

### Fwd: Acceptance and Matrix - Kinross Drive



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To: Mattas, Steven; Soichet, Emmanuelle  
Cc: Troy Bourne; bryan Wenter; Eric Zell; Bill Shiber; dick@loewke.com

Reply Reply All Forward

Mon 6/1/2020 12:50 PM

You forwarded this message on 6/2/2020 4:08 PM.

Acceptance of Offer of Dedication of 1\_ Strip.DOCX  
25 KB

Matrix - Request to Accept 1970 Offer of Dedication.DOCX  
29 KB

#### [EXTERNAL E-MAIL]

Emma and Steve, I know you have many other problems today and my heart goes out to all in the City trying to maintain the rule of law in a thoughtful and respectful way. I don't want to add to your problems but we would like you to discuss the Kinross dedication offer with the Council in closed session as soon as possible. I appreciate your alerting me to the two cases relating to CEQA issues and feel after reading them that, as we discussed on the phone, there is plenty of authority for the Council to accept the dedication of that 1' strip without additional CEQA review at this time. My reasoning is simple and I've outlined it in the attached outline and compared the facts of the three cases most on point with our situation in the attached matrix. When you can get your head above water in the current crisis, I would like the opportunity to talk again by telephone. Wilson

Begin forwarded message:

**From:** Nancy Troche <nancy.troche@msrlegal.com>  
**Subject:** Acceptance and Matrix - Kinross Drive  
**Date:** June 1, 2020 at 10:55:06 AM PDT  
**To:** Wilson Wendt <wilson.wendt@msrlegal.com>, "Wilson F. Wendt" <wilsonwendt@gmail.com>

Word docs attached.

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#### Following are the attachments, opened:

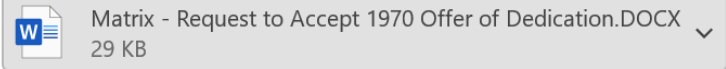
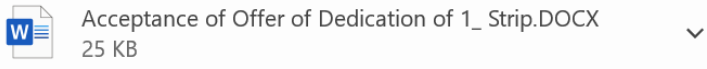
Back to message

Author: Nancy Troche

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- A. Final Subdivision Map for Subdivision 4006 Heather Farms: Approved by City Council 5/18/1970.
1. Entirety of Kinross Drive shown on Sheet 7 offered. City Clerk's Certificate says Council did not accept the offer of dedication on any of the streets, roads or avenues shown on the Map.
  2. Obviously, other streets within the subdivision have been accepted for public use as improved.
- B. Public Purpose in Acquiring 1' Strip: This is unclear. The strip is subject to the irrevocable offer of dedication.
1. GC § 66475: Cities may require irrevocable offer to dedicate roadways or streets.
  2. GC § 66471.1: At time of approving the final map, City shall accept, accept subject to improvement or reject the offer of dedication.
  3. GC § 66472.2: If streets offered are rejected, the offer remains open and can be accepted by the City at any time in the future.
- Offers may be terminated and the 1' strip freed from the obligation to be part of a public street only by the vacation provisions set out in Streets and Highways Code, Section 8300. Kinross is intended as a public street in the City General Plan, thus it is necessary for street and highway purposes and cannot be vacated.
- C. Acceptance of Offer of Dedication Does Not Need CEQA Review:
1. Continuation of Actions Begun in 1970: The offer was made on the map approved and filed before the effectiveness of CEQA. As such, it is part of the subdivision approval and ministerial in character. (See Matrix for comparison with applicable case law).
  2. Development Project on County Property Will be Fully Analyzed for Environmental Impacts by the County: The test established by the case law is whether the agency (the County, not the City) retains full and complete discretion to deny or fully mitigate the impacts of development. They will. (cites add).



