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No. 21-16688

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

THOMAS GEARING and DANIEL GEARING
Plaintiffs and Appellants,

vs.

CITY OF HALF MOON BAY
Defendant and Appellee.

Appeal from the United States District Court
for the Northern District of California
Case No. 3:21-cv-01802-EMC

**APPELLEE'S SUPPLEMENTAL EXCERPTS OF
RECORD**

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN
FRANCISCO DIVISION**

THOMAS GEARING and
DANIEL GEARING,

Plaintiffs,

v.

CITY OF HALF MOON
BAY and DOES 1-10,
inclusive,

Defendants.

Case No. 3:21-cv-01802-
EMC

**DECLARATION OF
JILL EKAS IN
SUPPORT OF
DEFENDANT'S
MOTION TO
ABSTAIN**

Date: August 12, 2021
Time: 1:30 p.m.

The Hon. Edward M.
Chen

I, Jill Ekas, declare:

1. I am the Community Development Director for Defendant City of Half Moon Bay ("City"). I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein. I make this declaration in support of the City's Motion to Abstain. The property at issue in this case consists of six undeveloped parcels of real property located in the West of Railroad area of Half Moon Bay, California ("Property").

Background on the City's Land Use Plans

2. The City lies entirely within the California coastal zone and is therefore subject to the California Coastal Act requirement that it adopt a Local Coastal Program ("LCP") to implement policies for protection and preservation of coastal resource in the City located within the coastal zone. A LCP must include a Land Use Plan ("LUP") and an Implementation Plan ("IP"). The LUP specifies the allowable kinds, locations, and intensities of development in the City's coastal zone, and the resource protection and development policies necessary to meet the requirements of the Coastal Act. Cal. Pub. Res. Code § 30108.5 (definition of LUP). These policies include requirements to protect wetlands, riparian, and other sensitive coastal resources; protect and maximize public access to and along the shoreline; provide a buffer between residential and recreational uses along the coast; concentrate new development in already developed areas and assure adequate public services for new growth; protect agricultural lands, scenic landscapes, and cultural resources; manage environmental hazards; and provide for certain priority coastal land uses such as visitor-serving and coastal-dependent development. Cal. Pub. Res. Code §§ 30000-30013 (findings and purpose of California Coastal Act of 1976).

3. In 1976, the City Council approved amendments to its General Plan Land Use Element. The Land Use Element considered the West of Railroad area to be part of the residential subdivision areas called Miramontes-Pilarcitos Park and Arleta Park West. The General Plan Land Use Element provides that undeveloped paper subdivisions (such as those in the West of Railroad area) should be converted to agricultural acreage or replanned for other uses to reduce hazards and promote preservation of open space and views of natural areas such as beaches, ocean, hillsides, and creeks.

4. In 1981, the City Council approved the City's first LUP for submittal to the Coastal Commission ("Commission"). In 1983, the Commission approved the LUP with modifications. In 1985, the City Council approved the Commission's modifications and re-submitted the LUP to the Commission. The Commission certified the LUP on September 24, 1985. The City's 1985 LUP designates the West of Railroad area for regional public recreation with a priority for public acquisition, but provides that limited residential uses could be developed in compliance with Planned Development ("PD") policies, including the requirement to adopt a specific plan.

5. The 1985 LUP was updated and certified by the Coastal Commission in 1993. With respect to the PD areas and their associated policies, including the West of Railroad area, the certified 1993 LUP did not make any substantive changes. In 1996, the Coastal Commission certified the City's IP to implement the LUP originally certified in 1985, providing the City with exclusive authority to issue Coastal Development Permits in the City, except for on public trust lands. The IP did not change the policies of the 1985 LUP affecting the West of Railroad area, including the policy requiring developers in the West of Railroad area to develop their property under a specific plan for the entire West of Railroad area.

6. The Property is shown on two subdivision maps recorded on December 4, 1905: the Ocean Boulevard Tract, and the Map of Frank T. Brophy's Subdivision of the Miramonte Tract. The County of San Mateo accepted the streets shown on the maps as dedicated to public use. These paper streets later became the streets of the City of Half Moon Bay by operation of law when the City incorporated in 1959.

