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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

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

Petitioners and Plaintiffs,

v.

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

Respondent and Defendant.

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

Petitioners and Plaintiffs,

v.

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

Respondent and Defendant.

Case No.: **22CVP-0121**  
(Consolidated w/ Case No. 22CVP-0122)

**RULING**

1           **I.           INTRODUCTION**

2           Ralph Waldo Emerson chided rigid thinkers with his oft-quoted aphorism that “*A*  
3 *foolish consistency is the hobgoblin of little minds.*”<sup>1</sup> But consistency can have its virtues  
4 and one place where its salutary attributes are most important (and particularly deserving  
5 of judicial protection) is in the interpretation of our laws by administrative agencies.<sup>2</sup>

6           For almost three decades, the County of San Luis Obispo (County), the Cambria  
7 Community Services District (CCSD), and the California Coastal Commission  
8 (Commission) treated the parcels of property at issue in this case, which are outside of the  
9 urban services line/urban reserve line (USL/URL) but which have long been served by the  
10 CCSD water system, as if they were within the USL/URL. These properties, in turn, have  
11 enjoyed the status of existing water users under the County’s Local Coastal Program  
12 (LCP).

13           The County, respecting this history (which included a formal legal interpretation  
14 adopted by the Board of Supervisors in 1995 that the proposed subdivision of the land into  
15 single-family lots was consistent with the LCP) approved Coastal Development Permits  
16 (CDPs) for the parcels in 2021. It did so after a prolonged and rigorous review, but without  
17 subjecting the properties to standards that would apply to new developments lacking  
18 existing water service. The Commission, acting in derogation of the legal/regulatory  
19 history of these parcels, took jurisdiction of the issue and denied the permits because it  
20 found that the CDPs did not meet the standards the Commission believes are required for  
21 development outside the USL/URL requiring **new** water service. As will be developed in  
22 greater detail in the discussion that follows, the Commission’s recent action was based on  
23 misinterpretation of the governing legal provisions of the LCP and must be vacated.

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27 <sup>1</sup> Ralph Waldo Emerson “Self Reliance” (1841).

28 <sup>2</sup> *Kort v. Burwell* (D.D.C. 2016) 209 F. Supp. 3d 98, 111–12 (consistency is a well-  
rooted concept in APA jurisprudence).

1                   **II.           PROCEDURAL AND FACTUAL BACKGROUND**

2           Petitioners Ralph Bookout (Bookout) and Alireza Hadian (Hadian) own residential  
3 parcels located in Tract 1804 in Cambria, California. Tract 1804 was approved by the  
4 County as an 18-lot clustered subdivision in 1997. This approval included the preparation  
5 of a detailed Environmental Impact Report (EIR). (AR004553 et seq.) As part of the  
6 approval process, the developer dedicated 342 acres of the 382-acre site to open space. In  
7 2019 (Hadian) and 2020 (Bookout), Petitioners sought CDPs from the County to build  
8 homes on their parcels. The County granted Petitioners’ requests, and later affirmed the  
9 CDPs after hearing appeals from three individuals. The Commission became involved  
10 when several individuals, including two Commissioners, appealed the County’s approval.  
11 After the Commission found a substantial issue of compliance with the LCP, and later  
12 held a de novo review hearing, it denied the CDPs.

13           Petitioners filed this consolidated action on May 9, 2022<sup>3</sup>, seeking a writ of  
14 mandate ordering the Commission to vacate and set aside its March 11, 2022 decision  
15 denying Petitioners’ CDPs.

16                   **A.       History of Petitioners’ Parcels.**

17           Petitioners’ parcels (the Parcels) are outside the northern edge of Cambria in  
18 unincorporated San Luis Obispo County. (AR000004, 000072.)

19           In 1969, Petitioners’ predecessor-in-interest, the Walter H. Leimert Company  
20 (Leimert), entered into an agreement with the Cambria County Water District to supply  
21 water to property that would eventually become Tract 1804 (the 1969 Agreement).

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23 <sup>3</sup> Mr. Hadian’s lawsuit is San Luis Obispo County Superior Court Case No. 22CVP-  
24 0121. Mr. Bookout’s lawsuit is San Luis Obispo County Superior Court Case No.  
25 22CVP-0122. Both lawsuits assert causes of action for (1) writ of administrative  
26 mandamus, (2) inverse condemnation (permanent taking), and (3) inverse  
27 condemnation (temporary taking). The Commission reviewed and discussed  
28 Petitioners’ parcels as a single project and reviewed both proposed projects during  
one hearing, because the parcels are “located nearly adjacent to each other and raise  
nearly identical concerns.” (AR005922.) The Commission also allowed for evidence  
submitted on behalf of either parcel to be considered as part of the record for the  
other parcel. (AR005941.)

1 (AR004503–004506.) That agreement included a fee payment of \$25,000 from Leimert  
2 to the water district. (AR004504.) In 1985, Leimert and the Cambria Community Services  
3 District (CCSD), the successor entity to the Cambria County Water District, entered into  
4 a further agreement to provide water to the Leimert property, again including the future  
5 Tract 1804 (the 1985 Agreement). (AR004507–004517.) The renewed agreement  
6 included a requirement that CCSD would issue a “will serve” letter to provide water  
7 services to the subdivided Tract 1804, while Leimert would design, develop, and pay the  
8 costs of building a 120,000-gallon water storage tank and deed fee interest of the tank site  
9 to CCSD once complete. (AR004509–004511.) CCSD agreed to pay half of the costs, up  
10 to but not exceeding \$45,000, for the tank. (*Ibid.*)

11 Leimert eventually filed an application with the County for Tract 1804 to  
12 subdivide approximately 380 acres into 18 single-family residential lots. In response to  
13 the County’s request for the Commission to review Leimert’s subdivision application,  
14 Assistant District Director David Loomis noted in a 1992 letter that at least a portion of  
15 Tract 1804 was located outside the Cambria USL/URL. (AR004519–004520.) Because  
16 both the Coastal Zone Land Use Ordinance (CZLUO) and the North Coast Area Plan  
17 (NCAP) prohibited “new community water or sewer service” for properties outside the  
18 USL/URL, Loomis questioned whether the Leimert application could be processed.  
19 (AR004520.)

20 In subsequent correspondence dated July 10, 1995, at a time when Leimert was  
21 already pursuing an application to move the USL/URL to address the Commission’s 1992  
22 concerns, Loomis backtracked, “clarifying” the Commission’s position on the proposed  
23 project, stating as follows:

24 It is our understanding that the meaning of the paragraph in our June 1992,  
25 letter about public water and/or sewer service to this proposed subdivision  
26 has been misinterpreted by some. We were not stating a requirement that  
27 this subdivision could not go forward without an LCP amendment. We  
28 were merely requesting clarification of the interaction of the USL, the  
CCSD boundary, and the requirements of the LCP. ***It is our understanding  
now that the CCSD’s water and sewer lines and boundary pre-date the  
LCP. Given this, we do not feel that the subdivision must be brought***

1            *within the USL*, especially since the proposed density outside of the USL  
2 is appropriate and is consistent with the LCP. (Emphasis added).  
3 (AR004591.)

4            Notwithstanding this clarification by the Commission, Leimert refused to  
5 withdraw the request to move the USL/URL without receiving a formal legal  
6 interpretation on the issue of whether the proposed development of Tract 1804 complied  
7 with the LCP. It submitted an "Application for Interpretation of Coastal Zone Land Use  
8 Ordinance" on September 27, 1995. (AR004523-004531.) This procedure was  
9 contemplated by the LCP, as CZLUO section 23.01.041 provided for the County to make  
10 formal interpretations of the LCP.<sup>4</sup>

11            On November 20, 1995, the County's Department of Planning and Building  
12 submitted a formal detailed report to the Planning Commission recommending that the  
13 Board of Supervisors adopt a resolution approving the interpretation sought by Leimert  
14 by concluding that no provision of the LCP precluded CCSD from serving the proposed  
15 Tract 1804 with water. (AR004533.) In response, the Planning Commission held a public  
16 hearing on the issue on November 20, 1995 to consider the proposed legal interpretation,  
17 and then adopted its Resolution No. 95-97 recommending that the Board of Supervisors  
18 approve the interpretation. (*Ibid.*)

19            On December 5, 1995, the Board of Supervisors held a public hearing on the issue  
20 and, on December 12, 1995 it adopted (by a 4-0 vote) its Resolution No. 95-506.  
21 (AR004970.) The resolution provided in relevant part as follows:  
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23            <sup>4</sup> As set forth in CZLUO section 23.01.041(e):  
24

25            **Procedure for interpretation:** If questions arise from persons or bodies charged with  
26 administering this title about its content or application, the Planning Commission shall  
27 ascertain all pertinent facts, and by resolution set forth its findings and interpretation.  
28 The resolution is to be forwarded to the Board of Supervisors, which is to consider the  
findings and interpretation of the Planning Commission and render a final decision  
and interpretation on the matter. Thereafter the interpretation of the Board of  
Supervisors shall prevail.

