Court of Appeal, Second Appellate District
Daniel P. Potter
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2d Civil Case No. B308306
Trial Court Case No. 20STCP00630

IN THE CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT -- DIVISION FOUR

COASTAL ACT PROTECTORS,
AN UNINCORPORATED ASSOCIATION,

PETITIONER-APPELLANT,
v.

CITY OF LOS ANGELES,

RESPONDENT.

On Appeal From
Los Angeles County Superior Court
Honorable James C. Chalfant

AMICUS BRIEF

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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: December 13, 2021

By:____________________________

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APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF

TO THE HONORABLE PRESIDING JUSTICE:

Pursuant to California Rules of Court, Rule 8.200, subdivision (c), 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 Respondent City of Los Angeles.

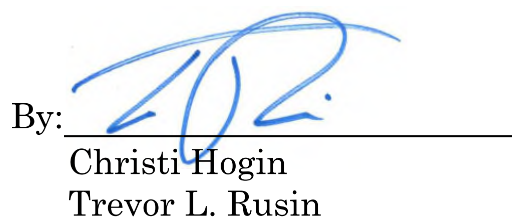
This brief will assist the Court by providing perspective and analysis of the application of the Coastal Act to municipal laws of general applicability.

There are far reaching implications if zoning ordinances are to be considered "development" under the Coastal Act because such a result confers to an executive branch agency the constitutional police powers vested in local governments. To require the City's general legislation to obtain Coastal Commission approval expands the power of the Commission beyond that provided by the Coastal Act itself or as interpreted by the Supreme Court.

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

The application and amicus curiae brief were authored by Christi Hogin and Trevor L. Rusin. No person or entity made a monetary contribution to its preparation and submission.

Dated: December 13, 2021

By: 

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INTEREST OF THE AMICUS CURIAE

Cal Cities is an association of 479 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 24 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 because a finding that the California Coastal Act precludes regulation of short-term vacation rental of property in the circumstances at issue here would improperly confer legislative authority to an executive branch agency, authority that the California constitution vests in local government and which is deployed to meet state coastal goal exclusively through the Coastal Act's requirement that local governments adopt local coastal programs that the Coastal Commission certifies are consistent with the Coastal Act. In the nearly 45 years of implementing the Coastal Act, neither the Coastal Commission nor the court has applied the coastal permit requirement to general legislative acts. Cal Cities is interested in defending this precedent because it is the correct reading of both the Coastal Act and of the California Constitution.

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BRIEF OF AMICUS CURIAE IN SUPPORT OF RESPONDENT

INTRODUCTION AND SUMMARY OF ARGUMENT

Challenges to regulation of short-term vacation rentals in residential neighborhoods along the coast have become a proxy for a legal inquiry into just how close to lawmaking the California Coastal Commission should be allowed to go. Short-term vacation rentals (STVRs) have proven to be a lucrative business; and their operators have encountered mixed reactions from the local governments that regulate land-use and business activities. Throughout California, cities confront STVRs' impact on housing supply and the local economy. But within the Coastal Zone, those businesses have ignited a whole different controversy, implicating issues of governance and the rule of law. This case squarely presents such a controversy.

The Coastal Act provides a careful delineation between policymaking and administration. The *policymaking* role is exclusively assigned to the Legislature and local governments. The state Legislature's coastal policies are set forth in Chapter 3 of the Coastal Act; and, in their certified LCPs, local governments set forth local level coastal policies. The *administrative* role of the Coastal Commission, which is created by the statute, is set forth in the Coastal Act. (*Marine Forests Society v. California Coastal*

Com. (2005) 36 Cal.4th 1, 44; *Yost v. Thomas* (1984) 36 Cal.3d 561, 572-74 (*Yost*).)

The fact that the Coastal Commission cannot make policy does not affect the heart of the Coastal Act. The Coastal Act is primarily a permitting scheme. (*Burke v. California Coastal Comm'n* (2008) 168 Cal.App.4th 1098, 1107–1108 ["the only authority the Coastal Commission has is over development in the coastal zone. The Coastal Act's 'cardinal requirement' [citation omitted] and its central enforcement mechanism, is the requirement that anyone seeking to undertake a development within the coastal zone must first obtain a coastal development permit."].)

