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

REAL PARTY IN INTEREST'S ANSWER TO AMICUS BRIEFS

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The amicus curiae briefs in support of the City of Goleta[1] argue in various ways that local home rule and land use concerns trump all other legal principles. But these concepts do not preempt the fundamental rule that we have a government of laws, not men (*Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1068 ["In short, the legal question at

[1]The League of California Cities' brief is cited "League Br." The Carmel Valley Association's brief is cited "CVA Br." The brief on behalf of the Sierra Club, the Surfrider Foundation, and Santa Barbara Shores Homeowner's Association is "Sierra Br."

issue – the scope of the authority entrusted to our public officials – involves the determination of a fundamental question that lies at the heart of our political system: the role of the rule of law in a society that justly prides itself on being 'a government of laws, and not of men' (or women)"]).

Further, these arguments miss the point of this case. None of the City's three amici address the City's repeated readoption of the County's SMA Ordinances which made final map approval ministerial. Indeed, this "gorilla in the room" cannot, much as amici would like, be ignored, for there is no avoiding the well-settled, incontrovertible rule that a City must follow its own ordinances (*e.g*, *Horwitz v. City of Los Angeles* (2004) 124 Cal.App.4th 1344, 1356).

I.

"LOCAL SELF-DETERMINATION" MAY BE IMPLEMENTED ONLY WHEN IT IS CONSISTENT WITH STATE AND LOCAL LAW.

There is nothing "anti-democratic" [CVA Br. 2] in expecting a city to follow the laws it has enacted. The power of local public entities over land use decisions does not preempt the overarching authority of the state articulated in the Subdivision Map Act or of the ordinances a city adopts pursuant to the Subdivision Map Act.

A. UPHOLDING THE TRIAL COURT WILL ADVANCE THE DEMOCRATIC PROCESS.

Carmel Valley Association urges that reversal of the Court of Appeal's decision would "chill the movement for local control" and lead to "a

drop in the drive of local communities to organize and self-govern" [CVA Br. 5]. This fear is unwarranted. It assumes that every newly incorporated city would behave in the same self-contradictory manner as the City of Goleta did, and defy its ordinances.

All a new city needs to do is not readopt ordinances providing for purely ministerial review of land use decisions or, alternatively, enact a new ordinance to supersede the county's ordinances it initially adopted [*see*, Department of Housing and Community Development Br., 6-7]. Acquiescing in Carmel Valley Association's position would countenance lawlessness on the part of local public entities. Democracy requires that local governments follow state law and local law (*Lockyer v. City and County of San Francisco*, *supra*, 33 Cal.4th at 1068. *See also*, *Beck Dev. Co. v. S. Pac. Transp. Co.* (1996) 44 Cal.App.4th 1160, 1200).

Contrary to the League of Cities' argument, Oly Chadmar has never claimed development rights "outside of the normal planning and review process" [League Br. 9, quoting *Toigo v. Town of Ross* (1988) 70 Cal.App.4th 309, 321]. Its only claim is that, like any other developer, Oly Chadmar is entitled to the benefits of the planning and review process ***as spelled out in the City's SMA Ordinances and in the Subdivision Map Act.***

Moreover, the concern that Oly Chadmar's interpretation of section 66413.5 will lead to "a rush of unacceptable and unwarranted developments approved by a county government with vastly different interests than the local community" [*id.*] is unfounded. A new city can control development

by adopting ordinances that are consistent with whatever growth control plan it has.

Here, there was no "run" or "mad dash" for County approval of the vesting tentative map. To the contrary, Oly Chadmar spent almost three years going through an exhaustive process to secure map approval from the County [Santa Barbara County Amicus Br. 4-8, 11], and its requests for expedited review were not any different from other requests the County typically receives [*id.*, p. 10].

