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Filed November 1, 2022

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RANDY RALSTON; LINDA MENDIOLA, Plaintiffs-Appellants, v. COUNTY OF SAN MATEO; CALIFORNIA COASTAL COMMISSION, Defendants-Appellees.	No. 21-16489 D.C. No. 3:21-cv-01880-EMC MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Edward M. Chen, District Judge, Presiding

Argued and Submitted October 20, 2022
San Francisco, California

Before: S.R. THOMAS and M. SMITH, Circuit Judges, and McSHANE,** District Judge.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Michael J. McShane, United States District Judge for the District of Oregon, sitting by designation.

Randy Ralston and Linda Mendiola (jointly referred to as "Ralston") appeal the district court's dismissal of their Fifth Amendment takings claim against the County of San Mateo ("the County") and the California Coastal Commission. We review a district court's dismissal of a complaint under Fed. R. Civ. P. 12(b)(1) and (6) de novo. *See Carson Harbor Vill., Ltd. v. City of Carson*, 353 F.3d 824, 826 (9th Cir. 2004); *Franceschi v. Schwartz*, 57 F.3d 828, 830 (9th Cir. 1995). As the parties are familiar with the facts, we do not recount them here. Because the County has not reached a final decision regarding how its regulations apply to Ralston's property, Ralston's takings claim is not ripe for federal court review. We affirm.

The Fifth Amendment Takings Clause "prohibits the government from taking private property for public use without just compensation." *Palazzolo v. Rhode Island*, 533 U.S. 606, 617 (2001). Courts should not consider the merits of a takings claim unless it is ripe for adjudication. *See id.* at 618; *Pakdel v. City & County of San Francisco*, 141 S. Ct. 2226, 2228 (2021) (per curiam). A regulatory takings claim ripens when "there [is] no question . . . about how the 'regulations at issue apply to the particular land in question.'" *Pakdel*, 141 S. Ct. at 2230 (quoting *Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S. 725, 739 (1997)).

Ralston first argues that his claim is ripe based on the County's Local Coastal Program ("LCP") regulations themselves which, Ralston contends, categorically prohibit him from building a house on his property. He asserts that no development permit

application is necessary for a use prohibited by law. Ralston's argument fails for multiple reasons.

As an initial matter, Ralston does not clearly allege that his property is located in a defined riparian corridor subject to the County's LCP development restrictions. Ralston relies on a 2006 map on the County's website to support his allegation that his property is "depicted" as being entirely within a riparian corridor. But as the County explained, the LCP defines riparian corridors based on the type and amount of plant species in the area, which can change over time. The same 2006 map provides the caveat that "[s]ite specific boundary surveys, riparian buffer delineations and biological studies" are required to determine permissible developments in these areas. Because Ralston did not submit a permit application, the County does not have the necessary information to determine whether Ralston's property meets the LCP's riparian corridor criteria and to what extent, if any, the County's regulations may restrict development on his property.

Even assuming Ralston's property is located entirely within a riparian corridor and subject to the LCP's development restrictions, the County's LCP alone cannot serve as the County's final decision for an as-applied takings challenge.[1] Ralston argues that "by prohibiting Ralston from building a home in conformity with R-1 zoning, the County's riparian corridor LCP regulation has resulted in a taking." Assuming, without deciding, that a categorical

[1] Ralston clarified in his Reply Brief that he brings an as-applied takings challenge rather than a facial challenge.

regulation could itself constitute a final decision for ripeness purposes, this is not such a case.

Here, the County is given discretion in the application of its LCP regulations under section 30010 of the California Coastal Act, which creates a "narrow exception to strict compliance with restrictions on uses in habitat areas" if necessary to avoid an unconstitutional taking. *See McAllister v. Cal. Coastal Comm'n*, 169 Cal. App. 4th 912, 939 (2008); *see also Felkay v. City of Santa Barbara*, 62 Cal. App. 5th 30, 39 (2021) (holding that, pursuant to section 30010, a local agency may deny a development permit and pay just compensation for the taking or grant the permit with conditions that mitigate environmental impacts). Accepting Ralston's argument that the County's LCP regulations alone serve as the County's final decision would strip the County of its ability to interpret and apply its own regulations as they relate to Ralston's property.

Ralston secondly argues, in the alternative, that his takings claim is ripe based on three informal responses he received from the County's Community Development Director and Board of Supervisors indicating that Ralston did not have "a reasonable economic-backed expectation" to build a house on his property. Ralston argues the Director's responses meet the "relatively modest" finality requirement from *Pakdel*, where the Supreme Court explained that all a takings plaintiff must show is that "no question" exists about how the "regulations at issue apply to the particular land in question." 141 S. Ct. at 2230.

The Director's preliminary opinions that building a house on Ralston's property may face difficulty do not serve as the County's final decision on the matter. The County's regulations establish four potential reviewing bodies for permit applications depending on the scope of the proposed project, meaning the Director may not even possess the authority to render a final decision on Ralston's proposal. *See* San Mateo County, Cal., Zoning Regulations § 6328.9. Further, because Ralston did not submit a permit application, which would include a location map, building elevations, and a site plan with pertinent landscape features, the Director did not have all the available information to make a final determination. *See id.* § 6328.7. Instead, after Ralston informally "requested review" of his "intent" to proceed with an application, the Director gave his personal opinion about the likelihood of success of Ralston's proposal based on the limited information Ralston provided.

As the Supreme Court explained, a plaintiff's claim may be unripe if avenues remain for the government agency to clarify or change its decision. *Pakdel*, 141 S. Ct. at 2231. In light of the identified uncertainties in this case, several opportunities remain for the County to do so. The district court correctly dismissed Ralston's takings claim for lack of ripeness.

AFFIRMED.

Filed August 26, 2021

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RANDY RALSTON, et al.,	Case No. 21-cv-01880-EMC
Plaintiffs, v. COUNTY OF SAN MATEO, et al.,	**ORDER GRANTING DEFENDANT COUNTY OF SAN MATEO'S MOTION TO DISMISS**
Defendants.	Docket Nos. 20, 22

Pending before the Court are separate motions to dismiss Plaintiffs' complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) by Defendants County of San Mateo (the "County") and the California Coastal Commission (the "Commission"). *See* Docket Nos. 20 ("Cnty. Mot."); 22 ("Comm'n Mot.").

For the following reasons, the Court **GRANTS** the County's motion in its entirety without leave to amend.[1]

[1] Because the Court grants the County's motion in its entirety, it need not address the Commission's motion.

I. BACKGROUND

A. Regulatory Framework

The California Coastal Act of 1976 (CCA), Cal. Pub. Res. Code §§ 30000–30900, "was enacted by the Legislature as a comprehensive scheme to govern land use planning for the entire coastal zone of California," *Yost v. Thomas*, 685 P.2d 1152, 1154 (Cal. 1984). It was intended "to protect the ecological balance of the coastal zone and prevent its deterioration and destruction." *Id.* § 30001. With this goal in mind, the CCA requires "any person . . . wishing to perform or undertake any development in the coastal zone . . . [to] obtain a coastal development permit." *Id.* § 30006(a).

Because the CCA "rel[ies] heavily on local government and local land use planning procedures and enforcement," it requires "[e]ach local government lying, in whole or in part, within the coastal zone [to] prepare a local coastal program for that portion of the coastal zone within its jurisdiction." *Id.* §§ 30004(a), 30500(a). After the commission certifies a local government's local coastal program (LCP), "the development review authority . . . shall no longer be exercised by the commission over any new development proposed within the area to which the certified [LCP] . . . applies and shall at the time be delegated to the local government that is implementing the [LCP] or any portion thereof." *Id.* § 30519(a). In other words, the Commission delegates the issuance of coastal development permits (CDPs) to the local government agency. In doing so, the CCA specifies that "a [CDP] shall be issued if the issuing [local government] agency, or the Commission on

appeal, finds that the proposed development is in conformity with the certified [LCP]." *Id.* § 30604(b).

The CCA has a provision explicitly stating that the law cannot be used to effect unconstitutional takings:

> The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a [CDP] in a manner which will take or damage private property for public use, without the payment of just compensation therefor. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.

Id. § 30010. The California Court of Appeal has thus explained that where "the denial of a [CDP] . . . would . . . deprive an owner the productive use of his or her land, the Commission theoretically has two options: deny the [CDP] and pay just compensation; or grant the [CDP] with conditions that mitigate the impacts that limitations were designed to prevent." *McCallister v. Cal. Coastal Comm'n*, 87 Cal. Rptr. 3d 365, 385 (Cal. Ct. App. 2008), *as modified* (Jan. 20, 2009).

B. Facts

Plaintiffs Randy Ralston and Linda Mendiola own an "undeveloped" 5,000-square-foot parcel ("the Property"), located in San Mateo County, "where they

would like to build a modest single-family home." *See* Docket No. 1 ("Compl.") ¶¶ 1, 2, 8, 12. The Property "is not generating any income for Plaintiffs, [] is not known to have generated any income for any prior private owners, [and] . . . is not subject to any restrictive covenants or open space easements." *Id.* ⁋⁋ 9–10. Plaintiffs have dutifully paid all taxes on the Property since they purchased it. *Id.* ⁋ 13.

The County's website lists the Property as "entirely within the 'Montecito Riparian Corridor'" which "is held to the applicable LCP (Sensitive Habitat Component) Policies (7.7-7.13)." *Id.* ¶¶ 15–16 (quoting *Documents, Planning and Building*, County of San Mateo, https://planning.smcgov.org/documents/san-mateo-county-montecito-ripariancorridor (last visited July 20, 2021)). According to Plaintiffs, the County's LCP specifies that land in riparian corridors can "only" be used for certain purposes that do not include residential development. *Id.* ⁋ 16. Plaintiffs also allege that "[n]o procedure to obtain a variance, exemption, or other exception from these LCP requirements exists." *Id.* Plaintiffs acknowledge, however, that the County's website "states that '[a]ny intention to proceed with an application for development that would run counter to any of these policies must first be throughly [sic] reviewed by the Community Development Director and County Counsel.'" *Id.* ⁋ 18.

