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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

COUNTY OF SANTA CRUZ,

Plaintiff, Cross-defendant and Respondent,

v.

PAUL M. CARRICK,

Defendant, Cross-complainant and Appellant.

H035505

(Santa Cruz County Super. Ct. No. CV158731)

I. INTRODUCTION

Respondent County of Santa Cruz (County) filed a civil action seeking injunctive and other relief against appellant Paul M. Carrick after he continued to maintain eight structures on his property without permits and in violation of the Santa Cruz County Code.[1] Carrick thereafter initiated a cross-action against the County. Carrick's operative pleading, which included a petition for a peremptory writ of mandate and a complaint for declaratory relief (hereafter the amended cross-complaint), sought to rescind an April 2006 notice of violation that the County had recorded in December 2006 concerning the unpermitted structures. After Carrick violated discovery and other orders, his answer to the County's complaint was stricken and a default entered. Following a

[1] Hereafter, all references to the County Code are to the Santa Cruz County Code.

trial in Carrick's cross-action, the trial court entered an amended judgment in favor of the County on both the County's complaint and Carrick's amended cross-complaint. Among other things, the court issued a permanent injunction mandating that Carrick either demolish or legalize the structures.

On appeal, with respect to his amended cross-complaint, we understand the principal arguments by Carrick, a self-represented litigant,[2] to be that (1) the County should have provided a hearing before an appeals board concerning the April 2006 notice of violation, (2) his unpermitted structures came within a purported "do-not-enforce policy" of the County, (3) the County Code sections that were applied to him were preempted by state law, (4) state law did not authorize the recording of the April 2006 notice of violation, (5) the County's definition of nuisance is preempted, and (6) other procedural issues warrant reversal of the amended judgment. With respect to the County's complaint, we understand Carrick's principal argument on appeal to be that the trial court abused its discretion by striking his answer to the complaint and entering a default against him.

For reasons that we will explain, we determine that the County was not authorized to record the April 2006 notice of violation in the absence of a statute or court order permitting the recordation (Gov. Code, § 27201, subd. (a)), and that Carrick is entitled to expungement of the notice of violation. Therefore, his petition for a peremptory writ of mandate should have been granted to the extent it sought to compel the County to expunge the notice of violation that was recorded in December 2006. Accordingly, we will reverse the amended judgment with directions to the trial court. We find no merit in Carrick's other contentions.

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[2] Carrick was represented by counsel during a portion of the trial court proceedings.

II. FACTUAL AND PROCEDURAL BACKGROUND

The Subject Property

At all relevant times, Carrick owned two parcels of land adjacent to Summit Road, Los Gatos, California. Since approximately April 2006, Carrick constructed, maintained, and/or converted eight units on the property without permits and in violation of various sections of the County Code. On April 13, 2006, a notice of County Code violation (hereafter the April 2006 notice of violation) was posted on the property. The description of the violations included "construction w/o permits," "construct structures for habitation w/o building or devel. permit," "maintain a building in violation of codes," "non-compliance with zoning regs," "establish or enlarge a use w/o permits," and maintaining a "public nuisance." (Capitalization omitted.) Carrick requested a "Protest Meeting," apparently with the County Planning Director or his or her designee. The Protest Meeting was held in May 2006, and apparently attended by Carrick and the Planning Director's designee, among others.

Since approximately September 2006, Carrick conducted grading and filling and failed to prevent erosion on the property in violation of the County Code. On September 20, 2006, a second notice of County Code violation was posted on the property.

In November 2006, the Planning Director's designee issued a determination concerning the County Code violations cited in the first notice of April 13, 2006, regarding units on the property without permits, and considered during the May 2006 Protest Meeting. It was determined that the finding of violations was valid.

On December 20, 2006, the County recorded against the property the April 2006 notice of violation, regarding units on the property without permits. Carrick continued to maintain the property in violation of the County Code thereafter. Under the County Code, the violations, including those pertaining to the unpermitted units and the grading, were deemed a public nuisance. (County Code, § 1.12.050, subd. (A).)

The County's Action and Carrick's Cross-Action

In November 2007, the County filed a civil complaint against Carrick, alleging that he continued to violate the County Code with respect to the eight units and the grading, filling, and failure to prevent erosion. The County sought a permanent injunction that would, among other things, either mandate the demolition of the illegal units or require Carrick to obtain the required permits to legalize the units, and either require Carrick to legalize and stabilize the grading or restore the property. The County also sought civil penalties, "illegal rents," code compliance enforcement costs, and attorney fees. (County Code, § 1.12.070.) In February 2008, Carrick filed a verified answer.

Carrick also initiated a cross-action against the County. In September 2008, he filed a "Verified Amended Cross Action For Petition For Writ Of Mandate And Complaint For Declaratory Relief," in which he sought to compel the County to rescind the April 2006 notice of violation that the County had recorded in December 2006 for the structures on his property. (Capitalization omitted.) He sought mandate relief in the first through sixth causes of action, as well as declaratory relief in the fourth through seventh causes of action.

More specifically, the first cause of action was based on Carrick's allegations that the County failed to provide an administrative hearing "as stated in" the April 2006 notice of violation, failed to provide "a hearing protecting his due process rights," and failed to provide "an appeals board hearing as required by State law . . . ." In the second cause of action, Carrick stated that the County Code provides that "the lawful use of land existing on the effective date of the adoption or change of zoning designation or of the zoning regulations may generally be continued . . . even if the use no longer conforms to the regulations." According to Carrick, the "main residential dwelling unit" on his property was "a legal nonconforming structure and use," and the County in recording the

notice of violation "failed to consider the age and construction of any of the structures" on his property.

Carrick asserted in the third cause of action that the County's "as-built policies and procedures, including the requirement that a landowner with an existing unpermitted . . . structure bring that structure up to current building code standards in order to obtain an as-built permit," is "preempted by the Uniform Building Code regulations and the provisions of the State Housing Law." He further stated that the structures on his property were "exempt from having to be improved to comply with all of the current building code standards." In the fourth cause of action, Carrick contended that state law preempted "the County's definition of nuisance as one that exists merely by any violation of the County Code," and thus the County "acted outside the scope of its jurisdiction" in finding that the structures on his property constituted a nuisance "simply because they were built without building permits in alleged violation of the County Code . . . ."

The fifth and sixth causes of action were based on Carrick's assertions that the doctrines of laches and equitable estoppel precluded the County from, among other things, requiring him to obtain a building permit for the existing structures and to bring the structures into compliance with "current building code standards." Lastly, in the seventh cause of action, Carrick sought a judicial determination regarding the County's "as-built policy and procedures" and concerning the County's collection of fees and civil penalties.

The County demurred to all but the seventh cause of action in the amended cross-complaint. The trial court overruled the demurrer except as to the fifth and sixth causes of action regarding laches and equitable estoppel. Carrick was given leave to amend the fifth and sixth causes of action but never did so.

The County's Discovery Motion

In October 2009, the County filed a motion seeking to compel further discovery responses from Carrick and monetary sanctions. In one of the document requests at

issue, the County sought the production of all documents related to Carrick's "renting out of structures" on the subject property. Carrick responded to the document request by stating: "Rental Agreements are confidential. Two blank rental forms are enclosed." The County also sought to compel further responses to special interrogatories, some of which asked for information about, and the identification of all documents evidencing, Carrick's renting of the structures. Carrick answered the interrogatories by stating: "Invasive question." In support of the motion to compel, the County explained that its complaint contained a request for "illegal rents" collected by Carrick, and that Carrick had no legal basis to withhold the requested information, including the names of every tenant. Carrick filed written opposition to the motion.

On October 26, 2009, a hearing was held on the County's motion to compel. Carrick and counsel for the County were present. The trial court granted the motion and ordered Carrick to provide copies of all rental agreements and further responses to the special interrogatories, including the name and last known address of each tenant, by November 2, 2009. Carrick was also ordered to pay a monetary sanction of $1,000 by November 25, 2009.

