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Office of County Counsel
123 E. Anapamu Street
Santa Barbara, CA 93101

VIA E MAIL

Re: Tree Farm Connection at north east end near Cathedral Oaks Village

This is input on behalf of the Cavaletto Tree Farm project as to on the northeasterly proposed road connection for Tree Farm through Cathedral Oaks Village. We have prepared this after reviewing the communications from the COVA attorneys, discussing this with a title expert and doing additional research.

There are three essential ways that this connection point could be handled each with their own issues:

1. Accept the offer of dedication with identified uses. Those uses are emergency access biking and walking for the public per the Planning Commission (PC) recommendation. Additionally traffic to the northern 19¹ homes through a gate was the consensus recommendation to the PC from Roads, Fire and P & D.
2. A private easement between COVA and Tree Farm as to uses approved by the PC but no auto traffic (potential, nominally offered by the COVA attorneys).
3. No road connection, the Tree Farm road terminates in a fire department approved round about.

First we note that all three of the above are approved by Fire Department, as the properties west of Las Perlas will be connected both at Las Perlas and Merida, the two required road connections when there exist more than 30 residences.

Summary discussion of the three options

1. **Accept the offer of dedication with identified uses** This method is cleanest from a title standpoint per the title expert. It appears express limitations in the offer of acceptance could be included in the document accepting the offer of dedication.

¹ 15 private new homes, existing Cavaletto residence and three retained Cavaletto lots for future family use.

COVA was not an innocent third party purchaser of the road parcel without knowledge of the offer of dedication. That defeats an essential point of CCP section 771.010(d). No case discusses Govt. Code section 66477.2 “for the benefit of”. Clearly if the PC action is upheld, then COVA would benefit from the walking and biking connection through Tree Farm down to the eventual bike bridge and would benefit by the emergency road connection which in times of emergency would be open so that COVA residents could go through Tree Farm to the south.

2. **A private easement between COVA and Tree Farm** Per the title expert, Cathedral Oaks Village Homeowners Association (COVA) does not actually own fee title. The prior developer entity which COVA nominally dealt with in the quiet title action did not exist legally to transfer any interest. If they don’t own that parcel, they can’t be a grantor of an easement that can be insured at this time. Moreover, the benefitted parcel of the easement- Tree Farm does not carry with it other members of the public who would walk or bike.
3. **No road connection** An alternative site plan with the roundabout at the end of the Tree Farm private road near COVA was previously prepared as an alternative. “No connection” defeats the purpose of connecting existing neighborhoods, a good planning concept supported by LEED neighborhood development.

Discussion:

Title Issues

I checked with the head regional title underwriter at First American Title on the Cathedral Oaks Village offer of dedication issue. He confirmed that the offer of dedication road “Parcel C” was not transferred in the 1970’s to the association by the original developer as had been the other open space parcels.

This actually confirms in a fashion that it was considered different than the open space parcels that the association owned and controlled including parcels with roads on them.

He said that since the offer of dedication has existed since the recording of the map in 1972 that the recent action by COVA to quiet title to that parcel did nothing in itself to impact the offer of dedication which existed as a matter of title before the action between COVA and the prior developer.²

The title representative said that if indeed the entities that constituted the general partnership Cathedral Oaks Village Associates are not currently viable corporations under the state records, then the former developer does not have authority to enter into a stipulated judgment or take any other action to impact title that a title company would rely on to insure an interest.

² As to the priority of the preexisting offer of dedication and a possible new ownership, in an Attorney General’s opinion, the fact that issuance of tax deed may otherwise start a new chain of title under [Rev. & T.C. § 3712](#), a previous offer of dedication of land runs with the land as a restraint upon its use. 54 Op.Atty.Gen. 230, 11-16-71.

Consequently the title officer does not feel Cathedral Oaks Village Association has a chain of title that puts it in a position to grant an easement over this parcel as one has to have proper title to be a grantor of property.

He said it would be more proper and clean from a title perspective to have the County accept the offer of dedication with whatever express limitations are in it and have that done in a recordable form.

I told him that in the Quiet Title action the association (COVA) alleged that it had obtained title to the road through adverse possession. We mutually discussed that the association had not paid property taxes, as the assessor apparently believed the parcel was already owned by the non-profit homeowners association. Also if it was only recently discovered that it was still owned by the now defunct developer, its use could not have been adverse as it did not even know until recently that the association did not own it.

