



TOWN OF PARADISE

5555 SKYWAY • PARADISE, CALIFORNIA 95969-4931

TELEPHONE (530) 872-6291 FAX (530) 877-5059

www.townofparadise.com

Management Staff:

Lauren Gill, Town Manager
Dwight L. Moore, Town Attorney
Joanna Gutierrez, Town Clerk
Craig Baker, Community Development Director
Gabriela Tazzari-Dineen, Police Chief
Greg McFadden, Interim Chief, CAL FIRE/Butte
County Fire/Paradise Fire
Gina Will, Finance Director/Town Treasurer

Town Council:

Scott Lotter, Mayor
Greg Bolin, Vice Mayor
Steve "Woody" Culleton, Council Member
Jody Jones, Council Member
John J. Rawlings, Council Member

TOWN COUNCIL AGENDA

SPECIAL MEETING – 6:00 PM – March 19, 2014

In accordance with the Americans with Disabilities Act, if you need a special accommodation to participate, please contact the Town Clerk's Dept., at 872-6291 at least 48 hours in advance of the meeting. Hearing assistance devices for the hearing impaired are available from the Town Clerk.

Members of the public may address the Town Council on any agenda item, including closed session. If you wish to address the Town Council on any matter on the Agenda, it is requested that you complete a "Request to Address Council" card and give it to the Town Clerk prior to the beginning of the Council Meeting.

All writings or documents which are related to any item on an open session agenda and which are distributed to a majority of the Town Council will be available for public inspection at the Town Hall in the Town Clerk Department at 5555 Skyway, Room 3, at the same time the subject writing or document is distributed to a majority of the subject body. Regular business hours are Monday through Thursday from 8:00 a.m. to 5:00 p.m.

1. OPENING

- a. Call to order
- b. Pledge of allegiance
- c. Roll call

2. COUNCIL CONSIDERATION

- 2a. Consider adopting an Interim Urgency Ordinance of the Town Council of the Town of Paradise Enacting a Moratorium on the Establishment of Fences, Gates

or Barriers Within or Across Private Access Easements; and, (1) Waive reading of entire proposed ordinance and approve reading by title only; and, (2) Adopt Interim Urgency Ordinance No. 539, An Ordinance Declaring a Moratorium on the Establishment of Fences, Gates or Barriers Within or Across Private Access Easements. **(ROLL CALL VOTE)**

3. PUBLIC HEARING

- 3a.** Conduct the public hearing continued from the March 11, 2014 Council Meeting, relating to an appeal to the Town Council of a Planning Commission Interpretation finding that a proposed gate across a private road access easement does not constitute a violation of Town zoning ordinance regulations prohibiting the establishment of fences in access easements (Paradise Municipal Code Section 17.06.600), and after the close of the hearing, consider: (1) Adopting or rejecting the zoning code interpretation recommended by staff; or, (2) Adopting an alternative interpretation or directive to town staff. **(ROLL CALL VOTE)**

4. ADJOURNMENT

STATE OF CALIFORNIA) COUNTY OF BUTTE)	SS.
I declare under penalty of perjury that I am employed by the Town of Paradise in the Town Clerk's Department and that I posted this Agenda on the bulletin Board both inside and outside of Town Hall on the following date:	
<hr/>	
TOWN/ASSISTANT TOWN CLERK SIGNATURE	

TOWN OF PARADISE
Council Agenda Summary
Date: March 19, 2014

Agenda No. 2a

ORIGINATED BY: Craig Baker, Community Development Director
Dwight L. Moore, Town Attorney

REVIEWED BY: Lauren Gill, Town Manager

SUBJECT: Town Council Consideration of an Interim Urgency Ordinance Enacting a Moratorium on the Establishment of Fences, Gates or Barriers Within or Across Private Access Easements

COUNCIL ACTION REQUESTED: Upon conclusion of the discussion adopt either the recommended action or an alternative action.

RECOMMENDATION: Adopt a MOTION TO:

1. Waive the first reading of Town Ordinance No. _____ and read by title only [roll call vote];
AND
2. Adopt Town Ordinance No. _____, " An Interim Urgency Ordinance of the Town Council of The Town of Paradise Enacting a Moratorium on the Establishment of Fences, Gates or Barriers Within or Across Private Access Easements"; OR
3. Adopt an alternative directive to Town staff regarding this agenda item.

BACKGROUND:

On March 11, 2014, the Town Council conducted a public hearing to consider an appeal of a February 18, 2014 Planning Commission decision regarding a provision in the Town's zoning ordinance regulations prohibiting the establishment of fences within private access easements (Paradise Municipal Code section 17.06.600E4). The appeal was filed by Dana and Denise Bettis on February 20, 2014. In rendering their decision, the Planning Commission found that the establishment of a gate by itself did not constitute a violation of the pertinent provision.

Subsequent to a staff presentation, acceptance of public testimony and closure of the appeal hearing, the Town Council and Town Attorney Dwight Moore discussed developing and considering an urgency interim ordinance during a special Town Council meeting on March 19, 2014 for the purpose of prohibiting the establishment of all fences, gates or other barriers within private access easements for up to one year or until such time as new language can be

developed for Town Council consideration for Paradise Municipal Code section 17.06.600E4 that clarifies or even alters the intent of the section. It was further discussed that, if such an urgency ordinance were adopted, the appeal of the Planning Commission's February 18, 2014 decision may be either moot or withdrawn.

At the conclusion of the hearing, the Town Council adopted a motion to continue the Bettis appeal hearing to March 19, 2014.

Additional background related to this agenda item can be found within the materials included with this agenda packet for Agenda Item No. 2 for the March 19, 2014 Special Town Council meeting.

DISCUSSION:

Given the fact that many, many developed residential properties in the Town of Paradise are accessed solely via private road easements, conflicts and disagreements regarding the establishment of fences, gates and other barriers within these easements are not uncommon. The installation of a gate or other barrier across an access easement could interfere with Town public safety services and other first responders in a manner that could delay the delivery of medical, police and fire services. Further, the unregulated or unauthorized establishment of gates and fences within private access easements without the prior consent of all users of the easement could create a barrier to their egress from their respective residences in times of wildland fires.

In consideration of the circumstances outlined above, it is Town staff's position that the unregulated and/or unauthorized installation of gates or other barriers within private access easements presents a plausible and immediate threat to the public health, safety and welfare of the Town's residents.

Therefore, Town staff recommends that the Town Council adopt the attached interim urgency ordinance enacting a moratorium on the establishment of gates, fences and other barriers within or across private access easements. As an urgency zoning ordinance, the moratorium would take effect immediately. To adopt the urgency ordinance, a four-fifths vote of the Council is required under Government Code section 65858. Thereafter, a noticed public hearing would be held within 45 days to consider extending the urgency zoning ordinance up to an additional 10 months and 15 days, so that Town staff can study and make recommendations regarding zoning regulations concerning the establishment of gates, fences and barriers in private access easements in the Town of Paradise.

FINANCIAL IMPACT: An approximate cost of \$85.00 will be borne by the Town of Paradise for publication of the ordinance or ordinance summary within the local newspaper.

Attachments

LIST OF ATTACHMENTS FOR AGENDA ITEM NO. 2(A)

1. Public notice of the March 19, 2014 Special Meeting of the Town Council
2. Excerpt of the minutes from the March 11, 2014 Town Council meeting
3. "An Interim Urgency Ordinance of The Town Council of The Town of Paradise Enacting a Moratorium on The Establishment of Fences, Gates or Barriers Within or Across Private Access Easements"



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NOTICE OF SPECIAL MEETING PARADISE TOWN COUNCIL

6:00 p.m. – March 19, 2014

NOTICE IS HEREBY GIVEN pursuant to Government Code Section 54956 that at the call of the Mayor of the Town of Paradise, a Special Meeting of the Paradise Town Council has been set for 6:00 p.m. on March 19, 2014 in the Town Hall Council Chambers located at 5555 Skyway, Paradise, California, for the following purposes:

1. To consider adopting an Interim Urgency Ordinance of the Town Council of the Town of Paradise Enacting a Moratorium on the Establishment of Fences, Gates or Barriers Within or Across Private Access Easements; and, (1) Waive the reading of entire ordinance and approve reading by title only; and, (2) Adopt the Interim Urgency Ordinance of the Town Council of the Town of Paradise.
2. To conduct the public hearing continued from March 11, 2014 relating to an appeal to the Town Council of a Planning Commission Interpretation finding that a proposed gate across a private road access easement does not constitute a violation of Town zoning ordinance regulations prohibiting the establishment of fences in access easements (Paradise Municipal Code Section 17.06.600), and after the close of the hearing, consider: (1) Adopting or rejecting the zoning code interpretation recommended by staff; or, (2) Adopting an alternative interpretation or directive to town staff.

Members of the public may address the Paradise Town council only on the items listed on the special meeting agenda.

Dated: March 17, 2014

JOANNA GUTIERREZ, CMC
Town Clerk

Excerpt of Draft Town Council Minutes from March 11, 2014 relating to agenda item 5a:

- 5a. Mayor Lotter announced that the Town Council would conduct a public hearing scheduled to hear the appeal filed by Dana and Denise Bettis to the Town Council of a Planning Commission Interpretation finding that a proposed gate across a private road access easement does not constitute a violation of Town zoning ordinance regulations prohibiting the establishment of fences in access easements (Paradise Municipal Code Section 17.06.600), and at the close the hearing, consider (1) Adoption or rejection of the zoning code interpretation recommended by staff; or, (2) Adopting an alternative interpretation or directive to town staff.

Community Development Director reviewed the background that led up to this appeal and stated, in essence, that the issue is whether or not a gate established across a private road access easement is the functional equivalent of a fence and would be prohibited by Paradise Municipal Code Section 17.06.600 (E)(4), which states, in part: "No fences shall be installed within public or private rights of way or access easements." The purpose of the regulation is to keep such easements unobstructed and to protect access rights of all parties.

Mayor Lotter stated that he would like hear from Town Attorney Moore prior to the opening of the hearing.

Attorney Moore stated that when reviewing law, one must look at the intent of the law and he recommended that the Council look at the reason for the prohibition within the Town's regulation, which reason is to provide unobstructed access through an easement; to look at the function of the proposed structure and to not rely on what it is called and, that the Town might need to amend the municipal code to make it clear as to how the regulation applies to gates.

Mayor Lotter opened the public hearing at 7:30 p.m.

Speaking in favor of the appeal:

1. Dana Bettis, appellant, owns property on Gregory Lane that involves the easement that goes through his property, read his appeal letter into the record requesting that the Council overturn the decision of the Planning Commission and interpret Paradise Municipal Code Section 17.06.600E4 as prohibiting construction of a locked electric gate across a non-exclusive easement road, without the prior written permission of the underlying land owner. He stated that Jon Remalia, a neighboring property owner on Gregory Lane, is attempting to build a gate upon his property, and that the easement right only provides a right to go through the property of another; it does not entitle any property owner to build anything upon the property of another property owner.

2. Gene Mapa stated that he supports Mr. Bettis but is bringing up a neutral issue, that there are many fences in Paradise built within easements, and that he thinks the Paradise Municipal Code should be re-written for clarification.
3. Sheryl Johnson asked if the Council Members had viewed the site where the gate/fence is proposed, that there are three other property owners that would be affected in a negative manner by construction of the gate proposed by Mr. Remalia, and that she thinks his construction projects are ruining the neighborhood.

Speaking against the appeal:

1. Jon Remalia, representing Ailamer Investments, stated that he thinks the agenda should have included an option for the Council to affirm the Planning Commission decision, that he believes interpretation of regulation should be based on past practices, that fences and gates are not the same, that the easement is a road easement which is different from ingress and egress easement, that the civil suit relating to this matter was not filed by him, and which he believes was filed in reliance on the interpretation that a gate is a fence. He stated that he would like to see either no action by the Council, or an affirmation of the Planning Commission decision.
2. Dan Wentland stated he is speaking as a Planning Commissioner, that much time was spent by the commission studying and discussing the definitions of gate and fence, that the commission decided a gate is a gate and fence is a fence, and wanted the Council to know that the decision of the Planning Commission was not based on who was involved, but based on the law. He stated that he is concerned that if gates are considered to be fences, what will be the impact on many, many gates in Town that are currently established in easements.
3. Alan White stated that he is in favor of affirming the decision of the Planning Commission, that he thinks the challenge in this issue is within the language of the Paradise Municipal Code, that the code should be amended to define or allow for a gate with the permission of the underlying property owners, or be removed altogether, and that he thinks this issue is a civil issue and the Town should not be involved.
4. Ward Habriel stated that he was involved in one these matters 25 or so years ago, referred to discussion that used the example of doors and walls to illustrate this situation, that the door is used for ingress and egress, and that he thinks the Planning Commission decision is very clear, that a gate is not a fence.

Mayor Lotter closed the public hearing.

After discussion, Council members were in agreement that the language in the Paradise Municipal could be clarified. Mayor Lotter suggested that the appeal hearing be continued to a specific date within the 40-day time frame allowed for decision, and that the Council meet next week to consider an emergency moratorium action relating to gates and fences that would provide time for the Council to consider language for the Paradise Municipal Code.

Attorney Moore confirmed that the Council has until the end of the month to act on the appeal and to adopt an urgency interim ordinance that would establish the 45-day moratorium. The moratorium would freeze the current laws relating to the fences and gates and would also freeze the appeal. No action could be taken on the appeal. In the interim, the civil case would continue. The moratorium would extract the town from the civil matter and provide the Town Council a specific time period within which to clarify the language in the code.

MOTION by Culleton, seconded by Jones, continued the public hearing to 6:00 p.m. on March 19, 2014, to hear the appeal filed by Dana and Denise Bettis to the Town Council of a Planning Commission Interpretation finding that a proposed gate across a private road access easement does not constitute a violation of Town zoning ordinance regulations prohibiting the establishment of fences in access easements (Paradise Municipal Code Section 17.06.600). Roll call vote was unanimous; Rawlings absent and not voting.

**TOWN OF PARADISE
ORDINANCE NO. ____**

**AN INTERIM URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE
TOWN OF PARADISE ENACTING A MORATORIUM ON THE
ESTABLISHMENT OF FENCES, GATES OR BARRIERS WITHIN OR ACROSS PRIVATE ACCESS
EASEMENTS**

The Town Council of the Town of Paradise, State of California does hereby **ORDAIN AS FOLLOWS:**

SECTION 1. Findings. The Town Council finds and declares as follows:

- a) Paradise Municipal Code section 17.06.600 E. 4. states, in pertinent part, as follows:

“No fences shall be installed within public or private rights-of-way or access easements.”

- b) The Community Development Director and Town Attorney have opined that a gate would also be prohibited within a private access easement because it is a component of a fence.
- c) The Paradise Planning Commission has interpreted that a gate within a private access easement does not violate the prohibition against fences.
- d) The Planning Commission interpretation has been appealed to the Town Council.
- e) The installation of a gate within a private access easement could foreseeably interfere with Town public safety services in a manner that would delay or prevent first responders from delivering medical, police and fire services relating to emergencies.
- f) The installation of a gate within a private access easement without the prior consent of all users of the easement could create a barrier to their egress from their respective residences in times of wildland fires.
- g) Although section 503.6 of the California Fire Code, as amended and adopted by the Town of Paradise, sets forth requirements for the function of security gates, including those within or across private access easements, it does not specify or imply any required location(s) for such gates.
- h) Based on all the foregoing findings, the Town Council finds that there is a current and immediate threat to the public health, safety and welfare relating to emergency services and that the unregulated installation of a gate within a private access easement would result in that threat to the public health, safety and welfare of the Town’s residents.

**TOWN OF PARADISE
ORDINANCE NO. _____**

- i) To study whether or not it is necessary to adopt regulations relating to the installation of fences, including gates, it is in the public interest to thoroughly study all the aspects of this subject matter before any additional gates are installed within or across a private access easement in the Town.

SECTION 2. Definitions. For the purpose of this ordinance, the following terms shall have the following meanings:

- a) "Fence" shall mean any barrier or structure consisting of any material, including a gate across or within any public right-of-way or private access easement.
- b) "Person" shall include: Any natural person, association, corporation, cooperative, partnership, limited liability company, or any other business entity.

SECTION 3. Prohibitions. During the term of this interim urgency ordinance, no person shall cause or permit the establishment, development, construction, maintenance, operation, or enlargement of any fence, gate or any other barrier within or across a private access easement within the Town of Paradise.

SECTION 4. Report. The Town Manager is directed to conduct a study concerning placement of gates within private access easements and emergency services and whether it is necessary to regulate the installation of gates within private access easements and to issue a written report describing the measures taken by the Town to alleviate the conditions which have led to the adoption of this ordinance, at least 10 days prior to the expiration of this ordinance.

SECTION 5. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is for any reason held to be invalid by a court or competent jurisdiction, such provision shall be deemed severable, and the invalidity thereof shall not affect the remaining provisions or other applications of the ordinance, which can be given effect without the invalid provision or application thereof.

SECTION 6. Urgency, Duration and Publication. This ordinance is adopted by the Town Council pursuant to the California Constitution, article XI, section 7 and Government Code section 65858 by a four-fifths or greater vote, as an urgency measure to protect the public health, safety and welfare, and shall take effect immediately. The reasons for such urgency are set forth in Section 1 above. This ordinance shall expire and be of no further force or effect 45 days after its adoption, unless it is extended by the Town Council pursuant to California Government Code section 65858. Before the expiration of 15 days after the adoption of this ordinance, it

**TOWN OF PARADISE
ORDINANCE NO. _____**

shall be published once, with the names of the members of this Council voting for or against the same in a newspaper of general circulation published in the Town of Paradise.

PASSED AND ADOPTED by the Town Council of the Town of Paradise, County of Butte, State of California, on this 19th day of March, 2014 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Scott Lotter, Mayor

APPROVED AS TO FORM:

ATTEST:

DWIGHT L. MOORE, Town Attorney

JOANNA GUTIERREZ, Town Clerk



TOWN OF PARADISE
Council Agenda Summary
Date: March 19, 2014

AGENDA ITEM: 3(a)

ORIGINATED BY: Craig Baker, Community Development Director

REVIEWED BY: Lauren Gill, Town Manager

SUBJECT: Appeal to the Town Council of a Planning Commission Interpretation Finding that a Proposed Gate Across a Private Road Access Easement Does not Constitute a Violation of Town Zoning Ordinance Regulations Prohibiting the Establishment of Fences in Access Easements (Paradise Municipal Code Section 17.06.600)

COUNCIL ACTIONS REQUESTED:

1. Conduct the duly noticed public hearing that was continued from the March 11, 2014 Council Meeting and accept any testimony from the attending public; and
2. Upon conclusion of the public hearing, move to adopt the following Zoning Code interpretation:

Based upon a review of the substantial evidence presented to the Town Council and the definitions for a fence and a gate contained within the current Merriam-Webster dictionary as required by Paradise Municipal Code (PMC) section 17.04.500(A), the Town Council finds that the prohibition against the establishing a fence in an access easement within PMC section 17.06.600(E)(4) includes a gate for purposes of the written request filed by Mr. Jon Remalia on February 10, 2014 for a Planning Commission interpretation of zoning regulations and particularly PMC section 17.06.600(E)(4).

OR

2. Adopt an alternative interpretation or directive to town staff.

BACKGROUND: On February 10, 2014, Mr. Jon Remalia submitted a written request to the Town Development Services Department for a Planning Commission interpretation of zoning regulations as they apply to the proposed establishment of a gate across an existing road easement. In particular, Mr. Remalia wishes to establish a new gate across a private road access easement to his property located at 6501 Gregory Lane in Paradise. Mr. Remalia's written request for Planning Commission consideration is attached for your review.

On February 18, 2014, the Planning Commission considered Mr. Remalia's request and, after soliciting verbal testimony from the attending public, adopted the following interpretation:

A proposed locked gate across a private road access easement does not constitute a violation of town zoning ordinance regulations prohibiting the establishment of fences in access easements (Paradise Municipal Code Section 17.06.600).

On February 20, 2014, Dana and Denise Bettis, owners of property upon which the gate is proposed to be established, filed a written appeal to the Town Council of the Planning Commission's decision. Pursuant to Paradise Municipal Code Section 17.45.800, any appeal of a Planning Commission decision must be considered at a noticed public hearing before the Town Council. The appeal filed by Mr. and Ms. Bettis essentially asks the Town Council to find that a closed gate across an access easement is functionally equivalent to a fence and should therefore be prohibited by the Town in this case.

Mr. Remalia is currently engaged in developing a residentially-zoned property, located at the western terminus of the easement in question, with a dwelling unit. The proposed location of the gate is off-site from the property Mr. Remalia is developing and is located upon lands owned by neighboring property owners, Dana and Denise Bettis. Dana and Denise Bettis have indicated their strong opposition to the placement of the gate and are currently engaged in a civil lawsuit with Mr. Remalia over this and other issues. Mr. Remalia has indicated that a gate has existed on the road in the past. Mr. Bettis has indicated to staff that he at one time installed a gate in the same easement on his property and subsequently removed it himself after a fairly short period. There is currently no gate across or within the road easement.

Mr. Remalia has stated that he has security concerns and has indicated that the road has no turnaround except upon his property, so he would prefer to install the gate within the easement on the Bettis property approximately 500 feet from Mr. Remalia's property, at or near where Mr. Bettis previously removed his own gate. Mr. Remalia has constructed post structures on either side of the easement in this location, evidently designed to support an electric gate.

DISCUSSION: Paradise Municipal Code (PMC) section 17.06.600(E)(4) states the following, in part: "*No fences shall be installed within public or private rights of way or access easements.*" No other portion of the section addresses this issue. With regard to Mr. Remalia's inquiries made of the Town, on June 12, 2013, Town Attorney Dwight Moore provided the following legal opinion:

"Based on PMC section 17.06.600(E)(4), it is my opinion that a gate could be considered to be the equivalent of a fence, which cannot be installed within a private right-of-way or access easement. However, such a gate would be permitted on the entrance to a parcel if it would not be in the easement."

There is no definition of either “fence” or “gate” in the PMC. However PMC section 17.04.500(A) directs that any words not defined in the definitions section shall be defined as set forth in current dictionaries. The current Merriam-Webster dictionary defines a fence as “a structure like a wall built outdoors usually of wood or metal that separates two areas or prevents people or animals from entering or leaving” and defines a gate as “an opening in a wall or fence.” Using these definitions, it is reasonable to regard the proposed gate as functionally equivalent to a fence, or portion thereof, when it is closed. In other words, a gate serves the same purpose as a fence – it prevents access from one side to the other side. The only difference is that a gate is a portion of a fence that can be opened.

The primary reason fences are not permitted within access easements is to keep such easements unobstructed and to protect the access rights of all parties having legal interest in such easements. It continues to be Town staff’s position that Mr. Remalia’s other options should include the installation of a gate upon his own property at the end of the easement and perhaps a sign advising others that there is no public turnaround on the driveway. And although it is clear that Mr. Remalia has an easement to access his property over the property of others, his rights do not impliedly allow the establishment of a gate within the easement on the property of others without their express consent.