On October 30, 2009, Carrick and county counsel were present in court when a hearing was set for November 3, 2009, on an order to show cause regarding the production of the rental agreements and the names of tenants. That same day, the written order reflecting the granting of the County's motion to compel further discovery was filed. Additionally, Carrick filed a document entitled "Comments And Objections To Tentative Order For Further Answers To Interrogatories," in which he "urge[d]" the court to "withdraw[]" the order compelling further answers. (Capitalization omitted.)

On November 3, 2009, Carrick failed to appear for the hearing on the order to show cause. County counsel informed the trial court that Carrick had "failed to produce the requested rental contracts and names as ordered by the Court" and requested sanctions. The court set the matter for another hearing on November 6, 2009, and

ordered Carrick to appear and show cause why sanctions, including the striking of his answer, should not be imposed for the failure to appear and the failure to comply with the court's order. The court directed county counsel to give notice of the hearing on the order to show cause by overnight mail and email, and directed the clerk to send a copy of the minute order to Carrick.

On November 6, 2009, a hearing was held on the second order to show cause.[3] Carrick and county counsel were present. The trial court determined that Carrick had failed to produce the rental contracts as previously ordered, and that he "did so willfully and without legal justification." The court further found that Carrick "had no valid excuse for failing to appear at the OSC hearing set on November 3, 2009 of which he had notice." The court imposed a monetary sanction of $400 against Carrick and struck his answer to the County's complaint. A default was subsequently entered against Carrick on the County's complaint.

That same day, the trial court granted the County's motion in limine to exclude expert testimony by Claire Machado and Daniel Bronson.

The Default Hearing on the County's Complaint and the Trial on Carrick's Amended Cross-Complaint

On November 9, 2009, the trial court held a default prove-up hearing on the County's complaint. The County sought an injunction, a civil penalty, code enforcement costs, and attorney fees, but it no longer sought "illegal rents."

Following the default prove-up hearing on the County's complaint, a court trial was held on Carrick's amended cross-complaint. Bronson, who had been appointed to the County Building and Fire Code Appeals Board, and Machado, who was formerly a County code compliance investigator, testified as lay witnesses. Machado stated that

[3] The reporter's transcript for the discovery-related hearings and the hearings on the orders to show cause (October 26 and 30, and November 3 and 6, 2009) are not included in the record on appeal.

during the time that she was employed by the County, which was prior to April 2006, the County Board of Supervisors "adopted changes to the code compliance policies," and that "[o]ne of those changes included a policy not to enforce against structures built prior to 1980." Carrick testified that of the eight structures at issue on his property, four of them were completed in, or in existence as of, the 1970's, one was completed in 1986, and one was under construction in 1978 and completed in 1994. He did not testify as to when the remaining two structures came into existence.

After trial, on November 13, 2009, Carrick filed a document entitled, "Objection to Order for Sanctions for Not Producing Documents." Carrick objected to producing his rental agreements "without a complete trial" and asserted, for the first time, that it was a violation of his Fifth Amendment privilege against self-incrimination. He contended that the court's order compelling further answers, granting sanctions, and striking his answer was an abuse of discretion. Carrick also filed a written "Objection" to the granting of the County's motion in limine to exclude expert testimony by Bronson and Machado.

The Default Judgment on the County's Complaint

On February 25, 2010, a default judgment was filed against Carrick on the County's complaint. The trial court found that Carrick had "wrongfully and unlawfully constructed, maintained and/or converted eight illegal units without permits and in violation" of County Code sections 1.12.070, 13.10.140, subdivision (a), and 13.10.279, subdivisions (a) and (b), and former County Code section 12.10.125, subdivisions (a) and (q). Carrick also "wrongfully and unlawfully conducted grading and filling, failing to prevent erosion, all without permits and in violation" of County Code sections 16.20.210, subdivision (a) and 16.22.160, subdivision (a). According to the default judgment, notices of the violations were posted on Carrick's property, and the April 2006 notice of violation pertaining to the units without permits was "properly recorded" against the property. The court further found that Carrick continued to "maintain the subject property in violation" of the County Code, that the County Code "validly declares these

violations to be a public nuisance under County Code section 1.12.050," and that the County was entitled to injunctive relief.

The trial court issued a permanent injunction restraining Carrick from continuing to "unlawfully maintain the illegal units and illegal grading" in violation of the County Code. Under the injunction, the units had to be vacated, and Carrick was required to (1) demolish the units and obtain the requisite permits, inspections, and approvals for the demolition, or (2) "legalize the units" by obtaining the required permits, inspections, and approvals. Carrick was also required to "legalize and stabilize the grading OR restore the property and obtain the required permits, inspections and approvals." The court ordered Carrick to submit applications to correct the violations by June 30, 2010, and it retained jurisdiction to review Carrick's compliance. Carrick was also ordered to pay a civil penalty of $10,000, code compliance enforcement costs of $8,061.10, and attorney fees of $25,000 pursuant to the County Code.

The Tentative Statement of Decision Regarding Carrick's Amended Cross-Complaint

On February 25, 2010, the trial court also issued a written, tentative statement of decision on Carrick's amended cross-complaint. In the tentative statement of decision, the court found that Carrick owned approximately 22 acres of land on the two adjoining parcels, and that six of the eight structures on the parcels were habitable and had been "used as such," while the other two structures were a garage and a "horse shop." The court explained that Carrick's fifth and sixth causes of action, asserting laches and equitable estoppel, had been abandoned. The court generally observed that Carrick "failed to introduce evidence on a number of the allegations made" in his amended cross-complaint. Ultimately, the court concluded that Carrick had not prevailed on any of his theories and that the County was entitled to "a judgment dismissing the petition for writ of mandate and complaint for declaratory relief." The court indicated that the tentative statement of decision would become the statement of decision unless within ten days a

party specified in writing controverted issues or made proposals not covered in the tentative decision. (Cal. Rules of Court, Rule 3.1590(c)(4).) The court also directed the County to submit a proposed judgment consistent with the tentative statement of decision within 21 days.

On March 15, 2010, Carrick filed a "Comment on Tentative Statement of Decision," in which he made various arguments and requested that the court "reverse" its tentative statement of decision.

The Amended Judgment Regarding the Complaint and Amended Cross-Complaint

On March 26, 2010, Carrick filed a motion to vacate and set aside the default and default judgment that was entered against him on the County's complaint. He again asserted that to compel production of the rental agreements violated his Fifth Amendment privilege against self-incrimination, and that the orders compelling further discovery responses, granting sanctions, striking the answer, and entering a default were abuses of discretion.

On March 30, 2010, the trial court filed a statement of decision concerning Carrick's amended cross-complaint. The statement of decision was substantively the same as the court's earlier tentative statement of decision. The court directed the County to prepare and submit a proposed judgment consistent with the statement of decision within 21 days.

On April 9, 2010, Carrick filed a notice of appeal. He also filed a "Response to Default Judgment," in which he reiterated that the orders compelling further discovery responses, granting sanctions, striking the answer, and entering a default were abuses of discretion.

That same day, on April 9, 2010, an amended judgment was filed concerning the County's complaint and Carrick's amended cross-complaint. Regarding the County's complaint, the substance of the amended judgment was the same as the default judgment

that had been filed on February 25, 2010; the trial court determined that Carrick continued to maintain his property in violation of the County codes and that the County was entitled to injunctive relief, a civil penalty, code compliance enforcement costs, and attorney fees.

