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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

COUNTY OF LOS ANGELES, Plaintiff and Respondent, v. LA VIÑA HOMEOWNERS ASSOCIATION, Defendant and Appellant.	B210444 (Los Angeles County Super. Ct. No. GC 035654)

APPEAL from a judgment of the Superior Court of Los Angeles County, Joseph DeVanon, Judge. Affirmed.

Woolls & Peer and H. Douglas Galt for Defendant and Appellant.

Robert E. Kalunian, Acting County Counsel, J. Scott Kuhn, Deputy County Counsel, for Plaintiff and Respondent.

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Respondent County of Los Angeles (County) brought an action against appellant La Viña Homeowners Association based on the latter's failure to include in the residential subdivision development of La Viña public hiking and equestrian trails. County prevailed after a 23-day trial to the court. La Viña Homeowners Association appeals from the judgment, as well as from a posttrial order awarding County $783,944 in attorney fees. We affirm the judgment and the order awarding fees.

FACTS

1. Introduction

In this case there is a thorough and extended statement of decision. Appellant, however, ignores the statement of decision and, in stating the facts, largely limits itself to the evidence that favors appellant.

Appellant is mistaken at several levels.

First, when, as in this case, there is a statement of decision, the reviewing court will look to the statement of decision, not to the appellant's rendition of the facts. "The statement of decision provides the trial court's reasoning on disputed issues *and is our touchstone* to determine whether or not the trial court's decision is supported by the facts and the law." (*Slavin v. Borinstein* (1994) 25 Cal.App.4th 713, 718, italics added.)

Second. "Where statement of decision sets forth the factual and legal basis for the decision, any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision." (*In re Marriage of Hoffmeister* (1987) 191 Cal.App.3d 351, 358.) Thus, appellant's references to evidence that is in conflict with the statement of decision must be disregarded.

Third. When it comes to findings of fact, the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, that supports the findings. (*Knapp v. City of Newport Beach* (1960) 186 Cal.App.2d 669, 673.) Because appellant makes no effort to claim that any of the findings in the statement of decision are not supported by substantial evidence, we continue to look only to the statement of decision for the facts of this case.

Fourth. When the appellant states only the evidence that favors the appellant and omits material facts that support the judgment, which is a violation of a cardinal rule of appellate practice, the reviewing court may presume that the record contains evidence to sustain every finding of fact. (*Toigo v. Town of Ross* (1998) 70 Cal.App.4th 309, 317.)

In sum, we look to the statement of decision for the operative facts of the case. It is worth noting that in a case that was 23 days in trial, that involves 788 trial exhibits and multiple witnesses, a case, in a word, that is complex, a carefully prepared statement of decision is particularly valuable. The statement of decision at hand fits this description.

2. The Location and History of the La Viña Development

The La Viña subdivision development (hereafter the property), which is the subject of this action, lies in the foothills of the San Gabriel Mountains in the unincorporated Altadena area of Los Angeles County. The northern portion of the property is within the Angeles National Forest. The property was home to a tuberculosis sanatorium and later to an acute care hospital, but by the 1980's the buildings were abandoned. In 1986, Cantwell-Anderson, Inc., acquired the property for the purpose of developing it as a residential subdivision.

3. The Governing Documents

Pursuant to the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.), the County undertook an environmental review by preparing an Environmental Impact Report (EIR) in October 1987. The EIR revealed that the public had been using hiking and equestrian trails that were to be found on the property; there was considerable hiking activity on the Millard Canyon portion of the property.

The specific plan serves as the County's zoning ordinance for the property.[1] County adopted the La Viña Specific Plan (hereafter Specific Plan) in December 1989.

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[1] The specific plan must be consistent with the general plan and it must deal with specific land uses, the location, distribution, extent and intensity of major public facilities and standards for development. (Gov. Code, §§ 65450, 65451.)

The Specific Plan stated that the developers would provide a hiking and equestrian trail system that integrated with existing trails both on and off the property. Per Government Code section 65455,[2] after the adoption of a specific plan, no zoning ordinance or tentative subdivision map may be adopted unless it is consistent with the specific plan.[3] The trial court found that it was clear from the evidence that the "Specific Plan requires public hiking and equestrian trails be included as part of the La Viña development."

