# Parcel as a Whole, Neighbors and Ownership

Workshop on Unity of Ownership and Related Topics California Coastal Commission

> Professor Steven J. Eagle George Mason University School of Law May 12, 2011

#### **Functions of State Agencies**

- Agencies further the specific goals for which they were established.
- They act within the context of fundamental elements of state law and policy.

May 12, 2011

Prof. Steven J. Eagle – Parcel as a Whole

#### **Coastal Commission**

- Specific (Chapter 3) goals include:
  - Public Access and Recreation
  - Sensitive Habitats and Marine Resources
  - Scenic and Visual Resources
  - Coastal Agriculture and Rural Character
- "This division shall be liberally construed to accomplish its purposes and objectives." Coastal Act § 30009

May 12, 2011

Prof. Steven J. Eagle - Parcel as a Whole

#### **Coastal Commission**

Fundamental State policy includes:

"...this division is not intended ... as authorizing the commission... to grant or deny a permit in a matter which will <u>take or damage private property</u> for public use, <u>without</u> the <u>payment</u> of just compensation therefor."

 Coastal Act § 30010, and California Constitution, Art. 1, § 19(a)

May 12, 2011

Prof. Steven J. Eagle – Parcel as a Whole

ŧ.

#### **Policy in Context**

- There is <u>no</u> "Takings Override" of other Commission goals.
- The Takings Clause was "designed to bar Government from forcing some people alone to bear burdens which, in all fairness and justice, should be borne by the public as a whole."

Armstrong v. United States (Sup. Ct. 1960)

[Full case citations at end of presentation]

May 12, 2011

Prof. Steven J. Eagle - Parcel as a Whole

#### **Policy in Context**

- Taken together, the Act requires that Chapter 3 goals must be liberally construed, within a <u>fair reading</u> of constitutional protections for property
- Within the context of "fair reading," should the Commission attempt to redefine corporation and partnership law concepts vis-à-vis the Legislature and other agencies?

May 12, 2011

Prof. Steven J. Eagle - Parcel as a Whole

#### **Property Rights in Context**

- Property is anchored by "background principles of the State's law of property and nuisance"
  - Lucas v. S. Car. Coastal Council (Sup. Ct. 1992)
- More broadly, "background principles" includes the Rule of Law, respect for separate parcels, and for established ownership entities (e.g., partnerships)

May 12, 2011

Prof. Steven J. Eagle – Parcel as a Whole

#### **Background of Takings Law**

- A "regulation [that] denies all economically beneficial or productive use of land" is a taking. Lucas
- BUT, under a multifactor test stressing <u>economic impact</u>, <u>expectations</u>, and <u>character</u> of government action, a partial taking may be compensable
  Penn Central (Sup. Ct. 1978)

May 12, 2011

Prof. Steven J. Eagle - Parcel as a Whole



#### "Parcel as a Whole"

- Takings tests focus on extent of owner's loss, so we must determine the owner's pre-regulation parcel.
- We look to "the nature and extent of the interference with rights in the parcel as a whole" Penn Central
- BUT, "parcel as a whole" is <u>not</u> selfdefining

May 12, 2011

Prof. Steven J. Eagle - Parcel as a Whole

#### What is the "Relevant Parcel"?

- Some commentators will say that the parcel is the piece of land regulators have in mind, and <u>any</u> reduction is "conceptual severance."
- The case law provides no magic definition, and regulators could engage in "conceptual agglomeration."
- The legal parcel is the norm.

May 12, 2011

Prof. Steven J. Eagle – Parcel as a Whole

# The Relevant Parcel is Not Too Small

#### "a taking can appear to emerge if the property is viewed too narrowly."

Ciampitti v. U.S., 22 Cl.Ct. 310, 319 (1991).

May 12, 2011

Prof. Steven J. Eagle – Parcel as a Whole

#### But, the Relevant Parcel is Not Too Large, Either

 "The effect of a taking can obviously be disguised if the property at issue is too broadly defined. Conversely, a taking can appear to emerge if the property is viewed too narrowly."
Ciampitti, 22 CI.Ct. at 318-19.

May 12, 2011

Prof. Steven J. Eagle - Parcel as a Whole



May 12, 2011

#### The Relevant Parcel Might be <u>Smaller</u> than the Original Parcel

"There may be no rigid rule that the parcel as a whole must include all land originally owned by plaintiffs."

Broadwater Farms (Ct. of Fed. Claims 1996)

The key is that there was that the early sale of some of the land was commercially reasonable and not an attempt to circumvent the CWA.

May 12, 2011

Prof. Steven J. Eagle - Parcel as a Whole

#### Theorizing Unification Where Ownership is Separate?

- As noted, in some situations, common ownership may lead to unified treatment of separate parcels.
- BUT, should some degree of cooperation among <u>separate owners</u> of <u>separate parcels</u> lead to unified treatment of the owners and parcels?

