

No. _____

In The
Supreme Court of the United States

MOUNTAINLANDS CONSERVANCY, LLC;
THIRD DISTRICT PARKLANDS, LLC; and
THIRD DISTRICT MEADOWLANDS, LLC,

Petitioners,

v.

CALIFORNIA COASTAL COMMISSION,
COUNTY OF LOS ANGELES,

Respondents.

**On Petition For A Writ Of Certiorari
To The California Court Of Appeal,
Second Appellant District**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. When the California Coastal Commission’s certification of the County of Los Angeles’ local coastal program imposed a complete ban on the establishment of all future vineyards in the Santa Monica Mountains, did it deprive Petitioners (as property owners) of rights secured by the United States Constitution? For example:
 - a. Were Petitioners’ rights to procedural due process under the Fourteenth Amendment to the United States Constitution violated when the California Coastal Commission gave 24-hours’ notice of its 176-page modifications to the Local Coastal Program, switching from a complete ban of all future crop-based agriculture to a ban on the establishment of all future vineyards in the Santa Monica Mountains in perpetuity?
 - b. Were Petitioners’ rights to substantive and procedural due process also violated by the California Coastal Commission’s application and interpretation of state statutes and regulations governing “amendment of a certified local coastal program,” where no certified local coastal program existed for the Santa Monica Mountains and by calling it an “amendment,” the Commission could avoid a mandated “substantial issue” determination and a separate public hearing?

QUESTIONS PRESENTED – Continued

c. Does the Constitution protect against zoning laws that are unduly oppressive, arbitrary and unreasonable as applied and interpreted by the California Coastal Commission to destroy a fundamental attribute of property ownership – the pursuit of a lawful business enterprise on private property?

This Court's cases suggest that the answer is "yes" to each of these questions.

PARTIES TO THE PROCEEDING

Petitioners are Mountainlands Conservancy, LLC; Third District Parklands, LLC; and Third District Meadowlands, LLC, the Petitioners below.

Respondents are the California Coastal Commission, the Respondent below, and the County of Los Angeles, the Real Party In Interest below.

CORPORATE DISCLOSURE STATEMENT

In accordance with United States Supreme Court Rule 29.6, Petitioners make the following disclosures: Petitioners Mountainlands Conservancy, LLC, Third District Parklands, LLC, and Third District Meadowlands, LLC have no parent companies, subsidiaries, or affiliates that are publicly owned corporations.

STATEMENT OF RELATED CASES

Mountainlands Conservancy LLC et al. v. California Coastal Commission, Case No. BS149063, Los Angeles County Superior Court. Judgment entered November 20, 2017.

Mountainlands Conservancy LLC et al. v. California Coastal Commission, Case No. B287079, Court of Appeal of the State of California, Second Appellate District, Division Eight. Judgment entered April 1, 2020.

Mountainlands Conservancy LLC et al. v. California Coastal Commission, Case No. S262700, Supreme Court of California. Judgment entered July 15, 2020.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Mountainlands Conservancy, LLC; Third District Parklands, LLC; and Third District Meadowlands, LLC petition for a writ of certiorari to review the judgment of the California Court of Appeal, Second Appellate District in this case.

OPINIONS BELOW

The two written opinions of the Superior Court for the State of California, for the County of Los Angeles, are unpublished and unreported. The decisions are reproduced in the Petition for Writ of Certiorari Appendix (“App.”) 44-78 and App. 79-142.

The written decision of Division Eight of the Second District Court of Appeal for the State of California issued on April 1, 2020, was published, and is reported at 47 Cal.App.5th 214. It is reproduced in the Appendix. (App. 1-43.)

The Order of the California Supreme Court denying Petitioners’ Petition For Review was issued July 15, 2020, and is reproduced in the Appendix. (App. 143.)

JURISDICTION

The decision of the Second District Court of Appeal for the State of California, which is sought to be reviewed, issued on April 1, 2020. The California

Supreme Court denied further discretionary review on July 15, 2020.

Pursuant to Supreme Court Rule 13.3, and this Court’s March 19, 2020 Order regarding COVID-19, the deadline to file any petition for a writ of certiorari due was extended to 150 days from the date of the order denying discretionary review. This petition is timely, therefore, because it is filed within the 150-day period which expires December 14, 2020.

