Trails Issues Update, May 2022

To: All members, Timber Cove Homes Association

Pedestrian Easements in Timber Cove Subdivision Unit 2: An Update

The status of claimed trails in our subdivision has been a subject of dispute for several years. A group of outspoken trails advocates has vigorously and publicly pressed their claims, and ultimately filed a lawsuit in 2018 against a few Timber Cove property owners who had resisted trails advocates' efforts to walk across their lots using claimed "pedestrian and equestrian easements" shown on the 1965 Unit 2 Subdivision Map. The lawsuit was a "Quiet Title" action, to resolve the status of disputed easement rights on the Vernon/Rea lot.

The Sonoma County Superior Court has now completed trial concerning the disputed pedestrian easement claims on that particular lot in Timber Cove Subdivision Unit 2 (claims against 2 other lot owners were settled previously). Members of the TCHA Board have monitored developments and pleadings in the case and personally attended the recent trial.

The TCHA Board has received inquiries from our members about the impact of the trial result on the Association, such as trail claims on other lots, liability risks and insurance costs for owners of lots with pedestrian easements and for the Association as a whole, and whether dues increases would be necessary.

The purpose of this memo is to discuss the meaning of the trial result, the important issues and questions about the pedestrian easements that remain unresolved, and the Board's plans to consult legal experts to clarify such issues, including the potential role of the Association membership in resolving them. We have heard statements broadly suggesting the trial "resolved the trails issues" in our subdivision; such claims are mistaken and inaccurate. We realize the following discussion is detailed and lengthy, and covers lots of ground, but there are multiple issues and questions that need to be addressed accurately and with care, and it is important to present the full picture of potential impacts for our entire Association to consider. The Board doesn't claim to know all the answers, but at least we can attempt to identify, and explain, the important questions.

The Trial: What the Judge Decided:

The trial was bifurcated into two phases, the first to determine if the "pedestrian and equestrian easements" shown on the 1965 Map were intended for private use. If so, the second phase would proceed to adjudicate damages claims exceeding $1,000,000.00, asserted by the plaintiffs against the defendants, for having been prevented from walking across defendants' lot. The Court issued a ruling in Phase 1 determining the existence and location of a private pedestrian easement on the subject lot. At the beginning of Phase 2, which concerned the damage claims, plaintiffs' attorney stated in open court that he expected that attorney costs incurred to prove damages would exceed the amount likely to be

recovered and that it therefore made more sense for the opposing parties to suspend trial in order to attempt to negotiate a settlement of the remaining issues. Accordingly, Phase 2 of the trial did not proceed. Instead, with assistance from the judge, the opposing parties were able to reach a confidential settlement agreement. The final judgement has not yet been published, but the ruling in Phase 1 is final and public. We have attached it to this memo for your information.

Phase 1 of the trial addressed whether there was a private trail easement for the benefit of Unit 2 property owners on the Vernon/Rea lot, and if so, whether it was necessary to relocate the routing of that easement. The Court acknowledged the statement on the 1965 subdivision map dedicating easements shown on the map to the public, expressly including the pedestrian easements, and noted that the specific dedication of pedestrian easements for public access was officially rejected by the County. However, the Court ruled the rejection of public access did not affect any separate private rights. Relying on caselaw and expert testimony, the Court declared that the wording "pedestrian easement" on the 1965 Unit 2 Subdivision Map was intended to create a private easement right for owners of Unit Two lots who bought properties that referred to the 1965 Map.

The judge then proceeded to decide that the original route of the pedestrian easement on the Vernon/Rea property was unfairly burdensome and must be relocated. The original lot had later legally been combined with an adjacent lot and as a result the easement created in 1965 ran directly through the middle of the designated building envelope of the reconfigured lot where the owners were currently building a new home and garden. Use of the original easement routing would now unacceptably interfere with the property owners' private property rights. The judge ruled that to protect the Vernon/Rea's privacy and security, the pedestrian easement needed to be relocated away from their homesite and close to the lower boundary of their property. He also noted there was precedent for relocating easement routes on other lots in the past. The judge monitored the parties' negotiations over the revised routing and personally visited the Vernon/Rea property to confirm the adequacy of the revised route. As a result of the judge's ruling, the only legal pedestrian easement on the Vernon/Rea lot now is the relocated routing. The original easement location is no longer valid and cannot be used. The revised route is similar to a compromise trail re-location offered by the property owners eight years ago but rejected by a prior HOA board.