B. THE COUNTY ADDRESSED, AND APPROPRIATELY RESOLVED, THE LOCAL CONCERNS AMICI DISCUSS.

In claiming that Oly Chadmar and its amici "have ignored significant and avoidable environmental and land use impacts that would result from the project" [Sierra Br. 1],[2] the Sierra Club is merely second-guessing decisions the County painstakingly considered [*see* County of Santa Barbara Br. 5-9, 13-17]. The supposed "community concern" the Sierra Club talks about had been thoroughly addressed by the County in the first place, then addressed further in the context of the appeals by the Urban Creeks Council and the Citizens of Goleta Valley. The latter group, which was represented by the Environmental Defense Center, was described as a group with "a vast membership in this area" [Vol. 7, p. 2222], which is "dedicated to the protection of environmental quality and sound land use planning in the

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[2]The Sierra Club brief uses references to page numbers in the administrative record filed in the trial court, rather than to the record for the writ petition in the Court of Appeal.

Goleta Valley area" [Vol. 6, p. 2002. *See also,* Vol. 7, p. 2160. *And see, Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167].

The Sierra Club and its co-amici may have commented on the Project, but none of them appealed the Project to the Coastal Commission nor brought a CEQA lawsuit, although each had the opportunity to do so (as did the City itself). On the other hand, the Citizens of Goleta Valley and the Urban Creeks Council, did appeal – and then settled all their administrative disputes with Oly Chadmar [Vol. 8, pp. 2609-2610] after initially being zealous opponents of the Project.

Much of the Sierra Club's brief is devoted to environmental contentions already presented to the County, and already evaluated [Sierra Br. 3-9, 13-15]. As the Sierra Club concedes, "[r]easonable people might disagree with the City's conclusions" about why the Project should not be approved [Sierra Br. 15]. The County Board of Supervisors and the Coastal Commission, both comprised of reasonable people, disagreed. There is no reason to revisit these points.

II.

UPHOLDING THE FINDING OF ESTOPPEL WILL NOT DEFEAT PUBLIC POLICY OR CREATE BAD PRECEDENT.

Three faulty premises underlie amici's arguments that applying the doctrine of estoppel would nullify public policy and create negative precedent. These are: (1) that the City acted on a "reasonable interpretation that section 66413.5 gave it discretion to deny Oly Chadmar's final map" [League Br. 3, 11]; (2) that the trial court found estoppel "merely because the city upheld its ministerial obligation to administratively process the application for that project" [League Br. 3]; and (3) that Oly Chadmar's reliance on the City's conduct was unreasonable [League Br. 8, 13, 15-16].

Oly Chadmar has already refuted each of those points, and the amicus curiae briefs filed in support of Oly Chadmar confirm the correctness of its position.

First, the City's interpretation of section 66413.5 is incorrect [Merits OB 9-21; Merits Reply 2-11]. As the Department of Housing and Community Development pointed out in its amicus brief [p. 6], " . . . to the extent that section 66413.5 implies the ability of a newly-incorporated city to exercise discretion over a previously approved vesting tentative map, that ability is circumscribed by the Subdivision Map Act's procedural requirements that a local government promulgate its regulation of subdivisions through ordinance." [*See also,* California Building Industry Association Br. 10-18 (Oly Chadmar acquired a constitutionally-derived vested right to

approval of its final map after compliance with tentative map conditions)].

Second, the trial court did not find estoppel because the City complied with its ministerial duties. Rather, the trial court provided six reasons[3] for finding estoppel, including that the City twice ***re***adopted the county subdivision map ordinances providing for only ministerial review, when it could have adopted different ordinances. In addition, the City authorized Oly Chadmar's Project to proceed with design review and requested changes to Oly Chadmar's agreements for the Project [Merits OB 4-5, Reply 21-

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[3] "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 Ordinance 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].

22. *See also*, Department of Housing and Community Development Br. 6-8]. The City adopted Ordinance 02-15, which exempted the Project and similarly situated projects from the City's moratorium extension and allowed them to "go forward in the near future . . . " [Vol. 19, p. 6037].

