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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

PROTECT OUR VILLAGE,

Plaintiff and Appellant,

v.

CALIFORNIA COASTAL
COMMISSION,

Defendant and Respondent;

OLIVE OIL AND GAS, LP, et al.,

Real Parties in Interest and Respondents.

2d Civil No. B236341
(Super. Ct. No. 1338881)
(Santa Barbara County)

The City of Santa Barbara (City) issued a conditional coastal development permit for a mixed use residential/commercial project on two adjoining parcels of land. At the City's request, the California Coastal Commission (Commission) certified a local coastal plan (LCP) amendment rezoning one of the parcels from residential to commercial. The trial court rejected appellant's contention that the Commission had to assess the environmental impacts of the whole development project before certifying the amendment. We conclude the Commission appropriately limited its review to whether

the amendment's zoning change conforms to and carries out the provisions of the City's existing, certified land use plan (LUP). (Pub. Resources Code, § 30513.)¹ We affirm.

FACTS AND PROCEDURAL BACKGROUND

Real parties in interest Olive Oil and Gas, LP (Olive) and John Price propose to build a 17,270 square-foot, three-story building with eight residential condominiums and 5,000 square feet of ground floor commercial space, on two adjoining parcels of land containing an existing gas station and parking lot. The gas station is at the intersection of Coast Village Road and Olive Mill Road in the Montecito area of Santa Barbara. The parking lot fronts on Olive Mill Road and is adjacent to and north of the gas station.

Under the City's existing certified LCP, both parcels of land are designated for "commercial" land use but have different zoning designations. The gas station is zoned as C-1 (limited commercial), while the parking lot is R-2 (two-family residential). The proposed project requires that the parking lot (subject parcel) be re-zoned as C-1.

In August 2008, the City conditionally approved a coastal development permit, tentative subdivision map and development plan for the project, and adopted a mitigated negative declaration. The City also approved an amendment to the LCP designating the subject parcel as C-1 to "bring the zone designation into conformance with the existing, certified Commercial land use designation." Because an LCP amendment is not effective until it is certified by the Commission (§ 30514, subd. (a)), the City conditioned its approval of the project on the Commission's certification.

Appellant Protect Our Village (POV) challenged the City's approval of the project, first in the trial court and then in this court, claiming the City should have prepared an environmental impact report (EIR) instead of a mitigated negative declaration under the California Environmental Quality Act (CEQA). In an unpublished decision, we upheld the City's determination that the project would not have significant

¹ All statutory references are to the Public Resources Code.

environmental effects on water supply, mountain views or aesthetics. (*Protect Our Village v. City of Santa Barbara* (Dec. 1, 2011) [2011 WL 6015598] (*POV I*).)²

In the meantime, the City submitted the proposed LCP amendment to the Commission for certification. The Commission held a public hearing to assess whether the amendment was consistent with the California Coastal Act (§ 30000 et seq.) and the LUP portion of the City's certified LCP. The Commission observed "[t]he proposed amendment will resolve an internal conflict within the existing certified LCP wherein the zoning on the subject parcel is not consistent with the land use designation." The Commission considered whether a commercial zoning designation, with a greater permissible development height, would have significant impact on public scenic views. It concluded that the LCP amendment would not result in significant impact to public scenic views, and that rezoning the subject parcel as commercial was consistent with the visual character of the surrounding area. The Commission adopted its staff report findings and certified the amendment.

POV petitioned the trial court for a writ of mandate vacating the Commission's decision. The trial court denied the petition, observing the only issue before the Commission was whether the amendment brought the zoning for the subject parcel into compliance with the City's LUP. The court determined the Commission properly limited its environmental review to those impacts that can be attributed to the proposed zoning change. POV appeals.

