San Mateo Land Exchange v. City of Half Moon Bay

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I. INTRODUCTION

Appellants San Mateo Land Exchange, et al. (hereafter appellants) challenge the denial of their petition for writ of mandate. In this petition, appellants argued that the City of Half Moon Bay's approval of a development project violated the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 2100 et seq.) and its approval of a Development Agreement between the City and the project's developers was illegal and constituted a taking of appellants' property. Like the trial court, we disagree with these arguments and hence affirm the judgment.

II. FACTUAL AND PROCEDURAL BACKGROUND

This appeal challenges the City of Half Moon Bay's approval of a 207-acre development along its coastal bluffs. As with many such projects along the California coast, this development represents decades of effort on the part of government, local citizens and interested developers to strike a balance among competing interests.

The project's genesis is in the City's Local Coastal Program (LCP). The LCP was approved in 1981 by the Coastal Conservancy, the California Coastal Commission and the City of Half Moon Bay. The LCP's "Development" section discusses, among other potentially developable pieces of land in Half Moon Bay, an area west of State Highway 1 designated the "Wavecrest Restoration Project." This appeal concerns this project, and the reduced version of it that was ultimately approved.

The Wavecrest Restoration Project area encompasses 630 acres; 490 acres in the "North Project Area" and 140 acres in the "South Project Area." The parties to this appeal own property in the North Project Area. The LCP describes the Wavecrest Restoration Project in general terms. It does not identify any specific project for which approvals were pending. Instead, the LCP sets out a series of conditions to be satisfied by any development in the area. Among other things, the LCP directs that a specific plan be prepared for any proposed development in the area. The LCP also sets out a maximum number of units to be developed (1,000), sets aside acreage for community use, and

specifies other required public facilities and accessways.

In 1991, the City's voters enacted Measure A, a residential growth initiative that limited growth in the City to three percent a year. The 1999 limit on housing was 114 units.

In July 1995, the City adopted the North Wavecrest Redevelopment Plan (the Redevelopment Plan) and certified a master environmental impact report for the plan (the 1995 EIR). The Redevelopment Plan covered the entire 490-acre North Project Area, including property owned by both respondents and appellants.

However, shortly after the City adopted the Redevelopment Plan, the voters of Half Moon Bay rejected it. The certification of the 1995 EIR was not affected by the vote.

The project with which this appeal is concerned represents a reduced version of the voter-rejected Redevelopment Plan. The project does not involve appellants' property, which is adjacent and to the west of the project. The Wavecrest Village Specific Plan (the Project) covers approximately 207 coastal bluff acres in Half Moon Bay and includes 225 single family homes, 46 affordable housing units, a 10-acre public park with ball fields, 6 acres of community gardens, a new 25-acre middle school site, a Boys and Girls Club facility, 61 acres of publicly dedicated bluff tops and open space, coastal trails and access areas, preservation of view corridors and riparian areas and 200,000 square feet of visitor serving and commercial space.

In 1999, the City prepared and certified a Subsequent EIR for the Project (the 1999 Subsequent EIR). The 1999 Subsequent EIR focused on Project changes or aspects not addressed in the 1995 EIR. On July 6, 1999, the City approved the Project and a related Development Agreement. Appellants, owners of neighboring land, challenged these approvals by filing a petition for a writ of mandate, which was denied on May 22, 2000. This timely appeal followed.

III. DISCUSSION

A. CEQA Challenge to the 1999 Subsequent EIR for the Project

1. Standard of Review

In San Franciscans for Reasonable Growth v. City and County of San Francisco (1984) 151 Cal.App.3d 61, 71-72 (San Franciscans for Reasonable Growth), this court summarized the standard of review applicable here: "The scope of review on this appeal is limited to the question of whether the City's agencies abused their discretion in certifying the EIRs and approving the RPIs' projects. [Citations.] This court may find such an abuse if the agencies failed to comply with CEQA and the Guidelines or if their findings are not supported by substantial evidence in light of the whole record. [Citations.] It is not our function to pass on the correctness of an EIR's environmental conclusions [citation] or to

substitute our judgment for that of the City agencies empowered to make the decisions here under review [citation]. However, we do have a duty to consider the legal sufficiency of the steps taken by the City agencies [citation], and we must be satisfied that these agencies have fully complied with the procedural requirements of CEQA, since only in this way can the important public purposes of CEQA be protected from subversion. [Citations.]"

