures" to mean structures that existed prior to January 1, 1977, the effective date of the Coastal Act. On that basis, it denied the request of Casa Mira Homeowners Association (Casa Mira) and its members for a coastal development permit to build a seawall to protect a condominium complex and sewer line built in 1984. It also concluded a 50-foot — rather than a 257-foot — seawall was sufficient to protect the California Coastal Trail (Coastal Trail) and an apartment complex built in 1972, both in danger of erosion. The Commission

determined that relocating the trail inland was a feasible alternative to shoreline armoring.

Casa Mira petitioned for a writ of mandate to vacate the Commission's decision, which the trial court granted. The Commission now asks us to decide whether it correctly interpreted "existing structures" or whether, as Casa Mira argues, those words mean "existing at the time of the seawall application." We also consider whether sufficient evidence supported the Commission's finding that relocating the Coastal Trail is a feasible alternative to constructing a seawall. We conclude "existing structures," in context, means structures that existed before the Coastal Act's effective date. Because the trial court concluded otherwise, we reverse that portion of the judgment. But because we conclude the Commission's finding concerning the feasibility of protecting the trail without the requested seawall is not supported by substantial evidence, we otherwise affirm.

BACKGROUND

In 2018 Casa Mira applied for a coastal development permit to construct a 257-foot seawall that would protect several structures along a coastal bluff in Half Moon Bay in danger from erosion— a four-building condominium complex and sewer line built in 1984, a four-unit apartment building built in 1972 located seaward of the condominiums, and a segment of the Coastal Trail. The proposed seawall would completely armor and protect the bluff downcoast of the apartments. A few years prior, approximately 20 feet of the bluff eroded and collapsed during heavy rains. At the time, the Commission issued two emergency coastal development permits allowing the temporary placement of 4,000 tons of rock, known as riprap, to prevent further erosion. There is currently no formal vertical beach access available from the blufftop to the sandy beach level. The

seawall would replace the emergency riprap revetment and would include a beach access stairway with a connection to the inland Coastal Trail.

Commission staff recommended approving the 257-foot seawall. Section 30235, staff explained, permits the construction of protective shoreline works when necessary to serve coastal-dependent uses or to protect existing structures — that is, structures existing prior to the effective date of the Coastal Act on January 1, 1977 — in danger of erosion. Thus, the apartments — built in 1972 — and the Coastal Trail — a coastal-dependent use because it requires siting adjacent to the ocean to serve its purpose — qualified for armoring. The sewer line and the condominiums, all constructed in 1984, did not. Moreover, the current setbacks for the apartments and the Coastal Trail were insufficient to protect them from erosion, which would worsen due to ongoing sea level rise and predicted increase in extreme weather events. Staff further concluded there were no feasible alternatives to armoring the shoreline, and a 257-foot seawall would prevent the loss of the apartments and the Coastal Trail while minimizing impacts to coastal resources.

The Commission agreed with the staff's interpretation of section 30235, concluding only the apartments and Coastal Trail were entitled to armoring. But it only approved a 50-foot section of the seawall to protect the apartments, not the trail. According to the Commission, the trail could be relocated to loop inland of the condominiums, a feasible, less environmentally damaging alternative to the seawall.

Casa Mira petitioned for a writ of mandate to vacate the Commission's decision. The trial court rejected the Commission's interpretation of section 30235. It concluded the statute's plain language mandates a permit for a seawall or revetment if a structure *presently exists* and is in danger from

erosion. Thus, it determined the Commission prejudicially erred by finding the condominiums and the sewer line were not entitled to any seawall or other protection. In addition, the court concluded, the Commission's finding that the Coastal Trail could be relocated away from the ocean rather than protected with a seawall lacked sufficient evidence. The court entered a judgment in favor of Casa Mira and issued a peremptory writ of mandate ordering the Commission to set aside its decision on Casa Mira's coastal development permit application.

DISCUSSION

The Commission contends the trial court erred by issuing the writ of mandate. We examine whether the Commission engaged in a prejudicial abuse of discretion — i.e., not proceeding in the manner required by law, decision not supported by the findings, or findings not supported by substantial evidence. (*Friends, Artists & Neighbors of Elkhorn Slough v. California Coastal Com*. (2021) 72 Cal.App.5th 666, 692.) On appeal, we affirm the Commission's decision if supported by substantial evidence. (*City of San Diego v. California Coastal Com*. (1981) 119 Cal.App.3d 228, 232.) We presume its decision is correct and supported by substantial evidence unless petitioners produce or cite evidence to the contrary. (*Smith v. Regents of University of California* (1976) 58 Cal.App.3d 397, 404–405.) We review questions of law de novo. (*Schafer v. City of Los Angeles* (2015) 237 Cal.App.4th 1250, 1261.)

