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SAN LUIS OBISPO SUPERIOR COURT  
BY   
Julie Vierra, Deputy Clerk

11  
12 SUPERIOR COURT OF CALIFORNIA

13 COUNTY OF SAN LUIS OBISPO

14 ALIREZA HADIAN, Trustee of the HADIAN  
15 FAMILY 2008 REVOCABLE TRUST dated  
November 11, 2008; ALIREZA HADIAN, an  
16 individual,

Petitioners and Plaintiffs,

v.

18 CALIFORNIA COASTAL COMMISSION, an  
19 agency of the State of California; and DOES 1–20,  
inclusive,

20 Respondent and Defendant.

21 RALPH BOOKOUT, trustee of the BOOKOUT  
22 FAMILY TRUST, dated February 2, 2018;  
23 RALPH BOOKOUT, an individual,

Petitioners and Plaintiffs,

v.

25 CALIFORNIA COASTAL COMMISSION, an  
26 agency of the State of California; and DOES 1–20,  
inclusive,

27 Respondent and Defendant.

No. 22CVP-0121 – Lead Case  
(consolidated with No. 22CVP-0122)

**PLAINTIFFS’ SUPPLEMENTAL  
BRIEFING REGARDING  
OCTOBER 11, 2024, ORDER**

Dep’t: P-2  
Judge: Hon. Michael Kelly

Action Filed: May 9, 2022  
Trial Date: September 30, 2024

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1 **I. THE COMMISSION EXCEEDED ITS JURISDICTION BY CONSIDERING**  
2 **ISSUES NOT RAISED IN THE NOTICES OF APPEAL**

3 The Court’s October 11, 2024, order requesting supplemental briefing identified a critical  
4 jurisdictional defect in the Commission’s actions: the Commission considered and relied upon  
5 alleged impacts to Monterey Pine Forest ESHA that were never raised in any of the notices of  
6 appeal. This jurisdictional overreach further invalidates the Commission’s actions and requires  
7 reinstatement of the County-approved permits.

8 The Coastal Act creates a carefully balanced system of development review designed to  
9 respect local control while preserving limited state oversight through the appeals process. Local  
10 governments retain primary authority over coastal development permits once their Local Coastal  
11 Programs (LCPs) are certified. *See Security Nat’l Guaranty, Inc. v. California Coastal Comm’n*,  
12 159 Cal. App. 4th 402, 421–22 (2008). The Commission’s authority on appeal from a permit  
13 approval is strictly circumscribed—it may only consider arguments that the development does not  
14 conform to the certified LCP. Pub. Res. Code § 30603(b)(1).

15 Its consideration of those arguments is limited to issues raised in the notices of appeal filed  
16 before the Commission. The Commission itself acknowledged this limitation in its staff report,  
17 explicitly stating, “At this [substantial issue] stage, the Commission may only consider issues  
18 brought up by the appeal.” AR000623–624. This limitation serves vital functions: it provides notice  
19 to permit applicants of the specific grounds being challenged, allows local governments to defend  
20 their decisions on defined issues, and prevents the Commission from improperly assuming a  
21 *de novo* review role over all aspects of local permits using *post facto* justifications.

22 A careful review of the notices of appeal confirms the Court’s initial assessment—none of  
23 the appellants (Bettenhausen, Key, Heinrichs, Commissioner Escalante and Commissioner Hart)  
24 identified purported impacts to Monterey Pine Forest ESHA as a basis for the appeal. AR00143–  
25 180 (Bookout); *id.* at 181–218 (Hadian). Indeed, *none* of the appeal documentation contains the  
26 words “Monterey” or “Pine.”

27 The Commission attempts to salvage its consideration of this issue by arguing that “several  
28 appeals raised LCP inconsistency with ESHA policies as a topic.” Commission’s Supplemental

