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To: Leighton Hills, Muir Beach Community Services District

From: Emily Longfellow

Date: January 22, 2021

Re: Analysis of Muir Beach Rights-of-Way Issues

I. INTRODUCTION.

Due to its unique development history, Muir Beach contains several rights-of-way and pedestrian paths. These routes have historically been used by the public for many years as roads (such as Sunset Way, Pacific Way, and Cove Lane) and long-standing pedestrian paths that provide beach access along walkways and stairs. In many cases, ownership and control over these rights-of-way have been uncertain. Issues have been raised regarding the ownership and control over these various rights-of-way and pedestrian lanes, particularly with respect to the ability to remove, or compel the removal of, encroachments. This memo addresses the possible interests the Muir Beach Community Services District (the "CSD") may have in such rights-of-way.

II. BELLO BEACH SUBDIVISION; LOWER MUIR BEACH.

A. Background.

In 1922, then-property owner Antonio Nunes Bello created the "Bello Beach Subdivision Map" (the "Map"), which was approved by the Marin County Board of Supervisors in 1923. The Map delineates rights-of-way and pedestrian lanes, including Sunset Way, Pacific Way, and Cove Lane. The Map does not offer these rights-of-way or lanes for dedication to the public, specifically providing:

> "[n]one of the roads, alleys, streets or highways shown thereon are intended for public use, but that each and all of the roads, alleys, turning places and other areas delineated on said map are hereby granted as private ways appurtenant to said lots for all of the purposes of ingress or egress thereto or therefrom for which a private right of way is usually and ordinarily given."

Consistent with the terms of the Map, the Marin County Board of Supervisors found the rights-of-way were not offered for dedication for the public, stating that "none of the streets,

lanes, roads or alleys shown thereon having been offered for dedication for public use…." The subdivided property on the Map was then sold to individuals, and it is understood that the deeds reference the subdivision lot numbers on the Map.

Over the years, Sunset Way and various pedestrian lanes have been improved and maintained by both private property owners and, in particular, the CSD. For example, Sunset Way was paved in the early 1970's by the CSD. It is uncertain whether the adjacent property owners funded the paving project, or whether the work was funded in whole or in part by the CSD. Since approximately 1972, the CSD has spent funds to maintain Sunset Way, including performing patch and re-paving work, installing speed bumps, and completing drain cleanings. During this time, adjoining property owners continued to perform maintenance and improvement work on Sunset Way.

In 1982, the CSD adopted a policy providing that it would complete minor work to keep roads safe for emergency vehicle use, and that residents could continue with additional repairs at their own cost. "[I]t is the policy of the CSD that general tax revenues shall only be used for the minor work necessary to keep the roads safe for the passage of emergency vehicles…Residents who wish improvements beyond such minor repairs…may join other residents adjoining their road to cooperatively finance and undertake the improvements, with the advice and supervision of the MBCSD if desired, but no funding."

B. Current Legal Status of Lanes and Rights-of-Way in Bello Beach Subdivision.

Currently, the adjacent property owners in the Bello Beach Subdivision have private easement rights of ingress and egress over the rights-of-way, in addition to owning title to the land underlying the rights-of-way to the center of the street.

By the description in the Map, each property owner was given an express appurtenant easement to use abutting roads and alleys for ingress and egress. The Map states, "the roads, alleys… delineated on said map are hereby *granted as private ways appurtenant to said lots* for all of the *purposes of ingress or egress* thereto or therefrom." As an appurtenant easement, the rights to the easement run with the land, and are automatically transferred to subsequent property owners upon the sale of the lot.

An easement is an interest in real property that entitles the easement holder the right to use property for a particular purpose. It does not confer fee title to the land below the easement. As easement holders, the current adjacent property owners have standing to enforce their private easement rights in court, and the court would likely order the removal of any obstruction that interfered with their rights to ingress and egress, and possibly compel improvements to the extent necessary to ensure that the easement rights of ingress and egress are maintained. Please note that the CSD does not currently have any established easement rights.

Additionally, it appears from the facts that these property owners also have a fee ownership interest from the adjacent lot line to the middle of the right-of-way. As a general rule, the conveyance of a lot that abuts a right-of-way sold by reference to lot number, and not by a metes and bounds description, transfers fee ownership of the underlying land to the center of the

right-of-way, unless a different intent appears from 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.) This rule applies even when the street is not public. (*See*, i.e., *Anderson v. Citizens Sav. Co.* (1921) 185 Cal. 386.)

Here, it appears that the lots in the Bello Beach Subdivision were sold by lot number and therefore fee title ownership to the underlying land rests with the adjacent property owners. Moreover, there is no indication of a different intent. For example, the Map does not state or otherwise indicate that Mr. Bello sought to retain fee ownership of the land under the rights-of-way. Please note that the determination of who has fee title ownership of the underling property does not affect any easement rights that may be asserted by the CSD, a private party, or the public by an implied dedication. The party who owns fee interest in land underlying an easement may not act in a way to violate the rights granted under the easement.

