PRICED OUT OF PARADISE: THE CALIFORNIA COASTAL ACT'S ROLE IN EXACERBATING CALIFORNIA'S HOUSING SUPPLY CRISIS

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This Note explores the relationship between California's severe housing supply crisis and the exploitation of its environmental laws to obstruct housing development. The California Environmental Quality Act (CEQA) has come under heightened scrutiny for the ways it is used to challenge residential development. However, comparatively little attention has been paid to how the California Coastal Act of 1976—which created the California Coastal Commission as a specialized land use regulator for the coast—has also contributed to the state's housing shortage and affordability issues.

This Note examines the California Coastal Act and the California Coastal Commission—reviewing their history, structure, and legal authorities—and evaluates the ways this regulatory model has contributed to the state's housing crisis by limiting housing development in some of California's most economically productive and affluent areas. The Commission's unique regulatory structure grants it near absolute control over coastal development, combining broad discretionary permitting powers with extensive appellate jurisdiction, further reinforced by the Coastal Act's requirement for liberal statutory construction. The Commission's plenary land use authority extends over California's Coastal Zone, an area containing roughly one million people.

While the Coastal Act was well-intentioned in its attempt to protect the state's coastline, substantial evidence indicates it has served exclusionary ends and contributed to an increasingly more affluent and demographically homogeneous Coastal Zone. Ironically, a statute that commendably mandated maximal public access to the coast has been wielded as a tool to prevent people from residing within it. Moreover, the Act enables housing to be blocked for reasons completely unrelated to environmental protection. Despite growing recognition of the role of the coastal land use regulatory regime in exacerbating California's housing crisis, legislative reform efforts have faced tough resistance, with even modest proposals to harmonize coastal-specific rules with statewide housing laws failing to pass.

This Note also analyzes two of the rare judicial decisions to consider the structural conflicts between the Coastal Act, which grants the Coastal Commission broad discretion over coastal development, and California's

* J.D., 2025, New York University School of Law. I am very grateful to Professors Roderick M. Hills Jr. and Christopher S. Elmendorf for their thoughtful guidance. Thank you to the *N.Y.U. Journal of Legislation and Public Policy* team for their invaluable help throughout the editing process. I also wish to thank Lane Baker, Timothy Duncheon, Aaron Sege, Don Chen, Darby Hopper, and Ben Boston for their comments and assistance.

housing enforcement laws, which aim to limit discretion in rejecting housing proposals. In 2016, Kalnel Gardens, LLC v. City of Los Angeles *initially subordinated statewide housing laws to the Coastal Act but was overturned in part by the legislature with respect to the Density Bonus Law. In 2024*, New Commune DTLA v. City of Redondo Beach *partially affirmed the applicability of the Housing Accountability Act's "Builder's Remedy" in the Coastal Zone, albeit with significant limitations. These cases highlight a stark contrast: while recent reforms have curtailed municipalities' power to block certain housing development, the Coastal Commission retains such authority within the Coastal Zone. This creates a de facto exemption for some of California's most desirable areas; the Coastal Act serves as a regulatory haven for coastal NIMBYism. The Note argues that California's courts and policymakers have been too deferential to the Coastal Act, undermining efforts to mitigate the housing crisis and risking the entrenchment of the coast as a state-sanctioned gated community under the misleading guise of environmental conservation.*

Introduction

In the words of its own legislature, "California has a housing supply and affordability crisis of historic proportions."[1] The state does not have enough homes for its people to live in.[2] The housing crisis has far-reaching social, economic, and environmental consequences, ranging from rising homelessness to the pollution generated by growing commutes between expensive job hubs and more affordable localities. While the causes of California's housing shortage are complex, there is a growing recognition among policymakers, activists, and scholars that the state's environmental laws have been weaponized to obstruct housing development that the state desperately needs. In California, the tools of environmental protection have become instruments of residential exclusion.

This Note builds on the burgeoning literature about the tension between a model of environmental protection that provides ready-made legal mechanisms to stop development and a housing crisis that has emerged in substantial part because of how easily development is stopped. This Note makes the novel contribution of reviewing the California Coastal Act of 1976 and the Coastal Commission, the state's powerful coastal land use regulator, as a crucial case study in this debate. The Note proceeds in four parts. Part I outlines the severity of California's housing crisis, the growing discussion about the role of environmental regulations in facilitating housing obstruction, and the environmental benefits of promoting residential density. Part II analyzes the California Environmental Quality Act of 1970 (CEQA) — a statute that has become perhaps the most notorious example of the misuse of environmental laws to hinder housing development — reviewing its framework, implementation, and reform efforts. Part III provides further background on the Coastal Act and Commission, outlining their history, structure, and legal authorities as well as the evidence demonstrating their role in creating a legally privileged coastal region under the banner of environmental protection. Finally, Part IV analyzes two of the only judicial decisions to directly confront the conflicts between housing laws such as the Housing Accountability Act, which aim to limit the discretion to deny housing proposals, and the Coastal Act, which delegates broad authority to restrict development in the coastal zone based on vague policy directives. The resolution of these incongruities, whether in the state's courthouses or legislature, will

1. Cal. Gov't Code § 65589.5(a)(2)(A) (Deering, LEXIS through 2024 Sess.) (amended 2024).

2. *See* infra notes 15-26.

determine if California can break free from its current path. Continuing the status quo of coastal regulatory exceptionalism will only intensify the housing crisis, reinforce the coast's exclusivity, and ultimately undermine California's housing and environmental objectives.

I. California's "Green's Dilemma": Balancing Environmental Concerns and Housing Supply

A. Environmental Law as an Obstacle to Housing Development

There is a growing focus among researchers, commentators, and policymakers on how environmental laws are weaponized to stop socially-beneficial development, including housing.[3] Discretionary permitting, lengthy environmental reviews, and expansive standing provisions facilitate challenges to development under the ostensible basis of environmental protection.[4] Environmental laws serve as easily-wielded

3. *See, e.g.*, Jerusalem Demsas, *The Great Defenders of the Status Quo*, Atlantic (Mar. 16, 2023) https://www.theatlantic.com/ideas/archive/2023/03/national-environmental-policy-act-1970-nepa-regulation/673385/ [https://perma.cc/F5XK-HLXJ]; M. Nolan Gray, *How Californians Are Weaponizing Environmental Law*, Atlantic (Mar. 12, 2021), https://www.theatlantic.com/ideas/archive/2021/03/signature-environmental-law-hurts-housing/618264/[https://perma.cc/CFX2-6UN9]. *See also* Chris Elmendorf, *How Major Environmental Groups Ended Up on the Wrong Side of California's Housing Crisis*, Mother Jones (Nov. 17, 2023), https://www.motherjones.com/environment/2023/11/green-groups-housing-crisis-ceqa-environmental-density-nimby/ [https://perma.cc/A2BN-XLW5]; Ezra Klein, *'What the Hell Happened to the California of the '50s and '60s?'*, N.Y. Times (June 18, 2023), https://www.nytimes.com/2023/06/18/opinion/newsom-california-building-permitting-procurement.html [https://perma.cc/C8JU-C33R]. However, this discussion is not new and draws upon longstanding critiques of environmental regulations being used by affluent residents seeking to preserve their exclusive communities and amenities rather than being driven by genuine ecological concerns. *See, e.g.*, William Tucker, *Environmentalism and the Leisure Class*, Harper's, Dec. 1, 1977, at 49 (arguing that early environmental opposition to development projects like Con Edison's Storm King Mountain power plant was driven primarily by wealthy elites seeking to preserve their scenic views and exclusive communities, rather than genuine environmental concerns, while ignoring the economic needs of working-class people and cities); Bernard Frieden, The Environmental Protection Hustle (1979) (contending that environmental regulations were being weaponized by suburban residents to obstruct housing development and maintain exclusivity, effectively using environmental protection as a pretext to keep others out of their communities).

4. Demsas, *supra* note 3; Gray, *supra* note 3; Elmendorf, *supra* note 3. *See also* Christopher S. Elmendorf & Timothy G. Duncheon, *When Super-Statutes Collide: CEQA, the Housing Accountability Act, and Tectonic Change in Land Use Law*, 49 Ecology. L.Q. 655, 657–59 (2022); Noah DeWitt, *A Twisted Fate: How California's Premier Environmental Law Has Worsened the State's Housing Crisis, and How to Fix It*, 49 Pepp. L. Rev. 413, 423–24, 431–35 (2022); Jennifer Hernandez, *California Environmental Quality Act Lawsuits and California's Housing Crisis*, 24 Hastings Envt'l L.J. 21, 21, 26 (2018).

tools to block or delay housing construction, exacerbating affordability problems in supply-constrained regions like California. While the impediments to housing supply are complex, environmental laws have earned significant public ire for California's housing shortage.[5]

There is great irony in the use of environmental laws to stop infill development, as increasing housing density tends to significantly reduce pollution. Infill housing development, particularly near job centers, reduces emissions by limiting driving, which disproportionately drives pollution levels.[6] Inadequate housing supply and high costs, on the other hand, exacerbate sprawl into natural areas, patterns of car dependency, and the total distance driven by vehicles.[7] The expensive San Francisco Bay Area's distant exurbs unsurprisingly feature the nation's highest rate of "super-commuters," who suffer a daily commute of more than three hours.[8] The emissions consequences of housing shortages are more than a noteworthy paradox. Recent research suggests that promoting infill housing is one of the single most effective emissions-reducing

5. *See, e.g.*, Ezra Klein, *Government Is Flailing, in Part Because Liberals Hobbled It*, N.Y. Times (Mar. 13, 2022), https://www.nytimes.com/2022/03/13/opinion/berkeley-enrollment-climate-crisis.html [https://perma.cc/5ZWG-A86D]; Trevor Bach, *Newsom: "CEQA is Clearly Broken,"* Real Deal (Feb. 28, 2023), https://therealdeal.com/sanfrancisco/2023/02/28/newsom-ceqa-is-clearly-broken/ [https://perma.cc/4ZKJ-RW2N]. *See also* Dan Walters, *How Environmental Law Is Misused to Stop Housing*, CalMatters (Jan. 8, 2023) https://calmatters.org/commentary/2023/01/how-environmental-law-is-misused-to-stop-housing/ [https://perma.cc/P2VB-ANYT]; Hernandez, *supra* note 4; Chris Carr et al., Pac. Rsch. Inst., The CEQA Gauntlet: How the California Environmental Quality Act Caused the State's Construction Crisis and How to Reform It (Feb. 2022), https://www.pacificresearch.org/wp-content/uploads/2022/02/CEQA_Report_Final.pdf [https://perma.cc/8CEJ-WDZW]; Elmendorf & Duncheon, *supra* note 4, at 658-662, 677; DeWitt, *supra* note 4.

6. Zack Subin, U.C. Berkeley Terner Ctr. for Hous. Innovation, Understanding the Role of New Housing in Reducing Climate Pollution (Mar. 12, 2024), https://ternercenter.berkeley.edu/research-and-policy/role-of-new-housing-in-reducing-climate-pollution/#:~:text=The%20climate%20benefits%20of%20infill,of%20people%20living%20in%20Oakley [https://perma.cc/Z9JK-NUSA]. *See also* Jacob Korn et al., Rocky Mountain Inst., Why State Land Use Reform Should Be a Priority Climate Lever for America (Feb. 16, 2024), https://rmi.org/why-state-land-use-reform-should-be-a-priority-climate-lever-for-america/ [https://perma.cc/56R6-9AG2].

7. Subin, *supra* note 6; Korn et al., *supra* note 6. *See also* Scott Wiener and Daniel Kammen, *Why Housing Policy Is Climate Policy*, N.Y. Times (Mar. 25, 2019), https://www.nytimes.com/2019/03/25/opinion/california-home-prices-climate.html [https://perma.cc/K6HA-AL83].

8. Igor Popov and Chris Salviati, *Traffic, Trains, or Teleconference? The Changing American Commute*, Apartment List (Mar. 14, 2019), https://www.apartmentlist.com/research/traffic-trains-or-teleconference-the-changing-american-commute [https://perma.cc/6RHB-MEQ2].

policy interventions available to state and local governments.[9] Dense housing development serves both urgent environmental and housing affordability goals alike. The California legislature recognized this connection when it determined that the shortage of housing supply has "undermin[ed] the state's environmental . . . objectives" and "threatens the . . . environmental . . . quality of life in California," while leading to "urban sprawl, excessive commuting, and air quality deterioration."[10]

Professors J.B. Ruhl and James Salzman have coined the term "The Green's Dilemma" to describe the tension between the urgency to build emissions-reducing infrastructure, and a dominant approach to environmental protection that relies on legal tools intended to slow down or block development.[11] They write that "[l]aws designed to slow and stop traditional infrastructure can equally slow and stop environmentally beneficial" projects.[12] Housing is no exception. Environmental laws have earned notoriety across the country for their role in obstructing housing, from blocking Minneapolis's attempted elimination of single-family zoning to stopping U.C. Berkeley's student housing construction on the grounds that student noise was a form of pollution.[13] As Ruhl and Salzman describe, the "environmental protection regulatory regimes do not hand out a 'green pass' to infrastructure projects that promote desirable environmental outcomes," such as urban infill housing.[14] The split in perspectives towards a legal regime hostile to producing housing density neatly illustrates the contrast between climate change-focused "Crisis Greens" and conservation-centered "Cautious Greens" — a distinction established by housing journalist Jerusalem Demsas — at the core of the identity crisis facing American environmentalism.[15]

9. *See* SUBIN, *supra* note 6. *See also* KORN ET AL., *supra* note 6.

