

Attachment J

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**Fidelity National Law Group,
A Law Division of Fidelity National Title Group, Inc.**
1550 Parkside Drive, Suite 300
Walnut Creek, CA 94596



October 11, 2019

Brandon Swanson, Interim Chief of Planning
Resource Management Agency
County of Monterey
1441 Schilling Place, 2d floor – South
Salinas California 93901

RE: Eric Miller, 24275 Via Malpaso, Monterey, CA
My File No.: L083641 Claim No. 654307

Dear Mr. Swanson:

I represent Eric and Greta Miller in a lawsuit filed by their neighbor Rebecca Tweten. It is my understanding that Mr. Miller has asked for a permit to begin construction of a main house on his property ("Lot 18"), and that the County has some question about the lot configuration.

The Millers' neighbor, Rebecca Tweten, who owns 24279 Via Malpaso ("Lot 19"), is claiming that Lot 18 has a different configuration than was created by a 1998 Lot Line Adjustment (Permit No. 980080) and described on the Millers' deed, relying upon two lot line adjustment ("LLA") permits that were issued in 2000 and 2003 respectively, but never perfected.

In my opinion, the Millers have legal title to Lot 18, as that Lot was created pursuant to the 1998 LLA (Permit No. 980080) and as described on their deed. Regardless, it is my understanding that the main house Mr. Miller wishes to build would be compliant with all set back requirements under either configuration of Lot 18. Thus, the litigation between the Millers and Mrs. Tweten should not stall approval of the building permit for the main house.

Below is a chronology and analysis of the chain of title for Lot 18.

In 1992, the final subdivision map for Monterra Ranch, Tract No. 1177, was recorded in Vol. 18 at Pg. 1.

In 1996, Hanover-Montera Investors sold Monterra Ranch to Monterra Ranch Properties, LLC. The deed to Monterra Ranch Properties describes the property by reference to the tract map. There are no meets and bounds descriptions.

In 1998, Monterra Ranch Properties LLC obtained a permit for a LLA (Permit No. 980080.) On July 24, 1998 a record of survey showing the new boundaries was recorded at 21 Surveys 128. The LLA affected lots 11-39. Government Code section 66412(d), of the Subdivision Map Act, states in pertinent part: **“The lot line adjustment shall be reflected in a deed, which shall be recorded.”** Here, I believe that this requirement was met by the following:

1. In Feb. 2000, Monterra Ranch Properties sold Lot 17 to Mary Margaret Graham. The deed to Graham described the property by reference to the 1998 LLA, specifically “Lot 17, as shown on that Record of Survey filed for record in the Office of the Recorder for the County of Monterey, California, on July 24, 1998, in Volume 21, Page 126, Surveys.”
2. On Mar. 28, 2000, Monterra Ranch Properties sold Lot 19 to Silvestrie Properties. Again, the deed to Silvestrie described the property by reference to the 1998 LLA, specifically “Lots 19, 22, and 26, as shown on that Record of Survey filed for record in the Office of the Recorder for the County of Monterey, California, on July 24, 1998, in Volume 21, Page 126, Surveys.”
3. In May 2004, and again in April 2006, Monterra Ranch Properties executed a deeds of trust against Lot 18. The deeds of trust identifies Lot 18 by reference to the 1998 LLA, specifically, “Lot 18, as shown on that Record of Survey filed for record in the Office of the Recorder for the County of Monterey, California, on July 24, 1998, in Volume 21, Page 126, Surveys.” The 2006 deed of trust was foreclosed in 2009 and the trustee’s deed identifies Lot 18 by reference to the 1998 LLA. In 2018 Lot 18 was sold to the Millers. The deed to the Millers identifies Lot 18 by reference to the 1998 LLA, specifically, “Lot 18, as shown on that record of survey filed for record July 24, 1998, in Volume 21 of “Surveys”, at Page 126, Monterey County Records.
4. Following the LLA, there was also an easement deed recorded to reflect the new boundaries.
5. All the subsequent grant deeds for Lots 17, 18, and 19 (all the way down to the current owners) describe the property by reference to the 1998 LLA, being “Lot ____, as shown on that Record of Survey filed for record in the Office of the Recorder for the County of Monterey, California, on July 24, 1998, in Volume 21, Page 126, Surveys.”