The Coastal Act authorizes the Coastal Commission to determine whether proposed development is eligible for a coastal development permit (CDP) based on its consistency with the policies adopted by the Legislature in Chapter 3 of the Coastal Act. (Pub. Res. Code §30600.)

If individual property owners change the intensity of use of their property by offering or ceasing to offer their property for short-term vacation rental such that a CDP is warranted, the Coastal Act authorizes the Coastal Commission to require the CDP of the property owner. (Cf. *Lent v. California Coastal Comm'n* (2021) 62 Cal.App.5th 812, 832, as modified on denial of reh'g (Apr. 16, 2021), review denied (July 21, 2021) [Although the

Coastal Act provision stating that any person wishing to perform or undertake any development in the coastal zone must obtain a CDP refers to the person wishing to perform or undertake development, the requirement to obtain a CDP for any development in the Coastal Zone necessarily extends to subsequent owners of the property.)

The Coastal Act is designed to *prevent* development that is inconsistent with its policies; the Coastal Act has no means to *compel* development. Appellants urge a dramatic revision of the Coastal Act to transform the CDP from its application as a shield against inappropriate development on property in the Coastal Zone to a sword that would compel "development." Moreover, they seek to use the development permit requirement to force the City to allow a land-use, i.e. to compel a legislative act.

The Coastal Act does not (and cannot) divest local governments of their constitutional authority to determine which land uses are eligible for local permits. The Legislature could not have stated this more plainly than it did in Public Resources Code section 30600 (emphasis added):

> a) Except as provided in subdivision (e) [emergency permits], **and in addition to obtaining any other permit required by law from any local government** or from any state, regional, or local agency, any person…

wishing to perform or undertake any development in the coastal zone…shall obtain a coastal development permit.

Thus, the Coastal Act explicitly does not interfere with local zoning requirements. (*Hubbard v. California Coastal Comm'n* (2019) 38 Cal.App.5th 119, 138 ["The local agencies never lose their jurisdiction over the project or development at issue simply because a CDP is required."]; *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles (2012) 55 Cal.4th 783, 794* [CDP is in addition to local agency permits].)

By enacting a permitting scheme, the Legislature created an effective mechanism to prevent any development in the Coastal Zone that was inconsistent with state coastal policies. Regardless of what a local government might allow, a property owner must also obtain a CDP. If a local government approves an oil refinery along the coast, a property owner could not proceed without also obtaining a CDP, which might be unavailable for that development.

While the Coastal Act functions well to *prevent* development that is inconsistent with coastal policy, the Coastal Act does not provide a mechanism to compel or prevent a local government from taking legislative action. (See *Douda v. California Coastal Comm'n* (2008) 159 Cal.App.4th 1181, 1195, 1199 [finding that Coastal Act provisions "demonstrate that the Legislature intended to curb the Commission's ability to

champion its own agenda over the decisions made by local governments" and holding that "only the local government can determine which of those conforming uses will be allowed."].) Yet, that is what the Appellants seek to do here – to transform the CDP requirement into a legislative veto for the Coastal Commission.

In the trial Court decision, Judge Chalfant thoroughly explains how the Coastal Commission "only reviews city zoning ordinances as part of an LCP or LCP Amendment" and goes on to explain:

> nothing in the Coastal Act authorizes Commission review of zoning ordinances outside the LCP process. This is not an issue of liberal construction as required by the Coastal Act (§30009). There is simply no provision that can be construed to confer greater authority. Whether there should be such a provision for Commission review of City zoning ordinances in the coastal zone because it does not have a certified LCP is an issue of policy for the legislature. Moreover, unlike a site-specific development that cannot be torn down, a zoning ordinance…may always be withdrawn during LCP approval. In this regard, what has been done may be undone.

