TRANCAS PROPERTY OWNERS ASSOCIATION, Plaintiff and Appellant, v. CALIFORNIA COASTAL COMMISSION et al., Defendants and Respondents.

2d Civil No. B142315

COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION SIX

2001 Cal. App. Unpub. LEXIS 636

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PRIOR HISTORY: Superior Court County of Los Angeles. Super. Ct. No. SC054684. Robert M. Latteau, Judge.

COUNSEL: Overton, Lyman & Prince, Stephen L. Jones; Greines, Martin, Stein & Richland, Robin Meadow, Alan Diamond for Plaintiff and Appellant Trancas Property Owners Association.

Alan Robert Block, Michael N. Friedman for Defendant and Respondent Trancas-PCH, LLC.

Daniel E. Lungren, Attorney General, Richard M. Frank, Chief Assistant Attorney General, J. Matthew Rodriquez, Senior Assistant Attorney General, Clara L. Slifkin, Deputy Attorney General, for Defendant and Respondent California Coastal Commission.

JUDGES: GILBERT, P.J. I concur: COFFEE, J.

OPINION BY: GILBERT

OPINION:

A developer submits an application for final subdivision map approval to the city with jurisdiction over its development. The developer's coastal development permit **[*2]** (CDP) expires before all conditions of the approved tentative map have been satisfied. In a letter the California Coastal Commission's counsel advises the developer that if the developer obtains final map approval from the city, the Commission's staff will "recommend that the permit for the project was properly exercised."

In granting summary judgment to the developer, the trial court found that the CDP had not expired. We reverse. The CDP expired by operation of law despite the letter.

FACTS

Respondent Trancas-PCH, LLC (Trancas) **n1** owns approximately 35 acres in the City of Malibu (City). In May 1985, prior to the City's incorporation, the County of Los Angeles approved a tentative tract map with conditions for subdivision of the property into 15 single-family lots and

52 townhouses. One of the conditions of the tentative map required that Trancas obtain a CDP from the California Coastal Commission (Commission). The Commission granted Trancas a CDP. Trancas applied for and received extensions of the CDP, but the CDP eventually expired by operation of law.

n1 Trancas-PCH, LLC is successor-in-interest to Trancas Town, Ltd., the owner of the property at the beginning of the development process. Both are referred to as "Trancas" in this opinion.

[*3]

On March 28, 1991, the City was incorporated and obtained jurisdiction over the project. (*Gov. Code, § 66457*, subd. (b).) On March 12, 1992, the Commission granted Trancas a second CDP which, by its terms, expired in two years, on March 12, 1994, "if development has not commenced." An amendment to the Government Code extended the expiration date for two more years, to March 12, 1996. Trancas did not apply for an extension.

In 1993, when Trancas submitted its final map to the City for approval, it had not fulfilled all conditions of its tentative map. It is the City's practice to accept and begin processing final tract map applications even though all conditions have not been satisfied. The City keeps the final map application on file, even though the application is not complete and will not be considered for approval until all the tentative map conditions have been satisfied. After the city engineer certifies that a final map meets all the conditions of the tentative map, it is sent to the city council for approval. When the CDP expired in 1996, numerous conditions of the tentative map still had not been satisfied.

Under section 13156 **[*4]** of the Commission's regulations, a project must be commenced during the life of a CDP to avoid expiration. (*Cal. Code Regs. tit. 14, § 13156*.) **n2** In September 1996, the Commission inquired whether Trancas's CDP expired by operation of law on March 12, 1996. On May 15, 1997, counsel for Trancas submitted a letter to the Commission requesting "confirmation of activation of permit." On June 5, 1997, the Commission's chief legal counsel, Ralph Faust, wrote to Trancas's attorney identifying the three accepted methods for avoiding expiration of a CDP: (1) apply for and receive an extension from the Commission, (2) begin construction before the CDP's expiration date, or (3) satisfy all conditions of the tentative map and obtain approval of the final map from the City before the CDP's expiration date.

n2 Section 13156 lists the information that must be included in all coastal development permits. According to subdivision (g) of section 13156, all permits "shall" include "the time for commencement of the approved development except that where the Commission on original hearing or on appeal has not imposed any specific time for commencement of development pursuant to a permit, the time for commencement shall be two years from the date of the Commission vote upon the application. Each permit shall contain a statement that any request for an extension of the time of commencement must be applied for prior to expiration of the permit."

[*5]

Faust stated: "The time for commencing construction under the terms of the coastal permit issued for this project has elapsed." Faust also noted that "the City Engineer has not yet given his approval of the map and has required additional testing, including geologic testing." Nonetheless, Faust advised: "If your client does obtain final map approval from the City, . . . we believe this would support the contention that a good faith final map submittal was made to the City before the expiration of the coastal permit. In such case, we would be prepared to recommend that the permit for the project was properly exercised."

