

CASE No. A168645

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT**

CASA MIRA HOMEOWNER'S ASSOCIATION

Plaintiff and Respondent,

v.

CALIFORNIA COASTAL COMMISSION

Defendant and Appellant,

TOP OF MIRADA and GRANADA COMMUNITY SERVICES

Real Party in Interest.

**Amicus Brief in Support of Appellant-Respondent
California Coastal Commission**

On Appeal From the Superior Court for the State of
California, County of San Mateo
Cases No. 19-CIV-04677 and 21-CIV-03202
Hon. Marie S. Weiner

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**CERTIFICATE OF INTERESTED
ENTITIES OR PERSONS**

There are no entities or persons that must be listed in this certificate under Rule 8.208 of the California Rules of Court.

Dated: September 6, 2024

s/Amanda D. Zerbe

Amanda D. Zerbe

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**APPLICATION FOR LEAVE
TO FILE AMICUS CURIAE BRIEF**

TO THE HONORABLE JUSTICES OF THE FIRST DISTRICT
COURT OF APPEAL:

Pursuant to Rule 8.200(c) of the California Rules of Court, Applicant Surfrider Foundation (“Surfrider”) respectfully requests leave to file the attached *amicus curiae* brief in support of Appellant California Coastal Commission. No party or counsel of record authored the proposed brief, in whole or in part, or contributed funds for the writing of the proposed brief, and no other person than proposed *amicus curiae* made any monetary contribution intended to fund the preparation or submission of the proposed brief. This application is timely made within 14 days of the filing of Appellants’ Reply Briefs.

**STATEMENT OF INTEREST OF
PROPOSED *AMICUS CURIAE***

Amicus Surfrider is a grassroots nonprofit organization headquartered in Orange County, California and dedicated to the protection and enjoyment of the world’s oceans, waves, and beaches for all people through a powerful activist network. It has more than 350,000 supporters, activists, and members who live in the United States and over 1,600 local chapters and school clubs nationwide, including the volunteer-based San Mateo County Chapter.

Surfrider has a particular interest in the outcome of the present litigation, both because of its desire to preserve the long-

term health and accessibility of Half Moon Bay's world-class beaches, and because of its interest in the Coastal Commission's ability to carry out its legal obligations to protect and maximize public beach health, access, and recreational opportunities in California's coastal zone.

Surfrider has a substantial interest in the beaches of Half Moon Bay generally and in this particular case. Surfrider provided written comments to the Coastal Commission as they considered Respondents' application for a permit to construct a seawall. At the July 2019 Coastal Commission hearing at which the Commission denied Respondents' application, staff and volunteers from Surfrider attended and spoke in opposition to the application. Surfrider's members, supporters, and staff also regularly use and enjoy Half Moon Bay's beaches in a variety of ways, including surfing, swimming, sunbathing, picnicking, camping, walking, jogging, and observing native plants and animals located there. Surfrider's members desire and intend to continue using Half Moon Bay State Beach for such purposes, and may no longer be able to do so if the beach is jeopardized by permanent coastal armoring.

HOW THIS BRIEF WILL ASSIST THE COURT

The proposed *amicus curiae* brief will assist the Court by describing (1) the centrality of California's public beaches to the state's ecology, economy, and way of life; (2) the ways in which

climate change and coastal development have rendered the state's beaches exceedingly fragile; (3) the reasons why coastal armoring projects, such as the one Respondents seek to implement, irreversibly damage and destroy public beaches; and (4) the environmental emphasis of the Coastal Act and the necessity of interpreting it in a way that aligns with legislative intent and the public trust doctrine. The party briefs do not fully address these issues, which are critical to understanding the legal questions before the Court. Accordingly, Surfrider offers the proposed *amicus* brief to provide background context that may be helpful to this Court's resolution of the matter.

REQUEST FOR LEAVE TO FILE

Because the decision of this Court will directly affect Surfrider, and because the proposed *amicus* brief brings a unique perspective to bear on this matter, Surfrider respectfully requests that the Court grant the filing of this *amicus curiae* brief.

Dated: Sept. 6, 2024 Respectfully submitted,

ENVIRONMENTAL LAW CLINIC*
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By: /s/ Amanda D. Zerbe
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BRIEF OF AMICUS CURIAE

INTRODUCTION

The beach is as central to California's identity as sunshine. It is a source of beauty, fun, economic prosperity, and spiritual enlightenment. *See* John. R. Gillis, The Human Shore 152-53 (2012) ("As a refuge from the speed of modern life, nothing could compete with the beach. Time stopped at the edge of the sand"). Californians decided decades ago that their precious beaches would forever be maintained as common property, for everyone in the state to use and enjoy in perpetuity. Cal. Const. art. X, §§ 3-4. However, the sublime views of the ocean waves and the setting sun have made the land immediately adjacent to these beaches one of the most coveted locations in the country for private development. In recent years, tensions have risen between the ultrarich property owners atop the bluffs, and the public on the beach below. Development inches ever closer to the water, even as the sea level rises at alarming rates. Beaches are caught in the middle.

Without human interference, the coastline is constantly moving, shifting inland as beaches and bluffs are eroded by the waves. The beach itself is naturally replenished by such eroded sand, as well as by sand deposited by rivers and streams and by shifting seasonal waves, but its location changes over time. Sea-level rise has accelerated such inland movement. Property

owners, after choosing to build or buy expensive structures as close as possible to the edge of the water, are now beginning to realize the risk and seek coastal armoring to protect their investments. Armoring is achieved through structures, such as groins, seawalls, or rock piles, that protect private development by stalling erosion of cliffs and bluffs. Although armoring can temporarily delay the loss of private property, the sea keeps rising. Unable to move inland, the public beaches in front of the barriers narrow and ultimately disappear, a phenomenon called “coastal squeeze.” Charles Lester, UC Santa Barbara, Marine Sci. Inst., *Protecting Public Trust Shoreline Resources in the Face of Sea Level Rise* 13-14 (2021); Cornelia Dean, *Against the Tide: The Battle for America’s Beaches* 8-9 (1999) (“Beaches and seawalls cannot coexist for long The reason is as simple as it is inexorable: an eroding shoreline is dynamic, but a wall is fixed.”). The state therefore must choose whether to prioritize a few private property owners’ desire to protect their coastal mansions or the state’s public trust property and the public’s constitutionally protected right to use and enjoy beaches. See Rosanna Xia, *California Against the Sea: Visions for Our Vanishing Coastline* 105 (2023) (“Walls smashed by the ocean. Bigger and higher walls rebuilt. Is this the future we want for our coast, with beaches raked away and waves thudding into nothing but stacks of rock and lifeless concrete?”).