C. Implied Dedication Bello Beach Subdivision.

1. Implied Dedication.

Under common law, a dedication may be either express or implied. (*Scher v. Burke* (2017) 3 Cal.5th 136, 141.) Here, noted above, there was no express offer of dedication. Therefore, an analysis of implied dedication is required.

Under certain circumstances, a private property owner may impliedly dedicate property to the public. (*Gion v. Santa Cruz* (1970) 2 Cal.3d 29; *Scher v. Burke* (2017) 3 Cal.5th 136, 141.) This common law dedication of land for public use need not comply with any statutory requirements or be in writing. (*Friends of Martin's Beach v. Martin's Beach* (2016) 246 Cal.App.4th 1312, 1342-1343; *Smith v. City of San Luis Obispo* (1892) 95 Cal. 463.) Instead, the evaluation focuses on whether the facts and circumstances show an intent to offer the property for public use, and an acceptance of the offer. (*Id.*) The common law of implied dedication applies not only to streets, but to other property used by the public such as trails. (*See*, i.d., *Friends of Hastain Trail v. Coldwater Development LLC* (2016) 1 Cal.App.5th 1013, 1027 and *Friends of the Trails v. Blasius* (2000) 78 Cal.App.4th 810, 820.)

An implied common law dedication requires both an offer and acceptance of the offer by the public, both of which may be either express or implied. (*Scher* 3 Cal.5th at 141; *County of Los Angeles v. Berk* (1980) 26 Cal.3d 201, 219.) Dedication and acceptance are fact-specific. It must be established that the property owner either expressly or impliedly manifested an intention to offer the property for public use, and that there was an acceptance of this offer by the public. (*Prout v. Dept. of Transportation* (2018) 31 Cal.App.5th 200, 213 [citing *Cherokee Valley Farms, Inc. v. Summerville Elementary School Dist.* (1973) 30 Cal.App.3d 579, 584-585].)

There are two types of implied dedications. An offer of dedication may be "implied-in-fact" or "implied-in-law." (*Scher* at 141; *Prout* at 213; *Hays v. Vanek* (1989) 217 Cal.App.3d 272, 281.)

First, a dedication may be "implied-in-fact" if there is proof the property owner gave actual consent to the dedication. (*Scher* at 141; *Union Transp. Co. v. Sacramento County* (1954) 42 Cal.2d 235, 241; *Gion v. City of Santa Cruz* (1970) 2 Cal.3d 29, 38; *Prout* at 213.) For example, evidence of an actual intent to dedicate streets will be found when, although there is no formal offer of dedication, the map or plot plan shows streets between parcels, which are subsequently used by the public. (*See*, i.e., *Hays* 217 Cal.App.3d at 282.) In the Bello Beach Subdivision, however, there is no implied-in-fact dedication because Mr. Bello specifically indicated on the Map that the roads and pathways were not dedicated for public use.

Second, a dedication may be "implied-in-law" when the public has openly and continuously used the property for a period of time, even in the absence of any affirmative act of dedication by the owner. (*Scher* at 141; *Gion* at 38; *Prout* at 213.) In such cases, an implied dedication is both made and accepted by a history of public use. (*Scher* at 141-142; *Gion* at 41.) As the California Supreme Court has explained, "[t]he question then is whether the public has used the land for a period of more than five years with full knowledge of the owner, without asking or receiving permission to do so and without objection being made by anyone." (*Gion* at 38 [internal quotations omitted].) An implied-in-law dedication is found in various circumstances where the public has openly and continuously used property for a period of time, without effectual efforts by the property owner to prevent such use. (*Friends of Martin's Beach v. Martin's Beach* (2016) 246 Cal.App.4th 1312.)

Please note that California Civil Code section 1009 constrains the circumstances under which use may ripen into an implied dedication after 1972. Generally, the use of private, non-coastal property after 1972 may not ripen into an implied dedication. (Civ. Code, § 1009(b); *Scher* at 144.) Similarly, public use of coastal property will not evince an implied dedication if the property owner posted signs or took other action to prevent use. (Civ. Code, § 1009(f); *Scher*.) However, there may be circumstances where public use of coastal property after 1972 can add to evidence showing an implied dedication if the property owner did not take steps to prevent such use. Evidence would require analysis on a fact-specific basis. Additionally, evidence that a governmental entity used private lands, or expended public funds on visible improvements, may constitute evidence of a prescriptive or vested right to continue use after five years, in the absence of either express permission by the owner, or reasonable steps by the owner to prevent such use. (Civ. Code, § 1009(d); *Scher*.) Here, Civil Code section 1009 does not bar the finding of an implied dedication. For example, there is evidence that the public has historically used the roads and pathways in lower Muir Beach prior to 1972. Additionally, the public has used coastal property without property owners taking steps to prevent public use. Finally, as explained further below, there is evidence that the CSD expended public funds on maintaining roads and paths, and that these improvements were visible. The analysis would vary based on the facts presented.

