Analysis of Claimed Pedestrian/Equestrian Easements in Timber Cove Unit 2
UPDATED April 2019

Introduction and Background

Since 2014 the Association has been consumed by an acrimonious dispute about whether "pedestrian and equestrian easement" routes indicated on the 1965 Timber Cove Subdivision Unit 2 Map constitute a grant to all Association members of unrestricted rights to walk or ride horseback across private lots within subdivision. Predecessor Boards have been actively involved in the dispute, generally supporting trails proponents. When members of the current Board first took office in fall 2017, we were asked by two continuing members of the prior Board to review a compilation of documents, references and legal commentary prepared by Board members and the Trails Committee chair, to educate the new Board about the trail easement dispute.

We reviewed the compilation, and we then went several steps further, greatly extending our review to be more thorough. We began with a careful examination of the actual language recorded on the Unit 2 Subdivision Map of 1965. We reviewed legal advice letters regarding the claimed "trail easements," pro and con. We reviewed the governing documents of TCHA including the CC&Rs, Articles of Incorporation and bylaws. We reviewed files and analyses prepared by the Sonoma County Permit and Resource Management Department ("PRMD") staff members and the Sonoma County Counsel to advise the Sonoma County Board of Supervisors for a hearing held in 2016 on a petition to vacate any rights the County retained to a disputed segment of pedestrian easements, as discussed below. Finally, we reviewed various Reports filed by the subdivider with the California Department of Real Estate between 1965 and 1991, as well as the multipage promotional sales brochure prepared by the Subdivider in the 1960's, seeking evidence of the subdivider's intentions regarding trails or pedestrian easements, if any.

Upon completing our review, in March 2018 the Board issued a detailed report of our findings and conclusions, stating that we had found no evidence of any actual grant of private pedestrian and equestrian access rights to Association members based on the 1965 Map or any other documents. As discussed below, the pedestrian and equestrian access easements shown on the Map were clearly created for, and dedicated to, Sonoma County for public use; however, that dedication was promptly and explicitly rejected by the County, on the same page of the 1965 Map, before the Map was approved. There is no language on the 1965 Unit 2 subdivision Map granting any private pedestrian/equestrian easement rights to the Association or its members, nor have we found any other document which expressly grants such private rights of access to the Association or its members. We presented the detailed basis for our analysis and conclusions in a lengthy memorandum, which we distributed to Association members. We asked Timber Cove residents to cease attempts to use the claimed access easements without the consent of the property owners whose land they traversed. We also offered to review any new documentation brought to our attention that countered our conclusions.

We now feel it necessary to weigh in on this controversy yet again to update our prior report. We have received additional information relevant to the "trails" dispute, pro and con, which we feel deserves comment. Very importantly for us all, a lawsuit has been filed by several plaintiffs against the owners of three lots in Unit 2 seeking a judicial determination that the pedestrian easements referenced on the 1965 Subdivision Map do create private rights of access for those plaintiffs across the defendants' properties and demanding monetary damages from defendant owners who resisted plaintiff's unconsented intrusions. TCHA is not a named party to this litigation, but because the suit contradicts the Board's prior review and unanimous conclusions, and because the lawsuit potentially impacts the property rights and obligations of so many other Association members, we felt it appropriate to comment.

We note that the Unit 2 CC&Rs of 1965 and the Articles of Incorporation of TCHA from the same era both state that the Association has authority "to interpret and enforce" the CC&Rs. The bylaws and Davis Stirling Act provide that the duly elected Board of Directors of the Association have authority to oversee and manage the affairs of the Association. The "trails" dispute has been a highly contentious and costly battle over fundamental property rights which by definition affects all members. Therefore, we believe the Board have a responsibility to inform the members about this issue.

How did the "trails" dispute begin?

