

Legal Status of Pedestrian and Equestrian Easements at Timber Cove: What are the Rights or Obligations of the Homeowners' Association?

BACKGROUND

The legal status of the "trails" within Timber Cove has been a highly contentious issue for several years. The trails in question are shown as "pedestrian and equestrian easements" on the recorded Subdivision Map for Unit Two approved by the County in March 1965. The easements are all located on private property, traversing the periphery of certain member-owned lots within the subdivision. They represent passage rights only; ownership of the underlying property remains with the lot owner. In 2016, after receiving and researching voluminous commentary from opposing viewpoints, the Sonoma County Board of Supervisors held a lengthy public hearing to consider the petition filed by a Timber Cove property owner seeking to vacate the public pedestrian/equestrian easement across her property which was dedicated to the County. The petitioner had legally merged two lots and wished to remove, or move, a public pedestrian/equestrian easement which crossed the middle of her reconfigured property, including her proposed building site. After hearing comments by numerous interested parties in attendance, and discussion by the Supervisors, the Supervisors voted 6-0 to vacate or abandon the portion of the dedicated pedestrian/equestrian easement shown on the Map which crossed the petitioner's property.

Both before and after the Supervisors' hearing, the then-serving TCHA Board, and its Trails Committee, took the position that the County Supervisors' decision addressed only the public's right of access, not private rights of trail access which the trail advocates believed belonged to TCHA members as a group. The prior Board and trail advocates have not to our knowledge identified the precise documentary grant or grants setting forth the "private trail easements" they refer to, nor indicated any recordation of those alleged "private rights".

When the new TCHA Board members took office in October 2017, incumbent members of the Board, including the former Treasurer and former Secretary, provided new Board members with a binder of legal authorities, documents and other records that had been prepared for the Supervisors' hearing, which they felt explained and supported the prior Board's conclusion that TCHA had legal rights to continue to develop and freely use the pedestrian/equestrian easements indicated on the Subdivision Map for Unit Two. In other words, they seem to be stating that although the County formally rejected the dedication of public pedestrian easements shown on the Subdivision Map, and subsequently abandoned or vacated any residual rights to the irrevocable dedication on petitioner's property, private pedestrian easements in favor of the Association members nonetheless still exist.

The new Board members agreed to review those materials and share our findings and conclusions. In the meantime, owing to the significant expense already incurred by the prior Board for investigation, development, and legal advice regarding the disputed trails, the risk of litigation over the issue, and wishing to avoid further expense given the financial shortfall affecting the Association, the new Board voted to discontinue the Trails Committee and to suspend actions regarding the trails, until we had reviewed the issue for ourselves and determined the best course to follow.

Board members have now reviewed materials provided by our former colleagues. We have also reviewed correspondence on the subject from the County, and Attorney opinion letters obtained by the prior Board commenting on the legal status of the pedestrian/equestrian easements. We have paid

particular attention to the foundational framework documents that established the Subdivision and Association over 50 years ago, and govern our rights and obligations, including the aforementioned Subdivision Map for Unit Two, the CC&Rs, The Articles of Incorporation of Timber Cove Homes Association, and reported subdivision filings made by the Developer after the Subdivision Map was Approved by the County in March 1965 and recorded.

Our review indicates that much of the argument about the legal status of the pedestrian/equestrian easements has been based on mistaken assumptions or misunderstandings of what is actually shown, and not shown, on the controlling Subdivision Map. We will discuss what those documents actually specifically indicate, and how that affects the rights and obligations of the Association regarding "trails".

THE UNIT TWO SUBDIVISION MAP APPROVED MARCH 1965

The pedestrian/equestrian easements for Unit Two were originally set forth by the Developer on the Subdivision Map for Unit Two which was submitted for approval by Sonoma County in March 1965. The pedestrian/equestrian easements shown on the Map did not represent previously existing physical trails. They were indicated locations on the Map which traversed the external boundaries of a number of proposed lots in the new subdivision. The pedestrian/equestrian easements largely overlapped easements simultaneously offered for public utilities on the same Map. As shown on the Map, the pedestrian/equestrian easements were not necessary to provide access to an otherwise "landlocked" private property. Nor did those easements connect with existing public or private recreational areas, or provide coastal beach access. They appeared to be recreational in purpose, providing a possible path for a walk in the woods, or possibly along a clearing with an ocean view. Much of the area they traversed was densely overgrown and steeply sloped.

