

EXHIBIT 1

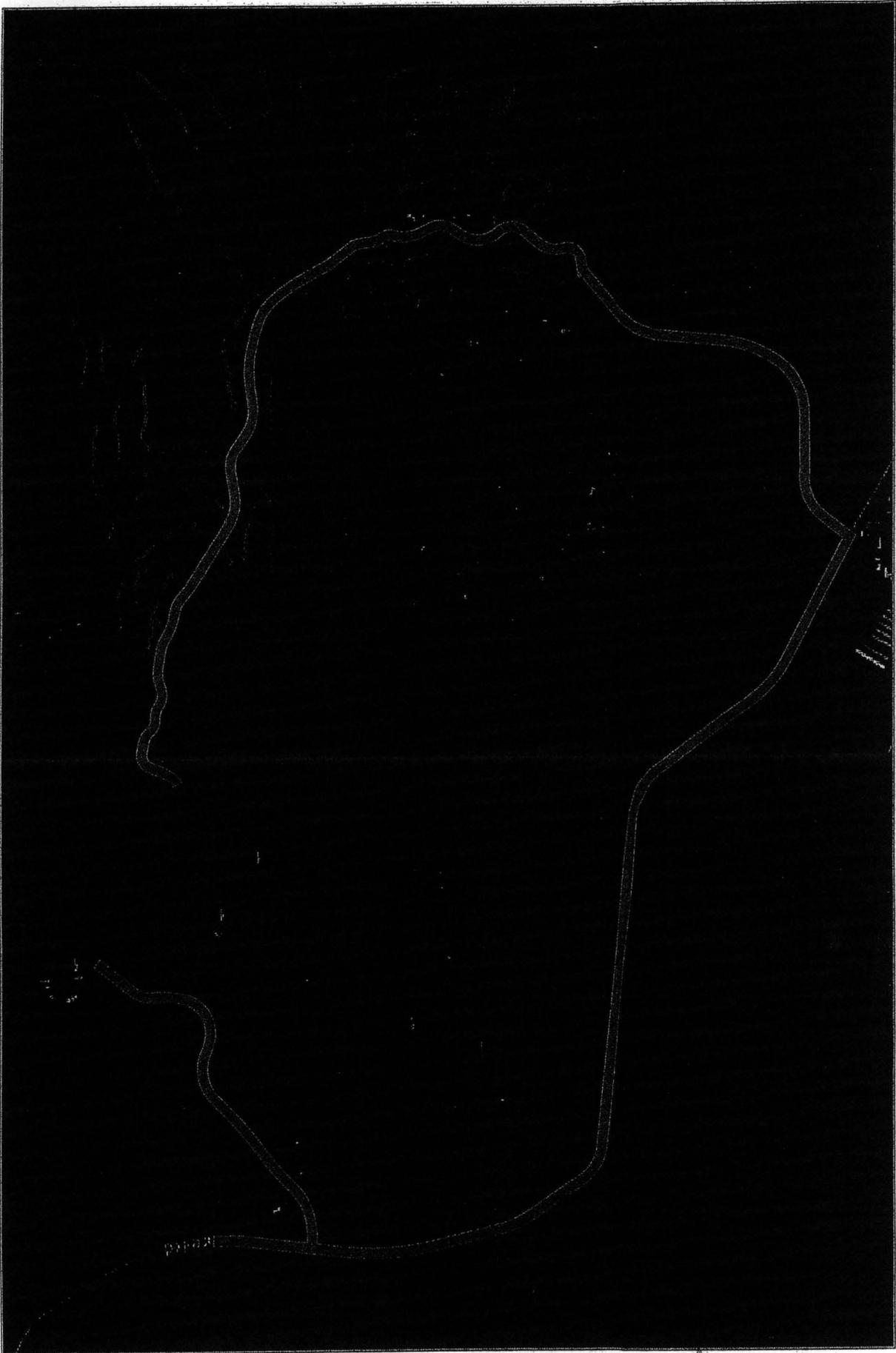
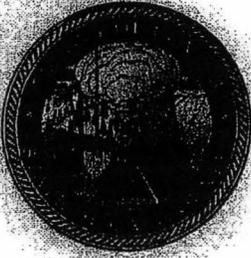


EXHIBIT 2



COUNTY OF PLACER
Community Development Resource Agency

Michael J. Johnson, AICP
Agency Director

ADMINISTRATION

December 12, 2011

Thomas S. Archer
Law Offices of Thomas S. Archer
12010 Donner Pass Road, Suite 102
Truckee, CA 96161-4968