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1. The area encompassed by proposed Tentative Tract 1804 is within the boundary of the Cambria Community Services District (CCSD).
2. Water mains to serve the area of the proposed Tentative Tract 1804 are already constructed, including fire hydrants, and the lines are currently active with water supplied by the CCSD.
3. Because water service exists and is supplied under a contract between the CCSD and Cambria West<sup>5</sup>, the area of proposed Tentative Tract 1804 is not considered a land division requiring new service within the meaning of Coastal Zone Land Use Ordinance Section 23.04.021c(3).
4. Because the area of proposed Tentative Tract 1804 is not considered a land division requiring new service subject to CZLUO Section 23.04.021c(3), the proposed project can be processed and recommended for approval without first amending the North Coast Area Plan of the County Local Coastal Plan to include the project site within the urban services line/urban reserve line of Cambria.
5. Because the proposed application for Tentative Tract 1804 is consistent with Coastal Zone Land Use Ordinance Section 23.04.021c(3) it is also found to be consistent with the Local Coastal Plan Public Works Policies No. 1 and No. 2.<sup>6</sup>

(AR004538; AR004970-004971.)

The County Board of Supervisors eventually approved Tract 1804 after preparation of the EIR. (See AR005082, ¶ 15; March 1997 EIR is at AR004554 et seq.) The Commission provided detailed comments on the draft EIR, including that it “strongly agreed” with the County’s view that development could be approved without creating a precedent for other similar development outside the USL because the “pre-existing contracts with the Community Services District for water supply” constituted an “exceptional circumstance.” (AR004769-004770.) The Final Tract Map for Tract 1804 was recorded June 1, 2000. (AR005142-005151.)

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<sup>5</sup> Cambria West was the Leimert entity that developed Tract 1804 and the plaintiff in the 1998 lawsuit described below.

<sup>6</sup> This recommendation was based in part on the position of the Commission, which the County staff report described as follows: “The California Coastal Commission staff has stated that because infrastructure is already in place to provide water to the site, no new community water service extension is needed to the proposed subdivision.” (AR 004535, emphasis in original.)

1           Subsequently, a dispute arose between Leimert and the CCSD. (AR005078–  
2 005106.) The CCSD took the position that Tract 1804 should be listed as part of the  
3 CCSD’s water waiting list. Leimert took the position that it had priority to a water  
4 connection based on the 1969 agreement. This dispute eventually led to a lawsuit filed in  
5 San Luis Obispo Superior Court, Case No. 980722. (See *ibid.*) In 1999, the parties entered  
6 into a settlement agreement whereby, subject to certain terms and conditions, CCSD  
7 agreed to provide water service to the lots created by Tract 1804. (AR005108–005115.)  
8 The conditions to this settlement agreement included: (i) CCSD would issue a will-serve  
9 letter for all eighteen lots in Tract 1804; (ii) lot owners would institute and maintain  
10 stringent water conservation measures; (iii) each lot would be connected and metered to  
11 the CCSD water system; (iv) upon installation, Leimert and successor lot owners would  
12 be billed immediately for water services; and (v) the CCSD would treat each lot owner  
13 the same as any other existing residential CCSD customer. (See *ibid.*)

14           On June 1, 2000, CCSD issued a will-serve letter for Tract 1804 and the final Tract  
15 Map and development plan were recorded. (AR005141; 005142–005151.) The will-serve  
16 letter informed the developers of Tract 1804 that CCSD was ready, willing, and able to  
17 supply water services to the lots within Tract 1804. (AR005141.) On or before April 16,  
18 2001, all potential residential lots within Tract 1804, including Petitioners’ lots, were  
19 connected to the CCSD water systems with water meters, and immediately began being  
20 billed for services. (AR005155!) Petitioners have both been billed and charged for water  
21 services by CCSD bi-monthly; their water hookups are functioning and water from CCSD  
22 is available and being used on Petitioners’ parcels. (AR005137–005139; 005933.)

23           **B. Cambria’s Water Supply Issues, Identification of Existing Water Supply**  
24           **Commitments and 2001 Moratorium on New Water Connections.**

25           The challenges for managing growth in Cambria in light of the constraints on water  
26 supply are not really in dispute. Cambria depends entirely on groundwater aquifers  
27 associated with Santa Rosa and San Simeon Creeks. (AR000005, 000073.) As the  
28 Commission itself wrote in 2007, “The issue of water supply in Cambria has been

1 significant since the early days of implementing the Coastal Act. Cambria's water is  
2 supplied by wells that pump water from Santa Rosa and San Simeon creeks." (AR 5468)  
3 The Commission also has acknowledged efforts by the CCSD to manage the issues: "The  
4 Cambria Community Services District (CCSD) has been moving forward in recent years  
5 to address the various water supply issues that it faces. In addition to producing a number  
6 of reports addressing aspects of the water supply system, including a water management  
7 plan, the CCSD Board of Directors declared a Water Code 350 emergency and is currently  
8 implementing a moratorium on new water connections because of the severe water supply  
9 constraints in the current system." (AR 5468-5469)

10 The moratorium referenced was implemented in 2001 and it specified that certain  
11 properties were exempt from the development restrictions being imposed because they  
12 were already connected, metered, or otherwise committed. (AR005311-005313.). It did  
13 so by reference to an earlier ordinance, adopted on October 23, 2000 (Ordinance No. 2-  
14 2000), which identified existing water commitments with single-family residential  
15 undeveloped lots. All lots in Tract 1804 were listed on the attachment (Exhibit B) to  
16 Ordinance No. 2-2000 (AR005313) as being included in "Existing Commitments."  
17 Additionally, Ordinance No. 2-2000 assigned each lot within Tract 1804 one equivalent  
18 dwelling unit (EDU) water allocation by the CCSD to project anticipated water use.  
19 (AR005330.) The CCSD utilized these EDUs to find that it had a sufficient water supply  
20 to meet its Existing Commitments in the future. (AR005312-005313.)

21 **C. 2007 Amendments to the NCAP.**

22 In 2007, the County proposed amendments to the NCAP. (AR004158-004228.)  
23 The Commission considered the County's draft plan and provided comments and  
24 suggested changes which the County ultimately adopted, specifically in reference to  
25 properties exempt from the CCSD Moratorium. (See AR005422-005493.) In justifying  
26 the amendments it proposed, the Commission discussed and relied upon the CCSD  
27 moratorium including that it exempted existing water commitments:  
28



1 To ensure consistency with Coastal Act sections 30231, 30240 (see below),  
2 as well as Coastal Act policies requiring the protection of coastal  
3 agriculture (30241, 30242), and to ensure that additional water withdrawals  
4 will not adversely impact riparian/wetland habitats in the short-term, a new  
5 communitywide planning standard must be added that limits new  
6 development to **available water supplies**, absent an assurance of no  
7 adverse impacts to Santa Rosa and San Simeon Creeks. **Available water**  
8 **supplies consist of existing water service connections and**  
9 **commitments including those projects previously recognized by the**  
10 **Commission as “pipeline projects” with water service commitments**  
11 **from the CCSD that pre-date the CCSD’s declaration of a water**  
12 **emergency.** A Suggested Modification includes such a standard, as well  
13 as a requirement that all new development that results in an increase in  
14 water use offset the amount of anticipated water use through retrofitting or  
15 some other verifiable action coordinated with the CCSD. This proposed  
16 standard also mirrors current requirements of the CCSD.

