S129125

Second Appellate District, Division Six
Case No. B175054

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

THE CITY OF GOLETA,

Petitioner,

v.

SANTA BARBARA SUPERIOR COURT,

Respondent,

OLY CHADMAR SANDPIPER GENERAL PARTNERSHIP,
a Delaware Corporation,

Real Party in Interest.

SANTA BARBARA COUNTY SUPERIOR COURT
HON. J. WILLIAM McLAFFERTY, JUDGE

OPENING BRIEF ON THE MERITS OF REAL PARTY IN INTEREST OLY CHADMAR SANDPIPER GENERAL PARTNERSHIP

ALLEN MATKINS LECK GAMBLE
& MALLORY LLP
PATRICK E. BREEN, SBN 081579
515 South Figueroa Street,
Seventh Floor
Los Angeles, California 90071-3398
Phone: (213) 622-5555
Fax: (213) 620-8816

HOLLISTER & BRACE
RICHARD C. MONK, No. 048355
MARCUS BIRD, No. 147463
P. O. Box 630
Santa Barbara, CA 93102-0630
Phone: (805) 963-6711
Fax: (805) 965-0329

LASCHER & LASCHER
WENDY C. LASCHER, No. 058648
605 Poli Street
Ventura, California 93001
Phone: (805) 648-3228
Fax: (805) 643-7692

Attorneys for Real Party In Interest
OLY CHADMAR SANDPIPER GENERAL PARTNERSHIP

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ISSUES PRESENTED

1. Does Government Code section 66413.5, subdivision (f) excuse a new city from complying with its own ordinances providing for ministerial review of final subdivisions maps, and from complying with other provisions of the Subdivision Map Act, and give the city absolute discretion to deny a final map arising from a county-approved vesting tentative map outside the statute's safe harbor period?

2. May the Court of Appeal reject, as a matter of law, a trial

court's finding of estoppel against a local public entity that does not follow its own ordinances, without weighing the private interests at stake against supposed public harm?

INTRODUCTION

Though centered around interpretation of Government Code section 66413.5, this case is at least as much about government in the lower-case sense than it is about interpretation of that statute. Oly Chadmar relied on the Subdivision Map Act Ordinances adopted and kept in force by the City of Goleta, just as other Americans depend on the rule of law. When a public entity fails to follow the law, the parties to the immediate dispute are not the only victims. Society's respect for public institutions suffers as well.

PROCEDURAL HISTORY

After the City of Goleta denied approval of the final subdivision map filed by real party in interest Oly Chadmar Sandpiper General Partnership, Oly Chadmar petitioned the Santa Barbara Superior Court for a writ of mandate [Vol. 1, Tab A, pp. 1-30].[1] The court tried the case and concluded that the City had a ministerial duty to approve Oly Chadmar's final map, and that the City was estopped to deny approval of the map under the extraordinary circumstances of this case [Vol. 2, Tab G, p. 400]. It issued a

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[1]As in Oly Chadmar's Petition for Review, record references are to the exhibits filed in support of and in opposition to the City's petition for writ of mandate in the Court of Appeal.

writ of mandate directing the City to approve the final map [Vol. 2, Tab H., pp. 428-430].

The City then petitioned the Court of Appeal for a writ of mandate. The Court of Appeal granted a writ, reversing the trial court. Its opinion states that "[t]he effect of section 66413.5 is to create an exception to the general rule that approval of a final map is ministerial" [Opin. of Court of Appeal, p. 6], regardless of whether approval would otherwise have been required under the Subdivision Map Act and the City's ordinances. Further, the Court of Appeal held that Oly Chadmar acted unreasonably as a matter of law in relying on the conduct of City officials in clearing conditions and processing Oly Chadmar's map, and in relying on the language of the City's SMA Ordinances [Opin. of Court of Appeal, p. 8].

The Court of Appeal denied Oly Chadmar's timely petition for rehearing.

STATEMENT OF FACTS

In March 1999, seven and a half months before filing its subdivision map application with the County of Santa Barbara, Oly Chadmar began consulting with local officials, citizens' groups, and affordable housing advocates about developing homes in an unincorporated part of Santa Barbara County [Vol. 3, Tab M, pp. 1072-1082; Vol. 5, pp. 1669:19-1672:24]. As eventually approved by Santa Barbara County, Oly Chadmar's vesting tentative map for its project included 109 housing units, with 20% of the homes affordable to a mix of low, lower-moderate and upper-moderate

income households – more than County ordinances required.

There had been 20 years of previous failed efforts to incorporate a city in the area [Vol. 19, p. 6021]. On July 4, 1999, the first signature was placed on a petition to incorporate the City of Goleta [Vol. 19, Tab M, p. 6003]. Voters finally approved formation of the City on November 6, 2001 [Vol. 19, Tab M, p. 6004]; the effective date of incorporation was February 1, 2002.

Throughout the eleven months from the date of incorporation through City's rejection of Oly Chadmar's final map, City processed the map and cleared conditions as if it were a final, not a tentative map. Aware that Oly Chadmar was proceeding through the expensive process of clearing tentative map conditions, City's representatives, including the City Attorney, worked closely with Oly Chadmar. City received compliance reports, and participated in drafting the agreements the vesting tentative map required Oly Chadmar to enter, and requested that Oly Chadmar change the terms of some of those agreements – which Oly Chadmar did [Vol. 8, pp. 2425-2429, 2514-2524, 2602-2606, 2611-2618, 2622-2647; Vols. 9-15, pp. 2648-4889; Vol. 16, pp. 4890-4964, 4971-4972, 4983-4986, 4996, 5147-5241; Vol. 17, pp. 5242-5508, 5514-5541; Vol. 18, pp. 5542-5837].