1 Brief at 1. While some appeals made references to ESHA policies, *all* of them focused on impacts  
2 to ESHA caused by additional water use, and *none* specifically challenged (or indeed, even  
3 mentioned) the County’s findings regarding Monterey Pine Forest impacts, or the proposed  
4 removal of Monterey Pines. *See generally* AR00143–180 (Bookout); *id.* at 181–218 (Hadian); *see,*  
5 *e.g., id.* at 149 (referencing ESHA policies when discussing “negative effects CCSD’s *water*  
6 *diversion* has on sensitive environmental habitats” (emphasis added)); *and id.* at 179–80  
7 (suggesting that existing water use causes “resource harm” and that additional water use risks the  
8 “health of the Santa Rosa and San Simeon Creeks.”).<sup>1</sup> These omissions can hardly be chalked up  
9 to inartful drafting by unsavvy appellants: four of the six references to ESHA are included within  
10 the appeals filed by Coastal Commissioners Escalante and Hart, who did so *only* with regard to  
11 impacts on the “Santa Rosa and San Simeon Creeks, which are designated ESHA.” *Id.* at 179.  
12 Elizabeth Bettenhausen discussed the impacts to sensitive habitat because of “*the amount of water*  
13 *we Cambrians use.*” *Id.* at 148 (emphasis added).

14 The Commission’s expansive interpretation would nullify the statutory limitation on the  
15 Commission’s appellate jurisdiction. Under the Commission’s logic, a vague reference to any LCP  
16 provision would grant it *carte blanche* to review compliance with every policy in that document,  
17 regardless of whether appellants raised those specific issues. But Section 30603 of the Coastal Act  
18 limits Commission review authority to both *types* of appeals, *see* Pub. Res. Code § 30603(a), and  
19 *grounds* for appeal, *see* Pub. Res. Code § 30603(b). To be appealable, an “allegation” must be made  
20 that the development does not conform to specific “standards set forth in the certified local coastal  
21 program.” Pub. Res. Code § 30603(b)(1).<sup>2</sup> When an administrative agency exceeds its statutory  
22 authority, its actions are void. *Association for Retarded Citizens v. Dep’t of Developmental Servs.*,  
23 38 Cal. 3d 384, 391 (1985). The Commission’s consideration of Monterey Pine Forest ESHA

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25  
26 <sup>1</sup> All references that follow are to the Bookout appeal, which appears first in the Administrative  
Record. The contents of the Hadian appeal are identical.

27 <sup>2</sup> Permit approvals may also be appealed on grounds that the development does not conform to the  
28 public access policies of the Coastal Act. Pub. Res. Code § 30603(b)(1). No such allegation was  
made in this case, and the Commission did not purport to find substantial issue on those grounds.

1 impacts—an issue outside the scope of the appeals—rendered its substantial issue determination  
2 void.

3 **II. FINDING SUBSTANTIAL ISSUE ON GROUNDS NOT APPEALED RAISES**  
4 **DUE PROCESS CONCERNS**

5 Permitting the Commission to find substantial issue on grounds not raised in any appeal  
6 would undermine critical procedural due process protections. The right to procedural due process  
7 requires both adequate notice and an opportunity to be heard before the government may deprive a  
8 person of property rights. Allowing the Commission to review any permit appeal for any substantial  
9 issue—regardless of the grounds filed on appeal—would leave landowners such as Petitioners here  
10 unsure of precisely *how* to contest the assertion of agency authority over their approved permits,  
11 requiring them to affirmatively assert LCP compliance in every aspect, clueless of which direction  
12 the Commission might ultimately go at its hearing.

13 As the Supreme Court of California held in *Horn v. County of Ventura*, notice must be  
14 “reasonably calculated to afford affected persons the realistic opportunity to protect their interests.”  
15 24 Cal. 3d 605, 617 (1979). The court further emphasized that notice must occur “sufficiently prior  
16 to a final decision to permit a ‘meaningful’ predeprivation hearing.” *Id.* at 618. The specificity and  
17 detail of the notice are crucial elements of constitutional due process. Notice must provide enough  
18 information for affected parties to meaningfully participate in the hearing process and protect their  
19 interests. *Calvert v. Cnty. of Yuba*, 145 Cal. App. 4th 613, 624 (2006), *as modified* (Jan. 3, 2007).  
20 Generic or vague notices that fail to identify the grounds on which property rights might be denied  
21 hinder property owners’ ability to mount an adequate defense or response. The *Calvert* court  
22 recognized that due process requires that a landowner understand the basis for potential deprivation  
23 to provide “a realistic opportunity to protect their interests.” *Id.* at 632; *accord Linovitz Capo Shores*  
24 *LLC v. California Coastal Comm’n*, 65 Cal. App. 5th 1106, 1122–23 (2021).