The owners of two Unit 2 parcels, Stu and Susan Drake and Anne Vernon and John Rea, separately owned neighboring lots on Timber Cove Road. Additionally, the two families jointly owned a third, larger adjacent lot, below their separate properties which is NOT within the subdivision and not bound by the CC&Rs. The Drakes and Vernon/Rea carried out and recorded a legal property line adjustment, merging portions of the commonly owned lot to expand the buildable area of each of their own respective lots in Unit 2. After that property line adjustment, a "pedestrian and equestrian easement" that had been on the lower boundary of their original lots now traversed the middle of their proposed building area. They notified the TCHA Board that they planned to petition the County to vacate the County's residual rights to the pedestrian/equestrian easement dedicated to the public; they also offered to relocate that easement to a lower portion of their reconfigured lots, away from the building area. The total length of easement affected was about 500 feet, a bit more than half on the Drakes' property, a bit less than half on the Vernon/Rea's. The TCHA Board approved their plan in 2014, but trails advocates claiming that the easement belonged to the Association members, vigorously complained that the Board had acted improperly. In 2015, control of the TCHA Board shifted to members who endorsed the trails advocates' opposition to the proposed pedestrian/equestrian easement relocation; the appointed chair of the Trails Committee of the Board was a leading advocate for the trails and an energetic opponent of the property owners' proposal to relocate the few hundred feet of pedestrian and equestrian easement crossing their lots.

In 2014, The Drakes and Vernon/Rea formally petitioned Sonoma County to vacate the County's residual rights to the pedestrian and equestrian easements derived from the irrevocable dedication of those easements shown on the 1965 Map. The County solicited public input and obtained advice from County permitting and legal officials; a public hearing was scheduled before the County Board of Supervisors. The petition and hearing were vigorously contested by the then incumbent TCHA Board and trails advocates, raising the dispute to the boiling point. At the hearing in 2016, the Supervisors voted unanimously to vacate the public easement, but that decision didn't dissuade the trails proponents. Now they have filed a lawsuit to advance their claims.

What does the Unit 2 Subdivision Map tell us?

The Map is THE key document in this dispute. It was submitted by the Subdivider, approved by the County and recorded in March 1965. The Subdivision Map contains a notarized dedication (grant) by the Subdivider/Owners of Timber Cove Unit 2 of various easements to Sonoma County for public use, including for roads, utilities, drainage and pedestrian and equestrian access. The Map shows pedestrian/equestrian access routes along more than 60 lots, affecting about 30% of the properties in Unit 2. On the same Map, by certificate dated March 2, 1965, **the County clerk formally certified that the Board of Supervisors accepted the easements dedicated to the County for roads and utilities, <u>but expressly rejected the offer of easements for drainage and pedestrian and equestrian access.</u>** That's the only easement grant language on the Map; the pedestrian/equestrian easement grant was rejected. No other declaration appears on the Subdivision Map purporting to grant the pedestrian/equestrian easement rights to the Association or to any other private parties. (The actual hand lettered statements describing the easement grants are not legible on smaller facsimile map copies which many residents may have received with their title reports and may therefore be unfamiliar).

To reiterate the key point, the controlling Unit 2 Subdivision Map only contains a dedication of pedestrian/equestrian easements to the County for public use, which the County clearly rejected. There is no other statement on any page of the Map creating or granting or referring to private pedestrian/equestrian easements for members of the Association or any other private parties.

A recent memo by a trails advocate appears to concede that the Map does not create or grant private pedestrian and equestrian easements, but argues that is because subdivision Maps are only intended to indicate public dedication of easements and that "nowhere is private ownership addressed". Actually, that contention is incorrect. Sheet 11 of the Unit 2 Map indicates **"10' PRIVATE ROADWAY EASEMENT TO CEMETARY". (**emph. added).

The trails advocate goes on to state that "private ownership is addressed in subsequent documents". That is merely his assertion; there is certainly no statement on the face of the Map that refers to grants of private easements "on other documents". The trails advocate seems to be pointing to broad language in the opening paragraph of the Declaration of CC&Rs of 1965 which refers generically to "easements", but not to pedestrian and equestrian easements and contains no grant language in any event.

Does the Declaration of CC&Rs of 1965 grant private rights to access pedestrian and equestrian easements?

In a word, "No". There is only one brief mention of pedestrian/equestrian easements, which is found in Clause VII of the CC&Rs entitled "Easements, Reservations and Rights of Way". That clause reserves easements for the construction and maintenance of utilities and lists three categories of necessary public utility easements for above ground poles and transmission wires and subsurface pipes and mains and sewers and drains. The final item tacks on the bare statement "Easements for pedestrian and equestrian access". That's all it says. There is no statement or reference to the intended purpose, or beneficiaries, or conditions of use of any such easements. And that brief opaque phrase is the only reference to pedestrian and equestrian easements in the entire Declaration.

