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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF MONTEREY

12 H-Y-H CORPORATION, a
13 Delaware corporation,

14 Petitioner and
15 Plaintiff,

16 vs.

17 COUNTY OF MONTEREY and
DOES I through XX, INCLUSIVE,

18 Respondents and
19 Defendants.
20

Case No. M 46616

STATEMENT OF DECISION

21 The above-entitled cause came on regularly for trial on July 26, 2000 in the above entitled-
22 court, The Honorable Richard M. Silver, Judge, presiding without a jury and was tried on that date.
23 Both parties were present through their respective attorneys.

24 By stipulation this matter was bifurcated and the trial herein was conducted only as to the
25 first through fourth causes of action for writs of mandate, and the fifth, sixth, and thirteenth causes
26 of action for declaratory relief and estoppel.

27 Oral and documentary evidence was introduced on behalf of the respective parties and the
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FILED

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SHERRI L. PEDERSEN
CLERK OF THE SUPERIOR COURT
DEPUTY

1 cause was argued and submitted for decision. The Court, having considered the evidence and heard
2 the arguments of counsel and being fully advised, makes the following statement of decision in
3 support of a Peremptory Writ of Mandamus compelling COUNTY to continue to process the EIR
4 and Specific Plan for the Rancho San Juan Area of Development Concentration forthwith, consistent
5 with statutory requirements for public notice and to diligently complete the certification of the EIR
6 and adoption of the Specific Plan within a reasonable time period in accordance with the law.

7 1. A principal controverted issue at trial was whether respondent could postpone further
8 processing of the EIR and Specific Plan for the Rancho San Juan Area of Development
9 Concentration until after an update of the General Plan. The Court has determined that respondent
10 must continue to process the Rancho San Juan EIR and Specific Plan forthwith, consistent with
11 statutory requirements for public notice and must diligently complete the certification of the EIR and
12 adoption of the Specific Plan within a reasonable time period in accordance with the law.

13 a. The Court based its decision on the following facts:

14 Petitioners are the owners of land in the Rancho San Juan area of North Monterey COUNTY.
15 In 1982 COUNTY adopted the Monterey COUNTY General Plan. This plan designated the Rancho
16 San Juan area as an "Area of Development Concentration" (ADC) study area and deferred planning
17 in that area to the Greater Salinas Area Plan (GSAP). During the preparation of the GSAP
18 alternative ADC areas were considered. An EIR was prepared for the GSAP. The EIR was certified
19 and GSAP adopted by the COUNTY in 1986. The Rancho San Juan area was designated as an ADC
20 and the GSAP provided that no discretionary development could take place until a specific plan for
21 this area was adopted. In summary, the General Plan deferred the planning of this area to the GSAP;
22 the GSAP deferred it to a Specific Plan; and discretionary development was thereby precluded until
23 adoption of the Specific Plan.

24 Shortly after adoption of the GSAP Petitioners were advised that COUNTY lacked funds to
25 prepare the Specific Plan and that current COUNTY policy then prohibited permitting Petitioners
26 to fund or prepare the Plan themselves. In January 1987 COUNTY did prepare and circulate
27 Requests for Proposals (RFP) for the Plan and sought funds from the State for a "Feasibility Study,"
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1 an initial step in the Plan process. In 1989, with little progress in preparation of the Plan, Petitioners
2 submitted various documents as part of an application for development called North Monterey
3 Heights, which included a request for General Plan amendment to eliminate the requirement for a
4 Specific Plan for this limited development. In 1990 COUNTY decided to defer this application until
5 the Specific Plan was completed and adopted a Resolution designating certain lands as "Areas of
6 Benefit" to impose predevelopment fees to recover costs for the "Feasibility Study." In addition they
7 also approved an agreement for preparation of the "Feasibility Study."

8 The "Feasibility Study" was completed and accepted by COUNTY in September 1991. It
9 made recommendations including reductions in density below the GSAP and reduced water
10 consumption. In September 1992 COUNTY adopted an Ordinance amending the zoning in the
11 GSAP to conform to the General Plan. Rancho San Juan, including Petitioners' property, was zoned
12 light industrial and high density residential.