2. Adequacy of the 1999 Subsequent EIR's Cumulative Impacts Analysis

Appellants argue that the 1999 Subsequent EIR's cumulative impacts analysis is flawed because it fails to discuss the possible development of their property. We disagree.

An EIR must contain an "adequate discussion of significant cumulative impacts." To do so, it must consider "past, present, and probable future projects producing related or cumulative impacts . . . ." (CEQA Guidelines, § 15130, subd. (b)(1)(A) (hereafter Guidelines).) [1] One of the significant issues in this appeal is whether the City properly defined "probable future projects." We conclude that it did. An EIR may base its cumulative impacts discussion on a description of "probable future projects" "included in . . . [a] general plan . . . or other similar plan . . . ." (Guidelines, § 15130, subd. (b)(1)(B)(2).) Here, the City based its cumulative impacts analysis on build-out projections contained in its General Plan. The 1995 EIR, which was incorporated into the 1999 Subsequent EIR, takes its projections for new development from the City's General Plan, which estimated that "Future development could include an increase in approximately 3,183 single family units, 445 townhouses, and 80 apartments." Within this analysis was a forecasted 941 new homes in the North Wavecrest Area (including property owned by appellants).

The cumulative impacts analysis itself also complies with CEQA. The 1999 Subsequent EIR, which incorporates much of the discussion contained in the 1995 EIR for the much larger Redevelopment Project, thoroughly considers the cumulative impact of potential development in the City, particularly with regard to traffic impacts. It need not do more.

Appellants, however, argue that the City was required to discuss in its cumulative impacts analysis the Project's effect on access to their land. Specifically, appellants complain that the 1999 Subsequent EIR should have taken into account various access routes to their property, which, they contend, would be cut off by the Project. Appellants further object to a parking area, which, they argue, is placed in the middle of an access route to their property. Appellants also take issue with the plan to vacate three paper streets, Stanford, Yale and Harvard Avenues. Finally, appellants maintain that the 1999 Subsequent EIR fails to consider that one potential access route to their property appears to go over a riparian corridor. For a variety of reasons, none of these claims has any merit.

First, and most basically, appellants' argument loses sight of what a cumulative impact is: "an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts." (Guidelines, § 15103, subd. (a)(1).) For example, in San

Franciscans for Reasonable Growth, a cumulative impact on the City's bus system results from the increase in riders because of the project itself and reasonably foreseeable future projects. (San Franciscans for Reasonable Growth, supra, 151 Cal.App.3d at p. 77-80.) Similarly, the 1999 Subsequent EIR properly considered whether the Project, in combination with other possible developments in the City (including the development of appellants' property), might result in increased traffic on existing roads.

The issue appellants raise -- whether development of the Project will result in loss of desirable access roads to their undeveloped property -- is not a question a cumulative impacts analysis must answer. The Guidelines make clear that a cumulative impacts analysis "should focus on the cumulative impact to which the identified other projects contribute rather than the attributes of other projects which do not contribute to the cumulative impact." (Guidelines, §15130, subd. (b), italics added.) Appellants' argument is nothing more than an improper attempt to focus the cumulative impacts analysis on "attributes of other projects which do not contribute to the cumulative impact." [2]

Beyond this basic definitional problem, appellants seek a level of specificity that is not required within a cumulative impacts analysis. A cumulative impacts analysis need not be as specific as an EIR for the project itself. It "shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided for the effects attributable to the project alone. The discussion should be guided by the standards of practicality and reasonableness . . . ." (Guidelines, § 15130, subd. (b).)