So, there is no formal language defining, creating or granting private "trail" easements for the Association or its members in the CC&R's. The brief phrase referenced above is simply a cryptic repetition of the same minimalist wording from the 1965 Map, with no elaboration, which dedicated **public** pedestrian and equestrian easements only to the County and was rejected. The essential, explicit announcement of the rights the trails advocates wish to claim, "for use by the Association or its members" simply does not appear in the CC&Rs; it would have been easy to add that important wording, if that was the subdividers' intention. Obviously, it wasn't.

It seems apparent that the use of identical language in Clause VII d. mirroring the language on the first page of the Subdivision Map used to dedicate pedestrian and equestrian easements to the County for public access, must mean that the reservation in Clause VII section d of the CC&Rs, also refers to those same public use easements from the Map, and offers no statement defining or creating private rights.

What other guidance does the Declaration offer?

The following provisions of the 1965 CC&Rs, while not definitive, reinforce the impression that enabling Association members to use private pedestrian/equestrian easements to walk or ride across other owners' private lots was **not** the Subdividers' objective.

Clause II, "General Purposes", states, "The purpose of this Declaration is to maintain for the benefit of Declarant and all subsequent individual land owners, insofar as it be possible, the natural character of the land…. **Declarant's desire is not to infringe on the Individual rights of home builders, but rather to protect the land from undesirable use**." (emph. added)

Clause IV (1) states, "**Said property shall not be used, nor shall any portion thereof be used, for any purpose other than private residence purposes…."**

Clause XI, "Provisions for Upkeep", under Section 8. enumerates authorized uses of Association members' dues. It lists road maintenance but makes no mention at all of pedestrian easements. It does, however, very specifically authorize the Association "to maintain and generally care for the beach area south of Timber Cove Inn, said beach area to be available for the use of property owners….". If the subdivider took pains expressly to provide for maintenance of a beach area (which the HOA has never been able to occupy), the total omission in that section of any analogous provisions for maintaining pedestrian and equestrian easements "for the use of property owners" strongly implies that no such rights were ever intended or created.

What information about pedestrian and equestrian easement rights of Association members do we find in other governing documents for Timber Cove Unit 2?

The Articles of Incorporation and Bylaws contain no mention whatsoever of any pedestrian or equestrian easement rights. The Articles do, however, repeat the above referenced provision for use of the beach area south of the Inn for use of the Association owners. Pedestrian/equestrian easements across owner lots for Association use were not even a consideration.

Interestingly, the Subdivision Map for the four dozen lots comprising Timber Cove Unit 1, which adjoins Unit 2 and predates it by 4 years, shows no proposed pedestrian/equestrian easements and contains no mention of such easements, whatsoever. There is obviously no indication of any plan to create an integrated private trail system for Timber Cove residents.

Are there any other documents that indicate an intention by the subdivider to create or grant <u>private</u> pedestrian/equestrian easements?

Quite the contrary; the subdivider emphatically denied such an objective in repeated public notices. Between 1965 and 1991 numerous formal "Final Reports" were filed with the California Department of Real Estate by the Subdivider which disclose essential information about the key features of the Subdivision to prospective purchasers of lots. All those official notifications prominently display the following disclaimer, emphasized in ALL CAPS under the heading "Special Notes", very clearly disavowing any intention or plan to create commonly owned facilities or recreational amenities within Unit 2, <u>except for roads</u>:

"DEVELOPER HAS MADE NO PROVISION TO FURNISH ANY COMMUNITY FACILITIES SUCH AS PARKS, PLAYGROUNDS, OPEN SPACES, AND AREAS FOR THE GENERAL USE OF OWNERS OR AT ALL, WITH THE EXCEPTION OF PRIVATE ROADS, NOR ARE ANY SUCH CONTEMPLATED TO BE FURNISHED BY THE DEVELOPER. THE RIGHT AND POWER RESIDES IN THE ASSOCIATION OF LOT OWNERS TO PROVIDE SUCH FACILITIES AT ITS SOLE COST IF THE ASSOCIATION SO DESIRES."

