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CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

COALITION OF CONCERNED COMMUNITIES, INC., et al., Plaintiffs and Appellants, v. CITY OF LOS ANGELES, Defendant and Respondent; CATELLUS RESIDENTIAL GROUP, Real Party in Interest and Respondent.	B149092 (Los Angeles County Super. Ct. No. BC207782)

APPEAL from a judgment of the Superior Court of Los Angeles County, David P. Jaffe, Judge. Affirmed.

Law Office of Craig A. Sherman and Craig A. Sherman for Plaintiffs and Appellants.

Rockard J. Delgadillo, City Attorney, Susan D. Pfann and Jack L. Brown, Assistant City Attorneys, for Defendant and Respondent.

Latham & Watkins, Robert D. Crockett, Kathryn M. Davis and James R. Repking for Real Party in Interest and Respondent.

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* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of part 1 of the Contentions and parts 1 through 7 of the Discussion.

Coalition of Concerned Communities, Inc., and Spirit of the Sage Council (collectively Coalition) appeal the denial of their petition for writ of mandate challenging the certification by City of Los Angeles (the city) of an environmental impact report (EIR) and the city's approval of a development project. The proposed project by Catellus Residential Group (Catellus) involves the construction of 114 homes on 44.69 acres of land in Westchester and Playa del Rey.

Coalition raises several contentions under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), the Planning and Zoning Law (Gov. Code, § 65000 et seq.), and the Mello Act (Gov. Code, §§ 65590, 65590.1). We conclude that Coalition has not shown prejudicial error and therefore affirm the judgment. In the published portion of this opinion, we conclude that the Mello Act affordable housing requirement applies to a new housing development only if the development includes housing constructed within the coastal zone.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Prior Proposed Project*

A prior owner proposed a residential development on the site including 121 single family homes and 16 acres of parkland and open space. The city notified other public agencies, including the California Coastal Commission, in April 1992 that it would prepare an EIR and conducted a public meeting on the proposed development. The city circulated a draft EIR for review and comment by the public and public agencies in December 1993.

The city planning department produced a final EIR in June 1994. The project applicant then proposed to amend the project, but abandoned the effort. The city did not conduct a public hearing on the final EIR and never certified the final EIR or approved the project.

2. *Present Project*

Catellus purchased the property and revised the development proposal. The revised proposal included 120 single family homes and 16.75 acres of open space. The city notified other public agencies, not including the Coastal Commission, in October 1997 that an EIR would be prepared. The city circulated a draft EIR in May 1998, but did not serve the Coastal Commission. Catellus later revised its proposal by reducing the number of homes to 119, increasing the area of open space, and modifying the design of a pedestrian trail.

A consultant for Catellus produced a final EIR in October 1998. The Advisory Agency of the city's planning department conducted a public hearing and recommended certification of the EIR, approval of the subdivision tract map, and approval of the project, with certain mitigation measures, in December 1998. The Advisory Agency made numerous findings, including findings that the EIR complies with CEQA and that the subdivision is consistent with the applicable general and specific plans. Coalition appealed the recommendation to the city planning commission. The planning commission conducted a public hearing, approved certain project modifications, and denied the appeal in January 1999.

Coalition appealed the decision to the city council. The city council referred the matter to its planning and land use management committee, which conducted a public hearing in February 1999 and recommended that the city council approve the project.

3. *Certification of the Final EIR and Project Approval*

The city council conducted a public hearing in February 1999. The city council adopted the Advisory Agency's findings as modified by the planning commission, including findings that the project will cause significant and unavoidable environmental impacts to aesthetics and views of the project site and to air quality from construction activities, that the project will cause significant and unavoidable cumulative impacts to air quality from construction activities and

to archeological resources, and that the impacts to other resources will be insignificant.

The city council certified the final EIR, adopted a statement of overriding considerations, approved the subdivision tract map modification, and issued a coastal development permit in February 1999. The city council also found that the Mello Act affordable housing requirement (Gov. Code, § 65590, subd. (d)) did not apply because none of the proposed homes would be constructed within the coastal zone.

4. *Petition for Writ of Mandate*

Coalition filed a petition for writ of mandate in the superior court in March 1999, challenging the city's certification of the final EIR and approval of the project. The petition also alleges that the project is inconsistent with the city's general and specific plans and violates the Mello Act.

5. *Coastal Commission's Denial of a Permit*

Coalition challenged the city's issuance of a coastal development permit by appealing the matter to the Coastal Commission. Meanwhile, Catellus applied to the Coastal Commission for a coastal development permit. At a public hearing in August 1999, Coastal Commission members expressed concerns regarding the filling of Hastings Canyon, grading to create an access road within the coastal zone, construction of retaining walls along the bluff top, and destruction of habitat. The Coastal Commission denied a coastal development permit.

The trial court stayed the petition for writ of mandate proceeding pending revision of the project.