(Chalfant Decision at 20-21.) Judge Chalfant is exactly correct.

Appellant in its reply acknowledges that the City does not have an LCP in place, and thus the City's short-term rental (STR) zoning ordinance can be implemented without an LCP amendment. Appellant instead relies entirely on its contention that a CDP should be required before a zoning ordinance can be implemented. (Reply at 15.) This novel concept has no basis in law, and neither Appellant nor Cal Cities can locate a single case where a city was required to obtain a CDP in order to implement a zoning ordinance.

Appellant argues that the decision in *Kracke v. City of Santa Barbara* (2021) 63 Cal.App.5th 1089 supports its interpretation, but Appellant ignores an essential difference between the situation in *Kracke* and the instant case—that Santa Barbara has a complete LCP and the City of Los Angeles does not (it has only a certified LUP—the Coastal Commission has not yet certified the draft LIP submitted to the Coastal Commission). As Santa Barbara had a full LCP in place, it was required under the statutory scheme described above to obtain a LCP amendment if the allowed uses in the City are changed.

Some of the language in the *Kracke* decision also demonstrates that Division 6 fundamentally confused key sections of the Coastal Act, but this Court does not need to reconcile *Kracke* to affirm Judge Chalfant's decision. The facts here are fundamentally different as the City of Los Angeles does

not have a full LCP in place and this case deals with a zoning ordinance (not a change in an enforcement program).

A zoning ordinance itself does not constitute development; such ordinances merely govern the potential use of land. Requiring a CDP to implement a zoning ordinance would be unprecedented and have far reaching consequences.

For these reasons and those below, and because of the far-reaching consequences at stake, Cal Cities respectfully urges this Court to affirm the trial court's decision.

ARGUMENT

I. THE COASTAL ACT DOES NOT REQUIRE A CITY TO OBTAIN A COASTAL DEVELOPMENT PERMIT TO ADOPT A ZONING ORDINANCE

The Coastal Act sets out general state policies (Pub. Res. Code §§30210-30265.5) that are implemented by requiring that any development in the coastal zone be consistent with those policies, which is enforced by requiring a coastal development permit (CDP). (Pub. Res. Code § 30600.) The Coastal Act is a permitting scheme and the Coastal Commission is created by the statute to administer it. Under the Coastal Act, permitting authority starts with the Coastal Commission and the CDP applications are evaluated for consistency with the state policies. (*Id.*)

The Coastal Act requires that local governments with

jurisdiction over part of the coastal zone prepare a local coastal program (LCP) that, once certified by the Coastal Commission, set the standards for CDPs in the coastal zone of that local government's jurisdiction. (*See* Pub. Res. Code §§30500, 30519, 30600.)

Thus, where, as here, the local government does not yet have a certified LCP, the Coastal Act has a foolproof stop-gap to make sure that individual development projects comply with the Coastal Act: the Coastal Commission retains permitting authority until it certifies an LCP for the area.

The Coastal Commission only evaluates zoning ordinances adopted in connection with the preparation of an LCP or LCP amendment that the local government prepares to create local implementation policies under the Coastal Act. Because the City has not yet adopted a local implementation plan, it does not have a complete LCP. No LCP amendment could be required. In addition, because the City's ordinance was not a site-specific project, no CDP was required. The City's ordinance governs the scope of uses available to individual property owners within a zone. The Coastal Commission could consider whether individual properties that changed use from residential properties to STVRs intensified the use of that property such to trigger a CDP requirement. But the CDP requirement is not triggered by the City's legislative action.

A. The Coastal Act Only Authorizes The Coastal Commission To Review Zoning Ordinances Through The LCP Adoption And Amendment Process

The California Constitution vests local governments with broad legislative authority, when exercised consistent with general state law. (California Const., art. XI, §7.) The Coastal Act itself relies on local governments' constitutional police power:

> (a) To achieve maximum responsiveness to local conditions, accountability, and public accessibility, it is necessary to rely heavily on local government and local land use planning procedures and enforcement.

