

No. S284378

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

SHEAR DEVELOPMENT CO., LLC,

Plaintiff and Appellant,

v.

CALIFORNIA COASTAL COMMISSION,

Defendant and Respondent.

Court of Appeal of the State of California
Court of Appeal Case No. B319895
Superior Court of the State of California
County of San Luis Obispo
The Honorable Rita Federman
Civil Case No. 20CV-0431

**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND
[PROPOSED] BRIEF OF LEAGUE OF CALIFORNIA CITIES IN SUPPORT
OF APPELLANT SHEAR DEVELOPMENT CO., LLC**

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

This is the initial certificate of interested entities or persons submitted on behalf of Amicus Curiae League of California Cities in the case number listed above.

The undersigned certifies that there are no interested entities or persons that must be listed in this Certificate under California Rules of Court, rule 8.208.

Dated: March 5, 2025

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**APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE
BRIEF IN SUPPORT OF APPELLANT SHEAR
DEVELOPMENT CO., LLC**

TO THE HONORABLE PRESIDING JUSTICE:

Pursuant to California Rules of Court, Rule 8.520, subdivision (f), the League of California Cities (“Cal Cities”) respectfully applies to this Court for permission to file the amicus curiae brief accompanying this application in support of Appellant Shear Development Co., LLC.

Cal Cities is an association of 472 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life, for all Californians. Cal Cities is advised by its Legal Advocacy Committee, comprised of 25 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

One issue in this appeal is whether courts must defer to the local government’s interpretation of its own local coastal program (“LCP”) when the California Coastal Commission (“Commission”) interprets the LCP differently. Many Cal Cities member cities have LCPs. Cal Cities has a direct interest in ensuring that a city’s interpretation of its own LCP is accorded deference by the courts. Any decision by this court on the deference owed to a local government’s interpretation of its LCP will have significant impacts on Cal Cities’ member cities.

This brief will assist the Court by providing perspective and analysis on the issue of whether courts must defer to a local government's interpretation of its own LCP when the Commission and local government offer conflicting interpretations of the LCP. Here, the County of San Luis Obispo ("County") is the author and primary implementer of the LCP in the case at issue. Thus, the County has greater authority on and understanding of a consistent interpretation of its own LCP in a way that maximizes responsiveness to local conditions, as required by the Coastal Act.

For the reasons stated in this application and further developed in the proposed amicus brief, Cal Cities respectfully requests leave to file the amicus brief with this application.

The application and amicus curiae brief were authored by Amy E. Hoyt, Gregg W. Kettles, Trevor L. Rusin, Patrick T. Donegan, and Antoinette Ranit-Mauro, all of Best Best & Krieger LLP. No person or entity made a monetary contribution to its preparation and submission.

Dated: March 5, 2025

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INTRODUCTION AND SUMMARY OF ARGUMENT

In order to achieve a maximum balance between coastal protections, public access and the rights of private property owners, the Coastal Act heavily relies on local government enforcement of local coastal programs (“LCPs”). Specifically, local governments are responsible for implementing and amending their LCPs. In most instances, local governments enforce their LCPs using their independent judgement and without any input from the California Coastal Commission (“Commission”).

As the author and primary enforcer, the local government’s interpretation of its own LCP should be entitled to deference, not the Commission’s interpretation. The Coastal Act contemplates the importance of each local government’s familiarity with local conditions and recognizes that such expertise is central to achieving the statute’s goals. The Coastal Act outlines the minimum standards each local government is required to meet, recognizing the need for each local government to design their own unique coastal planning tools. As such, once the Commission certifies an LCP, its role in enforcing an LCP is reduced to limited review. Notably, the Coastal Act does not give the Commission any authority to compel a local government to adopt modifications to their LCPs.

In light of the above, and as further described below, Cal Cities respectfully requests the Court reverse the decision of the Court of Appeal and hold that courts must give deference to a

local government's interpretation of ambiguous provisions within its LCP.

ARGUMENT

The Coastal Act expressly recognizes the need to “rely heavily” on local governments to “achieve maximum responsiveness to local conditions, accountability, and public accessibility.” (Pub. Resources Code § 30004, subd. (a).) In carrying out this aim, the Coastal Act requires each local government within the coastal zone to develop an LCP comprised of a land use plan and a set of implementing ordinances designed to promote the Coastal Act's objectives of protecting the coastline of maximizing public access. (*Id.*, §§ 30001.5, 30500–30526.)

“The Legislature left wide discretion to local governments to formulate land use plans for the coastal zone and it also left wide discretion to local governments to determine how to implement certified LCPs.” (*Yost v. Thomas* (1984) 36 Cal.3d 561, 574.) Although each local government consults the Commission in the formulation of their LCP, it is ultimately the local government that determines the precise content of each LCP. (Pub. Resources Code § 30500.)

