SAN GERONIMO GOLF COURSE: REVELATIONS AND APPLICATIONS OF LAND USE LAW

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INTRODUCTION

In December, 2018, the owner of the San Geronimo Golf Course, Trust for Public Land (TPL), closed the San Geronimo Golf Course, and in May, 2019 abandoned the maintenance of the course.

Ceasing the watering, mowing and weeding altered and replaced the use of this land from a golf course, the "use" established by the San Geronimo Community Plan,[1] into 157 acres of fallow, desiccated land, for a new use that TPL intends to be a park.

This presentation will analyze TPL's action in light of the San Geronimo Community Plan, the Marin Countywide Plan (a general plan that state law requires of counties for future development of their lands) and the Marin Development Code (the zoning ordinances that implement the Countywide Plan). The analysis concludes that TPL's destruction of the golf course violates the Marin Development Code, and its use of the land is a public nuisance as a matter of law subject to abatement and penalties.

FACTUAL BACKGROUND

The San Geronimo Golf Course was constructed in 1965 on 157 acres in the San Geronimo Valley in west Marin County, an unincorporated area of the County. It was designed by "the most revered golf course architect in the Northwest Pacific," Arthur Vernon Macan. (Joshua Pettit, president, Pacific Golf Designs, Richmond, CA ., letter to Marin Board of Supervisors, Nov. 11, 2017.)[2] The San Geronimo Golf Course was voted the best public golf course in Marin County by the San Francisco Chronicle and the Pacific Sun. It has been deemed the "finest designed public golf course in northern California from the Golden Gate Bridge to the Oregon Border." (*Id*.)

In early 2017, the Marin County Board of Supervisors (BOS) began negotiating to purchase San Geronimo Golf Course from its owner, Robert Lee. County Supervisor Dennis Rodoni, supervisor of the West Marin District, led the other supervisors in an

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[1] The San Geronimo Community Plan provisions are stated herein at p. 2.

[2] Mr. Macan was an Irish immigrant to British Columbia who fought in WW1; his foot was shot in the Battle of Vimy Ridge resulting in amputation; he later became a Pacific Northwest Golf Association amateur champion and a golf course architect. He is in the Pacific Northwest Golf Association Hall of Fame. Locally, Mr. Macan designed the California Golf Club course in South San Francisco and the Contra Costa Country Club. ("Just Call Me Mac," biography of A.V. Macan, Michael Riste, 2011.) Mr. Macan's plasticene model of San Geronimo's third green is on display in the British Columbia Golf Society museum, Vancouver.

effort to buy the golf course "to provide open space and park lands." (Marin Superior Court's "Decision—Petition For Writ Of Mandate" (herein, "Decision") pp.1:26, 7:19-20, 9:9-10, 10:23-24.)

The County did not have the money to buy the golf course, but sought to obtain funding from state grants that were available but restricted to land purchases for the purpose of fully restoring the land. (Prelim. Inj. p.19:4-6; Decision, pp.5:20-22, 7:1-7.)

The County contracted with the Trust For Public Lands (TPL), a non-profit organization whose purpose is to purchase land for open space recreation, by which "TPL would temporarily buy the golf course to keep it out of public hands" (Decision, p. 3:4-5), and when the County received the state grant money, the County would buy the golf course from TPL for the same purchase price TPL paid. (Decis. p. 7:20-22.)

The agreement between the County and TPL was to "purchase the golf course, terminate that use and convert it into a public park and open space." (Prelim. Inj. Decision p. 21:19-21, emphasis added**.)** TPL bought the golf course for $8.85 million; escrow closed the first week of January, 2018. (Decision, p.7:20-22.)

Before TPL's close of escrow, on Dec. 5, 2017 a group of Marin County citizens, the San Geronimo Advocates, filed a complaint against the County in Marin County Superior Court for a writ of mandate to prevent the County from proceeding with the purchase project. (CIV 1704467.) The lawsuit also named TPL as "real party in interest."