(Pub. Res. Code §§ 30004(a).) The Coastal Act expressly preserves the ability of local governments to adopt ordinances and regulate public nuisances:

> No provision of this division is a limitation on any of the following:
>
> (a) Except as otherwise limited by state law, on the power of a city or county or city and county to adopt and enforce additional regulations, not in conflict with this act, imposing further conditions, restrictions, or limitations with respect to any land or water use or other activity which might adversely affect the resources of the coastal zone.
>
> (b) On the power of any city or county or city and

county to declare, prohibit, and abate nuisances.

(Pub. Resources Code, §30005(a), (b). Moreover, the courts have recognized that the Coastal Commission does not have the authority to draft LCPs or set policy. (*Yost*, *supra,* 36 Cal.3d at 572; *City of Chula Vista v. Superior Court* (1982) 133 Cal.App.3d 472, 488 [in approving or disapproving a LCP, the Coastal Commission "does not create or originate any land use rules and regulations"].)

The LCP provisions of the Coastal Act are the only provisions that authorize the Coastal Commission to review or reject those portions of a city's zoning ordinances that the city has designated part of its proposed LCP. (*See* Pub. Res. Code §§ 30500-30526.) These provisions provide for a process whereby the Commission reviews proposed LCPs or LCP amendments and the criteria by which to certify them as meeting the requirements of the Coastal Act's policies. (*See Conway v. City of Imperial Beach* (1997) 52 Cal.App.4th 78, 86.) The Coastal Commission's "primary duties under the coastal act" are to "grant or deny permits for coastal development (§30600)" and "approve or disapprove local coastal programs (§§30500-22)." (*Ibarra v. California Coastal Commission* (1986) 182 Cal.App.3d 687, 696.)

A LCP has two parts: a LUP and a LIP. A LUP is the sum of "the relevant portion of a local government's general plan, or local coastal element, which are sufficiently detailed to indicate

the kinds, location, and intensity of land uses, the applicable resource protection and development policies and, where necessary, a listing of implementing actions." (Pub. Res. Code § 30108.5.) A LIP is made up of a City's zoning ordinances, zoning district maps, and other implementing actions that, together, implement the provisions and policies of the Coastal Act and the LUP. (Pub. Res. Code § 30108.6.)

The Commission's ability to review and reject zoning ordinances is only provided in the LCP provisions of the Coastal Act, and it is limited:

> The commission may only reject zoning ordinances, zoning district maps, or other implementing actions on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan.

(Pub. Res. Code § 30513.) The Coastal Commission's authority is statutory, and without specific statutory authority, the Coastal Commission lacks the power to act.

Appellant has provided no authority that shows the Coastal Commission may review the zoning ordinances of a city that does not have a LIP, as no such authority exists. The California Supreme Court has affirmed this autonomy and the limited nature of Coastal Commission administrative review of a city's legislative power over zoning ordinances:

> The wording of these and other sections do not suggest preemption of local planning by the state, rather they point to local discretion and autonomy in planning subject to review for conformity to statewide standards.

(*Yost*, *supra,* 36 Cal.3d at 572.)

Yost discusses at length how the Coastal Commission's authority is limited to this specific quasi-judicial role, and that it has no authority to preempt a city's police power to regulate land use. (*See, e.g., id.* at p. 574 ["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"].) This autonomy is further demonstrated by a city's authority, even after adoption of a full LCP, to adopt and enforce regulations not in conflict with the Coastal Act, or to abate a nuisance, without amending its LCP. (Pub. Res. Code § 30005(a), (b).)

Once a LIP is adopted, the Coastal Act provides that a city must apply for a LCP amendment if it wants to use a zoning ordinance to change the permitted uses in the city allowed by its LCP. However, as discussed above, until a full LCP is adopted, the Coastal Commission lacks statutory authority to review a city's zoning ordinances.