Regarding Carrick's amended cross-complaint, the court in the amended judgment adopted its February 25, 2010 tentative statement of decision.[4] Specifically, the court denied Carrick's petition for writ of mandate and found in favor of the County on Carrick's declaratory relief action. In the amended judgment, the court first explained that the May 2006 Protest Meeting "adequately afforded Carrick due process," the County did not violate the law when it failed to provide Carrick with an administrative appeal hearing or an appeal hearing before a "local appeal board," and the county did not violate the law by recording a notice of violation after the Protest Meeting determination. Second, the County's "As-Built" policy and permit application process were valid, did not conflict with state law, and were not preempted by it. Third, the County did not violate former section 108.8 of title 24 of the California Code of Regulations. Fourth, the main dwelling on one of Carrick's parcels was not a legal nonconforming use and he must "legalize" it or remove it. Fifth, the structures that predated the 2001 Uniform Building Code were not conforming, and the structures must conform to current building standards to be "legalized." Sixth, the structures were nuisances as defined by the County Code and the County's ordinances were not preempted by state law. The court concluded that the County was entitled to costs related to the trial on the amended cross-complaint, including code enforcement costs and reasonable attorney fees pursuant to the County Code. The court retained jurisdiction to enforce its orders and to ensure compliance with the County Code.

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[4] It is not clear from the record on appeal why the court adopted the February 25, 2010 tentative statement of decision after it had already filed a statement of decision on March 30, 2010. Regardless, as we have stated, the substance of the two was the same.

On April 14, 2010, the County filed written opposition to Carrick's motion to vacate and set aside the default and default judgment. A few days later, Carrick later filed a memorandum in support of the motion to set aside the default judgment. On April 28, 2010, the trial court denied Carrick's motion.[5]

While Carrick's appeal was pending, this court summarily denied his petition for writ of supersedeas and request for stay.

III. DISCUSSION

Notice of Appeal

As an initial matter, we first address whether Carrick has taken an appeal from an appealable order. Carrick's notice of appeal, dated April 8, 2010, and filed April 9, 2010, indicates that he is appealing from a judgment purportedly entered on March 30, 2010. The record on appeal reflects that the only document filed on March 30, 2010, was the trial court's statement of decision regarding Carrick's amended cross-complaint. An amended judgment was subsequently filed on April 9, 2010.[6]

For a reviewing court to have jurisdiction over a direct appeal, there must be an appealable order or judgment. (*Walker v. Los Angeles County Metropolitan Transportation Authority* (2005) 35 Cal.4th 15, 21.) "The general rule is that a statement or memorandum of decision is not appealable. [Citations.]" (*Alan v. American Honda Motor Co., Inc.* (2007) 40 Cal.4th 894, 901 (*Alan*).) "Reviewing courts have discretion to treat statements of decision as appealable when they must, as when a statement of

[5] The reporter's transcript of the hearing is not included in the record on appeal.

[6] A default judgment was previously filed on February 25, 2010, against Carrick with respect to the County's complaint. We note that "when a judgment resolves a complaint, but does not dispose of a cross-complaint pending between the same parties, the judgment is not final and thus not appealable. [Citation.]" (*Angell v. Superior Court* (1999) 73 Cal.App.4th 691, 698.) Thus, the default judgment regarding the County's complaint against Carrick was not appealable, because Carrick's amended cross-complaint against the County was still pending.

decision is signed and filed and does, in fact, constitute the court's final decision on the merits. [Citations.] But a statement of decision is not treated as appealable when a formal order or judgment does follow . . . . [Citations.]" (*Ibid.*)

In this case, the trial court's statement of decision was followed by the filing of an amended judgment on April 9, 2010. Thus, the amended judgment was appealable, but not the earlier-filed statement of decision. (*Alan*, *supra*, 40 Cal.4th at p. 901.) Nevertheless, we will treat Carrick's notice of appeal as filed immediately after entry of judgment. (Cal. Rules of Court, rules 8.100(a)(2), 8.104(d)(2);[7] see *Grossman v. Davis* (1994) 28 Cal.App.4th 1833, 1836, fn. 1 [citing former rules 1(a) and 2(c)].) We observe that in Carrick's opening brief on appeal, he states that he is appealing from the April 9, 2010 amended judgment. Further, the County has addressed the merits of Carrick's appeal and does not contend that Carrick's appeal should be dismissed. We therefore turn to the issues that Carrick seeks to raise on appeal.

Carrick challenges the amended judgment, in which the trial court granted injunctive relief to the County on its complaint and determined that Carrick should take nothing by his amended cross-complaint. As we have stated, with respect to his amended cross-complaint, we understand Carrick's principal arguments on appeal to be that (1) the County should have provided a hearing before an appeals board concerning the April 2006 notice of violation, (2) his unpermitted structures came within a purported "do-not-enforce policy" of the County, (3) the County Code sections that were applied to him were preempted by state law, (4) state law did not authorize the recording of the April 2006 notice of violation, (5) the County's definition of nuisance is preempted, and (6) other procedural issues warrant reversal of the amended judgment. With respect to the County's complaint, we understand Carrick's principal argument on appeal to be that the trial court abused its discretion by striking his answer to the complaint and entering a

[7] All further rule references are to the California Rules of Court.

default against him. In considering the issues raised by Carrick,[8] we will first address those pertaining to the amended cross-complaint, and then turn to those pertaining to the County's complaint.

Carrick's Amended Cross-Complaint

Whether Carrick Was Entitled to an "Appeals Board" Hearing

As to Carrick's amended cross-complaint, the trial court concluded that the County did not violate the law when it provided Carrick with the Protest Meeting, instead of an administrative appeal hearing or an appeal hearing before a "local appeal board."

On appeal, we understand Carrick to be arguing that he was entitled to a hearing before an "Appeals Board" pursuant to Health and Safety Code sections 17920.5 and 17920.6,[9] rather than the Protest Meeting that was provided by the County. Carrick asserts that "even though minimal due process is available" through the Protest Meeting procedure, "the maximum due process . . . [reflected in sections 17920.5 and 17920.6] is mandated."

The County responds that it "followed the law" when it provided the Protest Meeting.

Before addressing the substance of Carrick's argument, we first set forth the applicable standard of review where, as here, the pertinent facts are undisputed and statutory interpretation is required.

In his amended cross-complaint, Carrick sought a writ of mandate under Code of Civil Procedure sections 1085 and 1094.5. " 'A traditional writ of mandate under Code of Civil Procedure section 1085 is a method for compelling a public entity to perform a

[8] Harold Griffith filed an application for permission to file an amicus curiae brief in support of Carrick. We granted the application of Griffith, who described himself as having a "substantial interest in the outcome of this case because he is a rural county resident within the boundaries of Santa Cruz County." We have considered Griffith's arguments in connection with those raised by Carrick on appeal.

[9] Further unspecified statutory references are to the Health and Safety Code.

legal and usually ministerial duty. [Citation.]' " (*American Federation of State, County & Municipal Employees v. Metropolitan Water Dist.* (2005) 126 Cal.App.4th 247, 261 (*American Federation*).) With respect to a writ of administrative mandamus, "Code of Civil Procedure section 1094.5, subdivision (a), provides administrative mandamus is available to review a decision made by an agency as a result of a proceeding in which by law (1) a hearing is required to be given, (2) evidence is required to be taken, and (3) discretion in determining the facts is vested in the agency." (*Environmental Protection Information Center v. California Dept. of Forestry & Fire Protection* (2008) 44 Cal.4th 459, 520-521.) "Regardless of the writ involved, however, where the facts are undisputed, the reviewing court faces a question of law. 'On questions of law arising in mandate proceedings, we exercise independent judgment.' [Citation.]" (*Santa Clara Valley Transportation Authority v. Rea* (2006) 140 Cal.App.4th 1303, 1313 (*Santa Clara Valley Transportation Authority*).) Further, "to decide the meaning of [a statute], we apply our independent review without reference to the trial court's actions." (*Ibid.*) With this standard of review in mind, we turn to the question of whether Carrick was entitled to a hearing before an appeals board rather than the Protest Meeting.

