

E. J. Goepfinger Family Trust

5280 Stonewood Drive
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February 11, 2008

Nancy J. Romero
Clerk of the Board of Supervisors
Riverside County Administrative Center
4080 Lemon Street, 1st Floor
P. O. Box 1147
Riverside, CA. 92502-1147

VIA CERTIFIED MAIL

Ref.: Condemn Real Property
Resolution No. F2008 - 02
Project No. 1-0-000435, Alessandro Dam
APN 243-460-011

Dear Sir or Madame:

I am sending this letter to respond to the notice of Intention to Adopt Resolution of Necessity and the opportunity to be heard at the hearing scheduled for February 26, 2008.

I hereby request to personally appear and be heard regarding the above referenced taking of my property. I received the notice on February 5, 2008 for the hearing scheduled for February 26, 2008 without being contacted regarding my availability to attend the hearing on this date.

Because I have previously scheduled an important meeting out of town on the same date, I may not be able to attend the scheduled hearing. Therefore, I request that the hearing be continued for another time in March, so I can personally attend and raise my concerns regarding the proposed action of taking my property.

Please, inform me at your earliest convenience about the alternate date of the hearing. I appreciate your understanding in this matter.

Sincerely,



Edward J. Goepfinger, Trustee
E. J. Goepfinger Family Trust

c.c.:

Hon. Bob Buster
Supervisor First District
County of Riverside
4080 Lemon Street, 5th Floor
P.O. Box 1527
Riverside, CA. 92502-1527

Board of Supervisors- County of Riverside

Resolution F2008-02

Resolution of Necessity for the
Alessandro Dam Access

Item 11.6 on the Agenda for Feb. 26, 2008

Additional Information Provided by Owner:
Edward J. Goepfinger
951-683-7627

POSITION OF PROPERTY OWNER AS PRESENTED AT
BOARD OF SUPERVISORS MEETING
FEBRUARY 26, 2008

Owner: Edward J. Goepfinger
APN: 243-460-011
Resolution No. F2008-02

Public Interest and Necessity Require the Proposed Project

The proposed project as defined in the Notice of Intention to Adopt a Resolution of Necessity (page 1, par 2) is to "construct public flood control facilities (including but not limited to ... a flood control road for heavy vehicle access...)"

What really is the proposed project? Is it for access only or are there other objectives not limited to access? The Flood Control District does not state with specificity the public project and the intended use of the Subject Property, Lot 11.

The property taken can be used only for the purpose of the taking. That purpose must meet the test of necessity, least private injury and greatest public good. If we assume the sole purpose of the proposed project is access to Alessandro Dam, then we can show the access on Lot 11, does not meet the criteria of necessity.

Since the definition is vague, one must assume there are other contemplated and planned uses. If the District has an ulterior motive that truly drives the effort to take the lot notwithstanding the access needs, the District must disclose those other uses and show that they also meet the requirement of necessity. Other uses would also adversely affect all homeowners in Hawarden Summit who were not specifically notified of this hearing.

Compatible with the Greatest Public Good

The road and its use by heavy equipment and trucks hauling gravel will negatively impact the quality of life in a newly developed and carefully planned residential area in violation of all zoning and other land use regulations.

The proposed access creates a serious traffic hazard with truck traffic entering and exiting the lot directly from and to Overlook Parkway. Newly constructed Overlook Parkway has a median strip adjacent to the driveway entering the lot. Trucks would need to execute a u-turn on Overlook Parkway in order to legally access the lot through this driveway. During the District's maintenance operations there are hundreds of truckloads per day entering and exiting the lot. Overlook Parkway is an arterial street, where randomly located driveways are not permitted by the City. Driveway access onto Overlook Parkway would create a significant safety hazard. The driveway to Lot 11 is only about 80' from Chateau Ridge Lane and would not be allowed by the City for safety

reasons. Therefore, the project as planned and located is not compatible with the greatest public good.