10. CAL. GOV'T CODE §§ 65589.5(a)(1)-(3) (Deering, LEXIS through 2024 Sess.) (amended 2024).

11. J.B. Ruhl & James Salzman, *The Greens' Dilemma: Building Tomorrow's Climate Infrastructure Today*, 73 EMORY L.J. 1 (2023).

12. *Id.* at 6.

13. State by Smart Growth Minneapolis v. City of Minneapolis, 7 N.W.3d 418 (Minn. Ct. App. 2024) (overturning an injunction on the City of Minneapolis's 2040 Comprehensive Plan). *See also* Make UC a Good Neighbor v. Regents of Univ. of Cal., 548 P.3d 1051 (Cal. 2024) (holding that new legislation abrogated the Court of Appeal's determination that the environmental impact report for a proposed student housing project was inadequate for failing to consider "student-generated noise" as an environmental impact).

14. Ruhl & Salzman, *supra* note 11, at 7.

15. Jerusalem Demsas, *The Culture War Tearing American Environmentalism Apart*, ATLANTIC (Jan. 18, 2024), https://www.theatlantic.com/ideas/archive/2024/01/housing-shortage-minneapolis-environmentalism/677165/ [https://perma.cc/3BYC-PEMT].

California, which features uniquely byzantine environmental laws and an acute housing shortage, starkly epitomizes this tension.

B. California's Severe Housing Affordability and Supply Crisis

The statistics behind California's housing crisis paint a grim picture. One recent study that found California was home to eight of the nation's ten most unaffordable major metropolitan areas.[16] Over half of renter households in California were cost-burdened, which is defined by spending over thirty percent of their income on rent.[17] A stunning one in four renters were severely cost-burdened, allocating more than *half* their income to rent.[18] The crisis extends to homeowners, as median monthly mortgage costs in the state exceed the national average by fifty percent.[19] The scarcity of affordable housing has fueled a burgeoning homelessness crisis, with the state accounting for twelve percent of the nation's population, but thirty percent of the nation's homeless population.[20] California's affordability crisis has also led to significant outmigration, intensifying housing pressures in nearby regions.[21]

California's inflated housing prices are driven in substantial part by the state's meager housing production. In 2015, the Legislative Analyst's Office (a think tank for state legislators) estimated that to keep the increase in median home values in line with the national level, California needed to build 210,000 housing units annually between 1980 and 2010. However, the state only achieved this ambitious

16. Pub. Pol'y Inst. of Cal., California's Future: Housing 2 (Jan. 2020), https://www.ppic.org/wp-content/uploads/californias-future-housing-january-2020.pdf [perma.cc/N2DS-VDYP].

17. Davalos et al., *California's 17 Million Renters Face Housing Instability Before and After COVID-19*, Cal. Budget & Pol'y Ctr. (Jan. 2021), 2, https://calbudgetcenter.org/app/uploads/2021/01/IB-Renters-Remediated.pdf, [http://perma.cc/28W7-2QG7].

18. *Id*.

19. Pub. Pol'y Inst. of Cal., *supra* note 16, at 2.

20. Emily Hoeven, *California Accounts for 30% of Nation's Homeless, Feds Say*, CalMatters (Dec. 20, 2022), https://calmatters.org/newsletters/whatmatters/2022/12/california-homeless-count-2/ [http://perma.cc/U2WN-XCXT].

21. Vicki Gonzalez & Mike Hagerty, *California Has Lost Population and Built More Homes. Why is There Still a Housing Crisis?*, CapRadio (Aug. 16, 2023), https://www.capradio.org/articles/2023/08/16/california-has-lost-population-and-built-more-homes-why-is-there-still-a-housing-crisis [https://perma.cc/HL7D-7ENL]; M. Nolan Gray, *How California Exported Its Worst Problem to Texas*, Atlantic (Aug. 10, 2022), https://www.theatlantic.com/ideas/archive/2022/08/housing-crisis-affordability-covid-everywhere-problem/671077/ [https://perma.cc/UCP6-ADLZ]; Connor Dougherty, *The Californians Are Coming. So is Their Housing Crisis*, N.Y. Times (Feb. 12, 2021), https://www.nytimes.com/2021/02/12/business/economy/california-housing-crisis.html [https://perma.cc/FQ2R-D3LA].

production rate five times since 1980 and not at all after 1990.[22] The California legislature acknowledged that despite "enact[ing] numerous statutes intended to significantly increase the approval, development, and affordability of housing for all income levels," the crisis persists and government's "intent [to build more housing] has not been fulfilled."[23] The housing shortage is enduring, with supply falling far short of the demand. Governor Gavin Newsom ambitiously pledged to spur the construction of 3.5 million new housing units by 2025 during his 2018 campaign.[24] But Governor Newsom has fallen significantly short of this goal, meeting less than fifteen percent of his original target.[25] In a recent legislative findings provision, the California legislature aptly characterized the state's housing status quo as defined by "underserved demands, constrained supply, and protracted unaffordability."[26]

II. CEQA: From Environmental Protagonist to Housing Adversary

Before addressing this Note's central focus, the California Coastal Act of 1976, it is instructive to look at a different statute whose implementation has exemplified the Green's Dilemma in California and perhaps the nation. The California Environmental Quality Act (CEQA) has featured prominently in the emerging debate on the way environmental law is used to impede housing supply. The law serves as a paradigmatic example of how environmental laws, in the words of one California judge, that were "meant to serve noble purposes . . . can be manipulated to be a formidable tool of obstruction, particularly against proposed projects that will increase housing density."[27] This section delves

22. Ben Christopher, *California is Losing Population and Building New Houses. When Will Home Prices Come Down?*, CalMatters (May 15, 2023), https://calmatters.org/housing/2023/05/california-exodus-housing-cost/ [https://perma.cc/7V83-UFE3].

23. Cal. Gov't Code §§ 65589.5(a)(2)(j), (k) (Deering, LEXIS through 2024 Sess.) (amended 2024).

24. Manuela Tobias, *Newsom Campaigned on Building 3.5 Million Homes. He Hasn't Gotten Even Close*, CalMatters (Oct. 13, 2022), https://calmatters.org/housing/2022/10/newsom-california-housing-crisis/ [https://perma.cc/PDY5-U4MQ]. *See also* Gavin Newsom, *The California Dream Starts at Home,* Medium (Oct. 20, 2017), https://medium.com/@GavinNewsom/the-california-dream-starts-at-home-9dbb38c51cae [perma.cc/92CJ-JJ8S].

25. Tobias, *supra* note 24.

26. Cal. Gov't Code §§ 65589.5(a)(2)(c) (Deering, LEXIS through 2024 Sess.) (amended 2024).

27. Tiburon Open Space Comm. v. Cnty. of Marin, 78 Cal. App. 5th 700, 782–783 (Cal. Ct. App. 2022).

into the mechanisms through which CEQA is exploited to stymie housing development, whether by municipalities themselves or individual citizens empowered by broad public interest standing. It also discusses the growing academic literature on potential reforms to better align the law with California's housing needs and recent legislative efforts to enact such reforms. CEQA — with its permissive litigation rules, uncertain environmental criteria, lengthy procedural requirements, and demonstrated potential for abuse from cities and citizens alike — has created a regulatory environment that is fundamentally incompatible with the rapid, large-scale housing development California needs to combat its affordability crisis. Because these same issues permeate California's coastal land use regime, the discussion surrounding CEQA provides a critical context for understanding the conflicts between housing abundance and the California Coastal Act and Commission.

A. How CEQA is Weaponized to Obstruct Housing

CEQA was enacted in 1970 by Governor Ronald Reagan amid a burgeoning environmental movement that made slow growth its mantra and sought to establish robust legal mechanisms to protect against unchecked development.[28] CEQA is perhaps the strictest of all state-level counterparts to the federal National Environmental Protection Act (NEPA), which was passed just months earlier.[29] CEQA is distinguished by the broad scope of both the activities it covers and the lenient requirements for invoking its provisions. Unlike NEPA, which applies only to government actions, CEQA also applies to private activities that require discretionary approval or permitting from a government body and plausibly have a "significant effect" on the environment.[30] Under CEQA, state and local agencies are compelled to investigate, identify, and address the potential environmental repercussions from discretionary agency approvals of private actions only.[31] In contrast, private "ministerial" projects, which conform to existing standards and do not require the personal judgment of public officials, are not subject

28. *See* Gray, *supra* note 3.

29. Dewitt, *supra* note 4, at 422.

30. Cal. Pub. Res. Code §21000(g) (law covers the "regulate[d] activities of private individuals, corporations, and public agencies"); Sierra Club v. Cnty. of Fresno, 431 P.3d 1151, 1152 (Cal. 2018) ("With narrow exceptions, CEQA requires an EIR whenever a public agency proposes to approve or to carry out a project that may have a significant effect on the environment."). *See also* Cal. Code Regs. tit. 14, §§ 15061(b), 15378.

31. Friends of Westwood, Inc. v. City of L.A., 235 Cal. App. 3d. 259, 269 (Cal. Ct. App. 1987) (holding that discretionary developments include all those that require permits or conditions outside of local zoning codes).

to CEQA review.[32] Notwithstanding the deleterious environmental effects caused by California's housing shortage, CEQA does not compel any examination of the environmental repercussions of *rejecting* housing proposals.[33] Instead, it works from an assumption that housing development itself is damaging to the environment.[34]

In 1990, the California Supreme Court declared that CEQA "must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement."[35] This prescient warning has become California's reality. First Appellate District Judge James Richman recently characterized CEQA as the "tool of choice for resisting change that would accommodate more people in existing communities" in a landmark 2022 ruling.[36] Judge Richman described the law as a "uniquely powerful legal tool to block, delay or leverage economic and other agendas" in opposing housing construction.[37] The act of filing a CEQA claim alone can be enough to put a project "on ice" by creating legal uncertainty that in turn stifles project financing.[38] As former California Supreme Court Justice Ming Chin noted in his dissenting opinion in *Center for Biological Diversity v. Department of Fish & Wildlife*, project opponents can use CEQA delay to achieve the same outcome as an outright denial.[39] The uncertainty and cost associated with environmental reviews and CEQA litigation causes developers, especially of lower-income housing, to abandon their projects.[40]

CEQA can be weaponized to block housing by a variety of actors: individual citizens, interest groups, and municipalities themselves.[41]

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32. Protecting Our Water & Env't Res. v. Cnty. of Stanislaus, 472 P.3d 459, 462 (Cal. 2020).

33. Elmendorf & Duncheon, *supra* note 4, at 658 n.14.

34. *Id. See, e.g.*, *Friends of Westwood*, 235 Cal. App. at 260 ("the purpose of CEQA is to minimize the adverse effects of new construction on the environment").

35. Citizens of Goleta Valley v. Bd. of Supervisors, 801 P.2d 1161, 1175 (Cal. Ct. App. 1990).

36. Tiburon Open Space Comm. v. Cnty. of Marin, 78 Cal. App. 5th 700, 700 (Cal. Ct. App. 2022).

37. *Id.*

38. Elmendorf & Duncheon, *supra* note 4, at 667.

39. Ctr. for Biological Diversity v. Dep't of Fish & Wildlife, 62 Cal. 4th 204, 254 (Cal. 2015) (Chin, J., dissenting) ("Delay can become its own reward for project opponents. . . . [T]his is a recipe for paralysis. But CEQA is not meant to cause paralysis.") According to one environmental advocate, filing a CEQA claim functionally constitutes an injunction. Annelise Bertrand, *Proxy War: The Role of Recent CEQA Exemptions in Fixing California's Housing Crisis*, 53 COLUM. J. L. & SOC. PROBS. 413, 425–26 (2020).

40. Dewitt, *supra* note 4, at 434–35.

41. *Id.* at 429–38.

Municipal abuse occurs when cities impose discretionary approval requirements, thus requiring CEQA review, on broad categories of development, even if such projects otherwise comply with the relevant zoning.[42] Citizen and interest group abuse arises from CEQA's expansive public interest standing, which allows even anonymous parties to file suit and subject projects to lengthy, expensive litigation.[43] Public interest standing can be conferred even to plaintiffs whose motivations are primarily economically-motivated.[44] The maximally participatory framework distinguishes CEQA from equivalent statutes in other states, where economic interests alone are insufficient to justify legal standing.[45] Additionally, judicial interpretation has played a significant role in expanding CEQA beyond the text of the statute itself, often in ways that override other competing economic and social interests.[46] Bolstered by the minimal standing requirements and sensitive triggering thresholds, CEQA can serve as a highly effective mechanism to stop or slow housing development.

CEQA's supporters argue the law serves as a crucial safeguard against uncontroversially harmful environmental practices, such as permitting oil extraction activities in close to low-income neighborhoods or authorizing the development of waste disposal sites near groundwater

42. In doing so, cities transform ministerial projects into discretionary proposals requiring CEQA review. *Id.*

43. *Id.* at 431–38. *See also* Jessica Diaz, Save the Plastic Bag Coalition v. City of Manhattan Beach*: California Supreme Court Answers More than "Paper or Plastic?" in Major Decision on Corporate Standing Under CEQA*, 39 Ecology L. Q. 627, 629 (2012) (explaining how public interest standing rules established by the California Supreme Court are "broad enough to capture even the most self-interested plaintiff.").

44. *Id.* The California Supreme Court has deemed it "sufficient that [they] are interested as a citizen in having the laws executed and the duty in question enforced." *Id.* at 1011 (citations omitted). California's courts have recognized that "CEQA enforcement is built on such private enforcement." Families Unafraid to Uphold Rural El Dorado County v. Bd. of Supervisors, 79 Cal. App. 4th 505, 517 (Cal. Ct. App. 2000) (citations omitted).