The present case exemplifies this conflict between the privileged few and the public interest. Respondents, the Casa Mira Homeowners Association, constructed several condominiums atop a seaside bluff in Half Moon Bay, California in 1984. AR 507. These properties are located just meters from Half Moon Bay State Beach. AR 60. Now that erosion threatens their property, the owners insist that they are entitled to build a seawall by section 30235 of the California Coastal Act, which states that armoring “shall be permitted when required . . . to protect existing structures or public beaches in danger from erosion.” Cal. Pub. Res. Code § 30235.

To the contrary, Respondents’ assertion that section 30235 requires armoring for any structure “existing” now or at any point in the future clearly contradicts the Coastal Act’s general purpose of protecting beaches from destruction or degradation by private interests. Respondents’ Opposition to Writ at 14-17, 24-25, *Casa Mira Homeowners Ass’n v. Cal. Coastal Comm’n*, No. 19-CIV-04677 (Cal. Super. Ct. Aug. 17, 2022), *available at* CTX 1662. And the Court’s decision in this case will not merely affect the Casa Mira seawall permit application. Getting the interpretation of section 30235 right is essential to the general authority of the California Coastal Commission (“Commission”), as the agency charged with protecting public beaches from

private exploitation, to phase out the use of harmful armoring structures.

The only interpretation of section 30235 that aligns with the Coastal Act's intent and the state's public trust obligations is to define "existing structures," as "structures existing at the time of the Coastal Act's enactment on January 1, 1977." This brief aims to provide this Court with additional explanation of why this interpretation is required under California law, as well as the grave results that will ensue if the trial court's erroneous interpretation stands. California's beaches are already severely threatened by climate change and other human impacts. Requiring the Commission to permit widespread coastal armoring will do irreversible damage to the state's beaches, with profound environmental, cultural, and economic impacts. Moreover, because beaches serve as storm buffers and stabilizers, allowing their destruction will ultimately cause more property damage than it prevents. These consequences prove that the Respondents' interpretation of section 30235 is inconsistent with the state's public trust obligations and the general purpose of the Coastal Act: to preserve the environment and promote public uses of the beach.

BACKGROUND

I. Beaches Are at the Heart of California Culture, and Their Loss Causes Irreparable Public Harm.

Since the 19th century, Americans have flocked to the beach for recreation, relaxation, and reconnection with the natural world. California in particular has long been renowned for its pristine, sandy beaches. So essential is the beach that the people of California have enshrined public ownership of and access to beaches as fundamental rights in the state constitution. Cal. Const. art. X, §§ 3-4. Similarly, the California Coastal Act requires “maximum access” to the beach for “all the people” of the state. Cal. Pub. Res. Code § 30210; *see also id.* § 30211 (“Development shall not interfere with the public’s right of access to the sea . . . including, but not limited to, the use of dry sand and rocky coastal beaches . . .”).

Especially central to the California beach culture, and the state’s whole identity, is surfing. Ryan B. Anderson, *The Taboo of Retreat: The Politics of Sea Level Rise, Managed Retreat, and Coastal Property Values in California*, 9 *Econ. Anthropology* 284, 290 (2022). As Surfrider’s thousands of members would attest, surfing is more than a sport—it is a community and a way of life. Surfers build deep attachments to their local beaches. For many, a favorite surf spot feels just as much like “home” as their domicile. Dan R. Reineman & Nicole M. Ardoin, *Sustainable Tourism and the Management of Nearshore Coastal Places: Place*

Attachment and Disruption to Surf-Spots, 26 *J. Sustainable Tourism* 325, 335 (2018) (surveying California surfers). Besides surfing, beaches offer a wide range of other recreational opportunities, including hiking, camping, sunbathing, swimming, tidepool exploration, and building sandcastles.

Play and relaxation are important, of course, but to many Californians the beach offers much more than that. The ocean is a source of artistic inspiration and spiritual development, the last great bastion of wilderness in a civilized world. *See Gillis, supra*, at 133-57 (“Once marginal to Western culture, the sea has now gravitated to the center of its collective consciousness . . .”). An unspoiled beach is a place to commune with nature and engage in contemplation; beachgoers often report that “spending time by the edge of the vast blue space . . . is awe-inspiring and encourages modes of expanded thought.” David Jarratt & Richard Sharpley, *Tourists at the Seaside: Exploring the Spiritual Dimension*, 17 *Tourist Stud.* 349, 357-64 (2017). Losing a beach is not only an economic and environmental tragedy, but the loss of a “place[] where growth, identity, community, and other personal and social processes occur.” Reineman & Ardoin, *supra*, at 335.

II. California's Beaches Face Existential Danger from the Twin Threats of Climate Change and Development.

California enjoys one of the longest coastlines of any U.S. state, stretching over 1,000 miles from Oregon to Mexico. Eighty percent of the state's population lives within a few dozen miles of the sea. NOAA, Off. for Coastal Mgmt., *Understanding and Planning for Sea Level Rise in California*, <https://coast.noaa.gov/digitalcoast/stories/ca-slr.html>. Most of the California coastline is composed of rocky cliffs or bluffs, often towering above public sandy beaches. Gary B. Griggs, *The Effects of Armoring Shorelines—The California Experience*, in Puget Sound Shorelines and the Impacts of Armoring—Proceedings of a State of the Science Workshop, at 77, 77 (Hugh Shipman et al., eds. 2009).