The next year, Division One of this court decided *Trancas Property Owners Association v. City of Malibu (1998) 61 Cal.App.4th 1058* ("*Trancas I*"), a lawsuit initiated by appellant in this case, Trancas Property Owners Association (TPOA). **n3** The appellate court interpreted and applied section 13156 to a development project contiguous to the Trancas project. The city engineer approved the final map before the CDP expired, but construction had not begun before the expiration date. The court rejected TPOA's assertion that the project's **[*6]** CDP had expired before the project had commenced within the meaning of section 13156. The court deferred to the Commission's administrative interpretation of the regulation that the city engineer's approval of a final subdivision map was the date the project commenced; therefore, the project's CDP had not expired.

n3 We take judicial of the appellate briefs filed in that case as requested by the Commission. (*Evid. Code, § 459.*)

Soon after the *Trancas I* opinion was published, the city engineer asked the Commission whether Trancas's CDP in the instant case was "presently valid and not expired for purposes of approving the final map." Faust responded that "we consider this permit to be valid and unexpired if the applicant obtains final map approval from the City." On August 20, 1998, Faust told the city attorney that the City "should treat the coastal permit as valid" for the "purpose of determining whether to approve the final map."

On October 22, 1998, TPOA **[*7]** filed this lawsuit against Trancas, the City and the Commission for a declaration that Trancas's CDP expired and for an injunction to halt development. The parties filed cross-motions for summary judgment. **n4** TPOA argued that Faust's interpretation was inconsistent with the court's interpretation of section 13156 in *Trancas I.* TPOA asserted that, because Trancas had not received an extension, commenced construction or received final map approval before the CDP's expiration date, its CDP was no longer valid. Trancas and the Commission argued that the court was required to give deference to Faust's administrative interpretation, that Faust's direction to the City to treat the CDP as valid for purposes of final map approval was not inconsistent with *Trancas I*, and "under these circumstances . . . it would be inequitable to take a different position at this time."

n4 The City did not file a motion for summary judgment or oppose any of the motions brought by the other parties.

In addition, the **[*8]** Commission argued that it was not a proper party to the action and that the doctrines of res judicata and collateral estoppel precluded TPOA from "re-litigating" Faust's interpretation. Trancas further argued that *Trancas I* was not controlling authority, that the only proper remedy was administrative mandamus and that the action was barred by the statute of limitations in *Public Resources Code section 30801*. **n5**

n5 *Public Resources Code section 30801* states in part: "Any aggrieved person shall have a right to judicial review of any decision or action of the commission by filing a petition for a writ of mandate in accordance with *Section 1094.5 of the Code of Civil Procedure*, within 60 days after the decision or action has become final."

The trial court denied TPOA's motion and granted summary judgment to Trancas on the ground that the action was barred by *Public Resources Code section 30801* **[*9]** . The trial court also granted summary judgment to the Commission on the grounds that the CDP was exercised before

its expiration date and that the Commission was not a proper or necessary party to the action. The parties raise the same issues in this appeal.

DISCUSSION

We review the trial court's grant of summary judgment de novo and conduct an independent review of the trial court's resolution of questions of law. (*Green v. Ralee Engineering Co. (1998) 19 Cal.4th 66, 72, 960 P.2d 1046.)*

The construction of a statute by officials charged with its administration is entitled to great weight. If a court concludes that the administrative construction is reasonable, it will generally defer to the agency's judgment and uphold its interpretation against challenge. (*Henning v. Industrial Welfare Com. (1988) 46 Cal.3d 1262, 1269, 252 Cal. Rptr. 278, 762 P.2d 442.)*

In *Yamaha Corp. of America v. State Bd. of Equalization (1998) 19 Cal.4th 1, 960 P.2d 1031* (*Yamaha*), our Supreme Court determined that a tax opinion drafted by a board staff attorney was not an official administrative interpretation and was entitled only **[*10]** to "respectful nondeference." (*Id. at p. 11, fn. 4.)* The court reasoned: "Considered alone and apart from the context and circumstances that produce them, agency interpretations are not binding or necessarily even authoritative. To quote the statement of the Law Revision Commission in a recent report, 'The standard for judicial review of agency interpretation of law is the independent judgment of the court, giving deference to the determination of the agency appropriate to the circumstances of the agency action.'" (*Id. at p. 8,* italics omitted.)

The *Yamaha* decision reaffirmed the Supreme Court's prior decision in *Culligan Water Conditioning v. State Bd. of Equalization (1976) 17 Cal.3d 86, 93, 130 Cal. Rptr. 321, 550 P.2d 593,* which characterized an opinion by the board's assistant chief counsel as not being "the equivalent of a regulation or ruling of general application but . . . merely its litigating position in this particular matter." (See also *McPherson v. City of Manhattan Beach (2000) 78 Cal.App.4th 1252, 1266, fn. 6* ["The City's legal arguments as a party in the lawsuit are not evidence **[*11]** of the City's interpretation"].)