Most Association members are aware of the proposed easements from their deeds and title reports, which may reference them, and/or from small facsimile versions of the full size Unit Two Subdivision Map. We have learned that some members' deeds do NOT reference or show the pedestrian/equestrian easements. Our investigations lead us to conclude that mistaken assumptions or misunderstandings about the legal status of the "trail easements" may have arisen from the fact that the small facsimile maps and imprecise easement references on deeds or title report disclosures do not fully and accurately reflect the legally operative text concerning those easements which is entered on the full scale Subdivision Map of 1965 as actually recorded and filed with the County.

The actual filed Map as approved by the County in March 1965 includes a hand printed "Owners Certificate" which constitutes the formal grant, or dedication, of various listed easements, to Sonoma County for public access. That statement of dedication covers Timber Cove Road. It also states the following:

"We also offer to dedicate to public use all public utilities easements, Drainage easements, Pedestrian Easements, Equestrian Easements and Anchor Easements. Also, all streets shown within the colored border lines of this map, with the exception of "Timber Cove Road" and State Highway are dedicated for limited public agency use, to wit: a permanent public agency easement and right of way with unlimited public agency vehicular access, ingress, and egress to the County of Sonoma and the State of California....for the public purposes of exercising police powers and performing fire protection and other appropriate public services and functions, but without implication from the acceptance of said dedications of any obligation to provide such protections or perform such services or functions within

this subdivision or upon said easements herein dedicated. No buildings or structures of any kind are to be constructed on or within said easements.”

There follows a section entitled: “DEED RESTRICTIONS”. It addresses only requirements regarding septic systems, and individual well installations.

On the same sheet, next to the “OWNERS’ CERTIFICATE” there is a hand printed “TAX BONDS AND MAP CERTIFICATE”, which is effectively the response of the County to the Owners’ offer of dedication. It includes the following statement, signed by the County Clerk, Board of Supervisors, County of Sonoma, dated March 2, 1965:

“I, further certify that said Board of Supervisors has approved this final map and has accepted, in behalf of the public, the road shown on this map, namely “Timber Cove Road”; also, said Board of Supervisors has accepted in behalf of the public all that portion of the 60 foot State Highway shown on this map which has not previously been deeded to the County of Sonoma, easements and other parcels of land herein offered for dedication to the public, **except that the dedication of the following was rejected: drainage easements, pedestrian easements and equestrian easements.**” (emphasis added).

So, in plain English, what does this language mean? The owners of the subdivision dedicated road and public utilities easements to the County, which the County expressly accepted. The owners also dedicated pedestrian and equestrian easements to the County for public use, but those easements were expressly rejected by the County. **We believe that means the pedestrian and equestrian easements indicated on the Subdivision Map and granted to the County by the Owners of the Subdivision, have no present actual legal existence because that offer of dedication was expressly rejected by the County on the same Map.**

There is one further important legal condition, however, which does not expressly appear on the subdivision map itself. Under California law, an offer of dedication of an easement to the County is legally considered irrevocable. That means, even if the County expressly rejects the dedicated easement at the time it was granted, the County retains the right to reverse its decision and accept the dedication of that easement for public use at some later date, unless the County has formally abandoned or vacated its rights.

The irrevocability of the rejected offer of dedication, and the attendant possibility of a future decision by Sonoma County to reverse its rejection and to accept and use the dedicated pedestrian and equestrian easements for the public, may be the reason those easements continue to be shown on maps, referenced on deeds and identified in title reports even though no pedestrian easements were actually created. Showing the potential future easements on title documents is necessary in order to provide notice to owners of the possibility, however remote, that the County might decide to assert its right to accept and develop previously dedicated and rejected easements crossing their lots for public use at some future time. In other words, although the pedestrian and equestrian easements shown on the Subdivision Map did not actually come into existence and do not exist today, it remains possible that a decision by the County could bring them into existence at some future time (except for any dedications that were formally vacated by the County); hence the need to notify purchasers of affected lots of that possibility.