SUBJECT: Use of Public Roadways – The Retreat at Northstar Subdivision

Dear Mr. Archer:

The County has received your letter, dated November 1, 2011, regarding your client's concern that the County is not enforcing certain responsibilities related to the use of public roadways in the vicinity of the Retreat at Northstar residential subdivision. It is your contention that Martis Camp property owners, staff and personnel, as well as staff and personnel from Northstar, are using Mill Site Road beyond the "approved scope allowed by the restricted purpose easement described on both the Plat of Martis Camp (formerly known as Siller Ranch) and the Tract for the Retreat at Northstar." The purpose of this letter is to respond to the issues raised in your letter.

It is my understanding that staff from the Engineering and Surveying Department has met with your client on several occasions to discuss your client's concerns regarding the use of roadways (Schaffer's Mill Road, Mill Site Road) that connect the Martis Camp project with the Northstar-at-Tahoe property. As noted in your letter, there appears to be ongoing confusion regarding the public status of the roadways within the Retreat at Northstar subdivision and the private status of roadways within the Martis Camp subdivision. To address this confusion, this letter will articulate the rights and privileges associated with the public use of Mill Site Road, as well as the rights, privileges and restrictions associated with the private roadways within the Martis Camp development.

As has been discussed with your clients, and as you acknowledge in your letter, the owner/developer of the Retreat at Northstar subdivision – Trimont Land Company – offered certain easements for dedication, which were accepted by the Placer County Board of Supervisors on behalf of the public. The Retreat at Northstar subdivision was created by a Final Map recorded on May 16, 2006. Conditions 37A and 37C of the Tentative Subdivision Map for the project required the dedication of a 40-foot-wide highway easement to Placer County on Mill Site Road and Cross-Cut Court, respectively. Those Conditions of Approval were satisfied by the Owner's Statement and the Board of Supervisor's Statement found on the Final Map. Upon the acceptance of the project as complete on December 8, 2008, the Board accepted

Thomas S. Archer
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Page Two

Mill Site Road and Cross-Cut Court into the County's *Maintained Mileage System*. For the County's purposes, that acceptance in the *Maintained Mileage System* creates a road that is open to the general public for the use of legally registered vehicles, pedestrian and other non-motorized transportation.

The capacity from a Level of Service standpoint (the County's standard Level of Service is LOS C) for a two-lane roadway in mountainous terrain would be approximately 3,400 vehicles per day per lane (for a two-way total of 6,800 daily trips). Accordingly, the design of Mill Site Road is capable of handling approximately 6,800 vehicles per day without violating any County Level of Service issues.

In contrast to the public roadways included with The Retreat at Northstar subdivision, the Martis Camp development was approved with a private roadway system – there are currently no County-maintained roadways within the Martis Camp development (including the entire length of Schaffer Mill Road from its intersection with State Route 267). While you are correct in stating that the plans approved for the Martis Camp project reserved for the County ingress and egress rights over Schaffer Mill Road for emergency access and transit service, the County is not aware of any restrictions that prohibits the residents of Martis Camp from utilizing the public roadways (i.e., Mill Site Road) that abut the Martis Camp development.

As you correctly note in your letter, Mill Site Road was constructed with two 11-foot-wide travel lanes and four feet of shoulder for a total of 26 feet of overall pavement width. However, your statement that, "The allowable use is for less than 50 units on a cul-de-sac or 75 units on a through-road" is incorrect. The County utilizes 11-foot-wide travel lanes in many areas throughout the County, and this lane width is considered to be an acceptable standard for both Minor Residential roadways as well as Local Collector roadways. For example, Eureka Road in the Granite Bay area of the County – which has residences and a public school fronting directly onto the roadway – is constructed with two 11-foot-wide travel lanes and carries an Average Daily Traffic volume of approximately 3,550 daily trips.

Regarding the Zone of Benefit that was created to address drainage, maintenance, snow removal, repair and replacement of Mill Site Road and Cross-Cut Court, you are correct in stating that the original property owner (Trimont Land Company) desired to maintain a higher level of service than provided by Placer County, and the County Service Area Zone of Benefit was self-imposed on the Retreat at Northstar subdivision to provide this higher level of service. Unfortunately, your statement that the "Zone of Benefit does not contemplate either public transit nor unrestricted access by the public or owners of property within the neighboring communities over Mill Site Road" is incorrect. As Zones of Benefit are only created for public roadways, any members of the public are entitled to use roadways included within Zones of Benefit – the County cannot prohibit the public from utilizing a public roadway. As a result, while your clients are able to enjoy a higher level of service over the identified public roadways, so too are other members of the public.