The Protest Meeting procedure is set forth in the County Code. The County Code provides that "[w]henever the Planning Director has determined that a violation of the provisions of land use regulations exist, he/she may provide a notice of intent to record a notice of code violation to the owner of the property upon which the violation is located." (County Code, § 19.01.070.) Thereafter, the landowner "may request a meeting with the Planning Director or his or her designee to present evidence that a violation does not exist." (*Ibid.*) According to the County Code, "in the event that a meeting is held and after consideration of evidence the Planning Director determines that a code violation in fact exists, the Planning Director may record a notice of violation in the office of the County Recorder. The Planning Director's decision is final and not subject to further appeal." (*Id.*, § 19.01.080.)

The Health and Safety Code sections that Carrick relies on for his argument that he was entitled to a different appeal hearing or procedure (sections 17920.5 and 17920.6) are located in Division 13, Part 1.5 of the Health and Safety Code. (§ 17910 et seq.) "Division 13 of the Health and Safety Code regulates housing generally; part 1.5 of that division concerns the regulation of buildings used for human habitation and is known as the State Housing Law [(§ 17910 et seq.)]. [Citation.]" *Building Industry Assn. v. City of Livermore* (1996) 45 Cal.App.4th 719, 728 (*Building Industry Assn.*).)

Contrary to the implication of Carrick's argument, nothing in section 17920.5[10] or section 17920.6[11] specifically requires the County to have provided a hearing before an appeals board with hearing procedures different than those afforded to Carrick for the particular code enforcement decisions at issue, such as whether a notice of violation was properly issued. In comparison, section 17955 expressly provides that an "[a]ppeal" from a building department determination regarding soil issues "shall be to the local appeals board." We therefore conclude that the County was not required by sections 17920.5 and 17920.6 to provide a different appeals hearing or procedure than that afforded Carrick through the Protest Meeting procedure.

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[10] Section 17920.5 states: "As used in this part 'local appeals board' means the board or agency of a city or county which is authorized by the governing body of the city or county to hear appeals regarding the building requirements of the city or county. In any area in which there is no such board or agency, 'local appeals board' means the governing body of the city or county having jurisdiction over such area."

[11] Section 17920.6 states: "As used in this part, 'housing appeals board' means the board or agency of a city or county which is authorized by the governing body of the city or county to hear appeals regarding the requirements of the city or county relating to the use, maintenance, and change of occupancy of hotels, motels, lodginghouses, apartment houses, and dwellings, or portions thereof, and buildings and structures accessory thereto, including requirements governing alteration, additions, repair, demolition, and moving of such buildings if also authorized to hear such appeals. In any area in which there is not such a board or agency, 'housing appeals board' means the local appeals board having jurisdiction over such area."

Whether Carrick's Structures Fall Within a "Do-Not-Enforce" Policy of the County

At the trial of his amended cross-complaint, Carrick presented testimony from Machado, the former County code compliance investigator, concerning "a policy not to enforce against structures built prior to 1980." The trial court did not make any specific factual finding concerning this policy in its statement of decision, although it generally noted that Carrick "failed to introduce evidence on a number of the allegations" contained in his pleading.

On appeal, we understand Carrick to be arguing that the County had a "do-not-enforce policy" for "pre-1980-structures," and that "[m]ost of [his] buildings are pre-1980 and should come within the exclusion of [the] do-not-enforce policy."

Where, as here, relief is sought under a traditional writ of mandate (Code Civ. Proc., § 1085), " ' "we apply the substantial evidence test to the trial court's factual findings." [Citation.] Thus, foundational matters of fact are conclusive on appeal if supported by substantial evidence. [Citation.]' [Citation.]" (*American Federation*, *supra*, 126 Cal.App.4th at p. 261.) "The substantial evidence standard for review has been described by our Supreme Court as . . . [¶] . . . ' "a determination as to whether there is any substantial evidence, contradicted or uncontradicted," to support the findings below. [Citation.] We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor . . . .' [Citation.]" (*SFPP v. Burlington Northern & Santa Fe Ry. Co.* (2004) 121 Cal.App.4th 452, 462.)

"The substantial evidence standard applies to both express and implied findings of fact made by the superior court in its statement of decision rendered after a nonjury trial. [Citation.]" (*SFPP v. Burlington Northern & Santa Fe Ry. Co., supra,* 121 Cal.App.4th at p. 462.) Regarding implied findings of fact, an "appellate court will infer the trial court made implied factual findings favorable to the prevailing party on all issues necessary to support the judgment, including . . . omitted or ambiguously resolved

issues," where a party who challenges the statement of decision "fails to bring omissions or ambiguities in it to the trial court's attention . . . ." (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 59-60 (*Fladeboe*); see Code Civ. Proc., § 634.)

In this case, Carrick did not challenge the court's statement of decision on the ground that it had omitted findings on, or ambiguously resolved the issues of, whether the County had a "do-not-enforce policy" for "pre-1980-structures," and whether "[m]ost of [his] buildings are pre-1980 and should come within the exclusion of [the] do-not-enforce policy." Consequently, even assuming that a "do-not-enforce policy" would apply in this case, we will infer that the trial court impliedly found that Carrick's structures did not fall within any such purported policy. (*Fladeboe*, *supra*, 150 Cal.App.4th at pp. 59-60.)

Further, we determine that the trial court's implied factual finding was not erroneous, as Carrick failed to establish that his buildings came within a purported "do-not-enforce policy" of the County for "pre-1980-structures." Specifically, Carrick fails to point to evidence received during the trial on his amended cross-complaint that would establish that the County had such a policy in effect when the April 2006 notice of violation was issued, and that it pertained to the code violations at issue with respect to his property. Machado, the former County code compliance investigator, testified generally about the policy, but she did not testify as to the content of the policy, such as whether it applied to all County code violations and under any and all circumstances. Further, she only testified that the policy was in effect during her employment, which was prior to April 2006, when Carrick received the first notice of violation concerning the structures on his property without permits. On appeal, Carrick refers to the minutes from a County Board of Supervisors meeting in 2001, of which the trial court took judicial notice, but those minutes do not reflect whether a "do-not-enforce policy" for "pre-1980-structures" was adopted, the period of time during which the policy was in effect, or the scope of the policy. We also observe that Carrick only testified as to the date of existence

or completion of some of the eight structures on his property, and not all of them were completed by 1980.

In sum, Carrick failed to make an evidentiary showing that his buildings came within a purported "do-not-enforce policy" of the County for "pre-1980-structures," and therefore the trial court did not err by impliedly finding that Carrick's structures did not fall within any such purported policy.

Whether the County Code Was Preempted by State Law

The trial court determined that the County properly sought to enforce the County Code with respect to the violations on Carrick's property and that the County Code was not preempted by state law.

On appeal, we understand Carrick to be arguing that state law preempted the County code sections that were applied in connection with the April 2006 notice of violation concerning structures on his property.[12] The County responds that the County Code was not preempted and that the County's remedies were not limited to those provided by the State Housing Law.

Whether state law preempted the County Code sections that were applied to Carrick is a question of law that is subject to independent review. (*Santa Clara Valley Transportation Authority*, *supra*, 140 Cal.App.4th at p. 1313.) With this standard in mind, we turn to the specific contentions being made by Carrick as to the issue of preemption.

A. Whether the State Housing Law Preempted the County Codes that Were Applied to Carrick

First, we understand Carrick to be contending that the "Uniform Housing Code concerns [the] occupancy of buildings," that occupancy is defined as "the purpose for

[12] On appeal, Carrick also makes reference to grading, which was the subject of the second notice of violation posted on his property in September 2006. Carrick's amended cross-complaint did not contain any allegation concerning the second notice of violation and therefore he has abandoned any claim for relief based on that second notice of violation.

which a building . . . is used or intended to be used" (§ 18917), that "[o]ccupancy is the effect of the County Codes" that were applied, and that therefore those County Code sections were preempted. We are not persuaded by Carrick's argument.

