

DIVISION TWO

DAVIDON HOMES,

Plaintiff and Appellant,

A119734

v.

(Napa County Super. Ct. No. 26-28129)

CITY OF NAPA,

Defendant and Respondent.

Davidon Homes (Davidon) appeals from the lower courts denial of its [petition for writ of mandate](#). Davidon filed its petition after the City of Napa (Napa) rejected its application to develop 80.6 acres of undeveloped real property. Davidon claimed that, in rejecting its application, Napa violated the Map Filing Freeze Statute (Gov. Code, Â 66474.2, subd. (a)) and that this violation prejudiced Davidon. The lower court found that Napa had violated the Map Filing Freeze Statute but Davidon had suffered no prejudice. It therefore denied Davidons petition. We affirm the lower courts ruling.

BACKGROUND

On March 28, 1997, Davidon submitted to Napa an application for a tentative map to subdivide a site known as Napa Oaks, to create a residential development of large, single-family homes (Napa Oaks project). The Napa Oaks property consists of four undeveloped parcels totaling 80.6 acres at the southwestern edge of Napa. This property is adjacent to the citys rural urban limit that designates the maximum extent of the citys urban development. Two of the parcels, totaling 78 acres, contain a 336-foot ridge with a steep slope and 43 acres consist of native oak woodland. The 78-acre parcel is included in a group of properties known as Pod 123. On the east of these 78 acres is residential development and the remaining sides are bordered by working vineyards and open space. The remaining two parcels, totaling 2.6 acres, lie at the foot of the ridge to the east of the larger parcels.

The 85-unit project Davidon submitted to Napa in 1997 included applications to rezone the Napa Oaks site and for a tentative subdivision map, a hillside use permit, and architectural review (applications).^[1] Napa assigned Project No. 97-035 to the application. Napas general plan at the time designated the site single family residential, which allowed development of from zero- to three-dwelling units per acre on the 70-acre hillside portion of the property and three-to six-dwelling units per acre on the flatter 2.6-acre portion. On October 20, 1997, Napa determined Davidons 85-unit map application to be complete.

Much of the Napa Oaks site was zoned estate district, which permitted one unit per acre. Napa Oaks was subject to Napa's zoning ordinances, including Napa's Hillside Development Overlay Zone (hillside overlay ordinance).^[2] (See Napa Muni. Code, Â 17.40.030.) The hillside overlay ordinance restricts allowable development density and establishes special hillside development regulations, including requirements related to visibility, engineering and grading, and physical characteristics of residences to be constructed. Under the hillside overlay ordinance, a property owner has to obtain a use permit to build more than one residential unit per parcel. (Napa Muni. Code, Â 17.40.030.) The permit is discretionary.

In January 1998, Napa undertook an Environmental Impact Report (EIR), which focused on the environmental effects of the Napa Oaks project. In December 1998, Napa adopted a new general plan (1998 general plan) and a new land-use category entitled resource area (RA). Napa applied the RA designation to seven properties in Pod 123, including the 78-acre ridge and hillside portion of the Napa Oaks project. The RA designation permitted limited, very low density residential use. It permitted one home per existing parcel as of right or, with discretionary approval from Napa, up to one unit per 20 acres as long as such use did not impact either the particular property's character or a feature that Napa sought to preserve in designating the property RA. The remaining 2.6-acre portion of the Napa Oaks project retained the [single family residential](#) designation.

Napa and Davidon agreed that Napa would consider an application by Davidon to amend the 1998 general plan to restore the pre-1998 residential land use designation to Napa Oaks, while Davidon maintained its position that an amendment was not necessary and that the new RA designation could not apply to Napa Oaks. In September 1999, Napa circulated a draft EIR for Davidon's project. The draft EIR determined that the project would have potentially significant environmental impacts; the EIR proposed 89 mitigation measures to reduce these impacts. These mitigation measures led to the development of what was known as the 53-lot mitigated alternative, which was an attempt to conceptually illustrate how the 89 mitigation measures could be implemented.