6. *Project Revisions and City Approval*

Catellus revised the project to include 114 homes, all to be constructed outside the coastal zone, and 18.67 acres of open space. The revised project involves the filling of Hastings Canyon only outside the coastal zone, elimination of several proposed bluff top retaining walls within the coastal zone, reduced

grading and reduced removal of coastal sage scrub within the coastal zone, and an increased area to be replanted with native plant species.

Catellus applied to the city for a coastal development permit for the revised project and submitted a revised tentative subdivision tract map in September 1999. A consultant for Catellus prepared an addendum to the certified EIR. The EIR addendum dated October 1999 states that the project revisions will result in neither new significant environmental effects nor a substantial increase in the severity of significant effects previously identified, and will result in some reduced environmental impacts.

The Environmental Review Section of the city's planning department concluded in October 1999 that the EIR addendum is adequate. The city zoning administrator conducted a public hearing on the coastal development permit application in October 1999 and approved the application in November 1999. The zoning administrator cited the conclusion by the Environmental Review Section that the EIR addendum is adequate and concluded that the city council's prior CEQA findings and statement of overriding considerations apply equally well to the revised project.

Coalition appealed the approval of a coastal development permit to the city's board of zoning appeals. After a public hearing, the board of zoning appeals denied the appeal and issued a coastal development permit in January 2000.

The Advisory Agency approved the revised tentative map on November 4, 1999, with no prior notice and no public hearing, despite Coalition's prior written request to the planning department for notice of any modification to the tract map. The city did not notify Coalition of the approval. Upon learning of the approval by other means, Coalition filed an appeal on December 3, 1999. The city rejected the appeal as untimely.

7. *Coastal Commission's Issuance of a Permit*

Coalition appealed the city's decision to issue a coastal development permit to the Coastal Commission, and Catellus applied to the commission for a coastal development permit. Those proceedings before the Coastal Commission are not part of the administrative record in this action. The commission denied the appeal and issued a coastal development permit in August 2000.

Sierra Club and others filed a petition for writ of mandate in the San Francisco Superior Court challenging the Coastal Commission's issuance of a permit. The superior court denied the petition in July 2002. Division Five of the First District Court of Appeal affirmed the judgment denying the petition. (*Sierra Club v. California Coastal Com.* (2003) 107 Cal.App.4th 1030, mod. 108 Cal.App.4th 574a, review granted July 23, 2003, S116081.)[1]

8. *Denial of the Petition for Writ of Mandate*

Coalition filed a first amended petition for writ of mandate in October 2000 alleging that the EIR is inadequate in several respects, that the city's findings under CEQA are not supported by the evidence, that the city failed to notify the Coastal Commission of the draft EIR as required by CEQA, that the project is inconsistent with the city's general and specific plans concerning protection of views, that the project is located within the coastal zone and therefore must comply with Mello Act affordable housing requirements, and that the city failed to provide proper notice of revisions to the tentative map and wrongfully refused to consider Coalition's appeal.

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[1] Aware of the pendency of the appeal and its possible impact on our decision, we delayed our final consideration of this matter until after the First District had filed its opinion. We then asked the parties to file supplemental briefs discussing the significance of the opinion. The parties agreed that the opinion should not affect our analysis of the issues presented in this case. After consideration of the matter, we agree and therefore do not further discuss that opinion.

The trial court conducted a hearing on the merits in January 2001. It rejected Coalition's contentions and entered a judgment denying the petition in February 2001. Coalition has appealed from that judgment.

CONTENTIONS

1. *Nonpublished Issues*

Coalition contends (1) the project involves the filling and grading of a natural coastal canyon and stream bed and the loss of bluff top habitat for sensitive bird species, and the evidence does not support the city's findings that these are insignificant environmental impacts; (2) the city failed to require feasible mitigation measures to preserve grasslands on the coastal bluffs and to preserve wetlands and riparian habitat; (3) the EIR does not analyze a reasonable range of alternatives that would reduce significant impacts to scenic views, natural landforms, and wetlands; (4) the city failed to notify the Coastal Commission that an EIR was being prepared, failed to serve the draft EIR on the Coastal Commission, and prevented the Coastal Commission from participating meaningfully in the planning process; (5) the project conflicts with the city's general plan and specific plans because it impairs coastal views; and (6) the city's approval of the revised tentative map in November 1999 with no prior notice to Coalition and no notice of the decision deprived Coalition of the right to appeal the decision to the city council and violated due process.

Catellus and the city contend (1) the evidence supports the city's findings that certain impacts will be less than significant; (2) no significant loss of habitat or wetlands will result from the development, so no mitigation is required; (3) the city considered a reasonable range of feasible alternatives; (4) the city had no obligation to notify the Coastal Commission of the draft EIR because the Coastal Commission administers a certified regulatory program that involves de novo review of a proposed project after the city approves the project; (5) the project is consistent with the city's general plan and specific plans regarding coastal views;

and (6) Coalition was not entitled to prior notice of the subdivision tract map modification, failed to exhaust its administrative remedy, failed to file an action challenging the approval within 90 days after the approval as required by Government Code section 65009, and has not shown prejudicial error.