Thomas S. Archer
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On Page 4 of your letter you state, "Martis Camp did not secure a(n) easement or other mechanism allowing for local public transit across the Unsurveyed Remainder." In light of the Conditions of Approval referenced above and the actual development of Mill Site Road to the property line in accordance with those conditions, the County interprets Sheet 3 and Detail C of the Final Map for the Retreat at Northstar, including labeling in that Detail, as establishing Mill Site Road across the Unsurveyed Remainder. While this small triangle of public roadway may not be included within the Zone of Benefit for the subdivision, the small triangle of public roadway is still in fact a public roadway, and the public has rights to use this section of public roadway.

Your letter contends that the County is sitting idly while "Martis Camp improperly attempts to change a(n) Emergency Vehicle Access into a thoroughfare for the owners of lots within its subdivision to drive to and from Northstar for which there has been no CEQA study, compliance nor approval." For the record, while Martis Camp was required to provide Emergency Vehicle Access through its connection with Mill Site Road (which it has in fact provided), I can find nothing in the record that prohibits Martis Camp residents from utilizing the public roadways (i.e., Mill Site Road) that abut the Martis Camp development.

You do not give any specifics as to how the CEQA analysis prepared for both the Retreat at Northstar and Martis Camp projects are not adequate to address traffic generation associated with the respective projects. Further, the time for challenging those projects has long since passed. The usage of public roadways of which your letter complains arises not from a County action, or the County's approval of an action requiring a permit, but rather from the access rights pertaining to land abutting private roadways. Thus, there is no "current" project for purposes of CEQA analysis.

As noted above, Mill Site Road was designed with a 40-foot-wide roadway right-of-way, and Mill Site Road was constructed with two 11-foot-wide travel lanes and four feet of shoulder width. This roadway section is capable of accommodating Average Daily Traffic capacity of 6,800 vehicle trips. There is no indication that the roadway is experiencing anywhere near this level of traffic. The design width for Mill Site Road was predicated upon the intended volume of traffic as identified in the environmental analysis for the project, and the daily use of Mill Site Road is not exceeding the capacity of the roadway.

Based upon my analysis of both the Retreat at Northstar and Martis Camp projects, I cannot agree with your conclusion that the Martis Camp subdivision is not in conformance with its Conditions of Approval. Further, my review has concluded the County did in fact follow and comply with the requirements of the California Environmental Quality Act and the County's Environmental Review Ordinance as well as the Subdivision Map Act and the County's Subdivision Ordinance in its processing and approval of the Tentative and Final Maps for both the Martis Camp and The Retreat at Northstar projects.

Thomas S. Archer
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Page Four

During some of the previous meetings with your clients, it is my understanding that County staff discussed options available to your clients, including the possible abandonment of the County's interest in Mill Site Road and Cross-Cut Court. As I am sure you are aware, the requirements to allow the County to abandon its interest in those roadways are quite onerous. Should you client choose to pursue an abandonment of the public rights-of-way, it would be my suggestion that further discussion with County staff be held to discuss the viability of such a request prior to investing time and resources into such an endeavor.

I hope that this letter has responded to your client's concerns regarding the public use of Mill Site Road. Should you have any questions regarding the information set forth in this letter, please call me directly at 530-745-3099.

Sincerely,



MICHAEL J. JOHNSON, AICP
Agency Director

Michael Johnson Letter November 1, 2006



COUNTY OF PLACER
Community Development Resource Agency

Michael J. Johnson, AICP
Agency Director

ADMINISTRATION

Sent via FedEx, 11-02-12. Tracking No. 877096690574

November 1, 2012

Randall M. Faccinto
Stoel-Rives LLP
555 Montgomery Street, Suite 1288
San Francisco, CA 94111

**SUBJECT: Reported Violation of Conditions of Approval – Roadway Connection
Between Martis Camp and The Retreat Subdivisions**

Dear Mr. Faccinto:

The County has received your letter, dated May 1, 2012, as well as a subsequent letter, dated August 23, 2012 and e-mail correspondence dated September 24, 2012, regarding the above matter.