In determining whether an administrative interpretation is likely to be correct, the factors that should be examined include "indications of careful consideration by senior agency officials ('an interpretation of a statute contained in a regulation adopted after public notice and comment is more deserving of deference than [one] contained in an advice letter prepared by a single staff member' [citation], evidence that the agency 'has consistently maintained the interpretation in question, especially if [it] is long-standing' [citation] ('[a] vacillating position . . . is entitled to no deference' [citation]), and indications that the agency's interpretation was contemporaneous with legislative enactment of the statute being interpreted." (*Yamaha, supra, 19 Cal.4th at p. 13;* see also *Bolsa Chica Land Trust v. Superior Court (1999) 71 Cal.App.4th 493, 507* [court not required to give great weight to Coastal Commission's interpretation of statute where interpretation not contemporaneous with enactment of the statute or the result of any considered official interpretative effort and did not carry **[*12]** any other indicia of reliability that normally requires deference to an administrative interpretation]; and see *B.C. Cotton, Inc. v. Voss (1995) 33 Cal.App.4th 929, 951* ["an administrative agency cannot engage in rulemaking, including interpreting and implementing a statute, through informal procedures such as oral announcements, internal memoranda, or written and oral correspondence with affected parties"].)

Here the Commission did not interpret the statute; its legal counsel did. There is no evidence the Commission considered, voted on, or approved Faust's advice to the developer or his instruction to the city to process the final subdivision map as if the CDP were valid. Faust's interpretation is at best an instance of "ad hoc decisionmaking" and carries none of the "indicia of reliability" entitling it to deference by this court. (*B.C. Cotton, Inc. v. Voss, supra, 33 Cal.App.4th at p. 952.)*

Moreover, Faust's interpretation of section 13156 conflicts with *Trancas I*: a project is commenced if the city engineer approves a final subdivision map before the CDP's expiration date. At the time Trancas submitted its final map to the City in 1993, **[*13]** it had not fulfilled several conditions of the tentative map: regional water quality control board approval of method of waste discharge, geology concept approval, environmental health concept approval, improvement bonds, parkland in-lieu fees, fire department approval, agreement relating to environmental mitigation, a variance from the City permitting grading in excess of 1,000 cubic yards per lot, and percolation testing.

Faust's direction to the City to approve Trancas's final map conflicts with statutory requirements. The city engineer is barred from certifying an incomplete final map. (*Gov. Code, § 66442*; see *Great Western Sav. and Loan Assn. v. City of Los Angeles (1973) 31 Cal. App. 3d 403, 413, 107 Cal. Rptr. 359* ["the duty to determine the compliance of a final tract map with applicable state and local law and to imposed technical conditions has been delegated to the city engineer"].) A final subdivision map cannot be approved until it "conforms to the approved or conditionally approved tentative map [and] . . . after all required certificates or statements on the map have been signed and, where necessary, acknowledged. **[*14]** " (*Gov. Code, § 66457*, subd. (a); see, e.g., *Soderling v. City of Santa Monica (1983) 142 Cal. App. 3d 501, 505, 191 Cal. Rptr. 140* ["The purpose of a conditional tentative map is to identify clearly the requirements to which a developer must conform; hence, he must demonstrate in his final map that he has resolved all of the deficiencies or problems enumerated in the tentative map. . . . In other words, fulfillment of all tentative map conditions is, from the outset, a condition of final map approval"]; see also *South Central Coast Regional Com. v. Charles A. Pratt Construction Co. (1982) 128 Cal. App. 3d 830, 845, 180 Cal. Rptr. 555* ["until the subdivider proves that he has performed the requirements and conditions imposed by the local governing body's approval of the tentative map, the local agency must disapprove the final map. As a result, there can be no subdivision under the map act until the conditions are satisfied"].)

The remaining issues raised on appeal merit little discussion. TPOA's action is not barred by the statute of limitations. As TPOA points out, Faust's interpretation was not made after **[*15]** a public hearing and an administrative decision by the Commission. Therefore, this lawsuit is not governed by *Public Resources Code section 30801*. Its action is one for declaratory relief challenging an interpretation of a Commission regulation. Such action is specifically authorized by the California Coastal Act. (*Pub. Res. Code, § 30803*; *Pacific Legal Foundation v. California Coastal Com. (1982) 33 Cal.3d 158, 188 Cal. Rptr. 104, 655 P.2d 306; California Coastal Com. v. Office of Admin. Law (1989) 210 Cal. App. 3d 758, 258 Cal. Rptr. 560.)*

The trial court also erred in determining that the Commission was not a proper or necessary party. This lawsuit arose because of an interpretation of one of its regulations. (*Venice Town Council, Inc. v. City of Los Angeles (1996) 47 Cal.App.4th 1547, 1566.)*

The res judicata/collateral estoppel argument raised by the Commission has no merit. The parties and issues here are different than those in *Trancas I*.

The trial court's judgment is reversed. Costs are awarded to TPOA.

GILBERT, P.J.

I concur:

COFFEE, J.

[*16]