Article XI, section 7 of the California Constitution provides that a county "may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." "An ordinance that conflicts with state law is void. [Citations.] 'Conflicts exist if the ordinance duplicates [citations], contradicts [citation], or enters an area fully occupied by general law, either expressly or by legislative implication [citations]. If the subject matter or field of the legislation has been fully occupied by the state, there is no room for supplementary or complementary local legislation, even if the subject [was] otherwise one properly characterized as a "municipal affair." [Citations.]' [Citations.]" (*Building Industry Assn.*, *supra*, 45 Cal.App.4th at p. 724.)

"[T]he Legislature has expressed an intent to fully occupy the field of building standards relating to housing." (*Building Industry Assn.*, *supra*, 45 Cal.App.4th at p. 724.) The State Housing Law defines the term "building standard" (§ 17920, subd. (c)) by reference to section 18909, which is contained within the California Building Standards Law (*id.,* § 18901 et seq.). Section 18909 generally defines "building standard" to include "any rule, regulation, order, or other requirement . . . that specifically regulates, requires, or forbids the method of use, properties, performance, or types of materials used in the construction, alteration, improvement, repair, or rehabilitation of a building, structure, factory-built housing, or other improvement to real property, including fixtures therein, and as determined by the [California Building Standards Commission]." (*Id.,* §§ 18909, subd. (a), 18912.) According to section 18909, the term "building standard" also "includes a regulation or rule relating to the implementation or enforcement of a building standard not otherwise governed by statute, but does not include the adoption of procedural ordinances by a city or other public agency relating to

civil, administrative, or criminal procedures and remedies available for enforcing code violations." (*Id.*, § 18909, subd. (c).)

"The State Housing Law [(§ 17910 et seq.)] requires the state to adopt statewide building standards for residential housing. [Citations.]" (*Building Industry Assn.*, *supra*, 45 Cal.App.4th at p. 725; §§ 17920, subd. (d), 17921, 17950.) The building standards and rules and regulations must impose "substantially the same requirements" as are contained in various uniform industry codes, including the Uniform Housing Code and the Uniform Building Code. (§ 17922, subd. (a); *Baum Electric*, *supra*, 33 Cal.App.3d at p. 577.) The requirements are applicable to every city and county. (§ 17958; *Martin v. Riverside County Dept. of Code Enforcement* (2008) 166 Cal.App.4th 1406, 1413; *Building Industry Assn.*, *supra*, 45 Cal.App.4th at p. 725.) "[A] local government is precluded from enacting building standards that differ from state standards unless a state statute specifically authorizes the local government to do so." (*Building Industry Assn.*, *supra*, 45 Cal.App.4th at p. 724; see also *id.* at p. 727; see, e.g., §§ 17958, 17958.5, 17958.7, subd. (a) [authorizing a city or county to modify building standards based on local climatic, geological, or topographical conditions but requiring the local government to make express findings to do so].)

Carrick relies on *Briseno v. City of Santa Ana* (1992) 6 Cal.App.4th 1378 (*Briseno*) to support his preemption argument. In *Briseno*, the Court of Appeal determined that the Legislature has expressed an intent "to occupy the field of occupancy standards," and thus local occupancy ordinances are generally preempted. (*Briseno*, *supra*, 6 Cal.App.4th at p. 1381; see also *id.* at p. 1382.) The occupancy standard or ordinance at issue in *Briseno* pertained to the minimum size of the dwelling unit and the number of occupants, and it conflicted with the occupancy standards set forth in the Uniform Housing Code, as adopted by the State Housing Law. (*Briseno,* at pp. 1379-1380; see § 17922, subd. (a); Cal. Code Regs., tit. 25, § 32.)

In this case, Carrick's code violations pertained primarily to the lack of permits. Carrick fails to explain how the County Codes at issue with respect to his property pertain to occupancy standards, and thus *Briseno* is not helpful to him.

Carrick attached as an appendix to his opening brief on appeal a list of County Code sections and the Health and Safety Code sections that he apparently believes preempts those County Code sections. He does not, however, clearly articulate how a particular County Code section " 'duplicates [citations], contradicts [citation], or enters an area fully occupied by general law, either expressly or by legislative implication [citations].' " (*Building Industry Assn.*, *supra*, 45 Cal.App.4th at p. 724.) He also does not explain how a particular County Code section constitutes a building standard that is different from that required under the State Housing Law. (*Building Industry Assn.*, *supra*, 45 Cal.App.4th at pp. 724, 725.)

Carrick makes reference to section 17922, subdivision (g), which is contained within the State Housing Law. This subdivision provides that "[a] local ordinance may not permit any action or proceeding to abate violations of regulations governing maintenance of existing buildings, unless the building is a substandard building or the violation is a misdemeanor." (§ 17922, subd. (g).) We understand Carrick to be arguing that the County may only seek to abate the conditions on his property if the structures were substandard.

Carrick fails to articulate how the County's code enforcement in this case falls within the meaning of section 17922, subdivision (g). Subdivision (g) pertains to a local ordinance directed at "violations of regulations governing maintenance of existing buildings." (§ 17922, subd. (g); see, e.g., Cal. Code Regs., tit. 25, § 32, et seq. [regarding maintenance of existing buildings].) The County Code sections at issue in this case primarily concerned the lack of permits. Carrick has not identified the regulations, if any, governing the maintenance of existing buildings that were violated and that would have,

pursuant to section 17922, subdivision (g), restricted the County's ability to seek injunctive and other relief in this case.

Without any pertinent explanation, Carrick also cites to article IV, section 16, subdivision (b) of the California Constitution. This section states in its entirety: "(a) All laws of a general nature have uniform operation. [¶] (b) A local or special statute is invalid in any case if a general statute can be made applicable." (Cal. Const., art. IV, § 16.) This section "has been construed to be the substantial equivalent of the equal protection clause of the Fourteenth Amendment to the United States Constitution. [Citations.]" (*City of Los Angeles v. State of California* (1982) 138 Cal.App.3d 526, 533, fn. 2.) We find no equal protection argument in Carrick's opening brief on appeal and therefore do not consider this constitutional provision any further.

Carrick next argues that the code enforcement officer who apparently inspected his property "had no credentials to determine health and safety violations nor what constituted a substandard structure." Carrick asserts that as a result, "the Inspection Warrant obtained on September 2006" from a judge of the superior court "was obtained under false pretenses." The record on appeal does not reflect that Carrick raised this argument in the trial court.

An appellate court generally will not consider a matter presented for the first time on appeal. (*Franz v. Board of Medical Quality Assurance* (1982) 31 Cal.3d 124, 143 (*Franz*).) An argument raised for the first time on appeal is generally deemed forfeited. (*Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2006) 136 Cal.App.4th 212, 226 (*Kaufman & Broad Communities*).) Moreover, "[t]he general rule that a legal theory may not be raised for the first time on appeal is to be stringently applied when the new theory depends on controverted factual questions whose relevance thereto was not made to appear at trial. [Citation.]" (*Bogacki v. Board of Supervisors* (1971) 5 Cal.3d 771, 780; see also *McDonald's Corp. v. Board of Supervisors* (1998)

63 Cal.App.4th 612, 618 [a new theory may not be raised for the first time on appeal except if it involves a question of law on undisputed facts].)

In this case, Carrick did not raise the issue concerning the "Inspection Warrant" in the trial court, and the issue involves unresolved factual questions. As a result, he has forfeited the issue on appeal.