THE ARGUMENT OF THE TRAIL ADVOCATES: PRIVATE PEDESTRIAN/EQUESTRIAN EASEMENTS EXIST EVEN THOUGH THE DEDICATION TO THE COUNTY FOR PUBLIC USE WAS REJECTED

The trails advocates argue that although the County may have rejected the dedication on the Subdivision Map of the pedestrian and equestrian easements for public use, that rejection does not affect private rights to use those easements by members of the Association. The problem with that assertion is that the supporters of those trails fail to provide specific evidence that the private pedestrian easement rights they claim actually exist. The only pedestrian/equestrian easement granted on the Subdivision Map was the dedication to Sonoma County for public access. No other easement grant was made; there is no statement made granting a trail easement for private access by Association members. A deeded easement is created when a lawful property owner expressly grants a defined easement to an identified holder or grantee, for a specified purpose, and that grant is recorded by the County. There is no grant language whatsoever shown on the approved final subdivision map for Unit Two that grants any pedestrian or equestrian easement rights to the Association, its members or any other private parties. There's no reference to the Association at all on the Subdivision Map. The only reference to deeded restrictions applies to septic systems and wells.

Although the trails advocates frequently refer to Home Owners' "deeded rights", "vested rights" or "property rights" in the trails, there is nothing on the subdivision map to support such "rights". It certainly is conceivable that other documents exist in which property owners of the Subdivision expressly granted some easements for pedestrian and equestrian access to the Association or its members. However, no such documents, whether or not recorded, which describe such grant, location, duration, or related conditions have been called to our attention.

LEGAL OPINIONS

Several statements of opinions by lawyers or Sonoma County officials, have been brought to our attention. There are two statements of official or legal opinion which directly address the existence of pedestrian and equestrian easements as shown on the recorded Subdivision Map approved March 1965. Those legal opinions fully support the foregoing conclusion that no private trail easement rights have been granted to the Association or its members.

1. A letter dated January 7, 2015 to TCHA from attorney Barbara Zimmerman. Barbara Zimmerman served as attorney to the Association for approximately ten years, spanning many different Boards. Her opinion letter notes that she has spoken with Sonoma County Counsel about the effect of the County's vacation of the trail easement and that they are in agreement with her analysis regarding that no private trail easement rights were created on the recorded Unit Two subdivision map.

Consistent with our discussion above, Ms. Zimmerman states "If the County did not accept dedication of the trail easement then there is no public easement on the lot (the general public cannot use the trail); but the County retains the right to accept dedication and create the public easement in the future. Whether or not the County accepts dedication or vacates the easement shown on the map only determines the public's use of the trail and does not create or defeat any private easement right the Association may hold".

She then proceeds to address the question of whether any private easement rights were created. "To grant an easement there must be a recorded document that clearly shows the intent to grant an

easement to an identified area of land to a specific person. While the subdivision map sets out easements, those easements must be expressly granted to the Association by language on the map, language on the deed to the lot, or by language in the declarations of conditions, covenants and restrictions ("declarations"). The Timber Cove Unit 2 map does not expressly grant the easements to the Association or anyone else. The deeds to the lots at issue do not grant a pedestrian or equestrian easement to the Association or anyone else." (emphasis added)

She observes that unlike most declarations of CC&Rs, the "Timber Cove Unit 2 Declaration does not contain any language that clearly grants the easements shown on the map to the Association". She observes that there is general language in Clause VIII that reserves easements and rights of way for erection, construction and maintenance of easements, including pedestrian and equestrian easements, but she notes that the statement does not identify the location of any easements nor refer to or indicate the easements shown on the map. The generic reference to construction and maintenance "does not grant any easement for use by the members of the Association".

2. **Opinions of Sonoma County Counsel and the Permit Resource and Management Department** issued in response to the petition and opposing commentary submitted to the Sonoma County Board of Supervisors regarding vacation of the irrevocable offer of dedication of Timber Cove trail easements to the County in 2015-16.

A letter dated September 3, 2015 to John Howland from Sonoma County Counsel, Bruce D. Goldstein.

This letter discusses the application to vacate the irrevocable dedication of the trail easements to the County across two lots in Timber Cove. The County Counsel confirms statements in a prior memo addressed to Timber Cove Residents from the Sonoma County Permit and Resource Management Department which discussed the irrevocable dedication of the pedestrian and equestrian easements, and the significance of the rejection of that offer of dedication.

That memo from Sonoma County PRMD, describing the easement dedication on the face of the Unit Two subdivision map, states as follows:

"...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 Home Owners' 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.**" (emphasis added).