45. *See, e.g.*, Vill. of Canajoharie v. Plan. Bd. of Fla., 63 A.D.3d 1498, 1501 (N.Y. App. Div. 2009) (Under SEQRA, the New York equivalent of CEQA, "a challenger 'must demonstrate that it will suffer an injury that is environmental and not solely economic in nature'") (citations omitted).

46. No Oil, Inc. v. City of L.A., 529 P.2d 66, 70–76 (Cal. Ct. App. 1974) (interpreting a minimal threshold of environmental impact to require environmental review under CEQA and consciously rejecting the idea of only requiring environmental review for "projects which may have an 'important' or 'monumentous'" environmental impact). *See e.g.*, Friends of Mammoth v. Bd. of Supervisors, 104 Cal. Rptr. 761 (Cal. 1972) (construing the law as broadly as possible, interpreting the law to cover private activities); *see also* Save the Plastic Bag Coal. v. City of Manhattan Beach, 254 P.3d 1005, 1014–15 (Cal. 2011) (extending public interest standing to economically-motivated litigants).

resources.[47] However, extensive research indicates that the biggest target of CEQA litigation is housing development, particularly proposals in wealthy urban areas.[48] In 2020 alone, nearly 48,000 housing units (half the state's annual supply) were challenged in some manner under CEQA.[49] Lawsuits filed between 2019-2021 challenged housing plans that collectively would have allowed more than one million new housing units.[50] Far from stopping harmful sprawl, CEQA encourages it, as another study found that eighty percent of CEQA lawsuits between 2010-2012 that targeted physical development challenged projects *within* existing development patterns.[51] New multifamily infill development has been the single biggest target for CEQA litigation, followed by zoning code approvals intended to facilitate more housing construction.[52] CEQA litigation is also disproportionately used to stop housing in whiter and wealthier areas.[53] The lessons from the data are clear: the main use of California's landmark environmental law has become blocking housing proposals in urban and high-demand areas, paradoxically treating some of the most carbon-reducing development patterns as the state's primary environmental menace.

High-profile examples of CEQA abuse have raised the law's public profile as an antagonist in the California housing crisis. In 2021, CEQA was deployed to stall and overturn the approval of a new development of nearly 500 homes on a parking lot in downtown San Francisco in what is known as the "469 Stevenson" controversy.[54] In a 2023 case,

47. *CEQA Successes*, CEQA Works, https://ceqaworks.org/ceqa-successes/ [https://perma.cc/4WLY-V7TD].

48. Jennifer Hernandez, *In the Name of the Environment Part III: CEQA, Housing, and the Rule of Law*, 26 Chap. L. Rev. 57 (2022). *See also* Jennifer L. Hernandez & David Friedman, *In the Name of the Environment: Litigation Abuse Under CEQA*, Holland & Knight (Aug. 2015), https://issuu.com/hollandknight/docs/ceqa_litigation_abuseissuu?e=16627326/14197714 [https://perma.cc/4E4Q-A4W9]; Hernandez, *supra* note 4, at 25–34.

49. Hernandez, *supra* note 48, at 65.

50. *Id.* at 81.

51. Hernandez, *supra* note 4, at 28. Despite the obvious environmental benefits of channeling new development into transit-rich areas, a majority of CEQA litigation in Los Angeles between 2013 and 2015 targeted infill development proximate to transit. Hernandez, *supra* note 48, at 79–81. Some researchers dispute these findings, claiming that they exaggerate the causal role of CEQA in contributing to the state's housing shortage. Sean B. Hecht, *Anti-CEQA Lobbyists Turn to Empirical Analysis, But Are Their Conclusions Sound?*, LegalPlanet (Sept. 28, 2015), https://legalplanet.org/2015/09/28/anti-ceqa-lobbyists-turn-to-empirical-analysis-but-are-their-conclusions-sound/ [https://perma.cc/75SC-QQLU].

52. Hernandez, *supra* note 48, at 79–81.

53. Hernandez, *supra* note 4, at 32–34.

54. Adam Brinklow, *SF Lawmaker Closes 469 Stevenson Loophole With New State Housing Law*, Frisc (Oct. 26, 2023), https://thefrisc.com/

the First Appellate District blocked a proposed housing development for roughly 1,100 University of California, Berkeley students, partly on the basis that CEQA required the university to study and mitigate the potential "noise impacts from loud student parties" as a form of environmental harm.[55] CEQA has transformed from an arcane legal topic to the epitome of California's inability to address its housing shortage.

B. Addressing CEQA's Flaws: Legislative Reforms and Scholarly Perspectives

These disputes, and other similar abuses, have drawn the scorn of commentators and state policymakers. The *Los Angeles Times* editorial board declared that "[u]sing California's signature environmental law to shut down homeless housing [is] NIMBYism at its worst," while the *San Francisco Chronicle* demanded "action" to stop needed housing from being "[taken] hostage by hypothetical concerns."[56] Governor Gavin Newsom has vowed CEQA reform in response to the U.C. Berkeley case.[57] Leading housing reform advocate Senator Scott Wiener labeled CEQA as "the law that swallowed California."[58]

However, the widespread recognition that CEQA can be weaponized to stop environmentally and socially beneficial development has thus far prompted only limited legislative reforms. The changes have aimed to streamline CEQA litigation, expand ministerial approvals to avoid CEQA review, and create targeted exemptions for

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sf-lawmaker-closes-469-stevenson-loophole-with-new-state-housing-law-a4f1aedaff22.[https://perma.cc/N6PM-WNJZ]. *See also* J.K. Dineen, *State Investigating S.F.'s Decision to Reject Turning Parking Lot into 500 Housing Units*, S.F. Chron. (Oct. 29, 2021), https://www.sfchronicle.com/sf/article/State-investigating-S-F-s-decision-to-reject-16573167.php [https://perma.cc/FK3L-Y68H].

55. Make UC a Good Neighbor v. Regents of Univ. of Cal., 548 P.3d 1051, 1057 (Cal. 2024) (quoting Make UC a Good Neighbor v. Regents of Univ. of Cal., 304 Cal. Rptr. 3d 834, 857 (Cal. Ct. App. 2023)).

56. *Gavin Newsom is talking tough on CEQA. Let's see some action*, S.F. Chron. (Apr. 21, 2018), https://www.sfchronicle.com/opinion/editorials/article/uc-berkeley-peoples-park-housing-ceqa-newsom-17816129.php [https://perma.cc/22BD-TSZ6].

57. CBS News, *Newsom Vows CEQA Reform After Court Blocks UC Berkeley People's Park Student Housing* (Mar. 2, 2023), https://www.cbsnews.com/sanfrancisco/news/peoples-park-uc-berkeley-student-housing-blocked-newsom-vows-ceqa-reform/ [https://perma.cc/2WUR-L3FV].

58. Alexander Nieves, *POLITICO Q&A: California Senate Housing Chair Scott Wiener*, Politico (Mar. 10, 2022), https://www.politico.com/news/2022/03/10/scott-wiener-ceqa-housing-00015320 [https://perma.cc/8VBT-VEM3].

specific housing types like homeless shelters and university dorms.[59] AB 1633, which passed in 2023 in response to the 469 Stevenson controversy,[60] strengthens the Housing Accountability Act (HAA) by treating a municipality's failure to complete CEQA processes as a project denial and allowing developers to challenge CEQA-related decisions for certain infill projects.[61] However, these piecemeal efforts have not fundamentally reformed the underlying structure of CEQA.[62] The law's broader requirements and potential for abuse are largely intact for most housing development projects.[63]

A significant amount of recent scholarship suggests possible additional reforms to CEQA. One approach focuses on institutional reforms, such as improving the CEQA process through the creation of a dedicated administrative agency or judicial fast-tracking of the CEQA process.[64] Other researchers suggest tightening public interest standing

59. Dewitt, *supra* note 4, at 439–45. *See also* Bill Fulton et al., U.C. Berkeley Terner Center for Housing, *New Pathways to Encourage Housing Production: A Review of California's Recent Housing Legislation* 9–10 (Apr. 2023), https://ternercenter.berkeley.edu/wp-content/uploads/2023/04/New-Pathways-to-Encourage-Housing-Production-Evaluating-Californias-Recent-Housing-Legislation-April-2023-Final-1.pdf (collecting CEQA reform examples). For example, AB 68, passed in 2019, mandated ministerial approval for most accessory dwelling units (ADUs). *Id.* at 444–45. *See* Press Release, Assemblymember Phil Ting, *Governor Signs Ting Proposals to Increase California's Affordable Housing* (Oct. 9, 2019), https://a19.asmdc.org/press-releases/20191009-governor-signs-ting-proposals-increase-californias-affordable-housing/ [https://perma.cc/9XFH-MHCG]. Similarly, SB 35, enacted in 2017 and expanded by SB 423 in 2023, requires a simplified, ministerial approval process for housing with specific percentages of affordable units that also satisfies objective development standards. *See infra* note 139; Carr et al., *supra* note 5, at 26 ("Instead of enacting the reforms needed to address the real-life problems identified in this paper and elsewhere, lawmakers have largely limited themselves to passing narrow CEQA exemptions or streamlined procedures designed to benefit individual mega-projects or specific categories of favored high-profile projects"). *See also* Shawn Hubler, *California Lawmakers Have Solved Berkeley's Problem. Is CEQA Next?*, N.Y. Times (Mar. 15, 2022), https://www.nytimes.com/2022/03/15/us/berkeley-enrollment.html [https://perma.cc/L9TR-LYTA] ("Like many fixes before it, the Berkeley legislation 'leaves the larger problem of CEQA untouched'").

60. *See Gavin Newsom is talking tough on CEQA. Let's see some action*, *supra* note 56.

61. 2023 Bill Text CA A.B. 1633. *See also* Brinklow, *supra* note 54.

62. William Fulton, *Opinion: Reform CEQA Instead of Punching Holes in It*, L.A. Times (Aug. 23, 2024), https://www.latimes.com/opinion/story/2024-08-23/reform-ceqa-stop-punching-holes-in-it [https://perma.cc/S7MU-2RX7] (in which the former Mayor of Ventura, California argues that because the "Swiss cheese" approach of incremental CEQA reform has led to vast inconsistencies and inequities, "It's time to stop punching holes in CEQA and fix it instead."). *See also* Bertrand, *supra* note 39, at 417 (critically evaluating certain CEQA exemptions passed by the legislature).

63. Fulton, *supra* note 62.

64. *See* Kevin Woldhagen, *The Environment is Our Home: Ensuring Swift Judicial Review for Green Housing*, 53 U. Pac. L. Rev. 401 (2022). *See also* Ha Chung, *Moving*

and capping the recovery of attorneys' fees to limit abuse.[65] Given the gravity of California's housing crisis, some contributions reject reform through category-by-category exemptions and instead recommend streamlining the CEQA process for *all* housing development projects, irrespective of the income levels served.[66] This wave of research has already made a direct impact on the state's housing policy. For example, Professor Chris Elmendorf and Timothy Duncheon's 2022 article, *When Super-Statutes Collide: CEQA, the Housing Accountability Act, and Tectonic Change in Land Use Law*, highlighted how municipalities can use agency delay and bad faith to launder housing denials through the CEQA process, which AB 1633 was passed in 2023 to prevent.[67] The sheer volume of scholarship on CEQA demonstrates how the issue has come to epitomize the Green's Dilemma.

Other scholarly efforts have aimed to clarify CEQA's scope and meaning, often with the aim of facilitating housing development. Elmendorf and Duncheon's article, for example, aims to harmonize CEQA with the HAA — California's principal housing law — to ensure that the breadth of the environmental law does not unduly supersede the HAA's housing objectives.[68] Other scholars have looked to language within CEQA itself to find overlooked provisions with plausibly pro-housing interpretations, which could serve to counteract its longstanding anti-development construction.[69] Despite CEQA's stated aim of giving "major consideration . . . to preventing environmental damage, while providing a *decent* home and satisfying living environment for every Californian" and directing "the long-term protection of the environment, consistent with the provision of a *decent home* and suitable living environment for every Californian, [to] be the guiding criterion in public decisions," Elmendorf and Duncheon found only sixteen cases citing this pro-housing provision, with none invoking it to limit other aspects

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CEQA Away from Judicial Enforcement: Proposal for a Dedicated CEQA Agency to Address Exclusionary Use of CEQA, 93 S. CAL. L. REV. 307 (2020).

65. CARR ET AL., *supra* note 5, at 33.

66. *Id.* at 26–28; Dewitt, *supra* note 4, at 463–66; LITTLE HOOVER COMMISSION, CEQA: TARGETED REFORMS FOR CALIFORNIA'S CORE ENVIRONMENTAL LAW 6 (May 2024), https://lhc.ca.gov/report/california-environmental-quality-act-ceqa/ [https://perma.cc/3DPQ-T9ZT] ("The state should exempt all infill housing from CEQA review.").

67. Elmendorf & Duncheon, *supra* note 4, at 655.

68. *Id.*

69. *See, e.g.*, Lisabeth D. Rothman, *CEQA Turns 40: The More Things Change, The More They Stay The Same*, 20 ENVT'L L. NEWS (2010), https://law.ucdavis.edu/centers/environmental/files/Rothman-article-Hernandez.pdf; Elmendorf & Duncheon, *supra* note 4, at 658–59 n.14.

of CEQA.[70] Given the primary role of judicial interpretation in shaping the nuances of CEQA, the judiciary's lack of interest in the statute's pro-housing language has contributed to the structural subordination of abundant housing supply to other competing goals.