This coast, which appears so timeless to the human eye, is in fact in a state of constant change: It is not so much a place as a process. Sand flows out to sea, is carried along the beach by waves, and is blown away by storms; it is replenished from undersea sandbars, river sediment, and the erosion of dunes and bluffs. Dean, *supra*, at 24-32. Through this natural process of ebb and flow, the beach is maintained but migrates, as bluffs erode into beach, which in turn is swept away by the sea. See Meg Caldwell & Craig Holt Segall, *No Day at the Beach: Sea Level Rise, Ecosystem Loss, and Public Access Along the California Coast*, 34 *Ecology L.Q.* 533, 539 (2007) (noting that

cliffs and bluffs have “eroded almost 45 kilometers (km) over the past 18,000 years in some regions . . .”). Unfortunately, human activity has disrupted this equilibrium, putting California’s beaches in danger.

A. California beaches are already vulnerable to sea-level rise, extreme weather events, and loss of sediment flow.

Put simply, “erosion occurs when more sand moves out of an area than moves into it.” Dean, *supra*, at 27. The effects of climate change have increased the rate at which beaches lose sand. Meanwhile, human interference with natural sediment flow has slowed the rate at which sand is replenished. Thus, California’s beaches are caught between a rock and a hard place.

Climate change has supercharged the natural processes of erosion and beach migration. For the past 3,000 years, the average rate of sea-level rise has been about 1-2 centimeters per century. In the 20th century, however, California experienced sea-level rise of 15-20 centimeters. Caldwell & Segall, *supra*, at 537. This is nothing compared to what is to come: Scientific models predict that in the coming century, California could face 1-3 meters of sea-level rise. Sean Vitousek et al., *A Model Integrating Satellite-Derived Shoreline Observations for Predicting Fine-Scale Shoreline Response to Waves and Sea-Level Rise Across Large Coastal Regions* 128 J. Geophysical Rsch. e2022JF006936, at 5 (2023); *see also* Rachel Ehlers et al., Cal.

Legis. Analyst's Off., *What Threat Does Sea-Level Rise Pose to California?* 1 (2020) (“[T]he magnitude of sea-level rise (SLR) in California could be . . . as much as seven feet by 2100.”).

Depending on the slope of the beach, each vertical meter of sea-level rise corresponds to up to 300 meters of horizontal inland migration. Lester, *supra*, at 9-10. Thus, sea-level rise will contribute to ever-increasing rates of unprecedented disasters, so long as the coast remains highly developed. NOAA predicts that, from 1990 to 2050, the risk of flooding on the southwest Pacific coast will increase by 3,400 percent. William V. Sweet et al., NOAA, *Global and Regional Sea Level Rise Scenarios for the United States* 41 (Table 3.2) (2022).

In addition to making coastal development increasingly dangerous and eventually infeasible, the rising sea will eliminate many of California's beaches. Over 85 percent of the coastline is eroding right now. Monterey Bay Nat'l Marine Sanctuary, NOAA, *Resource Issues: Coastal Armoring and Erosion*, <https://montereybay.noaa.gov/resourcepro/resmanissues/coastal.html#:~:text=Introduction,episode%2C%20and%20other%20heavy%20storms1>. One study estimates that 24 to 75 percent of beaches in the state will be lost by the end of the 21st century, assuming past trends of human activity hold steady. Vitousek et al., *supra*, at 1, 5. The sandy beaches Californians know and love are an endangered species. Because as much as three-quarters of

beaches could be swallowed by the sea in the next 75 years, it is now more essential than ever to protect those that might withstand it.

Climate change has also dramatically increased the frequency of extreme weather, such as major wave events, king tides, and storms, all of which contribute further to erosion. *California Climate Adaptation Strategy*, State of California, <https://climateresilience.ca.gov/overview/impacts.html>; Caldwell & Segall, *supra*, at 538-39 (noting that as storms “grow stronger and more frequent, existing coastal protection structures will fail more often”). As the oceans continue to warm, storms hitting the California coast will become yet more ferocious. *See, e.g.*, Haley Smith & Grace Toohey, *El Niño and Climate Change Are Supercharging Incoming Storm, Socal’s Biggest This Winter*, L.A. Times (Feb. 2, 2024), <https://www.latimes.com/environment/story/2024-02-02/el-nino-and-climate-change-are-supercharging-incoming-california-storm>.

In addition to climate change, human activity has imperiled California beaches in another way: blocking natural sediment flow. As explained above, beaches exist in constant flux, as sand washes out to sea and is replaced. The new sand comes partly from erosion, but mostly from river sediment. Caldwell & Segall, *supra*, at 541. But in California, many rivers have been diverted or dammed, blocking sediment from making

its way downstream. A 2008 study estimates that about 23 percent of all sand that would have been carried by rivers to the California coast is instead blocked by dams. Matthew J. Slagel & Gary B. Griggs, *Cumulative Losses of Sand to the California Coast by Dam Impoundment*, 24 J. Coastal Rsch. 571, 573 (2008). This problem too is likely to worsen in coming years, as the state builds new reservoirs to accommodate growing water demand. *E.g.*, Kurtis Alexander, *Newsom Accelerates Plans for California's Largest Reservoir in Nearly 50 Years*, S.F. Chron. (Nov. 6, 2023), <https://sfchronicle.com/climate/article/newsom-reservoir-water-18470554.php>.

B. Much of the California coast has already been armored, and development pressure will prompt armoring of the entire coast if left unchecked.

As described above, many of California's beaches are facing imminent destruction. And the entire coast is at unprecedented risk of erosion, flooding, and storm damage, which will only get worse in coming years. The logical response to these twin crises is to do everything possible to protect the beaches, and to develop further away from the coast, out of harm's way. In practice however, Californians have done just the opposite. As one scholar puts it, "in cities all up and down the California coast, managed retreat—and even the broader idea of longer-term planning—has been largely taken off the table. Anathema.