2. *Mello Act Affordable Housing Requirement*

Coalition contends the proposed project is a "[n]ew housing development[] constructed within the coastal zone" (Gov. Code, § 65590, subd. (d)), so Catellus must provide affordable housing.

Catellus and the city contend the project is not a "[n]ew housing development[] constructed within the coastal zone" (Gov. Code, § 65590, subd. (d)) because no housing structures will be constructed within the coastal zone.

DISCUSSION

1. *CEQA Requirements*

A public agency must prepare an EIR or cause an EIR to be prepared for any project that it proposes to carry out or approve that may have a significant effect on the environment. (Pub. Resources Code,[2] §§ 21100, subd. (a), 21151, subd. (a); Guidelines,[3] § 15064, subd. (a)(1).) If more than one agency is responsible to carry out or approve the project, the agency with principal responsibility is designated lead agency and is the agency that must cause an EIR to be prepared. (§§ 21067, 21100, subd. (a), 21165; Guidelines, §§ 15050, 15367.) Other agencies with discretionary authority to carry out or approve the project are designated responsible agencies. (§ 21069; Guidelines, § 15381.)

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[2] All statutory references are to the Public Resources Code unless otherwise specified.

[3] All references to Guidelines are to the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.). "[C]ourts should afford great weight to the Guidelines except when a provision is clearly unauthorized or erroneous under CEQA." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391, fn. 2 (*Laurel Heights I*).)

The EIR must describe the proposed project and its environmental setting, state the objectives sought to be achieved, identify and analyze the significant effects on the environment, state how those impacts can be mitigated or avoided, and identify alternatives to the project, among other requirements. (§§ 21100, subds. (a), (b), 21151; Guidelines, §§ 15124, 15125, 15126.2, 15143.)

The lead agency must notify the public of the draft EIR, make the draft EIR and all documents referenced in it available for public review, and respond to comments that raise significant environmental issues. (§§ 21092, 21091, subds. (a), (d); Guidelines, §§ 15087, 15088.) The lead agency also must consult with and obtain comments from other agencies affected by the project and respond to their comments. (§§ 21092.5, 21104, 21153; Guidelines, § 15086.) It must prepare a final EIR including any revisions to the draft EIR, the comments received from the public and other agencies, and responses to comments. (Guidelines, §§ 15089, subd. (a), 15132.)

An agency may not approve a project that will have significant environmental effects if there are feasible alternatives or feasible mitigation measures that would substantially lessen those effects.[4] (§§ 21002, 21002.1, subd. (b); Guidelines, § 15021, subd. (a)(2); *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 134.) An agency may find, however, that particular economic, social, or other considerations make the alternatives and mitigation measures infeasible and that particular project benefits outweigh the adverse environmental effects. (§ 21081, subds. (a)(3), (b); Guidelines, § 15091, subd. (a)(3).) Specifically, an agency cannot approve a project that will have significant environmental effects unless it finds, based on substantial evidence in the

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4 " 'Feasible' means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (§ 21061.1.)

administrative record, that (1) mitigation measures required in or incorporated into the project will avoid or substantially lessen the significant effects; (2) those measures are within the jurisdiction of another public agency and have been adopted, or can and should be adopted, by that agency; or (3) specific economic, legal, social, technological, or other considerations make the mitigation measures or alternatives identified in the EIR infeasible, and specific overriding economic, legal, social, technological, or other benefits outweigh the significant environmental effects. (§§ 21081, 21081.5; Guidelines, § 15091, subds. (a), (b).)

Thus, a lead agency is not required to favor environmental protection over other considerations, but it must disclose and carefully consider the environmental consequences of its actions, mitigate adverse environmental effects if feasible, explain the reasons for its actions, and afford the public and other affected agencies an opportunity to participate meaningfully in the environmental review process. The purpose of these requirements is to ensure that public officials and the public are aware of the environmental consequences of decisions before they are made. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564 (*Goleta Valley II*).) The EIR process also informs the public of the basis for environmentally significant decisions by public officials and thereby promotes accountability and informed self-government. (*Laurel Heights I*, *supra*, 47 Cal.3d at p. 392; *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935-936.)

The lead agency must certify that its decisionmaking body reviewed and considered the information contained in the EIR, that the EIR reflects the agency's independent judgment and analysis, and that the EIR was completed in compliance with CEQA, before approving the project. (§ 21082.1, subd. (c); Guidelines, § 15090.)