17 (AR005469–005470) (Emphasis added).

18 In other words, the Commission accepted CCSD’s classification of “Existing  
19 Commitments” as part of “available water supplies” and exempted them from the  
20 restrictions imposed by the modification to the NCAP for new development. Following  
21 the 2007 amendment, the NCAP provides in relevant part:

22 **Water Service in Cambria.** Until such time as may be otherwise  
23 authorized through a coastal development permit approving a major public  
24 works project involving new potable water sources for Cambria, new  
25 development not using CCSD connections or water service commitments  
26 existing as of November 15, 2001 (including those recognized as “pipeline  
27 projects” by the Coastal Commission on December 12, 2002 in coastal  
28 development permits A-3-SLO-02-050 and A-3-SLO-02-073[]), shall  
29 assure no adverse impacts to Santa Rosa and San Simeon Creeks.

30 (AR001314, ¶ 4A; 001628, ¶ 4A.) (This provision is hereinafter referred to as NCAP  
31 Planning Area Standard 4.A.”) This provision, part of the Cambria Urban Area Standards  
32 (AR001619 et seq.), applies to “all land within the Cambria Urban Reserve Line.”  
33 (AR001626.) As discussed below, Petitioners’ parcels are located within the NCAP’s  
34 Rural Area, i.e. outside of the URL. (AR000065, 000169, 004524.)

35 In its briefing in this writ proceeding, the Commission contends this renders the  
36 NCAP Planning Area Standard 4.A. irrelevant. As discussed below, this position suffers

1 from a number of problems, not least of which is that the parcels remained outside of the  
2 USL/URL only because the Commission agreed, prior to the creation of the Tract 1804  
3 subdivision, that preexisting water commitments to the Petitioners' parcels exempted  
4 them from restrictions on new development for the rural zone under the LCP and the  
5 development essentially has been treated as if it were within the USL/URL. Moreover, the  
6 Commission itself considered the parcels, including those at issue in this case, to be  
7 included in the "available water supply" and thus not subject to limits on new development  
8 in the County's LCP established in the 2007 amendment.

9 **D. Petitioners' CDP Applications and Subsequent Appeal to the**  
10 **Commission.**

11 In 2019, Mr. Bookout applied for a Coastal Development Permit to build a 3136  
12 square-foot home on his property. In 2020, Mr. Hadian applied for a CDP to construct a  
13 4000 square-foot home on his property. The County approved both permits. In October  
14 2021, both permits were appealed to the Commission by private citizens and two Coastal  
15 Commissioners. (AR000143–000218.)

16 The substantial issue hearing for both appeals was held on November 17, 2021.  
17 Commission staff recommended the Commission find that the appeals raised substantial  
18 LCP conformance issues, "particularly with respect to the LCP water and ESHA resource  
19 issues." (AR000267 [Bookout], AR000619 [Hadian]; see AR000265–000616 [Bookout];  
20 AR000617–000993 [Hadian].) Commission staff further recommended that the  
21 Commission take jurisdiction over the CDPs, and on de novo review, that it deny both  
22 CDPs. (AR000267 [Bookout], 000619 [Hadian].) At the hearing, the Commission found  
23 a substantial issue existed for both parcels. (AR004328–004333, 004337.)

24 Both Petitioners exercised their rights to postpone the de novo portion of the  
25 hearing. (AR004332.) The de novo hearing was held on March 11, 2022. After hearing  
26 from Commission staff and Petitioners' counsel, the Commission denied the CDPs.  
27 (AR005918–005958 [Tr., Mar. 11, 2022]; AR005971.) In denying the CDPs, the  
28 Commission adopted its staff's conclusions regarding the proposed developments'

1 inconsistency with the LCP:

2 As discussed above, the proposed project is inconsistent with the LCP's  
3 provisions that require new development to ensure that adequate water is  
4 available to serve the project, inconsistent with LCP provisions that limit  
5 development in ESHA to resource-dependent development, and  
6 inconsistent with LCP provisions requiring that it not lead to adverse  
7 impacts to environmentally sensitive habitat areas, including Santa Rosa  
8 and San Simeon Creeks and their related fishery and other habitats  
(including sensitive species habitats protected by the LCP), and native  
Monterey pine forest. Thus the project must be denied.

(AR000033 [Bookout]; AR000101 [Hadian].)

### 9 III. STATUTORY SCHEME

#### 10 A. The Coastal Act.

11 Under the California Coastal Act of 1976 (the Coastal Act), local governments  
12 lying within the coastal zone must prepare a local coastal program, or LCP, to submit to  
13 the Commission for certification. (Pub. Res. Code<sup>7</sup>, § 30500(a).) The LCP must contain  
14 "a Land Use Plan (LUP) and a set of implementing ordinances designed to promote the  
15 act's objectives of protecting the coastline and its resources and maximizing public access.  
16 (§§ 30001.5, 30512, 30513.)" (*Landgate, Inc. v. California Coastal Com'n* (1998) 17  
17 Cal.4th 1006, 1011.) The Commission "shall certify a land use plan, or any amendments  
18 thereto, if it finds that a land use plan meets the requirements of, and is in conformity with,  
19 the policies" delineated in Chapter 3. (§ 30512(c).) The Commission's review of a local  
20 government's LUP is expressly limited to its determination that the plan "does, or does  
21 not, conform with" the requirements of Chapter 3. (§ 30512.2(a).) The Commission "is  
22 not authorized by any provision of [the Coastal Act] to diminish or abridge the authority  
23 of a local government to adopt and establish, by ordinance, the precise content of its land  
24 use plan." (*Ibid.*)

25 Anyone who undertakes development in the coastal zone is required to obtain a  
26 CDP. (§ 30600(a).) In most circumstances, a CDP must be obtained from the local

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28 <sup>7</sup> All further statutory references are to the Public Resources Code unless otherwise  
specified.

1 government after the Commission has certified an LCP. (§ 30600(d); see also § 30519  
2 [after an LCP is certified, “development review authority ... shall no longer be exercised  
3 by the commission over any new development proposed” and “shall at that time be  
4 delegated to the local government that is implementing the local coastal program...”].)  
5 The LCP serves “as the standard for proposed development and the issuance of new  
6 coastal development permits.” (*Sierra Club v. Dep’t of Parks & Recreation* (2012) 202  
7 Cal.App.4th 735, 742, as modified on denial of reh’g (Feb. 2, 2012).) If proposed  
8 development is in conformity with the objective requirements of the LCP, the issuing  
9 agency must issue a CDP to the applicant. (*Douda v. Cal. Coastal Comm’n* (2008) 159  
10 Cal. App. 4th 1181, 1192, as modified on denial of reh’g (Mar. 4, 2008) [“Once a local  
11 coastal program is certified, the issuing agency has no choice but to issue a coastal  
12 development permit as long as the proposed development is in conformity with the local  
13 coastal program.”].)

14 A local agency’s approval of a CDP may be “appealed to the commission by the  
15 applicant, any aggrieved person, or any two members of the commission. [Citations.] The  
16 commission has limited jurisdiction to hear the appeal.” (*City of Half Moon Bay v. Sup.*  
17 *Ct.* (2003) 106 Cal.App.4th 795, 804; §§ 30603, 30625(a).) If a basis for appeal to the  
18 Commission exists, the Commission has authority to conduct a de novo hearing on the  
19 merits of the CDP and is not bound by the local agency decision. (§ 30625(b).) Where the  
20 appeal is properly heard by the Commission, the Commission’s decision (rather than the  
21 local agency’s) is subject to judicial review by writ of mandate. (§ 30801; *Fudge v. City*  
22 *of Laguna Beach* (2019) 32 Cal.App.5th 193, 198-199, 204-205, 205 fn. 12.) “[T]he  
23 Commission hears the application as if no local government unit was previously involved,  
24 deciding for itself whether the proposed project satisfies legal standards and  
25 requirements.” (*Lindstrom v. California Coastal Com.* (2019) 40 Cal.App.5th 73, 92;  
26 *McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912, 920 fn. 3.)