B. A CDP Is Required For Site Specific Development, Not For Leave To Adopt A Zoning Ordinance

Zoning ordinances do not require a CDP in order to become effective. They are legislative acts that authorize uses within the development zones of a city, but do not themselves constitute development. CalCities is not aware of any authority that has ever required a city to obtain a CDP for a zoning ordinance, nor has the Appellant provided such authority. To the contrary, courts have found the opposite in fact applies: no CDP is required.

A CDP is required for development of a property that is located in the Coastal Zone: "any person…wishing to perform or undertake any development in the coastal zone…shall obtain a coastal development permit." (Pub. Res. Code § 30600(a).) When considering a CDP application, the Commission (or city if a LCP has been adopted) "is acting in an adjudicatory or quasi-adjudicatory capacity and simply applies existing rules to a specific set of facts." (*McAllister v. California Coastal Commission* (2009) 169 Cal.App.4th 912, 953.)

Again, as detailed above, the Coastal Commission has only been granted authority to review a city's zoning ordinances through the LCP process. (*See Yost, supra,* 36 Cal.3d at p. 573; *City of Dana Point v. California Coastal Commission* (2013) 217 Cal.App.4th 170, 188 (*Dana Point*) ["a municipality's legislative

action in adopting an ordinance is *not* a quasi-adjudicatory administrative decision to which the Commission has appellate jurisdiction pursuant to section 30625"][original emphasis], 190 [no CDP required to enforce nuisance abatement ordinance]; *Citizens for a Better Eureka v. Cal. Coastal Com.* (2011) 196 Cal.App.4th 1577, 1585 (*Better Eureka*).)

CDPs are required for actual, site-specific development, not for zoning ordinances that govern the potential, not actual, use of land. It is the actual actions on a property that constitute development; an ordinance alone does not. This is evident from the cases cited by Appellant to support this argument that all involve site-specific development. (*e.g.*,; *Surfrider Foundation v. Martins Beach 1, LLC* (2017) 14 Cal.App.5th 238 [beach access]; *La Fe, Inc. v. Los Angeles Cnty.* (1999) 73 Cal.App.4th 231 [lot line adjustments]; *Pac. Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783 [conversion of mobile home park]; *Gualala Festivals Committee v. California Coastal Com.* (2010) 183 Cal.App.4th 60 [fireworks discharged over river estuary].)

II. APPELLANT'S ARGUMENT HAS NO BASIS IN LAW

A. The Situation In *Kracke* Was Fundamentally Different, And The *Kracke* Decision By Its Own Terms Confuses The LCP And CDP Provisions Of The Coastal Act

Appellant argues that the decision of the Division 6 panel of the Second District Court of Appeal in *Kracke*[1] supports its argument that, contrary to all practice, cities that do not have a full LCP must obtain a CDP to implement zoning ordinances because the *Kracke* panel found that Santa Barbara's code enforcement initiative "constituted a 'development' under the Coastal Act and, as such, required a CDP or, alternatively, an LCP amendment certified by the Commission or a waiver of such requirement." (*Kracke,* 63 Cal.App.5th 1089 at 1097.)

However, both *Kracke* and *Greenfield* are distinct from the situation in the instant case. Both the City of Santa Barbara (*Kracke*) and the City of Oxnard Shores (*Greenfield*) had a complete LCP (both a LUP and LIP) while the City of Los Angles has only adopted a LUP and does not have a certified LIP.

This difference is critical as once a LCP is in place, a LCP amendment is required to change the uses allowed. (*See Conway, supra*, 52 Cal.App.4th at p. 89 ["only those amendments 'authoriz[ing] a use other than that designated in the LCP as a

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[1] This same panel also issued the decision in *Greenfield v. Mandalay Shores Community Association* (2018) 21 Cal.App.5th 896 (*Greenfield*).

permitted use…require certification by the Commission"], citing *Yost, supra,* 36 Cal.3d at p. 573 & fn. 9.) Until a LIP is adopted and a city has a complete LCP, the LCP amendment provisions of the Coastal Act that grant review of city zoning ordinances do not apply.