An implied-in-law dedication is similar to a prescriptive easement in that an intent to offer a dedication, and public acceptance thereof, is shown by the public's open and continuous use of property for a period of over 5 years. (*Union Transp. Co. v. Sacramento County* (1954) 42 Cal.2d 235, 240.) However, unlike the law of prescriptive easements, an implied dedication does not require a showing that the use of the property was under a claim of right. (*Gion* at 39.) In the prescriptive easement context, a party claims adverse possession over an easement right by

acting as if he/she actually claimed legal right to the property in a personal capacity. (*Gion* at 39.) In contrast, the test for an implied dedication is not personal. It must only be shown that the *public* used the property as if it were public land. (*Gion* at 39; *Scher* at 141; *Bess v. Humboldt* (1992) 3 Cal.App.4th 1544, 1550.) For example, if the property at issue is a road, it must be shown that the public used the road as if it were a public road. (*Gion* at 39.)

In the case of roads, an implied-in-law dedication will usually be found where the public has used the road in the same manner as a public road and a government has assumed some responsibility for maintenance.

For example, in *Bess v. County of Humboldt* (1992) 3 Cal.App.4th 1544, the court found an implied dedication of a road that was maintained by the county, which traversed private property and was used by the public since the 1920's to access a river. After purchasing the property in the 1960's, the property owner began blocking access in the 1980's and later brought a trespass lawsuit against the county. The court agreed with the county's argument that the road was public due to an implied dedication, evidenced by long and open public use, and maintenance of the road by the county.

Similarly, in *Union Transp. Co. v. Sacramento County* (1954) 42 Cal.2d 235, the court found an implied dedication of a road and bridge that were historically used by neighboring ranchers and other members of the public, and where the county had performed some maintenance work over the years. The case was brought by a trucking company after a bridge collapsed, arguing that the county was at fault for failure to maintain the road and bridge that had been impliedly dedicated to the county.

In contrast, there will be no implied dedication if use is so limited that it does not reflect how the public would typically use the property. For example, in *Friends of Hastain Trail v. Coldwater Development LLC* (2016) 1 Cal.App.5th 1013, the court found no implied dedication of an abandoned fire road when the only use was sporadic and infrequent hiking by a small number of people.

In addition to roads, implied dedications have been found for public pedestrian paths and boardwalks. For example, in *Gion* the court found an implied dedication which included a pedestrian boardwalk. Similarly, in *Blasius* the court found an implied dedication of an easement interest for public use of trail used for walking, bike riding, and horse riding.

In finding an implied-in-law dedication, courts frequently look at evidence the public relied on the local government for maintenance. (*Gion* at 39 [evidence that "the public looked to a governmental agency for maintenance of the land is significant in establishing an implied dedication to the public."].) For example, in *Gion*, the court found an implied dedication for public use of land including a parking lot area, a road, and recreational use, where it was shown that the public looked to the city to maintain the property and the city had performed regular maintenance and improvement work. The city's work included grading and paving, landscaping, and installing pedestrian signs. The court noted that, "the variety and long duration of these activities indicate conclusively that the public looked to the city for maintenance and care of the land and that the city came to view the land as public land." (*Gion* at 43-44.)

Similarly, in *Bess*, the court noted that Humboldt County had performed routine maintenance over many years, and the public believed that the county was responsible for road maintenance. (*Bess* at 1548.) Additionally, in *Smith*, the court found an implied dedicated public easement and noted that the city had consistently repaired and improved the road. (*Smith* 95 Cal. at 593.)

Courts may even find an implied intent to dedicate property in the face of contrary evidence that the owner did not intend to dedicate property to the public. (*City of Los Angeles v. McCollum* (1909) 156 Cal. 148, 152-153 [refusing owner's testimony of intent where objective facts supported an intention to dedicate]; *City of Laguna Beach v. Consolidated Mortg. Co.* (1945) 68 Cal.App.2d 38, 46-47.)

For example, in *City of Laguna Beach*, the city brought a quiet title action against property owners for rights to the boardwalk fronting the beach. Initially the property owners maintained the boardwalk with their own funds. However, after the city was formally incorporated, it assumed responsibility for larger repairs and maintenance, while the property owners continued to fund minor repairs. The property owners argued that they did not intend to dedicate the boardwalk for public use. The court sided with the city and determined that whatever the property owners' original intention, the intention to dedicate the walkway to public use was evidence by acts and conduct over many years

Here, it appears likely that a court would find an implied dedication for Sunset Way and the pedestrian paths in Lower Muir Beach. As in the cases of *Gion, Scher,* and *Bess,* there is a long history of the public using both Sunset Way and the pedestrian paths as if they were public property. Additionally, unlike *Friends of Hastain Trail*, many residents and visitors have frequently used Sunset Way and the paths over a period of many years likely beginning in the 1920's. Moreover, as in *Gion* and *City of Laguna Beach*, residents look to the CSD to maintain Sunset Way and the lanes. It is noted that Mr. Bello specifically did not dedicate Sunset Way or the paths to the public, as stated on the Map. The County did not accept any rights-of-way for this subdivision either. However, as in *City of Los Angeles v. McCollum*, and *City of Laguna Beach*, it may be argued that the long history of public use supersedes any indication of an intent not to dedicate the rights-of-way.

2. Scope and Nature of Implied-in-Law Dedication.

Both the nature of a property interest impliedly dedicated to public use, and the scope of the use, depends on how the public has historically utilized the property.

