**NOT FOR PUBLICATION**

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| RANDY RALSTON; LINDA MENDIOLA,<br><br>Plaintiffs-Appellants,<br><br>v.<br><br>COUNTY OF SAN MATEO; CALIFORNIA COASTAL COMMISSION,<br><br>Defendants-Appellees. | No. 21-16489<br><br>D.C. No. 3:21-cv-01880-EMC<br><br>MEMORANDUM[*] |

Appeal from the United States District Court
for the Northern District of California
Edward M. Chen, District Judge, Presiding

Argued and Submitted October 20, 2022
San Francisco, California

Before: S.R. THOMAS and M. SMITH, Circuit Judges, and McSHANE,[**] District Judge.

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The Honorable Michael J. McShane, United States District Judge for the District of Oregon, sitting by designation.

Randy Ralston and Linda Mendiola (jointly referred to as "Ralston") appeal the district court's dismissal of their Fifth Amendment takings claim against the County of San Mateo ("the County") and the California Coastal Commission. We review a district court's dismissal of a complaint under Fed. R. Civ. P. 12(b)(1) and (6) de novo. *See Carson Harbor Vill., Ltd. v. City of Carson*, 353 F.3d 824, 826 (9th Cir. 2004); *Franceschi v. Schwartz*, 57 F.3d 828, 830 (9th Cir. 1995). As the parties are familiar with the facts, we do not recount them here. Because the County has not reached a final decision regarding how its regulations apply to Ralston's property, Ralston's takings claim is not ripe for federal court review. We affirm.

The Fifth Amendment Takings Clause "prohibits the government from taking private property for public use without just compensation." *Palazzolo v. Rhode Island*, 533 U.S. 606, 617 (2001). Courts should not consider the merits of a takings claim unless it is ripe for adjudication. *See id.* at 618; *Pakdel v. City & County of San Francisco*, 141 S. Ct. 2226, 2228 (2021) (per curiam). A regulatory takings claim ripens when "there [is] no question . . . about how the 'regulations at issue apply to the particular land in question.'" *Pakdel*, 141 S. Ct. at 2230 (quoting *Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S. 725, 739 (1997)).

Ralston first argues that his claim is ripe based on the County's Local Coastal Program ("LCP") regulations themselves which, Ralston contends, categorically prohibit him from building a house on his property. He asserts that no development

permit application is necessary for a use prohibited by law. Ralston's argument fails for multiple reasons.

As an initial matter, Ralston does not clearly allege that his property is located in a defined riparian corridor subject to the County's LCP development restrictions. Ralston relies on a 2006 map on the County's website to support his allegation that his property is "depicted" as being entirely within a riparian corridor. But as the County explained, the LCP defines riparian corridors based on the type and amount of plant species in the area, which can change over time. The same 2006 map provides the caveat that "[s]ite specific boundary surveys, riparian buffer delineations and biological studies" are required to determine permissible developments in these areas. Because Ralston did not submit a permit application, the County does not have the necessary information to determine whether Ralston's property meets the LCP's riparian corridor criteria and to what extent, if any, the County's regulations may restrict development on his property.

Even assuming Ralston's property is located entirely within a riparian corridor and subject to the LCP's development restrictions, the County's LCP alone cannot serve as the County's final decision for an as-applied takings challenge.[1] Ralston argues that "by prohibiting Ralston from building a home in conformity with R-1

[1] Ralston clarified in his Reply Brief that he brings an as-applied takings challenge rather than a facial challenge.

zoning, the County's riparian corridor LCP regulation has resulted in a taking." Assuming, without deciding, that a categorical regulation could itself constitute a final decision for ripeness purposes, this is not such a case.

Here, the County is given discretion in the application of its LCP regulations under section 30010 of the California Coastal Act, which creates a "narrow exception to strict compliance with restrictions on uses in habitat areas" if necessary to avoid an unconstitutional taking. *See McAllister v. Cal. Coastal Comm'n*, 169 Cal. App. 4th 912, 939 (2008); *see also Felkay v. City of Santa Barbara*, 62 Cal. App. 5th 30, 39 (2021) (holding that, pursuant to section 30010, a local agency may deny a development permit and pay just compensation for the taking or grant the permit with conditions that mitigate environmental impacts). Accepting Ralston's argument that the County's LCP regulations alone serve as the County's final decision would strip the County of its ability to interpret and apply its own regulations as they relate to Ralston's property.

Ralston secondly argues, in the alternative, that his takings claim is ripe based on three informal responses he received from the County's Community Development Director and Board of Supervisors indicating that Ralston did not have "a reasonable economic-backed expectation" to build a house on his property. Ralston argues the Director's responses meet the "relatively modest" finality requirement from *Pakdel*, where the Supreme Court explained that all a takings

plaintiff must show is that "no question" exists about how the "regulations at issue apply to the particular land in question." 141 S. Ct. at 2230.

The Director's preliminary opinions that building a house on Ralston's property may face difficulty do not serve as the County's final decision on the matter. The County's regulations establish four potential reviewing bodies for permit applications depending on the scope of the proposed project, meaning the Director may not even possess the authority to render a final decision on Ralston's proposal. *See* San Mateo County, Cal., Zoning Regulations § 6328.9. Further, because Ralston did not submit a permit application, which would include a location map, building elevations, and a site plan with pertinent landscape features, the Director did not have all the available information to make a final determination. *See id.* § 6328.7. Instead, after Ralston informally "requested review" of his "intent" to proceed with an application, the Director gave his personal opinion about the likelihood of success of Ralston's proposal based on the limited information Ralston provided.

As the Supreme Court explained, a plaintiff's claim may be unripe if avenues remain for the government agency to clarify or change its decision. *Pakdel*, 141 S. Ct. at 2231. In light of the identified uncertainties in this case, several opportunities remain for the County to do so. The district court correctly dismissed Ralston's takings claim for lack of ripeness.

**AFFIRMED**.