Appellants, however, argue that issues having to do with the possible development of their land should have been included in the 1999 Subsequent EIR because the potential development of their land constitutes a "probable future project." As we have explained, the cumulative impacts discussion in the 1999 Subsequent EIR does, in fact, consider the potential development of appellants' property in the general terms which satisfy the Guidelines' requirement that this discussion "need not provide as great detail as is provided for the effects attributable to the project alone." This alone is sufficient reason to reject appellants' argument.

We also agree with the trial court that any potential development of appellants' land is simply too speculative to be considered a "probable future project" that must be discussed in any more specific terms in a cumulative impacts analysis. The Guidelines provide: "`Probable future projects' may be limited to those projects requiring an agency approval for an application which has been received at the time the notice of preparation is released . . . ." (Guidelines, § 15130, subd. (b)(1)(B)(2).) Thus, in San Franciscans for Reasonable Growth, supra, 151 Cal.App.3d at p. 77, this court held that the cumulative impacts analysis conducted for a high rise office building in San Francisco's Financial District was deficient because it failed to consider other high rise building projects that were under review at the time. Here, there is no evidence in the administrative record that appellants have submitted an application or plans for any development of their property. Thus, there is no "probable future project" with details specific enough to be discussed in a cumulative impacts analysis.

Similarly, in Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 396 (Laurel Heights), our Supreme Court held that an EIR need only address "reasonably foreseeable" future projects that are likely to change the scope or the environmental impacts of the projects. Appellants argue that certain facts indicate that the development of their property is "reasonably foreseeable." Specifically, appellants point to (1) their ownership of "legally subdivided" lots and (2) the general description of development in the North Wavecrest Area contained in the LCP. [3]

The administrative record contains ample, substantial evidence, that development is not reasonably foreseeable. As we have noted, appellants have not submitted an application or even announced a specific plan for their property. The "legally subdivided lots" to which appellants refer are substandard and disjointed and do not meet current standards that would allow development. The LCP's descriptions of development in the North Wavecrest Area are schematic rather than specific and in no way suggest that development of appellants' property is "reasonably foreseeable." Moreover, appellants' property is located on sensitive coastal bluffs and riparian areas, making it an unlikely candidate for development. There is no infrastructure, water, sewers or paved roads that might facilitate development of appellants' property.

Ironically, the final version of the 1999 Subsequent EIR does address appellants' objections. The 1999 Subsequent EIR notes appellants' arguments concerning access to their property and concludes that "The development of the Wavecrest Village Specific Plan would not preclude the future improvement of and/or connection to any of [the] vehicular access routes [to the remaining areas located within the Wavecrest Restoration Plan Area.]" One significant access route the parties discuss in their briefs is between Wavecrest Road, which is a primary access route to Highway 1 and Park Avenue, which borders appellants' lots and is parallel to Wavecrest Road. The 1999 Subsequent EIR states "the Specific Plan will provide for an easement that will maintain the public right of way connection of Wavecrest Road to Park Avenue. Improvements that would limit the future extension of Wavecrest Road to Park Avenue will be prohibited by the City as part of the project." The 1999 Subsequent EIR also notes that "[t]he improvement of Wavecrest Road will allow for an additional connection to the paper lots located west of the Specific Plan area which will provide connections to Highway 1 via Wavecrest Road, and the extension of Main Street/Higgins Purisima." Thus, it is clear that the 1999 Subsequent EIR takes into account the issue of access to potentially developable lots to the west of the Project.

As for the proposed parking lots, a review of the administrative record reveals that these lots are to be located to the side of Wavecrest Road, not in the middle of it as appellants contend.

Stanford, Harvard and Yale Avenues, which are vacated in the Project, have never been constructed and were created as part of a 1907 subdivision. The 1999 Subsequent EIR explains that the "substandard size of these streets presents potential public safety problems as the width is not sufficient for the provision of shoulders or sidewalks." This more than meets any requirement that

the 1999 subsequent EIR adequately address the cumulative impact of development of the Project and any potential development of appellant's property.