The County has interpreted your collective correspondence as an assertion that there is a violation of the Conditions of Approval for the Martis Camp (formerly Siller Ranch) project regarding the roadway connection between Martis Camp and The Retreat subdivision (located within the adjacent Northstar, California development). As stated in your May 1, 2012 letter, it is your contention that the County has failed to recognize that the emergency access gate provided for by approvals of the Martis Camp subdivision limits the connection between Martis Camp and The Retreat only to emergency vehicle access and possibly future public transit access.

Based upon your inquiries and related correspondence received from other interested parties, the County has investigated the issues raised in your correspondence pursuant to Placer County Code Article 17.62 (Code Compliance and Enforcement) to determine whether or not Martis Camp is in violation of its Conditions of Approval regarding the use of the accessway between the Martis Camp and The Retreat subdivisions. This letter provides the County's response.

In preparing this letter, I have reviewed the following correspondence:

1. My letter to Thomas S. Archer, The Retreat Homeowners Association counsel at the time, dated December 12, 2011.

2. Your Letter and Memorandum to Robert Sandman at Placer County Counsel dated May 1, 2012.
3. Letter and Memorandum from Lanny Winberry to Robert Sandman dated July 24, 2012.
4. Letter from Northstar Property Owners Association to Placer County Board of Supervisors Chairwoman Jennifer Montgomery dated August 21, 2012.
5. Your Letter and Memorandum to Robert Sandman dated August 23, 2012.
6. Letter from Lanny Winberry to Robert Sandman dated September 24, 2012.
7. Your e-mail to Robert Sandman dated September 24, 2012.

Copies of the above-referenced letters and email are attached for your reference. I have also reviewed various other background materials, project documents, and correspondence that are on file with the Placer County Community Development Resource Agency. These other documents include the respective projects' Conditions of Approval and environmental review documents.

Background

While your letters and correspondences state that the Martis Camp project is in violation of its Conditions of Approval regarding the use of access into The Retreat/Northstar development, I could not find where you identified which specific Condition(s) of Approval were allegedly being violated. On this basis, I have reviewed all Conditions of Approval for the Martis Camp project that have potential relevance or relationship to the access between Martis Camp and The Retreat.

The Martis Camp (formerly Siller Ranch) residential subdivision was approved by the Placer County Board of Supervisors in January 2005. As part of that project approval, the following Conditions of Approval address the connection between Martis Camp and The Retreat/Northstar development:

ROADS/TRAILS

27. *Construct the following road(s) to a Rural Secondary (Plate 3 LDM) standard: Siller Ranch Road, A Road (as shown on the Tentative Map), B Drive (as shown on the Tentative Map) from Siller Ranch Road to A Drive, and H Drive (as shown on the Tentative Map) from A Drive to Siller Ranch Road. All other on-site subdivision road(s) shall be constructed to a Rural Minor Residential (Plate 2*

LDM) standard with 22 feet of pavement width (based on CDF and Truckee Fire Protection District requirements). The road(s) and storm drainage shall be maintained by the Homeowners Association. All subdivision streets, except Siller Ranch Road, shall be designed to meet 25 mph design speed criteria, as specified in the latest version of the Caltrans Highway Design Manual, unless otherwise approved by DPW. The roadway structural section(s) shall be designed for a Traffic Index of 5.5 (Ref. Section 4, LDM). (CR) (DPW)

33. **mm 4.4.7b** The project applicant shall provide an easement or other mechanism acceptable to the County to allow the use of Siller Ranch Road (from the project entrance at Schaffer Mill Road to K Street and along K Street through the emergency connection to Northstar-at-Tahoe) by local public transit service vehicles. Local public transit is defined as published transit service provided by Placer County through Tahoe Area Regional Transit or through a contract provider. Local transit service does not include private carriers such as charter companies and tour buses. The easement or other mechanism acceptable to the County shall include provisions regarding hours of operation, number of stops, and security issues. (DPW)

39. As part of the phase that creates Lots 148 and 149, construct an emergency access connection between Lots 148 and 149 to provide a connection through the putting course to Siller Ranch Road (as shown on the Tentative Map) to the satisfaction of the serving fire district and the DPW. (DPW)

As a part of the phase that creates Lots 242 and 243, construct an emergency access connection between Lots 242 and 243 to provide a connection to the adjacent Lahanton project to the satisfaction of the serving fire district and the DPW.

