

Bond Case Briefs

Municipal Finance Law Since 1971

INVERSE CONDEMNATION - CALIFORNIA

Pacific Shores Property Owners Association v. Department of Fish and Wildlife

Court of Appeal, Third District, California - January 20, 2016 - Cal.Rptr.3d - 2016 WL 234482 - 16 Cal. Daily Op. Serv. 830

Owners of undeveloped subdivision along lagoon's shore, whose properties suffered flooding damage when lagoon rose above certain level, filed inverse condemnation action against Department of Fish and Wildlife and Coastal Commission, alleging owners suffered a physical taking from Department's actions related to breaching lagoon's sandbar, and a regulatory taking by Commission retaining land use jurisdiction over subdivision instead of transferring it to county.

The Superior Court found Department and Commission liable for physical taking and awarded damages, but concluded owners' claim for regulatory taking was barred, awarded owners attorney fees, and denied owners any precondemnation damages. All parties appealed.

The Court of Appeal held that:

- Commission's approval of permit to breach sandbar triggered period in which owners were permitted to file writ petition challenging permit;
- Statute governing period in which aggrieved person was permitted to file writ petition applied to Commission's approval of permit and owners' inverse condemnation action;
- Inverse condemnation action against Department accrued when Department adopted management plan for lagoon;
- Department was liable for physical taking under theory of strict liability;
- Department actions related to breaching sandbar were unreasonable;
- Administrative jurisdiction exception to doctrine of exhaustion of remedies did not apply to regulatory taking claim asserted against Commission;
- Evidence supported determination that owners were not entitled to precondemnation damages; and
- Trial court properly limited attorney fees to amount owners agreed to pay under contingency agreement.

Costal Commission's approval of permit to breach lagoon's sandbar at eight to ten feet mean sea level (msl) triggered 60-day period in which owners of undeveloped subdivision along lagoon's shore were permitted to file petition for writ of administrative mandate challenging permit or any other decision or action of Commission, as required for owner's to file subsequent inverse condemnation action against Commission, stemming from flood damage to owners' properties that occurred when lagoon rose above eight feet msl.

Statute governing 60-day period in which aggrieved person was permitted to file petition for writ of administrative mandate challenging decision of Costal Commission and requirement that inverse condemnation claim be filed with petition applied to Commission's approval of permit to breach lagoon's sandbar at eight to ten feet mean sea level (msl) and inverse condemnation action filed by

owners of undeveloped subdivision along lagoon's shore, stemming from flood damage to owners' properties that occurred when lagoon rose above eight feet msl; despite contention that 60-day statute and requirement to file writ petition first did not apply because Commission's actions constituted a physical taking, Commission did not physically invade or damage owners' properties, but rather Commission's actions were limited to denying and issuing permits.

Cause of action against Department of Fish and Wildlife for inverse condemnation filed by owners of undeveloped subdivision along lagoon's shore accrued under stabilization doctrine, and three-year statute of limitations for claims for damage to real property began to run, when Department adopted management plan for lagoon that called for breaching lagoon's sandbar at eight to ten feet mean sea level (msl) and subsequent resulting flooding of owners' lands, which suffered flooding damage when lagoon rose above eight feet msl, became certain. Although type of damage that occurred from breaching sandbar at eight feet msl was known prior to adoption of management plan, and although emergency and interim permits had been issued to breach sandbar at different levels, taking did not become permanent until management plan was approved.

Department of Fish and Wildlife was liable for physical taking under theory of strict liability in inverse condemnation action filed by owners of undeveloped subdivision along lagoon's shore, whose property flooded when lagoon rose above eight feet mean sea level (msl), based on Department's approval of management plan for lagoon that called for breaching lagoon's sandbar at eight to ten feet msl. Department's decision to breach sandbar at eight to ten feet msl was a decision to flood owners' properties intentionally whenever needed to protect environmental resources and did not constitute flood control project, and by its actions, Department chose to lessen flood protection that had been provided to owners for decades.

Department of Fish and Wildlife acted unreasonably in determining to breach, and actually breaching, lagoon's sandbar at eight to ten feet mean sea level (msl), and thus rule of reasonableness, as exception to strict liability for a physical taking, did not apply to Department in inverse condemnation suit filed by owners of undeveloped subdivision along lagoon's shore, stemming from flooding damage to their properties that occurred when lagoon rose above eight feet msl. Project was not designed to protect owners' properties from flooding, there was a feasible alternative that reduced risk of flooding, and owners bore disproportionate cost of Department's project.

Administrative jurisdiction exception to doctrine of exhaustion of remedies did not apply to regulatory taking claim asserted against Coastal Commission in inverse condemnation action filed by owners of undeveloped subdivision along lagoon's shore, alleging that Commission committed a regulatory taking by retaining land use jurisdiction over subdivision instead of transferring it to county, and thus owners were not excused from not filing a permit with Commission as a prerequisite for bringing claim for regulatory taking and then challenging Commission's decision on that application in administrative mandate. Commission had not acted, and was not acting, beyond its jurisdiction.

Substantial evidence supported trial court's determination that owners of undeveloped subdivision along lagoon's shore were not entitled to precondemnation damages in inverse condemnation suit based on Coastal Commission's actions in deferring certification of county's local coastal program for subdivision, combined with increased flooding that owners experienced when lagoon rose above eight feet mean sea level (msl). Evidence showed that delay arose from county's decision not to submit revised local coastal program for subdivision, that without that application, Commission was obligated to retain land use authority over subdivision, and that Commission had no duty to prepare a program for subdivision or to compel county to do so.

Trial court properly limited attorney fees awarded to owners of undeveloped subdivision along lagoon's shore, whose properties flooded when lagoon rose above eight feet mean sea level (msl), to amount owners agreed to pay under contingency agreement with their counsel in owners' inverse condemnation action against Department of Fish and Wildlife and Coastal Commission, stemming from adoption and approval of management plan that called for breaching lagoon's sandbar at eight to ten feet msl. Statute governing award of attorney fees in inverse condemnation actions limited fees to those actually incurred, and amount owners agreed to pay in contingency agreement constituted amount they were obligated to pay.