DISCUSSION

Standard of Appellate Review

In ruling on a petition for writ of administrative mandate, a trial court must assess "whether the agency in question prejudicially abused its discretion; that is, whether the agency action was arbitrary, capricious, in excess of its jurisdiction, entirely lacking

² In another appeal, we affirmed the trial court's judgment quieting title by adverse possession in favor of John and Sandy Wallace to a narrow strip of land along the boundary of the gas station parcel, owned by Olive, and the Wallaces' residence. (*Olive Oil & Gas, L.P. v. Wallace* (Jan. 31, 2012) [2012 WL 275479] (nonpub. opn.).)

in evidentiary support, or without reasonable or rational basis as a matter of law. [Citations.]" (*Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1497.) On appeal, our review is identical to that of the trial court. (*Reddell v. California Coastal Com.* (2009) 180 Cal.App.4th 956, 962.) "We review the administrative record to determine whether the Commission's findings are supported by substantial evidence." (*LT-WR, L.L.C. v. California Coastal Com.* (2007) 152 Cal.App.4th 770, 780.) "Courts may reverse an agency's decision only if, *based on the evidence before the agency*, a reasonable person could not reach the conclusion reached by the agency." (*McMillan v. American Gen. Fin. Corp.* (1976) 60 Cal.App.3d 175, 186.)

To the extent the challenge involves the interpretation of a statute or provisions of the City's LCP, we engage in de novo review. (*Reddell v. California Coastal Com., supra*, 180 Cal.App.4th at pp. 962, 965.) Although we exercise our independent judgment in reviewing the County's interpretation of the Coastal Act, we must accord appropriate deference to the agency's decision given the circumstances of its action. (*Dunn v. County of Santa Barbara* (2006) 135 Cal.App.4th 1281, 1289.)

Scope of Commission's Review of Proposed LCP Amendment

The Coastal Act requires each local government to prepare an LCP governing land use for the portion of the coastal zone within its jurisdiction. (§ 30500, subd. (a).) An LCP consists of land use plans, zoning ordinances, zoning district maps and other implementing actions. (§ 30108.6.) The Commission must certify that a proposed LCP conforms with the Coastal Act before the local government can adopt it. (§§ 30512, 30513.) The Commission certified the City's LCP in 1981. (See *Yost v. Thomas* (1984) 36 Cal.3d 561, 567 (*Yost*).)

Development within the coastal zone generally requires a coastal development permit, in addition to any other required permits. (§ 30600, subd. (a).) After the Commission certifies an LCP, as it did here, the authority to review development within the coastal zone and to issue a coastal development permit is delegated to the local government. (§§ 30519, subd. (a), 30600, subd. (d); *City of Half Moon Bay v. Superior Court* (2003) 106 Cal.App.4th 795, 804.) In limited

circumstances, the Commission has authority to hear appeals of a local government's approval of a coastal development permit, such as when the development is located between the first public road and the sea or within 100 feet of streams and wetlands. (§ 30603; see *Hines v. California Coastal Com.* (2010) 186 Cal.App.4th 830, 848-849.) In those cases, the Commission hears the permit application de novo and its decision supersedes the local agency's decision. (§ 30621, subd. (a).)

Here, the City's approval of the project was not within the Commission's appellate jurisdiction. POV concedes in its opening brief that "[t]he coastal development permit itself, however was not appealable to the . . . Commission." The only issue before the Commission, therefore, was whether to certify the proposed LCP amendment to allow for the zoning change.

The Coastal Act provides that the Commission must certify proposed amendments to local implementation plans, such as zoning ordinances, when they conform to the local government's LUP. (§§ 30513, 30514.) Section 30513 states: "The commission may only reject zoning ordinances, zoning district maps, or other implementing actions on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan." (See *Yost, supra*, 36 Cal.3d at p. 572; Cal. Code Regs., tit. 14, § 13542, subd. (c) ["The standard of review of the implementing actions shall be the land use plan as certified by the Commission"].) Here, the Commission determined that its role under section 30513 was to assess whether the proposed zoning change to the subject parcel conforms with, and carries out, the City's LUP.

POV contends the Commission had a broader duty. Relying on *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263 (*Bozung*), POV asserts that an agency with an independent responsibility to consider a preliminary approval, such as a zone or annexation change, must also consider the environmental impact of the whole project driving the request. *Bozung* addressed whether CEQA applies to the approval of annexation proposals by a Local Agency Formation Commission (LAFCO) where property development is intended to follow the annexation. (*Id.* at p. 268.)