It is important to understand that the judge reasoned that Unit 2 owners had easement rights "by implication" with reference to wording on the Unit 2 map which created their lots. The pedestrian easement rights therefore only apply to Unit 2 owners. Residents of unit 1 do not have pedestrian easement rights in Unit 2 because their lots were created on a totally different map, associated with separate and different CCRs, that made no mention of any pedestrian easements, and did not reference Unit 2 or the 1965 Unit 2 map. Confirming the limited application of the pedestrian easement rights to Unit 2 property owners, four of the original plaintiffs in the lawsuit dismissed their claims seeking Unit 2 pedestrian easement rights in Phase 1, before or during trial, because they did not own property in Unit 2.

By the same reasoning, the Court's ruling does not provide pedestrian easement rights to guests at the Timber Cove Resort, nor to short-term "Air BNB type" renters who have no property interest in Unit 2 at all. General public access is clearly excluded because the County expressly rejected the dedication of the easements for public access on the face of the recorded map in 1965.

After a long period of acrimony, the Trial Court's resolution of the easement claims on the defendants' property brings a welcome resolution for the parties and the community. We are relieved to put that dispute behind us. However, the Court's ruling left many other issues related to the pedestrian easements, involving other lots and the Association, unaddressed and unresolved. We will share with you the Board's current understanding of those issues. We acknowledge we are not legal experts; the Board intends to consult expert real estate counsel to help us explore these issues and to clarify or revise the preliminary comments we offer in this memo. We will of course share their advice with the full membership.

Key Points and Unresolved Issues Regarding the Pedestrian Easements in Unit 2:

1. The Court's decision resolves claims about the pedestrian easements only on the Vernon/Rea property. It does not legally bind parties who were not before the court, including the 61 other property owners whose lots have pedestrian easements crossing them according to the 1965 Unit 2 Subdivision Map. It is noteworthy that when they filed their lawsuit, the plaintiffs had the opportunity to bring in as "interested parties" the other 61 property owners of lots with pedestrian easements, as well as the Timber Cove Homes Association, so that they could ask the judge to issue a more broadly binding and comprehensive clarification and resolution of trail issues. However, the plaintiffs chose not to do so. Early in the case, the Court clearly stated that its decision would not be legally binding on parties not before the Court.

That means, if other property owners wish to contest the right of Unit 2 residents to walk on the easements on their lots, they still have the right to do so. The rationale is that because they and their properties were not brought into the recent lawsuit, and they had no opportunity to be heard in trial, those potentially impacted owners retain a right to present to another court their own legal arguments, case law, and evidence, some of which may not have been presented in the recent trial by the parties to it. Of course, owners of the 61 potentially impacted properties may choose not to object to use of the easements on their lots, or at least may not be willing to incur the expense required to mount a legal challenge. Because the easements are located on their private properties, that is solely a matter for their decision.

The recent court decision also does not include the Association since TCHA was not a named party and had no opportunity to present evidence and argument about its interests and authority regarding the easements to the Court. The pedestrian easements are on private lots, not common areas owned collectively by the Association. However, under the CCRs, the Association does have authority to interpret and enforce the CCR's, and the CCR's specifically **reserve** to the Association the power to erect, construct and maintain easements shown on the Map, expressly including pedestrian easements. Under the CCRs and the bylaws, the Association has additional fiduciary responsibilities and authority, requiring its approval of all proposed manmade improvements, stringent restrictions on tree removal and landscaping, protection of the Association from claims through insurance, all of which may impact pedestrian easements. We have previously shared with our membership the Board's analysis of the Unit 2 governance framework related to trails claims, as well as the definitive legal opinion of prior TCHA legal counsel for ten years, who analyzed the pedestrian easement question and advised the Association that the pedestrian easements on the Unit 2 Map did NOT create private rights. The Court did not

