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VICTORIA TALKINGTON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

UNLIMITED JURISDICTION

VICTORIA TALKINGTON,

Plaintiff,

v.

JIM McCANN and Does 1 through 10, inclusive,

Defendants.

Case No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Over the course of its hundred year-plus history, the City of Mill Valley ("the City") has acquired property interests in an expansive network of steps, lanes, and paths ("SLPs") located within the City's boundaries. The City has repeatedly acknowledged that these SLPs are vital public assets, and they fulfill critical community functions. They provide emergency evacuation routes in the event of nature disasters, allow children to safely walk to school, facilitate pedestrian and bicycle transportation to reduce traffic congestion, and connect residents to City parks, trails in Open Space and other public lands of Mt. Tamalpais and beyond. The most famous of these SLPs comprise the first three stairways of the Dipsea Steps.

2. The City's officials have a fundamental and unwaivable duty to preserve and protect the City's public assets, and to expend the City's resources in the manner necessary to do so. These officials are charged with the fiduciary responsibility of safeguarding the City's assets in trust and for the benefit of the entire community. City officials cannot lawfully transfer or relinquish ownership of City property, including SLPs, to private citizens without complying with elaborate legal procedures intended to protect the general public, including public notice, an opportunity for the City's residents to be heard, consideration of the City's General Plan, and a formal resolution approved by a vote of the City Council. Nor can they abandon City property to private interests without securing a public benefit or other adequate consideration.

3. In recent years the City has failed to fulfill its public trust responsibility of protecting and preserving the City's SLPs. Instead, it has allowed private property owners to occupy and exercise control over public property and exclude the citizens of the City from SLPs. This taxpayer action seeks declaratory and injunctive relief to compel the City to fulfill its obligations to the people of Mill Valley and to expend the City's resources as necessary to protect and preserve the SLPs as public assets.

PARTIES

4. Plaintiff Victoria Talkington is a resident of the City of Mill Valley. She has paid taxes to the State of California and the City of Mill Valley within one year of the commencement of this action, and brings these claims as a taxpayer and pursuant to Code of Civil Procedure §

526a. Plaintiff is a former Chair of the Mill Valley Planning Commission and has been actively involved in the City's efforts to inventory and revitalize its SLPs since 2000.

5. Defendant Jim McCann is the City Manager of Mill Valley and a resident of California. He is the senior official in the City. Defendant McCann supervises, oversees, and directs all of the City's employees and departments. He is responsible for implementing the City's policies and programs, including its General Plan, and reports directly to the City Council. As City Manager, Defendant McCann's duties include "see[ing] that all laws and ordinances are duly enforced;" "mak[ing] investigations into the proper performance of any obligation running to the City;" "investigat[ing] all complaints in relation to all matters concerning the administration of the government of the City ... and ... see[ing] that all franchises, permits and privileges granted by the City are faithfully observed;" and "exercis[ing] general supervision over all public buildings, public parks and other public property." Mill Valley Municipal Code § 2.04.020.

6. Does 1 through 10 are persons or entities whose true names and capacities are at present unknown to Plaintiff who, therefore, sues them under such fictitious names. Plaintiff is informed and believes and on that basis alleges that each of the fictitiously named Defendants perpetrated some or all of the wrongful acts alleged herein, is responsible for the harm alleged and is jointly and severally liable therefor. Plaintiff will amend this complaint to state the true names and capacities of such fictitiously named Defendants if and when they are ascertained.

JURISDICTION AND VENUE

7. This Court has jurisdiction over Plaintiff's claims for declaratory and injunctive relief pursuant to Code of Civil Procedures §525 and §526a, and because they are within the Court's general jurisdictional grant of authority.

8. Venue is appropriate in this judicial district because Plaintiff is a resident of Marin County, the City is located in Marin County, and the wrongful conduct alleged herein has occurred and is occurring in Marin County.

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STATEMENT OF FACTS

9. The City was incorporated in 1900. In the early years of the City, the SLPs were heavily used. After automobiles became the principal means of transportation for residents, the usage of the City's SLPs declined. Some SLPs fell into disrepair and many others were almost forgotten.

