

Dear Neighbor,

I have enclosed for your review a letter drafted to Allison De Busk, City Planner for the City of Santa Barbara, regarding the proposed gate closure for the Montecito Country Club in connection with the redesign of the golf course.

Ms. De Busk must receive written comments by Monday, June 22, 2009 in connection with the Draft Mitigated Negative Declaration. After two serious fires, there is a renewed and heightened community concern about emergency access through the Club. We are all aware that Alston is a narrow road which will not provide adequate evacuation for the Eucalyptus Hill residents if there is a fire on or above Eucalyptus Hill.

Additionally, if the gate at the juncture of Summit and Rammetto is closed to pedestrians and bicyclists, Alston is the only other access and it is a very dangerous alternative.

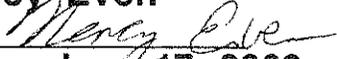
If you agree with the letter, please sign it and either fax it to Ms. De Busk or contact Nancy Even at 969-6916 and she will pick up the signed letter and deliver it to Ms. De Busk on or before Monday, June 22, 2009. The contact information for Ms. De Busk is :

Allison De Busk, Project Planner, City of Santa Barbara, Planning Division,
630 Garden Street, Santa Barbara, CA. 93101.
Phone: (805) 564-5470
Fax: (805) 897-1904
E-Mail: adebusk@SantaBarbaraCA.gov

Also, if you would prefer to provide your own comments, please e-mail, hand-deliver or fax them to Ms. De Busk on or before Monday, June 22, 2009. Due to the short deadline, it is not preferable to rely on the mail.

If you have any questions regarding the enclosed letter and signature page, please feel free to contact Nancy Even at the phone number set forth above.

Nancy Even


Date: June 17, 2009
805 Cima Linda Lane
Santa Barbara, Ca. 93108
Phone (805) 969-6916

June 22, 2009

Allison De Busk
Project Planner
City of Santa Barbara, Planning Division
630 Garden Street
Santa Barbara, CA 93101
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Fax: (805) 897-1904
E-mail: adebusk@SantaBarbaraCA.gov

RECEIVED
JUN 22 2009

CITY OF SANTA BARBARA
PLANNING DIVISION

Re: Proposed redesign of Montecito Country Club and Golf Course and Opposition to closure of access point located south of the convergence of Rametto Road and Summit Road

Dear Ms. DeBusk:

We, residents of the Eucalyptus Hill neighborhood, are writing to oppose the Draft Mitigated Negative Declaration dated May 20, 2009 and the Initial Study upon which it based for the Montecito Country Club Project (hereinafter "the project") located at 920 Summit Road.

The project poses significant adverse effects on the environment and humans, both direct and indirect, which have not been mitigated or addressed in the Initial Study or Draft Mitigated Negative Declaration.

These adverse impacts will pose significant danger to the public health and safety should the project be approved.

We request that the Planning Commission deny adoption of the Draft Mitigated Negative Declaration (dated May 20, 2009) and require an Environmental Impact Report on the project to address adverse impacts noted in our comments.

Closure of the access point located south of the convergence of Rametto Road and Summit Road poses danger to human life

Our opposition is directed to a particular aspect of the project, namely closure of the access gate at Summit and Rametto Roads on the north end of the Montecito Golf Course. This "access point" is critical for emergency evacuation of the Eucalyptus Hill neighborhood.

The Initial Study acknowledges that the "project site is located in a High Fire Hazard Area ... in the Eucalyptus Hill neighborhood." Yet the Initial Study entirely fails to relate this fact to the significant adverse impact that closure of the "access point located south of the convergence of Rametto Road and Summit Road" would have on the residents living in the area.

The Initial Study reads as if the project sits in an island unto itself, isolated from its surroundings and forces of nature. It fails to address the environmental phenomena to which Santa Barbara is subject known as the "sundowner winds."

These "sundowner winds," which can blow up to 90 miles per hour, fanned the flames of two recent Santa Barbara fires -- the Tea Fire (begun November 17, 2008) and the Jesusita Fire (begun May 5, 2009) -- both of which devastated areas of Montecito and Santa Barbara. Montecito residents living on Mountain, close to where the fire began, had only minutes to evacuate before the fire engulfed their homes. Similar reports came from residents living within close proximity of the Jesusita fire.

Not only does the Initial Study fail to address the "sundowner" phenomena and its potential impact on the Eucalyptus Hill neighborhood, the project demonstrates a callous disregard for the lives of the Eucalyptus Hill neighborhood, calling closure of the access point an "inconvenience."

In cavalier fashion, the Initial Study states that **"this access is not required for emergency access to the site. Therefore, closing this access does not represent a substantial environmental impact although it may inconvenience existing users."** This is an erroneous conclusion, not supported by the facts.

In fact, neighbors report that during the Jesusita fire the project owners, realizing the fire's extreme potential danger had it changed course, opened the access point gate to allow residents of the Eucalyptus Hill neighborhood to escape, had that become necessary.

The Initial Study incorrectly concludes in its "Mandatory Findings of Significance" that there are "no significant effects on humans (direct or indirect)..." (page 40). We disagree. It is clear that closing the access point poses great danger to the lives of the Eucalyptus Hill neighborhood.

Closure of access point poses danger to pedestrians and bicyclists

In addition to creating danger to the Eucalyptus Hill neighborhood by closure of the access point as an emergency evacuation route, closure of the access point also poses dangers to pedestrians and bicyclists of the Eucalyptus Hill neighborhood who use the access point as a safe route to Hot Springs Rd.

If pedestrians/bicyclists are forced to use the alternative route along Alston Rd. -- a narrow, heavily traveled vehicle route with blind curves -- they will be exposed to potential harm and even death. This adverse impact has not been addressed by the project.

The Eucalyptus Hill neighborhood has used the access point for at least 15 years **without** the permission of the owner. The project owner has never posted a sign stating that the right to pass by its property is by its permission and subject to its control, as required by California law to prevent a prescriptive easement.

The Initial Study states that, "while this access has been informally provided through the project site, no known easement exists." The Eucalyptus Hill neighborhood believes that it has gained a prescriptive easement to the access point that requires protection, particularly in light of the significant adverse impacts that closure of the access point presents.

Construction route impact not clarified

The Initial Study indicates that construction will take 9 months but does not state which routes will be used by trucks going to and from the project site. The Eucalyptus Hill neighborhood objects to use of Summit and Rametto Roads for any construction activity. Since it is unclear from the Initial Study as to whether these routes were intended to be used, we herewith set forth our objections and seek clarification.

In light of non-mitigation of significant adverse impacts, we request that the Draft Mitigated Negative Declaration be Denied and that an Environmental Impact Report be required

Because significant effects on humans (direct and indirect) would occur as a result of the project's proposed closure of the access point located south of the convergence of Rametto Road and Summit Road, which have been neither addressed nor mitigated, we request that the Draft Negative Mitigated Declaration be denied and that an Environmental Impact Report be required.

Signed by residents of Eucalyptus Hill neighborhood (signatures will be submitted by separate page).

**SIGNATURE PAGE FOR JUNE 22, 2009 LETTER OF OPPOSITION TO
CLOSURE OF ACCESS POINT REGARDING REDESIGN OF
MONTECITO COUNTRY CLUB AND GOLF COURSE (THE "LETTER")**

I have reviewed and concur with the three page Letter addressed to Allison De Busk, Project Planner for the City of Santa Barbara. The proposed redesign poses a significant adverse impact to humans and the environment which has not been mitigated or adequately addressed by the Draft Mitigated Negative Declaration (dated May 20, 2009).

I request the Planning Commission deny adoption of the Draft Mitigated Negative Declaration and require an Environmental Impact Report on the project to address the adverse impacts noted in the Letter.

Yours very truly,

Howard Dickelman
signature

Mrs. Howard Dickelman
print name

508 Alston
address

969-5213
phone number

e-mail

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John Ireland

JOHN IRELAND

610 ALSTON RD

969 1239

Yours very truly,

Barbara Ireland

signature

Barbara Ireland

print name

610 Alston Rd.

address

969 1239

phone number

bireland6@cox.net

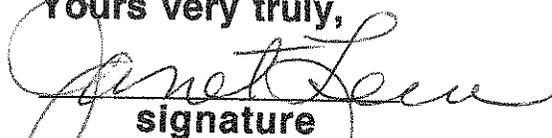
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Yours very truly,


signature

Janet Lew
print name

402 Alston Rd
address

805-565-0875
phone number

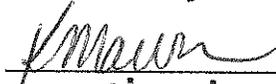
SJLew1@cox.net
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Yours very truly,


signature

Kathy Marvin
print name

1006 Alston Rd.
address

845.7845
phone number

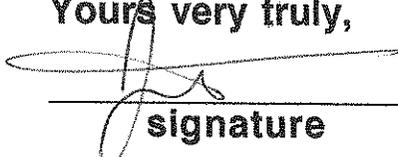
Kathleenmarvin@COC.net
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Yours very truly,



signature

John Marvin

print name

606 Astor Rd

address

845.7845

phone number

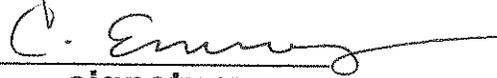
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Yours very truly,



signature

Christine Emmons

print name

736 Cima Linda Lane

address

969 3906

phone number

CBEpilot@aol.com

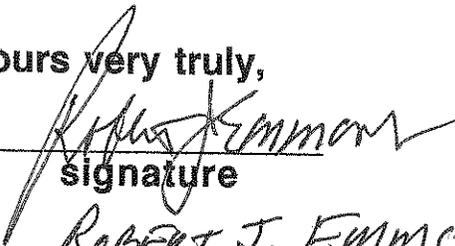
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Yours very truly,


signature

ROBERT J. EMMONS

print name

736 CIMA LINDA LN,

address

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phone number

RJECBE@AOL.COM

e-mail

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Yours very truly,

Nancy Even
signature

NANCY EVEN
print name

805 CLIMA LINDA LANE
address SB 93108

969-6916
phone number

NANCYEVEN@cox.net
e-mail

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Yours very truly,

Joel Ohlgren
signature

JOEL OHLGREN
print name

805 Cma LINDA LANE, SB 93108
address

805 969-6916
phone number

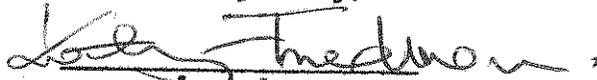
JOELGREEN@SMRIT.COM
e-mail

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Yours very truly,


signature

KATHY FRIEDMAN
print name

809 CILMA LINDA LN
address

969-4725
phone number

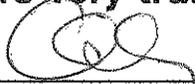
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Yours very truly,



signature

CHARLES GRAY

print name

1017 Cowan LINDA LN

address

805 969-2253

phone number

e-mail

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Yours very truly,

Don Hughes
signature

Don Hughes
print name

1050 Cima Linda Ln
address

969-1380
phone number

dourushi@cox.net
e-mail

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Yours very truly,

Joanne M Johnson
signature

JOANNE M JOHNSON
print name

1001 CIMA LINDA LN.
address

949-1248
phone number

e-mail

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Yours very truly,



signature

Matt Longmire

print name

803 Cima Liada Lane

address

969-2785

phone number

Matt.Longmire@cox.net

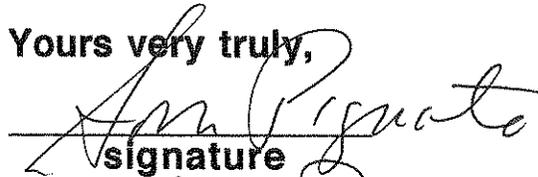
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Yours very truly,



signature

SAM RIGNATO

print name

1121 CIMA LINDA LANE

address

805 570 0196

phone number

SPIGNATOR @ COX . NE

e-mail

9

2

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Yours very truly,


signature

Jill A Smith
print name

807 Cima Linda Ln.
address Sta Barbara 93108

969-5414
phone number

jas807@verizon.net
e-mail

The Initial Study states that, "while this access has been informally provided through the project site, no known easement exists." The Eucalyptus Hill neighborhood believes that it has gained a prescriptive easement to the access point that requires protection, particularly in light of the significant adverse impacts that closure of the access point presents.

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Signed by residents of Eucalyptus Hill neighborhood (signatures will be submitted by separate page).

Alay G. Linder
234 Rametto Rd
Santa Barbara

CA 93108-
2320

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Yours very truly,

Wm May Allison
signature

Wm May Allison
print name

859 Summit Rd
address

805 9693811
phone number

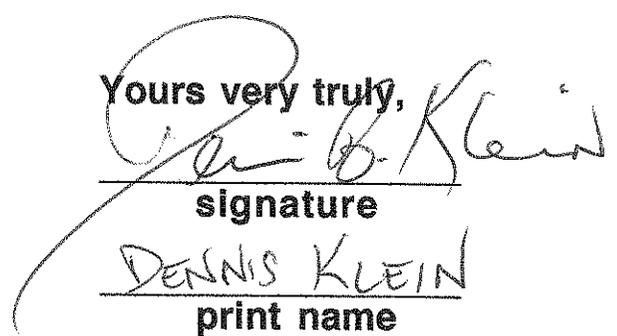
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Yours very truly,


signature

DENNIS KLEIN
print name

835 SUMMIT ROAD
address

(805) 565-9394
phone number

dennisklein@gmail.com
e-mail

Additionally, I object strongly to the ~~redundancies~~ ^{redundancies} and ^{occasional} poor use of the English language in the three-page letter, which could easily have been a one-page letter. I apologize for the wasting of your time in reading the excess verbiage. The gate, though, is a much more pressing concern.

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Yours very truly,

Suzanne Rottman
signature

Suzanne Rottman
print name

861 Summit Rd
address

(805) 565-0216
phone number

Suz.Rott@verizon.net
e-mail

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Yours very truly,


signature

George R. Alexander
print name

845 Woodland Dr.
address

969-0472
phone number

e-mail

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Yours very truly,

George C. Eskin
signature

GEORGE C. ESKIN
print name

744 WOODLAND DRIVE
address

805-969-4201
phone number

geskin@cox.net
e-mail

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Yours very truly,



signature

DIANA STERN

print name

752 Woodland Oxine

address

969-1309

phone number

Diana970@aol.com

e-mail

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Yours very truly,



signature

HERBERT STEAD

print name

752 Woodlands Dr.

address

9691309.

phone number

hstean@ecratchit.com

e-mail

**SIGNATURE PAGE FOR JUNE 22, 2009 LETTER OF OPPOSITION TO
CLOSURE OF ACCESS POINT REGARDING REDESIGN OF
MONTECITO COUNTRY CLUB AND GOLF COURSE (THE "LETTER")**

I have reviewed and concur with the three page Letter addressed to Allison De Busk, Project Planner for the City of Santa Barbara. The proposed redesign poses a significant adverse impact to humans and the environment which has not been mitigated or adequately addressed by the Draft Mitigated Negative Declaration (dated May 20, 2009).

I request the Planning Commission deny adoption of the Draft Mitigated Negative Declaration and require an Environmental Impact Report on the project to address the adverse impacts noted in the Letter.

Yours very truly,

Vince Mestik
signature

VINCE MESTIK
print name

201 RAMETTA ROAD, Santa Barbara
address

805-565-2337
phone number

e-mail

RECEIVED
JUN 22 2009

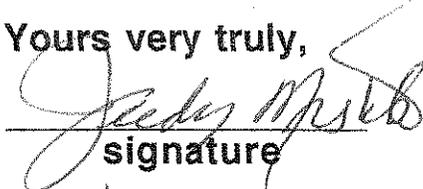
CITY OF SANTA BARBARA
PLANNING DIVISION

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Yours very truly,



signature

Jedy Mastik

print name

201 Ramona Rd SB

address

565-2337

phone number

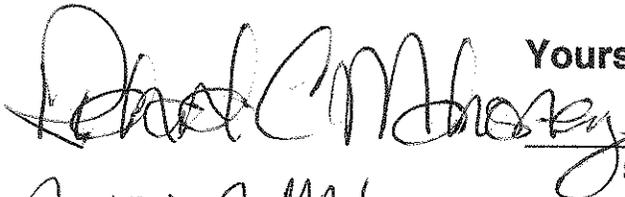
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Yours very truly,



signature

RICHARD C. MAHONEY

print name



JULIE MAHONEY

515 ALSTON RD, SB CA 93108

address

805 969 6737

phone number

DICKJULIE.MAHONEY@OOX.NET

e-mail

The Initial Study states that, "while this access has been informally provided through the project site, no known easement exists." The Eucalyptus Hill neighborhood believes that it has gained a prescriptive easement to the access point that requires protection, particularly in light of the significant adverse impacts that closure of the access point presents.

Construction route Impact not clarified

The Initial Study indicates that construction will take 9 months but does not state which routes will be used by trucks going to and from the project site. The Eucalyptus Hill neighborhood objects to use of Summit and Rametto Roads for any construction activity. Since it is unclear from the Initial Study as to whether these routes were intended to be used, we herewith set forth our objections and seek clarification.

In light of non-mitigation of significant adverse impacts, we request that the Draft Mitigated Negative Declaration be Denied and that an Environmental Impact Report be required

Because significant effects on humans (direct and indirect) would occur as a result of the project's proposed closure of the access point located south of the convergence of Rametto Road and Summit Road, which have been neither addressed nor mitigated, we request that the Draft Negative Mitigated Declaration be denied and that an Environmental Impact Report be required.

Signed by residents of Eucalyptus Hill neighborhood (signatures will be submitted by separate page).

Sincerely,

TEDDY & JOAN MEYER
228 RAMETTO RD
SANFRA BARBARA 0493108



805-565-0176

6/20/09

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Signed by residents of Eucalyptus Hill neighborhood (signatures will be submitted by separate page).

Sheryl Stagg
223 Rametto Road
Santa Barbara, Calif.
93108

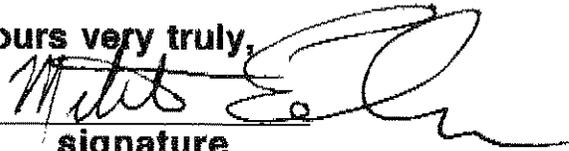
TO: Allison De Busk

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Yours very truly,



signature

Mitch Eakin

print name

242 Rametto Rd (RAMETTO RD)

address

805-455-9377 cell

phone number

MEEakin@cox.net

e-mail

Nell Eakin

Nell Eakin

242 Rametto Rd

805-565-4497 home

nell@prusb.com

RECEIVED
JUN 18 2009

CITY OF SANTA BARBARA
PLANNING DIVISION

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Yours very truly,

Cheryl R Lucas

signature

Cheryl R Lucas

print name

820 Woodland Drive.

address

(805) 969-7228

phone number

Cherierlucas@yahoo.com

e-mail

RECEIVED
JUN 18 2009

CITY OF SANTA BARBARA
PLANNING DIVISION

805 Cima Linda Lane
Santa Barbara, Ca. 93108
Phone (805) 969-6916

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Yours very truly,

Fred Clough
signature

FRED CLOUGH
print name

912 Alceda Lane
address

969-2920
phone number

fred.clough@sbbt.com
e-mail

Begin forwarded message:

*** PCB's AntiVirus/AntiSpam Gateway scanned this e-mail for malicious content. ***
*** IMPORTANT: Do not open attachments that are ***
*** unanticipated or received from unrecognized senders. ***

RECEIVED
JUN 18 2009
CITY OF SANTA BARBARA
PLANNING DIVISION

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Yours very truly,

Karen Hostettler
signature

Karen Hostettler
print name

863 Summit Road
address

805 969 7124
phone number

khostettler@hotmail.com
e-mail

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Yours very truly,

Judith Moulderres
signature

Judith Moulderres
print name

865 Summit Rd
address

805-969-0094
phone number

sclocals@aol.com
e-mail

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Yours very truly,


signature

GEORGE H. CLUTE
print name

860 SUMMIT ROAD SB
address

565 3848
phone number

USVCEH@MSN.COM
e-mail

RECEIVED
JUN ' 8 2009

CITY OF SANTA BARBARA
PLANNING DIVISION

June 7, 2009

To the City of Santa Barbara Planning Commission;

RECEIVED
JUN 10 2009

CITY OF SANTA BARBARA
PLANNING DIVISION

We are writing to express our surprise and concern regarding the current plan of the Montecito Country Club to close or limit access to the Summit Rd gate in order to extend their golf course.

At the time we purchased our home over 30 years ago, we were able to drive from the Hot Springs road entrance of the country club through to the back gate and onto Summit and Rametto road. Since the club entrance and our street are both Summit, we've always felt that was indication it was an actual road and there was a right of way to our neighborhood. Since then Santa Barbara has experienced several fires that threatened our area. During the recent Tea and Jesusita fires the winds shifted preventing the flames from coming any closer; however this street was under mandatory evacuation. A.P.S. was blocked and Hot Springs had heavy traffic as the only other exit for this end of Montecito. Fortunately the Montecito Country Club opened the Summit Rd access gate (as they also have) providing us a safe and quick exit if the winds had shifted again. Our neighbors are elderly and it takes time to pack up their medical equipment; having access to that exit lessened their anxiety if it had been necessary for them to quickly leave. The gate also provides another entry point into Summit and Rametto Rd. for emergency vehicles were Alston Rd to be closed.

As members of the Montecito Country Club we attended member information meetings every time a new remodel proposal was submitted and each time we expressed our neighborhoods need for the gate. We were told they were aware of our safety concerns and access to the gate would not be limited, which is why we were so surprised to learn that the current plan has changed that.