The Coastal Act makes clear: “the commission is not authorized by any provision of this division to diminish or abridge the authority of a local government to adopt and establish, by ordinance, the precise content of its land use plan.” (*Id.*, § 30512.2.) This express directive of the Coastal Act demonstrates that as the authors, primary implementers, and agencies with firsthand knowledge of local conditions, local

governments' interpretations of their own LCPs are entitled to deference.

I. The local government entity is primarily responsible for implementing its LCP

In this Court's landmark decision of *Yamaha Corp. of America v. State Bd. of Equalization* ("Yamaha") (1998) 19 Cal.4th 1, this Court recognized an agency's interpretation of its own statutes within its administrative jurisdiction is afforded deference because of the expertise and familiarity that comes along with repeated and consistent application and practical results of these interpretations. (*Id.* at 7, 11, emphasis added; *MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 219–220.) These interpretations take into account the agency's familiarity with satellite legal and regulatory issues, including the application and interpretation of other parts of the agency's laws that may impact the at-issue interpretation. (*MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 220.)

When the meaning the meaning of at-issue provisions of a local government's LCP is plain, the court need not resolve the issue of whether it is more appropriate to defer to the Commission or the local government when interpreting the LCP, or what degree of deference, if any, would be appropriate. (*Lindstrom v. California Coastal Com.* (2019) 40 Cal.App.5th 73, 96.) However, when the provisions of an LCP are ambiguous, courts should defer to the local government's interpretation of the provision.

The LCP incudes a local government's land use plans,

zoning ordinances, zoning district maps, and within sensitive coastal areas, other implementing actions that, when taken together, implement the provisions of the Coastal Act at the local level. (Pub. Resources Code §30108.6.) Importantly, the Coastal Act “leaves wide discretion to a local government not only to determine the contents of its land use plans, but to choose how to implement these plans.” (*Yost. v. Thomas, supra*, 36 Cal.3d. at 572.) After the Commission certifies an LCP, “development review authority ... shall no longer be exercised by the commission over any new development proposed” and “shall at that time be delegated to the local government that is implementing the local coastal program.” (*City of Malibu v. California Coastal Com.* (2012) 206 Cal. App.4th 549, 55; Pub. Resources Code § 30519.) Thus, although the Commission is tasked with implementing the Coastal Act, it is the local government who determines and implements its LCP.

The Commission’s role in LCP enforcement is limited to a review of whether the local government’s actions are consistent with the LCP or the Coastal Act’s public access policies. (Pub. Resources Code § 30603, subd. (b)(1).) Moreover, the Commission’s review is not automatically *de novo*. First, the Commission must consider whether the appeal raises a “substantial issue” and consider factors such as:

- 1) the degree of factual and legal support for the local government’s decision;
- 2) the extent and scope of the development as approved or denied by the local government;
- 3) the significance of the coastal resources affected by the decision;

- 4) the precedential value of the local government's decision for future interpretations of its local coastal program; and
- 5) whether the appeal raises only local issues as opposed to those of regional or statewide significance.

(Cal. Code Regulations, tit. 14, §13115, subd. (c).)

As the Commission regulations demonstrate, the local government's implementation and interpretation of its own LCP are important factors that the Commission must consider before it may proceed with its own de novo review. And this makes sense. An issue raised on appeal to the Commission may present a "substantial issue" in one jurisdiction, but not another due to varying local conditions. Therefore, the Commission must analyze whether the action at-issue is sound given the context of the surrounding environment. The Commission regulations acknowledge the local government is best suited to provide such context. (*Yamaha* at 7 ["[T]he binding power of an agency's interpretation of a statute or regulation is contextual: Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation."].)

Absent an appeal to the Commission, local governments regularly implement their LCPs without *any* Commission input. In applying the principles of *Yamaha* to local ordinances, courts have logically found local governments are entitled deference in their interpretation of ambiguous provisions within their ordinances. (*City of Monterey v. Carrnshimba* (2013) 215 Cal.App.4th 1068, 1091; *MHC Operating Limited Partnership v.*

City of San Jose, supra, 106 Cal.App.4th at 219–220; *Carson Harbor Village, Ltd. v. City of Carson Mobilehome Park Rental Review Bd.* (1999) 70 Cal.App.4th 281.) In *J. Arthur Properties, II, LLC v. City of San Jose* (2018) 21 Cal.App.5th 480, the court deferred to the local government’s consistently maintained interpretation of its zoning code. (*Id.* at 486-488.) Similarly, it is the local government who consistently implements the LCP, most often without any Commission oversight. Thus, its consistent interpretation of an ambiguous provision deserves deference. (*Ibid.*; *Yamaha* at 13.)