The lawsuit was based on the contention that "the change of use from a golf course to open space requires an amendment to the San Geronimo Valley Community Plan and a rezoning of the property, which triggers a CEQA (California Environmental Quality Act) review." (Decision p.10-12.) The complaint was amended in Feb., 2018 to add a cause of action stating that the County's purchase and restoration project violated the Marin Countywide Plan (CWP).

The cause of action alleging violation of the CWP was based on provisions of the San Geronimo Community Plan. The San Geronimo Community Plan states:

> San Geronimo Valley Golf Course (AP#...). The golf course is 157 acres of developed recreational land including clubhouse and restaurant facilities. The course represents an important visual and recreational resource in the Valley. The golf course use should be retained with no major expansion of the facilities. Future uses should be limited to those which support **the primary use as a golf course**. (Emphasis added.)[3]

[3] "A 'primary use' is one foremost in importance." (*United Outdoor Advertising Co. v. Business, Transportation & Housing Agency* (1988) 44 Cal.3d 242, 247.)

On June 6, 2018, the Marin County Superior Court granted a preliminary injunction barring the County's purchase project. The court found that the County's project required the County to comply with CEQA procedures (Prelim. Inj. pp.27:25; 30:26-28), and that the Board of Supervisors abused its discretion by its resolution that approved the purchase without engaging in CEQA analysis. (Prelim. Inj. p.31:6-7; 34:1-2; also, Decision p.33:16.)

The Court denied the San Geronimo Advocates' claim that the County's project violated the Marin Countywide Plan (Prelim. Inj. p. 40:8-41:10), for the following reasons: that the word "should" in the Community Plan was not mandatory and did not prohibit other uses, and that the County was allowed wide deference in its "interpretation of its own General Plan." (*Id*.)

In November, 2018, the Court issued its final Decision with the same conclusions of the preliminary injunction. (Decision, pp. 37-41.) In addition to the reasons stated in the preliminary injunction, the Court ruled that the San Geronimo Advocates had waived the argument that the County's project violated the Countywide Plan because the Advocates had not raised the argument in the administrative proceedings. (Decision, p.38:10-13.)

Following the Judgment, the County withdrew from the purchase project. The County's withdrawal left TPL as owner of the golf course.

On December 28, 2018, TPL closed the golf course but maintained the golf course condition. In late April, 2019, TPL terminated the gardeners, abandoned the watering, mowing and weeding, and let the land become fallow and desiccated. The tee boxes, fairways, greens and sand bunkers became eroded and overgrown with weeds. Lakes into which water was pumped and maintained during golf course operations dried up, pine trees have fallen and stands of pines have been ringed with yellow caution ribbons because they are dying.

On August 7, 2019, Brendan Moriarty, project manager of Trust For Public Land, wrote: "The Trust for Public Land is no longer considering golf on our property… We found no financially viable path (whether 18-hole, 9-hole or other configuration) that would be sustainable in the short- and long-term, recover our investment in the property and deliver on our conservation mission."[4]

[4] The statement is self-serving in light of TPL's contractual intent "to terminate [the golf course] use and convert it into a public park and open space" (See p. 2, *supra*, Prelim. Inj. Decis., p. 21:19-21), and TPL's mission statement, "We create parks…" (TPL website). Further, Robert Lee wrote to Brendan Moriarty on Oct. 17, 2017: "Yesterday, one of our employees told me a very disturbing and misleading comments (sic) made by Supervisor Rodoni… He told our employee that the county was shutting down the golf course because it was losing $150,000.00 every year. You know that is false, in fact, we have been averaging NOI (net of interest) over $450,000.00 per year for the past seven years… Please make him aware of the true facts and not mislead the public."

TPL's actions altered and replaced the golf course landscape. The "important visual resource" is blighted; and the "important recreational resource"—golf—is replaced with fallow land. TPL did not obtain a use permit for this use of the land.