Regarding the nature of property interest, in cases involving roads and pathways the courts will usually find that an implied dedication gives rise to an easement interest in favor of the public.[1] (*Friends of the Trails*, 78 Cal.App.4th at 820-822; *Burch v. Gombos* (2000) 82

[1] There have been rare cases where an implied dedication established ownership of the underlying property in fee. For example, in a quiet title action, the court in *Cherokee Valley Farms v. Summerville Elementary School District* (1973) 30 Cal.App.3d 579, found that there had been an implied dedication for use of the property as a school that vested a fee interest in the school district. The school district's predecessor in interest constructed a school on the subject property in 1891, and the court reasoned that when property is dedicated for school construction, a fee

Cal.App.4th 352, 362 ["prior to 1972 adverse public use of a road for more than five years generally gave rise to an implied dedication of a public easement to use the road."]; *Hays v. Vanek* (1989) 217 Cal.App.3d 271, 284 n. 7.) For example, in *Gion*, the court held that the public gained an easement interest for recreational use in land bordering the coast. In *Bess,* the court held that implied dedication conferred a road easement for the benefit of the public to access a river.

An implied dedication easement will have priority over other property interests on the land that conflict with the scope of the implied easement. For example, the party that owns fee title to the underlying property does not have the right to prevent the public use established by an implied dedication easement for road use. If an implied dedication for a roadway easement is established, then the underlying fee owner would not have the right to interfere with the roadway use, the scope of which is established by historic use. In fact, in *Bess* the court confirmed that the implied dedication easement trumps conflicting interests in another easement across the property, as well as the fee ownership interests in the underlying property.

Additionally, in the case of an implied-in-law dedication – where both the offer and acceptance are implied by public use – the scope of historical use will determine the scope of dedicated easement. (*Burch*, 82 Cal.Ap.4th at 362 [scope of implied road easement limited to recreational access for the public, and did not include use of commercial logging operations].) For example, the width of a road will be limited to the portion used by the public. (*Id.*)

Here, if a court were to find an implied-in-law dedication, it would likely be an easement interest in the public for the roads and lanes in the Bello Beach Subdivision. The fee title ownership to the underlying property would likely remain vested in the adjacent property owners, as explained above. The scope of use would be determined based on how the public historically used the property. For example, Sunset Way would include vehicle travel and pedestrian use. The lanes would include pedestrian use. Additionally, depending on the facts, it could be argued that the scope of a particular a pedestrian lane is wider than that necessary for only pedestrian use. For example, a court may consider the implied dedication of an area the public has historically used for other recreational purposes, such as a view area or pathway resting point. The particular scope of a right-of-way or lane would depend on how the public has used that land over time, which would be established based on the facts of each case.

Because the scope is determined by usage, the width would be what has historically been used, and would not extend the full width of what is indicated on the Map, to the extent it was not utilized by the public. As discussed in below, a court would make all of these determinations based on the evidence presented in a quiet title action.

D. Prescriptive Easement.

A prescriptive easement is an easement upon another's property that is acquired by continued use without the owner's permission for a defined period of time. A party claiming a

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interest is typically conferred. Here, in contrast, the property at issue in Muir Beach consists of roads and lanes, which are typically easement interests. Therefore, any implied dedication would likely not confer fee title interest but rather an easement interest.

prescriptive easement must show that it used the property in an open, notorious, continuous, and adverse manner for an uninterrupted period of five years. (Code Civ. Proc., § 321; *Warsaw v. Chicago Metallic Ceilings, Inc.* (1984) 35 Cal.3d 564, 570; *Ranch at the Falls, LLC v. O'Neal* (2019) 38 Cal.App.5th 155, 180.) Stated another way, the elements of a prescriptive easement are the "open and notorious use that is hostile and adverse, [and] continuous and uninterrupted for the five-year statutory period under a claim of right." (*Felgenhauer v. Soni* (2004) 121 Cal.App.4th 445, 449 [internal quotations omitted].) However, a "claim of right" does not require a belief that the use is legal, only that the property was used without the underlying property owner's permission. (*Felgenhauer*, 121 Cal.App.4th at 450.)

For a use to be considered adverse or hostile, it must be shown that the property owner has not consented to the use by, for example, granting a lease or license. (*Aaron v. Dunhan* (2006) 137 Cal.App.4th 1244, 1249-1250; *Felgenhauer* at 450.)

As with an implied dedication, the elements establishing a prescriptive easement are fact-specific. An essential element in establishing a prescriptive easement is the visible, open, and notorious use sufficient to give notice to the property owner of the adverse use occurring. (*McLear-Gary v. Scott* (2018) 25 Cal.App.5th 145, 159.)

A prescriptive easement claimant does not receive title to the property, but rather an easement interest. (*Blackmore v. Powell* (2007) 150 Cal.App.4th 1593.) With limited exceptions, the scope of a prescriptive easement is determined by the use during the prescriptive period. (*McLear-Gary*, 25 Cal.App.5th at 160.) Like an implied dedication, the scope of a prescriptive easement is established by the use through which it was acquired. (*Burch,* 82 Cal.Ap.4th at 362.)