10. Interest in the City's SLP network was rekindled following natural disasters in other cities and increasing traffic congestion problems in the City. Residents came to realize that protecting open SLPs and restoring overgrown SLPs would guarantee unblocked evacuation routes in the event of natural disasters and provide a means of reducing vehicular traffic, along with preserving historic routes to Mt. Tamalpais and providing access to natural resources for health and recreational purposes. They urged the City to revitalize its network of SLPs.

11. As a direct result of growing community interest, the City adopted provisions in its 1989 General Plan reflecting a new commitment to identifying and restoring the City's SLPs. Policy RC-3 specified that:

> The City shall preserve and restore its network of "lanes." Official abandonment of any such easements or fee simple rights should occur only in the most extraordinary circumstances and then only by vote of the City Council. Where there is any doubt whatever about the advisability of outright abandonment, private improvements shall be allowed only through a revocable encroachment permit and no structure of any permanence shall be built on or over the lane.

12. In order to effectuate Policy RC-3, the City adopted Program RC-3-1 and RC-3-2:

> The Parks and Recreation Department and the Department of Public Works shall maintain a system of pathways, lanes and steps . . . .
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> ***
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> All of the City's "lanes," including those that have been neglected or abandoned, shall be inventoried. The inventory shall give the legal status of each lane and shall categorize the lane according to present condition, expense of maintaining, expense of developing, and importance of the lane. The Parks and Recreation and Public Works Departments shall encourage the active cooperation of Neighborhood Associations and individuals with the inventory process, and especially with funding of improvements. A citizens' Lanes and Steps Committee shall be established to coordinate this program. The inventory shall be done by citizens on a volunteer basis, rather than with City funds.

13. The City also added Program RC-3-3 to the General Plan:

> The City should provide adequate funding to keep the existing system of pathways, lanes and steps safe and accessible. Certain paths may be designated for maintenance through funding, in whole or in part, by Neighborhood Associations, or other organizations, or individuals.

14. In 2000, following the General Plan mandate, the City commenced an extensive public process to inventory all of the SLPs in which the City held property interests. Plaintiff Talkington, then a member of the Mill Valley Planning Commission, led the ad hoc citizens' Lanes and Steps Committee to coordinate this General Plan program, conduct the inventory, and report back to the City Council.

15. All of the SLPs appear on subdivision maps of the City that are recorded in the County of Marin. Occupying a conference room in City Hall, a team of two administrators and three attorneys started with the City's 1975 Zoning Map as amended (the "1975 Map"). It was also provided to all City officials upon taking office. It was available for sale at City Hall. Using the 1975 Map as a location guide, the team identified and collated City Hall's official property records on the SLPs. Among other things, they examined the contents of the City vault, including the City Council's bound minute books, resolutions, deeds and other documentation beginning with the 1900 incorporation of the Town of Mill Valley (later changed to a City). The former City Manager instructed all City departments to give the committee access to records and files for its work pursuant to the General Plan.

16. Starting in or about 2002, the Committee also began working with other community members to survey the condition of many of the City's SLPs, both passable and impassable. A team of about 10 volunteers hiked the City, located the physical place of SLPs, and logged their findings in condition reports.

17. In 2004, the City Council authorized the Committee to prepare a user-friendly SLP map for all citizens to use. The City Council reviewed and approved as its model the highly successful pedestrian paths map created by the City of Berkeley's citizens' committee following the devastating 1991 Oakland Hills fire storm.

18. The proposed map of the City's historic SLP properties inventory was posted and published for public review and comment for an extended period. There were a series of public

hearings relating to the map. By Council decision, the map was to include both SLPs open for passage and SLPs currently overgrown and impassable, the objective being to encourage use of open paths and restore the impassable SLPs over time. As a result of community feedback, three SLPs were removed from the initial map publication because three adjoining neighbors provided documentation suggesting that the City's records were incomplete as to those particular SLPs. The public status of the remaining SLPs was undisputed.

19. In 2006, the City completed its review of the SLP property inventory. Then, the City Council authorized, approved and adopted a final map entitled "A Guide to Mill Valley Steps – Lanes – Paths" (as revised from time to time, "the SLP Map"). This SLP Map identifies many of the SLPs that had been accepted by the City as public property over the course of the City's 100 year history, and left open the possibility that additional SLPs would be included in the future as identified.