review or consider her opinion. Since the Association was not named a party in the lawsuit, we had no opportunity to present to the judge our analyses, relevant expert legal opinion, and concerns about risks and burdens to our community. The authority of the Association, and our documented analyses, rights and concerns were not reviewed or considered by the judge in his decision, and the court's decision therefore does not bind the Association. The Board will of course respect the Court's ruling regarding the Vernon/Rea property. But we retain fully our legal rights to address issues about the use of trails within the subdivision which impact all our members. We will explain those concerns more fully below.

2. The pedestrian easements in Timber Cove are very different from conventional recreational trails in other planned subdivisions, in ways that have problematic consequences. The Timber Cove pedestrian easements are unusual in several respects, which create a number of challenging issues.

a. Most importantly, unlike Timber Cove, most other planned subdivisions which have walking trails placed them on property owned in common by the HOA as an organization of all residents; they did not place trails or paths across private residential lots as in Timber Cove. The Sea Ranch is a good example. Locating trails on common easements owned by the HOA would have avoided conflicts between trail use and private residential property rights such as privacy, security, freedom from nuisance. Thus, the conflicts reflected in the recent lawsuit in Timber Cove arise in part from the peculiar decision by the developer to place the easements on private residential lots instead of common pathways owned collectively by the Association. That common ownership would also have made decisions and activities regarding development, maintenance, security, etc. much easier to plan and address systematically and efficiently.

b. Recreational paths or trails in most subdivisions were carefully planned, located, and designed with professional assistance, in a logical, safe, user-friendly layout clearly intended for recreational purposes, whether for exercise, enjoying a view, or accessing a beach or nearby park. Unfortunately, there is no evidence of that kind of intelligent design or planning regarding the pedestrian easements at Timber Cove. Those easements simply follow the routes of underground utility pipeline and transmission easements, which bear no relation to recreational purposes. Stretches of the easements cover rugged, treacherous, densely overgrown terrain of no visual appeal and considerable danger. Easement sections are disconnected and don't form a natural, logical loop. To be sure, some sections of the utility/pedestrian easements make for a nice walk. However, many others are not suitable for safe recreational purposes.

c. Finally, unlike most subdivisions, the developers of Unit 2 never actually created or installed any physical trails. They merely indicated potential routes on a map and did nothing more; perhaps they expected the County to accept the dedication of the easements and take on those burdens itself. The subdividers made the non-existence of any physical community amenities very clear in legally required information disclosure statements they filed between 1965 and 1992 with the California Department of Real Estate. In those Disclosures, the developers prominently disclaimed any intention or plan to create or install any commons areas, open space, parks, playgrounds, etc., EXCEPT ROADS. They expressly left future decisions about those amenities to the Association. (See attachment).

The peculiar placement of the pedestrian easements on private residential lots, and the unsuitable, treacherous conditions of many routes, raise serious problems of development, nuisance, safety, liability risk, and insurability which are discussed below.

3. What Unit 2 user rights are created by the private pedestrian easements in Unit 2? What activity is permitted and who makes decisions about development and use?

The minimal labeling referring to "Pedestrian Easements" on the Unit 2 Map on which the judge relied says nothing about these fundamental questions. Here is our understanding, which we will explore with real estate counsel and clarify as needed.

a. The "pedestrian easement" only grants a right to walk on the route indicated for Unit 2 owners. The easement creates a limited **right of use, not ownership**. The private physical land on which the easement lies continues to belong to the private property owner, who can do anything lawful he or she wants with it, in compliance with the CCRs, so long as he/she does not interfere with pedestrian access.