I.

The Commission contends the trial court erred by construing "existing structures" in section 30235 to mean structures that presently exist at the time an applicant seeks a coastal development permit. According to the Commission, "existing structures" refers to structures that existed prior to

January 1, 1977, the effective date of the Coastal Act. We review this question of statutory interpretation de novo, giving the statute's words their plain, ordinary meaning and considering them in the context of the entire statutory framework to effectuate the Legislature's purpose. (*Surfrider Foundation v. Martins Beach 1, LLC* (2017) 14 Cal.App.5th 238, 251; *Reddell v. California Coastal Com*. (2009) 180 Cal.App.4th 956, 965.) If the text evinces a plain, unmistakable meaning, further inquiry is unnecessary. (*Surfrider*, at p. 251.) But where the language is ambiguous or susceptible to other reasonable interpretations, we employ extrinsic aids — e.g., legislative history, contemporaneous administrative construction, public policy — to interpret the statute. (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 803.) We liberally construe Coastal Act provisions, " 'giving the highest priority to environmental considerations.' " (*Surfrider*, at p. 251.) Having engaged in that review, we agree with the Commission.

A.

The Coastal Act was designed to "[p]rotect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources." (§ 30001.5, subd. (a); *Kracke v. City of Santa Barbara* (2021) 63 Cal.App.5th 1089, 1095.) It seeks to "[m]aximize public access to and along the coast," consistent with "sound resources conservation principles and constitutionally protected rights of private property owners." (§ 30001.5, subd. (c).) Coastal zone development — broadly defined to include the construction, placement or erection of any solid material or structure — requires a coastal development permit. (§§ 30106, 30600, subd. (a).) Section 30235 addresses construction that alters the natural shoreline. That provision states, in relevant part, seawalls and other

construction altering natural shoreline processes "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." (§ 30235.) In other words, the Commission *must* issue a permit for construction of a seawall or other armoring to protect existing structures in danger of erosion, assuming the other requirements are fulfilled. (*Ibid*; *Tarrant Bell Property, LLC v. Superior Court* (2011) 51 Cal.4th 538, 542 [interpreting the term "shall" as a mandatory act].)

The text of section 30235 does not resolve the dispute here. Nothing in this section or the Coastal Act defines "existing structures." (§§ 30100 ["[u]nless the context otherwise requires, the definitions in this chapter govern the interpretation of" the Coastal Act], 30235, 30000 et seq.) Citing Dictionary.com, Casa Mira contends the ordinary meaning of "existing" is " 'already or previously in place.' " (*Busker v. Wabtec Corp.* (2021) 11 Cal.5th 1147, 1158–1159 [examining dictionary definitions for statutory interpretation].) Merriam-Webster identifies "existing" as "having being at the present time." (Merriam-Webster's Collegiate Thesaurus Online (2024) <https://unabridged.merriam-webster.com/thesaurus/existing> [as of Dec. 12, 2024].) But this begs the question of *when* the structures must be "already or previously in place" or "hav[e] being" — at the time the statute was written or at the time the statute is being applied. The statutory text does not readily answer that critical question. (*Vasquez v. State of California* (2008) 45 Cal.4th 243, 253 ["We may not rewrite the statute to conform to an assumed intention that does not appear in its language"].)

Casa Mira urges us to apply the rule "that a word given a particular meaning in one part of a law should be given the same meaning in other

parts of the same law." (*Ste. Marie v. Riverside County Regional Park & Open-Space Dist.* (2009) 46 Cal.4th 282, 289.) That canon is less useful to Casa Mira than it believes. Even though the word "existing" appears throughout the Coastal Act, Casa Mira fails to account for its inconsistent usage. (*People v. Woodhead* (1987) 43 Cal.3d 1002, 1008 [words may have "different meanings within a single statute"].)

To illustrate: one provision requires "New residential, commercial, or industrial 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 . . . ." (§ 30250, subd. (a).) The Legislature distinguished between development that existed at the time the Coastal Act was enacted — "existing developed areas" — and development that will be created after the Coastal Act's passage — new development. (*Ibid.*) Reading "existing" in this section to include *any* development renders the reference to new developments surplusage. (*Ste. Marie v. Riverside County Regional Park & Open-Space Dist.*, *supra*, 46 Cal.4th at p. 289 ["courts should, if possible, accord meaning to every word and phrase in a statute so as to better effectuate the Legislature's intent"]; §§ 30001, subd. (d) ["existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being" of the people of California], 30007 [nothing in the Coastal Act exempts local governments from "any other obligation related to housing imposed by existing law or any law hereafter enacted"]; 30261 [encouraging multicompany use of "existing and new tanker facilities" to "the maximum extent feasible and legally permissible" as well as requiring "[n]ew tanker terminals" be situated "to avoid risk to environmentally sensitive areas"].)