13 Third parties who alleged that it violated CEQA challenged the zoning ordinance. In order
14 to settle that lawsuit, COUNTY asked Petitioners to pay COUNTY lawyer fees and agree to a
15 rescission of the ordinance as it applied to the ADC, pending timely completion of the Specific Plan
16 consistent with the "Feasibility Study" and its reduced density and other recommendations.
17 Petitioners agreed. In 1993, as part of their discussions, COUNTY also changed their policy and
18 adopted appropriate ordinances to allow private parties to reimburse costs of environmental studies
19 and plan processing.

20 Finally, in 1994, COUNTY adopted the agreement for preparation and processing of the EIR
21 and Specific Plan. At the same time COUNTY contracted with "The Planning Center" to act as
22 consultants to prepare the EIR and Plan. The agreement established a schedule for completion and
23 adoption of the EIR and Plan that provided for completion of public hearings by December 1994.
24 Further, Petitioners agreed to accept the reduced densities suggested in the Feasibility Study.

25 Contemplated within the above agreements reached with Petitioners for both the payments
26 of money and the reduction in density was that COUNTY would proceed to complete the EIR and
27 Specific Plan in a timely manner. In this connection, the "Agreement for Preparation, Processing,

1 and Reimbursement for Specific Plan and Environmental Impact Report" COUNTY specifically
2 agreed to "prepare and process a legally sufficient Specific Plan and EIR for the ADC as promptly
3 as possible."

4 Since this time Petitioners have paid over \$500,000.00 pursuant to the ordinance and
5 agreement. A portion of these funds went to the COUNTY.

6 Neither the EIR nor Plan was completed by the scheduled date in 1994. It was not until
7 December 1998 that a Draft Plan and EIR were finally circulated for public review. The comment
8 period closed in March 1999 with over 400 comments. Shortly thereafter COUNTY informed
9 Petitioners that it was intending to commence a General Plan update and recommended postponing
10 further processing of the Specific Plan and EIR until that was completed. Petitioners did not agree.
11 In May 1999 the Chief of Planning Services recommended suspension of the processing of the Plan
12 and EIR until the General Plan update was completed. Petitioners again objected. Notwithstanding
13 Petitioners' position, COUNTY has not proceeded with the processing of the Specific Plan and EIR.
14 The purported time for completion of the General Plan Update is indefinite and could take multiple
15 years.

16 b. The legal basis for the Court's decision is as follows:

17 Contrary to the argument of COUNTY, Petitioners do not seek any adjudication as to the
18 contents or substance of the Plan or the EIR nor to compel COUNTY to "legislate" in a particular
19 manner. Nor do they claim any vested right to development. They only seek that COUNTY
20 complete the processing, certification, and adoption of both the EIR and the Plan. This is important
21 in that COUNTY has specifically precluded any discretionary development until the adoption of the
22 Specific Plan. Nothing herein shall compel any particular result nor prevent COUNTY from
23 specifically finding that the General Plan is inadequate and/or taking appropriate action under
24 Government Code section 65858.

25 The general plan is the "constitution" or "charter" for all land use within a COUNTY. City
26 of Sausalito v. County of Marin 12 Cal.App.3d 550 (1970). The preparation of a General Plan is
27 mandatory. Government Code Section 65300. No development may proceed unless and until there
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1 is a legally adequate General Plan and all other Plans and development must be consistent with the
2 General Plan. It is appropriate in the General Plan itself to specifically require and defer to the
3 preparation of Specific Plans for specialized or discreet areas. In this context Government Code
4 Section 65450 provides that:

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6 "After the legislative body has adopted a General Plan, the planning may, or if so
7 **directed** the legislative body, shall, prepare specific plans for the systematic
8 implementation of the general plan for all or part of the area covered by the
9 general plan."

10 Therefore, when the legislative body defers a specific area for preparation of a specific plan,
11 precludes all development until that is prepared, and directs the preparation of that plan, the adoption
12 of that specific plan becomes a part of the legislative bodies' mandatory duty to prepare a legally
13 adequate general plan. In the instant case the General Plan did defer to the preparation of the Greater
14 Salinas Area Plan, which, in turn, deferred to the development of a specific plan for the area in
15 question. As a consequence COUNTY has mandatory duty to adopt a specific plan.

16 No statute or appellate case establishes a date certain by which the adoption of a Plan or
17 certification of an EIR must be completed. Obviously the times for completion of these tasks will
18 vary according to the particular circumstances and nature of the project. This issue presented herein
19 is whether COUNTY's action in suspending processing and adoption of the Specific Plan and EIR
20 for an indefinite time while they consider whether the General Plan will be updated, given the
21 specific factual context of this case, is arbitrary, capricious, lacking in evidentiary support, or
22 contrary to procedures required by law.