25 Here, Petitioners received notices of appeal that identified “water supply” and “water  
26 shortage” issues, AR000149–150 (Bettenhausen); “water adequacy,” *id.* at 157 (Key); “water  
27 resource” and “water supply” concerns, *id.* at 169 (Heinrichs); and “inadequate water supply”  
28 questions, *id.* at 179 (Commissioners Escalante and Hart). Unsurprisingly, then, Petitioners’ written

1 response to the appeals in advance of the substantial issue hearing discussed *only* the properties’  
2 status as existing water commitments with active water meters and how that related to the  
3 exemption contained within the Cambria Water Moratorium Ordinance adopted November 15,  
4 2001, and the North Coast Area Plan (2007 LCP Amendments). *See* AR000603–609  
5 (September 15, 2021, letter of Thomas D. Green). Because no three Commissioners requested to  
6 hear discussion on the issue, that letter represented the *sole* opportunity for the Petitioners to be  
7 heard on the allegations contained within the filed appeals. AR004330–332 (Transcript of  
8 November 17, 2021, substantial issue hearing).

9 Procedural Due Process requires both notice and a *meaningful* opportunity to be heard. It is  
10 not sufficient for landowners to be given vague notice and an opportunity to be heard on  
11 *something*—rather, landowners must be given notice of the *basis* upon which they might be  
12 deprived of their rights, and an opportunity to dispute that particular rationale. In other words—  
13 assuming no other viable basis for finding substantial issue exists—Petitioners were deprived of  
14 their County-approved permits without adequate notice or an opportunity to be heard on the issue  
15 of the removal of Monterey Pines. *Horn*, 24 Cal. 3d at 617.

16 **III. THE COMMISSION’S SUPPLEMENTAL BRIEF FAILS TO ADDRESS THE**  
17 **JURISDICTIONAL QUESTION POSED BY THE COURT**

18 Rather than directly addressing whether it properly considered Monterey Pine Forest ESHA  
19 impacts at the substantial issue stage, the Commission’s Supplemental Brief attempts to reframe  
20 the issue and raise new arguments not relevant to the Court’s directed inquiry.

21 The Court specifically asked whether the Commission could consider Monterey Pine Forest  
22 ESHA impacts when that issue was not raised in any appeal. Instead of answering that question,  
23 the Commission’s brief largely focuses on whether it had general appellate jurisdiction over the  
24 permits based on their location in a sensitive coastal resource area, and noting that it also took  
25 jurisdiction over the permits on the basis of water adequacy. Commission’s Supplemental Brief at  
26 2–3. This conflates three distinct concepts: (1) whether the Commission had *potential* appellate  
27 jurisdiction over the permits based on their location (not disputed by Petitioners); (2) whether the  
28 County permit approvals raised a substantial issue because they were inconsistent with the Certified

1 LCP (disputed by Petitioners); and (3) whether the Commission could properly consider specific  
2 issues not raised by any appellant (the question posed by this Court). As detailed above, it could  
3 not.

4 The bulk of the Commission’s brief raises arguments unrelated to the Court’s jurisdictional  
5 question, including whether Petitioners waived challenges to consideration of ESHA impacts,  
6 Commission’s Supplemental Brief at 5–7, the existence of other potential grounds for finding  
7 substantial issue, *id.* at 2, whether Petitioners showed prejudice from consideration of un-appealed  
8 issues, *id.* at 9, and the Commission’s authority at the *de novo* stage, *id.* at 4–5. These arguments  
9 do not address whether the Commission properly considered Monterey Pine Forest ESHA impacts  
10 at the substantial issue stage after the issue was not raised by any appeal.

