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12 CITY OF SAUSALITO

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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF CONTRA COSTA
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17 CITY OF SAUSALITO,
18 Petitioner and Plaintiff,
19 v.
20 GOLDEN GATE BRIDGE, HIGHWAY AND
TRANSPORTATION DISTRICT,
21 Respondent and Defendant.

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23 GOLDEN GATE BRIDGE, HIGHWAY AND
TRANSPORTATION DISTRICT,
24 Real Party in Interest.
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Case No. MSN17-0098

~~PROPOSED~~ ORDER OVERRULING
RESPONDENT'S DEMURRER

Judge: Hon. Barry P. Goode
Dept: 17
Date: May 4, 2017
Time: 8:30 a.m.

Action Filed: September 13, 2016

CEQA Case

1 The hearing on Respondent and Defendant Golden Gate Bridge, Highway and
2 Transportation District's ("District's") Demurrer was held on May 4, 2017 at 8:30 a.m. in
3 Department 17 of this Court before the Honorable Barry P. Goode. Christopher Jensen of Hanson
4 Bridgett appeared on behalf of the District, and Arthur J. Friedman of Sheppard Mullin Richter &
5 Hampton and Mary Anne Wagner as City Attorney appeared on behalf of Petitioner and Plaintiff
6 City of Sausalito.

7 Having reviewed the pleadings, briefing, requests for judicial notice, and other materials
8 submitted by counsel, and having heard the arguments of counsel, and for good cause having been
9 shown, the Court hereby OVERRULES the Demurrer in its entirety, and adopts its tentative
10 ruling, attached as Exhibit A, as its final ruling.

11 IT IS SO ORDERED:

12 Dated: May 8, 2017



Hon. Barry Goode
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HON. BARRY P. GOODE
JUDGE OF THE SUPERIOR COURT

17 APPROVED AS TO FORM:

18 Dated: May 5, 2017

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

20
21 By  for

ARTHUR J. FRIEDMAN

Attorneys for Petitioner and Plaintiff
CITY OF SAUSALITO

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APPROVED AS TO FORM:

Dated: May 5, 2017

HANSON BRIDGETT LLP

By



CHRISTOPHER JENSEN

Attorneys for Respondent and Defendant
GOLDEN GATE BRIDGE, HIGHWAY AND
TRANSPORTATION DISTRICT

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EXHIBIT A

CONTRA COSTA SUPERIOR COURT

MARTINEZ, CALIFORNIA

DEPARTMENT: 17

HEARING DATE: 05/04/17

13. TIME: 8:30 CASE#: MSN17-0098

CASE NAME: CITY OF SAUSALITO VS. GOLDEN G

**HEARING ON DEMURRER TO CIVIL PETITION of CITY OF SAUSALITO FILED
BY GOLDEN GATE BRIDGE, HIGHWAY AND TRANSPORTAT**

*** TENTATIVE RULING: ***

Defendant/Respondent Golden Gate Bridge, Highway and Transportation District's ("District") demurrer is overruled. The District shall file and serve its answer by May 18, 2017.

Petitioner/Plaintiff the City of Sausalito ("City") has sued the District for violation of the California Environmental Quality Act ("CEQA"), and violation the public trust doctrine. It also states three claims for declaratory relief. The District demurs to all five causes of action. As to each cause of action, the District brings three arguments: the claims are unripe, the claims are moot and each claim fails to state a valid cause of action.

The City's complaint is generally based on the District's plan to replace the ferry terminal in Sausalito. The District repeatedly argues that it is not moving forward with the project, however, this argument is based on the District's definition of "project". The District's apparent definition of the "project" is one that replaces the ferry terminal *with* the consent of the City. The District views its current plan to replace the ferry terminal *without* the consent of the City as a different project. The District's defines "project" too narrowly. The Court considers the relevant "project" in this case to be the replacement of the ferry terminal and hereafter refers to this project as "the Project". The Court's definition of Project is not tied to whether or not the District is seeking the City's consent on the Project.

Ripeness

First, the District argues that the City's claims are not ripe. "The ripeness requirement, a branch of the doctrine of justiciability, prevents courts from issuing purely advisory opinions.... However, the ripeness doctrine is primarily bottomed on the recognition that judicial decisionmaking is best conducted in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to enable the court to make a decree finally disposing of the controversy. On the other hand, the requirement should not prevent courts from resolving concrete disputes if the consequence of a deferred decision will be lingering uncertainty in the law, especially when there is widespread public interest in the answer to a particular legal question. [Citations.]" (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170.)

"In determining whether a controversy is ripe, we use a two-pronged test: (1) whether the dispute is sufficiently concrete to make declaratory relief appropriate; and (2) whether the withholding of judicial consideration will result in a hardship to the parties. (*Pacific Legal Foundation, supra*, 33 Cal. 3d at pp. 171-173.) Under the first prong, the courts will decline to adjudicate a dispute if 'the abstract posture of [the] proceeding makes it difficult to evaluate . . . the issues' (*id.* at p. 172), if the court is asked to speculate on the resolution of hypothetical

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situations (*ibid.*), or if the case presents a 'contrived inquiry' (*ibid.*). Under the second prong, the courts will not intervene merely to settle a difference of opinion; there must be an imminent and significant hardship inherent in further delay. (*Id.* at pp. 172-173.)" (*Farm Sanctuary, Inc. v. Department of Food & Agriculture* (1998) 63 Cal.App.4th 495, 502.)

The District argues that there is no actual, concrete controversy because the District's September 2016 letter withdrew its request for the City's consent to the Project. The District also argues that there are currently multiple designs for the Project and thus there is nothing final and concrete for the Court to review. In addition, the District argues that the City will not be harmed if judicial consideration is withheld because, the District argues, that "if and when [it] elects to proceed with the ferry landing replacement project, the City will have the opportunity to review and potentially object to the project..." (Demurrer at 10:8-10.) The District does not explain at what stage the City would be able to review the project or show how this unspecified opportunity to review would comply with CEQA.

