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Bolsa Chica Land Trust v. Superior Court of San Diego County, 83 Cal. Rptr. 2d 850 (Cal. Ct. App. 1999)

Julie E. Hultgren

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CALIFORNIA

Bolsa Chica Land Trust v. Superior Court of San Diego County, 83 Cal. Rptr. 2d 850 (Cal. Ct. App. 1999) (holding that the Coastal Act: (1) did not permit development of environmentally sensitive habitat areas (“ESHA”) despite relocation of affected species; (2) did not permit residential development of wetlands despite restoration of other wetlands; and (3) did not permit destruction of an ESHA and wetland for widening of a road without a demonstration that no alternatives existed to maintain current traffic capacity).

A dispute occurred concerning the Local Coastal Program (“LCP”), a plan for the development of a large area of land in southern Orange County (“County”) known as Bolsa Chica. The Bolsa Chica area included 1,558 acres of undeveloped wetlands and coastal mesas surrounded on three sides by an urban development and the fourth side by beach, coastal dunes, and bluffs separating the Pacific Ocean. Approximately 1,300 acres of Bolsa Chica included lowlands of both saltwater and freshwater wetlands with dry areas used by wildlife. Flanking the lowlands were two mesas, the Bolsa Chica and Huntington. Both the County and the California Coastal Commission (“Commission”) approved an initial land use plan for Bolsa Chica in 1985 which permitted development of 5,700 residential units, a seventy-five acre marina, and a 600-foot-wide navigable ocean channel and breakwater. Concerned about the environmental impacts of the development, the Bolsa Chica Planning Coalition (“Coalition”) protested the development.

The Commission made modifications to the LCP and then approved it. The final LCP eliminated the planned marina and navigable ocean channel, eliminated three roads, reduced residential home development to 3,400 homes, 900 of the homes in the lowlands, and increased the planned open space and wetlands restoration area.

The plaintiffs, Bolsa Chica Land Trust (“Trust”), objected to three features of the modified LCP requesting a writ of mandate from the trial court challenging the following provisions of the LCP: (1) the replacement of a degraded eucalyptus grove on Bolsa Chica mesa with a new raptor habitat on Huntington mesa; (2) the residential development the lowland area which the LCP permitted as a means of financing restoration of substantially degraded wetlands; and (3) the elimination of Warner Pond on Bolsa Chica mesa to accommodate for the widening of Warner Avenue.

The trial court held that elimination of the Bolsa Chica mesa and recreation of the habitat on Huntington mesa was consistent with the Coastal Act (“Act”). The trial court stated, however, that the Act did not permit residential development of wetlands even if it would fund restoration of other wetlands and the Act did not permit elimination of Warner Pond to accommodate for a road absent a showing that the

road outweighed the value of preserving the Pond. Both parties appealed.

On appeal, the Trust argued that the trial court erred finding a planned relocation of bird habitat permissible under the Act. The Commission argued that the trial court erred in preventing residential development of a wetlands area and in requiring preservation of the pond.

The court reversed the trial court decision permitting the relocation of the bird habitat. It rejected an argument of the Commission that the goals of the Act under section 30240 to “carefully safeguard [the] preservation” of ESHA’s were upheld given the deteriorated state of Bolsa Chica. The Commission argued that the relocation of the raptor habitat best promoted the “habitat values” of the Bolsa Chica mesa. The court rejected this argument holding that the strict terms of section 30240 specifically limit all development of ESHA’s and did not permit the relocation of specific values of a particular ESHA. Thus, the court held that section 30240 did not provide a balancing mechanism to weigh conflicting interests concerning ESHA’s. In addition, the court rejected an argument that a conflict between long-term and short-term goals existed to permit development of the Bolsa Chica mesa.

The court upheld the trial court’s decision on the issue of residential development of wetlands. It held that section 30233 of the Act, while permitting development of wetlands for very specific purposes, did not mention residential development and therefore was excluded from the list of permissible development of wetlands. In addition, the court held that section 30411, permitting the Department of Fish and Game to evaluate degraded wetlands to determine the potential for restoration through development of a boating facility, did not permit the Commission to construct residential homes on wetlands as an alternative with equal potential to restore. More fundamentally, the court pointed out the fact that the power to evaluate degraded wetlands for boating facilities rested exclusively with the Department of Fish and Game.

The court also upheld the trial court on the issue of elimination of Warner Pond to widen the road. The court held that as both an ESHA and wetland, the Warner Pond was protected from development under sections 30240 and 30233 of the Act, absent a showing that no other alternative for the road expansion existed and was necessary to maintain existing traffic capacity.

Julie E. Hultgren