Plaintiffs did not apply for a CDP from the County to build their home on the Property. Instead, they "requested review by the County's Community Development Director," also known as the Planning Director, who "consulted with County Counsel and

rejected the *intention*, going so far as to state that no home on the Property would be allowed." *Id.* ¶¶ 19–20 (emphasis added). According to Plaintiffs, the Planning Director "stated" the following:

> I reviewed the information you [Plaintiffs] submitted with County Counsel. It is our view that the totality of the circumstances surrounding the recent acquisition of the property, including its purchase price, does not establish that the property owners had a reasonable economic-backed expectation to develop the property as a separate single-family residence such that it would be justifiable to override the Local Coastal Plan limitations on development within wetland and riparian areas in order to accommodate a reasonable economic use.

Id. ¶ 20. It is unclear whether this statement was made verbally or in writing.

Plaintiffs also requested, and were denied, a "buildability letter" from the County for the Property. *Id.* ¶¶ 22–23. The Coastside County Water District (CCWD), which "provides treated water to the part of the County in which the Property is located," "requires the owner to obtain a letter from the County confirming that the property is 'potentially developable' (known as a 'buildability letter')." *Id.* ¶ 21. Without this letter, CCWD will not provide treated water to the Property. *Id.* In refusing to issue the letter, the Planning Director allegedly stated: "I have been looking into the Department's history of issuing such letters, and do not think it would be

appropriate for us to issue one in this case, given our response [quoted in paragraph 20 above] to the parcel ownership history you [Plaintiffs] previously provided." *Id.* ⁋ 23. Again, it is unclear whether this statement was made verbally or in writing. According to Plaintiffs, they "requested that the County's Board of Supervisors reconsider the matter, or provide compensation for a taking, but the Board of Supervisors refused." *Id.* ⁋ 25.

Plaintiffs conclude that "[t]hese decisions *effectively prohibit* Plaintiffs even from applying for a [CPD] to build a home on the Property." *Id.* at 24 (emphasis added). The Plaintiffs also allege that "[n]o further administrative remedies exist to challenge the County's *refusal to entertain* a development application, or issue a buildability letter, for the Property," such that "[f]urther requests to reconsider the County's actions would be futile." *Id.* ⁋ 32 (emphasis added).

Plaintiffs raise two causes of action pursuant to 42 U.S.C. § 1983, against the County (Count 1) and the Commission (Count 2), for violations of their rights under the Fifth Amendment's Takings Clause. Compl. ⁋⁋ 34–51. More specifically, Plaintiffs allege Defendants effected an unconstitutional regulatory taking by not allowing them to build their home on the Property.

C. Procedural Background

Plaintiffs filed their complaint on March 17, 2021. Compl. On June 15, 2021, the County and the

Commission filed their respective motions to dismiss. Cnty. Mot.; Comm'n Mot.

II. LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(1), a party may move to dismiss for lack of subject matter jurisdiction. "[L]ack of Article III standing requires dismissal for lack of subject matter jurisdiction under [Rule] 12(b)(1)." *Maya v. Centex Corp.*, 658 F.3d 1060, 1067 (9th Cir. 2011). The "irreducible constitutional minimum" of standing requires a "plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Nayab v. Capital One Bank (USA), N.A.*, 942 F.3d 480, 489 (9th Cir. 2019) (quoting *Spokeo, Inc. v. Robins* (*"Spokeo II"*), 136 S. Ct. 1540, 1547 (2016)). These three elements are referred to as, respectively, injury-in-fact, causation, and redressability. *See Planned Parenthood of Greater Was. & N. Idaho v. U.S. Dep't of Health & Human Servs.*, 946 F.3d 1100, 1108 (9th Cir. 2020). "The plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing these elements," which at the pleadings stage means "'clearly . . . alleg[ing] facts demonstrating' each element." *Spokeo II*, 136 S. Ct. at 1547 (quoting *Warth v. Seldin*, 422 U.S. 490, 518 (1975)).

A Rule 12(b)(1) jurisdictional attack may be factual or facial. *See Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). "[I]n a factual attack, the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal

jurisdiction." *Id.* In resolving such an attack, unlike with a motion to dismiss under Rule 12(b)(6), the Court "may review evidence beyond the complaint without converting the motion to dismiss into a motion for summary judgment." *Id.* Moreover, the court "need not presume the truthfulness of the plaintiff's allegations." *Id.*

"In a facial attack," on the other hand, "the challenger asserts that the allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction." *Id.* The court "resolves a facial attack as it would a motion to dismiss under Rule 12(b)(6): Accepting the plaintiff's allegations as true and drawing all reasonable inferences in the plaintiff's favor, the court determines whether the allegations are sufficient as a legal matter to invoke the court's jurisdiction." *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014).

Either way, "it is within the trial court's power to allow or to require the plaintiff to supply, by amendment to the complaint or by affidavits, further particularized allegations of fact deemed supportive of plaintiff's standing." *Warth*, 422 U.S. 490 at 501; *see also Table Bluff Reservation (Wiyot Tribe) v. Philip Morris, Inc.*, 256 F.3d 879, 882 (9th Cir. 2001) (in assessing standing, the court may consider "the complaint and any other particularized allegations of fact in affidavits or in amendments to the complaint").

III. THE COUNTY'S MOTION TO DISMISS

The Court grants the County's motion to dismiss Plaintiffs' complaint in its entirety because their regulatory taking claims are unripe.

A. Ripeness of Regulatory Taking Claims

"Standing and ripeness under Article III are closely related." C*olwell v. Dep't of Health & Human Servs.*, 558 F.3d 1112, 1123 (9th Cir. 2009). "For a suit to be ripe within the meaning of Article III, it must present concrete legal issues, presented in actual cases, not abstractions." *Id.* (quoting *United Pub. Workers v. Mitchell*, 300 U.S. 75, 89 (1947)). "But whereas 'standing is primarily concerned with who is a proper party to litigate a particular matter, ripeness addressees when that litigation may occur.'" *Id.* (quoting *Lee v. Oregon*, 107 F.3d 1382, 1387 (9th Cir. 1997)). The constitutional ripeness inquiry generally "coincides squarely with standing's injury in fact prong." *Sacks v. Off. of Foreign Assets Control*, 466 F.3d 764, 773 (9th Cir. 2006) (quoting *Thomas v. Anchorage Equal Rts. Comm'n*, 220 F.3d 1134, 1138 (9th Cir. 2000) (en banc)). Thus, where the court determines that the plaintiff's "stake in the legal issues is concrete rather than abstract," constitutional ripeness is satisfied. *Colwell*, 558 F.3d at 1123.

The Supreme Court had long established a two-part test for determining whether a regulatory taking claim is ripe. First, "a claim that the application of government regulations effects a taking of a property interest is not ripe until the government entity charged with implementing the regulations has

reached a *final decision* regarding the application of the regulations to the property at issue." *Williamson Cnty. Reg'l Plan. Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186 (1985), *overruled on other grounds by Knick v. Twp. of Scott*, 139 S. Ct. 2162 (2019) (emphasis added). Second, a regulatory "taking claim is not yet ripe [where the plaintiff] did not seek compensation through the procedures the State has provided for doing so." *Id.* at 194.

However, the Supreme Court repudiated the second prong of this test two years ago in *Knick*, "conclud[ing] that the state-litigation requirement imposes an unjustifiable burden on takings plaintiffs, conflicts with the rest of [its] takings jurisprudence, and must be overruled." *Knick*, 139 S. Ct. at 2167. Thus, under *Knick*, the property owner need not exhaust, for instance, state court proceedings to obtain just compensation before bringing a constitutional claim in federal court. But *Knick* left the first prong of the *Williamson* test intact. In fact, the Supreme Court in the last term reaffirmed the "final rule" requirement several weeks ago. *See Pakdel v. City & Cty. of San Francisco*, 141 S. Ct. 2226, 2228 (2021) (per curiam) ("When a plaintiff alleges a regulatory taking in violation of the Fifth Amendment, a federal court should not consider the claim before the government has reached a *'final' decision*." (emphasis added) (quoting *Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S. 725, 737 (1997))). "After all, until the government makes up its mind, a court will be hard pressed to determine whether the plaintiff has suffered a constitutional violation." *Id.* Therefore, the question in the instant case is whether Plaintiffs' complaint alleges that the County and the

Commission made a "final decision regarding the application of the [LCP] to the [P]roperty," such that their regulatory taking claims are ripe. *Williamson*, 473 U.S. at 186.

The Supreme Court recently explained that the "final decision" requirement "is relatively modest. All a plaintiff must show is that 'there [is] no question . . . about how the 'regulations at issue apply to the particular land in question.'" *Pakdel*, 141 S. Ct. at 2230 (quoting *Suitum*, 520 U.S. at 739). This does not mean that the plaintiff must exhaust all possible state administrative procedures before filing suit in federal court; "nothing more than *de facto* finality is necessary." *Id*. But "a plaintiff's failure to properly pursue administrative procedures may render a claim unripe if avenues still remain for the government to clarify or change its decision." *Id*. at 2231. "This requirement ensures that a plaintiff has actually 'been injured by the Government's action' and is not prematurely suing over a hypothetical harm." *Id.* at 2230 (quoting *Horne*, 569 U.S. at 525). In other words, "because a plaintiff who asserts a regulatory taking must prove that the government 'regulation has gone too far,' the court must first 'kno[w] how far the regulation goes.'" *Id*. (quoting *MacDonald, Sommer & Frates v. Yolo Cnty*., 477 U.S. 340, 348 (1986)). "Once the government is committed to a position, however, these potential ambiguities evaporate and the dispute is ripe for judicial resolution." *Id.*

B. Plaintiffs' Regulatory Claim is Not Ripe Because the County Has Not Issued a Final Decision

Plaintiffs' complaint has not established *de facto* finality because questions remain as to "how the [County's LCP] appl[ies] to the [Property]." *Id.* The preliminary statements by the County's Planning Director cannot constitute a "final decision" for at least two independent reasons: (1) the Planning Director did not have the authority to issue a final decision; and (2) the County cannot issue a final decision until Plaintiffs submit a CDP application.