11 The Commission argues that Petitioners waived any challenge to consideration of Monterey  
12 Pine Forest ESHA impacts by not raising it during administrative proceedings or in their opening  
13 brief. Commission’s Supplemental Brief at 5–6. This argument fails because jurisdictional defects  
14 cannot be waived and may be raised at any time. *Schneider v. California Coastal Comm’n*, 140  
15 Cal. App. 4th 1339, 1348 (2006).<sup>3</sup> The Commission’s lack of authority to consider un-appealed  
16 issues is a fundamental jurisdictional limitation. Further, as noted above, Petitioners did not raise it  
17 in their letter to the Commission in advance of the substantial issue hearing because Petitioners  
18 (through counsel) were directly addressing *the grounds raised by the appeals*. Regardless, during  
19 the *de novo* phase of their permit review, Petitioners *did* raise the Monterey Pines issue before the  
20 Commission, arguing that the development was entirely consistent with the certified LCP.  
21 AR004441–42, AR004454–55 (March 4, 2022, letter of Thomas D. Green). Further, upon seeking  
22 review in this Court, Petitioners’ opening brief *specifically* challenged the Commission’s authority  
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24 <sup>3</sup> The Commission claims that Petitioners have the burden of proof and that all presumptions must  
25 flow in favor of the Commission. Commission’s Supplemental Brief at 9–10. Not so. Questions of  
26 the Commission’s jurisdiction are reviewed using independent judgment, and without deference to  
27 the agency’s determination. *See Burke v. California Coastal Comm’n*, 168 Cal. App. 4th 1098,  
28 1106 (2008) (“Where jurisdiction involves the interpretation of a statute, the issue of whether an  
agency acted in excess of its jurisdiction is a question of law reviewed *de novo* on appeal.”); *see also id.* (“[C]ourts do not defer to an agency’s determination when deciding whether the agency’s  
action lies within the scope of authority delegated to it by the Legislature.”).



1 to deny permits based on Monterey Pine Forest ESHA impacts, arguing that the County permit  
2 approval was consistent with the LCP and its ESHA policies in all respects. Petitioners’ Opening  
3 Brief at 23. Indeed, the crux of Petitioners’ arguments were that the Commission was entitled at  
4 the substantial issue phase to consider *only* whether the projects were consistent with the County  
5 LCP, and that—because the County-approved permits were entirely consistent with the County  
6 LCP—the Commission’s actions were void and the County permits must therefore be reinstated.  
7 *Id.* at 30. This preserved the broader challenge to the Commission’s authority to consider these  
8 impacts.

9         The Commission argues that even if it improperly considered Monterey Pine Forest ESHA  
10 impacts, its substantial issue determination was supported by other valid grounds. Commission’s  
11 Supplemental Brief at 1–2, 8. Of course, this misses the entire point of the Court’s question. The  
12 Petitioners have challenged *all* of the asserted grounds of jurisdiction,<sup>4</sup> on the following bases:  
13 (1) that the Petitioners are existing water users, and therefore have available water to support their  
14 residential development, Petitioners’ Opening Brief at 17–19; (2) the Commission misinterpreted  
15 the language in the Certified LCP exempting existing commitments from the impacts analysis, *id.*  
16 at 19–22; (3) that potential impacts to Monterey Pines were mitigated at the time Tract 1804 was  
17 subdivided, when small development envelopes were created, a 4:1 replacement plan and five-year  
18 monitoring program was put in place, and 90% of the property was deeded to the County as a  
19 conservation easement, *id.* at 23; and (4) that the proposed development was therefore in all  
20 respects consistent with the Certified LCP, requiring approval under the Coastal Act, *id.* at 23.

21         Here, the Commission explicitly relied on alleged Monterey Pine Forest ESHA impacts as  
22 one basis for finding substantial issue. AR000650–51. This was improper. *Supra*, Parts I and II.  
23 And because all other bases the Commission identified to support a substantial issue finding were  
24 *also* improper, *see generally* Petitioners’ Opening Brief, it erred in proceeding to a *de novo* review  
25 of Petitioners’ County-approved permits. The Commission’s argument that any error in considering

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26 <sup>4</sup> The Commission wrongly claims that “none of [the other grounds for finding substantial issue]  
27 are challenged in these actions.” Commission’s Supplemental Brief at 1. This is patently false, as  
28 Petitioners have already extensively addressed all other grounds in their earlier briefing. *See*  
Petitioners’ Opening Brief; *and* Petitioners Reply Brief.