23 COUNTY in part argues that the Court is without jurisdiction to compel completion of the
24 Plan and EIR because the "timing" is in itself a legislative act. If this were the case COUNTY could,
25 at will, indefinitely delay the adoption of a mandatory plan without consequence and a landowner
26 could be precluded from bringing a "takings" action because no final decision on the permissible
27 scope of development had been reached. Although there is authority that a public entity may be
28 liable for a "temporary takings" where they delay a project beyond the "normal and/or reasonable
time to accomplish processing," it could well be argued that no such takings could or should take

1 "outdated" nor have they taken any action pursuant to Government Code Section 65858.

2 Given the specific factual content of this case the Court finds that the decision of COUNTY
3 to suspend further processing of the Plan and EIR for an indefinite period is contrary to law.
4 (Government Code Sections 65103(b), 65300, and 65450; Public Resources Code Sections
5 21082.2(d) and 21091(d).)

6 2. A principal controverted issue at trial was whether COUNTY was compelled to adopt
7 zoning for Petitioner's property within a reasonable time. The Court has determined that COUNTY
8 shall adopt zoning for Petitioner's property forthwith, consistent with statutory requirements for
9 public notice, completing said process within a reasonable time period in accordance with the law.
10 (Government Code §65860.)

11 a. The Court based its decision on the following facts:

12 In September 1992 COUNTY adopted an Ordinance amending the zoning in the GSAP to
13 conform to the General Plan. Rancho San Juan, including Petitioners' property, was zoned light
14 industrial and high-density residential.

15 Third parties who alleged that the rezoning violated CEQA challenged the zoning ordinance.
16 In order to settle that lawsuit, COUNTY asked Petitioner to pay COUNTY lawyer fees, agree to a
17 rescission of the Ordinance as it applied to the ADC, pending timely completion of the Specific Plan
18 consistent with the "Feasibility Study" and its reduced density and other recommendations.
19 Petitioners agreed. In 1993, as part of their discussions, COUNTY also changed their policy and
20 adopted appropriate ordinances to allow private parties to reimburse costs of environmental studies
21 and plan processing.

22 3. The Court has found the issue of declaratory relief concerning COUNTY's duty to prepare,
23 process and adopt the Specific Plan, certify the EIR, and adopt a zoning ordinance within the ADC
24 moot based on the facts and legal reasons stated herein above.

25 4. A principal controverted issue at trial was whether COUNTY was estopped from denying
26 that Petitioners have a right to have COUNTY expeditiously complete the preparation, processing,
27 and adoption of a legally adequate Specific Plan and EIR. The Court has determined this issue is
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1 moot based on the facts and legal reasons stated hereinabove.

2 5. For the reasons articulated by Petitioner, the Court finds that Petitioner is not barred from
3 proceeding herein for failure to exhaust administrative remedies.

4 6. The Court has found that Ordinance No. 04037 was validly enacted.

5 a. The Court based its decision on the reasons articulated by COUNTY,
6 specifically including COUNTY's determination that Ordinance No. 04037 is consistent with the
7 General Plan, the Greater Salinas Area Plan (including Policy 26.1.4.1) and the Growth Management
8 Policy, and does not obstruct their attainment.

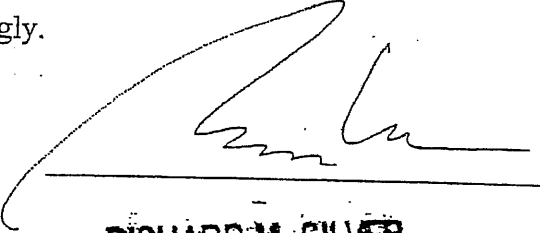
9 7. Judgment should be entered:

10 a. Ordering a peremptory writ of mandamus to issue from this Court, directing
11 Respondent to continue to process the EIR, Specific Plan and zoning for the Rancho San Juan Area
12 of Development Concentration forthwith, consistent with statutory requirements for public notice;
13 and to diligently complete the certification of said EIR, and the adoption of said Specific Plan and
14 zoning within a reasonable time period in accordance with the law; and

15 b. The Court has not made an award of attorneys' fees or costs in this proceeding,
16 but will consider that upon submission of an appropriate motion or cost bill.

17 Let judgment be entered accordingly.

18
19 DATED: 3-1-01



Judge
RICHARD M. SILVER