Most Compatible with the Least Private Injury

There are at least three other comparable alternative routes to access the Dam:

1. From the North- Flood Control has existing access on the north side of the Dam from Crest Haven Drive and Century Hills Drive.
2. From the West Chateau View Drive off of Wyndham Hills Dr.- TM29606 has received its last extension for conditional approval and the public Rights of Way have been offered for dedication and the City agreed to acceptance several years ago. When completed, this route will provide the closest paved route to the Dam.
3. From Kingdom Drive-

The access can be obtained from the north end of Kingdom Dr. that is reached via Overlook Parkway. Kingdom Dr. terminates at the south boundary line of a 40 acre undeveloped parcel that currently includes an easement used by the District and granted in the 50's to reach Alessandro Dam. Instead of reaching the south terminus of this easement via Lot 11, the District can acquire a temporary easement from Kingdom Dr. to reach the original easement. The District could develop a temporary road within this easement. This easement would not impact the quality of life in the area since it is located on undeveloped land not used by its owner and more distant from existing homes. It would be a fraction of the cost for the District to construct the road and pay for the easement rather than to purchase Lot 11, a fully developed residential lot through Eminent Domain. Not only irreversible injury is caused to the owner by taking the lot, but the subsequent incompatible use by the District will result in permanent and irreparable injury to all homeowners who purchased lots and built residences in reliance upon protection of covenants otherwise allowing only residential purposes. Clearly access through Lot 11 does not meet the test of the least private injury compared with other alternatives.

Compare Kingdom Drive access with Lot 11 access.

Kingdom Drive access

undeveloped land with no active use
no loss of use since there is no use
no increased burden since existing esmt
impacts 1 homeowner already impacted

Lot 11 access

loss of newly developed residential lot in gated community
loss of use- cannot build residential home as planned
gated community protected by CC&R
impacts multiple homeowners and entire Hawarden Summit HOA

Subject Property Interest is Necessary for the Proposed Project

The proposed project access to Alessandro Dam is not necessary because there are other available alternatives to reach the Dam. When the 40 acre tract is developed in the near future based on the trend in the area, the District will be required to release it's original easement and will use the newly developed streets. Should the District own the subject lot, it will not be able to use it for the purpose for which it was taken. If the project is for access only, there is no compelling reason to use Lot 11 when less expensive solutions and safer traffic flow solutions are available elsewhere. However, we understand the District, due to prior delays, has an ongoing need to access the Dam. We offered numerous times over the past 2 years, that we would be prepared to enter into an agreement granting a temporary easement under terms acceptable to the District, HOA, and owner, provided that the District recognizes and remedies its prior impermissive use of the Lot.

Public Use

There is no other authorized public use or public need for this property. The City of Riverside has an easement for ingress and egress purposes to a specific destination, Whitegate Reservoir No. 2. The City has stated that they no longer need this easement since it cannot be used for its original purpose and they intended to quitclaim the easement since they are able to access Whitegate Reservoir No 2 from Overlook Parkway. The District used the City's easement in the past, even though they were not the Grantee of the easement, nor did they use the easement to access Whitegate Reservoir No 2; instead they accessed Alessandro Dam. The City ceased its use of the easement in 2005 and the District and its contractors were the only users of the Lot, not only for the purpose of accessing the Dam, but using the entire Lot for storage, maintenance and other uses.

PICTURES

Because of the forgoing, I request that the Board does not adopt the Resolution of Necessity today and opens further inquiry into this matter and orders the District to remedy its impermissive use of the Lot.

