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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SIX

ADAM BROS. FARMING, INC., et al., Plaintiffs and Appellants, v. COUNTY OF SANTA BARBARA et al., Defendants and Appellants.	2d Civil No. B180880 (Super. Ct. No. 1007452) (Santa Barbara County)

The County of Santa Barbara delineated a 95-acre segment of land as an environmentally-sensitive wetland and incorporated the wetland into a land use plan for the County which had the effect of limiting or preventing farming on the wetland area. A few months thereafter, the family that controlled Adam Bros. Farming, Inc. (ABFI) purchased a parcel of land called Rancho Meadows that included the wetland.

Unhappy with the wetland designation, ABFI and a related company, Iceberg Holdings, L.P. (Iceberg), filed a lawsuit against the County, certain County employees, and a County-retained consultant. The complaint alleges violation of their substantive due process and equal protection rights pursuant to 42 United States Code section 1983 (section 1983) because the wetland delineation was based on deception and falsification of facts. After a jury trial, judgment was entered in favor of ABFI and Iceberg awarding damages of $892,500 representing a reduction in property value, and

$4,579,707 representing lost farming profits. The judgment also included injunctive and declaratory relief. The County and others filed two separate appeals.

We agree with the County that ABFI and Iceberg lack standing to assert their constitutional claims, and that these same claims are barred by the statute of limitations. We also conclude that the judgment properly invalidates the wetland delineation, and that there was no other error in the judgment granting and denying injunctive and declaratory relief.

In a cross-appeal, ABFI and Iceberg contend that the trial court erred in denying declaratory relief and injunctive relief regarding designation of the land as open space, and in denying a portion of their request for attorney fees. We conclude that there were no such errors.

Accordingly, we will reverse the judgment as to the constitutional claims, but affirm the judgment for injunctive and declaratory relief.

FACTS AND PROCEDURAL HISTORY

In 1994, the County began preparing a comprehensive land plan later adopted as the Orcutt Community Plan (OCP). The OCP covers 14,650 acres, and identifies more than 40 "Key Sites" for environmental and development concern. Key Site 22 includes Rancho Meadows.

During preparation of the OCP, County planning staff members Elihu Gevirtz and Dan Gira decided to delineate part of Rancho Meadows as a wetland. They relied on an aerial photograph which they knew to be an unreliable basis for identifying a wetland. They also were aware of earlier environmental impact reports showing no wetland on Rancho Meadows, and Gevirtz had obtained a survey showing no sensitive plants or wetland.

Gevirtz retained Katherine Rindlaub, a biologist, to prepare a "biological studies" report for Rancho Meadows. Shortly after she began work, Gevirtz and Gira instructed Rindlaub to conduct a wetlands delineation using the methodology of the U.S. Army Corps of Engineers Manual (ACE Manual). Rindlaub informed Gevirtz that she

had never conducted an ACE Manual wetlands delineation, and was not qualified to do so. Despite knowing this, Gevirtz insisted that Rindlaub perform the delineation.

Gevirtz prepared a topographical map identifying a wetland in Rancho Meadows based on the aerial photograph. Gervirtz submitted the map to Rindlaub, instructed her that the map correctly identified a wetland, and directed her to prepare a report consistent with his instructions. Rindlaub dutifully prepared such a report showing a 95-acre wetland in the area identified on Gevirtz's topographical map.

Rindlaub's report, however, failed to follow the methodology of the ACE Manual. Among other deficiencies, she did not adequately inspect the site due to the presence of a bull or bulls which she considered dangerous. Although Rindlaub told Gevirtz her report was deficient, he nonetheless submitted it to the County Board of Supervisors.

The OCP was adopted by the County in July 1997. The OCP included the wetland delineation and incorporated Rindlaub's report. The County otherwise complied with applicable notice, public hearing, and other requirements for adoption of the OCP.