B. *Whether the County's "As-Built" Policy or Procedure Was Preempted*

On appeal, Carrick makes reference to the County's "[a]s-[b]uilt" policy or procedure. In his amended cross-complaint, Carrick alleged that "the County's 'as-built' policies and procedures, including the requirement that a landowner with an existing unpermitted dwelling or structure bring that structure up to current building code standards in order to obtain an as-built permit," were preempted.

In determining that the County's policy did not conflict with state law, the trial court relied on section 18938.5. Subdivision (a) of that section provides that "[o]nly those building standards approved by the [California Building Standards Commission], and that are effective at the local level at the time an application for a building permit is submitted, shall apply to the plans and specifications for, and to the construction performed under, that building permit." (§ 18938.5, subd. (a); see § 18912.) Similarly, at the time of trial on Carrick's cross-action, the 2007 California Building Code provided that "[o]nly those standards approved by the California Building Standards Commission that are effective at the time an application for building permit is submitted shall apply to the plans and specifications for, and to the construction performed under, that permit." (Cal. Code Regs., tit. 24, § 101.9 (Jan. 1, 2009 Supp.); see *id.,* tit. 24, § 101.1.) Thus, by state law and regulation, the building standards applicable to a building permit were those in effect at the time the building permit was submitted, that is, standards current at the time.

The relevant provisions of the County Code are consistent with state law. County Code section 12.10.215 generally provides that the "Building Code for the County . . .

shall be the latest printing of the 2007 Edition of the California Building Code, also known as Part 2 of Title 24 of the California Code of Regulations . . . ." County Code section 12.10.215 sets forth certain "changes and exceptions" to the 2007 California Building Code, but Carrick does not contend on appeal that any of those "changes and exceptions" pertain to the County's "as-built" policy. Carrick does contend that section 17922, subdivisions (d), (e), and (f) "specifically exclude[]" existing housing from the requirement that a building permit application must comply with building standards then in effect. Carrick fails, however, to explain how any changes to his unpermitted units would fall within the scope of these subsections and how, by reference to particular language in these subsections, the "as-built" policy by the County is preempted.

C. *Whether the Notice of Violation May Be Recorded*

The trial court found that the County did not violate the law by recording the April 2006 notice of violation. On appeal, Carrick contends that the recording of the notice of violation was "[v]oid" pursuant to County Code section 1.04.080, subdivision (D), and that the recording conflicted with state law, including Government Code section 27201. The County contends that it had the authority to record the notice.

As an initial matter, we address the County's contention during oral argument that Carrick never raised the recordation issue in the trial court. We observe that Carrick's amended cross-complaint included the assertion that "the County unlawfully recorded the [notice of violation] in violation of State law . . . ." Further, during the trial on his amended cross-complaint, Carrick argued to the trial court that the County "unlawfully recorded its notice of violation in violation of state law," and he later cited Government Code section 27201 in his argument to the trial court. Moreover, the trial court concluded in the amended judgment concerning Carrick's cross action that the County "did not . . . violate the law by recording the Notice of Violation . . . ." The record thus

reflects that Carrick raised in the trial court the legality of recording the notice of violation.

Turning to the substance of Carrick's arguments, we find no merit in his first argument that the recording of the notice of violation was "[v]oid" pursuant to County Code section 1.04.080, subdivision (D),[13] as that subdivision does not pertain to the recordation of documents.

We do, however, find merit in Carrick's second argument that the recording conflicted with state law, and we conclude that Carrick is entitled to expungement of the April 2006 notice of violation. "The system for public recording of land title records was established by statute. (See Gov. Code, § 27201 et seq.) The proper operation of that system is hence one of legislative intent." (*Ward v. Superior Court* (1997) 55 Cal.App.4th 60, 66 (*Ward*).) Government Code section 27201, subdivision (a) states in part: "The recorder shall, upon payment of proper fees and taxes, accept for recordation any instrument, paper, or notice that *is authorized or required by statute or court order to be recorded*, if the instrument, paper, or notice contains sufficient

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[13] County Code section 1.04.080, subdivision (D) states: "To the extent that any action taken pursuant to this code is found by final decision of a court of competent jurisdiction to have the effect of taking or damaging property affected by such action, or to otherwise entitle the owner thereof to compensation, the action shall be null and void and of no effect in accordance with the intention and policy stated in subsection C of this section." County Code section 1.04.080, subdivision (C) states: "1. In the absence of a duly adopted resolution of necessity for eminent domain proceedings pursuant to the California Constitution and statutes implementing same, no intent to take or damage property for public use shall be implied by reason of any past or future action taken pursuant to this code. [¶] 2. It is not and never has been the intention of the board of supervisors to impose or authorize limitations or restrictions on the use of any property which would have the effect of either taking or damaging such property or which would otherwise entitle the owner thereof to damages or compensation under the United States Constitution, any statutes or judicial decisions. [¶] 3. If any action taken pursuant to this code is subsequently found by any court to entitle the owner of the affected property to damages or other compensation for such action, the board hereby declares that such action was taken, authorized, or permitted under a mistake of law and contrary to the intent expressed herein."

information to be indexed as provided by statute, meets recording requirements of state statutes and local ordinances, and is photographically reproducible." (Italics added.) In *Ward*, the Court of Appeal analyzed a prior version of the statute[14] and observed that "there is no authority for the proposition that the recorder must or may accept *unauthorized* documents for recordation." (*Ward*, *supra*, 55 Cal.App.4th at p. 66.)

In this case, the County fails to identify a statute or court order that authorized the recording of the notice of violation. (See Gov. Code, § 27201, subd. (a).) Instead, the County relies on an opinion by the Attorney General (see 63 Ops.Cal.Atty.Gen. 905 (1980)) for the proposition that "a county may enact an ordinance providing for the recordation of documents other than those specifically authorized by State law based upon [the county's] police powers . . . ."

We are not persuaded. At the time of the Attorney General's opinion, the version of Government Code section 27201 in effect did not contain any express limitation on the type of document that may be recorded. Government Code section 27201 simply stated: "The recorder shall not record any instrument, file any paper or notice, furnish any copy, or render any service connected with his office until the fees prescribed by law are, if demanded, paid or tendered." (Stats. 1947, ch. 424, § 1.) Currently, Government Code section 27201, subdivision (a) restricts recordation to any notice "that is authorized or required by statute or court order to be recorded . . . ." (Stats. 2000, ch. 924, § 5; see also Stats. 1998, ch. 779, § 4.)

We determine that the recordation of the April 2006 notice of violation was not authorized under the County's police power. A county's police power is "subordinate to

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[14] At the time *Ward*, *supra*, 55 Cal.App.4th 60, was decided, Government Code section 27201, subdivision (a) stated in part: "The recorder shall, upon payment of proper fees and taxes, accept for recordation any instrument, paper, or notice *which is authorized or required by law to be recorded*, if the instrument, paper, or notice contains sufficient information to be indexed as provided by statute, meets recording requirements of state statutes and local ordinances, and is photographically reproducible." (Stats. 1992, ch. 87, § 1, italics added.)

state law. (Cal. Const., art. XI, § 7.)" (*Candid Enterprises, Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878, 885 (*Candid Enterprises*).) "If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void. [Citations.] A conflict exists if the local legislation ' "duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication." ' (Citations omitted.) [Citation.]" (*Ibid.*)

Here, it was permissible for the County to record the April 2006 notice of violation only if the recordation was "authorized or required by statute or court order to be recorded . . . ." (Gov. Code, § 27201, subd. (a).) The County was not entitled to exercise its police power to provide or do otherwise. (*Candid Enterprises*, *supra*, 39 Cal.3d at p. 885.) In the absence of any statutory authority or court order authorizing the recordation of the April 2006 notice of violation, the County was not permitted to record it.

In a letter brief and at oral argument, the County contended that the word "statute" in Government Code section 27201 may include an ordinance, and thus County Code section 19.01.080[15] provided the County with the authority to record the notice of violation. The cases cited by the County in support of the argument that a "statute" may include an ordinance are distinguishable.