Also like an implied dedication, a party must file a quiet title action to establish rights to a prescriptive easement. (*See*, i.e., *Ranch at the Falls* [property owner brought quiet title action for both express and prescriptive easement].)

The majority of prescriptive easement case law involves a private party claiming a prescriptive easement interest against another private party. As noted above, there is significant overlap in the legal concepts of an implied dedication for an easement and a prescriptive easement. Therefore, cases where a government claims an easement right (in a roadway, for example) tend to be analyzed as an implied dedication based on historical public use. The historical use is by the public, and not the public entity itself. However, where it is shown that the government is the one that exercised control over the area, a court may find a prescriptive easement in favor of the governmental entity.

A court may grant a prescriptive easement in favor of a governmental entity where it is shown the government exercised control over the property. (*See*, i.e., *Otay Water Dist. v. Beckwith* (1991) 1 Cal.App.4th 1041 [in quiet title action, water district was awarded prescriptive easement after it had built reservoir on portion of property it did not own; use was by water district on its own behalf, with no use by public].)

It appears that a court could find the CSD has a prescriptive easement over Sunset Way and those pedestrian paths that it has maintained. The CSD has openly maintained, improved, and re-paved Sunset Way over many years. The scope of any prescriptive easement would be the location over which the CSD has exerted control and performed maintenance or improvement work. In addition to maintenance work, over the years the CSD has exerted control by prohibiting any parking requirement imposed by the County of Marin Planning Department from being located within the easement area as indicated on the Map. The Marin County Planning Department has accepted this, and has not required parking within the defined easement on the Map. It could be argued that based on this control, the scope of a prescriptive easement would extend beyond the roadway itself to the boundary of the easement as indicated on the Map. The scope of the easement would be determined based on the individual facts of the case.

If the CSD were to seek a prescriptive easement in the rights-of-way and paths, it would have to establish that it used the property for a period of five or more years without permission of the property owners. These arguments would necessarily be fact-specific based on the right-of-way being claimed. In the case of Sunset Way, the width may be established by the area the CSD has paved and repaired, and the typical width used by the public. Similarly, the lanes would include the width used by the public, which would include stairway and railing improvements. Again, a court would make these determinations based on the evidence presented in a quiet title action.

E. Quiet Title Action.

A quiet title action is a lawsuit filed to determine adverse claims to real property. Where the nature of interests to property are unclear, a quiet title action is the legal mechanism to establish the nature of property interests. The quiet title judgment is then filed with the county recorder's office, finalizing the property interests.

The basic procedures and pleading requirements are statutory, and found in Code of Civil Procedure sections 760.010 to 764.080. The plaintiff in a quiet title action must name all defendants known or unknown who may claim an interest in the property. (Code Civ. Proc., §§ 762.010, 762.020.) As such, in addition to performing a reasonable search of all parties that may have a property interest, a plaintiff must give service of the action by publication in a newspaper, which occurs after a motion before a court.

To succeed, a quiet title plaintiff must establish the claimed property interest by clear and convincing proof. (Evid. Code, § 662.) If a property owner does not contest its interests in a quiet title action, the property owner may file a disclaimer of interest with the court, essentially amounting to an effective settlement of the case without a court hearing. If no disclaimer in interest is filed, then the court will hear evidence regarding the underlying claims. A quiet title judgment is binding and conclusive to parties in the litigation, and those who have a claim to the property. (Code Civ. Proc., § 764.030.)

In a quiet title action, a plaintiff can set forth several arguments claiming control over property, such as an implied dedication and a prescriptive easement. For example, many implied

dedication cases involve quiet title actions. (*See*, i.e., *Scher*; *Friends of the Trails v. Blasius*; *Cherokee Valley Farms, Inc.*; and *City of Laguna Beach.*)

Here, should the CSD wish to establish the property interests in the rights-of-way and pathways in Lower Muir Beach it is suggested that it file quiet title actions. In these actions, the CSD could present both implied dedication and prescriptive easement arguments.

Establishing an interest in the rights-of-way and/or pedestrian ways would allow the CSD to remove, and compel the removal of, obstructions to those ways and give the CSD the authority to exercise its powers under the Government Code and its charter to maintain roads and pathways.[2] As noted above, an implied dedication establishes an easement in the name of the public. Should the CSD wish to exercise its authority to maintain and improve these rights-of-way, it is suggested that it adopt a formal resolution accepting the rights-of-way after a quiet title action.

F. Standing.

Standing refers to a party's ability to compel adjudication of an action, which will be established if the party shows an "injury in fact" to its own interests. As noted above, an implied dedication typically establishes a property interest in favor of the public – not an individual party. Cases are usually silent regarding the standing of a public entity to bring a quiet title for an implied dedication on behalf of the public. In many instances, the party asserting an implied dedication is a private party or organization, seeking to keep a road open. However, there appear to be some cases where a local government brought a quiet title for implied dedication acting as trustees for the public. (*See*, i.e., *County of Los Angeles v. Berk* (1980) 26 Cal.3d 201 [city and county brought action to establish an implied public beach recreation easement on behalf of the government and as trustees for the public].)