California's principal environmental law has seen "the wrong people . . . [discover] the right ways to make [it] serve their own interests."[71] As Judge Richman aptly concluded, "something is very wrong with this picture."[72] While CEQA requires review and mitigation of environmentally "significant effects," ironically, the law has had the significant effect of empowering disgruntled actors to thwart essential housing development in California.[73] An environmental paradigm of slow growth that measures success by blocking development is at odds with the economic and environmental imperative to build millions of new housing units in California. While CEQA's role in exacerbating California's housing crisis is particularly egregious, it is not the only example of environmental laws being contorted in this manner. CEQA's 1970s-based legal framework — substantively hostile to development and procedurally encouraging citizen lawsuits — underpins other environmental regulatory schemes, such as the Coastal Act, that prioritize preservation at the expense of all other competing interests and serve as readily exploitable vehicles for those seeking to obstruct development for reasons unrelated to environmental protection.

III. The California Coastal Act and Commission's Housing Obstruction: An Emerging "Green's Dilemma"

The California Coastal Act, implemented by the California Coastal Commission, is emerging as another focal point in the debate over environmental regulatory barriers to housing production.[74] The statute serves as a "comprehensive scheme to govern land use planning for the entire coastal zone of California."[75] Any development, broadly defined, in the state's vast Coastal Zone requires a permit certifying

70. Elmendorf & Duncheon, *supra* note 4, at 658–59 n.14 (discussing Cal. Pub. Res. Code § 21000(g)) (emphasis added). *See also* Cal. Pub. Res. Code § 21001(d) (emphasis added).

71. Dewitt, *supra* note 4, at 467.

72. Tiburon Open Space Comm. v. Cnty. of Marin, 78 Cal. App. 5th 700, 700 (Cal. Ct. App. 2022).

73. Sierra Club v. Cnty. of Fresno, 431 P.3d 1151, 1152 (Cal. 2018).

74. *Coastal Commission Needs to Get Out of the Way of Housing*, Orange County Register (Aug. 21, 2024), https://www.ocregister.com/2024/08/21/coastal-body-needs-to-get-out-of-the-way/?utm_campaign=socialflow&utm_source=twitter.com&utm_content=tw-ocregister&utm_medium=social [https://perma.cc/TP9Q-932G].

75. Pac. Palisades Bowl Mobile Ests., LLC v. City of L.A., 55 Cal. 4th 783, 793 (Cal. 2012) (citations omitted).

compliance with the law.[76] Policymakers and housing advocates have begun to question whether the Coastal Act's strict regulations and the Commission's broad authority are obstacles to addressing California's housing crisis.[77] In contrast to CEQA, for which decades of judicial interpretation and fierce legislative debates have clarified its relationship to the state's housing regulations, the Coastal Act's relationship to California's housing laws remains relatively obscure. This section explores the history, structure, and application of the Coastal Act, its uniquely powerful role as a state-level land use regulator in the Coastal Zone, and the growing debate surrounding its role in the state's housing crisis.

A. Coastal Act's History, Structure, and Sweeping Land Use Authority

In 1972, just two years after CEQA's passage, California voters approved Proposition 20. The ballot proposition created the California Coastal Zone Conservation Commission — a temporary predecessor to the current Coastal Commission — to regulate development, environmental protection, and public access on the coast.[78] The initiative's proponents were worried that unchecked development would lead to the state's coast being entirely inaccessible to the general public.[79] Proposition 20's supporters were also explicitly against housing development, warning that California's coast would resemble Miami Beach if the initiative failed.[80] The Commission was then made

76. *See infra* note 92.

77. *See infra* notes 118–62.

78. CAL. PUB. RES. CODE §§ 27000–27650 (1972) (repealed 1977); California Coastal Act of 1976, CAL. PUB. RES. CODE §§ 30000–30900. For a more detailed history of Proposition 20 and the passage of the Coastal Act, see Deborah Sivas, *California Coastal Democracy at Forty: Time for a Tune-up*, 36 STAN. ENV'T L.J. 109, 118–19 (2016); Jonathan Vankin, *Guardians of the Coast: How the California Coastal Commission Was Born and Carries Out Its Mission*, CAL. LOC. (Oct. 17, 2023), https://californialocal.com/localnews/statewide/ca/article/show/62530-california-coastal-commission-history-mission-founding/ [https://perma.cc/NW4W-HMAU]. The Commission is an unusually well-known state agency in the legal community because of its role in *Nollan v. California Coastal Commission,* where the Supreme Court found that the conditions imposed on a development permit constituted a regulatory taking.

79. JORDAN DIAMOND ET AL., THE PAST, PRESENT, AND FUTURE OF CALIFORNIA'S COASTAL ACT 9 (2017), https://www.law.berkeley.edu/wp-content/uploads/2017/08/Coastal-Act-Issue-Brief.pdf [https://perma.cc/7Q3Z-66SQ].

80. Ben Christopher, *Fresh Batch of YIMBY Housing Bills Clash with Coastal Protections (Again)*, CALMATTERS (Mar. 20, 2024), https://calmatters.org/housing/2024/03/california-coastal-commission-protections/ [https://perma.cc/XUS3-HL44].

permanent in its current form through the California Coastal Act of 1976, signed into law by Governor Jerry Brown.[81]

The Commission is an independent state agency comprised of twelve voting members, with the Governor, Senate Rules Committee, and the Assembly Speaker each appointing four members.[82] Six of the members must be from coastal regions across the state.[83] The other six members are typically also drawn from coastal communities.[84] The Commission is tasked with addressing matters of statewide concern, but its membership is composed almost exclusively of perspectives from inside the disproportionately privileged Coastal Zone. This structure raises questions about the Commission's ability to balance the diverse interests of all Californians. According to one analysis, its membership structure makes the "Coastal Commission something more akin to a large local jurisdiction responsive to its coastal constituents than to a statewide agency," despite wielding the power of state law.[85]

The Commission has vast power to regulate development within the Coastal Zone according to the guidelines of the "comprehensive scheme" established by the Coastal Act.[86] The demarcation of the Coastal Zone varies throughout the state depending on the local context, ranging from a few hundred feet to five miles from the tide lines.[87] The sheer size of California's coastline means that the Coastal Act is no trivial beach management program; the land area under the near-plenary authority of the Commission is larger than the entire state of Rhode Island.[88] The Coastal Zone contains some of the state's densest

81. Cal. Pub. Res. Code §§ 30000–30900.

82. Sivas, *supra* note 78, at 110.

83. Cal. Pub. Res. Code § 303019(e) ("Six representatives selected from six coastal regions. The Governor shall select one member from the north coast region and one member from the south central coast region. The Speaker of the Assembly shall select one member from the central coast region and one member from the San Diego coast region. The Senate Committee on Rules shall select one member from the north central coast region and one member from the south coast region.")

84. Will Moore & Colin Parent, A Better Coastal Commission 12 (2024), https://assets.nationbuilder.com/circulatesd/pages/7468/attachments/original/1718240891/A_Better_Coastal_Commission_Report_-_FINAL.pdf?1718240891 [https://perma.cc/L9EW-THVY].

85. *Id*.

86. Pac. Palisades Bowl Mobile Ests., LLC v. City of L.A., 288 P.3d 717, 720–21 (Cal. 2012). For maps outlining the geographic jurisdiction of the Coastal Zone, see *Maps: Coastal Boundary Zone*, California Coastal Commission, https://www.coastal.ca.gov/maps/czb/ (last visited Oct. 26, 2024).

87. Cal. Pub. Res. Code § 30103(a); Erin Rode, *'Getting Out of Hand': Legislator Blasts California Coastal Commission on Housing*, SFGate (Apr. 25, 2024), https://www.sfgate.com/la/article/california-coastal-commission-housing-19420867.php [https://perma.cc/4P9H-5Q4P].

88. Rode, *supra* note 87.

areas — including the western portions of Los Angeles, San Diego, and San Francisco — and roughly one million residents.[89] Inside this area, all development is subject to the Coastal Act's discretionary permitting scheme.

The Coastal Act requires local governments with territory in the Coastal Zone to develop local coastal programs (LCPs), which serve as planning frameworks to carry out the statute's policies.[90] After the Commission certifies an LCP, it delegates authority to issue permits under the Coastal Act to the local government. The Coastal Act establishes that the permitting procedures defined in a municipality's Commission-certified LCP "are not solely a matter of local law, but embody state policy" that supersedes local government concerns.[91]

Any development project within the Coastal Zone must obtain a Coastal Development Permit (CDP) that complies with the LCP and the Coastal Act, in addition to securing all other required permits.[92] In municipalities without a Commission-certified LCP, the Commission itself enforces the Coastal Act and issues CDPs.[93] This authority is particularly consequential, as some of the state's largest coastal municipalities — including Santa Monica, Venice Beach, Huntington Beach, and portions of San Diego, according to the latest available data — currently lack a Commission-certified LCP.[94] As a consequence,

89. Christopher, *supra* note 80.

90. *Pac. Palisades,* 288 P.3d at 721 (citing CAL. PUB. RES. CODE §§ 30001.5, 30500–30526).

91. *Id*. (citing Charles A. Pratt Constr. Co. v. Cal. Coastal Comm'n, 76 Cal. Rptr. 3d 466, 471 (Cal. Ct. App. 2008)).

92. Kalnel Gardens, LLC v. City of L.A., 208 Cal. Rptr. 3d 114, 119 (Cal. Ct. App. 2016) (citing CAL. PUB. RES. CODE § 30600(a)). *See also Pac. Palisades,* 288 P.3d at 721–23 (explaining the scope of what "development" requires a CDP). Recent scholarship on the Coastal Act has included a focus on whether short-term rental regulations in coastal cities constitute "development" under the Act, thus requiring Coastal Commission approval. For contrasting analyses of this issue and its implications for local policymaking, see Veronika Morrison, *Airbnbs & Coastal Access: Can the California Coastal Commission Reject Local Ordinances That Ban Short-Term Rentals?*, 53 U.C. DAVIS L. REV. 2041 (2020); Lucy Humphreys, *Regulating Short-Term Rentals in California's Coastal Cities: Harmonizing Local Ordinances with the California Coastal Act*, 52 LOY. L.A. L. REV. 309 (2019); and Taylor Smith, *The California Coastal Commission's Efforts to Provide Affordable Overnight Accommodations by Preempting Cities' Constitutional Police Power*, 2019 BYU L. REV. 1369 (2020).

93. CAL. PUB. RES. CODE § 30600(c). *See also* Ben Christopher, *My House or My Beach? How California's Housing Crisis Could Weaken Its Coastal Protections*, CALMATTERS (July 9, 2023), https://calmatters.org/housing/2023/07/california-coast-housing-bill/ [https://perma.cc/4XJ4-K2UF].

94. CAL. COASTAL COMM'N, SUMMARY OF LCP PROGRAM ACTIVITY IN FY 20-21 3 (2021), https://documents.coastal.ca.gov/assets/rflg/LCPStatusSummaryChart.pdf [https://perma.cc/8ZP9-N4YQ].

all housing development in these areas depends on the discretion of the Commission.

The Commission's role as a land use regulator is enhanced by its vast appellate authority, which gives it the final say over any development in the Coastal Zone, even in jurisdictions with a Commission-certified LCP. The law stipulates that a municipality's CDP decisions are appealable to the Commission.[95] The grounds for appeal are limited to whether the development conforms to the standards outlined in the LCP and the broader policies of Coastal Act itself.[96] Due to the frequently vague and highly contestable standards outlined in the Coastal Act, the Commission's appellate authority is extensive in practice. The Commission is obligated to consider appeals unless there is "no substantial issue" of compliance.[97] Even after a local government approves a project and finds it consistent with local zoning and LCP rules, the Commission nonetheless has a final opportunity to overturn the approval.

The Coastal Act also provides broad standing for appeals, allowing "any aggrieved person" — or two members of the commission — to challenge a CDP decision. The statute clarifies that this includes any person who appeared at a public hearing held in connection with the decision.[98] Despite the minimal standing and substantive thresholds required to make an appeal, the Commission conducts a complete *de novo* review of the decision; the review is not limited to the specific matter which raised a "substantial issue" of compliance. Instead, "all issues relating to conformance with LCP and Coastal Act public access and recreation policies are appropriate for consideration."[99] The Commission also has expansive authority to approve, modify, or deny the proposed development during the appeals process.[100]

The Commission's substantial regulatory power is enhanced by how courts broadly construe the Coastal Act *and* defer to the agency's understanding of the law. The legislature directed the Coastal Act to be "liberally construed to accomplish its purposes and objectives."[101]

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95. Cal. Pub. Res. Code § 30603.
96. *Id.*
97. Cal. Pub. Res. Code § 30625.
98. Cal. Pub. Res. Code § 30801; La Costa Beach Homeowners' Ass'n v. Cal. Coastal Comm'n, 124 Cal. Rptr. 2d 618, 626 (Cal. Ct. App. 2002).
99. Cal. Coastal Comm'n, Frequently Asked Questions: The Coastal Commission Permit Appeal Process 3, https://documents.coastal.ca.gov/assets/cdp/appeals-faq.pdf [https://perma.cc/8GRG-V28F]. *See also* Moore & Parent, *supra* note 84, at 15.
100. Cal. Pub. Res. Code § 30625.
101. *Id.* § 30009.