LEGAL ANALYSIS

> It must be concluded that government power to regulate land use is so important that no vested right to a particular use arises until the government has approved that specific use.
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> (*Pescosolido v. Smith* (1983) 142 Cal.App.3d 964, 969-970.)

The Marin Countywide Plan is a general plan required of counties by state law for the use of its land, pursuant to Gov. Code sec. 65300.) The "general plan has been aptly described as 'the constitution for all future land development.' " (*Orange Citizens for Parks & Recreation v. Superior Court* (2016) 2 Cal.5th 141,152.)

The Marin Countywide Plan states at p. 3-9: "Implementation tools such as the County Development Code are used to carry out the goals of the Countywide Plan."

The Development Code provides: "The County of Marin uses this Development Code as the primary tool to carry out the goals, objectives and policies of the Countywide Plan and applicable community plans. (Dev. Code. sec. 22.01.030 B.)

Development Code sec. 22.01.040 states:

> This Development Code applies to all land uses…within unincorporated Marin County.

A. New land uses, structures, and changes to them. **Compliance with the following requirements is necessary for any person or public agency to lawfully establish a new land use or structure, or to alter or replace any land use or structure:**

1. Allowable use. The proposed use of land shall be allowed by Article II of the Development Code (Zoning Districts and Allowable Land Uses) within the zoning district that applies to the site.

2. Development standards. **The proposed use of land…shall satisfy…all applicable requirements of this Development Code….**

3. Permit/approval requirements. **Any land use permit…required by Article II…shall be obtained…."** (Emphases added.)

The focal issue is: Has TPL altered or replaced the land use of the San Geronimo Golf Course in conformance with the provisions of the Development Code?

The answer is: No. TPL's alteration and replacement of the golf course use violates the Development Code in two respects: one, TPL has not obtained a use permit for its action; two, TPL is not entitled to a use permit because destruction of the golf course violates the San Geronimo Community Plan which, in turn, is a violation of the Countywide Plan and of the Development Code.

TPL ALTERED AND REPLACED THE EXISTING USE WITHOUT A PERMIT, IN VIOLATION OF THE DEVELOPMENT CODE.

The Development Code designates the zoning for this land as "Resort Commercial Recreational." (Dev. Code sec. 22.44.030, *infra*, at p. 10).

The uses of land that are "allowable" in the "Resort Commercial Recreational" zone are listed in Dev. Code sec. 22.12.030, Table 2-7. Among these allowable uses are "golf courses," "public parks and playgrounds," and "private residential recreational facilities." (Table 2-7) If a use is not listed in this table, it is not allowed in the RCR zone. (Dev. Code sec. 22.12.030.)

"Conditionally permitted uses are shown as "U" uses in the tables…." "'U' means conditionally permitted subject to use permit approval." (Dev. Code sec. 22.12.030, Table 2-7.) Table 2-7 provides a "U"—use permit required—for "public parks and playgrounds" and for "private residential recreational facility," in RCR zoning.

Assuming that TPL will declare that its use of the land is "public parks and playgrounds" or "private residential recreational facility" because these uses are allowed in this zoning, these uses require a permit. (Dev. Code, sec. 22.12.030, Table 2-7.)[5] TPL has not obtained a permit, and a permit must be obtained before the proposed use is put into operation.

Marin Development Code Sec. 22.06.040 A provides: "***No use of land…shall be established…altered, allowed or replaced*** **unless the use of land …complies with the following requirements…**

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[5]TPL's land use cannot be considered as "open space" or "nature preserve" for purposes of complying with the Development Code because neither "open space" nor "nature preserve" are listed in the RCR zone table. (Dev. Code Sec. 22.12.030, Table 2-7). If not listed in the RCR zone table, the use is not allowed. (*Dev. Code sec. 22.12.030.*) "Open Space" as used in this Code means an area of natural landscape essentially undeveloped…owned or otherwise managed by the Marin County Open Space District. (Marin Open Space Code, p. A99.01-1, Sec. 10.01.030 D.) "Nature preserves" is defined as "sites with environmental resources intended to be preserved in their natural state." (Dev. Code sec. 22.230.030.) Nature preserves are allowed in a Residential Commercial Multiple Planned zone (Table 2-6) and in an Agricultural and Resource-Related District (Table 2-1).