Please take our safety into consideration during this review process. Additionally I'm concerned that we have not received any notice regarding public hearings on their plans since elimination of the gate and basically a portion of that road directly impacts this neighborhood. We always thought we had a right of way for that road.

Sincerely,

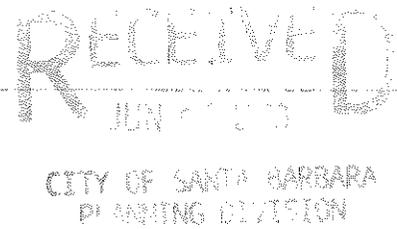
Gary and Cathy Carpenter

853 Summit Rd.

CarpenterRanch@cox.net

DeBusk, Allison L.

From: Kathy Keith [rametto@vadama.com]
Sent: Sunday, June 07, 2009 4:41 PM
To: DeBusk, Allison L.
Subject: Summit Road safety access gate



Dear Ms. DeBusk: We wholeheartedly support the accommodation by the Montecito County Club of a gate to be used for fire - emergency escape by nearby residents and the SB Fire Dept. We are residents of 137 Rametto Rd. and would appreciate the City Planning Division's requirement of such an escape route to be used only in case of emergency. Thank you for your consideration. Sincerely, Ken & Kathy Keith

6/8/2009

DeBusk, Allison L.

From: Walter Iberti [walter@ibertigroup.com]
Sent: Sunday, June 07, 2009 4:46 PM
To: DeBusk, Allison L.
Subject: Montecito Country Club site visit 6/9/09

RECEIVED
JUN 7 2009
CITY OF SANTA BARBARA
PLANNING DIVISION

RE: Summit Rd. safety access gate – Montecito Country Club plan review

Dear Ms. DeBusk,

I am a resident of the Summit Rd. area directly behind the safety gate and bordered on the North by Alston Rd. I am also a longtime golf member of Montecito Country Club as is my wife Sharon.

While I look forward to the proposed changes to the course they're irrelevant if they come at the expense of our safety. We have evacuated our house twice in the last 12 months because of wild fires which came dangerously close to our neighborhood. We're well aware of how precarious our situation is in terms of ingress and egress. If fire ever reaches Alston Rd. and cuts off Summit Rd. and Rametto Rd. we're stuck and can't evacuate by vehicle nor can fire equipment get in except through the Montecito Country Club. By removing this additional route we're needlessly being isolated. This just doesn't seem prudent in light of the recent Tea, Gap and Jususita fires. I think in this case it would be wiser to consider the safety of the community over the lengthening of the 16th hole of the golf course.

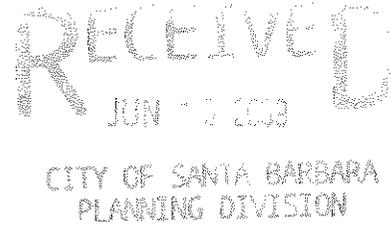
Yours truly,

Walter Iberti

Iberti Group, Inc.
1187 Coast Village Rd. Ste. 1-497
Santa Barbara, CA 93108
805-969-7131 Office
805-695-0410 Fax
805-402-6620 Cell

DeBusk, Allison L.

From: Karen Cutts [cutts@rrr.com]
Sent: Sunday, June 07, 2009 6:21 PM
To: DeBusk, Allison L.
Subject: Montecito Gate Closure



Ms. Allison DeBusk, Project Planner
City of Santa Barbara Planning Division
PO Box 1990
Santa Barbara, CA 93102-1990

Re: Proposed closure of Montecito Club gate at Summit Rd.

Dear Ms. DeBusk:

We are residents on Summit Rd. in Santa Barbara. We are concerned to learn that a proposal to expand a fairway at the Montecito Country Club will result in the closure of access through the Montecito Country Club, an escape route in the event of a fire.

In the most recent Jesuita fire, the Montecito Country Club opened this gate to enable residents to escape had the fire changed course. This escape route has been available for the 15 years that we have lived here.

We are strongly opposed to closing the access or restricting access with a barrier, such as a wall that only a fire engine or other large vehicle could break down in the event of an emergency. It is highly foreseeable that residents would not wait to evacuate and would therefore block access to fire vehicles, making escape for everyone difficult or impossible.

We request that the Planning Commission make public safety its first priority in considering this critical decision.

Sincerely,

James and Karen Cutts
845 Summit Rd.
tel: 626 375 9898 (cell)

DeBusk, Allison L.

From: Tara Holbrook [taracollin@gmail.com]
Sent: Sunday, June 07, 2009 1:57 PM
To: DeBusk, Allison L.
Subject: fire

RECEIVED
JUN 15 2009
CITY OF SANTA BARBARA
PLANNING DIVISION

We at 161 Rametto are concerned that the Summit road entrance to the Montecito Club will not be made available in the event of fire.

Tara and George Holbrook

DeBusk, Allison L.

From: TERRY TYLER [TJTCPA@GARNERTYLER-CPA.COM]
Sent: Saturday, June 20, 2009 7:22 AM
To: DeBusk, Allison L.
Cc: Francisco, Dale
Subject: Montecito Country Club project

Dear Ms. DeBusk,

I have been a member of Montecito Country Club for 32 years and I have lived on Augusta Lane, directly above the club, for 33 years. I am on the Board of Directors of the Eucalyptus Hill Improvement Association and have completed the City's CERT training program. It is essential that an emergency evacuation route be maintained down Summit Road through the country club's property. A gate, such as is in place now, which can be opened in an emergency, is adequate.

Alston Road, which spans the clubs length above the property, is two miles long and Summit Road is at the half way mark. Without Summit Road as an exit point south residents could likely be trapped in their cars along Alston Road trying to flee a wildfire moving down canyon. Please have the fire department take another look at this very dangerous situation. They have made a huge mistake which could cost lives. Just because they don't need to get in this way does not mean we don't need to get out down Summit or Rametto Road.

Regards,
Terry Tyler
12 Augusta Lane
969-4931

6/22/2009

RECEIVED
JUN 11 2009

Francis and Dumarina Sarguis
102 Rametto Road
Santa Barbara, CA 93150
tel (805) 565-0528

CITY OF SANTA BARBARA
PLANNING DIVISION

June 7, 2009

City of Santa Barbara
Planning Division
Attn: Allison DeBusk, Project Planner
Email: adebusk@santabarbara.gov

Re: Proposed remodel of Montecito Country Club golf course

Dear Ms Debusk,

I am writing in reference to the proposed MCC golf course remodel, a project which this week will receive further consideration by the City Planning Commission. This letter is addressed to you, Ms DeBusk, but I ask that my concerns be shared with the members of the Planning Commission.

At the outset, I want to tip my hat to the MCC owner, Mr. Ty Warner, whose other local projects have shown sensitivity to the affected neighborhoods, while enhancing the quality of our community in general. In this particular case, Mr. Warner's team previously briefed the neighbors about the MCC plan, and according to several of our immediate neighbors, assurances were provided by the Warner staff (from the architect to the field manager) that the dire concern of the neighbors for maintaining a rear access gate (confluence of Summit and Rametto) for future emergency evacuation would be addressed.

I was not at home at the peak of the Tea House fire. Fire department officials alerted this neighborhood of possible evacuation. The safest way to effectuate such evacuation is quite obviously via the MCC access gate on Summit Road.

I have not personally examined the latest rendition of the MCC golf course remodel plans. However, I am alarmed to learn from at least two neighbors who have pored over the latest drawings that there appears to be no accommodation in these plans for this important access gate. I cannot imagine Mr. Warner or the City ever going forward with this project without solid assurance that the safety of residents in case of emergency evacuation will be safeguarded.

This safeguard feature must be a condition of any approval of this project, and I trust City officials will heed our reasonable concern.

Thank you for your immediate attention to this, and please do not hesitate to contact me if I can provide any additional information.

Francis Sarguis
Dumarina Sarguis

DeBusk, Allison L.

From: suebutcher@aol.com
Sent: Wednesday, June 10, 2009 9:47 PM
To: DeBusk, Allison L.
Cc: michael@rangefire.comm
Subject: Montecito Country Club Gate

We had previously been told at a meeting held at the Montecito Country Club to discuss the upcoming renovation of the golf course that the metal gate in question near Summit and Rametto Roads would always allow an alternate evacuation route. This information was given by Mr. Warner's representative in response to a question posed by one of the people attending the meeting who was concerned that this alternate route would no longer be available.

All of us at the meeting relied on this information. Eucalyptus Hill is full of, yes, eucalyptus trees planted many years ago which create, through no fault of our own, an extreme fire hazard. We might desperately need this alternate evacuation route if and when the next fire comes to our area.

Public safety demands that Mr. Warner and his developers stick to their word to maintain the gate in such a way that we have the option to escape the next inferno in that direction if it comes our way.

Susan Butcher
219 Rametto Road
Santa Barbara, CA 93108
(805) 969-4267

[Dell Deals: Don't miss huge summer savings on popular laptops starting at \\$449.](#)

Dear Addison

Please excuse me for writing you on heavy matters when we should be having a latte at Starbucks and laughing about old times.

But this one's a doozy that's got the Eucalyptus Hill crowd up in arms.

The Montecito Country Club proposal to replace the current access gate at the foot of Rametto and Summit with a solid wall raises serious evacuation issues.

For the 25+ years I have lived on Rametto that gate has always been an alternative route for quickly and safely moving residents out of harm's way.

As a member of the Eucalyptus Hill homeowners board, as a member of MERRAG and as president of the Santa Barbara Amateur Radio Club and its cadre of emergency communications volunteers, I fervently believe that this proposal flies in the face of every logical safety issue that I can imagine.

Twice in the last year alone we had the alternative of moving evacuees through that corridor in the face of imminent danger from the Tea and Jesusita fires. This potentially removed a substantial traffic burden off the Alston Road route - which is the ONLY alternative.

It is my personal and professional opinion that closing off this option will increase the danger to a substantial number of residents when the next disaster occurs.

Who in their right mind would authorize construction of or modification to a structure so as to reduce the number of available exits from two to one? Even the Country Club should see the advantages to having an alternative escape route to Country Club Drive.

The City and its planners should be looking for ways to improve public emergency egress, not choke it down. I and my crews planned for and participated in the Mission Canyon, Riviera and Montecito evacuation drills. In each and every case, the fewer alternative routes offered, the greater the congestion and delay in clearing the areas.

As someone who has personally suffered great loss I know that you are in a unique position to understand the issues being raised by this proposal.

Hoping to see you soon, and with very best wishes.

Michael Ditmore

Eucalyptus Hill Improvement Association

DeBusk, Allison L.

From: Karen Vanhorn [karenavhorn@hotmail.com]
Sent: Monday, June 08, 2009 6:41 PM
To: DeBusk, Allison L.
Cc: Phil Van Horn; Karen
Subject: 920 Summit Road - Montecito Country Club Project

June 8, 2009

Ms. Allison De Busk, Project Planner

City of Santa Barbara Planning Division

P.O. box 1990

Santa Barbara, Ca 93102-1990 Via E-mail: adebusk@santa-barbaraca.gov

RE: 920 Summit Road - Montecito Country Club Project

Dear Ms. De Busk:

Many residents of the neighborhood immediately to the north of the Montecito Country Club are very concerned about the country club's plans to permanently close the Summit Road access gate.

In November 2008 and again this May 2009, Santa Barbara experienced horrible wild fires that destroyed over 300 homes. It's only because of the wind direction of both those fires that the fire did not come south, off the mountains, into our neighborhood. Had the fire suddenly come in our direction, the only safe escape route we had was the Summit Road access gate to the Montecito Country Club. Fortunately for the neighborhood, the management at the country club understood the potential danger to the residents and opened the access gate so that families would have a safe escape route if either of those fires came in our direction.

In addition to being a safe south escape route for the residents of the neighborhood, the Summit Road access gate serves as another entry into the neighborhood for the Santa Barbara Fire Department, if Alston Road is closed off by a wild fire.

We have been told personally, by most of the project leaders associated with the Montecito Country Club remodel, that they understand the safety issue and they plan to make some sort of accommodation regarding the gate. However, after reviewing the Montecito Country Club's remodel plans that were submitted to the city, it appears that there has been no accommodation for the safety access gate. We need your help with this very important safety issue.

Sincerely,

6/9/2009

Phil and Karen Van Horn

141 Rametto Road

Santa Barbara, CA 93108

Tele: 805 - 565 - 4760

DeBusk, Allison L.

From: Dennis Klein [denniklein@gmail.com]
Sent: Monday, June 08, 2009 5:39 PM
To: DeBusk, Allison L.
Subject: PLEASE KEEP THE CRASH GATE

I am writing to let you know I am STRONGLY against the Montecito Country Club breaking its word to us (I live at 835 Summit Road, up the street from the Country Club) and taking out the gate. I will not sleep at night, knowing that I am trapped--along with my wife and mainly my child--in this cul de sac if there is a fire or other disaster.

ALSO--during the recent Tea Fire, for some of the days of that fire the Montecito Country Club locked the crash gate. Which I believe is not legal.

Please do not let Ty Warner's power and influence (and/or sweet-talking attorneys) sway you into placing our lives in jeopardy. That would be very wrong. I don't know you but I'm hoping you're a decent, humane person.

Thank you for reading this.

Sincerely,

Dennis Klein

(805) 565-9394

P.S. For what it's worth I'm a writer for TV and movies. I created "THE LARRY SANDERS SHOW" and many other things. I'm not sure why I'm telling you this, but I just thought I'd add it so you get a sense of me.

DeBusk, Allison L.

RECEIVED
JUN 11 2009

From: BJJ1943@aol.com
Sent: Monday, June 08, 2009 11:57 AM
To: DeBusk, Allison L.
Subject: Access Gate Montecito Country Club

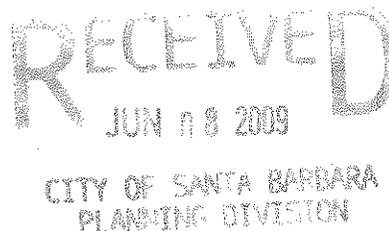
CITY OF SANTA BARBARA
PLANNING DIVISION

Allison-- I am a new resident in the area and live at 811 Summit Road- when we bought the property 6 months ago one the features we found important was the safety of having an access gate south of us - It seems to me that the new design for the planned golf course could easily be modified for the safety of not only my family - but all families that live in this neighborhood-If in fact a horrible situation arose and residents perished because they couldn't exit at the country club -you and the Planning commission would live with this guilt for the rest of your lives - thank your -for your consideration Benn and Terry Jacobson

A Good Credit Score is 700 or Above. See yours in just 2 easy steps!

DeBusk, Allison L.

From: R. H. Warren [rh.warren@verizon.net]
Sent: Monday, June 08, 2009 10:44 AM
To: DeBusk, Allison L.
Cc: judeenne.warren@verizon.net
Subject: Montecito Country Club Summit Gate



Ms. Allison DeBusk, Project Mgr
City of Santa Barbara Planning Div.

We live at 157 Rametto Road which borders the MCC golf course. We, Mr. and Mrs. R. H. Warren are absolutely opposed to the Summit Gate being permanently closed.

There are several reasons but I will give you only two. All that is needed.

1) WE HAVE ATTENDED TWO BRIEFINGS GIVEN BY TY WARNER'S PROJECT MGR. THE SUBJECT OF THIS GATE WAS DISCUSSED IN GREAT DETAIL. ON BOTH OF THESE MEETING WARNER'S PROJECT MGR. FIRMLY COMMITTED THAT THE GATE WOULD REMAIN CLOSED BUT WOULD BE CONSTRUCTED SO EMERGENCY VEHICLES AND PEOPLE COULD GO THROUGH IN EMERGENCY SITUATIONS.

2) IN THE LAST TWO FIRES WE WERE PREPARING TO EVACUATE. THIS GATE WAS OPENED FOR EVACUATION BY CITY EMERGENCY PERSONNEL.

THESE TWO REASONS I THINK SAYS IT ALL.

R.H. WARREN
565-9979



Mrs. Helgi T. Goppelt
231 Rametto Rd
Santa Barbara, CA 93108

~~Copy~~

RECEIVED

JUN 11 2009

CITY OF SANTA BARBARA
ADMINISTRATIVE DIVISION

June 07, 09

Mrs. Allison De Busk, Project Planner
City of S.B. Planning Div.
P.O. Box 1990

Re: Fire Escape Gate
Santa Barbara, Ca 93102-1990 Montecito Country Club

Dear Mrs. De Busk:

I oppose the fire escape gate closing for safety reasons. This gate leads from Rametto/Summit Rds to the MCC.

We live in a caring + civil community where human welfare + public safety should take priority over any design of Montecito Country Club or any other institution.

When the escape routes become clogged + there is no escape gate, many people with their children + pets will face the horrible death by fire.

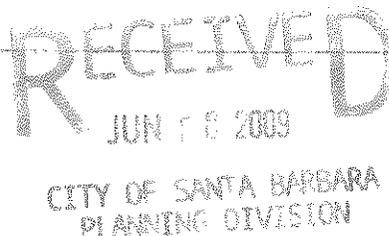
Please keep the fire escape gate in operation for the safety of all residents in the adjoining community.

Thank you!

Yours truly,
Helgi T. Goppelt 969-3429
231 Rametto Rd
Santa Barbara, Ca. 93108

DeBusk, Allison L.

From: Teddy Meyer [teddym@earthlink.net]
Sent: Monday, June 08, 2009 10:16 AM
To: DeBusk, Allison L.
Subject: Summit Rd. Crash Gate removal



Good Morning Allison:

Over the weekend it was brought to my wife and my attention that the Montecito Country Club has changed their plans to keep the crash gate in place, as promised in meetings we attended. Because of the possible emergency's like we have just experienced with the fires, closing off our emergency exit through the Montecito County Club could turn out to be a major disaster. We need to keep this emergency gate in place.

Before the end of this week I will have more than 100 signatures from neighbors asking to keep this emergency gate in place.

Thank you,

Teddy and Joan Meyer- 228 Rametto Rd. Santa Barbara Ca. 93108

All the best,

Teddy Meyer
Coldwell Banker Previews International- Montecito Ca.
Office Direct- 805-565-8835
Cell 451-4321
Fax 969-0262
e mail teddym@earthlink.net
www.LuxuryMontecitoHomes.com
www.TeddyMeyer.com

NO Boundaries, Just Possibilities

DeBusk, Allison L.

From: Karen Hostettler [khostettler@hotmail.com]
Sent: Monday, June 08, 2009 9:57 AM
To: DeBusk, Allison L.
Subject: Comment -- Montecito Country Club Redevelopment Plan
Importance: High

RECEIVED
JUN 8 9 2009
CITY OF SANTA BARBARA
PLANNING DIVISION

Dear Ms. DeBusk:

I reside at 863 Summit Road in Santa Barbara. I am writing to express my concern regarding the proposed Montecito Country Club redevelopment plan and the absence of the Summit Road fire safety access gate in this proposed plan. This fire safety access gate is critical for myself and other homes located North of the club on both Summit and Rametto Roads. In fact, this very gate was available as a residential escape route and fire truck access route during both the recent Tea Fire and Jesusita Fires. Given the fire threats we live with everyday in Santa Barbara and the fact that the Summit Road gate has been essential for the neighborhood's safety over the years and twice in the past year, I would like to City Planning office to know that I fear that the removal of the fire access safety gate in the new Montecito Country Club redevelopment plan would be detrimental to my personal safety and the safety of other residents located just North of the club.

Furthermore, I am writing to let you know that I have never received one mailing correspondence from the City of Santa Barbara regarding the Montecito Country Club redevelopment plan. I kindly ask your office keep me informed at my permanent residential address or post office box address indicated below:

863 Summit Road
Santa Barbara, CA 93108

1187 Coast Village Road
Suite 1-161
Santa Barbara, CA 93108

Thank you for reviewing my comments.

Karen Hostettler
khostettler@hotmail.com
(805) 969-7124

DeBusk, Allison L.

From: Vince Mrstik [vmrstik@verizon.net]
Sent: Monday, June 08, 2009 9:22 AM
To: DeBusk, Allison L.
Subject: Closing of Summit Road access gate at Montecito Country Club

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JUN 08 2009

CITY OF SANTA BARBARA
PLANNING DIVISION

Ms. Allison DeBusk,

This morning I was notified that the Montecito Country Club is planning to permanently close the Summit Road access gate.

This is a very disturbing development which places my family at great risk. As a resident of Rametto Road, I have depended on the Summit Road access gate as a means of escaping fire coming from the North (which would block escape to the North on Alston road). The possibility of such fire is very real, recent events make this clear.

During the upcoming site visit by the Santa Barbara Planning Commission, please include a visit to the Alston road access to Rametto and Summit road so that the commissioners will have a clear understanding of the importance of keeping the Summit Road access gate available as a fire exit.

PLEASE, PLEASE DO NOT PERMIT THE GATE ACCESS TO BE REMOVED. THE COUNTRY CLUB'S DESIRES SHOULD NOT BE PERMITTED TO RISK THE LIVES OF RESIDENTS OF RAMETTO AND SUMMIT ROAD.

