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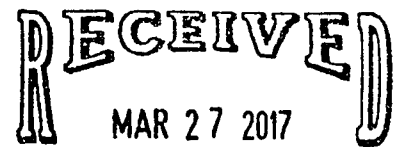
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\* Also admitted in Washington  
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\*\*\* Also admitted in Wisconsin

March 27, 2017



**VIA E-MAIL & UNITED STATES MAIL**

CLERK. BOARD OF SUPERVISORS

Bernice E. Seidel  
Clerk, Board of Supervisors  
County of Fresno  
Hall of Records  
2281 Tulare Street  
Fresno, CA 93721

**Re: Land Use Appeal: DRA No. 4465**  
**Charlie and Tamara Maxwell**

Dear Ms. Seidel:

On behalf of my clients, Charlie and Tamara Maxwell, I am submitting information to the Board of Supervisors in connection with the April 25, 2017, consideration of the Maxwells' appeal of the Planning Commission's denial of DRA No. 4465. This letter includes several enclosures included on the accompanying disk for consideration by the Board and inclusion in the record.

**A. Information Concerning the Judgment in the Maxwells' Favor in the**  
**Haines Action**

First, I understand arguments were raised at the Planning Commission meeting regarding the potential impacts of DRA No. 4465 on the use of Rusty Spur Lane for ingress and egress for the project. These arguments include increased burden under a Road Maintenance Agreement for Rusty Spur Lane, whether Rusty Spur Lane could be used for the proposed project, and whether such uses were appropriate under the applicable easement (the "Sohm Easement").

## WANGER JONES HELSLEY PC

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These issues were fully and finally resolved in the Maxwells' favor by the Fresno County Superior Court in the matter of *Haines, et al. v. Maxwell, et al.*, Fresno County Superior Court, Case No. 09CECG02582-AMS (the "*Haines Action*"), as reflected in the judgment issued in that case. (See **Attachment "A"** [the "Amended Judgment"].) Among other things, the Court made the following rulings:

- "The Sohm Easement does not limit the purpose of the trips for the types of uses on the properties serviced by the easement, whether residential, commercial or otherwise . . . ." (Amended Judgment at page 3 ¶ 1(A).)
- "The Roadway Maintenance Agreement does not limit vehicle trips to personal residential trips and allows vehicular trips for any lawfully permitted uses by the County, including commercial agricultural uses such as a [*sic*] the Proposed Project . . . ." (Amended Judgment at page 3 ¶ 1(B).)
- The Amended Judgment also states that "judgment shall be and hereby is entered in favor of Defendants Charlie Maxwell, Tamara Maxwell, Terry Hall and Teri Hall on the Second Amended Complaint on each of the declarations sought therein . . . ." (Amended Judgment at page 2 ¶ 1.) Plaintiffs sought the following "declarations" in their Second Amended Complaint, (attached as **Attachment "B"**), which were *all rejected by the Court*:
  - "[P]ublic use of Rusty Spur Lane as a result of the Commercial Rodeo Project Access will constitute a material breach of the Roadway Maintenance Agreement . . . ." (Second Amended Complaint, Prayer ¶ 1.)
  - "Commercial Rodeo Access is not a permitted right of access under the course of conduct of the signatories to the Road Maintenance Agreement . . . ." (Second Amended Complaint, Prayer ¶ 2.)
  - "Commercial Rodeo Access violates the covenant of good faith and fair dealing implied in the Roadway Maintenance Agreement in that the remaining Rusty Spur Lane Owners, other than Defendant Maxwell, will be burdened with a disproportionate share of the cost of maintaining the roadway for public use . . . ." (Second Amended Complaint, Prayer ¶ 3.)
  - "[T]he condition of approval of the Commercial Rodeo Project to keep the gate at the entrance of Rusty Spur Lane and Millerton Road open during event days violates the covenant of good faith and fair dealing implied in the Roadway Maintenance Agreement in that such condition subjects Rusty Spur Lane to public use . . . ." (Second Amended Complaint, Prayer ¶ 4.)

## WANGER JONES HELSLEY PC

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The law provides that these claims may not be litigated again. First, the claims are subject to the doctrine of *res judicata*, which bars all claims based on the same “primary right” (*i.e.*, the injury about which a party complains). The scope of *res judicata* is broad, and includes not only the specific arguments raised in the prior proceeding, but any other claims that could have been brought in that prior proceeding:

The doctrine not only precludes relitigation of claims resolved in a prior action, *but it also precludes litigation of claims that could have been brought in the prior action but were not . . . .*

(*Franceschi v. Franchise Tax Bd.* (2016) 1 Cal.App.5th 247, 258-59 [citing *Warga v. Cooper* (1996) 44 Cal.App.4th 371, 377-78] [emphasis added].)

The arguments are also subject to the doctrine of collateral estoppel, or claim preclusion, which prohibits the re-litigation of issues by a party or their privy (such as a successor-in-interest to real property) that were actually litigated and determined in a prior action. (See, e.g., *Hernandez v. Pomona* (2009) 46 Cal.4th 501, 511; *Grombiner v. Swartz* (2008) 167 Cal.App.4th 1365, 1370; see also 2d Restat.Judgments § 27, *et seq.*)<sup>1</sup>

### **B. Visual and Noise Impact Claims Raised by the Kyles**

I also wanted to address the claims of visual and noise impacts raised by David and Lynn Kyle, who presented pictures purporting to show the arena from the Kyles’ residence. First, these images present an inaccurate representation of the spatial dimensions of the surrounding area, and the distance between the Kyles’ residential structure and the existing horse arena, creating the misleading impression that the horse arena is immediately adjacent to, and highly visible from, the Kyles’ residence. This is inaccurate, as the distance between the existing horse arena and the residence is at its closest point over 1,000 feet, with another parcel, a stream, and Millerton Road situated between the two.

It is unclear what type of lens and/or software was used to create the images, but those images are not an accurate representation of the facts. Thus, to help the Board better understand the issue, I have enclosed photographs taken using a traditional 50mm lens taken at the horse arena and showing the residence at issue. (See **Folder “2.”**) These images show the residence is barely visible from the horse arena. I have also enclosed a video file taken by drone to highlight the distance between the residence and the horse arena. The video shows the large amount of space between the two properties and the unobtrusiveness of the existing arena from a visual perspective. (See **Folder “3.”**)

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<sup>1</sup> For your convenience, I have also enclosed a copy of the transcript showing the Court’s pertinent rulings during trial, as well as other pertinent documents related to that proceeding. (See **Folder “1.”**)

## WANGER JONES HELSLEY PC

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Moreover, any visual or noise-related impacts associated with the horse arena were examined by the County in the prior approvals received by the Maxwells. Importantly, DRA No. 4465 will not increase the intensity of events at the horse arena from a noise perspective, or authorize the construction of any new facilities that would change the visual landscape.

In addition, the Maxwells have been using the horse arena for identical uses under this prior approvals for years. Despite this, there were no complaints about alleged noise impacts until the Planning Commission hearing. Under DRA No. 4465, sound levels for events would not increase; rather, the Maxwells would continue to operate the horse arena consistent with existing practices and under the sound thresholds required under the County Code.

Finally, to the extent the Kyles remain worried about visual impacts, the Board should note that, at the Board meeting for the site plan for the horse arena in 2012, Maxwell as a concession to the Kyles agreed to plant two rows of Eldarica pine trees (which are shown in **Attachment "C"**), to avoid any argument that the horse arena would have visual impacts on the Kyles. The Kyles made no mention of this concession at the Planning Commission hearing.

Note that the trees are only 2-3 years old. As shown in **Attachment "D,"** Eldarica pine grow at a rate of 13-24 inches/year, and at maturity reach a height of 30-60 feet and a spread of 25-40 feet. **Folder "4"** includes visual depictions of what relevant viewsheds will look like after the trees are at maturity (as well as the existing conditions for purposes of comparison). As you can see, the trees will shield the Kyles' view of the existing arena.

### **C. The Maxwells Have Worked With the Rusty Spur Lane Property Owners to Move the Existing Gate**

At the Planning Commission hearing, concerns were expressed regarding the existing gate on Rusty Spur Lane, which is left open for access during Rusty Spur Arena events. After the hearing, the Maxwells worked with the landowners along Rusty Spur Lane to allow the Maxwells to fund the relocation of the gate to a different point on Rusty Spur Lane. The new location is beyond the entrance to Rusty Spur Arena, but before the entrance to any other property on Rusty Spur Lane. As a result, the Maxwells no longer need to open the gate for events at Rusty Spur Arena, and the persons attending events at Rusty Spur Arena are unable to travel beyond the existing gate. **Folder "5"** includes a photograph showing the relocated gate.

### **D. The Natural Topography Shields Most Residences at Issue from the Existing Arena**

The Maxwells also believe it is important to consider the topography of the surrounding area, particularly in light of alleged concerns regarding visual impacts to certain residences. As the files in **Folder "6"** demonstrate, many of the residences at issue (such as the

## WANGER JONES HELSLEY PC

March 27, 2017

Page 5

Samples) are completely shielded visually from the arena by the topography of the surrounding area.

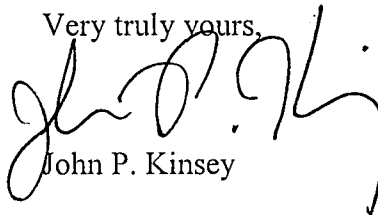
### **E. Alleged Impacts of Horse Trailers on the Existing Bridge**

The Maxwells understand there have also been concerns raised concerning the bridge on Rusty Spur Lane, and alleged impacts associated with heavy horse trailers traversing the bridge, as well as the width of the bridge. Folder "7" includes pictures taken by the Maxwells on March 3, 2017, showing a horse trailer and a cement truck traversing the bridge at the same time with ease. Moreover, horse trailers, even when fully loaded, are only a fraction of the weight of heavy cement trucks and other construction equipment, which regularly traverse both the bridge and other portions of Rusty Spur Lane due to the construction activities of other landowners with houses along Rusty Spur Lane.<sup>2</sup>

### **F. Conclusion**

Thank you for your consideration of the enclosed documents. Should you have any questions, please do not hesitate to contact me.

Very truly yours,



John P. Kinsey

Enclosures

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<sup>2</sup> You should note that the cement truck is not related to any activity on the Maxwells' property.

**WANGER JONES HELSLEY PC**

March 27, 2017

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**Enclosures**

Attachment A: Amended Judgment, *Haines, et al. v. Maxwell, et al.*, Fresno County Superior Court, Case No. 09CECG02582-AMS

Attachment B: Second Amended Complaint, *Haines, et al. v. Maxwell, et al.*, Fresno County Superior Court, Case No. 09CECG02582-AMS

Attachment C: County of Fresno, Board of Supervisors, Agenda Item 14, September 27, 2011

Attachment D: Arbor Day Foundation, *Eldarica Pine*, available at [www.arborday.org/trees/treeguide/TreeDetail.cfm?ItemID=1087](http://www.arborday.org/trees/treeguide/TreeDetail.cfm?ItemID=1087), last visited March 27, 2017

Flash Drive [containing Folders 1-7]

**ATTACHMENT “A”**

OCT 21 2011

BY \_\_\_\_\_  
DEPUTY

**WANGER JONES HELSLEY PC**  
265 E. River Park Circle, Suite 310  
Fresno, California 93720  
Telephone: (559) 233-4800  
Facsimile: (559) 233-9330

Timothy Jones #119841  
John P. Kinsey #215916  
Timothy A. Bennett #249600

Attorneys for: Defendants/Cross-Complainants, Charlie Maxwell, Tamara Maxwell,  
Terry Hall and Teri Hall

**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF FRESNO - UNLIMITED CIVIL**

WADE HAINES, an individual, and  
RHONDA HAINES, an individual,  
BIRCHWOOD PARK, LLC, a California  
limited liability company; WHITE  
PROPERTIES, INC., a California  
corporation; and JACK MURRAY, an  
individual

Plaintiffs,

v.

CHARLIE MAXWELL, an individual;  
TAMARA MAXWELL, an individual;  
BIRCHWOOD PARK, LLC, a California  
limited liability company; JOHN  
SAMPLE, an individual; DORINDA  
SAMPLE, an individual; TERRY HALL,  
an individual; TERRI HALL, an  
individual; and DOES 1 through 50,  
inclusive,

Defendants.

AND RELATED CROSS-ACTION

Case No. 09 CE CG 02582 AMS

**NOTICE OF ENTRY OF AMENDED  
JUDGEMENT AFTER TRIAL BY  
SUPERIOR COURT**

**Judge: Hon. Alan M. Simpson**  
**Dept.: 503**

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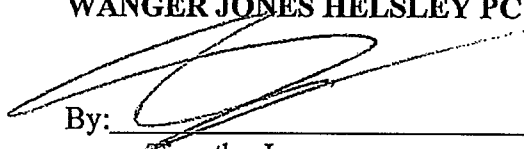
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**TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

**NOTICE IS HEREBY GIVEN** that on October 19, 2011, the *Amended* Judgment After Trial By Superior Court, regarding above-referenced matter, was signed by the Honorable Alan M. Simpson and entered in favor of Defendants, Charlie Maxwell, Tamara Maxwell, Terry Hall and Teri Hall. A true and correct copy of the *Amended* Judgment is attached hereto as **Exhibit "A."**

DATED: October 20, 2011

**WANGER JONES HELSLEY PC**

By:   
Timothy Jones,  
Attorneys for Defendants/Cross-Complainants,  
Charlie Maxwell, Tamara Maxwell,  
Terry Hall and Teri Hall

FILED

OCT 19 2011

FRESNO SUPERIOR COURT  
By \_\_\_\_\_  
DEPT. 503 - DEPUTY

1 **WANGER JONES HELSLEY PC**  
265 E. River Park Circle, Suite 310  
2 P.O. Box 28340  
Fresno, California 93729  
3 Telephone: (559) 233-4800  
4 Facsimile: (559) 233-9330

5 Timothy Jones #119841  
6 John P. Kinsey #215916  
Melissa C. Hunt #267181

7 Attorneys for: Defendants/Cross-Complainants Charlie Maxwell, Tamara Maxwell,  
8 Terry Hall and Teri Hall

9 **SUPERIOR COURT OF CALIFORNIA**  
10 **COUNTY OF FRESNO - UNLIMITED CIVIL**

11 WADE HAINES, an individual, and  
12 RHONDA HAINES, an individual,  
13 BIRCHWOOD PARK, LLC, a California  
limited liability company; WHITE  
14 PROPERTIES, INC., a California  
corporation; and JACK MURRAY, an  
individual

15 Plaintiffs,

16 v.

