



September 12, 2016

**VIA E-MAIL AND U.S. MAIL**

Mr. Jeffrey Lewis  
Broedlow Lewis, LLP  
734 Silver Spur Rd., Ste. 300  
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E-Mail: Jeff@BroedlowLewis.com

Re: Elkmont Canyon, Case No. ZON2014-00229

Dear Mr. Lewis:

This firm serves as City Attorney to the City of Rancho Palos Verdes (“City”) and is in receipt of your letter to the City’s Mayor dated August 23, 2016. In your letter, you raise a number of issues concerning a project proposed by Mr. Lionel Perera (“Applicant”) including his application for ingress/egress access between his lot, known as Elkmont Canyon, and Hawthorne Blvd. Your clients own neighboring properties.

The basic facts surrounding the landlocked condition of Elkmont Canyon do not appear to be in dispute. In 1961, Tract Map 24719 (the “Tract Map”) expressly abandoned all easements of ingress and egress between the lots comprising Elkmont Canyon and Hawthorne Boulevard. In 2006, the City issued a conditional certificate of compliance, which recognized Elkmont Canyon as one lot, but very clearly confirmed that the Canyon has no access to Hawthorne Blvd.

*While not a full response to all issues raised in your letter, the primary purpose of this letter is to inform you that the City has determined that it will not be proceeding with a hearing on Applicant’s access request on September 20, 2016. We believe that given the facts here, Resolution No. 90-93 does not apply to this access request, and we share your concern that considering the access issue separate from the development application may raise CEQA issues. Accordingly, a determination on Applicant’s request will be deferred and considered with the entire project.*

**A. We Believe Resolution No. 90-93 Is The Incorrect Procedure For Establishing An Access Way.**

Applicant sought to comply with the procedures set forth in Resolution No. 90-93 to obtain access to Hawthorne Blvd. In reviewing Resolution 90-93, and its applicability to this matter, we have concluded that it is not, in fact, applicable to the establishment of an access way. Resolution 90-93 applies to “vacation of City right-of-way and easements.” Since the 1961

Mr. Jeffrey Lewis  
September 12, 2016  
Page 2

Tract Map abandoned all easements to Hawthorne Blvd., there is no longer an easement to “vacate” per Resolution 90-93. Apparently, the Applicant invoked Resolution 90-93 for the establishment of Elkmont Canyon access under the theory that the Tract Map’s abandonment of ingress/egress equates to a “prohibitory easement”—basically, an easement to prohibit access. We do not believe this concept is supported by law.

Although abandonment is not specifically mentioned in the statutes, any easement, regardless of how created, can be abandoned by its owner. (*Gerhard v. Stephens* (1968) 68 Cal.2d 864, 890.) Once an easement is abandoned, it is extinguished even though it still appears in the public records. In other words, upon abandonment the easement terminates and the underlying fee is held by the grantor and his or her successors free of the burden of the easement. (*Johnson v. Ocean Shore Railroad Co.* (1971) 16 Cal.App.3d 429, 433.) In fact, the owner of the servient tenement can quiet his or her title against a successor of the abandoning party. (*Flanagan v. San Marcos Silk Co.* (1951) 106 Cal. App.2d 458, 463–466.)

Thus, since Elkmont Canyon’s access rights to Hawthorne were clearly abandoned in 1961, there is nothing in existence to “vacate” per Resolution 90-93. We have informed City staff that we believe Resolution 90-93 is inapplicable to the establishment, or even re-establishment, of an access route, and access would be reviewed by City’s normal process. Given the conclusion that Resolution 90-93 is inapplicable to Applicant’s request, the hearing that was scheduled for September 20<sup>th</sup> has been taken off-calendar.

**B. Access Rights Will Be Determined As A Part of the Normal Development Application Process Under CEQA.**

You have also raised in your letter concerns as to whether the City was bifurcating important parts of the project in violation of the California Environmental Quality Act (“CEQA”). We agree that CEQA is a critical element of the planning process for Applicant’s request. We are also mindful of the CEQA “piecemealing” issues raised in your letter. A public agency may not divide a single project into smaller individual subprojects to avoid responsibility for considering the environmental impact of the project as a whole. (*Orinda Ass'n v Board of Supervisors* (1986) 182 CA3d 1145, 1171.) CEQA "cannot be avoided by chopping up proposed projects into bite-sized pieces which, individually considered, might be found to have no significant effect on the environment or to be only ministerial." (*Tuolumne County Citizens for Responsible Growth, Inc. v City of Sonora* (2007) 155 Cal.App.4th 1214; *Association for a Cleaner Env't v Yosemite Community College Dist.* (2004) 116 Cal.App.4th 629, 638; *Plan for Arcadia, Inc. v City Council* (1974) 42 Cal.App.3d 712, 726.)

Accordingly, we have recommended that the City process the requested access route in conjunction with the project as a whole. That process has not been initiated, and will not take place on September 20, 2016.

Mr. Jeffrey Lewis  
September 12, 2016  
Page 3

For further clarification, I would add that some persons who we believe are represented by you made the request that the hearing on September 20<sup>th</sup> be deferred as the Applicant had not obtained the necessary signatures under Resolution 90-93, and also requested deferral until the overall project was considered due to CEQA concerns you have raised. While we agree with the second rationale, we are not advising Applicant that he is required to obtain support of neighbors to have his application processed.

Finally, please note that while the hearing that was scheduled for September 20<sup>th</sup> has been taken off-calendar, staff may present an informational update to the Council regarding this matter at that meeting.

We would appreciate your informing your clients that the matter will not be heard on September 20<sup>th</sup>, even though it is listed on the agenda. We will inform you of any pertinent developments in this matter as it progresses. Should you have any questions or further comments on this matter, please do not hesitate to email me at [llyaymon@awattorneys.com](mailto:llyaymon@awattorneys.com), or City Attorney Dave Aleshire at [daleshire@awattorneys.com](mailto:daleshire@awattorneys.com).

Very truly yours,  
ALESHIRE & WYNDER, LLP

A handwritten signature in black ink, appearing to read 'Lona N. Laymon', with a large, stylized flourish extending to the right.

Lona N. Laymon  
Partner

cc: Mayor & City Council, Rancho Palos Verdes  
City Manager