1. The Planning Director Did Not Have The Authority to Issue a Final Decision

The Planning Director does not have exclusive authority under the County's zoning regulations to issue a final decision on a CDP application. *See* Docket No. 20-2 ("RJN") at Ex. A (San Mateo County, Cal., Zoning Regulations ("Zoning Regulations")) § 6328.9.[2]

[2] The Court takes judicial notice of the County's zoning regulations because they are public records available on the County's website, and if authentication is necessary, an officer of the County can testify to the authenticity of these documents. Moreover, Plaintiffs do not challenge their authenticity. *See, e.g.*, *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1025 (9th Cir. 2006) (affirming district court's grant of request for judicial notice of documents on file with the City Clerk of the City of Santa Monica and those accessible on Santa Monica's official website); *Gerristen v. Warner Bros. Ent. Inc.*, 112 F. Supp. 3d 1011, 1033 (C.D. Cal. 2015) ("Under Rule 201, the court can take judicial notice of '[p]ublic records and government documents available from reliable sources on the

Section 6328.8 of the County's Zoning Regulations specifies that the Planning Director "shall . . . *forward* an application for a [CDP] together with his *recommendation* thereon to the *appropriate body* specified under Section 6328.9 for its action." *Id.* § 6328.8 (emphases added). Four separate "appropriate bodies" can adjudicate CDP applications in the County: (1) the Planning Director, (2) the Zoning Hearing Officer, (3) the Planning Commission, and (4) the Board of Supervisors. Which of these bodies "acts on" a CDP application depends on the scope of the proposed project, which can vary in five ways. First, if the proposed project requires "other permits or approvals" by the Planning Director, Zoning Hearing Officer, Planning Commission, or Board of Supervisors, then "that person, commission, or board shall also act on the [CDP]." *Id.* § 6328.9(a). Second, if the proposed project requires "action on other permits or approvals . . . other than those specified in paragraph (a)," then "the Planning Director shall act on the [CDP]." *Id.* § 6328.9(b). Third, if the proposed project requires "no County permit or approval other than the [CDP]," then "the Planning Commission shall act on the [CDP.]" *Id.* § 6328.9(c). Fourth, if the proposed project requires other permits that are issued by the Planning Director, "but Section 6328.10(a)2 requires a public hearing," then "the Zoning Hearing Officer or Planning Commission, as

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Internet, such as websites run by governmental agencies.'"[)] (quoting *Hansen Beverage Co. v. Innovation Ventures, LLC*, No. 08-CV-1166-IEG POR, 2009 WL 6597891 (S.D. Cal. Dec. 23, 2009)); *Michery v. Ford Motor Co.*, 650 Fed.Appx. 338, 342 n.2 (9th Cir. 2016) (affirming district court's grant of request for judicial notice of the existence of documents available on a government website).

appropriate, shall act *in place of the Planning Director*." *Id.* § 6328.9(d). Finally, if the proposed project requires a "recommendation of one officer or body to another," then "that officer or body shall make a concurrent recommendation on the [CDP]." *Id.* § 6328.9(e). Put simply, the final decisionmaker depends on what other permits or approvals are required.

Here, it is impossible to tell from Plaintiffs' informal communications with the Planning Director whether their proposed project requires "other permits or approvals" or "a public hearing," such that the Zoning Hearing Officer, Planning Commission, or Board of Supervisors—instead of the Planning Director—must issue the "final decision" on Plaintiff's a CDP application. Indeed, it appears the County might have to hold a public hearing on Plaintiffs' CDP application. According to the County's internal mapping tools, Plaintiffs' parcel is within 100 feet of a known stream. *See* Docket No. 38 ("Cnty's Suppl. Br.") at 2. Section 6328.3(s)(2) states that proposed "[p]rojects in County jurisdiction located . . . within 100 feet of any wetland, estuary, [or] stream" are "appealable to the Coastal Commission." Section 6328.10(2), in turn, specifies that "[t]he appropriate person or body specified in Section 6328.9 shall hold a public hearing prior to any action on a [CDP] where . . . [t]he [CDP] is for a project appealable to the Coastal Commission." If this is true, Plaintiff's proposed project falls under section 6328.9(d), which requires the Zoning Hearing Officer or Planning Commission—not the Planning Director—to issue a final decision on Plaintiffs' CDP application.

Thus, the Planning Director's preliminary statements cannot constitute a "final decision" for purposes of ripeness under *Williamson* and *Knick* because it appears the Planning Director may not have the authority to issue a CDP in this case. Only after Plaintiffs submit a CDP application with all the required components will it become clear which "appropriate body" has the authority to issue a CDP under Section 6328.9.

2. The County Cannot Issue a Final Decision Until Plaintiffs Apply For a CDP

There is a second reason why there is no "final decision" here. Section 6328.7 of the County's zoning regulations specifies that an "[a]pplication for a [CDP] *shall* be made to the Planning and Building Division" and "*shall* be accompanied by" a nominal fee, a location map, a site plan, and building elevations. *See* Zoning Regulations §§ 6328.7(a)–(d) (emphases added). Plaintiffs do not allege that they submitted an application to the Planning and Building Division, let alone that they paid the fee or provided the County with a map, site plan, or building elevations. As a result, the Planning Director was unable to issue a final decision explaining in any detail how or why the LCP prevents Plaintiffs from building their home in the Property, nor did he foreclose the possibility that the County might conclude otherwise if Plaintiffs submit a proper CDP application. FAC ¶¶ 20–23. An application for a CDP is important because even if a CDP would normally not be permitted under a certified LCP, the CCA allows for exceptions where a takings occurs. *See* Cal. Pub. Res. Code §§ 30010. As noted, a CDP may be granted with mitigatory

conditions. *McCallister*, 87 Cal. Rptr. at 385. Accordingly, Plaintiffs' regulatory taking claim will not be ripe for adjudication until they file a CDP application and the County has "the opportunity to review a sincere development proposal, apply its regulations to that proposal, and decide whether to approve, deny or condition a [CDP]." Docket No. 28 ("Cnty. Reply") at 1.

Notably, the Supreme Court has concluded that regulatory taking claims are unripe in a myriad of cases where—as here—the plaintiffs did not formally apply to develop the properties under the applicable regulations, depriving the regulatory agency from issuing a final decision explaining how those regulations apply to the subject properties. For example, in *Hodel v. Virginia Surface Mining & Reclamation Association, Inc.*, the Supreme Court held that an as-applied challenge of the Surface Mining Control and Reclamation Act of 1977 was unripe because "there is no indication on the record that [the landowners and coal producers challenging the law] . . . request[ed] . . . a variance from the [applicable provisions of the law]." 452 U.S. 264, 297 (1981). Plaintiffs' regulatory takings claim is similarly unripe here because there is no indication on the record that they formally applied, under *McCallister*, for a "[CDP] with conditions that mitigate the impacts" of their proposed project. 87 Cal. Rptr. 3d at 385. Moreover, the Supreme Court has found that a claim is unripe even *after* a plaintiff applies for a permit in situations where subsequent circumstances gave the state a chance to clarify or change its position. *See Williamson*, 473 U.S. at 187 ("No [final] decision had been made at the time respondent filed

its § 1983 action, because respondent failed to *apply for variances* from the regulations." (emphasis added)); *MacDonald*, 477 U.S. at 345–47. *id.* [sic] at 191 (no final decision had been made because, after the state rejected the plaintiff's application, two state-court decisions held that the plaintiff's proposed use of the property was proper under the regulations at issue).

Plaintiffs do not cite a single analogous case where a court concluded that a state agency reached a "final decision" before the landowner even applied for a permit or submitted a substantive proposal to develop the property. Nor have they cited a single case holding that a government official's preliminary statements on the viability of a hypothetical land development proposal constitutes a "final decision." Plaintiffs first rely on *Suitum*, which is entirely distinguishable because there the plaintiff "applied to the agency for permission to construct a house on her lot, the agency determined that her property was located within a SEZ, assigned it an IPES score of zero, and denied permission to build." 520 U.S. at 731. In fact, Ms. Suitum "appealed the denial to the agency' governing board, which itself denied relief." *Id.* The *Suitum* Court therefore held that "there [was] no question . . . about how the 'regulations at issue [apply] to the particular land in question,'" *id.* at 739 (quoting *Williamson*, 473 U.S. at 191), because "[i]t is undisputed that the agency 'has finally determined that petitioner's land lies entirely within an SEZ,' . . . and that it may therefore permit '[n]o additional land coverage or other permanent land disturbance' on the parcel," *id.* (first quoting Brief for Respondent at 21; then quoting TRPA Code § 20.4). Here, by contrast,

there was no application for a permit, much less a denial of that application or an appeal to the California Coastal Commission.

Plaintiffs' reliance on *Palazzolo v. Rhode Island* is also misplaced because the plaintiff there submitted not one, but *two* applications to develop his property: "the 1983 proposal to fill the entire parcel, and the 1985 proposal to fill 11 of the property's 18 wetland acres for construction of the beach club." 533 U.S. 606, 614–15, 619 (2001). Rhode Island argued that the plaintiff's regulatory taking claim was not ripe because "while the Council rejected [his] effort to fill all of the wetlands, and then rejected his proposal to fill 11 of the wetland acres, perhaps an application to fill (for instance) 5 acres would have been approved." *Id.* at 619. The Supreme Court flatly rejected this argument:

> The rulings of the Council interpreting the regulations at issue, and the briefs, arguments, and candid statements by counsel for both sides, leave no doubt on this point: On the wetlands there can be no fill *for any ordinary land use*. There can be no fill for its own sake; no fill for a beach club, either rustic or upscale; no fill for a subdivision; no fill for any likely or foreseeable use. And with no fill there can be no structures and no development on the wetlands. Further permit applications were not necessary to establish this point.

Id. at 621. Unlike in *Palazzolo*, there is no decision here—much less *two* decisions—by the County or the Commission stating that Plaintiffs cannot build their

home on the Property, let alone that the Property is not fit "for *any* ordinary land use." *Id.* Again, that decision will only come when the Plaintiffs apply for a CDP and submit a proposal for how they plan to use the Property, which will give the County or the Commission a chance to apply the County's LCP to that proposed project and consider whether a CDP may be granted with mitigation conditions where a takings would otherwise occur.

Finally, Plaintiffs rely on *Pakdel*, even though the facts of that case are even further afield what is alleged here. The plaintiffs in that case sought to avail themselves of San Francisco's recently adopted program whereby non-occupant owners of units in a multiunit residential building could "convert their tenancy-in-common interests into modern condominium-style arrangements, which allow individual ownership of certain parts of the building." 141 S. Ct. at 2228. But there was a catch: to avail themselves of the program, the plaintiffs "had to offer their tenants a lifetime lease." *Id.* Unlike Plaintiffs here, the *Pakdel* plaintiffs applied to convert the interests in their building, "agreed that they would offer a lifetime lease to their tenant," and "[t]he City approved the conversion." *Id.* It was only "*a few months later*" that the Pakdels "requested that the city either excuse them from executing the lifetime lease or compensate them for the lease." *Id.* (emphasis added). Therefore, contrary to Plaintiffs' interpretation, *Pakdel* does not—indeed it cannot—stand for the proposition that Plaintiffs need not formally apply for a CDP or submit a meaningful development proposal before filing suit. The Pakdels applied to be part of San Francisco's conversion

program, and there was in effect a final decision applying the conversion rules to them.

