SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

CASA MIRA HOMEOWNERS ASSOCIATION, et al.,
Petitioners and Plaintiffs,

vs.

CALIFORNIA COASTAL COMMISSION, et al.,
Respondent and Defendant.
_____/

CALIFORNIA DEPARTMENT OF PARKS AND RECREATION, et al.,
Real Parties in Interest.
_____/

Case No. 19CIV04677
CEQA ACTION

Assigned for All Purposes to
Hon. Marie S. Weiner, Dept. 2

TENTATIVE DECISION AFTER COURT TRIAL/HEARING ON PETITION FOR WRIT

On October 12, 2022, a Court Trial/Hearing was held on the first and second claims alleged in the Verified Second Amended Petition for Writ of Administrative Mandamus and/or Traditional Mandamus filed in 19CIV04677, in Department 2 of this Court before the Honorable Marie S. Weiner. Thomas Roth, Esq. appeared on behalf of Petitioners and Plaintiffs; Nicholas Tsukamaki, Deputy Attorney General appeared on behalf of Real Party in Interest California Department of Parks and Recreation; Joel Jacobs, Deputy Attorney General, appeared on behalf of Respondents and Defendants California Coastal Commission and Jack Ainsworth as Executive Director of the CCC;

Fran Layton of Shute Mihaly & Weinberger LLP appeared on behalf of Real Party in Interest City of Half Moon Bay; Antoinette Ranit of Wittwer Parkin LLP appeared on behalf of Real Party in Interest Granada Community Services District; and Jennifer Wendell Lentz of Folger Levin LLP appeared on behalf of Top of Mirada LLC and Jennifer Thomas.

Counsel for the parties previously stipulated to set the Petition (first and second "causes of action") in 19CIV04677 for trial, and to bifurcate and adjudicate later the Complaint for inverse condemnation (third and fourth causes of action) in 19CIV04677.

Upon due consideration of the evidence set forth in the Administrative Record, the Verified Petition and Answers, and the briefs and oral arguments of counsel for the parties, and having taken the matter under submission,

THE COURT *TENTATIVELY* DECIDES AND ORDERS as follows:

The Petition is GRANTED. Respondent California Coastal Commission committed abuse of discretion, committed prejudicial legal error, failed to make necessary findings, and/or the findings made are not supported by the evidence; and Respondent mandated "conditions" which are unreasonable and/or infeasible.

A Writ shall issue ordering Respondent California Coastal Commission to VACATE and set aside its July 11, 2019 Decision on Coastal Development Permit Application No. 2-16-0784, and subsequent Commission Action on November 13, 2019; and to rehear and consider CDP Application No. 2-16-0784 in light of, and consistent with, this Court's rulings and determinations.

Petitioners' Evidentiary Objections are SUSTAINED. On Petition for Writ reviewing the decision of the CCC on a CDP permit, the Court should conduct such review relying upon the Administrative Record, and not evidence that is not part of the

Administrative Record. Sierra Club v. CCC (2005) 35 Cal.4th 839, 863. There was no motion to augment the record here. Petitioners' Second Requests for Judicial Notice are DENIED. Petitioners' initial Request for Judicial Notice No. 1 is DENIED; and Requests Nos. 2 and 3 that this Court take notice of the verified pleadings filed in this lawsuit is GRANTED (but unnecessary, as the Court can always consider the docket of the case upon which it is ruling).

Respondent's Requests for Judicial Notice are DENIED.

THE COURT *TENTATIVELY* FINDS as follows:

Standard for Statutory Interpretation of the Coastal Act

More recently in the case of Surfrider Foundation v. Martins Beach 1 LLC (2017) 14 Cal.App.5th 238, 251, the First Appellate District set forth the standard for statutory interpretation of the Coastal Act:

> "'As in any case involving statutory interpretation, our fundamental task here is to determine the Legislature's intent so as to effectuate the law's purpose.' [Citation.] We begin by examining the statutory language because the words of a statute are generally the most reliable indicator of legislative intent. [Citations.] We give the words of the statute their ordinary and usual meaning and view them in their statutory context. [Citation.] We harmonize the various parts of the enactment by considering them in the context of the statutory framework as a whole. [Citations.] 'If the statute's text evinces an unmistakable plain meaning, we need go no further.' [Citation.] 'Only when the statute's language is ambiguous or susceptible of more than one

reasonable interpretation, may the court turn to extrinsic aids to ssist in interpretation.'" [Citation.] "When a provision of the Coastal Act is at issue, we are enjoined to construe it liberally to accomplish its purposes and objectives, giving the highest priority to environmental considerations." [Citation.]