27 On appeal, the Commission’s jurisdiction is limited to a determination whether the  
28 project conforms to standards set forth in the local government’s certified LCP and the

1 public access provisions of the Coastal Act. (§ 30603(b); *Lindstrom, supra*, 40  
2 Cal.App.5th 73, 92.) If the Commission determines an appeal raises a substantial issue of  
3 conformity with those provisions, the local government’s permit is vacated, and the local  
4 government is divested of coastal development permitting jurisdiction in the matter. At  
5 that point, the Commission considers the application de novo as the coastal development  
6 permitting authority. (*Kaczorowski v. Mendocino County Bd. of Supervisors* (2001) 88  
7 Cal.App.4th 564, 569; §§ 30621(a), 30625(b)(1); Cal. Code Regs., tit. 14, § 13115(a), (b).)

8 **B. San Luis Obispo LCP.**

9 The County’s certified LCP consists of (1) a Land Use Plan comprised of:

10 (i) Coastal Plan Policies (Coastal Plan) (AR001709–001916), (ii) the “Framework  
11 for Planning” (AR001939–002105), and (iii) four area plans; and (2) an Implementation  
12 Plan, titled the “Coastal Zone Land Use Ordinance” (CZLUO<sup>8</sup>) (AR001917–001938)  
13 which applies throughout all four area plans. (AR000020, 001501–001502.)

14 Petitioners’ parcels are in an area covered by the County’s approved LCP, and  
15 specifically the North Coast Area Plan (NCAP). (AR001481–001708.) The NCAP, among  
16 other things, sets out geographically-based planning standards for mapped areas: Rural  
17 Area Standards (applicable to projects outside the urban and village reserve lines),  
18 Cambria Urban Area Standards (applicable to projects within the Cambria urban reserve  
19 line, or URL), and San Simeon Acres Village Standards (applicable to projects within San  
20 Simeon Acres village reserve line). (AR001600–001601, 001603, 001619, 001668.)  
21 Projects must comply with standards applicable to their project location. (AR001600.)

22 **IV. STANDARD OF REVIEW**

23 Petitioners seek a writ of administrative mandamus under Code of Civil Procedure  
24 section 1094.5. There are three grounds for review under this section: (1) whether the  
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26 <sup>8</sup> As set forth in the Coastal Plan Policies: “The Local Coastal Plan is incorporated into  
27 existing county policies and regulations through amendment to the Land Use Element  
28 and certification of a Land Use Ordinance for the Coastal Zone (CZLUO).”  
(AR001717.)

1 agency proceeded without or in excess of its jurisdiction; (2) whether there was a fair trial;  
2 and (3) whether there was a prejudicial abuse of discretion. Abuse of discretion is  
3 established if the respondent has not proceeded in the manner required by law, the order  
4 or decision is not supported by the findings, or the findings are not supported by the  
5 evidence. (Code Civ. Proc., § 1094.5(b).)

6 The court presumes the agency's decision is supported by substantial evidence,  
7 and the petitioner bears the burden of demonstrating the contrary. (*Desmond v. County of*  
8 *Contra Costa* (1993) 21 Cal.App.4th 330, 336; *Saad v. City of Berkeley* (1994) 24  
9 Cal.App.4th 1206, 1212.) In reviewing the agency's decision, the trial court examines the  
10 whole record and considers all relevant evidence, including evidence that detracts from  
11 the decision. (*Bolsa Chica Land Trust v. Sup. Ct.* (1999) 71 Cal.App.4th 493, 503.)

12 Although this task involves some weighing to fairly estimate the worth of  
13 the evidence, that limited weighing does not constitute independent review  
14 where the court substitutes its own findings and inferences for that of the  
15 Commission. Rather, it is for the Commission to weigh the preponderance  
16 of conflicting evidence, as [the court] may reverse its decision only if,  
17 based on the evidence before it, a reasonable person could not have reached  
18 the conclusion reached by it.  
(*Kirkorwoicz v. California Coastal Com.* (2000) 83 Cal.App.4th 980, 986.)

18 On the other hand, the trial court exercises independent judgment on pure  
19 questions of law, including the interpretation of statutes and judicial precedent. (*Ghirardo*  
20 *v. Antonioli* (1994) 8 Cal.4th 791, 800–801; *Donaldson v. Department of Real Estate*  
21 (2005) 134 Cal.App.4th 948, 954.)

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1           **V.           DISCUSSION**

2           **A.           Whether The Commission Proceeded In Excess Of Its Jurisdiction Or**  
3           **Failed To Proceed In A Manner Required By Law As A Result Of**  
4           **Committing Legal Error In Its Interpretation Of The LCP.**

5                   **1.   The Commission’s Scope of Authority Extends to Review of the CDPs.**

6           Petitioners contend that “development review authority cannot be exercised by the  
7 Commission” “in areas that fall under a certified LCP.” (Opening Br., p. 14, ll. 3–7,  
8 quoting *City of Malibu v. Cal. Coastal Com.* (2012) 206 Cal.App.4th 549, 563, as  
9 modified on denial of reh’g (June 5, 2012).) Petitioners argue elsewhere in their brief that,  
10 because the Commission acted in excess of its jurisdiction, its actions must be deemed  
11 void. (Opening Br., p. 30, ll. 20–21.) Petitioners contend that the Commission was  
12 required to find no substantial issue with their CDPs, “and/or issue a CDP on appeal.” (*Id.*  
13 at p. 30, ll. 15–17.). To the extent these arguments imply that the Commission lacks  
14 general authority to review the County’s conclusion on the CDPs and whether they  
15 comport with the LCP, they must be rejected.

16           Although local governments have the authority to issue coastal  
17 development permits, that authority is delegated by the Commission. The  
18 Commission has the ultimate authority to ensure that coastal development  
19 conforms to the policies embodied in the state’s Coastal Act. In fact, a  
20 fundamental purpose of the Coastal Act is to ensure that state policies  
21 prevail over the concerns of local government. (See *City of Chula Vista v.*  
22 *Sup. Ct.* (1982) 133 Cal.App.3d 472, 489 [Commission exercises  
23 independent judgment in approving LCP because it is assumed statewide  
24 interests are not always well represented at the local level].) The  
25 Commission applies state law and policies to determine whether the  
26 development permit complies with the LCP.

27 (*Pratt, supra*, 162 Cal.App.4th 1068, 1075–1076.)

28           Thus, it is inaccurate to assert that the Commission has *no* development review  
authority in areas falling within the certified LCP. Once an appeal of a local agency  
decision has been brought before the Commission, it first determines whether to exercise  
its appellate jurisdiction at all, and it only does so if it finds a substantial issue.

1 (AR000270–000271.) The Commission “*shall hear* an appeal” unless it determines “that  
2 no substantial issue exists with respect to the grounds on which an appeal has been  
3 filed...” (§ 30625(b)(2), emphasis added.) If the Commission finds the appeal raises a  
4 substantial issue and takes jurisdiction over the appeals, the County permits are nullified,  
5 and the Commission conducts a de novo review, considering the merits of the permit  
6 application “as if no decision had previously been rendered” to determine whether the  
7 permit is consistent with the LCP and Coastal Act policies. (*Coronado Yacht Club v.*  
8 *California Coastal Com.* (1993) 13 Cal.App.4th 860, 871–72.)

9 That said, in a writ proceeding such as this, the Court has an obligation to consider  
10 whether the Commission properly construed the law it purported to apply. On this subject,  
11 the parties have been more than a little imprecise in their briefing as to how the Court  
12 should evaluate what Petitioners contend were legal errors made by the Commission in  
13 construing the County LCP, within the framework of the standard of review that governs  
14 this writ proceeding.

15 After parsing and distilling the arguments, the Court will consider the alleged legal  
16 errors as being potentially relevant to both decisions made by the Commission (i.e. (1) to  
17 the finding of a “substantial issue” of LCP compliance, and (2) to the ultimate decision  
18 denying the CDP on de novo review based on a finding of LCP noncompliance). The  
19 Court also considers these legal determinations to be relevant to assessing whether the  
20 Commission has proceeded without or in excess of its jurisdiction and whether it  
21 prejudicially abused its discretion by not proceeding in a manner required by law.