May 12, 2011

Prof. Steven J. Eagle - Parcel as a Whole

# Kalway v. City of Berkeley 60 Cal.Rptr.3d 477 (Cal. Ct. of App. 2007)

- "[T]he evidence fully supports the City's determination that irrespective of the grant deed, the [two lots] were in substance under common ownership."
- BUT, the Kalways "agree" that the "lastminute deed" was given "in order to prevent the City from merging the City from merging the parcels . . ." The Kalways never claimed any substance to the transfer.

May 12, 2011

Prof. Steven J. Eagle – Parcel as a Whole

#### Chapman v. Hughes

Cal. Supreme Court, 104 Cal. 302 (1894)

- "[P]arcels of land . . . were contributed by the respective partners, and thereby <u>became partnership property</u>. . . . not affected by the agreement that each partner should retain his title."
- BUT, the parties had previously "created an association . . . <u>for the purpose</u> of carrying on together the business of selling the lands, and dividing the profits . . ."

May 12, 2011

Prof. Steven J. Eagle - Parcel as a Whole

### Zanetti v. Zanetti

77 Cal.App.2d 553 (Cal. Ct. of App. 1947)

- "[A] partner's separate real property may become partnership property if he or she devotes that property to partnership purposes." [Staff explanation of case.]
- BUT, "[i]t is <u>not disputed</u>... that <u>all of the</u> <u>expenses</u> in connection with the development and obtaining of the patents in controversy were <u>paid out of the common</u> <u>partnership account</u>."

May 12, 2011

Prof. Steven J. Eagle – Parcel as a Whole

#### **Neighbors Cooperate**

- Parcel boundaries "are generally efficient only if one assumes a societal norm that, broadly described, [favors] limited cooperation and interdependence between neighboring landowners."
  - Stewart E. Sterk, "Neighbors in American Land Law," 87 Columbia Law Rev. 55, 58-59 (1987).

May 12, 2011

Prof. Steven J. Eagle - Parcel as a Whole

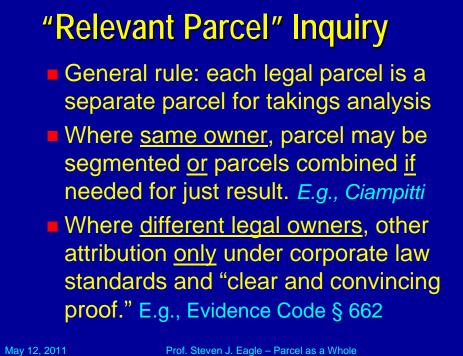
#### **Types of Cooperation**

- Easements (e.g., for driveway)
- Covenants (e.g., promise to locate disamenities away from neighbors)
- Joint maintenance of common benefits (e.g., roads, sewer lines)
- Harmonious development
- Neighborliness and affinity
- All benefit, but as individual landowners, and <u>not</u> as partners

May 12, 2011

Prof. Steven J. Eagle - Parcel as a Whole





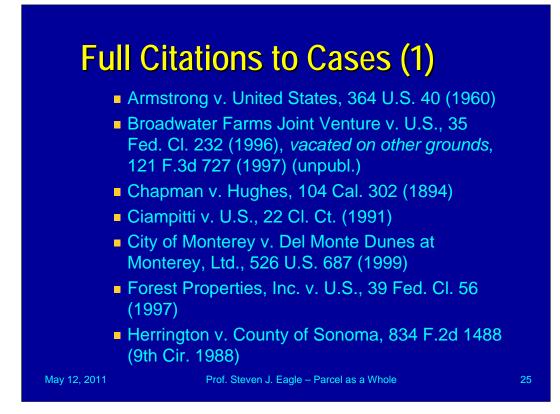
May 12, 2011

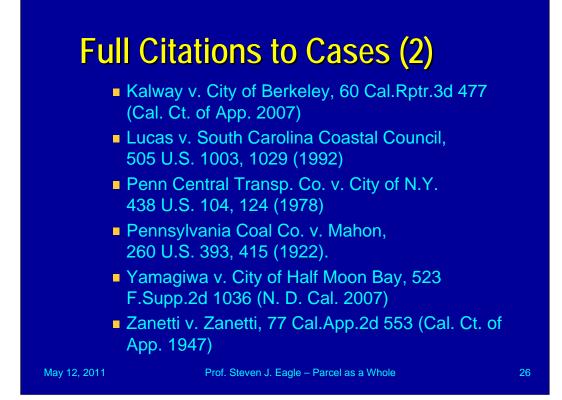
#### Conclusions

- Reattribution of ownership is severely limited under California corporate law
- The "Single Economic Parcel" Theory likely will produce unintended harm
- Reattribution inquiries should be limited to isolated cases
- The <u>threshold</u> for inquiries: activities <u>clearly</u> not normal for neighbors

May 12, 2011

Prof. Steven J. Eagle - Parcel as a Whole





## The End

Professor Steven J. Eagle George Mason University School of Law seagle@gmu.edu