I discussed with the title representative the provisions of Code of Civil Procedure section 771.010 and a requirement that to qualify “real property was sold to a third person after the map was filed and used as if it were free of the dedication”. COVA has known about the existence of the offer of dedication since at least 1979 when it was discussed in the context of the Cavaletto Tree Farm operation. COVA has known of the offer of dedication expressly as to the Tree Farm property as far back as 2000 when I first wrote their attorney Karen Mehl, sending her copies of it and proposing specifics as to the connection. The association set up a *Cavaletto Transition Committee* that has existed for the last 12 years and the board has known of the intended use of this offer of dedication road during that entire period.

The title representative said that from his vantage point he does not believe based on the quiet title action the real property sold to a third person after the map was filed and used as if free of the dedication.

The quiet title action does not name the County or the Cavaletto property as the benefited parcel from the offer of dedication and therefore does not have any impact over those parties.

One cannot gain prescriptive rights against a public agency, and it is the public agency that has the offer of dedication in its favor.

If they had wanted to litigate the Offer of Dedication’s impact, they had to name the County.

C.C.P. § 771.020 provides (a) An action is authorized to clear title to real property of a proposal to dedicate the property for public improvement if there is a conclusive presumption pursuant to [Section 771.010](#) that the proposed dedication was not accepted.

(b) The action shall be pursuant to Chapter 4 (commencing with [Section 760.010](#)) and shall have the following features:

(1) The public entity to which the dedication was proposed shall be named as defendant.

(2) The judgment in the action shall clear the title of the proposed dedication and remove the cloud created by the proposed dedication.

COVA tried to take unilateral action to impact the Offer of Dedication rather than name the parties interested in the issue. As such it obtained a stipulated Judgment that is not binding on the parties interested in and involved in the Offer of Dedication.

If inside transfers or claims of prescriptive rights could defeat offers of dedication, then unaccepted lateral access offers along beachfronts could be easily and routinely defeated. That is not the case.

I have prepared for your consideration a draft form Acceptance Offer of Dedication which can be adjusted to be used for action on this project. If this is the ultimate path, it might be best to run it by the title officer and if he finds the form acceptable to serve as a recorded action that clarifies the status of offer of dedication.

As to issues concerning the purported quiet title action,

California Code of Civil Procedure Section 762.010-762.090 states that the when filing the Quiet Title Lawsuit, the Plaintiff must name as defendants **all persons known or unknown claiming an interest in the property and other rules regarding proper parties in a quiet title action are addressed in these sections.**

Here are those Sections:

762.010. The plaintiff shall name as defendants in the action the persons having adverse claims to the title of the plaintiff against which a determination is sought.

762.050. Any person who has a claim to the property described in the complaint may appear in the proceeding. Whether or not the person is named as a defendant in the complaint, the person shall appear as a defendant.

762.060. (a) In addition to the persons required to be named as defendants in the action, the plaintiff may name as defendants "all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the complaint adverse to plaintiff's title, or any cloud upon plaintiff's title thereto," naming them in that manner.

(b) In an action under this section, the plaintiff shall name as defendants the persons having adverse claims that are of record or known to the plaintiff or reasonably apparent from an inspection of the property.

Accepting an Offer of Dedication: Govt. Code 66477.2

The starting point is that the County can presumptively accept an outstanding offer of dedication.³ None of the cases concerning accepting an offer of dedication discuss the issue of whether the action is “for the benefit of the subdivision”. Clearly the road segments exist that are to enhance the greater transportation circulation in an area. The Cavaletto property has dedicated land for roads that may not really be for the benefit of their subdivision but have been required by the County at one point or another. For example, Las Perlas cuts directly through the Cavaletto property and is perhaps both a detriment and benefit to the property. The new road connection from Las Perlas to Patterson Ave. will be the best road link for all of the 50 Cathedral Oaks Village residents to get to 101 and maybe both a benefit to the Tree Farm subdivision and a detriment to some of the owners along that route. It is a net economic detriment to the subdivision but required by the County Parcel.

Parcel “C” was required as a dedication of the Cathedral Oaks Village project to contribute to the natural road links in the area. The developers agreed to contribute that future road link and the issue of whether it was a benefit to COVA or not could have been raised in 1972, but was not raised. In any case this road link clearly has benefits to COVA in the following respects: COVA would benefit from the walking and biking connection through Tree Farm down to the eventual bike bridge and would benefit by the emergency road connection which in times of emergency would be open so that COVA residents could go through Tree Farm to the south.