Indeed, the holding in *Pakdel* supports concluding that Plaintiffs regulatory taking claim here is unripe. The *Pakdel* Court concluded that San Francisco issued a "final decision" only because it had made it clear to the Pakdels that they had to issue the lease or face an enforcement action:

> In this case, there is no question about the city's position: Petitioners must "execute the lifetime lease" or face an "enforcement action." Brief for Respondents 9. And there is no question that the government's "definitive position on the issue [has] inflict[ed] an actual, concrete injury" of requiring petitioners to choose between surrendering possession of their property or facing the wrath of the government.

Id. at 2230 (quoting *Williamson*, 473 U.S. at 193). Here, by contrast, not only are Plaintiffs in no risk of facing an enforcement action from the County, but the County has repeatedly represented that there is a possibility—despite the Planning Director's preliminary statements—that it will allow them to build their home on the Property. *See* Cnty. Reply at 1 (stating that a formal application would "at least give the County the opportunity to review a sincere development proposal, apply its regulations to that proposal, and decide whether to approve, deny, or condition a development permit")[;] 5 ("By suing instead of applying for a permit, Plaintiffs have not given the County the opportunity to exercise [its] statutory discretion."); 6 ("The County's alleged

communications with Plaintiffs about the Property have, so far, been minimal, informal, and preliminary. The possibility remains that the County's ultimate decisionmaker, reviewing a complete development proposal, could decide to permit Plaintiffs' desired project with appropriate environmental mitigation"). In fact, the *Pakdel* Court distinguished the facts before it from situations like the instant case by noting that "[t]o be sure, . . . a plaintiff's failure to properly pursue administrative procedures may render a claim unripe *if* avenues still remain for the government to clarify or change its position." *Id.* at 2231. The County in the instant case—unlike San Francisco in *Pakdel*—may clarify or even change its position if it is given a chance to apply the County's LCP to a concrete development proposal from Plaintiffs. Moreover, as the Planning Director's testimonial view suggests, the determination whether an outright denial may constitute a takings which would warrant possible issuance of a CDP with conditions was a fact-specific issue turning on assessment of, *e.g.*, economic-based expectation to develop the property. Compl. ¶ 20. *See e.g.*, *Williamson*, 473 U.S. at 192–194 ("The Commission's refusal to approve the preliminary plat . . . leaves open the possibility that [the plaintiff] may develop the subdivision according to the plat after obtaining the variances"); *Knick*, 139 S.Ct., at 2169 ("[T]he developer [in *Williamson*] still had an opportunity to seek a variance from the appeals board"); *Cf. Palazzolo*, 533 U.S. at 624–625 ("[S]ubmission of [a] proposal would not have clarified the extent of development permitted . . . , which is the inquiry required under our ripeness decisions.").

Further, the County convincingly explains in its reply that it "cannot reach a final decision based on a tentative, hypothetical development proposal" because "site-specific boundary surveys, riparian buffer delineations, and biological studies are required to determine what development might be allowed on a parcel." *See* Cnty. Reply at 3, n. 3; *see also id*. at 6 ("A formal application would likely include details about the site plan, biological surveys, and other information that would be relevant to determining whether Plaintiffs could adopt an acceptable mitigation plan and avoid a taking."); Zoning Regulations § 6328.7 ("The application for a [CDP] shall be accompanied by [listing requirements]."). If the Court allows this lawsuit to proceed under the current posture, it would deprive the County of the opportunity to fully decide whether and how its LCP applies to Plaintiffs' Property.

Adjudicating Plaintiffs' regulatory taking claims without a final decision from the County would require the trier of fact to impermissibly speculate what land uses the County would allow on the Property. *Pakdel*, 141 S. Ct. at 2228 ("After all, until the government makes up its mind, a court will be hard pressed to determine whether the plaintiff has suffered a constitutional violation."). As the Supreme Court put it in *Suitum*, without a final decision the court is faced with "the virtual impossibility of determining what development will be permitted on a particular lot of land when its use is subject to the decision of a regulatory body invested with great discretion, which it has not yet even been asked to exercise." 520 U.S. at 739; *see also MacDonald*, 477 U.S. at 349 ("[The] effect [of the regulation] cannot be

measured until a final decision is made as to how the regulations will be applied to respondent's property."[)] (quoting *Williamson*, 473 U.S. at 199–200)); *Kinzli v. City of Santa Cruz*, 818 F.2d 1449, 1454 (9th Cir.), *amended*, 830 F.2d 968 (9th Cir. 1987) ("[The] absen[ce of] any rejected development plan . . . would result in the same sort of speculation that the ripeness doctrine prohibits."). The purpose of the "final decision" rule is to protect courts from having to decide whether the state committed an unconstitutional taking based on impermissible speculation rather than on a concrete record.

Accordingly, the allegations in Plaintiffs' complaint, taken as true, do not establish that the County has issued a "final decision" rejecting an application for a CDP, and therefore their claim is not ripe.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** the County's motion to dismiss in its entirety without leave to amend because Plaintiff's claims are unripe. Plaintiffs may refile this action, if necessary, after they apply for a CDP and the County issues a final decision.

This order disposes of Docket Nos. 20 and 22. The Clerk shall enter Judgment and close the file.

IT IS SO ORDERED.

Dated: August 26, 2021

/s/ Edward M. Chen
EDWARD M. CHEN
United States District Judge

Filed January 20, 2023

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RANDY RALSTON; LINDA MENDIOLA, Plaintiffs-Appellants, v. COUNTY OF SAN MATEO; CALIFORNIA COASTAL COMMISSION, Defendants-Appellees.	No. 21-16489 D.C. No. 3:21-cv-01880-EMC Northern District of California, San Francisco ORDER

Before: S.R. THOMAS and M. SMITH, Circuit Judges, and McSHANE,* District Judge.

Judges S.R. Thomas and M. Smith have voted to deny the petition for rehearing en banc, and Judge McShane so recommends. The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for rehearing en banc is DENIED.

* The Honorable Michael J. McShane, United States District Judge for the District of Oregon, sitting by designation.

Appendix 32a

Dated June 2013

SAN MATEO COUNTY LOCAL COSTAL PROGRAM, COMPONENT 7: SENSITIVE HABITATS COMPONENT

GENERAL POLICIES

*7.1 Definition of Sensitive Habitats

Define sensitive habitats as any area in which plant or animal life or their habitats are either rare or especially valuable and any area which meets one of the following criteria: (1) habitats containing or supporting "rare and endangered" species as defined by the State Fish and Game Commission, (2) all perennial and intermittent streams and their tributaries, (3) coastal tide lands and marshes, (4) coastal and offshore areas containing breeding or nesting sites and coastal areas used by migratory and resident water-associated birds for resting areas and feeding, (5) areas used for scientific study and research concerning fish and wildlife, (6) lakes and ponds and adjacent shore habitat, (7) existing game and wildlife refuges and reserves, and (8) sand dunes.

Sensitive habitat areas include, but are not limited to, riparian corridors, wetlands, marine habitats, sand dunes, sea cliffs, and habitats supporting rare, endangered, and unique species.

7.2 Designation of Sensitive Habitats

Designate sensitive habitats as including, but not limited to, those shown on the Sensitive Habitats Map for the Coastal Zone.

*7.3 Protection of Sensitive Habitats

a. Prohibit any land use or development which would have significant adverse impact on sensitive habitat areas.

b. Development in areas adjacent to sensitive habitats shall be sited and designed to prevent impacts that could significantly degrade the sensitive habitats. All uses shall be compatible with the maintenance of biologic productivity of the habitats.

*7.4 Permitted Uses in Sensitive Habitats

a. Permit only resource dependent uses in sensitive habitats. Resource dependent uses for riparian corridors, wetlands, marine habitats, sand dunes, sea cliffs and habitats supporting rare, endangered, and unique species shall be the uses permitted in Policies 7.9, 7.16, 7.23, 7.26, 7.30, 7.33, and 7.44, respectively, of the County Local Coastal Program on March 25, 1986.

b. In sensitive habitats, require that all permitted uses comply with U.S. Fish and Wildlife and State Department of Fish and Game regulations.

7.5 Permit Conditions

a. As part of the development review process, require the applicant to demonstrate that there will be no significant impact on sensitive habitats. When it is determined that significant

impacts may occur, require the applicant to provide a report prepared by a qualified professional which provides: (1) mitigation measures which protect resources and comply with the policies of the Shoreline Access, Recreation/Visitor-Serving Facilities and Sensitive Habitats Components, and (2) a program for monitoring and evaluating the effectiveness of mitigation measures. Develop an appropriate program to inspect the adequacy of the applicant's mitigation measures.

b. When applicable, require as a condition of permit approval the restoration of damaged habitat(s) when in the judgment of the Planning Director restoration is partially or wholly feasible.

7.6 Allocation of Public Funds

In setting priorities for allocating limited local, State, or federal public funds for preservation or restoration, use the following criteria: (1) biological and scientific significance of the habitat, (2) degree of endangerment from development or other activities, and (3) accessibility for educational and scientific uses and vulnerability to overuse.

RIPARIAN CORRIDORS

7.7 Definition of Riparian Corridors

Define riparian corridors by the "limit of riparian vegetation" (i.e., a line determined by the association of plant and animal species normally found near streams, lakes and other bodies of freshwater: red

alder, jaumea, pickleweed, big leaf maple, narrow-leaf cattail, arroyo willow, broadleaf cattail, horsetail, creek dogwood, black cottonwood, and box elder). Such a corridor must contain at least a 50% cover of some combination of the plants listed.

7.8 Designation of Riparian Corridors

Establish riparian corridors for all perennial and intermittent streams and lakes and other bodies of freshwater in the Coastal Zone. Designate those corridors shown on the Sensitive Habitats Map and any other riparian area meeting the definition of Policy 7.7 as sensitive habitats requiring protection, except for man-made irrigation ponds over 2,500 sq. ft. surface area.