Taboo. . . . this does not bode well for California’s future.”

Anderson, *supra*, at 293-94.

Rather than adapting to changing times, California has gone to war against the rising sea, spending billions on coastal armoring projects like seawalls. Fourteen percent of the coast, about 149 miles, has already been armored. In southern California, nearly two-fifths of beaches are armored. Gary Griggs, *Coastal Armoring and Disappearing Beaches*, Coastal Care (May 1, 2020), <https://coastalcare.org/2020/05/coastal-armoring-and-disappearing-beaches-by-gary-griggs/>. But while the ocean is an unstoppable force, armoring is not an immovable object. As the sea level rises, even the strongest seawalls wear down and break, and must be rebuilt and expanded repeatedly at great cost. *See* Xia, *supra*, at 24-25 (“[T]he true cost of forcing an unmoving line in the sand is proving to be magnitudes more than what California seems willing to pay.”); *id.* at 60-61 (“All this armoring that we have is likely to fail as sea level rises” (quoting Bob Battalio, coastal engineer from Pacifica, California)). As the sea level rises faster in coming years, barriers will likely break down sooner. In a war against the ocean, the ocean always wins.

Even so, pressure to build new developments on the California coast has only grown. Extreme property values are used to justify ever-more armoring, and postponement of the

inevitable need to retreat. *See* Anderson, *supra*, at 291-94.

Without policy change, this cycle of high-risk development could cause nearly the entire coastline to be armored.¹ *See* Caldwell & Segall, *supra*, at 539; *see also* Orrin H. Pilkey, Jr. et al., *Saving the American Beach: A Position Paper by Concerned Coastal Geologists* 3 (1981), https://www.wcu.edu/WebFiles/PDFs/psds_SKIDAWAY1_1981.pdf (“Once a beach has been stabilized, [i.e. armored,] it will almost always remain in a stabilized state at increasing cost to the taxpayer.”). The irony in such short-term thinking is that even as wealthy owners clamor for yet another wall to preserve their property value, they forget that such “value derives in large part from the beach—the beach that the wall will inevitably destroy.” Dean, *supra*, at 10.

III. Coastal Armoring Inevitably Destroys Beaches and Impairs Public Access, with Devastating Environmental, Cultural, and Economic Repercussions.

¹ While section 30253 of the Public Resources Code does limit armoring for new structures, the steady march of sea level rise means that the trial court’s interpretation of section 30235 would nonetheless lead to pervasive armoring throughout California. As both parties note, beaches are dynamic, and the need for armoring is not always predictable. Op. Br. at 13; Resp. Br. at 47.

A. Coastal armoring, in any form, increases erosion and blocks sand from reaching beaches, eventually destroying the beach.

Coastal armoring is antithetical to beach health, whether it be seawalls, riprap, groins, jetties, or one of the numerous other ways humanity tries to impose order on the chaotic ocean. To understand why, remember that “a beach is a place where sand stops to rest for a moment before resuming its journey to somewhere else.” Karl F. Nordstrom et al., Living with the New Jersey Shore x (1986). Constantly, through wind and wave action, sand is washed or blown away from the beach. And because waves often hit the shore at an angle rather than head-on, sand also flows *along* the beach, in a process called “longshore sand transport” or “littoral drift.” *See generally* Paul D. Komar, *The Mechanics of Sand Transport on Beaches*, 76 J. Geophysical Rsch. 713 (1971). Meanwhile, waves erode cliffs and bluffs, and rivers carry sediment downstream, adding new sand to replenish what was lost. Armoring disrupts this natural cycle, causing more sand to be lost than regained, and ultimately destroying the beach, as seen in Figure 1 below.



Figure 1: Beach Loss Caused by Armoring. Griggs, Effects, supra, at 82.

Armoring causes beach loss in several distinct ways. First and most obvious is “placement loss”: The beach directly underneath the structure (its “footprint”) is immediately lost. Second, armored beaches suffer “impoundment”: Armoring places a barrier between the sea and the cliffs or bluffs or dunes above the beach, preventing natural erosion and trapping sand that would have otherwise replenished the beach. Griggs, *Effects, supra*, at 81; Molly Loughney Melius & Margaret R. Caldwell, *California Coastal Armoring Report: Managing Coastal Armoring and Climate Change Adaptation in the 21st Century* 9 (2015), <https://slc.ca.gov/wp-content/uploads/2018/10/CACoastalArmoringRpt.pdf>. Impoundment also has lateral

effects, as armoring structures trap sand that would have otherwise drifted along the beach via longshore transport—this

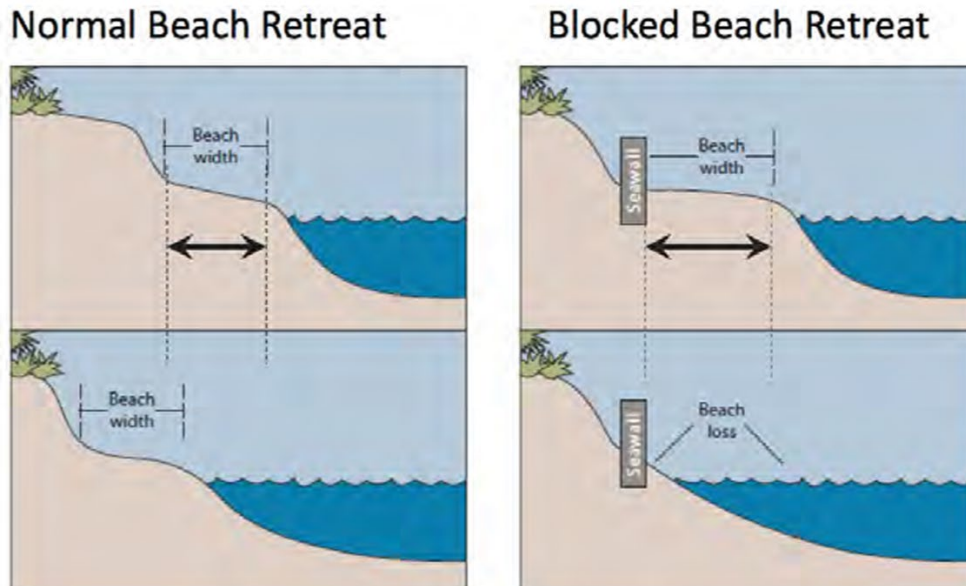


Figure 2: Passive erosion. Melius & Caldwell, *supra*, at 9.