2. *Standard of Review*

The standard of review of an agency decision under CEQA is abuse of discretion. Abuse of discretion means the agency did not proceed as required by law or there was no substantial evidence to support its decision. (§§ 21168, 21168.5; *Laurel Heights I*, *supra*, 47 Cal.3d at p. 392, fn. 5 ["the standard of review is essentially the same under either section"]; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1375.) In reviewing the adequacy of an EIR, the court does not determine whether the agency's factual determinations were correct, but only determines whether they were supported by substantial evidence. (*Laurel Heights I*, *supra*, at pp. 392-393.)

On appeal, we independently review the administrative record under the same standard of review that governs the trial court. (*Gentry v. City of Murrieta*, *supra*, 36 Cal.App.4th at pp. 1375-1376.)

3. *Substantial Evidence Supports the Findings Concerning Significant Impacts and Feasible Mitigation*

a. *Filling of Part of Hastings Canyon*

We review an agency's finding that an environmental effect identified in an EIR is insignificant under the substantial evidence standard. (§§ 21168, 21168.5; *Laurel Heights I*, *supra*, 47 Cal.3d at pp. 392-393.)

The revised project involves no filling or grading of Hastings Canyon within the coastal zone. The Coastal Commission's prior objection to alteration of the canyon within the coastal zone has been addressed.

Catellus's biological consultants reported and the EIR states that Hastings Canyon has suffered erosion due to rapid and increased water runoff caused by human activities and that the erosion contributes to detrimental siltation and degradation of the Ballona Creek wetlands. The consultants reported that the canyon is no longer a true natural drainage and that vegetation within the canyon is seriously degraded, and concluded that filling the portion of the canyon outside

the coastal zone will mitigate harmful effects to the adjacent wetlands. Although there is contrary evidence, we conclude that this evidence supports the finding that filling the canyon would be environmentally beneficial and would not create a significant impact on natural landforms or wetlands.

b. *Loss of Bluff Top Vegetation*

Catellus's biological consultants reported and the EIR states that nonnative and ruderal vegetation predominates on the bluff top, that the bluff top vegetation has no significant value as habitat, that the native coastal sage scrub remaining on the site is isolated and degraded, and that the proposed restoration of native coastal sage scrub on the bluff face would enhance the habitat value. The EIR states that six different sensitive or threatened species have been observed foraging on or flying over, but not nesting on, the site: California horned lark, loggerhead shrike, sharp-skinned hawk, black-shouldered kite, Cooper's hawk, and northern harrier.

The city council found that the loss of habitat for the California horned lark and loggerhead shrike "could affect local populations of these species, but would not result in significant impacts to the regional populations of these species, as additional on and off-site habitat remain," and concluded that the impact will be less than significant.[5] The city council also found that the removal of nonnative plants and restoration of native plants will avoid or substantially reduce the adverse environmental impacts. We conclude that the cited evidence supports the finding that the impact of the loss of bluff top vegetation, as mitigated, will be less than significant.

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5 The EIR states that Hasting Canyon contains suitable nesting habitat for the California horned lark and loggerhead shrike, but that those species have not been observed nesting on site. Coalition addresses only the loss of habitat on the bluff top and does not challenge the city council's finding that the loss of habitat in the canyon is insignificant.

c. *Lack of Mitigation Measures*

The lead agency must adopt feasible mitigation measures to minimize significant environmental impacts (§§ 21002, 21081, subd. (a); Guidelines, §§ 15002, subd. (a)(3), 15021, subd. (a)(2), 15091, subd. (a)(1)), but need not adopt mitigation measures to minimize an impact that is less than significant (Guidelines, § 15126.4, subd. (a)(3)). Since substantial evidence supports the finding that the loss of bluff top vegetation, as mitigated, and the filling of Hastings Canyon will not cause a significant impact, as stated *ante*, no further mitigation is necessary.

4. *The EIR Discusses a Reasonable Range of Alternatives*

An EIR must analyze a reasonable range of alternatives to the proposed project and evaluate their comparative merits. (§§ 21002, 21002.1, subd. (a), 21100, subd. (b)(4); Guidelines, § 15126.6; *Goleta Valley II*, *supra*, 52 Cal.3d at pp. 564-566; *Laurel Heights I*, *supra*, 47 Cal.3d at p. 400.) The discussion should focus on alternatives to the project that could substantially reduce or avoid one or more of the significant environmental effects while still serving most of the project's fundamental objectives, even if those alternatives would impede to some degree the attainment of the project objectives or be more costly. (Guidelines, § 15126.6, subds. (b), (c); *Laurel Heights I*, *supra*, at p. 400.) The EIR also should identify alternatives that initially were considered but were rejected as infeasible and therefore were not considered in detail, and should briefly explain the reasons. (Guidelines, § 15126.6, subd. (c).)