7.9 Permitted Uses in Riparian Corridors

a. Within corridors, permit only the following uses: (1) education and research, (2) consumptive uses as provided for in the Fish and Game Code and Title 14 of the California Administrative Code, (3) fish and wildlife management activities, (4) trails and scenic overlooks on public land(s), and (5) necessary water supply projects.

b. When no feasible or practicable alternative exists, permit the following uses: (1) stream dependent aquaculture, provided that non-stream dependent facilities locate outside of corridor, (2) flood control projects, including selective removal of riparian vegetation, where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or

to protect existing development, (3) bridges when supports are not in significant conflict with corridor resources, (4) pipelines, (5) repair or maintenance of roadways or road crossings, (6) logging operations which are limited to temporary skid trails, stream crossings, roads and landings in accordance with State and County timber harvesting regulations, and (7) agricultural uses, provided no existing riparian vegetation is removed, and no soil is allowed to enter stream channels.

7.10 Performance Standards in Riparian Corridors

Require development permitted in corridors to: (1) minimize removal of vegetation, (2) minimize land exposure during construction and use temporary vegetation or mulching to protect critical areas, (3) minimize erosion, sedimentation, and runoff by appropriately grading and replanting modified areas, (4) use only adapted native or non-invasive exotic plant species when replanting, (5) provide sufficient passage for native and anadromous fish as specified by the State Department of Fish and Game, (6) minimize adverse effects of waste water discharges and entrainment, (7) prevent depletion of groundwater supplies and substantial interference with surface and subsurface waterflows, (8) encourage waste water reclamation, (9) maintain natural vegetation buffer areas that protect riparian habitats, and (10) minimize alteration of natural streams.

7.11 Establishment of Buffer Zones

a. On both sides of riparian corridors, from the "limit of riparian vegetation" extend buffer

zones 50 feet outward for perennial streams and 30 feet outward for intermittent streams.

b. Where no riparian vegetation exists along both sides of riparian corridors, extend buffer zones 50 feet from the predictable high water point for perennial streams and 30 feet from the midpoint of intermittent streams.

c. Along lakes, ponds, and other wet areas, extend buffer zones 100 feet from the high water point except for man-made ponds and reservoirs used for agricultural purposes for which no buffer zone is designated.

7.12 Permitted Uses in Buffer Zones

Within buffer zones, permit only the following uses: (1) uses permitted in riparian corridors; (2) residential uses on existing legal building sites, set back 20 feet from the limit of riparian vegetation, only if no feasible alternative exists, and only if no other building site on the parcel exists; (3) on parcels designated on the LCP Land Use Plan Map: Agriculture, Open Space, or Timber Production, residential structures or impervious surfaces only if no feasible alternative exists; (4) crop growing and grazing consistent with Policy 7.9; (5) timbering in "streamside corridors" as defined and controlled by State and County regulations for timber harvesting; and (6) no new residential parcels shall be created whose only building site is in the buffer area.

7.13 Performance Standards in Buffer Zones

Require uses permitted in buffer zones to: (1) minimize removal of vegetation; (2) conform to natural topography to minimize erosion potential; (3) make provisions (i.e., catch basins) to keep runoff and sedimentation from exceeding pre-development levels; (4) replant where appropriate with native and non-invasive exotics; (5) prevent discharge of toxic substances, such as fertilizers and pesticides; into the riparian corridor; (6) remove vegetation in or adjacent to man-made agricultural ponds if the life of the pond is endangered; (7) allow dredging in or adjacent to man-made ponds if the San Mateo County Resource Conservation District certified that siltation imperils continued use of the pond for agricultural water storage and supply; and (8) limit the sound emitted from motorized machinery to be kept to less than 45-dBA at any riparian buffer zone boundary except for farm machinery and motorboats.

* * * * *

SAN MATEO COUNTY ZONING REGULATIONS

CHAPTER 20B. "CD" DISTRICT (COASTAL DEVELOPMENT DISTRICT)

SECTION 6328. ESTABLISHMENT AND PURPOSE OF COASTAL DEVELOPMENT DISTRICT. There is hereby established a Coastal Development ("CD") District for the purpose of implementing the Coastal Act of 1976 (Division 20 of the Public Resources Code) in accordance with the Local Coastal Program of the County of San Mateo.

SECTION 6328.1. REGULATIONS FOR "CD" DISTRICT. The regulations of this Chapter shall apply in the "CD" District. The "CD" District is an "overlay" district which may be combined with any of the districts specified in Chapters 5 through 20A of this Part, or other districts which may from time to time be added by amendment to this Part. The regulations of this Chapter shall apply in addition to the regulations of any district with which the "CD" District is combined.

SECTION 6328.2. LOCATION OF "CD" DISTRICT. The "CD" District is and shall be coterminous with that portion of the Coastal Zone, as established by the Coastal Act of 1976 and as it may subsequently be amended, which lies within the unincorporated area of San Mateo County.

SECTION 6328.3. DEFINITIONS. For the purpose of this Chapter, certain terms used herein are defined as follows:

(a) "Aggrieved person" means any person who, in person or through a representative, appeared at a public hearing or by other appropriate means prior to action on a Coastal Development Permit informed the County of his concerns about an application for such permit, or who for good cause was unable to do either, and who objects to the action taken on such permit and wishes to appeal such action to a higher authority.

(b) "Applicant" means the person, partnership, corporation or State or local government agency applying for a Coastal Development Permit.

(c) "Approving authority" means the County officer, commission or board approving a Coastal Development Permit.

(d) "Coastal Commission" means the California Coastal Commission.

(e) "Coastal Development Permit" means a letter or certificate issued by the County of San Mateo in accordance with the provisions of this Chapter, approving a project in the "CD" District as being in conformance with the Local Coastal Program. A Coastal Development Permit includes all applicable materials, plans and conditions on which the approval is based.

(f) "Coastal Policy Checklist" means a form prepared and completed by the Planning Director as a guide for reviewing a Coastal Development Permit application for conformance with the Local

Coastal Program. It shall list appropriate application information, all Local Coastal Program policies, those policies with which the application does not comply and recommended conditions, if any, which could be imposed to bring the application into compliance.

(g) "Coastal Zone" means that portion of the Coastal Zone, as established by the Coastal Act of 1976 and as it may subsequently be amended, which lies within the unincorporated area of San Mateo County.

(h) "Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land including lots splits, except where the division of land is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan, submitted

pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

(i) "Emergency" means a sudden, unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property or essential public services.

(j) "Historic structure" means, in accordance with Health and Safety Code Section 18955, any structure, collection of structures, and their associated sites deemed of importance to the history, architecture, or culture of an area by an appropriate local or State governmental jurisdiction. This shall include structures on existing or future national, State, or local historical registers or official inventories, such as the National Register of Historical Places, State Historical Landmarks, State Points of Historical Interest, and city or County registers or inventories of historical or architecturally significant sites, places, historic districts, or landmarks.

(k) "Local Coastal Program" means the County's land use plans, zoning ordinances, zoning maps and implementing actions certified by the Coastal

Commission as meeting the requirements of the California Coastal Act of 1976.

(l) "Major energy facility" means any energy facility as defined by Public Resources Code Section 30107 and exceeding $25,000 in estimated cost of construction.

(m) "Major public works project" means any public works project as defined by California Administrative Code Section 13012 and exceeding $25,000 in estimated cost of construction.

(n) "Other permits and approvals" means permits and approvals, other than a Coastal Development Permit, required by the San Mateo County Ordinance Code before a development may proceed.

(o) "Overlay district" means a set of zoning requirements, described in the ordinance text and mapped, which is imposed in addition to the requirements of one or more underlying districts. Development in such districts must comply with the requirements of both the overlay district and the underlying district(s). The "CD" District is an overlay district.

(p) "Permittee" means the person, partnership, corporation or agency issued a Coastal Development Permit.

(q) "Principal permitted use" means any use representative of the basic zone district allowed without a use permit in that underlying district.

(r) "Project" means any development (as defined in Section 6328.3(h)) as well as any other permits or approvals required before a development may proceed. Project includes any amendment to this Part, any amendment to the County General Plan, and any land division requiring County approval.

(s) "Project appealable to the Coastal Commission" if approved by the Board of Supervisors means:

(1) Projects between the sea and the first through public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.

(2) Projects in County jurisdiction located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream or within 300 feet of the top of the seaward face of any coastal bluff.

(3) Any project involving development which is not a principal permitted use in the underlying zone, as defined in Section 6328.3(p).

(t) "Project appealable to the Coastal Commission" if approved, conditioned, or denied by the Board of Supervisors means any project involving development which constitutes a major public works project or a major energy facility (as defined in Section 6328.3).

(u) "Scenic Road Corridor" means any scenic road corridor as defined and mapped in the Visual Resources Component of the Local Coastal Program.

(v) "Underlying district" means any district with which the "CD" District is combined.

(w) "Working day" means any day on which County offices are open for business.

SECTION 6328.4. REQUIREMENT FOR COASTAL DEVELOPMENT PERMIT.
Except as provided by Section 6328.5, any person, partnership, corporation or state or local government agency wishing to undertake any project, as defined in Section 6328.3(r), in the "CD" District, shall obtain a Coastal Development Permit in accordance with the provisions of this Chapter, in addition to any other permit required by law. Development undertaken pursuant to a Coastal Development Permit shall conform to the plans, specifications, terms and conditions approved or imposed in granting the permit.

SECTION 6328.5. EXEMPTIONS. The projects listed below shall be exempt from the requirement for a Coastal Development Permit. Requirements for any other permit are unaffected by this section.

(a) The maintenance, alteration, or addition to existing single-family dwellings; however, the following classes of development shall require a permit because they involve a risk of adverse environmental impact:

(1) Improvements to a single-family structure on a beach, wetland or seaward of the mean high tide line.

(2) Any significant alteration of landforms including removal or placement of vegetation, on a beach, wetland or sand dune, or within 50 feet of the edge of a coastal bluff.

(3) The expansion or construction of water wells or septic systems.

(4) On property located between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, or in scenic road corridors, an improvement that would result in an increase of 10% or more of internal floor area of an existing structure, the construction of an additional story (including lofts) in an existing structure, and/or any significant non-attached structure such as garages, fences, shoreline protective works, docks or trees.

(5) In areas determined to have critically short water supply that must be maintained for the protection of coastal resources or public recreational use, the construction of any specified major water using development not essential to residential use including but not limited to swimming pools, or the construction

or extension of any landscaping irrigation system.