As a part of the phase that creates Lots 595 and 598, or before, construct an emergency access connection to the adjacent Northstar project to the satisfaction of the serving fire districts and the DPW.

GENERAL DEDICATIONS/EASEMENTS

55. Provide the following easements/dedications on the Improvement Plans and Final Map to the satisfaction of the DPW and DRC: (CR) (DPW)

A) A 40-foot-wide private road and public utility easement (Ref. Chapter 16, formerly Chapter 19, Placer County Code) along all on-site subdivision roadways, except golf cottage roads in Lot 605. (CR) (DPW)

FIRE PROTECTION

146. **mm 4.11.1.2a** Unless otherwise agreed to by the appropriate district, prior to recordation of the first final map and approval of the improvement plans for the site, the project applicant shall submit these plans to the California Department of Forestry and Fire Protection (CDF) and the Truckee Fire Protection District (TFPD) for review and approval. The final map and improvement plans shall contain the following items, as appropriate: **(SR) (CR) (DPW)**

- I) Emergency access roads shall be designed and gated to meet District, County, and State standards unless exceptions are approved.
- K) Emergency access into Northstar-at-Tahoe with direct access to Big Springs Drive shall be provided with Phase Five improvements.
- L) A Knox box system, or equivalent, shall be provided at all gated entrances and emergency access roads to provide access to the fire district.

The Retreat at Northstar residential subdivision was approved by the Placer County Planning Commission in February 2005. As part of that project approval, the following Conditions of Approval address the connection between Martis Camp and The Retreat at Northstar development:

ROADS/TRAILS

- 21. **mm** Construct a public road entrance onto Big Springs Drive to a Major Plate 27-1, LDM standard. The design speed of Big Springs Drive shall be 30 mph, unless an alternate design speed is approved by the DPW. The improvements shall begin at the outside edge of any future lane(s) as directed by the DPW. An Encroachment Permit shall be obtained by the applicant or authorized agent from DPW. The Plate 27 structural section within the main roadway right-of-way shall be designed for a Traffic Index of 7.0, but said section shall not be less than 3" AC/8" Class 2 AB unless otherwise approved by the DPW.
- 26. Mill Site Road shall be constructed at a minimum to the west property line for a future emergency access / transit access road connection.

PUBLIC SERVICE

- 35. Create a County Service Area (CSA) Zone of Benefit or annex to an existing CSA Zone of Benefit, if appropriate. The CSA will be established concurrent with and on the Final Map. In the event that the CSA is abolished by the Board of Supervisors, or the CSA is otherwise not able to function, the Homeowners'

Association shall be responsible for all services previously provided by the CSA. Road maintenance and other services may be provided by the Northstar Community Services District, as approved by the DPW. The CSA, NCSD, or homeowners association shall provide the following services: (DFS)

- A) *Snow removal (CR)*
- B) *Road maintenance (CR)*
- C) *Storm drainage maintenance for facilities located within public easements excluding structural stormwater quality enhancement facilities (BMP's). (CR/MM)*

GENERAL DEDICATIONS/ EASEMENTS

37. *Provide the following easements/dedications on the Improvement Plans and Final Map to the satisfaction of the DPW and DRC: (DPW)*

A) Dedicate to Placer County a 40'-wide (minimum) highway easement (Ref. Chapter 16, Placer County Code) along Mill Site Road for road and utility purposes. Prior to accepting the dedication, the applicant shall form or annex into a CSA Zone of Benefit for road and drainage maintenance, snow removal, etc.

B) A 40'-wide (minimum) private road and public utility easement (Ref. Chapter 16, formerly Chapter 19, Placer County Code) along Cross Cut Court. (DPW)

C) An Irrevocable Offer of Dedication to Placer County for a 40'-wide (minimum) highway easement (Ref. Chapter 16, formerly Chapter 19, Placer County Code) along Cross Cut Court for road and utility purposes. Said road shall be privately maintained until such time as the County Board of Supervisors accepts the offer of dedication. (DPW)

Analysis

There are multiple references in your correspondence to the Martis Valley Community Plan and limitations that may be imposed on roadway connections between Martis Camp and The Retreat subdivisions based upon language in the Community Plan. As you are aware, the Martis Valley Community Plan is a policy document to guide development within the Martis Valley area. This policy document is meant to inform decision-makers when reviewing specific development projects. When a development project is approved, and specific Conditions of Approval are approved for that development project, those Conditions of Approval (and not the Community Plan) become the primary guiding document for the implementation of that particular development project. The Community Plan remains relevant as part of the approval process, with applicable policies within the Community Plan taken into consideration with the approval of the development project.