An EIR need not analyze every conceivable alternative, but under the rule of reason must analyze a range of alternatives sufficient to permit the agency to make a reasoned choice and to meaningfully inform the public. (Guidelines, § 15126.6, subds. (a), (f); *Goleta Valley II*, *supra*, 52 Cal.3d at pp. 565-566; *Laurel Heights I*, *supra*, 47 Cal.3d at pp. 406-407; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 733.) The alternatives analyzed need

not include a particular alternative promoted by commenters as long as the alternatives analyzed constitute a reasonable range of alternatives to the project as a whole. (*Big Rock Mesas Property Owners Assn. v. Board of Supervisors* (1977) 73 Cal.App.3d 218, 227.)

An EIR must evaluate the "no project" alternative, which analyzes the environmental impacts if the project is not constructed, for purposes of comparison. (Guidelines, § 15126.6, subd. (e)(1), (2).) If the "no project" alternative is environmentally superior to the project, the EIR must identify and analyze another environmentally superior alternative. (Guidelines, § 15126.6, subd. (e)(2).) These requirements help to ensure a reasonable range of alternatives.

Alternatives analyzed in the EIR here include (1) no project; (2) Alternative Access, no new access road from Lincoln Boulevard below the bluffs; (3) Reduced Site Elevation, a 20-foot reduction in site elevation achieved by soils excavation; (4) Reduced Density, a reduction in the number of homes (96 homes) and increase in average lot size; and (5) Alternative Slope Stabilization Plan, increased grading of the bluff face. The EIR identifies no project and Reduced Density as environmentally superior alternatives. With the exception of the no project alternative, all of the alternatives analyzed involve some grading and alteration of the bluff and canyon. The EIR describes Hastings Canyon as an "erosional feature," states that the site is highly susceptible to erosion due to loose soils, and states that erosion caused by stormwater runoff through the canyon adversely impacts adjacent property.

The EIR also identifies two alternatives that were rejected as infeasible and therefore were not evaluated in detail: Alternative Use, a community park with recreational facilities; and Alternative Site, construction of a similar project at another location.

Coalition contends the range of alternatives analyzed is unreasonable because other than the no project alternative there is no alternative that avoids impairing scenic views and grading the bluffs and canyon. Coalition contends a reasonable range of alternatives should include an alternative that would minimize grading of the bluffs and canyon, would not impair wetlands, and would modify the development footprint and design to protect scenic views. Coalition also contends the Reduced Density alternative is not environmentally superior to the project because it would not reduce significant impacts and contends Hastings Canyon is not an "erosional feature" in need of stabilization.

We conclude that the alternatives analyzed provide a meaningful basis for comparison with the project and constitute a reasonable range of alternatives. Although none of the alternatives analyzed other than the no project alternative would avoid impairing scenic views and grading the bluffs and canyon, the alternatives generally would reduce some significant impacts while increasing others. The analysis of these alternatives provides the decision makers and the public with sufficient information to stimulate thought and make an informed decision. Moreover, substantial evidence supports the conclusion that the Reduced Density alternative is environmentally superior to the project because a reduction in the number of homes would reduce significant impacts to air quality from construction activities and significant impacts to scenic views. Substantial evidence, including a geotechnical report and biological resources reports, also supports the conclusion that Hastings Canyon has experienced significant erosion and that some manner of soil stabilization and improved drainage would be environmentally beneficial.

5. *The City's Failure to Notify the Coastal Commission of the Draft EIR Was Not Prejudicial*

The city as lead agency had an obligation to consult with and obtain comments from the Coastal Commission as a responsible agency concerning the

draft EIR. (§§ 21153, subd. (a), 21069.) Although the city's failure to notify the Coastal Commission of the draft EIR violated CEQA, we conclude that the noncompliance was not prejudicial in light of the Coastal Commission's later review of the approved project and the city's project modifications in response to the Coastal Commission's concerns.

The Coastal Commission conducted a hearing on the project in August 1999, after the city had approved the project and issued a coastal development permit. The Coastal Commission expressed its concerns and denied a coastal development permit, and the city revised the project accordingly. Thus, neither the city nor the public was deprived of the Coastal Commission's careful consideration and input, and the final project reflected the Coastal Commission's concerns.

In these circumstances, we conclude that the city's failure to notify the Coastal Commission earlier in the CEQA process did not preclude informed decisionmaking or meaningful public participation and was not a prejudicial abuse of discretion. (§ 21005, subds. (a), (b); cf. *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 748.)

6. *Substantial Evidence Supports the Finding that the Project is Consistent with the General and Specific Plans*

The Westchester-Playa del Rey District Plan, part of the land use element of the city's general plan, states several "design principles" for new development, including:

"New development will be concentrated to preserve identified coastal resource values (i.e., wetlands, view corridors)."

"Views of distinctive visual resources (e.g., bluffs, wetlands) will not be significantly disturbed."

The district plan also states the following policy:

"Protecting existing coastal views of the wetlands and bluffs from the following locations: Culver Boulevard, from Jefferson intersection to Playa del Rey; Lincoln Boulevard and Culver Boulevard bridges over Ballona Creek, north and south Ballona jetties."