22 **2. The Commission’s Legal Interpretations of the LCP Are Not Subject**  
23 **Entitled To Deference.**

24 As a threshold matter, the Court rejects as unfounded the Commission’s contention  
25 that its construction of the LCP is entitled to deference. As noted by the court of appeal  
26 in *Lindstrom v. California Coastal Commission* (2019) 40 Cal.App.5th 73, cases  
27 discussing deference to the Commission do not involve circumstances, such as are present  
28 here, where the Commission’s interpretation conflicts with the local agency whose LCP



1 is at issue. (*Lindstrom, supra*, at p. 94, fn. 20.) The *Lindstrom* court continued:

2 “The construction of an ordinance is a pure question of law for the court,  
3 and the rules applying to construction of statutes apply equally to  
4 ordinances.” (*H.N. & Frances C. Berger Foundation v. City of Escondido*  
5 (2005) 127 Cal.App.4th 1, 12.) “Where, as here, the issue presented is one  
6 of statutory construction, our fundamental task is ‘to ascertain the intent of  
7 the lawmakers so as to effectuate the purpose of the statute.’ [Citations]  
8 We begin by examining the statutory language because it generally is the  
9 most reliable indicator of legislative intent. [Citation] We give the  
10 language its usual and ordinary meaning, and ‘[i]f there is no ambiguity,  
11 then we presume the lawmakers meant what they said, and the plain  
12 meaning of the language governs.’ [Citation] ... Ultimately we choose the  
13 construction that comports most closely with the apparent intent of the  
14 lawmakers, with a view to promoting rather than defeating the general  
15 purpose of the statute. [Citation] Any interpretation that would lead to  
16 absurd consequences is to be avoided.” (*Allen v. Sully-Miller Contracting*  
17 *Co.* (2002) 28 Cal.4th 222, 227.)

18 (*Lindstrom, supra*, at p. 94.)

19 Turning to the record, this case concerns decisions of the Commission made in  
20 2021 and 2022, which together operated to reverse decisions by the County and ultimately  
21 to deny CDPs to two families who wished to construct modest single-family homes on  
22 developed lots in Cambria. As noted, above, the subdivision in which they planned to  
23 build (Tract 1804 or Cambria Pines) was the subject of a final tract map initially approved  
24 in 1997. It consists of 18 lots. At the time the Petitioners’ CDPs were overturned by the  
25 Commission, ten of these lots had already been developed with residences without  
26 objection from the Commission. As discussed more fully below, the Commission’s  
27 actions—first to take jurisdiction by finding that the issuance of the CDPs raised a  
28 substantial issue of compliance with the LCP, and second, by deciding the matters adverse  
to the property owners at a subsequent “de novo” hearing—were both infected by  
fundamental legal error in the Commission’s interpretation of the County’s LCP.

This conclusion flows not only from a plain reading of the operative provisions,  
but is also supported by a formal legal interpretation made by the County back in 1995,  
which was an interpretation based on input from the Commission and was also made

1 pursuant to a provision in the Commission-certified LCP that vested in the County Board  
2 of Supervisors the authority to issue legal interpretations of the LCP. That interpretation  
3 aligned with the position expressed by the Commission at the time, and has been ratified  
4 by the Commission's conduct over the ensuing years. For these reasons, in exercising the  
5 Court's independent judgment on interpretation of the law, the Court finds that the  
6 Commission's action was based upon an incorrect legal interpretation of the LCP and  
7 therefore will grant the writs.

8 As noted, the Commission contends the Court should defer to its interpretation of  
9 the LCP, but the authorities it relies upon do not apply in a situation such as this, where  
10 the Commission's interpretation conflicts with the County's interpretation of its own LCP,  
11 and where the County's interpretation is more consistent with the language and the  
12 practical construction given to that language over the years, including evidence that the  
13 Commission has historically agreed with the County's interpretation. Any deference that  
14 a court may accord to a particular administrative legal interpretations is situational and  
15 "depending upon context [such interpretation] may be helpful, enlightening, even  
16 convincing. It may sometimes be of little worth." (*Yamaha Corp. of America v. State Bd*  
17 *of Equalization* (1998) 19 Cal. 4th 1, 7). The interpretation by the Commission in this  
18 case falls into this last category. The United States Supreme Court recently described one  
19 of the prototypical situations in which a court will defer to an agency's interpretation of a  
20 statute as being where the interpretation was made at or around the time of the legislation  
21 and has remained consistent over time. (*Loper Bright Enterprises v. Raimondo* (2024) 144  
22 S. Ct. 2244, 2258.) It is obvious that neither circumstance is present here.

23 In addition, the statute in question was adopted by the County, which also  
24 conducted a formal legal interpretation process prior to approving the development of  
25 Tract 1804 which concluded that existing water commitments to the Parcels rendered  
26 restrictions in the LCP for new development inapplicable.<sup>9</sup> Moreover, when the water  
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28 <sup>9</sup> It is significant that the Commission approved the County's LCP which included the  
process for interpreting provisions of the CZLUO that vested interpretive authority in

1 Moratorium was put in place in 2001 the Petitioner's Parcels were exempted from the  
2 restrictions on "new development." Thereafter the Commission suggested a revision to  
3 the NCAP in 2007 which gave effect to the exemption for parcels with "Existing  
4 Commitments" by treated these parcels as part of the "available water supplies." For these  
5 reasons, the Court declines to afford deference to the Commission's revisionist legal  
6 interpretation that was relied upon in 2021 to deny the Petitioners' CDPs.

7 As a final consideration on the deference issue, it is significant that the  
8 Commission concurred with the County's interpretation when it commented on the Draft  
9 EIR for the Tract 1804 development. (See letter dated January 31, 1997 from Coastal  
10 Planner Steven Guiney (AR005059) ["We strongly agree with the discussion on page 7-1  
11 under 7.1 Growth-Inducing Impacts, that this proposal should not be considered precedent  
12 setting with respect to urban services bond the URL/USL. This is a situation with an  
13 exceptional circumstance: a pre-existing contract with the Community Services District  
14 for water supply. If that were not the case here, an amendment to the URL/USL would  
15 be necessary."].)<sup>10</sup>

16 **3. The Commission's Legal Conclusions Were Erroneous Because They**  
17 **Ignored Precedent And Were Based On Flawed Interpretation Of The**  
18 **LCP.**

19 In taking jurisdiction over Petitioners' CDPs, the Commission renounced its  
20 interpretation made in 1995 that the residential development of Tract 1804 did not involve  
21 new development subject to the LCP. It's position also conflicted with the formal  
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23 the Board of Supervisors based on input from the Planning Department. If anything,  
24 this provision, accepted by the Commission when it approved the LCP, would support  
25 an argument that it is the County's interpretation that should be given deference.

26 <sup>10</sup> The County Board of Supervisors Resolution, containing the formal interpretation of  
27 the LCP, was attached as an appendix to the EIR (AR 004970). The Commission  
28 cannot credibly claim to have been unaware of it when it "strongly agreed" with the  
County's statement in the EIR regarding the exceptional circumstances present in  
Tract 1804 due to its preexisting water service arrangements with CCSD.

1 interpretation made by the County in 1995—an interpretation that had been based in part  
2 on the Commission’s then-current view—and upon which the developer had relied in  
3 abandoning the effort to move the USL/URL. The County also had relied on the  
4 Commission’s view at the time it approved the subdivision of Tract 1804 and that reliance  
5 continued. In 2007 the County made modifications to various parts of the LCP related to  
6 water usage in Cambria, which were based on revisions the Commission required. These  
7 revisions to the LCP continued to recognize preexisting water commitments to the parcels  
8 in Tract 1804 and based on those considerations exempted such parcels from restrictions  
9 on new development.

10 In its 2021 decision finding that a substantial issue of LCP conformance was  
11 presented in the County’s approval of the CDPs, the Commission construed several  
12 elements of the LCP in a manner that was not tenable. Once those provisions are properly  
13 interpreted, which is a legal determination upon which this Court exercises independent  
14 judgment, it is clear there was no substantial issue justifying the Commission taking the  
15 appeal and deciding the CDP issue de novo.