This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides, in pertinent part: “No person shall . . . be deprived of life, liberty, or property, without due process of law. . . .”

The Fourteenth Amendment to the United States Constitution provides, in relevant part: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law.”

The California Coastal Act of 1976 includes Public Resources Code, § 30241, stating:

The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas' agricultural economy, and conflicts shall be minimized between agricultural and urban land uses. . . .

Public Resources Code, § 30503:

During the preparation, approval, certification, and amendment of any local coastal program, the public, as well as all affected governmental agencies, including special districts, shall be provided maximum opportunities to participate.

Public Resources Code, § 30512, states:

(a) The land use plan of a proposed local coastal program shall be submitted to the commission . . . pursuant to the following procedure:

(1) . . . the commission shall, after public hearing and by majority vote of those members present, determine whether the land use plan, or a portion thereof applicable to an identifiable geographic area, raises no substantial issue as to conformity with the policies of Chapter 3 (commencing with Section 30200).

Public Resources Code, section 30514:

(a) A certified local coastal program and all local implementing ordinances, regulations, and other actions may be amended by the appropriate local government, but no such amendment shall take effect until it has been certified by the commission.

(b) Any proposed amendments to a certified local coastal program shall be submitted to, and processed by, the commission in accordance with the applicable procedures and time limits specified in Sections 30512 and 30513, except that the commission shall make no determination as to whether a proposed amendment raises a substantial issue as to conformity with the policies of Chapter 3 (commencing with Section 30200) as would otherwise be required by Section 30512. . . .

....

(e) For purposes of this section, “amendment of a certified local coastal program” includes, but is not limited to, any action by a local government that authorizes the use of a parcel of land other than a use that is designated in the certified local coastal program as a permitted use of the parcel.

STATEMENT OF THE CASE

This case arises from the California Coastal Commission’s certification of a Local Coastal Program designed to govern development for one of three County of Los Angeles expansive coastal areas – the Santa Monica Mountains. App. 2. The certified Santa Monica Mountains Local Coastal Program (“SMM LCP”) singled out and eliminated the right of property owners in the area to establish new vineyards (as opposed to any other type of crop, tree, or form of agriculture) and it did so on 24-hours’ notice.

A. Background On The California Coastal Act.

In 1976, the California Legislature enacted the California Coastal Act of 1976 (the “Coastal Act”). App. 2-3. As part of the Coastal Act, the California Coastal Commission (“CCC”) was established as an independent, quasi-judicial state agency.

The Coastal Act also establishes state-wide policies (referred to as “Chapter 3 policies”) designed to protect not only the scenic and visual qualities of coastal areas but also to protect “agriculture.” P.R.C. § 30241. The Commission is a form of “gatekeeper” and may not certify a proposed “local coastal program” (“LCP”) if it fails to conform to the Chapter 3 policies of the Coastal Act. P.R.C. § 30512, subd. (c). App. 55-57.

The Coastal Act requires local governments (i.e., a county) to prepare and submit an LCP to the Commission for certification. P.R.C. § 30108.6 and § 30500, subd. (a). An LCP consists of both the local government’s proposed Land Use Plan (“LUP”) as well as its proposed implementing ordinances (LIPs). App. 3.

Section 30512 mandates that the Commission must examine the submitted LCP (in either one phase involving the combined LUP and LIP, or in two phases, with just the LUP and then the LIP). In either case, the submission of the “new” LUP requires a CCC determination whether “no substantial issue” is raised as to the proposed LCP’s conformity with the Chapter 3 policies. (§ 30512, subd. (a)(1).) When substantial

issues are raised, another public hearing is required, among other things. (§ 30512, subd. (a)(2) and (3).)

On the other hand, § 30514 allows an amendment to a “certified local coastal program” but the procedure for amendments bypasses the “no substantial issue” requirement and the additional public hearing requirement of § 30512. P.R.C. § 30514, subd. (b). The term “amendment” is specifically defined and identified as an “amendment of a certified local coastal program.” P.R.C. § 30514, subd. (e).