The Coastal Bluffs Specific Plan states several "purposes," including:

"To protect, maintain, enhance and where feasible, restore the overall quality of the coastal environment and its natural and cultural resources."

"To regulate all development, including use, height, density, bulk and other factors in order to provide for the protection and enhancement of views and scenic highways . . . ."

"To preserve and protect the unique and distinctive landforms within the Specific Plan area by requiring sensitive site design."

A subdivision must be consistent with applicable general and specific plans. (Gov. Code, §§ 66473.5, 66474.) A subdivision is consistent with an adopted plan only if "the proposed subdivision or land use is compatible with the objectives, policies, general land uses, and programs specified in such a plan." (*Id*., § 66473.5.)

Consistency does not require full compliance with all general and specific plan policies. Rather, "[o]nce a general plan is in place, it is the province of elected city officials to examine the specifics of a proposed project to determine whether it would be 'in harmony' with the policies stated in the plan. [Citation.] It is, emphatically, *not* the role of the courts to micromanage these development decisions." (*Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 719.)

We review the city's finding that the subdivision is consistent with applicable general and specific plans under the abuse of discretion standard. (Code Civ. Proc., § 1094.5, subd. (b); *Youngblood v. Board of Supervisors* (1978) 22 Cal.3d 644, 651, fn. 2; *Sequoyah Hills Homeowners Assn. v. City of Oakland*,

supra, 23 Cal.App.4th at p. 717.) To prevail on its contention that the project is inconsistent with the general and specific plans, Coalition must show that there is no substantial evidence to support the city's finding. (Code Civ. Proc., § 1094.5, subd. (b); *Sequoyah Hills*, *supra*, at p. 717.) In other words, Coalition must show that no reasonable decision maker could conclude that the project is in harmony with the stated policies.

Coalition's argument that the project is inconsistent with the policies largely disregards the city's considerable discretion and merely expresses Coalition's contrary point of view. We conclude that in light of the competing policies embodied in the general and specific plans and the project's benefits cited in the EIR and consultants' reports, the city reasonably concluded that the project is consistent with the stated policies of the general and specific plans.

7. *Coalition Was Not Denied Due Process or Prejudiced by Lack of Notice of the City's Approval of the Revised Tentative Map or by the Denial of an Administrative Appeal*

Adjudicatory land use decisions that substantially affect the property rights of owners of adjacent parcels may constitute deprivations of property under the due process clause. (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 615.) An affected property owner is entitled to prior notice and a hearing, but only if the deprivation of property is significant or substantial. (*Id*. at pp. 615-616.)

Coalition had notice of and participated in hearings before the Advisory Agency, planning commission, and city council concerning the tentative subdivision map initially submitted by Catellus and approved by city council in February 1999. The revised tentative map submitted in September 1999 reduced the number of homes, increased the area of open space, and made other changes required by the Coastal Commission to mitigate or avoid adverse impacts within the coastal zone. Those revisions of the prior approved tentative map did not significantly or substantially impair the property interests of adjacent landowners.

Rather, the revisions actually reduced some of the adverse impacts cited by Coalition. We therefore conclude that due process did not require either prior notice to Coalition or a hearing on the application for a revised tentative map.

Moreover, Coalition has not shown that it was prejudiced by either lack of notice or the denial of an opportunity to appeal to the city council. A court cannot set aside a planning or zoning decision by a public agency or legislative body based on a procedural error alone unless the error was prejudicial and a different result would have been probable absent the error. (Gov. Code, § 65010, subd. (b).) In light of the city council's prior rejection of Coalition's objections to the tentative map in February 1999 and its rejection of Coalition's objections to a coastal development permit for the revised project in January 2000, Coalition has not established a probability that a different result would have obtained if Coalition had received notice of the application for a revised tentative map and an opportunity to appeal the decision to the city council.

8. *The Mello Act Affordable Housing Requirement Does Not Apply*

Government Code section 65590 states that a local government must ensure that "[n]ew housing developments constructed within the coastal zone shall, where feasible, provide housing units for persons and families of low or moderate income . . . ." (*Id*., subd. (d); see *id*., subd. (a).)[6] Coalition contends a housing

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[6] Government Code section 65590, subdivision (d) states in full: "New housing developments constructed within the coastal zone shall, where feasible, provide housing units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code. Where it is not feasible to provide these housing units in a proposed new housing development, the local government shall require the developer to provide such housing, if feasible to do so, at another location within the same city or county, either within the coastal zone or within three miles thereof. In order to assist in providing new housing units, each local government shall offer density bonuses or other incentives, including, but not limited to, modification of zoning and subdivision requirements, accelerated processing of required applications, and the waiver of appropriate fees."

development is constructed within the coastal zone within the meaning of the statute if a substantial part of the development is constructed within the coastal zone. Catellus and the city contend a housing development is constructed within the coastal zone only if residential structures are constructed within the coastal zone. The trial court did not expressly address this question in its written ruling.