In November 1997, Richard and Bernadette Adam purchased 268 acres of Rancho Meadows, including the 95 acres designated as a wetland. Family member Peter Adam inspected the property and concluded that it was dry land. The Adam family planned to farm the land through ABFI.[1]

Shortly after the purchase, Peter Adam obtained a portion of the OCP which showed the wetland designation. After further inspection of the land, Adam remained convinced that there was no wetland in Rancho Meadows. Adam contacted the National Resources Conservation Services of the United States Department of Agriculture (NRCS) to request a "non wetland determination" that he believed would contradict Rindlaub's report and the OCP.

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[1] Iceberg was created by the Adam family in December 1998 to hold title to its farming property, and Rancho Meadows was deeded to Iceberg at that time. Although the family often acted through ABFI, ABFI never held title to the land.

Contrary to Adam's expectations, the NRCS report showed a wetland in Rancho Meadows, but of a smaller size than that delineated by Rindlaub. Peter Adam continued to believe there was no wetland and retained consultants who concluded by mid-1998 that the NRCS had falsified the data used to support its finding. Adam's attorney wrote to federal authorities asserting that the NRCS had falsified data and that the County may be conspiring with NRCS.

Also in 1998, the County learned that the Adam family planned to farm Rancho Meadows and informed ABFI that its grading ordinance would likely require a permit for the agricultural grading necessary to prepare the land for farming. The County told ABFI that it could farm the non-wetland part of Rancho Meadows, but not the wetland area unless it satisfied permit requirements or obtained an amendment to the OCP to modify or delete the wetland delineation. Having already decided that there was no wetland, ABFI asserted that a permit was unnecessary and did not apply for one.

Peter Adam also concluded that communications from the County were tantamount to a denial of any permit application, and filed an appeal of what he had decided unilaterally was the denial of a permit. In September 1998, the County rejected the appeal, claiming that there had been no denial because ABFI had never applied for a permit. At the same time, however, the County changed its interpretation of the grading ordinance to allow agricultural grading without a permit. In December 1998, ABFI began grading the wetlands area without a permit.

In February 1999, the County returned to its initial interpretation that the grading ordinance required a permit for agricultural grading. ABFI continued grading without a permit. On March 30, 1999, the County issued a stop work order. The County's order followed a January 29, 1999, cease and desist order from the Army Corps of Engineers. Both orders required ABFI to stop farming or preparatory work on the wetland portion of Rancho Meadows. In June 1999, ABFI consulted an expert who concluded that the Rindlaub report was seriously deficient.

ABFI and Iceberg filed their complaint on March 29, 2000. It alleges that Gevirtz and Gira had concocted a scheme to falsely designate part of Rancho Meadows

as a wetland and hired Rindlaub with an understanding that she would support their position regardless of the actual condition of the land. The complaint states several causes of action based on the false wetland designation, including section 1983 substantive due process and equal protection claims. The complaint also requests declaratory and injunctive relief.

In 2001, demurrers by the County were sustained and ABFI and Iceberg appealed the resulting dismissal. In a September 2002 unpublished opinion, this court reversed in part, ruling that the demurrers were erroneously sustained as to respondents' claims for violation of substantive due process and equal protection rights, conspiracy to violate due process, and for declaratory and injunctive relief.[2]

After remand, the trial court conducted a jury trial of these claims. The jury rendered special verdicts that Rindlaub did not conduct a valid ACE Manual wetland delineation, a 14-acre wetland in fact existed on Rancho Meadows, the County and its employees and Rindlaub violated ABFI and Iceberg's due process and equal protection rights, Rindlaub and Gevirtz conspired to violate those rights, and ABFI and Iceberg did not discover the violation until after March 29, 1999. The jury awarded ABFI damages of $4,579,707 for lost profit and Iceberg $892,500 for reduced land value. The jury found the County employees and Rindlaub acted with malice, oppression or fraud and awarded a total of $130,000 in punitive damages.