There are no formal written rules or regulations about use of these easements in Timber Cove, but we believe that exercise of good sense, reasonableness and neighborly consideration can allow enjoyment of a recreational benefit for the community without interfering with the reasonable private property rights of the property owners who host trails. Formal rules should not be necessary if trails users apply basic courtesy, keeping in mind that they are walking across residential private property that belongs to their neighbors.

A few basic guidelines seem obvious for safety, privacy, avoiding disturbance:

Trail use is only for daylight hours.

Dogs must be leashed at all times and cleanup is required.

Use of smoking materials or open flames is extremely hazardous and strictly prohibited.

Conversation should be respectfully quiet; loud voices can carry and disturb residents.

The pedestrian trails are for orderly walking, not partying or horseplay or hanging out.

At all times, please remember to be a good neighbor, don't become a nuisance.

b. Development, construction, and maintenance of the pedestrian easements.

Individual Unit 2 owners have a right to walk the easements, but they have no right to physically alter the natural features of the easement, meaning they cannot cut trees or brush, or build steps or railings, without the private landowner's permission as well as the approval of the HOA under the CCRs. Stringent coastal commission restrictions may also apply. Additionally, of course, easement users must confine their activity within the boundaries of the easement, they must not stray outside the easement onto the private property of the lot owner.

c. More specifically, **under the CCRs, only the Association has the power to erect, construct or maintain easements shown on the subdivision map, including public utility easements and pedestrian easements**. Those rights were **"reserved"** to the Association in the CCRs, meaning the Declarant/Subdivider retained those specific rights for itself when it sold the lots. The Declarant's rights were subsequently transferred to the Association as its legal successor, as stated in the CCRs. **Those are rights, not obligations**. That means, the Association, via a full membership vote, has the power to decide whether to develop certain trail routes as an asset for all Unit 2 owners, or alternatively, not to develop easements because of the burden, risk and expense involved.

Whether or not to expend the money and effort to improve, develop or maintain any of the pedestrian easements is a decision to be made by all members of the Association. There are several miles of pedestrian easements shown on the Map. Attempting to develop and safely maintain all, or even a fraction, of those routes, given the terrain, falling trees, tree and leaf debris, etc., could be costly. There is no obligation to do anything with the pedestrian easement routes without an approval vote of the members. Nothing the judge decided alters that. The trail advocate groups are free to advocate, but they have no legal authority to construct or maintain the trails. That authority belongs to the Association, as a corporate organization. We are informed that our neighbor Association to the South at Muniz Ranch, which also had pedestrian easements shown on their subdivision map and defined in detail in their CCRs, eventually voted to rescind those easement rights. We are not recommending that action, but the questions are valid, can have serious financial, safety and liability consequences, and deserve calm and careful consideration and discussion by our membership.

4. What liability risks may be associated with pedestrian easement use, and what insurance protection is available, at what cost?

There are sensitive and important issues here which we can identify in a preliminary way but will require expert legal and insurance advice to help us all sort out more fully. The pedestrian easements cover some hazardous terrain. Even less-challenging sections can pose unseen trip and fall hazards from downed branches, unsteady footing over pinecones, concealed surface irregularities and drop offs. The risk of a severely disabling accident to an easement user is a reasonable concern.

a. Can a private lot owner be liable for an accident that occurs on an easement crossing his/her property? We don't know. Affected owners need to consult their own lawyers. The Board does plan to seek general advice from legal counsel, but in any case, owners should not rely on the Board's conjecture; they need to consult their own legal advisers. We have heard claims that the California recreational immunity law may protect private property owners from liability to members of the public who enter their properties for recreational purposes uninvited. However, that law is intended only for **public** recreational access, it may not apply for purely private easement rights granted by map to a defined group of subdivision property owners. Expert advice is needed.