The TCHA Board also located and reviewed the original illustrated multi-page Timber Cove Properties sales brochure from the 1960's, looking for relevant indications of the intended character of the subdivision, and any references to trail easements; we found none. The brochure describes all the appealing features of the development and emphasizes the thoughtful way it was designed to preserve and highlight the natural environment while protecting owners' privacy. There is not one word about pedestrian/equestrian easements; indeed, imposing hiking and horseback riding trails across the private lots would defeat the distinctive features of the subdivision eloquently emphasized in the brochure.

A few relevant excerpts:

> "Timber Cove is not a tract, **not a planned recreation resort**, not a cooperative suburban development." (emph. added).

"**A buyer at Timber Cove has the assurance that the land which he is buying will suffer only the minimum change necessary to make it available for residential use**. (emph. added).

"the one acre site [minimum] is optimum **to insure privacy and a sense of isolation**..." (emph. added).

"…homes should be barely visible from one another, if at all"

Are there any distinctive features about the pedestrian easements as laid out on the Unit 2 Subdivision Map, or physical "facts on the ground" in 1965 which arguably imply the existence of a recreational trail system to benefit the Association, even though we find no language creating or demonstrating any intention to create one?

For new TCHA members or remote owners unfamiliar with the dispute about the pedestrian/equestrian easement rights (colloquially referred to as "trails", though that term does not appear on the Map), some clarification may be appropriate. When Timber Cove Subdivision Unit 2 was created, and the Subdivision Map filed in March 1965, the pedestrian/equestrian access routes shown on the 1965 Map had no actual physical existence; there were no actual, developed trails over the indicated routes. The locations they indicated were undeveloped, consisting largely of overgrown, densely wooded, steeply sloped, forest terrain. The Map merely indicated future potential routes shown for purposes of the dedication of easement rights to the County, which the County presumably could develop and maintain.

Also, neither those labelled accessways, nor any terminology on the Map or any other filing, shows any indication of thoughtful planning or design specifically intended to create a recreational walking circuit for Association members for views or exercise. In reality, the indicated "pedestrian easements" were nothing more than "labels" overlaid atop designated public utility easements, which were presumably laid out to provide for installation or service of buried utility lines or poles and overhead wires, not functionally related to recreation or scenic view purposes. The pedestrian/equestrian access ways depicted do not represent a sensible walking circuit, they are largely disconnected fragments and segments; they don't connect with existing County recreational trails nearby. And they certainly are not required for access to other lots; the subdivision roads serve that essential function. During the County hearings on the petition to vacate the pedestrian easements, one Supervisor commented on the apparent absence of any serious design or planning effort, aptly characterizing the "trails" as no more than an "after thought".

For nearly fifty years after the filing of the Subdivision Map for Unit 2, no systematic or sustained effort was made by the Association membership to install or develop actual trails along those easements (A couple decades ago a few trail enthusiasts made limited, uncontroversial efforts to clear short segments of narrow pathways through the woods, but those efforts were not maintained or advanced and soon lapsed back into wild undergrowth). Finally, after a half century without serious trail development, in 2016-2017 after the current dispute had come to a head, a group of impassioned trails advocates made a more ambitious effort to clear several hundred yards of physical trail (the "Sperry Trail"), perhaps to reinforce their present claims.

What do attorney commentaries tell us about the disputed trail easement claims?

The Board also reviewed contending legal opinions presented over recent years supporting and negating the claims by trail advocates of private pedestrian easement rights.

1. Two 2015 legal opinions by Martin Macomber and by Malcolm Manwell of the Perry Law Firm have repeatedly been cited by the trails proponents as support for their claimed private rights to use the pedestrian/equestrian access. However, both those opinions suffer a critical defect, since both letters totally fail to address the decisive dedication statements on the 1965 Subdivision Map discussed above:

a. The only grant language referencing pedestrian and equestrian easements on the 1965 Subdivision Map, was a dedication of those easements to the County for public use, which was immediately explicitly rejected by the County.

b. There is no language granting pedestrian/equestrian easements for private use by members of the Association contained in any other document.

Neither attorney discusses or refutes those key Map certificates, or identifies any legal document stating a grant of private easement rights, describing the purpose, conditions and beneficiaries of pedestrian/equestrian access for the Association or other private parties.