Is the Offer of Dedication a Mistake?

The COVA attorneys state that they believe it was a mistake that the offer of dedication appeared on the map. There is no basis for this we believe. Not only was it on the map but it was also on the improvement plan approved by various County departments at that time with the Goleta Water District installing a main 20 in. line under that road with it stubbed out to have the Cavaletto property ready for connection when that property developed. See attachment. The Supervisors approval of Cathedral Oaks Village approved the Roads department letter dated January 24th 1972 “accept condition 28”. The Roads letter referring to the connecting through road “subject street shall be located with its north right of way line coinciding with the north property boundary line of the adjacent undeveloped parcel” (the Cavaletto parcel). They did not accept that road location as written. There is instead a note the “road to remain as shown on Dev. Plan per PC action 26 January”. Review of the County’s records of the PC action show the road is indeed shown at the location of the current parcel C.

³ Cal.Gov.Code § 66477.1 (a) At the time the legislative body or the official designated pursuant to [Section 66458](#) approves a final map, the legislative body or the designated official shall also accept, accept subject to improvement, or reject any offer of dedication. The clerk of the legislative body shall certify or state on the map the action by the legislative body or designated official.

(b) The legislative body of a county, or a county officer designated by the legislative body, may accept into the county road system, pursuant to [Section 941 of the Streets and Highways Code](#), any road for which an offer of dedication has been accepted or accepted subject to improvements

It appears they were recognizing the change in the road location to what was approved by the Planning Commission action which is the current location. The offer of dedication road is 210 feet south of the “north property boundary line of the adjacent undeveloped Cavaletto property”.

There is a separate stub road that is directly in alignment with the north property line of the Cavaletto parcel. It must have shifted the offer of dedication stub road to its current location from that northerly road location. In other words as written paragraph 28 was wrong in that it had reference to the stub road north of what was intended by the decision makers. That was corrected by the note in the margin.

It is highly unlikely that the civil engineers would have prepared a final map inconsistent with the approved plan, that all departments who sign off on it would have missed a mistake like that, and the owner would record a map inconsistent with the actual approval. Moreover it is highly unlikely the Goleta Water District would install a major water line in the wrong location, not in this future road.

COVA Quiet Title Action

COVA filed suit alleging it had obtained adverse possession against the owner of that parcel which it described as “defunct entities no longer active or authorized to do business in California” (complaint to Quiet Title paragraph 2). “Plaintiff is informed and believes and thereon alleges that all defendants are defunct entities, and have no legal standing in the state of California” (Complaint paragraph 7). (We have e mailed you the Court litigation file documents.)

The complaint does not name the County or the Cavaletto property, the known beneficiary of the offer of road dedication, so it clearly does not impact those parties or their rights.

We believe that a stipulated judgment between a homeowners association and defunct entities does not transfer title to confirm a claim of adverse possession. Adverse possession seemingly does not apply because COVA’s action was not open, notorious, hostile, or adverse in using the property. Moreover with no payment of taxes, it fails to meet the statutory requirement and may only at best have a non exclusive easement for road purposes which does not give them title or authority to then grant further easements. The title expert said that defunct entities do not have the ability to convey clear title to anything.

No public obligation of maintenance. It appears that the County can limit its acceptance of the offer of dedication as it chooses. One issue is private maintenance. “Although the dedication offer is accepted, the public entity does not necessarily assume the obligation of maintenance. The public is not required to maintain any road or street until they have also been formally included into the public road system. “Miller and Starr California Real Estate updated September 2011, Harry D. Miller and Marvin B. Starr Chapter 26. Dedication

Acceptance of Lesser Estate than in the Offer

The offer of dedication is for a grant of Fee for a 60 foot wide road area. A lesser acceptance

than the full grant, like the above precedent of “accepting road but not maintenance” would here match up with limitations discussed for this road link. , We have put such limitations in the draft document attached including that the road way is to be an easement rather than a fee. The 60 ft. wide fee area has been an area of concern for COVA over time.

In a sense a limited acceptance is a partial acceptance and a partial denial to accept the full extent of the Offer of Dedication.