Please be prepared to publicly discuss Mr. Remalia’s request for the Planning Commission’s zoning interpretation and the appeal filed by Mr. and Ms. Bettis, including accepting written and or verbal input provided by attending parties. Town staff has provided several attachments to assist Town Council members in preparing for the public hearing, including an excerpt of the draft minutes from the February 18, 2014 Planning Commission meeting and a legal opinion provided to the Town Attorney by private attorney Doug Thorn supporting the finding that a closed gate constitutes a fence for purposes of PMC section 17.06.600(4)(A).

FINANCIAL IMPACT: Town Council adoption of a motion interpreting Paradise Municipal Code section 17.06.600(A) will have no direct or immediate impact upon the Town’s funds.

Attachments

ATTACHMENTS FOR BETTIS APPEAL HEARING

1. Public notice for the March 11, 2014 Town Council appeal hearing
2. Written request for Planning Commission interpretation of PMC section 17.06.600(E)(4) submitted to the Town by Jon Remalia on February 10, 2014
3. Excerpt of draft Planning Commission minutes from the February 18, 2014 Planning Commission meeting
4. Written appeal to the Town Council of the Planning Commission's finding and decision rendered during the February 18, 2014 Planning Commission meeting, filed by Dana and Denise Bettis with the Town Clerk on February 20, 2014
5. Written legal opinion provided to Town Attorney Dwight Moore by trial attorney Douglas R. Thorn, dated February 20, 2014

**TOWN OF PARADISE
NOTICE OF PUBLIC HEARING - PARADISE TOWN
COUNCIL**

NOTICE IS HEREBY GIVEN by the Town Council that a public hearing will be held on Tuesday, March 11, 2014 at 6:00 p.m., or as soon thereafter as possible, in the Town Hall Council Chambers, 5555 Skyway, Paradise, California, regarding the following matter:

PURSUANT TO PARADISE MUNICIPAL CODE SECTION 17.45.800, BETTIS APPEAL OF PLANNING COMMISSION INTERPRETATION OF ZONING REGULATIONS ON FEBRUARY 18, 2014: Appeal to the Town Council of a Planning Commission interpretation finding that a proposed gate across a private road access easement does not constitute a violation of town zoning ordinance regulations prohibiting the establishment of fences in access easements (Paradise Municipal Code Section 17.06.600). Item determined to be exempt from environmental review.

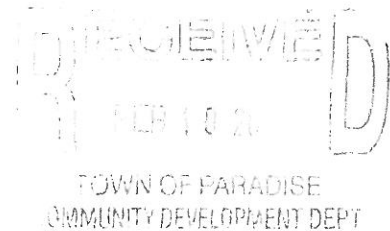
The project file is available for public inspection at the Community Development Department, Town Hall. If you challenge this matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Town Clerk at, or prior to, the public hearing. For further information, please contact the Development Services Department (planning division), 5555 Skyway, Paradise, CA (530) 872-6291, extension 111.

Joanna Gutierrez, Town Clerk
Publish: 3/1/14

Honorable Daniel Wentland,
Acting Chairman, Paradise Planning Commission
5555 Skyway
Paradise, California
95969

February 06, 2014

Jon Remalia,
Project Manager, Ailamer Investments LLC
6501 Gregory Lane
Paradise, California
95969



Dear Chairman Wentland,

As we have previously discussed Ailamer is experiencing a severe hardship regarding the interpretation of section 17.06.600 and whether a standalone gate solely to limit vehicular access without any linier features is a fence.

Specifically, the first decision involves Section 17.06.600 Yard and Building/structure setback regulations Paragraph E.4 which states:

A non-open or solid fence up to six (6) feet in height above grade may be installed along property lines which do not abut a road or street, or beyond setback lines as required by the zone when the property line abuts a road or street. A non-open or solid fence not exceeding four (4) feet in height above grade may extend into the front yard setback area; and wrought iron and/or chain link fences up to six (6) feet in height above grade may extend into the front yard setback area. **No fences shall be installed within public or private rights-of-way or access easements.** Exclusive of the front yard setback area, fences to a maximum height of eight (8) feet above grade subject to procurement of town building permit issuance may be installed around recycling processing facilities, a wastewater treatment/disposal utility facility, and/or legally established facilities that provide either scrap and salvage services or general vehicle/equipment storage or vehicle impoundment service.

It is Ailamer's and Ailamer's council's opinion that this Zoning Ordinance does not apply in Ailamer's case for numerous reasons.

First and foremost a gate is not a fence. It lacks the elements of a fence and cannot be a "fence" unless other features are associated. We agree that a gate as part of a linier assembly or attached to a structure with linier features that a gate could be part of a fence.

An equal similar instance might be having a tire. A tire is not a automobile. However, when assembled with axles, a frame, motor, and other components it is a part of a car.

Secondly, the instant use is a Vehicular Access Gate on a 500 foot +/- driveway with steep up slopes to the south and 100% drop-offs to the north with no areas for turning around a vehicle. Furthermore, the width and configuration of the easement does not provide enough room for a turnaround at the end of the driveway thereby requiring anyone passing down the road to back out the long driveway. Backing out this curvy 500 foot driveway is unsafe for most drivers.

In addition, the driveway without proper limited access creates a liability nightmare for the underlying property owner, easement owner and the town for prohibiting the installation of safety structures to protect someone who makes a "wrong turn".

Third, the Plan Review for the project which was reviewed by both the Building and Planning Departments on March 27, 2013 not only failed to prohibit the gate but specifically identified the installation of a Knox Box as required by the Town of Paradise Fire Code. As the gate required no building permit the foundation had been built in October 2011 and the reinforcing placed in May 2013 and stone façade partially constructed in June 2013. The plans approved later that year and permits issued identified the gate as "not a part of this project". A fore coming lawsuit filed by Dana and Denise Bettis has halted financing of the project and forced Ailamer to be subjected to interest rates at least 2.5% higher than the locked in rate in May 2013.

Fourth, The current gate is in the location of the pipe gate installed by Dana and Denise Bettis in 2008 or 2009. Prior to that the access had been equipped with 2 thin wall metal posts and a cable gate with rocks in the roadway during some periods. This has been confirmed by former owner Vesta McCart and her family (1985 to 2007). Yourself whom built the McCart home and a Declaration signed by Pete Lindstrom whom has lived in the neighborhood for over 30 years. The materials which this cable gate was constructed of are consistent with the materials used by the Paradise Irrigation District in the early part of the century which is supported by the fact that the road location is one in the same with the "Moody Ditch" which provided water to the Southwest portion of Paradise (Moody Ditch recorded book 1017 page 156). Therefore, even if prohibited by Current Zoning Regulations the function of a vehicle limiting device in this location must be "Grandfathered" as an **Existing Legal Non-conforming Use**.

Lastly, Ailamer believes that the current ordinance prohibiting gates and fences on **any private property** is a violation of the landowner and/or easement owner's California Constitutional and Statutory Rights. The California Civil Code specifically authorizes the gating to prohibit access as a way to protect ones property rights against adverse possession and title or an easement by prescription.

Section 1009 of the California Civil Code states in part:

1009. (a) The Legislature finds that:

- (1) It is in the best interests of the state to encourage owners of private real property to continue to make their lands available for public recreational use to supplement opportunities available on tax-supported publicly owned facilities.
- (2) Owners of private real property are confronted with the threat of loss of rights in their property if they allow or continue to allow members of the public to use, enjoy or pass over their property for recreational purposes.
- (3) The stability and marketability of record titles is clouded by such public use, thereby compelling the owner to exclude the public from his property.

Coupled with the liability identified in the second reason above the installation of a mechanically operated gate protects the owner of both the easement and the fee owner of the lands from loss of right and liability of those using the lands for other than recreational uses.

Article 11 Section 7 of the California Constitution states that:

A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.

The General Laws provide provisions whereby a property owner can gate his drive or roadway to protect himself from others using the drive or road and then later (5 years) claiming some right to continued use.

The current Town of Paradise Ordinance as written applying to "private right-of-ways or access easements" denies the fee owner and/or easement owner the right to protect themselves from losing certain rights as established by the California Civil Code.

Ailamer does not want to restrict the Servant tenement or anyone else that has a legal right to use the roadway. However, Ailamer must protect its roadway from unnecessary wear and tear, of unauthorized use (some summer months generate four instances per day) protect itself and others from any liability related to the roadway and protect the general public from injury on the roadway.

Ailamer in this instance respectfully requests the Planning Commission to solve the issue in the easiest and simplest way. That being making the firm determination that a gate is not a fence and that each is a structure which can be separate and distinct.

In the event that the Planning Commission does not make the "separate and distinct" determination Ailamer requests some action whereby Gates may be permitted on Easements in a manner that limits access to those whom have no legal right to use the lands behind the gate.

Furthermore, Butte Superior Court on February 05, 2013 set a trial date of March 03, 2014 for this matter to be heard so it is very important to have this matter resolved immediately. We would like to have this matter resolved at 6:00 February 21, 2014. Ailamer's portion of the presentation will be made by Jon Remalia and/or Attorney Bill Apger.

Jon Remalia,
Ailamer investments LLC

cc: Craig Baker, Mike Zuccolillo, Jim Clarkson, Stephnie Newman, Bill Apger

EXCERPT OF DRAFT PLANNING COMMISSION MINUTES
MEETING DATE: February 18, 2014

- 6b. Consideration of a Request for Planning Commission Interpretation of Town Zoning Regulations to Determine if a Proposed Locked Gate Across a Private Road Access Easement Would Constitute a Violation of Town Zoning Ordinance Regulations Prohibiting the Establishment of Fences in Access Easements.

Community Development Department Director Baker informed the Planning Commission that on February 10, 2014, Jon Remalia submitted a written request for a Planning Commission interpretation of Town zoning regulations as they apply to his proposed establishment of a gate across an existing road easement. Community Development Director Baker stated that the issue is within Paradise Municipal Code Section 17.06.600 which states that no fences are allowed in public rights of way or access easements and that the Planning Commission is being asked to publicly discuss whether the gate is functionally equivalent to a fence and to make a finding.

Commissioner Clarkson stated that he would like to know how a Planning Commission finding might affect existing gates and is concerned that if this gate is determined to be a fence, then will all other such gates become fences and have to come down. Director Baker stated that the Town generally does not involve itself with private road matters. In this case, Mr. Remalia is asking for a determination or permission from the Town to establish a gate or fence, and the fundamental difference herein is that the proposed gate is intended to be established upon the property of another who opposes the placement of the gate. Assistant Planner Hartman stated that one of the gate or fence is proposed to be electrical and, as such, the Town would be asked to issue an electrical permit.

Town Attorney Dwight Moore stated that the Town deals with issues case-by-case, and that he doesn't believe a decision on this matter will have far reaching impacts as the Commission is dealing with a specific set of facts, the Town has no authority over the easement itself, or to determine if there is an easement, and the Planning Commission scope is limited to determining if this gate is a fence. Mr. Moore stated that the issue is not what it is called, it is about what it will do, and that titles don't have meaning in law; it is about what a thing actually does. This gate looked like a fence because it was not accepted by other owners and they would not have access based on the fact that it would be locked.

Chair Zuccolillo stated for the record that he is a real estate broker, was involved in the sale of the property to Ailamer in 2011 and received commission in an amount less than \$500, that he consulted with the Town Attorney and because the transaction took place more than one year ago, he has no conflict of interest relating to this matter.

Chair Zuccolillo opened the matter to public comment.

1. Jon Remalia asked if he could give his presentation first and then allow the other people to comment. He stated the presentation would outline what was there and what is proposed. Planning Commission agreed to allow Mr. Remalia to provide his presentation first.

Mr. Remalia stated that when he purchased the property there was a gate and there was never any intent to lock anybody out that has the legal right to use the road, stated that there has been misrepresentation of that fact and that he would like everyone who is going to give testimony to be sworn.

After brief discussion, the Planning Commissioners concurred that sworn testimony was not necessary.

1. Jon Remalia displayed a power point presentation of the property and easement. He stated that he does not think that the proposed freestanding gate on pillars is a fence. The gate is proposed to restrict unauthorized vehicular access and that persons who live along the road would be provided access.

Chair Zuccolillo reminded Mr. Remalia that the easement dispute is not the issue before the commission. Chair Zuccolillo called for the comment from citizens who turned in speaker cards.

2. William Apger stated that he represents Mr. Remalia in the civil litigation relating to this matter and would like to reserve his comments to the end, as rebuttal, to which the commission concurred.
3. Claudia Benike, stated that she is one of the parties having interest in the easement and the fence/gate, that her concern is also one of aesthetics and she is opposed to letting Mr. Remalia build something like this in their backyard, doesn't think their property should provide security for Remalia's property and that it would be an inconvenience for them to have to use a gate.
4. Dana Bettis stated that he doesn't want a gate on his property and stated his position that Mr. Remalia has no right to put a gate on his property.
5. Denise Bettis stated that she agrees with the statements made by her husband.
6. Lea Roy Johnson stated that he doesn't want any gate or anything built on his property. Jon hasn't asked any other property owner for compensation and thinks Jon needs to put the gate on his own property and put a sign at the end of Gregory Lane. He uses the easement to access their backyard and basement. Doesn't want a gate on the property.
7. Gene Mapa stated that he would like to discuss the Fillerup-Butler easement information as he thinks what Mr. Remalia stated was incorrect.

Chair Zuccolillo stated that the Planning Commission is not addressing the easement issue.

8. David Murray stated that he representing the Bettises, that Ailamer is a real-estate investment company which he thinks is requesting this determination to gain an advantage in a pending civil litigation. Mr. Murray stated that the court has granted a restraining order on the construction of the gate, that he thinks the investment

company wants to change building code to maximize his profit and the CA Fire Code requires that a turn-around be provided, and that his clients will lose free access to their easement.

Commission Clarkson asked Mr. Murray to stay focused on the issue, that the Planning Commission must take the facts as they are, and the question is, is this a fence or is this a gate, and would appreciate information that supports that this is a fence.

- 8a. Mr. Murray stated that the gate makes a non-exclusive easement. It becomes an exclusive easement if the power goes out, then it becomes a fence.
9. Alan White asked that the agenda item be read. Commissioner Zuccolillo read the agenda item again.

Mr. White stated that is not the discussion he is hearing, that the only item for discussion is whether a gate is a fence, and according to the Merriam Webster dictionary a gate is an opening in a wall or fence. He mentioned specific private gated easements, including Puddle Duck Court, Paradise Community Village access off of Paloma, the end of Valley View, but the discussion tonight is only to help determine whether or not a gate is a fence.

10. Susan Butler Mapa suggested that the commissioners look the state code to see what it says about an easement across someone's property, there is a right to go in and to go out, and that there is no right to do anything else to someone's property.

Chair Zuccolillo stated that the commissioners are not here to litigate that, but are being asked to decide what is the definition of a gate.

11. Jerod Holiday stated that he contracted to work for Jon Remalia and that there is indication that there was a cable across the road at one time and as that is a component of this discussion, asked if the existing, non-compliance rule would apply.

Community Development Director Baker stated that there is no gate there; and, that non-conforming uses are lost when abandoned.

12. William Apger stated that the discussion is whether a gate is a fence, that a gate is a closure for a hole in a fence, there are many reasons to have a gate on an easement, security and liability are issues, a non-exclusive easement is not a passage to private property, security gates must be approved by the Fire Chief, and to state that all gates are fences would be in conflict with the Town code. There are many reasons why a gate would be reasonable, there is no statute that prohibits gates on easements, and discussed the provision in the Paradise Municipal Code that allows for fire access gates. Mr. Apger stated that he has been to the Remalia property before it was purchased by Mr. Remalia and that he remembers a previous gate on the road easement.

Chair Zuccolillo closed the public comment. Mr. Zuccolillo stated that the Planning Commission is not discussing the merits of whether or not a gate is allowed on a easement but to strictly define what they believe is a gate and a fence.

Commissioner Clarkson questioned how our code addresses or defines the requirements for gates and for fences. Community Development Director Baker explained the code mentioned herein is the only section in the zoning code that addresses fences in easements. There are other sections in the site development chapter that discuss fence height and location in setbacks.

Commissioner Clarkson stated, for example, when building a house, you have a wall and you have a door that you go through, and there are different code requirements for each, the requirements are separate, and asked if we are dealing with the similar type of thing. Mr. Clarkson stated he has a hard time understanding how somebody could say that you can't put a wall up to prevent somebody having access – they have to have access to go outside – and isn't that what a door is for. And if the door does not have a lock on it, is it therefore able to comply with the heart of what code requires.

Community Development Director stated that our zoning code does not independently define what is a gate and refers to current dictionaries for terms not defined.

The Town Attorney stated that when interpreting law, one looks at intent of the law – why is there a prohibition of fences across an easement. Mr. Baker has a statement in the staff report that deals with the primary reason that fences are not permitted in an access easement is to keep the easement unobstructed and protect the access rights of all parties having legal interest in such easements. The intent is to allow unobstructed access through that area and a closed gate obstructs an easement as a fence does.

Commissioner Clarkson asked if, using that argument, if the gate is locked there is a fence – because there is no access - and if the gate is unlocked there is no fence. Attorney Moore stated that anything across the road can constitute a fence if it prevents free access, and the subject of this agenda item is a proposed locked gate.

Commissioner Clarkson stated that he would like to make a motion to determine that if it is deemed that if this a gate is to be locked, then it is a fence, and if the gate is unlocked it is not a fence, and that he would like input from the commissioners.

Commissioner Neumann stated that she is having a very difficult time with this because if the Planning Commission renders a decision on this, then she believes the Town will have to go back to other properties with gated easements, that she is very clear about what she believes to be a fence and what is a gate, she doesn't want to make a decision about defining or revising code for the sake of litigation or settling a neighborhood dispute, and since the whole property is not fenced, does the term gate even apply.

Commissioner Wentland stated that he thinks this matter is a private property issue that cannot be resolved by the commission and that a gate is a gate and fence is a fence.

Chair Zuccolillo stated that the Planning Commission is not here to resolve a neighborhood dispute, that he thinks there are different definitions for a gate and for a

fence and that our code is not clear relating to this matter, that fences and a gates each have a different purpose, and that there are many gates in Town across easements that seem to be ok.

The **MOTION by Clarkson** to make a determination that a gate is not a fence as long as the gate is unlocked and has free access, that it could be considered a fence if it is locked and therefore does not offer free access, died for lack of a second.

Commissioner Neumann asked if the Town has a count on the number of properties in Town where upon a gate was established on an easement on an easement not owned by the individual, but who had legal right to use. Mr. Baker stated that the Town does not have such records and that he believes the vast majority of easements to be unobstructed.

Mr. Baker stated that his determination was made based on: (a) The fact that the fence is not located on the property that it's protecting, (b) The property owner of the property upon which the gate would be located opposes the installation of the gate, and (c) the manner in which it opens makes it subject to being inaccessible to other property owners having an interest in the easement. So that's why the Town said, for the benefit of the doubt, if everyone agreed in writing that they could open the fence for each other and it would always be unobstructed, then the Town would not be concerned.

There was a **MOTION by Clarkson**, to accept the definition that a gate is a gate, a different function than a fence, and a fence is a fence, died for lack of a second.

There was a **MOTION by Clarkson, seconded by Wentland**, that a gate is a gate and a fence is a fence and the two are not the same.

Attorney Moore stated that the subject matter of the action item on the agenda only deals with a request for a Planning Commission interpretation as to whether or not a proposed locked gate across a private road access easement would constitute a violation of Town zoning ordinance regulations prohibiting the establishment of fences in access easements, and not try to define what a gate is.

Commissioner Clarkson stated that his concern is if they make the recommended finding, then that could be used to determine that any gate could be a fence.

Community Development Director Baker stated that the commission could adopt a motion to not make the finding.

The motion and second were withdrawn.

The **MOTION by Clarkson** to make a finding that a locked gate constitutes a violation of the code and that an unlocked gate is not, died for lack of a second.

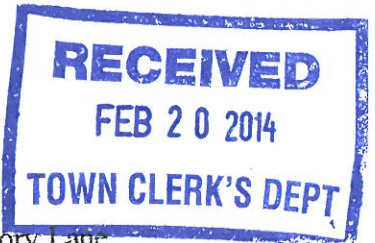
The Planning Commission concurred to take comment.

1. Mr. Remalia stated that the gate would only be locked to the public, not to those who have a legal right to access.
2. Loren Harvey stated that he used to hold nine building code certificates and if there is a term is not defined in the code, then the dictionary definition must be used.

Chair Zuccolillo stated that the commission is being asked to make the determination based on their belief as to what is a fence and what is a gate and suggested that a motion be made to either make a finding or to not make a finding.

Community Development Director Baker pointed out that staff's recommended finding could simply be changed to indicate that the gate would *not* constitute a code violation.

MOTION by Wentland, seconded by Clarkson, after considering the request for a Planning Commission interpretation of Town zoning regulations, made the determination that a proposed locked gate across a private road access easement would not constitute a violation of Town zoning ordinance regulations prohibiting the establishment of fences in access easements. Roll call vote was unanimous.



To the Town of Paradise City Council and to the Town Clerk:



We, Dana Bettis and Denise Bettis, owners of a residence located at 6479 Gregory Lane in Paradise, California, hereby appeal the Town of Paradise Planning Commission's Decision on February 18, 2014, of Published Agenda Item 6b. We are appealing this matter to the Town of Paradise City Council. We ask that the City Council reverse the decision of the Town of Paradise Planning Commission to allow a locked electric gate to be placed across a non-exclusive easement road without the permission of the underlying land owner.

Paradise Municipal Code § 17.06.600E4 states, "[n]o fences shall be installed within public or private rights-of-way or access easements." Previously, both the Town of Paradise Community Development Director, Craig Baker, and the Town of Paradise attorney, Dwight Moore, interpreted Paradise Municipal Code § 17.06.600E4 as prospectively prohibiting construction of a locked electric gate across a non-exclusive easement road without the prior written permission of the underlying land owner. It is our position that a locked electric gate across a non-exclusive easement road is effectively a "fence" structure, even if it opens and closes.

The current Town of Paradise Municipal Code does not define what constitutes a "fence" or a "gate." Black's Law Dictionary defines a "fence" as, [a] hedge, **structure, or partition, erected** for the purpose of enclosing a piece of land, or to **divide a piece of land into distinct portions, or to separate two contiguous estates...intended to prevent intrusion from without...** The current Merriam-Webster Dictionary defines a fence as, "**a structure like a wall built outdoors usually of wood or metal that separates two areas or prevents people or animals from entering or leaving.**" The vast majority of non-exclusive easements in the Town of Paradise are open for free ingress and egress. Those that do have a locked gate are because the CC&R's allow for a locked gate or they are by permission of the underlying land owner. We are not trying to outlaw locked gates or cause locked gates that are already built to be removed. We are merely asking the City Council to clarify the Municipal code so that all future installations of locked electric gates that are not located on the land of the person wanting to install the gate, be by written permission of the underlying land owner. This is certainly reasonable request.

Therefore, we respectfully ask that the City Council interpret Paradise Municipal Code § 17.06.600E4 prospectively (from the date of the City Council hearing on this matter on forward) as prohibiting construction of a locked electric gate across a non-exclusive easement road, without the prior written permission of the underlying land owner.

Sincerely,


Dana & Denise Bettis


Douglas R. Thorn

Trial Attorney

February 20, 2014

VIA EMAIL

Dwight L. Moore
Town Attorney
Town of Paradise
5555 Skyway
Paradise, California 95969

Re: Zoning Question

Dear Mr. Moore:

The Paradise Municipal Code states that, "No fences shall be installed within public or private rights of way or access easements." You asked me whether a locked gate across a private access easement would be the equivalent of a fence. The answer is yes, a gate is a barrier and a fence is a barrier and the two are one in the same thing.