In 2018, an enlarged copy of the 1965 Unit 2 subdivision Map, which displays the above-referenced dedication of the pedestrian/equestrian easements to the County and records the County's express rejection of those easements was shown by TCHA Board members to attorney Martin Hirsch of the Perry law firm who had provided a 2015 opinion supporting the existence of private trail rights. He was also shown the subdivider's declarations on California Real Estate Department filings mentioned above, which emphatically disclaimed any intentions or plans to provide any recreational amenities or commonly owned spaces except roads. Mr. Hirsch reacted with surprise, admitting he had not previously seen the actual dedication and rejection wording shown on the 1965 Unit 2 Map nor the subdividers' Real Estate Department disclaimers. He acknowledged these documents appeared to indicate there were no private easement rights.

2. The legal effect of the actual language on the Map, was fully and definitively explained in 2014 by attorney Barbara Zimmerman who served as Timber Cove Homes Association legal counsel for ten years. In advice to the TCHA Board, she noted that according to California law, the original grant by the Subdividers to Sonoma County in 1965 was an "irrevocable dedication" to the public. That means that even though the County rejected the dedication of the pedestrian/equestrian easements for public access, the County retained the future legal right to reverse its 1965 rejection and accept the access easements for public use. That has never happened, nor even been suggested, but the theoretical possibility likely explains why title companies continued to reference the potential (public) easements on deeds and title insurance Policies. Ms. Zimmerman fully explained that the 1965 Subdivision Map indicated no grant of private trail easements to the Association or any other private parties, nor had any other documents granting such rights been found.

3. A previously undisclosed advice letter dated July 12, 2000 from Attorney Adrienne M. Moran of the Shapiro, Galvin, Shapiro law firm in Santa Rosa to Tom Giacinto of Timber Cove Homes Association was recently discovered in TCHA files. It is consistent with the later Zimmerman opinion described above. The Moran letter appears to be responding to an inquiry regarding the legal feasibility of connecting a proposed beach access staircase to the pedestrian access easement shown on the Subdivision Map, crossing properties on Nineve Drive in Unit 2. In pertinent part, Attorney Moran states: "Secondly, regarding the Ninive Drive easement, it does not appear that either of the two parcels contains any specific pedestrian access easement in its recorded description. I also note that Mr. Charlie Moore [*Sonoma County Official?]* further concluded that the pedestrian easement reflected on the map was rejected by the Board of Supervisors. Therefore I do not find any basis upon which the Association could enforce an express right of pedestrian access across the Ninive Drive parcels……I do not recommend that the Association build any staircase to the beach from the Nineve Drive easement as I do not believe you have the right to build any such staircase."

4. It's also worth noting the difference between the claimed Timber Cove trail easements and private road or street easements typically shown on subdivision maps. Regardless of dedication language, streets and roads are obvious, essential, physical improvements clearly necessary in residential subdivisions to provide common vehicular access to all owners' lots for their neighbors and third parties. In contrast, the public pedestrian/equestrian easement rights dedicated to, and rejected by Sonoma County had no physical existence or visibility, nor any defined essential purpose or function or defined conditions of use; they represent nothing more than the superimposition of the words "pedestrian and equestrian access" across buried public utility easement routes, in no way required for any owner's access to lots or (non-existent) recreational facilities.

In researching the issues for the Board of Supervisors' 2016 hearing of the petition to vacate the irrevocable dedication, County Permit and Legal staff made very clear that pedestrian easements shown on the Unit 2 Subdivision Map did NOT create any private easement rights.

As noted above, In 2015-2016, the Sonoma County Board of Supervisors conducted a thorough review and hearing on a petition by Anne Vernon/John Rea and the Drakes, owners of two Timber Cove Unit 2 lots crossed by a 500 foot segment of disputed trail easement, seeking to vacate any residual County interest created by the irrevocable dedication so that the owners would be able to build on their lots. The Board of Supervisors considered a detailed submission of references and presentations, including analyses by the County Permit Department and the County Counsel, and then, at a public hearing held May 10, 2016, voted unanimously to grant the petition to vacate the County's residual interest in the affected section of pedestrian/equestrian easements.