20. In a series of resolutions and formal actions over the last decade, the City Council has repeatedly and consistently confirmed and acknowledged that the SLPs on the SLP Map are public property and community assets. Since 2006, the City has sold the SLP Map to the general public and has derived thousands of dollars in revenues therefrom. The City has published three successive editions of the SLP Map. Each new edition contained revised content, with SLPs that were formerly shown as impassable being upgraded to "blue" and passable, consistent with the City's rehabilitation of formerly closed SLPs to travelable condition.

21. The City is responsible for administering the SLPs in public trust for the benefit of its citizens. In order to implement the City's SLP policies, the City initially vested its Parks and Recreation Director with jurisdiction over the restoration, maintenance and protection of the SLPs. It also formed a committee, consisting of the Parks and Recreation Director, the Parks Superintendent, the Fire Battalion Chief, and Plaintiff, to prioritize an initial twenty-five of the impassable or derelict SLPs for improvement and repairs, based on emergency egress needs, pedestrian circulation and traffic considerations, degree of disrepair, and access to public open space and Mt. Tamalpais. The committee developed a list of 25 SLPs as the beginning group of SLPs to repair and re-open with City funding and volunteer efforts where practicable, with others

to be added to that preliminary priority list by City staff as the initial priority paths were completed.

22. In 2008, the City adopted an update to its Bicycle and Transportation Plan ("Bike/Ped Plan"). Included in the Bike/Ped Plan is a map of the City's SLPs. The Bike/Ped Plan map includes the SLPs identified on the SLP Map. Table 5 to the Plan lists many of the City's SLPs, which also corresponds to most of those identified on the SLP Map. The City Council adopted the initial priority list of 25 SLPs as part of the Bike/Ped Plan. Prior to formally adopting the priority list of 25 SLPs into the Bike/Ped Plan, the City mailed notices to all property owners adjoining these 25 SLPs, and two members of City staff visited the homes of these property owners to alert them to the City's plans for these SLPs.

23. From 2005 to 2010, the City's and citizen efforts on the SLPs included actual physical paths renovation and general funding, on top of the paperwork of inventorying the City's historic SLP records, formalizing the Bike/Ped Plans (2003 and 2008) and publicizing and selling the SLP Map. Plaintiff and the City's Departments of Planning, Fire Department and Parks and Recreation worked together to create a volunteer path rebuilding program, modeled after the successful City of Berkeley PathWanderers program, with the first restoration taking place in approximately 2005. By mid-2010, the City/volunteer program had restored more than twenty-eight (28) SLPs in five years. Of those 28 restored paths, almost all had been inaccessible at the beginning of their restoration, and seven were among the 25 priority SLPs on the Bike/Ped Plan list (SLPs 11, 23, 33, 39, 46, 51 and 54). By mid-2010, when Defendant McCann was appointed, two additional priority paths (SLPs 19/19A and 167) were in the pipeline to be restored over the coming year. Still another SLP was in the process of being newly donated by a community member, and volunteer discussions were underway for its rehabilitation. And decaying SLP 230, just around the corner from City Hall, was on track to be renovated.

24. On October 13, 2013 the City Council adopted a new General Plan called MV 2040 (the "MV 2040 General Plan"). The City's decisions affecting public property and community growth and development must be consistent with its General Plan. The MV 2040 General Plan acknowledges the existence of 175 SLPs within the City and underscores their

importance to the community. It states:

> Because of the City's miles of hillside streets, the SLPs are especially important shortcuts for the many hillside walkers, including children and others who cannot drive. The SLPs function as the "sidewalks" for Mill Valley's hillside neighborhoods, providing a safe path of travel for pedestrians where one would otherwise not exist.

MV 2040 at 56.

25. The MV 2040 General Plan also recognizes that the SLPs serve at least five important public purposes in that they provide:

- Direct access from the hillsides to key destinations such as schools, transit stops, and commercial and recreational areas;
- An alternative method of travel from an automobile;
- Direct access and routes away from danger when narrow streets and roadways may not be readily accessible or useable during an emergency;
- Venues for outdoor health and fitness activities, including the annual Dipsea Race – the oldest trail race in America; and
- A sense of community, by connecting residents and neighborhoods with pedestrian opportunities in areas not typically served by sidewalks.