Thank you,

Vincent Mrstik
201 Rametto Road
Santa Barbara, CA
(805)565-2337

June 5, 2009

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JUN 5 2009

CITY OF SANTA BARBARA
PLANNING DIVISION

Ms. Allison De Busk, Project Planner
City of Santa Barbara Planning Division
P. O. Box 1990
Santa Barbara, CA 93102-1990

Via E-mail: adebusk@santabarbaraca.gov

Re: 920 Summit Road - Montecito Country Club Project

Dear Ms. De Busk:

Many residents of the neighborhood immediately to the north of the Montecito Country Club are very concerned about the country club's plans to permanently close the Summit Road access gate in order to lengthen the 16th hole of the golf course by 20 yards.

In November 2008 and again this May 2009, Santa Barbara experienced horrible wild fires that destroyed over 300 homes. It's only because of the wind direction of both those fires that the fire did not come south, off the mountains, into our neighborhood. Had the fire suddenly come in our direction, the only safe escape route we had was the Summit Road access gate to the Montecito Country Club. Fortunately for the neighborhood, the management at the country club understood the potential danger to the residents and opened the access gate so that families would have a safe escape route if either of those fires came in our direction.

In addition to being a safe south escape route for the residents of the neighborhood, the Summit Road access gate serves as another entry into the neighborhood for the Santa Barbara Fire Department, if Alston Road is closed off by a wild fire.

We have been told personally, by most of the project leaders associated with the Montecito Country Club remodel, that they understand the safety issue and they plan to make some sort of accommodation regarding the gate. However, after reviewing Montecito Country Club's remodel plans that were submitted to the city, it appears that there has been no accommodation for the safety access gate. We need your help with this very important safety issue.

Sincerely,

Jim and Margo Coffman
877 Summit Road
Santa Barbara, CA 93108
Tele: 949/637-5607

DeBusk, Allison L.

From: Corrgroup1@aol.com
Sent: Monday, June 22, 2009 2:15 PM
To: DeBusk, Allison L.
Subject: Montecito Country Club Project

Ms. DeBusk
Project Planner, City of Santa Barbara

I want to add my voice to those expressing serious concerns with some of the proposed changes at the Montecito Country Club. While I have not seen detailed reports nor heard of the exact changes proposed, I understand the existing rear gate at Summit and Rametto Roads will be closed to vehicles and pedestrians.

This gate is of great importance to the community in the event of an emergency and evacuation order as it would allow us to get quickly from this area to Coast Village Drive and the highway. We are all well aware of the recent fires. Alston Road is narrow with numerous sharp turns and in an emergency would be crowded with neighbors fleeing on foot and by automobiles. At the same time fire department equipment, emergency vehicles and police vehicles will be attempting to reach their destinations. It seems to me and my neighbors that much study is needed before a decision is made to approve the changes to the MCC and perhaps (if not ordered already) an Environmental Impact Report on the MCC Project is necessary.

I trust your Department will keep the community informed on the proposed changes and give us an opportunity to comment.

Gerald Corrigan
723 Woodland Drive
Santa Barbara, CA 93108

Make your summer sizzle with [fast and easy recipes](#) for the grill.

DeBusk, Allison L.

From: nancy even [nancyeven@cox.net]
Sent: Friday, June 12, 2009 10:38 PM
To: DeBusk, Allison L.
Cc: Michael Ditmore

Dear Ms. DeBusk,

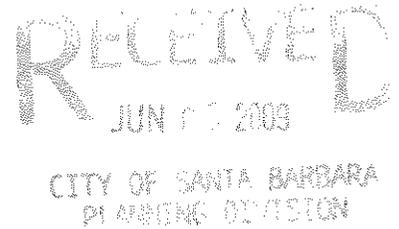
I am extremely concerned about the potential closure of Summit Road through the Montecito Country Club. This is an extremely important fire escape route for those in the Eucalyptus Hill community. After the two recent fires, the necessity of maintaining the access route is critical for our safety.

Additionally, it has been used continuously for years by a large number of pedestrians and bicyclists to walk and ride safely to the lower Montecito and beach areas. If this were not available, the residents would have no safe alternative. Alston is dangerous for pedestrians and bikers between Summit and Hot Springs Road. Santa Barbara's policy is to encourage alternative methods of transportation.

The closure would force many Eucalyptus Hill residents to use their cars when they have been walking or riding their bikes. This would not be furthering the goals of our city. Thank you for your consideration.

Nancy Even
805 Cima Linda Lane
Santa Barbara, Ca. 93108
phone-969-6916

June 7, 2009



To the City of Santa Barbara Planning Commission regarding the closure of the Summit Rd gate access

Commission Members;

The closure of the Summit Rd gate would create an extreme hardship to the residents of and around Summit and Rametto roads. First and foremost, it would eliminate a vital access route in the case of emergencies as the recent fires have demonstrated. Closure would also create a danger to the children and bicyclists who use that road for safety concerns rather travel then Alston Rd.

Also from a legal point, we believe that when we purchased and built our home over 50 years ago there was (and still is) an easement clause in the deed of our properties that states we are entitled to free access of that outlet. We intend to research that as well as contact the Eucalyptus Hill Homeowners Association this next week.

Please consider the needs of our neighborhood when you are reviewing their plans.

Sincerely

Bill and May Allison 859 Summit Rd.

Hope Kelly 839 Summit Rd.

DeBusk, Allison L.

From: ERNSTSAL@aol.com
Sent: Wednesday, June 17, 2009 4:55 PM
To: DeBusk, Allison L.
Cc: Armstrong, Jim; Blum, Marty; Schneider, Helene; Falcone, Iya; Horton, Roger; Francisco, Dale; House, Grant; Williams, Das
Subject: Closing Access to Montecito Country Club Rametto/Sumit

Dear Ms. DeBusk:

The proposed closure of walking access through the now chained entryway at Rametto and Summit Rods is a threat to the home owners in the area in the event of fire or earthquake.

The only other road out for many of us living on Eucalyptus Hill is Alston Road traveling east and west. In the event of a major evacuation, I assure you that Alston Road and all its connecting on-flow streets will be jammed with cars. It is reasonable to believe that in the event of another fire, which is sure to happen, or an earthquake, some residents will be forced to walk or bike out as they have in every past fire, including the last one.

This entryway to the Montecito Country Club has been chained for years so that cars are not able to drive through. The club has not suffered any damage over the years by people walking through or biking through. I don't understand Ty Warner's motives for this complete closure request. Closing it off to walkers or bicycles could be catastrophic.

There is a legal issue that could come into play and it is one of Prescriptive Easement. I personally have jumped over the chain and walked through the club for over 30 years, as have hundreds of others. This is an issue for a court to decide, should you move to allow the entryway to be permanently sealed shut.

Bottom Line: Closure is bad public policy.

Sincerely,

Ernest Salomon
855 Woodland Drive
Santa Barbara, CA 93108
Ernstsal@aol.com
805-565-3025

Dell Days of Deals! June 15-24 - A New Deal Everyday!

DeBusk, Allison L.

From: Pam Raisin [pamraisin@mac.com]
Sent: Thursday, June 18, 2009 8:05 AM
To: DeBusk, Allison L.
Cc: Capp Raisin
Subject: Montecito Country Club Easement

>>
>> Dear Ms. DeBusk:
>>
>> We are homeowners living at 207 Rametto Road, living in our home for
>> the past 5 years. We own approximately 3 1/2 acres of land including
>> a portion of the canyon/creek which abuts to the Montecito Country
>> Club (MCC).
>> My letter is concerning the proposed blockage of the back entrance of
>> the MCC. This back entrance is currently open for pedestrian use and
>> has been unlocked and opened during the past two (2) fire evacuation
>> warnings in the last 8 months. Here are our concerns:
>>
>> 1. This is the only SAFE access for us to walk, run, our ride our
>> bikes to get to the grocery store, beach, Coast Village Road, or the
>> path on Cabrillo Street. Without it, MCC would be expecting our 9
>> and 7 year old to ride their bikes (or walk down) Alston Road east
>> onto Hot Springs Road or take Alston, heading west onto Eucalyptus
>> Hill Road. Neither way is safe. We also have a 15 month old we put
>> in a baby stroller. We treasure our family outings where we don't
>> have to get into the car! And we have never been hit by a golf ball.
>> We think being a pedestrian on Alston Road is more dangerous than
>> walking under, across, or around a golf course.
>>
>> 2. Fire exit for the neighbors. Having three little ones and
>> packing up your home during a "warning" is frightening enough, we
>> can't imagine having little to no warning (we are next to a canyon)
>> and not being able to escape because there is a back-up or the fire
>> is coming down on Alston Road thru the neighboring canyon off of
>> Camino Viejo Road. If you can prevent such a catastrophe from
>> happening, we would assume the city of Santa Barbara would make it a
>> priority. We think it is the duty of the Santa Barbara Fire
>> Department and the city of Santa Barbara to do everything in their
>> powers to prevent any future problems from occurring. It is
>> responsible and accountable government.
>>
>> 3. Is this an Easement? We know there has been public access for
>> over 35 years. We would be most appreciative if you would please
>> forward the current documentation showing the legal use of this
>> property.
>>
>> Thankyou for your time. We look forward to hearing from you.

>>
>> Pam and Capp Raisin
>

June 18, 2009

Dear Ms. Debusk,

The redesign of the Montecito Country Club Golf Course would affect the kids of this neighborhood greatly. It is always a safe place to walk through if I want to go to the beach with my friends and sisters. The other road Alston is very dangerous and my mom doesn't feel comfortable allowing us on that road alone. We are members of the Coral Casino and it is always a convenience to ride our bikes through the Club in order to get there safely. The closing of the gate would also change my mom's perspective of safety in the neighborhood. Being left alone here I know I can always walk through the Country Club in case of an emergency. I love living here and the whole neighborhood would change if the gate were closed.

Sincerely,

Emily Rottman: Age 17 

Danielle Rottman: Age 14 

Alexis Rottman: Age 11 

Address: 861 Summit Road

RECEIVED
JUN 22 2009

CITY OF SANTA BARBARA
PLANNING DIVISION

**OPPOSITION TO PROPOSAL TO BLOCK SUMMIT ROAD IN CONNECTION
WITH THE MONTECITO COUNTRY CLUB GOLF COURSE PROJECT**

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The Montecito Country Club ("MCC") seeks Santa Barbara City Approval of a Project to remake the MCC golf course.

As part of the proposal MCC would build a Wall along the Northern Boundary of the golf course that would block all access from Summit Road and Rametto Road North of the Wall to Summit Road below the Wall.

Summit Road through MCC appears as a public thoroughfare on Google Maps, Yahoo Maps, the Automobile Association of Southern California map of Santa Barbara, and other maps of Santa Barbara. Moreover, Summit Road below the proposed Wall has been used by more than 30 years by pedestrians and cyclists as a safe access to Hot Springs Road and to the Beach, and it is a safety exit from the neighborhoods north of the Golf Course in the event of fire or other natural disaster.

The proposal should be denied for the following reasons:

1. Public property rights have been created over Old Summit. Moreover, prescriptive easement exists and has existed for over 30 years allowing pedestrians and cyclists to safely go from the neighborhoods above the Golf Course to Hot Springs Road, Coast Village Road, the Beach, and to connect to the bicycle paths along the beach. Other routes such as Alston Road are unsafe for pedestrians and cyclists. The City should not take these important property rights.
2. Public Safety requires that the access to Old Summit be retained. In the last year, 3 significant fires have occurred in the City, and the neighborhoods North of the Golf

1 Course have been in the potential Evacuation Zones. Fires sweeping down Eucalyptus
2 Hill or down the Canyons from Hale Park and Barker Pass under Sundowner Wind
3 conditions could quickly make the Old Summit access critical to save the lives of
4 people in those neighborhoods. Other potential escape routes might be blocked by fire
5 or by evacuees from neighborhoods to the North of Eucalyptus Hill and Pepper Hill,.
6 The City require access on Summit road or a reasonable alternative route South of the
7 junction of Summit Road and Rametto road to avoid putting citizens lives at
8 unnecessary risk.

- 9
- 10 3. The project can be reconfigured to preserve access to Old Summit as it is now provided
11 or to provide alternative access along the North and East sides of the changed Golf
12 Course either to Summit Road below the planned changed Golf Course or to Golf
13 Road.
- 14
- 15 4. As stated above, many maps and navigations systems (such as Garmin) routinely route
16 travelers up Old Summit when they are seeking to go to Alston Road. These maps and
17 navigation systems show the continuous use and utility of Old Summit to the public at
18 large.

19

20 Reasonable access through the MCC property should be required during the
21 construction phase of the project as well as after it has been completed.

22

23 Dated: 22 June, 2009

24

25 By



26 Joel R. Ohlgren

RECEIVED
JUN 27 2009
CITY OF SANTA BARBARA
PLANNING DIVISION

1 DECLARATION OF JOEL OHLGREN IN OPPOSITION TO THE MONTECITO
2 COUNTRY CLUB PROPOSAL TO BLOCK SUMMIT ROAD

3
4 FACTS

5 I, Joel Ohlgren, say and declare as follows:

- 6 1. I have consulted several maps of the neighborhoods around the Montecito Country
7 Club at several times since 1994. Summit Road is shown on pertinent public maps as a
8 through road from Alston Road in Santa Barbara proceeding south to Hot Springs Road
9 and then to Butterfly Lane and Middle Road in Montecito. Copies of the Street Map of
10 Santa Barbara published by H. M. Gousha, the Street Map of Santa Barbara and
11 vicinity published by Automobile Club of Southern California, copyright 1988, Google
12 Maps, and Yahoo Maps are attached.
13
- 14 2. On June 21, 2009, I made A Google map search for the walking route between 158
15 Hermosillo, Montecito, California 93108 and 805 Cima Linda Lane, Santa Barbara,
16 California 93108, and I made a Yahoo Map Search for the same route. Both searches
17 direct the traveler to take Summit Road from Hot Springs Road through the Montecito
18 Country Club to the junction of Summit Road and Rametto Road, and then Rametto
19 Road to Alston Road, and then Alston Road to Cima Linda Lane. The prescribed route
20 on both systems is Summit Road through the Montecito Country Club.
21
- 22 3. I have had a home at 158 Hermosillo, Montecito, California 93108 since spring 1994,
23 and I have used the Summit Road route through the Montecito Country Club to reach
24 Alston Road, Hale Park, Eucalyptus Hill Road above Hale Park, Cold Springs School
25 located on Sycamore Canyon Road, and Westmont College located along Cold Springs
26 Road regularly and routinely.
27
28

1 4. Since 2003, I also have had a home at 805 Cima Linda Lane, Santa Barbara, California,
2 93108. (I still own the home at 158 Hermosillo). Since 2003, I have regularly and
3 routinely used Summit Road through the Montecito Country Club to walk to Butterfly
4 Beach (using the pedestrian tunnel under the freeway at Butterfly Lane), to walk or
5 bike to the Bird Refuge along Cabrillo, to use the bike route along the bluffs, around
6 the Cemetery, and to walk to shopping and restaurants on Coast Village Road, and to
7 access the bike paths along the beaches.

8
9 5. The Summit Road route is the safest and most direct route to walk to Butterfly Beach
10 and to Coast Village Road, and is the safest and most direct route to walk from the
11 lower Montecito neighborhood (Hermosillo is in the Cold Springs School District) to
12 Alston Road, Hale Park, and Eucalyptus Hill Road and to Cold Springs School.

13
14 6. Alston Road is increasingly more heavily used since the closure of Sycamore Canyon
15 Road.

16
17 7. From the top of Summit Road to Hot Springs Road, Alston Road has no marked or safe
18 bike path or pedestrian walking area. Alston Road twists and turns as it goes down hill
19 to Hot Springs Road and traffic tends to go fairly fast down hill. This is a very unsafe
20 route for Pedestrians and Cyclists to go to Coast Village Road, to Butterfly Beach, to
21 the Coral Casino and to the bike paths along the beach from the neighborhoods above
22 the Montecito Country Club.