Here, given the lack of clear law regarding standing, it is suggested that any quiet title action seeking an implied dedication join at least one member of the public as a plaintiff, along with CSD, who could bring an action as a trustee for the public interest. A member of the public would have sufficient standing to claim an implied dedication for public use. (*See*, i.e., *Blasius* [court heard private citizen group's claim of an implied dedication of road].) If an implied dedication for public use is found, case law shows that the local governmental entity has the right to maintain and improve the road as if it were a public road. The scope of the maintenance work would be defined by the historical scope of use. As noted above, to confirm the CSD's maintenance responsibility, it is suggested that after the quiet title action, the CSD adopt a resolution formally accepting maintenance responsibility of any implied dedication, allowing it to exercise its powers under the Government Code and its charter.

[2] Government Code section 61100 gives the CSD the authority to engage in a variety of actions, including providing fire protection services and authorizing the CSD to "[a]cquire, construct, improve, and maintain streets, roads, rights-of-way, bridges…sidewalks, and any incidental works." (Gov. Code, § 61100(d) and (l).) Additionally, a CSD LAFCO report notes that "residents authorized the District to expand services powers to include roads and recreation…as allowed under the agency's principal acts…." Establishing secure property interests would allow the CSD to carry out these acts, which it is authorized to perform.

The CSD would have standing to bring a quiet title action to establish a prescriptive easement, because in such an action, the CSD would be claiming the right to the easement on its own behalf.

III. SEACAPE SUBDIVISION.

A. Seacape Restrictive Covenants.

Owners Miriam Smith and the Miwok Corporation filed the Seacape subdivision map (the "Seacape Map") in 1965.[3] 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. (*See*, Grant Deed to the CSD dated September 23, 1970.)

The Seacape subdivision properties were subdivided conditioned upon certain restrictive covenants, as set forth in the "Deed and Declaration and Imposition of Protective Covenants" (the "Protective Covenants") dated January 13, 1966. The Protective Covenants are intended to "run with the land" and bind future property owners.

The recitals of this document provide that the property conveyed on the Seacape Map is subject to "certain easements, restrictions, conditions, [and] covenants…." The Protective Covenants further specifically provide that "all of said property hereby conveyed and shown on said map, shall be sold, conveyed…and held subject to the following easements, restrictions, conditions, servitudes [and] covenants…between Grantor and Grantee…and each of their successors and interests and assigns." As the case with lower Muir Beach, adjacent landowners in Seacape own fee interest to the land underlying the easement areas to the center of the road. Noted above, generally, conveyance of a lot that abuts a 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.) 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, and that there is no contrary intent to convey the underlying property on the face of the grants.

Additionally, the Protective Covenants provide that the restrictions and easements are for the mutual benefit of the parties. Paragraph 1 is a mutuality of covenants provision, and requires that the restrictions and covenants are "for the direct, mutual and reciprocal benefit of each and every lot…and the present and future owners thereof…." This paragraph further provides that the restrictions create "privity of contract and estate" among the owners, both present and future, and constitute covenants that run with the land "for the benefit of all other portions of said subdivision."

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[3] The Seacape Map contains several dedicated rights-of-way, including Seacape, Ahab, and Starbuck Drives that were accepted by the County of Marin. Additionally, it is understood that the Seacape Map offered for dedication various easements, including drainage easements and pedestrian easements, which were not accepted by the County. As explained in this memo, there are circumstances where historical use by the public may effect an implied dedication. This memo does not address whether there has been an implied acceptance by historical public use of the easements in the Seacape subdivision.

Paragraph 5 reserves easements for "utilities, drainage facilities and pedestrian ways" as shown on the Seacape Map. Paragraph 9 establishes a "Property Owners Committee" consisting of 5 members. The Property Owners Committee has the authority to enforce the restrictive covenants and approve the construction and alteration of buildings, fences, and other improvements. It is stated that "[t]he responsibility and duties of the Committee shall be to carry out the provisions of these covenants and restrictions…." (Protective Covenants, Paragraph 9.)

Additionally, the restrictive covenant in paragraph 9 restricts the construction of any "building, outbuilding, garage, fence, wall, retaining wall or other structure…" and any "alteration, addition, change or remodeling of the exterior thereof" without the approval of the Property Owners Committee. It continues, however, to provide that work will be deemed approved if in compliance with other conditions of the covenant, if the Committee fails to approve within thirty days. Correspondingly, this paragraph provides that the Property Owners Committee will adopt a "Code of Architectural Standards" to "guide in its determination" regarding the approval or proposed projects within the subdivision.

Paragraph 11 gives the owners, and their successors and assigns, the right to enter property and abate/remove encroachments in violation of the restrictive covenants.

Finally, paragraph 15 provides that the initial term of the covenants is 25 years from 1965, with automatic extensions of 10 year periods unless a majority of the property owners agree in writing to change the covenants in whole or in part – which would presumably include the possibility to terminate the covenants in their entirety.

It is understood that the Property Owners Committee is no longer a functioning body. Additionally, over the years, several properties in the Seacape subdivision have constructed improvements, such as fences, that appear to conflict with the intention of the restrictive covenants. It is also understood that the property deeds in the Seacape subdivision contain reference to the restrictive covenants.