A certified LCP (consisting of both an LUP and an LIP) is significant because in the absence of a certified LCP, only the Commission can issue a permit for use to a landowner and the local government has no permit-issuing authority. App. 57, App. 89-91.

B. The Arbitrary Certification Of The Santa Monica Mountains LCP With A Prohibition Of New Vineyards.

From 1986 through 2014, *no certified local coastal program existed for the Santa Monica Mountains coastal area*. The CCC previously had approved a 1986 Malibu Land Use Plan but all attempts to certify any LCP for the Santa Monica Mountains coastal area failed. App. 92-93.

On February 19, 2014, under the label of “amendment,” Los Angeles County submitted an entirely new, revamped, complete Local Coastal Program, expressly designed to repeal and replace the 1986

Malibu LUP and to finally result in a full, complete and properly-certified LCP. App. 6. The public was given notice of an April 10, 2014 hearing date.

The County's proposed Santa Monica Mountains LCP (consisting of a two phase presentation of an LUP and an LIP) was designed to prohibit all new and future "agriculture" in the Santa Monica Mountains – a patent violation of the Coastal Act's express Chapter 3 policies protecting agricultural lands. App. 6.

Yet, the Commission made no "substantial issues" determination under § 30512 regarding the LUP's lack of conformity to the Chapter 3 policies protecting agriculture. And the Commission did not schedule an additional public hearing for that determination.

Instead, the Commission issued a March 27, 2014 Staff Report, which recommended approval of the LUP with 60 modifications. App. 97. The Staff Report agreed with the County's proposed prohibition of all "new crop, orchard, vineyard, and other crop, nonlivestock agricultural uses" in the Santa Monica Mountains. App. 6-7, App. 99.

Following public outcry at the proposed elimination of all new crop-based agriculture, including Petitioners' protestations, the CCC staff altered its position. App. 10-11, 13. Yet, again, the CCC did not make a substantial issue determination or schedule a new public hearing under § 30512.

Rather, on less than 24-hours' notice, the Commission issued its 176-page April 9 Addendum, which

reclassified the prohibition of all new agriculture. The April 9th Addendum allowed for the establishment of new crop-based agriculture in all forms of crops, albeit under severe restrictions, but with one exception – vineyards. The Addendum singled out the establishment of all new vineyards for absolute, unconditional, and categorical prohibition, in perpetuity. App. 13-16.

Following the April 10 hearing, and additional public comments, the CCC completed the two-phase process by first certifying SMM LUP, followed by the certification of the SMM LIP. Final certification occurred on October 10, 2014. App. 17-18. As a consequence, the Santa Monica Mountains coastal area obtained its first “certified local coastal program,” which singles out the prohibition against the establishment of all new vineyards in the area.

C. The Judicial Proceedings

Petitioners filed a petition for writ of administrative mandamus, challenging the CCC’s certification of the SMM LCP as invalid. App. 18. Petitioners alleged that the SMM LCP was invalid because the Commission did not proceed in the manner required by law, the CCC failed to perform the “substantial issue” determination, the CCC failed to conduct further hearings, inadequate notice was given for the action taken and the Commission’s findings were not supported by the evidence. App. 18-19.

The trial court, acting in its role as an appellate court, found no error in the certification process and

affirmed the CCC’s decision, holding that the actions did not offend the constitutional provisions guaranteeing due process. App. 79-142. The trial court concluded the proposed SMM LCP was an “amendment of a certified local coastal program,” governed by P.R.C. § 30514, not § 30512. App. 19-20, 121. In doing so, the trial court gave “deference” to the CCC’s interpretation of these statutes and regulations. App. 120-121. The trial court denied the administrative mandamus Petition and entered final judgment against Petitioners.

Petitioners then filed their appeal to the Second District Court of Appeal. On April 1, 2020, Division Eight of the Second District issued its published decision affirming the judgment against Petitioners. App. 1-43.

In a published decision, the California Court of Appeal concluded, among other things, that a fair administrative hearing occurred, despite the 24-hours’ notice of the change in position taken by the Commission from a ban on all future agriculture to a ban on future vineyards.