In light the above, the local government is entitled to deference of its interpretation of its LCP because it is the primary and consistent enforcer of the LCP and the entity with firsthand knowledge of local conditions.

II. The Coastal Act does not permit the Commission to amend certified LCPs

The Commission cannot bypass the Coastal Act’s LCP amendment process and create a *de facto* LCP amendment by applying new interpretations to local actions it appealed to itself. “Indeed, if the Coastal Commission determines that a certified LCP is not being carried out in conformity with a policy of the Coastal Act, the Coastal Commission’s power is limited to recommending amendments to the local government’s LCP; and if the local government does not amend its LCP, the Coastal Commission’s only recourse is to recommend legislative action.” (*City of Malibu v. California Coastal Com.* (2012) 206 Cal.App.4th 549, 563, emphasis added.) “The Commission has no statutory authority to amend an LCP during the CDP appeal process.”

(Security National Guaranty, Inc. v. California Coastal Com.
(2008) 159 Cal.App.4th 402, 420.)

The Coastal Act allows the local government to propose an amendment to its LCP.¹ (Pub. Resources Code § 30514, subd. (a).) Once the local government adopts the LCP amendment at the local level, it then submits the proposed amendment to the Commission for review. (Pub. Resources Code § 30514.) However, the Coastal Act limits the scope of the Commission's review.

The Coastal Act restricts the Commission's review of a local government's land use plan to a determination that the plan "does, or does not, conform with" the requirements of Chapter 3 of the Coastal Act. (§ 30512.2, subd. (a).) Furthermore, the Coastal Act expressly states the Commission "is not authorized by any provision of [the Coastal Act] to diminish or abridge the authority of a local government to adopt and establish, by ordinance, the precise content of its land use plan." (*Ibid.*) The Commission is to require conformance with Chapter 3 policies "only to the extent necessary to achieve the basic state goals specified in Section 30001.5." (*Id.*, subd. (b).) The Coastal Act likewise limits the Commission's ability to reject a local government's implementation plan. The Commission can only reject an implementation plan on the grounds that it does not conform with, or is inadequate to carry out, the provisions of the

¹ Other than the local government itself, Public Resources Code section 30515 only allows "[a]ny person authorized to undertake a public works project or proposing an energy facility development..." to propose an LCP amendment. However, this Coastal Act provision is not relevant to the case at issue.

certified land use plan. (Pub. Resources Code § 30513, subd. (b).)

Once the Commission has prepared its draft findings, it holds a public hearing and votes to either certify the amendment or deny the amendment and suggest modification. (Pub. Resources Code § 30514.) Notably, the Coastal Act does not grant the Commission the authority to compel local governments to adopt its suggested modifications. Thus, if denied with suggested modifications, the local government has the option to either accept those modifications, prepare alternatives and repeat the LCP amendment process, or allow the suggested modifications to expire.

As demonstrated by the LCP amendment process, the Coastal Act limits the Commission's ability to disrupt a local government's enforcement of its certified LCP. For example, in *Security National Guaranty, Inc. v. California Coastal Com.*, *supra*, 159 Cal.App.4th 402 the court found the Commission improperly assumed powers reserved to local government. The Coastal Act limits the grounds for an appeal on a local government's action on a coastal development permit ("CDP") application to an allegation that the development does not conform to the certified LCP. (*Id.* at 422, Pub. Resources Code § 30603, subd. (b)(1).) The court found the Commission exceeded this express limitation by denying the CDP based on standards that were not outlined in the LCP. (*Id.* at 422.) By doing so, the court also found the Commission improperly attempted unilaterally to amend a part of the LCP. (*Id.* at 422-423.)

Similarly, the court in *Schneider v. California Coastal Com.*

(2006) 140 Cal.App.4th 1339 found the Commission lacked authority to adopt, and on that basis reject, a new offshore visual resource policy during its review of a development two Commission members appealed to itself. (*Id.* at 1348.) In *City of Malibu v. California Coastal Com.*, *supra*, 206 Cal.App.4th 549 the court also found the Commission exceeded its jurisdiction in overriding a local government's refusal to amend its LCP. (*Id.* at 563-564.)

The Coastal Act's restrictions on the Commission's ability, or more accurately the lack thereof, to amend a certified LCP demonstrates a recognition of each local government's intimate familiarity with the LCP it authored and the practical implications of one interpretation over another. (*Yamaha* at 11; *J. Arthur Properties, II, LLC v. City of San Jose*, *supra*, 32 Cal.App.5th at 486; see also, *Pacific Gas & Electric Co. v. Public Utilities Commission* (2015) 237 Cal.App.4th 812, 852-853 [court gave deference to government agency's interpretation of a rule it promulgated and implemented because of the agency's expertise and first-hand experience implementing the rule].) Thus, the local government's interpretation of its LCP is entitled to deference.