The City Council voted unanimously to allow the project, along with other similarly-situated projects which had received all final development project approvals, to proceed with the design review by the County's Board of Architectural Review, pending full operation of the City's newly-created

Design Review Board, which at that time had no members [Ordinance No. 02-18, Vol. 19, pp. 6041-6050]. Oly Chadmar spent $1,890,000 in reliance on the City's conduct [Vol. 14, pp. 4437-4458].

Despite the City's Subdivision Map Ordinances, which provided for ministerial approval of final maps when the developer has satisfied all tentative map conditions [Vol. 21, Tab X, p. 6247], even after Oly Chadmar complied with all conditions and the City's Surveyor certified its map [Vol. 19, pp. 6006-6007, Recitals 21 and 22; Vol. 18, p. 5838], the City denied final map approval [Vol. 19, pp. 6003-6014, 6019].

After Two Years of Exhaustive Hearings, and Significant Changes in Response to Public Concerns, the County Approved the Oly Chadmar Project in January, 2002.

Oly Chadmar's application to the Santa Barbara County Planning and Development Department for a vesting tentative map for a residential project was filed November 18, 1999 [Vol. 20, Tab M, pp. 6164-6165], and deemed complete on January 7, 2000 [Vol. 5, p. 1646]. The County subjected the application to 26 months of rigorous environmental and land use review. The Santa Barbara County Planning Commission conducted four public hearings in 2001 [Vol. 5, pp. 1650-Vol. 6, pp. 1855-1932, 1936-1969], and the County Board of Supervisors granted final discretionary approval January 15, 2002, following two more public hearings. The County imposed 98 development plan and 82 vesting tentative map conditions on the project to mitigate potential environmental impacts [Vol. 8, pp. 2415-2421, 2431-2504].

The City Kept in Place, and Twice Readopted, the County's Subdivision Map Ordinances, Which Made Final Map Approval Ministerial After Map Conditions Were Satisfied.

By operation of law (Gov't. Code, §§ 57376 and 57384), the City initially adopted the County's subdivision ordinances ("SMA Ordinances") [Vol. 19, pp. 6025-6027]. The SMA Ordinances the City thus adopted from Santa Barbara County required ministerial approval of a final subdivision map once conditions on the tentative or vesting tentative map were cleared, as further discussed in Section I.C., below.

The City could have changed these ordinances, but it did not. Instead, the City readopted the same ordinances – twice [Vol. 19, pp. 6051-6053, 6055-6058]. As part of the second readoption, the City found that "[c]ontinuation of all provisions of the County Code as the Code of the City of Goleta is . . . a matter of urgency necessary for the immediate protection of the public health, safety, interest, and general welfare . . ." [Vol. 19, p. 6056].

The City Did Not Make Findings to Extend its Moratorium Ordinance to Encompass Oly Chadmar's Project, and Had No Factual Basis for Doing So.

The City imposed a 45-day moratorium on approval of development proposals [Vol. 8, pp. 2525-2528]. When the moratorium expired, the City did not renew it as to Oly Chadmar. Instead, on March 25, 2002, the City exempted Oly Chadmar's and similarly situated projects from an extension of the moratorium [Vol. 19, pp. 6036-6039], finding that these projects

could go forward "without substantial detriment to, or interference with, the City's ability to adopt a general plan . . ." [Vol. 19, p. 6037]. Had the City concluded there was some risk to the public, it could have extended the moratorium under Government Code section 65858, subd. (c)(1), but the City did not find any such risk.

After Working with Oly Chadmar to Clear Map Conditions, the City Unsuccessfully Appealed Oly Chadmar's Coastal Development Permit.

Though individuals who later became members of the City Council had spoken out against the project [Vol. 5, pp. 1722:13-1726:20, 1728:22-1729:14; Vol. 6, pp. 1918:21-1921:13], the City did not vote to disapprove it. Nevertheless, when the City's planning department gave notice of intent to issue a coastal development permit for final map recordation, the City appealed – unsuccessfully – to the Coastal Commission [Vol. 19, p. 6005].

It was not until the City appealed to the Coastal Commission and filed its brief in July, 2002, that Oly Chadmar learned for the first time the City might attempt to assert that it was entitled to deny approval of the final map based on its interpretation of section 66413.5, regardless of the City's duties under other provisions of the Subdivision Map Act and its own ordinances [Vol. 19, pp. 6062-6067]. Just three weeks earlier, City had readopted the SMA Ordinances [Vol. 19, pp. 6058].

Despite the position it took before the Coastal Commission, the City did not take any steps to amend the SMA Ordinances, which remain in effect to this date.

The City Disapproved Oly Chadmar's Final Map Though It Met the Requirements for Ministerial Approval.

After the unsuccessful Coastal Commission Appeal, the City continued to process the final map, with City staff reporting to the City Council on Oly Chadmar's progress in clearing map conditions [Vol. 16, pp. 4987, 4996].

Between August and November 2002, the City identified supposed safety, environmental, and traffic concerns about the project. These were all resolved. Oly Chadmar, without waiving its rights, negotiated and finalized agreements, offering numerous project modifications, and cleared all conditions [Vol. 15, pp. 4836-4845, 4866-4872, 4887-4889; Vol. 16, pp. 4890-4909, 4922-4929, 4932, 4965-4970, 4973-4982, 4987-5001; Vol. 17, pp. 5444-5458; Vol. 19, pp. 5999, 6005-6006, Recital 18].

