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To: Leighton Hills, Muir Beach Community Services District

From: Emily Longfellow

Date: January 22, 2021

Re: Supplemental Analysis Regarding Seacape Rights-of-Way

This supplemental memo addresses easement issues regarding the Seacape Subdivision. For an analysis of the enforceability of covenants, please see main memo ("Memo 1").

As a threshold issue, the Muir Beach Community Services District's ("CSD") interests in Seacape easements – like that in Bello Beach – are uncertain and currently unestablished. A legally binding decision by a court, or a recorded settlement, is necessary to establish property interests here. Prior to exercising any control over property, the CSD should establish a property interest pursuant to, for example, a quiet title action or settlement. (Memo 1, p. 9-10.) Here analysis is given regarding potential arguments available to the CSD and the likelihood of success.

By way of factual summary, the Seacape subdivision map (the "Seacape Map") was filed in 1965, and the majority of the lots were sold to private parties. The CSD has fee ownership rights to the park parcels identified in the Seacape subdivision map. The Seacape Map contains several dedicated rights-of-way, including Seacape, Ahab, and Starbuck Drives that were accepted by the County of Marin. Additionally, the Seacape Map offered for dedication various easements, including drainage, utility, and pedestrian easements that were not accepted by the County.

1. Adjacent Property Owners Likely Own Fee Title to Middle of Rights-of-Way.

As the case with lower Muir Beach, adjacent landowners in Seacape likely own fee interest to the land underlying the easement areas to the center of the road. Generally, conveyance of a lot that abuts a public right-of-way will transfer to the adjacent property owner fee ownership to the underlying land to the center of the right-of-way unless a different intent appears on the face of the grant. (Civ. Code, § 1112; *see*, i.e., *Neff v. Ernst* (1957) 48 Cal.2d 631, 635; *Safwenberg v. Marquez* (1975) 50 Cal.App.3d 301, 306; *Besneatte v.Gourdin* (1993) 16 Cal.App.4th 1277, 1281 [pedestrian alley use].) Here, it is understood the lots in the Seacape subdivision were sold by reference to lot number, rather than by a metes and bound description. There is no evidence of a contrary intent to convey the underlying property on the face of the grants. Therefore, fee title ownership to the middle of the easement is likely held by adjoining

property owners. Please note that ownership of the underlying fee does not impact easement issues, as any uses allowed under an easement (either express or implied) will control.

2. No Complete Dedication of Easements for Public Use; May Argue Common Law Dedication.

Noted above, although the County accepted the offer to dedicate rights-of-way including Seacape, Ahab, and Starbuck drives, it did not accept the offer of various pedestrian and drainage easements.

A complete dedication requires an offer and acceptance, which may be implied. (*Union Transp. Co. v. Sacramento County* (1954) 42 Cal.2d 235, 240; *Cherokee Valley Farms v. Summerville Elementary Sch. Dist.* (1973) 30 Cal.App.3d 579, 584-585.)

Here, because the County did not accept the offer to dedicate pedestrian lanes and drainage easements, there is currently no complete dedication. However, as explained below – and similar to the Bello Beach Subdivision – the CSD has a reasonable argument that there has been a common law or implied dedication for public use of the pedestrian and drainage easements.

As background, a formal statutory acceptance of an offer to dedicate a public easement requires explicit acceptance by the government. (Subdivision Map Act, Gov. Code, § 66410 *et seq.*) An explicit offer of dedication is made when, for example, a developer offers a right-of-way for public use on a subdivision map. (*See*, i.e., *McKinney v. Ruderman* (1962) 203 Cal.App.2d 109.) Here, there was a formal offer of dedication, but there has been no formal acceptance of pedestrian and drainage easements.

Notwithstanding, a court may find a common law or implied acceptance by public use.[1] (*See*, i.e., *Hanshaw v. Long Valley Rd. Assn.* (2004) 116 Cal.App.4th 471, 477 [generally disapproved of for post-1972 use in *Sher v. Burke*]; *McKinney v. Ruderman* (1962) 203 Cal.App.2d 109; *Brumbaugh v. City of Imperial* (1982) 134 Cal. App. 3d 556.) As one court has explained, "the rule is that an incomplete or defective statutory dedication, or an ineffectual attempt to make a statutory dedication, will, when accepted by the public ... operate as a common law dedication." (*Hanshaw* at 477 [internal quotations omitted; citing *People v. County of Marin* (1894) 103 Cal. 223, 229-230].)

The degree of public use necessary to establish a common law acceptance is less than in the implied dedication context, where both the offer and acceptance are implied by public use. (*See*, Memo 1, p. 3-4.) The *Hanshaw* court explained that under an implied dedication theory, the offer of dedication is implied by a public use. (*Hanshaw* at 482.) For an implied dedication, the proponent must establish use by various members of the public sufficient to put the property owner on notice that the public is using the property as if it were a public right-of-way. (*Hanshaw* at 482.) In contrast, the common law acceptance of an explicit offer may stand on a

[1] Some courts appear to use the term "implied dedication" and "common law dedication" interchangeably. This does not impact the analysis here, and courts often find a "common law dedication" when the offer to dedicate was explicit.

lesser showing of public use. (*Id.* ["…there is no need to satisfy the same burden as in cases dependent on adverse usage."].)