b. As a separate issue, we are particularly concerned about potential liability exposure for the Association itself, as a corporate organization. TCHA does not own the pedestrian easements; they are on private property. But if the Association takes actions to promote easement use, or to construct or maintain trails, it is possible that kind of involvement could expose us to claims resulting from user accidents. Our previous insurers, who visited the subdivision a few years ago and walked the newly

improved Sperry Trail, clearly warned us that our regular HOA insurance might not protect the Association because we do not own the trails as common property, and also because the treacherous rugged forested terrain certainly creates a heightened potential risk of injury. We were strongly advised not to involve the Association with the pedestrian easements in any way, and to clearly and visibly disclaim responsibility for maintenance or safety via signage that warned users of risks. It is a high priority for the Board to explore the issue more fully with lawyers and our current insurers to help our members understand the risks and options and chart a sensible course. We recently managed to reduce our insurance expense by $25,000. We don't want to jeopardize our affordable coverage without carefully weighing the risks and rewards. We obviously need to learn more and share what we learn with our members.

5. What's next?

As mentioned, the Board plans to seek guidance from knowledgeable real estate lawyers regarding the scope of pedestrian easement rights and the judge's ruling, as well as related matters including easement development, maintenance, security, liability exposures and insurance. Counsel can confirm, supplement, or correct our preliminary understandings as presented herein and we will share the guidance they offer.

Regarding impacts on TCHA dues, the recent trial decision only affects rights on one lot and does not bind the Association. Therefore, we believe that limited decision should **not** cause the Association to incur substantial additional costs that would lead to dues increase. However, the broader questions pending about easement construction, maintenance, management, security, liability and insurance discussed above could indeed carry potentially significant future cost impacts, depending on what decisions are made and resulting activities. Those financial consequences cannot yet be estimated.

Under the CCRs and the bylaws, decisions whether to develop and maintain private pedestrian easements, the allocation of funds for those purposes, mitigating and ensuring any liability risk, are all determinations to be made by the members of the Association acting as a group, not by the Board alone, nor by self-appointed trails advocates. As we make progress exploring these issues, we will keep you posted, and as needed, seek your approval for any significant steps going forward.

The Board of Directors

Timber Cove Homes Association

Attachments [2022 Ruling of Trial Judge; 1965 California Department of Real Estate Disclaimer]

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

HANNAH MARIE CLAYBORN, et al.,

Plaintiff

v.

ANN VERNON, et al.,

Defendants.

_____/

Case No. SCV-263251

RULING ON BIFURCATED COURT TRIAL, PHASE 1

This matter came on calendar for Bifurcated Court Trial, Phase 1 on March 29th, 30th, April 1st, 5th and 6th, 2022. Appearing at the proceedings were Counsel Lewis Warren and Daniel Wilson on behalf of Plaintiffs and Counsel Peter Mallon on behalf of Defendants. The court makes it's Ruling as follows:

Statement of Facts

On March 2, 1965 the Sonoma County Board of Supervisors approved the subdivision map for Timbe Cove Properties No. 2. The Map was recorded on March 5, 1965 in Book 103, pages 11-25. Along with streets the map included several 20 foot pedestrian, equestrian and public utility easements. The map offered to dedicate all streets, pedestrian easements, equestrian easements, public utility easements, and anchor easements for public use. By resolution the Board accepted the offer of dedication for public use of streets and public utilities easements, but rejected

the offer of pedestrian, equestrian and drainage easements.

All of the parties purchased lots within the subdivision. Each deed by which the Parties acquire their properties specifically refers to the Subdivision Map. Plaintiff Susan G, Moulton sold her parcel after this suit was filed. On August 16, 2013 Defendant Ann Vernon expanded her parcel through lot line adjustment to include a 2.2 acre portion of the property immediately to the north of her property.

The pedestrian and equestrian easements are situated along property lines throughout the subdivision, extending 10 feet on either side of the property line. However, because of the lot line adjustment, the pedestrian and equestrian easement that originally ran along the northern boundary of the Vernon property, now ran through the center of the expanded parcel. As now situated, the easement ran between two residential structures that Ms. Vernon planned to construct.