Beyond this mandate of statutory interpretation, the Commission is granted significant deference to its own constructions of the Coastal Act.[102] Courts will only depart from the Commission's interpretations of the Coastal Act if they are clearly erroneous.[103] There is conflicting precedent regarding whether the Commission's deference extends to its interpretation of a municipality's LCP, and there is no judicial guidance on the deference owed to a city's interpretation of its own LCP.[104] The Coastal Act's deferential construction is often dispositive in litigation over the statute's meaning and scope.[105] The sprawling law relies more on broad policy statements than specific prescriptions, enabling a wide range of Commission interpretations to meet the clear error threshold on review. The Coastal Commission's appellate jurisdiction, the deference afforded to its interpretations of a statute that calls for liberal construction, and its flexible power to impose conditions on development combine to give the agency near-absolute authority over what is built in the Coastal Zone.

The Coastal Act is often misunderstood as solely focused on environmental protection, but the law also explicitly pursues other competing values, including public access and building aesthetics. The Coastal Act explicitly requires that permitted development "protect views" along the ocean.[106] New development is required to be "compatible with the character of surrounding areas."[107] The Commission (and municipalities with certified LCPs) can wield this power to stop housing development in the Coastal Zone on purely

102. Hines v. Cal. Coastal Comm'n, 112 Cal. Rptr. 3d 354, 369–70 (Cal. Ct. App. 2010).

103. *Id.*

104. Lindstrom v. Cal. Coastal Comm'n, 252 Cal. Rptr. 3d 817, 834–35 (Cal. Ct. App. 2019) (noting that though several previous cases suggest deference should be applied to the Commission's construction of an LCP, such cases "have limited persuasive value here because they did not involve a purported disagreement between the Commission and the local government as to how the local government's LCP should be interpreted, and thus did not decide which, if any, interpretation should be given deference in the case of a conflict." (emphasis omitted)). In June 2024, the California Supreme Court agreed to hear a case presenting the question of what standard of review applies to a decision by the Commission asserting appellate jurisdiction where such jurisdiction depends on the Commission's disagreement with a local government's interpretation of its local coastal program. Press Release, Supreme Court of Cal., Summary of Cases Accepted and Related Actions During Week of June 10, 2024 (June 14, 2024), https://supreme.courts.ca.gov/sites/default/files/supremecourt/default/documents/ws061024_0.pdf [https://perma.cc/2RNC-BMDB].

105. *See, e.g.*, Kalnel Gardens, LLC v. City of L.A., 208 Cal. Rptr. 3d 114, 124 (Cal Ct. App. 2016). *See also* Coastal Prot. All. Inc. v. Airbnb, Inc., 313 Cal. Rptr. 3d 262, 268–69 (Cal. Ct. App. 2023).

106. Cal. Pub. Res. Code § 30251.

107. *Id.*

aesthetic grounds, without any conservation or environmental-based pretext.[108] The environmental veneer of the Coastal Act conceals its profoundly anti-housing substance.

The Coastal Act is also charged with protecting California's constitutional guarantee of public access to the coast.[109] The Act requires "maximum access" and tasks the Commission to "maximize public access . . . [and] public recreational opportunities in the coastal zone."[110] The mandate of public access tested the constitutional limits of constraints on private property, from the exactions at issue in *Nollan* to *Surfrider Foundation v. Martin's Beach*, which assessed the legality of a billionaire landowner's closure of a beach access path and captured global media headlines.[111] The Commission admirably prevents coastal homeowners from closing public access points to the beach. However, the Commission also interpreted the access mandate in the Coastal Act to require, for example, that San Diego's outdoor dining program replace the parking spaces it occupied.[112] The Commission consistently fought to preserve coastal parking, blocking San Diego's proposal to legalize building accessory dwelling units without parking requirements. Coastal housing received much different treatment. Both the Commission and California's courts have not yet considered, let alone accepted, that this mandate for maximum public access might implicate housing development along the coast. The notion that increasing the number of Californians *residing* inside the Coastal Zone could constitute increased "public access" has not materialized.

B. Examining the Coastal Act's Influence on the Housing Shortage

Coastal Commission Executive Director Kate Huckelbridge recently declared that "abundant housing and coastal resource protection are not mutually exclusive."[113] While this sentiment might be true in theory, there is substantial evidence that the Commission and the Coastal Act have contributed to a localized coastal housing crisis

108. *See, e.g.*, *Kalnel Gardens*, 208 Cal. Rptr. 3d at 114.
109. Cal. Const. art. X, § 4.
110. Cal. Pub. Res. Code §§ 30210, 30001.5(c).
111. Surfrider Foundation v. Martins Beach 1, LLC, 221 Cal. Rptr. 3d 382 (Ct. App. 2017); Nellie Bowles, *Billionaire's Fight to Close Path to a California Beach Comes to a Dead End*, N.Y. Times (Oct. 1, 2018), https://www.nytimes.com/2018/10/01/technology/california-beach-access-khosla.html [https://perma.cc/EDW2-LCHD].
112. Karla Rendon, *Coastal Restaurants Ordered to Replace Parking Taken by Outdoor Dining Patios*, NBC San Diego (May 23, 2023), https://www.nbcsandiego.com/news/local/coastal-restaurants-ordered-to-replace-parking-taken-by-outdoor-dining-patios/3232847/ [https://perma.cc/JB4U-YU5A].
113. Christopher, *supra* note 80.

even more dire than California faces as a whole. The Coastal Zone is increasingly a privileged zone: older, whiter, and more affluent than the rest of California. In enacting the Coastal Act, the legislature declared that the Coastal Zone was a "distinct and valuable natural resource of vital and enduring interest to *all the people*."[114] In the almost fifty years since, the Coastal Act's policies have restricted residential access to the coast in defiance of these egalitarian ideals.

A major peer-reviewed 2010 economic study found that quality-adjusted housing prices were twenty percent higher inside the Coastal Zone than in comparable locations just outside.[115] Researchers observed that home prices and household incomes have increased significantly more over time for residents inside the Coastal Zone than outside.[116] The Coastal Zone also experienced a reduction in the proportion of children among its residents.[117] The researchers concluded the Coastal Act contributed to these effects not only by constraining housing supply but also by increasing demand.[118] The Coastal Act's functional mandate of low-density along the coveted California coast transforms these areas into "superstar communities" that command premium prices which, combined with the multiplier effect of higher-income residents bidding up housing costs, further exacerbate the situation.[119]

The Coastal Commission's plenary appellate authority, combined with its discretion to flexibly interpret the Coastal Act's broad policy mandates, gives it nearly unconstrained power to block or delay housing. The law's substantive requirements and its unpredictable enforcement create a regulatory landscape that disincentivizes housing being proposed altogether before it can be blocked or delayed. The Coastal Act's bias against development is also structural: the Commission has no fiscal incentive, unlike local governments, to balance the preservation of the coast's built and natural environment with the revenue generated by new housing.[120] A later economic study replicated the earlier findings of a roughly twenty percent increase in prices for properties inside the Coastal Zone compared to those

114. CAL. PUB. RES. CODE § 30001(a) (emphasis added).
115. Matthew E. Kahn et al., *The Housing Market Effects of Discrete Land Use Regulations: Evidence from the California Coastal Boundary Zone*, 19 J. HOUS. ECON. 269, 270 (2010).
116. *Id.* at 277.
117. *Id.* at 275.
118. *Id.* at 271.
119. *Id.*
120. *Id.* at 271–73.

just outside it.[121] This research is particularly convincing because the Coastal Zone serves as a quasi-natural experiment, with the boundary line constituting an exogenous independent variable to test for its causal effect on outcomes.[122] The Coastal Zone also acts as a racial enclave, with one study finding that the proportion of white residents in the area to be twice as high as California as a whole.[123] Despite its mandate for maximum public access, under the ostensible banner of environmental stewardship, the Coastal Zone in practice serves as a state-sanctioned gated community. In the words of a former senior Commission staffer, the Coastal Act has contributed to "extraordinarily expensive coastal housing, exurban sprawl into the hottest regions of the state, an almost entirely car-dependent transportation system along the coast, and painfully long commutes for workers who cannot afford to live near their employers."[124]

C. Legislative Scrutiny and Reform Efforts

Since 2023, the Coastal Act and the Commission's role in California's housing crisis have come under unprecedented scrutiny from policymakers and commentators.[125] While California's legislature has passed numerous statutes aimed at increasing housing supply in recent years — typically through eliminating the ability of local governments to block new development in specific circumstances — these efforts left the rules governing the Coastal Zone almost entirely untouched. Instead, the Coastal Commission (and municipalities wielding the Coastal Act through a certified LCP) have retained the discretionary authority, and demonstrated potential for abuse, that municipalities have been stripped

121. Christopher Severen & Andrew J. Plantinga, *Land-Use Regulations, Property Values, and Rents: Decomposing the Effects of the California Coastal Act*, 107 J. Hous. Econ. 65, 77 (2018) ("Our estimate of the total effect is similar to the 20% effect on single-family house prices found by Kahn et al."). A 1984 study which reviewed the first four years of data after the enactment of the Coastal Act found that the housing prices in the Coastal Zone rose significantly. H.E. Frech III & Ronald N. Lafferty, *The Effect of the California Coastal Commission on Housing Prices*, 16 J. Urb. Econ. 105 (1984).

122. Severen & Plantinga, *supra* note 121, at 66–67.

123. Christopher, *supra* note 80.

124. Christopher Pederson, *Reforming California's Landmark Coastal Law Can Restore Balance Between Housing and Environment*, CalMatters (June 24, 2024), https://calmatters.org/commentary/2024/06/reform-california-coastal-housing-environment/ [https://perma.cc/N4S3-5LV2].

125. Dustin Gardiner & Lara Korte, *Pro-Housing Groups Hit Rough Waters*, Politico: Cal. Playbook (Apr. 29, 2024, 9:00 AM), https://www.politico.com/newsletters/california-playbook/2024/04/29/pro-housing-groups-hit-rough-waters-00154875 [https://perma.cc/9KLT-QGSG]. *See also* Christopher, *supra* note 80.

of in every other part of the state.[126] As a consequence, the Coastal Zone exists in a "separate regulatory universe from the rest of the state."[127] Senator Catherine Blakespear, a leading housing reformer, described that "[t]he Coastal Commission and the Coastal Act have been a bit of a sacred cow and that has meant that it has been carved out of a lot of bills."[128] This rhetorical and political deference is softening, with the Commission transforming into the primary target among housing-focused legislators.[129]

Assemblymember David Alvarez of San Diego is a particularly vocal critic, arguing that countless housing units are never built because developers completely abandoned trying to build in the Coastal Zone due to the highly unpredictable CDP process.[130] Alvarez argued that the Coastal Act should not be used as an excuse to keep California's coastal cities exclusively for the rich, arguing the law serves to exclude all but the wealthiest from having residential access.[131] Senator Wiener claimed it was "offensive" for state housing laws to apply in the rest of the state, but "exempt whiter, wealthier coastal communities."[132]

Mirroring the political dynamic surrounding CEQA, high-profile instances of misuse by the Coastal Commission accelerated the frustration among pro-housing advocates and legislators. In June 2024, a San Diego housing and transportation advocacy organization released a report calling for a "Better Coastal Commission."[133] The report documented numerous instances where the Commission blocked or delayed housing projects for reasons unrelated to environmental protection.[134] The Commission opposed developments on sites such as parking lots and an abandoned Burger King based on concerns including building height, neighborhood character, parking requirements, visual aesthetics, and subjective

126. Christopher, *supra* note 80.
127. *Id.*
128. *Id.*
129. *Id.*
130. Rode, *supra* note 87.
131. Michael Smolens, Opinion, *Is the Coastal Zone the Toughest Frontier in California's Housing Battles?*, San Diego Union-Tribune (Sept. 3, 2023, 7:43 PM), https://www.sandiegouniontribune.com/columnists/story/2023-08-23/michael-smolens-is-the-coastal-zone-the-last-frontier-in-californias-housing-battles [https://perma.cc/6UCY-ERJX]; Andrew Bowen, *San Diego Lawmakers Want to Rein in Coastal Commission's Power to Block Housing, Transportation Projects*, KPBS (Mar. 12, 2024, 6:00 AM), https://www.kpbs.org/news/environment/2024/03/12/san-diego-lawmakers-want-to-reign-in-coastal-commissions-power-to-block-housing-transportation-projects [https://perma.cc/3UNM-D6H3].
132. Christopher, *supra* note 90.
133. Moore & Parent, *supra* note 84; Rode, *supra* note 87.
134. *Id.*

assessments of community scale, far from the ostensibly conservational objectives of the Coastal Act.

The Commission faced intense scrutiny in an April 2024 State Assembly hearing regarding its objections to an eight-unit four-story development in Venice Beach that included three units for deed-restricted affordable housing. The Commission overturned the city's approval and determined that the project undermined the "community character" of what it called a "naturally affordable" neighborhood, causing the developers to withdraw.[135] Assemblymember Joe Patterson stated bluntly, "[the Commission's] behavior is why we can't have houses on the coasts."[136] In a subsequent interview, Assemblymember Patterson called the general exemptions for the Coastal Zone from state housing laws a form of "modern-day redlining" and claimed it was "unfair that my district has to comply but these wealthy coastal cities don't have to."[137] Assemblymember Alvarez neatly summarized the issue by saying, "[i]t can't just be 'This beach town is iconic, therefore you can't build anything.'"[138]

The heightened awareness of the Coastal Act and Commission's impact on housing supply spurred a variety of legislative fix attempts, but most proposed reforms failed to pass. When the Second Appellate District court, in a case explored in substantial detail in Part IV, held that the state's Density Bonus Law (DBL) was subordinate to the Coastal Act in 2016, the legislature responded. Concerned that the ruling would weaken the already limited housing supply in the Coastal Zone, legislators passed AB 2797.[139] The bill clarified that a proposed project cannot be found inconsistent with the Coastal Act solely on the basis that it receives a density increase under the DBL, and the two statutes are meant to be harmonized in their interpretation.[140]

The legislature's passage of SB 423 in 2023 expanded the geographic reach of SB 35, a 2017 bill that expedited permitting for specific developments in jurisdictions that have not produced sufficient

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135. *Id*.