The verdict was followed by a bench trial of the declaratory and injunctive relief claims. The trial court issued an injunction and declaration invalidating Rindlaub's report and striking the wetland delineation from the OCP. The court denied substantially all of the other requested declaratory and injunctive relief. As relevant to ABFI and Iceberg's cross-appeal, the court ruled that the OCP had designated a portion of Rancho Meadows as open space and, based on this finding, denied a declaration and injunction that would have allowed ABFI to farm Rancho Meadows without a permit.

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[2] (*Adam Bros. Farming, Inc., et al. v. County of Santa Barbara et al.* (Sept. 16, 2002, B152770).)

Separate appeals were filed by the County, its Planning and Development Department and Noel Langle (collectively the County appellants), and by Gevirtz, Gira, Rindlaub and Rindlaub's company (collectively the individual appellants). ABFI and Iceberg filed a cross-appeal.[3]

DISCUSSION

COUNTY AND INDIVIDUAL APPELLANTS' APPEALS

ABFI and Iceberg Lack Standing to Assert Constitutional Claims

The County and individual appellants contend that ABFI and Iceberg[4] lack standing to pursue their section 1983 claims for violation of substantive due process and equal protection because they did not own Rancho Meadows when the OCP was enacted.[5] Appellants argue that, without any interest in the property at that time, respondents were not the direct victims of the wrongful government action, and were not deprived of *their* civil rights. We agree. Although the jury found that County officials misused their authority, general principles of standing as well as the language of section 1983 compel the conclusion that respondents lack standing to challenge application of a land use ordinance enacted prior to their acquisition of the property.

Standing includes "a blend of constitutional requirements and prudential considerations" that center upon whether the complaining party is the proper party to invoke the court's jurisdiction. (*Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.* (1982) 454 U.S. 464, 471; see also Code Civ. Proc., § 367 ["[e]very action must be prosecuted in the name of the real party in interest"].) Under federal law, standing necessarily requires a party show that he or she personally

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3 We grant the County's request for judicial notice of a land use permit and consent decrees in a federal case involving ABFI and Iceberg.

4 Except where otherwise specified, ABFI and Iceberg will be referred to collectively as "respondents."

5 Section 1983 provides in relevant part: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . ."

suffered an immediate and actual injury as a direct result of the unlawful conduct of the defendant. (*Valley Forge*, at pp. 472, 475; *Warth v. Seldin* (1975) 422 U.S. 490, 498.) The plaintiff can only assert his or her own legal rights, not the legal rights or interests of third parties or the public in general. (*Valley Forge*, at pp. 474-475, 477; *Warth*, at p. 499.) Under California law, standing also requires an actual injury inflicted upon the plaintiff who must have "'some special interest to be served or some particular right to be preserved or protected . . .'" apart from the interest held in common with the public at large. (*Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 361-363.)

The remedy provided by section 1983 is intended to redress the deprivation of the plaintiff's personal constitutional rights by government officials acting under color of law. (See *Albright v. Oliver* (1994) 510 U.S. 266, 271; *County of Los Angeles v. Superior Court* (1999) 21 Cal.4th 292, 297; *Moreland v. Las Vegas Metropolitan Police Dept.* (9th Cir. 1998) 159 F.3d 365, 369.) An action under section 1983 is considered a personal injury resulting from a constitutional tort. (*Wilson v. Garcia* (1985) 471 U.S. 261, 278; *McDougal v. County of Imperial* (9th Cir. 1991) 942 F.2d 668, 672.) As with standing in general, only the person towards whom the state action was directed may maintain a section 1983 action, not a third party whose rights may be affected at a later date. (See *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., supra,* 454 U.S. at p. 472; *Warth v. Seldin, supra,* 422 U.S. at p. 499.)

Moreover, to prevail in a section 1983 action, the plaintiff must establish the violation of a constitutionally-protected property interest that is so arbitrary as to "shock the conscience." (*Galland v. City of Clovis* (2001) 24 Cal.4th 1003, 1032-1033; *Uhlrig v. Harder* (10th Cir. 1995) 64 F.3d 567, 573-574, cert. den. 516 U.S. 1118.) But, regardless of the arbitrariness of governmental action, there is no section 1983 claim unless a plaintiff is deprived of a property interest plaintiff held at the time the government misconduct occurs. (*Crowley v. Courville* (2d Cir. 1996) 76 F.3d 47, 52; *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1184; see generally *Warth v. Seldin, supra,* 422 U.S. at pp. 499-501.)