My Webster's dictionary defines a fence as "a barrier." A gate is by definition a barrier and thus by definition a fence because when the gate is closed it is a barrier; it is a fence that can be swung shut to create a barrier to ingress or egress, and therefore meets the very definition of a fence. Said another way, when a gate is closed, it fences off access; when a gate is closed it is a barrier to access, or a fence. So to put a gate across a private access easement is putting a fence across the private access easement when the gate is closed, and could raise a number of other zoning health and safety concerns that I cannot address without more information. To argue that a gate is not a fence is a word game that ignores function and utility. It would set a very dangerous and onerous precedent to ignore the fact that a gate, when closed, is a fence.

Sincerely Yours,



MEMO

To: TOWN COUNCIL

From: Joanna Gutierrez, Town Clerk 

Subject: Additional Agenda Material Relating to Item 5(a): Bettis Appeal of Planning Commission Decision

Date: March 5, 2014

Attached for the record are items received from Jon Remalia regarding Agenda Item 5(a):

1. Email dated 03/04/14 regarding the Council Appeal Hearing; and,
2. Notice of Entry of Order, Dana Bettis and Denise Bettis vs. Ailamer Investments, LLC; Jon Remalia, Butte County Superior Court Case No. : 159895

Gutierrez, Joanna

From: Jon Remalia [jon@ailamer.com]
Sent: Tuesday, March 04, 2014 1:00 PM
To: Baker, Craig; Moore, Dwight; Gill, Lauren; Gutierrez, Joanna; Lindsey, Anthony; Susan Oliver; Stephanie Neumann; Michael Zuccolillo; Daniel Wentland; James Clarkson
Subject: Council Appeal Hearing

Friends,

Again, after reviewing the letter requesting the Planning Commission to review the "Gate/Fence" issue located at 6501 Gregory Lane I must challenge the wording which was used in the Notices.

First and foremost, Director Baker on his own inserted "LOCKED" into my request. Such is not the case. Selective Access or Restricted Access is a more appropriate term. I challenged this before without success with Mr. Baker and the Planning Commission. However, after winning the matter Ailamer saw no reason to Appeal the matter.

Now, Bettis has Appealed the matter and again "LOCKED" remains inserted in the Notice. Yes, an action is required to gain access. The simple pushing of a button or entering a code. Is a Disabled person locked out of a store if he or she must push a button to open the door? Are you locked out of an elevator because you must push a button for the door to open? What about turning a knob?

The inclusion of "LOCKED" raises a serious prejudice against Ailamer and myself. Locked was not in my request. Nor was the "solely to limit vehicular access" (paragraph 1 of my letter dated February 01 2014). This is just one more example of the Prejudice I must deal with which was originally outlined in My July 25 2013 Claim for Damages of which I did not receive notice of denial until September.

I was hoping that the filing of the Claim might stimulate equal treatment for Ailamer and myself. Obviously, it has not.

We are under the hardship created by Susan Butler-Mapes when she chose to challenge Ailamer's attorney representing it as he handled her mother's estate close to 4 years ago.

We have met with other attorneys and hopefully will be retaining Mr. Larry Baumbeck (of whom I believe the Town is familiar with). However, Mr. Baumbeck needs to receive the file from Mr. Apger and review the same to be informed enough to represent Ailamer.

In a similar situation the superior Court set the trial over to May to allow Mr. Baumbeck time to prepare. I would only believe that in the interest of justice the town should allow the matter to be set out an additional 30 days for council to prepare for the hearing.

We continue To see and hear the prejudice.

Specifically, I and Susan Oliver prior to the Planning Commission meeting were informed that an interpretation could not be appealed and was final after being heard by the Planning Commission. Mr. Moore told me that same thing. Yet, Bettis was granted an Appeal?? Equal protection???? Prejudice????

Where will it end. Hopefully this does not need to end up in yet more litigation. But, that is obviously where this is leading. Bettis' attorney claimed he never would have filed the suit except for Director Baker's solid statement that a gate is a fence backed up by Mr. Moore

In sum,

On the first note Ailamer would like a continuance of the hearing to allow Attorney Larry Baumbeck to review the matter.

Secondly, Ailamer would like direction in how the prejudice of "Locked" being inserted into its request should be addressed.

And lastly, how Ailamer and most likely Bettis also can be compensated for the associated cost of litigation, costs of construction delays and the current \$60,000 loss in available construction funding due to the doubling of interest rates since June when Mr. Baker's wrongful interpretation instigated this entire mess.

As I see it Mr. Baker's retaliation and fraudulent inclusion of a "Vehicular Access Gate" as a "Fence" has subjected the town to potential liability from both Ailamer and Bettis et al. In addition, it seems to me that Mr. Moore is not helping the matter. The best thing that could have ever happened would have been the town settling the matter in August by issuing the permits and Baker admitting his wrong.

Please distribute this email to all the Planning Commissioners and Councilmen and the record for the March Town Council Meeting. And thank you Planning Commission for standing up to the Director and keeping the definition of Fence as it has been for hundreds of years and specifically since the adoption of 17.06-600.

Thank You,

Jon Remalia
for Ailamer Investments LLC.

RECEIVED
MAR 05 2014
TOWN CLERK'S DEPT

Notice of E 34 Order - 1

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF BUTTE

3 I, June M. McLaughlin, am employed in the aforesaid County; I am over the age of 18
4 years and not a party to the within action; my business address is 426 Broadway, Suite 205,
5 Chico, Butte County, California 95928. On February 28, 2014, I served:

6 NOTICE OF ENTRY OF ORDER

7 on the interested parties in this action as follows:

8 David Murray
9 Law Offices of David J. Murray
10 354 E 5th Street
11 Chico, CA 95928

12 Jon Remalia
13 6501 Gregory Lane
14 Paradise, CA 95969

15 in the following manner:

- 16 (x) U.S. Postal Service: By placing the document(s) listed above in a sealed envelope with
17 postage fully prepaid, addressed as indicated above, and deposited in regularly
18 maintained office mail at Law Offices of William G. Apger, 426 Broadway, Suite 205,
19 Chico, Butte County, California, 95928 for collection and same-day delivery to the
20 United States Postal Service.
- 21 () Federal Express
- 22 () Via Facsimile
- 23 () Personal Service - by causing to be delivered such document by hand to the offices of the
24 addressee(s).

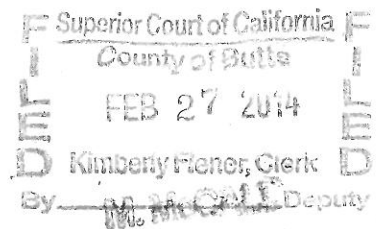
25 (x) State: I declare under penalty of perjury under the laws of the State of California
that the foregoing is true and correct.

() Federal: I declare that I am employed in the office of a member of the bar of this
court, at whose direction the service was made.

Dated: 2/28/14


June M. McLaughlin

1 LAW OFFICE OF WILLIAM G. APGER
William G. Apger (SBN 142992)
2 Attorney at Law
426 Broadway Ste 205
3 Chico, CA 95928
Phone: (530) 899-9575
4 Fax: (530) 899-9577
Attorney for Defendants and Cross-Complainants



8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9 COUNTY OF BUTTE

11 DANA BETTIS and DENISE BETTIS,
12 husband and wife,

13 Plaintiffs,

14 vs.

15 AILAMER INVESTMENTS, LLC; JON
REMALIA aka JOHN REMALIA and DOES
1 through 20, inclusive,

16 Defendants.
17

18 AND RELATED CROSS-ACTION.
19

) Case No.: 159895
)
)

) **ORDER GRANTING EX PARTE**
) **MOTION TO VACATE AND CONTINUE**
) **TRIAL; MEMORANDUM OF POINTS &**
) **AUTHORITIES IN SUPPORT THEREOF;**
) **DECLARATION OF WILLIAM G.**
) **APGER IN SUPPORT THEREOF**

20 GOOD CAUSE SHOWING, IT IS HEREBY ORDERED that the current trial date of
21 March 3, 2014 be vacated and reset to May 12, 2014 at 8:30 a.m., in
22 Department C13 at 655 Oleander Avenue, Chico, California. The Trial Readiness
23 Conference scheduled for February 28, 2014 at 8:30 a.m. shall be vacated and continued to
24 May 9, 2014, 2014 at 8:30 a.m., in Department C13 at 655 Oleander Avenue,
25

1 Chico, California. Trial briefs currently scheduled to be filed on February 26, 2014 shall now be
2 due to be filed and served by per local rules, 2014.

3 IT IS SO ORDERED.

4 DATED: 2-27-14

5 SANDRA L. McLEAN

6 JUDGE OF THE SUPERIOR COURT

1 LAW OFFICE OF WILLIAM G. APGER
William G. Apger (SBN 142992)
2 Attorney at Law
426 Broadway Ste 205
3 Chico, CA 95928
Phone: (530) 899-9575
4 Fax: (530) 899-9577
Attorney for Defendants and Cross-Complainants



8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9 COUNTY OF BUTTE

11 DANA BETTIS and DENISE BETTIS,
12 husband and wife,

13 Plaintiffs,

14 vs.

15 AILAMER INVESTMENTS, LLC; JON
16 REMALIA aka JOHN REMALIA and DOES
1 through 20, inclusive,

17 Defendants.

) Case No.: 159895

) **EX PARTE MOTION TO VACATE AND**
) **CONTINUE TRIAL; MEMORANDUM OF**
) **POINTS & AUTHORITIES IN SUPPORT**
) **THEREOF; DECLARATION OF**
) **WILLIAM G. APGER IN SUPPORT**
) **THEREOF**

18 AND RELATED CROSS-ACTION.
19

20 NOTICE IS HEREBY GIVEN through Ex Parte Application that on
21 2/27, 2014 at 4:00 p.m., or as soon thereafter as the matter may be
22 heard, in Department _____ of this court, located at 655 Oleander Avenue, Chico, California,
23 Defendants/Cross-Complainants AILAMER INVESTMENTS, LLC and JON REMALIA, will,
24 and hereby do, move for an order vacating the March 3, 2014 trial date and continuing said trial
25

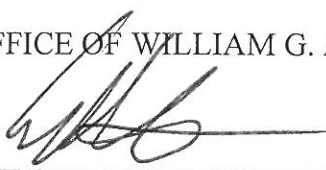
1 date to a date and time convenient for the court and to allow sufficient time for
2 Defendants/Cross-Complainants to find new counsel of record.

3 The motion will be made on the grounds that the Defendants/Cross-Complainants'
4 attorney is seeking, through Ex Parte Application, to be relieved as counsel of record due to a
5 conflict of interest that has now arisen.

6 The motion will be based on this notice of motion on the declaration of William G. Apger
7 and the supporting memorandum of points and authorities served and filed herewith, on the
8 records and file herein, and on such evidence as may be presented at the hearing of the motion.

9 DATED: *February 26, 2014*

LAW OFFICE OF WILLIAM G. APGER

11 By 
12 William G. Apger
13 Attorney for Defendants and Cross-Complainants

14 **MEMORANDUM OF POINTS & AUTHORITES IN SUPPORT**

15 **I.**

16 **BACKGROUND**

17 This lawsuit arises from a dispute over a private roadway easement. The Plaintiffs are
18 suing Defendants/Cross-Complainants for permanent injunction barring installation of a gate
19 across the easement, trespass, and declaratory relief.

20 Defendants/Cross-Complaints have been represented by counsel throughout the duration
21 of this matter. Discovery has been served but as yet has not been responded to. A motion to
22 bifurcate the trial was heard and a trial date of March 3, 2014 was scheduled for a half day court
23 trial regarding the gate portion of the matter.
24
25

1 A conflict of interest has arisen for Defendants/Cross-Complainants counsel and a
2 separate Ex Parte Motion to be Relieved as Counsel has been submitted with this Motion to
3 Vacate and Continue Trial. In addition, Defendants/Cross-Complainants have not been able to
4 access the Plaintiffs' property for the site inspection.

5 II.

6 LEGAL ARGUMENT

7 A. Good Cause Exists for the March 3, 2014 Trial to Be Vacated and Reset

8 Good cause exists for the March 3, 2014 trial to be vacated and reset due to the
9 affirmative showing that Defendants/Cross-Complainants' counsel has requested to be relieved
10 as counsel. Should counsel's Ex Parte Motion to be Relieved as Counsel be granted, the
11 Defendants/Cross-Complainants will need to hire new counsel and bring them current on the
12 status of this matter. (Cal. Rules of Ct., Rule 3.1332(c)).

14 B. Significant, Unanticipated Change in Case Status Constitutes Good Cause for 15 Continuance.

16 The circumstances that may indicate good cause for a continuance include a significant,
17 unanticipated change in the status of the case as a result of which the case is not ready for trial.
18 (Cal. Rules of Ct., Rule 3.1332(c)(7)). Counsel for Defendants/Cross-Complainants has filed
19 concurrently herewith an Ex Parte Motion to be Relieved as Counsel due to a conflict of interest
20 that has recently arisen.

21 In addition, as set forth in Defendants' Trial Brief, Defendants have not been allowed
22 access to Plaintiffs' property pursuant to a Demand for Inspection, before trial, in order for
23 Defendants to develop evidence refuting the numerous claims of Plaintiffs concerning
24 Defendants' gate. March 10, 2014 is the last date to allow inspection pursuant to the demand.
25

1 Without the photographic evidence Defendants were seeking, they will be hindered in presenting
2 their case to rebut Plaintiffs' claims.

3 **C. Continuance Sought as Soon as Reasonably Practical.**

4 A party seeking a continuance of the date set for trial, whether contested or uncontested
5 or stipulated to by the parties, must make the motion or application as soon as reasonably
6 practical once the necessity for the continuance is discovery. (Cal. Rules of Ct., Rule 3.1332(b)).

7
8 As stated in counsel's Ex Parte Motion to be Relieved as Counsel filed concurrently with
9 this Motion to Vacate and Continue Trial, a conflict of interest was discovered on February 20,
10 2014 when Mr. Remalia informed Mr. Apger that one of Mr. Apger's current clients, Susan
11 Mapa-Butler, was helping to fund the Plaintiffs' portion of this litigation. Mr. Remalia requested
12 Mr. Apger to name Does which will include Susan Mapa-Butler. Due to Mr. Remalia's request,
13 a conflict of interest has arisen and Mr. Apger immediately began the process of investigating
14 withdrawing from this matter. Mr. Apger then had to be in Eugene, Oregon for Wednesday,
15 February 19 through Saturday, February 21. Upon returning to his office, Monday, February 24,
16 2014, Mr. Apger received a letter from his client Susan Butler-Mapa objecting to his
17 representation of Mr. Remalia and claiming Mr. Apger had a conflict of interest. In a subsequent
18 telephone conversation with Ms. Butler-Mapa she refused to waive the conflict.

19
20 Mr. Apger has investigated the issue with two other experienced trial attorneys in the
21 Butte County area, and has discussed the situation with the California State Bar, Ethics Hotline.
22 The unanimous conclusion is that Mr. Apger has a direct conflict of interest and must stand
23 down.

24 The State Bar informed Mr. Apger that he may be heading towards a violation of Rule of
25 Professional Conduct 3-310(e), but that he needs to protect his client from prejudice pursuant to

1 Rule 3-700a (seeking court approval to withdraw, continuance of proceedings to allow time for
2 client to obtain other counsel). This motion is in response to that recommendation.

3 **D. Opportunity for Full Presentation.**

4 A continuance should be granted if failure to allow the continuance would probably or
5 possibly prejudice the party seeking the continuance by depriving that party of the opportunity to
6 fully and fairly present his/her/its case. (*Cadle Co. v. WorldWide Hospitality Furniture* (2006) 144
7 Cal. App. 4th 504, 513–515, 50 Cal. Rptr. 3d 480; *In re Dolly A.* (1986) 177 Cal. App. 3d 195, 199,
8 201, 222 Cal. Rptr. 741; *Cohen v. Herbert* (1960) 186 Cal. App. 2d 488, 494, 8 Cal. Rptr. 922).

10
11 **DECLARATION OF WILLIAM G. APGER**

12 I, WILLIAM G. APGER, declare as follows:

13 1. I am an attorney at law licensed to practice law in the State of California.

14 2. I am the attorney of record for Defendants/Cross-Complainants AILAMER
15 INVESTMENTS, LLC and JON REMALIA.

16 3. On February 20, 2014 I became aware of a conflict of interest in this matter when
17 Mr. Remalia informed me that one of my current clients, Susan Mapa-Butler, was helping to
18 fund the prosecution of this matter. As such, Mr. Remalia has asked me to name Does in this
19 matter which will include Susan Mapa-Butler.

20 4. On February 19-21, I was in Eugene, Oregon on a matter. As soon as I became
21 aware of this conflict of interest issue, I requested my staff begin the process of preparing an Ex
22 Parte Motion to be Relieved as Counsel and Ex Parte Motion to Vacate and Continue Trial.

23 5. Upon my return to my office on Monday, February 24, 2014, I received a letter
24 from my client who is adverse to Defendants herein, stating they are gravely concerned about my
25 conflict of interest between themselves and Defendants herein. They refuse to waive any
conflicts.

6. On Tuesday, February 25, 2014 I discussed this issue with two trial attorneys in Butte County, and also discussed the issue with the State Bar of California, attorney's ethics hotline. The unanimous conclusion of all was that I must withdraw, but need to make sure Defendants herein are not abandoned. In order to withdraw at this time, it is important for the Court to vacate the current trial date and set the matter over for new trial setting in order to allow Defendants herein time to obtain legal counsel.

7. I have propounded written discovery and have prepared a Trial Brief setting forth the issues pertinent to Defendants and legal issues supporting their position. With a change of trial date, Defendants will be protected from loss of their rights, and will have time to obtain other legal counsel.

I have personal knowledge of the foregoing facts, except as to those matters which are therein stated on information and belief, and concerning those matters, I believe it to be true. If called upon to testify as to these facts, I could competently do so.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Chico, California this 26 day of February, 2014.

WILLIAM G. APGER

MEMO

To: TOWN COUNCIL

From: Joanna Gutierrez, CMC, Town Clerk



Subject: Additional Agenda Material Relating to Item 5(a):
Bettis Appeal of Planning Commission Decision

Date: March 10, 2014

Attached for Town Council consideration relating to the public hearing scheduled for an appeal of a planning commission decision, is a letter from Susan K. Butler-Mapa and Gene S. Mapa received prior to the deadline on March 10, 2014.

According to the Town Council's adopted meeting rules, information relating to a public hearing shall be accepted and distributed by the Town Clerk if received by 12 noon on the day preceding the Council meeting.

Information received at or immediately prior to the hearing may be accepted at the discretion of the Council.

The pertinent sections of Article VII, Sections D & E of Resolution No. 11-48 are set forth below:

D. Written Material. Written material for Public Hearings to be submitted by either proponents or opponents shall be delivered to the Town Clerk by noon on the business day preceding the hearing with copies provided for the Town Manager, Town Attorney, Town Council and one copy for Public Viewing

E. Unreviewed Written Materials. Written materials presented to the Council for the first time at or immediately prior to the public hearing, which have not been previously reviewed by staff or Council, may be accepted into evidence at the discretion of the Council. Sufficient copies should be made for each Council Member, the Town Manager, Town Attorney, Town Clerk and at least one extra copy for public viewing/the press.

TO: Joanna Gutierrez

FAX NUMBER: 877-5059

FROM: Susan K. Butler-Mapa and Gene S. Mapa

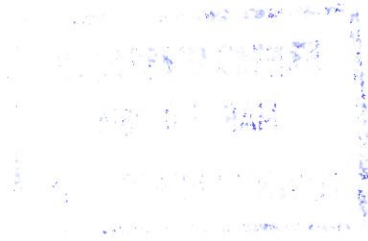
DATE: March 9, 2014

RE: The appeal of the Planning Commission's Decision of February 18, 2014



Attached you will find 5 copies of our letter regarding this issue. Please distribute to the following entities: Town Manager, Town Attorney, Town Council and one copy for public viewing and one for your records.

Thank you.



PO Box 1145
Colfax, CA 95713
885 Panorama Pt
Paradise, CA 95713

March 9, 2014

Paradise Town Council
Town Manager, Town Attorney, Town Clerk
Town of Paradise
5555 Skyway
Paradise, CA 95969

Subject: Bettis Appeal of Planning Commission Meeting, Decision of February 18, 2014, Town Council Resolution No. 11-48, Section VII(D)

To Whom It May Concern:

As owners of property in Paradise, we are very concerned with the Planning Commission interpretation/reinterpretation of Paradise Municipal Code 17.06.600E.4, determined at the February 18, 2014 Planning Commission meeting.

Old PMC Code:
Paradise Municipal Code 17.06.600E.4:

No fences shall be installed within public or private rights-of-way or access easements.

New PMC Code Interpretation by Planning Commission on February 18th:

".....gate across a private road access easement does not constitute a violation of town zoning ordinance regulations prohibiting the establishment of fences in access easements (Paradise Municipal Code Section 17.06.600)".

The Planning Commission's newly revised interpretation, and in all likelihood the initial PMC Code, does not take into consideration the need and probable requirement for the recognition of legal written agreements and CC&R's of affected property owners in regards to easements. Property owners may agree to have a fence and/or gate across a private easement and have legal documentation for substantiation. If there is no written legal agreement allowing a fence and/or gate on the easement, the owner of the easement only has rights to ingress or egress. It appears that the Planning Commission has made a poorly

written PMC (*No fences shall be installed within public or private rights-of-way or access easements.*) and made an even more confusing and ambiguous PMC code revision, "*.....gate across a private road access easement does not constitute a violation of town zoning ordinance regulations prohibiting the establishment of fences in access easements (Paradise Municipal Code Section 17.06.600)*".

As it is written, it would appear that the Planning Commission's interpretation would allow any gate across a private road access easement, for ingress and egress only, without consideration of the property owner of the burdened land. We don't believe that was the intent of the revision as there was no mention of affected property owner's legal rights with road agreements, CC&R's, etc., as previously mentioned. For example, we have a home on the far north end of Lucky John Road. This "*private road*" section of Lucky John Road serves four (4) houses and some adjacent vacant property. According to the new Planning Commission interpretation, "*.....gate across a private road access easement does not constitute a violation of town zoning ordinance regulations prohibiting the establishment of fences in access easements (Paradise Municipal Code Section 17.06.600)*", it would appear that one of the property owners can put up a gate across the private section on the far north end of Lucky John Road without the approval of the other property owners, although in reality we all know that this could not be done and the gate across this private section of Lucky John would be torn down by other disgruntled property owners as soon as it was installed. If all the property owners approved of the gate and a legal agreement would be prepared, this hypothetical gate would not be an issue. Perhaps the Planning Commission should revise their interpretation to mention legal agreements with property owners and easement owners and not just make a blanket statement.

Also, when making decisions regarding the issue with gates/fences across easements, the Town Council and Planning Commission should consider the following provisions of the Paradise Municipal Code:

Title 1. General Provisions Code Adoption

..... 1.01.090 Constitutionality.