On the other hand, other Coastal Act provisions using the term "existing" appear to refer to post-enactment activity. For example, section 30705 governs diking, filling, or dredging water areas and provides the "design and location of new or expanded facilities shall . . . take advantage of existing water depths, water circulation, siltation patterns, and means available to reduce controllable sedimentation so as to diminish the need for future dredging." (*Id*. subd. (b).) In this context, "existing" likely refers to marine conditions that exist at the time the new facility is being constructed or expanded. It makes little sense for a new constructed facility to "take advantage" of water conditions that existed when the Coastal Act was passed.

Thus, we cannot conclude use of the word "existing" in the Coastal Act answers the question presented here. (*Ste. Marie v. Riverside County Regional Park & Open-Space Dist.*, *supra*, 46 Cal.4th at p. 289.) And unlike these other provisions, the rest of section 30235 does not assist in determining the intended meaning of "existing structures." (*Ibid*.) Rather, it is susceptible to both competing interpretations. (*Joannou v. City of Rancho Palos Verdes* (2013) 219 Cal.App.4th 746, 752.)

B.

Yet when one views section 30235 in light of the Coastal Act as a whole — highlighting additional provisions governing shoreline armoring in section 30253 — it is apparent "existing structures" refers to structures existing prior to the Coastal Act's effective date. (*Surfrider Foundation v. Martins Beach 1, LLC*, *supra*, 14 Cal.App.5th at p. 251; *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 166 [" 'we consider portions of a statute in the context of the entire statute and the statutory scheme of which it is a part, giving significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose' "].) Section 30253 requires "new

development" to minimize adverse impacts in the coastal zone. Among other things, "new development" shall "[a]ssure stability and structural integrity, and neither create nor contribute significantly to erosion" of the "site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs."[1] (§ 30253, subd. (b).) Accordingly, to the extent new development is authorized, it must comply with mandatory siting and structural requirements so as to not require the construction of destructive shoreline protection. (*Ibid*; *Tarrant Bell Property, LLC v. Superior Court*, *supra*, 51 Cal.4th at p. 542.)

Together, sections 30235 and 30253 create a shoreline protection management framework. Section 30235 is designed to protect structures built prior to the enactment of section 30253's siting and structural requirements — when the Coastal Act did not yet exist. Such structures may not necessarily have been built in a manner to avoid the need for shoreline protection at some point. In those circumstances, section 30235 guarantees "existing" structures protection from coastal erosion — shoreline protection "shall be permitted when required . . . to protect existing structures or public beaches in danger from erosion." But after enactment of the Coastal Act, structures cannot be built in a manner that requires shoreline armoring — "[n]ew development shall" not "in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs." (§ 30253, subd. (b).) The statutes logically distinguish

[1] New development must also "[m]inimize risks to life and property in areas of high geologic, flood, and fire hazard"; "[b]e consistent with requirements imposed by an air pollution control district or the State Air Resources Board as to each particular development"; and "[m]inimize energy consumption and vehicle miles traveled." (§ 30253, subds. (a), (c)–(d).)

between structures that are entitled to the privilege of shoreline armoring when in danger of erosion — structures built prior to January 1, 1977 — and those that cannot require shoreline armoring — structures constructed after Coastal Act enactment that must adhere to section 30253's siting requirements for structural integrity and stability.

This interpretation effectuates the Coastal Act's goal to "[a]nticipate, assess, plan for, and, to the extent feasible, avoid, minimize, and mitigate the adverse environmental and economic effects of sea level rise within the coastal zone." (§§ 30001.5, subd. (f), 30009; *Yeager v. Blue Cross of California* (2009) 175 Cal.App.4th 1098, 1103, fn. omitted [legislative "findings and statements of purpose in a statute's preamble," though not binding, "can be illuminating if a statute is ambiguous"].) It further promotes the Coastal Act's purpose of "protect[ing] public and private property" (§ 30001, subd. (c)) by ensuring pre-1977 structures are entitled to shoreline protection when in danger of erosion under section 30235, and mandating developments built afterwards adhere to setback and structural integrity requirements in section 30253. Thereby, the Coastal Act protects both types of structures — existing structures and new developments — in different ways according to their dates of construction and accompanying building requirements. In sum, we read "existing structures" in section 30235 to refer to structures existing prior to the Coastal Act's effective date on January 1, 1977.

C.