In the land use context, a plaintiff must establish that the governmental action deprived the plaintiff of a constitutionally-protected use of his or her land. (See, e.g., *RRI Realty Corp. v. Incorporated Village of Southampton* (2d Cir. 1989) 870 F.2d 911, 915-918; *Gardner v. City of Baltimore Mayor & City Council* (4th Cir. 1992) 969 F.2d 63.) The plaintiff must have an entitlement to a particular use of the land in question, not merely an expectation. (*Breneric Associates v. City of Del Mar* (1998) 69 Cal.App.4th 166, 181; *Natale v. Town of Ridgefield* (2d Cir. 1999) 170 F.3d 258, 263.)

Here, there was no violation of a constitutionally-protected property interest. Respondents claim the County violated their constitutional right to farm Rancho Meadows when the County adopted the OCP with its false wetland delineation. But, respondents acquired their interest in the property after enactment of and subject to the conditions of the OCP, including any impediment on its agricultural or other use that may have affected the value of the property. Because they had no interest in Rancho Meadows at the time of the purported constitutional tort, respondents did not suffer any personal injury from the tort. Respondents may have been unaware of the extent of the unlawful government conduct, but they were aware of the OCP. There is no legal authority giving purchasers of property the right to sue whenever a known restriction on land use later turns out to have been arbitrary and unlawful.

In substance, respondents are asserting rights based on the enactment of the OCP as it affected the property interest of a third party. The County's false wetland delineation was directed at and inflicted an injury on the owners of Rancho Meadows at the time the OCP was adopted. Respondents' claim of entitlement rests on the proposition that an owner who acquires land from the party injured by governmental action also acquires the injury suffered by the prior owner and the constitutional right to redress that injury. The implications of respondents' attempt to extend substantive due process rights to include state action directed at a prior property owner are far-reaching. A conclusion that an actionable land use determination by local government resembles a covenant running with the land would expose the state action to continued or delayed constitutional litigation in a myriad of unforeseen circumstances and blur both the

requirement for violation of a personal interest and the standing requirements for civil litigation in general. (See *Valdivieso Ortiz v. Burgos* (1st Cir. 1986) 807 F.2d 6, 9.)

Respondents rely on the general proposition that standing exists where a plaintiff has a "personal stake" in the outcome of the controversy, which is "fairly traceable" to the defendant's acts. (See, e.g., *Baker v. Carr* (1962) 369 U.S. 186, 204; *Warth v. Seldin, supra*, 422 U.S. at pp. 498-499.) Clearly, the impediment on farming in the abstract is traceable to the wetland delineation, but respondents' personal claim is "fairly traceable" only to their acquisition of property on which the impediment had already been imposed. Similarly, respondents lost profits from the impediment on farming, but had no "personal stake" in those profits when the delineation occurred.

Respondents also argue that the wrongdoing is not the wetland delineation but rather the fraud that caused the delineation. But, however characterized, the misconduct occurred before the acquisition of the property. In addition, although respondents claim delayed discovery of the purported fraud, there is no authority that incorporates the delayed discovery rule for accrual of a cause of action into the requirements of standing to sue.

Respondents further argue that ownership at the time of the land use decision is not the test for standing to challenge the decision. Legal authority compels the contrary conclusion. In *Nevel v. Village of Schaumburg* (7th Cir. 2002) 297 F.3d 673, a plaintiff challenged a municipality's designation of property an historic landmark even though the plaintiff did not acquire the property until after the designation. The court concluded, in dictum, that any due process violation affected the rights of the owner at the time of the designation, and that the plaintiff lacked standing to raise a claim based on the due process rights of a third party. (*Id.*, at p. 679, citing *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., supra*, 454 U.S. at p. 474.)