“ **Either interest may be dedicated.** A property owner can dedicate either a fee or easement whether the dedication is by statute or implied under the common law. [1] Whether the public receives the fee title to the property dedicated, or merely an easement, depends on the facts in each case. [2]

Common-law dedication of a street or road. The cases that find a common-law dedication of a street or road by public use generally do not distinguish whether or not the public has acquired the fee title or merely an easement. In many cases the court concludes that the public only receives an easement. [3] Presumably, since the public rights are acquired by passing across the street or road, only an easement is acquired. [4]

Statutory dedication of a street or road. When there is a statutory dedication, the Subdivision Map Act does not specify whether the public acquires the fee title estate or merely an easement in the property. [5]” Miller and Starr California Real Estate 3D, Database updated September 2011§ 26:29. **Fee or easement**

The 40 year wait before accepting the offer of dedication

COVA attorneys argue that it would be unfair to accept the offer of dedication after 40 years. During that time the Goleta Water Moratorium prevented development from 1973 through 1997. During that period the County in 1979⁴ acknowledged the continuing existence of the offer of dedication through COVA. In 2000 we first communicated with COVA and its attorneys as to the use of the offer of dedication road. So of the 40 years, 25 years was consumed by the Water Moratorium, the last 12 were involved in active discussions with COVA, and use of the road accounted for 37 of the 40 years. When we first contacted COVA in 2000 no one at COVA said it was unfair to consider using a road 28 years after it was offered for dedication. Only in the last 6 months has COVA taken that position.

The greater Cavaletto family owned what are now COVA and the Cavaletto property from the 1930’s on. The relatively new owners in COVA such as the President who signed the moving papers, who moved there in 2006, should have had disclosure by realtors as to the pending

⁴ The County did not accept the offer of dedication in 1979. Regarding that, a case holds that the county supervisors' previous rejection of offer of dedication of streets did not render subsequent resolution ordering such streets to be accepted into the county road system ineffective since statute in former Subdivision Map Act indicated that offers remain open, and board might accept them at any later date. [Galeb v. Cupertino Sanitary Dist. of Santa Clara County \(App. 1 Dist. 1964\) 38 227 Cal.App.2d 294.](#)

project next door with planned circulation through COVA and could have inquired and found that there was a special Cavaletto Transition Committee representing the COVA Board on the road issue (or so the Cavaletto representatives were led to believe).

The alleged action by COVA to impact the offer of dedication occurred after an extensive public process and EIR being prepared and staff analyzing and reviewing this road connection; the acceptance of the offer of dedication has not yet occurred. It has not yet happened because project processing has endured for 12 years now.

Conclusion

We want to assist the County in analyzing the legal issues concerning the COVA road connection. We engaged the COVA association in 2000 and actively communicated with all neighbors on all planned road connectivity with the project and have tried to advance the goals of LEED ND by incorporating good planning and not causing any disproportionate traffic impact on any neighborhood group.

We hope this letter furthers the dialog on these issues.

Very truly yours,



Jeffrey C. Nelson

CC: Larry & Jackie Cavaletto
P&D- Alex Tuttle

SEE SHEET 3

S. 89°39'00" W.
833.14'

INSTALL 20' OF 20" CEMENT
LINED STEEL PIPE WITH 20"
BLIND FLANGE WEST END PER
G.C.W.D. STD. DET. 647-D

IF CAPPED DISTRICT
FORCES WILL INSTALL
CATHODIC JUMP WIRE

MAIN TO REMAIN IN-
PLACE AND INTACT

FUTURE STREET DEDICATION R/W

CONST. 20" CLASS 150 A.C. WATER LINE

INSTALL SUB SERVICE FOR
WATER METER PER
G.C.W.D. STD. DET. P-207-B

FIREHYDRANT
G.C.W.D. STD. DET. 507, & 510

N. 025'00" E. 1008.00' (REL.)
N. 024'50" E. 1008.56' (MEAS.)

N. 89°35'10" W. 146.42'

DESIGNED BY
W.O.S.

CHECKED BY
R.E.G.

REVISED
DATE DESCRIPTION

STORM DRAIN SYSTEM APPROVED BY
R. Panto 4-19 1972
FLOOD CONTROL ENGINEER - S. B. COUNTY

WATER DISTRIBUTION SYSTEM APPROVED BY
Robert M. Walden 4-24 1972

SANITARY SEWER SYSTEM APPROVED BY

PLAN & PE
WATER MAIN CO
IN EAST
TRACT
SANTA BARBARA CO

Raymond E. Spencer R.E.

U. S. GRANT &
314 E. CARRILLO ST.
SANTA BARBARA, CALIFOR

"AS"