Casa Mira proffers a series of arguments disputing this conclusion; we find none persuasive.[2] First, it suggests this interpretation renders section

[2] Casa Mira moved to strike portions of Surfrider Foundation's amicus curiae brief that are unsupported by record citations. We deny the motion to strike but will ignore the unsupported references. (*Colt v. Freedom Communications, Inc.* (2003) 109 Cal.App.4th 1551, 1560.)

30235 internally inconsistent. Specifically, the second sentence of section 30235 provides, "Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible." Defining both "existing structures" and "existing marine structures" as those existing prior to the Coastal Act's effective date on January 1, 1977, Casa Mira asserts, precludes authorities from phasing out or upgrading post-1977 marine structure such as an oil platform contributing to water pollution. Not so.

This narrow reading ignores other Coastal Act provisions governing marine resources and water pollution. (E.g., §§ 30230 ["[u]ses of the marine environment *shall* be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long–term commercial, recreational, scientific, and educational purposes"], italics added, 30231 [requiring maintenance and, where feasible, restoration of "biological productivity and the quality of coastal waters" to protect optimum marine organism populations and human health by among other things "minimizing adverse effects of waste water discharges and entrainment, controlling runoff"].) For oil and gas development in particular, new and expanded oil and gas development may be permitted if, among other things, the "development is performed safely and consistent with the geologic conditions of the well site"; pipelines transporting oil shall "ensure maximum protection of public health and safety and of the integrity and productively of terrestrial and marine ecosystems." (§ 30262, subd. (a)(1), (5).) Thus, reading the Coastal Act as a whole, any marine structure, regardless of when it was constructed, must comply with these mandates.

Next, Casa Mira contends section 30253 merely clarifies that a new development must not depend on a seawall when constructed. Casa Mira attempts to harmonize sections 30235 and 30253 by arguing they authorize shoreline protection due to threats of erosion that arise decades after a new development has been constructed. There are two flaws with this analysis. First, while we agree section 30253 prohibits the construction of a new development that depends on the simultaneous construction of a seawall, nothing in the statute limits this prohibition to the initial construction. It states that new development shall not "in any way" require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. (§ 30253, subd. (b).) The phrase "in any way" is broad, encompassing current and *prospective* need for armoring for the life of the structure, not merely short-term construction-related impacts of a new development. (*Ibid.*; *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798 [" 'Any' " is a term of broad inclusion, meaning "without limit and no matter what kind"].)

This reading comports with the legislative history of section 30253.[3] (*Becerra v. Superior Court* (2020) 44 Cal.App.5th 897, 920.) The California Coastal Plan, completed in 1975 (Coastal Plan) — a study mandated by Proposition 20 articulating policy recommendations that guided the

[3] We grant amici curiae City of Del Mar et al.'s unopposed request for judicial notice of the legislative history of Senate Bill No. 1277 (1975–1976 Reg. Sess.) — approved by the Legislature in 1976 and enacted into law as section 30000 et seq.— and Assembly Bill Nos. 2943 (2001–2002 Reg. Sess.) and 1129 (2017–2018 Reg. Sess.). (Evid. Code, § 452, subd. (c); *California School Bds. Assn. v. State Bd. of Education* (2010) 186 Cal.App.4th 1298, 1307 & fn. 4.) We deny the remainder of the request for judicial notice as other materials are not relevant to our analysis. (*Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6.)

Legislature when drafting the Coastal Act — expressly warned the "best means of avoiding the many problems associated with construction of bluff protective works . . . is to limit construction on or near bluffs that might eventually require such works." (Cal. Coastal Zone Conservation Com., Cal. Coastal Plan (1975) p. 89; *Pacific Legal Foundation v. California Coastal Com*. (1982) 33 Cal.3d 158, 162–163 [tracing the history of the Coastal Act preceded by Prop. 20, entitled the California Coastal Zone Conservation Act of 1972, Pub. Resources Code, former §§ 27000–27650]; *Surfrider Foundation v. California Coastal Com*. (1994) 26 Cal.App.4th 151, 158 [reviewing the California Coastal Plan recommendations and policies when assessing the scope of Coastal Act provisions].) The Coastal Plan recommended Policy 70 — resembling eventual section 30253 — "[b]luff and cliff developments shall be permitted if design and setback are adequate to assure stability and structural integrity *for the expected economic lifespan of the development* and if the development (including storm runoff, foot traffic, grading, irrigation, and septic tanks) will neither create nor contribute significantly to erosional problems or geologic instability of the site or surrounding area." (Cal. Coastal Zone Conservation Com., Cal. Coastal Plan, *supra*, at p. 89, italics added.) "Bluff protection works," as noted in Policy 70, "may be permitted only in accordance with Policy 19.[4] With that exception, no new

[4] Policy 19 contains language similar to current section 30235: "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," as relevant here, "to protect principal structures of *existing developments* that are in danger from present erosion where the coastal agency determines that the public interest would be better served by protecting the existing structures than in protecting natural shoreline processes." (Cal. Coastal Zone Conservation Com., Cal. Coastal Plan, *supra*, at pp. 44–45, italics added.)

lot shall be created or new structure built that would increase the need for bluff protection works." (Cal. Coastal Zone Conservation Com., Cal. Coastal Plan, at p. 89.)