23 I declare the foregoing under penalty of perjury.

24
25 Dated: 22 June, 2009

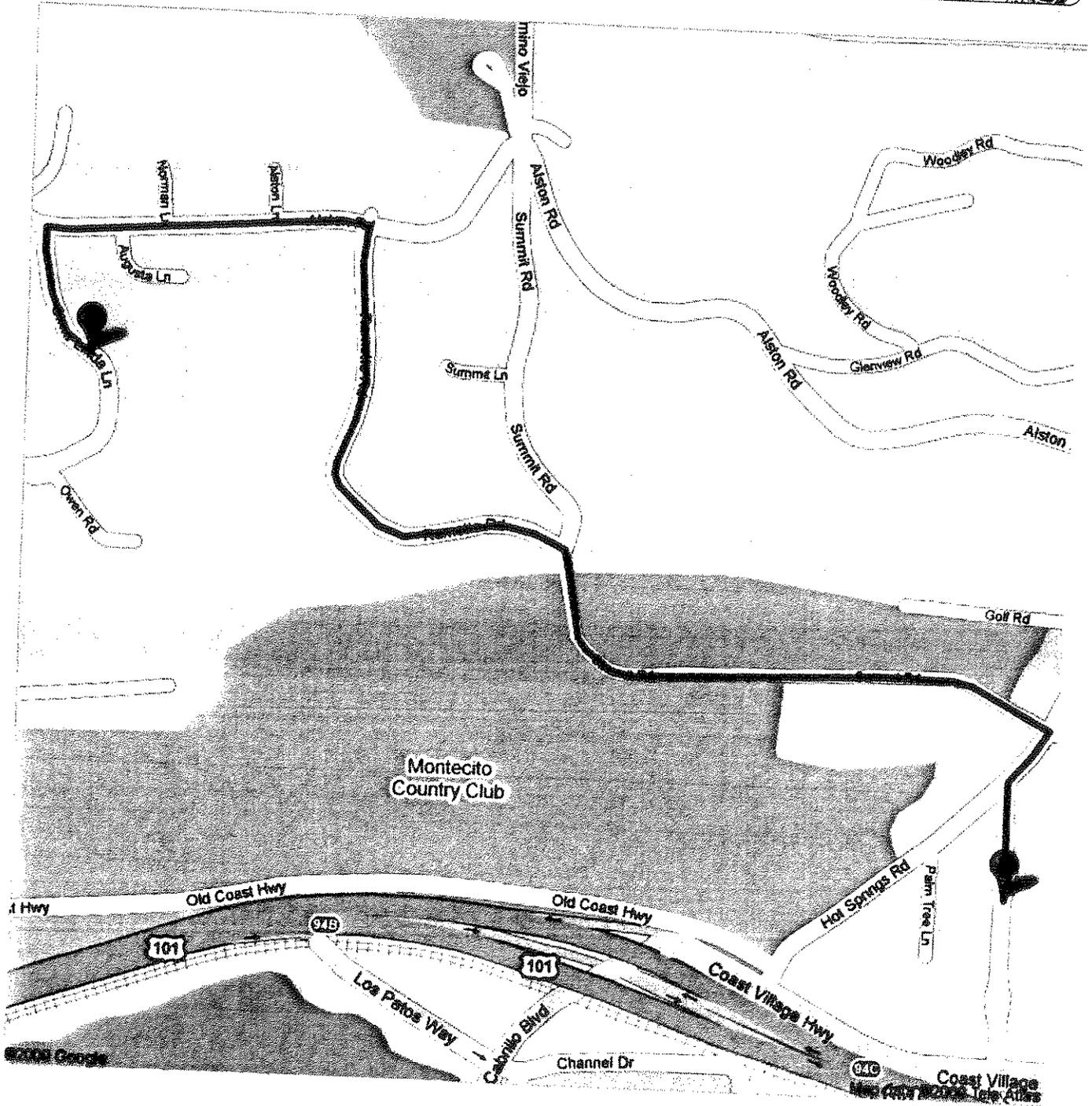
26
27 By


Joel R. Ohlgren

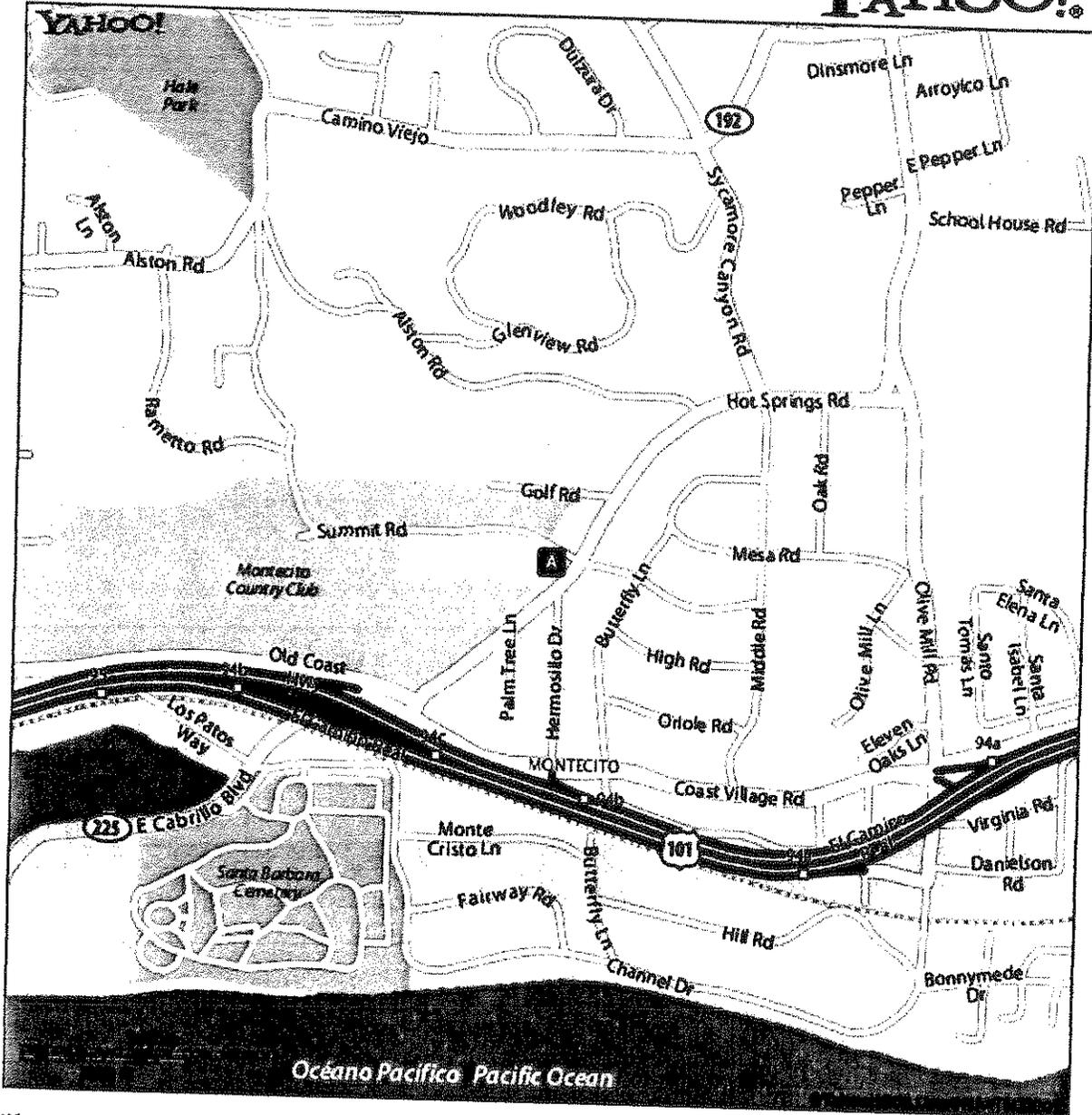
Google maps

Directions to 805 Cima Linda Ln, Santa Barbara, CA 93108
1.4 mi - about 31 mins

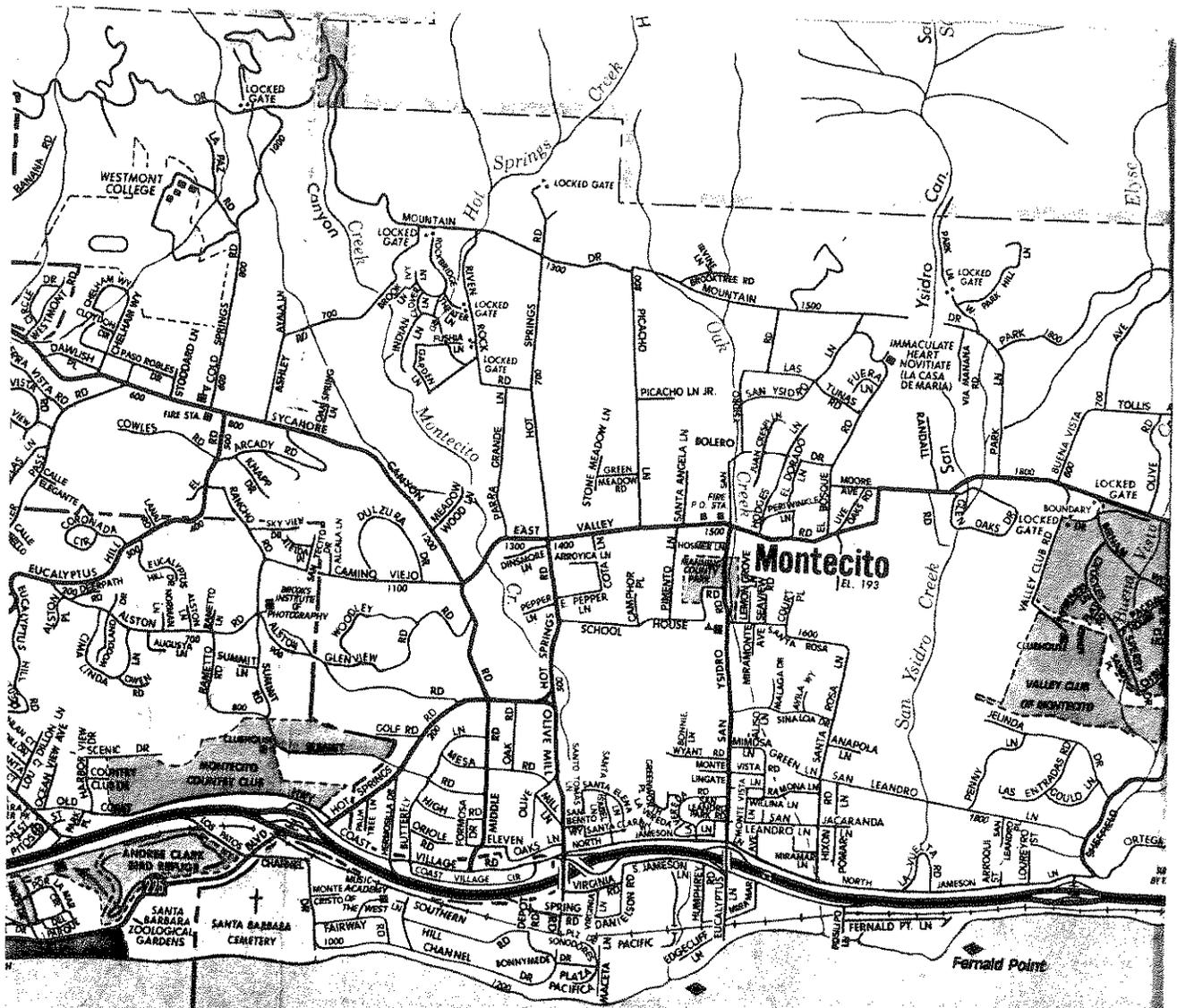
Save trees. Go green!
Download Google Maps on your phone at google.com/gmm



Map of 34.425565,-119.649245



When using any driving directions or map, it's a good idea to do a reality check and make sure the road still exists, watch out for construction, and follow all traffic safety precautions. This is only to be used as an aid in planning.



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Santa Barbara

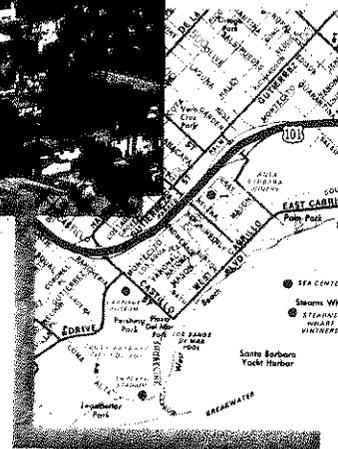
CITYMAP

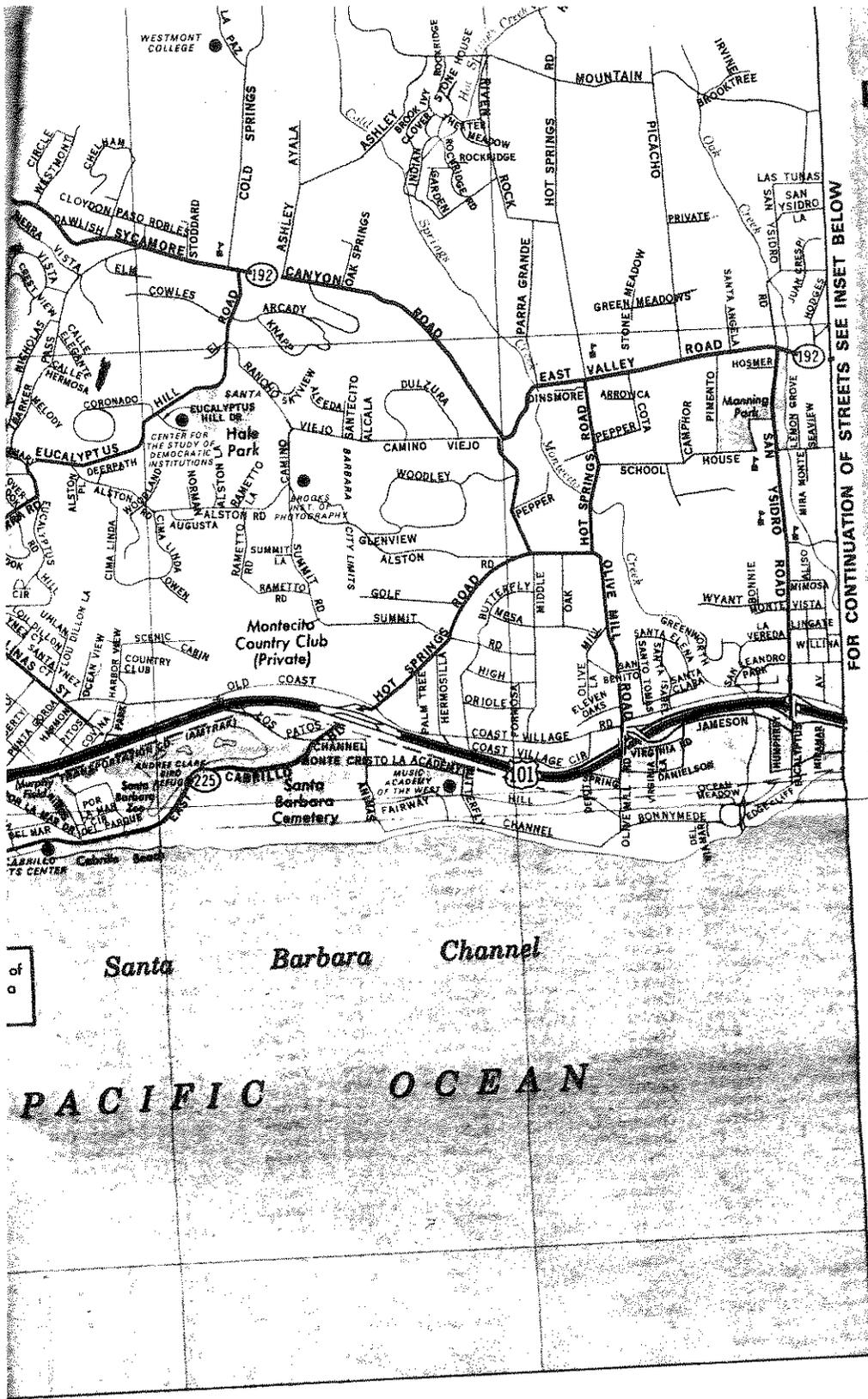
A GOUSHA TRAVEL PUBLICATION



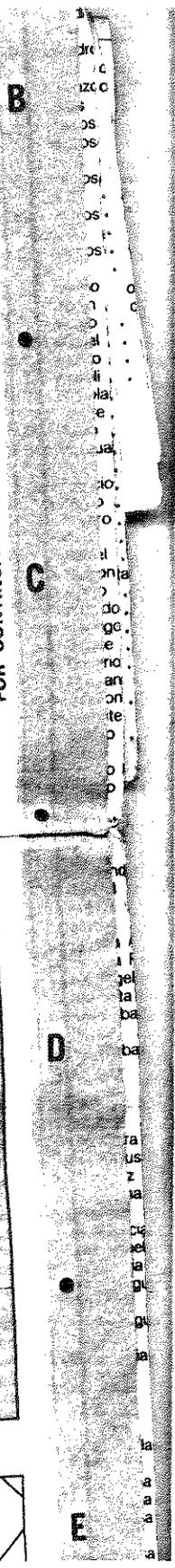
Including Carpinteria, Lompoc, Santa Maria and adjoining communities.

Plus detailed map of Central Santa Barbara, highway map of Santa Barbara County and Vicinity.





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Pages: 12

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ERNEST E. WARSAW et al., Plaintiffs and Respondents, v. CHICAGO METALLIC CEILINGS, INC., Defendant and Appellant

L. A. No. 31740

Supreme Court of California

35 Cal. 3d 564; 676 P.2d 584; 199 Cal. Rptr. 773; 1984 Cal. LEXIS 154

March 5, 1984

PRIOR-HISTORY: Superior Court of Los Angeles County, No. C303574, Carlos E. Velarde, Judge.**COUNSEL:** Gibson, Dunn & Crutcher, Richard G. Duncan, Jr., Larry C. Boyd, Christopher L. Cella and John J. Waller for Defendant and Appellant.

David S. Smith and Lee S. Smith for Plaintiff and Respondent.

JUDGES: Opinion by Richardson, J., with Mosk, Kaus and Broussard, JJ., concurring. Separate concurring opinion by Grodin, J., with Bird, C. J., concurring. Separate dissenting opinion by Reynoso, J.**OPINION BY:** RICHARDSON**OPINION**

We granted a hearing in this case to consider whether one who acquires a valid prescriptive easement over another's property nonetheless may be required to compensate that person for either (1) the fair market value of the easement, or (2) the cost of removing or relocating any encroaching structures which interfere with use of the easement. We conclude that the statutes which define and validate prescriptive easements neither authorize nor contemplate an award to the underlying property owner of compensation for the reasonable value of the easement, and that under the circumstances in this case it would be improper to charge the owner of the easement with any portion of the cost of removing encroachments.

Although we disagree with the Court of Appeal's resolution of the foregoing issues, its opinion (per Compton, J.) correctly determined the other issues on appeal from the trial court's judgment declaring that plaintiffs had acquired a prescriptive easement over defendant's property. Accordingly, we adopt that portion of the opinion as follows: *

This is an appeal from an equitable decree which declared that plaintiffs had acquired an easement by prescription over the property of defendant. Defendant was ordered to dismantle and relocate a structure which had been erected on its own property but which interfered with plaintiffs' use of the easement. []

FOOTNOTES

* Brackets together, in this manner [], are used to indicate deletions from the opinion of the Court of Appeal; brackets enclosing material (other than the editor's parallel citations) are, unless otherwise indicated, used to denote insertions or additions by this court. (*Estate of McDill* (1975) 14 Cal.3d 831, 834 [122 Cal.Rptr. 754, 537 P.2d 874].)

This action involves two contiguous parcels of real estate which front on [the west side of] Downey Road in the City of Vernon. Downey Road runs in a generally north-south direction. The two parcels are approximately 650 feet deep. Plaintiffs own the southerly parcel and defendant owns the northerly parcel. Both parcels were acquired in 1972 from a common owner.

At the time of acquisition both parcels were unimproved. Plaintiffs' arrangement with the seller was that the seller would construct on the parcel to be purchased by plaintiffs a large commercial building erected to plaintiffs' requirements. The building covered almost the entire parcel. A 40-foot wide paved driveway was laid out along the northern edge of plaintiffs' property to provide access to loading docks on the northern side of plaintiffs' building.

For its part defendant constructed on its property a substantially smaller building which ran only about one-half the depth of the northerly parcel and left vacant a strip of ground about 150 feet wide along the side of the parcel which abutted plaintiffs' property.

From the beginning it was apparent that plaintiffs' 40-foot wide driveway was inadequate since the large trucks which carried material to and from plaintiffs' loading dock could not turn and position themselves at these docks without traveling onto the defendant's property. The inability of these trucks to make such use of defendant's property would destroy the commercial value of plaintiffs' building.

The court found that because of the fact that the possibility of creating an easement over defendant's property was considered and rejected in the original negotiations between the seller, plaintiffs and defendant, no easement by implication was created. The trial court further found that the existence of the driveway on plaintiffs' property militated against the creation of an easement by necessity.

From 1972 until 1979 trucks and other vehicles servicing plaintiffs' facility used a portion of the vacant ground on defendant's property to enter, turn, park and leave the area of plaintiffs' loading dock. On at least two occasions during that period plaintiffs sought, unsuccessfully, to acquire an easement from defendant or to create mutual easements over plaintiffs' and defendant's property.

In 1979 defendant developed plans to construct a warehouse on the southerly portion of the property including that portion of the property being used by plaintiffs. A pad of earth was raised along the southerly portion of defendant's property approximately five feet from the property line. This grading effectively blocked plaintiffs' use of the area and plaintiffs commenced this action for injunctive and declaratory relief.

When the trial court denied plaintiffs' request for a preliminary injunction to prevent further construction, defendant proceeded to erect a building on the contested area.

After a trial on the merits, the trial court found that plaintiffs had acquired a 25-foot wide prescriptive easement over and along the southern portion of defendant's property for the full depth of the property. As noted defendant was ordered to remove that portion of the building which interfered with the described easement. Further the trial court gave defendant 90 days to accomplish the removal and purported to reserve jurisdiction to award damages for failure of defendant to comply with the mandatory injunction. This appeal ensued.

The elements necessary to establish a prescriptive easement are well settled. The party claiming such an easement must show use of the property which has been open, notorious, continuous and adverse for an uninterrupted period of five years. (*Gas & E. Co. v. Crockett L. & C. Co.* (1924) 70 Cal.App. 283, 290 [233

P. 370]; *Zimmer v. Dykstra* (1974) 39 Cal.App.3d 422, 430 [114 Cal.Rptr. 380]; Code Civ. Proc., § 321.) Whether the elements of prescription are established is a question of fact for the trial court (*O'Banion v. Borba* (1948) 32 Cal.2d 145 [195 P.2d 10]), and the findings of the court will not be disturbed where there is substantial evidence to support them.

Further, the existence of a prescriptive easement must be shown by a definite and certain line of travel for the statutory period. (*Dooling v. Dabel* (1947) 82 Cal.App.2d 417 [186 P.2d 183].) "The line of travel over a roadway which is claimed by prescription may not be a shifting course, but must be certain and definite. Slight deviations from the accustomed route will not defeat an easement, but substantial changes which break the continuity of the course of travel will destroy the claim to prescriptive rights [Citations.] [Manifestly] the distance to which a roadway may be changed without destroying an easement will be determined somewhat by the character of the land over which it passes, together with the value, improvements, and purposes to which the land is adapted." (*Matthiessen v. Grand* (1928) 92 Cal.App. 504, 510 [268 P.675].)

The trial court found that "the truckers using [the disputed parcel] did, in fact, follow a definite course and pattern, and while admittedly, no two truck drivers followed the exact course . . . and the traffic situation . . . varied from day to day, the deviation taken by various drivers over the seven-year period was only slight."

The evidence revealed that truck drivers who were making deliveries to or receiving goods from plaintiffs used the parcel to approach the building, swing around and back into plaintiffs' loading dock. Since the drivers varied in their abilities, the space required to complete this maneuver was variable. No two drivers followed precisely the same course, but all used the parcel for the same purpose -- to turn their vehicles so they could enter plaintiffs' loading docks. There was substantial evidence to support the findings on this issue.

Defendant contends that there was no evidence supporting use of several hundred feet of the westerly portion of the parcel. From the trial transcript, it is difficult to discern exactly to which portion of the parcel specific bits of testimony pertain. [] [Our review of the record, however, discloses substantial evidence supporting the establishment of a prescriptive easement over the westerly portion at issue.]

Defendant contends that there was no substantial evidence that plaintiffs' use of the property was hostile rather than permissive. Again, we find that this contention is without merit.

The issue as to which party has the burden of proving adverse or permissive use has been the subject of much debate. However, [] [we agree with the view, supported by numerous authorities,] that continuous use of an easement over a long period of time without the landowner's interference is presumptive evidence of its existence and in the absence of evidence of mere permissive use it will be sufficient to sustain a judgment. (*MacDonald Properties, Inc. v. Bel-Air Country Club* (1977) 72 Cal.App.3d 693, 702 and cases cited [140 Cal.Rptr. 367].)

Defendant relies on evidence that plaintiffs at one time attempted to purchase the disputed parcel from the seller and at various times attempted to negotiate for an express easement. [para.] Whether the use is hostile or is merely a matter of neighborly accommodation, however, is a question of fact to be determined in light of the surrounding circumstances and the relationship between the parties. (*Taormino v. Denny* (1970) 1 Cal.3d 679 [83 Cal.Rptr. 359, 463 P.2d 711]; *Fobbs v. Smith* (1962) 202 Cal.App.2d 209 [20 Cal.Rptr. 545].)

There was evidence adduced at trial that despite plaintiffs' unsuccessful attempts to negotiate an express easement, their use of the property continued uninterrupted for approximately seven years. There was no evidence that defendant had ever expressly permitted plaintiffs to use the parcel for truck and vehicular traffic. In fact defendant's adamant refusal to negotiate on the issue is evidence that no permission was given or contemplated.

