

Subject: 7th St, Montara - street closed by fence encroachment

From: Lisa Ketcham

Date: November 15, 2012

To: John Nibbelin

Cc: Don Horsley, Nicholas Calderon, Diana Shu, Peggy Jensen

Leaving aside the issue of attempting to deal with the encroaching fence via a development permit, has the County considered simply revoking the encroachment permit as a stand-alone action? Recently I heard DPW staff say that Caltrans can revoke an encroachment permit at any time. What is the County policy for revoking encroachment permits? I note that in the 1974 DPW letter on which hinges any basis for the existence of an encroachment permit, it's temporary nature is implied: "You have fenced off the end of Seventh Street at the present time."

We would be interested in your thoughts on the following, sent along by an interested Montara resident:

The California ruling known as Danielson v. Sykes (Danielson v. Sykes, 157 Cal. 686 [109 P. 87, 28 L.R.A. N.S. 1024]) specifies that all residents of a tract that was originally platted to show roads have permanent right of easement over those roads for all purposes for which roads were intended. Therefore, neither the County nor anyone else can allow any "road" to be fenced off or otherwise obstructed at risk of incurring liability for multiple lawsuits from any and all members of that tract community. (Ref: <http://law.justia.com/cases/california/calapp2d/131/622.html>)

In a summary of the Prescott case and of Danielson v. Sykes, 157 Cal. 686 [109 P. 87, 28 L.R.A.N.S. 1024], the District Court in Bradley v. Frazier Park Playgrounds, 110 Cal. App. 2d 436 [242 P.2d 958], said (p. 443): "It was said in Danielson v. Sykes, 157 Cal. 686 [109 P. 87, 28 L.R.A.N.S. 1024], that where a lot conveyed by deed is described by reference to a map, such map is made a part of the deed; that if streets are marked on the ground in the absence of a map, and lots are sold on the representation that such streets exist, the appurtenant right to use the streets, not expressed in the deed, rests upon an equitable estoppel; that the right of the owner may be enforced in equity with respect to all the streets which the particular lot owner has occasion to use; and any street or alley in close vicinity to a lot owner, which either is or may become of substantial benefit to him, will be protected against closure by injunction. Prescott v. Edwards, 117 Cal. 298 [49 P. 178, 59 Am.St.Rep. 186], as well as many other authorities, are cited therein. (See, also, Davidow v. Griswold, 23 Cal.App. 188, 192 [137 P. 619]; Civ. Code, § 801 et seq.; Civ. Code, § 1104.)"

Thank you,
Lisa Ketcham, Secretary
Midcoast Community Council

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