On October 7, 2014 Ms. Vernon Petitioned the County "to relocate the existing trail that now passes thru the middle of the properties...". On May 10, 2016 the Board of Supervisors adopted Resolution Number 16-0189, vacating the irrevocable offer to dedicate the pedestrian and equestrian easements located on the Vernon property. The Board excepted from the vacation all existing private and public easements other than the easements specifically vacated in its resolution.

Throughout the pendency of the Vernon Petition, plaintiffs had opposed vacation of the offer of dedication. Their concern was that the Board's action might impair their right to use the easement across the Vernon parcel. On September 3, 2015, the County Counsel, Bruce Goldstein, wrote to Plaintiff John Howland, assuring him that the County's action would have no effect on any private trail easements on the property. Mr. Goldstein went on to state that the County did not have a position as to whether private easements existed on the property.

From 2016 to 2018, the pedestrian and equestrian easements were a subject of dispute

among the property owners in the subdivision, often addressed at meetings of the Board of Directors of the homeowners association, ultimately the subject of a mediation between the parties. The mediation failed to resolve the controversy as to the relocation of the easement located on the Vernon property. On March 27, 2018, the Board of Directors took the position that private pedestrian and equestrian easements did not exist within the subdivision. The Plaintiffs then filed the instant lawsuit.

Statement of the Case

The First amended complaint alleges causes of action to quiet title to private easements, enforcement of private easements pursuant to *Civil Code Section* 809, to enjoin private nuisance and for compensatory and punitive damages. Defendants' Answer denies the allegations in the complaint and affirmatively alleges lack of standing, statute of limitations, laches, estopple, unclean hands, failure to mitigate damage, and lack of proximate cause. At trial, the parties have stipulated to bifurcate the issues of existence of the private easements and the defense of laches.

During the trial the Court conducted a site visit in the company of the parties and their attorneys. The Court walked the majority of the easements and made the following observations: Each of the 20 foot easements is delineated by a series of survey markers. Many of the easements traverse steep terrain, littered with fallen branches and trees. As a result the trail itself is extremely narrow, meanders around obstacles, and in some places almost completely disappears. While all of the easements are passable on foot, travel on horseback seems highly unlikely. The Court also observed that in some areas what are referred to by the parties as "courtesy trails", which deviate outside of the easement, are utilized to accommodate the privacy concerns of affected property owners or to avoid particularly challenging terrain.

The Court heard testimony from two surveyors who were designated as expert witnesses. Howard Brunner, called by plaintiffs, testified that he had reviewed or participated in the creation

of over 100 subdivision maps starting in 1965. Maps created at that time were far less detailed in notation, and easements created on maps were generally not designated as "public" or "private". In his opinion the pedestrian and equestrian easements on the Timber Cove #2 Map were "private" as well as offered for dedication as "public". Anthony Cabrera, called by defendants, testified that he had worked with subdivision maps since 1989. During that period notations on maps had become increasingly descriptive. If a private easement were to be created, it would be labeled as private on the map. However, he candidly admitted that he had no knowledge of the customs and practices for labeling maps in 1965. His opinion was that if the easement was offered for dedication it was public, and until accepted by the public entity no easement existed.

Hanna Clayborn testified that she had first seen the trail on the Vernon property in 1989 and had walked on it. The path was small and in forested stretches, difficult to find. She moved to Timber Cove in 2010. She participated on work parties to improve and maintain the trails, and was aware of newsletters which discussed the trails. She testified in detail about the controversy surrounding the trail across the Vernon parcel from 2014 to 2018, the acrimonious board meetings, and attempts to resolve the conflicting claims through informal mediation.

Thomas Giacinto testified, corroborating Ms. Clayborn's testimony regarding trail use, trail maintenance, the ongoing controversy regarding the Vernon easement, and efforts made to resolve that controversy prior to filing suit.

Susan Moulton and Tim Mc Kusic also testified along the same lines. Ms. Moulton stated that she sold her property in 2021.