In 1991, County prepared a supplemental environmental impact report (SEIR) that stated that public hiking and equestrian trails were part of the development of the property.

The conditional use permit (CUP) for the property of August 6, 1992, specifically required easements for equestrian and hiking trails. The CUP, as revised on February 13, 1996, identified two trails: Millard Canyon on the west side of the property and Sunset Ridge on the east.

On January 26, 1993, County's Board of Supervisors approved the Vesting Tentative Tract Map (VTTM) for the property. The VTTM made specific mention of hiking and equestrian trails and showed these trails on the map.

Final approval was given the CUP and VTTM by the Board of Supervisors on February 16, 1996. The trial court found that it was undisputed that neither the CUP nor the VTTM was ever amended to alter or eliminate the trails provided for by these documents.

The "Declaration of Restrictions" for the La Viña Development (CC&R's), recorded on May 13, 1997, states that it is "currently envisioned that there will be certain public equestrian and hiking trails within the Common Area" of the property. The trails referenced by the CC&R's were the trails shown in the CUP and the VTTM.

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[2] All further statutory references are to the Government Code unless otherwise indicated.

[3] "No local public works project may be approved, no tentative map or parcel map for which a tentative map was not required may be approved, and no zoning ordinance may be adopted or amended within an area covered by a specific plan unless it is consistent with the adopted specific plan." (§ 65455.)

The trial court concluded that the overwhelming evidence presented at trial demonstrated that both the original and subsequent developers intended to include public trails as an integral part of the development of the property.

4. Work Commences on the Trails

Following through on the Specific Plan, the developers began both planning and actually developing hiking and equestrian trails. The trail on the east side of the property was lengthened to continue into the foothills. The existing trail in Millard Canyon that had been historically used by the public was cleaned up, reinforced and improved.

5. The Developers Advertise the Trails

The trial court found that highlighting the trails was part of the developers' sales strategy. One of the developers sent out thousands of newsletters to prospective buyers and to Altadena residents that discussed the trails, included maps showing the trails on sales brochures and considered the trails a marketing feature of the development. Large maps in the developers' offices showed the hiking and equestrian trails.

The trial court concluded that the developers included public trails as a way of gaining the support of the Sierra Club, which was important for the development.

6. The Final Maps

The Final Maps[4] were recorded between December 1996 and June 1998. Unaccountably, the trails were left off the Final Maps. The statement of decision states: "There was no credible evidence presented at trial to support [appellant's] contention that the County's omission of the trails from the final maps was any intentional decision. No motive was established as to why the County would have 'intentionally' omitted the trails. Witnesses from the County and developers did not have an explanation for why the trails were not on the final maps other than a mistake was made. Again, the overwhelming evidence demonstrates the omission of the trails was the result of mistake and oversight. . . . [¶] . . . There is no substantial evidence suggesting that County or the developer[s] ever intended to waive or eliminate the public trail requirement of the Specific Plan or CUP. No

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[4] "Final Map" is a term of art. We expand on this point below.

documentary evidence was presented showing that any discussions were ever held by the County or developer[s] concerning elimination of the trail requirements."

9. Appellant, County and the Developers Continue to Work on the Trails After the Recordation of the Final Maps

For approximately five years after the last Final Map was recorded, all parties continued to work on the trails. The developers submitted reports indicating that they were working on the trails and their budgeting and staffing plans included the trails. In fact, the developers never claimed that they were not obligated to comply with the trail requirements of the various governing documents. In 1998, County and the developer entered into an agreement for bond financing of public improvements; one of these improvements was full public access to hiking and equestrian trails. In 2002, corrective action was taken to remedy problems in connection with the development of the trails. According to the statement of decision, there was no evidence that the developers ever claimed that the trail requirements were waived because they were not on the Final Maps.

As far as appellant's attitude toward the trails was concerned, the trial court found that the evidence showed that during 2001, 2002 and nearly all of 2003, appellant supported County's efforts to require completion of all outstanding conditions, including trails. Appellant's "CFO testified before the County Board of Supervisors on February 11, 2003 in support of trails." To respond to some problems, County formed the Altadena Crest Trails Working Group; one of the members of this group was appellant's representative. "In summary, there was substantial evidence of mutual belief on the part of the developers, the County, and [appellant] that the trails were not intended to be waived by the recording of final maps without trail easements."