16 Although the Commission identified six factors supporting the existence of a  
17 substantial issue (AR000618), as it related to the five factors that were related to water  
18 resource issues<sup>11</sup>, all of them hinged on the Commission’s legal conclusion that the LCP  
19 required the County to determine that there was an “adequate sustainable water supply”  
20 for what the Commission characterized as the new development contemplated by the  
21 CDPs. This legal conclusion is not correct.

22 Before explaining in more detail why the substantial issue finding rests on an  
23 erroneous legal interpretation of the LCP (and thus must be reversed), it is appropriate to  
24 consider and comment upon the other components of the substantial issue finding. The  
25 Commission’s substantial issue finding states as follows:

26 The term substantial issue is not defined in the Coastal Act. The  
27 Commission’s regulations simply indicate that the Commission will hear

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28 <sup>11</sup> The Monterey Pine Forest issue will be discussed separately (see Section V. C., *post.*)

1 an appeal unless it “finds that the appeal raises no significant question”  
2 (California Code of Regulations, Title 14, (CCR) Section 13115(b)). CCR  
3 Section 13115(c) provides, along with past Commission practice, that the  
4 Commission may consider the following five factors when determining if  
5 a local action raises a significant issue: (1) the degree of factual and legal  
6 support for the local government’s decision that the development is  
7 consistent or inconsistent with the certified LCP and the Coastal Act’s  
8 public access provisions; (2) the extent and scope of the development; (3)  
9 the significance of the coastal resources affected by the decision; (4) the  
10 precedential value of the local government’s decision for future  
11 interpretation of its LCP; and (5) whether the appeal raises only local  
12 issues, or those of regional or statewide significance.

13 (AR000271.)

14 The very first factor is at the heart of this proceeding and will be discussed at  
15 length below. Before doing so, a brief discussion of the other factors demonstrates that  
16 they do not independently support finding a substantial issue here.

17 The extent and scope of the development at issue in this case is quite modest. At  
18 issue are two residences in an 18-parcel tract that was approved for this very type of  
19 development many years ago without objection by the Commission. Ten other parcels in  
20 the same development have already been improved with homes with no objection from the  
21 Commission. The coastal resources affected by this decision are also de minimis. While  
22 the Commission attempts to cast this issue in terms of the implications for its broader  
23 dispute with the County and CCSD about stewardship of water resources generally, the  
24 only impact from the particular CDPs at issue in this case would be that two residential  
25 parcels, which have had water service for more than 20 years, will be improved with  
26 modest sized homes. In a comparable circumstance back in 2002, in the immediate  
27 aftermath of the CCSD moratorium, the Commission considered an appeal from an  
28 approval of a CDP for construction of a residence on an existing lot in Cambria and the  
Commission found there was not a substantial issue, in part because the incremental  
estimated consumption for the one project was “at face value... a relatively insubstantial  
increase.” (AR003427.)

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1 For similar reasons, there is little if any precedential impact that would attend final  
2 approval of CDPs for these two parcels. In addition to the explicit recognition in 1997 that  
3 development of Tract 1804 would not be “precedent setting” for other potential  
4 development outside the USL/URL, the development itself consists of only 18 parcels.  
5 And once these two are improved with the homes that were contemplated by the approval  
6 of the subdivision in the first place, there will be only six others that might possibly be the  
7 subject of future CDPs whose applications may be affected by the issues in this case. The  
8 Commission itself recognized that there are very few, if any, similarly situated parcels of  
9 land with claims of preexisting water service commitments such as those at issue here.  
10 (See, e.g., Commission correspondence dated Jan. 28, 1997, noting that Tract 1804 was  
11 an “unusual situation with an exceptional circumstance: a pre-existing contract with the  
12 [CCSD for] water supply,” AR 005059-005060.) Finally, the issue here is highly  
13 localized. It has to do with the circumstances created by the unique set of water and  
14 development issues in Cambria, and more narrowly still, outside of the Cambria  
15 USL/URL. Moreover, the history of these particular parcels, which included the  
16 Commission’s record of reversing course on key issues presented in this locality, further  
17 serves to make the circumstances here *sui generis* and thus not precedential. In short,  
18 none of the other factors (apart from the interpretation of the LCP) would support finding  
19 a substantial issue here.

20 Both parties have made arguments regarding developments in the LCP since the  
21 Tract 1804 project was approved. The Court will turn to those arguments now. One  
22 potential legal question is whether the projects are exempt from the provisions in the LCP  
23 under the NCAP North Coast Area Planning Standard B.4 (A) which requires new  
24 development to show no adverse impact on the creeks unless the development is using  
25 CCSD connections or water service commitments existing as of November 15, 2001. The  
26 parties disagree about this, but even the Commission, in its significant issue finding,  
27 acknowledges that the provision has some ambiguity. Another potential legal question,  
28 as framed in the Commission’s significant issue finding, is whether Planning Standard

1 B.4(a) can “override” other provisions of what the Commission refers to as “the LCP  
2 Construct”.

3 The County, in approving the projects, included a detailed analysis of why the  
4 projects were exempt from a requirement of demonstrating no adverse impact on the Santa  
5 Rosa and San Simeon Creeks. (AR000325.) This analysis had several components:

- 6 • All lots in Tract 1804 were connected to the CCSD for water service and have  
7 been billed for such service since 1999.
- 8 • In 2000, the CCSD, in Ordinance NO. 2-2000, determined that there were certain  
9 “Existing Commitments” in place which included 24 grandfathered meters.
- 10 • On November 15, 2001, the CCSD adopted the Moratorium for new water  
11 service connections, but this Moratorium exempted the Existing Commitments  
12 (which included the grandfathered meters).
- 13 • At about the time of the Moratorium, CCSD determined the water demand for  
14 the Existing Commitments was 202.3 EDUs and this included the meters on  
15 Petitioners’ Parcels.
- 16 • The Commission recognized the Existing Commitments for 202.3 EDUs were  
17 exempt from the Moratorium (CDPA A-3-slo-02-050 (Monaco)).
- 18 • The Commission approved the North Coast Area Plan in 2007 which exempted  
19 water service commitments existing as of November 15, 2001 from the need to  
20 show no adverse impacts on the Santa Rosa and San Simeon Creeks.

21 The Commission contends that Planning standard B.4(a) has no application  
22 because it only applies to parcels within the USL/URL, but, as discussed above, that  
23 contention lacks merit.

24 The Commission’s position in this action also hinges on its interpretation of the  
25 County’s Coastal Plan Policies, Policy for Public Works, Policy 1 (Public Works Policy  
26 1) and CZLUO Section 23.04.430. (BR. at 16-17) It contends these provisions required  
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28

1 the denial of Petitioners' CDPs unless they showed there was "adequate and sustainable"  
2 water, which the Commission contends they were unable to do.<sup>12</sup>

3 Public Works Policy 1 provides, in relevant part:

4  
5 **Policy 1: Availability of Service Capacity.**

6 New development (including divisions of land) shall demonstrate that  
7 adequate public or private service capacities are available to serve the  
8 proposed development.

9 Section 23.04.430 provides:

10 **Availability of Water Supply and Sewage Disposal Services.** A land use  
11 permit for new development that requires water or disposal of sewage shall  
12 not be approved unless the applicable approval body determines that there  
13 is adequate water and sewage disposal capacity available to serve the  
14 proposed development, as provided by this section. Subsections a. and b.  
15 of this section give priority to infilling development within the urban  
16 service line over development proposed between the USL and URL. In  
17 communities with limited water and sewage disposal service capacities as  
18 defined by Resource Management System alert levels II or III:

19 a. A land use permit for development to be located between an urban  
20 services line and urban reserve line shall not be approved unless the  
21 approval body first finds that the capacities of available water supply  
22 and sewage disposal services are sufficient to accommodate both  
23 existing development, and allowed development on presently-vacant  
24 parcels within the urban services line.

25 b. Development outside the urban services line shall be approved only  
26 if it can be served by adequate on-site water and sewage disposal  
27 systems, except that development of a single-family dwelling on an  
28 existing parcel may connect to a community water system if such  
service exists adjacent to the subject parcel and lateral connection can  
be accomplished without trunk line extension.