If any section, subsection, sentence, clause or phrase of this Code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Code. The council declares that it would have passed this Code, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional, and if for any reason this Code should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect. (Ord. 106 §11, 1983)

1.04 General Provision

1.04.080 Construction.

The provisions of the ordinances of the town, and all proceedings under them, are to be construed with a view to effect their objects and to promote justice.

In conclusion, it is our understanding that without a legal agreement/documentation, a fence and/or gate cannot be constructed on property that one does not own. An easement conveys rights over the land of another for ingress and egress but does not automatically provide blanket approval for the installation of a fence and/or gate. A legal written agreement between property and easement owners may take precedence over the Planning Commission interpretation, where- as a , *".....gate across a private road access easement does not constitute a violation of town zoning ordinance regulations prohibiting the establishment of fences in access easements (Paradise Municipal Code Section 17.06.600)"* There may be agreement between property and easement owners for the establishment of a fence within an easement, in contradiction to the PMC code prohibiting the same. Maybe the entire item should be rewritten for further review under the guidance of Town Attorney, Dwight Moore, and Community Development Director, Craig Baker?

Thank you for taking this matter into consideration.

Sincerely,



Susan K. Butler-Mapa
Gene S. Mapa

Paradise Home Address
885 Panorama Pt.

MEMO

To: TOWN COUNCIL
From: Joanna Gutierrez, CMC, Town Clerk
Subject: Additional Agenda Material Relating to Item 5(a):
Bettis Appeal of Planning Commission Decision
Date: March 10, 2014

Attached for Town Council consideration relating to the public hearing scheduled for an appeal of a planning commission decision, is an email and attachments from Jon Remalia received at 2:22 pm on March 10, 2014.

According to the Town Council's adopted meeting rules, information relating to a public hearing shall be accepted and distributed by the Town Clerk if received by 12 noon on the day preceding the Council meeting.

As Mr. Remalia's information has been received the day prior to the meeting, I am distributing as additional agenda material for the record.

Information received at or immediately prior to the hearing may be accepted at the discretion of the Council.

The pertinent sections of Article VII, Sections D & E of Resolution No. 11-48 are set forth below:

D. Written Material. Written material for Public Hearings to be submitted by either proponents or opponents shall be delivered to the Town Clerk by noon on the business day preceding the hearing with copies provided for the Town Manager, Town Attorney, Town Council and one copy for Public Viewing

E. Unreviewed Written Materials. Written materials presented to the Council for the first time at or immediately prior to the public hearing, which have not been previously reviewed by staff or Council, may be accepted into evidence at the discretion of the Council. Sufficient copies should be made for each Council Member, the Town Manager, Town Attorney, Town Clerk and at least one extra copy for public viewing/the press.

Gutierrez, Joanna

From: Jon Remalia [jon@ailamer.com]
Sent: Monday, March 10, 2014 2:22 PM
To: Gutierrez, Joanna; David Griffith; Susan Oliver; Bill Apger; June McLaughlin
Subject: Gate
Attachments: Gate Trial Brief.pdf; Gate brief.pdf; Bettis Survey.pdf; Johnson Deed.pdf; Bettis Deed.pdf; Gregory Deed.pdf

Joanna,

Please forward this brief note and the attached legal briefs to council and enter them into the record.

Dear Council,

I understand that you are being put in a hard position by your staff, the Bettis' and lately Ailamer Investments LLC.

The issue of our easement use arose when we were correctly required to comply with the Towns Fire Code. This required a 20' wide traveled surface from the Public Road to Ailamer's new home.

Prior to that we worked on the gate and easement for 1 1/2 years with no problem. Only when the Bettis' learned that trees must be removed, his bank cut into and his stone wall/planter which is illegally on centerline of the easement and protrudes 40 feet into a 60' easement removed did problems start. In fact most of the improvements which Bettis has installed are on the property of Mrs. Anderson no on the Bettis property.

You will hear Mr. Moore state that the gate is prohibited within the easement as to not obstruct emergency operations. However, the towns code has specific standards which any gate must comply with. The biggest obstruction to access is the stone planter and flowers which Bettis constructed and maintains on Anderson's property. The proposed and partially constructed gate provides no obstruction and less inconvenience than the padlock gate that existed at the time of Ailamer purchasing the property.

You will also hear from Mr. Learoy Johnson and Claudia Beneke whom own the home between Bettis and Ailamer. I have attached the Johnson/Beneke Deed which does not include access across the Bettis property and makes no mention of the right to use this easement. However, per Mr. Johnson's statements to the Planning Commission he uses it all the time. I have attached Mr. Johnsons Deed for your review.

Mr. Bettis has the right to use the easement across Anderson to access his driveway and of course his own lands. However, he has no right to use the lands of Johnson as he has no easement over them.

Bettis and Johnson cannot grant each other easements without all parties including Ailamer consenting.

The only party which has the right to use the paved portion together with the gravel driveway to the west is Ailamer. Johnson and Beteke do not have a "dog in this fight. Yet they seem to be the most outspoken.

Enough of that.

The use of the easement is governed by the California Civil Code. Therefore, this matter should be addressed in Superior Court as is happening.

However, Mr. Bettis' case is slowly falling apart. He lost the widening of the road, removal of trees. The only thing he has to rely upon is a drastic misstatement by Planning Director Craig Baker which stated a "Gate is a Fence".

There are 41 gates across easements in the Town of Paradise. All of them would become illegal if the definition was changed to what Director Baker proposed. The ordinance is specific. It is not conditional. It is absolute. No means No !!!!!!!

Mayor Lotter's gate across his driveway on lands owned by Councilman Bolen is illegal. The gates at Valley View Estates is illegal. Apple Valley, Redbud, Every PG&E gate accessing the flume as the utility easement is gained entry by access easements.

This is an irrational move by an irrational neighbor involved in a vendetta against Ailamer due to the mandatory improvements which the Fire Code requires.

Furthermore, some of the neighbors are upset that the property is "Cluttered and Messy". I must admit. There are construction materials scattered around. I must also admit the Efficiency Dwelling Unit should have been completed by now.

However, there is a good reason that it is not completed.

That reason is the Bettis lawsuit. The lawsuit is a legal action effecting this piece of land. As such Ailamer's loan was cancelled by the lender until the legal action is completed. If the trees are not removed (the town will not issue the permit) the project cannot be signed off at completion. The road also has to be 20'. The town will not issue the permit for the retaining wall. So, despite the Order of the Court which was provided to the town the Town will not issue the permits to do the work the town is requiring.

Ailamer is over \$100,000 cash into this project. Owner/builders must borrow from Hard Money until the project is completed and the conventional lenders will then step in.

Even if Ailamer was able to borrow "Hard Money" at 12% the issue of completion without the trees removed, the retaining wall built could cause the loss of the property in foreclosure.

My suggestion is that the Town Council abide by the California Civil Code together with the Adopted Fire Code and Historical Practices of the Town and keep the same definitions and the meanings that appear to have been understood since the town was created (and also reinforced by the Planning Commission)

If the placement of the gate is improper unsafe or unreasonable the Superior Court will make that decision based upon the written law and how the courts have ruled on this law for the last century.

This is an easement rights case. It is not a zoning case. And it is not a case which a Town Council should determine. It is a case for the Superior Court after proper research, discovery, briefs, and trial. This council does not have enough time to research all the issues involved in this matter and make an educated decision.

What Town Council should do is pass an ordinance whereby all shared accesses whether by easement or tenants in common shall have a contract or agreement whereby things such as maintenance, gates, snow removal, mandated improvements, taxes insurance and other matters are spelled out.

This cannot be retroactive. However, it will keep this problem from happening in the future.

Council and Staff need to be Proactive. Yes we have a problem. But, not one person has said how do we keep it from happening again?

Please support the Planning Commission decision and allow the Superior Court to make the determinations related to this location. It is unfair to subject every gate in Paradise to a definition which makes 41 gates in Paradise illegal and will prohibit Ailamer and others from protecting their lands from Prescriptive Easements and Adverse possession.

I have attached both the Preliminary Injunction Brief and Trial Brief which spells out why a gate should be permitted. In addition I have included both Johnson's Deed and Bettis Deed which clearly do not include Johnson as one of the deeded Easement holders. In addition Bettis has no right to use the portion of the easement on the Johnson Lands.

Deeds are attached for the Ailamer Property, the Bettis Property and the Johnson Property. It is clear that Johnson has no interest in the easement and Bettis only shares the first 300 feet of the easement where Ailamer's Easement cuts West. Yes, Bettis can use his own lands subject to the easement. BUT, Johnson has no right to any portion of the Easement in question.

Lastly, it is quite interesting that in the options provided for consideration by Council that Affirming the Planning Commission is not mentioned. This is highly unusual and clearly shows prejudice as usually upon Appeal one of the options is to Affirm the Planning Commissions Decision.

Jon Remalia for
Ailamer Investments LLC



2008-0013024

chile

RECORDING REQUESTED BY
Mid Valley Title & Escrow Company

AND WHEN RECORDED MAIL DOCUMENT
AND TAX STATEMENT TO:
Dana Bettis and Denise Bettis
6479 Gregory Lane
Paradise, CA 95969

Recorded	REC FEE	14.00
Official Records	TAX	275.00
County of		
Butte		
CANDACE J. GRUBBS		
County Clerk-Recorder		
	MP	
09:00AM 10-Apr-2008	Page 1 of 3	

Space Above This Line for Recorder's Use Only

A.P.N.: 051-120-130-000

File No.: 0401-2904681 (DMP)

3
M

GRANT DEED

The Undersigned Grantor(s) Declare(s): DOCUMENTARY TRANSFER TAX ^{275.00}~~\$0.00~~; CITY TRANSFER TAX \$0.00;
SURVEY MONUMENT FEE \$

- [☒] computed on the consideration or full value of property conveyed, OR
- [☐] computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,
- [☐] unincorporated area; [☒] City of Paradise, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **Bank of New York as Trustee for the Certificateholders CWABS, Inc., Asset-Backed Certificates, Series 2005-AB4**

hereby GRANTS to **Dana Bettis and Denise Bettis, Husband and wife as Joint tenants**
the following described property in the Town of **Paradise**, County of **Butte**, State of **California**:

PARCEL I:

PARCEL 1, AS SHOWN ON THAT CERTAIN PARCEL MAP, RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, ON FEBRUARY 11, 1987, IN BOOK 105 OF MAPS, AT PAGE(S) 74.

EXCEPTING THEREFROM ALL MINERALS AND MINERAL RIGHTS, AS EXCEPTED IN THE DEED FROM LUCKY JOHN GOLD MINING CO., A CORPORATION, TO ALBERT J. MARTENS, DATED JULY 9, 1959, AND RECORDED JULY 31, 1959, UNDER BUTTE COUNTY RECORDER'S SERIAL NO. 2351; THE MINERALS AND MINERAL RIGHTS AND OIL, GAS AND OTHER HYDROCARBONS BETWEEN 200 FEET BELOW THE SURFACE AND THE SURFACE OF THE HEREINABOVE DESCRIBED PROPERTY WERE QUITCLAIMED IN THAT CERTAIN DEED FROM LUCKY JOHN GOLD MINING COMPANY, A CORPORATION, TO ALBERT J. MARTENS, DATED SEPTEMBER 1, 1959 AND RECORDED SEPTEMBER 4, 1959, IN BOOK 1017, PAGE 154, OFFICIAL RECORDS, FROM THAT PORTION OF SAID LANDS THAT WAS LOT 3 OF PARCEL MAP 40, AT PAGE 37.

ALSO EXCEPTING THEREFROM ALL MINERALS, AS CONTAINED IN THE DEED FROM W. P. LYNCH TO SEARS-MASTERSON COMPANY, A CORPORATION, DATED DECEMBER 28, 1914, AND RECORDED JANUARY 17, 1918, IN BOOK 153, PAGE 181, OFFICIAL RECORDS, FROM LOTS 31 AND 32, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "SUNSET HEIGHTS SUBDIVISION", WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, IN BOOK 15 OF MAPS, AT PAGE(S) 36 AND 37. RIGHT OF ENTRY RELATIVE TO OIL, GAS AND OTHER HYDROCARBONS, WERE QUITCLAIMED BY LUCKY JOHN GOLD MINING COMPANY BY DOCUMENT RECORDED AUGUST 14, 1950, IN BOOK 550, PAGE 277, OFFICIAL RECORDS.

PARCEL II:

Mail Tax Statements To: SAME AS ABOVE

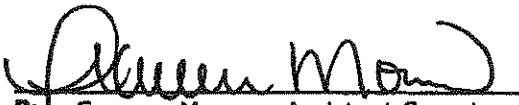
A 60 FOOT NON-EXCLUSIVE EASEMENT FOR ROADWAY AND PUBLIC UTILITIES OVER A STRIP OF LAND LYING 30 FEET ON EITHER SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

BEGINNING AT THE CENTER OF A 50 FOOT RADIUS CUL DE SAC AT THE NORTHERLY END OF GREGORY LANE AND LYING BETWEEN LOTS 31 AND 32, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "SUNSET HEIGHTS SUBDIVISION", WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, IN BOOK 15 OF MAPS, AT PAGE(S) 36 AND 37; THENCE NORTH 40 DEG. 42' 36" EAST FOR 50.00 FEET TO A POINT ON THE CIRCUMFERENCE OF SAID CUL DE SAC; THENCE FOLLOWING ALONG THE CENTERLINE OF A 60 FOOT NON-EXCLUSIVE EASEMENT FOR ROADWAY AND PUBLIC UTILITIES AND RECORDED SEPTEMBER 20, 1974, UNDER BUTTE COUNTY RECORDER'S SERIAL NO. 9182; THENCE NORTH 26 DEG. 24' 31" EAST ALONG SAID CENTERLINE FOR 92.58 FEET; THENCE NORTH 56 DEG. 16' 10" EAST FOR 86.43 FEET TO THE INTERSECTION WITH THE NORTHERLY BOUNDARY LINE OF SAID LOT 32; THENCE CONTINUING NORTH 56 DEG. 16' 10" EAST FOR 132.85 FEET TO A POINT IN THE AFORESAID ROAD EASEMENT; THENCE LEAVING THE AFORESAID ROAD EASEMENT AND GOING NORTH 33 DEG. 43' 50" WEST FOR 24.55 FEET; THENCE NORTH 86 DEG. 34' 32" WEST FOR 103.14 FEET; THENCE NORTH 89 DEG. 59' 30" WEST FOR 121.58 FEET; THENCE NORTH 64 DEG. 07' 00" WEST FOR 114.86 FEET; THENCE NORTH 48 DEG. 22' 30" WEST FOR 21.84 FEET TO THE INTERSECTION WITH THE NORTHERLY BOUNDARY LINE OF LOT 3, AS SHOWN ON THAT CERTAIN PARCEL MAP, RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, IN BOOK 40 OF MAPS, AT PAGE(S) 37, AND BEING THE END OF SAID DESCRIBED EASEMENT CENTERLINE. THE SIDE LINES OF SAID EASEMENT ARE TO BE LENGTHENED OR SHORTENED TO INTERSECT THE BOUNDARY LINES CONCERNED.

EXCEPTING THEREFROM ALL THAT PORTION LYING WITHIN THE BOUNDS OF PARCEL I, DESCRIBED HEREIN.

Dated: 03/17/2008

Bank of New York as Trustee for the
Certificateholders CWABS, Inc., Ass-
et-Backed Certificates, Series 2005-
AB4, by Countrywide Home Loans
Servicing LP, as Attorney in fact


By: Frances Moreno, Assistant Secretary

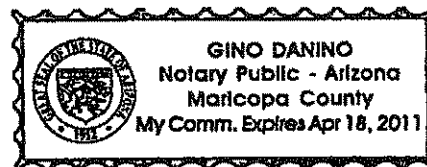
STATE OF ARIZONA)SS
COUNTY OF MARICOPA)

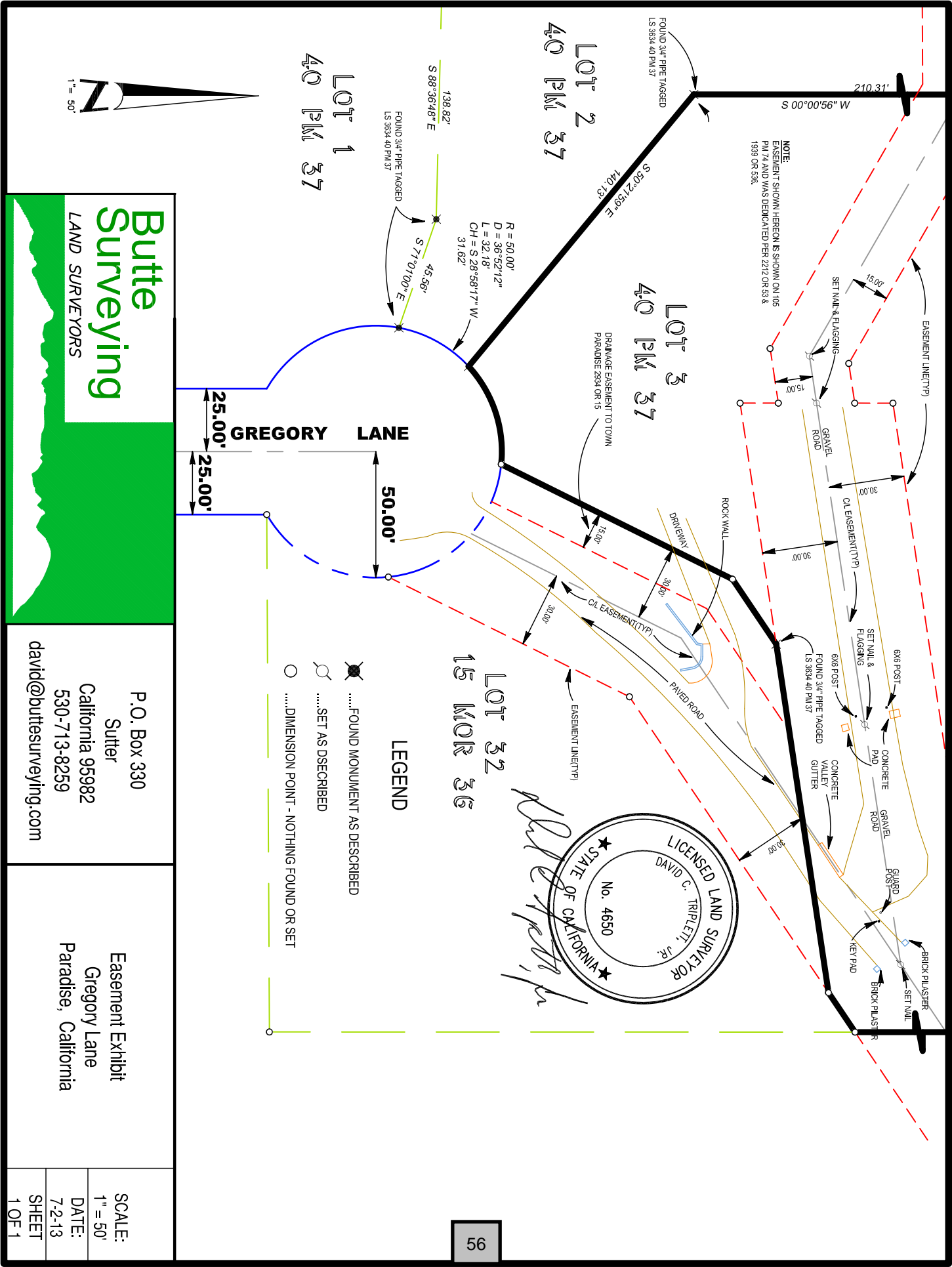
On March 17, 2008, before me, Gino Danino, Notary Public, personally appeared Frances Moreno, Assistant Secretary, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

~~I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.~~

WITNESS my hand and official seal.

Signature

My Commission Expires: April 18, 2011Notary Name: Gino DaninoNotary Registration Number: N/A*This area for official notarial seal*Notary Phone: 480 224-5249County of Principal Place of Business: Maricopa



1 LAW OFFICE OF WILLIAM G. APGER
2 William G. Apger (SBN 142992)
3 Attorney at Law
4 426 Broadway Ste 205
5 Chico, CA 95928
6 Phone: (530) 899-9575
7 Fax: (530) 899-9577
8 Attorney for Defendants

FILED Superior Court of California
County of Butte
AUG 16 2013
Kimberly Fleener, Clerk
By S. BEST Deputy

9 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
10 COUNTY OF BUTTE

11 DANA BETTIS and DENISE BETTIS,
12 husband and wife,

13 Plaintiffs,

14 vs.

15 AILAMER INVESTMENTS, LLC; JON
16 REMALIA aka JOHN REMALIA and DOES
17 1 through 20, inclusive,

18 Defendants.

) Case No.: 159895

)
) BRIEF ON ISSUE OF GATES ERECTED
) WITHIN EASEMENT BY DOMINANT
) TENANT (Easement Owner)

)
)
) Hearing Date: August 23, 2013
) Time: 9:00 a.m.
) Dept: Judge McLean

19 This matter is on for argument over whether or not the law allows gates to be erected
20 within an easement by the dominant tenement, the owner of the easement.

21 **PROCEDURAL HISTORY**

22 The hearing for Preliminary Injunction sought by Plaintiffs was heard before Judge
23 Glusman on July 26, 2013. The Court issued its ruling denying the petition for Preliminary
24 Injunction for all matters except on the issue of whether or not Defendants, as the Dominant
25 Tenement could erect a gate within the easement upon the lands of Plaintiffs, the Servient
Tenement. The temporary restraining order remains in effect as to Defendants' gate only,

1 pending a hearing on that matter alone. The parties were directed to submit their briefs on the
2 issue no later than the end of business on August 16, with the hearing on the one remaining issue
3 to be heard August 23, 2013.

4 The Notice of Entry of Judgment was served by Defendants on all parties on July 26,
5 2013.

6 The issue of the surety bond may be addressed at the August 23, 2013 hearing.

7 **FACTS OF THE CASE RELATING TO THE GATE**

8 Pursuant to their construction of their residence, Defendants are required to make certain
9 improvements to their driveway access. Because of the length on the driveway, State law, as
10 well as Paradise Town ordinances, require a 20-foot wide roadway for fire safety and access.

11 Plaintiffs began work on their roadway, and in 2011 began construction of two gate
12 pillars approximately six (6) feet in height, to support their electronically controlled gate they
13 were going to install at the same location Plaintiffs and their predecessors had installed a pipe
14 gate. That pipe gate installed by Plaintiffs, or a cable gate predecessor, was present at that
15 location for years before Defendants purchased their lands. That location has had a pipe gate,
16 cable gate, large rocks or dirt mounds securing access through Plaintiffs' property along
17 Defendants' driveway for 30 years. (See Declaration of Charles P. Lindstrom, attached hereto as
18 **Exhibit A.**)

19 Commencing in June of 2013, Plaintiffs objected to Defendants widening their road,
20 putting in electrical wiring, water pipe, and erecting their gate.

21 Defendants' easement is described in their Grant Deed as follows:

22 "A non-exclusive easement for road and public utility purposes over a
23 strip of land described as follows: [Description of Centerline of Easement] The
24 exterior boundary lines of the above described easement to be lengthened or
25 shortened to meet the property lines."

1 Section 1104; *Elliott v McCombs* (1941) 17 Cal 2d 23, 31; Miller & Starr, California Real Estate,
2 3d, Volume 6, Section 15.6.)