For example, the County cited *King Mfg. Co. v. Augusta* (1928) 277 U.S. 100 (*King Mfg.*). In *King Mfg.*, the United States Supreme Court concluded that it had jurisdiction to consider the constitutionality of a city *ordinance*, where its jurisdiction on writ of error generally extended to questions concerning the "validity of a *statute* of any State on the ground of its being repugnant to the Constitution, treaties or laws of the United States . . . ." (*Id.* at p. 102.) The Supreme Court reasoned that ordinances "are in essence legislative acts of the State; they express its will and have no force otherwise. As

[15] County Code section 19.01.080 generally provides that "the Planning Director may record a notice of violation in the office of the County Recorder."

respects their validity under the Constitution of the United States all are on the same plane. If they contravene the restraints which that instrument places on the legislative power of a State they are invalid, no matter what their form or by what agency put forth . . . ." (*Id.* at p. 104.) Thus, in *King Mfg.*, the Supreme Court *assumed* that the city ordinance was a valid exertion of state legislative power and it proceeded to the question of whether the ordinance was unconstitutional under the federal constitution. In contrast, in the present case, whether the County had the power to record the notice of violation under state law is at issue, as Government Code section 27201, subdivision (a) restricts the documents that may be recorded to those authorized or required by "statute or court order."

In *City of Los Angeles v. Belridge Oil Co.* (1954) 42 Cal.2d 823 (*Belridge Oil*), another case cited by the County, the California Supreme Court determined that an action arising from a city tax ordinance was subject to a three-year statute of limitations under former Code of Civil Procedure section 338, subdivision (1), which applied to "an action upon *liability created by statute* . . . ." (Italics added.) The California Supreme Court observed that (1) in another context, the United States Supreme Court in *King Mfg.*, *supra*, had "construed the word statute as including a municipal ordinance" and (2) "the city license tax, though created in the final instance by the license ordinance could not have existed but for the power delegated to the city by the state Constitution and statutes." (*Belridge Oil*, 42 Cal.2d at pp. 833-834.) In the present case, in contrast to *Belridge Oil* where power had been delegated to the city to tax, the County has not identified any constitutional or statutory authority expressly delegating to it the power to enumerate what documents may be recorded. To the contrary, Government Code section 27201, subdivision (a) restricts recordation to those documents authorized or required by "statute or court order" to be recorded.

The County also cited *City of Santa Paula v. Narula* (2003) 114 Cal.App.4th 485 (*Narula*) for the proposition that the word "statute" may include an ordinance. In *Narula*,

the Court of Appeal considered Code of Civil Procedure section 1033.5, subdivision (a)(10), which provides that attorney fees are allowable as costs if such fees are authorized by "[c]ontract," "[s]tatute," or "[l]aw." The Court of Appeal determined that a city ordinance providing for attorney's fees was a "law" as well as a "statute." (*Narula*, *supra*, 114 Cal.App.4th at p. 492.) We have no reason in this case to question the former point that an ordinance may be deemed a law. On the latter point, the Court of Appeal observed that "[c]ourts have interpreted the term 'statute' to include 'municipal ordinances' " and cited *Belridge Oil*, *supra*, 42 Cal.2d at pages 833 to 834. As we have explained, *Belridge Oil* is distinguishable from the present case concerning the County's authority to record a notice of violation.

Moreover, we observe that Government Code section 27201, subdivision (a), while providing for the recordation of documents as authorized or required by "statute or court order" to be recorded, also refers to the recording requirements of "state statutes and local ordinances." The reference to "state statutes and local ordinances" in the same subdivision suggests that the Legislature was well aware of the possible application of local recording ordinances, yet it nonetheless restricted those documents that may be recorded to those authorized or required by "statute or court order," and to the exclusion of local ordinances. (Gov. Code, § 27201, subd. (a).) In view of the Legislature's express reference to local ordinances in subdivision (a) of Government Code section 27201 with respect to recording requirements, we will not construe "statute" in another part of the same subdivision to include local ordinances where the Legislature has not so stated expressly.

The County also contends that there is a "strong public policy to support the recordation of notices of building and zoning violations," and that "[r]ecording such notices protects innocent purchasers of property by informing them of problems on the property." We do not have the power to rewrite a statute in this context. If the County believes that public policy supports the recording of documents beyond those authorized

by Government Code section 27201, subdivision (a), it should address those arguments to the Legislature.

Lastly, we observe that the County has argued that "[m]ost of Carrick's arguments," including regarding the recordation of the notice of violation, "are barred by the doctrine of res judicata." In this regard, the County asserts that its complaint "materially alleged" that it "was authorized pursuant to County Code to issue and record the Notice of Violation," that these allegations "were deemed admitted by the default," and that "a judgment by default has the consequences of res judicata."

We find the County's argument unpersuasive. First, the County did not allege that it "was authorized pursuant to County Code to issue and record the Notice of Violation." Second, even assuming this allegation was made, the County fails to explain how an admission regarding authorization under the *County Code* would preclude Carrick from making the argument that the recordation was not permitted by *state law*. Third, a final judgment was not entered with respect to the County's complaint until *after* the trial on Carrick's cross-action. There must be a final judgment on the merits in a prior action in order for that prior judgment to operate as res judicata on a subsequent action. (*Consumer Advocacy Group, Inc. v. ExxonMobil Corp.* (2008) 168 Cal.App.4th 675, 685-686.)

In sum, we determine that the County was not entitled to record the April 2006 notice of violation in the absence of a statute or court order authorizing the recordation (Gov. Code, § 27201, subd. (a)), and that Carrick is entitled to expungement of the notice of violation that was recorded on December 20, 2006.

Whether the County's Definition of a Nuisance Is Preempted

County Code section 1.12.050, subdivision (A) defines as a public nuisance "[a]ny condition caused or permitted to exist in violation of any of the provisions of this code . . . ." The trial court determined that the County may, pursuant to its police power, define a nuisance and that County Code section 1.12.050 was not preempted by state law.

On appeal, we understand Carrick to be arguing that the County's definition of nuisance is preempted by state law.

Civil Code section 3479 defines nuisance as "[a]nything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway . . . ." Further, a "public" nuisance is defined under the Civil Code as "one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal." (Civ. Code, § 3480.)

"Violations of a planning code constitute a public nuisance. [Citation.]" (*Golden Gate Water Ski Club v. County of Contra Costa* (2008) 165 Cal.App.4th 249, 255 (*Golden Gate Water Ski Club*).) A county may seek to abate a public nuisance. (Civ. Code, § 3494; Gov. Code, § 25845.) Further, "the County has a constitutional right to 'make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.' (Cal. Const., art. XI, § 7.) It therefore is not particularly relevant whether a particular violation of a zoning law is or is not a public nuisance, or whether a county, as opposed to a city, has the power to declare the violation a nuisance. Unless the enforcing authority's declaration of nuisance in some way misleads the landowner into misunderstanding the nature of the violation, it is enough that the authority has the power to act." (*Golden Gate Water Ski Club*, *supra*, 165 Cal.App.4th at pp. 255-256, fn. omitted.) Here, Carrick "cannot reasonably claim to have been misled into believing the [notice of violation] was based on the statutory definition of 'public nuisance' as opposed to the claim [he] was violating the County's

land use ordinances." (*Id.* at p. 256.) Thus, it was permissible for the County in this case to seek relief for Carrick's continuing code violations.

Other Issues

In his opening brief on appeal, Carrick mentions several issues but fails to present a well-reasoned argument supported by relevant record citations and relevant legal authority as to each issue, including regarding the apparent denials of his requests for bifurcation and for jury trial on his amended cross-complaint, the exclusion of expert witness testimony, the denial or refusal of discovery, the quashing of trial subpoenas, and the compelling of responses to discovery. For the following reasons, we treat the issues as waived and pass them without consideration.