causes beach loss miles down the beach from the armoring itself. See, e.g., Dean, *supra*, at 39-43 (describing how a groin in Long Island destroyed downdrift beaches). Third, armored beaches exhibit “passive erosion”: As the shoreline on either side of the armoring migrates inland, the armor stays in the same place, preventing new beach from forming. As the water deepens, the beach disappears, as illustrated in Figure 2 below. Griggs, *Effects, supra*, at 82. Fourth, armored beaches also experience “active erosion”: When waves are blocked by a seawall, it reflects the wave energy back onto the beach. This scours away the sand in front of the seawall and reduces the supply of new sand by making the foreshore steeper. Melius & Caldwell, *supra*, at 1, 9.

Even if armoring does not fully destroy beaches, they are never the same afterward. Armoring reduces beaches' accessibility and can be a serious public safety hazard. Dean, *supra*, at 67 (“[B]each strollers may find themselves rock-climbing instead. It is not unusual . . . for climbers to twist or even break ankles on the rocks, or for rising water to trap unwary sunbathers against rock walls.”). Armoring also reflects wave energy, which can make the water in a previously prime surf spot turbulent and unsafe for swimming or surfing. Melius & Caldwell, *supra*, at 11; Reineman & Ardoin, *supra*, at 327. And of course, armoring is often visually unappealing and degrades the scenic, natural quality of public beaches. Griggs, *Effects*, *supra*, at 78-79.

These negative impacts of armoring have been well-known since the time of the Coastal Act's enactment. *See, e.g.*, Cal. Coastal Zone Conservation Comm'n's, California Coastal Plan 43-45 (1975) (hereinafter “Coastal Plan”). Back in 1981, 85 coastal geologists signed onto a report for President Ronald Reagan. Armoring, the report observes, “usually results in severe degradation or total loss of a valuable natural resource, the open ocean beach.” Pilkey et al., *supra*, at 2-3. Since armoring serves only to protect the property of “a few individuals relative to the number of Americans who use beaches,” the report concludes that “stabilization of most American shores is not justifiable in the

broader scope of national interests.” *Id.* With no dispute over the science, the choice is clear: California can take a stand against unfettered coastal development and protect its beaches, or it can keep prioritizing the interests of a few wealthy property owners until the once-beautiful coast is reduced to miles of bare rock and concrete against an unforgiving sea.

B. Armoring causes the direct loss of habitat and disrupts the food chain, destroying unique and fragile beach ecosystems.

California’s sandy beach ecosystems and the species that rely on them—including sea turtles, migratory birds, and myriad invertebrates—are in grave danger from local human development. Schooler et al., *supra* at 4830 (finding local development was a greater threat to California’s beaches than any other factor, including climate change). And armoring in particular imperils these unique environments.

As explained above, armoring causes the loss of sandy beaches wherever it is built. This in turn devastates intertidal (between the high- and low-tide marks) and supratidal (above the high-tide mark) ecosystems. Melius & Caldwell, *supra*, at 12. A 2008 study on beaches in Santa Barbara County confirmed that armored areas had far less diversity and abundance of invertebrates and “birds of all types.” Jenifer E. Dugan et al., *Ecological Effects of Armoring on Sandy Beaches*, 29 *Marine Ecology* 160, 162-67 (2008). The researchers concluded: “the

combination of rising sea levels[,] . . . coastal development and armoring will accelerate beach erosion and loss and increase ecological impacts to sandy beach ecosystems on a scale that is unprecedented.” *Id.* at 169.

Beach loss is not the only way that armoring devastates beach ecology. By increasing wave reflection and interfering with littoral drift, armoring also greatly reduces the amount of wrack (i.e., kelp, seaweed, and other biological material) that drifts ashore. *Id.* at 161, 167 (“[T]he standing crop of wrack was significantly lower (10-1000 times less) on armored beach segments than on adjacent unarmored segments.”). Wrack and the invertebrates that feed on it are the foundation of the beach’s entire food web, since the sand itself provides few nutrients. They are essential to the survival of migratory and nesting shorebirds, who depend on wrack-associated invertebrates to meet their high caloric requirements. *Id.* at 168. When the wrack is gone, the invertebrates die, the birds die, and the whole ecosystem collapses. Schooler et al., *supra*, at 4823, 4830.

C. The economic costs of armoring far outweigh its benefits, and it causes more property damage than it prevents.

In the face of the ecological and cultural devastation wrought by protective structures, those who seek to build them have one primary rebuttal: what about my property? *See* Resp. Br. at 14; Anderson, *supra*. But even in purely economic terms,

armoring is a terrible investment. A 2021 study conducted a holistic cost-benefit analysis, which weighed a broad range of economic factors in the context of a central California beach. The researchers determined that “adaptation approaches that prioritize maintaining public beach recreation and ecosystem values . . . provide long-term benefits. Hold-the-line armoring to protect private property is not a long-term answer for smaller communities that depend on the beach for their identity and livelihood.” David Revell et al., *A Holistic Framework for Evaluating Adaptation Approaches to Coastal Hazards and Sea Level Rise: A Case Study from Imperial Beach, California*, 13 Water 1324, at 31 (2021).