136. Rode, *supra* note 87.

137. Jenavieve Hatch, *Is Coastal California Doing Its Fair Share to Fix the State's Affordable Housing Crisis?,* Sacramento Bee (Aug. 10, 2024, 1:07 PM), https://www.sacbee.com/news/politics-government/article289676329.html [https://perma.cc/LHJ6-9U7R].

138. *Id.*

139. A.B. 2797, 2017–18 Leg., Reg. Sess. (Cal. 2018) (enacted); *Legislature Approves Measure to Clarify Density Bonus Law in Coastal Zone*, Santa Monica Daily Press (Sept. 5, 2018), https://smdp.com/2018/09/05/legislature-approves-measure-to-clarify-density-bonus-law-in-coastal-zone/ [https://perma.cc/Y95V-HSHS].

140. Santa Monica Daily Press, *supra* note 139.

housing.[141] SB 423 expanded SB 35 to specific regions within the Coastal Zone, which had previously been completely excluded from the statute's streamlined permitting process.[142] The passage of SB 423 reportedly caught the Coastal Commission by surprise and prompted a "PR and lobbying offensive" that has led to the comprehensive failure of pro-housing Coastal Act reforms in the 2024 legislative session.[143] While housing advocates hoped that 2024 would cement a "new political reality in which the 48-year-old Coastal Commission no longer has quite so much say over housing policy. . . [the proposed reforms] are either dead or so severely watered down that they no longer carry the promise of a more-built out coastline."[144]

A historic number of bills specifically addressing housing in the Coastal Zone were introduced in the 2024 legislative session, but none were signed into law.[145] AB 2560, authored by Assemblymember Alvarez, aimed to go beyond AB 2797 and fully apply the DBL in the Coastal Zone.[146] SB 1077, introduced by Senator Blakespear, sought to similarly exempt accessory dwelling units (ADUs) from permitting requirements under the Coastal Act.[147] SB 1092, also introduced by Senator Blakespear, sought to expedite the Coastal Commission's famously lengthy appeal process for locally-approved apartment buildings.[148] Senator Wiener's SB 951, as originally introduced, sought remove a portion of San Francisco from the Coastal Zone entirely.[149]

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141. *See* Ruegg & Ellsworth v. City of Berkeley, 277 Cal. Rptr. 3d 649, 658–659 (Cal. Ct. App. 2021); Christian Britschgi, *A New Bill Would Extend California's YIMBY Revolution to Heavily Regulated Coastal Areas*, Reason (Aug. 17, 2023, 10:50 AM), https://reason.com/2023/08/17/a-new-bill-would-extend-californias-yimby-revolution-to-heavily-regulated-coastal-areas/ [https://perma.cc/8TSP-LHE2].

142. Britschgi, *supra* note 141.

143. Gardiner & Korte, *supra* note 125.

144. Ben Christopher, *Push to Build More Homes on California Coast Stifled After Lawmakers Derail Housing Bills*, CalMatters (Aug 19, 2024), https://calmatters.org/housing/2024/08/coastal-commission-bills-die/ [https://perma.cc/2NMS-5NYV].

145. *Id. See also* Christopher, *supra* note 80.

146. Press Release, David Alvarez, Assemblymember, Cal. State Assembly, Assemblymember Alvarez's AB 2560 Passes the Housing Committee to Expand Coastal Housing Access in California (Apr. 11, 2024), https://a80.asmdc.org/press-releases/20240411-assemblymember-alvarezs-ab-2560-passes-housing-committee-expand-coastal [https://perma.cc/RWT4-MBSR].

147. Press Release, Catherine Blakespear, Senator, Cal. State Senate, Sen. Blakespear Aims to Streamline Approval of Housing In Coastal Zones With 2 New Bills (Feb. 12, 2024), https://sd38.senate.ca.gov/news/sen-blakespear-aims-streamline-approval-housing-coastal-zones-2-new-bills#:~:text=SB%201077%20will%20simplify%20the,Development%20Permit%20(CDP)%20requirements [https://perma.cc/JLM8-L3S2].

148. *Id*.

149. Julie Johnson, *California Coastal Protections Versus Housing: The Battle is On*, S.F. Chron. (last updated Jan. 25, 2024, 7:13 PM), https://www.sfchronicle.com/bayarea/article/coast-housing-wiener-18624806.php [https://perma.cc/B32K-NJ45].

These legislative efforts to reform the balance between the Coastal Act and the state's housing laws were completely stymied in the 2024 legislative session. Senator Blakespear's SB 1077 was "gutted" by the legislature, while SB 1092 became a "study bill," according to media reports.[150] Facing substantial pushback, Senator Wiener amended SB 951, limiting its impact to removing the Commission's appellate jurisdiction for projects that are within the permitted uses of a municipality's Commission-certified LCP.[151] AB 2560, Assemblymember Alvarez's attempt to fully apply the DBL in the Coastal Zone, passed out of the Assembly Housing Committee on April 10 and passed the full Assembly on May 20.[152] However, the legislation was significantly watered down in the State Senate. In response to these amendments, Assemblymember Alvarez withdrew the bill.[153]

Clear lines exist in the debate over housing development in California's Coastal Zone. Advocates for reform, like Senator Blakespear, say the Commission is engaging in "mission creep" that hinders the state's ability to handle the housing crisis.[154] Other advocates ground their arguments in upholding the Coastal Act's purported values of environmental protection and access. For example, Assemblymember Alvarez highlighted that the coastal economy relies on workers who are priced out of residing in the area, which forces them into high-emissions commutes that threaten "the very coastline the Coastal Commission

150. Gardiner & Korte, *supra* note 125.

151. Press Release, Scott Wiener, State Senator, Cal. State Senate, Senator Wiener Introduces Bill To Exclude Urbanized San Francisco From The Coastal Zone, Clarify Coastal Commission's Role in Housing Approvals (Jan. 19, 2024), https://sd11.senate.ca.gov/news/senator-wiener-introduces-bill-exclude-urbanized-san-francisco-coastal-zone-clarify-coastal [https://perma.cc/6Y96-4M3X].

152. Press Release, David Alvarez, Assemblymember, Cal. State Assembly, Legislation to Expand Coastal Housing Access in California and Eliminate Barriers to Build More Housing Passes the Assembly (May 21, 2024), https://a80.asmdc.org/press-releases/20240521-legislation-expand-coastal-housing-access-california-and-eliminate-barriers [https://perma.cc/2CZ7-KUA8].

153. Press Release, David Alvarez, Assemblymember, Cal. State Assembly, Assemblymember Alvarez Issues Statement on AB 2560 - Affordable Housing in Coastal California (Aug. 15, 2024), https://a80.asmdc.org/press-releases/20240815-assemblymember-alvarez-issues-statement-ab-2560-affordable-housing-coastal [https://perma.cc/MY57-CQ9T]. Instead of the DBL fully applying to projects in the Coastal Zone, the revised bill would have required municipalities to submit amendments to their LCP that harmonize the DBL with the Coastal Act, a change that overrides the bill's attempt to subordinate the Coastal Act to the DBL. *See also* Andrew Brown, *Bill Targeting Coastal Commission's Veto Power Over Mixed-Income Housing is Dead*, KPBS (Aug. 23, 2024, 2:05 PM), https://www.kpbs.org/news/economy/2024/08/23/bill-targeting-coastal-commission-veto-power-over-mixed-income-housing-is-dead [https://perma.cc/H9PU-YUWW].

154. Bowen, *supra* note 131.

is entrusted to protect" by exacerbating climate change.[155] Senator Wiener frames pro-housing measures as enabling the same egalitarian coastal accessibility envisaged by the Coastal Act itself, saying "[t]he most effective way to increase coastal access is to allow people to be able to afford to live by the coast."[156] Noting that "People have to live somewhere," *The Orange County Register*'s editorial board implored the Commission to "accommodate both protecting our precious coast while building more housing."[157]

Coastal Act supporters remain steadfast in their opposition to any compromises that would limit the Coastal Act or the Commission's authority, claiming that legitimizing any deregulation leads to a slippery slope. Longtime San Francisco Supervisor and 2024 mayoral candidate Aaron Peskin warned, "[o]nce you do it in San Francisco they'll be able to do it in San Diego and Crescent City, and it's the beginning of the end of the model law that's worked for California that's the envy of the nation."[158] Sarah Christie, the Commission's legislative director, echoed this perspective, cautioning, "Once you start exempting classes of development from the Coastal Act, there will be no shutting that barn door."[159]

The evidence from the 2024 legislative session suggests that this steadfast resistance has proven effective. Despite Governor Newsom's heavy criticism of CEQA's role in obstructing housing, he remains conspicuously silent on the impact of the Coastal Act and Commission. Policymakers are unable to adopt even minor changes to the laws regulating housing on the state's coast. In defiance of California's broader efforts to increase housing supply in response to its housing crisis, the Coastal Zone exists as a privileged realm where state-wide affordability measures and supply mandates can often be ignored. California remains a two-tiered system where coastal communities operate under a separate set of housing rules where they can exclude newcomers and change under the pretense of environmental stewardship.

IV. Judicial Attempts to Reconcile California's Coastal Act and Housing Laws

Despite the Coastal Act's contribution to California's housing crisis, courts have seldom assessed its interaction with the state's numerous housing laws, many of which operate by removing the

155. Rode, *supra* note 87.
156. Johnson, *supra* note 149.
157. Editorial, *supra* note 73.
158. Johnson, *supra* note 149.
159. Christopher, *supra* note 80.

power to deny certain development proposals. This model directly conflicts with the Coastal Act's mandate of discretionary permitting for *all* development within its geographic scope. The way legal tensions between California's coastal and housing laws are reconciled holds far-reaching implications, both practical and normative. At stake is whether California's Coastal Zone, encompassing some of the most exclusionary and expensive areas in the entire country, will be entirely or partially exempt from complying with the state's housing enforcement laws. How this quandary is resolved will also reveal the state's normative hierarchy among the competing values of housing affordability, housing aesthetics, coastal accessibility, ecological conservation, and climate change.

The following section explores two of the only cases to explicitly consider how to reconcile the protections of the Coastal Act against the force of California's housing laws. First, the section reviews *Kalnel Gardens, LLC v. City of L.A.*, the only state appellate court opinion to ever explicitly consider the scope of California housing laws inside the Coastal Zone. *Kalnel Gardens* has limited precedential value: the legislature immediately overturned its holding that the Coastal Act superseded the Density Bonus Law (DBL), and the court did not reach a decision regarding the interaction with the Housing Accountability Act (HAA), the state's principal "anti-NIMBY" law. Second, the section delves into *New Commune DTLA v. City of Redondo Beach*, the only case to explicitly consider and rule on the scope of the HAA, specifically its famous "builder's remedy," inside the Coastal Zone.

A. Kalnel Gardens*: A Short-Lived Coastal Act Victory*

The *Kalnel Gardens* case highlighted the statutory conflicts between California's housing laws and the Coastal Act: both sides paradoxically have broad interpretive and policy mandates, but also deferential savings clauses. To properly understand the court's analysis, it is helpful to summarize the housing laws at issue in the case briefly. The Mello Act mandates the replacement of demolished low-income units and the provision of density bonuses for sufficiently affordable developments within the Coastal Zone.[160] The DBL mandates that municipalities allow developers to build at moderately higher densities than permitted by local zoning ordinances for projects that include a certain number of affordable units, allowing builders to circumvent

160. Cal. Gov't Code §§ 65590, 65590.1; *What is The Mello Act*, L.A. City Planning, https://planning.lacity.gov/blog/what-mello-act [https://perma.cc/B6PR-UXUR] (last visited Oct. 2, 2024).

local zoning limits.[161] Among other provisions explained at length in Section IV, the HAA — California's "anti-NIMBY law" — requires a municipality to make specific and substantial findings of detrimental effects before rejecting, or reducing the density of, proposed housing that complies with "objective" development standards.[162]

Writing for a unanimous panel, Judge Laurence Rubin concluded that the Mello Act and the DBL were subordinate to the Coastal Act. The case emerged out of Los Angeles's decision to deny the issuance of a CDP to a previously approved fifteen-unit development in Venice Beach that included affordable units. The developer used a trio of state housing laws —the HAA, DBL, and the Mello Act— to leverage these low-income units to secure additional height and density allowances for the project.[163] In addition to approving this additional density, the West Los Angeles Area Planning Commission certified the project's compliance with the Coastal Act, issuing the required CDP.[164] Alarmed by the three-story project's scale, local residents filed an appeal with the Planning Commission. On appeal, the Commission determined that the project violated the Coastal Act's requirement that new development be consistent with the visual character of its surroundings.[165] Kalnel Gardens' subsequent appeal to the City Council was unsuccessful, as the Council sided with the Commission and adopted its findings.[166] Kalnel Gardens then filed suit for a writ of administrative mandate against the City. The organization alleged the city unlawfully violated the three aforementioned housing statutes by rejecting the otherwise qualified housing development proposal.[167]

The trial court determined that the city's rejection of the proposal violated the HAA and that the proposal qualified for additional density under the DBL and the Mello Act. However, it also concluded that the housing statutes were nonetheless subordinate to the Coastal Act and held that there was substantial evidence supporting the city's findings that the project violated the Coastal Act by being incompatible

161. Cal. Gov't Code § 65915 (Deering, LEXIS through 2024 Sess.). *See* Elmendorf, *supra* note 3.
162. Cal. Gov't Code § 65589.5(j)(1); Kalnel Gardens, LLC v. City of L.A., 208 Cal. Rptr. 3d 114, 118 (Cal. Ct. App. 2016).
163. Kalnel Gardens, LLC v. City of L.A., 208 Cal. Rptr. 3d 114, 115-116 (Cal. Ct. App. 2016).
164. *Id.*
165. *Id.* at 116-117.
166. *Id.* at 117.
167. *Id* at 155.

with the area's visual character.[168] The principal question on appeal to the Second Appellate District was to what extent the Coastal Act and its requirements superseded the trio of housing laws when they conflicted.[169]

1. Kalnel Gardens*: Coastal Act vs. Housing Accountability Act*

The appellate court quickly rejected the HAA claim on procedural grounds.[170] It scrutinized the statute's ambiguous language regarding the scope of appeals, concluding that the sole avenue for seeking appellate review of a negative HAA order was through a writ petition.[171] Because Kalnel Gardens did not file a writ petition, instead filing an appeal of the entire underlying order, the HAA claim was dismissed.[172] However, in a footnote, the court said it would have likely determined the HAA was subordinate to the Coastal Act.[173] The failure to reach a full merits decision clarifying the conflicts between the HAA and Coastal Act is particularly significant because the HAA contains several of the state's most powerful tools for overcoming housing project denials.[174] The conflict between these laws was left unresolved, which made *New Commune DTLA v. City of Redondo Beach* (explored subsequently), a case of first impression.