10. December 9, 2003, and the Instant Action

On December 9, 2003, appellant wrote County a letter in which it stated that appellant's board had voted unanimously, unequivocally and irrevocably to deny access to and use of the property to all parties other than appellant's members.

County attempted to resolve the matter informally but failed in this effort. No trespassing signs were posted along the Millard Canyon trail.

The instant action was filed on July 21, 2005. The complaint alleged four causes of action. County sought a declaration that it had a right to enforce the requirements of the Specific Plan and CUP and that appellant's failure to comply with the public trail requirements violated County's zoning ordinance and constituted an ongoing public nuisance. The second cause of action was for the breach of the covenant contained in the CC&R's, which required compliance with the Specific Plan and CUP. The third cause of action was for the specific performance of the trail requirements. Finally, there was a cause of action for violations of County's zoning code, which in turn was alleged to be a public nuisance.

DISCUSSION

1. County's Action Is Not Brought Under the Subdivision Map Act

Appellant contends that County's action is time-barred. Specifically, appellant contends that section 66499.37 requires that County should have filed its action within 90 days after the Final Maps were approved.

The purpose of the Subdivision Map Act (§ 66410 et seq.) is to regulate and control the design and improvement of subdivisions and to facilitate orderly community development. (9 Miller & Starr, Cal. Real Estate (3d ed. 2001) § 25:11, pp. 25-54 to 25-55.) Tentative and final maps are required for all subdivisions containing five or more parcels. (§ 66426.) The filing, approval and recordation of the final map are distinct steps in the process of the approval of a subdivision. (See generally 9 Miller & Starr, *supra*, § 25:61, pp. 25-270 to 25-278.) A final map must be approved if it is in substantial compliance with the tentative plan. (§ 66474.1.) There are provisions for the correction and amendment of a final map. (§§ 66469, 66470 & 66471; see generally 9 Miller & Starr, *supra*, § 25:62, pp. 25-278 to 25-280.)

While a violation of the Subdivision Map Act is a crime,[5] there is an additional provision authorizing and governing judicial review of "the decision of an advisory agency, appeal board, or legislative body concerning a subdivision," including the approval of a

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[5] Sections 66499.30 and 66499.31.

final map.[6] Such an action for judicial review must be commenced within 90 days of the decision that is to be reviewed. (Fn. 6, *ante*.)

Citing, among other cases, *Presenting Jamul v. Board of Supervisors* (1991) 231 Cal.App.3d 665, 671, appellant contends that "section 66499.37 governs any challenge to a subdivision-related decision 'regardless of the nature or label attached to the action.'" Much to the same effect is yet another passage from *Presenting Jamul*: "The broad language the Legislature employed within section 66499.37 was specifically designed to include any challenge, regardless whether procedural or substantive in character, to any subdivision-related decision of either a legislative or advisory entity, or any of the necessary precedent proceedings, acts or determinations pursued before the making of the challenged decision." (*Ibid*.) In other words, appellant contends that the substance of County's action is that the approval of the Final Maps should be set aside and section 66499.37 therefore governs.

We do not agree that either in form or substance County's action is aimed at reviewing, judicially, the decisions to approve the Final Maps.

In the first place, the error that was committed here was the unintended omission from the Final Maps of the hiking and equestrian trails that are shown in the Specific Plan, the SEIR, the CUP, the VTTM and the CC&R's. County advances no reasons or grounds to set aside its own decision to approve the Final Maps. Even assuming that County could act both as plaintiff and defendant in such an action, and we do not think it could, County is satisfied with the approval of the Final Maps. It is important to understand that approval of a final map is one of the last steps in the long and complex process of planning and

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[6] "Any action or proceeding to attack, review, set aside, void, or annul the decision of an advisory agency, appeal board, or legislative body concerning a subdivision, or of any of the proceedings, acts, or determinations taken, done, or made prior to the decision, or to determine the reasonableness, legality, or validity of any condition attached thereto, including, but not limited to, the approval of a tentative map or final map, shall not be maintained by any person unless the action or proceeding is commenced and service of summons effected within 90 days after the date of the decision. Thereafter all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the decision or of the proceedings, acts, or determinations." (§ 66499.37.)

developing a subdivision. One would think that the last thing County would want is to vacate that final important and significant decision.