For one thing, armoring is expensive. And since it must be maintained indefinitely, the total costs often end up exceeding the value of the property being protected. Pilkey et al., *supra*, at 2. Moreover, although armoring protects the investment of property owners right on the shoreline, the degradation of the beach lowers property value everywhere else in the community, creating a net loss in value overall. Warren Kriesel & Robert Friedman, *Coping with Coastal Erosion: Evidence for Community-Wide Impacts*, 71 Shore & Beach, July 2003, at 19-20 (“While [armoring] may be attractive to an individual, the property values within the community as a whole will suffer . . .”).

Moreover, armoring does not actually prevent property damage. It protects the structures immediately behind it, of course, at least until it collapses. But armoring increases the risk of damage elsewhere in the community, both to private property and to public resources. A natural, unarmored beach provides an essential buffer against storm surges. Alexandra Toimil et al., *Demonstrating the Value of Beaches for Adaptation to Future Coastal Flood Risk*, 14 *Nature Commc'ns* 3474 (2023). By blocking sand flows and eroding the beach downdrift of it, armoring makes neighboring properties far *more* vulnerable to flood damage. *See, e.g.,* Dean, *supra*, at 39-43 (describing catastrophic flooding in Long Island in the early 1990s, worsened by armoring).

The cultural and ecological impacts of armoring also have economic significance. Tourism is a multi-billion-dollar industry on which many California towns depend, and beaches are the main attraction. California's beaches get more visitors every year than all U.S. national parks combined. Reineman & Ardoin, *supra*, at 325-26. Healthy beaches also provide economically valuable ecosystem services for free, such as recreation, flood buffering, sediment storage, groundwater purification, breakdown of pollutants, habitat for edible organisms, and more. Revell et al., *supra*, at 1-3, 12. Even ignoring the unquantifiable

benefits of ecosystem health, tradition, and community provided by beaches, preserving them is well worth the cost.

D. Mitigating the harms of armoring is infeasible, and replenishing beach sand is prohibitively costly.

What's more, there is no mitigation that can permanently prevent beach loss. It results directly from the blocking of natural wave action and erosion of cliffs, which is what armoring does *by definition*. See Griggs, *Effects, supra*, at 82 (“Passive erosion takes place regardless of the type of protective structure emplaced.”); Dean, *supra*, at 53 (“Seawalls damage virtually every beach they are built on. . . . Shoreline hardening to thwart nature’s ebb and flow is therefore the antithesis of beach conservation.”).

One might think that new sand could simply be added periodically to replace what has been lost. Indeed, southern California cities with extensive armoring have tried keeping their terminally ill beaches on life support via constant truckloads of new sand. But such artificial beaches are no substitute for the real thing, as any visitor can tell. See Dean, *supra*, at 92-119. The local flora and fauna feel the difference too: The foreign sand lacks the diversity of microscopic and macroscopic organisms that form the base of the entire intertidal and supratidal food chain. See Nicholas K. Schooler et al., *Local Scale Processes Drive Long-Term Change in Biodiversity of Sandy Beach Ecosystems*, 7

Ecology & Evolution 4822, 4829 (2017). And the sand must come from somewhere. Stealing sand from one ecosystem to maintain another is not environmentally friendly—and neither are the emissions from thousands of trucks. See Marius Dan Gavriltea, *Environmental Impacts of Sand Exploitation. Analysis of Sand Market*, 9 Sustainability 1118, at 13-16 (2017). This strategy is also enormously costly. To maintain just one mile of beach requires hauling in 48,000 truckloads of sand, at a cost of over \$100 million. Xia, *supra*, at 201-03. This process must be repeated every few years, forever. Historically, even the wealthiest communities, initially willing to pay any cost to save their beaches, eventually give up. See, e.g., *id.* (describing the experience of Broad Beach in Malibu, CA). Soon after the community stops trucking in new sand, the zombie beach disappears.

ARGUMENT

At the heart of this litigation is section 30235 of the California Coastal Act, which provides that armoring “shall be permitted when required . . . to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts.” Cal. Pub. Res. Code § 30235. Respondents assert that the Commission violated this provision by denying them a permit to construct a seawall in front of their Casa Mira townhouses, which were built in 1984.

Petitioners’ Opening Brief at 7-8, *Casa Mira Homeowners Ass’n v. Cal. Coastal Comm’n*, No. 19-CIV-04677 (Cal. Super. Ct. June 29, 2022), available at CTX 1200; AR 503-08. But as the Commission notes in its briefing, the text itself leaves ambiguous whether “existing structures” means “existing at the time of the application,” or “existing at the time of the Act’s enactment in January 1977.” Op. Br. at 22-24. Given that textual ambiguity, and aware that allowing unfettered armoring for new structures would contradict the Coastal Act’s clear purpose to promote environmental protection and public access, the Commission adopted the latter interpretation. Op. Br. at 21-22.

The “existing at time of enactment” interpretation of section 30235 is not just permissible but required. The Respondents’ overbroad “existing now” interpretation would render the Coastal Act inconsistent with the public trust doctrine, and therefore null. Moreover, when statutory language is ambiguous, courts must interpret it in the context of the statute as a whole, the legislative history, and practical consequences that would flow from a given interpretation. *Mejia v. Reed*, 31 Cal. 4th 657, 663 (2003). All these factors support the Commission’s “existing at time of enactment” interpretation.

I. The Coastal Act Must Not Be Interpreted in a Way that Violates the Public Trust Doctrine.

Since the time of ancient Rome, it has been understood that navigable waters and seashores are public property, held in trust by governments for the public benefit. *Nat'l Audubon Soc'y v. Superior Ct.*, 33 Cal. 3d 419, 433 (1983) (“By the law of nature these things are common to mankind—the air, running water, the sea and consequently the shores of the sea.” (quoting Institutes of Justinian 2.1.1)). This “public trust doctrine” is especially well-established in California. When the state was founded, “California received title to the tidelands . . . within its borders, to be held subject to the public trust for statewide public purposes . . . and for preservation in their natural state.” Cal. Pub. Res. Code § 6009(a); *see also id.* § 6009(d) (“Tidelands and submerged lands granted by the Legislature to local entities remain subject to the public trust . . .”).