Finally, it was reasonable for Oly Chadmar to assume City would follow the law [Merits OB 33. *See also*, California Building Industry Association Br. 19-20]. This point is discussed in subsection B, below.

A. THE PRINCIPLE OF ESTOPPEL APPLIES TO NEW CITIES AS WELL AS TO ESTABLISHED ONES.

The League of Cities asserts that the City cannot be estopped by its actions because it was required by law to process Oly Chadmar's tentative map application. According to the League, June 28, "cities cannot adopt interim ordinances to delay the process of development applications" [League Br. 13, and see p. 15]. Oly Chadmar does not argue that the City was required to adopt an interim ordinance to delay. Instead, Oly Chadmar's position is that the City was not entitled to ***re***adopt subdivision map ordinances calling for ministerial approval, yet claim it could exercise discretion notwithstanding those ordinances.

The fact the City is newly incorporated does not change the estoppel analysis [*see*, League Br. 16]. Whether a city has a new staff or an established one, when its staff members act pursuant to that city's ordinances, the city is bound by what the ordinances say.

B. OLY CHADMAR REASONABLY RELIED ON THE ACTIONS OF THE CITY.

Carmel Valley Association says that a developer that fails to meet the temporal deadline of section 66413.5 has "constructive if not actual (as in this case) notice that a newly incorporated city will have discretion to deny its final map regardless of a county's initial approvals" [CVA Br. 6. *See also*, League Br. 12; Sierra Br. 4]. Knowing the petition was signed does not establish anything except that the safe harbor provision of section 66413.5 would not apply. The signature could not put Oly Chadmar on constructive notice that the City intended to enact subdivision ordinances but not obey them.

In addition, though it is accurate to say that Oly Chadmar's application for a tentative vesting map was filed after the first signature on the petition for incorporation, that accident of timing should not distract the Court. There had been 20 years of failed past attempts at incorporation [Vol. 19, p. 6021], and Oly Chadmar had no way of knowing whether a new attempt would succeed – even assuming it could have predicted when the first signature would be put on a new incorporation petition.

In any event, the history discussed by the League of Cities does not establish that it was unreasonable for Oly Chadmar to rely on the City's actions. For example, it is inaccurate for the League to say that ***the City*** "made clear from the time of its incorporation that it regarded Oly Chadmar's map to be within its discretion to approve or deny" [League Br. 8]. The League does not provide any record reference for this proposition and,

indeed, the facts are otherwise: What the City made clear, through its SMA Ordinances, was that the Project was to be given ministerial approval. Two council members-elect asked the County Board of Supervisors to defer appeals of land use decision on Goleta properties [Vol. 19, p. 6004, Recital 9], and when the County declined, expressed their displeasure in writing [Vol. 6, pp. 2001]. But this unofficial expression took place before incorporation. Citizens must rely on the ordinances and official acts of government bodies in noticed public meetings (Gov. Code, §54950, *et seq.*) – not on what happens before an entity has official legal status.

The March 18 and June 4, 2002 emails indicating that the City "had concerns about the Project and was not inclined to give a rubber stamp approval for it" [League Br. 12] do not negate Oly Chadmar's reasonable reliance. The March 18 email is quoted incompletely at page 6 of the League's brief. It said:

> You need to know that there continues to be a high level of interest in this project from both the community and the council and so the council ***wants to be consulted about all decisions regarding the clearance process***.

Vol. 14, p. 4351, emphasis added.

This message supports the finding of estoppel. It led Oly Chadmar to believe, reasonably, that it was participating in a process of clearing conditions for its vesting tentative map. If the City intended simply to deny the Project based upon general policy concerns, or to invoke its supposed discretion under section 66413.5, there was no point in the City's participating in or discussing the "clearance process."