Defendant's next assignment of error is addressed to the trial court's order to remove that part of the completed structure which interferes with plaintiffs' easement. Defendant argues that a mandatory

injunction may not issue to enjoin a completed act. However, there is extensive authority standing for the proposition that a court of equity may, in a proper case, issue a mandatory injunction for protection and preservation of an easement including, where appropriate, an order for removal of an obstruction already erected. (*Clough v. W. H. Healy Co.* (1921) 53 Cal.App. 397 [200 P. 378]; *Pacific Gas & Elec. Co. v. Minnette* (1953) 115 Cal.App.2d 698 [252 P.2d 642].) The determination as to whether such remedy is appropriate is within the sound discretion of the trial court. (*Pacific Gas & Elec. Co. v. Minnette, supra.*) A mandatory injunction may issue even if the cost of removal is great under certain circumstances [, especially if the encroaching structure was wilfully erected with knowledge of the claimed easement. (See *Brown Derby Hollywood Corp. v. Hutton* (1964) 61 Cal.2d 855, 859 [40 Cal.Rptr. 848, 395 P.2d 896]; *Dolske v. Gormley* (1962) 58 Cal.2d 513, 521 [25 Cal.Rptr. 270, 375 P.2d 174]; *Raab v. Casper* (1975) 51 Cal.App.3d 866, 873 [124 Cal.Rptr. 590]; *D'Andrea v. Pringle* (1966) 243 Cal.App.2d 689, 698 [52 Cal.Rptr. 606]; *Pacific Gas & Elec. Co. v. Minnette, supra*, 115 Cal.App.2d at p. 710; *Christensen v. Tucker* (1952) 114 Cal.App.2d 554, 563-564 [250 P.2d 660]; *Morgan v. Veach* (1943) 59 Cal.App.2d 682, at p. 689 [139 P.2d 976].)]

As the court in *Morgan* explained:] "An appropriate statement relative to defendants' assertion that an injunction would work an inequitable burden is in 28 Am.Jur., section 56, page 253 as follows: 'In view of the drastic character of mandatory injunctions, the rule under consideration as to balancing the relative conveniences of the parties applies with special force to a prayer for such mandatory relief. Where, therefore, by innocent mistake or oversight, buildings erected . . . slightly encroach . . . and the damage to the owner of the buildings by their removal would be greatly disproportionate to the injury . . . the court may decline to order their removal But relief by way of a mandatory injunction will not be denied on the ground that the loss caused by it will be disproportionate to the good accomplished, where it appears that the defendant acted with a full knowledge of the complainant's rights and with an understanding of the consequences which might ensue'

"In a note in 57 A.L.R., first column, page 343, it was said: 'Wilfulness on the part of the defendant in proceeding with the violation of the restriction after warning by the complainant, especially after suit is brought, is a ground for equitable relief by mandatory injunction greatly stressed by the courts.'" (P. 689.)

In the case at bench, the structure to be removed was not begun until after the underlying action was filed. It was completed while the litigation was still pending. Defendant gambled on the outcome of the action and lost. The fact that its decision may have been reasonable in light of the denial of the preliminary injunction does not change the result.

[] [Defendant next challenges the trial court's] retention of jurisdiction to award damages in the event of defendant's noncompliance with the mandatory injunction within 90 days of judgment. Defendant argues that this portion of the judgment interferes with its right to an automatic stay of the injunction on appeal. (*Byington v. Superior Court* (1939) 14 Cal.2d 68, 70 [92 P.2d 896].)

Code of Civil Procedure section 916, subdivision (a), provides: "Except as provided in Sections 917.1 through 917.9 and in Section 117.7, the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, *including enforcement of the judgment or order*, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order." (Italics added.)

The order reserving jurisdiction was made by the court in apparent recognition of the fact that plaintiffs continued to suffer damages every day that use of the easement was obstructed. If defendant's contentions had been upheld on appeal, there would of course have been no basis for an award of damages. Hence the judgment was not enforceable during the pendency of the appeal.

On the other hand, a stay in the enforcement of the judgment during the pendency of the appeal does not a fortiori prevent the accrual of the damages which become part of the judgment if and when the judgment becomes final and enforceable. [] [The trial court's retention of jurisdiction for the possible awarding of damages thus was appropriate under the circumstances of this case.] (End of Court of Appeal opinion.)

We next consider whether defendant is entitled to any offsetting monetary relief from plaintiffs. Defendant contends that the trial court's judgment is overly harsh because it both granted plaintiffs an easement over a 16,250-square-foot parcel of defendant's property free of charge and also required defendant to incur the entire cost of relocating or reconstructing its building. Would application of equitable principles dictate that plaintiffs either pay to defendant the fair market value of the easement they acquired, or contribute a portion of the costs of relocating? We think not.

Initially, the statutory procedure for acquiring an easement by prescription quite clearly retains the traditional common law rule that such an easement may be obtained without incurring any liability to the underlying property owner. Civil Code section 1007, enacted in 1872, provides that "Occupancy for the period prescribed by the Code of Civil Procedure as sufficient to bar any action for the recovery of the property *confers a title thereto*, denominated a title by prescription, *which is sufficient against all . . .*" (Italics added.) We have confirmed that if the requisite elements of a prescriptive use are shown, "Such use for the five-year statutory period of Code of Civil Procedure section 321 *confers a title by prescription.*" (*Taormino v. Denny, supra*, 1 Cal.3d at p. 686, fns. omitted, italics added.)

Thus, plaintiffs herein have acquired a title by prescription which is "sufficient against all," including defendant. That being so, there is no basis in law or equity for requiring them to compensate defendant for the fair market value of the easement so acquired. To exact such a charge would entirely defeat the legitimate policies underlying the doctrines of adverse possession and prescription "to reduce litigation and preserve the peace by *protecting* a possession that has been maintained for a statutorily deemed sufficient period of time." (Italics added, *Gilardi v. Hallam* (1981) 30 Cal.3d 317, 324 [178 Cal.Rptr. 624, 636 P.2d 588], quoting from an earlier case; see also Rest., Property, intro. note at pp. 2922-2923; 3 Powell, The Law of Real Property (1981 ed.) para. 413, pp. 34-103 -- 34-104.) As described by Professor Powell, "Historically, prescription has had the theoretical basis of a lost grant. Its continuance has been justified because of its functional utility in helping to cause prompt termination of controversies before the possible loss of evidence and in *stabilizing* long continued property uses." (*Ibid.*, fn. omitted, italics added.) If the doctrine of prescription is truly aimed at "protecting" and "stabilizing" a long and continuous use or possession as against the claims of an alleged "owner" of the property, then the latter's claim for damages or fair compensation for an alleged "taking" must be rejected.

The Court of Appeal recently described the rationale underlying the related adverse possession doctrine as follows: "[Its] underlying philosophy is basically that land use has historically been favored over disuse, and that therefore he who uses land is preferred in the law to he who does not, even though the latter is the rightful owner. [Fn. omitted.] Hence our laws of real property have sanctioned certain types of otherwise unlawful taking of land belonging to someone else, while, at the same time, our laws with respect to other types of property have generally taken a contrary course. This is now largely justified on the theory that the intent is not to reward the taker or punish the person dispossessed, but to reduce litigation and preserve the peace by protecting a possession that has been maintained for a statutorily deemed sufficient period of time [para.] Quite naturally, however, dispossessing a person of his property is not easy under this theory, and it may even be asked whether the concept of adverse possession is as viable as it once was, or whether the concept always squares with modern ideals in a sophisticated, congested, peaceful society [para.] *Yet this method of obtaining land remains on the books*, and if a party proves all five of the [requisite] elements [citation], he can claim title to another's land" (*Finley v. Yuba County Water Dist.* (1979) 99 Cal.App.3d 691, 696-697 [160 Cal.Rptr. 423], italics added.)

Similarly, the system of acquiring an interest in land by prescription "remains on the books," and any decision to alter that system by requiring the payment of compensation clearly would be a matter for the Legislature. Defendant cites no authorities indicating that the present system is unconstitutional in any respect.

Assuming that an award of compensation for the value of the easement is unavailable, may the courts nonetheless order the easement owner to contribute all or part of the cost of relocating or reconstructing an encroaching building? It is at least arguable that a court of equity could order, in an appropriate case, that the plaintiff contribute a portion of the cost of relocating an *innocent* encroachment, as a condition to an award of injunctive relief. As previously noted, it is well established that a court has discretion to balance

the hardships and *deny* removal of an encroachment if it was innocently made and does not irreparably injure the plaintiff, and where the cost of removal would greatly exceed the inconvenience to the plaintiff by its continuance. (See *Brown Derby Hollywood Corp. v. Hatton*, *supra*, 61 Cal.2d at p. 858; *Dolske v. Gormley*, *supra*, 58 Cal.2d at pp. 520-521; *Raab v. Casper*, *supra*, 51 Cal.App.2d at p. 872; *Donnell v. Bisso Brothers* (1970) 10 Cal.App.3d 38, 45 [88 Cal.Rptr. 645].) If, as the foregoing cases establish, an outright denial of injunctive relief would be sustained under those circumstances, then no compelling reason exists for depriving the trial court of the *lesser* power of granting the injunction on condition that the plaintiff pay a reasonable portion of the cost of relocation. (See *Collester v. Oftedahl* (1941) 48 Cal.App.2d 756, 760-761 [120 P.2d 710] [injunctive relief conditioned upon payment of costs]; cf. *Farmers Ins. Exch. v. Rujiz* (1967) 250 Cal.App.2d 741, 747-748 [59 Cal.Rptr. 13]; 2 Witkin, Cal. Procedure (2d ed. 1970) Provisional Remedies, § 82, at p. 1520; 2 Pomeroy's Equity Jurisprudence (5th ed. 1941) § 385 et seq. ["He who seeks equity must do equity"].)

In the present case, however, it is apparent that it would be inequitable to charge plaintiffs, who lawfully perfected an easement by prescription, for the cost of removing an encroaching structure erected by defendant with prior notice of plaintiffs' claim. As previously noted, defendant's building was erected *after* plaintiffs' suit was filed and remained pending. Under similar circumstances, the courts have deemed an encroachment to be wilful and have ordered its removal despite a disproportionate hardship to the defendant. Likewise, plaintiffs should not be required to contribute to the cost of relocating encroaching structures which were erected by defendant with full knowledge of plaintiffs' claim.

The judgment is affirmed.

CONCUR BY: GRODIN

CONCUR

GRODIN, J., Concurring. I cannot accept the majority's attempted justification for the current law of prescriptive easements. How, in today's urban society, litigation is reduced or the peace is preserved by allowing persons situated as are these plaintiffs to acquire rights in what is concededly the land of another without a cent of payment is beyond my comprehension. I therefore agree entirely with the policy criticisms contained in Justice Reynoso's dissenting opinion.

I am persuaded, however, that if change is to come to this arcane area of the law it should come through the Legislature rather than through the courts. It is not alone the existence of Civil Code section 1007 which persuades me, for as my dissenting colleague observes that section, adopted in 1872, was early interpreted as merely fixing the time within which a right by prescription may be acquired. But, in 1965 the Legislature modified the harsh application of the prescriptive easement doctrine by adding Civil Code section 1008, which permits a property owner to avoid acquisition of an easement by the simple expedient of posting a sign. ¹ Given that modification, and that degree of legislative attention, I would leave the next move to Sacramento. I therefore join in affirming the trial court's judgment.

FOOTNOTES

¹ Civil Code section 1008 provides: "No use by any persons or persons, no matter how long continued, of any land, shall ever ripen into an easement by prescription, if the owner of such property posts at each entrance to the property or at intervals of not more than 200 feet along the boundary a sign reading substantially as follows: 'Right to pass by permission, and subject to control, of owner: Section 1008, Civil Code.'"

DISSENT BY: REYNOSO

DISSENT

REYNOSO, J. I respectfully dissent from that portion of the majority opinion which denies compensation of fair market value for the easement.

A. Fair Market Value

Plaintiffs called upon the power of the trial court, acting in equity, to declare and protect a prescriptive easement. The court agreed. Yet the practical result, as indicated by the Court of Appeal opinion (*per* Compton, J.), is that: "A simple affirmance of the judgment would result in plaintiffs, who are admittedly trespassers, acquiring practical possession of a sixteen thousand two hundred fifty (16,250) square foot parcel of defendant's valuable property free of charge"

The majority argues that the result, unjust or not, is ordained by statute. I disagree. My review of the statutes cited by the majority convinces me that they have not removed from the courts the traditional power to invoke the equitable doctrines which deal with fairness. Those doctrines persuade me that plaintiffs should pay fair market value for the property interest acquired.

1. Statutory Scheme

The law of prescriptive easements and their enforcement enjoyed a long history at common law before 1872. In that year Civil Code section 1007 was enacted. It merely codified the general concept of prescriptive easement found at common law. ¹ We must look, therefore, to common law precepts to resolve the issue at hand.

FOOTNOTES

¹ Our 1872 codification generally followed the 1865 New York codification. (See 1 Powell, *The Law of Real Property* (1981 ed.) para. 83, p. 307.) New York, like California, recognized the applicability of the common law. (Generally, see *id.*, at para. 59, p. 186.) Indeed, California had already incorporated the common law of England, if not in conflict with constitutional or statutory provisions, as it existed in 1850. (See Civ. Code, § 22.2 [formerly Pol. Code, § 4468]; *Martin v. Superior Court* (1917) 176 Cal. 289 [168 P. 135]; McMurray, *Seventy-five Years of California Jurisprudence* (1925) 13 Cal.L.Rev. 445.)

At common law, the declaration of whether a prescriptive easement existed was considered an action at law. ² It remains so. (2 Defuniak, *Handbook of Modern Equity* (1956) § 31, pp. 55-56, hereinafter Defuniak.) However, the protection of the declared right was generally considered, and still is, an action in equity. (Walsh on Equity (1930) § 35, p. 184; hereinafter Walsh; Defuniak, § 31, p. 56.)

FOOTNOTES

² In *Clarke v. Clarke* (1901) 133 Cal. 667, 669 [66 P. 10], we find this description: "Prescription, at common law, was a mode of acquiring title to incorporeal hereditaments by immemorial or long-continued enjoyment. It had its origin in a grant evidenced by usage, and was allowed on account of its loss, either actual or supposed, and for this reason only those things could be prescribed for which could be created by grant. The presumption of the grant of an easement in the lands or over the lands of another is sometimes indulged."

Mere citation to Civil Code section 1007 resolves nothing. The term "title by prescription," for example, describes the rights which a person acquires upon establishing a prescriptive easement. Nothing more. The case at bench assumes acquisition; the real issue deals with the conditions which the court may impose to

protect that judicially declared easement. Thus, in *Taormino v. Denny* (1970) 1 Cal.3d 679 [83 Cal.Rptr. 359, 463 P.2d 711], cited by the majority, our court did no more than affirm the prescriptive right over a private roadway. (See also *Niles v. City of Los Angeles* (1899) 125 Cal. 572 [58 P. 190]; *Clarke v. Clarke* (1901) 133 Cal. 667 [66 P. 10].) Not surprisingly, the parties have not cited the section before the trial court, the appellate court, or before us. Neither the trial court nor the Court of Appeal mentioned it. And no papers before us mention the code section. Yet, the section erroneously forms the basis for the majority opinion.

2. The Power of the Court Acting in Equity

The Court of Appeal correctly identified the nature of plaintiff's cause of action and the issue in this appeal when it wrote: "This is an appeal from an *equitable decree* which declared that plaintiffs had acquired an easement by prescription over the property of defendant." (Italics added.) Neither the parties nor the majority disagree with that characterization.

We come, therefore, to the power of the court in equity. Whether the trial court must order the plaintiffs to pay fair market value for the prescriptive easement, as the Court of Appeal concluded, depends on the breadth of discretion which the court in equity enjoys. Let us briefly explore the concept of equity.

Equity's origins lie in the King's extraordinary judicial power, exercised through the Chancery, to administer justice whenever "it was probable that a fair trial in the ordinary Courts would be impeded, and also whenever, . . . the regular administration of justice was hindered. (5 Pomeroy's Equity Jurisprudence (1941) § 31 p. 37, hereinafter Pomeroy.) The Chancellor was obliged to look only to "Honesty, Equity, and Conscience []" to decide conflicts. (*Id.*, § 35, p. 40.) Today, it is only a matter of degree that separates the early Chancellors who decided "whether reason and conscience demanded special intervention . . ." (Walsh, § 53, p. 282) from the modern judges and their grants of equitable relief. (*Id.*) The modern judge remains the reposit of special relief; he stands in the states' stead "modifying the rigor of hard and fast rules at law where reason and conscience demand it." (*Ibid.*)

What would be fair under the circumstances of the case at bench? The problem began because plaintiff built a large commercial building without leaving sufficient room for delivery trucks to approach the loading docks. The building which defendant had built left a 150-foot wide strip of unimproved land. The 40-foot wide driveway plaintiffs had constructed was simply insufficient for its purposes. Therefore, the delivery trucks went on to defendant's land. In the original negotiations the creation of an easement was considered by the seller, plaintiffs and defendant, but none was negotiated. Later, plaintiffs offered to purchase an easement at least twice. Finally, when defendant raised a dirt pad of land on his land (apparently in preparation for the construction) which prevented the trucks from trespassing more than five feet, plaintiffs brought this action.

Traditionally the courts have not imposed a condition that fair market value be paid before a prescriptive easement will be declared and protected. However, in my view, the courts do have such power. In the case at bench that power should be exercised.

The role which the court in equity can play is seen in two disparate examples, one old and one new. First, we look to the traditional case wherein the building of one owner trespasses upon that of another. Where the law recognizes a legal wrong in such a trespass, and would normally order the removal of the encroaching building (as was done in the case at bench), the court in equity may instead order that money damages be paid by the encroaching party as a condition of protecting the encroachment, particularly where the encroachment was unintentional. (See Walsh, § 55, pp. 284-85.) Second, I cite a quite different example which does not deal with property. The courts, pursuant to their inherent equitable powers, have created several exceptions to the statutory rule (Code Civ. Proc., § 1021) which requires each party to pay his or her own attorney fees. (See *Serrano v. Priest* (1977) 20 Cal.3d 25, 34-47 [141 Cal.Rptr. 315, 569 P.2d 1303].) These examples simply illustrate the not too startling notion that courts of equity, in search of fairness, may (1) impose conditions before a decree protecting rights will issue, (2) grant monetary damages, and (3) extend statutory rights. I cite these only to stress that no reason abides in the history, concept or modern practice of equity which would so restrict the power of the court that it could not impose

a requirement that fair market value be paid by the trespasser who is granted a prescriptive easement.

Finally, I turn to the fairness issue. By permitting the prescriptive easement in the case at bench the state, acting through the court, endorses a private action akin to eminent domain. Practically, ³ it is the taking of property rights from defendant and giving them to plaintiff. Can it be fair to reward a wrongdoer and punish an innocent property owner?

FOOTNOTES

³ The fiction that a lost "title" is newly found by the trespasser and that therefore he or she has a title sufficient as to all flies in the face of reality. The facts in the case at bench cannot accommodate that fiction.

The majority says "yes." It is fair, according to the majority, for several reasons including (1) reducing litigation, (2) protecting possession, and (3) preference for use over disuse of land. None of these reasons is convincing. First, no litigation was reduced. Society should not be in the business of forcing an owner of land to bring suit when a trespass has occurred. Such a policy increases litigation. Second, the possession of the easement has in fact been protected; plaintiffs are only required to pay for the easement. Third, modern society evidences a preference for planned use, not the ad hoc use of a trespasser. It is questionable that in the urban setting of the case at bench, such use by the trespasser is preferred by society.

I do not rely solely on my personal view of fairness. Rather, it is my role as a judge, as it was with the chancellor, to apply a "conception of justice in accordance with the prevailing reason and conscience of the time." (Walsh, § 53, p. 281.) (See also 5 Pomeroy, Equity Jurisprudence, § 67, p. 89; "[Equity] is so constructed . . . , that it possesses an inherent capacity of expansion, so as to keep abreast of each succeeding generation and age.") The final decree of the trial court, approved by the majority, contravenes today's basic notions of fairness and justice. A requirement that plaintiffs pay fair market value for the land use given them is the least our society expects.

B.

The suggestion of the concurring opinion that the Legislature should study this area of law bears underscoring. The statutes need to reflect today's realities. Certainly -- they should at least ameliorate the harsh consequences the majority feels compelled to enforce. However, I note that the recent legislative changes referred to in the concurrence only provide a landowner relief from the *creation* of a prescriptive easement. There remains the need for an equitable avenue by which the courts may relieve a landowner subject to a prescriptive easement of an otherwise inequitable burden.

I would affirm the judgment. However, I would remand to the trial court for further proceedings to fix an amount of reasonable compensation to be paid by plaintiffs to defendant. That compensation would be the fair market value of the property interest acquired. From that compensation damages, if any, sustained by plaintiff should be subtracted.

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 MacDonald Properties, Inc. v. Bel-Air Country Club, 72 Cal. App. 3d 693 (Copy w/ Cite)

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MacDONALD PROPERTIES, INC., et al., Plaintiffs, Cross-defendants and Appellants, v. BEL-AIR COUNTRY CLUB, Defendant, Cross-complainant and Respondent

Civ. No. 49715

Court of Appeal of California, Second Appellate District, Division Two

72 Cal. App. 3d 693; 140 Cal. Rptr. 367; 1977 Cal. App. LEXIS 1758

August 15, 1977

SUBSEQUENT HISTORY: A petition for a rehearing was denied September 12, 1977, and appellants' petition for a hearing by the Supreme Court was denied October 13, 1977.

PRIOR-HISTORY: Superior Court of Los Angeles County, No. WEC 35063, Laurence J. Rittenband, Judge.

COUNSEL: Barry Brannen for Plaintiffs, Cross-defendants and Appellants.

Louis Lee Abbott and Timothy H. Ziemann for Defendant, Cross-complainant and Respondent.

JUDGES: Opinion by Fleming, Acting P. J., with Compton and Beach, JJ., concurring.