The public trust doctrine overrides any private property interests in adjacent land. *Marks v. Whitney*, 6 Cal. 3d 251, 259-63 (1971). In *Marks*, the California Supreme Court held that private property interests in the seashore should only be “given as full effect as the public interests will permit.” *Id.* at 259-63 (quoting *People v. Cal. Fish Co.*, 166 Cal. 576, 596 (1913)). The Court went on to clarify the scope of public interests in tidelands protected by the public trust—not only the “right to fish, hunt, bathe, swim, to use for boating and general recreation purposes,” but also “the preservation of those lands in their natural state, so

that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area.” *Id.* at 259-60.

To be clear, the public trust doctrine does not just mean that the state *may* override private interests to protect the public trust—the state *must* do so. *Nat’l Audubon Soc’y*, 33 Cal. 3d at 441 ([The public trust] is an affirmation of the duty of the state to protect the people’s common heritage”); *see also City of Berkeley v. Superior Ct.*, 26 Cal. 3d 515, 521 (1980) (“[A] state, as administrator of the trust in tidelands on behalf of the public, does not have the power to abdicate its role as trustee in favor of private parties.”). The Court has recognized that harming the public trust may at times be unavoidable, such as the appropriation of drinking water from rivers, but “the conveyance of vast expanses of tidelands” does not qualify. *Nat’l Audubon Soc’y*, 33 Cal. 3d at 446-47, 446 n.26. In light of this duty, courts must not interpret a statute as violating the public trust unless the Legislature’s intent to do so is “clearly expressed or necessarily implied. . . . And if any interpretation of the statute is ***reasonably possible*** which would not involve a destruction of the public use or an intention to terminate it in violation of the trust, the courts will give the statute such interpretation.” *Cal. Fish Co.*, 166 Cal. at 597 (emphasis added).

When enacting the California Coastal Act, the legislature did not clearly express any intent to abandon the state’s public trust duties—rather, they intended to codify them. After a massive oil spill in 1969, the Californian public had become enraged at the degradation of public beaches. Xia, *supra*, at 72-74. In response, environmental activist and lawyer Peter Douglas developed an initiative to “put a stop to rampant development” and put control of the state’s beaches back in the people’s hands. *Id.* at 76-78. Against the firm opposition of private industry, developers, and property owners, Douglas joined with environmental organizations such as the Sierra Club to run a massive public campaign and get Proposition 20—the California Coastal Zone Conservation Act of 1972—on the ballot. *Id.* at 79-83; Todd T. Cardiff, *Conflict in the California Coastal Act: Sand and Seawalls*, 38 Cal. W. L. Rev. 255, 262, 262 nn. 61-63 (2001).

This ballot measure passed, mandating the creation of the 1975 California Coastal Plan. The California Coastal Plan had a strong environmental focus, and particularly emphasized the harmful effects of coastal armoring and the need to minimize its use. See Coastal Plan, *supra*, at 6, 43-45. These policy findings and recommendations were the primary basis for the California Coastal Act. Cardiff, *supra*, at 263-64 (“[T]he coastal act bill, SB

1277 (Smith-Beilenson), supported by conservationists, was enacted over competing developer-friendly bills.”).

Given that the Legislature did not “clearly express[] or necessarily impl[y]” any intent to abandon its public trust duties by passing the Coastal Act—just the opposite—the Act must not be interpreted in a way that destroys the public trust. *Cal. Fish Co.*, 166 Cal. at 597. Widespread coastal armoring threatens the entire range of public trust rights in the seashore, from access, to recreation, to ecological observation. Therefore, even if the plain, ordinary meaning of the statutory language appears to allow such armoring (which it does not), that plain language must be ignored. *See Cal. Fish Co.*, 166 Cal. at 592-93 (explaining “the rule of statutory construction, that the state is not bound by general words in a statute, which would operate to trench upon its sovereign rights, [or] injuriously affect its capacity to perform its functions” (quoting *Mayrhofer v. Bd. of Education*, 89 Cal. 110 (1891))). As explained by Charles Lester, former executive director of the Commission, there is no way to reconcile the public trust doctrine with the “existing now” interpretation of “existing structures” in section 30235. Lester, *supra*, at 56-58 (“Allowing continued individual and aggregated authorizations of private shoreline structures . . . would seem to inevitably result in a privatization of land that otherwise would have been public tidelands, thereby alienating public trust lands . . .”). If there is

any reasonably possible interpretation of the statute that aligns with the public trust doctrine, courts and the Commission must adopt it.

II. The Phrase “Existing Structures” in Coastal Act Section 30235 Is Ambiguous.

Putting aside the necessity of the Commission’s interpretation under the public trust doctrine, more ordinary principles of statutory interpretation also support it. The phrase “existing structures” in section 30235 is inherently ambiguous. Respondents are correct that “[t]he ordinary meaning of the word ‘existing’ is ‘already or previously in place.’ Resp. Br. at 27 (quoting Dictionary.com). But that hardly resolves the ambiguity. As the Commission points out repeatedly, the use of the present tense raises the question: whose present? The writer, or the reader? Op. Br. at 42; Reply Br. at 10. The fact that “existing” has a straightforward dictionary definition (as most words do) also does little to clarify. *Cf. Coal. of Concerned Cmty., Inc. v. City of L.A.*, 34 Cal. 4th 733, 738 (2004) (finding the phrase “developments constructed within the coastal zone” is ambiguous in context, although “within” has a clear dictionary definition). As the Commission explains, “neither the text of section 30235 nor the Dictionary.com definition of ‘existing’ . . . says ‘now’ It is impossible to apply section 30235 without assuming some timeframe; the question is which one.” Op. Br. at 23-24; *see also* Reply Br. at 10-11. And in any case, ordinary

meaning is not the be-all end-all: “It is a well-established canon of statutory construction that a court should go beyond the literal language of a statute if reliance on that language would defeat the plain purpose of the statute.” *Florez v. Linens 'N Things, Inc.*, 108 Cal. App. 4th 447, 452 (2003) (quoting *Bob Jones University v. United States*, 451 U.S. 574 (1983)). The “existing now” interpretation is completely at odds with the Coastal Act’s general purpose and must be rejected on those grounds. *See infra* Argument Part III.