The City's SMA Ordinances required the City Surveyor to deliver the final map to the City Clerk when the surveyor "is satisfied that the map is technically correct, conforms to the approved tentative map or any approved alterations thereof and complies with all applicable laws and regulations" [Vol. 21, Tab. X, p. 6247]. The City Surveyor delivered the map to the City Council on November 27, 2002. The City's Engineer concurred with the City Surveyor's conclusion that the map was technically correct and in conformity with law [Vol. 18, p. 5839; Vol. 19, pp. 6006-6007, Recitals 21 and 22].

Like Government Code section 66458, the City's SMA Ordinances

further provided that the City Council "***shall*** approve the map at its next regular meeting if it conforms with all the requirements of applicable laws and regulations made thereunder" [Vol. 21, Tab X, p. 6247, emphasis added]. However, the City did not act before that deadline. The City Council held at least four separately noticed, agendized and adjourned regular meetings following delivery of the final map before it denied approval of that map on January 6, 2003 [Vol. 19, pp. 6086, 6090, 6116-6117, 6127, 6132].

DISCUSSION

This case arises from Oly Chadmar's effort to increase the housing stock in a part of the state so expensive that its work force must be imported from miles away, and so expensive that grown children cannot afford housing in the communities where they grew up. The City itself has noted the "growing shortage of housing units resulting in a critically low vacancy rate and rapidly rising and exorbitant rents," and the adverse effect of this shortage on public health and welfare (Goleta City Code, §11A-1).[2]

Thus it is not just Oly Chadmar whose interests are at stake. People who need an affordable place to live are equally concerned that there be no impediments to publicly-desired residential development once government-

[2]Oly Chadmar will file a request for judicial notice of this City ordinance.

imposed conditions are satisfied.[3]

I.

GOVERNMENT CODE SECTION 66413.5 DOES NOT EXCUSE A NEW CITY FROM COMPLYING WITH ITS OWN ORDINANCES CONCERNING PROCEDURES FOR REVIEWING SUBDIVISION MAPS.

A. OVERVIEW OF THE SUBDIVISION MAP ACT

The Subdivision Map Act, Government Code sections 66410-66499.58, is the "primary regulatory control governing subdivision of real property in California" (*Gardner v. County of Sonoma* (2003) 29 Cal.4th 990, 996-997, citations omitted). It vests regulation and control of the design and improvement of subdivisions in the legislative bodies of local agencies (Govt. Code, §66411).

To subdivide property, the developer must first file a tentative map and after the local agency approves the map, must then satisfy any conditions the agency puts on final approval before expiration of the tentative map. The developer may choose instead to file a "vesting tentative map" which, upon approval, confers certain vested rights to approval of a final map consistent with the vesting tentative map (Govt. Code, §66498.1, et seq.).

> The vesting tentative map statutes (§66498.1 et seq.), adopted in 1984, were intended to offer developers "a degree of assur-

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[3]See, December 6 and 13, 2004 letters from Coastal Housing Partnership and from Coalition of Labor, Agriculture, and Business in support of granting review.

> ance, not previously available, against changes in regulations.") Section 66498.1 permits a developer to file a "vesting tentative map" whenever a tentative map would otherwise be required. Approval of the vesting tentative map entitles the developer, subject to certain limitations, to proceed with the project "in substantial compliance with the ordinances, policies, and standards described in Section 66474.2," that is, with those in effect when the map application was determined to be complete.

Golden State Homebuilding Assocs. v. City of Modesto (1994)

26 Cal.App.4th 601, 611, quoting

2 Longtin's Cal. Land Use (2d ed. 1987) § 6.50[2], p. 700.

When a tentative or vesting tentative map is filed, the local agency is required to act on it within a specified period by either approving, conditionally approving, or denying approval of the map (Gov't. Code, §§66452.1, 66452.2). Once approved or conditionally approved, the map remains in effect for 24 months, but may be extended for up to 12 additional months (§66452.6). During that time, the developer must satisfy all conditions attached to the map, as Oly Chadmar did. Once conditions are satisfied, the developer then files a final map (§§66426, 66456).

Local agencies may modify the procedures of the Subdivision Map Act (Gov't. Code, §§ 66421, 66451) so long as the local procedures do not conflict with the state statutory scheme (*Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 751-752. See also, *Griffis v. County of Mono* (1985) 163 Cal.App.3d 414, 425, fn. 14 ["[I]f a local ordinance ***supplements*** procedures in the Map Act, and does not conflict with them,

the local ordinance does not 'modify' the Map Act"]).

B. SECTION 66413.5 WAS ADOPTED TO PROTECT DEVELOPERS, NOT TO ENLARGE CITIES' DISCRETION TO BLOCK DEVELOPMENT.

Local agencies do not have absolute discretion to approve or disapprove final subdivision maps. Government Code section 66474.1 states that a "legislative body shall not deny approval of a final . . . map if it has previously approved a tentative map," and section 66498.1, subd. (b) provides: "When a local agency approves or conditionally approves a vesting tentative map, that approval shall confer a vested right." There is no reason to believe that when the Legislature enacted section 66413.5, it intended to give newly created cities vastly greater discretion to deny map approval than existing cities had.

A 1980 Attorney General Opinion determined that Subdivision Map Act rights conferred upon a vesting tentative map bind not only the legislative body approving the vesting tentative map, but also bind a newly incorporated city considering a final map based on a vesting tentative map previously approved by a county (63 Ops. Cal. Atty. Gen. 844, at 848, Vol. 21, Tab X, pp. 6254-6259, citing *Youngblood v. Board of Supervisors* (1978) 22 Cal.3d 644 and *Great Western Sav. & Loan Ass'n v. City of Los Angeles* (1973) 31 Cal.App.3d 403). The Legislative Counsel made a similar determination in 1985 [Vol. 21, Tab X, pp. 6260-6271].