Analyzing claims that the pedestrian "trail" easements on the Map created private rights of access, the County Permit and Resource Management Division staff advised that:

"…the owner of the subdivision did offer the trail easements for dedication to the public for use as a public trail. The Board of Supervisors, however, rejected the offer of dedication…Thus the public trail was never created." **"That offer to the public could not create a private easement (i.e., rights in members of the Timber Cove Homeowners Association). Moreover, there is no evidence on the face of the subdivision map that the subdivider offered to dedicate a private trail easement over any of the parcels in question, nor has anyone provided other evidence to the County demonstrating that such private trail easements were ever created**." (Transmittal by Sonoma County PRMD staff and counsel to Timber Cove Homes Association and Timber Cove Trails, December 10, 2014. (emph. added).

Internal correspondence in the hearing file from County Counsel Robert Pitman to PRMD officer Leonard Gabrielson amusingly conveys the annoyance of County officials at the irrational exaggerations of the trails advocates. The trails proponents were arguing that the petition to vacate public trail easements would necessarily threaten public utility easements as well. The County Counsel, referring to the trails advocates, stated:

"They continue with their **myopic hysteria** and are confusing the vacation of the pedestrian trail easement with interference with the public utility easement. Whether or not the Water District is entitled to utilize the public utility easement is nothing more than a red herring. Vacating the pedestrian trail easement has no effect on the Public Utility Easement (unless Ms. Vernon plans to build over the easement which we should not permit). Not sure how many ways we can continue to state the same information so the HOA will understand it, but…." (January 28, 2016; emph. added).

As noted above, the County Board of Supervisors voted unanimously to grant the petition to vacate the irrevocable dedication a few months later. After the Supervisors' hearing, the trails advocates refused to back off, or to accept prior recommendations by the County, and offers by Vernon/Rea, either to mediate or negotiate an amicable resolution of the trail controversy.

Finally, late in 2018 a lawsuit was filed by eight plaintiffs against Timber Cove Unit 2 property owners seeking to enforce "private" pedestrian/equestrian access rights and, as later amended, demanding one million dollars in damages.

In the fall of 2018 eight plaintiffs, including prior board members and local trails advocates, one of whom is not a resident of Unit 2, sued owners of two lots in Unit 2 in a "quiet title" action, asking the court to declare their private rights to cross those lots on the pedestrian/equestrian easements shown on the 1965 Subdivision Map, and also seeking money damages and punitive damages. That complaint included 500 "fictitious defendants", enabling the plaintiffs to add new defendants later. **In January 2019, the plaintiffs did just that; they amended the original complaint, dropping one plaintiff, adding new defendant property owners, and demanding one million dollars in damages against defendants for resisting plaintiffs' claimed rights to walk or ride horseback across their residential lots**.

The TCHA Board does not dispute the legal right of the plaintiffs to seek a judicial determination of their claimed rights to use the pedestrian/equestrian access, notwithstanding our comprehensive review and conclusion that they have no such access rights. Indeed, if they have new documentary evidence showing a valid grant of such easements

to any private parties, our March 2018 Report expressly offered to review and consider such new evidence, and to modify our conclusions as appropriate. No lawsuit should have been necessary. But the trails advocates have never offered such evidence to the Board.

The Association is not a party to the lawsuit, but the litigation directly affects our prior investigations and determinations, as well as the valuable rights of our members. We feel compelled to comment.
The reason we find it necessary to comment now is not merely to acknowledge the new lawsuit which would overturn our prior analysis and conclusions if plaintiffs prevail. We feel obliged to alert the Association membership about the full potential impact of the lawsuit on the community and to correct misleading statements made by proponents of the lawsuit who have described it innocuously as simply a "quiet title" action made necessary because defendants opposed plaintiffs' attempts to use the claimed "trail easements" to walk across their lots. That description is incomplete and misleading and masks serious potential adverse impacts to the entire community.

We call your attention to the following points:

1) It is important to recognize that this lawsuit is NOT merely a request for the court to rule on the dispute about the legal status of the access easements. **The plaintiffs are also demanding a million dollars in damages; as if that wasn't enough, they seek additional punitive damages against the property owners who refused to consent to their intrusions**. Those extreme monetary demands are shocking. They go far beyond the boundaries of a normal quiet title action and raise questions of intimidation and harassment. Creating the impression that buying a lot in Timber Cove could risk exposure to financially crippling litigation by aggressive neighbors obviously does not benefit the community.