3 The rights and duties between the owner of an easement, the Dominant Tenement (i.e.
4 Defendants) and the owners of the Servient Tenement (Plaintiffs) are correlative. The word
5 “correlative” means “naturally or reciprocally related.” (Merriam-Webster’s Collegiate
6 Dictionary, 10th Ed.) “Having a mutual or reciprocal relation, in such sense that the existence of
7 one necessarily implies the existence of the other.” (Black’s Law Dictionary, Fifth Edition.)
8 “Reciprocal” and “Reciprocity” refer to “mutually corresponding privileges;” “a mutual
9 exchange of privileges.” (Merriam-Webster’s Collegiate Dictionary, 10th Ed.) The words are
10 also defined as a “relationship existing where privileges of one party are enjoyed equally by the
11 other party;” and as “owed mutually between two persons.” (Black’s Law Dictionary, Fifth
12 Edition.) In layman’s terms, “What is good for the goose is good for the gander.”

13 Each is required to respect the rights of the other. Neither party can conduct activities or
14 place obstructions on the property that *unreasonably* interfere with the other party’s use of the
15 easement or underlying property. (*Herzog v Grosso* (1953) 41 Cal 2d 219; Miller & Starr,
16 California Real Estate, 3d, Volume 6, Section 15.63.)

17 Thus, the owner of the Servient Tenement (Plaintiffs) can use their property within the
18 easement area, but only so long as that use is consistent with and does not unreasonably interfere
19 with, the use and enjoyment of the easement by the Dominant Tenement (Defendants). (Miller &
20 Starr, California Real Estate, 3d, Volume 6, Section 15.64, and cases cited.) Likewise, the
21 easement owner (the dominant tenement, Defendants herein) may use the easement in any
22 manner that does not *unreasonably* interfere with the use of the underlying land by the servient
23 tenement. The easement owner has those rights of enjoyment specified in the grant, plus such
24 additional rights as are incidental and reasonably necessary to its use. (*City of Pasadena v*
25 *California-Michigan Land and Water Co.* 17 Cal 2d 576, 578 (1941)) The owner of a dominant

1 estate may do that which is reasonably necessary to enjoy the easement and, as an incident
2 thereto, keep it in repair and fit for use. (*Scruby v Vintage Grapevine* 37 Cal App 4th 697, 707
3 (1995); *Colvin v Southern Cal. Edison Co.* 194 Cal App 3d 1306, 1312) The *Scruby* Court went
4 on to say that “Scruby has not been granted the right to exclusive use of each and every square
5 inch of the easement area. Rather, Grapevine may make continued use of the easement area
6 *although it may not do anything that unreasonably interferes with Scruby having access to their*
7 *property.* (*Scruby*, Supra, 37 Cal App 4th at Pg. 706; Emphasis added.) The *Scruby* Court did
8 not rule that Scruby could not widen or pave its road if it was reasonably necessary for Scruby’s
9 use of the easement. The ruling denied Scruby’s paving because Scruby had paved a second
10 road within the easement area that endangered the winery license of Vintage Grapevine.
11 (*Scruby*, Supra, 37 Cal App 4th at Pg. 707)

12 The easement owner can improve the easement or construct improvements on the
13 easement, such as grading, paving, installing guardrails, and the like, which are reasonably
14 required to make the use of the easement safe and convenient; so long as the easement owner
15 does not unreasonably interfere with the use of the servient tenement by the owner of the
16 underlying fee. (*Ballard v Titus*, 157 Cal 673, 681 (1910); *Robinson v Cuneo* 137 Cal App 2d
17 573, 579 (1955); *Herzog v Grosso*, 41 Cal 2d 219, 225 (1953); 6 Miller & Starr, Cal Real Estate
18 (3rd Ed., Section 15:59)

19 Concerning maintenance of the easement, generally, the Servient Tenement has no duty
20 to maintain or repair the easement if they do not use the road. In this case, the neighbors use
21 Defendants’ road to access their properties to a certain extent. The owner of an easement (the
22 Dominant Tenement, Defendants) not only has the right to maintain and repair the easement, he
23 or she also has the duty to keep the easement in a safe condition. (Civil Code, Section 8451;
24
25

¹ Civil Code Section 845: “The owner of any easement in the nature of a private right of way, or of any land to which any such easement is attached, shall maintain it in repair ...”

1 Miller & Starr, California Real Estate, 3d, Volume 6, Section 15.67, *Joseph v. Ager* (1895) 108
2 Cal. 517; *Burris v. People's Ditch Co.* (1894) 104 Cal. 248, 252.)

3 Therefore, Defendants have the right to repair the drainage ditches, grade and shape the
4 roadbed, widen the road and smooth the surface, add sub-grade or surface materials as needed to
5 maintain the road, and even remove trees and vegetation that grow in and adjacent to the
6 roadway to improve and maintain their access. In addition, relevant case law provides that where
7 the width of the easement is specified, in this instance at 60 feet for most of its reach and 30 feet
8 for a smaller portion close to Defendants' property line, the owner of the easement (Defendants)
9 may eventually use the entire width, even though they do not do so initially or consistently.

10 (*Ballard v. Titus* (1910) 157 Cal. 673, 681; *Tarr v. Watkins* (1960) 180 Cal. App. 2d 362, 366.)

11 That is, you or others that share your easement along the road may exercise their right to use the
12 full width of the easement if it becomes reasonably necessary under the circumstances. (*Scrubby*
13 *v. Vintage Grapevine, Inc.* (1995) 37 Cal. App. 4th 697, 704-705.)

14 Additionally, Penal Code Section 420.1 makes it a criminal offense to willfully and
15 knowingly prevent, hinder or obstruct a person from entering, passing over, or leaving land that
16 the person has the right to enter, use, cross, etc., pursuant to a recorded instrument that grants an
17 easement.

18 LAW ON GATES WITHIN EASEMENT

19 Regarding the question of whether a gate may be erected across an easement, "the issue
20 in each case is whether or not the gate unreasonably interferes with the use and enjoyment of the
21 easement." (6 Miller & Starr, California Real Estate, 3d, Section 15:59) Plaintiffs have the
22 burden of proving that Defendants' gate would interfere with their property rights. (*Sylva v*
23 *Kuck*, 240 Cal App 2d 127, 136 (1966))

24 Interestingly, there are no cases prohibiting a Dominant Tenement from erecting a gate in
25 the easement. All cases reviewed, as well as commentaries, involve disputes where the Servient

1 Tenement has erected a gate across the way and the easement owner, the Dominant Tenement,
2 has objected to the presence of the gate. The fact no cases prohibiting a Dominant Tenement
3 from erecting a gate makes sense, as the right of passage belongs to the Dominant Tenement, and
4 if a gate is reasonable and imparts a minimum impact upon the Servient Tenement, a gate is not
5 objectionable, and falls within the right of the Dominant Tenement to improve the easement or
6 construct improvements on the easement, such as grading, paving, installing guardrails, and the
7 like, which are reasonably required to make the use of the easement safe and convenient; so long
8 as the easement owner does not unreasonably interfere with the use of the servient tenement by
9 the owner of the underlying fee. (*Ballard v Titus*, 157 Cal 673, 681 (1910); *Robinson v Cuneo*
10 137 Cal App 2d 573, 579 (1955); *Herzog v Grosso*, 41 Cal 2d 219, 225 (1953); 6 Miller & Starr,
11 Cal Real Estate (3rd Ed., Section 15:59)

12 However, the analysis of whether a Servient Tenement can erect a gate across an
13 easement is instructive as to whether a Dominant Tenement can do so, because, as discussed
14 above under the law of easements, the rights and duties of the Dominant and Servient Tenements
15 are generally correlative and reciprocal.

16 Miller & Starr contains a statement that a non-exclusive easement may not be obstructed.
17 However, this proposition is based upon a case where the Dominant Tenement was using the
18 nonexclusive easement as a parking lot, completely defeating its purpose as a right of way and
19 preventing any passage by others. In that case, it is a proper decision, but not applicable to this
20 present case where Plaintiffs have maintained a gate or other obstruction at the same location as
21 Defendants' gate for 30 years. (See, *Keeler v Haky*, 160 Cal App 2d 471, 474; 6 Miller & Starr,
22 California Real Estate, 3d, Section 15:59)

23 Whether a gate is allowed across an easement depends on a variety of circumstances.
24 The language of the deed, the history of past use and manner the easement has been used in the
25 past, the intent of the parties, the reasonableness of the interference created by the gate.

1 “Whatever the situation, the use of a gate or any other method of regulating an easement ... must
2 be reasonable.” (25 Am Jur 2d, Easements and Licenses, Section 88.)

3 “It may be laid down as a general rule that the grant of a way without reservation
4 of the right to maintain gates does not necessarily preclude the owner of the land
5 from doing so, and unless it is expressly stipulated that the way shall be an open
6 one, or it appears from the terms of the grant or the circumstances that such was
7 the intention, the owner of the servient estate may erect gates across the way if
8 they are constructed so as not *unreasonably* to interfere with the right of passage.
... In the absence of any express language in the grant bearing upon the question
of the right to maintain gates the courts ordinarily treat it as a question of fact
whether gates will *unreasonably* interfere with the exercise of the easement.”
(*McCoy v Matich*, 128 Cal App 2d 50, 53 (1954); 77 ALR 779; Emphasis added.)

9 “The owner ... may erect gates ... across the way, provided they are necessary for
10 the use of [the easement], and they are located, constructed, and maintained so as
11 to not unreasonably interfere with the [other party’s] right of passage. What is
12 “necessary” for the use ... is merely what is appropriate to the [party’s] use, not
what is essential to that use. (Cites)” (28A C.J.S. Easements; Fences and Gates,
Section 240)

13 In determining “reasonableness” of the placement of a gate across an easement, a
14 balancing test must be applied to weigh the interests of the Dominant and Servient estates in the
15 easement. “Thus, the consideration of whether the gate is usual and proper under the
16 circumstances and the ... need for a gate must be balanced against the extent of the interference
17 with the reasonable use of the right-of-way by the [other party].” (28A C.J.S. Easements; Fences
18 and Gates, Section 240)

19 The extent of the use of an easement is established by the past use. 6 Miller & Starr,
20 California Real Estate, 3d, Section 15:56 (Pg. 15-186) provides the following:

21 “When the instrument of conveyance grants an easement in general terms, without
22 specifying or limiting the extent of its use, the permissible use is determined in
the first instance by the intention of the parties and the purpose of the grant.
(Cites) Once the easement has been used for a reasonable time, the extent of its
23 use is established by the past use. (Cites) Thereafter, its owner cannot make
24 changes in its use that would substantially modify or increase the burden of the
servient tenement. (Cites)”

1 The comment to this principle of law states: "This rule is consistent with the general rule
2 of contract construction that the Court will accept the 'practical construction placed on the
3 contract' by the acts and conduct of the parties before the controversy arose." (6 Miller & Starr,
4 Cal Real Estate, 3d, Section 15:56 (Pg. 15-186)

5 In this case, Plaintiffs and their predecessors have maintained gates and barriers upon the
6 easement at issue for at least 30 years. For Plaintiff to maintain his gate at the same location in
7 no way "substantially modifies or increases the burden of the Servient Tenement." In fact, the
8 electronic gate being installed actually reduces the burden on Plaintiffs of having a gate where
9 Plaintiffs have maintained one for so many years, because it will be automatically operated from
10 within their vehicles.

11 **THIS GATE IS A REASONABLE IMPROVEMENT TO AN EASEMENT**

12 The law is quite clear that Defendants can make any improvement to their easement to
13 make its use convenient and safe. In this case, safety calls for the installation of a gate at the
14 same location Plaintiffs have had their gate for years. Plaintiffs claim they installed their gate at
15 this location to keep folks from damaging Defendants' home building. However, this
16 misrepresents the facts to this Court. According to neighbor Charles P. Lindstrom, Plaintiffs and
17 their predecessors have had their gates at this location for decades. Plaintiffs have stated they
18 installed their latest manual pole gate at this very location to keep people from entering the land
19 below their home to party. Plaintiffs' gate installation occurred far earlier than when Defendants
20 began constructing their home on their property.

21 Defendants' gate does not impose an unreasonable burden or interference upon Plaintiffs,
22 who have maintained a gate at the same location for years, and their predecessors for decades
23 before that. In fact, Defendants' gate reduces the burden Plaintiffs placed upon themselves with
24 their old manual gate. Defendants want to install an electronic gate and provide Plaintiffs with
25 the code, keys, anything they need, to make their passage through the gate as easy and simple as

1 possible. This imposes the slightest burden upon Plaintiffs as possible. Certainly the burden is
2 far less than the Plaintiffs imposed upon themselves by installing a manual pole gate that
3 required them to get out of their vehicle, walk to the gate, unlock the lock, open the gate, get
4 back in their car, drive through the gate, stop their car and get out, close the gate, lock the gate,
5 and return to their vehicle and continue on. Even if Plaintiffs left their gate open while carrying
6 out their activities in the easement area, they still had to duplicate the process upon leaving the
7 easement area.

8 Plaintiffs argue that no Court has issues a decision *allowing* the Dominant tenement to
9 install gates in an easement, therefore no permission in the law exists to allow the Dominant
10 tenement to install a gate in their easement. However, this argument turns our legal system on its
11 head. This is not how our system of laws operates. The maxim in our legal system, even the
12 basis of freedom itself, is “Everything which is not forbidden is allowed”, a constitutional
13 principle of English Law. There exists no case that *prohibits* a Dominant tenement from
14 installing a gate within their easement. The issue is to be resolved by the facts of the case and
15 the balancing of interests. In this case, Plaintiffs and their predecessors have installed and
16 maintained gates and obstructions of various sorts for decades in the very location where
17 Defendants desire to place their gate. Defendants desire to install a gate at that location since
18 that is where Plaintiffs maintained their gate. It is near the terminus of Defendants’ easement, set
19 back from the public road enough to allow trucks with trailers to be off the cul-de-sac while
20 waiting for the gate to open itself.

21 Plaintiffs have argued before Judge Glusman that the gate directly interferes with their
22 view from their home and the pillars are giant obstructions jutting into their view. However, as
23 the photographs attached hereto as **Exhibit C** show, that is a complete misrepresentation of the
24 truth to this Court. Defendants’ gate pillars are no more than six (6) feet in height, and are
25

1 located far away from the viewshed of Plaintiffs' home, and actually hidden from Plaintiffs'
2 home by trees on their property.

3 **NO SHOWING OF IRREPARABLE INJURY, IMMINENT DAMAGE**
4 **OR PROBABILITY OF SUCCESS AT TRIAL**

5 Plaintiffs have failed to show how construction of the gate by Defendants causes them to
6 suffer irreparable injury or that they are in imminent danger of suffering significant damage or
7 loss of rights. The gate does not create an unreasonable burden upon their land, and does not
8 unreasonably interfere with their use of their property or the easement itself. A mere order of
9 this court that the gate be removed cures all their problems. In addition, the above analysis of the
10 law on easements and gates across an easement shows Plaintiffs will likely not prevail on the
11 merits at trial.

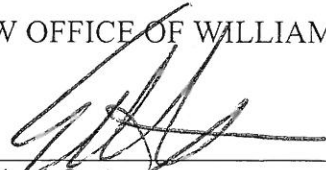
12 Therefore, Plaintiffs have failed to support their claim for injunctive relief with sufficient
13 facts or law to allow this Court to issue a preliminary injunction against Defendants to prevent
14 them from completing construction of their gate.

15 **CONCLUSION**

16 Defendants respectfully request this Court deny Plaintiffs' request for issuance of a
17 preliminary injunction in this matter, and that the Court refuse to exonerate the bond.
18 Defendants have suffered significant losses directly resulting from Plaintiffs' temporary
19 restraining order and wish to seek compensation from the bond.

20 DATED: *August 16, 2013*

LAW OFFICE OF WILLIAM G. APGER

21 By 
22 William G. Apger
23 Attorney for Defendants
24
25

LAW OFFICE OF WILLIAM G. APGER
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CONSOLIDATED SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF BUTTE

DANA BETTIS and DENISE BETTIS,
husband and wife,

Plaintiffs,

v.

AILAMER INVESTMENTS LLC, etal.

Defendants,

Case No.: 159895

Bettis v Ailamer
DECLARATION OF CHARLES P. "PETE"
LINDSTROM REGARDING LIMITED
ACCESS ON DRIVEWAY AT 6501
GREGORY LANE PARADISE
CALIFORNIA

I, Charles P' Lindstrom, state and declare:

1. I, Charles P. "Pete" Lindstrom have lived at 905 Waggoner Rd in Paradise California since 1978. During the years of raising my children I often hiked the area of the Little Butte Creek and am very familiar with the lay of the land and improvements which have taken place.

2. The northeast corner of the property upon which I have lived and raised my family meets the southwest corner of the property which is currently owned by Ailamer Investments LLC and managed by Jon Remalia.

3. In the fall of last year I overheard talking at the rear of my and my wife's property and found Learoy Johnson and one of the other neighbors whom I believe was the daughter of the late Francis Butler on the rear of my property.

4. Mr. Johnson was explaining that Jon Remalia cut down a large Black Oak tree on Mrs. Butler's property.

Bettis v Ailamer
DECLARATION OF CHARLES P. "PETE" LINDSTROM REGARDING LIMITED ACCESS ON DRIVEWAY
AT 6501 GREGORY LANE PARADISE CALIFORNIA

1 5. I explained to Mr. Johnson and Ms. Butler that the tree that Jon Remalia
2 cut down was a portion of a multiple trunk Black Oak that had broken off about
3 10 feet above the ground and landed upon my property. The 3/4" metal pipe
4 identifying my and my wife's property corner had previously been identified by a
5 licensed surveyor and clearly identified that the stump of the broken tree was on
6 my and my wife's property.

7 6. I also explained to Mr. Johnson and Ms. Butler that I was informed and
8 believed that Mr. Remalia was a California Licensed Timber Operator and the
9 work was completed by Mr. Remalia with my full knowledge and consent.

10 7. Mr. Remalia did not charge me or anyone else for cutting the damaged
11 tree, left me the firewood and even loaned and delivered his splitter for me to
12 split the wood for firewood.

13 8. Ailamer also has a utility Easement to the east of my and my wife's
14 property line. Ailamer has installed his utilities within this easement and upon
15 completion of this work left this area in better condition than it was prior to the
16 installation of the utilities.

17 9. My shop behind our home is the closest structure to the home being
18 constructed by Ailamer. I have never heard any loud construction activities
19 during the 7:00 pm to 7:00 am restricted noise period (Town of Paradise
20 Municipal Code) which originated from the Ailamer owned property.

21 10 Recently, Mr. Remalia inquired about the access to the 6501 Gregory
22 Lane property which Ailamer now owns.

23 11. I informed Mr. Remalia that prior to the construction of his gate there
24 had been a red pipe gate across the driveway near the east end.

25 12. Prior to the red pipe gate there had been large metal posts with a 1/2" or
26 5/8" metal cable strung between them.

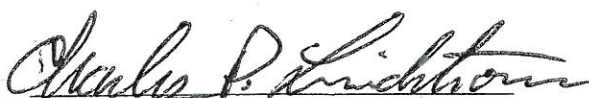
27 13. During the over 30 years which I have lived in the home at 905
28 Waggoner Rd. the access to the 6501 Gregory Lane "home site" has often been
restricted by gates, cables, placed rocks or mounds of dirt.

Bettis v Ailamer

DECLARATION OF CHARLES P. "PETE" LINDSTROM REGARDING LIMITED ACCESS ON DRIVEWAY
AT 6501 GREGORY LANE PARADISE CALIFORNIA

1 14. The limitation of travel on the Ailamer easement is and has been similar
2 to the limitations placed a short distance to the west at the end of Lucky John
3 Rd. which is very similar to the Ailamer access easement. As a 30 plus year
4 resident of this neighborhood I support the gating of the Ailamer access
5 easement near Gregory Lane as both reasonable and necessary for the
6 protection from unauthorized entry to both our and Ailamer's properties.

7 I declare under penalty of perjury under the laws of the State of
8 California that the foregoing is true and correct. Executed this 14th day of July,
9 2013

10 

11 Charles P. "Pete" Lindstrom,
12 co-owner and resident
13 905 Waggoner Rd. Paradise CA
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2011-0031858

RECORDING REQUESTED BY
Bidwell Title & Escrow Company

Recorded	REC FEE	28.00
Official Records	TAX	16.50
County of Butte	MONUMENT PRESE	10.00
CANDACE J. GRUBBS County Clerk-Recorder		

AND WHEN RECORDED MAIL TO

Name **Ailamar Investments LLC**
Atte: Jon P. Remalla

Street Address **6684-B Ishl Drive**
City, State Zip **Magalla, CA 95954**

09:00AM 26-Sep-2011 Page 1 of 5

Order No. 80242149-002

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Parcel No. 051-110-013

GRANT DEED

THIS FORM FURNISHED BY BIDWELL TITLE & ESCROW COMPANY

The Undersigned Grantor(s) Declare(s)

☒ City/Town of PARADISE☐ Unincorporated Area

Documentary Transfer Tax is \$16.50

☒ computed on full value of interest or property conveyed, or
☐ full value less value of liens or encumbrances remaining at the time of sale

☐ Monument Fee of \$10.00

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Home Partners Finance I, LLC, a Delaware limited liability company

hereby GRANT(s) to

Ailamar Investments LLC

the following real property in the ☒ City/Town of PARADISE ☐ Unincorporated Area

County of Butte, State of California:

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF

Home Partners Finance I, LLC, a Delaware
limited liability company

Roger J. Krystopa, Vice President

Document Date: September 22, 2011

STATE OF CONNECTICUT } ss:

COUNTY OF New HavenOn September 22, 2011, before me, Heather Santi, Notary Public,personally appeared Roger J. Krystopa

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Connecticut that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]
My Commission Exp: March 31, 2015

MAIL TAX STATEMENTS TO: Same as Above

BTECGRANTDEED

71
Exhibit BEX. B PG. 1 OF 5

EXHIBIT A

THE LAND REFERRED TO HEREIN IS DESCRIBED AS FOLLOWS:

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE TOWN OF PARADISE, COUNTY OF BUTTE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL I:

A PORTION OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 22 NORTH, RANGE 3 EAST, M.D.B.&M., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE QUARTER SECTION CORNER BETWEEN SECTIONS 10 AND 22, TOWNSHIP 22 NORTH, RANGE 3 EAST, M.D.B.&M.; THENCE RUNNING NORTH ON THE SECTION LINE 770.4 FEET; THENCE SOUTH 88°24' EAST, 315.10 FEET; THENCE NORTH 83°57' EAST, 314.70 FEET; THENCE NORTH 67°22' EAST, 14.20 FEET TO THE TRUE POINT OF BEGINNING OF THE LAND DESCRIBED HEREIN; THENCE FROM SAID TRUE POINT OF BEGINNING, NORTH 67°22' EAST, 223.0 FEET; THENCE NORTH 81°33' EAST, 451.4 FEET; THENCE NORTH 56°05' EAST, 376.0 FEET; THENCE NORTH 75°56' EAST, 114.73 FEET; THENCE NORTH 214.40 FEET; THENCE SOUTH 75°56' WEST, 203.18 FEET; THENCE SOUTH 56°05' WEST, 364.56 FEET; THENCE SOUTH 81°33' WEST, 430.28 FEET; THENCE SOUTH 67°22' WEST, 161.96 FEET TO A POINT WHICH BEARS NORTH FROM THE TRUE POINT OF BEGINNING; THENCE SOUTH 225.35 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION THEREOF LYING EASTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT ON THE NORTH LINE OF LOT 31, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "SUNSET HEIGHTS SUBDIVISION", WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, ON DECEMBER 8, 1957, IN BOOK 15 OF MAPS, AT PAGES 36 AND 37, SAID POINT BEING SOUTH 81°33' WEST ALONG SAID NORTH LINE, 14.45 FEET FROM THE NORTHEAST CORNER OF SAID LOT 31; THENCE FROM SAID POINT OF BEGINNING, SOUTH 81°33' WEST ALONG THE NORTH LINE OF SAID SUNSET HEIGHTS SUBDIVISION, 214.19 FEET AND SOUTH 67°22' WEST, 35.81 FEET TO THE TRUE POINT OF BEGINNING FOR THE LINE HEREIN DESCRIBED; THENCE FROM SAID TRUE POINT OF BEGINNING, LEAVING SAID NORTH LINE, NORTH 220.0 FEET, MORE OR LESS, TO A POINT IN THE NORTH LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED FROM LUCKY JOHN GOLD MINING CO., A CORPORATION TO ALBERT J. MARTENS, DATED JULY 9, 1959 AND RECORDED JULY 31, 1959, UNDER BUTTE COUNTY RECORDER'S SERIAL NO. 2351 AND THE END OF SAID LINE.