OPINION BY: FLEMING

OPINION

Plaintiffs appeal an adverse summary judgment in this action for declaratory relief and to quiet title to real property bordering defendant Bel-Air Country Club's golf course. The judgment (1) declared valid and binding on plaintiffs certain building restrictions in the deed by which Bel-Air conveyed the subject property in 1936 to Hilda Weber, plaintiffs' predecessor in interest, and (2) granted Bel-Air a prescriptive easement in the subject property.

The undisputed facts reveal the following: In 1936 Bel-Air owned a golf course, portions of which abutted lot 35, block 3, tract 7656, in the County of Los Angeles. Hilda Weber owned the bulk of lot 35, a wooded plateau of over 7 acres jutting south from Bellagio Road almost 800 feet into Bel-Air's golf course. Weber had constructed a large mansion on lot 35 but was dissatisfied with the entrance to her property from Bellagio Road. Her entryway was steep, curving, and hazardous, and she wished to acquire a portion of the golf course to provide safer, more convenient access from Bellagio Road. In 1936 Bel-Air likewise had cause for dissatisfaction in that Weber's frontage on Bellagio Road separated the fifth green of its golf course from its sixth tee, thereby making surface movement between these two points difficult. Accordingly, Weber and Bel-Air entered into an arrangement for their mutual satisfaction. Bel-Air undertook to convey to Weber the subject property of this action, approximately four-fifths of an acre of portions of lots 33, 34, and 35 of tract 7656, comprising a long strip of land bounded by Bellagio Road on the northeast and by Bel-Air's sixth fairway on the southwest. Acquisition of the property would give Weber the entranceway she desired. However, the property served as rough for Bel-Air's sixth fairway, and misdirected golf balls fell on it every day. To prevent interference with this use of the property for golfing purposes Bel-Air inserted certain

building restrictions in its deed of conveyance to Weber, restrictions hereinafter discussed in detail. In her turn, Weber agreed to convey to Bel-Air a permanent easement and right of way for the construction, operation, and maintenance of a pedestrian tunnel under her portion of lot 35 adjoining Bellagio Road, a tunnel which would link the fifth green of Bel-Air's golf course with its sixth tee.

No money changed hands in the execution of this arrangement between Bel-Air and Weber. Reciprocal conveyances were recorded on 28 August 1936, under which Weber granted the tunnel easement to Bel-Air, and Bel-Air deeded the subject property to Weber. Bel-Air's deed contained the building restrictions here in issue, and, additionally, reserved to Bel-Air a bridle trail easement over part of the property. In November 1950 plaintiff Hilton purchased the entire Weber property and mansion, including the subject property, and in March 1963 Hilton transferred a remainder interest in the property to plaintiff MacDonald Properties.

The bridle trail easement is no longer an issue because Bel-Air disclaimed all interest in that easement to facilitate its motion for summary judgment on the issue of building restrictions. ¹ Restrictions 1 and 3, provide: "Restrictions. 1. That said premises shall be used only in connection with the use of Lot 35 in Block 3 of said Tract No. 7656, for the purpose of erecting a gate lodge or other buildings or structures which shall make the use of said Lot 35 more convenient for residence purposes. That no such gate lodge, outbuildings or other structures shall be moved from any other place onto said premises, nor erected on said premises before a residence shall have been completed on said Lot 35, provided, however, that any structure herein permitted by these restrictions may be erected simultaneously with a residence to be erected on said Lot 35. Any structure constructed on said premises shall be located not nearer than twenty (20) feet from any boundary line of said premises, provided, however, that this restriction as to location of structures may be waived or modified by the architectural supervising committee hereinafter provided for.

FOOTNOTES

¹ The evidence showed that the bridle trail had been abandoned about 1946. The court's judgment provided:

"c. By virtue of the Disclaimer, Defendant its successors and assigns, possess no interest adverse to Plaintiffs, or either of them, in the easement and right of way for a bridle trail described in the Weber Deed and therein reserved to Defendant."

On this appeal plaintiffs maintain that the judgment does not adequately quiet title with respect to the bridle trail easement. Since the judgment decrees that neither Bel-Air nor its successors possess any bridle trail easement under the Weber deed, plaintiffs have been given the relief they sought.

"

"3. That no structure, except as hereinabove provided, shall ever be erected or allowed on said premises."

The deed provides in paragraph 9 that its restrictions constitute express conditions subsequent, breach of which gives rise to a right of reverter in the grantor, and in paragraph 11 that the restrictions continue in effect until 31 December 1998.

The trial court found that restrictions 1 and 3 of the Weber deed are valid and binding on plaintiffs and further found that Bel-Air had acquired a prescriptive easement to use the subject property as rough in connection with its golf course. The relevant portions of the judgment are:

"b. The restrictions contained in the Weber Deed and, specifically, Restrictions 1 and 3 thereof (the enforceability of which is denied by the Complaint) and the rights and remedies in respect thereto provided in Restrictions 9 through 13, inclusive, of the Weber Deed are valid, viable and binding upon Plaintiffs. . . .

"3. As to the cross-complaint and answer thereto:

"a. Title to the following described easement and servitude is declared vested in defendant, to wit:

"An easement and servitude across and upon the entirety of the Subject Property to use the same as a 'rough' area immediately adjacent to a fairway of Defendant's golf course, that is, an area where golf balls and other objects are frequently driven or cast in the ordinary pursuit of the game of golf, which area is regularly entered by Defendant, its officers, agents, employees, and members to retrieve such golf balls or other objects. A further incident to such easement and servitude is the right of Defendant, its officers, agents, employees, and members, to utilize the same without risk of injury or liability to persons or improvements upon the Subject Property, with consequent limitation of the use and improvement of the Subject Property to those uses which do not place persons or property in hazard from exercise of Defendant's rights to so utilize the Subject Property.

"b. The said easement and servitude is appurtenant to that real property owned by Defendant, adjoining the Subject Property . . .

"c. The above defined title of Defendant to the said easement and servitude is forever quieted against any and all claims of Plaintiffs, or either of them, or any person claiming through or under them, or either of them; and each of Plaintiffs and all such persons are enjoined from asserting any claim whatsoever adverse to Defendant in or to said easement and servitude or inconsistent therewith; and each of Plaintiffs and each of said persons is further enjoined from obstructing, impeding or interfering with Defendant's use and enjoyment of said easement and servitude."

Plaintiffs contend: (1) the building restrictions are not enforceable as covenants at law (Civ. Code, § 1468) or as equitable servitudes; (2) the evidence does not support summary judgment for a prescriptive easement in Bel-Air because (a) no evidence establishes an adverse or hostile claim to the property, (b) a grantor cannot acquire prescriptive rights in property he has conveyed in fee, and (c) "the presumptive easement is inherently incredible"; (3) summary judgment for Bel-Air was improper because plaintiffs' complaint raised factual issues of changed conditions of the property rendering the building restrictions invalid; (4) a triable issue of fact existed with respect to plaintiffs' alleged consent to the prescriptive use of the subject property as rough; and (5) the judgment did not properly quiet title in plaintiffs regarding the bridle trail easement. (See fn. 1 for discussion of point 5.)

I

Technically, the building restrictions of the Weber deed are drafted in the form of conditions subsequent with right of reentry in the grantor (Bel-Air). Where such a condition appears in a grantor's deed to property, as here, a court of equity will enforce it on behalf of the grantor or his transferee, unless it is shown that changed circumstances make such enforcement inequitable. (Arrowhead Mut. Service Co. v. Faust (1968) 260 Cal.App.2d 567, 578 [67 Cal.Rptr. 325]; Shields v. Bank of America (1964) 225 Cal.App.2d 330, 334-335, 338 [37 Cal.Rptr. 360].) But because conditions subsequent may result in forfeiture, they are disfavored at law and normally interpreted as covenants (Civ. Code, § 1442). We so interpret the restrictions here.

Plaintiffs argue that the restrictions interpreted as covenants are defective, in that covenants burdening land for the benefit of other property do not run with the land and are not enforceable against subsequent purchasers unless the restrictions in the original deed particularly describe the property to be benefited (Civ. Code, § 1468). Such, they argue, was not the case here, for the Weber deed fails to particularly describe the property of Bel-Air to be benefited by the restrictions. (See, e.g., Ross v. Harootunian (1967) 257 Cal.App.2d 292, 294-296 [64 Cal.Rptr. 537].)

This argument is technically correct at law, because the deed contains no particular description of the dominant tenement to be benefited, which is, of course, the sixth hole of Bel-Air's golf course. Nevertheless a companion doctrine declares that burdensome covenants which do not run with the land may be enforced on behalf of the original grantor or his assigns as equitable servitudes against transferees acquiring the property with actual or constructive notice of the restrictions, when failure to enforce the restrictions would

produce an inequitable result. (*Los Angeles etc. Co. v. S.P.R.R. Co.* (1902) 136 Cal. 36, 43 [68 P. 308]; *Richardson v. Callahan* (1931) 213 Cal. 683, 686 [3 P.2d 927]; *Russell v. Palos Verdes Properties* (1963) 218 Cal.App.2d 754, 762-764 [32 Cal.Rptr. 488].) As the Supreme Court observed in *Richardson v. Callahan*, *supra*, at page 686, "The marked tendency of our decisions seems to be to disregard the question of whether the covenant does or does not run with the land and to place the conclusion upon the broad ground that the assignee took with knowledge of the covenant and it was of such a nature that when the intention of the parties coupled with the result of a failure to enforce it was considered, equity could not in conscience withhold relief." Moreover, mere constructive notice of the covenant is sufficient to make it enforceable against the transferee. (*Russell v. Palos Verdes Properties*, *supra*, at p. 764.) While it is clear that building restrictions for the benefit of an entire tract cannot be enforced against a grantee when the restrictions have not been inserted in the original grant deed from the covenantor (*Riley v. Bear Creek Planning Committee* (1976) 17 Cal.3d 500 [131 Cal.Rptr. 381, 551 P.2d 1213]; *Werner v. Graham* (1919) 181 Cal. 174 [183 P. 945]; *Ross v. Harootunian* (1967) 257 Cal.App.2d 292, 294-295 [64 Cal.Rptr. 537]), such a limitation has no relevancy here, for the pertinent building restrictions were set out in the Weber deed and recorded in 1936, thus affording plaintiffs constructive notice of the restrictions and probably actual notice as well. (They do not deny notice.) We conclude that the cause is technically governed by the equitable servitude rule of *Richardson v. Callahan* (1931) 213 Cal. 683 [3 P.2d 927], and, unless plaintiffs can show that enforcement is inequitable, the building restrictions are enforceable in equity.

Plaintiffs have failed to show why enforcement would be inequitable. On the record it is undisputed that Bel-Air has been using the land adjacent to the subject property as part of its golf course since prior to 1936 and that the subject property has served as rough for the sixth hole of the golf course throughout that period. It is likewise undisputed that plaintiffs had actual knowledge of this use, which includes the frequent driving of golf balls onto the subject property. No showing was made of changed conditions or changed use of Bel-Air's property. In their original complaint plaintiffs alleged changed conditions only with respect to the bridle trail, which they claimed had been abandoned. (As stated in fn. 1, Bel-Air disclaimed any rights in that trail.) In the court below, plaintiffs construed the building restrictions as protection for the bridle trail. On appeal, plaintiffs now assert they should have been given a chance to prove other changed conditions since 1936 -- such as alteration of zoning laws and construction of residences adjacent to defendant's golf course. Plaintiffs, however, never alleged any ultimate facts which would show that such changes had any bearing on enforcement of the building restrictions. Bel-Air submitted uncontradicted affidavits establishing that the reasons for the restrictions were to preserve the sylvan quality of the land adjoining the sixth hole and avoid liability for golf ball injuries on the subject property. Such evidence was admissible to explain the purpose of the restrictions. (*Townsend v. Allen* (1952) 114 Cal.App.2d 291, 298 [250 P.2d 292]; see *Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 521-523 [67 Cal.Rptr. 761, 439 P.2d 889]; *Buehler v. Oregon-Washington Plywood Corp.* (1976) 17 Cal.3d 520, 526 [131 Cal.Rptr. 394, 551 P.2d 1226].) Plaintiffs offered no evidence of changed conditions that would outdate respondent's purpose for the imposition of the restrictions. Accordingly, no showing was made that it would be inequitable to enforce the restrictions on Bel-Air's behalf, and the court properly entered summary judgment upholding the validity and enforceability of the building restrictions.

II

The question of a prescriptive easement to use the subject property as rough for Bel-Air's golf course and to allow players to enter upon the property to retrieve golf balls is more difficult. A prescriptive easement in property may be acquired by open, notorious, continuous, adverse use, under claim of right, for a period of five years. (*Code Civ. Proc.*, § 321; *Civ. Code*, § 1007; *Lynch v. Glass* (1975) 44 Cal.App.3d 943, 950 [119 Cal.Rptr. 139].) The owner of the servient property must have actual knowledge of its use. Once knowledge of use is established, as was done here without contradiction, the key issue becomes one of permissive use under license as against adverse use under claim of right. The decisions on the burden of proving adverse use are widely divergent. *Clarke v. Clarke* (1901) 133 Cal. 667 [66 P. 10], puts the burden on the person asserting the easement to establish that his use was adverse under claim of right; whereas *Fleming v. Howard* (1906) 150 Cal. 28 [87 P. 908], holds that undisputed use of an easement for the prescriptive period raises a presumption of claim of right and puts the burden on the party resisting the easement to prove permissive use. Each decision has acquired a following: e.g., *Tarpey v. Veith* (1913) 22 Cal.App. 289, 292 [134 P. 367], and *Case v. Uridge* (1960) 180 Cal.App.2d 1, 506 [4 Cal.Rptr. 85], following *Clarke*; and

Chapman v. Sky L'Onda etc. Water Co. (1945) 69 Cal.App.2d 667, 678 [159 P.2d 988]; and *Wallace v. Whitmore* (1941) 47 Cal.App.2d 369, 372-373 [117 P.2d 926], following *Fleming*.

We think the better and more widely held rule is that continuous use of an easement over a long period of time without the landowner's interference is presumptive evidence of its existence. (See 28 C.J.S., Easements, § 68, p. 736, fn. 99, and numerous California cases cited therein in 1977 Supp. to 28 C.J.S.) This rule, articulated in *Wallace v. Whitmore, supra*, 47 Cal.App.2d 369, 372-373, was quoted as controlling in *Miller v. Johnston* (1969) 270 Cal.App.2d 289, 294 [75 Cal.Rptr. 699], as follows: "It is true that title to an easement for the use of a private roadway must be established by clear and satisfactory evidence that it was used for more than the statutory period of five years openly, notoriously, visibly, continuously and without protest, opposition or denial of right to do so. But clear and satisfactory evidence of the use of the road in that manner creates a *prima facie* title to the easement by prescription. Such evidence raises a presumption that the road is used with an adverse claim of right to do so, and in the absence of evidence of mere permissive use of the road, it will be sufficient upon which to sustain a judgment quieting title to the easement therein." (*Wallace v. Whitmore* (1941) 47 Cal.App.2d 369, 372-373 [117 P.2d 926]. See also *Van Amersfoort v. Young* (1951) 105 Cal.App.2d 22, 25-27 [332 P.2d 569]; *Shonafelt v. Busath* (1944) 66 Cal.App.2d 5, 7-9 [151 P.2d 873]; *Crawford v. Lambert* (1934) 136 Cal.App. 617, 621 [29 P.2d 428]; and *Wells v. Dias* (1922) 57 Cal.App. 670, 672 [207 P. 913]. Cf. *Peck v. Howard* (1946) 73 Cal.App.2d 308, 325-326 [167 P.2d 753]; and *Nelson v. Robinson* (1941) 47 Cal.App.2d 520, 526 and 528 [118 P.2d 350].)"

At bench, the affidavits of both parties establish without contradiction that Bel-Air's use of the area as rough for its sixth hole continued for over forty years -- from sometime prior to 1936 to the filing of suit in 1974 -- and was well known to plaintiffs. Furthermore, in addition to the evidence of open and continuous use referred to in *Miller v. Johnston, supra*, we have at bench the crucial fact of the Weber deed with its building restrictions on the subject property designed to preserve Bel-Air's then existing use of its sixth hole. Extrinsic evidence established that such was the motivation for the restrictions, and no other plausible justification for them exists. The conduct of Bel-Air subsequent to the execution of the deed manifests the open and continuous use inferentially contemplated by the parties to the deed and effectuated through the creation of building restrictions. It is true that the deed does not in so many words grant an easement to Bel-Air to continue to use the property as rough for the sixth hole of its golf course. But the deed's existence, coupled with Weber's acquiescence in Bel-Air's use of the subject property as rough for many years (1936 to 1950), provides conclusive evidence that Bel-Air's use was adverse, under claim of right, and accepted as such by the owner of the subject property.

Plaintiffs did not acquire their interest in the subject property until later -- 1950 for Hilton, 1963 for MacDonald. Accordingly, if open and continuous use of property for five years is presumed to be adverse and in the absence of other evidence establishes an easement, Bel-Air had already perfected its easement against plaintiffs' predecessor in title (Weber). Even if we disregard the historic record and assume that prescription did not begin until title to the servient property was acquired by its present owners, the evidence establishes that plaintiffs knew of the fall of golf balls on the subject property and their retrieval by defendant's players and agents (knowledge which plaintiffs concede) and failed to protest Bel-Air's continuous use of the subject property as rough, a failure that lasted 24 years in respect to Hilton and 11 years in respect to MacDonald. Nor did plaintiffs erect permissive use signs or take other steps to preserve their rights as they might have done (see Civ. Code, § 1008), a significant evidentiary fact in most jurisdictions. (See 28 C.J.S., Easements, § 70, p. 745, fn. 19; e.g., *Burnham v. Burnham* (1931) 130 Me. 409 [156 A. 823, 824].) Clearly, it did not occur to plaintiffs to challenge Bel-Air's right to use the subject property until challenge acquired the appearance of profitability in the context of plaintiffs' desire to build.

Plaintiffs raise the spectre that if Bel-Air prevails on the easement issue, all homeowners living near golf courses on whose property golf balls sometimes fall will find themselves subject to easements in favor of the golf course property if they permit players to retrieve golf balls. However, it is unlikely that many homes are so situated as to show the continuous usage without protest that occurred here (a minimum of "several balls per day frequently and regularly" driven onto the property and retrieved therefrom, amounting to "between three and five percent of the balls teed off from" a given location) or that the written record of the relationship between adjoining landowners will show as clearly as here what the intended use of the property had been. As discussed earlier, the Weber deed furnishes powerful evidence of the parties' actual

intent that Bel-Air should continue to use the subject property as rough in the same fashion that it had when it owned the property in fee. Continuity of usage is really all the trial court granted Bel-Air by way of this unusual, but under the circumstances not incredible, prescriptive easement.

Plaintiffs argue that a grantor cannot acquire prescriptive rights against his grantee. We find no logical support for such a rule, and we find dictum to the contrary in the statement of the Supreme Court that a grantor can acquire title by adverse possession against his grantee. (*Allen v. Allen* (1911) 159 Cal. 197, 200 [113 P. 160].) Bel-Air's grant of the fee interest in the subject property to Weber to give her better access to her property was not inconsistent with Bel-Air's continued use of the subject property adjacent to its sixth fairway as rough for misdirected golf balls.

Finally, no triable issue of fact existed on the subject of consent to the user, because, as stated, all affidavits indicated that plaintiffs knew of the use of the property and made no protest against it.

The judgment is affirmed.

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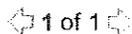
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MAX E. APPELGATE et al., Plaintiffs and Respondents, v. TOSHIKAZY OTA et al., Defendants and Appellants

Civ. No. 66783

Court of Appeal of California, Second Appellate District, Division Six

146 Cal. App. 3d 702; 194 Cal. Rptr. 331; 1983 Cal. App. LEXIS 2108

August 29, 1983

PRIOR-HISTORY: Superior Court of Santa Barbara County, No. 127523, Arden T. Jensen, Judge.**COUNSEL:** J. E. Delwiche, Harding & Zilinskas and Neil S. Tardiff for Defendants and Appellants.

Donnelly & Schlottman and Douglas R. Donnelly for Plaintiffs and Respondents.

JUDGES: Opinion by Stone, P. J., with Abbe and Gilbert, JJ., concurring.**OPINION BY:** STONE**OPINION**

Appellant landowners appeal from a judgment of declaratory relief, finding that respondents had acquired a 20-foot wide prescriptive easement for all purposes necessary or beneficial to the use of respondents' property which purposes do not impose a greater burden on the servient tenements, ordering removal of all fencing upon said easement, and permanently restraining and enjoining Crocker National Bank from interfering in any way with the easement. We affirm the judgment.

Facts

The subject of this action is a paved roadway located in Carpinteria Valley, Santa Barbara County, which serves as the only passable access for several parcels of land situated in an approximate right angle triangle between Highway 150 on the southern side and Highway 192 on the eastern side, with the easement forming the hypotenuse. Respondents purchased two parcels serviced by the road in question July 1972; other parcels pertinent herein are owned respectively by Crocker National Bank as Trustee of the Trust of Isadora Parsons (Crocker) and appellant Toshikazy Ota (Ota). Presently, all of the trust property is farmed by Louis Parsons (Parsons), income beneficiary of the Parsons Trust.