Randall M. Faccinto
November 1, 2012
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In our review of the Transportation Section of the Martis Valley Community Plan, Placer County staff and I could find no goals, policies and implementation programs that addressed the roadway connection between the Martis Camp and The Retreat subdivisions. There is a statement within the Martis Valley Community Plan (under the Community Plan Transportation "Discussion" section on Page 72) that states:

Schaffer Mill Road is classified as a collector road and will be the access to a majority of the large land holdings remaining within the Martis Valley. Dedicated turn lanes will be required into all of the large developments that front Schaffer Mill Road for the entire length of the roadway. This roadway will be extended to make a connection with Northstar-at-Tahoe, via Big Springs Drive, as an emergency access and as a local transit route when conditions on SR 267 warrant.

It is important to note that, when the Martis Valley Community Plan was adopted in 2003, the Martis Camp residential subdivision had not yet been approved by the Board of Supervisors. Accordingly, Schaffer Mill Road terminated at what is now the northerly boundary of the Martis Camp subdivision, adjacent to the entrance to the Lahontan residential subdivision. At that time, the owners of the Martis Camp project were considering the development of private roadways within the Martis Camp project. Accordingly, language was included in the Martis Valley Community Plan to convey that there would be a roadway connection between the then-terminus of Schaffer Mill Road and Big Springs Drive, and this roadway connection would be available for emergency access and as a local transit route. This is in fact how the Martis Camp project was approved, and emergency access and future local transit easements have been retained. In my review of this language in the Martis Valley Community Plan, I can find no prohibition on traffic from Martis Camp utilizing the public roadways within The Retreat/Northstar development and, as noted above, there are no goals, policies or implementation programs in the Community Plan that address such a prohibition.

Because the Martis Camp project (January 2005) was approved prior to The Retreat project (February 2005), the County was aware that the Martis Camp project had been approved with private roadways. Accordingly, because The Retreat was being developed with public roadways, Condition 26 was included with The Retreat project to assure that an emergency access/transit road connection was provided between the public roadways in The Retreat and the private roadways in Martis Camp. As written, Retreat Condition 26 does not prohibit vehicles from Martis Camp to access the public roadways within The Retreat.

As noted in your correspondence, there appears to be ongoing confusion regarding the public status of the roadways within the Retreat at Northstar subdivision and the private status of roadways within the Martis Camp subdivision. To address this confusion, this letter also addresses the rights and privileges associated with the public use of Mill Site Road, as well as

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the rights, privileges and restrictions associated with the private roadways within the Martis Camp development.

With the development of The Retreat project, the owner/developer of the project – Trimont Land Company – offered certain easements for dedication, which were accepted by the Placer County Board of Supervisors on behalf of the public. Conditions 37A and 37C of the Tentative Subdivision Map for the project required the dedication of a 40-foot-wide highway easement to Placer County on Mill Site Road and Cross Cut Court, respectively. Upon the acceptance of the project as complete on December 8, 2008, the Board of Supervisors accepted Mill Site Road and Cross Cut Court into the County's Maintained Mileage System. For the County's purposes, that acceptance in the Maintained Mileage System creates a road that is open to the general public for the use of legally registered vehicles, pedestrians and other non-motorized transportation.

In contrast to the public roadways included with The Retreat at Northstar subdivision, the Martis Camp development was approved with a private roadway system – there are currently no County-maintained roadways within the Martis Camp development (including the entire length of Schaffer Mill Road from its intersection with State Route 267). While the plans approved for the Martis Camp project reserved for the County ingress and egress rights over Schaffer Mill Road for emergency access and transit service, the County is not aware of any restrictions that prohibits the residents of Martis Camp from utilizing the public roadways (i.e., Mill Site Road) that abut the Martis Camp development.

On Page 2 of your Memorandum attachment to your May 1, 2012 letter, you state:

“The Martis Camp Map/CUP does not authorize any road connection between the two subdivisions at this location, except for emergency access and public transit use. Use of that connection for a public road, as an inter-project private road access for Martis Camp owners, was not a part of the DMB Martis Camp project proposal, or the Retreat developer's (Trimont Land Company) proposal for its project. No plan for a public or private road connection at this point was brought before the Planning Commission or Board of Supervisors of Placer County, nor was it included in the CEQA required environmental impact review for either project, and for that reason a public or private road connection was and is not authorized by either project's approvals. In fact, in granting the Martis Camp approvals, the County expressly stated that use of the road connection for anything other than emergency or transit use would require additional County approval and subsequent environmental review.”