Kracke also did not involve a zoning ordinance, but rather a code enforcement initiative of the City based on what the court found to be a new interpretation of the City's LIP that STRs actually constituted hotel use (despite the City previously permitting STRs and collecting tax). (*Id.*)

The other statements in *Kracke* constitute only dicta, but they also demonstrate that Division 6 fundamentally misunderstood the Coastal Act.

First, there is no requirement in the Coastal Act that a LCP amendment be obtained to authorize "development" in the Coastal Zone. The LCP provisions are found in Public Resources Code sections 30500-30526, and nowhere does it state that an LCP or LCP amendment is required for a city that seeks to undertake "development" in the Coastal Zone.

Second, the enforcement program at issue could not constitute development because the program did not itself change the state or "intensity of use of land" of any particular site.

Third, Division 6 ignored the fact that the issue at bar was whether the enforcement program constituted a change in the

allowed uses in Santa Barbara's coastal zone (and thus a LCP amendment was required) not whether the enforcement program constituted "development." A LCP amendment would be the only remedy that could be required if the City was changing the uses allowed under the LIP. A CDP should never have been mentioned by Division 6 as being potentially required.

As discussed above, a zoning ordinance does not constitute "development," and such interpretation directly contradicts the Coastal Act's process for reviewing zoning ordinances for compliance with the Coastal Act's policies. To the extent that Division 6 held differently, and that a CDP was required, they are simply wrong.

B. Appellant's Argument That Cities Without LCPs Must Obtain CDPs To Adopt A Zoning Ordinance Has No Basis In Law

Appellant argues for a new system for evaluating zoning ordinances in the Coastal Zone that would rewrite the Coastal Act. Under Appellant's proposal cities that have full LCPs would continue to submit zoning text amendments to the Coastal Commission through the LCP amendment process, but cities without a full LCP would have to obtain a CDP for zoning text amendments. (Reply at 15.) Considering the expansive definition of "development" adopted by some courts, if this Court rules as requested by Appellant, a CDP will be required for most, if not all, zoning text amendments. (Reply at 15-18.)

Appellant argues that this new system is required because otherwise the result would "obliterate the Coastal Act's purpose of ensuring that state policies prevail over the concerns of local government." (Reply at 19-20.) Appellant misreads and misunderstands the Coastal Act. As described above, the central feature the Coastal Act put in place was a permitting system that ensures development inconsistent with the Coastal Act does not occur in the coastal zone. It did not remove a City's power to legislate, and in fact relies on that very power in its structure. It is through the LCP adoption and amendment process, and only that process, that a City's legislative actions are reviewed. It is through this process that the Coastal Commission ensures the zoning ordinances included in a LCP support the Coastal Act's policies.

As all cities in the coastal zone are required to adopt a full LCP, any zoning ordinance that does not comply with the Coastal Act will necessarily be removed through the LCP certification process. Appellant complains that this process takes too long, but the answer to that question is that if the Legislature believes this to be true it can set a deadline or take action.

Appellant itself points out how the Coastal Act originally required LCPs to be adopted by January 1, 1981, but the Legislature later chose to remove that deadline. (Reply at 14.) Contrary to Appellant's argument, this action actually

underscores that the Legislature can expedite the LCP adoption process if it *wants* to, and that it is through this process alone legislative actions of cities are reviewed by the Coastal Commission. The Legislature could have amended the Coastal Act as Appellant proposes at the time it removed the January 1, 1981 deadline, but it did not.

The LCP certification process is complicated, costly, and time consuming and the Coastal Commission itself has limited staff. If the Legislature is unhappy with the pace at which full LCPs are certified it can take action to ensure the process accelerates by imposing penalties or incentives or taking other action. In fact, the state has taken such action previously when it adopted legislation codified in Public Resources Code section 30166.5 that directed the Coastal Commission to draft and adopt a LCP for the city of Malibu by September 15, 2002, thus imposing a LCP on the city.