III. The Coastal Act's structure and due process principles bar the Commission from appealing a local decision to itself to create an opportunity to address perceived defects in an LCP; deference is owed not to the Commission, but rather the local government's interpretation of its LCP

The Commission, like all administrative agencies, has no inherent powers; it possesses only those powers that have been granted to it pursuant to the Coastal Act. (*Security National*

Guaranty, Inc. v. California Coastal Com., supra, 159 Cal.App.4th 402, 419.) “That an agency has been granted some authority to act within a given area does not mean that it enjoys *plenary* authority to act in that area.” (*Ibid.*, emphasis in original.)

Here the Commission appealed a local decision to itself. It is inappropriate for the Commission to use such an appeal as an opportunity to address perceived defects in an LCP by interpreting the LCP differently than the local agency. Rather, the Coastal Act requires the Commission to conduct reviews of every certified LCP at least once every five years to determine whether an LCP is being carried out in conformity with the Coastal Act. (Pub. Resources Code § 30519.5, subd. (a).) If the Commission determines an LCP does not conform to the Coastal Act, the Commission can submit recommendations of correction actions to the local government. (*Ibid.*)

This review process under Public Resources Code § 30519.5 is the *only* statutory opportunity for the Commission to provide recommendations for corrective actions. Notably, the Coastal Act does not allow the Commission to compel the local government adopt its recommendations. If the local government declines to adopt the Commission’s recommended actions, the Commission can only request action from the State Legislature to assure implementation of the Coastal Act. (*Id.*, subd. (b).) Thus, this process demonstrates another instance in which the local government has broad discretion to decide the contents of and implementation of its LCP, entitling its interpretation to

deference.

Furthermore, due process principles also suggest courts should not defer to the Commission's interpretation of an LCP provision where, as here, the Commission uses an appeal to itself to interpret an LCP differently than the implementing local government does. Cal Cities does not dispute that the Legislature vested the Commission with the authority to appeal matters to itself. However, the Commission should not be permitted to abuse this authority and create an opportunity improperly to effectuate an LCP amendment. When the Commission does so, the courts should not defer to the Commission's interpretation because the Commission is not only sitting as quasi-adjudicatory body, but also as the appellant who, by definition, claims to be aggrieved by the local agency's decision being appealed. Rejecting deference to the Commission's interpretation in such circumstances is consistent with "the principle that no person can be a judge in his own case . . . [which is] a fundamental tenet of natural law." (*Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1234.)

For example, in *Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, the court found the due process rights of a project applicant were violated where a council member appealed the planning commission's approval to the city council because, in part, that council member took a position against the project before the council hearing (*Id.* at 1021-1023; see also *Breakzone Billiards v. City of Torrance, supra*, 81 Cal.App.4th at 1241 [finding no violation of due process principle

where city council member appealed planning commission decision to city council pursuant to city municipal code processes where there was no evidence that council member had prejudged the issue].) Therefore, in situations where a court reviews the Commission's determination of a matter it appealed to itself, due process principles require that the Commission's interpretation of the LCP should not be afforded deference.

CONCLUSION

Each local agency implements and amends their own LCPs. While the Commission has the authority to certify a local government's LCP, each local government has broad discretion and the is the final decisionmaker as to the contents of its LCP. The Coastal Act only requires a local government to comply with the minimum standards of the statute, not any heightened standards the Commission sees fit to impose. For the reasons set forth above, each local government's interpretation of its own LCP is entitled to judicial deference.

Dated: March 5, 2025

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CERTIFICATE OF WORD COUNT

The text of this brief consists of 2,864 words and the text of this application for permission to file amicus curiae brief consists of 2,151 words according to the word count feature of the computer program used to prepare this brief.

Dated: March 5, 2025

BEST BEST & KRIEGER LLP

By: /s/ Antoinette Ranit-Mauro

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DECLARATION OF SERVICE

I, Tatiana Hoefer, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to this action. My business address is 300 S. Grand Avenue, 25th Floor, Los Angeles, California 90071.

On March 5, 2025, I caused a true copy of APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND [PROPOSED] BRIEF OF LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF APPELLANT SHEAR DEVELOPMENT CO., LLC to be electronically delivered via TrueFiling upon the following:

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on March 5, 2025, at Los Angeles, California.

/s/ *Tatiana Hoef*
Tatiana Hoef