**COMPARISON OF CASE LAW:**

**REQUEST TO ACCEPT 1970 OFFER OF DEDICATION**

<u>Seven Hills Development; Request to Accept Dedication:</u>	<u>Plan for Arcadia</u> 42 Cal.App.3d 712 (1974)	<u>Tuolumne City</u> 155 Cal.App.4th (2007)	<u>Sierra Club</u> 128 Cal.App.4th 690 (2006)
<p>A. <u>Seven Hills Senior Project</u>: Multi-acre project located entirely in County; access through public streets in WC;</p> <p>1. Acceptance of Kinross offer; done by WC. Approval of project; done by County.</p> <p>2. City <u>not</u> a responsible agency per 15381 because no discretionary approvals (acceptance of offer of dedication is ministerial).</p>	<p>A. <u>Project</u>: Approval of 72 acre shopping center out of 400+ acres of Santa Anita holding court divided into:</p> <p>1. Shopping Center and Parking;</p> <p>2. Baldwin Avenue Improvements:</p> <p>(a) North</p> <p>(b) South</p> <p>3. Development of rest of Santa Anita.</p>	<p>A. <u>Project</u>: 10.74 acre home improvement center; realignment of Old Wards Ferry Road (“OWFR”).</p>	<p>A. <u>Project</u>: Two assignments of water from separate irrigation districts to City (both required approval by City and Bureau of Reclamation).</p>
<p>B. <u>Proposed CEQA</u>:</p> <p>No CEQA for City acceptance of offer (Discretionary action taken before CEQA); full EIR by County for Seven Hills Senior Project with ability to fully mitigate or deny in County.</p>	<p>B. <u>Proposed CEQA</u>:</p> <p>Shopping Center and Parking exempt because approved before CEQA; Baldwin Avenue Improvements subject of Negative Declaration; development of remainder of Santa Anita to be fully reviewed per CEQA. Plaintiff’s claim segmenting; should review impacts of road improvements as part of the project.</p>	<p>B. <u>Proposed CEQA</u>:</p> <p>MND approved for home improvement center; 111,000 sq. ft. building with parking. Plaintiff’s claimed segmenting; should analyze impacts of Road Improvements also.</p>	<p>B. <u>Proposed CEQA</u>:</p> <p>City approved two negative declarations for the two assignments. Plaintiff’s claimed should have analyzed impacts of <u>combined</u> assignments.</p>
	<p>C. <u>DCA Holdings</u></p> <p>1. Shopping Center, Parking is part of the project: exempt;</p> <p>2. Baldwin Avenue Northerly Improvement part of Capital Improvement Plan and long planned, also exempt.</p>	<p>C. <u>DCA Holdings</u></p> <p>1. Widening of OWFR was COA and the Center couldn’t open until done. Similar to southerly portion of Baldwin Avenue in Arcadia. COA requires and developer must fund. Should have been analyzed with the project.</p>	<p>C. <u>DCA Holdings</u></p> <p>The two assignments were separate activities and could be analyzed independently.</p>
	<p><u>Plan for Arcadia</u> 42 Cal.App.3d 712 (1974)</p>	<p><u>Tuolumne City</u> 155 Cal.App.4th (2007)</p>	<p><u>Sierra Club</u> 128 Cal.App.4th 690 (2006)</p>

Plan for Arcadia  
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128 Cal.App.4th 690 (2006)

3. Baldwin Avenue Improvements Southerly were COA of the project, not proper subject of Negative Declaration.

4. Development of remainder of Santa Anita will require CEQA compliance.

D. Reasons Acceptance Separate from Project:

1. Two approvals done by two different agencies.
2. Full EIR on the project; not MND or Negative Declaration.
3. Offer has been in effect since 1970.
4. Not a COA nor integral to approval of the Seven Hills project. Other access exists to the site.

D. Reasons Supporting Separate Analysis:

1. Shopping Center and Parking Lot “private projects” approved prior to CEQA.
2. Baldwin North: Municipal project decided upon well before project approval.
3. Baldwin South: COA of project; can’t be segmented with MND.

D. Reasons Supporting Separate Analysis:

1. Tests to see if separate:
  - (a) How closely related to overall objectives of project?
  - (b) Are they related in time, location and entity making the decision?
  - (c) Is the activity integral to completion of project (COA)?

D. Reasons Supporting Separate Analysis:

1. Second activity is independent of and not contemplated future part of the first.
2. Two assignments were separate activities.
3. The two assignments were approved by different agencies.