2. ***Any land use or development permit required by this Development Code shall be obtained before the proposed…land use otherwise is established or put into operation.*** (Emphasis added.)[6]

TPL is not entitled to a use permit because, as will be shown below, its destruction of the golf course is contrary to the San Geronimo Community Plan which, in turn, is a violation of the Countywide Plan and of the Development Code .

Being in violation of the Development Code, TPL's use of the land is a public nuisance as a matter of law. The Development Code states: "**Any use established, operated… altered or maintained contrary to the provisions of the Development Code is declared to be unlawful and a public nuisance and subject to remedies and penalties specified**." (Dev. Code, sec. 22.122.030 A, emphasis added.)

TPL'S USE OF THE LAND CONTRAVENESTHE REQUIREMENTS OF THE COUNTYWIDE PLAN AND THE DEVELOPMENT CODE.

Dev. Code sec. 22.48.040 provides in pertinent part:

"The review authority may approve a Use Permit application…only if all of the following findings are made… B. The proposed use is consistent with the Countywide Plan and applicable Community Plans." (Emphasis added.)

a.

The "more specific provisions" of the San Geronimo Community Plan prevail over the general policies of the Countywide Plan.

Board of Supervisors Resolution No. 2012-77 adopted on September 11, 2012, "A Resolution Approving an Amendment to the 2007 Marin Countywide Plan" states:

> A Community plan is considered part of the Marin Countywide Plan and sets forth the goals, objectives, policies and programs to address specific issues relevant to that particular community.
>
> **Where there are differences in the level of specificity between a policy in the Community Plan and a policy in the Countywide Plan,**

[6] Dev. Code Sec. 22.02.010 states: "When used in this Development Code, the words "shall…" (is) always mandatory.

> **the document with the more specific provision shall prevail.** (Emphasis added.)

Comparing the policy of the Community Plan with the policy of the Countywide Plan reveals the Community Plan provisions as more specific than the Countywide Plan.

The Countywide Plan (CWP) states: "Established land use categories are generalized groupings of land uses that define a predominant land use type. Some listed uses will be conditional uses under zoning, will require a use permit or other discretionary approval, and may be allowed only in limited areas or under limited circumstances." (CWP p.3-33, CD-8.2).

The CWP, at pp. 1-23 and 3-43 states the implementing policy for lands designated as Recreational Commercial, such as the San Geronimo Golf Course land:

> The Recreational Commercial land use category is established to provide for resorts, lodging facilities, restaurants, and privately owned recreational facilities, such as golf courses and recreational boat marinas. **See the Development Code for a complete list of permitted and conditional uses and development standards."** (Emphasis added.)

While the Development Code lists the uses allowed in the Recreational Commercial category, on the other hand, the San Geronimo Community Plan's provisions for this particular Recreational Commercial land provides, "the course is an important visual and recreational resource in the valley," "the golf course use should be retained," and "further uses should support golf as the primary use." (p. 2, *supra*.) "A primary use is one foremost in importance." (fn. 2, *supra*, 44 Cal.3d at 247.)

Compared with the Countywide Plan's Recreational Commercial land policy implemented by the uses listed in the Development Code, the San Geronimo Community Plan's provisions are more specific, and thus, "prevail."

Additionally, the Countywide Plan defers to community plans in its following statements. "**Community plans also provide specific direction for communities in the unincorporated area of the county.** Many unincorporated communities are guided by community plans that provide specific direction regarding land use…as well as issues unique to a particular community." (CWP p. 3-9, emphasis added.)