Government Code §66413.5 was enacted in 1988 as Senate Bill 186. The Legislature intended to codify the conclusions in the 1980 Attorney

General opinion and the 1985 Legislative Counsel opinion that a newly incorporated city must approve a final map where the vesting tentative map had been approved by the county before the effective date of the city's incorporation [Vol. 2, Tab D, pp. 299-305]. Before 1988, despite the Attorney General's and Legislative Counsel's opinions, some newly incorporated cities subjected all previously-issued county development permits to a second review and affirmation by the new city before building permits would be issued. SB 186 was intended to provide developers with certainty in the development process, and ensure certain protections for development projects [Vol. 21, Tab X, pp. 6260-6271].

The original versions of the legislation did not include the temporal requirements ultimately set forth in subsection (f). These were added because the League of California Cities noted that incorporation drives sometimes resulted in "runs" on various development rights such as building permits, tentative maps, and development agreements [Vol. 1, Tab C, pp. 215-216]. In Section II.A., below, Oly Chadmar refutes the City's contention that it rushed the County into approving Oly Chadmar's vesting tentative map.

One cannot get from the legislative purpose of providing additional protection for developers to the conclusion that section 66413.5 weakens other protections. Reduced to its essence, City's argument is:

> If X (tentative map filed within specified safe harbor period),
> then Y (a new city must approve it).

> Therefore, if not X (tentative map not filed within safe harbor), then not Y (a new city need not approve it).

This line of thinking ("If X, then Y; therefore, if not X, then not Y") is a logical fallacy known as "denying the antecedent" (Aldisert, Logic for Lawyers (3d ed., NITA 1997), pp. 158-163). Another example would be a claim that if a defendant were convicted of a third strike, he would be subject to a mandatory sentence of 25 years to life, and therefore, if the conviction were not a third strike, the defendant would not receive that sentence.

What is wrong with this kind of reasoning is that it requires the assumption that no other cause can produce the same effect. But there may be an independent cause, such as conviction of a different crime that subjects a defendant to a 25-to-life sentence even without a third strike.

Other laws constrain the City's exercise of discretion even if Oly Chadmar's final map was filed outside the safe harbor period. When the Legislature created the safe harbor for some subdivision maps, it did not override all other state laws regulating subdivision approval, nor did it preempt local subdivision ordinances. Section 66413.5 does not say what happens to maps that do not come within the safe harbor. And Government Code sections 66456, et seq., continue to spell out the procedure for final approval of subdivision maps that conform to the Subdivision Map Act and local subdivision ordinances – regardless of when the tentative map was filed. If the Legislature had intended to eliminate those procedures as to

maps outside the safe harbor, it would have said so.

The City's notion that section 66413.5 vests it with absolute discretion to approve or disapprove a map outside the safe harbor is not found anywhere in the statute's language. Silence is an odd way to confer upon cities the power to disregard their own ordinances. "'We are not persuaded the Legislature would have silently, or at best obscurely, decided so important and controversial a public policy matter and created a significant departure from the existing law'" (*Garcia v. McCutchen* (1997) 16 Cal.4th 469, 482, quoting *In re Christian S.* (1994) 7 Cal.4th 768, 782). Further, this interpretation is contrary to the rule that local entities have only those powers expressly granted to them by the state (*Eastern Municipal Water Dist. v. City of Moreno Valley* (1994) 31 Cal.App.4th 24, 28).

Interpreting section 66413.5, subd. (f) to confer implied powers upon cities is also contradicted by other parts of the same statute that ***expressly*** give certain power to cities. Subdivision (c) allows cities to deny permits and approvals to projects coming within the safe harbor under certain circumstances. Subdivision (e) expressly allows cities to impose conditions on permits and approvals for projects that have an approved tentative map. If the Legislature had wanted section 66413.5, subd. (f) to confer on cities complete discretion over maps outside the safe harbor, it would have been equally specific.

C. ALTHOUGH THE CITY COULD HAVE ENACTED NEW ORDINANCES AFTER INCORPORATION, IT CHOSE INSTEAD TO READOPT ORDINANCES PROVIDING FOR MINISTERIAL REVIEW.

By operation of law, when Goleta became a city it adopted existing Santa Barbara County SMA Ordinances (Gov't. Code, §57376). The City's new Ordinance 21-10 provided:

> When the [City] Surveyor is satisfied that the map is technically correct, conforms to the approved tentative map or any approved alterations thereof and complies with all applicable laws and regulations, the [City] Surveyor will notify in writing the licensed land surveyor . . . who prepared the map and request delivery of the original tracing of the final or parcel map. . . . In the case of a final map . . . the [City] Surveyor will transmit the same to the Clerk of the [City Council] for filing and approval. The [City Council] shall approve the map at its next regular meeting if it conforms with all the requirements of applicable laws and regulations made thereunder.

During Goleta's first four months of cityhood, it reconsidered its SMA Ordinances on two occasions: April 22 and June 17, 2002. Both times, the City readopted Ordinance 21-10 without change [Vol. 19, pp. 6051-6053, 6055-6058].

If the City of Goleta wanted to create a new set of hurdles for Oly Chadmar or other developers, it could have – to the extent permitted by state law – enacted ordinances specifying what additional steps needed to be taken after the County had already approved a vesting tentative map. But the City Council did not do so; instead, it readopted subdivision map ordinances that provided for ministerial final map approval once all county-

imposed map conditions were satisfied. At the time of the second readoption, the City Council even found that readopting these ordinances was urgently necessary to protect the public [Vol. 19, p. 6056].[4]

Citizens must rely on the law in effect at the time they act. Oly Chadmar was entitled to know what standard applied to approval of its project ***before*** it spent millions of dollars complying with map conditions.[5]

D. OLY CHADMAR'S INTERPRETATION OF THE CITY'S ORDINANCES DOES NOT CONFLICT WITH STATE LAW.

The City has argued that the trial court interpreted the City's Subdivision Map Act Ordinances in a manner that conflicts with section 66413.5, and that the trial court's interpretation is therefore preempted by state law [Petition for Mandate pp. 36-37]. There is no preemption problem.