The City of Los Angeles submitted a draft LIP to the Coastal Commission and it is through the certification of this LIP that the City's zoning ordinances will be evaluated for compliance with the Coastal Act's policies. It is through this process specifically called for in the Coastal Act that zoning ordinances are evaluated; Appellant's proposal simply cannot be found

within the text of the Coastal Act.[2]

III. OVERTURNING JUDGE CHALFANT'S DECISION WOULD HAVE FAR-REACHING IMPACTS

Determining that zoning ordinances constitute "development" under the Coastal Act would confer to an executive branch agency the constitutional police powers vested in local governments. Requiring a city to obtain Coastal Commission approval of its general legislation would expand the power of the Commission beyond that provided by the Coastal Act itself or as interpreted by the California Supreme Court and is unprecedented.

If zoning ordinances can constitute "development" requiring a CDP, coastal cities would then need to obtain a CDP in order to legislate on virtually any matter that could affect property in the Coastal Zone. This would confer on the Coastal Commission an effective legislative veto. A power that the Legislature withheld from the Coastal Commission in the Coastal Act and which never has been found by a court interpreting the statutory authority of the Coastal Commission.

General ordinances do not change the intensity of use of

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[2] It should be noted that if, per Appellant's argument, zoning ordinances constitute "development" then even jurisdictions that have a full LCP would arguably need BOTH a CDP and LCPA to adopt a new zoning ordinance. Adoption of a LCPA does not excuse the need for a project that constitutes development to obtain a CDP.

property because they deal only in the *potential* or permitted use. Thus, such ordinances are not properly deemed "development" under the Coastal Act. This applies to STVRs as well as a city's business license ordinance and home occupation ordinance.

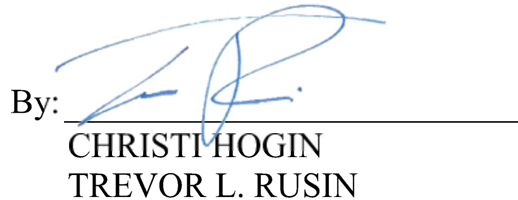
The Legislature adopted a specific procedure for ensuring the zoning codes of coastal cities support the policy provisions of the Coastal Act. If the Legislature chooses to change that process it may do so, but until it does, the LCP process provisions of the Coastal Act constitute the only authority that grants the Coastal Commission the ability to review a City's zoning ordinances.

IV. CONCLUSION

For the reasons described above, Cal Cities respectfully requests that the Court affirm the trial court's decision.

Dated: December 13, 2021

BEST BEST & KRIEGER LLP



By: ______________________________
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League of California Cities

CERTIFICATE OF WORD COUNT

The text of this brief consists of 4,451 words according to the word count feature of the computer program used to prepare this brief.

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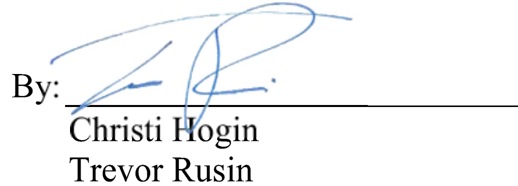

By: ____________________

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PROOF OF SERVICE

I, Wendy Hoffman, am a citizen of the United States, employed in the City of Manhattan Beach in Los Angeles County, California. My business address is Best Best & Krieger LLP, 1230 Rosecrans Avenue, Suite 110, Manhattan Beach, California 90266. I am over the age of 18 years and not a party to the above-entitled action. On December 13, 2021, I served the following:

AMICUS BRIEF OF LEAGUE OF CALIFORNIA CITIES

☒ On the parties in this action by causing a true copy thereof to be placed in a sealed envelope with postage thereon fully prepaid in the designated area for outgoing mail addressed as listed below.

☒ I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ On the parties in this action by causing a true copy thereof to be electronically delivered via TrueFiling

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct and that this Proof of Service was executed this 13th day of December, 2021, at Manhattan Beach, California.

Wendy Hoffman

SERVICE LIST

Via True Filing

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California Supreme Court	Via submission of electronic copy to Court of Appeal, as per CRC Rule 8.212(c)(2)

Via U.S. Mail

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