(b) The maintenance, alteration, or addition to existing structures other than single-family dwellings and public works facilities; however, the following classes of development shall require a permit because they involve a risk of adverse environmental impact:

(1) Improvements to any structure on a beach, wetland, stream or lake, or seaward of the mean high tide line.

(2) Any significant alteration of landforms including removal or placement of vegetation, on a beach, wetland or sand dune, or within 100 feet of the edge of a coastal bluff, or stream or in areas of natural vegetation designated as a sensitive habitat.

(3) The expansion or construction of water wells or septic systems.

(4) On property located between the sea and the first public road paralleling the sea or within 300 feet of the inland intent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, or in scenic road corridors, an improvement that would result in an increase of 10% or more of external floor area of the existing structure, and/or the construction of an additional story (including lofts) in an existing structure.

(5) In areas determined to have critically short water supply that must be maintained for the protection of coastal recreation or public recreational use, the construction of any specified major water using development including but not limited to swimming pools or the construction or extension of any landscaping irrigation system.

(6) Any improvement to a structure which changes the intensity of use of the structure.

(7) Any improvement made pursuant to a conversion of an existing structure from a multiple unit rental use or visitor-serving commercial use to a use involving a fee ownership or long-term leasehold including but not limited to a condominium conversion, stock cooperative conversion or motel/hotel time-sharing conversion.

(c) Maintenance dredging of existing navigation channels or moving dredged material from such channels to a disposal area outside the Coastal Zone, pursuant to a permit from the United States Army Corps of Engineers.

(d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of such repair or maintenance activities; however, the following classes of development shall require a permit because they involve a risk of adverse environmental impact:

(1) Any method of repair or maintenance of a seawall, revetment, bluff retaining wall, breakwater, groin, or similar shoreline work that involves:

a) Repair or maintenance involving substantial alteration of the foundation of the protective work including pilings and other surface or subsurface structures;

b) The placement, whether temporary or permanent, of riprap, artificial berms of sand or other beach materials, or any other forms of solid materials, on a beach or in coastal waters, streams, wetlands, estuaries and lakes or on a shoreline protective work;

c) The replacement of 20% or more of the materials of an existing structure with materials of a different kind; or

d) The presence, whether temporary or permanent, of mechanized construction equipment or construction materials on any sand area or bluff or within 20 feet of coastal waters or streams.

(2) The replacement of 50% or more of a seawall, revetment, bluff retaining wall, breakwater, groin or similar protective work under one ownership.

(e) Any category of development requested by the County as a Categorical Exclusion pursuant to Section 13241 of the Coastal Commission's Regulations and approved by the Coastal

Commission pursuant to Section 13243 of the Regulations. Categorical Exclusions in effect on March 25, 1986, may be deleted or restricted by the Board of Supervisors, but they may not be increased, expanded, or otherwise altered without approval by a majority of the voters of San Mateo County, voting in a valid election. The Board of Supervisors may, by four-fifths vote, after consideration by the Planning Commission, submit the proposed amendment(s) to the voters.

(f) The installation, testing, and placement in service or the replacement of any necessary utility connection between an existing service facility and any development provided that the County may, where necessary, require reasonable conditions to mitigate any adverse impacts on coastal resources, including scenic resources.

(g) The replacement of any structure, other than a public works facility, destroyed by natural disaster. Such replacement structure shall conform to applicable existing zoning requirements, shall be for the same use as the destroyed structure, shall not exceed either the floor area, height, or bulk of the destroyed structure by more than 10%, and shall be sited in the same location on the affected property as the destroyed structure.

As used in this subdivision, "natural disaster" means any situation in which the force or forces which destroyed the structure to be replaced were beyond the control of its owner.

As used in this subdivision, "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

(h) Projects normally requiring a Coastal Development Permit but which are undertaken by a public agency, public utility or person performing a public service as emergency measures to protect life and property from imminent danger or to restore, repair or maintain public works, utilities and services during and immediately following a natural disaster or serious accident, provided such projects are reported to the Planning Director and an application for a Coastal Development Permit is submitted within five days.

(i) Lot line adjustments not resulting in an increase in the number of lots.

(j) Harvesting of agricultural crops, including kelp.

(k) Timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

(l) Land division brought about in connection with the purchase of land by a public agency for public recreational use.

(m) Encroachment permits.

(n) Street closure permits.

SECTION 6328.6. PREAPPLICATION CONFERENCE. A prospective applicant, or his agent, may request a preapplication conference with the Planning Director or his designee prior to formal submittal of an application for a Coastal Development Permit. At such conference, the Planning Director shall acquaint the property owner with Local Coastal Program policies, plans and requirements as they apply to his property, suggest improvements to the proposed development based on review of a sketch plan provided by the property owner, and inform the owner of the steps necessary prior to formal action on the project. The sketch plan provided by the owner should be drawn approximately to scale and should contain, in a general manner, the information required by Section 6328.7(c) for a site plan. The Planning Director shall exercise discretion in granting requests for such conferences so as not to infringe upon other staff duties.

SECTION 6328.7. APPLICATION REQUIREMENTS. Application for a Coastal Development Permit shall be made to the Planning and Building Division on forms provided by the Planning Director. Where required by this Chapter, application for a Coastal Development Permit shall be made prior to or concurrently with application for any other permit or approvals required for the project by the San Mateo County Ordinance Code. The application for a Coastal Development Permit shall be accompanied by:

(a) A nominal fee set by resolution of the Board of Supervisors.

(b) A location map showing the lot to be developed in relation to nearby lots, streets, highways and major natural features such as the ocean, beaches, wetlands and major landforms.

(c) A site plan, to scale, showing:

(1) Existing and proposed property lines of the lot to be developed, including all easements over or adjacent to the lot.

(2) Existing and proposed topography, at a contour interval appropriate to the size of the site to be developed.

(3) All existing and proposed structures, roads, utility lines, signs, fences and other improvements.

(4) Major natural and man-made landscape features, including location, type and size of any trees or other vegetation to be removed or planted.

(5) For projects proposed between the first through public road and the sea, indicate on the site plan existing and/or proposed public access to and along the shoreline.

(d) Building elevations showing:

(1) All exterior walls.

(2) Type and color of roof and other exterior materials.

(3) Location and design of roof equipment, trash enclosures, fences, exterior lights, signs and other exterior structures and equipment.

(e) For all proposed development requiring a domestic well water source, except single-family residences and any permitted use on a parcel of 40 acres or greater, demonstrated proof of the existing availability of an adequate and potable water source for the proposed development, and that use of the water source will not impair surface streamflow, the water supply of other property owners, agricultural production or sensitive habitats.

(f) Any additional information determined by the Planning Director to be necessary for evaluation of the proposed development.

SECTION 6328.8. REFERRAL OF APPLICATION. It shall be the duty of the Planning Director to forward an application for a Coastal Development Permit together with his recommendation thereon to the appropriate body specified in Section 6328.9 for its action.

In so doing, the Planning Director shall instruct his staff to process any proposed development providing affordable housing ahead of other residential development proposals and shall forward applications for comment to other reviewing officials and/or agencies as may be required by Local Coastal Program policies.

SECTION 6328.9. ACTION ON COASTAL DEVELOPMENT PERMIT. Action to approve, condition or deny a Coastal Development Permit shall be taken only by the Planning Director (acting in that capacity or as the Zoning Administrator or as the Design Review Administrator), the Zoning Hearing Officer, the Planning Commission or the Board of Supervisors. To the extent possible, action on a Coastal Development Permit shall be taken concurrently with action on other permits or approvals required for the project, in accordance with the following procedures:

(a) Where action on other permits or approvals is to be taken by the Planning Director, the Zoning Hearing Officer, the Planning Commission or the Board of Supervisors, then that person, commission, or board shall also act on the Coastal Development Permit.

(b) Where action on other permits or approvals is to be taken by a County officer or body other than those specified in paragraph (a), the Planning Director shall act on the Coastal Development Permit prior to action by the appropriate body on the other required permits or approvals.

(c) Should the project require no County permit or approval other than a Coastal Development Permit, the Planning Commission shall act on the Coastal Development Permit..*

* By the operation of law, Ordinance No. 3022 returned subsection (c) to its state prior to the enactment of the ordinance, on February 21, 1987. Ordinance No. 3022 was in full force and

(d) Where, in accordance with paragraphs (a) and (b), above, action on a Coastal Development Permit would be taken by the Planning Director, but Section 6328.10(a)2 requires a public hearing, the Zoning Hearing Officer or Planning Commission, as appropriate, shall act in place of the Planning Director.

(e) Where final action on other permits or approvals requires the recommendation of one officer or body to another, as in the case of a Planning Commission recommendation to the Board of Supervisors, that officer or body shall make a concurrent recommendation on the Coastal Development Permit.

SECTION 6328.10. PUBLIC HEARING AND COMMENT.

(a) The appropriate person or body specified in Section 6328.9 shall hold a public hearing prior to any action on a Coastal Development Permit where any of the following apply:

(1) Action or recommendation on other permits or approvals required for the project require the holding of a public hearing.

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effect for a 2-year period prior to February 21, 1987, during which subsection (c) read as follows: "If no building permit or other County permit or approval is required for the project, other than a Coastal Development Permit, the Board of Supervisors shall act on the Coastal Development Permit. In all other cases not otherwise provided for in this section, the Planning Commission shall act first on the Coastal Development Permit."

(2) The permit is for a project appealable to the Coastal Commission, as defined in Section 6328.3(r).

(3) The project is proposed by a public agency, including special districts or a public utility which requires no County permit or approval other than a Coastal Development Permit.

(b) A public hearing on a Coastal Development Permit may be held concurrently with any other public hearing on the project held by the appropriate person or body specified in Section 6328.9.

(c) Any person may submit written comment on an application for a Coastal Development Permit, or on a Coastal Development Permit appeal, at any time prior to the close of the applicable public hearing. If no public hearing is required, written comments may be submitted prior to the decision date specified in the notice required by Section 6328.11.2(2). Written comments shall be submitted to the Planning Director who shall forward them to the appropriate person, commission, board, or applicant.

SECTION 6328.11.1. NOTICE OF DEVELOPMENTS APPEALABLE TO COASTAL COMMISSION.

(a) Definition of development appealable to the Coastal Commission is that provided in Sections 6328.3(r) and (s).