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12 Petitioners contend that they have met this requirement in any event, but the Court does not have to resolve that issue given the legal error that infects the Commission's action.



1 A related provision is Section 23.04.440, which was part of the CZLUO in 1997  
2 when the Tract 1804 subdivision was being considered, but at that time was codified as  
3 section 23.04.021c(3). It provides:

4 **Development Requiring Water or Sewer Service Extensions.**

5 To minimize conflicts between agricultural and urban land uses,  
6 development requiring new community water or sewage disposal service  
7 extensions beyond the urban services line shall not be approved.

8 For the Commission's argument to have any merit, the Court would have to  
9 conclude that the phrase "new development" in the Policy and "new development that  
10 requires water" in the CZLUO would apply to Petitioners' parcels, even though those  
11 parcels have had water service for decades. There are several reasons why this is not a  
12 tenable construction.

13 First, the Commission's construction of the Policy is simply wrong. The  
14 Commission's brief paraphrases but does not quote Public Works Policy 1. The brief  
15 states: "The County's LCP Public Works Policy 1 requires that all new development  
16 demonstrate that there is adequate water capacity to serve the development before a CDP  
17 may be approved." This is a misleading characterization, giving the impression that there  
18 must be a showing that there is enough water, when what the policy requires is only that  
19 there is adequate "public or private service capacities" that are "available to serve" the  
20 proposed development. Given that the Policy is a Public Works policy, this clearly refers  
21 to the public works infrastructure for water delivery, not the water itself. Such  
22 infrastructure has been in place for Tract 1804 since 1999 and in 2007 the Commission  
23 itself recognized that these parcels were part of "available water supplies" [AR 005469-  
24 005470].

25 Second, the title of the CZLUO section "Availability of Water Supply," considered  
26 in tandem with the phrase "new development that requires water" indicates that the focus  
27 of the provision is also on the construction of new water delivery infrastructure that would  
28 be required to deliver water to a new development, not to any proposed construction that  
would make use of water that is already being provided. This construction is not only

1 driven by the words used (i.e. “availability,” “required” and “capacity”) but from the  
2 context. As noted above, the CZLUO implements a Public Works Policy<sup>13</sup>.

3 Third, in 1997, both the Commission and the County agreed that, due to the unique  
4 circumstances of preexisting water service to the parcels in Tract 1804, the approval of its  
5 development did not contravene the relevant section of the CZLUO in effect at the time.  
6 (I.e. section 23.04.021c(3), which is now codified as section 23.04.432). This provision  
7 prohibited “development requiring new community water... service extensions beyond  
8 the urban service line... .” This further supports the Court’s conclusion that section  
9 23.04.430 does not impose a further requirement on the Petitioners to demonstrate there  
10 was “adequate water... capacity” to secure CDPs for the parcels. In short, for the very  
11 reasons the Commission was compelled to exempt Tract 1804 from the strictures of  
12 section 23.04.021c(3) in 1997, it is constrained from interpreting the newer companion  
13 provision to conflict with the earlier reading.

14 Fourth, there is additional language in section 23.04.430 which strongly weighs  
15 against the Commission’s interpretation because it would lead to absurd results. Under  
16 subsection b., a single-family dwelling on an existing parcel that is outside the USL may  
17 still connect to a community water system without making any showing of water service  
18 adequacy if there is service on an adjacent parcel. Under this provision, if the Petitioners’  
19 parcels did not have service but one of the other adjacent (and already developed) parcels  
20 in Tract 1804 did have it, then the Petitioners could connect to the community system. Of  
21 course, in this case they both already have connections of their own. It would be an absurd  
22 construction of section 23.04.432 to say that they could connect to their neighbor’s water  
23 service under subsection b, but if they wanted to use their own existing metered  
24 connection they have to make a threshold showing of “adequate sustainable” water.

25  
26 <sup>13</sup> The definition of Public Works in the LCP supports this point. “Public Works—means  
27 the following: a. All production, storage, transmission, and recovery facilities for  
28 water, sewage, telephone, and other similar utilities owned or operated by any public  
agency, or by any utility subject to the jurisdiction of the Public Utilities Commission,  
except for energy facilities.” (AR 001874)

1 For all of these reasons, the Court has concluded that the Commission's erroneous  
2 interpretation of the County's LCP infected both its threshold decision to take jurisdiction  
3 based upon the flawed conclusion that there was a substantial issue as well as its decision  
4 at the de novo stage. The latter decision was an abuse of discretion because it was not in  
5 accordance with law.

6 **B. The Commission Cannot Preserve Its Finding Of A Substantial Issue**  
7 **Warranting Exercise Of Jurisdiction Or Support Its Denial Of The CDPs**  
8 **By Relying On The Alleged Impacts On The Monterey Pines Forest That**  
9 **Were Not Appealed To The Commission.**

10 Because the Court has concluded the Commission erred in finding that there were  
11 substantial issues regarding compliance with the water-adequacy provisions of the LCP,  
12 it is necessary to determine whether the substantial issue finding could nonetheless still  
13 be supported on the alternative ground that there was a substantial issue related to impact  
14 on the Monterey Pine Forest.

15 This issue was not developed in the parties' briefing. Accordingly, on October 11,  
16 2024, the Court vacated the submission of the matter and requested the parties to file  
17 supplemental briefs. The order stated in part:

18 The Commission took jurisdiction of the appeals of both the Hadian CDP  
19 and the Bookout CDP, in part, based upon a finding that there was a  
20 substantial issue of LCP compliance raised concerning the impact of the  
21 projects on the Monterey Pine Forest. (AR-000650-651). Notwithstanding  
22 the Commission's statements that this issue was raised by the appeals (e.g.  
23 AR-000624, 000648) the Court has been unable to locate any place in the  
24 appeals that were filed (Bettenhausen, Key, Heinrichs, Commissioner  
25 Escalante and Commissioner Hart) where this issue was raised.

26 The Commission's response asserts six reasons for the Court's disregard of the  
27 fact that none of the appeals challenged the County's grant of the CDP as being in conflict  
28 with the LCP's provisions pertaining to the Monterey Pines Forest. These reasons are not  
persuasive.

///

1 First, the Commission contends that it has appellate jurisdiction over the County's  
2 CDP decision simply because the developments at issue are within the scope of Section  
3 30603 because they are located in a designated sensitive coastal resource area.  
4 (Commission Supp. Br. at 2.) Implicit in this contention is the notion that the breadth of  
5 the Commission's jurisdiction allows it to find a substantial issue sua sponte regardless of  
6 whether any appeal has raised the issue.<sup>14</sup> It is true that section 30603 provides that the  
7 Commission had jurisdiction to potentially review the development decisions at issue  
8 here, but section 30625 also provides that no such appeal shall be heard where "no  
9 substantial issue exists *with respect to the grounds on which the appeal has been filed.*"  
10 This provision would be a nullity if the Commission could, on its own, find a substantial  
11 issue warranting assertion of its jurisdiction to decide a CDP issue de novo regardless of  
12 whether anyone has raised the issue in an appeal based solely on the project falling within  
13 the Commission's potential jurisdiction. The significance of restricting substantial issue  
14 determinations to issues raised in an appeal is highlighted by the Commissions' own  
15 regulations. (See 14 Cal. Code Regs., § 13111.) Any appeal must identify the "specific"  
16 grounds for appeal" as well as "a statement of facts on which the appeal is based" and "a  
17 summary of each substantial issue raised by the appeal." The issue-specificity these  
18 regulations demand makes sense only if the scope expressed in the appeals defines the  
19 parameters of Commission's permissible review.

20 Second, the Commission contends that Petitioners waived the argument by not  
21 raising it in the administrative proceeding. Given that the Monterey Pines issue was  
22 injected into the administrative proceeding *after* the Petitioners filed their original letter-

23  
24 <sup>14</sup> The Commission seems to take issue with the Court's characterization of the  
25 substantial issue finding as being a predicate for its assertion of "jurisdiction."  
26 (Commission Supp. Br. at 2 ("The substantial issue phase of the Commission's appeal  
27 process is not a jurisdictional inquiry.") Yet the Commission's own documents  
28 describe it precisely in this way. (AR 000268 ("A finding of substantial issue would  
bring the CDP application for the proposed project under the jurisdiction of the  
Commission for de novo hearing and action.."))