Despite the fact that any mention of a mere 24-hours’ notice in many contexts should cause eyebrows to raise in consternation as a patent due process violation, the Court of Appeal rationalized its holding that the administrative hearing “complied with pertinent regulations,” satisfied due process requirements, and was “fair” by declaring: “That is the way the process is supposed to work.” App. 32. The appellate court

deplored Petitioners' due process arguments as "rhetoric." App. 33-34.

Petitioners argued on appeal that Section 30514 of the Coastal Act, as applied and interpreted by the CCC, was arbitrary and unreasonable. Petitioners argued that the statutory language, on its face, allowed for the CCC to bypass a substantial issue determination only with respect to an "amendment of a certified local coastal program" – of which there was none. The appellate court disagreed, citing to a single case, while acknowledging the absence of judicial decisions construing the language of sections 30512 and 30514, particularly in the context of where no certified LCP exists. App. 25. The California appellate court determined that the CCC was not required to make a "substantial issue" determination. App. 26. The judgment against the Petitioners was affirmed.

Petitioners then sought discretionary review of the California Second District's decision in the California Supreme Court. The California Supreme Court issued an order denying discretionary review on July 15, 2020. App. 143. This Petition follows.

REASONS FOR GRANTING THE PETITION

A. The Due Process Clause Of The Fourteenth Amendment Guarantees The Right To A Fair Administrative Proceeding And Protects Against The Deprivation Of Liberty And Property Without Due Process of Law.

The United States and California Constitutions establish both substantive and procedural due process rights available to all citizens. “The touchstone of due process is protection of the individual against arbitrary action of government.” *People v. Ramirez*, 25 Cal.3d 260, 267 (1979), quoting *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974). “The Fourteenth Amendment’s Due Process Clause protects persons against deprivations of life, liberty, or property; and those who seek to invoke its procedural protection must establish that one of these interests is at stake.” *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005).

These interests are at stake here because: “The right of [a property owner] to devote its land to any legitimate use is properly within the protection of the Constitution.” *Washington ex rel. Seattle Title Trust Co. v. Roberge*, 278 U.S. 116, 121 (1928); *Harris v. County of Riverside*, 904 F.2d 497, 503 (9th Cir. 1990) (the loss of a use and enjoyment of land is a property interest for which the landowner is entitled to constitutional procedural due process); *Action Apartment Ass’n, Inc. v. Santa Monica Rent Control Bd.*, 509 F.3d 1020, 1026 (9th Cir. 2007) (same).

Procedural due process under the United States Constitution and the California Constitution consists of the right to have “some form of hearing” before rights are affected, the right to receive “notice” of that hearing, and the right to be heard in a meaningful time and in a meaningful manner. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *People v. Allen*, 44 Cal.4th 843, 869 (2008).

Due process is flexible, and may vary depending on the context and the procedural protections demanded by each particular situation. Nevertheless, beyond criminal and civil trial considerations, quasi-legislative administrative decision-making also is subject to judicial review for violations of due process where constitutional rights of liberty and property are involved. *See St. Joseph Stock Yards Co. v. United States*, 298 U.S. 38, 52 (1936).

Due process rights in “some” form are recognized in administrative proceedings:

The right to a fair and open hearing is one of the rudiments of fair play assured to every litigant by the Federal Constitution as a minimal requirement. (citation omitted) There must be due notice and an opportunity to be heard, the procedure must be consistent with the essentials of a fair trial, and the Commission must act upon evidence and not arbitrarily.

R.R. Comm'n of California v. Pac. Gas & Elec. Co., 302 U.S. 388, 393 (1938)

This Court has adopted three “distinct factors” considered to be useful in determining the specific safeguards that may be required by the Constitution’s Due Process Clause as follows: “1) the nature of ‘the private interest that will be affected,’ (2) the comparative ‘risk’ of an ‘erroneous deprivation’ of that interest with and without ‘additional or substitute procedural safeguards,’ and (3) the nature and magnitude of any countervailing interest in not providing ‘additional or substitute procedural requirement[s].’” *Turner v. Rogers*, 564 U.S. 431, 444-445 (2011), quoting *Mathews, supra*, 424 U.S. at 335; *see also Lassiter v. Department of Social Services of Durham County*, 452 U.S. 18, 27-31 (1981).