EXCEPTING THEREFROM ALL MINERALS OF EVERY KIND AND CHARACTER WITH THE RIGHT AND PRIVILEGE TO ENTER INTO AND TO MINE AND EXTRACT THE MINERALS THEREFROM BY MEANS OF TUNNELS, DRIFTS AND OTHER APPLIANCES EXCEPT THAT THE SURFACE OF SAID LAND SHALL NOT BE INTERFERED WITH OR DISTURBED, AS CONTAINED IN THE DOCUMENTS RECORDED FEBRUARY 26, 1926 IN BOOK 220 OF DEEDS, PAGE 274, BUTTE COUNTY RECORDS, AND DECEMBER 13, 1956, IN BOOK 861, PAGE 211, OFFICIAL RECORDS.

SAID SURFACE ENTRY RIGHTS WERE WAIVED BY DOCUMENT RECORDED AUGUST 14, 1950, IN BOOK 550, PAGE 277, OFFICIAL RECORDS.

AP NO. 051-110-013

PARCEL II:

A NON-EXCLUSIVE EASEMENT FOR ROAD AND PUBLIC UTILITY PURPOSES OVER A STRIP OF LAND DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTER OF A 50 FOOT RADIUS CUL-DE-SAC AT THE NORTHERLY END OF GREGORY LANE, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "SUNSET HEIGHTS SUBDIVISION", WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, ON DECEMBER 8, 1957, IN BOOK 15 OF MAPS, AT PAGES 36 AND 37; THENCE NORTH 40°42'36" EAST FOR 50.00 FEET TO A POINT LOCATED IN THE WESTERLY BOUNDARY LINE OF LOT 32, AS SHOWN ON SAID SUBDIVISION MAP, SAID POINT BEING ALSO THE TRUE POINT OF BEGINNING FOR THE CENTERLINE OF THE ROAD EASEMENT HEREIN DESCRIBED; THENCE 30.00 FEET ON THE RIGHT AND 30.00 FEET ON THE LEFT, NORTH 26°24'31" EAST FOR 92.58 FEET; THENCE NORTH 56°15'10" EAST, FOR 86.43 FEET TO A POINT LOCATED IN THE NORTHERLY BOUNDARY LINE OF SAID LOT 32; THENCE CONTINUING NORTH 56°16'10" EAST FOR 70.25 FEET; THENCE SOUTH 81°33'00" WEST, BEING PARALLEL TO AND 30.00 FEET NORTHERLY OF THE NORTHERLY BOUNDARY LINE OF SAID LOT 32, FOR 225.84 FEET TO A POINT LOCATED IN THE EASTERLY BOUNDARY LINE OF LOT 3, AS SHOWN ON THAT CERTAIN PARCEL MAP FOR CLARENCE L. BRADISH, WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, IN BOOK 40 OF MAPS, AT PAGE 37; THENCE 15.00 FEET ON THE RIGHT AND 15.00 FEET ON THE LEFT, CONTINUING SOUTH 81°33'00" WEST FOR 18.92 FEET; THENCE NORTH 59°56'24" WEST FOR 119.98 FEET; THENCE SOUTH 89°48'03" WEST FOR 77.12 FEET; THENCE SOUTH 53°39'18" WEST FOR 56.17 FEET TO A POINT LOCATED IN THE WESTERLY BOUNDARY LINE OF LOT 2 AS SHOWN ON SAID BRADISH PARCEL MAP; THENCE CONTINUING SOUTH 53°39'18" WEST FOR 6.86 FEET; THENCE SOUTH 23°22'38" WEST, 85.51 FEET TO THE END OF SAID CENTERLINE.

THE EXTERIOR BOUNDARY LINES OF THE ABOVE DESCRIBED EASEMENT TO BE LENGTHENED OR SHORTENED TO MEET THE PROPERTY LINES.

EXCEPTING THEREFROM THAT PORTION LYING WITHIN LOT 32, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "SUNSET HEIGHTS SUBDIVISION", WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, ON DECEMBER 8, 1957, IN BOOK 15 OF MAPS, AT PAGES 36 AND 37.

ALSO EXCEPTING THEREFROM ALL THAT PORTION LYING WITHIN THE BOUNDS OF PARCEL I, DESCRIBED HEREIN.

PARCEL III:

AN EASEMENT FOR INSTALLATION, MAINTENANCE, REPAIRS AND/OR REPLACEMENT FOR A SEPTIC SYSTEM, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 28, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "SUNSET HEIGHTS SUBDIVISION", WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, ON DECEMBER 8, 1957, IN BOOK 15 OF MAPS, AT PAGES 36 AND 37; THENCE SOUTH $81^{\circ}33'00''$ WEST, ALONG THE NORTH LINE OF SAID LOT 28, A DISTANCE OF 0.16 FEET; THENCE CONTINUING ALONG SAID NORTH LINE OF LOT 28, SOUTH $67^{\circ}22'00''$ WEST, 111.43 FEET TO THE NORTHWEST CORNER OF SAID LOT 28; THENCE SOUTH 97.48 FEET ALONG THE WEST LINE OF SAID LOT 28; THENCE EAST, 103.01 FEET TO THE EAST LINE OF SAID LOT 28; THENCE NORTH 140.39 FEET TO THE POINT OF BEGINNING.

PARCEL IV:

AN EASEMENT FOR INGRESS AND EGRESS TO AND FROM THE SEPTIC SYSTEM REFERRED TO IN PARCEL III HEREIN, INCLUDING THE INSTALLATION, MAINTENANCE, REPAIR OF AND/OR REPLACEMENT OF SAID SEPTIC SYSTEM, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 28, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "SUNSET HEIGHTS SUBDIVISION", WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, ON DECEMBER 8, 1957, IN BOOK 15 OF MAPS, AT PAGES 36 AND 37; THENCE NORTH ALONG THE EAST LINE OF SAID LOT 28, A DISTANCE OF 343.99 FEET; THENCE NORTH $51^{\circ}44'19''$ WEST, 42.30 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 28, SAID POINT BEING 35.81 FEET FROM AN ANGLE POINT IN SAID NORTH LINE OF SAID LOT 28; THENCE SOUTH $67^{\circ}22'00''$ WEST, ALONG SAID NORTH LINE 11.45 FEET; THENCE SOUTH $51^{\circ}44'19''$ EAST, 43.01 FEET TO A POINT BEING 10.00 FEET PERPENDICULAR FROM THE EAST LINE OF SAID LOT 28; THENCE SOUTH ALONG A LINE PARALLEL WITH AND WESTERLY, 10.00 FEET MEASURED PERPENDICULAR FROM SAID EAST LINE OF SAID LOT 28, A DISTANCE OF 339.18 FEET TO THE SOUTH LINE OF SAID LOT 28; THENCE NORTH $89^{\circ}47'30''$ EAST, 10.00 FEET TO THE POINT OF BEGINNING.

PARCEL V:

A NON-EXCLUSIVE EASEMENT FOR PUBLIC UTILITIES OVER THE WEST 10 FEET OF THE FOLLOWING DESCRIBED PARCEL OF LAND:

LOT 27, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "SUNSET HEIGHTS SUBDIVISION", WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, ON DECEMBER 8, 1957, IN BOOK 15 OF MAPS, AT PAGES 36 AND 37

PARCEL VI:

A NON-EXCLUSIVE EASEMENT FOR ROAD AND PUBLIC UTILITY PURPOSES OVER A STRIP OF LAND DESCRIBED AS FOLLOWS:

BEGINNING AT A CENTER OF A 50.00 FOOT RADIUS CUL-DE-SAC AT THE NORTHERLY END OF GREGORY LANE, AS SHOWN THAT CERTAIN MAP ENTITLED, "SUNSET HEIGHTS SUBDIVISION", WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, ON DECEMBER 8, 1957, IN BOOK 15 OF MAPS,

AT PAGES 36 AND 37; THENCE NORTH $40^{\circ}42'36''$ EAST FOR 50.00 FEET TO A POINT LOCATED IN THE WESTERLY BOUNDARY LINE OF LOT 32, AS SHOWN ON SAID SUBDIVISION MAP, SAID POINT BEING ALSO THE TRUE POINT OF BEGINNING OF THE CENTERLINE OF THE ROAD EASEMENT HEREIN DESCRIBED; THENCE 30.00 FEET ON THE RIGHT AND 30.00 FEET ON THE LEFT, NORTH $26^{\circ}24'31''$ EAST FOR 92.58 FEET; THENCE NORTH $56^{\circ}16'10''$ EAST FOR 86.43 FEET TO A POINT LOCATED IN THE NORTHERLY BOUNDARY LINE OF SAID LOT 32 TO THE END OF SAID CENTERLINE.

THE EXTERIOR BOUNDARY LINES OF THE ABOVE DESCRIBED EASEMENT TO BE LENGTHENED OR SHORTENED TO MEET THE PROPERTY LINES.

08-M-2013-18-16



08.11.2013 18:24

PLAINTIFFS' HOUSE ->

PLAINTIFFS' DECK

08.11.2013 18:25

08.11.2013 18:26

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8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9 COUNTY OF BUTTE
10

11 DANA BETTIS and DENISE BETTIS,) Case No.: 159895
12 husband and wife,)
13 Plaintiffs,) TRIAL BRIEF ON ISSUE OF GATES
14 vs.) ERECTED WITHIN EASEMENT BY
15 AILAMER INVESTMENTS, LLC; JON) DOMINANT TENANT (Easement Owner)
16 REMALIA aka JOHN REMALIA and DOES)
1 through 20, inclusive,) Trial Date: March 3, 2014
17 Defendants.) Time: 8:30 a.m.
AND RELATED CROSS-ACTION) Dept: Judge McLean
18)

19 This matter is on for trial on the narrow issue of whether or not the law and
20 circumstances of this case allow gates to be erected within an easement by Defendant, the
21 dominant tenement, the owner of the easement.

22 **PROCEDURAL HISTORY**

23 The hearing for Preliminary Injunction sought by Plaintiffs was heard before Judge
24 Glusman on July 26, 2013. The Court issued its ruling denying the petition for Preliminary
25 Injunction for all matters except on the issue of whether or not Defendants, as the Dominant
Tenement could erect a gate within the easement upon the lands of Plaintiffs, the Servient

1 Tenement. The temporary restraining order remains in effect as to Defendants' gate only,
2 pending a hearing on that matter alone. The Court's Order allows Defendants to complete work
3 on their access road within their easement, which is being prevented by Plaintiffs' refusal to sign
4 tree removal permits necessary to widen the access road to the width required by local and state
5 laws.

6 The Notice of Entry of Judgment was served by Defendants on all parties on July 26,
7 2013. Trial on the case was set for November 17, 2014. Following trial setting, Plaintiffs filed
8 their motion to bifurcate the trial to have the sole issue of whether or not the law allows a gate
9 across an easement and whether the gate at issue in this case is a reasonable interference with
10 Plaintiffs' use of their underlying property. Trial on the narrow issue of the gate is set for
11 Monday, March 3, 2014. Defendants objected to the early setting of the trial date because they
12 have significant written discovery responses pending and a request for site inspection to obtain
13 important evidence for putting on their case. Plaintiffs' counsel assured the Court and
14 Defendants' counsel that there would be no problem in completing discovery at issue prior to the
15 March 3 trial date. The remaining issues in this case are reserved for the November trial.

16 **DISCOVERY ISSUES**

17 As of the filing of this trial brief, Defendants have not received the responses due to their
18 written Form Interrogatories nor to their Request for Admissions. In addition, Defendants have
19 been refused access to Plaintiffs' deck to perform their inspection.

20 As responses to the written discovery have not been produced, it is impossible to address
21 any objections or pursue efforts to compel discovery if necessary.

22 Concerning the request for inspection, the deadline for site inspection is March 10, 2014,
23 the week after trial. The issue of whether the gate is an extreme interference with Plaintiffs' view
24 from their deck is critical. In their pleadings and declarations Plaintiffs on numerous instances,
25 and throughout this entire proceeding, have claimed the gate at issue is a pair of "huge" pillars,

1 located in the middle of their back yard, blocking their view, causes them extreme mental
2 anguish, destroys their property values, and a host of other issues of impending doom.

3 See: Declaration under oath of Dana Bettis, Filed July 19, 2013, Pg. 4, Ln. 16-19

4 Declaration under oath of Dana Bettis, dated August 15, 2013, Pg. 1, Ln. 22-25;
5 (Filed as Exhibit A to "Plaintiffs' Brief in Support of Issuance of
6 Preliminary Injunction Prohibiting Construction of Locked Gate in
Middle of Plaintiffs' Backyard", dated August 16, 2013.)

7 Plaintiffs' Brief in Support of Issuance of Preliminary Injunction Prohibiting
8 Construction of Locked Gate in Middle of Plaintiffs' Backyard, Dated August 16, 2013, Pg. 2,
9 Ln 24-28; Pg.3, Ln. 18-23; Pg. 4, Ln 6-10; Pg. 5, Ln 2-5 and 17-18; Pg. 6, Ln 9-12; and, Pg. 7,
10 Ln 1-3.

11 Plaintiffs' Motion to Bifurcate Trial on Issue of Locked Gate, dated January 3,
12 2014; Pg. 6, Ln 6-9.

13 In light of this it is important for Defendants to put on a defense to these issues, the most
14 important being that none of the accusations of Plaintiffs are true. Therefore, Defendants gave
15 notice of the need for a site inspection in order to take photos and video from Plaintiffs' deck
16 showing the view from the deck and its relation to Defendants' planned gate.

17 At first, Plaintiffs objected to Defendants and their attorney coming through their home to
18 access the deck, which sits quite high above the ground. Defendants attorney agreed to access
19 the gate by way of extension ladder to avoid passing through Plaintiffs' home, a reasonable
20 accommodation. Next, in light of Plaintiffs' promise to have discovery completed prior to the
21 trial on the gate issue, Defendants requested the site inspection take place before trial. Plaintiffs
22 refused to allow any site inspection prior to the trial. Thus, Plaintiffs' assurances to the Court
23 that Defendants' discovery would be honored were hollow utterances.

24 Plaintiffs have offered a stipulation regarding the gate and views, but none has been
25 forthcoming.

1 In light of what has occurred with the site inspection, Defendants are not encouraged
2 Plaintiffs will in good faith provide all responses to their written discovery as promised; and the
3 rushed trial date will prevent curing any deficiencies prior to trial.
4

5 **FACTS OF THE CASE RELATING TO THE GATE**

6 Pursuant to their construction of their residence, Defendants are required to make certain
7 improvements to their driveway access. Because of the length of the driveway, State law, as
8 well as Paradise Town ordinances, require a 20-foot wide roadway for fire safety and access.

9 Plaintiffs began work on their roadway, and in 2011 began construction of two gate
10 pillars approximately six (6) feet in height, to support their electronically controlled gate they
11 were going to install at the same location Plaintiffs and their predecessors had installed a pipe
12 gate. That pipe gate installed by Plaintiffs, or a cable gate predecessor, was present at that
13 location for years before Defendants purchased their lands. That location has had a pipe gate,
14 cable gate, large rocks or dirt mounds securing access through Plaintiffs' property along
15 Defendants' driveway for 30 years.

16 Commencing in June of 2013, Plaintiffs objected to Defendants widening their road,
17 putting in electrical wiring, water pipe, and erecting their gate.

18 Defendants' easement is described in their Grant Deed as follows:

19 "A non-exclusive easement for road and public utility purposes over a
20 strip of land described as follows: [Description of Centerline of Easement] The
21 exterior boundary lines of the above described easement to be lengthened or
shortened to meet the property lines."

22 There are no further restrictions contained in the description as to the easement's use or
23 prohibitions of use. (See legal description to Defendants' real property at issue, attached hereto
24 as **Exhibit A.**)
25

LAW ON EASEMENTS

The grant of an easement, such as the one Defendants possess, creates an interest in Defendants' favor in the lands of the Plaintiffs. (Civil Code, Section 887.010; *Frahm v Briggs* (1970) 12 Cal App 3d 441, 445; Miller & Starr, *California Real Estate*, 3d, Volume 6, Section 15.5.) An easement is an incorporeal (intangible) interest in the land of another that gives the owner of the easement (Defendants in this case) the limited right to use another's property. The owner of an easement has valuable property rights that are protected by the law. The owner of the easement can enjoin any interference with the easement as a nuisance, and can recover damages caused by a wrongful loss of use. (*Dolske v Gormley*, 58 Cal 2d 513, 520-521 (1962); *Wing v Forest Lawn Cemetery Ass'n* 15 Cal 2d 472, 484 (1940); *Masin v La Marche*, 136 Cal App 3d 687, 695 (1982); *Pacific Gas & Electric Co. v Hacienda Mobile Home Park*, 45 Cal App 3d 519, 525-526 (1975); 6 Miller & Starr, *Cal Real Estate* (3rd Ed., Section 15:5))

The owner of the property burdened with the easement, which in this specific instance is the Plaintiffs, is referred to as the owner of the Servient Tenement and the owner of the property benefited by the easement (Defendants, in this case) is referred to as the owner of the Dominant Tenement. (Miller & Starr, *California Real Estate*, 3d, Volume 6, Section 15.6.)

A grant of a deeded road easement such as in this case automatically passes with the land and does not terminate by nonuse or when a new owner purchases the land, including new owners of the Dominant Tenement and the Servient Tenement. This means the easement attaches to the land of the grantee, the Dominant Tenement (Defendant), and whenever the dominant tenement is transferred, all appurtenant easements are also transferred as a matter of law to the grantee even though they may not be specifically mentioned in the deed. (Civil Code, Section 1104; *Elliott v McCombs* (1941) 17 Cal 2d 23, 31; Miller & Starr, *California Real Estate*, 3d, Volume 6, Section 15.6.)

1 The rights and duties between the owner of an easement, the Dominant Tenement (i.e.
2 Defendants) and the owners of the Servient Tenement (Plaintiffs) are correlative. The word
3 “correlative” means “naturally or reciprocally related.” (Merriam-Webster’s Collegiate
4 Dictionary, 10th Ed.) “Having a mutual or reciprocal relation, in such sense that the existence of
5 one necessarily implies the existence of the other.” (Black’s Law Dictionary, Fifth Edition.)
6 “Reciprocal” and “Reciprocity” refer to “mutually corresponding privileges;” “a mutual
7 exchange of privileges.” (Merriam-Webster’s Collegiate Dictionary, 10th Ed.) The words are
8 also defined as a “relationship existing where privileges of one party are enjoyed equally by the
9 other party;” and as “owed mutually between two persons.” (Black’s Law Dictionary, Fifth
10 Edition.) In layman’s terms, “What is good for the goose is good for the gander.”

11 Each is required to respect the rights of the other. Neither party can conduct activities or
12 place obstructions on the property that *unreasonably* interfere with the other party’s use of the
13 easement or underlying property. (*Herzog v Grosso* (1953) 41 Cal 2d 219; Miller & Starr,
14 California Real Estate, 3d, Volume 6, Section 15.63. Emphasis added.)

15 Thus, the owner of the Servient Tenement (Plaintiffs) can use their property within the
16 easement area, but only so long as that use is consistent with and does not unreasonably interfere
17 with, the use and enjoyment of the easement by the Dominant Tenement (Defendants). (Miller &
18 Starr, California Real Estate, 3d, Volume 6, Section 15.64, and cases cited.) Likewise, the
19 easement owner (the dominant tenement, Defendants herein) may use the easement in any
20 manner that does not *unreasonably* interfere with the use of the underlying land by the servient
21 tenement. The easement owner has those rights of enjoyment specified in the grant, *plus such*
22 *additional rights as are incidental and reasonably necessary to its use.* (*City of Pasadena v*
23 *California-Michigan Land and Water Co.* 17 Cal 2d 576, 578 (1941), Emphasis added.) The
24 owner of a dominant estate may do that which is reasonably necessary to enjoy the easement
25 and, as an incident thereto, keep it in repair and fit for use. (*Scrubby v Vintage Grapevine* 37 Cal

1 App 4th 697, 707 (1995); *Colvin v Southern Cal. Edison Co.* 194 Cal App 3d 1306, 1312) The
2 *Scruby* Court went on to say that “Scruby has not been granted the right to exclusive use of each
3 and every square inch of the easement area. Rather, Grapevine may make continued use of the
4 easement area *although it may not do anything that unreasonably interferes with Scruby having*
5 *access to their property.* (*Scruby*, Supra, 37 Cal App 4th at Pg. 706; Emphasis added.) The
6 *Scruby* Court did not rule that Scruby could not widen or pave its road if it was reasonably
7 necessary for Scruby’s use of the easement. The ruling denied Scruby’s paving because Scruby
8 had paved a second road within the easement area that endangered the winery license of Vintage
9 Grapevine. (*Scruby*, Supra, 37 Cal App 4th at Pg. 707)

10 The easement owner can improve the easement or construct improvements on the
11 easement, such as grading, paving, installing guardrails, and the like, which are reasonably
12 required to make the use of the easement safe and convenient; so long as the easement owner
13 does not unreasonably interfere with the use of the servient tenement by the owner of the
14 underlying fee. (*Ballard v Titus*, 157 Cal 673, 681 (1910); *Robinson v Cuneo* 137 Cal App 2d
15 573, 579 (1955); *Herzog v Grosso*, 41 Cal 2d 219, 225 (1953); 6 Miller & Starr, Cal Real Estate
16 (3rd Ed., Section 15:59)

17 Concerning maintenance of the easement, generally, the Servient Tenement has no duty
18 to maintain or repair the easement if they do not use the road. In this case, the neighbors use
19 Defendants’ road to access their properties to a certain extent. The owner of an easement (the
20 Dominant Tenement, Defendants) not only has the right to maintain and repair the easement, he
21 or she also has the duty to keep the easement in a safe condition. (Civil Code, Section 8451;
22 Miller & Starr, California Real Estate, 3d, Volume 6, Section 15.67, *Joseph v. Ager* (1895) 108
23 Cal. 517; *Burris v. People’s Ditch Co.* (1894) 104 Cal. 248, 252.)