Section 30235 of the Coastal Act Applies to All Developments and Structures in CDP Application No. 2-16-0784

The CDP Application No. 2-16-0784, by Petitioner Casa Mira Homeowners Association and by 2 Mirada Road Ownership Group, seeks to construct a tied-back shotcrete seawall, 257 feet in length by 2.5 feet in width, along with a public access staircase along the bluff face, to replace existing emergency riprap revetment (sometimes referred to herein as the Project). The seawall is to shore-up an eroding bluff, and thus to protect four condominium buildings in the Casa Mira condo complex, *and* a multi-family apartment building at 2 Mirada Road, *and* a segment of the California Coastal Trial, *and* a sewer line of the Granada Sanitary District – all located in the City of Half Moon Bay, California.

Respondent California Coastal Commission *rejected* its Staff's Recommendations (whereby Staff recommended approval) and rejected its Staff's Proposed Findings at the hearing on July 11, 2019.

Of the 257 feet of seawall for the Project, Respondent California Coastal Commission only approved 50 feet located at the 2 Mirada Road location, but no protection of the California Coastal Trail or of the Casa Mira condo buildings. Respondent CCC decided that Petitioner Casa Mira Homeowners Association's buildings

were not entitled to any seawall protection under Section 30235, and neither is the Granada Sanitary District sewer line; but decided that the 2 Mirada Road buildings are subject to protection under the Coastal Act. Respondent further decided that the California Coastal Trail is in danger from erosion and is subject to protection under Section 30235, ***but*** *denied it seawall protection* – deciding instead, that it is a "feasible alternative" to simply *move* the Coastal Trail away from the ocean and place it *behind* Petitioner's buildings.

The key issue in this Petition proceeding is the interpretation of Section 30235 of the Public Resources Code, which states as follows:

> Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible.

This Court finds that the statute is unambiguous, and the disputed terms are used and to be interpreted in their ordinary, general, common sense meaning.

The phrase "shall be permitted" uses the future tense. The phrase "to protect existing structures" uses words in a present tense. A natural and ordinary reading of the statute is that if a structure *exists* presently, and the existing structure is now in danger from erosion, a seawall or revetment shall be permitted (i.e., a permit shall be issued for its construction) as long as the planned construction is also designed to eliminate or

mitigate adverse impacts on local shoreline sand supply. It is clear that the statute supports people protecting their existing structures from the danger of property damage due to subsequent erosion.

Respondent CCC advocates for a different interpretation. Specifically Respondent takes the position that Section 30235 only applies to "structures" that "existed" *before* the Coastal Act was enacted in 1976. It is Respondent's position that the Coastal Act should be interpreted such that all sea-side homes and buildings constructed after 1976, if endangered by erosion, should be allowed to fall into the sea and be destroyed, in complete deference to creation of beach sand by erosion of beach cliffs.

The Court finds that (i) Respondent CCC has misinterpreted an unambiguous statute; (ii) Respondent is attempting to add language to the statute; (iii) Respondent's interpretation is contrary to the stated purposes of the Coastal Act; and (iv) Respondent's interpretation is unreasonable.

Based upon Respondent's own erroneous interpretation and application of Section 30235, Respondent here erroneously decided that Petitioner's condo complex properties and Granada's sewer lines were not subject to Section 30235 and were not entitled to any seawall or other protection against erosion. Accordingly, Respondent failed to make any findings as to the propriety of the CDP Application as to Petitioner.

As for the California Coastal Trail, and obvious "coastal-dependent use", Respondent erroneously concluded that a seawall or other protection against erosion was not "required" – again misapplying Section 30235. Instead, Respondent decided that the subject portion of the Trail should *stop being used*, and instead moved to a different location away from the sea. This proposition was created *sui sponte* by members of the

CCC, for which proposal Respondent lacked substantive evidence to make any findings that the Trail could so be moved.

Respondent's Interpretation of Section 30235 is Erroneous and Unreasonable

Respondent CCC asserts that Section 30235 only applies to structures existing prior to the 1976 enactment of the Coastal Act, and relies upon multiple bases.

First, CCC asserts that the words "prior to the enactment of the Coastal Act" or "prior to the enactment of this statute" should be implied within the stated term "existing structures". "Existing structures" is not a defined term in the Coastal Act, and this Court had applied the term using common understanding. Adding language to a statute -- especially where, as here, the statutory language can be applied as written – is not appropriate. The Coastal Act does not permit the Court to add limiting descriptive phrases to its stated statutory language. Surfrider, at p. 253/

Indeed, Respondent CCC concedes that it previously interpreted and enforced Section 20235 with the understanding that "existing structures" meant exactly what this Court has found to be the meaning. Respondent CCC admits that it has only recently changed its mind, and now decided that it only means pre-Coastal Act buildings.