17 CHARLIE MAXWELL, an individual;  
18 TAMARA MAXWELL, an individual;  
19 BIRCHWOOD PARK, LLC, a California  
limited liability company; JOHN  
20 SAMPLE, an individual; DORINDA  
SAMPLE, an individual; TERRY HALL,  
21 an individual; TERRI HALL, an  
individual; and DOES 1 through 50,  
inclusive,

22 Defendants.

23 **AND RELATED CROSS-ACTION**  
24  
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Case No. 09 CE CG 02582 AMS

**[PROPOSED] AMENDED  
JUDGMENT AFTER TRIAL BY  
SUPERIOR COURT**

Judge: Hon. Alan M. Simpson  
Dept.: 503

1           The cause came on regularly for trial on July 13, 14, 18, 19 and 20, 2011, in  
2 Department 503 of the above-entitled court, the Honorable Alan M. Simpson presiding,  
3 sitting without a jury, a jury having been duly waived. Plaintiffs and Cross Defendants  
4 Wade Haines, Rhonda Haines, Birchwood Park, LLC; White Properties, Inc. and Jack  
5 Murray appeared by their attorneys, Jason Helsel and David Richards of the law firm of  
6 FOWLER/HELSEL; Defendants and Cross-Complainants Charlie Maxwell, Tamara  
7 Maxwell, Terry Hall and Teri Hall appeared by their attorneys, Timothy Jones and Timothy  
8 A. Bennett of the law firm of JONES HELSLEY PC. Evidence, both oral and documentary,  
9 having been presented by both parties, the cause having been argued and submitted for  
10 decision, the court having issued its decision on July 20, 2011, and no request having been  
11 made by any party for a Statement of Decision.

12           **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

13           As to the Second Amended Complaint filed in this action by Plaintiffs Wade  
14 Haines, Rhonda Haines, Birchwood Park, LLC; White Properties, Inc. and Jack Murray, the  
15 original of which was filed on September 10, 2010, and an amended version of which was  
16 filed July 19, 2011, with leave to amend having been granted by the Court during trial  
17 (collectively the "Second Amended Complaint"):

18           1.       Plaintiffs Wade Haines, Rhonda Haines, Birchwood Park, LLC; White  
19 Properties, Inc. and Jack Murray shall take nothing by reason of their Second Amended  
20 Complaint against Defendants Charlie Maxwell, Tamara Maxwell, Terry Hall and Teri Hall;  
21 and that judgment shall be and hereby is entered in favor of Defendants Charlie Maxwell,  
22 Tamara Maxwell, Terry Hall and Teri Hall on the Second Amended Complaint on each of  
23 the declarations sought therein; and

24           2.       That Defendants Charlie Maxwell, Tamara Maxwell, Terry Hall and  
25 Teri Hall are the prevailing parties as against Plaintiffs Wade Haines, Rhonda Haines,  
26 Birchwood Park, LLC; White Properties, Inc. and Jack Murray on their Second Amended  
27 Complaint; and

28       ///

1           3.     That Defendants Charlie Maxwell, Tamara Maxwell, Terry Hall and  
2 Teri Hall shall recover their costs and attorneys' fees as provided below.

3                   **IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT:**

4           As to the Cross-Complaint filed by Cross-Complainants Charlie Maxwell,  
5 Tamara Maxwell, Terry Hall and Teri Hall on May 7, 2010, and as amended on July 20,  
6 2011, with leave to amend having been granted by the Court ("Cross-Complaint"):

7           1.     That Cross-Complainants Charlie Maxwell, Tamara Maxwell, Terry  
8 Hall and Teri Hall hereby prevail on their Cross-Complaint against Cross-Defendants Wade  
9 Haines, Rhonda Haines, Birchwood Park, LLC; White Properties, Inc. and Jack Murray, and  
10 that the Court makes the following declarations:

11                   A. The Sohm Easement does not limit the purpose of the trips for  
12                   the types of uses on the properties serviced by the easement,  
13                   whether residential, commercial or otherwise;

14                   B. The Roadway Maintenance Agreement does not limit vehicle  
15                   trips to personal residential trips and allows vehicular trips for  
16                   any lawfully permitted uses by the County, including  
17                   commercial agricultural uses such as a the Proposed Project;

18                   C. The Roadway Maintenance Agreement recorded against the  
19                   Hall Property is unenforceable as a matter of law and shall be  
20                   removed from Hall's chain of title;

21           2.     That judgment shall be and hereby is entered in favor of Cross-  
22 Complainants Charlie Maxwell, Tamara Maxwell, Terry Hall and Teri Hall as set forth  
23 herein;

24           3.     Cross-Complainants Charlie Maxwell, Tamara Maxwell, Terry Hall  
25 and Teri Hall are the prevailing parties against Cross-Defendants Wade Haines, Rhonda  
26 Haines, Birchwood Park, LLC; White Properties, Inc. and Jack Murray as to the Cross-  
27 Complainants Cross-Complaint; and  
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4. That **Defendants and Cross-Complainants** Charlie Maxwell, Tamara Maxwell, Terry Hall and Teri Hall shall recover their costs in an amount of \$12,051.84, and their attorneys' fees as the prevailing parties in this action in the amount of \$262,036, pursuant to Section 1717 of the Civil Code.

**ALAN M. SIMPSON**

DATED: October 19, 2011.

\_\_\_\_\_  
Honorable Alan M. Simpson  
Judge of the Superior Court

**PROOF OF SERVICE**

My business address is 265 E. River Park Circle, Suite 310, Post Office Box 28340, Fresno, California 93729. I am employed in Fresno County, California. I am over the age of 18 years and am not a party to this case.

On the date indicated below, I served the foregoing document(s) described as **NOTICE OF ENTRY OF AMENDED JUDGEMENT AFTER TRIAL BY SUPERIOR COURT** on all interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Jason A. Helsel  
**FOWLER/HELSEL**  
1724 Broadway Street  
Fresno, CA 93721  
Ph: (559) 840-4450  
Fax: (800) 840-9450  
E-mail: [jason@helsellaw.com](mailto:jason@helsellaw.com)

☒

(BY MAIL) I am readily familiar with the business' practice for collection and processing of correspondence for mailing, and that correspondence, with postage thereon fully prepaid, will be deposited with the United States Postal Service on the date noted below in the ordinary course of business, at Fresno, California.

\_\_\_\_\_  
(BY PERSONAL SERVICE) I caused delivery of such envelope(s), by hand, to the office(s) of the addressee(s).

\_\_\_\_\_  
(BY ELECTRONIC MAIL) I caused such documents to be scanned into PDF format and sent via electronic mail to the electronic mail addressee(s) of the addressee(s) designated.

\_\_\_\_\_  
(BY FACSIMILE) I caused the above-referenced document to be delivered by facsimile to the facsimile number(s) of the addressee(s).

\_\_\_\_\_  
(BY OVERNIGHT COURIER) I caused the above-referenced envelope(s) to be delivered to an overnight courier service for delivery to the addressee(s).

EXECUTED ON **October 20, 2011**, at Fresno, California.

☒

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

  
\_\_\_\_\_  
Belinda Ordway

**ATTACHMENT “B”**

1 Jason A. Helsel, #214992  
2 FOWLER | HELSEL  
3 1724 Broadway Street  
4 Fresno, CA 93721  
5 Tel: (559) 840-4450  
6 Fax (559) 840-9450

7 Attorney for Plaintiffs Wade and Rhonda Haines,  
8 Birchwood Park, LLC, White Properties, Inc. and Jack Murray

FILED

JUL 19 2011

FRESNO SUPERIOR COURT

By \_\_\_\_\_ DEPT. 503 - DEPUTY

9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF FRESNO – UNLIMITED CIVIL

11 WADE HAINES, an individual; RHONDA  
12 HAINES, an individual; BIRCHWOOD  
13 PARK, LLC a California limited liability  
14 company; WHITE PROPERTIES, INC., a  
15 California corporation; and JACK  
16 MURRAY, an individual

17 Plaintiffs,

18 v.

19 CHARLIE MAXWELL, an individual;  
20 TAMARA MAXWELL, an individual;  
21 JOHN SAMPLE, an individual; DORINDA  
22 SAMPLE, an individual; TERRY HALL, an  
23 individual; TERRI HALL, an individual; and  
24 DOES 1 through 50, inclusive,

25 Defendants.

26 AND RELATED CROSS-ACTION

Case No. 09 CE CG 02582 AMS

**SECOND AMENDED COMPLAINT  
FOR DECLARATORY RELIEF**

**[As Conformed to Proof at Trial]**

27 Plaintiffs Wade Haines, Rhonda Haines, Birchwood Park, LLC, White Properties, Inc.  
28 and Jack Murray (collectively, the “Plaintiffs”) allege as follows:

**GENERAL ALLEGATIONS**

1. Plaintiffs WADE HAINES and RHONDA HAINES (collectively, the “Haines”) are, and at all times herein mentioned were, individuals residing in Fresno County, California



1 and the current owners of real property located in Fresno County more fully described as 11248  
2 Rusty Spur Lane, Clovis, California 93611, APN 138-061-48. APN 138-061-48 is accessed  
3 exclusively by Rusty Spur Lane (hereinafter defined). At all times herein mentioned, the  
4 Haines' owned, operated, controlled and managed APN 138-061-48.

5 2. The Haines are also the current owners of real property located in Fresno County  
6 more fully described as APN's 139-061-70 and 139-061-071. APN's 139-061-70 and 139-061-  
7 071 are accessed exclusively by Rusty Spur Lane. At all times herein mentioned, the Haines'  
8 owned, operated, controlled and managed APN's 139-061-70 and 139-061-071. (For ease of  
9 reference, APN's 138-061-48, 139-061-70 and 139-061-71 will be collectively referred to as the  
10 "Haines Property.")

11 3. Plaintiff BIRCHWOOD PARK, LLC (hereinafter, "Birchwood") is, and at all  
12 times herein mentioned was, a limited liability company existing under the laws of the State of  
13 California with its principal place of business in Fresno County, California. Birchwood is the  
14 current owner of real property located in Fresno County more fully described as 12755 Rusty  
15 Spur Lane, Clovis, California 93611 as APN 138-061-45 (the "Birchwood Property"). The  
16 Birchwood Property is accessed exclusively by Rusty Spur Lane. At all times herein  
17 mentioned, Birchwood owned, operated, controlled and managed the Birchwood Property.

18 4. Plaintiff WHITE PROPERTIES, INC. (hereinafter "WPI") is, and at all times  
19 herein mentioned was, a California corporation existing under the laws of the State of California  
20 with its principal place of business in Fresno County, California. WPI is the current owner of  
21 real property located in Fresno County more fully described as APN 138-061-64 (the "WPI  
22 Property"). The WPI Property is accessed exclusively by Rusty Spur Lane. At all times herein  
23 mentioned, WPI owned, operated, controlled and managed the WPI Property.

24 5. Plaintiff JACK MURRAY (hereinafter "Murray") is, and at all times herein  
25 mentioned was, an individual residing in Fresno County, California and the current owner of  
26 real property located in Fresno County described more fully, APN 138-061-72 (the "Murray  
27 Property"). The Murray Property is accessed exclusively by Rusty Spur Lane. At all times  
28 herein mentioned, Murray owned, operated, controlled and managed the Murray Property.

1           6.     Plaintiffs are informed and believe and thereon allege that Defendants JOHN  
2     SAMPLE and DORINDA SAMPLE (collectively, the "Sample's") are, and at all times  
3     mentioned herein were, individuals residing in Fresno County, California and the current  
4     owners of real property located in Fresno County more fully described as 11596 Rusty Spur  
5     Lane, Clovis, California 93611, APN 138-061-57 (the "Sample Property"). The Sample  
6     Property is accessed exclusively by Rusty Spur Lane. At all times herein mentioned, the  
7     Sample's owned, operated, maintained, controlled and managed the Sample Property.

8           7.     Plaintiffs are informed and believe and thereon allege that Defendants CHARLIE  
9     MAXWELL and TAMARA MAXWELL (collectively, the "Maxwell's") are, and at all times  
10    mentioned herein were, individuals residing in Fresno County, California and the current  
11    owners of real property located in Fresno County more fully described as 10925 Rusty Spur  
12    Lane, Clovis, California 93611, APN 138-061-49 (the "Maxwell Property"). The Maxwell  
13    Property is accessed exclusively by Rusty Spur Lane. At all times herein mentioned, the  
14    Maxwell's owned, operated, maintained, controlled and managed the Maxwell Property.

15          8.     Plaintiffs are informed and believe and thereon allege that Defendants TERRY  
16    HALL and TERRI HALL (collectively, the "Hall's") are, and at all times mentioned herein  
17    were, individuals residing in Fresno County, California and the current owners of real property  
18    located in Fresno County more fully described as 11084 Rusty Spur Lane, Clovis, California  
19    93611, APN 138-061-61 (the "Hall Property"). The Hall Property is accessed exclusively by  
20    Rusty Spur Lane. At all times herein mentioned, the Hall's owned, operated, maintained,  
21    controlled and managed the Hall Property.

22          9.     The Sample's, Maxwell's and Hall's shall hereinafter be referred to collectively  
23    as the "Rusty Spur Lane Defendants."

24          10.    The Plaintiffs and Rusty Spur Lane Defendants shall hereinafter be referred to  
25    collectively as the "Rusty Spur Lane Property Owners."

26          11.    Plaintiffs are informed and believe and thereon allege that Defendant COUNTY  
27    OF FRESNO (the "County") is, and at all times herein mentioned was, a political subdivision of  
28    the State of California.

12. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as DOES 1 through 50, inclusive, and therefore sue these Defendants by fictitious names. Each of these fictitiously named Doe Defendants shall be collectively referred to together with all other Defendants as "Defendants." The Plaintiffs will amend this Second Amended Complaint to allege their true names and capacities when ascertained. The Plaintiffs are informed and believe, and on that basis allege, that each of these fictitiously named Defendants is responsible in some manner for the acts or omissions alleged in this Second Amended Complaint.

## BACKGROUND FACTS

### The 1970 Easement

13. Plaintiffs are informed and believe and thereon allege that in or around June 1970, Floyd Robert Sohm and Wilda Rugh Sohm (collectively, the "Sohm's") were the owners of certain real property (the "Sohm Property") that would ultimately be subdivided and acquired by the Plaintiffs and Rusty Spur Lane Defendants. In order to gain public road access from the public road (Millerton Road) to the Sohm Property, it was necessary for the Sohm's to obtain an easement across the parcel of land owned by Ethel Ferguson (the "Ferguson Property"). On June 9, 1970, Ethel Ferguson granted a (60) sixty-foot private roadway easement to the Sohm's pursuant to a written agreement entitled "Agreement and Grant of Easement" between Ethel Marie Ferguson as Grantor, and the Sohm's as Grantee (the "1970 Easement Agreement"). (A true and correct copy of the 1970 Easement Agreement is attached hereto as Exhibit "A" and incorporated herein.) The 1970 Easement Agreement was recorded in the official records of Fresno County, California on July 10, 1970 in Book 5793, Page 449. (The private road easement created by the 1970 Easement Agreement shall be referred to herein as the "1970 Easement.")

14. The 1970 Easement was created for the sole purpose of providing the Grantee (and not the public or patrons of any commercial activity) private access from Millerton Road to the Sohm Property. The Plaintiffs and Rusty Spur Lane Defendants are all successors in interest to the Grantee.