While County does not challenge the approval of the Final Maps, it may be certainly dissatisfied with the errors of omission on those maps. There are procedures for the correction and amendment of a final map (§§ 66469, 66470 & 66471; 9 Miller & Starr, Cal. Real Estate, *supra*, § 25:62, pp. 25-278 to 25-280), which County may or may not seek to invoke; since the issue is not before us, we express no view on the correction or amendment of the Final Maps. Be that as it may, appellant's expert William Christopher testified at trial that public trail easements could be obtained by deed. Two of County's witnesses testified that trails can be dedicated by separate instruments and are not always on final maps. Nonetheless, we refer to procedures to correct or amend the Final Maps to highlight that the error is in the maps, and not the approval of the Final Maps.

The activity that is challenged by County's action is not the approval of the Final Maps, but appellant's refusal to abide by the Specific Plan, the SEIR, the CUP, the VTTM and the CC&R's. We agree with appellant, and the court in *Presenting Jamul v. Board of Supervisors*, that section 66499.37 was designed to include any challenge, no matter what the label, to any subdivision-related decision of an agency. But it is not the decision of an agency that is at the heart of County's action; County's action is predicated on *appellant's conduct.*

The case on which appellant relies to support its claim that this action is one for judicial review under section 66499.37, *Anthony v. Snyder* (2004) 116 Cal.App.4th 643, actually illustrates the contrary. Neither the tentative nor the final map required the developer in *Anthony v. Snyder* to make certain improvements on streets adjacent to the subdivision in question. (*Id.* at pp. 648-650.) About a year after the final map was approved, Anthony filed an action seeking to compel the county to make those certain improvements on an adjacent street. (*Id.* at p. 650.) The court in *Anthony v. Snyder* concluded that Anthony's action posed a dispute about the content and efficacy of the tentative and final maps (which did not include the improvement Anthony was seeking) and

Anthony's action was therefore a dispute "'concerning a subdivision'" in terms of section 66499.37. (*Anthony v. Snyder*, at p. 656.)

In the case before us, an unbroken line of governing documents from 1989 to 1997 showed the inclusion of hiking and equestrian trails open to the public on the property. In fact, work continued on those trails well after the last Final Map was approved in 1998. Thus, the trails were from the beginning of this subdivision development a part of that development. This is quite unlike *Anthony v. Snyder*, where the improvement that Anthony was seeking was never included in the tentative map or the planning of the subdivision. In short, Anthony was seeking to alter substantively the decision reached by the County of San Diego in that case, whereas in this case County is seeking to confirm the decisions that were made all along the line, beginning in 1989.

The fact of the matter is that appellant is seeking to convert inadvertent mistakes of omission into planning decisions. Not only did the trial court expressly find that these omissions were in fact inadvertent mistakes, which could be the end of the matter, there is no evidence at all that would support appellant's theory that these omissions were planned and intended.

Appellant states that by approving the Final Maps, the board of supervisors, i.e., County, adjudicated that the Final Maps were consistent with the Special Plan and all local ordinances. But now, appellant states, County states that this is a mistake and the Final Maps are not consistent with previous enactments. Appellant concludes that "the gravamen of the County's claim is that its decision to approve the Final maps was a mistake," which brings the case within the scope of section 66499.37. It is not that the approval of the Final Maps was a mistake, it is that the Final Maps contained mistakes; the gravamen of County's action is appellant's refusal to abide by the Specific Plan, the SEIR, the CUP, the VTTM and the CC&R's.

We note, as did the trial court, that section 65453 provides that amendments to a specific plan must adopted in the same manner as in the case of the original specific plan and that there has never been an amendment of the Specific Plan in this case. We agree with, and adopt, the trial court's finding that approval of a final map does not operate to

amend a specific plan. In short, there are extant, operative enactments that require the inclusion of public hiking and equestrian trails in the development. Finally, County makes the point that the adoption and amendment of a specific plan is a legislative act, while the approval of a final map is a ministerial act. A comparison of the qualitative significance of these two events heavily favors the former, which means that the Specific Plan speaks much more authoritatively to County's intent than the approval of the Final Maps.