Cases have found cognizable property interests short of fee title such as equitable ownership and tenancy. (*Riccobono v. Whitpain Tp.* (D.C.Pa. 1980) 497 F.Supp. 1364, 1370 [equitable ownership interest based on an agreement to purchase the

property]; *Moran v. City of New Rochelle* (S.D.N.Y. 2004) 346 F.Supp.2d 507, 511-512 [tenancy interest]; *Scott v. Greenville County* (4th Cir. 1983) 716 F.2d 1409, 1418 [option to purchase]; *Construction Industry Ass'n of Sonoma County v. City of Petaluma* (9th Cir. 1975) 522 F.2d 897, 903-904 [membership organization].) These cases are inapposite. Respondents had no interest in Rancho Meadows until after the wrongful conduct.

Respondents' challenge to the wetland delineation on equal protection grounds fails for the same and additional reasons. An equal protection claim under section 1983 requires that the governmental actor intentionally treat the plaintiff different from similarly situated individuals. (*City of Cleburne, Tex. v. Cleburne Living Center* (1985) 473 U.S. 432, 439.) Respondents claim that the County treated them differently from other landowners in the County who were not subjected to a wetland delineation based on the Army Corps of Engineers methodology, or a delineation that was intentionally false. This is essentially a substantive due process claim and does not reasonably implicate equal protection law. There is no evidence to support a claim that respondents were treated differently than similarly-situated landowners, or even that there were any similarly-situated landowners. The evidence requires the conclusion that the physical condition of Rancho Meadows was unique.

Constitutional Claims Barred by Statute of Limitations

The County and individual appellants also contend that the action is barred by California's one-year statute of limitations. They argue that the evidence requires the conclusion that respondents discovered their claim no later than July 1998, approximately 20 months before the complaint was filed. We agree, and conclude that there is no substantial evidence to support the jury verdict that respondents did not discover the claim earlier than March 1999. (*Grassilli v. Barr* (2006) 142 Cal.App.4th 1260, 1277 [substantial evidence standard]; *Allred v. Chynoweth* (10th Cir. 1993) 990 F.2d 527, 529 [same standard under federal law].) Accordingly, in addition to the lack of standing, respondents' constitutional claims are barred by the statute of limitations.

In a section 1983 case, state law determines the length of the limitations period but federal law determines when the claim accrues and starts the limitation period

running. (*Wallace v. Kato* (2007) ___ U.S. ___ [127 S.Ct. 1091, 1095]; *Knox v. Davis* (9th Cir. 2001) 260 F.3d 1009, 1013.) The parties agree that the California one-year statute of limitations for personal injury actions[6] applies, but dispute when the claim accrued.

A section 1983 claim accrues when the plaintiff knows or through the exercise of reasonable diligence should know the critical facts revealing the injury which is the basis of the claim. (*United States v. Kubrick* (1979) 444 U.S. 111, 121-123; *Knox v. Davis, supra,* 260 F.3d at p. 1013.) A plaintiff knows or reasonably should know of a claim when he or she "knows both the existence and the cause of his injury." (*Kubrick*, at p. 113; see also *Wilson v. Giesen* (7th Cir. 1992) 956 F.2d 738, 740.) A plaintiff cannot wait until he or she knows all of the facts in support of the lawsuit. (*Kubrick*, at pp. 122-123; *Skwira v. U.S.* (1st Cir. 2003) 344 F.3d 64, 84 (conc. opn. of Boudin, J.).) Once the plaintiff knows enough to provoke a reasonable person to inquire further, the plaintiff has the duty to investigate and is held to the knowledge that could reasonably be discovered through investigation of available sources of information. (*Gonzalez v. United States* (1st Cir. 2002) 284 F.3d 281, 288-291; see also *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110-1111.)