In March 2000, the final EIR was released and was considered by the Napa planning commission (planning commission). The planning commission held a public hearing on the Napa Oaks project on April 20, 2000, and received many comments about environmental impacts. Concerns included the loss of onsite wetlands and oak woodland habitat, detention basin design, traffic and safety issues, seismic issues, unstable slopes, visual impacts, drainage and runoff, grading, agricultural-urban conflicts, views of a proposed water tank, water quality impacts, and general plan consistency issues.

Davidon requested that the application process not continue as scheduled to allow it to redesign the Napa Oaks project. Davidon submitted a conceptual map for a revised project during September and October of 2000. It then submitted an application for a revised 65-unit subdivision; it reduced the number of acres to be graded by almost 40 percent; and it eliminated more than one-half of the proposed cut and fill. On April 11, 2001, Napa concluded that Davidon's application for the revised 65-unit project was incomplete. After Davidon submitted additional materials, Napa deemed the application complete in December 2001.

Napa released a new final EIR, which concluded that the revised application materials submitted by Davidon presented a project that was quantitatively and qualitatively different from both the mitigated alternative proposed in the draft EIR and Davidon's original project. It found that all environmental impacts were mitigated to a less-than-significant level except for those involving short-term tree loss, the change in the visual character of the site, and potential water quality impacts from storm runoff. Napa was especially concerned about the clustering of homes and lot location. The mitigated alternative proposed fewer homes clustered toward the center of the site to provide a substantial buffer from neighboring properties. Napa recommended that Davidon minimally remove

proposed lots 19 and 32, which were both along the southern edge. Napa believed that the removal of these lots was necessary to reduce fragmentation in the newly-created oak woodland mitigation area. Davidon refused to remove these lots.

In addition to the removal of proposed lots 19 and 32, Napa was concerned with the location of proposed lots 15 and 16. In the revised plan, the homes on lots 15 and 16 would be located 80 to 100 feet from the edge of the site, but the homes on these lots in the mitigated alternative were 200 feet away. Additionally, there were concerns regarding excessive cutting, grading, and filling.

On October 17, 2002, Davidons revised application came before the planning commission. Davidon had further reduced the revised project to a total of 64 units. Scott Gregory, a principal with Lamphier-Gregory, the environmental consulting firm hired by Napa that prepared the EIR, summarized the revised projects impacts. He stated that of the 89 mitigation measures recommended in the draft EIR, 17 recommended measures were incorporated into Davidons project either in whole or in part. He stated that there were 72 mitigation measures that were still applicable to the revised project. The planning commission voted three to two against amending the general plan to return the site to its residential land use designation. The commission recommended certification of the EIR.

Davidons revised subdivision application, the general plan amendment, and the EIR went before Napa's city council (council) at a public hearing on December 3, 2002. At the conclusion, the council denied the project and the general plan amendment to change its land use designation to single-family residential. The council tentatively decided to certify the EIR for Napa Oaks. The council adopted extensive findings, which included the following: The RA was the appropriate land use classification for the Napa Oaks property; Davidons modified project was clearly *inconsistent* with the existing general plan land use designation for most of the site, as it proposed to develop much denser housing than would otherwise be allowed under the current designations for the property; the Napa Oaks site was too sensitive for Davidons revised subdivision; under the original single family residential general plan designation for the Napa Oaks project site, the council would probably have determined that the revised project was inconsistent with the Hillside Development Guidelines; the benefits of the project did not outweigh the significant and unavoidable impacts of the project enumerated in the EIR; and the projects adverse and significant impacts on downstream water quality, the amount of grading proposed, the lack of adequate clustering of lots to avoid habitat areas and steep slopes, and the prospect of visible development within a scenic and environmentally sensitive hillside were issues of significant concern.

The council denied Davidons development applications. It also denied Davidons application to return the bulk of Napa Oaks to its prior general plan residential land use designation.