**Riverside County Flood Control District
Use of
Lot 11, Hawarden Summit (APN 243-460-011)**

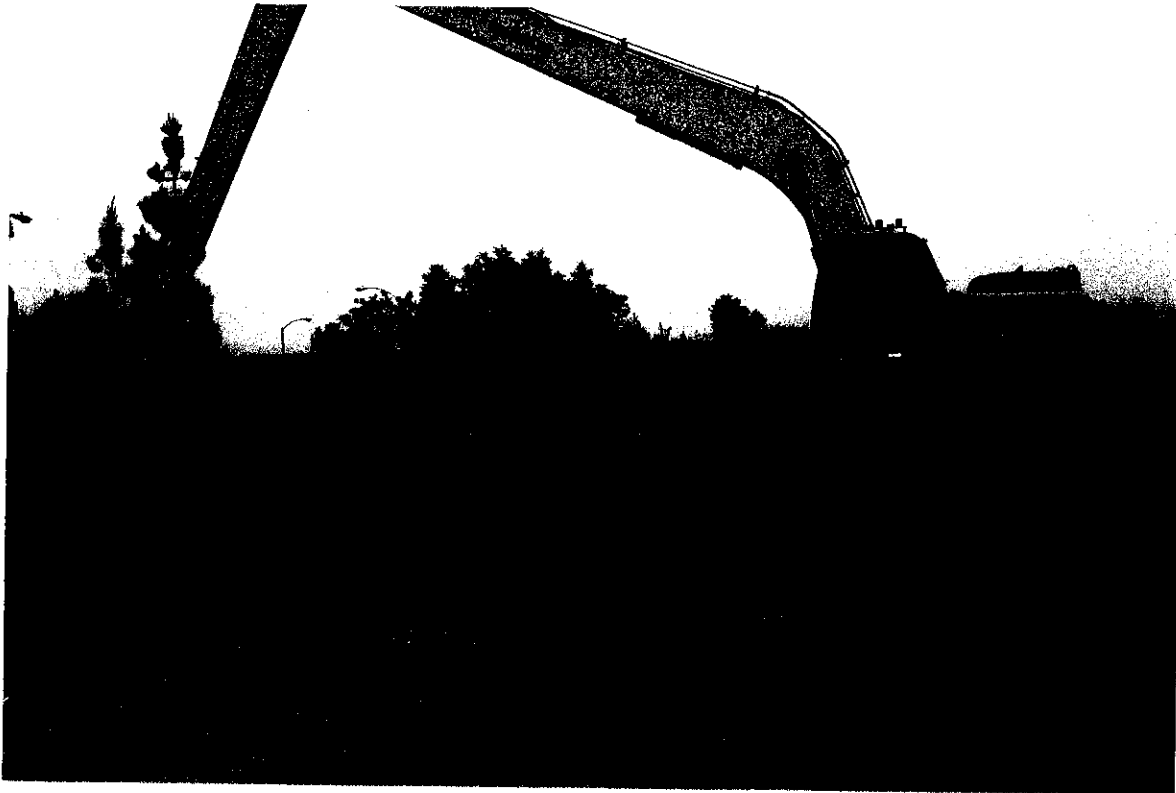


November 2005



March 2006

**Riverside County Flood Control District
Use of
Lot 11, Hawarden Summit (APN 243-460-011)**



May 2006



October 2006

E. J. Goepfinger Family Trust
5280 Stonewood Drive
Riverside, CA. 92506
Home Phone (951) 683 - 7627

November 10, 2006

Riverside County Flood Control and
Water Conservation District
1995 Market Street
Riverside, CA. 92501

Certified Mail

Attn: Mr. Gregory S. Walker, Senior Real Property Agent

Ref.: Your letter dated October 31, 2006, regarding use of Lot 11, Tr. 26109 - 2, and the easement for ingress and egress purposes to Whitegate Reservoir No. 2 granted to City of Riverside (City) over a portion of said lot, to access your existing easement over other properties to reach Alessandro Dam.

Dear Mr. Walker:

We are sending this letter as the response to your above referenced letter, to clarify the outcome of the meeting on October 3, 2006, and our position regarding the use of Lot 11 by the Riverside County Flood Control and Water Conservation District (District).

In your letter, you raised four items to state your understanding of the outcome of the meeting. We will address each of these items separately to clarify our understanding of the outcome of the meeting and our position on each of these items. The cited text of each item from your letter will be repeated and shown in *italic* for clarity of reading.

