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July 15, 2016

HAND DELIVERED

BOARD OF SUPERVISORS
County of Santa Barbara
105 East Anapamu Street
Santa Barbara, CA 93101

Re: **Access for Parcels 31 & 17
Sierra Grande Project
Hearing Date: July 19, 2016**

2016 JUL 15 AM 11:39
COUNTY OF SANTA BARBARA
CLERK OF THE
BOARD OF SUPERVISORS

Dear Members of the Board,

Please see the attached letter dated July 1, 2016 from Mr. Kirby to Jennifer Richardson of the County Counsel's office in connection with above matter.

Respectfully submitted,

HOLLISTER & BRACE

By 
Monica Ziemer

:mmz

Attachments

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Jennifer Richardson, Esq.
Deputy County Counsel
COUNTY OF SANTA BARBARA
105 E. Anapamu Street, Suite 201
Santa Barbara, CA 93101

Re: **Access for Parcels 31 & 17**
Sierra Grande Project

Dear Jenna,

During the June 21 Board of Supervisors hearing, County Counsel advised the Board that the finding of adequate access could be made.¹ Without conceding the point, there may be substantial evidence to support such a finding, in part. There is deeded access through Parcel 74 for the benefit of Parcel 33, and the question whether the proposed use is excessive is a mixed question of law and fact. However, the same cannot be said about use of my client's private driveway to gain access to the commercial activities on Parcels 31 & 17. *As a matter of law*, the owners of Parcel 33 have no right to use the road for the benefit of Parcels 31 or 17. Two appellate cases illustrate this point very well (copies enclosed).

In *Crimmins v. Gould* (1957) 149 Cal. App. 2d 383, the owner of the dominant tenement (here Parcel 33) used and allowed "the public generally" to use an access easement appurtenant to that parcel for the benefit of an adjacent parcel which was not a dominant tenement (here Parcels 31 & 17). The trial court found that the easement was forfeited by such misuse. The Court of Appeal affirmed, explaining:

"The general rule is that misuse or excessive use is not sufficient for abandonment or forfeiture, but an injunction is the proper remedy. But where the burden of the servient estate is increased through changes in the dominant estate which increase the use and *subject it to use of non-dominant property*, a forfeiture will be justified if the unauthorized use may not be severed and prohibited." *Id* at 791; citations omitted; emphasis added.

¹ In order to approve issuance of a CUP, LUDC 35.82.060.E.1.c requires the decision maker to find that "Streets and highways are adequate and properly designed."

Jennifer Richardson, Esq.
Deputy County Counsel
COUNTY OF SANTA BARBARA
Access for Parcels 31 & 17
Sierra Grande Project
July 1, 2016

Thus, the applicant's proposed use of the driveway easement thru Parcel 74 creates the genuine risk, not only that the use will be enjoined, but that Parcel 33's right of access thru Parcel 74 will be forfeited entirely and that its access will thereafter be limited to Hwy. 101 alone.

The second case is *Wall v. Rudolph* (1961) 198 Cal. App. 2d 684. The court's recitation of the facts of this Ventura County case is convoluted. However, pages 694 thru 697 of the opinion cogently illustrate our point. The owners of the dominant tenement in *Wall* were not content with excessively using their road easements for access to a commercial facility ("sump 1") on their own appurtenant property. They also invited the public to use the roads for access to "sump 2" located on adjacent land which was not a dominant tenement. The court found this to be an excessive use of the easements *as a matter of law*. "Use of an appurtenant easement for the benefit of any property other than the dominant tenement is a violation of the easement because it is an excessive use, ... We thus see that as a matter of law there has been an excessive use of easements in burdening them with the heavy public traffic to sump 2." *Id.* at 695 - 696. Our situation is virtually identical.²

We firmly believe a court will find that the proposed public use of our client's private driveway is alone an excessive use of the easement in favor of Parcel 33, but that in any event the driveway cannot be used to benefit proposed commercial activities on Parcels 31 and 17 as a matter of law. In sum, road design issues aside, we do not see how the record can possibly support the requisite finding in this case.

Jenna, if you have a different view of this, would you please give me the benefit of your reasoning so that we can better focus our remarks at the July 19 hearing. Thank you for your consideration.

Very Truly Yours,

HOLLISTER & BRACE

By 
Steven Evans Kirby

SEK:bew

Enclosures (2)

Copy: Pollyrich Properties, LLC
Chip Wullbrandt, Esq.

² It is certain that Parcels 31 and 17 are not dominant tenements of Parcel 74. See Hebda - Kirby submission dated June 6, 2016.