///

1 **The Subdividers Easement**

2 15. Plaintiffs are informed and believe and thereon allege that in or around 1992, the  
3 Maxwell's, Donald Schram and Nada Schram (collectively, the "Subdividers") initiated an  
4 application with the County to effectuate the subdivision of a portion of the Sohms Property into  
5 approximately five (5) forty (40) acre parcels through a parcel map subdivision application  
6 (hereinafter "Parcel Map No. 91-39"). Each of the properties at issue in this litigation was  
7 originally part of the Sohms Property that was ultimately divided by Parcel Map No. 91-39.

8 16. Plaintiffs are informed and believe and thereon allege that as part of the County's  
9 ordinance code requirements for parcel map subdivisions, the Subdividers were required to  
10 covenant and agree with the County that they would convey to future purchasers of the  
11 subdivided parcels a sixty (60) foot private roadway easement to connect access to the  
12 subdivided parcels from the 1970 Easement to the public road (Millerton Road). Accordingly,  
13 on October 2, 1992, the Subdividers executed and recorded with the Fresno County Recorder's  
14 office, a Certificate of Waiver of Parcel Map No. 91-39 ("Parcel Map Waiver") and a Record of  
15 Survey Map (the "Map"). (True and correct copies of the Parcel Map Waiver and the Map are  
16 attached hereto as Exhibits "B" and "C", respectively, and incorporated herein.)

17 17. The private road easement conveyed to Plaintiffs pursuant to the requirements of  
18 the Parcel Map Waiver shall be referred to herein as the "Subdividers Easement." (A true and  
19 correct copy of the legal description of the Subdividers Easement is attached hereto as Exhibit  
20 "D" and incorporated herein.)

21 18. The Subdividers Easement effectively connected the future subdivided parcels of  
22 the Sohms Property to the existing 1970 Easement for private access to and from Millerton Road  
23 (hereinafter "Rusty Spur Lane" or "Road"). Nothing contained in the Parcel Map Waiver  
24 extinguished or in any other way modified the 1970 Easement or the Subdividers Easement to  
25 include use of the Road by anyone other than the Grantor or Grantee, or their successors in  
26 interest. Notably, Rusty Spur Lane does not access any other parcels, streets, roads or  
27 thoroughfares.

28 ///

1           19. Plaintiff is informed and believes and thereon alleges that as a condition for  
2 approval by the County on Parcel Map No. 91-39, the Subdividers executed and recorded with  
3 the Fresno County Recorder's Office on October 1, 1992, a "Covenant and Agreement  
4 Regarding Improvement and Maintenance of Private Roads (hereinafter the "Covenant and  
5 Agreement.") (A true and correct copy of the Covenant and Agreement is attached hereto as  
6 Exhibit "E" and incorporated herein.) The Covenant and Agreement provides that the Rusty  
7 Spur Lane Property Owners and their successors in interest "will pay their proportionate share  
8 of the cost toward the improvement and/or maintenance of the private road to a standard  
9 determined adequate by the users of the private road, through a district, agency or other entity,  
10 whether public or private, for the improvement and/or maintenance of said private road."  
11 [Emphasis added.] Nothing contained in the Covenant and Agreement extinguished or in any  
12 other way modified the 1970 Easement or the Subdividers Easement to include use of the Road  
13 by anyone other than the Grantor or Grantee, or their successors in interest.

14 **Creation of County Service Area 35**

15           20. Plaintiffs are informed and believe and thereon allege that on or about November  
16 16, 1993, the County, along with the Subdividers, created County Service Area No. 35  
17 (hereinafter "CSA 35") to provide the County with the means to assess and pay for the  
18 maintenance of the Rusty Spur Lane. Nothing relating to the creation of the CSA 35  
19 extinguished or in any other way modified the 1970 Easement or Subdividers Easement to  
20 include use of the Road by anyone other than the Grantor or Grantee, or their successors in  
21 interest.

22           21. Plaintiffs are informed and believe and thereon allege that from November 16,  
23 1993, through June 29, 1999, the County collected yearly assessments from the owners of these  
24 parcels that were created by Parcel Map No. 91-39 to pay the County to maintain the Road.

25 **Dissolution of County Service Area 35**

26           22. Plaintiffs are informed and believe and thereon allege that on or about June 29,  
27 1999, the Fresno County Board of Supervisors, at the unanimous request of the Rusty Spur  
28 Lane Property Owners (including the Maxwell's), voted to dissolve the CSA 35 and remove the

1 yearly assessment on the Rusty Spur Lane Property Owners' tax roll for the maintenance of the  
2 Road. The responsibility of the Road was returned to the Rusty Spur Lane Property Owners  
3 and Rusty Spur Lane was abandoned by the County. (A true and correct copy of the Board of  
4 Supervisors for the County of Fresno's Resolution Removing an Assessment on Real Property  
5 for Road Maintenance and Dissolving CSA 35 is attached hereto as Exhibit "F" and  
6 incorporated herein.)

7 **The Road Maintenance Agreement**

8 23. On or about June 10, 1999, the owners of the parcels created by Parcel Map No.  
9 91-39, including the Plaintiffs and the Maxwell's, entered into a written agreement, entitled  
10 "Agreement to Share Roadway Maintenance Expenses for Rusty Spur Lane" (hereinafter the  
11 "Roadway Maintenance Agreement") to share in the cost of maintaining and repairing the Road.  
12 The Roadway Maintenance Agreement was recorded in the official records of Fresno County,  
13 California on March 9, 2000 at Document No. 2000-0027675. (A true and correct copy of the  
14 Road Maintenance Agreement recorded in the official records of Fresno County, California on  
15 March 9, 2000 at Document No. 2000-0027675 is attached hereto as Exhibit "G" and  
16 incorporated herein.) The Road Maintenance Agreement reaffirmed the existence of the 1970  
17 Easement and Subdividers Easement and that Rusty Spur Lane is owned by the Rusty Spur  
18 Lane Property Owners to benefit and burden only other Rusty Spur Lane Property Owners and  
19 not patrons of any commercial activity occurring on any of the dominant tenements:

20  
21 The Owners are owners of tenants in common interests (hereinafter the  
22 "Owners' Interests" or "Owner's Interest") of a parcel of land  
23 commonly known as "Rusty Spur Lane" (hereinafter the "Road"), with  
24 each tenant in common having specific rights, duties and obligations to  
25 pass over the land held by the other tenants in common pursuant to a  
26 "[Easement Agreement]" recorded to benefit and burden all tenants in  
27 common.

28 The Owners wish to enter into an Agreement which provides for the  
Owners to share in the cost of maintaining and repairing that property  
described in Exhibit B, commonly known as Rusty Spur Lane. Each of  
the parties of this agreement agree that their respective Owners' Interests

1 shall be held, conveyed, hypothecated, encumbered, leased, rented, used  
2 and occupied subject to the following limitations, reservations,  
3 covenants, conditions, servitudes, liens and charges, all of which are  
4 declared and agreed to be in furtherance of and part of the beneficial use  
5 of the Road as a private right of way, and all of which are declared and  
6 agreed to be for the purpose of enhancing, maintaining and protecting the  
7 value and utility of the Road. These provisions are imposed upon the  
8 parties hereto, and are for the benefit of such parties, their Owners'  
9 Interests', and the properties owned by such parties contiguous to such  
10 Owners' Interests, and shall bind the parties hereto. These provisions  
shall be a burden upon and benefit to not only the original owners of the  
Owners' Interests, but also to their successors and assigns with any  
owners or subsequently subdivided parcels assuming one full share of  
rights and obligations per assessor's parcel created subject to paragraph  
3, below. All covenants are intended as and are declared to be covenants  
running with the land as well as equitable servitudes upon the land.

11 Plaintiffs are informed and believe and thereon allege that Defendant Charlie Maxwell was  
12 involved in the drafting and revising of the Roadway Maintenance Agreement and was  
13 instrumental in having all parties execute the same.

14 24. Soon thereafter, the Rusty Spur Lane Property Owners unanimously voted to  
15 install a private access gate (accessible only with a touch-pad code known only to Rusty Spur  
16 Lane Property Owners) at the entrance of Rusty Spur Lane, just off of Millerton Road, and affix  
17 a sign on the gate stating "Private Property. No Trespassing."

18 **The Proposed Commercial Rodeo Facility**

19 25. Plaintiffs are informed and believe and thereon allege that on or about  
20 December 16, 2008, the Maxwell's submitted an Application for Director Review and Approval  
21 to the Fresno County Department of Public Works and Planning (the "Application") relating to  
22 a proposed commercial horse and rodeo arena to be located on the Maxwell Property pursuant  
23 to the Municipal Code of the County of Fresno, Section 872. (A true and correct copy of the  
24 Application, including an Operational Statement, is attached hereto as Exhibit "H" and  
25 incorporated herein.) According to the Application, the proposed commercial horse arena was  
26 for the purpose of and was to include, among other things, the following:

27       ▪ Development of an equestrian facility in which eighteen (18) public rodeo,  
28 gymkhana and/or roping events would occur per year;

1           ▪     Approximately sixty (60) horse riders and “30+ vehicles” (plus horse trailers)  
2 per event day;

3           ▪     Sound amplification system on event days; and

4           ▪     Access from the public road (Millerton Road) to the Maxwell Property (the  
5 proposed location of the commercial horse and rodeo arena) is exclusively by way of Rusty  
6 Spur Lane. The proposed purpose and terms of the Application shall hereinafter be referred to  
7 as the “Commercial Rodeo Project.” Access to the proposed Commercial Rodeo Project by  
8 way of Rusty Spur Lane shall hereinafter be referred to as “Commercial Rodeo Project Access.”

9           26. Plaintiffs are informed and believe and thereon allege that the Commercial  
10 Rodeo Project will not include the boarding of horses other than the personal horses of the  
11 Maxwell’s. (See Page 1 of the Operational Statement, Exhibit “H.”) Plaintiffs are further  
12 informed and believe and thereon allege that the Commercial Rodeo Project shall not include  
13 any rodeo lessons or riding academies. Plaintiffs are further informed and believe and thereon  
14 allege that the stated purpose of the Commercial Rodeo Project is to invite rodeo, roping and/or  
15 gymkhana participants to participate in rodeo, roping and/or gymkhana events and to invite  
16 patrons to sit in attendance and observe such events.

17           27. Plaintiffs are informed and believe and thereon allege that on or about  
18 December 9, 2009, the Maxwell’s revised their Operational Statement previously submitted to  
19 the County. The revised Operational Statement modified the Commercial Rodeo Project as  
20 follows:

21           ▪     The rodeo, roping and/or gymkhana events would occur on weekends between  
22 April 1 and September 30 of any calendar year; and

23           ▪     Saturday events would occur between the hours of 8:00 a.m. and 5:00 p.m.;  
24 Sunday events would occur between the hours of 10:00 a.m. and 5:00 p.m. No other significant  
25 revisions were made to the Commercial Rodeo Project.

26           **Limited Agricultural District Zoning and Permitted Uses**

27           28. All of the parcels currently owned by the Rusty Spur Lane Property Owners  
28 are within the Agricultural Limited Zone District (hereinafter “AL”). Pursuant to the Municipal



1 Code of the County of Fresno, Section 817.2, the Commercial Rodeo Project is not a use that is  
2 permitted by right under the current AL zoning on the Rusty Spur Lane Property Owners'  
3 parcels (or dominant tenements), including the Maxwell Property.

4 29. Pursuant to the Municipal Code of the County of Fresno, Section 817.3, the  
5 Commercial Rodeo Project is not a use that is permitted subject to a Conditional Use Permit.

6 30. The Maxwell's intend to conduct commercial horse and rodeo events on the  
7 Maxwell Property pursuant to the Municipal Code of the County of Fresno, Section 817.2.B,  
8 which permits the use of "commercial stables or riding academies" subject to review and  
9 approval of the Director of the Fresno County Department of Public Works and Planning or the  
10 Fresno County Planning Commission. Municipal Code of the County of Fresno, Section 803.16  
11 defines "commercial stable" as "the keeping of horses for remuneration." The Application  
12 provides, however, that the Maxwell's will not be boarding horses of others on the Maxwell  
13 Property. The Application fails to provide any indication that the Commercial Rodeo Project  
14 will include any rodeo, roping or gymkhana riding academies or lessons.

15 **Planning Commission Action**

16 31. On December 10, 2009, the Fresno County Planning Commission (the  
17 "Commission") considered the Application for the Commercial Rodeo Project. At the  
18 conclusion of that hearing, the Commission approved the Application (Resolution No. 12182),  
19 subject to certain conditions (the "Conditions of Approval"). The Conditions of Approval  
20 provide, in relevant part, are as follows:

21 ■ There shall be no more than twelve (12) event days per year consisting of six  
22 youth-focused event days and six adult-focused event days to be conducted on weekends  
23 between the months of April and September;

24 ■ The Commercial Rodeo Project shall be operated in substantial compliance  
25 with the revised Operational Statement, dated December 4, 2009;

26 ■ The gate providing access to Rusty Spur Lane from Millerton Road shall  
27 remain open during arrival times on event days to preclude vehicle queuing on Millerton Road.

28 ///

1 **County Board of Supervisors Action**

2 32. The Haines' timely filed an appeal of the Commission's Resolution No. 12182  
3 (the "Appeal"). On February 23, 2010, the Fresno County Board of Supervisors considered the  
4 Appeal. Following that hearing, the Board of Supervisors concluded that because the only  
5 access to the proposed Commercial Rodeo Project is by way of Rusty Spur Lane, a private road  
6 easement, the Appeal could not be decided and the Commercial Rodeo Project could not be  
7 permitted until the instant lawsuit relating to, among other things, the legal use of Rusty Spur  
8 Lane road by participants and patrons of the proposed Commercial Horse Arena was finally  
9 determined. No other findings or conclusions were made by the Board of Supervisors.

10 33. Plaintiffs are informed and believe and thereon allege that Defendants Sample  
11 are in agreement with Plaintiffs' interpretation and understanding of Rusty Spur Lane Property  
12 Owners' respective rights and obligations in furtherance of and part of the beneficial use of  
13 Rusty Spur Lane as a private right of way and not for the purpose of allowing patrons access to  
14 the Commercial Rodeo Project. Plaintiffs name Defendants Sample as Defendants herein only  
15 for the purpose of including all Rusty Spur Lane Property Owners in this action.

16 **CAUSE OF ACTION**

17 **(As Against the Rusty Spur Lane Defendants**

18 **for Declaratory Relief re: Road Maintenance Agreement)**

19 34. Plaintiffs incorporate by reference herein paragraphs 1 through 33 of this  
20 Second Amended Complaint as though fully set forth herein.