The District's arguments fail. First, the City is suing because of the District's position that the City's consent is not necessary for the project. The District's September 2016 letter makes it clear that a disagreement about the City's role in the Project creates an actual, concrete controversy. Second, while the complaint does not clearly allege that the District is moving forward with the Project without the City, the complaint assumes this fact and seeks to stop the District from continuing with the Project without the City's consent. (Comp. ¶¶ 41, 47, 52, 56, 60 and Prayers for Relief 1-6.) In addition, the City's requests for judicial notice make clear that the District is moving forward with the Project. (City's RJN Exs. A-D.) And finally, the District has not presented a convincing argument that City will not be harmed if judicial review is denied. In addition, denying judicial review here would have the effect of denying the City its chance to participate in this Project as a responsible agency, which could constitute a CEQA violation.

Therefore, the Court finds that the City's claims are ripe.

Mootness

The District also argues that the City's claims are moot. "A case is considered moot when 'the question addressed was at one time a live issue in the case,' but has been deprived of life 'because of events occurring after the judicial process was initiated.' [Citation.]... The pivotal question in determining if a case is moot is therefore whether the court can grant the plaintiff any effectual relief. [Citations.] If events have made such relief impracticable, the controversy has become 'overripe' and is therefore moot. [Citations.]" (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1574.)

The District argues that it withdrew its request for the City to consent to the Project and therefore the City's claims are moot. This argument fails. As discussed above, the City's claims are based on the District's position that it does not need to obtain the City's consent on the Project. This dispute was not mooted by the September 2016 letter.

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The District also argues that the Project is not going forward, but this argument is based on the narrow definition of project. In addition, this argument appears based on facts outside of the complaint and is improper for a demurrer.

The Court finds that the City's claims are not moot.

Valid Causes of Action

The District also argues that each of the claims fails to alleged sufficient facts to state a valid cause of action.

CEQA

The District argues that the City has not stated a valid claim for violation of CEQA. The District argues that all claims under CEQA must be brought under either Public Resources Code §21168 or §21168.5. Section 21168 applies to decisions made after a hearing, which is not the case here. Section 21168.5 applies to "any action or proceeding, other than an action or proceeding under Section 21168, to attack, review, set aside, void or annul a determination, finding, or decision of a public agency on the grounds of noncompliance with this division..."

The District argues that section 21168.5 does not apply because the District has not made a "determination, finding, or decision" with respect to the Project. The District also argues that the City has not alleged how the September 2016 letter prevents the City from taking necessary action as required by law.

The City argues that it is a responsible agency for the Project under CEQA and that as responsible agency the City was required to consider the environmental impacts of the Project, determine whether supplemental environmental review was required and consider mitigation options. (CEQA Guidelines §§15004(a); 15096(a); (f) and (g)(1).) The City then argues that the District made a determination, finding, or decision when it sent the September 2016 letter, which told the City that its approval was no longer needed on the Project.

The City's argument makes sense. Section 21168.5 applies to determinations, findings, and decisions. The District's position that the City's consent is not needed for the Project can be fairly characterized as a decision and the District has cited no case that holds otherwise. In addition, if the City is a responsible agency (as they claim to be) then the District's decision to refuse to consider the City a responsible agency states a claim for a violation of CEQA.

The District also argues that it is not preventing the City from conducting its own CEQA review. This argument is essentially that the City can do whatever it wants, but the District will not consider the City's findings. The District has not shown how this position complies with CEQA. In reply, the District argues that the City's claim is based on the mitigated negative declaration issued in 2012 and is time barred. This argument was first raised in reply and will not be considered at this time.

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The District's demurrer for failure to state a cause of action fails. Therefore, the demurrer to the first cause of action is overruled.

Public Trust

A trustee of the public trust has "an 'affirmative duty to take the public trust into account... and to protect public trust uses whenever feasible.' [Citation.]" (*San Francisco Baykeeper, Inc. v. State Lands Com.* (2015) 242 Cal.App.4th 202, 234.)

Here, the District argues that the City's public trust claim fails because the City must allege some injury or impact to the public lands. The District did not, however, cite any legal authority for this proposition until its reply and therefore the Court will not consider this argument.

The demurrer to the second cause of action is overruled.

Declaratory Relief

As to the declaratory relief claims, the District argues that there is no "actual controversy" as required by Code of Civil Procedure § 1060 because the District withdrew its request for the City's consent in September 2016. As explained above, the District made a decision that it did not need the City's consent on the Project, however, it is this decision that the City challenges. Thus, there is an actual controversy.

The District's argument as to the lease claims is another version of their ripeness argument and that argument fails for the reasons explained above. In addition, the City's position is that the District must obtain the City's consent for the Project pursuant to section 5.4 of the lease. The City alleges that the changes to the Project since 2011 negate any consent given to the original Project and that pursuant to the lease the District must still obtain the City's consent. (Comp. ¶¶ 49-52 and 54-56.) The complaint has alleged actual controversies regarding the lease. Therefore, the declaratory relief claims based on the lease are proper.

In addition, the fifth cause of action for declaratory relief relating to CEQA states an actual controversy as explained above.

Therefore, the demurrers as to the third, fourth and fifth causes of action are overruled.

Requests for Judicial Notice

The District's request judicial notice of its September 2, 2016 letter to the City. The City requests judicial notice of four documents prepared by the District. The parties' requests are unopposed and therefore granted. However, the Court is only taking judicial notice of the official acts shown in these documents and not of the truth of all matters stated within these documents.

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