24
25

¹ Civil Code Section 845: “The owner of any easement in the nature of a private right of way, or of any land to
which any such easement is attached, shall maintain it in repair ...”

1 Therefore, Defendants have the right to repair the drainage ditches, grade and shape the
2 roadbed, widen the road and smooth the surface, add sub-grade or surface materials as needed to
3 maintain the road, and even remove trees and vegetation that grow in and adjacent to the
4 roadway to improve and maintain their access. In addition, relevant case law provides that where
5 the width of the easement is specified, in this instance at 60 feet for most of its reach and 30 feet
6 for a smaller portion close to Defendants' property line, the owner of the easement (Defendants)
7 may eventually use the entire width, even though they do not do so initially or consistently.
8 (*Ballard v. Titus* (1910) 157 Cal. 673, 681; *Tarr v. Watkins* (1960) 180 Cal. App. 2d 362, 366.)

9 Additionally, Penal Code Section 420.1 makes it a criminal offense to willfully and
10 knowingly prevent, hinder or obstruct a person from entering, passing over, or leaving land that
11 the person has the right to enter, use, cross, etc., pursuant to a recorded instrument that grants an
12 easement.

13 LAW ON GATES WITHIN EASEMENT

14 Regarding the question of whether a gate may be erected across an easement, "the issue
15 in each case is whether or not the gate unreasonably interferes with the use and enjoyment of the
16 easement." (6 Miller & Starr, California Real Estate, 3d, Section 15:59) Plaintiffs have the
17 burden of proving that Defendants' gate would interfere with their property rights. (*Sylva v*
18 *Kuck*, 240 Cal App 2d 127, 136 (1966))

19 Interestingly, there are no cases prohibiting a Dominant Tenement from erecting a gate in
20 the easement. All cases reviewed, as well as commentaries, involve disputes where the Servient
21 Tenement has erected a gate across the way and the easement owner, the Dominant Tenement,
22 has objected to the presence of the gate. The fact no cases prohibiting a Dominant Tenement
23 from erecting a gate makes sense, as the right of passage belongs to the Dominant Tenement, and
24 if a gate is reasonable and imparts a minimum impact upon the Servient Tenement, a gate is not
25 objectionable, and falls within the right of the Dominant Tenement to improve the easement or

1 construct improvements on the easement, such as grading, paving, installing guardrails, and the
2 like, which are reasonably required to make the use of the easement safe and convenient; so long
3 as the easement owner does not unreasonably interfere with the use of the servient tenement by
4 the owner of the underlying fee. (*Ballard v Titus*, 157 Cal 673, 681 (1910); *Robinson v Cuneo*
5 137 Cal App 2d 573, 579 (1955); *Herzog v Grosso*, 41 Cal 2d 219, 225 (1953); 6 Miller & Starr,
6 Cal Real Estate (3rd Ed., Section 15:59)

7 However, the analysis of whether a Servient Tenement can erect a gate across an
8 easement is instructive as to whether a Dominant Tenement can do so, because, as discussed
9 above under the law of easements, the rights and duties of the Dominant and Servient Tenements
10 are generally correlative and reciprocal.

11 Miller & Starr contains a statement that a non-exclusive easement may not be obstructed.
12 However, this proposition is based upon a case where the Dominant Tenement was using the
13 nonexclusive easement as a parking lot, completely defeating its purpose as a right of way and
14 preventing any passage by others. In that case, it is a proper decision, but not applicable to this
15 present case where Plaintiffs themselves have maintained a gate or other obstruction at the same
16 location as Defendants' gate for 30 years. (See, *Keeler v Haky*, 160 Cal App 2d 471, 474; 6
17 Miller & Starr, California Real Estate, 3d, Section 15:59)

18 Whether a gate is allowed across an easement depends on a variety of circumstances.
19 The language of the deed, the history of past use and manner the easement has been used in the
20 past, the intent of the parties, the reasonableness of the interference created by the gate.
21 "Whatever the situation, the use of a gate or any other method of regulating an easement ... must
22 be reasonable." (25 Am Jur 2d, Easements and Licenses, Section 88.)

23 "It may be laid down as a general rule that the grant of a way without reservation
24 of the right to maintain gates does not necessarily preclude the owner of the land
25 from doing so, and unless it is expressly stipulated that the way shall be an open
one, or it appears from the terms of the grant or the circumstances that such was
the intention, the owner of the servient estate may erect gates across the way if
they are constructed so as not *unreasonably* to interfere with the right of passage.

1 ... In the absence of any express language in the grant bearing upon the question
2 of the right to maintain gates the courts ordinarily treat it as a question of fact
3 whether gates will *unreasonably* interfere with the exercise of the easement.”
(*McCoy v Matich*, 128 Cal App 2d 50, 53 (1954); 77 ALR 779; Emphasis added.)

4 “The owner ... may erect gates ... across the way, provided they are necessary for
5 the use of [the easement], and they are located, constructed, and maintained so as
6 to not unreasonably interfere with the [other party’s] right of passage. What is
7 “necessary” for the use ... is merely what is appropriate to the [party’s] use, not
8 what is essential to that use. (Cites)” (28A C.J.S. Easements; Fences and Gates,
9 Section 240)

10 In determining “reasonableness” of the placement of a gate across an easement, a
11 balancing test must be applied to weigh the interests of the Dominant and Servient estates in the
12 easement. “Thus, the consideration of whether the gate is usual and proper under the
13 circumstances and the ... need for a gate must be balanced against the extent of the interference
14 with the reasonable use of the right-of-way by the [other party].” (28A C.J.S. Easements; Fences
15 and Gates, Section 240)

16 The extent of the use of an easement is established by the past use. 6 Miller & Starr,
17 California Real Estate, 3d, Section 15:56 (Pg. 15-186) provides the following:

18 “When the instrument of conveyance grants an easement in general terms, without
19 specifying or limiting the extent of its use, the permissible use is determined in
20 the first instance by the intention of the parties and the purpose of the grant.
21 (Cites) Once the easement has been used for a reasonable time, the extent of its
22 use is established by the past use. (Cites) Thereafter, its owner cannot make
23 changes in its use that would substantially modify or increase the burden of the
24 servient tenement. (Cites)”

25 The comment to this principle of law states: “This rule is consistent with the general rule
of contract construction that the Court will accept the ‘practical construction placed on the
contract’ by the acts and conduct of the parties before the controversy arose.” (6 Miller & Starr,
Cal Real Estate, 3d, Section 15:56 (Pg. 15-186))

In this case, Plaintiffs and their predecessors have maintained gates and barriers upon the
easement at issue for at least 30 years. For Plaintiff to maintain his gate at the same location in

1 no way “substantially modifies or increases the burden of the Servient Tenement.” In fact, the
2 electronic gate being installed actually reduces the burden on Plaintiffs of having a gate where
3 Plaintiffs have maintained one for so many years, because it will be automatically operated from
4 within their vehicles.

5 **THIS GATE IS A REASONABLE IMPROVEMENT TO AN EASEMENT**

6 The law is quite clear that Defendants can make any improvement to their easement to
7 make its use convenient and safe. In this case, safety calls for the installation of a gate at the
8 same location Plaintiffs have had their gate for years. Plaintiffs claim they installed their gate at
9 this location to keep folks from damaging Defendants’ home building. However, this
10 misrepresents the facts to this Court. According to neighbor Charles P. Lindstrom, Plaintiffs and
11 their predecessors have had their gates at this location for decades. Plaintiffs have stated they
12 installed their latest manual pole gate at this very location to keep people from entering the land
13 below their home to party. Plaintiffs’ gate installation occurred far earlier than when Defendants
14 began constructing their home on their property.

15 Defendants’ gate does not impose an unreasonable burden or interference upon Plaintiffs,
16 who have maintained a gate at the same location for years, and their predecessors for decades
17 before that. In fact, Defendants’ gate reduces the burden Plaintiffs placed upon themselves with
18 their old manual gate. Defendants want to install an electronic gate and provide Plaintiffs with
19 the code, keys, anything they need, to make their passage through the gate as easy and simple as
20 possible. This imposes the slightest burden upon Plaintiffs as possible. Certainly the burden is
21 far less than the Plaintiffs imposed upon themselves by installing a manual pole gate that
22 required them to get out of their vehicle, walk to the gate, unlock the lock, open the gate, get
23 back in their car, drive through the gate, stop their car and get out, close the gate, lock the gate,
24 and return to their vehicle and continue on. Even if Plaintiffs left their gate open while carrying
25

1 out their activities in the easement area, they still had to duplicate the process upon leaving the
2 easement area.

3 Plaintiffs argue that no Court has issued a decision *allowing* the Dominant tenement to
4 install gates in an easement, therefore no permission in the law exists to allow the Dominant
5 tenement to install a gate in their easement. However, this argument turns our legal system on its
6 head. This is not how our system of laws operates. The maxim in our legal system, even the
7 basis of freedom itself, is “Everything which is not forbidden is allowed”, a constitutional
8 principle of English Law. There exists no case that *prohibits* a Dominant tenement from
9 installing a gate within their easement. The issue is to be resolved by the facts of the case and
10 the balancing of interests. In this case, Plaintiffs and their predecessors have installed and
11 maintained gates and obstructions of various sorts for decades in the very location where
12 Defendants desire to place their gate. Defendants desire to install a gate at that location since
13 that is where Plaintiffs maintained their gate. It is near the terminus of Defendants’ easement, set
14 back from the public road enough to allow trucks with trailers to be off the cul-de-sac while
15 waiting for the gate to open itself.

16 Plaintiffs have argued before Judge Glusman that the gate directly interferes with their
17 view from their home and the pillars are giant obstructions jutting into their view. However, as
18 the evidence at trial will show, that is a complete misrepresentation of the truth to this Court.
19 Defendants’ gate pillars are no more than six (6) feet in height, and are located far away from the
20 viewshed of Plaintiffs’ home, and actually hidden from Plaintiffs’ home by trees on their
21 property.

22 Plaintiffs argue that the location of the gate should not be on their property, but located at
23 the property line entering into Defendants' property, or somewhere else within Defendants'
24 property. Unfortunately, there are significant problems to putting a gate at the property line
25 entering into Defendants' land. At that location, the width of the easement has been reduced to

1 thirty (30) feet. In addition, the slopes upon which the access easement road are located are very
2 steep at that location. It is impossible to turn around at that location if the gate is closed.
3 Vehicles entering to that point would be forced to back out all the way to Gregory Lane, a
4 dangerous proposition. The only option besides backing out all the way, is to back up half way
5 to a gentle slope above the roadway and back onto it to turn around. To do that requires the
6 driver to trespass upon Plaintiffs' land.

7 Defendants' property is entirely located on steep slopes. A pad had been constructed by
8 Defendants' predecessors in interest for construction of a home, which is where Defendants are
9 building. To locate a gate on the pad is ridiculous. The gate would essentially be right outside
10 Defendants' front door in order to provide a turn around.

11 Plaintiffs raise the issue that fire trucks must have a sufficient turn around at the end of
12 Defendants' road, near their home. There is such a turn-around area there; and it takes up the
13 entire area where Plaintiffs' claim the trucks must turn around. Therefore, Defendants cannot
14 place a gate at that location without it interfering with the turn around, or be so close to their
15 home that it is at their front door.

16 The best location for the gate on this easement is exactly where Plaintiffs themselves
17 placed the gate many years ago. Unwanted traffic is stopped before entering the narrow
18 easement road; there is sufficient room off the pavement of Gregory Lane for vehicles to stop
19 while the gate is opening; emergency vehicles can easily turn around on Gregory Lane.

20 According to the fire marshall rules, the electric gate must have a code for emergency
21 services. The gate planned by Defendants takes that into account. It has the required frequency
22 for emergency vehicles to open; in the event of a power failure, it has a quick release mechanism
23 (just like the hundreds of other electric gates in the Paradise area); and the design is approved by
24 the Fire Marshall.

25 ///

1 **NO SHOWING OF IRREPARABLE INJURY, IMMINENT DAMAGE**
2 **OR PROBABILITY OF SUCCESS AT TRIAL**

3 Plaintiffs have failed to show how construction of the gate by Defendants causes them to
4 suffer irreparable injury or that they are in imminent danger of suffering significant damage or
5 loss of rights. The gate does not create an unreasonable burden upon their land, and does not
6 unreasonably interfere with their use of their property or the easement itself. A mere order of
7 this court that the gate be removed cures all their problems. In addition, the above analysis of the
8 law on easements and gates across an easement shows Plaintiffs will likely not prevail on the
9 merits at trial.

10 Therefore, Plaintiffs have failed to support their claim for injunctive relief with sufficient
11 facts or law to allow this Court to issue a preliminary injunction against Defendants to prevent
12 them from completing construction of their gate.

13 **PLAINTIFFS ARGUE THE GATE VIOLATES PARADISE**
14 **MUNICIPAL CODE BARRING FENCES ON EASEMENTS**

15 Plaintiffs have maintained that the existence of a locked gate across an easement violates
16 Paradise Municipal Code 17.06.600E4, "no fences shall be installed within public or private
17 rights of way or access easements." Plaintiffs plan to trot out town representatives who will
18 opine that an electric or locked gate is a fence, but a cable or rope barrier gate is not a fence.
19 This byzantine conclusion that an electric or locked gate is a fence is in direct conflict with other
20 clear Town codes that clearly address an electric gate closing across an easement.

21 Reference Paradise Municipal Code, Section 15.09.130 Chapter 5, Section 503.6, Gates,
22 Amended:

23 "The installation of security gates across a fire apparatus access road shall be
24 approved by the Fire Chief. Where security gates are installed, they shall have an
25 approved means of emergency operation. The emergency gates and emergency
operation shall be maintained operational at all times. *Electric gate operators are*

1 *required when serving five or more residential lots,* Gates intended for
2 automatic operation shall be designed, constructed and installed to comply with
3 the requirements of ASTM F-2200. Access keypads shall be proficed that are
4 coded with the fire department emergency access code as specified. Plans and
5 specifications shall be submitted for review and approval by the Fire Prevention
6 Bureau prior to installation." (Emphasis added.)

7 This section clearly anticipates gates across easements. Five or more residential lots
8 sharing a common access road is an easement situation. In that case, if the gate allowed across
9 the easement must be electric. In addition, installation of a security gate across a fire apparatus
10 access road is anticipated in this ordinance. There is not a limitation that states if the gate is
11 located across an easement it is not a gate, it is a fence and thus prohibited. The Town's
12 ordinance clearly anticipates gates across roads regardless of whether or not the road is public or
13 an easement. If the road is a "fire apparatus access road" such as the road in this case, a gate is
14 allowed. The only way around this logical conclusion and plain meaning of the language of the
15 law is to claim a gate is not a gate, it is a fence once located across an easement; and that is
16 ridiculous.

17 In fact, in a showing of common sense, the Paradise Planning Commission voted
18 unanimously on Tuesday, February 18, 2014 that the gate at issue in this matter is not a violation
19 of the code's ban on fences within an easement. Defendants have been informed that this
20 decision will be appealed to the Town Council, which means that at the time of trial in this
21 matter, the issue of the Town's ordinance is not settled.

22 Defendants urge the Court to consider the rules of statutory construction.

23 The clear meaning of the language of the Town's ordinance (17.06.600E4) is that
24 "fences" are barred from being constructed in an easement. Plaintiffs then claim without support
25 that "fence" means "gate". However, common sense and the plain meaning of the words of the

1 statute hold otherwise. The key to statutory interpretation by the Court is applying the rules of
2 statutory construction in their proper sequence. (*Jessen v BMW of North America, Inc.*, 35 Cal
3 App 4th 112, 122 (1995)) The three-step sequence the Court is to follow is as follows: “we first
4 look to the plain meaning of the statutory language, then to its legislative history and finally to
5 the reasonableness of a proposed construction.” (*Riverview Fire Protection District v Worker’s*
6 *Comp. Appeals Brd.*, 23 Cal App 4th 1120, 1126 (1994)).

7 In the first step of the interpretive process the Court looks to the words of the statute
8 themselves. (*Delaney v Superior Court*, 50 Cal 3d 785, 798 (1990)) accord, *Janke v GM*
9 *Hughes Electronics*, 46 Cal App 4th 55, 60 (1996) [“primary determinant” of legislative intent is
10 words used by the Legislature].) The Legislature's chosen language is the most reliable indicator
11 of its intent because “it is the language of the statute itself that has successfully braved the
12 legislative gauntlet.” (*California School Employees Assn. V Governing Board*, 8 Cal 4th 333,
13 338 (1994)) The Court is to give the words of the statute “a plain and commonsense meaning”
14 unless the statute specifically defines the words to give them a special meaning. (*Flannery v*
15 *Prentice*, 26 Cal 4th 572, 577 (2001)) If the statutory language is clear and unambiguous, the
16 Court’s task is at an end, for there is no need for judicial construction. (*California School*
17 *Employees Assn., supra*, 8 Cal 4th at pg. 340) In such a case, there is nothing for the court to
18 interpret or construe. (*Halbert’s Lumber v Lucky Stores, Inc.*, 6 Cal App 4th 1233, 1239, (1992))

19 The words "fence" and "gate" are given different definitions in our language and
20 dictionaries. "Fence" is defined as "a barrier intended to prevent escape or intrusion or to mark a
21 boundary; such as a barrier made of posts and wire or boards." Whereas "gate" is defined as "an
22 opening in a wall or fence; a means of entrance or exit." (*Meriam Webster's Collegiate*
23 *Dictionary, Tenth Edition.*)

24 Common sense also dictates that while a fence is a blockage of an easement, and may be
25 undesirable; there are numerous reasons for gates in an easement: security; keeping pets in;

1 keeping strangers out; livestock; etc. Defendants contend that the Town's efforts to prevent them
2 from having their gate is tied to the officials' personal interests and prejudices in this case, and
3 not based upon what is good for the Town as a whole.

4
5 **CONCLUSION**

6 Defendants respectfully request this Court deny Plaintiffs' request for issuance of a
7 preliminary injunction in this matter, and that the Court refuse to exonerate the bond.
8 Defendants have suffered significant losses directly resulting from Plaintiffs' temporary
9 restraining order and wish to seek compensation from the bond, which issues will be raised at the
10 November trial.

11
12 DATED:

LAW OFFICE OF WILLIAM G. APGER

13
14 By _____
15 William G. Apger
16 Attorney for Defendants
17
18
19
20
21
22
23
24
25



2011-0031858

RECORDING REQUESTED BY
Bidwell Title & Escrow Company

Recorded	REC FEE	28.00
Official Records	TAX	16.50
County of Butte	MONUMENT PREP	10.00
CANDACE J. GRUBBS County Clerk-Recorder		

AND WHEN RECORDED MAIL TO

Name Ailamar Investments LLC
Attn: Jon P. Remalla

Street Address 6684-B Isht Drive
City, State Zip Magalia, CA 95954

09:00AM 26-Sep-2011 MZ Page 1 of 5

Order No. 00242149-002

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Parcel No. 051-110-013

GRANT DEED

THIS FORM FURNISHED BY BIDWELL TITLE & ESCROW COMPANY

The Undersigned Grantor(s) Declare(s)

☒ City/Town of PARADISE☐ Unincorporated Area

Documentary Transfer Tax is \$16.50

☒ computed on full value of interest or property conveyed, or☐ full value less value of liens or encumbrances remaining at the time of sale☐ Monument Fee of \$10.00

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Home Partners Finance I, LLC, a Delaware limited liability company

hereby GRANT(s) to

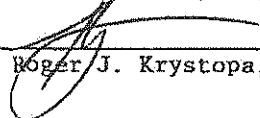
Ailamar Investments LLC

the following real property in the ☒ City/Town of PARADISE ☐ Unincorporated Area

County of Butte, State of California:

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF

Home Partners Finance I, LLC, a Delaware
limited liability company


Roger J. Krystopa, Vice President

Document Date: September 22, 2011

STATE OF CONNECTICUT } ss:

COUNTY OF New Haven


On September 22, 2011, before me, Heather Santi, Notary Public,

personally appeared Roger J. Krystopa

who proved to me on the basis of satisfactory evidence to be the person(s)
whose name(s) is/are subscribed to the within instrument and acknowledged to
me that he/she/they executed the same in his/her/their authorized capacity(ies),
and that by his/her/their signature(s) on the instrument the person(s), or the
entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of
Connecticut that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 
My Commission Exp: March 31, 2015



MAIL TAX STATEMENTS TO: Same as Above

BTEC/GRANTDEED

EXHIBIT A

THE LAND REFERRED TO HEREIN IS DESCRIBED AS FOLLOWS:

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE TOWN OF PARADISE, COUNTY OF BUTTE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL I:

A PORTION OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 22 NORTH, RANGE 3 EAST, M.D.B.&M., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE QUARTER SECTION CORNER BETWEEN SECTIONS 10 AND 22, TOWNSHIP 22 NORTH, RANGE 3 EAST, M.D.B.&M.; THENCE RUNNING NORTH ON THE SECTION LINE 770.4 FEET; THENCE SOUTH 88°24' EAST, 315.10 FEET; THENCE NORTH 83°57' EAST, 314.70 FEET; THENCE NORTH 67°22' EAST, 14.20 FEET TO THE TRUE POINT OF BEGINNING OF THE LAND DESCRIBED HEREIN; THENCE FROM SAID TRUE POINT OF BEGINNING, NORTH 67°22' EAST, 223.0 FEET; THENCE NORTH 81°33' EAST, 451.4 FEET; THENCE NORTH 56°05' EAST, 376.0 FEET; THENCE NORTH 75°56' EAST, 114.73 FEET; THENCE NORTH 214.40 FEET; THENCE SOUTH 75°56' WEST, 203.18 FEET; THENCE SOUTH 56°05' WEST, 364.56 FEET; THENCE SOUTH 81°33' WEST, 430.28 FEET; THENCE SOUTH 67°22' WEST, 161.96 FEET TO A POINT WHICH BEARS NORTH FROM THE TRUE POINT OF BEGINNING; THENCE SOUTH 225.35 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION THEREOF LYING EASTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT ON THE NORTH LINE OF LOT 31, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "SUNSET HEIGHTS SUBDIVISION", WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, ON DECEMBER 8, 1957, IN BOOK 15 OF MAPS, AT PAGES 36 AND 37, SAID POINT BEING SOUTH 81°33' WEST ALONG SAID NORTH LINE, 14.45 FEET FROM THE NORTHEAST CORNER OF SAID LOT 31; THENCE FROM SAID POINT OF BEGINNING, SOUTH 81°33' WEST ALONG THE NORTH LINE OF SAID SUNSET HEIGHTS SUBDIVISION, 214.19 FEET AND SOUTH 67°22' WEST, 35.81 FEET TO THE TRUE POINT OF BEGINNING FOR THE LINE HEREIN DESCRIBED; THENCE FROM SAID TRUE POINT OF BEGINNING, LEAVING SAID NORTH LINE, NORTH 220.0 FEET, MORE OR LESS, TO A POINT IN THE NORTH LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED FROM LUCKY JOHN GOLD MINING CO., A CORPORATION TO ALBERT J. MARTENS, DATED JULY 9, 1959 AND RECORDED JULY 31, 1959, UNDER BUTTE COUNTY RECORDER'S SERIAL NO. 2351 AND THE END OF SAID LINE.