21 35. An actual controversy has arisen and now exists between the Plaintiffs and the  
22 Rusty Spur Lane Defendants concerning their respective rights and obligations in furtherance of  
23 and part of the Roadway Maintenance Agreement. Plaintiffs contend, and the Rusty Spur Lane  
24 Defendants deny that the public use of Rusty Spur Lane as a result of the Commercial Rodeo  
25 Project Access constitutes a breach of the Roadway Maintenance Agreement;

26 36. In light of the pending Application and Appeal relating to the Commercial  
27 Rodeo Project and the access thereto, a judicial declaration is necessary and appropriate at this

28 ///

1 time in order that the Plaintiffs may ascertain their rights and duties as Rusty Spur Lane  
2 Property Owners with respect to the Roadway Maintenance Agreement.

3 **WHEREFORE**, Plaintiffs pray for judgment as set forth more fully below:

4 **As Against the Rusty Spur Lane Defendants:**

5 1) For a judicial determination that public use of Rusty Spur Lane as a result of  
6 the Commercial Rodeo Project Access **will constitute a material breach of the Roadway**  
7 **Maintenance Agreement;**

8 2) For a judicial determination that Commercial Rodeo Project Access is not  
9 a permitted right of access under the course of conduct of the signatories to the Roadway  
10 **Maintenance Agreement;**

11 3) For a judicial determination that Commercial Rodeo Project Access  
12 violates the covenant of good faith and fair dealing implied in the Roadway Maintenance  
13 Agreement in that the remaining Rusty Spur Lane Owners, other than Defendant  
14 Maxwell, will be burdened with a disproportionate share of the cost of maintaining the  
15 roadway for public use;

16 4) For a judicial determination that the condition of approval of the  
17 Commercial Rodeo Project to keep the gate at the entrance of Rusty Spur Lane and  
18 Millerton Road open during event days violates the covenant of good faith and fair dealing  
19 implied in the Roadway Maintenance Agreement in that such condition subjects Rusty  
20 Spur Lane to public use;

21 5) For a judicial determination that failure to pay the agreed upon annual  
22 assessments under the Roadway Maintenance Agreement on or before the due date is a  
23 **material breach of the Roadway Maintenance Agreement;**

24 6) For a judicial determination that Defendant Charlie and Tamara Maxwell  
25 are in material breach of the Roadway Maintenance Agreement for failure to pay their  
26 **2011 annual assessment; and**

27 ///

28 ///

1           7) For any further relief as the Court may deem just and proper.  
2

3 Dated: July 19, 2011

FOWLER | HELSEL

4   
5

6 Jason A. Helsel, Esq.  
7 Attorney for Plaintiffs Wade and Rhonda Haines  
8 Birchwood Park, LLC, White Properties, Inc. and  
9 Jack Murray  
10  
11  
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# **EXHIBIT "A"**

39892

RECORDING  
REQUESTED BYFloyd R. Sohm,  
PRATHER, Calif.

## AGREEMENT AND GRANT OF EASEMENT

BOOK 5793 PAGE 449

THIS AGREEMENT and GRANT OF EASEMENT, made this 2<sup>nd</sup> day of June, 1970, by and between Floyd Robert Sohm and Wilda Ruth Sohm and Ethel Marie Ferguson, being a non-exclusive Easement, 60 feet wide, for roadway purposes for ingress and egress to and from the Fresno County Road, known as Millerton Road, and across the property of Ethel Marie Ferguson, and described as follows:

Starting at a point at the Millerton Road and going along the East line of the S.W.  $\frac{1}{4}$  of the S.E.  $\frac{1}{4}$  of Section 17 - T. 11 S. - R. 22 E. - N.D.B. & M. and going South along this line to the South line of said Section thence going West along this said Section line for a distance of 60 feet thence going North, parallel to the East line of said section to the Millerton Road thence East along this Road to the point of beginning.

A gate or cattleguard shall be constructed at each end of said Easement. This Easement for the benefit of property owned by Floyd Robert Sohm and Wilda Ruth Sohm and described as follows:

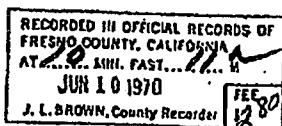
The North  $\frac{1}{4}$  of the S.E.  $\frac{1}{4}$  of Section 20 and the South  $\frac{1}{4}$  of the N.E.  $\frac{1}{4}$  of section 20 and the N.W.  $\frac{1}{4}$  of the N.E.  $\frac{1}{4}$  of Section 20 and all in T. 11 S. - R. 22 E. - N.D.B. & M.

Neither Ethel Marie Ferguson or her Successors shall be required to contribute to the construction or maintenance of said Easement, gate or cattleguard. However, Ethel Marie Ferguson or her Successors shall have the right to use said Easement for roadway purposes for ingress and egress to her property.

This Agreement shall be binding upon, and shall inure to the benefit of the heirs, administrators and executors, successors and assigns of the respective parties hereto.

Grantor: Ethel Marie Ferguson  
Ethel Marie Ferguson.

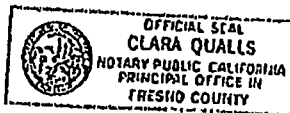
Grantees: Floyd Robert Sohm  
Floyd Robert Sohm.  
Wilda Ruth Sohm  
Wilda Ruth Sohm.



SUBSCRIBED AND SWORN TO BEFORE ME

THIS 2<sup>nd</sup> DAY OF June 1970Clara Qualls

CLARA QUALLS - Notary Public - Cal.  
COM. EXP. SEPT. 14, 1971 - FRESNO CO.  
P. O. Box 304, Aubrey, Calif. 95202



STATE OF CALIFORNIA }  
County of Fresno } SS.

On this 24 day of June in the year of one thousand nine hundred seventy, before me, the undersigned, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared ETHEL MARIE FERGUSON, FLOYD ROBERT SOHN and WILDA RUTH SOHN, known to me to be the persons described in, whose names are subscribed to and who executed the within instrument, and acknowledged that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said County, the day and year in this Certificate first above written.

*Clara Qualls*  
\_\_\_\_\_  
CLARA QUALLS  
Notary Public - California, Principal  
Office - Fresno County.

SUBSCRIBED AND SWORN TO BEFORE ME

THIS 24 DAY OF June 1970

*Clara Qualls*  
\_\_\_\_\_  
CLARA QUALLS - Notary Public - Cal.  
COR. 14th & SEVE. 14, 1911 - FRESNO CO.  
P. O. Box 331, Arden, Calif. 93602



# **EXHIBIT "B"**



When recorded return to:  
Development Services Division  
Stop 53

92151474

|  |                 |
|--|-----------------|
| RECORDED IN OFFICIAL RECORDS OF<br>FRESNO COUNTY, CALIFORNIA |                 |
| AT   | MIN. PAST 3 P M |
| OCT 02 1992  |                 |
| WILLIAM C. GREENWOOD<br>County Recorder                      | FEE<br>\$17.    |

CERTIFICATE OF WAIVER OF PARCEL MAP  
No. 91-39

This document is to certify that DONALD E. SCHRAMM and NADA LU SCHRAMM are the owners of that real property situated in the County of Fresno, State of California, more particularly described as follows:

The West half of the Northeast quarter; the Southeast quarter of the Northeast quarter; and the North half of the Southeast quarter; all in Section 20, Township 11 South, Range 22 East, Mount Diablo Base and Meridian, according to the Official Plat thereof.

That the above-described real property is proposed for division along those division lines set forth in that map recorded in Book 38 of Record of Surveys at Page 53, Fresno County Records.

The waiver of a tentative and parcel map as requested by the said owner has been approved by the Director of the Public Works & Development Services Department pursuant to approved Waiver Application No. 91-39, dated May 19, 1992.

In the event all or any portion of the real property is divided as proposed in said Record of Survey, such property shall be subject to the following:


The undersigned, in consideration of being granted an approval of said Waiver Application No. 91-39 by the County of Fresno, do hereby covenant and agree with the County of Fresno that they will convey to the purchasers of any portion of the real property proposed for division without public road frontage an easement for access purposes 60 feet in width described as follows:

(See Exhibit "A" attached hereto and made a part hereof.)

SUBDIVIDER STATEMENT

The undersigned being parties having record title interest in the land within this subdivision hereby consent to the preparation and recordation of this certificate:

Dated: 9-4-92

  
DONALD E. SCHRAMM

  
NADA LU SCHRAMM

CONTRACT VENDEE

  
CHARLES H. MAXWELL

  
TAMARA K. MAXWELL

STATE OF CALIFORNIA

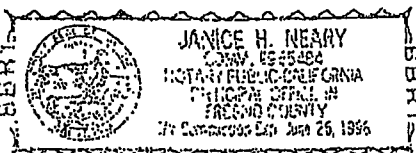
COUNTY OF Fresno

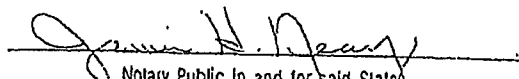
SS.

On this 4th day of September, in the year 1992  
before me, the undersigned, a Notary Public in and for said State, personally appeared  
Charles H. Maxwell & Tamara K. Maxwell

\_\_\_\_\_, personally known to me  
(or proved to me on the basis of satisfactory evidence) to be the persons whose names  
are subscribed to the within instrument, and acknowledged to me that they  
executed it.

WITNESS my hand and official seal.



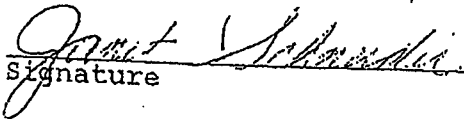
  
Notary Public in and for said State

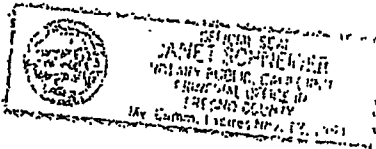
State of California

County of Fresno

On September 3, 1992 before me Janet Schneider, personally appeared Donald E. Schramm and Nada Lu Schramm personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose name they subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

  
Signature



COUNTY SURVEYOR'S STATEMENT

This certificate conforms with the requirements of the subdivision map act and local ordinance.

Dated: OCT. 2, 1992

Richard D. Welton, Director  
Public Works & Development Services  
Department

By: Robert E. Greene  
Robert E. Greene, PLS 4699  
Senior Engineer

STATE OF CALIFORNIA, )  
COUNTY OF FRESNO, ) ss.

On this 2ND day of OCTOBER in the year 1992  
before me, SUSAN B. ANDERSON, County Clerk, in and for the County of  
Fresno, personally appeared ROBERT E. GREENE, Senior Engineer,  
Development Engineering, Fresno County, personally known to me to be  
the person whose name is subscribed hereto, and who executed the  
annexed instrument and acknowledged to me that he executed the same.

WITNESS my hand and affixed the seal of the County of Fresno.



SUSAN B. ANDERSON, County Clerk

By: [Signature]  
Deputy County Clerk

92031W.T

# **EXHIBIT "C"**

CONSISTING OF ONE SHEET

IN THE EAST NEAR 1ST SECTION 2ND TOWNSHIP 77 SOUTH, RANGE 22 EAST, LIBERTY TOWNSHIP ALICE AND WILFRED

**CONTRACTS WITHHOLDING**

RECEIVED  
JAN 10 1964  
U.S. DEPT. OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
WASHINGTON, D.C. 20535

**EXPERT INSPECTION'S GUARANTEE**

WORKING IN THE  
FIELD WORK & DEVELOPMENT OFFICE

UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
WASHINGTON, D. C. 20535

PHOTO BY BOBBI MC FRY

Edith Warner

FOR THE UNITED STATES  
SIXTH DISTRICT

1

REC'D BY 92151475

WAS THE STAY OR STAY?

Page 8 ENCLOSURE

•

2

66

$\beta/\gamma$  3/5  $\Delta$  5/3

# **EXHIBIT "D"**

EXHIBIT "A"

The East 60.00 feet of the Northwest quarter of the Northeast quarter of Section 20, Township 11 South, Range 22 East, Mount Diablo Base and Meridian.

Together with a 60.00 foot wide parcel of land in the South half of the Northeast quarter and the North half of the Southeast quarter of said Section 20, the centerline of which is described as follows:

Beginning at a point on the North line of the West half of said South half of the Northeast quarter which bears North  $88^{\circ}13'38''$  West a distance of 30.01 feet from the Northeast corner thereof; thence Southeasterly along a curve concave to the Northeast whose radius point bears South  $86^{\circ}58'26''$  East a distance of 125.00 feet, through a central angle of  $35^{\circ}01'41''$ , an arc distance of 76.42 feet; thence Southerly, along a reverse curve concave to the West with a radius of 125.00 feet, through a central angle of  $69^{\circ}05'31''$ , an arc distance of 150.74 feet; thence Southerly, along a reverse curve concave to the East with a radius of 125.00 feet, through a central angle of  $62^{\circ}35'02''$ , an arc distance of 136.54 feet; thence Southeasterly, along a reverse curve concave to the Southwest with a radius of 125.00 feet, through a central angle of  $21^{\circ}48'24''$ , an arc distance of 47.57 feet; thence South  $03^{\circ}41'14''$  East a distance of 75.54 feet; thence Southwesterly along a tangent curve concave to the Northwest with a radius of 300.00 feet, through a central angle of  $34^{\circ}21'59''$ , an arc distance of 179.94 feet; thence Southerly, along a reverse curve concave to East with a radius of 250.00 feet, through a central angle of  $65^{\circ}46'47''$ , an arc distance of 287.02 feet; thence South  $35^{\circ}06'02''$  East a distance of 156.22 feet; thence Southeasterly, Southerly and Southwesterly along a tangent curve to the West with a radius of 125.00 feet, through a central angle of  $98^{\circ}29'34''$ , an arc distance of 214.88 feet; thence Southwesterly along a reverse curve concave to the Southeast with a radius of 125.00 feet, through a central angle of  $60^{\circ}21'58''$ , an arc distance of 131.70 feet to Northwest corner of the East half of said North half of the Southeast quarter; thence South  $03^{\circ}01'34''$  West, along the West line of said East half, a distance of 60.00 feet.

5



# **EXHIBIT "E"**

RETURN TO

Rabe Engineering  
2021 Oakway Blvd  
Fresno, Ca 93717

92150333

|   |                    |
|---|--------------------|
| RECORDED IN OFFICIAL RECORDS OF<br>FRESNO COUNTY, CALIFORNIA<br>AT <u>25</u> JAN. PAST <u>11A</u> M |                    |
| OCT 1 - 1992  |                    |
| WILLIAM C. GREENWOOD<br>County Recorder   | FEE<br>\$ <u>8</u> |

COVENANT AND AGREEMENT REGARDING IMPROVEMENT  
AND MAINTENANCE OF PRIVATE ROADS

The undersigned represent that they are sole owners of that parcel of  
real property being divided by Parcel Map No. 91-39 and situate in the  
County of Fresno, State of California, described as follows:


The West half of the Northeast quarter; the Southeast quarter of the  
Northeast quarter, and the North half of the Southeast quarter, all in  
Section 20, Township 11 South, Range 22 East, Mount Diablo Base and  
Meridian, according to the Official Plat thereof.

That access to the above-described real property from a public road  
is over and across a non-exclusive private road easement extending between a  
public road and above-described parcel being divided as is more particularly  
delineated upon said parcel map.