Part of the June 4 email likewise is omitted on page 6 of the League's brief. The full text is:

> The City has some serious concerns about jurisdictional and substantive issues regarding this project. At the council meeting last night, the City Council directed this office to prepare and file an appeal to the California Coastal Commission on the notice of intent to issue the CDP and to notify you as our staff on this matter of the action taken. A formal letter will be forwarded to you this week, but in the meantime please take no further action with regard to this project until further notice form the City.

Vol. 14, p. 4429.

The jurisdictional issues discussed in this email related to the issuance of the coastal development permit for final map clearance. Moreover, even as to that issue, the City's concerns were contrived. The County was clearly the proper entity to issue that permit; in fact, the City Council's Resolution No. 02-09 authorized the County's Planning Director to act as the City's Interim Zoning Administrator, and to issue ministerial land use permits, such as the final map coastal development permit [Vol. 19, pp. 6022-6024].

There is a similar defect in the League's observation that "[n]otwithstanding Goleta's clear and consistent objections to the Oly Chadmar project, the County approved a coastal development permit for the Oly Chadmar project on May 23, 2002" [League Br. 7]. In processing the coastal development permit for map recordation, the County was acting ***as the land use agent for the City of Goleta*** [Vol. 3, pp. 994-1009; Vol. 13, pp. 4038-4039; Vol. 19, pp. 6022-6024. *See also,* Santa Barbara County

Amicus Br. 9]. And although the City subsequently appealed issuance of the permit to the California Coastal Commission [League Br. 7], the Coastal Commission unanimously found that no substantial issue existed with respect to the City's appeal [Vol. 15, p. 4624; Vol. 19, p. 6005, Recital 16]. An appeal presenting no substantial issue does not put anyone on notice of the correctness of the appellant's position.

Finally, the League argues that "[t]he County itself acknowledged that section 66413.5 might affect the final decision on the map when its own County Counsel stated that the incorporation of Goleta and section 66413.5 could allow Goleta to deny approval of the final map" [League Br. 13]. Although County Counsel did say the Project might not qualify for protection ***under section 66413.5*** if it were approved after the City's effective date of incorporation, he did not comment on the issue presented here: Is Oly Chadmar entitled to map approval under the City's SMA Ordinances under the circumstances of this case even though the Project is not within section 66413.5's safe harbor? Further, County Counsel also pointed out that if the Project were approved by the County before incorporation, it appeared that the City would have to make very special findings "before it could adopt a moratorium that would affect the project" [Vol. 20, p. 6216]. The City never made the findings that would have been required under Government Code section 65858, subdivision (c)(1).

Contrary to the League's belief [League Br. 13], *First Street Plaza Partners v. City of Los Angeles* (1998) 65 Cal.App.4th 650 is not relevant. That case arose from the City of Los Angeles's decision not to proceed with

a public project despite lengthy and costly negotiations with the plaintiff. The parties never entered a contract, and it was the lack of any formal action on a contract which led the Court of Appeal to hold the City was not estopped to deny the existence of a contract (*Id.* at 669 ["estoppel cannot create contractual duties where compliance with a charter is lacking"], 669-670 ["Even though the parties may at one time have been proceeding in an atmosphere of goodwill and even camaraderie, and may have held high and even reasonable hopes for eventual formation of a final contract, the record shows that no contract had yet been concluded and that final contract formation depended on discretionary approval by the mayor and city council"]).

The notion that a developer proceeds at its own risk [CVA Br. 6] is meaningless. As Oly Chadmar stated in its Merits Brief [p. 20], it 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."

In fact, the estoppel cases cited by the League support Oly Chadmar's position. For example, the League argues that estoppel should only be sparingly applied in the land use context and never where it would nullify a strong rule of policy adopted for the benefit of the public [League Br. 9]. In support, the League cites *Burchett v. City of Newport Beach* (1995)

33 Cal.App.4th 1472, 1480: "The public and community interest in preserving the community patters ***established by zoning laws and ordinances*** outweighs the injustice that may be incurred by the individual in relying upon an invalid permit . . ." (emphasis added).[4] But here, the only ordinances that have been established are those that required ministerial approval and determined that the Project would not affect public safety or welfare. The "strong public policy" at issue here is the provision of housing. All of these elements argue strongly for, rather than against, allowing the Project to go forward.