The private interest in this case is the right to use one’s private property without unwarranted and arbitrary governmental interference. It is a right that can be lost by the slightest governmental excessiveness and a right that commands protections from arbitrary, unreasonable and misconceived intrusions.

This Court has recognized the fundamental nature of the right to make reasonable use of land: “[T]he right to build on one’s own property – even though its exercise can be subjected to legitimate permitting requirements – cannot remotely be described as a ‘governmental benefit.’” *Nollan v. California Coastal Commission*, 483 U.S. 825, 833 n.2 (1987). When a city imposes restrictions on the right to develop or use real property, usually in the context of a permit application process, the city is affecting a fundamental right.

The potential for arbitrary and offensive government intrusion into one's private business enterprises conducted on private property demands due process protections of "notice" of the final actions contemplated by the administrative agency and a meaningful opportunity to specifically address "the charge." *Mathews, supra*, 424 U.S. at 333.

California law is consistent. *Today's Fresh Start, Inc. v. Los Angeles Cty. Office of Educ.*, 57 Cal.4th 197, 213 (2013). In fact, in the context of an administrative proceeding, California courts have recognized that the right to a fair administrative hearing is violated – due process is denied – where the administrative agency's ultimate determination is based on notice so insufficient that the affected parties had no meaningful opportunity to refute, test or explain the information received. *Clark v. City of Hermosa Beach*, 48 Cal.App.4th 1152, 1172 (1996).

Further, where an administrative agency exceeds its statutory powers, its ultimate determination is void and may be set aside. *See Skinner & Eddy Corp. v. United States*, 249 U.S. 557, 562 (1919); *see also Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 388 (1926) (an ordinance can be declared unconstitutional where its provisions are "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.").

Here, the CCC's "ultimate determination" in the form of the certification of the SMM LUP was the singular elimination of vineyards (as distinct from

the severe restrictions imposed on all other types of crop-based, nonlivestock agriculture). The ultimate determination was based on the disclosure to the public of “the charges” in the form of a 176-page April 9 Addendum provided within 24-hours of the hearing. That type of short notice failed to allow for the marshalling of evidence sufficient to rebut the evidence considered by the CCC, which had previously related predominantly to the impairments of all crop-based, nonlivestock agriculture on coastal resources – not just vineyards. The ultimate decision to single out vineyards was arbitrary and nonsensical.

Significantly, in doing so, the CCC also improperly bypassed a statutorily-imposed procedural safeguard of an additional public hearing and a “substantial issues” determination. The CCC did so by concluding that the proposed, two-phase presentation of the SMM LCP was an “amendment of a certified local coastal program” where no such “certified local coastal program” existed.

As a consequence, the CCC failed to make a “substantial issues” determination and also failed to hold an additional public hearing contemplated by § 30512. This ignorance of the statutory mandate of § 30512 had the effect of denying the requisite public hearing required. That, in and of itself, constitutes a denial of due process. Further, the CCC’s interpretation of § 30514 (allowing for the CCC to bypass the “substantial issues” determination and public hearing) is inconsistent with the express statutory policy that the CCC is to provide “maximum” opportunities for the public to

participate (i.e., public hearings), not a minimum number of public hearings. P.R.C. § 30503. Again, the CCC's interpretation of the statutes to avoid hearings exhibits the arbitrary and capricious nature of the CCC's determination and the denial of due process.

An order based on a denial of due process is contrary to the law and must be set aside. *See Interstate Commerce Comm'n v. Louisville & N.R. Co.*, 227 U.S. 88, 92-93 (1913).

Here, the ultimate determination of the CCC denied Petitioners due process, was unconstitutional, and the court of appeal's decision to the contrary was erroneous. The Petitioners were prejudiced, as a result. From March 27, 2014, to the April 10, 2014 hearing, Petitioners submitted many documents into the administrative record to refute a complete ban on all crop-based, nonlivestock agriculture. As of April 9, 2014, the CCC sought a complete ban of all new crop-based, nonlivestock agriculture in the Santa Monica Mountains. The fundamental nature of the "evidence" reflected that virtually all discussion of any adverse impact to the coastal resources in the area occurred almost exclusively in the context of the adverse impact of all crop-based agriculture and livestock (while also mentioning vineyards). There was no substantial evidence that vineyards (as opposed to other crop-based agriculture) were deserving of isolation or distinction as being uniquely disruptive of watersheds, erosion, ESHA, scenic views or of any other coastal resource.