Characterizing LAFCO as a "lead agency" under CEQA, the court concluded it was subject to CEQA rules, including preparation of an EIR for the proposed development project. (*Id.* at pp. 282-287.) The court rejected the assertion that requiring LAFCO to prepare an EIR would be "premature and wasteful" because the city will have to prepare its own EIR to rezone the annexed property. (*Ibid.*)

POV maintains the Commission is analogous to LAFCO in that it, too, must conduct its own environmental analysis of the proposed project. This analogy fails for two reasons. First and foremost, *Bozung* addressed CEQA requirements, which are inapplicable here. CEQA permits the Secretary of the Natural Resources Agency (Secretary) to certify that state agencies with regulatory programs meeting certain environmental standards may follow their own program rather than CEQA. (§ 21080.5, subd. (a); *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1229-1230.) The Secretary has certified the Commission's regulatory program regarding the "preparation, approval, and certification of local coastal programs" as complying with CEQA. (Cal. Code Regs., tit. 14, § 15251, subd. (f); *San Mateo County Coastal Landowners' Assn. v. County of San Mateo* (1995) 38 Cal.App.4th 523, 552, fn. 18.) Thus, the Commission was not required to follow CEQA in approving the City's proposed LCP amendment. (*Santa Barbara County Flower & Nursery Growers Assn. v. County of Santa Barbara* (2004) 121 Cal.App.4th 864, 872 ["[A]n EIR is not required for the approval of an LCP or LCP amendment by the Commission".])

Second, *Bozung* has been superseded by statute on the very point raised by POV. (*City of Redding v. Shasta County Local Agency Formation Com.* (1989) 209 Cal.App.3d 1169, 1175-1177 (*City of Redding*); accord, *Natural Resources Defense Council, Inc. v. City of Los Angeles* (2002) 103 Cal.App.4th 268, 271, fn. 2.) After *Bozung*, the Legislature amended CEQA to clarify the roles of lead agencies and responsible agencies in the CEQA analysis. (*City of Redding*, at pp. 1175-1176.) As directed by section 21083, subd. (c), the California Resources Agency adopted California Code of Regulations, title 14, section 15051 (CEQA Guideline 15051), which designates

the city, not LAFCO, as the lead agency responsible for the EIR.³ As noted in *City of Redding*, CEQA Guideline 15051 solved the "problem the *Bozung* court twice grappled with: that requiring a LAFCO to prepare an EIR was inefficient because two EIR's would be required for the same annexation, one by a LAFCO and one by a city undertaking zoning of the area sought for annexation." (*City of Redding*, at p. 1177.) In view of these legislative and administrative amendments, *Bozung* does not support POV's assertion that an agency such as LAFCO, with independent authority to consider an annexation request, must necessarily consider the environmental impact of the project driving the request. (See *ibid.*)

In its reply brief, POV cites *Ross v. California Coastal Com.* (2011) 199 Cal.App.4th 900 (*Ross*), for the proposition that the Commission was required to make its own CEQA equivalent environmental review of the proposed LCP amendment. The scope of the Commission's review under section 30513 was not at issue in *Ross*. It also is factually distinct because it involved the proposed development of the only remaining undeveloped beachfront property in Malibu. The city approved the project subject to the Commission's certification of an LCP amendment to reduce the minimum lot width standard from 80 feet to 45 feet for *all* 733 beachfront parcels in the area. (*Id.* at pp. 910-911.) Given the sweeping nature of the proposed amendment, the Commission necessarily had to consider the environmental impacts of the zoning change to assess whether it conformed to the city's LUP with respect to ocean views and environmentally sensitive habitat areas. (*Id.* at pp. 926-930.) Those issues are not present here. The subject parcel is not on the beach, does not have coastal views and is not in an environmentally sensitive habitat area.