2. Kalnel Gardens*: Coastal Act vs. Density Bonus Law*

The court then held that the DBL was expressly subordinate to the Coastal Act.[175] The DBL's savings clause for the Coastal Act — which provides that the "section does not supersede or in any way alter or lessen the effect or application of the California Coastal Act"— was dispositive in the court's reasoning.[176] The court rejected the appellant's argument that the DBL's savings clause should be considered in context with other sections of the statute, which provided that density bonuses "shall not require or be interpreted, in and of itself, to require a ... local

168. *Id*. at 117.
169. *Id*.
170. *Id.* at 120-22.
171. *Id*.
172. *Id*.
173. *Id*. at 123.
174. *See* Elmendorf & Duncheon, *supra* note 4, at 669–674 (explaining the evolution and strengthening of the HAA, and the mechanisms by which it limits local discretion to deny compliant housing projects and provides judicial remedies). *See also infra* notes 192-202 (discussing the HAA's so-called "Builder's Remedy").
175. *Kalnel Gardens*, 208 Cal. Rptr. 3d at 123–24.
176. *Id*. Cal. Gov't Code § 65915(m).

coastal plan amendment."[177] Because the savings clause "could not be clearer," the court held that it superseded the other provision.[178] The court was also unpersuaded by Kalnel Gardens' claim that the DBL's savings clause should be interpreted in context with language in other statutes that underscored the importance of housing supply. The explicit nature of the savings clause took precedent, with the court noting in dicta that the Coastal Act itself struck a "balanced pose" between coastal protection and housing.[179]

Accordingly, the court concluded that a housing project that violated the visual character protections of the Coastal Act because of a density bonus granted under the DBL may be lawfully rejected on that basis.[180] In reaching its conclusion, the opinion curiously omitted any reference to, let alone consideration of, the strongest pro-housing language in the Coastal Act. Section 30007 of the Coastal Act clarifies that the statute does not exempt local governments from *any* current or future obligations under federal or state housing laws.[181] Section 30007 meant the court faced dueling savings clauses, with both the DBL and Coastal Act requiring the full application of the other. The court was clearly aware of the Coastal Act's savings provision, as it was central to its consideration of the Mello Act, but it nonetheless ignored it in analyzing the DBL.

3. Kalnel Gardens*: Coastal Act vs. Mello Act*

The Mello Act's relationship with the Coastal Act presented a closer call. Unlike the DBL, the Mello Act contained no explicit guidance on resolving statutory conflicts with the Coastal Act. Instead, the Mello Act categorically provides that it "shall apply within the Coastal Zone."[182] The court noted that this provision, combined with the Coastal Act's savings clause for housing obligations, could be construed on their own to give the Mello Act supremacy.[183] Instead, the court dismissed this argument, saying that the legislature was capable of expressly stating that one statute superseded another but failed to do so here.[184] The court asserted it would not find a conflict between the statutes absent such

177. *Id.* at 122; Gov't §§ 65915(f)(5), (j)(1).
178. *Id.*
179. *Id.*
180. *Id*. at 122-23.
181. Cal. Pub. Res. Code § 30007 (Deering, LEXIS through 2024 Sess.).
182. *Kalnel Gardens*, 208 Cal. Rptr. 3d at 123.
183. *Id*.
184. *Id*.

an "express declaration of legislative intent," instead concluding that Mello Act and Coastal Act could be harmonized.[185]

The court then violated the exact principle it just laid out. Despite finding the statutes capable of being harmonized, it implicitly found them to conflict and held that the Mello Act was subordinate to the Coastal Act.[186] In doing so, the court relied heavily on two Coastal Act's provisions which strongly favor conflicts to be resolved in the statute's favor. First, Section 30009 requires the Coastal Act be liberally construed to accomplish its objectives.[187] Second, Section 30007.5 clarifies that conflicts between the statute's own provisions— here, between visual character requirements in Section 30251 and the savings clause for housing obligations in Section 30007— be resolved in the manner maximally protective of coastal resources.[188] The court's analysis ignored that Section 30007.5's interpretive guidance was limited to conflicts *within* the Coastal Act itself, leaving conflicts with other statutes like the Mello Act unaffected. Nonetheless, these provisions tipped the scales in favor of the Coastal Act.

The court's holding also violated the plain language of the Coastal Act's housing-related savings clause. Despite the provision's categorical language that "*nothing* in this division shall exempt local governments" from meeting state housing law requirements, in the case that the Mello Act shall apply in the Coastal Zone, the court expressly created such an exemption by subordinating the Mello Act.[189] The court's reliance on the interpretive guidance in Section 30007.5 also overlooked the provision's explicit language in support of housing development within the urban areas of the Coastal Zone. Section 30007.5 contains a legislative finding that "concentrat[ing] development in close proximity to urban and employment centers" can be more protective of the coast than specific environmental policies.[190] The opinion quoted this language in its entirety, before then upholding the rejection of *exactly* such a development for "purely aesthetic reasons."[191] The court based the Coastal Act's supremacy in the principles of environmental protection, but the case at hand involved a city using the law to block otherwise lawful housing development for expressly non-environmental reasons.

185. *Id*.
186. *Id*. at 123–24.
187. Cal. Pub. Res. Code § 30009.
188. *Id.* § 30007.5.
189. *Id.* § 30007.
190. *Id.* § 30007.5.
191. *Kalnel Gardens*, 208 Cal. Rptr. 3d at 123–24, 127.

4. Legislative Response to Kalnel Gardens

While the court faced an unenviable task of untangling a thorny set of statutory conflicts, it was excessively deferential to the Coastal Act. The California legislature made the same conclusion, overturning *Kalnel Gardens* by passing AB 2797 in 2018.[192] AB 2797 established that proposed housing development cannot violate the Coastal Act's visual and scenic requirements by obtaining increased density under the DBL alone. It also added interpretive guidance clarifying that the two laws were meant to be harmonized.[193] By focusing solely on the Coastal Act's capacity to block housing on aesthetic concerns, AB 2797 affirmed that visual effects of development were inherently less threatening than genuinely harmful environmental consequences. However, the failure of Assemblymember Alvarez's AB 2560, which would have required that the DBL fully apply in areas of the Coastal Zone already zoned for housing, demonstrates the ongoing challenges in meaningfully reforming the Coastal Act to prioritize housing production.

B. New Commune DTLA*: Partial Win for Housing in Coastal Zone in Losing Case*

New Commune DTLA v. City of Redondo Beach presented the question that *Kalnel Gardens* avoided: to what extent, if at all, do the Housing Accountability Act's (HAA) mandates apply inside the Coastal Zone? Coincidentally, the case was assigned to Judge James Chalfant of the Los Angeles Superior Court, who presided over *Kalnel Gardens* at the trial level. The HAA provision examined in *New Commune* was the law's most controversial: Section 65589.5(d)(5), which is widely known as the "builder's remedy." The law generally prohibits municipalities without a compliant "housing element" from enforcing many of their zoning rules against proposed housing projects with a qualifying percentage of units affordable to low-income or moderate-income households.[194] Each municipality in California is required to create a housing element: a comprehensive plan that demonstrates how it will provide its share of regional housing requirements.[195] The

192. *See* 2018 Cal Stats., *supra* note 139.
193. *Id*.
194. Cal. Gov't Code § 65589.5(d)(5), (h)(3) (Deering, LEXIS through 2024 Sess.) (amended 2024). For a comprehensive history of the provision, *see* Jordan Wright, *California's "Builder's Remedy" for Affordable Housing Projects: A View from the Legislative History*, 46 Environs 175, 179 (2023). *See also* Elmendorf & Duncheon, *supra* note 4, at 674-76.
195. Cal. Dep't of Hous. and Cmty. Dev., *Housing Elements*, https://www.hcd.ca.gov/planning-and-community-development/housing-elements [https://perma.cc/CAZ2-EW5B] (last visited May 27, 2024).

element must obtain the approval of the California Department of Housing and Community Development.[196] The builder's remedy goes far beyond issuing small density bonuses like the Density Bonus Law or Mello Act; it substantially overrides local zoning codes and empowers developers to petition for a writ of mandate compelling the approval of a qualifying project. In 2024, the California legislature passed AB 1893, clarifying and reforming the builder's remedy by imposing new limitations on qualifying projects (including density minimums and maximums, site restrictions, and certain local standards) in exchange for reducing affordability thresholds, strengthening protections against common obstruction tactics, and providing explicit guidance on the remedy's application and implementation.[197]

The California legislature passed the builder's remedy in 1990, eight years after the initial passage of the HAA, to provide a stronger enforcement mechanism against municipalities that fail to meet their housing supply obligations.[198] At the time of its passage, the builder's remedy was widely understood as a formidable pro-housing tool; opponents believed it would strip municipalities of their ability to deny high-density affordable housing developments.[199] But the policy has not had the transformative effect originally intended. The builder's remedy was rarely used between its 1990 passage and 2022, with some scholars attributing its ineffectiveness to the lack of legal clarity regarding its scope and application.[200] After fading into obscurity for many years, the builder's remedy has recently become a favored legal tool for pro-housing policy advocates and developers.[201] According to one housing advocacy organization, ninety-three builder's remedy

196. *Id.*

197. Daniel R. Golub & Will Sterling, *California Legislature Passes Major Reforms for "Builder's Remedy" Projects*, Holland & Knight (Sept. 11, 2024), https://www.hklaw.com/en/insights/publications/2024/09/california-legislature-passes-major-reforms-for [https://perma.cc/6V7P-MQUJ].

198. Wright, *supra* note 194, at 177.

199. *Id.* at 177 n.5 (quoting Vlae Kershner, *Bill to Force Cities to Build Low-Income Housing Gets Ok*, S.F. Chron. (Aug. 10, 1990) (labeling the measure a powerful bill designed to "bludgeon exclusive suburban communities into accepting low-income housing")); Elmendorf & Duncheon, *supra* note 4, at 674–77.

200. Elmendorf & Duncheon, *supra* note 4, at 676. *See also* Wright, *supra* note 194, at 177.

201. Ben Christopher, *'Godzilla Next Door': How California Developers Gained New Leverage to Build More Homes*, CalMatters (June 5, 2023), https://calmatters.org/housing/2023/06/california-builders-remedy/ [https://perma.cc/78CT-48ZN]; Erin Baldassari & Adhiti Bandlamudi, *Controversial California Law Meant to Spur New Housing Could Get More Teeth*, KQED (Apr. 2, 2024), https://www.kqed.org/news/11981595/controversial-california-law-meant-to-spur-new-housing-could-get-more-teeth [https://perma.cc/Y5LH-5GBH].

projects representing 17,000 potential units have been proposed across the state in the last two years.[202] Because forty percent of the state's municipalities lack a compliant housing element, including many in the Coastal Zone, the builder's remedy has the potential to greatly increase housing production along the coast.[203] The question before Judge Chalfant in *New Commune* was whether the Coastal Act absolved cities in the Coastal Zone from their obligations to approve otherwise qualified builder's remedy projects by superseding the HAA.

In July 2022, New Commune DTLA LLC (NCD), a developer, submitted a preliminary application to the City of Redondo Beach for a 35-unit, mixed-use development project, including affordable housing units, on a vacant lot in the Coastal Zone. At the time of NCD's application, the city had not yet adopted a compliant housing element.[204] NCD's application was denied by the city's planning department. The decision was later confirmed by the City Council on appeal, due to discrepancies with the city's Local Coastal Program (LCP) and the Coastal Act. NCD sought a writ of mandate to compel the city to process and approve its application, arguing that the project qualified for the builder's remedy under the HAA.[205]

NCD argued that the HAA must be construed to supersede the Coastal Act, allowing the development to proceed.[206] It contended that the Coastal Act's provisions that encourage coastal access for all income groups and promote affordable housing would be violated otherwise.[207] NCD also pointed to the HAA's litany of urgent policy declarations about California's housing crisis, which would be undercut by the statute being subordinated.[208] Just like the Coastal Act, the HAA contains a provision demanding it be liberally construed, affording "the fullest possible weight to the interest of, and the approval and provision, of housing."[209] NCD argued that subordinating the HAA to the Coastal Act would create a "privileged zone along the entirety of the State's coast where affordable housing development obligations can be ignored."[210]

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202. Baldassari & Bandlamudi, *supra* note 201.
203. *Id.* Despite the many changes to the builder's remedy in AB 1893, the reforms left the law's relationship to the Coastal Act unchanged.
204. Decision on Petition for Writ of Mandate at 1, New Commune DTLA LLC v. City of Redondo Beach, No. 23STCP00426 (Cal. Super. Ct. L.A. Cnty. Feb. 8, 2024) [hereinafter Decision] (on file with author).
205. *Id.* at 2.
206. *Id.* at 21–22.
207. *Id.* at 21 (citing Cal. Pub. Res. Code §§ 30604(g), 30001(d)).
208. *Id.* at 23.
209. *Id.* (citing Cal. Gov't Code §65589.5(a)(2)(L)).
210. *Id.* at 24.