Three tests determine whether the Legislature has impliedly pre-

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[4]Ironically, in other litigation the City has taken the position that when a new city adopts a county ordinance, that ordinance is valid and binding [see *Guggenheim v. City of Goleta*, U.S. District Court (C.D. Cal.) case no. CV 02-02478 FMC (Rzx), City of Goleta's Motion to Dismiss the Complaint, pp. 11:19-12:6], that the adopted ordinance effects no change in the law [*Id.* at p. 9:17-20], that the new city "becomes the 'successor in interest' to a county's rights and duties through its ordinances," [Memorandum of Points and Authorities in Reply to Plaintiff's Opposition to Motion to Dismiss, p. 2:23-25], and that it would be "illegal" to automatically invalidate all laws adopted by a city from a county at the time of incorporation [*Id.* at p. 2:2].

Oly Chadmar will file a separate request for judicial notice of these pleadings.

[5]It is not only private citizens who are affected when a government body does not comply with its own laws. The November 17, 2004 letter of the Goleta Water District indicates the effect on other public agencies.

empted a local ordinance: "(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality" (*Morehart v. County of Santa Barbara*, *supra*, 7 Cal.4th at 751-752, internal quotation marks omitted).

Subdivisions are not exclusively a matter of state concern, and the subject has not been couched in terms indicating the state will not tolerate local action. Nor is the subject one in which local concerns will harm transient citizens. To the contrary, the Subdivision Map Act gives local agencies a significant role in regulating the design and improvement of subdivisions (Govt. Code, §66411). "The Act vests the regulation and control of the design and improvement of subdivisions in the legislative bodies of local agencies, which must promulgate ordinances on the subject" (*Gardner v. County of Sonoma, supra*, 29 Cal.4th at 996-998, internal quotation marks and footnote omitted). As noted by one land use treatise: "The Map Act gives many options to local agencies so there is great variation, both substantive and procedural, among the local ordinances" (4 California Environmental Law and Land Use Practice (Matthew-Bender

2003), Subdivision Regulation, §61.03[3], p. 61-9. Vol. 1, Tab D, pp. 271-274).

The City's SMA Ordinance 21-10, as adopted and readopted, was consistent with the Subdivision Map Act. And state law assumes ministerial approval when local ordinances do not create a different procedure:

> Once the tentative map is approved, the developer often must expend substantial sums to comply with the conditions attached to that approval. These expenditures will result in the construction of improvements consistent with the proposed subdivision, but often inconsistent with alternative uses of the land. Consequently it is only fair to the developer and to the public interest to require the governing body to render its discretionary decision whether and upon what conditions to approve the proposed subdivision when it acts on the tentative map. Approval of the final map thus becomes a ministerial act once the appropriate officials certify that it is in substantial compliance with the previously approved tentative map.

Youngblood v. Board of Supervisors, supra, 22 Cal.3d at 656.

Specifically, approval of the final map is a ministerial act if: (1) the final map is filed before expiration of the tentative map; (2) the final map satisfies all requirements applicable when the vesting tentative map was approved; and (3) the developer substantially complies with the vesting tentative map (see, §§ 66458, 66473, 66474.1).

The same principles should apply to City under its ordinance.

E. OLY CHADMAR'S INTERPRETATION IS CONSISTENT WITH SOUND PUBLIC POLICY.

Oly Chadmar is well aware that development is a risky business.

Changes in demographics, interest rates, the labor market, the cost of materials, the business climate, public attitudes, and the weather can have profound effects on the success of a development project. But there should be no risk associated with believing that a city will follow its own adopted rules, including those that govern subdivision map approval.

If the City's arbitrary disregard of its own ordinances were allowed, the risks of development would become astronomical, developers would refrain from taking the many risks associated with development, and housing costs would rise even higher.

Clear rules enhance the ability of citizens, landowners, and public entities to participate effectively in land use planning.

> A clear rule avoids unnecessary bargaining and legal posturing by clarifying the respective rights of the landowner and the government. [¶] Uncertainty leads to increased litigation and delay costs. . . These costs are borne first by the developer and then by society as a whole as they are passed on to land purchasers.

Rinaldi, "Virginia's Vested Property Rights Rule: Legal and Economic Considerations," 2 Geo. Mason L. Rev. 77, 98-100 (1994).

II.

OLY CHADMAR WAS ENTITLED TO APPROVAL OF ITS FINAL SUBDIVISION MAP.

The City did not identify any valid reason to deny approval of Oly Chadmar's final map under the City's SMA Ordinances or under any provision of state law.

A. OLY CHADMAR DID NOT ENGAGE IN A "MAD DASH" FOR SUBDIVISION APPROVAL.

The City has attempted to create the impression that Oly Chadmar engaged in a race against the incorporation effort, and hurried the County into approving Oly Chadmar's tentative subdivision map [e.g., Answer to Petition for Review, pp. 3-5, 13-15, 18]. But Oly Chadmar commenced pre-application review of the project in April 1999, and acquired the property in June 1999, before any signature appeared on the petition for incorporation [Vol. 3, Tab M, pp. 1072-1082; Vol. 5, pp. 1669:19-1672:24]. Oly Chadmar submitted its application to the County on November 18, 1999, and it was deemed complete on January 7, 2000, ***twenty-two months before the November 2001 vote on incorporation*** [Vol. 20, Tab M, pp. 6164-6165; Vol. 5, p. 1646].