Let's be clear about this lawsuit. The only "sin" of the defendants was asking to be left alone on their properties and to protect their privacy. The million dollar "harm" the plaintiffs complain about is in reality a minimal inconvenience at worst---- they have been denied permission to walk or ride horseback across the defendants' lots for a couple years (notwithstanding opinions of lawyers, Sonoma County officials and the TCHA Board of Directors that they have no such rights). Yet the damages they claim would total $142,857 for each of the seven plaintiffs. That claimed "loss" per individual plaintiff far exceeds the entire current fair market value of the average unbuilt lot at Timber Cove. An odor of vindictive overkill hangs over this extreme demand for damages. It is hard to avoid the conclusion that the purpose of that huge dollar claim is to use the expense of litigation, and the threat of grotesquely excessive damage demands to terrify the defendants and any other likeminded community members who wish to protect their property rights, into surrendering those rights or moving out. That kind of extremely punitive legal offensive against neighbors far exceeds a simple "declaration of rights" and needlessly casts an ugly shadow over the entire Timber Cove Community.

2) This lawsuit potentially impacts not just the named defendants alone. The 1965 Map shows that more than 60 lots in Timber Cove Unit 2 have pedestrian/equestrian easements crossing them. The claims the plaintiffs make inherently affect all such member properties, at least potentially. As the plaintiffs have already shown, they can, at any time they wish, target new defendants in their suit, or use the results against them in new lawsuits demanding outrageous damages if they win. Their present lawsuit thus may threaten 60 other Timber Cove owners with litigation seeking to impose the burdens and liabilities of unregulated trails easements across their properties. Therefore, members are advised to inform themselves about the issues and potential consequences for their own properties, even if they are not yet named as defendants. We will briefly highlight some of those adverse consequences in item 4) below.

3) The plaintiffs repeatedly rejected recommendations by County officials and Association lawyers to avoid costly and acrimonious litigation by pursuing a compromise resolution of the trails dispute through negotiation or mediation. Since 2014 defendants Anne Vernon and John Rea have repeatedly offered to work out a compromise of the easement dispute affecting their property. In order to avoid the threat of litigation, they expressed willingness to consent to use of a revised trail route shifted about ten yards down slope from their building envelope to a less intrusive location that would still enjoy a panoramic view. In September 2017, one week before the Annual TCHA Meeting and Board elections, a public inspection of their proposed compromise routing was held at the Vernon/Rea

property. Twenty or more persons attended, including a number of Association members, trails advocates, incumbent board members, and opposing board candidates. Significantly, Martin Hirsch, then attorney for the Association, and Bob Haroche, Attorney for Vernon/Rea also attended. It was the recommendation of the Association attorney, shared with Vernon/Rea's attorney, that a compromise was in everyone's interest. Because the election of three new Board members was scheduled for the following weekend, Hirsch advised that the proposed compromise and the opinions of trails advocates should await review and consideration by the new board after their election only a week later.

However, the outgoing Board ignored that advice and rushed action to preclude a new board from accepting the proposed compromise routing. A week after the compromise route inspection, holding their final board meeting literally an hour before the elections for new Board Directors, and without any notification to Vernon/Rea, the outgoing directors summarily announced they were rejecting the proposed compromise. With that parting shot, they thereby pre-empted the new Board's opportunity to consider that compromise offer. The Association attorney was caught off guard by this ploy and later apologized to the Vernon/Rea's lawyer for the Board members having "blindsided" them. Among the plaintiffs in the current lawsuit are the prior board members and unsuccessful board candidates who arbitrarily de-railed attorney advice to compromise, and summarily rejected the proposed compromise settlement before the newly elected Board had a chance to review it. This lawsuit should never have been necessary.

4) The trails supporters have argued that a well-planned trail system is a source of significant financial value to the members of the Association. That argument might be true for the Sea Ranch, where an architect-designed, engineered trail system was professionally developed, installed and maintained, <u>on commonly owned land</u> (not easements across private property) from the very inception of the subdivision, and is consistently well maintained and diligently policed by Subdivision security. None of those conditions describes Timber Cove.