1 brief on the substantial issue question, this is, at best, a curious contention. The letter from  
2 Appellants' counsel cited by the Commission for its silence on the issue was dated  
3 September 15, 2021. (AR 000603-000609) But up to that point, no one had challenged  
4 the CDPs on this basis. It was not until the Commission staff issued its report on October  
5 29, 2021 that the Monterey Pines Forest issue was raised sua sponte by the Commission  
6 staff (AR 000617, 000650).<sup>15</sup> No one, including the Commission, argued the Monterey  
7 Pines Forest issue when the CDPs were being considered by the County. Nor does this  
8 issue appear in any of the appeals filed by the private parties or two Commissioners. If  
9 the Commission's point is that after the Commission had reached its substantial issue  
10 determination the Petitioners should have protested the inclusion of the Monterey Pines  
11 Forest issue as a substantial issue, they did so by opposing the contentions on the merits  
12 at the de novo hearing. The Commission points to nothing in its own rules or procedures  
13 that would have permitted the Petitioners to seek reconsideration of the substantial issue  
14 decision.<sup>16</sup>

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15 <sup>15</sup> As Petitioners point out, at the November 17 "hearing" there was not a request by  
16 three Commissioners to have discussion of the staff recommendation so the  
17 recommended findings were adopted without debate or discussion. (Pet. Supp. Br. at  
18 7.)

19 <sup>16</sup> The Commission makes a variant of this waiver argument by asserting that Petitioners  
20 failed to exhaust administrative remedies. (Commission Supp. Br. at 5.) There are  
21 exceptions to the requirement of exhaustion, the most notable of which is when the  
22 agency lacks jurisdiction and resolving that jurisdictional defect does not depend on  
23 disputed factual issues. (*Coachella Valley Mosquito & Vector Control Dist. v.*  
24 *California Public Employee Relations Bd.* (2005) 35 Cal.4th 1072, 1082. Here, there  
25 is no dispute about the key fact which deprived the Commission of jurisdiction to  
26 consider the Monterey Pines Forest issues (i.e. that not one of the appealing parties  
27 raised the issue). The Commission concedes as much by failing to contest that point  
28 in its Supplemental Brief. In addition, applying the exhaustion doctrine here would  
not be consistent with the rationale for the doctrine (to give the administrative agency  
the opportunity to consider and potentially cure the issue before it gets presented in  
court). In this case there is nothing the Commission could have done to cure the  
Monterey Pines Forest jurisdictional defect if the Petitioners had raised this issue  
either when it was first injected into the appeal or at the de novo hearing. By then the

1 Third, the Commission contends that “it was not necessary for the appellants to  
2 specifically identify the Monterey Pine Forest ESHA for the Commissioners to evaluate  
3 it for a determination of substantial issue because several appeals raised ‘LCP  
4 inconsistency with ESHA policies as a topic.’ ” On its face this assertion conflicts with  
5 the Commission’s own regulation, cited and quoted above, which requires “specific  
6 grounds for appeal” and a summary of “each substantial issue” raised by the appeal.  
7 Moreover, the places in the appeals the Commission cites as raising a generic issue of  
8 consistency with ESHA policies, do not reflect that the appellants were objecting to the  
9 potential impacts on the Monterey Pine Forest site. Moreover, the Commission concedes  
10 that “[d]uring [the] substantial issue phase, the Commission is generally limited to  
11 considering the grounds upon which the appeals are based to determine whether there is a  
12 substantial issue with LCP policies” [Supp. Br. at 4].

13 Fourth, the Commission contends the Monterey Pine Forest issue is irrelevant  
14 because there were other grounds upon which the Commission found a substantial issue  
15 of LCP compliance. However, as discussed above, the Court has concluded that these  
16 other findings were based upon legal error. Thus, unless the Monterey Pine Forest  
17 substantial issue finding can be sustained on a stand-alone basis for jurisdiction, there was  
18 no valid predicate for the Commission to vacate the original CDP and decide the matter  
19 de novo.

20 Fifth, the Commission contends there was substantial evidence supporting all of  
21 the findings made at the substantial issue phase. This argument misses the point. The Court  
22 has found that the Commission’s water-related substantial issue findings were based on  
23 legal errors in construing the LCP. With respect to the Monterey Pines Forest issue,  
24 substantial evidence is also beside the point because that issue was not raised in any of the  
25 appeals.

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period for any appeal from the County’s CDP decision had long expired. (14 Cal. Code  
Regs. § 13328.8 [appeal period is 20 days from issuance of the challenged permit].)

1 Sixth and finally, the Commission claims that there was no prejudice to the  
2 Petitioners because there were other grounds upon which a substantial issue finding was  
3 made. This appears to be but an alternative way of expressing the fourth argument  
4 discussed above; it remains invalid.

5 In conclusion, the assertion of jurisdiction by the Commission cannot be justified  
6 by its finding of a substantial issue related to the Monterey Pines Forest issues. However,  
7 even if the Commission could properly have injected the Monterey Pines Forest issue into  
8 the appeal (or if an objection to its doing were to be deemed to have been waived) this  
9 issue cannot support a substantial issue finding on its own or provide a basis for the  
10 Commission to have decided against Petitioners at the de novo hearing. As with the water-  
11 adequacy issues, the Commission's treatment of the Monterey Pines Forest issue in this  
12 case ignored critical historical background. When Tract 1804 was being considered for  
13 subdivision in 1997, the Commission commented on the draft EIR and advised the County  
14 that it should incorporate the County's *Guidelines for Monterey Pine Forest Preservation*  
15 into the final project conditions of approval. (January 31, 1997 letter from Commission  
16 Coastal Planner Steven Guiney) (AR005059-005060.) The Final EIR did just that. (AR  
17 004633-004636) Moreover, as set forth in the EIR, 342 acres of Tract 1804 were set aside  
18 to be preserved as open space. This amounts to 90% of the tract and was done on  
19 recommendation of the Commission. Consistent with these historical commitments and  
20 conditions, the County's Tentative Notice of Action for the Hadian Parcel also required  
21 that any Monterey Pines that were removed would be replaced at a 4:1 ratio for each tree  
22 removed, and at a 2:1 ration for each tree impacted but not removed. (AR005470, ¶ E.)

23 The Commission's analysis of the Monterey Pines Forest issues ignored the  
24 historical context and the extensive mitigation conditions required by the Commission and  
25 the County when the Tract 1804 subdivision was originally created. It also failed to  
26 identify any respect in which any of those mitigation conditions had not been satisfied in  
27 the CDPs that the County approved. This renders the Commission's finding of a  
28 "substantial issue" of compliance with the LCP fatally flawed. The decision at the de

1 novo hearing denying the CDP's based on a finding of Monterey Pines Forest compliance  
2 issues was infected by the same flaws and was a prejudicial abuse of discretion.

3 **VI. DISPOSITION**

4 Based on the foregoing analysis, the Court has concluded that writs should issue  
5 vacating the Commission's orders denying the Petitioner's CDPs. Petitioners are directed  
6 to prepare a proposed order.

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10 Dated: December 31, 2024

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13 Honorable Michael C. Kelley  
14 Judge of the Superior Court

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**STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO  
CERTIFICATE OF MAILING**

Alireza Hadian vs. California Coastal Commission (Consolidated with 22CVP-0122 Non-Lead) LEAD	22CVP-0121
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I, Kimberly Hernandez, Deputy Clerk of the Superior Court of the State of California, County of San Luis Obispo, do hereby certify that I am over the age of 18 and not a party to this action. Under penalty of perjury, I hereby certify that on **12/31/2024** I deposited in the United States mail at Paso Robles California, first class postage prepaid, in a sealed envelope, a copy of the attached **RULING** : The foregoing document was addressed to each of the above parties.

OR

Document served electronically pursuant to CRC§2.251(b)(1)(B).

Dated: 12/31/2024

Michael Powell, Clerk of the Court

By: /s/ Kimberly Hernandez, Deputy Clerk  
Kimberly Hernandez