There was no evidence of ponderable significance to suggest vineyards use more water than other kinds of “crop-based agriculture,” so as to justify CCC’s decision to single out vineyards. There was no evidence to suggest that the establishment of vineyards would cause more disturbance of habitats, more erosion of soil, more water pollution, more soil pollution, or more use of pesticides than rows of avocado trees, orange trees, pecan trees, corn stalks, or any other crop-based agriculture. There was no evidence to suggest that vineyards’ trellis-use is any more unsightly and disturbing to scenic views than the high fencing, nighttime lighting, and structural facilities associated with Cannabis operations. *See California Coastal Commission Memorandum, Cannabis in the Coastal Zone and Regulatory Requirements of the Coastal Act, July 18, 2018, <https://documents.coastal.ca.gov/assets/agriculture/Cannabis%20Informational%20Document%207.18.18.pdf>.*

Because of the CCC’s 24-hours’ notice of the ultimate CCC determination, Petitioners could not have anticipated CCC’s intent to single out “vineyards” for exclusion. Why did the CCC not propose severe restrictions on all new crop-based nonlivestock agriculture rather than singling out vineyards? Petitioners were misled and thereby precluded from refuting the CCC’s proposition and from marshalling the necessary evidence to do so. This is a grave denial of due process, as well as a clearly arbitrary and unreasonable abuse of power.

The Fourteenth Amendment's procedural due process rights are well-known and easily recognizable by the average television viewer in certain contexts. Various laws are known to protect the procedural due process rights of accused thieves, drug dealers, and murderers to receive adequate notice of the criminal charges against them and an opportunity for a fair hearing. *See Gideon v. Wainright*, 372 U.S. 335, 342-45 (1963) (the right to retain counsel). Other laws protect similar due process rights of particular government-employed individuals, such as teachers, fire fighters, police officers, and tenured college faculty. Yet, property owners have little to no clarity or assurance that they will receive requisite due process rights in zoning matters – such as the right to have sufficient notice of the precise administrative zoning sought to be enacted or the right to present rebuttal evidence or witnesses when the state seeks to prohibit a property owner from devoting its land to any legitimate use. Petitioners contend those rights exist. *Washington ex rel. Seattle Title Trust Co. v. Roberge*, 278 U.S. 116, 121 (1928).

The concept of due process is fleeting and despite the citation to several of this Court's decisions, no clear guidance exists on the manner in which to determine due process parameters. *See Dusenberry v. United States*, 534 U.S. 161, 167 (2002) (rejecting the *Mathews* balance of three factors).

In order to provide guidance to state courts in these areas involving administrative, quasi-legislative decisions affecting private constitutional property rights, review by this Court is warranted.

Many businesses and individuals own property in numerous jurisdictions and are subject to a myriad of complex, often onerous, land restrictions that hinder or stymie productive use of their land. These entities should not be subject to uncertain or inconsistent application of due process principles and Constitutional law.

For these reasons, this Court should grant the writ of certiorari.

B. Substantive Due Process Within The Fourteenth Amendment Also Protects Against Government Abuse Of Power Or Undue Oppression Of Individual Property Rights.

This Court has determined that the Due Process Clause prohibits laws “that are unnecessary, and that will be oppressive to the citizen.” *Mugler v. Kansas*, 123 U.S. 623, 8 S. Ct. 273, 289 (1887); *see also County of Sacramento v. Lewis*, 523 U.S. 833, 840 (1998) (Due process prevents government “from abusing [its] power, or employing it as an instrument of oppression.”) (citations omitted); *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 387 (1926); *Hagar v. Reclamation Dist. No. 108*, 111 U.S. 701, 709 (1884) (If a government action is “found to be arbitrary, oppressive, and unjust, it may be declared to be not ‘due process of law.’”).