The subject roadway crosses parcel 13 owned by Crocker as well as a corner of parcel 5 owned by Ota. It is approximately 10 feet wide and is used by school buses, United Parcel Service, trash collection, lemon grower cooperative, and Carpinteria Water District trucks. At the southern end there are three signs indicating "private road," "Slow" and "Bumps." There are two wide dirt areas on each side of the roadway to allow vehicular passing. Passing on other areas of the roadway, requires driving partially on the pavement and shoulder. Subsequent to filing this action, Parsons caused a chain link fence to be placed on the east side of the road within 30 inches of the pavement with boulders placed between the fence and the road and another lower fence on the west side of the road, effectively preventing vehicles from passing each other

except at the turnouts. There are no separate taxes assessed on the roadway.

Issues

Appellants contend that: (a) there is not substantial evidence to support a finding of a prescriptive easement; (b) the scope of the easement is overly broad and unsupported by the evidence as being reasonably necessary, and (c) an easement by necessity exists which precludes an easement by prescription.

Discussion

I

Substantial Evidence to Support Easement by Prescription

A prescriptive easement in property may be acquired by open, notorious, continuous, adverse use, under claim of right, for a period of five years. (*Code Civ. Proc.*, § 321; *Civ. Code*, § 1007.) Although the trial court's finding of the existence of a prescriptive easement must be based upon clear and convincing evidence, if there is substantial evidence to support its conclusion, the determination is not open to review on appeal. (See *Stromerson v. Averill* (1943) 22 Cal.2d 808 [141 P.2d 732].) The usual rule of conflicting evidence is applied, giving full effect to respondents' evidence, however slight, and disregarding appellant's evidence, however strong. (See *Beeler v. American Trust Co.* (1944) 24 Cal.2d 1 [147 P.2d 583]; 6 *Witkin, Cal. Procedure* (2d ed. 1971) Appeal, § 250, pp. 4241-4242.)

Appellants contend that the party claiming the prescriptive easement has the burden of proving all essential elements, a proposition which finds support in a series of cases, beginning with *Clarke v. Clarke* (1901) 133 Cal. 667 [66 P. 10], which placed the burden of proof upon the person asserting the easement to establish that his use was adverse and under claim of right. There is, however, another line of cases following *Fleming v. Howard* (1906) 150 Cal. 28 [87 P. 908], which holds that use of an easement over a long period of time without the landowner's interference is presumptive evidence of existence of an easement.

Appellants further assert that the claim of right must be communicated to the owner of the land or the use of the roadway must be so obvious as to constitute actual knowledge of its use. Once knowledge of use is established, the key issue becomes one of permissive use under license as against adverse use under claim of right. In *MacDonald Properties, Inc. v. Bel-Air Country Club* (1977) 72 Cal.App.3d 693 at pages 702-703 [140 Cal.Rptr. 367], the appellate court, following *Fleming v. Howard*, held "We think the better and more widely held rule is that continuous use of an easement over a long period of time without the landowner's interference is presumptive evidence of its existence This rule, . . . was quoted as controlling in *Miller v. Johnston* (1969) 270 Cal.App.2d 289, 294" (See *Twin Peaks Land Co. v. Briggs* (1982) 130 Cal.App.3d 587 [181 Cal.Rptr. 25].) We agree with *MacDonald* and its latest progeny. Although appellants contend that there were no acts by respondents inconsistent with permissive use, once a prima facie case is shown by the party asserting the easement, the burden of proof shifts to the landowner to show the use is permissive rather than hostile. (*Chapman v. Sky L'Onda etc. Water Co.* (1945) 69 Cal.App.2d 667 [159 P.2d 988].)

Whereas mere passage over the property has been held to be insufficient to establish a prescriptive title, whether the use of an easement allegedly acquired by prescription was under claim of right adverse to the owner is a question of fact, (*Taormino v. Denny* (1970) 1 Cal.3d 679 [83 Cal.Rptr. 359, 463 P.2d 711]), and when the evidence of prescriptive use of a private roadway is conflicting, it is the sole province of the jury or the trial judge to determine whether the prescriptive title thereto has been established. (*Dooling v. Dabel* (1947) 82 Cal.App.2d 417 [186 P.2d 183].) All conflicts must be resolved in favor of the prevailing party and the evidence viewed in the light most favorable to him. (*O'Banion v. Borba* (1948) 32 Cal.2d 145 [195 P.2d 10].) Respondents actually used the roadway beginning in 1972 for over six years. Their use was frequent, often several trips a day, and, in addition, numerous social guests, church and school groups invited by respondents, as well as workmen and supplies involved in the construction of respondents' house traveled the road without interference. Respondents on two occasions moved a large mobilehome by

transport onto their property and Ota complained to them on one occasion of damage done to his tomato plants by the passage of the mobilehome down the road. The fact that a roadway is used by family, guests, relatives and business invitees is evidence that supports the inference that use was adverse and not permissive. (*Castillo v. Celaya* (1957) 155 Cal.App.2d 469 [318 P.2d 113].) Appellants Ota and Parsons had actual knowledge of respondents' use. Notice to Crocker can be inferred or implied since visible, open and notorious use implies that the owner had either actual or constructive notice. (*Murray v. Fuller* (1947) 82 Cal.App.2d 400 [186 P.2d 157]; *Conaway v. Toogood* (1916) 172 Cal. 706 [158 P. 200]; *Chapman v. Sky L'Onda etc. Water Co.*, *supra*, 69 Cal.App.2d 667.) Where road use indicates to the owner that it is under a claim of right, the fact that the road is used by others as well does not impair such claim. (*Sufficool v. Duncan* (1960) 187 Cal.App.2d 544 [9 Cal.Rptr. 763].) Thus, exclusiveness of user is not essential to acquisition of a prescriptive easement. (*Miller v. Johnston* (1969) 270 Cal.App.2d 289 [75 Cal.Rptr. 699].)

Furthermore, merely because the public also uses the easement does not preclude the acquisition by an individual of a right based upon his own use. His right, however, must be based on his individual use rather than use as a member of the public. (*O'Banion v. Borba*, *supra*, 32 Cal.2d 145.) In the instant case we find that the evidence supports that respondents' claim of right was individual rather than as a member of the general public. One example is their moving large mobilehomes on and off their property, causing damage to Ota's plants.

That respondents' use of the road was under claim of right is substantiated by the evidence since respondents testified they believed they had a prescriptive right to use the road, they never asked permission, never discussed the use of the road with Crocker or Ota, used the road openly, and were never given permission by appellants. No one ever questioned their right to use the road. (See, *Twin Peaks Land Co. v. Briggs*, *supra*, 130 Cal.App.3d 587.) Parsons testified that he did not remember any periods of nonuse of the road by respondents and Ota testified that he considered respondents' use to be without permission. Where a hostile witness employs expressions favorable to the side he opposes, the court may properly attach more importance thereto than to the main part of his narrative. (*Fleming v. Howard*, *supra*, 150Cal. 28.)

Appellants exaggerate in stating that if subjective belief of user is sufficient to establish prescriptive rights, one would have to question the occupants of every vehicle to ascertain their motives. Appellants could have posted the appropriate sign provided for by Civil Code section 1008, as was posted by Parsons in 1980 after the instant suit was filed, or could have recorded a notice of revocable consent under Civil Code section 813. "Nor did plaintiffs erect permissive use signs or take other steps to preserve their rights as they might have done (see Civ. Code, § 1008), a significant evidentiary fact in most jurisdictions." (*MacDonald Properties, Inc.*, *supra*, 72 Cal.App.3d at p. 703.)

The assertion that there was insufficient objective hostile and adverse use to support a mistaken claim of right is likewise incorrect. Appellants have cited no authority for the proposition that a person who uses the land of another mistakenly has a greater burden to establish a prescriptive easement than does one who enters the land of another intending his use to be hostile to the title of the true owner. (See, *Miller v. Johnston*, *supra*, 270 Cal.App.2d289; *Gilardi v. Hallam* (1981) 30 Cal.3d 317 [178 Cal.Rptr. 624, 636 P.2d 588].)

In the case at bar respondent Max Applegate knew the road had been in continuous use since 1932 and assumed he had a prescriptive right to use the road. He thereupon used the road as though he had a right to do so. Such use is sufficiently hostile and adverse to support a claim of right.

II

Substantial Evidence in Support of Scope of Easement Awarded

Appellants argue that the trial court erred in granting a 20-foot wide easement when the paved road is currently only 10 feet wide. It is true that the extent of a servitude is determined by the terms of the grant, or the nature of the enjoyment by which it was acquired. (Civ. Code, § 806.) Nevertheless, the rule that

the use of a prescriptive easement is fixed and determined by the manner of use in which it originated and cannot be extended or increased has been modified to allow such increased use if the change is one of degree, not kind. Furthermore, in ascertaining whether a particular use is permissible under an easement created by prescription, the needs which result from a normal evolution in the use of the dominant tenement and the extent to which the satisfaction of those needs increases the burden on the servient tenement must be considered. The increase must be a normal development, reasonably foretold, and consistent with the pattern formed by the adverse use by which the prescriptive easement was created. (*Cushman v. Davis* (1978) 80 Cal.App.3d 731 [145 Cal.Rptr. 791]; see also *Hill v. Allan* (1968) 259 Cal.App.2d 470 [66 Cal.Rptr. 676].) The ultimate criterion determining the scope of a prescriptive easement is that of avoiding increased burdens on the servient tenement while allowing some flexibility in the use of the dominant tenement. (*Pipkin v. Der Torosian* (1973) 35 Cal.App.3d 722 [111 Cal.Rptr. 46].) In *Pipkin*, the appellate court held it was error to define the prescriptive easement exclusively in terms of the use to which the dominant estate was put during the prescriptive period "provided that the nature, scope and extent of the use does not substantially increase the burden placed upon the servient tenement as it existed during the period that the prescriptive easement was acquired." (P. 729.) The wording of the court's judgment in the instant case was fashioned to allow maximum necessary use by respondents which would not impose a greater burden on the servient tenement. We find no error in that order.

Contrary to appellants' assertion that respondents could gain no more than prayed for in their complaint, i.e., an easement for ingress and egress, and should be limited to the actual width of the paved road, a court of equity is not limited in granting relief by demands and offers of parties themselves but may fashion a decree which will do justice to all parties, *Redke v. Silvertrust* (1971) 6 Cal.3d 94 [98 Cal.Rptr. 293, 490 P.2d 805], and slight deviation from accustomed routes does not defeat an easement. (*Matthiessen v. Grand* (1928) 92 Cal.App. 504, 510 [268 P. 675].) An easement for "all purposes necessary" is consistent with the facts and within the parameters of the provisions of Code of Civil Procedure section 580, which provides that "The relief granted to the plaintiff, if there be no answer, cannot exceed that which he shall have demanded in his complaint, but in any other case, the court may grant him any relief consistent with the case made by the complaint and embraced within the issue."

That the trial court found respondents actually used twenty feet during the prescriptive period is supported by testimony indicating an additional five feet on either side of the road were necessary to enable vehicles to pass each other. A prescriptive easement over a road can exceed the width of a paved road surface where evidence exists that vehicles have passed each other along the road. (*Crossett v. Souza* (1935) 3 Cal.2d 721 [45 P.2d 970].) In *Stevens v. Mostachetti* (1946) 73 Cal.App.2d 910 [167 P.2d 809], the appellate court affirmed the granting of an easement of 20 feet in width where 20 feet appeared to be an average width and where it was clear that not all 20 feet were used for the entire length of the road.

Appellants' argument that the respondents could cause the utility company to remove their poles and appellants to lose their crops is specious. The easement granted is nonexclusive and the users of the common easements have to accommodate each other. Nor did the trial court err in ordering the removal of the fence. Parsons erected the fence on the trust property after commencement of the lawsuit and without the trustee's knowledge or permission. During the course of the trial, the court expressed concern about the fence and questioned the legitimacy of its purpose. Upon stipulation, the court viewed the disputed easement and fence. Upon viewing the scene, the court could well have concluded the fence was built for spite. The trier of fact's view of an area is independent evidence which can be considered by him in arriving at his conclusion and is substantial evidence in support of findings consonant therewith. (*Key v. McCabe* (1960) 54 Cal.2d 736, 739 [8 Cal.Rptr. 425, 356 P.2d 169]; *Miller v. Johnston, supra*, 270 Cal.App.2d 289, 304.) All three respondents testified that they used the shoulder to pass other vehicles on the road and that the fence prevented their so doing. A court of equity will in a proper case award a mandatory injunction for the protection and preservation of an easement, including, where the remedy is appropriate, an order for the removal of an obstruction already erected. (*Pacific Gas & Elec. Co. v. Minnette* (1953) 115 Cal.App.2d 698, 708 [252 P.2d 642].) The challenged findings of the trial court are therefore supported by substantial evidence in both the testimony of respondents and the view of the scene by the trial court.

III

No Easement by Necessity

Appellants argue that since the trial court made a finding that the paved road is the only passable path for ingress and egress, respondents could not prove they used the road adversely for the statutory period unless they first proved the nonexistence of an easement by necessity. Appellants correctly assert that a condition precedent to perfecting a prescriptive easement is the cessation of use by necessity. A way of necessity, no matter how long so used, will never ripen into a prescriptive easement because a way of necessity is deemed appurtenant to a grant of title. (See *Smith v. Skrbek* (1945) 71 Cal.App.2d 351 [162 P.2d 674].) An easement by necessity arises by operation of law when a grantor conveys land that is completely shut off from access to any road by land retained by the grantor or by the land of the grantor and that of a stranger. (*Tarr v. Watkins* (1960) 180 Cal.App.2d 362 [4 Cal.Rptr. 293].) Respondents purchased their land from the estate of R. L. Brooks in 1972. Ota has owned his parcel over which the road passes since 1939 and Crocker has been responsible for the trust property since 1971. Brooks, therefore, could not have owned either servient tenement in 1972. Consequently, there could be no easement by necessity.

Appellants have failed to cite persuasive authority for their proposition that the continuous use prescription should be applied only in circumstances where those seeking prescriptive rights are the only users in question or where there is no evidence of implied or express permission. Likewise, the argument that the court failed to find that there was a definite and certain line of travel is inaccurate. The trial court's findings on that point are sufficient. ¹

FOOTNOTES

¹ The trial court made the following pertinent findings: "4. The paved surface of said road varies in width from 10 to 12 feet, and extends between 5 and 6 feet on either side of that center line described on Exhibit A attached hereto. Prior to September of 1980, whenever it was necessary for two vehicles to pass on the road while travelling in opposite directions, as was common occurrence, either one vehicle would wait at the mouth of the road for the other to pass the length of the road, or each vehicle would bear to the driver's right to pass so that each vehicle would have its left wheels on the paved surface and its right wheels on the unpaved 'shoulder' area adjacent to the paved surface. When two vehicles passed in this fashion, the width occupied was approximately twenty (20) feet, or ten (10) feet on either side of the center line of the road."

Appellants' final contention, untimely raised in their reply brief, is that respondents should be required to pay reasonable compensation for acquisition to the right to use appellants' property.

In the case at bar, respondents have not obtained an exclusive easement. Since Civil Code section 845 provides a method for apportioning costs if no agreement is reached among owners of an easement, we believe the requested remand is unnecessary.

The judgment as entered is affirmed.

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📄 [Applegate v. Ota, 146 Cal. App. 3d 702](#) (Copy w/ Cite)

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June 22, 2009

Ms. Allison De Busk, Project Planner
P.O. Box 1990
Santa Barbara, CA 92102-19909
Sent electronically to: adebusk@SantaBarbaraCA.gov

RECEIVED
JUN 22 2009

CITY OF SANTA BARBARA
PLANNING DIVISION

Dear Ms. De Busk:

Thank you for the opportunity to comment on the proposed Montecito Country Club and Golf Course redesign and Draft Mitigated Negative Declaration (MND). I reside at 553 Scenic Drive, immediately adjacent to the golf course property and have lived here since 1998. My husband attended the neighborhood meeting about the project on May 10, 2009. We both spoke to the Mr. Jeremy Salts of Penfield & Smith, the Project Engineer, to seek clarification of some of the drawings, particularly with respect to drainage near our property.

Overall, we support the proposed project and look forward to the relocation of the maintenance buildings and hazardous materials away from the residential neighborhood. We have always enjoyed a very good working relationship with the management and staff at the Country Club and expect this to continue.

However, we believe the following issues should be addressed in the MND prior to project approval:

1. Please describe preventative measures to be taken to ensure that the sediment debris basin will not retain water and become a breeding ground for mosquitoes and other insects. While the design may be intended to facilitate water flow, will the site be monitored to be sure it works as intended?
2. Please confirm that the sediment basin design will accommodate the maximum historic flow volumes so that water does not back up onto our property.
3. The MND does not address the issue of access to public utilities. We understand that the extension of Summit Road will be eliminated by the new golf course design. Please note that this road extension and the gravel roadway leading to the western edge of the property is used periodically by the City Public Works Department, City Fire Department, and Southern California Edison to reach the sewer main and electrical utility lines/poles that run along the corner of the golf course behind our property. Access to these manholes and electrical lines should be maintained in the event these facilities need to be serviced.
4. This access road has also played an important role in keeping the culvert clear behind our property. The culvert directs water flow beneath an old road behind our property and keeps the water in the creek channel. Drainage from the culvert exits onto the golf course property, then flows down the creek channel through our property, before crossing beneath the fence line back onto the golf course property near the maintenance buildings. During El Nino storms in the mid-1990s, the culvert became blocked with debris causing the water to find an alternate course. We sustained substantial property damage during this time until we were able to work with the

property owner and the Country Club management to bring a small backhoe to the area and open up the culvert. Although this is a rare occurrence, there is no other equipment access to the culvert. We believe it is in the Country Club's as well as our interest to be sure the culvert remains clear and rainwater continues to flow in the creek channel. Therefore, we would hope the Country Club would be agreeable to small equipment access to keep the culvert clear if this becomes necessary in the future.

5. The proposed location of the 2nd tee (far northwest corner of the property) appears to be positioned such that a shank off the drive could potentially hit our house or enter our yard. Please understand that we have two small boys who enjoy playing in their yard with their friends. If there is risk of golf balls being hit into our property, we expect that some sort of protective netting could be installed in the interest of safety.
6. As stated above, we live at the end of the cul-de-sac on Scenic Drive. The recent fires have made us acutely aware of the importance of emergency egress. If a fire were to prevent us from evacuating safely by car, it is critical that we have an alternate means of exiting the area. Our family back-up plan has been to run on foot onto and across the golf course if necessary. We would like the Country Club to consider some sort of gate that could be used by those of us at the end of the cul-de-sac in the event of such an emergency.

Thank you for your consideration of these comments. We look forward to continuing our positive relationship with the Country Club.

Sincerely,



Michelle Pasini
553 Scenic Drive
Santa Barbara, CA 93103
(805) 766-7484
michelle.pasini@interactprojects.com

DeBusk, Allison L.

From: Ferguson, Bill
Sent: Monday, June 22, 2009 6:17 PM
To: DeBusk, Allison L.
Cc: Bjork, Rebecca; Jordan, Alison; Lancy, Theresa
Subject: Initial Study - Montecito Country Club

Allison-

Thank you for making the subject Initial Study available for comment. Our interest is in developing appropriate project conditions and environmental mitigations related to conserving potable water and maximizing the use of recycled water in place of potable water. We look forward to your assistance in determining how to best achieve that on this project.

The water supply information provided in the Initial Study is the most recent official information, but much has changed since this was published. The City's Gibraltar Reservoir has experienced significant siltation, Lake Cachuma is the subject of complex water rights hearings, and State Water deliveries are subject to a number of new environmental restrictions. In addition, State officials have identified a significant long-term Statewide shortage of water and are developing revised regulations to implement conservation and increased recycled water use. It is prudent for the City to respond accordingly in project review.

Regarding recycled water use, we expect that our next water supply plan will move toward eliminating remaining uses of potable water for irrigation at properties where recycled water is available. An appropriate mitigation measure/project condition for a project of this magnitude would be to provide for the conversion of the greens to irrigation with recycled water, either by incorporating this into the project, or by including plumbing modifications that will facilitate the conversion in the near future. Other appropriate uses of recycled water would include all ornamental fountains, golf cart washing, tennis court washing, and toilet flushing.

For water conservation, the following progressive measures should be considered for project conditions as development review continues:

- 1.28 gal flush high-efficiency or dual flush models for all new toilets
- Waterless urinals
- Clothes washers with a water factor of 5.0 or less
- 1.5 gpm or less flow for lavatory faucets
- Air cooled or 20 gal/100 lbs ice machines
- Boiler-less, self contained food steamers
- State of the art water conserving dishwashers
- 1.6 gallon per minute (gpm) pre-rinse spray valves
- Recycling of laundry water

Thank you again. Please let us know if you have any questions.

Bill

Bill Ferguson, Water Resources Supervisor

DISTRIBUTED TO:
 DATE: *email 6/3/09*
 PLANNING COMMISSION (7)
 SR. PLANNER, ASST. CITY ATTY.
 CASE PLANNER APPLICANT(S)
 AGENT PC SEC, ENTERED AS INT
 PARTY ON

Rodriguez, Julie

From: Russell Ruiz [Russell@hendersonborgeson.com]
Sent: Wednesday, June 03, 2009 3:22 PM
To: DeBusk, Allison L.
Cc: Ferguson, Bill; Harwood A. White; Russell Ruiz
Subject: RE: Montecito Country Club

Dear Ms. De Busk:

Thank you for your reply. If I was working on this professionally I would look further into the process, because I am more concerned that the Project approval process require the maximum use of recycled water, than I am in the environmental review process. I hope you will distribute this comment as appropriate. On CEQA my only comment would be to make maximum use of recycled water on both the golf course itself as well on the property landscaping a CEQA mitigation measure.