Like any developer, Oly Chadmar was anxious to move the project along because of the "time is money" reality of land development, and because of the many economic risks listed in Section I.E., above. Yet, even though Oly Chadmar's project was entitled to "fast track" processing under the County's Housing Element because of its affordable housing component [Vol. 5, p. 1649], it still took twenty-six months to move the project through the County's administrative approval process. By any standard, this does not amount to a "run" by Oly Chadmar to beat the incorporation effort.

B. THE COUNTY DID NOT LOOSEN ITS APPROVAL STANDARDS.

The City has also claimed that "the County approved a project that violated many of its development standards . . . that could not feasibly be mitigated or eliminated" [Answer to Petition for Review, p. 5]. The alleged violations actually represent modifications of development standards – such as setbacks and parking requirements – which are allowable under the County's Coastal Zoning Ordinance. The City adopted these same provisions when it adopted the Coastal Zoning Ordinances February 1, 2002 and readopted them April 22 and June 17, 2002 [Vol. 19, pp. 6051-6053, 6055-6058]. Also, affordable housing projects such as Oly Chadmar's are entitled to development incentives under the County's Housing Element Implementation Guidelines. Reduction in setbacks was one such incentive [Vol. 8, p. 2435].

The suggestion that Santa Barbara County bent the rules for this project is, therefore, incorrect. Further, Santa Barbara County is known for its rigorous environmental review and land use standards (see, e.g., *Morehart v. County of Santa Barbara, supra,* 7 Cal.4th 725; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Mission Oaks Ranch, Ltd. v. County of Santa Barbara* (1998) 65 Cal.App.4th 713; *County of Santa Barbara v. Purcell* (1967) 251 Cal.App.2d 169).

Oly Chadmar was able to settle all administrative disputes and threatened litigation regarding the project with the Environmental Defense Center, the Urban Creeks Council, and the Citizens for Goleta Valley [Vol. 8, pp. 2609-2610]. All three of those organizations enjoy well-deserved

reputations as aggressive proponents of local environmental issues (see, e.g., *Citizens of Goleta Valley v. Board of Supervisors, supra*, 52 Cal.3d at 553). It is inconceivable that they would refrain from challenging a project that threatened public health and safety in the ways the City claims.

C. THE CITY DID NOT, AND COULD NOT, MAKE FINDINGS THAT WOULD HAVE JUSTIFIED DENYING MAP APPROVAL.

The City's petition for mandate claimed that the City was not required to approve Oly Chadmar's project because the City had made a finding that "the design of the subdivision is likely to cause serious public safety and/or health problems" [Petition for Mandate., p. 32, citing Exh. M, pp. 6009-6012]. Respondent correctly rejected that notion [Vol. 2, Tab G, pp. 423-424].

State law allows a city to set aside vested rights created by a vesting tentative map only if it makes a specific finding that approval ". . . would place the residents of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both . . . ." (Gov't. Code, §66498.1(c)). An identical provision for maps falling within the "safe harbor" is found at section 66413.5(c). The requirement contemplates some substantial danger to the community, not merely adverse health or safety impacts.

The City did not make the necessary finding required to avoid its ministerial duty. It merely speculated that the project was "likely to" cause health or safety problems. Section 66498.1 requires more; it allows a city

to postpone or deny project approval only if it finds actual danger. Conjecture about negative impacts or detrimental effect is inadequate. If unsupported assumptions warranted project denial, the vested rights conferred under section 66498.1(b) would be meaningless, because a local legislative body could declare the existence of an insignificant detrimental possibility for any project without evidence to back it up.

When a public agency acts in an adjudicatory or quasi-judicial capacity, it "must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order . . . Among other functions, a findings requirement serves to conduce the administrative body to draw legally relevant sub-conclusions supportive of its ultimate decision" (*Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515-516). The lack of appropriately supported findings is fatal to City's claim it could ignore Oly Chadmar's rights under its vesting tentative map.

Further, the City was collaterally estopped to assert the purported health and safety issues in the trial court, because it did not pursue any CEQA or other land use judicial challenge to the County's approval of the project and its EIR, nor did it file an action challenging the project when the Coastal Commission refused to hear its appeal. The City cannot lawfully use the SMA process for approving final maps to reopen the issues after the fact (*see, Briggs v. City of Rolling Hills Estates* (1995) 40 Cal.App.4th 637, 645-646, describing the principle of administrative collateral estoppel: ". . .

it is a form of res judicata, of giving collateral estoppel effect to the administrative agency's decision, because that decision has achieved finality due to the aggrieved party's failure to pursue the exclusive ***judicial*** remedy for reviewing administrative action," emphasis added).

Nevertheless, the City criticized the trial court for agreeing with Oly Chadmar that there was no meaningful evidence the project would place its residents or the community in danger [Petition for Mandate, p. 32]. Respondent court had before it in Oly Chadmar's opening trial brief extensive, detailed discussion of the evidence refuting the City's claims of danger and of conflict with development standards [Vol. 1, Tab B, pp. 74-80]. Oly Chadmar submitted with its trial brief a 20-page, single-spaced, point by point analysis of City's health and safety concerns, with specific references to the administrative record [Vol. 1, Tab B, pp. 100-119]. While that document is too long to copy into this brief, some examples illustrate that the trial court was justified in concluding that if City had made the proper finding, it would still be unsupported by the record.