Id., MV 2040 at 56-58.

26. In order to further the important public purposes of the SLPs, the City incorporated M.12-1 into the MV 2040 General Plan. This provision mandates that:

> The City shall preserve and restore its network of steps, lanes and paths. Official abandonment of any such easements or fee simple rights of way should occur only in the most extraordinary circumstances and then only by vote of the City Council.

27. The Hazards and Public Safety Element of the General Plan also emphasizes the importance of the SLPs. It identifies the SLPs as evacuation routes in the event of natural disasters. *Id.,* MV 2040 at 187. Moreover, it commits the City to "[s]upport measures to designate, create, maintain, resurrect, and enhance those steps, lanes and paths that also serve as evacuation routes." *Id.,* MV 2040 at 193, HZ.5-2.

28. In connection with the review and approval of the new General Plan, MV 2040, the City issued and adopted an Environmental Impact Report. The final version of this Report, dated October 7, 2013, references the SLP Map as Exhibit 3.11-4.

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29. The City's Municipal Code prohibits destruction of or interference with SLPs and other public land, and makes it unlawful to impede or obstruct streets and walkways used by pedestrians as sidewalks. Enforcement of those provisions "is vital to the protection of the public's health, safety and quality of life." Municipal Code § 8.01.010

30. At the time Defendant McCann was appointed City Manager of Mill Valley in June 2010, the City's Parks and Recreation Director had jurisdiction over and responsibility for the restoration, maintenance and protection of the City's SLPs. At a date and time presently unknown, Defendant McCann transferred jurisdiction over SLPs to a citizen committee lacking any legal authority to implement and enforce the City's SLP policies or to restore, maintain and protect the SLPs. Defendant McCann also brought City and community efforts to revitalize the SLPs to a halt.

31. As a direct and foreseeable consequence of these actions, the existing mechanisms for restoring, maintaining and protecting the SLPs were disrupted and/or effectively eliminated. In the months and years following these actions, Defendant and the City have ceded control of public SLPs to private property owners, acquiesced to encroachments by private property owners onto SLPs, and allowed private property owners to exclude the general public from SLPs. As of the date of this Complaint, no renovation work has begun on three of four SLPs that were in line for construction as of 2010. No further renovation work has been done on any of the priority 25 SLPs.

32. The acts and failures to act of Defendant and the City alleged herein constitute a waste of public property, breach of trust, unlawful attempts to abandon public SLPs, and violate the City's MV 2040 General Plan. These actions and inactions include, but are not limited to, the following:

a. Defendant and the City have allowed private property owners to construct a fence over SLP 5, and to incorporate SLP 5 into their yard. This SLP was one of the 25 SLPs identified as a priority for restoration and is also a priority for restoration under the Old Mill School Safe Routes to School program. This fence has closed public access to the top half of SLP 5;

b. Defendant and the City approved building plans for a residence adjoining SLP 19/19A. The plans do not acknowledge the existence of the SLP. This SLP was one of the 25 SLPs identified as a priority for restoration, it is also a priority for restoration under the Old Mill School Safe Routes to School program, and it is a top priority path for restoration under the new General Plan MV 2040;

c. Defendant and the City have allowed a private property owner to post "Private Road" and "Private Property" signs on SLP 140, to construct a shed and stack wood for burning on the SLP, to remove a City "No Parking" sign, to park in the center of the SLP, and to construct a padlocked fence over the SLP. This fence has closed public access to SLP 140 and has made the Cascade Reservoir inaccessible to emergency vehicles. This SLP is identified as an emergency evacuation route in the MV 2040 General Plan and the reservoir to which it connects is identified in MV 2040 as a potential resource for drought and emergency; and

d. Defendant and the City have allowed a private property owner to continue to encroach upon and occupy SLP 167. This encroachment has interfered with public access to SLP 167. This SLP was one of the 25 SLPs identified as a priority for restoration under the Bike/Ped Plan, it is a priority for restoration under the Old Mill School Safe Routes to School program, and it is also a top priority path for restoration under the new General Plan MV 2040.