In March 2000, Monterra Ranch Properties obtained a permit approval for another LLA (Permit No. 990517) affecting lots 17, 18, 31-34, 37, 38, 66 and 67. A record of survey showing the new proposed boundaries was recorded on March 29, 2000 at Vol. 23, Pg. 62. I see a couple of problems with this LLA. First, as far as I can tell, Monterra Ranch Properties is the only signatory to the permit approval or record of survey. But, Monterra Ranch Properties had sold Lot 17 to Graham a month before the LLA. It does not appear that Graham agreed to the LLA. Thus, it is

not effective, at least not as to the LLA between Lots 17 and 18. Additionally, the LLA was never perfected because there are no deeds that reflect the LLA as required by the Subdivision Map Act. The record of survey was insufficient to perfect the LLA. Under California law, a record of survey is not a conveyance of property, does not provide constructive notice, and does not affect title. (*Stearns v. Title Ins and Trust Co.* (1971) 18 Cal.App.3d 162, 169 [record of survey not instrument affecting title to real property]; see *M.F. Farming Co. v. Couch Distributing Co., Inc.* (2012) [parcel map and site plan do not transfer title, and are not instruments], disapproved on other grounds in *Baral v. Schnitt* (2016) 1 Cal.5th 376, fn. 11; *Brown v. Johnson* (1979) 98 Cal.App.3d 844 848-849.)

In April 2003, the owners of Lots 17, 18, and 19 obtained another permit approval for lot line adjustment (Permit No. 000547.) A record of survey reflecting the proposed new boundaries was recorded on May 8, 2003, at Vol. 26, Pg. 69. Again, the LLA was not perfected because there are no deeds that reflect the LLA. And, as discussed above, all of the grant deeds that came after April 2003 identify lots 17, 18, and 19 by reference to the 1998 LLA. For example, in Oct and Nov. 2004 the owners of Lot 17 and 18 each granted a driveway easement to the owner of Lot 19. The easement deeds describe all lots by reference to the 1998 LLA.

In response to a subpoena to Sothebys, I've discovered a memo from Beth Franks, the real estate agent who represented the McGraw's when they sold Lot 19. The McGraw's purchased Lot 19 from Silvestri Properties in November 2004. The deed to the McGraws describes Lot 19 by reference to the 1998 LLA, i.e., as shown on that Record of Survey filed July 24, 1998, in Vol. 21, Page 126, Surveys. The Franks memo acknowledged that the 2000 and 2003 LLAs were never completed, and that the McGraws were aware of that fact when they sold Lot 19 to the Vanderpols in 2006. The Vanderpols sold Lot 19 to the Twetens in 2011. I can find nothing in the recorded documents to suggest that the 2000 and 2003 LLAs were perfected after the McGraws became aware of the issue in 2005.

Sotheby's also produced a survey map acknowledged by Leonard Tweten which shows the configuration of Lots 17, 18 and 19 per the 1998 LLA, a tax assessor's map which shows the configuration of Lots 17, 18 and 19 per the 1998 LLA, and the Tweten's title insurance policy which identifies Lot 19 per the 1998 LLA, and specifically excepts from coverage the 2000 and 2003 permit approval notices (exclusions 19 & 20).

I would also point out that the owners of Lots 17, 18 and 19 have been paying property taxes based upon the lots as configured in the 1998 LLA.

To recap, to my knowledge (and I've included the chains of title for Lots 17, 18, and 19 for your review) there is not a single grant deed conveying Lots 17, 18, or 19 as configured in the 2000 or 2003 LLA applications. The Subdivision Map Act was not complied with, and the LLAs were not perfected. No purchaser of Lots 17, 18 or 19 could reasonably believe that they acquired anything other than the lots as adjusted by the 1998 LLA.

Brandon Swanson
October 11, 2019
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If you require any further information, please do not hesitate to contact me.

Cordially yours,


Josette D. Johnson, Esq.

JJ:dw
Enclosure
cc: Wendy Strimling
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