Respondents do not dispute that Peter Adam had constructive knowledge of the wetlands delineation when the family acquired the property in November 1997, and actual knowledge a few days thereafter when Adam obtained an OCP map showing the delineation. Respondents also do not dispute that Peter Adam quickly concluded that the wetland delineation was contrary to the facts, or that the family hired a lawyer and contacted federal authorities to complain and obtain a "non-wetland" report to dispute Rindlaub's report. In addition, by mid-1998, ABFI had obtained the second NRCS report and concluded not only that the NRCS wetland delineation was incorrect, but also that

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6 The statute of limitations was one year when the complaint was filed. (Former Code Civ. Proc., § 340, subd. (3).) Effective January 1, 2003, the limitations period was extended to two years (§ 335.1) but only as to cases not already time-barred by the one-year statute. (*Andonagui v. May Dept. Stores Co.* (2005) 128 Cal.App.4th 435, 438.)

NRCS falsified the data used in its delineation. Any reasonable person also would have realized that Rindlaub may also have falsified the data in her report.

This evidence is sufficient as a matter of law to trigger the running of the limitations period. By mid 1998, respondents knew the critical facts regarding their injury and who inflicted the injury, and had sought legal advice to represent their interests in farming the land which had been delineated as a wetland.

Respondents argue that their claim did not accrue until they realized that the delineation was the product of deception and deliberate falsehoods. They argue that, until March 1999, they believed the delineation was legitimate, albeit erroneous, and "had absolutely no knowledge of or reason to suspect that the Rindlaub Report was the result of a corruption of the legal process and a deliberate flouting of the law." This assertion, however, indicates only that respondents did not know the details of the Gevirtz-Rindlaub machinations and had not formulated the allegations of their complaint or marshaled their evidence for trial. It does not undermine the fact that Rindlaub's report was a public record known to respondents that had reached conclusions totally inconsistent with what respondents believed to be true.

The Supreme Court has stated that, "in applying a discovery accrual rule, we have been at pains to explain that discovery of the injury, not discovery of the other elements of a claim, is what starts the clock." (*Rotella v. Wood* (2000) 528 U.S. 549, 555.) The Court draws a distinction between a plaintiff's ignorance of his or her legal rights and ignorance of the fact of the injury or its cause. (*Id.*, at pp. 555-556.) Both the injury and its cause may be unknown or difficult to obtain. But, the prospect is not so bleak for a plaintiff in possession of the critical facts that he has been hurt and who has inflicted the injury. He is no longer at the mercy of the latter. There are others who can tell him if he has been wronged, and he need only ask. (*United States v. Kubrick*, *supra*, 444 U.S. at p. 122, cited in *Rotella*, at p. 556.)

Respondents also argue that the limitations period was tolled because the County fraudulently concealed its misconduct. To make out a claim of fraudulent concealment, a plaintiff must prove the particular circumstances surrounding the

concealment and show his or her diligence in trying to uncover the facts. (*Rutledge v. Boston Woven Hose & Rubber Co.* (9th Cir. 1978) 576 F.2d 248, 250.) Additionally, the plaintiff must show affirmative conduct upon the part of the defendant which would, under the circumstances of the case, lead a reasonable person to believe that he did not have a claim. (*Ibid.*; see also *Conerly v. Westinghouse Elec. Corp.* (9th Cir. 1980) 623 F.2d 117, 120.) Here, there was no finding of fraudulent concealment by the jury, no substantial evidence that the County affirmatively concealed any misconduct, and no substantial evidence that the respondents could have reasonable relief upon the legitimacy of Rindlaub's report in light of the state of their knowledge. (See *Gibson v. U.S.* (9th Cir. 1986) 781 F.2d 1334, 1344-1345.)

No Error in Injunctive or Declaratory Relief

Appellants do not challenge the trial court's issuance of declaratory or injunctive relief. Moreover, the absence of a privately enforceable right under section 1983 does not prohibit declaratory or injunctive relief under Code of Civil Procedure sections 526 or 1060. (See *City of Los Angeles v. Lyons* (1983) 461 U.S. 95, 113; *California Homeless & Housing Coalition v. Anderson* (1995) 31 Cal.App.4th 450, 458.) Thus, although respondents' constitutional claims fail because of lack of standing and the running of the statute of limitations, the trial court could lawfully grant injunctive or declaratory relief under state law. (*Lyons,* at p. 113; see *ASARCO Inc. v. Kadish* (1989) 490 U.S. 605, 617; *Princeton University v. Schmid* (1982) 455 U.S. 100, 102-103, fn.*.)