On January 21, 2005, Davidon filed its complaint against Napa for violating its constitutional rights and filed its petition for [writ of mandate](#) and for other equitable relief in the superior court. It filed a first amended complaint on June 14, 2005. The complaint challenged Napa's 1998 legislative decision incorporating an RA designation for Napa Oaks, as well as the 2003 quasi-adjudicative decision denying Davidons subdivision map and other development applications for its proposed project.

The trial court heard Davidons petition for a writ of mandate on August 24, 2007. The court adopted its tentative ruling, making it the order of the court. The court found that the RA designation was not in effect when Napa determined that the initial map application was complete in 1997 and that Government Code section 66474.2 barred Napa from applying the RA designation in determining whether to approve or disapprove of the tentative map. The court ruled that Napa had thus failed to proceed in the manner required by law and abused its discretion.

The trial court, however, determined that Napas abuse of discretion was not prejudicial. The court found: Under Government Code section 66474, Napa was *required* to deny approval of the tentative map if [Napa] made any one of several findings, including that the map was not consistent with the general plan or that the site is not physically suitable for the type of development or proposed density of development. In denying the tentative map in this case, [Napa] found both that the map was not consistent with the general plan and that the site is too sensitive and constrained to develop as currently proposed by Davidon. The court interprets this latter statement as a finding that the site is not physically suitable for the Project as proposed. **The court concluded: The finding that the site is too sensitive and constrained, was properly based on the physical attributes of the property itself, rather than an application of the RA designation.** Thus, even if the improper findings were eliminated, [Napa] would have been required under [Government Code] section 66474 to deny the application. . . . Under these circumstances, the court finds that [Napas] **abuse of discretion was not prejudicial** and does not warrant a writ of mandate directing [it] to reconsider the project without application of the RA designation. . . . The court determined that Davidon also failed to show any arbitrary or discriminatory action against it by Napa.

Judgment was entered on October 9, 2007. Davidon filed a timely notice of appeal.

Davidon filed a request for [judicial notice](#) of Napa Municipal Code section 16.04.150 and the 1964 report of the state planning law revision committee. Napa opposed the motion on the basis that neither document was presented at trial and neither is relevant. We will not consider new legal issues on appeal but, to the extent this evidence does not raise new legal issues and is relevant, we consider these documents. Accordingly, we grant judicial notice of these documents. Napa requested that, in the event we grant Davidons request for judicial notice, we take judicial notice of the complete chapters 16.04 and 16.20 of the Napa Municipal Code. We grant this request, too, and take judicial notice of these chapters of the Napa Municipal Code.

DISCUSSION

I. Standard of Review

The decision regarding a subdivision application is an adjudicatory act. (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 614.) A proceeding under Code of Civil Procedure section 1094.5 is the exclusive remedy for judicial review of the quasi-adjudicatory administrative action of local level agencies in these circumstances. (*Saad v. City of Berkeley* (1994) 24 Cal.App.4th 1206, 1211 (*Saad*).) The scope of judicial inquiry in such proceedings extend[s] to the questions whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence. (Code Civ. Proc., Â 1094.5, subd. (b).)

Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its [independent judgment](#) on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record. (Code Civ. Proc., 1094.5, subd. (c).)

In applying the substantial evidence standard, the reviewing court must resolve reasonable doubts in favor of the administrative finding and decision. [Citation.] The appellate courts role is precisely the same as the trial courts, and lower courts findings are not conclusive on appeal. [Citation.] (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722.) The burden is on the petitioner to show no substantial evidence supported the findings of the local agency. (*Saad, supra*, 24 Cal.App.4th at p. 1212.)

Here, the trial court found that Napa violated the Map Filing Freeze Statute. However, it rejected Davidons petition for writ of mandate because it ruled that substantial evidence supported a finding that Napas decision did not prejudice Davidon. (See Code Civ. Proc., 1094.5, subd. (b); *Saad, supra*, 24 Cal.App.4th at pp. 1215-1216.)