7. On October 20, 2020, the City Council approved an LUP Update (“2020 LUP Update”), the culmination of an effort that commenced in 2013. The LUP Update does not make any substantive change to the policies affecting the West of Railroad area adopted in 1985, including the requirement that development of housing in the area proceed under a master plan¹ rather than piecemeal. The 2020 LUP Update also continues the preference for public acquisition of the West of Railroad area because it is located immediately east of the City-owned blufftop lands, with the intent of preserving the blufftop area for its significant habitat, coastal access and recreation, and scenic value. The West of Railroad area, including Plaintiffs’ parcels, likely contains wetlands and environmentally sensitive habitat. The 2020 LUP Update also allows limited new and existing uses in PD areas prior to the adoption of a master plan. With limited exceptions not applicable here, the new uses do not include new residential development. On April 15, 2021, the Coastal Commission certified the City’s 2020 LUP Update as consistent with the policies in the state Coastal Act.

8. On July 27, 2020, Plaintiffs submitted a letter to the City’s Planning Commission objecting to the treatment of the Property in the 2020 LUP Update. A true and correct copy of Plaintiffs’ letter to Brittney Cozzolino and Jill Ekas dated July 27, 2020 is attached as Exhibit A. On August 26, 2020, the City’s outside counsel, Matthew D. Zinn, responded, explaining that the 2020 LUP Update did not make any changes to the land use regulations applicable to the Property. A true and correct copy of Mr. Zinn’s

¹ The 2020 LUP Update requires a “master plan” rather than a “specific plan” but there is no substantive difference between the requirements. A specific plan, as defined by Government Code section 65450 et seq, qualifies as a “master plan” in the 2020 LUP.

letter to Plaintiffs dated August 26, 2020 is attached as Exhibit B.

The City's Actions to Acquire the Property

9. The City is in the process of acquiring lots in the West of Railroad area, including the Property, to implement the City's 2020 LUP Update by protecting significant habitat and scenic values, providing an area for green infrastructure to control drainage and manage erosion hazards, managing retreat of the Coastal Trail, mitigating cumulative traffic impacts through its lot retirement program, and maintaining public access and recreational opportunities in the West of Railroad area. Prior to exercising the power of eminent domain, a local jurisdiction must appraise the property it seeks to acquire, then make an offer to purchase the property based on that appraisal. Cal. Gov't Code § 7267.2. If unable to reach an agreement with the property owner to purchase the property, the jurisdiction can adopt a Resolution of Necessity ("RON") which authorizes the filing of an eminent domain action in state court. Cal. Civ. Proc. Code § 1245.220.

10. The City notified Plaintiffs of the City's plans to acquire the Property well in advance of the RON hearing and filing of the eminent domain action. On December 22, 2020, the City sent a Notice of Decision to Appraise the Property to Plaintiffs. The Notice invited Plaintiffs to accompany the City's appraiser on his inspection of the property and to provide any information relevant to the market value of the property to the appraiser. Plaintiffs did not respond to the City's offer to accompany the appraiser on the inspection or to provide information to the appraiser. The appraisal was thus finalized without any input from Plaintiffs. On January 21, 2021 the City offered to purchase the Property for the full appraisal amount. Plaintiffs did not accept the City's offer. On February 26, 2021, the City mailed a notice to Plaintiffs advising them that the City Council

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would hold a hearing on March 16, 2021 to consider adoption of a RON to acquire the Property by eminent domain.

11. On March 16, 2021, after notice to Plaintiffs under California Code of Civil Procedure section 1245.235, at a hearing conducted at a regular meeting, the City Council adopted, by a vote in excess of two-thirds of its members, Resolution C-2021-13, declaring that the public interest and necessity require the acquisition of the Property. During the hearing, the Council considered substantial evidence demonstrating that the Property is required to implement the 2020 LUP Update by protecting significant habitat and scenic values, providing an area for green infrastructure to control drainage and manage erosion hazards, managing retreat of the Coastal Trail, mitigating cumulative traffic impacts through its lot retirement program, and maintaining public access and recreational opportunities in the West of Railroad area. The Council also considered substantial evidence showing the estimated location of the bluff edge in 2050 and 2100 under the assumption of "business as usual" and under a mitigated approach providing improved drainage and public access. In the unmitigated case, the bluff face is projected to recede as much as 200 horizontal feet by 2100 which would bring the bluff into the West of Railroad area. Plaintiffs did not appear at the hearing or submit any comments.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 1st day of July, 2021, at Half Moon Bay, California.

/s/

Jill Ekas