That in accordance with the tentative parcel map approved by the  
Director of Public Works & Development Services Department of the County of  
Fresno on the 19th day of May 1992 and in accordance with  
the provisions of the Ordinance Code of the County of Fresno, the undersigned  
do hereby covenant on behalf of themselves and their successors in interest  
that they will pay their proportionate share of the cost toward the  
improvement and/or maintenance of the private road to a standard determined  
adequate by the users of said private road, through a district, agency or  
other entity, whether public or private, for the improvement and/or  
maintenance of said private road.

This covenant and agreement shall run with the land and be binding  
upon the undersigned, their heirs, successors and assigns.

DATED: 9-29-92

  
Neda Lee Schramm

REG:jb:23800

FRESNO COUNTY RECORDERS OFFICE

OCT 01 1992

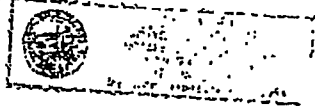
State of California

County of Fresno

On September 29, 1992 before me Janet Schneider, personally appeared Donald E. Schramm and Nada Lu Schramm personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose name they subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

Janet Schneider  
Signature



2

OCT 01 1992

# **EXHIBIT "F"**

BEFORE THE BOARD OF SUPERVISORS

COUNTY OF FRESNO

STATE OF CALIFORNIA

|                            |   |                              |
|----------------------------|---|------------------------------|
| In the matter of           | ) | RESOLUTION REMOVING AN       |
| ZONE AW OF COUNTY          | ) | ASSESSMENT ON REAL PROPERTY  |
| SERVICE AREA NO. 35, RUSTY | ) | FOR ROAD MAINTENANCE AND     |
| SPUR LANE                  | ) | DISSOLVING ZONE AW OF COUNTY |
|                            |   | SERVICE AREA NO. 35          |

WHEREAS, Zone AW of County Service Area No. 35, whose territory includes the area described in Exhibit "A" attached hereto and incorporated herein by reference, was formed by the Board of Supervisors of the County of Fresno on November 16, 1993, for the maintenance of Rusty Spur Lane; and

WHEREAS, said formation was at the request of the property owner/subdivider as a condition of approval of Parcel Map Waiver No. 91-39; and

WHEREAS, Rusty Spur Lane is a private road dedicated for public use and is not owned by the County of Fresno or maintained with County Road Funds; and

WHEREAS, the County of Fresno has provided road maintenance services for Rusty Spur Lane through Zone AW since the date of formation and at the direction of the property owners within the zone; and

WHEREAS, the property owners within Zone AW have paid a yearly assessment for the maintenance of Rusty Spur Lane; and

WHEREAS, the eight property owners of the nine parcels within Zone AW have presented a petition to the County of Fresno requesting that Zone AW of County Service Area No. 35 be dissolved and the assessment on real property for the maintenance of Rusty Spur Lane be removed by the Board of Supervisors; and

WHEREAS, Article XIIC, Section 3, of the State of California Constitution allows voters and property owners to repeal or reduce assessments on real property through the initiative process; and

WHEREAS, on June 29, 1999, the Board of Supervisors of the County of Fresno considered the property owners' unanimous request to dissolve Zone AW of County

1 Service Area No. 35 and for the removal of an assessment on real property for the  
2 maintenance of Rusty Spur Lane.

3 NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the  
4 County of Fresno that Zone AW of County Service Area No. 35, whose territory  
5 includes the area described in Exhibit "A" attached hereto and incorporated herein by  
6 reference, is hereby dissolved.

7 BE IT FURTHER RESOLVED that the Board of Supervisors of the County of  
8 Fresno hereby repeals any assessments on real property for the road maintenance of  
9 Rusty Spur Lane on property within the boundaries of Zone AW of County Service Area  
10 No. 35, whose territory includes the area described in Exhibit "A" attached hereto and  
11 incorporated herein by reference.

12 BE IT FURTHER RESOLVED that any funds remaining in the Zone AW budget  
13 after payment of the County's costs for the dissolution process, any outstanding County  
14 road maintenance costs and any other outstanding County costs associated with the  
15 operation and administration of Zone AW shall be equally divided and returned to each  
16 property owner within the former zone.

17 BE IT FURTHER RESOLVED that based on the Board of Supervisor's action no  
18 assessment shall be levied for Fiscal Year 1999-2000.

19 ADOPTED by the Fresno County Board of Supervisors this 29th day of June,  
20 1999, by the following vote, to-wit:

21 AYES: Supervisors Koligian, Arambula, Case, Oken, Levy

22 NOES: None

23 ABSENT: None

24  
25 ATTEST:

26 SHARI GREENWOOD, Clerk  
27 Board of Supervisors

28 By

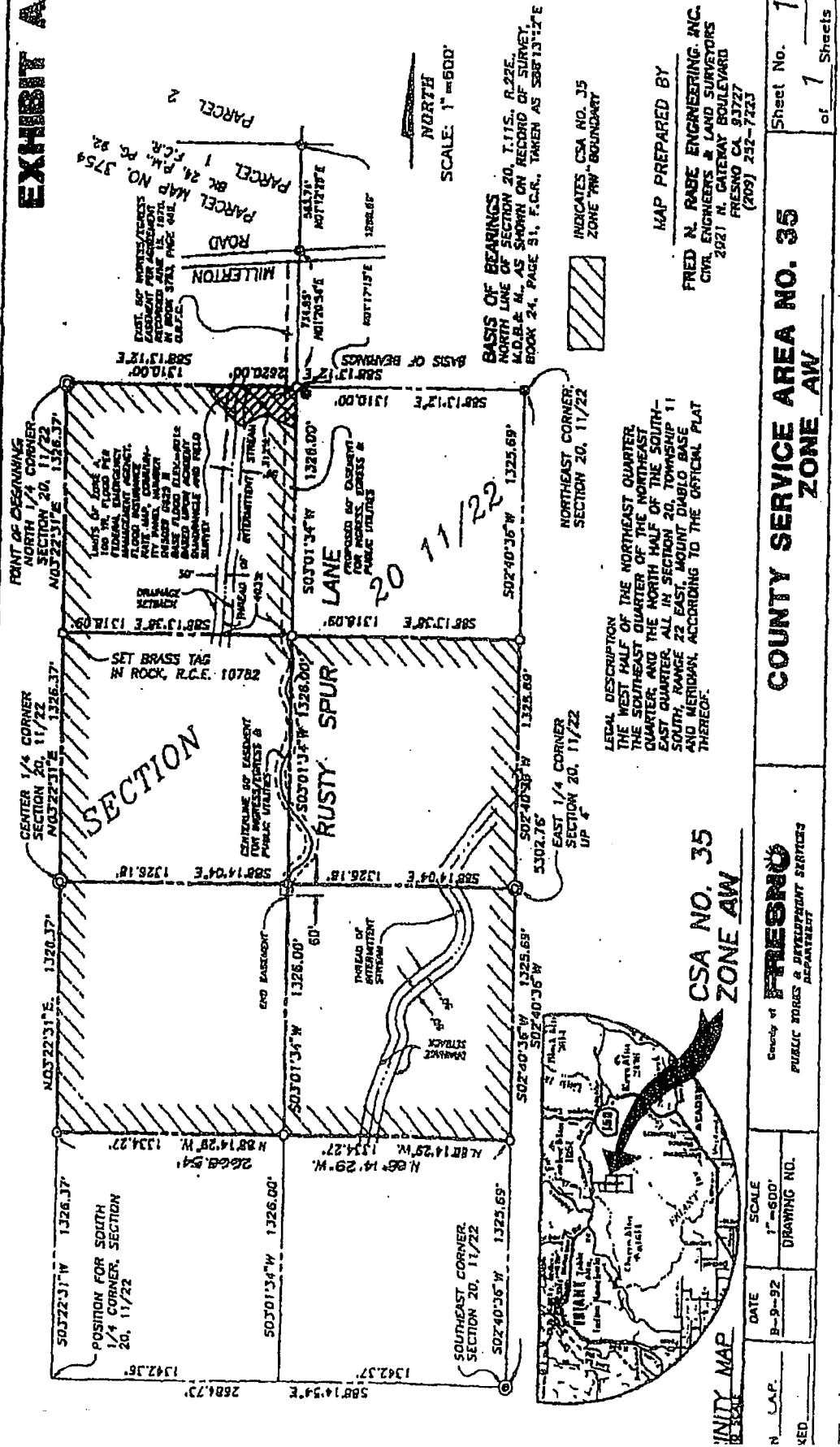
*Patty Schalk*  
Deputy

*Sharon Levy*  
CHAIRMAN, Board of Supervisors

ff, awresodic.doc

6/17/99

# EXHIBIT A



|  |                  |                               |
|--|------------------|-------------------------------|
| COUNTY SERVICE AREA NO. 35<br>ZONE AW  |                  | Sheet No. 1<br>of 1 Sheets    |
| County of <b>FRESNO</b><br>PUBLIC WORKS & DEVELOPMENT SERVICES<br>DEPARTMENT |                  | DATE<br>8-9-92<br>DRAWING NO. |
| N. L.A.P.<br>8-9-92  | SCALE<br>1"=600' | DATE<br>8-9-92<br>DRAWING NO. |

COUNTY SERVICE AREA 35, ZONE 'AW'  
PARCEL MAP WAIVER NO. 91-39  
Boundary Description

The west half of the northeast quarter, the southeast quarter of the northeast quarter; and the north half of the southeast quarter, all in Section 20, Township 11 South, Range 22 East, Mount Diablo Base and Meridian, according to the official plat thereof, described as follows:

BEGINNING at the north quarter corner of said Section 20; thence,

- (1) South  $88^{\circ}13'12''$  East, along the north line of the northeast quarter of said section, a distance of 1310.00 feet to the east line of the west half of the northeast quarter of said section; thence,
- (2) South  $03^{\circ}01'34''$  West, along said east line, a distance of 1326.00 feet to the north line of the southeast quarter of the northeast quarter of said section; thence,
- (3) South  $88^{\circ}13'38''$  East, along said north line, a distance of 1318.09 feet to the east line of said section; thence,
- (4) South  $02^{\circ}40'36''$  West, the following distances along the east line of said section: 1325.69 feet, to the east quarter of said section; thence, 1325.69 feet to the south line of the north half of the southeast quarter of said section; thence,
- (5) North  $88^{\circ}14'29''$  West, along said south line, 2668.54 feet to the north-south centerline of said section; thence,
- (6) North  $03^{\circ}22'31''$  East, along said centerline, the following distances: 1326.37 feet to the center quarter corner of said section; thence, 2652.74 feet to the POINT OF BEGINNING.

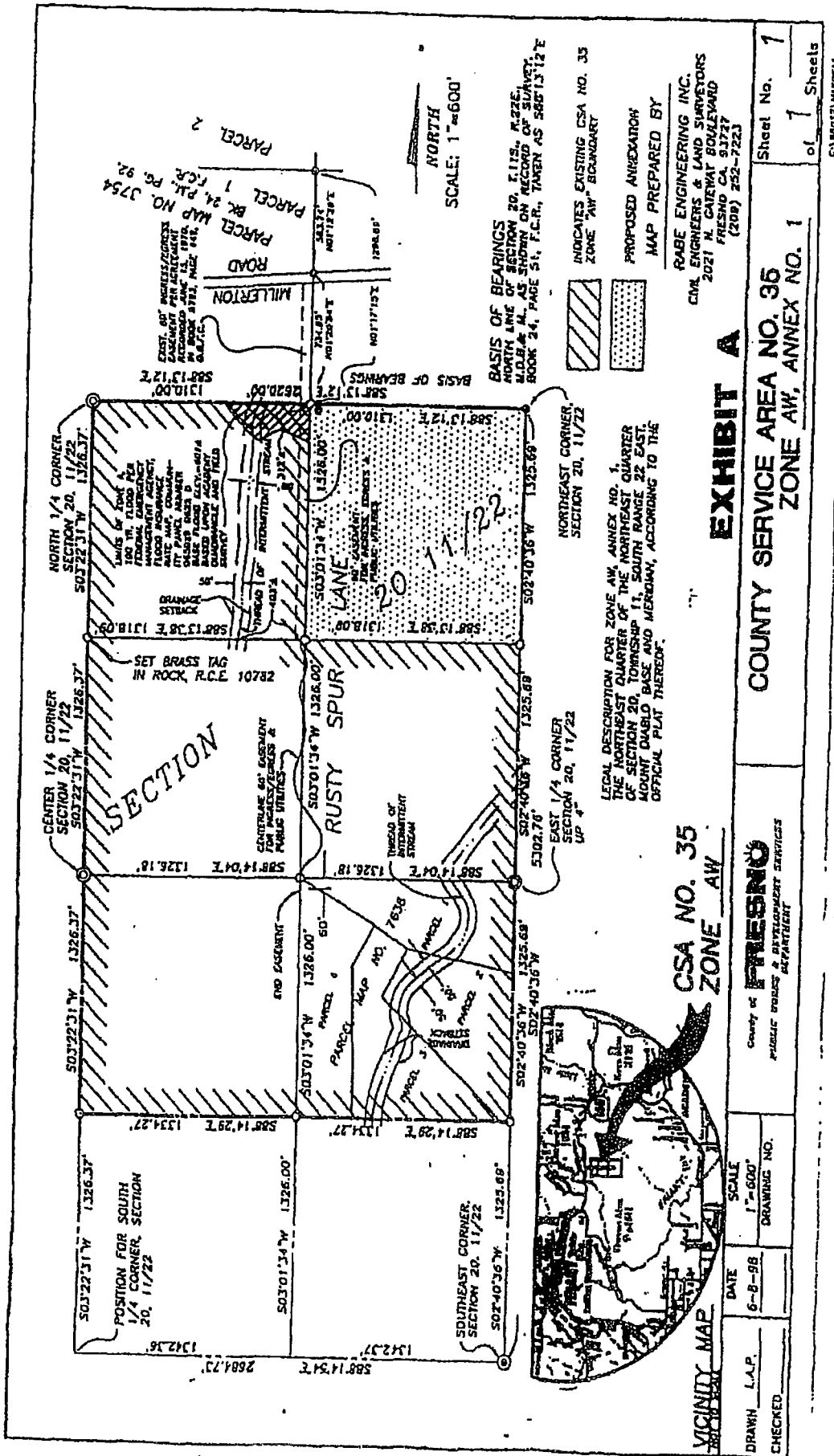
Containing 200 acres, more or less.