For example, in *Hanshaw*, the court upheld a common law dedication when the county refused a statutory offer to accept a road, but acceptance was established by public use. Evidence showed that 80 lots were sold under a subdivision map, and the road offered for dedication was freely used by those owning parcels in the subdivision.

Additionally, acceptance by public use must be shown within a reasonable time from the date of the offer of dedication, which issue is fact-specific. (*McKinney* at 116 [court found acceptance by public use was within a reasonable time of the offer in 1891, when the public began using by at least 1915].)

Please note that pursuant to statutory and case law, public use of private, non-coastal property cannot ripen into a common law or implied acceptance of dedication after March 4, 1972. (*Scher v. Burke* (2017) 3 Cal.5th 136, 144; Civ. Code, § 1009(b).) There are exceptions where post-1972 use will be considered for coastal property if the owner did not try to prevent, and in circumstances where a public entity used public funds on visible improvements. Here, the court would examine public use from the time of the offer, 1965, through March 4, 1972, and consider the CSD's expenditure of public funds. The analysis would be fact-specific.

Here, there is a reasonable argument that the Seacape pedestrian, utility, and drainage easements would be considered common law dedications based on public use. First, there has been an explicit offer of dedication for pedestrian, utility, and drainage easements. Although the offer was rejected by the County, there is a history of public use. This use may constitute an implied, or common law, acceptance of the offer of dedication. It is understood that pedestrians have used the pedestrian lanes in Seacape starting in 1965. Similarly, the public has benefited from, and thus "used" the drainage and utility easements, since that time. Therefore, it appears reasonable that a court may find a common law dedication due to public use.

3. Scope of Easements Are That Shown on Map.

When an explicit offer of dedication is accepted by common law or implied public use, the scope of the easement is that shown on the map. (*See*, i.e., *Hanshaw* at 483.)

For example, in *Hanshaw*, the court held that there was a common law acceptance of an explicit offer to dedicate public roads, and that the scope of the roads was not limited by historical use. The *Hanshaw* court contrasted cases of implied dedications where the offer of dedication was implied, and therefore it was necessary to determine the scope based on historical use. (*Id.*) Because the offer was explicit, the court held that the scope of the roadway was as described in the offer of dedication. (*Id.*)

Here, there was an explicit offer of dedication. If determined that it was accepted under the common law by public use, the scope of the pedestrian, utility, and drainage easements would be that shown on the map.

4. CSD Authorization of Use in Rights-of-Way.

Noted above, the CSD currently does not have any established easement interests in lower Muir Beach, or the Seacape subdivision. As explained in Memo 1, there is a likely successful argument that rights-of-way in lower Muir Beach were dedicated to public use by implied dedication. Similarly, there is a likely argument that certain pedestrian, utility, and drainage easements exist for public use under the common law in Seacape.

To the extent these easements become legally established, the CSD may seek to formally accept, by resolution, maintenance of these rights-of-way. (Memo 1, p. 9-10.) Generally, a property owner who owns fee title may issue a revocable license for the private use of property. There appears to be no case law directly on point regarding whether a public entity may issue revocable licenses for the use of public easement property. However, in cases where there is a right-of-way easement interest, such as a road, public entities may issue an encroachment permit – which is similar to a license – authorizing the private use of the public right-of-way easement. The level of use allowed must be consistent with the easement, and not interfere with its intended use.

If public easement interests were established, the CSD may seek to issue encroachment permits for certain uses to the extent they did not interfere with the purpose of the rights-of-way. This issue would have to be analyzed on a case-by-case basis.

CASE LIST.

1. *Besneatte v.Gourdin* (1993) 16 Cal.App.4th 1277.
https://law.justia.com/cases/california/court-of-appeal/4th/16/1277.html

2. *Cherokee Valley Farms v. Summerville Elementary Sch. Dist.* (1973) 30 Cal.App.3d 579.
https://law.justia.com/cases/california/court-of-appeal/3d/30/579.html

3. *Hanshaw v. Long Valley Rd. Assn.* (2004) 116 Cal.App.4th 471.
https://www.courtlistener.com/opinion/2276484/hanshaw-v-long-valley-road-assn/

4. *McKinney v. Ruderman* (1962) 203 Cal.App.2d 109.
https://www.courtlistener.com/opinion/2200322/mckinney-v-ruderman/

5. *Neff v. Ernst* (1957) 48 Cal.2d 631.
https://scocal.stanford.edu/opinion/neff-v-ernst-26749

6. *Safwenberg v. Marquez* (1975) 50 Cal.App.3d 301.
https://law.justia.com/cases/california/court-of-appeal/3d/50/301.html

7. *Union Transp. Co. v. Sacramento County* (1954) 42 Cal.2d 235.
https://scocal.stanford.edu/opinion/union-transp-co-v-sacramento-county-32727