Ann Vernon testified that she purchased her first parcel in 2001 and looked at the Subdivision Map at that time but was unaware of the trails until they were mentioned at the annual meeting of the Board in 2004. She purchased the second parcel in 2008 and, by lot line adjustment, combined her existing parcel with a portion of the second parcel, resulting in the

easement now running through the middle of her planned development of the property. She stated that she did not see a trail on her property when she purchased it in 2001. She hired Susan Ruschmier to achieve the lot line adjustment in 2011.

John Rea testified that he had proposed an alternate trail route during the proceedings before the Board of Supervisors.

Susan Ruschmeier, a licensed surveyor, testified that Ms. Vernon hired her to do the lot line adjustment, which required a new record of survey and new monuments. She was aware of the pedestrian equestrian easement on the property and observed a narrow trail within the easement. She described the trail as similar to a deer trail.

John Grey, a member of the Board of Directors testified that there are "No Trespassing" signs posted throughout the subdivision.

Robert Leightner testified that he did extensive research and worked with the Board of Directors to issue a memo as to the Board's position on the existence of private easements, which was sent to all property owners.

Leonard Gabrielson, the County Surveyor, during the vacation proceedings, testified to the protracted nature of the proceedings. He recognized that Ms. Vernon had filed a petition to relocate the easement and that several proposals had been presented to the Board. He was unable to say why the Board of Supervisors acted to vacate the offer to dedicate a public easement instead of relocating the easement, as requested by Ms. Vernon.

Analysis.

Burden of Proof.

Reference to a subdivision map in a grant deed creates an easement by implication. *Fristoe v. Drapeau* (1950) 35 Cal 5. Defendants argue that Plaintiffs who rely on such a reference must prove the existence of the easement by clear evidence, citing *Thorstrom v. Thorstrom* (2011) 196

Cal App 4th 1406, 1420. Plaintiffs argue that *Thorstrom* did not involve reference to a subdivision map and therefore the higher burden of proof does not apply in this case. Without resolving this issue, the Court will apply the higher clear evidence standard.

Existence of Private Pedestrian and Equestrian Easements.

Danielson v. Sykes (1910) 157 Cal 686 is the seminal case on the subject at hand. *Danielson* holds that when a grant deed refers to a subdivision map, right of way easements shown on the map are, by implication, incorporated in the deed. The reference establishes a private right of passage that exists independently of whether the street is dedicated for public use. This doctrine has been applied and expanded to include recreational facilities in *Bradley v. Frazier Park* (110 Cal App 2nd 436 and reaffirmed in *Tract Development v. Kepler* (1988) 199 Cal App 3rd 1374. *Tract* specifically holds that: "this rule applies regardless of whether the city or county has ever accepted the right-of-ways laid out in the map, and whether or not the right-of-ways have ever been opened or used as streets or highways."

The intent of the developer of Timber Cove #2 to establish the private right to use the pedestrian and equestrian easements is clear. As Mr. Brunner testified in 1965 the custom and practice in the industry was not to label easements either public or private unless the use was to be limited to one or the other. Once the offer of dedication was rejected by the County on the face of the Map, the easement remained private only, unless later accepted by the County as a public easement. Proof of the developer's intent is further established by the CC&Rs for the subdivision. In Section 8 the developer specifically reserves the pedestrian and equestrian easements in spite of the County's rejection of the offer of dedication.

Defendants offer the DRE Report as evidence that the developer did not intend to create private rights to the pedestrian and equestrian easements. However the language referred to specifies community facilities, parks, playgrounds, open spaces, and areas for general use.

Easements are not included.

Effect of the Vacation Proceedings.

Defendants argue that the County's action to vacate the offer of dedication terminated any private rights to use the easement. This argument is refuted by the Resolution of the Board 16-0189, which specifically excepts all existing private easements from its action.