1.) The City of Riverside will not quitclaim its easement granted on Tract Map No. 26109 - 2 over Lot 11, from Overlook Parkway until such time that alternative access is provided to Riverside County Flood Control and Water Conservation District (District).

This easement was expressly granted to and accepted by the City of Riverside per the Final Map for Tr. 26109-2 in 1998, and depicted on Sheet 4 of said map to cover a portion of Lot 11, for "ingress and egress access purposes to provide access to Whitegate Reservoir No. 2." Based on this language and the depiction on the map, the easement was granted for specific purpose of providing ingress and egress, has clearly defined physical boundaries, and is appurtenant to Whitegate Reservoir No. 2 as a dominant tenement, while Lot 11 is a servient tenement. An easement appurtenant may be used only to serve the land to which it is appurtenant. It cannot be used to reach another parcel. An easement is extinguished by the performance of any act upon either tenement, by the owner of the easement, which is incompatible with its nature or exercise.

During the meeting, Mr. Kevin Milligan, P.E., Assistant Director Water Division, City of Riverside, clearly stated that the City is no longer using the easement for its intended purpose, to reach Whitegate Reservoir No. 2. Instead, the City is using newly developed public streets within Tract 29515. The City cannot resume the use of the easement due to development of Tr. 29515 and abandonment of

other easement within this tract. For the City's purposes, the easement over Lot 11 now dead-ends at the east boundary of the lot.

Therefore, notwithstanding the refusal to formally quitclaim the easement, the City does not have power to give valid permission to the District to use the easement to access Alessandro Dam without express consent by the owners of Lot 11. Attempt to grant such permission will result in extinguishments of the easement.

As owners of Lot 11, we object to the use of the lot by the District and its assignees for purposes of accessing Alessandro Dam and other incidental purposes, since no easement has been granted.

2.) The owner of Lot 11 will provide access to the District, via the existing access easement, previously granted to the City of Riverside, over Lot 11 from Overlook Parkway.

During the meeting on October 3, 2006, we were prepared to discuss temporary provisions to allow the District to use the area within the City's easement to access Alessandro Dam until an alternative solution is found.

During the meeting, we did not give our permission to provide temporary access to the District over Lot 11 to reach Alessandro Dam. We stated that we are prepared to give our permission to the District for this purpose, provided that an acceptable agreement between the District and us is reached. This did not happen during the meeting.

At the conclusion of the meeting, you promised to formulate the District's proposal how to resolve this situation in a letter to us. This letter was expected to be submitted, perhaps within several days, for our review and comments to progress toward reaching a solution acceptable to us. Instead, your letter of October 31, 2006 was received four weeks later.

During the rest of October, after the meeting, there has been extensive and very significant increase in the use of Lot 11 by numerous large trucks, heavy equipment and personal vehicles bearing logos and names of private contractors and the District. This use consisted of vehicles passing thru the lot, driving and parking over its entire area during the day and overnight, conduct of other uses by various persons such as maintenance of the equipment, interaction among the personnel as well as persons remaining in the cars parked on the lot in various locations during the day. The type of use has been that of an industrial heavy equipment staging area and maintenance yard. To our knowledge, the last piece of heavy equipment parked on the lot was removed on or about Wednesday, November 1, 2006.

The entire surface of the lot was left significantly damaged and disturbed by your operation and littered with trash, including but not limited to empty grease tubes apparently used for equipment maintenance previously parked on the lot, spills of unknown substance and empty medicine containers.

These activities were conducted over the entire surface of the lot with complete disregard for physical limits of the City's easement. Neither you, nor another representative of the District, contacted us to inform us about this use prior to its commencement and to obtain our permission for it.

Under these circumstances, we do not give permission to provide access over Lot 11 from Overlook Parkway to the District and to its assignees or other parties for purposes of accessing Alessandro Dam and other incidental purposes.

3.) The District and the owner of Lot 11 will work cooperatively to obtain an alternative access, via Kingdom Drive, Lot N of Tract No. 29515 and over the property immediately north and adjacent to said Tract.