Judge Chalfant faced a near-impossible problem of statutory interpretation. Both the Coastal Act and HAA contained savings clauses that explicitly disclaimed any limitation of their obligations under the other statute.[211] Yet the legislature also instructed that *both* laws be interpreted broadly.[212] Faced with this textual quandary, Judge Chalfant decided to reject the notion that either statute superseded the other. He wrote that the builder's remedy was "just as necessary in the coastal zone" as in the rest of the state.[213] Exempting the Coastal Zone from the HAA would be against "logic, public policy, and basic canons of statutory construction" because that no such exemption appears in either statute.[214] However, similar logic counseled against holding the Coastal Act to be subordinate, which could "eviscerate the [law's] protections" and lead to unfettered residential development in coastal areas.[215]

Citing the strong canon against implied repeals in California jurisprudence, Judge Chalfant declared that no statute "repeals another unless there is no rational basis for harmonizing the conflicting statutes and they are so clearly inconsistent that they cannot operate in unison."[216] He reasoned that avoiding subordination and honoring both statutes was critical to effectuate their purpose.[217] But achieving this harmonious outcome required a creative interpretive solution, which he found in Section 30604(f) of the Coastal Act. The section provides that when reviewing low or moderate-income housing in the Coastal Zone, cities may not require measures that reduce residential densities below that sought by an applicant "if the density sought by [an] applicant is *within the permitted density or range of density established by local zoning*" and qualified density bonuses.[218]

Judge Chalfant took Section 30604(f)'s focus on permitted density to create a residential versus non-residential distinction in the scope of builder's remedy projects in the Coastal Zone. He concluded that harmonizing the statutes meant that NCD could properly use the builder's remedy if the underlying parcel was zoned for residential uses.[219] However, because NCD's plot was zoned for commercial uses,

211. Cal. Pub. Res. Code § 30007; Cal. Gov't Code §65589.5(e) (Deering, LEXIS through 2024 Sess.) (amended 2024).
212. Cal. Pub. Res. Code §30009; Gov't §65589.5(a)(2)(L).
213. Decision at 21.
214. *Id*. at 22.
215. *Id.* at 24.
216. *Id.* at 21 (citing Pac. Palisades Bowl Mobile Ests., LLC v. City of L.A., 55 Cal.4th 783, 805 (Cal. 2012)).
217. *Id.* at 21.
218. *Id*. at 22 (emphasis added).
219. *Id.* at 23–24.

it could not properly invoke the builder's remedy, as the "Coastal Act does not contemplate that residential uses will occur within the coastal zone on land *not* designated for residential uses."[220]

The legislature put the court in a challenging position: conflicting statutes, savings clauses, and interpretive guidance. While Judge Chalfant's use of Section 30604(f) was an admirable attempt to avoid subordinating the HAA, it was substantively in error. The section centers on coastal development's conformity with local zoning codes, but the entire builder's remedy statutory scheme is explicitly built on ignoring and overriding these exact local rules. Requiring consistency with an LCP and local zoning as a precondition for the builder's remedy effectively nullifies its intended use. The fact that an LCP carries the force of state policy should not matter in this context, as the HAA does too. Instead, Judge Chalfant created an eligibility requirement based on criteria inherently incompatible with the builder's remedy.

Judge Chalfant's concerns about allowing the builder's remedy projects to apply without limitation in the Coastal Zone were understandable, but the opinion overlooked key facts and other statutory provisions that could have altered the court's treatment of the issue. Notably, the site in question hosted a former power plant, not an undisturbed ecologically sensitive area.[221] The court also failed to consider other statutory offramps. Section 30007.5 of the Coastal Act, discussed in *Kalnel Gardens*, explicitly counsels that concentrating development near population centers like Redondo Beach serves the statute's objective of environmental protection.[222] The Coastal Act also mandates that coastal development minimize vehicle miles traveled, a goal also served by infill development in dense areas.[223] The court similarly failed to consider the HAA's findings that blocking housing supply causes harmful downstream environmental effects via sprawl and longer vehicle commutes.[224]

Judge Chalfant could have leveraged any of these provisions to find a different and more defensible point of reconciliation between the laws, for example recognizing the difference in environmental consequences between builder's remedy projects in the urbanized coast and in areas

220. *Id*. at 22 (emphasis added).
221. Jack Rogers, *L.A. Power Station May Yield 2,700 Homes Under Builder's Remedy*, GlobeSt (Jan. 4, 2024, 7:05AM), https://www.globest.com/2024/01/04/l-a-power-station-may-yield-2700-homes-under-builders-remedy/?slreturn=20240410104040 [https://perma.cc/CE8Z-2LNK].
222. Cal. Pub. Res. Code § 30007.5 (Deering, LEXIS through 2024 Sess.).
223. *Id*. § 30253(d).
224. *See* Cal. Gov't Code § 65589.5(a)(1)-(3) (Deering, LEXIS through 2024 Sess.) (amended 2024).

without any residential development. Nonetheless, the *New Commune* decision may prove to be influential for the builder's remedy's future, as it signals that its power is not excluded from the Coastal Zone. However, the case leaves other, more complex statutory conflicts unresolved, such as the ability to block builder's remedy projects under the visual and aesthetic standards set forth in Section 30251 of the Coastal Act, the provision at issue in *Kalnel Gardens*. The future of the builder's remedy in California's Coastal Zone remains uncertain.

Conclusion

The tension between California's environmental laws and its housing crisis is reaching a breaking point. Despite the California Supreme Court's 1990 warning that "rules regulating the protection of the environment must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development and advancement," essential housing supply continues to be blocked and delayed on thin or non-existent environmental pretenses.[225] California needs to build, but CEQA and the Coastal Act make it easy for opponents to stop development.

The enormity of the housing crisis and rising discontent with the abuse of environmental laws makes it seem inevitable that some change will be forthcoming, but resistance to even minor alterations to the Coastal Act has proven fierce. With the failure of Assemblymember Alvarez's AB 2560, the legislature has proven unwilling to extend even the gentle density increases given to affordable projects under the Density Bonus Law into the urban parts of the Coastal Zone.[226] More comprehensive changes to the Coastal Act's discretionary permitting regime appear a distant possibility. However, the Coastal Act, as a creation of the legislature, remains entirely within the state's power to amend or reform; lawmakers can rectify how the law has been exploited for purposes entirely unrelated to its environmental aims.

The "Green's Dilemma" extends beyond California. Other states have proven capable of balancing housing goals with environmental protection. For example, New Jersey's Mount Laurel doctrine, which wields mandamus remedies against exclusionary municipalities like the HAA, does *not* exempt the state's coastal areas from its requirements.[227]

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225. Citizens of Goleta Valley v. Bd. of Supervisors, 801 P.2d 1161, 1175 (Cal. Ct. App. 1990).

226. *See, e.g.*, Christopher, *supra* note 144.

227. *See, e.g.*, Jack Slocum, *Borough Gives Update on Affordable Housing Redevelopment Plans*, TAPInto (Sept. 27, 2023, 9:45PM), https://www.tapinto.net/towns/belmar-slash-lake-como/sections/government/articles/

This choice recognizes that the moral, environmental, and economic imperative for housing supply does not end where the coast starts. Continuing to exclude the Coastal Zone from the jurisdiction of California's "anti-NIMBY" housing laws perpetuates a state-sanctioned gated community under the guise of conservation.

While the goal of fully applying existing housing laws such as the HAA to the Coastal Zone is important, fundamentally reforming the Coastal Act and Commission is necessary to reshape the exclusionary impact of the state's coastal land use regulatory regime. The Coastal Act's discretionary review process, with its lengthy timelines and vague statutory standards, creates uncertainty that discourages housing development and empowers housing opponents. Reforming this system could involve implementing time limits for CDP issuances, replacing subjective criteria like "community character" with clear, objective standards, and limiting the grounds for appeal to demonstrable environmental impacts rather than aesthetic concerns.

The Coastal Commission's appellate authority is especially ripe for reform. The Coastal Act should be amended to introduce a presumption of validity for local government decisions consistent with certified LCPs, requiring the Commission to demonstrate clear error or present substantial new evidence to overturn these decisions on appeal. The Coastal Act should also be amended to curtail the Commission's expansive de novo review authority—which currently allows it to reconsider an entire project, including issues entirely unrelated to the "substantial issue" that initially justified the appeal — and instead should require it to address only the specific concerns raised on appeal.

The Coastal Commission's broad interpretive authority over the standards of the Coastal Act should be constrained. The creation of specific state-mandated overlay zones in the most populous coastal municipalities would create more predictable, by-right approvals for projects that meet predefined criteria.[228] In these areas, legislators could raise the evidentiary standard for permit denials or appeals, requiring

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borough-gives-update-on-affordable-housing-redevelopment-plans [https://perma.cc/9LUJ-NQKA] (detailing the Mount Laurel process of wealthy coastal municipality of Belmar). *See also* Samantha Smith, *Sea Girt on Target to Address Affordable Housing*, STAR NEWS GRP. (May. 2, 2024), https://starnewsgroup.com/2024/05/02/sea-girt-on-target-to-address-affordable-housing/ [https://perma.cc/P7XR-LKFC] (discussing the outcome of an affordable-housing requirement compliance lawsuit against Borough of Sea Girt, a coastal town in New Jersey).

228. *See* Eric Biber et al., *Just Look at the Map: Bounding Environmental Review of Housing Development in California*, 54 ENV'T. L. 221, 233 (2024) (proposing a state-level "infill priority area" map to streamline environmental review and local approval processes for housing development in urban areas, which could serve as a model for creating overlay zones with more predictable approvals in coastal municipalities).

clear and convincing evidence of environmental harm rather than mere inconsistency with broad Coastal Act policies, or even shift the burden of proof to the Commission to demonstrate that its decision was necessary to prevent specific environmental harms. As Christopher Pederson, former Chief Counsel for the Commission, has recognized, "The urban aspects of the Coastal Act, however, have too often failed."[229] The Coastal Act should recognize that development in Newport Beach and San Francisco should be treated differently than development in Point Reyes and Año Nuevo.

To ensure coherence between state-level coastal protection and housing policies, the legislature could establish a formal mechanism requiring the Coastal Commission and the Department of Housing and Community Development to coordinate their respective approval processes. This joint review would prevent contradictions between certified Housing Elements and Local Coastal Programs and help ensure coastal cities meet their state housing goals. Alternatively, in the absence of a formal joint review mechanism, the Coastal Act could be amended to require the Commission to give substantial weight to certified Housing Elements when reviewing LCP amendments or CDPs in jurisdictions with compliant Housing Elements. For coastal jurisdictions lacking a compliant Housing Element, the Commission could be required to make more substantial findings in rejecting CDPs, incentivizing coastal communities to meet their state-mandated housing obligations.

Section 30301 of the Coastal Act, which outlines the Commission's composition requirements, should be amended to include members from non-coastal regions, ensuring that the agency truly represents statewide interests rather than functioning as a state-empowered NIMBY entity and safeguarding against its potential use for exclusionary ends.[230] The legislature should broaden the statute's commendable objective of maximizing public access to the state's coast to encompass residential opportunities, challenging the implicit assumption that coastal living is a legal privilege of the affluent or longtime incumbents. Particularly in an era of rising inland temperatures, a genuine dedication to coastal accessibility must go beyond the provision of beachfront parking lots, prioritizing diverse housing opportunities that allow all Californians to benefit from the coast's milder climate.

The Coastal Act could also be amended to explicitly recognize that urban infill housing development serves as a mechanism of

229. Pederson, *supra* note 124.
230. Cal. Pub. Res. Code §30301.

environmental protection through its role in reducing sprawl and vehicle emissions. The statute already requires that *new* development minimize vehicle miles traveled, but the Commission should have to consider the impact on driving patterns (and associated environmental impacts) from denying housing proposals.[231] Such reforms would maintain the Coastal Act's core environmental protections while streamlining the permitting process for much-needed housing, striking a balance between conservation and development that would better serve California.

California's lawmakers must make an affirmative choice between the current path of NIMBYism laundered through environmental pretenses and an alternative approach enabling the construction of desperately needed housing while protecting against genuine ecological harms. Will the state continue to allow its coastal regions to exist as exclusive enclaves under a special land-use regulatory regime, increasingly accessible only to the wealthy and long-time residents? The choice is not between environmental protection and housing development. It is rather between an outdated, overly expansive form of environmental law that stops even socially (and environmentally) beneficial development and a more inclusive vision of coastal sustainability. California's future prosperity *and* environmental sustainability require a new paradigm that prevents the abuse of its green laws from suffocating the Golden State.

231. *Id.* § 30253(d).