III. The History and General Purpose of the Coastal Act Suggest a Legislative Intent to Protect the Environment and Public Access over Private Property Interests.

When statutory language is ambiguous, “courts must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute.” *Merced Irrigation Dist. v. Superior Court*, 7 Cal. App. 5th 916, 925 (2017). As the Commission’s briefing accurately recounts, Coastal Act’s history and provisions reveal an unmistakable legislative intent to prioritize environmental quality and public trust rights over private property interests whenever there is tension between them. *See, e.g.*, Reply Br. at 19.

Some indications of the legislative intent are found in the text of the Coastal Act. One example is section 30211, which

requires that “development *shall* not interfere with the public’s right of access to the sea . . . including, but not limited to, the use of dry sand and rocky coastal beaches” (emphasis added). The Coastal Act also requires that the Commission only grant permits consistent with public access and recreational policies (§ 30604(c)), “scenic and visual qualities” (§ 30251), and preservation of “environmentally sensitive habitat areas” (§ 30240). Even more on point, section 30253(b) prohibits all new development that would “in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.” Finally, Coastal Act section 30007.5 directs that all conflicts between Coastal Act Provisions “be resolved in a manner which on balance is the most protective of significant coastal resources.”

Read in conjunction with section 30007.5, whenever the requirements come into conflict, these environmental and public access mandates override the section 30235 mandate that the Commission grant permits for armoring. Lester, *supra*, at 61-67; *cf. Ocean Harbor House Homeowners Ass’n v. Cal. Coastal Com.* 163 Cal. App. 4th 215, 241 (2008) (“[Section 30235] does not purport to preempt other sections of the Act that require the Commission to consider other factors in granting coastal development permits.”). But—as Casa Mira itself even admits—it would be easier, and more consistent with statutory

interpretation principles, to minimize the frequency of such conflicting mandates in the first place. Resp. Br. at 46; see *Elsner v. Uveges*, 34 Cal. 4th 915, 933 (2004) (“[W]hen interpreting a statute, we must harmonize its various parts if possible, reconciling them in the manner that best carries out the overriding purpose of the legislation.”). The statute’s provisions are best harmonized via the Commission’s narrower interpretation of section 30235, which avoids the contradictory obligations of preserving the environment and public access, and permitting ever-more seawalls.

Moreover, the history of the Coastal Act’s enactment suggests a general purpose of protecting public access and environmental conservation. See Reply Br. at 19. Respondents provide no countervailing legislative history from the time of the Coastal Act’s enactment. They simply throw up their hands, asserting that “[n]ot a word in the legislative history explains why the committee added the word ‘existing.’” Resp. Br. at 57. Without any evidence to the contrary, it is clear that the general purpose of the Coastal Act is to maximize environmental protection and public access. Ambiguous language should be interpreted accordingly.

IV. Practical Consequences Require Section 30235 to be Interpreted in a Way That Does Not Allow Unchecked Destruction of the State’s Beaches.

Finally, when interpreting ambiguous statutory language, courts should “consider the impact of an interpretation on public policy, for [w]here uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation.” *Mejia v. Reed*, 31 Cal. 4th 657, 663 (2003) (quoting *Dyna-Med, Inc. v. Fair Employment & Housing Comm’n.*, 43 Cal. 3d 1379, 1387 (1987)). As explained at length above, the Respondents’ “existing now” interpretation would require the Commission to permit almost unlimited armoring up and down the entire coastline, leading to massive beach loss and all the environmental, aesthetic, economic, and cultural tragedy associated therewith. *See supra* Statement of Facts. That economically and culturally disastrous consequence weighs in favor of the Commission’s interpretation.

CONCLUSION

California’s famous beaches are being squeezed out of existence, with a rising ocean on one side and stationary private development on the other. These beaches are the heart of the state’s culture, the home of unique and valuable ecological treasures, and a source of tourist revenue and flood protection for coastal communities. In the face of rising oceans, the wealthiest Californians demand seawalls and other armoring to protect

their coastal properties. But the science is clear: Armoring inevitably destroys the beaches on which it is built. The California public has a constitutional right to these beaches, and the California Coastal Act has charged the Commission with protecting them. Yet Respondents argue that the Coastal Act *requires* the Commission to permit armoring for any structure “existing” now. Their interpretation would also require armoring for any structures built in the future that subsequently require protection, making it functionally limitless.

Moreover, statutory interpretation principles support the “existing at time of enactment” interpretation of Coastal Act section 30235, not Respondents’ overbroad reading. Most importantly, no statute can be interpreted to abrogate the state’s duty to protect the public trust rights in the beaches and tidelands without an unmistakable indication of legislative intent, which is not present here. Indeed, far from abrogating the state’s public trust duties, the Coastal Act is perhaps their most direct codification. Even ignoring public trust obligations, the term “existing structures” is inherently ambiguous, making it necessary to look to the general purpose of the statute and the interpretations’ practical consequences. The general purpose of the Coastal Act, as evidenced by both its text and its history, is to promote public access and environmental conservation, not to destroy the beaches at the whim of wealthy private interests.

This purpose is irreconcilable with an interpretation of the statute that forces the Commission to rubber-stamp destructive armoring projects for any structure existing now or in the future. Moreover, the practical consequences—cultural, environmental, and economic—all favor the interpretation of “existing” as “existing at time of enactment.” This interpretation allows the Commission to do its job of defending beaches for generations of Californians to come.

Dated: Sept. 6, 2024 Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.240(c) of the California Rules of Court, I certify that the text of this brief consists of 7,366 words, not including caption, tables, signature block, and required certifications, as counted by Microsoft Word, the computer processing program used to generate this brief.

Dated: September 6, 2024

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