APN. 138-161-05

9-17-92  
rev. 10-28-93  
WS034 C:\WORD\CSA\235AW

**EXHIBIT A**





CSA NO. 35  
ZONE AW

# EXHIBIT A

COUNTY SERVICE AREA NO. 35  
ZONE AW, ANNEX NO. 1

County of **FRESNO**  
PUBLIC WORKS & DEVELOPMENT SERVICES  
DEPARTMENT

|              |        |         |             |
|--------------|--------|---------|-------------|
| DRAWN L.A.P. | DATE   | SCALE   | DRAWING NO. |
| CHECKED      | 6-8-98 | 1"=600' |             |

Sheet No. 1  
of 1 Sheets

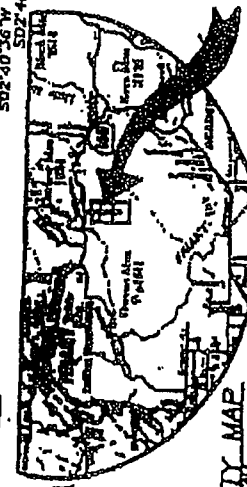
RABE ENGINEERING INC.  
CIVIL ENGINEERS & LAND SURVEYORS  
2021 N. GATEWAY BOULEVARD  
FRESNO CA 93727  
(209) 252-7223

BASIS OF BEARINGS  
NORTH LINE OF SECTION 20, T.11N., R.22E.,  
S10B & M., AS SHOWN ON RECORD OF SURVEY,  
BOOK 24, PAGE 51, F.C.R., TAKEN AS S85°13'12"E

INDICATES EXISTING CSA NO. 35  
ZONE "AW" BOUNDARY  
PROPOSED ANNEXATION  
MAP PREPARED BY

NORTH  
SCALE: 1"=600'

LEGAL DESCRIPTION FOR ZONE AW, ANNEX NO. 1,  
THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER  
OF SECTION 20, TOWNSHIP 11, SOUTH RANGE 22 EAST,  
COUNTY OF FRESNO, CALIFORNIA, ACCORDING TO THE  
OFFICIAL PLAT THEREOF.



**COUNTY SERVICE AREA 35, ZONE "AW"**

**ANNEXATION NO. 1  
Boundary Description**

The Northeast quarter of the Northeast quarter of Section 20, Township 11 South, Range 22 East, Mount Diablo Base and Meridian, in the County of Fresno, State of California, according to Official Plat thereof, more particularly described as follows:

BEGINNING at the Northeast corner of said Section 20; thence South  $02^{\circ}40'36''$  West, along the East line of said Section 20, a distance of 1325.69 feet; thence North  $88^{\circ}13'38''$  West, along the existing boundary of Zone "AW", a distance of 1318.09 feet; thence North  $03^{\circ}01'34''$  East, along the existing boundary of Zone "AW", a distance of 1326.00 feet to the North line of said Section 20; thence South  $88^{\circ}13'38''$  East, along said North line, a distance of 1310.00 feet to the Point of Beginning.

Containing 40 acres, more or less

A Portion of  
APN 138-061-10

**EXHIBIT A**



# County of Fresno

## BOARD OF SUPERVISORS

|                   |                |              |                |                       |                   |
|-------------------|----------------|--------------|----------------|-----------------------|-------------------|
| Chairman          | Vice-Chairman  |              |                |                       |                   |
| Susan B. Anderson | Judith G. Case | Phil Larson  | Henry Perera   | Deborah A. Poochigian | Bernice E. Seidel |
| District Two      | District Four  | District One | District Three | District Five         | Clerk             |

STATE OF CALIFORNIA,

ss.

COUNTY OF FRESNO

I, BERNICE E. SEIDEL Clerk to the Board of Supervisors of said Fresno County, do hereby certify the attached to be full, true and correct copies of the original Agenda Item/Minute Order and Resolution regarding the Removing an Assessment on Real Property for Road Maintenance and Dissolving Zone AW of County Service Area No. 35 for the June 29, 1999 Board of Supervisors' Meeting.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Board of Supervisors, this 9th day of September, 2009.

BERNICE E. SEIDEL, Clerk  
Board of Supervisors  
Fresno County, California

By

Kelley McCreary  
Deputy Clerk



# **EXHIBIT "G"**

1. PHOTOGRAPH REQUESTED BY

AND WITH REDUCED MAIL THIS AGREEMENT TO

Charlie & Tamara Maxwell  
10925 Rusty Spur Lane  
Clovis, CA 93611

Fresno County Recorder  
William C. Greenwood  
DOC- 2000-0027676  
Thursday, June 08, 2000 11:24:33  
REG \$10.00 TCR \$4.00 JCN \$0.00  
HTG \$1.00 DPT \$0.00  
TTL PD \$15.00 FRT-\$010037210  
adv/105/L-S

BY MAIL REQUESTED BY

#### AGREEMENT TO SHARE ROADWAY MAINTENANCE EXPENSES FOR RUSTY SPUR LANE

This Agreement is entered into this 10<sup>th</sup> day of June, 1999 between all "Owners" having access to Rusty Spur Lane as listed on the attached Exhibit A incorporated herein and hereinafter referred to as "Owners".

The Owners are owners of tenants in common interests (hereinafter the "Owners' Interests" or Owner's Interest") of a parcel of land commonly known as "Rusty Spur Lane" (hereinafter the "Road"), with each tenant in common having specific rights, duties and obligations to pass over the land held by the other tenants in common pursuant to a "Mutual Easement Agreement For Private Right of Way" recorded to benefit and burden all tenants in common.

The Owners wish to enter into an agreement which provides for the Owners to share in the cost of maintaining and repairing that property described in Exhibit A, commonly known as Rusty Spur Lane. Each of the parties of this agreement agree that their respective Owners' Interests shall be held, conveyed, hypothecated, encumbered, leased, mortgaged, used and occupied subject to the following limitations, reservations, covenants, conditions, servitudes, liens and charges, all of which are declared and agreed to be in furtherance of and part of the beneficial use of the Road as a private right of way, and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and utility of the Road. These provisions are imposed upon the parties hereto, and are for the benefit of such parties, their Owners' Interests, and the properties owned by such parties contiguous to such Owners' Interests, and shall bind the parties hereto. These provisions shall be a burden upon and a benefit to not only the original owners of the Owners' Interests, but also to their successors and assigns with any owners of subsequently subdivided parcels assuming one full share of rights and obligations per assessor's parcel created subject to paragraph 3, below. All covenants are intended as and are declared to be covenants running with the land as well as equitable servitudes upon the land.

#### TERM

1. This Agreement shall be in effect for a period of three (3) years at which time it shall be automatically extended for subsequent three (3) year periods unless disapproved in writing by all holders of an Owner's Interest. Each holder of an Owner's Interest expressly waives the right to seek judicial partition of the Owner's Interest. Should the election be made to terminate this Agreement, it shall be a mandatory requirement prior to termination that Fresno County accept the maintenance of the roadway in the previously canceled CSA.

#### AUTHORIZED MAINTENANCE AND REPAIRS

2. This Agreement covers all expenses relative to maintenance or replacement of the road, or replacement of security gate installed, if any, and the crossing over the intermittent stream located near Millerton Road.

#### COSTS AND EXPENSES

3. The Owners will bear the costs and expenses of the maintenance and repair/replacement work specified in Paragraph 2 of this Agreement as follows:

An annual fee of \$400 per parcel has been agreed to by the Owners. Provided, however, should an Owner subdivide his parcel, no increase in annual fee shall be assessed until such time as the Owner sells a parcel so subdivided. This sum is due no later than August 15 of each year beginning August 15, 1999 and continuing annually thereafter. This sum may be assessed from time to time at the annual meeting by vote of a two-thirds majority of Owners whether present or not, meaning two-thirds of the total number of Owners, whether present or not. The vote may be made by proxy if an Owner is unable to attend the annual meeting.

Should the reserve fund reach a level of \$10,000, annual assessments shall be discontinued until the fund drops below that level, unless a two-thirds majority of the total number of Owners, whether present or not, votes in favor of continuing the assessment to provide for a future anticipated need.

#### LIENS

4. Unpaid sums assessed to each of the Owner's Interests shall be considered delinquent and bear a late charge of one and one half percent (1.5%) per month if not paid within thirty (30) days of its due date. Such sums, together with reasonable attorney's fees and costs, shall become a lien against the delinquent Owner's Interest upon the recording in the office of the County Recorder of Fresno County of a Notice of Delinquent Assessment. This notice shall describe the amount of the delinquent assessment, the charges authorized by this agreement, a description of the Owner's Interest, and the name of the Owner, and shall be signed by the Owner Responsible for Record Keeping.

If the delinquent assessment or installment and related charges are paid or otherwise satisfied, by either the Owner or his or her mortgagee, the Owner Responsible for Record Keeping shall record a notice of satisfaction and release of lien.

After the recording of the Notice of Delinquent Assessment, the Owner Responsible for Record Keeping may enforce any assessment lien by filing an action for judicial foreclosure or by recording a notice of default in the form described in the California Civil Code to commence a non-judicial foreclosure. The Owner Responsible for Record Keeping may bid at any foreclosure sale and any amounts in excess of a credit bid shall become an assessment on all remaining holders of Owners' Interests. If the delinquent Owner's Interest is acquired at such foreclosure sale, it shall inure to the benefit of all remaining holders of Owners' Interests, ratably.

#### ANNUAL AND SPECIAL MEETINGS

5. An annual meeting will be held in May of each year. Owners shall be notified of a place and time for the annual meeting. Business conducted at the meeting shall be decided by a two-thirds majority of the total number of Owners, whether present or not, or by proxy at the annual meeting and such decisions will be transmitted by U.S. mail to all Owners. Obligations for maintenance, repair or replacement of the road and funds required therefore shall be discussed at the annual meeting. Owners unable to attend may be represented by a third party who is to hold a written proxy and shall be authorized to vote on behalf of the absent Owner.

#### RECORDS KEEPING

At each meeting, an Owner responsible for mailing notices, collection of funds and maintaining an interest bearing account at an insured banking institution shall be designated by a two-thirds majority of the total number of Owners, whether present or not.

At each annual meeting the Owner responsible for records keeping shall provide an accounting of funds on hand, delinquent accounts, if any, and expenses for the previous period. The records keeping Owner shall be entitled to expense reimbursement from funds on hand for secretarial services, copies, costs of mailings, and other expenses necessarily incurred in the performance of those duties.

The records keeping designee shall be authorized by the Owners to represent the interests of the Owners in (i) the procurement of vendors, contractors, and materials for the purposes of this Agreement, (ii) the representation of the Owner's in Court or non-judicially for the pursuit of delinquent assessments, and other acts necessary or convenient to accomplish the spirit and letter of this Agreement. Each Owner hereby grants a special power of attorney to the records keeping designee to implement such duties. Such special power of attorney is specifically limited to matters concerning Rusty Spur Lane and this Road Maintenance Agreement. Such power of attorney (i) may be exercised by the records keeping designee by signing any document with his individual name "as attorney in fact for the Rusty Spur Owners" and (ii) is coupled with an interest and is therefore irrevocable. Any document so executed shall be the joint and several obligation of all holders of Owners' Interests.

No records keeping designee shall be liable to any person or Owner, and each holder of an Owner's Interest shall ratably indemnify such designee, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of and such records keeping designee if such designee acted in good faith and in a manner he or she reasonably believed to be in the best interests of all holders of Owner's Interest.

#### INSURANCE

6. Should outside vendors be employed to perform services in the maintenance or replacement of any of the roadway components, they must prove evidence of liability and Worker's Compensation Insurance. Owners are responsible to carry insurance to protect their interests as they deem necessary.

Each owner may carry whatever personal liability and property damage liability insurance with respect to his or her Owner's Interest that he or she desires. However, any such policy shall include a waiver of subrogation clause wherein the carrier waives the right to proceed against any of the other holders of Owners' Interests or their mortgagees.

# NOTICES

7. Notices to Owners and their mortgagees shall be mailed to the address listed under the Owners signature attached to this Agreement and shall be deemed delivered 72 hours after depositing in United States Postal Service. It is the responsibility of individual Owners and their mortgagees to maintain current mailing addresses on file with the designated Owner responsible for records keeping.

## BINDING EFFECT

8. This Agreement shall be binding on the successors and assigns, personal representatives, grantors, and tenants of Owners signatory to this Agreement.

## MORTGAGE PROTECTION

9. Any Owner may encumber his Owner's Interest.

Any lien created or claimed under the provisions of this agreement for delinquent assessments is expressly made subject to and subordinate to the rights of any mortgage that encumbers all or part of the Owner's Interest made in good faith and for value, and no such lien shall in any way invalidate, defeat, or impair the obligation or priority of such mortgage unless the mortgage expressly subordinates its interest in writing to such lien. If any Owner's Interest is encumbered by a mortgage made in good faith and for value, the foreclosure of any lien created by any provision of this agreement shall not operate to affect or impair the lien of the mortgage. On foreclosure of the mortgage, the lien for assessments shall be subordinate to the lien of the mortgage.

## ATTORNEY'S FEES

10. Should any party to this Agreement engage the services of an attorney or bring suit to enforce this Agreement, the prevailing party shall be entitled to recover attorney's fees and costs incurred in such suit.

Dated this 4 day of Feb, 2000

CHARLES MAXWELL AND TAMARA MAXWELL, HUSBAND AND WIFE, AS JOINT TENANTS

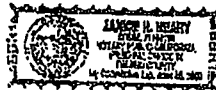
Charles Maxwell Tamara Maxwell  
Charles Maxwell Tamara Maxwell

Assessor's Parcel Number 138-061-49

Address: \_\_\_\_\_

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California  
County of FRESNO  
On 2/4/00 before me JAMES H. HENRY Notary Public  
I, James H. Henry, a Notary Public in and for the State of California, do hereby certify that Charles Maxwell and Tamara Maxwell personally appeared Charles Maxwell and Tamara Maxwell known to me or 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.



WITNESS my hand and official seal.

James H. Henry  
Notary Public

**OPTIONAL SECTION**  
**CAPACITY CLAIMED BY SIGNER**  
Though state does not require this Notary to fill in the data below, doing so may prove valuable to persons relying on the document.

☐ INDIVIDUAL  
☐ CORPORATE OFFICER(S)

☐ PARTNER(S) ☐ TITLE  
☐ LIMITED ☐ GENERAL  
☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER: \_\_\_\_\_

SIGNER IS REPRESENTING:  
NAME OF PERSON(S) OR ENTITY(ES): \_\_\_\_\_

**EXHIBIT A**

The Northwest quarter of the Northeast quarter of Section 20, Township 11 South, Range 22 East, Mount Diablo Base and Meridian, according to the official Plat thereof.