For example, the City "found" that the project is likely to cause serious public safety and/or health problems as a result of the five-foot driveway aprons, because vehicles backing from garages into the street lack a clear line of vision to oncoming traffic [Vol. 19, p. 6009]. There is no evidence to support this finding, but there is substantial evidence to the contrary. Peter Swift, a registered professional engineer and qualified expert witness in traffic and transportation issues, specifically examined

backing maneuvers:

> [W]e found that a minimum requirement of building separation to effectively operate SUVs in here for backing out of the garages and out of the street is about 28 to 30 feet.
>
> The 38 feet here should not pose a problem. The traffic volumes here are extremely low and it's a yield condition where people will pay attention to these things. We have no problem with that.

Vol. 19, p. 5996, pp. 37:5-38:19.

The City also purported to find that the project is inconsistent with respect to contemplated standards for the number of on-site parking spaces [Vol. 19. pp. 6008-6009]. Again there is no evidence to support the City's finding on this issue. The County's Coastal Zoning Ordinance adopted by the City required the project to have 205 parking spaces, yet the project as approved provides 279 spaces, 271 of which were to be located off-street, together with an additional 33 reserve spaces [Vol. 7, pp. 2252-2257; Vol. 8, p. 2492; Vol. 16, pp. 4990, 5003-5004; Vol. 17, pp. 5448-5449]. Moreover, there is no explanation of the serious public health or safety problems that would be caused by fewer parking spaces, although the City indicated that it would have required more parking spaces.

Another City finding, that the project's "narrow streets are inconsistent with contemplated standards for street widths; and the layout of streets is inconsistent with standards that will be sought for access by emergency vehicles" [Vol. 19, p. 6009], is also contrary to the only evidence. The County Fire Department signed off on the project [Vol. 12, p. 3792; Vol.

14, p. 4488; Vol. 16, p. 4989]. The internal roadways would measure 28 feet in width, consistent with Fire Department access standards [Vol. 8, p. 2470].

Oly Chadmar provided graphic illustration that the width of the roadways would not impede emergency vehicle access. Cross-sectional and aerial perspectives demonstrated fire trucks and an SUV passing each other without difficulty on a 28-foot wide street [Vol. 19, p. 5897; Vol. 19, pp. 5993-5994; Vol. 20, p. 6194]. The Council also received testimony that narrower lanes and aprons not only provide a greater sense of community, but are environmentally superior to wider streets and larger driveways because they minimize the amount of impervious land coverage and thereby reduce the amount of storm water pollutants and run-off [Vol. 19, pp. 5845-5874, 5997-5999].

The City erroneously found that the project provided insufficient affordable housing because "all 'affordable' units are for high-moderate income households, with none specifically restricted for low and very-low income households" [Vol. 19, p. 6011]. Yet Oly Chadmar had voluntarily agreed, and the County conditioned approval on the agreement, to make 20% of the project affordable to a mix of low, lower-moderate and upper-moderate income households, more than County ordinances required [Vol. 6, pp. 1987-1988; Vol. 7, pp. 2134:13-2135:18]. At the time the County approved the project, the prices of the affordable units ranged from $94,920 for a lower income studio to $203,400 for an upper moderate 3-bedroom

unit [Vol. 7, p. 2332; Vol. 8, p. 2424], significantly below market prices (the median price for a single-family home in Santa Barbara County's south coast area was $749,000 in 2002 and $825,000 in 2003 (University of California at Santa Barbara Economic Forecast Project, Santa Barbara County Economic Outlook (2004), p. 109)).[6]

Oly Chadmar has discussed only a few of many examples of the administrative record defeating the City's claims of danger to health and safety, but they are ample to show that respondent's conclusion was correct.

D. THE CITY APPROVED THE FINAL MAP BY OPERATION OF LAW.

The Government Code and the City's SMA Ordinances impose timing obligations to act on a final map. Section 66458, subdivisions (a)-(c) provides:

> (a) The legislative body ***shall***, at the meeting at which it receives the map or, at its next regular meeting after the meeting at which it receives the map, approve the map if it conforms to all the requirements of this chapter and any local subdivision ordinance applicable at the time of approval or conditional approval of the tentative map and any rulings made thereunder. If the map does not conform, the legislative body shall disapprove the map.
>
> (b) If the legislative body does not approve or disapprove of the map within the prescribed time, or any authorized extension thereof, and the map conforms to all requirements and rulings, it shall be deemed approved, and the clerk of the

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[6]Prices apparently continue to increase. "Data for 2004 thus far show the market is still strong with median single-family home prices of $925,000 recorded in February of 2004" (*Id.*).

> legislative body shall certify or state its approval thereon.
>
> (c) The meeting at which the legislative body receives the map shall be the date on which the clerk of the legislative body receives the map (emphasis added).

Thus, the deadline to approve the map runs from "the date on which the clerk of the legislative body receives the map." City's SMA Ordinance is very clear on the process:

> . . . the [City] Surveyor ***will transmit the same to the Clerk of the [City] for filing and approval***. The [City Council] ***shall approve the map at its next regular meeting*** if it conforms with all the requirements of applicable laws and regulations made thereunder.

SMA Ordinance, section 21-10, emphasis added.

The final map was ready for filing with the City Council and was delivered to the City on November 27, 2002 [Vol. 18, p. 5839]. The City Clerk took possession of the map the first week of December 2002 [Vol. 1, Tab D, pp. 285-286, 288-289]. However, the City did not disapprove the map until its evening meeting on January 6, 2003. In the meantime, the City had held at least four separately noticed, agendized and adjourned regular meetings (three of these after actual receipt of the final map) [Vol. 19, pp. 6086, 6090, 6116, 6117, 6127, 6132]. Therefore, because the final map conformed to all requirements and rulings (as confirmed by the City Surveyor's letter of November 26, 2003) and the City did not act within the prescribed period of time, the map is "deemed approved."

III.