Other Issues

The County appellants also claim error concerning evidentiary rulings, the form of the special verdict, and the assessment of damages. The individual appellants claim immunity, the lack of substantial evidence to support a finding of a constitutional violation or punitive damages, and other errors. In light of our decision regarding standing and the statute of limitations we need not address these contentions.

RESPONDENTS' CROSS-APPEAL

No Error in Open Space Designation

The OCP is a comprehensive development plan that, among other land use decisions, designates "open space" areas within several of the over 40 Key Sites. During trial, the court ruled that a portion of Rancho Meadows, which is in Key Site 22, had been designated as open space in the OCP and, therefore, could be used for farming only after issuance of a grading permit. Relying on this ruling, the court later denied respondents' request for a declaration and injunction which would have allowed respondents to farm all parts of Rancho Meadows without a permit.

Respondents contend that the trial court misinterpreted the plain language of the OCP in ruling that land in Key Site 22 had been designated "open space." They argue that the OCP refers to open space in Key Site 22 merely as "conceptual" and "proposed." We disagree. The OCP is over 500 pages long and includes information in the form of narrative discussion, maps, charts and other documents. Not surprisingly, the scope of the enactment creates ambiguities and complexities. We conclude that, based on the OCP as a whole, the trial court reasonably concluded that the OCP made a definitive designation of the part of Key Site 22 along the Orcutt floodplain as open space.

The interpretation of a local ordinance or other municipal enactment is governed by the same rules as the construction of statutes. (*C-Y Development Co. v. City of Redlands* (1982) 137 Cal.App.3d 926, 929.) As with a statute, a local enactment must be considered as a whole and its parts harmonized to the extent possible. (*Flavell v. City of Albany* (1993) 19 Cal.App.4th 1846, 1851.) If its language has a plain meaning, the court will interpret the enactment in accordance with that plain meaning unless to do so would frustrate the manifest purpose of the legislation as a whole. (*California School Employees Assn. v. Governing Board* (1994) 8 Cal.4th 333, 340; *C-Y Development Co.*, at pp. 929-930.) If the language is ambiguous, however, a court may consider extrinsic evidence in its interpretation in order to understand the intent and purpose of the enactment and the consequences of a particular interpretation. (*MacIsaac v. Waste Management Collection and Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1083-1084;

Southern Cal. Underground Contractors, Inc. v. City of San Diego (2003) 108 Cal.App.4th 533, 552.)

The standard of appellate review varies depending on whether extrinsic evidence was admitted and considered by the trial court. If extrinsic evidence was not admitted, a reviewing court independently reviews the ruling as a question of law. (*Atlantic Richfield Co. v. State of California* (1989) 214 Cal.App.3d 533, 538.) But, as in the instant case, when the parties offer extrinsic evidence and implicitly understand that the trial court will draw inferences from that evidence, any interpretation by the court supported by substantial evidence will be upheld on appeal. (*Id.*, at pp. 538, 542.)

Here, the OCP includes numerous references to open space, including several references to open space within Key Site 22. Respondents rely on references suggesting that elements of open space designations are tentative and conceptual, while appellants cite references indicating the designations are definitive and final.

Respondents rely on a reference to a future "specific plan" covering Key Site 22 which states that, "[i]n order to address project phasing, distribution of densities across parcels, infrastructure financing, school construction funding, affordable housing, and park and trail development, a Specific Plan *will be prepared* to address future development of this site." (Italics added.) The same reference also states that certain OCP maps "show *conceptual plans* which identify areas for different densities, as well as land for protection as *Open Space*." (Italics added.) Conversely, appellants rely on a reference to "open space" on the same page which states in more unequivocal language that the "floodplain of Orcutt Creek, the canyons of the drainages near Black Road, the vernal wetland/grassland complex and remnant dune area on the northern portions of [Key Site 22] *are to be retained* as open space." (Italics added.)