As noted, the Timber Cove pedestrian/equestrian easements were never professionally sited, designed nor actually installed and maintained as useable recreational trails. They were just routes shown on the Map superimposed over buried utility easements. They were not sited on commonly owned land (there being none in Timber Cove); their development would require setting aside 10-foot wide strips of private residential lots for unregulated, unmonitored use by unidentified pedestrians and horses, with potential claims exposure for the impacted property owners. That obviously would not improve the value of the 60-odd privately owned lots they cross; quite the contrary.

Worse, such trail easements would erode the privacy and imperil the personal security not only of the 60 property owners but of their adjacent neighbors as well. Would-be burglars or vandals could easily use such

unmonitored rights of way to access the interior of the subdivision, familiarize themselves with residence patterns and surveil vulnerable properties to facilitate potential crimes against persons or property. Timber Cove is not a gated community, we cannot monitor or control access, we cannot even afford a security guard. This is a travesty of the blissful vision of privacy and isolation portrayed in the original Timber Cove brochure.

Given the rough, overgrown forest conditions, steep slopes, and slippery, hazardous conditions during stormy months, the trails would also be a significant safety and liability concern, posing burdensome maintenance demands, financially and physically beyond the ability of most owners or the Association to adequately carry out. If a trail user is seriously injured in a fall on a trail crossing a member's property, are they likely to sue the member? In 2018 the Association's insurance brokers and underwriters visited the subdivision, inspected the affected terrain, including the newly installed Sperry Trail, and cautioned Board members that they deemed the hazardous conditions they observed to pose significant liability risks. They urged the Board to post warning signs to make clear that the trails were not maintained by the Association. The present dire financial condition of the Association has left us short of funds for essential interior road maintenance and repair functions, which are indispensable to maintaining reliable access to homes and the safety of the residents in emergencies. Installation and maintenance of safe and secure walking and equestrian trails across the steeply forested slopes of Timber Cove is clearly beyond the capabilities of the Association and most individual property owners.

5) Timber Cove is an area of extreme fire risk, which is a serious concern of all members. Allowing uncontrolled access to interior forested areas at all hours of the day by unidentified "private persons", drastically increases the fire risk from a carelessly discarded match or cigarette by a guest, visitor, transient, or arsonist unaware, unconcerned or criminally stimulated about that severe risk. It is the Board's unanimous conclusion that all these very real risks and detriments obviously outweigh any theoretical future value that development of trails over the easements might bring.

6) It should be obvious that the demands of the trails advocates are incompatible with the Founders' vision for the community. As the early Timber Cove documents evidence, the founding subdividers were deeply committed to preserving the unspoiled, natural habitat, and the unique opportunity for homeowners to experience the beauty, peace, solitude and privacy of this place. That is the precious, priceless appeal of our Timber Cove homes, the right to just be left alone, undisturbed, with the sights, sounds and smells only of the forest, sky and sea, watching hawks soar, calmed by the murmur of the sea breeze through stately redwoods, lulled and refreshed in a private retreat free of the crowds, distractions and noise of the city. That contemplative peace, beauty and isolation are the unique qualities which attracted each of us to Timber Cove.

Imposing ten foot wide walking and riding trails across our small private retreats would violate and shatter that fragile magic. To open our private homesites to uncontrollable trail access by groups of strangers, or even horsemen, wandering across private properties at all hours of the day (or night) would destroy the peaceful, private appreciation of an untrammeled natural environment our Founders envisioned for each property owner.

Conclusion

For all the foregoing reasons, the Board reaffirms its conclusion that so-called "trail easements" were never created or intended for private use; they were created and dedicated in 1965 solely for public use by the County, and immediately rejected by the County as clearly stated on the recorded Subdivision Map. Pedestrian trails were not created by the Unit 2 CC&Rs or any other binding document. There is no recorded document that describes and grants private trail rights to the Association or any other private parties. The claimed pedestrian/equestrian trails are ill suited to the environmental conditions and private property rights of this unspoiled rural residential community of private homesites, and the County was well advised to reject the offered dedication. The claimed trails would pose a serious burden and a source of significant risks of harm and liability for the Association members, if their development was imposed on the community. We hope the Court will acknowledge and respect the carefully considered findings and conclusions of the Board of Directors of the Association. We will of course respect any final judicial determination.

The Board of Directors
Timber Cove Homes Association
April 2019

Ron Case
Russell Wells
John Gray
Cindy Culcasi
Rosemary Gorz
Margaret Grahame
Bob Leichtner