C. PUBLIC POLICY SUPPORTS REINSTATING THE TRIAL COURT'S DECISION.

As the Sierra Club points out, '[f]inding the appropriate balance between the environmental and community impacts of the project and the need for affordable housing is one of the fundamental policy issues presented by this case" [Sierra Br. 2]. As noted above, the environmental/community impacts were fully considered and given deference in the County approval process where the Project's environmental impacts were substantially decreased as density went from 159 to 109 homes; where the Project was revised to include 22 affordable units; and where the Project incorporated an innovative program to enhance the wetlands and grasslands

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[4]The League also cites *Burchett* for the proposition that estoppel cannot lie where a city official acts in excess of his or her authroity [League Br. 15-16]. That is not the claim here; rather, Oly Chadmar contends that the City refused to follow its own ordinances, not that someone acted in excess of his or her authority.

found on site [Vol. 3, pp. 1042-1071; Vol. 8, pp. 2476-2477]. But, obviously, none of those housing units, including the 22 affordable units, has been built as the City has not allowed the Project to go forward.

As the Legislature has stated (Gov. Code, §65580), "the availability of housing [is] of vital statewide importance and a priority of the highest order. Local agencies have a clear responsibility to contribute to the attainment of the state housing goals." Thus, in "finding the appropriate balance" referred to by the Sierra Club, this Court should come down in favor of allowing the housing development to proceed. To hold otherwise would defeat the clear policy goal of building more housing, including affordable housing, in the state. The Department of Housing and Community Development put it best: "The process of city incorporation should not become a device that impedes the statewide statutory policies designed to require each local agency to adopt land-use policies which facilitate the construction of housing sufficient to meet its portion of the statewide housing goal.

The League of Cities argues that the City of Goleta should have the ability to "protect the health and welfare of its citizens" [League Br. 3]. The City already made this determination, finding in its second readoption of the SMA Ordinances (which required ministerial approval of the Project) that such readoption was "a matter of urgency necessary for the immediate protection of the public health, safety, interest, and general welfare . . ." [Vol. 19, p. 6056]. Further, to the extent the Sierra Club is worried about "community impacts," the City expressly stated in Ordinance 02-15 that the categories of projects which included Oly Chadmar's Project fell (multifam-

ily projects and development projects approved before February 1) "can go forward in the near future without substantial detriment to, or interference with, the City's ability to adopt a general plan and implementing land use regulations . . ." [Vol. 19, p. 6037].

CONCLUSION

As the California Department of Housing and Community Development explained in its amicus brief, it is not only possible to balance the interests of newly-incorporated cities and the business community [pp. 7-9], but doing so is necessary to implement the state's affordable housing goals [p. 10].

Amici's contention that the City had unbridled authority to ignore its own SMA Ordinances would make sense only if the Court concluded that section 66413.5 completely invalidates any approved tentative or vesting tentative subdivision map that does not fall within its temporal safe harbor. That interpretation is contradicted by the rest of the Subdivision Map Act, and by the history of section 66413.5, which was enacted to protect the reliance interests of developers, not to expand the powers of new cities.

The amicus briefs in support of the City of Goleta do not suggest any legitimate reason to override the public interest in consistent, uniform, enforcement of law.

Therefore, this Court should reverse the decision of the Court of Appeal, direct that court to deny the City's petition for writ of mandate, and thus reinstate the trial court's decision.

Dated: June 28, 2005

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, Rule 29(c)1))

The text of this brief consists of 3,929 words as counted by the Corel WordPerfect version 10 word processing program used to generate this brief.

Dated: _____ _____

Appellate Counsel