"A copy of a deed and CC&R's referencing the easements was provided to the County and has been reviewed by both the County Surveyor and County Counsel. The interpretation from the County Surveyor and County Counsel is that the deed and CC&R's both reference the subdivision map (Tract 340) which showed the trails, the offer to dedicate the trails to the public, and the Board of Supervisors' formal rejection of that offer. There was no indication on the documents presented that private

easements were independently created. However, private rights MAY exist through other documents not provided to the County, or by other means such as prescriptive rights created through use.”

In sum, the opinions of the Sonoma County surveyor and County Counsel, are consistent with the opinion of former TCHA legal advisor, Barbara Zimmerman, and support the current TCHA Board analysis that no deeded or recorded private trails easements have been established by the Unit Two Subdivision Map or any other documents presented for our review.

3. The trails advocates rely on two other attorney letters obtained by prior TCHA Board members in support of private trail easements.

The first, a **letter dated 19 January 2015 from Attorney Martin McOmber** to Hannah Clayborn, John Howland and Tom Giacinto regarding “Timber Cove Trails Issue”.

This opinion letter was not originally prepared at the request and direction of the TCHA Board. Mr. McOmber’s original clients were three members of the Association who were advocates of private trail rights. The letter was later offered for use of the full Board, who agreed to contribute a share of the cost to prepare it. That context does not invalidate the advice, nor imply any criticism of Mr. McOmber. It should simply be understood that this lawyer’s clients all favored private trail rights, and he relied on information and direction supplied by them in framing his advice.

That said, much of Mr. McOmber’s letter challenges the validity of proceedings of the TCHA Board in 2014 relative to the dispute involving the petitioner’s efforts to move or remove the claimed private trail rights. A concluding section discusses the trail easements themselves. It questions the Zimmerman opinion referenced above and makes an argument based on alleged patterns of trail use over 50 years, and a general argument of estoppel. Questions of historical trail use and representations are disputable factual matters for a jury, perhaps analogous to claims of implied or prescriptive easement rights. They do not comprise documented or “deeded” property rights.

More importantly, Mr. McOmber does not discuss the details of the Owners’ March 1965 offer of dedication of trail easements to the County, nor the County’s rejection of those rights, as shown on the Subdivision Map. Similarly, he does not identify any specific affirmative grant of private easement rights. Therefore, his conclusions do not reach the issues we are focusing on herein.

The Trails advocates also rely on an **attorney opinion letter dated November 2, 2015 prepared for the TCHA Board by Attorney Malcolm Manwell of the Perry Law firm**. Mr. Manwell appears to argue that the pedestrian/equestrian easements are valid and enforceable simply by virtue of their being recorded on the subdivision map. He makes a general assertion that easements can be created by dedication, but he totally fails to address the Owners’ actual offer of dedication of the easements in this case to the County, and the County’s express rejection of the pedestrian/equestrian easements, all shown on the face of the map. He references the concept of an “intention” to dedicate, but does not offer any evidence of any actual expression of intention to create private trail rights on behalf of TCHA. Finally, he seems to be arguing that the Board in 2014 had no authority to remove existing easements. That is irrelevant, we are not now claiming such a right. Indeed, we support the opposite principle, that a board does not have authority to unilaterally create an easement across private property it does not own without that owner’s permission.

“THE INTENTION OF OUR FOUNDERS”

Some of the trails advocacy we have read emphasizes "the vision", or intention, of the originators of the subdivision, as if they had a concept, or plan for the community in which the existence of recreational trails played a clearly recognized and important part, even an inducement for people to buy property at Timber Cove, which we are obligated to respect. The fact that for so many years there were only occasional spotty and limited efforts to develop or use even a portion of the supposed pedestrian easements renders that proposition dubious. But, more to the point, it is worth examining the framework documents for evidence of the subdividers' intentions or vision of the community, and to consider statements indicating whether recreational trails were indeed essential components of such a plan or vision.

We've already discussed the key subdivision map, and the CC&Rs. A few words about the latter might be useful. As many have observed, our CC&Rs were rather roughly drafted, with problematic quirks, ambiguities, inconsistencies. They are also not compliant with California law, including Davis-Stirling, which was enacted after the CC&Rs were created. Nonetheless, if you read them over a few times, you do begin to get a sense of what they were aiming for, what they considered essential. The emphasis is on creating and preserving a non-commercial residential community which makes minimal changes to the natural environment, and in which home construction and landscaping are regulated to be unobtrusive and harmonious with our surroundings. There is a clear intent to keep expenditures low, setting a maximum annual fee of \$200 (which Davis-Stirling supersedes) and focusing primarily on the architectural review process and road maintenance/reserves. If you read the entire CC&Rs, other than the generic provision for servicing all kinds of easements mentioned by Barbara Zimmerman, there is no other reference anywhere to trails as a fundamental or important feature. They simply are not mentioned, even in lists of authorized functions. The only recreational feature mentioned in the CC&Rs is a supposed deeded beach access area for Association members' use south of the Inn, which has been occasionally talked about or investigated, but never pursued by any Board over the years.