THE TRIAL COURT PROPERLY CONCLUDED THAT THE CITY WAS ESTOPPED TO IGNORE ITS SUBDIVISION ORDINANCES.

A citizen is entitled to rely on the actions of a city and its employees undertaken in accord with state and local law. A public entity, like a private citizen, may be estopped from denying the effects of its conduct where: (1) it is apprised of the true facts; (2) it intends that its conduct be acted upon, or acts so that the other party had the right to believe that it was so intended; (3) the other party is ignorant of the true state of facts; and (4) the other party relies on the conduct to his or her injury (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 489).

Respondent trial court made detailed findings concerning estoppel:

> The City, and apparently the City alone, had knowledge of its intention to deny the County-approved Vesting Tentative Map and assert the right to discretionary review of the project. From the date of incorporation, and while at all times represented by experienced counsel, the City consistently acted in a manner evidencing an intent to honor the Vesting Tentative Map. Thus, it engaged Oly Chadmar in the process of clearing the conditions imposed on the Vesting Tentative Map such that the Final Map could be submitted for approval.
>
> The City: (a) adopted, readopted and maintained ordinances providing only for ministerial approval of final maps; (b) authorized this project, and others which had received final development project approvals, to proceed with design review before the County's Board of Architectural Review; (c) worked extensively with [Oly Chadmar] to clear the County-imposed conditions from the vesting tentative map at considerable expense to [Oly Chadmar]; (d) requested numerous changes to the many agreements which were required for the project; (e) issued the Notice of Intent to issue the Coastal Development Permit for the project; and (f) adopted Ordi-

> nance 02-15 on March 25, 2002 which exempted the project and similarly situated projects from the City's moratorium extension and allowed these projects to "go forward in the near future . . ." [Vol. 2, Tab G, pp. 415-416].

Appellate courts generally honor trial court factual findings, under the substantial evidence test, recognizing that "[t]he hierarchical process and respective roles of the trial and appellate courts involve more than ceremony" (*Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d 605, 611). When appellate courts review findings of estoppel against government entities, however, they go somewhat beyond the substantial evidence test, limiting application of estoppel to circumstances where the injustice is great, to avoid adversely affecting public policy "by the creation of precedent where estoppel can too easily replace the legally established substantive and procedural requirements for obtaining permits" (*Smith v. County of Santa Barbara* (1992) 7 Cal.App.4th 770, 775).

To avoid supplanting the fact-finding role of trial courts, appellate courts must confront policy issues and actually balance potential harm to the public against the private rights at issue (*City of Long Beach v. Mansell*, *supra*, 3 Cal.3d at 496-497). In this case, the trial court reached the correct balance, but the Court of Appeal rejected the trial court's explicit and detailed findings of estoppel, concluding that Oly Chadmar's reliance on the City's conduct was unreasonable as a matter of law because "neither a promise made nor a permit issued that is contrary to law will support an estoppel against the government" [Opin., p. 8]. The Court of Appeal de-

clined to weigh the damage to Oly Chadmar of not proceeding with the project, and the the loss of 109 potential housing units, against perceived harm to public policy, out of concern for the creation of adverse precedent [Opin. p. 11, quoting *Smith v. County of Santa Barbara, supra*, 7 Cal.App.4th at 775-776].

Approving Oly Chadmar's final map would not violate the law, and the actions undertaken by the City and its agents as it worked with Oly Chadmar to clear map conditions likewise did not violate the law. The City has repeatedly argued, however, that it was not reasonable for Oly Chadmar to rely on these because some City Council members had from time to time expressed disapproval of Oly Chadmar's project [e.g., Petition for Mandate, pp. 1, 5, 47; Answer to Petition for Review, p. 4]. Citizens rely on the ordinances and official acts of government bodies, not on what individual officeholders say (especially, not on what they say before a city is even formed). Indeed, the Ralph M. Brown Act (Gov't. Code, §54950, et seq.) precludes a local agency from acting except in a noticed, public meeting.

The trial court reached the right balance of private benefit against public interest. The private harm to Oly Chadmar is great: the loss of $1,800,000 in fees and other payments (more than half of which is not refundable), plus the loss of its business opportunity. The public also loses 109 housing units, including 22 affordable units in a housing-starved area. On the other hand, the City has not demonstrated any public benefit to allowing it to ignore its own ordinances, whereas there is no potential harm

to the public because Oly Chadmar merely asks the Court to require the City to comply with its SMA Ordinances. No other project is riding on Oly Chadmar's coattails because the circumstances giving rise to estoppel are limited to the City's treatment of Oly Chadmar.

When, as in this case, a party arguing estoppel is urging the court to ***enforce*** local and state laws, there is no public policy reason to reject a trial court's finding of estoppel.

CONCLUSION

Citizens who rely on government to act fairly must be assured that municipalities not substitute arbitrary, *ad hoc* decision-making for orderly procedures spelled out in advance.

The Court should reverse the Court of Appeal's decision and issue a new opinion holding that the extent of a city's discretion to deny a final map which arises from a tentative map outside the safe harbor period of section 66413.5 depends on the city's exercise of discretion, including the language of that city's subdivision ordinances. Further, the Court should discharge the writ and award costs to Oly Chadmar.

Dated: September 7, 2006

Respectfully submitted,

ALLEN, MATKINS, LECK,
GAMBLE & MALLORY LLP
PATRICK E. BREEN

HOLLISTER & BRACE
A Professional Corporation
RICHARD C. MONK
MARCUS S. BIRD

LASCHER & LASCHER,
A Professional Corporation
WENDY COLE LASCHER

By:_____
WENDY COLE LASCHER
Attorneys for Real Party
in Interest

CERTIFICATE OF WORD COUNT
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Appellate Counsel