We conclude the Commission appropriately limited its review under section 30513 to whether the rezoning of the subject parcel conforms with, and carries

³ CEQA Guideline 15051 applies when two or more public agencies will be involved with a project. Subdivision (b)(2) states: "Where a city prezones an area, the city will be the appropriate lead agency for any subsequent annexation of the area and should prepare the appropriate environmental document at the time of the pre zoning. The local agency formation commission shall act as a responsible agency."

out, the provisions of the City's LUP. The Commission had no authority to consider matters outside the scope of the LUP. It was the City's burden to perform the requisite environmental assessment prior to approving the project. The City satisfied that burden, as we confirmed in *POVI*. POV is not entitled to further review of that decision.

*Substantial Evidence Supports the Commission's Determination that the
Proposed LCP Amendment Conforms to the City's LUP*

The City's certified LUP designates the subject parcel as "commercial." POV does not dispute the proposed rezone is consistent with that designation. It contends the Commission also had to consider the environmental impact of the project on water supply, views and aesthetics.⁴ As discussed above, the only matter before the Commission was whether the zoning change conforms to the City's LUP. (§ 30513.) POV has not identified any provision or policy in the LUP addressing water supply. Nor has it pointed to any evidence demonstrating the zoning change, in and of itself, would necessarily affect the local water agency's ability to supply water to the area.

The City's LUP does provide for "protection of visual resources." Incorporating section 30251, the LUP requires that developments be sited and designed to protect public views to and along the ocean and scenic coastal areas, and be visually compatible with the character of surrounding areas. The Commission appropriately conducted a visual impact analysis to assess whether the proposed zoning change could impact public scenic views, particularly since it increases the maximum height of any permitted development on the subject parcel from 30 to 45 feet. (See § 30251.)

The City's land use map identifies the Coast Village Road area as a commercial district including service stations, motels, restaurants, financial institutions and general commercial operations. The Commission's staff report determined the

⁴ Notably, these issues were the focus of *POVI*, in which we observed "[t]he most controversial issues [surrounding the project] were water supply and the aesthetics of the building design, including its height, scale and bulk, compatibility with the neighborhood, and its impact on mountain views." (*POVI, supra*, 2011 WL 6015598 at p. *2.) Following substantial discussion of each issue, we upheld the City's determination that the project will not have a significant environmental impact on water supply, aesthetics and views. (*Id.* at p. *10.)

proposed rezone will not adversely impact existing public views or the character of the surrounding area because: (1) views of the mountains along Coast Village Road are already significantly impacted by current development, (2) views from Coast Village Road through the subject site are already impacted by the existing service station, and (3) the maximum height under the C-1 zone district is compatible with surrounding commercial buildings and uses along Coast Village Road. The report further observed: "There are no public parks or significant open space areas in the area. In addition, the project site is not visible from the coastal bluff or beach. Neither Coast Village Road nor Olive Mill Road [is] designated [a] scenic highway[] and the immediate areas are also not designated visual resources in the City's LCP."

POV asserts the Commission was confused as to the location of the subject parcel, referencing the portion of the Commission's staff report stating the parcel is on the corner of Coast Village Road and Olive Mill Road, instead of entirely on Olive Mill Road. The record as a whole reveals no such confusion. The staff report also states: "The proposed development site (comprised of the subject parcel and the adjacent parcel to the south) is located at the east end of the City of Santa Barbara on the east side of Coast Village Road at Olive Mill Road The northern lot along Olive Mill Road is the subject of this LCP Amendment." In addition, the report contains multiple maps depicting the location of the subject parcel in relation to Coast Village Road and Olive Mill Road. Although POV disputes the Commission's findings relating to visual impact, they are supported by substantial evidence in the administrative record.

The Coastal Act sets minimum standards and policies local governments must follow in coastal zones, but it "does not mandate the action to be taken by a local government in implementing local land use controls." (*Yost, supra*, 36 Cal.3d at p. 572.) As long as the local government satisfies these minimum standards and policies, "the decision of whether to build a hotel or whether to designate an area for a park remains with the local government." (*Id.* at p. 573.) Having determined the proposed rezone

meets these standards and policies, the Commission appropriately deferred to the City's decision to approve the project.

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

James W. Brown, Judge
Superior Court County of Santa Barbara

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