In addition, a statement in the OCP that "seven contiguous bands of open space are proposed" for parks and trails contrasts with a statement that "floodplains along Orcutt, Pine Canyon and Graciosa Creeks *have been* designated as open space" and maps which describe a portion of Key Site 22 near Orcutt Creek as open space.

These various references support the conclusion that the OCP definitively designated a portion of Key Site 22 containing the floodplains as open space, but also discussed proposed future refinements of open space areas as dictated by "project phasing, distribution of densities across parcels, infrastructure financing, school construction financing, affordable housing, and park and trail development." It is also reasonable to conclude that certain open space plans are merely "proposed" because they require financial commitments by the County that have not yet been made, whereas the Key Site 22 flood plan designation is final.

The extrinsic evidence offered by both respondents and the County appellants add support to the trial court's ruling. The County's planning director and planning staff member Dan Gira testified that the floodplain portion of Key Site 22 had been designated as open space in the OCP. More importantly, trial testimony by respondents' own land use expert supports the trial court's ruling that the Key Site 22 floodplains had been designated as open space and were not proposed actions requiring future financial commitments. A County staff report refers to the elimination of the "Parks, Trails, and Open Space components" from Key Site 22 to reduce the "infrastructure and capital costs" associated with those components. Respondents' land use expert criticized this deletion of the "payment plan" for open space, but assumed in her testimony that the land had been designated as open space.

Attorney Fees Award Reversed by Decision on Constitutional Claims

As provided by federal statute, the trial court may award reasonable attorney fees to the prevailing party in a section 1983 action. (42 U.S.C. § 1988.) In this case, the trial court awarded $841,406.07 but denied respondents' request for an additional $195,383 for work performed by respondents' in-house counsel. Respondents seek that additional amount in their cross-appeal. Because we reverse the judgment on the section 1983 claims, the entire attorney fees award must be vacated, and the cross-appeal for an additional amount is moot.

DISPOSITION

The judgment is reversed as to the constitutional claims, but affirmed as to

the injunctive and declaratory relief. The trial court is directed to enter judgment in favor of County appellants and the individual appellants regarding the constitutional claims.

The County and individual appellants shall recover costs.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Rodney S. Melville, Judge

Roger D. Randall, Judge*

Superior Court County of Santa Barbara

Stephen Shane Stark, County Counsel, Stephen D. Underwood, Chief Assistant County Counsel, Alan Seltzer, Senior Deputy County Counsel, Jennifer C. Klein, Deputy County Counsel; Caldwell, Leslie, Newcombe & Pettit, David Pettit, Michael V. Schafler; Caldwell, Leslie, Proctor & Pettit; Caldwell Leslie & Proctor, Robyn C. Crowther; Greines, Martin, Stein & Richland, Robin Meadow and Feris M. Greenberger for Appellants County of Santa Barbara, County of Santa Barbara Planning and Development Department and Noel Langle.

John Sansone, County Counsel (San Diego) and Deborah A. McCarthy, Chief Deputy, for The California State Association of Counties as Amici Curiae on behalf of Appellants County of Santa Barbara et al.

Philip A. Seymour for Appellants Katherine Rindlaub, Elihu Gevirtz, Dan Gira and Katherine Rindlaub Biological Consulting.

Law Office of Herb Fox, Herb Fox; Chern & Brenneman; Brenneman, Juarez & Adam, Richard C. Brenneman, Mario A. Juarez, Richard E. Adam, Jr., and Alison E. Brenneman for Appellants Adam Bros. Farming, Inc., and Iceberg Holdings.

Nancy N. McDonough and Carl G. Borden for California Farm Bureau Federation and California Cattlemen's Association as Amici Curiae on behalf of Appellants Adam Bros. Farming, Inc., and Iceberg Holdings.

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* (Assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.)