Finally, appellants maintain that access to their property from a possible extension to Park Avenue appears to run through a riparian corridor. However, because appellants have not even proposed any specific configuration for development on their property, it is not at all certain that this extension will ever occur. Park Avenue is not within the project boundaries and certainly, at this point, no such route through a riparian corridor is part of the Project itself. Respondents also point out that the LCP provides that when no feasible or practicable alternative exists, "improvement, repair or maintenance of roadways or road crossings" are permitted uses in riparian corridors.

In sum, we conclude that the City did not abuse its discretion in approving the 1999 Subsequent EIR.

B. Development Agreement

Appellants also challenge the Development Agreement entered into by the City and the Project's developers. Under the terms of this Development Agreement, the City agreed to issue to the Project's developer the following "Measure A allocations": 25 in 1999-2002, 35 in 2003-2005 and 21 in 2006. Measure A establishes yearly limits on permits for new residential development. The Measure establishes two categories of new residential development: "infill" and "new." "Infill" is defined as legally subdivided lots, as of the date Measure A was adopted, which have all required infrastructure. "New" development is any proposed residential development for which a subdivision application was submitted after the date Measure A was adopted. For example, the total number of available permits to be issued in 1999, based on the population of Half Moon Bay, was for 114 units. Measure A anticipated that half the development allocations would go to "infill" and half to "new," although it also left room for the City to adjust this division.

Appellants contend that the City's decision to enter into the Development Agreement is (1) an abuse of discretion and in violation of law because it grants a "monopoly" on Measure "A" allocations to the Project's developer; (2) constitutes a temporary taking because it precludes appellants from developing their property for a period of "8 to 15 years"; (3) improperly surrenders the City's police powers and (4) violates principles of equality and justice "upon which this country was founded."

A City may enter into an agreement with a developer or property owner to vest development rights and lock into place rights and obligations regarding land use and related regulations. Government Code section 65864 subdivision (c), contemplates that these agreements will involve tradeoffs in which municipalities give up the ability to enact subsequent exactions in return for the additional public benefits provided by negotiated development projects.

The City's approval of the Development Agreement is a legislative act which will not be set aside unless it is arbitrary, capricious, or unlawful. (Gov. Code, § 65867.5, Santa Margarita Area Residents

Together v. San Luis Obispo Board of Supervisors (2000) 84 Cal.App.4th 221, 227-228 (Santa Margarita).) Appellants appear to be arguing that the City acted in an arbitrary, capricious or unlawful way because, given the restrictions imposed on residential growth by Measure A, the Development Agreement allocates, according to appellants "virtually all" available development permits to the Project for "8-15" years. [4]

Even were we to accept the factual accuracy of appellants' reading of the Development Agreement and Measure A, [5] the City entered into this agreement after specifically recognizing that committing Measure A allocations to the Project involved a "tradeoff" in which the benefits of entering into the Development Agreement outweighed the costs of "using up at least half of our Measure A allocations." The City articulated these benefits as follows: "the economic benefits of the project due to the creation of new employment; the establishment of policies, programs and regulations that facilitate future development of the Plan Area to implement the LCP/LUP and allow for well-planned development of undeveloped areas while preserving important resources, achieving coastal access objectives, eliminating poorly platted and unimproved subdivisions and encouraging provision of low and moderate income housing; the implementation of the Wavecrest Restoration Project and its Development Conditions as they relate to the Specific Plan area; and the opportunity for development of public uses and facilities including a Middle School, Boys and Girls Club and dedication of 68 acres of open space with public access trails and community garden, in addition to a new enhanced 10-acre ball field facility . . . ." In light of these specifically-articulated benefits, we cannot agree that the City acted in an arbitrary, capricious or unlawful manner in entering into the Development Agreement.