Second, Respondent argues that Legislative history should be considered in interpretation of Section 30235. The law is established that if a statute in unambiguous, Legislative history is irrelevant. Surfrider, at p. 255 fn. 14 ("Because the plain language of section 30106 controls, it is unnecessary to address appellants' arguments based on the legislative history of the Coastal Act.") Even if there was an argument to consider it here, counsel for all parties conceded *that there is no Legislative history* specifically regarding Section 30235 or any special meaning or purpose of the phrase "existing structures" at the time it was enacted. Even the articles that Respondent asked the Court

to consider – as to which evidentiary objections are sustained – *do not rely upon Legislative history* from the time of enactment of Section 30235. Section 30235 has never been amended since its enactment.

Third, Respondent argues that Section 30235 must be read in conjunction with Section 30253, and that such joint reading results in a conclusion that a seawall can never be authorized. Although the Court agrees that the statutes should be read in harmony, the Court finds that the construction of a seawall to protect "existing buildings", including those built after 1976, does not conflict with Section 30253.

Section 30253 states, in pertinent part: "New development shall do all of the following: . . . (b) Assure stability and structural integrity, and neither create or contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. . . ."

Courts have a "duty to 'harmonize' the 'various elements' of the Coastal Act 'in order to carry out the overriding legislative purpose as gleaned from a reading of the entire act.' [Citations.]" Sierra Club v. California Coastal Commission (2005) 35 Cal.4th 839, 858.Sections 30235 and 30253 can easily be read in harmony. As an example, we use the very simply example of a coast-side home. Section 30253 expressly applies to ***new*** construction. If a person wants to build a new house on coast-side property, under Section 30253, the person should not be allowed to build this "**new** development" in the first place **if** land stability and structural integrity would require that a seawall (or other fortification) be built at the same time as the house. Section 30235 expressly applies to *existing* construction. If a person already had a house on coast-side property, i.e., development that had already been considered by authorities and approved to build and is

built, and the situation arises that subsequent erosion necessitates that a seawall (or other fortification) be built to protect the existing (previously approved) home, then Section 30235 would allow such seawall construction.

Fourth, Respondent argues that this Superior Court should simply defer to the CCC's interpretation of the Coastal Act statutes, as it is a state agency. That is not the law. Interpretation of a law, which is not a regulation propounded by that agency, is in excess f its jurisdiction, "because interpretation of a statute is purely a matter of law, the final determination of the applicability of that law to the agency is outside the agency's jurisdiction. [Citations.]" California Administrative Mandamus §3.58.

In Yamaha Corp. of America v. State Board of Equalization 91998) 19 Cal.4th 1, 7, the Supreme Court held that an administrative body's interpretation of a statute may be "entitled to consideration and respect by the court, however, unlike quasi-legislative regulations adopted by an agency to which the legislature has confided the power to 'make law,'", it is the courts that have the final say on interpretation of statutes. "The ultimate interpretation of a statute is an exercise of the judicial power . . . conferred upon the courts by the Constitution and, in the absence of a constitutional provision, cannot be exercised by any other body." Yamaha, at p. 7, quoting from Bodinson Mfg. Co. v. California e. Comm. (1941) 17 Cal.2d 321, 326.

The Court finds that Respondent's position is contrary to the stated purposes of the Coastal Act. It is Respondent's position that all structures along the coast that become endangered or unstable or damaged due to erosion should be allowed to deteriorate and collapse. Respondent takes the position that the erosion of sea-side cliffs creates beach sand, and that continued creation of a sandy beach is the ultimate goal –

and private property rights are insignificant. That is an unreasonable interpretation of the Coastal Act.

Rather, the Coastal Act requires a weighing and consideration of protection and enjoyment of nature *and* protection and enjoyment of private property. In Section 30001(d), the Legislature found and declared: "That existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of this state and especially to working persons employed within the coastal zone." In Section 30001.5, the Legislature found and declared that a basic goals of the state for the coastal zone is to

In addition, this Court notes that evidence was presented, and it is uncontested, that Respondent CCC now regularly mandates that coast-side builders affirmatively waive all rights to request fortifications un the future, under Section 30235, in order to get a CDP approval by the CCC. No such waiver was requested or obtained as to the structures and developments that are the subject of Petitioner's CDP Application. Thus, Respondent's position is completely inconsistent: If Section 30235 allegedly only applies to structures "existing" prior to 1976, then why is CCC requiring applicants to affirmatively waive Section 30235 in order to obtain approval to build *new* structures post-1976? The waiver condition makes no practical sense unless Section 30235 applies in the first place.

Accordingly, Respondent's "interpretation" of Section 30235 is rejected as erroneous and unreasonable.

DATED: January 10, 2023

HON. MARIE S. WEINER
JUDGE OF THE SUPERIOR COURT