Another potentially instructive framing document is the Articles of Incorporation of Timber Cove Homes Association from 1964, which legally established the Association itself, and which enumerate its purposes and powers. If recreational trails were viewed by the Developer as an essential, defining feature of the subdivision he was creating and marketing, we would expect some indication of that in the Articles. Read them. There is a long list of purposes and activities. Easements are not mentioned at all. Not a word about trails. There is, however, a provision to "maintain and care for the beach area south of Timber Cove Inn...to be available for the use of property owners." That indicates the incorporators did give some thought to recreational amenities. But that's an express requirement of the Articles of the Association which no Board has attended to. If trails are not even worthy of mention in the Articles which establish the rights and purposes of the Association, they cannot reasonably be claimed to be an essential responsibility of the Association.

Janet Smith-Heimer has taken the trouble to call our attention to another evidentiary document related to the creation and marketing of lots in the Unit Two, a series of Subdivision Reports filed by the Developer with the State Division of Real Estate to provide summary information about the subdivision for potential buyers.

These documents contain a brief reference under the heading "Title" to: "easements affecting certain lots for utility, drainage, roadway, pedestrians right of way and other purposes. These easements as

they affect individual lots may be determined by an examination of title report and recorded map of the subdivision.”

That brief reference does not constitute, nor evidence, creation of private trail rights. It doesn't say anything about **private** trail rights, it simply directs a purchaser to examine the title report and recorded subdivision map, with the specific detail it contains as we have already fully explained.

The more interesting provision on all these Final Subdivision Public Reports is language which illuminates the very limited, constrained, low budget vision the Developer actually had in mind. Timber Cove was never slated to be a mini Sea Ranch, with common areas, architecturally designed trails, beach access, recreational amenities and the like. Instead, the Timber Cove Subdivision Report states, under the heading: "Special Notes", the following, in CAPS for emphasis:

"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 THE 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."

There's your statement of "the vision of our founders". No reference to recreational trails, indeed, a disclaimer of any intention to create any such amenity for the use of the community members.

CONCLUDING CONSIDERATIONS

Recreational trails are an attractive concept. The developers of the subdivision could easily have designed a trail loop for members and set aside commonly held property for such a trail, creating a private easement for the benefit of Timber Cove members. They chose not to do so. Their vision was much more limited, and perhaps justifiably so. This is a purely residential subdivision in a rural area, extending over densely forested land with steep ridges and gullies. Especially during winter storms, conditions can be treacherous. Trail maintenance, and provision for safe use would be significant burdens. Other concerns are privacy and security. We are not a gated community and we cannot afford full time, or even part time security. There is no way to regulate who might access trails, who might be surveilling properties that are not regularly occupied. These are not trivial or imaginary concerns: they might have justified the reluctance of both the developer and the County to assume the burden or responsibility involved in creating, maintaining and securing a safe internal trail system. We are fortunate that there are several attractive state recreational areas within a few miles of Timber Cove as an alternative venue to stretch our legs.

We also need to acknowledge that many homeowners in Timber Cove purchased their properties for the natural, undisturbed peace and quiet, and solitude, offered by the subdivision. With properties of less than 2 acres, trail easements may not coexist happily with that vision of undisturbed natural surroundings. There is a substantial positive value in quality of life, regional reputation, and property values that arises from respect for neighbors, civility, lack of contention.

If trails have been created with the permission of all the owners whose properties they traverse, we have no desire to interfere with that feature. However, based on our analysis of the Subdivision map, the framework documents, legal advice and statements by the County, we believe it is clear that there are no private trail rights, or private pedestrian/equestrian easement rights that presently exist in favor

of the Association, and the Board will not attempt to enforce such purported rights. We have conferred with our insurers at length on these issues, and they have advised us to clearly notify the community that the Association has no rights to access or maintain the pedestrian/equestrian easements indicated on the subdivision map, that we will not do so, and that no one should access those easements without obtaining the permission of the property owner whose lot they cross.