Second, interpreting "existing structures" to mean "existing at the time of the seawall application" would circumvent section 30235's restrictions on constructing shoreline devices. Amici curiae California Building Industry Association and California Business Properties Association readily admit a "new development" would become an "existing structure" once construction is complete under Casa Mira's interpretation. Coastal landowners could build a structure and then file a separate permit application for a seawall under section 30235. A newly constructed building would be guaranteed shoreline armoring immediately upon completion if it is in danger of erosion. (§§ 30253, subd. (b), 30235.) The Commission would be *required* to grant an applicant a coastal development permit to construct a seawall for *any* built structure in those circumstances, regardless of when the structure was built. Such an interpretation gives no independent meaning to the term "existing," rendering it surplusage. (*Los Angeles Unified School Dist. v. Superior Court* (2023) 14 Cal.5th 758, 781–782.) It further fails to comport with the Coastal Act's predominant goal of "preservation of the fragile coastal ecology from overzealous encroachment." (*Save Oxnard Shores v. California Coastal Com.* (1986) 179 Cal.App.3d 140, 152; see also § 30001.5, subds. (a), (f).)

Indeed, section 30235's legislative history strongly suggests the Legislature considered but rejected this expansive interpretation. Early versions of Senate Bill No. 1277 (1975–1976 Reg. Sess.) — the bill ultimately enacting the Coastal Act — did not limit the construction of revetments, seawalls, and other construction altering the natural shoreline to "existing structures." (Legis. Counsel's Dig., Assem. Amends. to Sen. Bill No. 1277

(1975–1976 Reg. Sess.) Stats. 1976, ch. 1330, § 1, June 18, 1976, p. 21; Legis. Counsel's Dig., Assem. Amends. to Sen. Bill No. 1277 (1975–1976 Reg. Sess.) June 24, 1976, p. 20; *Switzer v. Wood* (2019) 35 Cal.App.5th 116, 131 [examining early versions of bill for issues of statutory interpretation].) Rather, section 30204 (later renumbered 30235) provided, in relevant part, "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. . . ." (Legis. Counsel's Dig., Assem. Amends. to Sen. Bill No. 1277 (1975–1976 Reg. Sess.) June 18, 1976, p. 21; Legis. Counsel's Dig., Assem. Amends. to Sen. Bill No. 1277 (1975–1976 Reg. Sess.) June 24, 1976, p. 20.) That broad language would have entitled *any* structure, development, beach or cliff in danger of erosion to a seawall.

But the Legislature ultimately narrowed the type of structures guaranteed seawall protection. In addition to striking from section 30235 "developments" and "cliffs," the final version of Senate Bill No. 1277 inserted the word "existing" before "structures." (Legis. Counsel's Dig., Assem. Amends. to Sen. Bill No. 1277, Stats. 1976 (1975–1976 Reg. Sess.) Aug. 12, 1976, pp. 1, 19.) If the Legislature intended to guarantee any structure shoreline protection — regardless of when it was constructed — it could have retained the broad language "shall be permitted when required . . . to protect structures. . . ." By incorporating "existing structures" into the enacted legislation, it declined to do so. Interpreting "existing structures" as structures existing prior to the effective date of the Coastal Act gives the term "existing" full force and effect. (*In re Pedro T.* (1994) 8 Cal.4th 1041, 1048 ["[i]t is axiomatic that in assessing the import of a statute, we must

concern ourselves with the Legislature's purpose at the time of the enactment"].)

That the Legislature considered but failed to pass legislation expressly defining, among other things, "existing structure" in section 30235 as structures existing as of the effective date of the Coastal Act, does not alter this conclusion. (Legis. Counsel's Dig., Assem. Amends. to Assem. Bill No. 1129 (2017–2018 Reg. Sess.) April 26, 2017, p. 3; Legis. Counsel's Dig., Sen. Amends. to Assem. Bill No. 2943 (2001–2002 Reg. Sess.) Aug. 26, 2002.) Unadopted statutory amendments have little evidentiary value regarding legislative intent. (*West Coast University, Inc. v. Board of Registered Nursing* (2022) 82 Cal.App.5th 624, 641.) The amendments "may have failed because the Legislature felt it unnecessary to accomplish the result intended" or "for any of the multitude of reasons other than consideration on the merits that exist for the failure of measures to pass." (*Burgess v. Board of Education* (1974) 41 Cal.App.3d 571, 581.) "We will not speculate, as there is too little in the record to confidently resolve the question." (*West Coast University*, at p. 641.)