1 Monterey Pine Forest ESHA impacts at the substantial issue stage was harmless because it could  
2 consider those impacts during *de novo* review, *see* Commission’s Supplemental Brief at 4, puts the  
3 cart before the horse. The Commission obtains *de novo* review authority only after first properly  
4 determining that a permit approval raises a substantial issue. *Lindstrom v. California Coastal*  
5 *Comm’n*, 40 Cal. App. 5th 73, 92 (2019). An invalid substantial issue determination means the  
6 Commission never properly obtained *de novo* review authority. *Encinitas Country Day Sch., Inc.*  
7 *v. California Coastal Comm’n*, 108 Cal. App. 4th 575, 587 (2003) (finding that a failure to make  
8 findings of substantial issue within the statutory 49-day window strips the Commission of  
9 jurisdiction).

10 Finally, if the Court agrees with Petitioners that they are existing water users exempt from  
11 the water impacts analysis, and that denial of their development permits on that basis was improper,  
12 then denial of the permits on a separate improper basis is necessarily prejudicial. Prejudice is  
13 defined as a “substantial injury to petitioner plus probability of a different result.” *Lucas Valley*  
14 *Homeowners Ass’n v. Cnty. of Marin*, 233 Cal. App. 3d 130, 147 (1991). Here, the Petitioners were  
15 denied permits to develop homes after years of investment and navigating the local government  
16 permit process to obtain initial approvals. If the bases of that denial are improper—such that *proper*  
17 consideration and process would have led to the probability of a different result—they have been  
18 substantially harmed. To uphold a permit denial where such procedural or substantive defects exist,  
19 the Court must be able to point to *at least* one basis upon which the Commission could properly  
20 deny the permit. *Cf. Saad v. City of Berkeley*, 24 Cal. App. 4th 1206, 1215 (1994), *as modified*  
21 (May 5, 1994). Because the Commission has identified no such grounds, the decision of the  
22 Commission must be reversed, and the Petition granted.

#### 23 **IV. THE PROPER REMEDY IS REINSTATEMENT OF THE COUNTY-APPROVED** 24 **PERMITS**

25 When an agency exceeds its jurisdiction, the proper remedy is to void its actions and restore  
26 the status quo ante. Code of Civ. Proc. § 1094.5 (“The court shall enter judgment either  
27 commanding respondent to set aside the order or decision, or denying the writ.”). Here, that requires  
28 setting aside the Commission’s substantial issue determination and directing the Commission to

1 consider only those issues properly raised in the notices of appeal, use the proper standards set forth  
2 in the certified LCP, and make a finding of no substantial issue. The County-approved permits  
3 should be reinstated upon a finding of no substantial issue.

4 **CONCLUSION**

5 The Commission exceeded its jurisdiction by considering Monterey Pine Forest ESHA  
6 impacts that were never raised in any notice of appeal. This jurisdictional defect renders its  
7 substantial issue determination void. The Commission's Supplemental Brief fails to directly  
8 address this fundamental problem, instead raising irrelevant arguments about general jurisdiction  
9 and harmless error. The Court should grant the writ of mandate and invalidate the Commission's  
10 actions in their entirety.

11 DATED: November 27, 2024.

12 Respectfully submitted,

13 JEREMY TALCOTT  
14 JEFFREY W. MCCOY  
15 THOMAS D. GREEN

16 By /s/ Jeremy Talcott  
17 JEREMY TALCOTT

18 *Attorneys for Petitioners and Plaintiffs*

1 **DECLARATION OF SERVICE**

2 I, Jeremy Talcott, declare as follows:

3 I am a resident of the State of California, residing or employed in Sacramento, California. I  
4 am over the age of 18 years and am not a party to the above-entitled action. My business address is  
5 555 Capitol Mall, Suite 1290, Sacramento, California 95814.

6 I hereby certify that on November 27, 2024, I electronically served the attached Plaintiffs’  
7 Supplemental Briefing Regarding October 11, 2024, Order by transmitting a true copy via E-  
8 Service to the One Legal efilng system on the persons listed as follows:

9 John M. Natalizio  
10 Elizabeth St. John  
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12 300 S. Spring St., Suite 1702  
13 Los Angeles, CA 90013  
14 *Attorneys for Respondent/Defendant*  
15 *California Coastal Commission*

John.Natalizio@doj.ca.gov  
Elizabeth.StJohn@doj.ca.gov

16 I declare under penalty of perjury that the foregoing is true and correct and that this  
17 declaration was executed this 27th day of November, 2024, at Sacramento, California.

18 /s/ Jeremy Talcott  
19 JEREMY TALCOTT