B. Enforcement of Restrictive Covenants.

Property owners may restrict the use of property by subsequent owners through restrictive covenants, which are included with documents transferring title. Restrictive covenants are typically included in the deeds of property sold in a subdivision. Such covenants usually "run with the land", which means that they transfer to subsequent property owners and are binding on them. (*See* Miller & Starr, 6 Cal. Real Est. § 16:1.) A covenant running with the land is essentially an agreement between landowners with interest in real property, that is in the nature of a private contract that is enforceable by the original parties, and also serves as a continuing agreement benefiting and binding upon successor owners interest. (*Id.*)

CC&Rs, or "covenants, conditions, and restrictions" broadly refer to a recorded document setting a common plan for reciprocal covenants covering a subdivision. (*Citizens for Covenant Compliance v. Anderson* (1994) 12 Cal.4th 345, 352-353.) Such covenants often include development constraints such as height and view limitations. (*Id.*)

Restrictive covenants may be enforced by a homeowner's association. (Civ. Code, § 5980 [granting authority to homeowner's associations to bring legal action to enforce restrictive covenants].) Additionally, the general rule is that a restrictive covenant that runs with the land is enforceable by and against the original parties and their successors in interest. (*See*, i.e., *Self v. Sharafi* (2013) 220 Cal.App.4th 482, 490-491.) Restrictive covenants that run with the land will not be extinguished upon the dissolution of a homeowner's association.

The question presented is whether the CSD would have the authority to enforce the restrictive covenants.

Although the Property Owners Committee is no longer in existence, the law regarding covenant enforcement provides that property owners may also enforce covenants. Noted above, the restrictive covenants were intended to "run with the land" which means that they are binding on successive property owners. As also noted above, the Protective Covenants contain a mutuality of covenants provision, stating that the restrictions are for the mutual benefit of current and future property owners, creating privity of contract and estate. (See paragraph 1.) Moreover, it is understood that the automatic extension provisions in the Protective Covenants, paragraph 15, are still in effect, and the majority of property owners have not agreed to terminate the covenants.

Because the CSD is the owner of certain park parcels within the Seacape subdivision, it is likely that it would have standing to file an action in court to enforce the restrictive covenants. Similarly, it is likely that other property owners within the subdivision would have standing to pursue an enforcement action in court. This memo does not address the likelihood of success regarding any particular action to enforce a restrictive covenant, but rather only concludes that the CSD would likely have standing to pursue such an action in court.

Finally, although Paragraph 11 of the Protective Covenants states that property owners, and successors and assigns, have the right to enter property and directly abate nuisances and remove encroachments in violation of the restrictive covenants, a property interest must be established prior to exercising this authority.

C. Possible Defenses to Enforcement.

It is understood that several properties and easements within the Seacape subdivision likely violate the protective covenants in that they contain unapproved improvements, such as fences, and other obstructions within the easements. Given the length of time many of these improvements have been in place, there are some likely defenses to any enforcement action.

For example, laches is a likely defense here. In essence, laches is a legal term that means the enforcing party sits on its rights for too long. Laches is a defense to enforcement that applies when the party seeking enforcement unreasonably delayed in asserting the right to enforce restrictions, such that the delay would is prejudicial against the party against whom enforcement is sought, and enforcement would therefore be inequitable. (*See*, i.e., *Butler v. Holman* (1956) 146 Cal.App.2d 22, 28-29 [definition of laches]; *Jewett v. Albin* (1928) 90 Cal.App. 535, 542;

Ezer v. Fuchsloch (1979) 99 Cal.App.3d 849 [no laches with 3 year delay in enforcement action].)

In addition to establishing an unreasonable delay, the party asserting a laches defense must prove that the delay caused prejudice. (*Pacific Hills Homeowners Ass'n v. Prun* (2008) 160 Cal.App.4th 1557 [no laches when enforcement against fence delayed 4 years, in part because association made its opposition known when fence built].)

Here, many improvements and obstructions in the Seacape subdivision have been in place for a number of years. There has been no enforcement action during this time, although the improvements and obstructions have been open and visible. Unlike in *Pacific Hills Homeowners Ass'n*, it appears that property owners who are in possible violation of a restrictive covenant did not receive notice of any alleged violation. Moreover, given the length of time many improvements have been in place, and the expense of the improvements, a requirement that the improvements be removed (e.g., a fence) may prejudice the property owner. As such, any action to enforce the restrictive covenants would likely encounter a successful laches defense.

IV. CONCLUSION.

Under the legal theories discussed above, the CSD may claim property interests in the rights-of-way on its own behalf and on behalf of the public in the Bello Beach Subdivision, and it may seek to enforce restrictive covenants in the Seacape Subdivision. However, formally establishing those interests will require the CSD to initiate litigation. Multiple quiet title actions may be necessary for the Bello Beach Subdivision claims and each of those cases will be fact-intensive. It is noted that in the case of lower Muir Beach, due to the CSD's longstanding maintenance over various rights-of-way, some property owners may willingly settle a quiet title action by filing a disclaimer in interest, thereby reducing costs. Similarly, enforcement of the restrictive covenants in the Seacape Subdivision will require the CSD to go to court to argue for the enforcement of these covenants. There are always risks and expense associated with litigation, especially when the required actions are fact-specific and will require witness and potentially expert testimony. The CSD will have to weigh the potential risks and rewards of bringing these lawsuits.