Citing section 30614 — the Commission shall "take appropriate steps to ensure that coastal development permit conditions existing as of January 1, 2002, relating to affordable housing are enforced" — Casa Mira argues the Legislature knew how to express its intent to temporally limit "existing structures," but failed to do so in section 30235. (§ 30614, subd. (a).) True, "where a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different legislative intent existed with reference to the different statutes." (*People v. Norwood* (1972) 26 Cal.App.3d 148, 156.) But that interpretative principle is inapplicable here. Section 30614 —

located in the chapter addressing development controls and governing the Commission's responsibility to ensure coastal development permit conditions for affordable housing are enforced and do not expire during the term of the permit — addresses a subject unrelated to section 30235 — construction altering the natural shoreline, located in the chapter for coastal resources planning for the marine environment.

The Commission's prior coastal development permit decisions interpreting "existing structures" in section 30235 to mean "existing at the time of the seawall application" also do not impact our analysis. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7–8 [agency interpretation of a statute, "[d]epending on the context, . . . may be helpful, enlightening, even convincing. It may sometimes be of little worth"].) The administrative record reflects the Commission's interpretation has been inconsistent[5] — its " 'vacillating position . . . is entitled to no deference.' " (*Yamaha*, at p. 13.) We also fail to see how the Commission's past practice of mandating coastside builders affirmatively waive all rights to request fortifications in the future under section 30235 to obtain a coastal development permit impacts our independent assessment of the statutory

[5] The Commission asserts the trial court abused its discretion by denying its request for judicial notice of several prior determinations on shoreline armoring coastal development permit applications that included the Commission's interpretation of section 30235. We agree. (*Hubbard v. California Coastal Com*. (2019) 38 Cal.App.5th 119, 137, fn. 9 [granting request for judicial notice on appeal in writ of administrative mandate to set aside Commission's decision on a coastal development application]; Evid. Code, § 452, subd. (c) [authorizing judicial notice of official acts of state executive departments].) The documents were relevant to assessing whether the Commission's interpretation of section 30235 was entitled to any deference, and denial of the request was an abuse of discretion. (*CREED-21 v. City of San Diego* (2015) 234 Cal.App.4th 488, 520 [abuse of discretion standard of review of request for judicial notice ruling].)

text. (*Yamaha*, at pp. 8, 13 [" 'The standard for judicial review of agency interpretation of law is the *independent judgment* of the court, giving *deference* to the determination of the agency *appropriate* to the circumstances of the agency action' "].)[6]

In sum, the phrase "existing structures" in section 30235 refers to structures that existed prior to January 1, 1977, the Coastal Act's effective date. The condominiums and the sewer line, constructed in 1984, are not existing structures and are not entitled to shoreline armoring.

II.

The Commission contends substantial evidence supports its finding that armoring was unnecessary to protect the Coastal Trail, a coastal-dependent use. (*City of San Diego v. California Coastal Com.*, *supra*, 119 Cal.App.3d at p. 232.) The record, according to the Commission, reflects that rerouting the Coastal Trail inland into a residential neighborhood was a less environmentally damaging feasible alternative to shoreline armoring. Accordingly, the trial court erroneously concluded the Commission abused its discretion by only approving the construction of a 50-foot seawall to protect the apartments. After reviewing the Commission's decision, examining "the

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[6] At oral argument, respondent's counsel argued a settled expectation regarding an entitlement to shoreline armoring could arise from the Commission's prior interpretation of "existing structures" in section 30235. But the sole reference to this "argument" in Casa Mira's brief is a conclusory statement — unsupported by any legal authority or citation to the record — that "Casa Mira and its members have serious reliance interests in the [Commission's] previous, 38-year interpretation of the statute." Consequently, we do not consider this argument. (*New Plumbing Contractors, Inc. v. Nationwide Mutual Ins. Co.* (1992) 7 Cal.App.4th 1088, 1098 ["[n]ew issues cannot generally be raised for the first time in oral argument"]; *Osornio v. Weingarten* (2004) 124 Cal.App.4th 304, 316, fn. 7 [" 'Issues do not have a life of their own: if they are not raised or supported by argument or citation to authority, we consider the issues waived' "].)

whole record and consider[ing] all relevant evidence, including that evidence which detracts" from the Commission's decision, we disagree. (*Ocean Harbor House Homeowners Assn. v. California Coastal Com.* (2008) 163 Cal.App.4th 215, 227.)