In conducting our appellate review, we presume that a judgment or order of a lower court is correct. "All intendments and presumptions are indulged to support [the judgment] on matters as to which the record is silent, and error must be affirmatively shown." (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) Therefore, a party challenging a judgment or an appealable order "has the burden of showing reversible error by an adequate record." (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574.) " 'A necessary corollary to this rule is that if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed.' [Citations.]" (*Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.) Thus, where the appellant fails to provide an adequate record as to any issue the appellant has raised on appeal, the issue must be resolved against the appellant. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295.)

Further, the appellate brief must "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." (Rule 8.204(a)(1)(C).) " 'The appellate court is not required to search the record on its own seeking error.' [Citation.] Thus, '[i]f a party fails to support an argument with the

necessary citations to the record, . . . the argument [will be] deemed to have been waived. [Citation.]' [Citations.]" (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246 (*Nwosu*).)

The appellant must also present argument supported by relevant legal authority as to each issue raised on appeal. " '[E]very brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration. [Citations.]' [Citations.]' " (*People v. Stanley* (1995) 10 Cal.4th 764, 793.)

A litigant is not exempt from compliance with these general rules of appellate practice where the litigant is acting without an attorney on appeal. "Under the law, a party may choose to act as his or her own attorney. [Citations.] '[S]uch a party is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys. [Citation.]' [Citations]." (*Nwosu*, *supra*, 122 Cal.App.4th at pp. 1246-1247.) Thus, a self-represented litigant is not entitled to lenient treatment. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.)

Here, in view of Carrick's failure to articulate a well-reasoned argument supported by pertinent record citations and relevant legal authority as to each of the other contested rulings in the cross-action, we treat the issues as waived and pass them without consideration.

We also understand Carrick to be arguing for the first time in his reply brief that Judge Almquist should have been disqualified from the case.[16] "Points raised in the reply brief for the first time will not be considered, unless good reason is shown for failure to present them before." (*Campos v. Anderson* (1997) 57 Cal.App.4th 784, 794, fn. 3

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[16] Carrick did mention in his opening brief in a section entitled "CONCLUSION," that a "past association" of Judge Almquist "may disqualify him as judge under Code of Civil Procedure 170.1(2)(B)." We do not understand Carrick to be arguing in his opening brief, and indeed he did not assert in his opening brief, that Judge Almquist *should have been* disqualified from hearing the case and that the amended judgment should be reversed because Judge Almquist continued to preside over the case.

(*Campos*).) "The California Supreme Court long ago expressed its hostility to the practice of raising new issues in an appellate reply brief." (*Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764.) " 'Obvious reasons of fairness militate against consideration of an issue raised initially in the reply brief of an appellant.' [Citation.]" (*Ibid*.) Here, in the absence of good cause for the delay in presenting the argument concerning the disqualification of Judge Almquist until the reply brief, we will not consider it. (*Campos*, *supra*, 57 Cal.App.4th at p. 794, fn. 3; see also Code Civ. Proc., § 170.3, subd. (c)(1) [a party seeking a judge's disqualification must do so "at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification"].)

County's Complaint

With respect to the trial court proceedings concerning the County's complaint, we understand Carrick to be arguing that the court abused its discretion by striking his answer to the County's complaint and entering a default against him. Carrick contends that in *Alvarez v. Sanchez* (1984) 158 Cal.App.3d 709 (*Alvarez*), "it was concluded that striking and default judgment were too harsh a sanction for exercise of the [Fifth] Amendment protection against self-incrimination. Default gave the respondents a totally unjustified advantage in proving their claim."

Alvarez does not help Carrick. In *Alvarez*, some of the defendants invoked their Fifth Amendment privilege and refused to answer questions during trial. (*Alvarez*, *supra*, 158 Cal.App.3d at p. 711.) The trial court granted the plaintiffs' motion to strike a portion of the answer and "directed that the case proceed 'as a default matter.' " (*Ibid*.) The Court of Appeal determined that the ruling was erroneous. In examining cases from other states, the appellate court observed that "the overwhelming majority of cases hold that the striking of the defendant's answer and the resultant default procedure are too harsh a sanction for exercising" the Fifth Amendment right. (*Id*. at p. 713.) In the case before it, the Court of Appeal determined that the defendants "were cooperative in all pretrial discovery proceedings," " invoked their privilege against self-incrimination only

after they had been formally charged with criminal offenses," and "were prepared to introduce evidence to rebut [the plaintiffs'] claim." (*Id*. at p. 714.) The appellate court concluded: "The striking of the answer and resultant proceeding by default gave [plaintiffs] a totally unjustified advantage in proving their claim, for it prevented their proof from being tested by cross-examination, and by contrary evidence, both testimonial and documentary. Such conduct by the trial court effectively denied [defendants] their fundamental right to a trial simply because they invoked their constitutional right. Such ruling was unnecessary." (*Id*. at pp. 714-715.)

In the present case, the trial court did not strike Carrick's answer because he had asserted the Fifth Amendment privilege. Rather, the answer was stricken on November 6, 2009, because Carrick failed to respond to discovery as previously ordered by the court, and he "did so willfully and without legal justification." The court also found that Carrick "had no valid excuse for failing to appear at the OSC hearing set on November 3, 2009 . . . ." The record on appeal reflects that it was only thereafter, in a November 13, 2009 written "Objection" filed with the court, that Carrick first attempted to assert the Fifth Amendment privilege with respect to the County's discovery requests. By then, however, an objection to the discovery based on the Fifth Amendment was waived. (*Brown v. Superior Court* (1986) 180 Cal.App.3d 701 [discussing former Code of Civil Procedure section 2030]; see Code Civ. Proc., §§ 2030.260, subd. (a), 2030.290, subd. (a).) Because Carrick fails to articulate any other argument establishing that the discovery sanction was erroneous, we conclude that the trial court did not abuse its discretion in striking Carrick's answer.

Lastly, we observe that Carrick raises new issues in his reply brief, including that his motion to set aside the default judgment should have been granted based on a "mistake of law" by him and based on the fact that he missed a single hearing on an order to show cause. The record on appeal does not reflect that Carrick made these arguments in the trial court, and therefore the arguments are forfeited. (*Franz*, *supra*, 31 Cal.3d at

p. 143; *Kaufman & Broad Communities*, *supra*, 136 Cal.App.4th at p. 226.) Carrick also fails to offer an explanation for not raising these grounds concerning the motion to set aside the default judgment prior to the reply brief. (*Campos*, *supra*, 57 Cal.App.4th at p. 794, fn. 3.) For these reasons, we will not consider Carrick's untimely arguments.

Conclusion

We determine that the County was not authorized to record the April 2006 notice of violation in the absence of a statute or court order permitting the recordation. (Gov. Code, § 27201, subd. (a).) For that reason, Carrick is entitled to expungement of the notice of violation that was recorded on December 20, 2006. We therefore conclude that his petition for a peremptory writ of mandate should have been granted to the extent it sought to compel the County to expunge the notice of violation that was recorded on December 20, 2006. As we have explained, we find no merit in Carrick's other contentions on appeal.

IV. DISPOSITION

The April 9, 2010 amended judgment is reversed insofar as it concludes that the April 2006 notice of violation was properly recorded by the County. The matter is remanded to the superior court with directions to enter a new judgment (1) deleting any finding in support of that conclusion, and (2) granting Carrick's petition for a peremptory writ of mandate to the extent it sought to compel the County to expunge the April 2006 notice of violation that was recorded on December 20, 2006. The parties are to bear their own costs on appeal.

____
Duffy, J.

WE CONCUR.

____
Mihara, Acting P. J.

____
Lucas, J.[*]

[*] Judge of the Santa Clara County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.