An arbitrary deprivation of a landowner’s constitutionally protected property right may give rise to a viable substantive due process claim as well as a

procedural due process claim. *Action Apartment Ass'n, supra*, 509 F.3d at 1026.

And this Court has long held that the Due Process Clause protects against laws that are unduly oppressive of property rights. *Goldblatt v. Town of Hempstead, N.Y.*, 369 U.S. 590, 594 (1962) (quoting *Lawton v. Steele*, 152 U.S. 133, 137 (1894)).

The California appellate court's decision in this case concluded that no substantive due process violation occurred. The Second District determined that the Coastal Commission's interpretation of § 30514 was entitled to deference, noting that the CCC **has repeatedly used** that section to justify the certification of a replacement program where no "certified local coastal program" had previously existed. App. 25-26. This begs the question: What purpose does § 30512 serve? Call a new LCP an "amendment" and bypass the provisions of § 30512 altogether, regardless of whether the LCP is "new" or not. The result is that § 30512 is not used and becomes meaningless.

In essence, the California Coastal Commission has been given *carte blanche* by the California courts to continue to abuse and misuse the mandatory, statutory system designed for maximum public participation in a way that is guaranteed to thwart maximum public participation.

For the California courts to uphold unduly arbitrary and oppressive regulation in this manner threatens more than property rights – it strikes at the heart of individual liberty. Property rights are "an essential

pre-condition to the realization of other basic civil rights and liberties which the [Fourteenth] Amendment was intended to guarantee.” *Lynch v. Household Fin. Corp.*, 405 U.S. 538, 544 (1972) (“[A] fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other.” *Id.* at 552.); *see also Murr v. Wisconsin*, 137 S. Ct. 1933, 1943 (2017) (“Property rights are necessary to preserve freedom, for property ownership empowers persons to shape and to plan their own destiny in a world where governments are always eager to do so for them.”). Our individual liberty is inseparable, in essence, from our rights in property.

Petitioners contend that they were denied procedural and substantive due process during the CCC’s decision-making process. Not only did the CCC violate procedural due process as argued above, by providing only 24-hours’ notice of their ultimate determination to single out vineyards as the “agriculture” prohibited but substantive due process was denied by (1) the arbitrary choice to single out vineyards and (2) the use of deference to administrative interpretation of statutes that has no bearing on the actual language of the statute itself.

The Fourteenth Amendment has a basic premise that a hearing before an administrative body or court must be fair in all respects and must not be a mere formal procedure intended to precede a predetermined result.

The right to sufficient notice designed to allow for a party to marshal and present rebuttal evidence are critical procedural due process ingredients. Those rights were not afforded to Petitioners in this case. The CCC's decision in this case cannot be left to stand.

It may be perfectly appropriate that the right to use property be subject to reasonable government regulation and restrictions in furtherance of public health, safety, and general welfare. Yet, such restrictions must be imposed with some modicum of fairness and due process. The court below concluded that 24-hours' notice and a misuse of an agency's statutory interpretation "is the way the process is supposed to work." App. 32.

This Court should grant certiorari to consider the minimal procedural and substantive due process standards that administrative agencies, like the CCC in this case, must provide to landowners, like Petitioners in this case. Only when this Court clarifies and determines the minimal standards necessary to guarantee due process will property owners be able to rest.

CONCLUSION

This Court has the opportunity to declare that the California Coastal Commission's decision to pivot and ramrod a full prohibition against all future vineyards in the Santa Monica Mountains on 24-hours' notice and on the pretense that the Local Coastal Program was an "amendment of a local coastal program" when

none previously existed, was arbitrary, inherently unfair, and a denial of both substantive and procedural due process. This Court can declare that California's statutory scheme, as applied and interpreted, *is not* "the way the process is supposed to work," as decided by the Second District Court of Appeal of California. (App. 32.) Review is necessary to provide guidance and clarification of these important issues of law likely to have a profound impact of public significance.

Petitioners respectfully request that this Court grant this Petition for a Writ of Certiorari, that the judgment against Petitioners be reversed and remanded to the trial court with directions that the California Coastal Commission vacate its certification of the Santa Monica Mountains Local Coastal Program and to conduct further hearings as mandated by statute.

Respectfully submitted,
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