"The Marin Countywide Plan is the comprehensive long range general plan for the physical development of the jurisdiction required by California law. While the law establishes specific requirements for the contents of the general plan, within that framework **each community has the latitude to design its own future**." (CWP p.1-1, emphasis added.)

TPL's termination of the golf course is therefore contrary to the Community Plan provisions which establish golf as the primary use of the land.[7]

b.

The "restrictive provisions" establishing golf in the San Geronimo Community Plan apply in this RCR zone as opposed to other uses allowed by provisions in the Development Code.

Dev. Code sec. 22.02.020 F provides: "**If conflicts occur between this Development Code and a Community Plan…where a discretionary permit is applicable, the most restrictive provision shall apply**." (emphasis added.)

Dev. Code sec. 22.44.030 establishes the "Resort Commercial Recreational" zone, a zone in which the San Geronimo Golf Course is located.

> The RCR zoning district is intended to create and protect resort facilities in pleasing and harmonious surroundings with emphasis on public access to recreational areas within and adjacent to developed areas. The RCR zoning district is consistent with the Recreational Commercial land use category of the Marin Countywide Plan."

As shown previously, the uses that are "allowable" with a permit in "Resort Commercial Recreational" zones are listed in Dev. Code sec. 22.12.030, Table 2-7. Among these allowable uses are "golf courses," "public parks and playgrounds," and "private residential recreational facilities."

Assuming TPL contends that its use of the subject land is allowed as a "public park," "playground" or "private residential recreational facility" in RCR zones in general, its destruction of the golf course to establish such other uses conflicts with the restrictive provisions in the Community Plan that establish golf as the primary use in the San Geronimo RCR zone.

As defined in Webster's Dictionary, a "restriction" is "that which restricts, a limitation, a qualification."

As a matter of grammar, the provisions of the Community Plan restrict the use of this land to golf as the primary use: the phrase "as a golf course" restricts the words

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[7] Compatible uses may coexist with the designated primary use. (*Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 113-114; *Denham, LLC v. City of Richmond*, Oct. 25, 2019; https://www.courts.ca.gov/opinions/documents/A154759.PDF;)

"primary use." (See, https://www.englishgrammar 101.com…phrases/…/restrictive and nonrestrictive; Waldenu.edu/wrutubgcebter/grammar/clauses).

TPL's elimination of the golf course is contrary to the mandates that the more specific provision of the Community Plan, golf, "shall prevail" (Resolution 2017-77), and that the most restrictive provisions "shall apply." (Dev. Code 22.02.020 F).

Hence, TPL is ineligible for a use permit because its elimination of the golf course is inconsistent with the Countywide Plan and Community Plan. (See Dev. Code sec. 22.48.040.) Its current use is thereby a public nuisance**.** (Dev. Code, sec. 22.122.030 A.)

The case of *Golden Gate Water Ski Club v County of Contra Costa* (2008) 165 Cal.App.4th 249 is an example where an organization's use of land was deemed a nuisance per se because it violated the county general plan without obtaining a use permit, and could not obtain a use permit. The ski club bought an island in the San Joaquin Delta in Contra Costa County which was in an area designated "open space" in the County's general plan. The open space ordinance prohibited building on the island. Without obtaining any land use permits, the club built residential dwelling units on the island plus docks and related structures. The County notified the club its use violated the land use requirements and was not permitted, and the County abatement officer issued a notice and order to demolish and remove all of the structures. The club sought a writ of mandamus to prevent the County from carrying out its order to demolish the buildings on the island. The court of appeal affirmed the trial court's judgment denying the writ. The court stated: "The "nuisance at issue here is, or at least is comparable to, a nuisance per se in that it violates the County's land use ordinance." (*Id*. at p. 266,)

CONCLUSION

TPL does not have and cannot obtain a use permit because its destruction of the primary use of the land, the golf course, contravenes the San Geronimo Community Plan. TPL is thereby in violation of the Development Code, and is maintaining a public nuisance subject to fines and abatement remedies.