CASE LIST.

1. *Aaron v. Dunhan* (2006) 137 Cal.App.4th 1244.
https://caselaw.findlaw.com/ca-court-of-appeal/1098129.html

2. *Anderson v. Citizens Sav. Co.* (1921) 18 Cal. 386.
https://casetext.com/case/anderson-v-citizens-sav-etc-co

3. *Bess v. Humboldt* (1992) 3 Cal.App.4th 1544.
https://law.justia.com/cases/california/court-of-appeal/4th/3/1544.html

4. *Blackmore v. Powell* (2007) 150 Cal.App.4th 1593.
https://caselaw.findlaw.com/ca-court-of-appeal/1478204.html

5. *Burch v. Gombos* (2000) 82 Cal.App.4th 352, 362.
https://law.justia.com/cases/california/court-of-appeal/4th/82/352.html

6. *Butler v. Holman* (1956) 146 Cal.App.2d 22.
https://www.courtlistener.com/opinion/1314760/butler-v-holman/

7. *Cherokee Valley Farms v. Summerville Elementary School District* (1973) 30 Cal.App.3d 579. https://caselaw.findlaw.com/ca-court-of-appeal/1827656.html

8. *Citizens for Covenant Compliance v. Anderson* (1994) 12 Cal.4th 345.
https://caselaw.findlaw.com/ca-court-of-appeal/1758355.html

9. *City of Laguna Beach v. Consolidated Mortg. Co.* (1945) 68 Cal.App.2d 38.
https://law.justia.com/cases/california/court-of-appeal/2d/68/38.html

10. *City of Los Angeles v. McCollum* (1909) 156 Cal. 148.
https://www.courtlistener.com/opinion/3308388/city-of-los-angeles-v-mccollum/

11. *County of Los Angeles v. Berk* (1980) 26 Cal.3d 201.
https://law.justia.com/cases/california/supreme-court/3d/26/201.html

12. *Ezer v. Fuchsloch* (1979) 99 Cal.App.3d.
https://law.justia.com/cases/california/court-of-appeal/3d/99/849.html

13. *Felgenhauer v. Soni* (2004) 121 Cal.App.4th 445.
https://casetext.com/case/felgenhauer-v-soni

14. *Friends of Hastain Trail v. Coldwater Development LLC* (2016)1 Cal.App.5th 1013.
https://caselaw.findlaw.com/ca-court-of-appeal/1744040.html

15. *Friends of Martin's Beach v. Martin's Beach* (2016) 246 Cal.App.4th 1312.
https://caselaw.findlaw.com/ca-court-of-appeal/1733249.html

16. *Friends of the Trails v. Blasius* (2000) 78 Cal.Ap.4th 810.
https://law.justia.com/cases/california/court-of-appeal/4th/78/810.html

17. *Gion v. Santa Cruz* (1970) 2 Cal.3d 29.
https://casetext.com/case/gion-v-city-of-santa-cruz

18. *Hays v. Vanek* (1989) 217 Cal.App.3d 272.
https://law.justia.com/cases/california/court-of-appeal/3d/217/271.html

19. *Jewett v. Albin* (1928) 90 Cal.App. 535.
https://casetext.com/case/jewett-v-albin

20. *McLear-Gary v. Scott* (2018) 25 Cal.App.5th 145.
https://www.leagle.com/decision/incaco20180711005

21. *Neff v. Ernst* (1957) 48 Cal.2d 631.
https://caselaw.findlaw.com/ca-supreme-court/1805843.html

22. *Otay Water Dist. v. Beckwith* (1991) 1 Cal.App.4th 1041.
https://law.justia.com/cases/california/court-of-appeal/4th/1/1041.html

23. *Pacific Hills Homeowners Ass'n v. Prun* (2008) 160 Cal.App.4th 1557.
https://casetext.com/case/pacific-hills-v-prun

24. *Prout v. Dept. of Transportation* (2018) 31 Cal.App.5th 200.
https://www.leagle.com/decision/incaco20181218047

25. *Ranch at the Falls, LLC v. O'Neal* (2019) 38 Cal.App.5th 155.
https://www.leagle.com/decision/incaco20190731023

26. *Safwenberg v. Marquez* (1975) 50 Cal.App.3d 301.
https://caselaw.findlaw.com/ca-court-of-appeal/1828861.html

27. *Scher v. Burke* (2017) 3 Cal.5th 136.
https://www.leagle.com/decision/incaco20170615044

28. *Self v. Sharafi* (2013) 220 Cal.App.4th 482.
https://www.leagle.com/decision/incaco20131011019

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

30. *Warsaw v. Chicago Metallic Ceilings, Inc.* (1984) 35 Cal.3d 564.
https://law.justia.com/cases/california/supreme-court/3d/35/564.html