As already stated above, we came to the meeting on October 3, 2006 ready and willing to discuss temporary provisions to allow the District to use the City's easement to access Alessandro Dam until an alternative solution is found. We were prepared to cooperate in this situation by agreeing to provide a temporary easement to the District over Lot 11 for a specific period of time, under specific terms and for consideration, while the District is seeking another suitable alternative. The time period would have to be reasonable as to the owners and adequate for the District's securing this alternative. This arrangement would allow the District uninterrupted access to Alessandro Dam and would provide us with reasonable certainty that we can resume possession and full use and enjoyment of the lot within a set foreseeable time. Other terms to be incorporated in the arrangement, if reached, would include consent of Homeowners Association of Tr. 26109-2 to this agreement as the body responsible for compliance with CC&Rs of the tract, and other terms as appropriate.

The access via Kingdom Drive, Tr. 29515, was presented as one of several possibilities of an alternative access for the District to reach Alessandro Dam. We were pleased with discussion of this feasible alternative, since it results in the least burden on owners of developed land.

There are certainly other possibilities that may exist and have been available for sometime, as we were informed by the City. As an example, another alternative is afforded via proposed Tr. 29606 located northerly from Tr. 26109-2. Rights of Way for public streets within this tract provide connection from existing public streets to the existing District's easement reaching Alessandro Dam. These Rights of Way have been irrevocably offered for dedication and the City consented to their acceptance in 1994.

The District has means available to seek and obtain appropriate solutions to meet its needs when performing its public functions, such as maintaining Alessandro Dam. The same means are not available to private individuals and landowners. Therefore, the District is best equipped to pursue alternative easements, while we are willing to be supportive as well as providing an interim agreement.

4.) When alternative access is obtained, the District will quitclaim its interest in the Grant of Easement for Road Purposes, recorded February 8, 1957, in Book 2038, pages 85 - 87 of Official Records of Riverside County, which is within Tract No. 26109 - 2 and the access provided to the District over Lot 11 from Overlook Parkway by the owner of said lot.

Exercising practical use of rights, if any, under the above referenced easement granted in 1957, is the prerogative of the District notwithstanding our approval or objection. However, it is subject to ability of the grantee to demonstrate that the rights exist and can be legally and practically exercised, and subject to the physical limitations and particular terms of the grant.

This easement is 20 feet wide and traverses across improved residential lots and private streets within Tract No. 29106 - 2 recently developed as a gated community. During the meeting Mr. Morris L. Reynolds, Supervising Real Property Agent of the District, stated that the District is willing to resume use of this easement extinguished in 1998, even if it would result in destruction of some of the improvements recently constructed within TR. 29106 - 2, such as swimming pools, etc.

As already stated, we did not agree during the meeting on October 3, to grant a temporary access to the District over Lot 11. Vacating of a temporary access by the District as it may be properly granted in the future would be certainly incorporated in the conditions under which this access would be granted.


Conclusion:

We consider the use of Lot 11 by the District and its assignees for purposes inconsistent with the original grant of the easement to the City without our express permission, illegal trespass and violation of our legally protected ownership rights. We hereby request that it be formally terminated immediately, and the property be returned to its original conditions.

Although we are still open to meaningful discussions to try to resolve this situation amicably, we are also anxious to recover the rightful possession of Lot 11 for its intended purposes, a single family home.

Please, let us know at your earliest convenience, your position on this issue and any specific information relevant to a amicable solution of this situation.

Sincerely,



Edward J. Goepfinger,
Trustee of The E. J. Goepfinger Family Trust



Vit Liskutin
1030 Talcey Terrace
Riverside, CA. 92506
Tel.: (951) 907 - 0097

Attachments: Our letter to the City on this issue dated October 25, 2006.

c.c.:

Kristi Smith, Esq., City of Riverside Attorney's Office
Warren D. Williams, Chief Engineer, The District