II. Substantial Evidence Supported the Finding of No Prejudicial Abuse of Discretion

A. The Map Filing Freeze Statute and the Facts of This Case

It is undisputed that on October 20, 1997, Napa determined that Davidons 85-unit map application was complete. This project included applications to rezone the Napa Oaks site and for a tentative subdivision map, a hillside use permit, and an architectural review. Subsequently, Napa adopted the 1998 general plan and a new land-use category entitled RA.

Following a [public hearing](#) on the Napa Oaks project held by the planning commission on April 20, 2000, Davidon requested that the application process not continue as scheduled to permit it to redesign its project. On April 11, 2001, Davidon concluded that this application for the revised 65-unit project was incomplete. After Davidon submitted additional materials, Napa deemed the application complete in December 2001.

Napa asserts that the 2001 application substantially revised the 1997 application and thus constituted a new application, which it deemed complete in 2001. Napa asserts that it therefore properly applied the 1998 general plan to this application completed in 2001. Davidon contends that it simply revised its original 1997 application and Napa abused its discretion and violated the Map Filing Freeze Statute (Gov. Code, Â 66474.2) by applying the 1998 general plan designation to its 1997 application.

Government Code section 66474.2, subdivision (a) provides that, subject to certain exceptions not applicable here, in determining whether to approve or disapprove an application for a tentative map, the local agency shall apply only those ordinances, policies, and standards in effect at the date the local agency has determined that the application is complete pursuant to Section 65943 Government Code section 65943, subdivision (b) states: Not later than 30 calendar days after receipt of the submitted materials, the public agency shall determine in writing whether they are complete and shall immediately transmit that determination to the applicant. If the written determination is not made within that 30-day period, the application together with the submitted materials shall be deemed complete for purposes of this chapter.

Even if we were to presume that Davidon was entitled to have its revised application judged by the standards in effect when it filed its initial application in 1997, we conclude that Napa did not abuse its discretion because Davidon cannot show prejudice. The councils findings supported its denial of Davidons application under the general

plan in effect in 1997 (1997 general plan). As already noted, under Code of Civil Procedure section 1094.5, we will only reverse if there is a prejudicial abuse of discretion. (See also Gov. Code, 65010, subd. (b) [no action by public agency will be set aside by court unless court finds error was prejudicial].)

B. Prejudice

Davidon must establish prejudice under both Code of Civil Procedure section 1094.5, subdivision (b), and Government Code section 65010. As already set forth, we review a governmental agency's quasi-adjudicatory decision to determine whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence. (Code Civ. Proc., 1094.5, subd. (b).)

Government Code section 65010, subdivision (b) provides: No action, inaction, or recommendation by any public agency or its legislative body or any of its administrative agencies or officials on any matter subject to this title shall be held invalid or set aside by any court on the ground of the improper admission or rejection of evidence or by reason of any error, irregularity, informality, neglect, or omission (hereafter, error) as to any matter pertaining to petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, or any matters of procedure subject to this title, unless the court finds that the error was prejudicial and that the party complaining or appealing suffered substantial injury from that error and that a different result would have been probable if the error had not occurred. There shall be no presumption that error is prejudicial or that injury was done if the error is shown.

Here, Napa argued in the trial court that the council made three independent findings, which required it to deny Davidon's application no matter whether it applied the 1997 or 1998 general plan. Napa maintained that council found a substantial likelihood that it would deny the project (1) based on Napa's hillside development guidelines; (2) based on the Napa Oaks project having significant environmental impacts, which outweighed the benefits according to the project EIR; and (3) based on the site not being physically suitable for the type or density of development proposed.

Since we are reviewing the denial of an application for a subdivision, it is not necessary to determine that each finding by the [council] was supported by substantial evidence. As long as the [council] made a finding that any one of the necessary elements enumerated in the ordinance[] was lacking, and this finding was itself supported by substantial evidence, the [council's] denial of [Davidon's] application must be upheld. (Saad, supra, 24 Cal.App.4th at pp. 1213-1214.) The Saad court explained: If any one of the findings made by [Napa] is supported by substantial evidence and warrants denial of the permit under the ordinance, defects in other findings by [Napa] will not prejudice [Davidon]. [Napa] could simply eliminate the other findings and still prevail upon the one adequate finding of detriment. Unless the findings are so intertwined that a failure of one could reasonably lead [Napa] to reconsider its denial of the permit, [Davidon] cannot establish prejudice. (Id. at p. 1215.)