33. SLPs 5, 19/19A, 140 and 167 are identified on the SLP Map. They are public property and constitute important community assets administered by the City and Defendant in trust for the benefit of its citizens.

34. Plaintiff Talkington has repeatedly brought these matters to the attention of the City and has urged Defendant McCann to take the steps necessary to protect the City's SLPs. Despite actual notice, he has failed to do so.

35. Plaintiff is informed and believes, and on that basis alleges, that other residents of the City have also notified Defendant McCann about obstructions to access to and the need to take action to preserve and protect SLPs, and that he has failed to respond to those requests for action as well.

FIRST CAUSE OF ACTION

Declaratory Relief

36. Plaintiff realleges and incorporates herein as if set forth the allegations of paragraphs 1-35, above.

37. An actual controversy exists between Plaintiff, in her capacity as a taxpayer of Mill Valley, and Defendant, in his capacity as City Manager, as to their respective rights, remedies, and obligations. In particular, Plaintiff contends that Defendant has violated and failed to fulfill his legal duties, as set forth in General Plan MV 2040 and the Municipal Code, to preserve and restore the City's network of SLPs, to not abandon SLPs, and to ensure that the SLPs remain safe and fully accessible for use as pedestrian ways and evacuation routes. Plaintiff further contends that Defendant has instead permitted private parties to block public access to SLPs, convert SLPs to private use, and thus waste public property without legal authority for doing so. The City holds the SLPs in public trust for its citizens. Defendant's failure to protect the public interest in the SLPs is a breach of that trust.

38. Defendant disputes Plaintiff's allegations and contends to the contrary. Accordingly, Declaratory Relief is necessary to resolve this controversy.

WHEREFORE, Plaintiff seeks a declaration as to the respective rights and obligations of the parties and prays for relief as set forth below.

SECOND CAUSE OF ACTION

Injunctive Relief To Prevent Waste Of Public Property

39. Plaintiff realleges and incorporates herein as if set forth in full the allegations of paragraphs 1-35.

40. Resident taxpayers such as Plaintiff Talkington are authorized to bring an action to obtain a judgment restraining and preventing waste of, or injury to, the property of a county,

town, or city. Code Civil Procedure § 526a.

41. As hereinabove alleged, Defendant has repeatedly breached his legal obligations to protect, restore and maintain the City's historic network of SLPs. Instead, Defendant is effectively wasting the City's public property and allowing the SLPs to be used for the exclusive benefit of private parties who have no legal right to them. Defendant has failed and refused to carry out his duty to protect the City's SLPs despite actual notice of the issues and in disregard of specific requests that he act. This constitutes a breach of trust.

42. In the absence of an injunction, the residents of Mill Valley will continue to be deprived of access to the City's historic network of SLPs, including but not limited to SLPs 5, 19/19A, 140, and 167, depriving them of the use and enjoyment of public property and of mobility options and endangering their health and welfare, and the City and its taxpayers will suffer the loss of valuable public property without any compensation.

WHEREFORE, Plaintiff seeks an injunction and prays for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court grant the following relief:

(a) Find and declare that Defendant has wasted City property and failed to fulfill his legal obligations as set forth above;

(b) Issue an injunction ordering Defendant to take all steps necessary to ensure that the City's SLPs remain unobstructed and open to the public, and to protect, restore and maintain all of the SLPs identified in the SLP Map;

(c) Retain jurisdiction over this case until Defendant has fully and completely complied with the orders of this Court, and there is reasonable assurance that he and his successors will continue to do so;

(d) Award Plaintiff her reasonable costs, expenses and attorneys' fees pursuant to California Code of Civil Procedure § 1021.5; and

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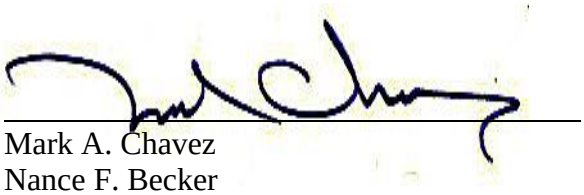
(e) Award such other and further relief as the Court deems just and proper.

Dated: October 18, 2016

Respectfully submitted,

CHAVEZ & GERTLER LLP

By: 

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