As relevant here, construction of a seawall "shall be permitted when required to serve coastal-dependent uses" and "when designed to eliminate or mitigate adverse impacts on local shoreline sand supply." (§ 30235.) According to the Commission, the use of the word "required" indicates armoring is only permitted if it is the only feasible alternative capable of protecting the structure — "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (§ 30108.)

There is no dispute the Coastal Trail is a coastal-dependent use — any "use which requires a site on, or adjacent to, the sea to be able to function at all." (§ 30101.) Consistent with those requirements, the Commission staff recommended realigning the Coastal Trail *slightly* inward, roughly parallel to the shoreline, and approving the construction of a 257-foot seawall.[7] The seawall would occupy much less public beach space than the emergency riprap revetment currently installed, would minimize significant adverse impacts to coastal resources, and could be built to minimize encroachment onto the public beach.

Commission staff noted that shoreline protective structures can have a variety of negative impacts on coastal resources including adverse effects on sand supply and shoreline and beach dynamics, including the loss of sandy

[7] That seawall, according to staff, would also protect the apartments until they are redeveloped, are no longer present, or no longer require armoring.

beach. But after evaluating the necessity of proposed armoring to protect the Coastal Trail, staff concluded "there is no viable location for the Coastal Trail to be rerouted in this location while maintaining its aesthetic and recreational value adjacent to the ocean and beach." *Rerouting* the trail, staff noted, would require "loop[ing] inland of existing residential structures, such as the Casa Mira condominiums." The narrow space between the coastal bluff and the condominiums required relocating the Coastal Trail farther east of the condominium complex, thus sacrificing coastal views and a consistent shoreline path for pedestrians. (§ 30251; *McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912, 943 ["in determining whether to grant a coastal development permit, the Commission must consider and protect scenic and visual resources"].) Accordingly, the staff concluded relocation was not feasible and recommended certain measures to mitigate adverse effects of the seawall, such as constructing a new beach access stairway, dedicating a portion of the private blufftop land for public access to facilitate access to the stairway, opening an additional beach area for public recreation, and providing ongoing maintenance of these public access areas.

The Commission rejected its staff's recommendation; a revised staff report thereafter determined the Coastal Trail could be relocated by connecting it from the south and extending it inland of the condominiums on the Department of Parks and Recreation (Department) property. This, the Commission explained, provided pedestrians a contiguous path in "close enough proximity to the coast" while avoiding impacts to coastal resources from constructing a seawall. Accordingly, it approved a coastal development permit for the northernmost 50 feet of the proposed seawall — the length of seawall the Commission deemed necessary to protect the apartments — rather than the 257-foot seawall.

The Commission may disagree with its staff's proposed recommendation, necessitating staff to revise its report with findings to reflect the Commission's actions. (Cal. Code Regs., tit. 14, § 13090, subds. (b), (d); *Ocean Harbor House Homeowners Assn. v. California Coastal Com.*, *supra*, 163 Cal.App.4th at p. 225, fn. 6.) But the revised staff report does not include "an ample factual basis and explanation for the Commission's decision to reject the staff recommendation." (*Ocean Harbor*, at p. 245.) As Casa Mira notes, the Commission's revised staff report baldly stated that relocating the Coastal Trail avoids impacts to coastal resources and provides a path "close enough" to the coast. But the original staff report found rerouting was problematic due to the additional costs and permitting time necessary for moving the Coastal Trail. (Compare with *ibid.* [original staff report contained detailed explanation of three valuation methods for calculation of a mitigation fee providing Commission a factual basis for adopting a different methodology for assessing mitigation].) An engineering firm similarly noted the Department actually approved of the 257-foot seawall because it protected the trail. (§ 31408, subd. (a) [requiring consultation with the Department to coordinate the development of the Coastal Trail].) In the absence of any seawall, the Department must apply for a separate coastal development permit to realign the trail as well as seek new easements on the private, coastal bluff property. The firm determined both were uncertain and likely costly endeavors. Indeed, there are no estimates regarding the time the Department would require to relocate the trail. The firm also opined that removing the emergency riprap would result in the trail's imminent danger from the next major storm. Even the revised staff report expressly concedes relocation may be problematic given that Coastal Trail infrastructure would be immediately threatened without any

armoring present. On this record, it was not reasonable to conclude that relocating the Coastal Trail could be accomplished "in a successful manner within a reasonable period of time," considering the economic and environmental factors. (§ 30108.)