Statutory construction and the application of a statute to undisputed facts are legal questions that we review de novo. (*Estate of Madison* (1945) 26 Cal.2d 453, 456; *R. P. Richards, Inc. v. Chartered Construction Corp.* (2000) 83 Cal.App.4th 146, 153-154.) Our objective in construing a statute is to ascertain and give effect to legislative intent. (*People v. Murphy* (2001) 25 Cal.4th 136, 142.) We carefully consider the words of the statute, giving them a plain and commonsense meaning, and construe them in the context of the statute as a whole so as to effectuate the purpose of the law. (*Ibid*.)

A statute is ambiguous if it is susceptible of more than one reasonable construction. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 776.) A court may consider a variety of extrinsic aids including the legislative history to resolve an ambiguity and determine the most reasonable construction. (*Ibid.*) The phrase "new housing developments constructed within the coastal zone" (Gov. Code, § 65590, subd. (d)) reasonably can be construed in accordance with either of the parties' contentions and therefore is ambiguous. Our review of the legislative history does not help to resolve the ambiguity.

We construe the phrase "[n]ew housing developments constructed within the coastal zone" (Gov. Code, § 65590, subd. (d)) to mean new developments that include residential structures constructed within the coastal zone. Construing this phrase to encompass other construction or development within the coastal zone would overlook the express qualification that the new development "constructed within the coastal zone" be a "*housing* development." Our construction gives effect to each word of the phrase in the context of both the phrase and the statute

as a whole, the clear purpose of which is to require the provision of affordable housing based on activities conducted within the coastal zone. (Gov. Code, § 65590, subd. (a) ["Each respective local government shall comply with the requirements of this section in that portion of its jurisdiction which is located within the coastal zone."].) A development that includes housing outside the coastal zone but no housing within the coastal zone is not a development of housing "constructed within the coastal zone" and therefore is not a "[n]ew housing development[] constructed within the coastal zone" within the meaning of the statute.

All of the residential structures in the project will be constructed outside the coastal zone. The project therefore is not a "[n]ew housing development[] constructed within the coastal zone" within the meaning of Government Code section 65590, subdivision (d), and the statute's affordable housing requirement does not apply.

The dissent maintains that the phrase *housing development* as used in Government Code section 65590, subdivision (d) is clear, unambiguous and implicates the Mello Act's affordable housing requirements. As a basis for this conclusion the dissent posits a test that would require affordable housing considerations when *a substantial part of the development is constructed in the coastal zone.* Thus, the dissent constructs the syllogism: If a substantial part of a housing development is constructed in the coastal zone the Mello Act applies. The 11.95 acres located within the coastal zone is *a substantial part* of the total project acreage of 44.69. Therefore, the Mello Act's affordable housing requirements apply to this project and should have been considered by the authorizing agencies. This analysis misses the mark for several reasons.

First, the dissent provides no definition of the phrase, *substantial part of housing developments constructed within the coastal zone.* Not only the parties to

the present lawsuit but future developers and municipalities are therefore left to speculate on a case-by-case basis (see fn. 1 of dissent) whether a particular housing development is within the coastal zone or not. Such an ad hoc analysis lacks clarity and in all probability will lead to needless future litigation.

Second, such an amorphous standard provides no clear direction or predictability for future developments as to when this substantiality test is met. Examples too numerous to completely list might include scenarios where only the main sewer line to a housing development traverses but a few feet of the coastal zone property or, as here, part of one of the main access roads traverses the same land. Or take the situation where there is to be no construction or excavation of any kind within the coastal zone, but some of the project acreage is to be left in its natural state as a habitat for rare species of plant or wildlife. Under any of these scenarios, the parties would never be able to predict whether they must consider the feasibility of affordable housing.

Third, as the dissent acknowledges, out of the 44.69 acres involved in this project, the only grading within the coastal zone involves not 11.95 acres but only 2.31 acres. This grading is limited to the construction of part of an access road, widening of Lincoln Boulevard, construction of a public view park, erosion control measures and the placement of certain utility lines under that part of the access road leading to some of the homes. There is to be no housing constructed in the coastal zone. Even under the standard proposed by the dissent, we disagree that the grading of 2.31 acres constitutes a *substantial part of this housing development.*

DISPOSITION

The judgment is affirmed. Catellus and the city are entitled to costs on appeal.

CERTIFIED FOR PARTIAL PUBLICATION

ALDRICH, J.

I concur:

KLEIN, P.J.

CROSKEY, J., Concurring and Dissenting.—

I concur in the majority opinion with the exception of its discussion and resolution of the issues arising under the Mello Act. With respect to that matter, I must respectfully dissent from the views expressed by my colleagues. In my view, the affordable housing requirement of Government Code section 65590, subdivision (d) applies to this project.