(b) Contents of Notice:

(1) A statement that the development is within the Coastal Zone.

(2) The date of filing of the application and the name of the applicant.

(3) The number assigned to the application.

(4) A description of the development at its proposed location.

(5) The date, time and place at which the application will be heard by the local governing body or hearing officer.

(6) A brief description of the general procedure of local governing body concerning the conduct of hearing and local actions.

(7) The system for local governing body and Coastal Commission appeals, including any local fees required.

(c) Provision of Notice Prior to Public Hearing: Mail notice at least ten (10) calendar days before the

first public hearing on the project to the following people and agencies:

(1) Applicant.

(2) Owner of the property.

(3) All property owners and residents within 100 feet of the perimeter of the subject parcel.

(4) All persons who have, within the past calendar year submitted a written request for notice of all Coastal Permit applications.

(5) All persons who have requested, in writing, notices relating to the Coastal Permit in question.

(6) The Coastal Commission.

(7) Public agencies which, in the judgment of the Planning Director, have an interest in the project.

(8) Newspaper of general circulation in the Coastal Zone. Notice to be published once.

(d) Notice of Continued Public Hearings: If a decision of an appealable Coastal Development Permit is continued to a time which has not been stated in the initial notice or at the public hearing, notice of the continued hearing shall be provided in the same manner and within the same time limits as outlined in Sections 6328.11.1(a), (b), (c).

(e) Notice of Decision: On or before the fifth working day following action by the Zoning Hearing Officer or the Planning Commission, notice of the decision, including findings for approval and conditions (if any) on the project proposal shall be mailed to the following people:

(1) The applicant.

(2) The owner of the subject parcel.

(3) All persons who have submitted a written request for notification of action on this specific permit.

(f) Notice of Final Local Decisions: On or before the fifth (5th) working day following action by the Board of Supervisors, notice of the decision, including findings for approval and conditions (if any) shall be mailed to the following people and agencies:

(1) The applicant.

(2) The owner of the subject parcel.

(3) All persons who have submitted a written request for notification of action on this specific permit.

(4) The Coastal Commission.

SECTION 6328.11.2. NOTICE OF DEVELOPMENTS NOT APPEALABLE TO THE COASTAL COMMISSION.

(a) Notice of Projects for which Local Ordinance Requires a Public Hearing.

(1) Contents of Notice:

a) A statement that the development is within the Coastal Zone.

b) The date of filing of the application and the name of the applicant.

c) The number assigned to the application.

d) A description of the development at its proposed location.

e) The date, time and place at which the application will be heard by the local governing body or hearing officer.

f) A brief description of the general procedure of local government concerning the conduct of hearing and local actions.

(2) Provision of Notice: Notice of developments shall be given at least ten (10) calendar days before the first public hearing in the following manner:

a) If the matter is heard by the Planning Commission, notice shall be published in a

newspaper of general circulation or (if there is none) posted in at least three public places in the local jurisdiction.

b) Notice by first class mail to any person who has filed a written request therefore.

c) Notice by first class mail to property owners within 300 feet.

d) Notice by first class mail to the Coastal Commission.

(b) Notice of Projects for which no Public Hearing is Required.

(1) Contents of Notice:

a) A statement that the development is within the Coastal Zone.

b) The date of filing of the application and the name of the applicant.

c) The number assigned to the application.

d) A description of the development and its proposed location.

e) The date the application will be acted upon by the local governing body or decision-maker.

f) The general procedure of the local government concerning the submission of

public comments either in writing or orally prior to the local decision.

g) A statement that a public comment period of sufficient time to allow for the submission of comments by mail will be held prior to the local decision.

(2) Provision of Notice: Notice of these development proposals shall be given within ten (10) calendar days of receipt of the application or at least seven (7) calendar days prior to the local decision date to the following people and agencies:

a) Applicant.

b) The owner of the property.

c) All property owners and residents within 100 feet of the perimeter of the subject parcel.

d) All persons who have, within the past calendar year, submitted a written request for notice of all Coastal Permit applications.

e) All persons who have requested, in writing, notices relating to the Coastal Permit in question.

f) The Coastal Commission.

(c) Categorically Excluded Developments:

(1) Definitions: Any project exempted from Coastal Development District permit requirements pursuant to a Coastal Commission approved Categorical Exclusion.

(2) Notice Requirements: Those required by County Ordinance for any other permits and approvals required for the project.

(3) Maintenance of Permit Records: A current record of all permits issued for categorically excluded developments shall be available for public and Coastal Commission review and shall include the following information for each permit: name of applicant, location of the project, and brief description of the project.

SECTION 6328.12. STANDARDS FOR APPLICATION REVIEW. The officer, commission or board acting on a Coastal Development Permit shall review the project for compliance with: all applicable plans, policies, requirements and standards of the Local Coastal Program, as stated in Sections 6328.19 through 6328.30 of this Chapter; the County General Plan; requirements of the underlying district; and other provisions of this Part. To assist this review, the Planning Director shall, as part of the recommendation required by Section 6328.8, complete a Coastal Policy Checklist, as defined in Section 6328.3.

SECTION 6328.13. PRECEDENCE OF LOCAL COASTAL PROGRAM. Where the plans, policies,

requirements or standards of the Local Coastal Program, as applied to any project in the "CD" District, conflict with those of the underlying district, or other provisions of this Part, the plans, policies, requirements or standards of the Local Coastal Program shall take precedence.

SECTION 6328.14. CONDITIONS. Approval of a Coastal Development Permit shall be conditioned as necessary to ensure conformance with and implementation of the Local Coastal Program. The approving authority may require modification and resubmittal of project plans, drawings and specifications to ensure conformance with the Local Coastal Program. When modification and resubmittal of plans is required, action shall be deferred for a sufficient period of time to the project.

For all proposed development requiring a domestic well water source and not subject to the provisions of Section 6328.7(e), require as a condition of approval demonstrated proof of the existing availability of an adequate and potable water source for the proposed development, and that use of the water source will not impair surface streamflow, the water supply of other property owners, agricultural production or sensitive habitats.

SECTION 6328.15. FINDINGS. A Coastal Development Permit shall be approved only upon the making of the following findings:

(a) That the project, as described in the application and accompanying materials required by Section 6328.7 and as conditioned in accordance with

Section 6328.14, conforms with the plans, policies, requirements and standards of the San Mateo County Local Coastal Program.

(b) Where the project is located between the nearest public road and the sea, or the shoreline of Pescadero Marsh, that the project is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Section 30200 of the Public Resources Code).

(c) That the project conforms to specific findings required by policies of the San Mateo County Local Coastal Program.

(d) That the number of building permits for construction of single-family residences other than for affordable housing issued in the calendar year does not exceed the limitations of Policies 1.22 and 1.23 as stated in Section 6328.19.

SECTION 6328.16. APPEALS. Development pursuant to an approved Coastal Development Permit shall not commence until all applicable appeal periods expire or, if appealed, until all appeals, including to the Coastal Commission, have been exhausted.

(a) Action by the Planning Director, Zoning Hearing Officer or Planning Commission to approve, condition or deny any Coastal Development Permit may be appealed on or before the tenth working day following such action. Action by the Planning Director or Zoning Hearing Officer may be appealed only to the Planning Commission.

Action by the Planning Commission may be appealed only to the Board of Supervisors.

(b) Action by the Board of Supervisors to approve a Coastal Development Permit for projects defined in Section 6328.3(r) may be appealed to the Coastal Commission in accordance with Coastal Commission regulations.

(c) Action by the Board of Supervisors to approve, condition, or deny a Coastal Development Permit for projects as defined in Section 6328.3(s) may be appealed to the Coastal Commission in accordance with Coastal Commission regulations.

(d) An appeal pursuant to this section may only be filed by the applicant for the Coastal Development Permit in question, an aggrieved person, or any two members of the Coastal Commission.

(e) An appeal shall be filed with the Planning and Development Division on a form provided by the Planning Director. The appeal shall be accompanied by a fee set by resolution of the Board of Supervisors and statement of the grounds for the appeal.

(f) It shall be the duty of the Planning Director to forward a Coastal Development Permit appeal, together with his recommendation thereon, to the appropriate body specified in Paragraph (a) or (b) for its action.

SECTION 6328.17. EXPIRATION OF COASTAL DEVELOPMENT PERMIT. A Coastal Development

Permit shall expire on the latest expiration date applicable to any other permit or approval required for the project, including any extension granted for other permits or approvals. Should the project require no County permits or approvals other than a Coastal Development Permit, the Coastal Development Permit shall expire one year from its date of approval if the project has not been commenced during that time.

SECTION 6328.18. PERMIT AMENDMENT. Upon application by the permittee, a Coastal Development Permit may be amended by the approving authority. Application for and action on an amendment shall be accomplished in the same manner specified by this Chapter for initial approval of a Coastal Development Permit. All sections of this Chapter shall apply to permit amendments.

* * * * *

CAL. PUB. RES. CODE § 30010

California Coastal Act of 1976

Section 30010. Compensation for taking of private property; legislative declaration The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States. (Amended by Ch. 285, Stats. 1991.)

Filed March 17, 2021

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RANDY RALSTON and LINDA MENDIOLA, Plaintiffs, v. COUNTY OF SAN MATEO and CALIFORNIA COASTAL COMMISSION, Defendants.	No. **COMPLAINT RE: UNCONSTITUTIONAL TAKING** **Demand for Jury Trial**

1. Plaintiffs RANDY RALSTON and LINDA MENDIOLA together own undeveloped property, zoned single-family residential, in a residential neighborhood of San Mateo County where they would

like to build a modest single-family house. The government, though, has applied land-use regulations to the property to prohibit building any house, connecting the property to the community water system, or doing anything else of economic value, on any part of the property. The government says that application of these regulations to this private property is necessary to support a "riparian corridor" for the benefit of the public. Yet the government has not paid for the property—in fact, it continues to tax it. The government's application of regulations to prohibit all economic use of the property, and to place burdens on the economically beneficial use of the property which, in all fairness and justice, should be borne by the public as a whole—without paying for the property—violates the Takings Clause of the Fifth Amendment of the U.S. Constitution.

PARTIES

2. Plaintiffs RANDY RALSTON and LINDA MENDIOLA are individuals and California residents. Together, they own real property in fee in unincorporated San Mateo County, California, identified as APN 047-076-190, acquired by that grant deed recorded as instrument 2017-054896 in the Official Records of the County of San Mateo ("Property").