The Commission disputes this conclusion, mischaracterizing the record. First, it argues a Casa Mira homeowner conceded rerouting the Coastal Trail was a viable alternative to shoreline armoring. But the homeowner merely acknowledged Surfrider Foundation, an entity that opposed shoreline armoring, recommended rerouting the Coastal Trail through residential buildings. Indeed, the homeowner emphasized this alternative would eliminate coastal views. Second, the Commission suggests the Department supports relocation since it did not seek armoring here and intends to realign the Coastal Trail in the future. The record reflects the Department noted its agreement with a *slight* realignment of the Coastal Trail above Half Moon Bay State Beach, not rerouting the trail inland throughout residences, as the Commission contends. In that realignment, the Coastal Trail would remain seaward of the condominiums rather than weaving throughout the residences due to the long term threat to the Coastal Trail. Third, conclusory statements by the Surfrider Foundation — noting "less environmentally damaging alternatives have to be fully evaluated" and it "is entirely feasible to reroute the Coastal Trail around buildings as needed moving forward and as sea level rise progresses" — and a statement by the Commission's counsel — clarifying the commissioners' motion to revise final plans eliminating seawall protection for the Coastal Trail — do not constitute substantial evidence to support the Commission's findings. (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1502.)

Thus, we conclude Casa Mira has overcome the presumption that the Commission's determination is correct by identifying evidence to the contrary. (*Smith v. Regents of University of California*, *supra*, 58 Cal.App.3d at pp. 404–405.)

DISPOSITION

The judgment granting the petition for writ of mandate is reversed as to its interpretation of "existing structures" in Public Resources Code section 30235. The judgment is affirmed as to the trial court's determination that there is no substantial evidence supporting the Commission's finding that armoring was unnecessary to protect the Coastal Trail. The parties are to bear their own costs of appeal.

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RODRÍGUEZ, J.

WE CONCUR:

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FUJISAKI, Acting P. J.

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PETROU, J.

A168645; *Casa Mira Homeowners Assoc. v. California Coastal Com.*

San Mateo County Superior Court, Hon. Marie S. Weiner.

Rob Bonta, Attorney General, Elizabeth S. St. John, Acting Assistant Attorney General, Daniel A. Olivas, Assistant Attorney General, David G. Alderson and Joel S. Jacobs, Deputy Attorneys General, for Defendant and Appellant California Coastal Commission.

Environmental Law Clinic, Mills Legal Clinic at Stanford Law School, Deborah A. Sivas and Amanda Zerbe for Surfrider Foundation as Amicus Curiae on behalf of Defendant and Appellant California Coastal Commission.

Law Offices of Thomas D. Roth and Thomas D. Roth, for Plaintiff and Respondent Casa Mira Homeowners Association.

Hanson Bridgett, Nathan A. Metcalf, Sean G. Herman and Ellis F. Raskin for Bay Area Council and Bay Planning Coalition, as Amici Curiae on behalf of Plaintiff and Respondent Casa Mira Homeowners Association.

Cox, Castle & Nicholson, Stanley W. Lamport and Morgan L. Gallagher for California Building Industry Association and California Business Properties Association, as Amici Curiae on behalf of Plaintiff and Respondent Casa Mira Homeowners Association.

Nossaman, Steven H. Kaufmann for Capistrano Bay District, Gary Grossman, Pajaro Dunes Association, Pajaro Dunes North Association, Coastal Property Owners Association of Santa Cruz County, and Smart Coast California; Devaney Pate Morris & Cameron and Leslie E. Devaney for City of Del Mar; Rutan & Tucker, A. Patrick Munoz for City of Dana Point; Seren Legal, Katrina Kasey Corbit for Alliance for Coastal Marin Villages, as Amici Curiae on behalf of Plaintiff and Respondent Casa Mira Homeowners Association.

G10 Law, Louis A. Galuppo and Daniel T. Watts for Beach Cities Preservation Alliance, as Amicus Curiae on behalf of Plaintiff and Respondent Casa Mira Homeowners Association.

State of California)
County of Los Angeles)
)

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I, Stephen Moore , declare that I am not a party to the action, am over 18 years of age and my business address is: 626 Wilshire Blvd., Suite 410, Los Angeles, CA 90017; ca@counselpress.com

On 1/16/2025 declarant served the within: Petition for Review **upon:**

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The Honorable Marie S. Weiner SUPERIOR COURT OF CALIFORNIA County of San Mateo 400 County Center, Courtroom 2E Redwood City, California 94063 Trial Court Judge					

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

Signature: /s/ Stephen Moore, Senior Appellate Paralegal, Counsel Press Inc.; ca@counselpress.com

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