



September 9, 2016

VIA E-MAIL AND U.S. MAIL

Mr. Lionel Perera
15 Moccasin Lane
Rolling Hills Estates, CA 90274

Re: Vacation of Abandonment Easement
Elkmont Canyon, APN-7576-026-028

Dear Mr. Perera:

This firm serves as City Attorney to the City of Rancho Palos Verdes (“City”). This letter is intended to update you as to your request for ingress/egress access between your lot, known as Elkmont Canyon, and Hawthorne Boulevard (your “Application”).

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 confirmed that the Canyon has no access to Hawthorne Blvd.

The primary purpose of this letter is to inform you that the City has determined that it will not be holding a hearing on your Application on September 20, 2016. We believe that given the facts here, Resolution No. 90-93 does not apply to your access request. A Council hearing on the Application has been postponed pending resolution of several procedural issues pertaining to the planning process applicable to your Application. Accordingly, a determination on your request will be deferred and considered with the entire project.

As discussed in more detail below, the City Attorney believes that Resolution 90-93 may be the incorrect planning vehicle for your Application and, even if applicable, your Application would likely be deemed incomplete for lack of signatures from directly affected property owners.

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

Your Application letter invokes Resolution No. 90-93 to establish access between Elkmont Canyon and Hawthorne Blvd. In reviewing Resolution 90-93, and its applicability to this matter, we believe that it is not applicable to the establishment of an access way. Resolution 90-93 applies to “vacation of City right-of-way and easements.” Since the 1961 Tract Map abandoned all easements to Hawthorne Blvd., there is no longer an easement to “vacate” per

Resolution 90-93. We understand the theory that that the Tract Map's abandonment of ingress/egress equates to a "prohibitory easement"—basically, an easement to prohibit access. However, 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, on 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 your Application, the hearing that was scheduled for September 20th has been taken off-calendar.

B. Even If Resolution No. 90-93 Does Apply, Your Application Would Likely Be Deemed Incomplete.

Before an application under Resolution 90-93 is deemed complete, it requires the applicant to provide "signatures of at least 50% of the directly affected property owners. . ." Assuming *arguendo* that Resolution 90-93 is applicable to your Application, it does not appear that this neighbor consent requirement has been satisfied.

Arguably, there is at least one neighbor directly affected by your Application for access to Hawthorne Blvd., and more neighbors would be directly affected by the full scope of a single family home in Elkmont Canyon. However, as we understand it, your Application was not accompanied by even one consent from a "directly affected" property owner.

C. Access Rights Will Be Determined as a Part of the Normal Development Application Process Under CEQA.

We believe the City is legally required to process your Application for access to Hawthorne in conjunction with the project as a whole. In other words, the City can only process the access issue as part of an application for the overall single family residential project. We believe that the California Environmental Quality Act ("CEQA") compels this conclusion.

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CEQA prohibits the “piecemealing” of a project for environmental review purposes. 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.)

Segregating the issue of roadway access from the project to be served by such access is very likely the type of “piecemealing” prohibited by these authorities.

While this postponement is unfortunate, applying the correct procedure to your Application is beneficial to both you and the City. We believe that proceeding in a manner that misapplies the planning process or CEQA could significantly expose both you and the City to litigation and liability. Please contact City staff to discuss the next steps for submittal of a complete project application.

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

Very truly yours,
ALESHIRE & WYNDER, LLP



Lona N. Laymon
Partner

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