**RUSTY SPUR LANE PROPERTY OWNERS**

**Birchwood Park, LLC**  
Jack Murray, Manager  
5228 E. Pine Ave., Suite A  
Fresno, CA 93727

**Robert Carson**  
3152 W. Los Altos Ave.  
Fresno, CA 93711

**Fairy Tale Bakery, Inc.**  
Dieter Reimberg  
¾ Coast Packing Company  
3275 E. Vernon Ave.  
Vernon, CA 90058

**Bill Gallagher**  
11084 Rusty Spur Lane  
Clovis, CA 93611

**Wade & Rhonda Halnes**  
1614 E. Salem  
Fresno, CA 93720

**Ralph & Kerl Hitter**  
110 W. Shaw Ave., #102  
Clovis, CA 93612

**Nadar Malakan**  
Malakan Diamond Co.  
1396 W. Herndon Ave., #107  
Fresno, CA 93711

✓ **Charles & Tamara Maxwell**  
10925 Rusty Spur Lane  
Clovis, CA 93611

**John & Dorinda Sample**  
Rocking Horse Ranch  
11596 Rusty Spur Lane  
Clovis, CA 93611



EXHIBIT B

That certain 60 foot non-exclusive easement for roadway purposes described in agreement recorded June 15, 1970 in Book 5733 Page 449, Document No. 39892, Official Records, more particularly described as follows:

Starting at a point at the Millerton Road and going along the East line of the Southwest quarter of the Southeast quarter of Section 17, Township 11 South, Range 22 East, and going South along this line to the South line of said Section thence going West along this said Section line for a distance of 60 feet thence going North, parallel to the East line of said Section to the Millerton Road thence East along this Road to the Point of Beginning.

Together with

A non-exclusive easement for Roadway purposes across the East 60.00 feet of the Northwest quarter of the Northeast quarter of Section 20, Township 11 South, Range 22 East, together with a 60 foot wide non-exclusive easement for Roadway purposes, in the South half of the Northeast quarter and the North half of the Southeast quarter of said Section 20, the centerline of which is described as follows:

Beginning at a point on the North line of the East half of said South half of the Northeast quarter which bears North 88° 11' 31" West a distance of 35.01 feet from the Northeast corner thereof; thence Southeasterly along a curve concave to the Northeast whose radius point bears South 86° 58' 26" East a distance of 125.00 feet, through a central angle of 15° 01' 41", an arc distance of 16.42 feet; thence Southerly, along a reverse curve concave to the West with a radius of 125.00 feet, through a central angle of 69° 05' 31", an arc distance of 150.74 feet; thence Southerly, along a reverse curve concave to the West with a radius of 125.00 feet, through a central angle of 62° 35' 07", an arc distance of 135.84 feet; thence Southeasterly, along a reverse curve concave to the Southwest with a radius of 125.00 feet, through a central angle of 21° 46' 24", an arc distance of 47.57 feet; thence South 03° 41' 14" East a distance of 75.54 feet; thence Southeasterly along a tangent curve concave to the Northwest with a radius of 200.00 feet, through a central angle of 34° 21' 59", an arc distance of 179.94 feet; thence Southerly, along a reverse curve concave to East with a radius of 250.00 feet, through a central angle of 65° 45' 47", an arc distance of 287.02 feet; thence South 33° 06' 02" East a distance of 133.22 feet; thence Southeasterly, Southerly and Southwesterly along a tangent curve to the West with a radius of 125.00 feet, through a central angle of 93° 28' 14", an arc distance of 214.88 feet; thence Southwesterly along a reverse curve concave to the Southeast with a radius of 125.00 feet, through a central angle of 60° 21' 58", an arc distance of 131.70 feet to Northwest corner of the East half of said North half of the Southeast quarter; thence South 03° 01' 34" West, along the West line of said East half, a distance of 60.00 feet.

# **EXHIBIT "H"**



# Fresno County Department of Public Works and Planning

**MAILING ADDRESS:**  
Department of Public Works and Planning  
Development Services Division  
2220 Tulare Street, 6<sup>th</sup> Floor  
Fresno, CA 93721

**LOCATION:**  
Southwest corner of Tulare & "M" Streets, Suite A  
Street Level  
Fresno Phone: (559) 262-4055  
Toll Free Phone: 1-800-742-1011

## APPLICATION FOR:

- ☐ Amendment Application
- ☐ Amendment to Text
- ☐ Conditional Use Permit
- ☒ Director Review and Approval
- ☐ Site Plan Review/Occupancy Permit
- ☐ Variance/Minor Variance
- ☐ No Shoot/Dog Leash Law Boundary
- ☐ Other \_\_\_\_\_

- ☐ ALCC/RLCC
- ☐ Pre-Application (Check Type)
  - ☐ General Plan Amendment
  - ☐ Specific Plan Amendment
  - ☐ Specific Plan
- ☐ Determination of Merger
- ☐ Agreements

## DESCRIPTION OF PROPOSED USE OR REQUEST:

HORSE RENA

PLEASE TYPE OR PRINT IN BLACK INK. Answer all questions completely. Attach required site plans, forms, statements and deeds as specified on the Pre-Application Review.

LOCATION OF PROPERTY: 10925 RUSTY SUNK RD CORN 18 side of RUSTY SUNK  
between MILWAUKEE and ALBERTA  
Street address 10925 RUSTY SUNK RD, CORN 18  
APN 138-061-49 Parcel size 40 ACRES Sec-Twp/Rg. 20 - 11 - 122

## LEGAL DESCRIPTION: (Attach Copy of Deed)

I, E. MAKWELL (signature), declare that I am the owner, or authorized representative of the owner, of the above described property and that the application and attached documents are in all respects true and correct to the best of my knowledge. The foregoing declaration is made under penalty of perjury.

Owner (Print or Type) E. MAKWELL Address 10925 RUSTY SUNK RD CORN 18 City 93719 Zip 0437 Phone 352-  
Applicant (Print or Type) \_\_\_\_\_ Address \_\_\_\_\_ City \_\_\_\_\_ Zip \_\_\_\_\_ Phone \_\_\_\_\_  
Representative (Print or Type) \_\_\_\_\_ Address \_\_\_\_\_ City \_\_\_\_\_ Zip \_\_\_\_\_ Phone \_\_\_\_\_

## OFFICE USE ONLY

Application Type / No.: ORA 4112 Fee: 2660 PLU 5  
Application Type / No.: \_\_\_\_\_ Fee: \_\_\_\_\_ PLU \_\_\_\_\_  
Application Type / No.: \_\_\_\_\_ Fee: \_\_\_\_\_ PLU \_\_\_\_\_  
Application Type / No.: \_\_\_\_\_ Fee: \_\_\_\_\_ PLU \_\_\_\_\_  
Initial Study No.: 6062 Fee: 3901 PLU 83  
Environmental Review: \_\_\_\_\_ Fee: \_\_\_\_\_ PLU \_\_\_\_\_  
Health Department Review: \_\_\_\_\_ Fee: 770 PLU 94  
Received by: JRA  
This permit is sought under Ordinance Section: \_\_\_\_\_  
Related applications: \_\_\_\_\_  
Attaching verification: Zone District: \_\_\_\_\_  
APN# \_\_\_\_\_  
APN# \_\_\_\_\_  
APN# \_\_\_\_\_  
Sec. Twp. Rg. \_\_\_\_\_  
Parcel Size \_\_\_\_\_

WHEN VALIDATED  
THIS APPLICATION IS YOUR RECEIPT

\*\*\* ORDER# 0017 \*\*\*  
KP # 1  
001 D R A 2660.00  
001 E REV 3901.00  
001 HD FEE 770.00  
DATE 12/15/2008 17:53 012-00  
BY 12/15/2008 17:53 012-00  
BY REC CARD 1772-00  
BY 1772-00



# County of Fresno

DEPARTMENT OF PUBLIC WORKS AND PLANNING

## INITIAL STUDY APPLICATION

### INSTRUCTIONS

Answer all questions completely. An incomplete form may delay processing of your application. Use additional paper if necessary and attach any supplemental information to this form. Attach an operational statement if appropriate. This application will be distributed to several agencies and persons to determine the potential environmental effects of your proposal. Please complete the form in a legible and reproducible manner (i.e., USE BLACK INK OR TYPE).

| OFFICE USE ONLY    |       |
|--------------------|-------|
| IS No.             | _____ |
| Project No(s)      | _____ |
| Application Rec'd. | _____ |

### GENERAL INFORMATION

Property Owner: CHARLES MAKWEL Phone/Fax: 392-0437  
Mailing Address: 10925 WESTY SPR RD CECIVIS CA 93619  
Street City State/Zip  
Applicant: SAME Phone/Fax: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
Street City State/Zip  
Representative: SAME Phone/Fax: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
Street City State/Zip  
Proposed Project: HORSE ARENA, YOUTH AND ADULT  
ACTIVITIES  
Project Location: 10925 WESTY SPR RD CECIVIS  
Project Address: 10925 WESTY SPR RD CECIVIS  
Section/Township/Range: 28 1 N 122 8. Parcel Size: 40 ACRES  
Assessors Parcel No. 138-061-49

10. Land Conservation Contract No. (If applicable): N/A

11. What other agencies will you need to get permits or authorization from:

☐ LAFCo (annexation)  
☐ CALTRANS  
☐ Division of Aeronautics  
☐ Water Quality Control Board  
☐ Other \_\_\_\_\_

☐ SJVUAPCD (Air Pollution Control District)  
☐ Reclamation Board  
☐ Department of Energy  
☐ Airport Land Use Commission

12. Will the project utilize Federal funds or require other Federal authorization subject to the provisions of the National Environmental Policy Act (NEPA) of 1969? Yes ☐ No ☒

If so, please provide a copy of all related grant and/or funding documents, related information and environmental review requirements.

13. Existing Zone District: AL - 40

14. Existing General Plan Land Use Designation: AL 40

### ENVIRONMENTAL INFORMATION

1. Present land use: SFR BARN PRIVATE PERSONAL ARENA  
Describe existing physical improvements including buildings, water (wells) and sewage facilities, roads, and lighting. Include a site plan or map showing the previously listed improvements:

Describe the major vegetative cover: NATIVE GRASS

Any perennial or intermittent water courses? If so, show on map: NO

Is property in a flood prone area? Describe: NO

Describe surrounding land uses (e.g., commercial, agricultural, residential, school, etc.):

North: FOOTHILL AG LAND / VACANT

South: FOOTHILL AG LAND / 40 ACRE PARCEL VACANT

East: FOOTHILL AG LAND / 40 ACRE PARCEL ONE S.F.R.

West: FOOTHILL AG LAND / 500 ACRE PARCEL VACANT

17. What land use(s) in the area may be impacted by your Project?: S. FR ONE TO EAST

18. What land use(s) in the area may impact your project?: NONE

19. Transportation:

NOTE: The information below will be used in determining traffic impacts from this project. The data may also show the need for a Traffic Impact Study (TIS) for the project.

A. Will additional driveways from the proposed project site be necessary to access public roads?  
Yes ☒ No

B. Daily traffic generation:

I. Residential - Number of Units  
Lot Size \_\_\_\_\_  
Single Family \_\_\_\_\_  
Apartments \_\_\_\_\_

II. Commercial - Number of Employees \_\_\_\_\_  
Number of Salesmen \_\_\_\_\_  
Number of Delivery Trucks \_\_\_\_\_  
Total Square Footage of Building \_\_\_\_\_

III. Describe and quantify other traffic generation activities:

30 + VEHICLES ON EVENT DAYS  
18 MAXIMUM EVENTS PER YEAR

Describe any source(s) of noise from your project that may affect the surrounding area:

SOUND AMPLIFICATION SYSTEM ON EVENT DAYS

Describe any source(s) of noise in the area that may affect your project:

NONE

Describe the probable source(s) of air pollution from your project:

DUST TO BE CONTROLLED BY ON-SITE WATERING

Proposed source of water:

☒ private well

☐ community system<sup>1</sup>—name: \_\_\_\_\_

24. Anticipated volume of water to be used (gallons per day)<sup>2</sup>: EVENT DAYS (18) 2000 GAL
25. Proposed method of liquid waste disposal:  
(X) septic system/individual  
( ) community system<sup>1</sup>-name \_\_\_\_\_
26. Estimated volume of liquid waste (gallons per day)<sup>2</sup>: \_\_\_\_\_
27. Anticipated type(s) of liquid waste: \_\_\_\_\_
28. Anticipated type(s) of hazardous wastes<sup>2</sup>: N/A
29. Anticipated volume of hazardous wastes<sup>2</sup>: N/A
30. Proposed method of hazardous waste disposal<sup>2</sup>: N/A
1. Anticipated type(s) of solid waste: HORSE MANURE
2. Anticipated amount of solid waste (tons or cubic yards per day): MIN
3. Anticipated amount of waste that will be recycled (tons or cubic yards per day): MIN
4. Proposed method of solid waste disposal: DISCING
5. Fire protection district(s) serving this area: CDF
6. Has a previous application been processed on this site? If so, list title and date: N/A
- Do you have any underground storage tanks (except septic tanks)? Yes \_\_\_\_\_ No ✓
- If yes, are they currently in use? Yes \_\_\_\_\_ No \_\_\_\_\_

THE BEST OF MY KNOWLEDGE, THE FOREGOING INFORMATION IS TRUE.

E. M. J. W. J.  
SIGNATURE

8-18-05  
DATE

er to Development Services Conference Checklist  
assistance, contact Environmental Health System, (559) 445-3357  
County Service Areas or Waterworks Districts, contact the Resources Division, (559) 262-4259

## NOTICE AND ACKNOWLEDGMENT

### INDEMNIFICATION AND DEFENSE

The Board of Supervisors has adopted a policy that applicants should be made aware that they may be responsible for participating in the defense of the County in the event a lawsuit is filed resulting from the County's action on your project. You may be required to enter into an agreement to indemnify and defend the County if it appears likely that litigation could result from the County's action. The agreement would require that you deposit an appropriate security upon notice that a lawsuit has been filed. In the event that you fail to comply with the provisions of the agreement, the County may rescind its approval of the project.

### STATE FISH AND GAME FEE

State law requires that specified fees (\$2,606.75 for an EIR; \$1,876.75 for a Negative Declaration) be paid to the California Department of Fish and Game (DFG) for projects, which must be reviewed for potential adverse effect on wildlife resources. The County is required to collect the fees on behalf of the DFG. A \$50.00 handling fee will also be charged as provided for in the legislation to defray a portion of the County's costs for collecting the fees.

The following projects are exempt from the fees:

1. All projects statutorily exempt from the provisions of CEQA (California Environmental Quality Act).
2. All projects categorically exempt by regulations of the Secretary of Resources (State of California) from the requirement to prepare environmental documents.

A fee exemption may be issued by DFG for eligible projects determined by that agency to have "no effect on wildlife." That determination must be provided in advance from DFG to the County at the request of the applicant. You may wish to call the local office of the DFG at (559) 222-3761, if you need more information.

Upon completion of the Initial Study you will be notified of the applicable fee. Payment of the fee will be required before your project will be forwarded to the project analyst for scheduling of any required hearings and final processing. The fee will be refunded if the project should be denied by the County.