2. Appellant Has Breached the Covenant Contained in the CC&R's by Failing to Comply With the Specific Plan

Appellant recognizes that County's breach of the covenant claim is based on CC&R section 5.1, which requires appellant to comply with applicable ordinances that includes in this case the Special Plan, the VTTM and the CUP. But appellant contends that the approval of the Final Maps, which do not show the trails, means that County has acknowledged, by virtue of approving the Final Maps, that these maps comply with the Special Plan, the VTTM and the CUP. Thus, according to appellant, there is no breach of the CC&R's covenant.

Appellant continues to ignore, however, the trial court's determination that the omission of the trails from the Final Maps was an inadvertent mistake, and not a planning decision. Appellant's argument ignores important ordinances, such as the Specific Plan, years of studies and labor, its own conduct up to December 9, 2003, and, last but not least, County's dogged pursuit of this action, which certainly certifies that County does not think that the mistaken omissions on the Final Maps reflect its planning decisions.

Equally devoid of merit is appellant's contention that there was no breach of the covenant because the Specific Plan makes no mention of public trails. We turn to the statement of decision: "It is clear from the evidence presented at trial that the Specific Plan requires public hiking and equestrian trails [to] be included as part of the La Viña development. The Court finds the Specific Plan is not void for vagueness. [Appellant] admitted in its trial brief and its opening statement at trial that the Specific Plan requires hiking and equestrian trails."

Finally, appellant claims the covenant could not be breached because the Specific Plan, on the one hand, and the VTTM and CUP, on the other, are inconsistent in showing the location of the trails. There is no mention of such a conflict or conflicts in the statement of decision; the clear implication is that there is no such conflict. In any event, the statement of decision resolves any conflict in ordering that appellant dedicate easements that conform to the trails depicted in the VTTM and CUP.

The trial court rejected the claim that the breach of covenant claim was time-barred, as do we. Appellant breached its obligation on December 9, 2003, and County filed its action on July 21, 2005. Assuming that the relevant period is five years, as appellant claims, the action was timely.

3. The Failure to Follow the Specific Plan, VTTM and CUP Constitutes a Nuisance

The trial court concluded that by violating the Specific Plan and the CUP, appellant has violated the County's zoning code and appellant is therefore maintaining a public nuisance. This finding is supported by substantial evidence.

Appellant contends that because the "Specific Plan does not mandate dedication of the trail easements," appellant is not in violation of any zoning requirements. Assuming that the Specific Plan does not require the trails (an assumption contrary to the evidence and the findings of the trial court), the VTTM and CUP clearly do require them. Under Los Angeles County Code section 22.60.350, which provides that any use of property contrary to zoning requirements is a public nuisance, appellant's failure to comply with the zoning requirements does constitute a public nuisance. And the failure to comply with land use planning codes has been held to constitute a public nuisance. (*City and County of San Francisco v. Padilla* (1972) 23 Cal.App.3d 388, 401.) In any event, we do not agree that the Specific Plan does not mandate the trails. For one, at trial appellant admitted that the Specific Plan did mandate trails.

4. The Award of Attorney Fees Is Affirmed

Appellant's claim that "the lodestar method generates a recoverable fee for the County of $479,083" is astounding.

The lodestar claim made by County was $825,395 and County suggested a 5 percent reduction, which brought its lodestar claim to $783,944.[7]

The figure of $479,083 is taken from appellant's opposition to the fee motion; this is the figure that appellant suggests is the appropriate fee.

Appellant misrepresents the actual lodestar claimed by the County in order to suggest that the fee awarded was inappropriately based on a multiplier of the lodestar. Suffice it to say that we reject out of hand such maneuvering and misuse of the record.

As County points out, the average hourly billing rate for the three attorneys who worked on this case comes to $334. This is without question a solid, even moderate rate. And not even appellant has a quarrel with the amount of attorney time spent on this case, which was 2, 280 hours.

We conclude that the fee award was well within the scope of the trial court's discretion (*La Mesa-Spring Valley School Dist. v. Otsuka* (1962) 57 Cal.2d 309, 316) and eminently correct.

DISPOSITION

The judgment and the order awarding attorney fees are affirmed. Respondent is to recover its costs on appeal.

FLIER, J.

We concur:

BIGELOW, P. J. LICHTMAN, J.*

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[7] The correct amount would have been $784,126.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.