On the Project approval process, you will find there is wide discretion in how a golf course designer goes about designing a course regarding use of recycled water. I was General Counsel when the Goleta Water District built its Recycled Facility and one of the primary target customers were the existing golf courses. They all resisted use of recycled water as they thought it would damage the grasses, particularly the greens. History has shown that their fears were unfounded and none of the courses that were required to convert from potable water to recycled water encountered any problems, and they all in fact were required to do so.

The example City staff should investigate is the Glenn Annie Golf Course. It is the only area course that was designed new to use recycled water. Again they initially resisted maximizing their use of recycled water but with committed design, and a committed Goleta Water District staff, they were successful in using recycled water throughout the course, including fountains and an on site lake that doubled as a water storage facility. It will take a commitment by City staff to require the golf course designers to maximize their use of recycled water. I know from relatively recent local experience it works. I strongly encourage staff to research the Goleta/Glenn Annie Golf Course experience and then require Montecito to pursue maximizing their use of recycled water throughout the course and property landscaping. I also know the onsite lake at Glenn Annie provides valuable storage and flexibility in irrigation timing.

Thank you.

From: DeBusk, Allison L. [mailto:ADebusk@SantaBarbaraCA.gov]
Sent: Wednesday, June 03, 2009 2:59 PM
To: Russell Ruiz
Subject: RE: Montecito Country Club

Dear Mr. Ruiz,

The environmental document does briefly discuss recycled water, given that it represents a large portion of the site's existing water use (approximately 93%). The Club would continue to use recycled water for the majority of it's demand, as is currently the case. The conditions of approval for the project would deal more specifically with the issue. The following link will take you to the project's initial study

<http://www.santabarbaraca.gov/NR/rdonlyres/60989380-76C0-4B00-9047-F2301F7406EE/0/InitialStudy.pdf>

Water supply and demand is discussed in Section 9.

6/10/2009

If you have any specific comments on the analysis or conclusions in the DMND, please send them to my attention by June 22, 2009.

If you have any further questions, please do not hesitate to contact me.

Sincerely,

Allison De Busk

Allison De Busk
Project Planner
City of Santa Barbara, Planning Division

Ph: (805) 564-5470
Fax: (805) 897-1904
E-mail: adebusk@SantaBarbaraCA.gov

 Please consider the environment before printing this e-mail

From: Russell Ruiz [<mailto:Russell@hendersonborgeson.com>]
Sent: Wednesday, June 03, 2009 12:21 PM
To: DeBusk, Allison L.
Cc: Bjork, Rebecca; Russell Ruiz
Subject: Montecito Country Club

I see the Notice for the environmental document for this on the PC Agenda. I am the Vice-Chair of the City Water Commission. I am interested to know if there is any discussion in the environmental document about the use of recycled water on the Project. I am also interested if the issue of recycled water use on the Project has been addressed yet in the planning process. I had substantial experience implementing recycled water use at Goleta where golf courses were a major component of the recycled customer base. It is critically important that the issue be addressed up front so that City staff and the owner consider how to maximize the use of recycled water on the new golf course and otherwise on the property. It is an issue that the Project designers must address at the outset of Project design, including the irrigation systems. The City went through a major litigation regarding the initial use of recycled water at this property many years ago and we must make sure we follow the issue as this new Project is implemented.

Please advise.

Russell R. Ruiz



**Santa Barbara County
Air Pollution Control District**

Our vision  Clean Air

May 28, 2009

Allison De Busk, Associate Planner
City of Santa Barbara
Planning Division
P.O. Box 1990
Santa Barbara, California 93102-1990

RECEIVED
JUN 01 2009
CITY OF SANTA BARBARA
PLANNING DIVISION

Re: Montecito Country Club Improvement Project, 920 Summit Road: MND

Dear Allison:

The Santa Barbara County Air Pollution Control District (APCD) has reviewed the air quality section of draft Mitigated Negative Declaration and Initial Study for the proposed project at 920 Summit Road. We concur with the conclusion in the document that the project will not have significant air quality impacts with the implementation of mitigation measures.

The project involves several changes to the site plan of the existing Montecito Country Club and Golf Course (MCC) including demolition of buildings. We have the following comments and additional mitigation measures for the air quality discussion in the MND:

1. The project must comply with all Rules and Regulations required by the Santa Barbara County APCD, including, but not limited to:
 - Compliance with APCD Rule 339, governing application of cutback and emulsified asphalt paving materials;
 - Obtaining required APCD permits for emergency diesel generators or any individual (or grouping) of boilers or large water heaters with a rated heat over 2.0 million BTUs per hour (MMBtu/hr). Depending on the size of the individual unit, the unit must comply with the requirements of APCD Rule 360 or Rule 361.
2. Under Construction Impacts, please note that the project will involve demolition or renovation of existing structures which may release regulated friable asbestos. Friable asbestos crumbles into a dust of microscopic fibers that can remain in the air for long periods of time. If inhaled, they pose a serious health threat as asbestos fibers can become permanently lodged in body tissues. Since there is no known safe level of exposure, all asbestos exposure should be avoided. This is particularly important when removing asbestos insulation. Pursuant to APCD Rule 1001 – National Emission Standards for Hazardous Air Pollutants (NESHAPS) – Asbestos, even if the building does not contain any asbestos, the project proponent is required to complete and submit an APCD Asbestos Demolition and Renovation Compliance Checklist (available on the APCD

Terence E. Dressler • Air Pollution Control Officer

260 North San Antonio Road, Suite A • Santa Barbara, CA • 93110 • www.sbcapcd.org • 805.961.8800 • 805.961.8801 (fax)

City of Santa Barbara 920 Summit Road

May 28, 2009

Page 2 of 2

website, www.sbcapcd.org) at least 10 working days prior to commencing any activities on the buildings.

Sincerely,



Vijaya Jammalamadaka

Air Quality Specialist

Technology and Environmental Assessment Division

cc: TEA Chron File
Electronic File – 920 Summit Road

DeBusk, Allison L.

From: Karen Hickman [karen.hickman3@verizon.net]
Sent: Monday, June 08, 2009 9:20 AM
To: DeBusk, Allison L.
Cc: elynch@twhr.net
Subject: Reference: Montecito Country Club (920 Summit Road)

RECEIVED
JUN 08 2009

CITY OF SANTA BARBARA
PLANNING DIVISION

City of Santa Barbara

Planning Division

Attn: Allison De Brusk, Project Planner

P.O. Box 1990

Santa Barbara, CA 93102

adebusk@SantaBarbaraCA.gov

Reference: Montecito Country Club (920 Summit Road)

Thank you for hearing our comments. I am writing in support of the project coming before you of the Montecito Country Club renovation. What we currently have is a water system that is old, inefficient and does not work well, trees that are old and dying, flooding when it rains a lot. I have been a member there for the past 15 years and watched the workings.

By approving the project I am sure there will be water saving and state of the art in whatever it takes to run a golf course. I am sure there will be more trees and native plants. We of course want you to do the due diligence. Foremost I hope is that environmentally this will be a great improvement.

sincerely,

Karen Hickman, member Montecito Country Club

DeBusk, Allison L.

From: Martin Potter [MPOTTER@dfg.ca.gov]
Sent: Wednesday, June 10, 2009 4:12 PM
To: DeBusk, Allison L.
Cc: Natasha Lohmus
Subject: Montecito Country Club MND - SCH # 2009051099

Allison,

To follow up on our telephone conversation, the above named project would include the removal or relocation of an anticipated 444 trees. The Department concurs with the proposed mitigation measures for this impact. However, we do not agree that the dates March 1 to July 1 listed in the proposed Required Mitigation BIO-3(2)(b) are adequate to protect nesting birds, and that the dates March 1 to June 15 listed in the proposed Required Mitigation BIO-3(2)(e) are adequate to protect nesting raptors.

the Department standard for the bird breeding season is February 1- August 15. These dates account for the early nesting typical of many raptor species as well as late nesting typical of other species, such as swallows. Data collected in the late 1960's and early 1970's on More Mesa showed WTK having eggs in their nests as early as March 5 (Waian, 1973), indicating some WTK must have been nest building and breeding in February.

The Department therefore recommends changing the dates in BIO-3(2)(b) to February 1 to August 15. Surveys specifically for raptors in BIO-3(2)(e) can be conducted from February 1 to June 15.

Thank you for your attention to these issues.

Sincerely,

Martin Potter

Waian, Lee. 1973. The Behavioral Ecology of the North American White-tailed Kite (*Elanus leucurus majusculus*) of the Santa Barbara Coastal Plain. PhD. Dissertation, Department of Biological Sciences, U.C. Santa Barbara.

Martin Potter
Environmental Scientist
California Department of Fish and Game
South Coast Region
P.O. Box 1797
Ojai, CA 93024
Phone/Fax (805) 640-3677
email mpotter@dfg.ca.gov

DeBusk, Allison L.

From: Harwood A. White [harwood@harwoodwhite.com]
Sent: Monday, June 15, 2009 6:30 PM
To: DeBusk, Allison L.
Subject: MCC

Hi Alison

I would like to add the following question to the environmental review:
Would the project change the number of employees? Ie How many now, and how many anticipated to manage the upgraded club and course?

Thanks.

Bendy

Harwood A. White
Land Use Consultant

1553 Knoll Circle Drive
Santa Barbara, CA 93103
Tel (805) 962-5260
Fax (805) 957-1006
harwood@harwoodwhite.com

George Eskin

From: "George Eskin" <geskin@cox.net>
To: <adebusk@SantaBarbaraCA.gov>
Cc: "Chris Flynn" <flynner@cox.net>
Sent: Sunday, June 21, 2009 5:41 PM
Subject: Montecito Country Club Project

Dear Ms. De Busk,

I value my membership in the Montecito Country Club and hesitate to participate in any action that may delay its exciting re-design project. However, I have added my signature to those of my Eucalyptus Hill neighbors who have written to oppose the Draft Mitigated Negative Declaration dated May 20, 2009 and the Initial Study upon which it is based.

Although I would not adopt the characterization of the project as demonstrating a "callous disregard for the lives of the... neighborhood..." I do believe the conclusions that "access is not required" for emergencies, and "...closing this access... may inconvenience existing users" are erroneous. Safe passage in the event of an evacuation is required and forcing pedestrians and bicycles to resort to the obvious hazards of Alston Road, which I travel daily, would be much more than an inconvenience. I also believe the neighbors should be advised whether Summit and Rametto Road will be utilized for construction activities, which could present substantial environmental impacts.

Finally, serious consideration should be given to determine whether a prescriptive easement has been established by the MCC's acquiescence in the use of the current access point. Litigation on this issue would likely cause a substantial delay that could, and should be avoided through reasonable compromise.

Although I am not directly affected by the plan, I have observed numerous pedestrians (some walking dogs), joggers and cyclists pass through gateway on their way to and from Hot Springs Road, Coast Village Road and the Von's shopping center.

Very truly yours,


George Eskin
744 Woodland Drive
Santa Barbara, CA 93108
805-882-4707

Dear Ms. DeBusk:

The proposed closure of walking access through the now chained entryway at Rametto and Summit Rods is a threat to the home owners in the area in the event of fire or earthquake.

The only other road out for many of us living on Eucalyptus Hill is Alston Road traveling east and west. In the event of a major evacuation, I assure you that Alston Road and all its connecting on-flow streets will be jammed with cars. It is reasonable to believe that in the event of another fire, which is sure to happen, or an earthquake, some residents will be forced to walk or bike out as they have in every past fire, including the last one.

This entryway to the Montecito Country Club has been chained for years so that cars are not able to drive through. The club has not suffered any damage over the years by people walking through or biking through. I don't understand Ty Warner's motives for this complete closure request. Closing it off to walkers or bicycles could be catastrophic.

There is a legal issue that could come into play and it is one of Prescriptive Easement. I personally have jumped over the chain and walked through the club for over 30 years, as have hundreds of others. This is an issue for a court to decide, should you move to allow the entryway to be permanently sealed shut.

Bottom Line: Closure is bad public policy.

Sincerely,

Ernest Salomon
855 Woodland Drive
Santa Barbara, CA 93108
Ernsts@aol.com
805-565-3025

Nancy - Ernie emailed this letter at 5pm to Mayor & all city council members too.

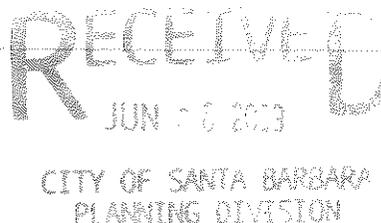
Donna

DeBusk, Allison L.

From: sclocals@verizon.net

Sent: Sunday, June 07, 2009 8:07 AM

To: DeBusk, Allison L.



Dear Ms. DeBusk,

I have lived in my home on Summit Road for 35 years. My property is the 3rd house above the Montecito Country Club gate. I have seen the club change hands several times. For the most part, until Ti Warner bought the club, changes made have improved the club and have not significantly adversely impacted the immediate neighbors. The Japanese, who previously owned the club, were great neighbors. Any changes made by them were only done after securing the surrounding neighbors' approval. Ti Warner, on the other hand, has illustrated time and time again, that he could care less about us. His only goal is MONEY! The Club makes ridiculous noise that we must tolerate night and day, and changes trying to be pushed through for his project, are not in the neighbors' best interests. I am vehemently opposed to the gate adjacent to the Summit and Rametto Road intersection being closed permanently for several reasons.

- 1) This reason is by far the most important. In case of fire or other emergency, this is the quickest and possibly the only way out for the residents on Summit and Rametto Roads. Should fire approach from the north, as has been the case in the latest two fires, we would be totally trapped.
- 2) By closing our access to the club, our properties will be devalued. Living only yards from the club, we have enjoyed walking access to eat, play golf and tennis. If the gate is closed, we might as well live 5 miles away as we will have to drive a significant distance to enter.
- 3) This is our only walking access to the beach. For 35 years, I've enjoyed my Sunday morning walk through the club, under the freeway, to Butterfly Beach. Alston Road is far too dangerous for walking.

I hope the Planning Department will listen to the neighbors surrounding the club. Some of us have lived here for years and have much input on various issues. Thank you.

Judy Mouderris
865 Summit Road
805-969-0094

DeBusk, Allison L.

From: Eric W. Spivey [eric@spivey.org]
Sent: Saturday, June 06, 2009 10:26 AM
To: DeBusk, Allison L.
Cc: Bill Medel; randym@girvinassoc.net
Subject: Montecito Country Club (MCC) project

June 6, 2009

Ms. Allison De Busk
 Project Planner
 City of Santa Barbara, Planning Division

RECEIVED
 JUN 11 2009

CITY OF SANTA BARBARA
 PLANNING DIVISION

Hi Allison,

Thank you for taking time to read this email. We have owned our home on Rаметto Road since February 2000. We also are members of the Montecito Country Club. It is my hope to be able to support the proposed project to improve the clubhouse and golf course, although my support is contingent on Bill Medel and the Ty Warner Hotels & Resorts group following through on their commitments.

I have been in regular verbal and written communication with Bill Medel and the Ty Warner group since 2005. My concerns have remained consistent since my first written correspondence on December 1, 2005 through my last written correspondence on September 9, 2008. I am happy to share with you copies of all of our correspondence if you would find that useful. Please let me know. For the record, I must say that every interaction with Bill Medel has been a pleasant and helpful interaction.

There are two basic concern areas:

1. First Hole Layout

a. From the early sketches on the proposed first tee position provided by Bill Medel, we had a grave concern about the probability of sliced golf balls entering our yard and hurting either structures or people. During several in-person meetings with Bill Medel and also by walking the property with Bill (as well as Randy Mudge who represents the hired landscape architects of George W. Girvin Associates), he has committed to me that the Nicklaus Group (Chet Williams) will work closely with me to ensure this will not be an issue. This will include incorporating the slope of the fairway, sand traps and other items to eliminate the risk of a golf ball entering our property.

b. With the full agreement of the MCC General Manager, we paid in 2003 for all new landscaping on the MCC side of the fence line and gate with our property. Bill Medel has confirmed that all of this will remain in tact and that as a part of this, we will have complete preservation of our view and landscape.

2. Summit Road access

a. In a December 29, 2005 letter from Bill Medel to myself, Bill explained that it was the intention of the Ty Warner group to close off the gate to non emergency automobile traffic. Additionally, he said that they were exploring options to maintain a pedestrian path way for the neighbors to the club house. A neighbor of ours on Summit Road (Jim and Margo Coffman) explained to me that the current plans show no emergency automobile traffic access. I consider this to be a very dangerous safety issue. Given the two most recent fires resulting in possible quick evacuations, I believe the Santa Barbara Fire Department will want to make sure that there is a safe south escape route for the citizens living on Rаметto and Summit as well as an entry path for the fire department if they need to attack a fire that is heading down towards the Montecito Country Club.

Allison, can you please confirm you have received this email. Unfortunately, I will not be in town on June 11, 2009 during the public comments session. I would like this email to be made placed into public record and for the Planning Commission to understand the commitments made to me by the Ty Warner Hotels & Resorts group and

6/8/2009

its representatives. I am copying both Bill Medel and Randy Mudge, as I have referred to them in this email.

Thank you for your help.

Eric W. Spivey
eric@spivey.org
805-886-9434

RECEIVED
JUN 11 2008

CITY OF SANTA BARBARA
PLANNING DIVISION

June 11, 2008

Ms. Allison De Busk, Project Planner
PO Box 1990
Santa Barbara, CA 93102-1990

Re: 920 Summit Road Project (Montecito Country Club)

Dear Ms. Allison:

My wife and I are homeowners at 149 Rametto Road. We overlook the Country Club's second tee. Herewith some comments on the DMND.

1. While we applaud the concern this project has on viewpoints from within the city, there is another issue related to views that is not mentioned at all. That is the impact of proliferating Blue Gum Eucalyptus trees (with maximum height of 150 to 200') on the views of neighbors. We have lived in our house for forty years now, and we used to have panoramic views of the city and east beach and the bird refuge. But over the years the eucalyptus trees have proliferated and grown to the point that they have almost eliminated the views of the Bird Refuge and East Beach (see attachment), and are impacting the westerly view of the city. The problem is that these trees – quite lovely in the right place – don't belong in front of hillside property owners whose views get destroyed.

The adoption of an extensive Country Club make-over is an excellent time to visit this issue and adopt some standards. We ask specifically for the following (all references are to trees in the NW corner of the Country Club property in the general vicinity of the 2nd tee): (We have, incidentally, had the substance of this conversation with Bill Medel from the Ty Warner Group.)

- A. Trees 2-60 and 2-67 be removed.
- B. Trees 2-55, 2-56, 2-57 and 2-58 be pruned according to one or more of the restoration actions described in code section 22.76.120 (lacing or thinning, vista pruning, crown reduction, ...) to restore views.
- C. That, more generally, the County Club affirm the policy of not allowing large eucalyptus trees to obscure neighborhood views. Among other things, this would mean planned replacement of the large Eucalyptus with tree(s) of lesser height when one of these large Eucalyptus trees is removed for whatever reason.

Tiny bits of Bird Refuge now visible (June, 2009)



When we acquired our house in 1969, the Bird Refuge was largely visible from our front yard. Massive Eucalyptus trees have now destroyed the view.

June 9, 2009
650 Miramonte
Santa Barbara,
Calif 93109

Dear Planning Commission
The Montecito Country
Club is an established part
of the entire town -
never demolishing part
of it. The Native American
Indians live and work
& effectively help the golfers
with their golf game, so
never remove them.

TO Environmental
Fair -
Montecito Country
Club 9200
Rd.
Please read
at the file

DISTRIBUTED TO:
DATE: 6/11/09
PLANNING COMMISSION (7)
SR. PLANNER, ASST. CITY ATTY.
CASE PLANNER APPLICANT(S)
AGENT PC SEC, ENTERED AS INT
PARTY ON

never remove any maintenance
building. It is 25,000 yd Redwood tree
& Azus - 20,000 yd old one is gone in ocean
of Gibraltar etc - 10,000 yd old etc.
There are treasures. Keep everyone. All buildings
are essential - full of Indians making baskets, sweaters
& all proper - Be well of people of the club & their friends
precious buildings & their contents. Keep everyone.
The natural areas of the golf course are splendid
many people come here. They think by walking as
usual and seeing the course never by walking as
with ever take away 106,000 sq yds of soil. Never
bill 80,000 yds. Absurd. Complex. Crazy.
never expand the building. It is sacred 9,900 yds
it is fully 100 yds. People. Some are danced in
had many people. It grew here from
Main people leave. One of the good for
rest in place - buried in the side. Let them
removing 361 trees is unconscionable. Never
fruits you can replace them. Don't have them -
Don't remove anything. Anyone would have
thruout the project. It is truly detrimental
to Santa Barbara - Just keep the present 5th course,
never pay for any demolition for all is excellent
thruout there is Next Environmental damage
due to grading, digging, loss of 361 trees, loss of
buildings, construction all involving massive
amount of money. The land is being destroyed
State to not being considered - Just never even do the
project - show plans all to change the club at all -
never even do the project -

9000 yards
trying
to help
people

Sincerely,
Paula Westburn
PAULA WESTBURN

RECEIVED
JUN 10 2009