  
Applicant's Signature

12-16-05  
Date



## EXHIBIT 4

### Mr. CHARLIE MAXWELL OPERATIONAL STATEMENT Revised December 4, 2009

#### PROJECT REQUEST

To allow a commercial horse arena on a 40.05 +/- acre parcel in the AL-40 Zone District

#### PROJECT APPLICANT

Mr. Charlie Maxwell  
10925 Rusty Spur Road  
Clovis, CA 93619

#### REPRESENTATIVE

Dirk Poeschel Land Development Services, Inc.  
923 Van Ness Ave., #200  
Fresno, CA 93721  
559-445-0374  
E-Mail: [dpoeschel@dplds.com](mailto:dpoeschel@dplds.com)

#### PROJECT LOCATION

10925 Rusty Spur Road, Clovis  
APN 138-061-49

#### PROJECT DESCRIPTION

##### 1. Nature of Operation

Development of an equestrian (horse) facility in which youth events will be featured. No horses would be boarded other than my personal horses. Events would be patterned after youth "gymkhana" events that took place at the American Legion Post throughout the nineteen ninety's. This type of events for children was extremely popular and a benefit to all the young adults in the foothill area. The entire program is to feature youth and have all event riders become winners and receive prizes. Handicap riders would also be featured. Six youth events throughout the summer would be featured. Twelve adult events would be featured at a later time (2011, 2012) including roping and adult gymkhana events. This is eighteen days out of 365 days. Functions would start at 8:00 AM and conclude around 5:00 PM on Saturday and from 10:00 AM to 5:00 PM on Sunday. On event days the arena will be watered and the roadway to the arena watered for dust control. Event days for youths would feature approximately 50 to 60 riders and thirty vehicles, and possibly the same for adults. The applicant offers the following supplemental mitigation measures:

1. There shall be no boarding of horses not owned by the applicant on the subject property.
2. No alcoholic beverages shall be sold on the site.
3. There shall be no overnight camping.
4. In a manner acceptable to the Director of Public Works and Planning, a dust control plan shall be submitted and approved which detail the means that dust from event activities shall not adversely affect adjacent properties. All recommendations of that dust control plan shall be implemented and maintained by the applicant. The arena will be covered with 500 tons of sand for dust control.
5. The project shall comply with all Cal Fire *Fire Safe Guidelines*.
6. In a manner acceptable to the Director of Public Works and Planning, the site shall be kept clean and well maintained. All waste shall be disposed of to prohibit vectors and odors. Appropriate measures shall be implemented to assure Rusty Spur Road is free of debris and litter that would have an aesthetic impact or be detrimental to the roadway itself following event days.

## 2. Operational Time Limits

There shall be no more than 18 days of events per calendar year. Events shall be limited to the period between April 1 and September 30 of any calendar year. The facility could open at 8:00 AM on Monday through Saturday event days and conclude at 5:00 PM, and open at 10:00 AM on Sunday event days and conclude at 5:00 PM.

## 3. Number of customers or visitors

The facility could host an untold number of vehicles and trailers, however from past practice usually 50 to 60 riders and 30 trailers is an accurate assessment.

## 4. Number of employees

There will be no employees, however with the youth events there would be people, including retired CDF employees who would like to volunteer.

## 5. Service and delivery vehicles

No large service or delivery trucks.

## 6. Access to the site

The arena is located as the first residence off of Rusty Spur Road, which connects to the

public roadway of Millerton Road.

7. Number of parking spaces for employees, customers, and service/delivery vehicles.

The arena is located on a forty-acre parcel with the arena being located in the extreme north/west portion of the parcel. The parking is on native grass which would be mowed and on natural dirt which would be watered. The design of the arena and surrounding area adjacent to the arena would allow in excess of sixty to seventy trailers to be parked.

8. Are any goods to be sold on-site?

This is primarily a youth activity and numerous groups have offered to sell lunch food and drinks to support their youth activities and the activities of the arena.

9. What equipment is used?

Arena tractors and related equipment that is currently used on the property. Horses and related tack. Event timing equipment, gymkhana poles and arena chalk.

10. What supplies or materials are used and how are they stored?

Event equipment is utilized in the arena on the day of the event and stored in a personal barn currently on-site.

11. Does the use cause an unsightly appearance?

The arena by design was placed in the extreme north/west corner of the property. The location is as far as possible removed from any other residences on Rusty Spur Road as possible. The neighbors to the north are separated from the arena by a public roadway (Millerton Road) and a seasonal stream (Little Dry Creek.) The distance from the neighbor's home to the north to the center of the arena is approximately 1,350 feet or 450 yards. Odor and dust are both controlled by an arena watering system and the roadway to the arena will be watered. The arena is lighted, however no public events will occur at night, personal usage at night is limited and the arena lights have direction hoods to control the glare. During event days an arena public announcing system will be utilized and controlled below the decibel level allowed by the county. The applicant has installed nine trees around the arena and fifteen additional trees are to be planted to reduce aesthetic impacts. The existing exterior block wall adjacent to the street will be painted to blend with its surroundings.

12. List any solid or liquid wastes to be produced.

On event days there is very little animal waste generated because the participant's animals are not eating. On event days the arena is disced at the end of the day disposing of any waste or urine into the arena surface. A restroom building permit would be applied for

and placed in the north/west corner of the property for participant's usage.

13. Estimated volume of water to be used (gallons per day)

A water system is being developed to water the arena by a gravity system to reduce dust. The holding tanks will be placed south of the arena approximately 145 feet above the arena floor. This system will allow the arena to be watered completely with minimum effort to allow for maximum dust control. We anticipate using 2000 gallons of water on event days. The water is provided from our current well, which has sufficient capacity to allow for this usage and more.

14. Describe any proposed advertising including size, appearance, and placement.

A small sign at Rusty Spur Road and the driveway will read "Rusty Spur Arena" and include an arrow indicating the direction of travel. An arena layout sign near the entrance to the arena will depict the arena layout, various parking places, and how to easily exit the arena and property upon departure. (The arena has sufficient room to circle the entire arena for exiting, therefore eliminating most vehicle backing.)

15. Will existing buildings be used or will new buildings be constructed?

Existing barn for storage, and one new restroom building to be constructed per county requirements.

16. Explain which buildings or what portion of buildings will be used in the operation.

Only the current barn would be used for storage of the event timing equipment.

17. Will any outdoor lighting or an outdoor sound amplification system be used?

Outdoor lighting will not be used for any events. A sound amplification system will be used and controlled below the county decibel levels.

18. Landscaping or fencing proposed?

The entire arena is to be surrounded by mature tree's to help with dust, and noise, while providing shade for the participants. The applicant has installed nine trees around the arena and fifteen additional trees are to be planted to reduce aesthetic impacts. The entire forty-acre parcel is currently fenced, with the arena being fenced with used well piping. Numerous day pens would also be constructed of well piping to provide safe "parking" spaces for participant's horses, along with numerous "hitching" rails and block wall "hitching" rings.

19. Any other information that will provide a clear understanding of the project or operation.

Currently no youth arena exists for the pure enjoyment of youth and related horse or

horse gymkhana events. The entire goal or propose to give back to the community the same enjoyment that our children and numerous other foothill children enjoyed while being a part of the foothill community. Numerous families and community groups have approached us with the same idea of providing safe, clean fun activities for the children of this community. As with the American Legion program handicapped children would be especially welcomed. This program is designed around the goals of having all participants be a winner and win prizes that will be donated from the local merchants of this community. In subsequent years the adult events would only serve as a vehicle for funding to provide more awards to the youth activity.

G:\WPDOCS\Maxwell - Horse Arena 09-47\12-04-09 REVISED-COMBINED Operational Statement.doc

**ATTACHMENT “C”**



## Agenda Item

14

STATE OF CALIFORNIA  
COUNTY OF FRESNO

I, Bernice E. Seidel, Clerk to the Board of Supervisors, do hereby certify the foregoing to be a full, true and correct copy of the original Agenda Item #14 of 9/27/11 BOS Meeting on file in my office. Witness my hand and seal of the Board of Supervisors. This 2nd day of May 2012.

BERNICE E. SEIDEL  
Clerk to the Board of Supervisors

By: Kelly McCune Deputy

DATE: September 27, 2011

TO: Board of Supervisors

FROM: Alan Weaver, Director  
Department of Public Works and Planning

SUBJECT: Resolution No. 12182 – Initial Study Application No. 6062 and Director Review and Approval Application No. 4112 filed by Charlie Maxwell – Appellant: Wade and Rhonda Haines

### RECOMMENDED ACTION:

Consider and take action on appeal filed by Wade and Rhonda Haines of the Planning Commission's approval of Director Review and Approval Application No. 4112 and Initial Study Application No. 6062, to allow a commercial horse arena on a 40.05-acre parcel in the AL-40 (Limited Agricultural, 40-acre minimum parcel size) Zone District. The project site is located on the west side of Rusty Spur Road (a private road), approximately 710 feet south of its intersection with Millerton Road, approximately three miles east of the unincorporated community of Friant (10925 Rusty Spur Road) (Sup. Dist.: 5) (APN: 138-061-49). (Continued from February 23, 2010)

### FISCAL IMPACT:

There is no net County cost associated with the recommended action.

### IMPACTS ON JOB CREATION:

Approval of the recommended action should not impact the creation of jobs in Fresno County.

### BACKGROUND / DISCUSSION:

This item comes to your Board on appeal of the Planning Commission's approval of the subject application. This item was originally heard by your Board on February 23, 2010. At that hearing, your Board voted to continue this item pending the outcome of a civil lawsuit filed against the

ADMINISTRATIVE OFFICE REVIEW

BOARD ACTION: DATE September 27, 2011

APPROVED AS RECOMMENDED

Page 1 of 2

OTHER



Official Action of  
Board of Supervisors

Deputy

SEE PAGE THREE FOR BOARD ACTION

UNANIMOUS \_\_\_\_\_ ANDERSON \_\_\_\_\_ CASE \_\_\_\_\_ LARSON \_\_\_\_\_ PEREA \_\_\_\_\_ POOCHICIAN \_\_\_\_\_

Applicant by the Appellants of the subject application regarding access rights to the subject and surrounding properties. On August 8, 2011, Fresno Superior Court filed its judgment in favor of the Applicant, confirming the Applicant's legal ability to utilize the existing site access in conjunction with the proposed use.

On December 10, 2009, the Planning Commission considered the subject application filed by the Applicant. Testimony included those in opposition to the proposal citing concerns regarding decreased property values, increased traffic levels and the use of Rusty Spur Road (private road) for commercial purposes, increased noise and light levels and other aesthetic concerns, and possible negative impacts to wildlife. Those in support of the proposal cited that horse events provide a benefit to the community for both youth and adults, and that this would be a local resource that does not require great travel distances to reach.

After considering the information in the Staff Report, staff's presentation, and public testimony from the Applicant, the Commission voted six to one to adopt Resolution No. 12182 approving Director Review and Approval Application No. 4112. The Planning Commission stated their concurrence with staff's recommendation that the required Findings could be made with the inclusion of two additional conditions limiting the number of events to six youth-focused events and six adult-focused events annually, and a provision for a landscaping buffer adjacent to the southern and eastern boundaries of the arena to assist in screening views of the arena area from adjacent properties.

If your Board determines to uphold the Planning Commission's approval of the project, a simple denial motion denying the appeal and upholding the Commission's approval would be appropriate. If your Board were inclined to grant the appeal, a motion to uphold the appeal thus denying the project would be appropriate with clarification and reasoning as to which Findings cannot be made.

A copy of the August 8, 2011 Fresno County Superior Court Judgment in favor of the Defendant is attached as Exhibit "A". The February 23, 2010 Board Action including the recommended Conditions of Approval is attached as Exhibit "B".

Notices of the subject hearing were sent to 22 property owners within 600 feet of the subject property exceeding the minimum notification requirements prescribed by the California Government Code and the Fresno County Zoning Ordinance.

#### REFERENCE MATERIAL

BAI #18, February 23, 2010

CM:cwm  
G:\4360Devs&Pin\ADMIN\BOARD\Board Items\2011\09-27-11\ORA 4112\_AI.doc



CONDUCTED HEARING; RECEIVED PUBLIC TESTIMONY; CLOSED HEARING; DENIED  
APPEAL; ADOPTED FINDINGS AND APPROVED INITIAL STUDY APPLICATION NO. 6062  
AND DIRECTOR REVIEW AND APPROVAL APPLICATION NO. 4112, SUBJECT TO  
CONDITIONS RECOMMENDED IN THE STAFF REPORT, INCLUDING STAFF'S  
MODIFICATION TO CONDITION NO. 2 RELATING TO LANDSCAPING TO REQUIRE  
TREES ALONG THE NORTHERN AND WESTERN PERIMETER OF THE ARENA (RATHER  
THAN TREES AND SHRUBS ALONG THE SOUTHERN AND EASTERN PERIMETER) AND  
THE FOLLOWING ADDITIONAL CONDITION: "APPROVAL OF THE USE PERMIT SHALL  
NOT BE VALID UNLESS/UNTIL THE APPLICANT ENTERS INTO AN AGREEMENT  
INDEMNIFYING THE COUNTY FOR LEGAL COSTS ASSOCIATED WITH APPROVAL OF  
THE PROJECT." FURTHER DIRECTED STAFF TO COORDINATE WITH THE CALIFORNIA  
HIGHWAY PATROL TO DISCUSS POSSIBLE NEED FOR SPEED LIMIT AND SIGNAGE  
CONTROL MEASURES ALONG MILLERTON ROAD

|              |                               |            |            |
|--------------|-------------------------------|------------|------------|
| Motion by:   | Anderson                      | Second by: | Case       |
| Ayes:        | Anderson, Case, Perea, Larson | Noes:      | Poochigian |
| Abstentions: | None                          | Absentees: | 0          |

**ATTACHMENT “D”**



# Eldarica Pine

*Pinus eldarica*



This is a great desert pine that tolerates heat, wind and drought conditions. It has strong branches and soft needles with an open and airy canopy compared to similar trees. This tree gives off a mild, fresh fragrance and is a great choice for people looking to grow Christmas trees on marginal soils in tough climates. Eldarica pines also make good windbreaks in tough areas.



## Hardiness Zones

The eldarica pine can be expected to grow in Hardiness Zones 6–10. [View Map](#)



## Tree Type

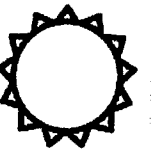
This is an evergreen tree, keeping its foliage year-round.

## Mature Size



### Growth Rate

This tree grows at a medium rate, with height increases of 13–24" per year.



### Sun Preference

Full sun is the ideal condition for this tree, meaning it should get at least six hours of direct, unfiltered sunlight each day.



### Soil Preference

The Eldarica pine grows in acidic, alkaline, loamy, sandy, well-drained and clay soils. It tolerates dry conditions very well.



### Attributes

This tree:

- Makes a good windbreak in tough areas.
- Gives off a mild, fresh fragrance.
- Has a more open and airy shape in comparison to similar trees.
- Tolerates heat, wind and dry conditions very well.
- Develops strong branches.
- Features soft dark green needles.
- Produces oval to oblong reddish-brown cones that are around 3" in length.
- Grows in a pyramidal, upright or erect shape.



## Wildlife Value

An Eldarica pine windbreak makes valuable cover, nesting and breeding areas for upland game and songbirds. In winter, seeds and fruits of trees and shrubs provide food for nonmigratory species.



## History/Lore

The Eldarica pine is also known as the Afghan, Mondel, Elder or Calabrian pine.