Government Code section 65590 states that a local government must ensure that "[n]ew housing developments constructed within the coastal zone shall, where feasible, provide housing units for persons and families of low or moderate income . . . ." (*Id*., subd. (d); see *id*., subd. (a).) The Mello Act does not define the term "housing development."

"Our task in construing a statute is to ascertain the Legislature's intent so as to effectuate the purpose of the law. (*People v. Murphy* (2001) 25 Cal.4th 136, 142.) We begin by examining the words of the statute, giving them their usual and ordinary meaning. (*People v. Garcia* (2002) 28 Cal.4th 1166, 1172; *Murphy*, at p. 142.) We construe statutory words and clauses in the context of the statute as a whole. (*Murphy*, at p. 142) We cannot insert what has been omitted, omit what has been inserted, or rewrite the statute to conform to a presumed intention that is not expressed. (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349.) If the plain language of the statute is unambiguous and does not involve an absurdity, then the plain meaning governs. (*Garcia*, at p. 1172; *People v. Ledesma* (1997) 16 Cal.4th 90, 95.)" (*Lewis v. Clarke* (2003) 108 Cal.App.4th 563, 567.)

The usual and ordinary meaning of a "development" in the context of building construction is the whole of an improved tract of land, including commonly buildings and other structures, roads, utilities, and physical modifications to the land. A "housing development" is a development that

includes residential housing. The Legislature's use of this term in the Mello Act is consistent with this common definition. There is no ambiguity.

Government Code section 65590 repeatedly uses the terms "dwelling units" and "residential structure," and then uses the term "housing development[s]" only twice. The Legislature's separate use of these terms necessarily suggests that each must have a different meaning. Thus, section 65590, subdivision (b) requires the replacement of "dwelling units" that have been converted or demolished. Subdivision (b) also provides exceptions for the conversion or demolition of certain "residential structure[s]," including the conversion or demolition of a "residential structure" containing fewer than three "dwelling units" and the conversion or demolition of more than one "residential structure" containing a total of 10 or fewer "dwelling units."

Government Code section 65590, subdivision (d) uses the term "housing development" for the first time in the statute. Subdivision (d) states in full:

"New housing developments constructed within the coastal zone shall, where feasible, provide housing units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code. Where it is not feasible to provide these housing units in a proposed new housing development, the local government shall require the developer to provide such housing, if feasible to do so, at another location within the same city or county, either within the coastal zone or within three miles thereof. In order to assist in providing new housing units, each local government shall offer density bonuses or other incentives, including, but not limited to, modification of zoning and subdivision requirements, accelerated processing of required applications, and the waiver of appropriate fees."

Subdivision (d) states that the affordable housing requirement applies to "[n]ew *housing developments* constructed within the coastal zone." (Italics added.) After repeated references to "dwelling units" and "residential structure"

earlier in the statute, subdivision (d) pointedly does not state that the affordable housing requirement applies only if there are "new dwelling units constructed within the coastal zone" or only if there are "new residential structures constructed within the coastal zone." Rather, the statute employs a term that encompasses not only dwelling units and residential structures but the whole of an improved tract of land: "housing developments."

Similarly, Government Code section 65590, subdivision (d) does not state that the affordable housing requirement applies only if a new housing development is constructed entirely within the coastal zone. Such a construction would allow a developer to avoid providing affordable housing simply by combining in one development land outside the coastal zone and land within the coastal zone, and would undermine the Legislature's express intention that the statute be construed in a manner that promotes the construction of affordable housing (Gov. Code, § 65589, subd. (d)). In my view, a proper interpretation and construction of the statutory language would compel the conclusion that if a substantial part of the development is constructed within the coastal zone, as here, the affordable housing requirement will apply.[1]

The revised project will occupy 44.69 acres of land, including 11.95 acres within the coastal zone. The land within coastal zone is limited to the bluff face and part of Hastings Canyon. Proposed construction within the coastal zone includes the construction of part of an access road, widening of Lincoln Boulevard, construction of a public view park, and erosion control measures, all of which will involve the grading of a total of 2.31 acres of land within the coastal zone. A storm drain and water, sewer, and other utility lines also are to be constructed in or under the access road and partly within the coastal zone. Thus,

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[1] Whether the construction within the coastal zone is a substantial part of the development should be determined on a case-by-case basis.

although all of the proposed residential structures and residential lots will be outside of the coastal zone, a substantial part of the development as a whole will be within the coastal zone.

The city concluded that the Mello Act affordable housing requirement does not apply and therefore did not determine whether it is feasible to provide housing for persons and families of low or moderate income either in the proposed development or elsewhere within the city, as required by Government Code section 65590, subdivision (d). I would reverse the judgment on the Mello Act claim with directions to the superior court to order the city to make those required findings and comply with its statutory obligation to require Catellus to provide affordable housing in the development if it is feasible, and if it is not feasible then to provide affordable housing elsewhere within the city if that is feasible.

CROSKEY, J.