3. Defendant COUNTY OF SAN MATEO ("County") is a county in California.

4. Defendant CALIFORNIA COASTAL COMMISSION ("Commission") is a California state agency.

JURISDICTION

5. This Court has original jurisdiction under 28 U.S.C. § 1331 because the claims for relief arise under the laws of the United States, including 42 U.S.C. § 1983. To the extent that California law governs the available remedies for inverse condemnation, the Court may also have supplemental jurisdiction over any California-law remedies under 28 U.S.C. § 1367.

VENUE

6. Venue is proper in the United States District Court for the Northern District of California under 28 U.S.C. § 1391(b) because one or more defendants reside in this District and a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of the property that is the subject of this action is situated, in this District.

INTRADISTRICT ASSIGNMENT

7. Intradistrict assignment to the San Francisco or Oakland division is proper because this action arises at least in part in San Mateo County.

FACTS

8. The Property is a standard approximately 50x100 foot, 5000 square-foot parcel, zoned R-1 (single-family residential).

9. The Property is vacant, is not generating any income for Plaintiffs, and is not known to have generated any income for any prior private owners.

10. The Property is not subject to any restrictive covenants or open space easements.

11. In the County's adopted 2014-2022 Housing Element to its General Plan, the Property is listed as a "vacant developable site" with "[n]o known" "[e]nvironmental constraints" and with "[a]vailable" infrastructure and "[n]one" listed infrastructure issues.

12. Plaintiffs purchased the Property with the expectation that they would be allowed to build a home on it.

13. Upon purchasing the Property, the County required Plaintiffs to pay property transfer taxes, and the County continues to require Plaintiffs to pay property taxes for the Property. Plaintiffs have paid all required transfer and property taxes for the Property.

14. The Property is depicted as being entirely within a "Montecito Riparian Corridor" on a County website, https://planning.smcgov.org/documents/san-mateo-county-montecito-riparian-corridor.

15. That County website states that any area within the Montecito Riparian Corridor "is held to the applicable LCP (Sensitive Habitat Component) Policies (7.7-7.13)."

16. Those LCP [Local Coastal Plan] Policies specify that, within riparian corridors, "only" certain uses may be permitted. Residential development is not listed as one of those permissible uses. No

procedure to obtain a variance, exemption, or other exception from these LCP requirements exists.

17. The Property is suitable for a single-family house, but it is not suitable for any of the uses listed in the LCP as the only uses permissible in a riparian corridor. Specifically, the Property is not suitable for: education and research, consumptive uses as provided for in the Fish and Game Code and Title 14 of the California Administrative Code, fish and wildlife management activities, trails and scenic overlooks on public lands, necessary water supply projects (not including connecting the Property to the community water supply system), stream dependent aquaculture in any form, feasible and necessary flood control projects, bridges, pipelines, repair or maintenance of roadways or road crossings, logging operations, or agricultural uses.

18. The County website states that "[a]ny intention to proceed with an application for development that would run counter to any of these policies must first be throughly [sic] reviewed by the Community Development Director and County Counsel."

19. Consistent with this requirement from the County website, Plaintiffs, who intended to proceed with an application for development of the Property with a single-family house, requested review by the County's Community Development Director.

20. The County's Community Development Director consulted with County Counsel and rejected the intention, going so far as to state that no home on the Property would be allowed: "I reviewed the

information you [Plaintiffs] submitted with County Counsel. It is our view that the totality of the circumstances surrounding the recent acquisition of the property, including its purchase price, does not establish that the property owners had a reasonable economic-backed expectation to develop the property as a separate single-family residence such that it would be justifiable to override the Local Coastal Plan limitations on development within wetland and riparian areas in order to accommodate a reasonable economic use."

21. The Coastside County Water District ("CCWD") provides treated water to the part of the County in which the Property is located. Having treated water from CCWD is necessary for any residential development of the Property. To provide treated water to a parcel such as the Property, CCWD requires the owner to obtain a letter from the County confirming that the parcel is "potentially developable" (known as a "buildability letter"). The County is aware of this requirement and provides buildability letters upon request to owners of properties the County views as potentially developable. Without a buildability letter for a parcel, CCWD will not provide treated water.

22. Plaintiffs requested a buildability letter from the County for the Property.

23. The County's Community Development Director refused Plaintiffs' request for a buildability letter, stating: "I have been looking into the Department's history of issuing such letters, and do not think it would be appropriate for us to issue one in this case, given our response [quoted in paragraph 20

above] to the parcel ownership history you [Plaintiffs] previously provided."

24. These decisions effectively prohibit Plaintiffs even from applying for a permit to build a home on the Property.

25. Plaintiffs requested that the County's Board of Supervisors reconsider the matter, or provide compensation for a taking, but the Board of Supervisors refused.

26. The County's refusal to entertain or allow any residential development on the Property is an ongoing deprivation of all economic benefit from the Property.

27. The County's refusal to entertain or allow any residential development on the Property would be repeated in the future by the County or the Commission were Plaintiffs to resubmit their requests.

28. But for the application of those LCP policies to the Property, its fair-market-value has been estimated as at least approximately $300,000.

29. Permitting a single-family residence on the Property is not contrary to any traditional, long-established background limitations on private property rights; building a single-family residence on an otherwise suitable residential-zoned property such as the Property, in a residential neighborhood, is consistent with traditional uses of private property such as this one.

30. Permitting a single-family residence on the Property would not have been prohibited under the traditional law of nuisance; a single-family residence on an otherwise suitable property such as the Property is consistent with the zoning for the area, the County's General Plan, and with the uses to which most nearby parcels have been put.

31. Neither the County nor any other governmental agency has compensated Plaintiffs for this decision to refuse any residential development on the Property.

32. No further administrative remedies exist to challenge the County's refusal to entertain a development application, or issue a buildability letter, for the Property.

33. Further requests to reconsider the County's actions would be futile.

FIRST COUNT
TAKING IN VIOLATION OF FIFTH AMENDMENT, 42 U.S.C. § 1983
(Against COUNTY)

34. Paragraphs 1 through 33 are incorporated and realleged by reference.

35. The Civil Rights Act of 1871, 42 U.S.C. § 1983, "guarantees a federal forum for claims of unconstitutional treatment at the hands of state officials," including claims of violations of the Takings Clause of the Fifth Amendment (incorporated against the States by the Due Process Clause of the Fourteenth Amendment), and "exhaustion of state

remedies is not a prerequisite to an action under 42 U.S.C. § 1983." (*Knick v. Township of Scott*, 139 S.Ct. 2162, 2167 (2019), cleaned up.)

36. The Takings Clause of the Fifth Amendment is violated when a regulation goes "too far" and, without just compensation, "denies all economically beneficial or productive use of land", *or* "places limitations on land that fall short of eliminating all economically beneficial use … [but] which, in all fairness and justice, should be borne by the public as a whole." (*Palazzolo v. Rhode Island*, 533 U.S. 606, 617-618 (2001), cleaned up.)

37. The County is denying all economically beneficial or productive use of the entire Property.

38. The County's prohibition of any residential development on a property zoned for single-family residential development, and listed in the General Plan as developable without issues or environmental constraints, in favor of preserving the property for a riparian corridor benefitting the public, and which the County has required and continues to require Plaintiffs to pay taxes on, places ongoing burdens on the economically beneficial use of the property which, in all fairness and justice, should be borne by the public as a whole.

39. The County has not compensated Plaintiffs at all.

40. The County's decision violates the Takings Clause of the Fifth Amendment.

41. Plaintiffs are entitled to appropriate relief against the County, including, to the extent authorized by law, damages and injunctive relief.

SECOND COUNT
TAKING IN VIOLATION OF FIFTH AMENDMENT, 42 U.S.C. § 1983
(Against COMMISSION)

42. Paragraphs 1 through 40 are incorporated and realleged by reference.

43. The Eleventh Amendment does not bar suit in federal court against a state "commission to restrain [its] members" from violating federal law, and suit in federal court against such a commission "will be the proper form of remedy". (*Verizon Maryland, Inc. v. Public Service Comm'n of Maryland*, 535 U.S. 635, 645 (2002), quoting *Prentis v. Atlantic Coast Line Co.*, 211 U.S. 210, 230 (1908).)

44. The Property is in the San Mateo County coastal zone.

45. The Commission has delegated primary review authority under the California Coastal Act (Cal. Public Resources Code §§ 30000 *et seq.*) for proposed development in the San Mateo County coastal zone to San Mateo County. Authority to apply the LCP is part of the Commission's delegation to the County.

46. Because of this delegation of authority, the County acts as the Commission's agent in exercising primary review authority under the California

Coastal Act and LCP for proposed development in the San Mateo County coastal zone.

47. Because the County is its agent, the Commission shares responsibility for the County's exercise of primary review authority under the California Coastal Act and LCP for proposed development in the San Mateo County coastal zone.

48. In making its decision to refuse development for the Property, the County purported to be exercising the primary review authority under the California Coastal Act and LCP delegated by the Commission to the County.

49. Because the County is its agent, the Commission shares responsibility with the County for the ongoing violation of the Takings Clause of the Fifth Amendment with respect to the Property.

50. The Commission and its members should be restrained from the ongoing violation of the Takings Clause of the Fifth Amendment with respect to the Property.

51. Plaintiffs are entitled to appropriate prospective injunctive relief against the Commission.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment to be entered for them and against the County and Commission (except as noted) as follows:

1. Ordering that Defendants not apply the "LCP (Sensitive Habitat Component) Policies" to

prohibit development, including any development related to residential development, on the Property;

2. Declaring that application of the "LCP (Sensitive Habitat Component) Policies" to prohibit development, including any development related to residential development, on the Property violates the Takings Clause of the Fifth Amendment;

3. Ordering that the County pay just compensation to Plaintiffs;

4. Ordering that the County pay Plaintiffs' fees and costs, including attorney fees and expert fees, under 42 U.S.C. § 1988, paras. (b) & (c), CCP § 1021.5, or CCP § 1036;

5. Ordering that Plaintiffs recover such other relief as the Court deems just and proper.

Dated: March 17, 2021

BRISCOE IVESTER & BAZEL LLP

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury.

Dated: March 17, 2021

BRISCOE IVESTER & BAZEL LLP

By: /s/ Peter Prows
Peter Prows
Attorneys for Plaintiffs