Defendants cite *Streets and Highway Code Section* 8353 to support their argument that the Board's action terminated any private easement. But that section applies to vacation of rights of way that have been accepted for public use and does not apply to vacation of an offer of dedication. Defendants argue that *Government Code Section* 66477.2 makes *Section* 8353 applicable to vacation of an offer to dedicate, but that section merely establishes the procedure for vacation and does not incorporate the substantive provisions such as 8353.

Laches.

The elements necessary to prove laches are unreasonable delay in enforcing a right and prejudice to the affected party. *Johnson v. Little Rock Ranch* (2022) 73 Cal App 5th 576, 596. Defendants have proved neither. Plaintiffs used and maintained the easements, including the easement on Defendant's property before Ms. Vernon purchased it. The easements were shown on the Map incorporated in Ms. Vernon's deed. Plaintiffs have vigorously opposed Ms. Vernon's attempts to terminate their rights and have filed suit as soon as it became apparent that other avenues of resolving the dispute were futile.

Remedies

Although the Court has recognized the existence of the private easement, the appropriate remedy must be considered. Injunctive relief requires the Court to balance the hardships to the parties. The existing location of the easement lies directly between the two residences proposed for the property and in a developed garden area. The continued use of the easement in this

location creates a significant burden on Ms. Vernon's privacy. Moving the pedestrian trail will cause far less of a burden on the Plaintiff's. The court will condition any injunction it issues on location of the trail to an area outside of the existing easement and removed from the residences. Such an accommodation has precedence in other "courtesy trails" which deviate from the easement in other locations in the subdivision.

Other Rulings.

1. The Court confirms its ruling Granting Judgement on the Pleadings as to Susan Moulton's claim under the Second Cause of Action.

2. The Court denies Plaintiff's Motions in Limine #1 and #2.

IT IS SO ORDERED.

Dated: April 7, 2022.

RENE AUGUSTE CHOUTEAU
Superior Court Judge

BEFORE THE BUSINESS AND COMMERCE AGENCY
DEPARTMENT OF INVESTMENT
DIVISION OF REAL ESTATE
OF THE
STATE OF CALIFORNIA
MILTON G. GORDON, Real Estate Commissioner

In the matter of the application of

TIMBER COVE PROPERTIES, INC.
RICHARD CLEMENTS, JUNIOR, President

for a final subdivision public report on

TIMBER COVE PROPERTIES, UNIT 2

SONOMA COUNTY, CALIFORNIA

FINAL SUBDIVISION PUBLIC REPORT

FILE NO. 7879 SF

This Report Is Not a Recommendation or Endorsement of the Subdivision But Is Informative Only.

Buyer or Lessee Must Sign That He Has Received and Read This Report.

THIS REPORT EXPIRES FIVE YEARS FROM DATE OR UPON A MATERIAL CHANGE

March 25, 1965

SPECIAL NOTES

THE 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.

YOUR ATTENTION IS ESPECIALLY DIRECTED TO THE PARAGRAPHS BELOW HEADED: RESTRICTIONS, STREETS, SEWAGE DISPOSAL, FIRE PROTECTION AND WATER.

ADDITIONAL INFORMATION FOLLOWS IN NARRATIVE FORM:

LOCATION AND SIZE: East of North Coast Hwy. #1, approximately 2.8 miles north of Ross.
Approximately 450 acres divided into 224 lots or parcels.

TITLE: Title is subject, among other things, to:
Reservations of 1/2 of all mineral, oil and gas rights without right of surface entry.
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.

ZONING: The property is to be sold for residential purpose except for Lots 3, 17, 24, 25 and 31, Block 6 and Lot 1, Block 5 which are to be sold for commercial purpose.

RESTRICTIONS: Restrictions, recorded in Book 2112, Page 651, March 5, 1965, restrictions amended Document No. Ser. J 36147, 3-25-65, Official Records of the Sonoma County Recorder, affecting the development, among other restrictions, limitations, or use, contain the following provisions:
No building, outbuilding, garage, stable, fence, wall, retaining wall, or other structure of any kind shall be erected constructed,