EXCEPTING THEREFROM ALL MINERALS OF EVERY KIND AND CHARACTER WITH THE RIGHT AND PRIVILEGE TO ENTER INTO AND TO MINE AND EXTRACT THE MINERALS THEREFROM BY MEANS OF TUNNELS, DRIFTS AND OTHER APPLIANCES EXCEPT THAT THE SURFACE OF SAID LAND SHALL NOT BE INTERFERED WITH OR DISTURBED, AS CONTAINED IN THE DOCUMENTS RECORDED FEBRUARY 26, 1926 IN BOOK 220 OF DEEDS, PAGE 274, BUTTE COUNTY RECORDS, AND DECEMBER 13, 1956, IN BOOK 861, PAGE 211, OFFICIAL RECORDS.

SAID SURFACE ENTRY RIGHTS WERE WAIVED BY DOCUMENT RECORDED AUGUST 14, 1950, IN BOOK 550, PAGE 277, OFFICIAL RECORDS.

AP NO. 051-110-013

PARCEL II:

A NON-EXCLUSIVE EASEMENT FOR ROAD AND PUBLIC UTILITY PURPOSES OVER A STRIP OF LAND DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTER OF A 50 FOOT RADIUS CUL-DE-SAC AT THE NORTHERLY END OF GREGORY LANE, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "SUNSET HEIGHTS SUBDIVISION", WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, ON DECEMBER 8, 1957, IN BOOK 15 OF MAPS, AT PAGES 36 AND 37; THENCE NORTH 40°42'36" EAST FOR 50.00 FEET TO A POINT LOCATED IN THE WESTERLY BOUNDARY LINE OF LOT 32, AS SHOWN ON SAID SUBDIVISION MAP, SAID POINT BEING ALSO THE TRUE POINT OF BEGINNING FOR THE CENTERLINE OF THE ROAD EASEMENT HEREIN DESCRIBED; THENCE 30.00 FEET ON THE RIGHT AND 30.00 FEET ON THE LEFT, NORTH 26°24'31" EAST FOR 92.58 FEET; THENCE NORTH 56°15'10" EAST, FOR 86.43 FEET TO A POINT LOCATED IN THE NORTHERLY BOUNDARY LINE OF SAID LOT 32; THENCE CONTINUING NORTH 56°16'10" EAST FOR 70.25 FEET; THENCE SOUTH 81°33'00" WEST, BEING PARALLEL TO AND 30.00 FEET NORTHERLY OF THE NORTHERLY BOUNDARY LINE OF SAID LOT 32, FOR 225.84 FEET TO A POINT LOCATED IN THE EASTERLY BOUNDARY LINE OF LOT 3, AS SHOWN ON THAT CERTAIN PARCEL MAP FOR CLARENCE L. BRADISH, WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, IN BOOK 40 OF MAPS, AT PAGE 37; THENCE 15.00 FEET ON THE RIGHT AND 15.00 FEET ON THE LEFT, CONTINUING SOUTH 81°33'00" WEST FOR 18.92 FEET; THENCE NORTH 59°56'24" WEST FOR 119.98 FEET; THENCE SOUTH 89°48'03" WEST FOR 77.12 FEET; THENCE SOUTH 53°39'18" WEST FOR 56.17 FEET TO A POINT LOCATED IN THE WESTERLY BOUNDARY LINE OF LOT 2 AS SHOWN ON SAID BRADISH PARCEL MAP; THENCE CONTINUING SOUTH 53°39'18" WEST FOR 6.86 FEET; THENCE SOUTH 23°22'38" WEST, 85.51 FEET TO THE END OF SAID CENTERLINE.

THE EXTERIOR BOUNDARY LINES OF THE ABOVE DESCRIBED EASEMENT TO BE LENGTHENED OR SHORTENED TO MEET THE PROPERTY LINES.

EXCEPTING THEREFROM THAT PORTION LYING WITHN LOT 32, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "SUNSET HEIGHTS SUBDIVISION", WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, ON DECEMBER 8, 1957, IN BOOK 15 OF MAPS, AT PAGES 36 AND 37.

ALSO EXCEPTING THEREFROM ALL THAT PORTION LYING WITHIN THE BOUNDS OF PARCEL I, DESCRIBED HEREIN.

PARCEL III:

AN EASEMENT FOR INSTALLATION, MAINTENANCE, REPAIRS AND/OR REPLACEMENT FOR A SEPTIC SYSTEM, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 28, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "SUNSET HEIGHTS SUBDIVISION", WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, ON DECEMBER 8, 1957, IN BOOK 15 OF MAPS, AT PAGES 36 AND 37; THENCE SOUTH $81^{\circ}33'00''$ WEST, ALONG THE NORTH LINE OF SAID LOT 28, A DISTANCE OF 0.16 FEET; THENCE CONTINUING ALONG SAID NORTH LINE OF LOT 28, SOUTH $67^{\circ}22'00''$ WEST, 111.43 FEET TO THE NORTHWEST CORNER OF SAID LOT 28; THENCE SOUTH 97.48 FEET ALONG THE WEST LINE OF SAID LOT 28; THENCE EAST, 103.01 FEET TO THE EAST LINE OF SAID LOT 28; THENCE NORTH 140.39 FEET TO THE POINT OF BEGINNING.

PARCEL IV:

AN EASEMENT FOR INGRESS AND EGRESS TO AND FROM THE SEPTIC SYSTEM REFERRED TO IN PARCEL III HEREIN, INCLUDING THE INSTALLATION, MAINTENANCE, REPAIR OF AND/OR REPLACEMENT OF SAID SEPTIC SYSTEM, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 28, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "SUNSET HEIGHTS SUBDIVISION", WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, ON DECEMBER 8, 1957, IN BOOK 15 OF MAPS, AT PAGES 36 AND 37; THENCE NORTH ALONG THE EAST LINE OF SAID LOT 28, A DISTANCE OF 343.99 FEET; THENCE NORTH $51^{\circ}44'19''$ WEST, 42.30 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 28, SAID POINT BEING 35.81 FEET FROM AN ANGLE POINT IN SAID NORTH LINE OF SAID LOT 28; THENCE SOUTH $67^{\circ}22'00''$ WEST, ALONG SAID NORTH LINE 11.45 FEET; THENCE SOUTH $51^{\circ}44'19''$ EAST, 43.01 FEET TO A POINT BEING 10.00 FEET PERPENDICULAR FROM THE EAST LINE OF SAID LOT 28; THENCE SOUTH ALONG A LINE PARALLEL WITH AND WESTERLY, 10.00 FEET MEASURED PERPENDICULAR FROM SAID EAST LINE OF SAID LOT 28, A DISTANCE OF 339.18 FEET TO THE SOUTH LINE OF SAID LOT 28; THENCE NORTH $89^{\circ}47'30''$ EAST, 10.00 FEET TO THE POINT OF BEGINNING.

PARCEL V:

A NON-EXCLUSIVE EASEMENT FOR PUBLIC UTILITIES OVER THE WEST 10 FEET OF THE FOLLOWING DESCRIBED PARCEL OF LAND:

LOT 27, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "SUNSET HEIGHTS SUBDIVISION", WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, ON DECEMBER 8, 1957, IN BOOK 15 OF MAPS, AT PAGES 36 AND 37

PARCEL VI:

A NON-EXCLUSIVE EASEMENT FOR ROAD AND PUBLIC UTILITY PURPOSES OVER A STRIP OF LAND DESCRIBED AS FOLLOWS:

BEGINNING AT A CENTER OF A 50.00 FOOT RADIUS CUL-DE-SAC AT THE NORTHERLY END OF GREGORY LANE, AS SHOWN THAT CERTAIN MAP ENTITLED, "SUNSET HEIGHTS SUBDIVISION", WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, ON DECEMBER 8, 1957, IN BOOK 15 OF MAPS,

AT PAGES 36 AND 37; THENCE NORTH 40°42'36" EAST FOR 50.00 FEET TO A POINT LOCATED IN THE WESTERLY BOUNDARY LINE OF LOT 32, AS SHOWN ON SAID SUBDIVISION MAP, SAID POINT BEING ALSO THE TRUE POINT OF BEGINNING OF THE CENTERLINE OF THE ROAD EASEMENT HEREIN DESCRIBED; THENCE 30.00 FEET ON THE RIGHT AND 30.00 FEET ON THE LEFT, NORTH 26°24'31" EAST FOR 92.58 FEET; THENCE NORTH 56°16'10" EAST FOR 86.43 FEET TO A POINT LOCATED IN THE NORTHERLY BOUNDARY LINE OF SAID LOT 32 TO THE END OF SAID CENTERLINE.

THE EXTERIOR BOUNDARY LINES OF THE ABOVE DESCRIBED EASEMENT TO BE LENGTHENED OR SHORTENED TO MEET THE PROPERTY LINES.



2008-0018718

Recorded	REC FEE	17.00
Official Records	TAX	350.90
County of		
Butte		
CANDACE J. SKRIBS		
County Clerk-Recorder		
	JC	
03:00PM 16-May-2008	Page 1 of 4	

76 *Park*
RECORDING REQUESTED BY
 Mid Valley Title & Escrow Company

**AND WHEN RECORDED MAIL DOCUMENT
 AND TAX STATEMENT TO:**

Learoy W. Johnson
 6473 Gregory Lane
 Paradise, CA 95969

Space Above This Line for Recorder's Use Only

A.P.N.: 051-120-093

File No.: 0402-3059525 (VG)

GRANT DEED4
JC

The Undersigned Grantor(s) Declare(s): DOCUMENTARY TRANSFER TAX \$350.90; CITY TRANSFER TAX \$0.00;
 SURVEY MONUMENT FEE \$

- [☒] computed on the consideration or full value of property conveyed, OR
 [] computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,
 [] unincorporated area; [☒] Town of Paradise, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **Mark E. Colombo, Successor
 Sole Trustee of the Carlo J. Colombo Living Trust, dated 1/13/2005**

hereby GRANTS to **Learoy W. Johnson, an unmarried man and Claudia J. Benike, an unmarried woman
 as joint tenants**

the following described property in the Town of **Paradise**, County of **Butte**, State of **California**:

PARCEL I-A:

**BEING A PORTION OF LOT 31, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "SUNSET
 HEIGHTS SUBDIVISION", WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER
 OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, DECEMBER 8, 1947 IN BOOK 15 OF
 MAPS, AT PAGE 36 AND 37, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 31 AND THENCE FOLLOWING
 ALONG THE WESTERLY BOUNDARY LINE THEREOF, SOUTH FOR A DISTANCE OF 85.49 FEET;
 THENCE LEAVING SAID WESTERLY BOUNDARY LINE, SOUTH 88 DEG. 35' EAST FOR A
 DISTANCE OF 138.79 FEET; THENCE SOUTH 71 DEG. 01' 56" EAST FOR A DISTANCE OF 45.56
 FEET TO A POINT LOCATED IN THE WESTERLY BOUNDARY LINE OF GREGORY LANE; THENCE
 FOLLOWING ALONG SAID WESTERLY BOUNDARY LINE OF GREGORY LANE ALONG THE ARC
 OF A 50.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 36 DEG.
 52' 12" FOR AN ARC DISTANCE OF 32.18 FEET; THENCE LEAVING SAID WESTERLY
 BOUNDARY LINE OF GREGORY LANE, NORTH 50 DEG. 22' 55" WEST FOR A DISTANCE OF
 140.07 FEET TO A POINT LOCATED IN THE NORTHERLY BOUNDARY LINE OF SAID LOT 31;
 THENCE FOLLOWING ALONG SAID NORTHERLY BOUNDARY LINE, SOUTH 81 DEG. 33' WEST
 FOR A DISTANCE OF 90.23 FEET TO THE POINT OF BEGINNING.**

Mail Tax Statements To: SAME AS ABOVE

RESERVING THEREFROM ALL MINERALS AS CONTAINED IN THE DEED FROM W.P. LYNCH TO SEARS-MASTERSON COMPANY, A CORPORATION, DATED DECEMBER 28, 1914 AND RECORDED JANUARY 17, 1918 IN BOOK 153 OF DEEDS, PAGE 181, RECORDS OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, WHICH RESERVATION READS AS FOLLOWS: "THE PARTY OF THE FIRST PART RESERVES THE PRIVILEGE AND RIGHT TO ENTER INTO AND UPON SAID PREMISES AND MINE AND EXTRACT THE MINERAL THEREFROM BY MEANS OF TUNNELS, DRIFTS AND OTHER MEANS AND APPLIANCES, EXCEPT THAT THE SURFACE OF SAID LAND SHALL NOT BE INTERFERED WITH OR DISTURBED SO AS TO PREVENT IT FROM BEING FARMED IN THE ORDINARY MANNER".

SAID RESERVATION WAS AMENDED AS TO THE ENTRY AFFECTING THE HEREIN DESCRIBED PREMISES, RELATIVE TO OIL, GAS AND OTHER HYDROCARBONS BY AN INSTRUMENT DATED AUGUST 11, 1950 AND RECORDED AUGUST 14, 1950 IN BOOK 550 OF BUTTE COUNTY OFFICIAL RECORDS, AT PAGE 277, WHICH PROVIDES THAT THE RIGHT OF ENTRY UPON THE PREMISES HEREIN DESCRIBED FOR THE PURPOSE OF EXTRACTING SUCH OIL, GAS AND OTHER HYDROCARBONS IS THEREBY WAIVED.

PARCEL I-B:

A NON-EXCLUSIVE EASEMENT FOR ROAD AND PUBLIC UTILITY PURPOSES OVER THE FOLLOWING DESCRIBED PARCEL OF LAND:

BEGINNING AT THE NORTHWEST CORNER OF AS SHOWN ON THAT CERTAIN MAP ENTITLED, "SUNSET HEIGHTS SUBDIVISION", WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, DECEMBER 8, 1947 IN BOOK 15 OF MAPS, AT PAGE 36 AND 37 LOT 31 AND THENCE FOLLOWING ALONG THE WESTERLY BOUNDARY LINE THEREOF, SOUTH FOR A DISTANCE OF 85.49 FEET; THENCE LEAVING SAID WESTERLY BOUNDARY LINE, SOUTH 88 DEG. 35' EAST FOR A DISTANCE OF 138.79 FEET; THENCE NORTH 10 DEG. 25' EAST FOR A DISTANCE OF 60.00 FEET TO THE TRUE POINT OF BEGINNING FOR THE PARCEL OF LAND HEREIN DESCRIBED; THENCE FROM SAID TRUE POINT OF BEGINNING, SOUTH 50 DEG. 22' 55" EAST FOR A DISTANCE OF 73.89 FEET TO A POINT LOCATED IN THE WESTERLY BOUNDARY LINE OF GREGORY LANE; THENCE FOLLOWING ALONG SAID WESTERLY BOUNDARY LINE OF GREGORY LANE ALONG THE ARC OF A 50.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 36 DEG. 52' 11" FOR AN ARC DISTANCE OF 32.17 FEET TO THE WESTERLY BOUNDARY LINE OF THAT CERTAIN STRIP OF LAND, 10 FEET IN WIDTH LYING BETWEEN LOT 31 AND LOT 32 AS SHOWN ON SAID MAP OF THE "SUNSET HEIGHTS SUBDIVISION", THENCE NORTH 50 DEG. 22' 55" WEST FOR A DISTANCE OF 51.81 FEET; THENCE NORTH 88 DEG. 35' WEST FOR A DISTANCE OF 45.87 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL II:

BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 22 NORTH, RANGE 3 EAST, M.D.B. & M., AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF LOT 31, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "SUNSET HEIGHTS SUBDIVISION", WHICH MAP WAS RECORDED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF BUTTE, STATE OF CALIFORNIA, DECEMBER 8, 1947 IN BOOK 15 OF MAPS, AT PAGES 36 AND 37, SAID POINT BEING SOUTH 81 DEG. 33' WEST ALONG SAID NORTH LINE 138.25 FEET FROM THE NORTHEAST CORNER OF SAID LOT 31; THENCE FROM SAID POINT OF BEGINNING, SOUTH 81 DEG. 33' WEST ALONG THE NORTH LINE OF SAID LOT 31 FOR A DISTANCE OF 90.23 FEET; TO THE NORTHWEST CORNER OF SAID LOT 31; THENCE CONTINUING ALONG THE NORTHERLY BOUNDARY LINE OF SAID "SUNSET HEIGHTS SUBDIVISION", SOUTH 81 DEG. 33' WEST FOR A DISTANCE OF 0.16 FEET; THENCE SOUTH 67 DEG. 22' WEST FOR A DISTANCE OF 35.81 FEET; THENCE LEAVING SAID NORTHERLY BOUNDARY LINE OF THE "SUNSET HEIGHTS SUBDIVISION", NORTH, FOR A DISTANCE OF 210.62 FEET, MORE OR LESS, TO A POINT LOCATED IN THE NORTH LINE OF THAT PARCEL OF LAND DESCRIBED IN DEED FROM LUCKY JOHN GOLD MINING CO., A CORPORATION, TO ALBERT J. MARTENS, DATED JULY 9, 1959, AND RECORDED JULY 31, 1959, UNDER BUTTE COUNTY RECORDER'S SERIAL NO. 2351; THENCE NORTH 81 DEG. 33' EAST ALONG THE NORTH LINE OF SAID MARTENS PARCEL FOR A DISTANCE OF 123.80 FEET TO A POINT LOCATED NORTH FROM THE TRUE POINT OF BEGINNING; THENCE SOUTH FOR A DISTANCE OF 201.7 FEET MORE OR LESS TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL MINERAL AND MINERAL RIGHTS AS EXCEPTED IN THE DEED FROM LUCKY JOHN GOLD MINING CO., A CORPORATION, TO ALBERT J. MARTENS, DATED JULY 9, 1959 AND RECORDED JULY 31, 1959 UNDER BUTTE COUNTY RECORDER'S SERIAL NO. 2351; THE MINERALS AND MINERAL RIGHTS AND OIL, GAS AND OTHER HYDROCARBONS BETWEEN 200 FEET BELOW THE SURFACE AND THE SURFACE OF THE HEREIN ABOVE DESCRIBED PROPERTY WERE QUITCLAIMED IN THAT CERTAIN DEED FROM LUCKY JOHN GOLD MINING COMPANY, A CORPORATION, TO ALBERT J. MARTENS, DATED SEPTEMBER 1, 1959 AND RECORDED SEPTEMBER 4, 1959 IN BOOK 1017 OF OFFICIAL RECORDS OF BUTTE COUNTY, AT PAGE 154.

THE ABOVE DESCRIBED PARCELS I AND II ARE SHOWN AS LOT 2 ON THAT CERTAIN PARCEL MAP RECORDED IN THE BUTTE COUNTY RECORDER'S OFFICE ON DECEMBER 9, 1971 IN BOOK 40 OF MAPS, AT PAGE 37.

Date: 05/09/2008

Dated: 05/09/2008

**Mark E. Colombo, Successor Sole Trustee of
the Carlo J. Colombo Living Trust, dated
1/13/2005**

Mark E. Colombo
Mark E. Colombo, Successor Trustee

STATE OF CALIFORNIA)SS
COUNTY OF BUTTE)

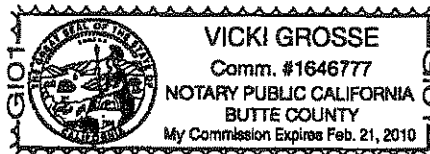
On 5-14-08, before me, VICKI GROSSE, Notary
Public, personally appeared MARK E. COLOMBO---

_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____



My Commission Expires: _____

This area for official notarial seal

Notary Name: _____

Notary Phone: _____

Notary Registration Number: _____

County of Principal Place of Business: _____

MEMO

To: TOWN COUNCIL
From: Joanna Gutierrez, CMC, Town Clerk
Subject: Additional Agenda Material Relating to Item 5(a):
Bettis Appeal of Planning Commission Decision
Date: March 11, 2014

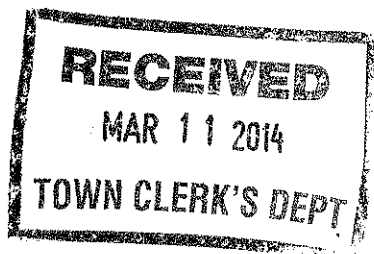
Attached for Town Council consideration relating to the public hearing scheduled for an appeal of a planning commission decision, is a letter dated March 11, 2014 that was received by the Town Clerk at 4:19 pm from Alan White.

According to the Town Council's adopted meeting rules, information received at or immediately prior to the hearing may be accepted at the discretion of the Council.

The pertinent sections of Article VII, Sections D & E of Resolution No. 11-48 are set forth below:

D. Written Material. Written material for Public Hearings to be submitted by either proponents or opponents shall be delivered to the Town Clerk by noon on the business day preceding the hearing with copies provided for the Town Manager, Town Attorney, Town Council and one copy for Public Viewing

E. Unreviewed Written Materials. Written materials presented to the Council for the first time at or immediately prior to the public hearing, which have not been previously reviewed by staff or Council, may be accepted into evidence at the discretion of the Council. Sufficient copies should be made for each Council Member, the Town Manager, Town Attorney, Town Clerk and at least one extra copy for public viewing/the press.



5801 Ingalls Road
Paradise, CA 95969
March 11, 2014

Honorable Scott Lotter
Members of the Paradise Town Council
5555 Skyway
Paradise, CA 95969

Mayor Lotter and Members of the Council,

I am writing with respect to tonight's agenda item 5(a), a public hearing appealing the decision of the Paradise Planning Commission. I am especially concerned that the Planning Director is not asking you, our duly elected representatives, to uphold the decision of your appointed Planning Commission at their February 18, 2014 meeting. He, in fact, does not even give you that option, unless you consider the phrase "Adopt an alternative interpretation or directive to town staff" to be equivalent to "Uphold the decision of the Planning Commission". Instead, he is asking, just as he did at the Planning Commission meeting, for you to agree with his interpretation of PMC section 17.06.600(E)(4).

The morning after the aforementioned meeting I left a message for Craig Baker suggesting that a better way to address this issue is to clean up PMC section 17.06.600(E)(4). The portion he mentions currently states "No fences shall be installed within public or private rights of way or access easements". I suggest the addition of verbiage similar to "no gates shall be installed within public or private rights of way or access easements without the written consent of the property owners involved". Considering that there are a number of existing gates across private easements in our community, many of which were installed after the above code section was written. Some of which were even required in the permit process as conditions of approval (in contradiction to the PMC). An alternate suggestion would be remove the section altogether and let property owners deal with it as a civil matter.

Unfortunately, this option isn't available this evening. So I hope you look at the Merriam Webster definition of a gate- "an opening in a wall or fence" (<http://www.merriam-webster.com/dictionary/gate>). I understand that an attorney might define things differently. I would suggest asking a five year old what a fence is and what a gate is. Common law should be as it appears to the average citizen, not an attorney. I understand the property owner does not want this, but a property owner gives up some rights with an easement. It is unfortunate that the parties involved can't come up with an equitable agreement.

Maybe the best option would be no decision. Refund the fees paid by both parties and let them slug it out in civil court. They are already there.

Alan White

cc- town manager
town clerk
town attorney
cd/planning director