Nor do we agree with appellants that the Development Agreement effects a temporary taking of their property. We agree with respondents that appellants' takings claim is not ripe for adjudication. In Milagra Ridge Partners, Ltd. v. City of Pacifica (1998) 62 Cal.App.4th 108, 117-119, the court articulated the general rule that "[t]he developer bears a heavy burden of showing that a regulation as applied to a particular parcel is ripe for a taking claim." Before such a claim is made, the plaintiff "must establish that it has submitted at least one meaningful application for a development project which has been thoroughly rejected . . . ." (Long Beach Equities, Inc. v. County of Ventura (1991) 231 Cal.App.3d 1016, 1032.) The City must also make a "`final and authoritative determination of the type and intensity of development legally permitted on the subject property.'" (Ibid.) Here, appellants have not submitted any application for development of their property, and certainly have not been "thoroughly rejected." Nor does this case fall within the futility exception to this rule articulated most recently by the United States Supreme Court in Palazzolo v. Rhode Island (2001) __ U.S. __ [121 S.Ct. 2448, 2459-2460]. In Palazzolo, the court held that "once it becomes clear that the agency lacks the discretion to permit any development, or the permissible uses of the property are known to a reasonable degree of certainty, a takings claim is likely to have ripened." (Id. at p. 2459.) This, or course, is not true here, where no application has ever been submitted. Therefore, appellants takings claim is not ripe.

Appellants respond by citing Alameda County Land Use Assn. v. City of Hayward (1995) 38 Cal.App.4th 1716, 1723 and California Alliance for Utility Etc. Education v City of San Diego (1997) 56 Cal.App.4th 1024. Appellants argue that these cases stand for the proposition that their takings challenge may be heard because "the parties are in fundamental disagreement over the construction of particular legislation or they dispute whether a public entity has engaged in conduct or established policies in violation of applicable law." These cases, however, are inapposite because neither involved a takings claim. Instead, they address the quite different question of whether a party may bring a declaratory relief action seeking clarification of the construction of particular legislation or a ruling that a public entity's action or policy violates applicable law.

Nor is it the case that the City has improperly contracted away its municipal functions by entering into the Development Agreement. A city may not enter into a contract in which it surrenders or abnegates its "control of a properly municipal function." (Morrison Homes Corp. v. City of Pleasanton (1976) 58 Cal.App.3d 724, 734.) However, the Development Agreement in this case, like the one in Santa Margarita, supra, 84 Cal.App.4th at page 233, commits the City and the Project's developer to a particular project, including public improvements and amenities in return for an agreement to permit development. As such, it represents a "legitimate exercise of governmental police power in the public interest [rather than] a surrender of the police power to a special interest." (Ibid.)

Finally, without citation to any authority, appellants contend broadly that the Agreement violates "public policy," "equal protection of the laws," and "equal access to government." We have concluded that the Agreement is a valid legislative act and appellants' vague accusations, unsupported by specific argument or authority, do not alter that conclusion.

IV. DISPOSITION

The judgment is affirmed. Costs on appeal to respondents.

We concur:

Lambden, J.

Ruvolo, J.

1. All subsequent references to "Guidelines" are to the CEQA Guidelines, which implement CEQA. (Cal. Code Regs., tit. 14, § 15000 et seq.)

2. We note, however, that the 1999 Subsequent EIR does address these questions and concludes that various access routes to appellants' property will continue to be possible after the Project is completed.

3. Appellants have filed and respondents have objected to a motion to take judicial notice of certain "cost sharing" agreements. These agreements are not part of the administrative record. We agree with respondents that they are not relevant to the City's certification of the EIR and approval of the Project. (Western States Petroleum Assn. v. Superior Court (1995) 9 Cal.4th 559, 573 [courts may only review evidence that was actually before the administrative decision makers prior to or at the time of their decision].)

4. Appellants also contend that the City's actions are particularly objectionable when considered in light of Measure D, a growth control ordinance enacted by the City's voters. Measure D, however, was not enacted until five months after the City entered into the Development Agreement and has not yet been implemented by the City. Therefore, this subsequent event has no bearing on the question of whether, when the Development Agreement was signed, the City acted in an arbitrary, capricious or unlawful manner.

5. In fact, our reading of these documents indicates that appellants' characterization of the limits on development posed by Measure A is grossly exaggerated.