The trial court found that Davidon cannot establish prejudice because the council would have rejected Davidon's application had it applied the 1997 general plan because its findings required it to reject Davidon's application under Government Code section 66474.^[3] We agree for the reasons set forth below.

1. Site Not Physically Suitable for Type or Density of Proposed Development

Government Code section 66474, which was in effect when Davidon submitted its first application in 1997, provides in relevant part: A legislative body of a city or county *shall* deny approval of a tentative map, or a parcel map for which a tentative map was not required, if it makes any of the following findings: [] . . . [] (c) That the site is not physically suitable for the type of development. [] (d) That the site is not physically suitable for the proposed density of development. (Gov. Code, 66474, subds. (c) & (d), italics added.)

Here, council specifically found, based on the Napa Oaks project EIR, that Napa Oaks is too sensitive and constrained to develop as currently proposed by Davidon. Council found that Napa Oaks had serious constraints, including landslides and seismic hazards related to a fault running through the property. Thus, if these findings are supported by evidence in the record, Napa was required to deny Davidons application under Government Code section 66474 no matter what general plan it applied.

Davidon does not argue that the foregoing findings are unsupported by substantial evidence. It therefore has failed to meet its burden of proving Napas findings were invalid and lacked substantial evidence. (See *Breneric Associates v. City of Del Mar* (1998) 69 Cal.App.4th 166, 177.) Moreover, our independent review of the record confirms that substantial evidence did support this finding.

The record states that information included in the EIR and in studies prepared for previous project applications established that Napa Oaks has serious constraints to development due to slopes, significant stands of vegetation, habitat, seismic risks, water supply problems, and limited access. The Napa Oaks site is located on a visually prominent ridgeline and many of its slopes are quite steep (30 percent incline or greater). An initial study prepared in January 1998 described the property in the following manner: The site is atop of a ridgeline within the western boundary of the City of Napa. The hillside topography rises from 70 feet above sea level to four knolls separated by small valleys up to 336 feet in elevation. Vegetation is grassland interspersed with stands of trees, primarily oaks. Hillside slopes are extremely variable, with about 40% of the site having slopes of 9-15%, about 30% of the site having slopes ranging from 15-30%, and the remainder having slopes steeper than 30%. Geotechnical analysis has found areas of landsliding and potential slope instability, and fault traces through the site which may be related to the West Napa Fault Zone. . . .

The record contained ample evidence that Napa Oaks was not physically suitable for Davidons revised project. Davidons revised project proposed a new oak woodland on approximately 23.7 acres, but there was evidence that the planting and irrigation of young trees could undermine unstable slopes, exacerbate landslide conditions, or create unintended biological effects. Gregory, a principal with Lamphier-Gregory, the environmental consulting firm hired by Napa that prepared the EIR, stated that of the 89 mitigation measures recommended in the draft EIR, 17 recommended measures were incorporated into the revised project either in whole or in part. He stated that there were 72 mitigation measures that were still applicable to the revised project.

Accordingly, we conclude the record supported councils findings that Napa Oaks was not physically suitable for the type of development Davidon proposed. Rather than provide any substantial evidence argument, Davidon mounts a challenge based on the councils statement that it was making its ruling in its legislative capacity. When making its findings, council stated that its decision whether or not to amend the general plan so as to allow Davidons development as proposed is purely discretionary and legislative in character. When finding that the site was too sensitive and constrained to develop as currently proposed by Davidon[,] council stated the following: For these reasons, [council], acting in its legislative capacity, does not believe it to be in the public interest at this time to amend the general plan as requested by Davidon.