As shown in the Conditions of Approval listed above for both the Martis Camp and The Retreat projects, there is no exclusive language that prohibits vehicles from Martis Camp from utilizing the public roadways within The Retreat residential subdivision. Each project requires the

Randall M. Faccinto
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provision of an emergency access and future public transit connection, but staff can find no language that prohibits the public use of public roadways within The Retreat residential development.

The County disagrees with your contention that "No plan for a public or private road connection at this point was brought before the Planning Commission or Board of Supervisors of Placer County, nor was it included in the CEQA required environmental impact review for either project, and for that reason a public or private road connection was and is not authorized by either project's approvals." Contrary to your last sentence in the referenced paragraph, County staff can find no reference in the Conditions of Approval, for either the Martis Camp or The Retreat project, that expressly precludes the use of the roadway connection for uses other than emergency or transit use.

On Page 2 of your Memorandum attachment to your May 1, 2012 letter, you also state that "the Martis Camp Map/CUP conditions of approval require a gate limiting use of the connection for emergency access to be installed and that it have a Knox Box key system. . . ". In fact, the subject Condition of Approval (Condition 146, addressing "Fire Protection" issues) is not requiring that a gate be constructed, but rather if a gate is constructed on any emergency access roads, the emergency access roadway and gate needs to be designed to meet Fire District, County, and State standards (unless exceptions are approved).

I did not locate in your correspondence any specifics as to how the CEQA analysis prepared for both The Retreat and Martis Camp projects are not adequate to address traffic generation associated with the respective projects. Further, the time for commenting on or challenging the CEQA determinations for those projects has long since passed. The usage of public roadways of which your correspondence complains arises not from a County action, or the County's approval of an action requiring a permit, but rather from the access rights pertaining to land abutting private roadways. There is no "current" project for purposes of CEQA analysis.

Based upon my analysis of both The Retreat and Martis Camp projects, I do not agree with your clients' contention that the Martis Camp subdivision is not in conformance with its Conditions of Approval. Further, my review has concluded the County did in fact follow and comply with the requirements of the California Environmental Quality Act and the County's Environmental Review Ordinance as well as the Subdivision Map Act and the County's Subdivision Ordinance in its processing and approval of the discretionary land use entitlements for both the Martis Camp and The Retreat at Northstar projects.

Randall M. Faccinto
November 1, 2012
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On this basis, I have concluded that the Martis Camp residential development project is not in violation of any of its Conditions of Approval. As a result, no Code Enforcement action on the part of the County is warranted or required. Accordingly, no Code Enforcement action will be commenced.

This letter constitutes the final action of the County of Placer in this matter. No further appeal may be taken.

Sincerely,



MICHAEL J. JOHNSON, AICP
Agency Director

Attachments:

1. Letter from Michael Johnson to Thomas S. Archer, dated December 12, 2011
2. Letter and Memorandum from Randall M. Faccinto to Robert Sandman, dated May 1, 2012
3. Letter and Memorandum from Lanny Winberry to Robert Sandman, dated July 24, 2012
4. Letter from Northstar Property Owners Association to Placer County Board of Supervisors Chairwoman Jennifer Montgomery, dated August 21, 2012
5. Letter and Memorandum from Randall M. Faccinto to Robert Sandman, dated August 23, 2012
6. Letter from Lanny Winberry to Robert Sandman, dated September 14, 2012
7. E-mail from Randall M. Faccinto to Robert Sandman, dated September 24, 2012

ATTACHMENT 1

Letter from Michael Johnson to
Thomas S. Archer, dated
December 12, 2011



COUNTY OF PLACER
Community Development Resource Agency

Michael J. Johnson, AICP
Agency Director

ADMINISTRATION

December 12, 2011

Thomas S. Archer
Law Offices of Thomas S. Archer
12010 Donner Pass Road, Suite 102
Truckee, CA 96161-4968

SUBJECT: Use of Public Roadways – The Retreat at Northstar Subdivision

Dear Mr. Archer:

The County has received your letter, dated November 1, 2011, regarding your client's concern that the County is not enforcing certain responsibilities related to the use of public roadways in the vicinity of the Retreat at Northstar residential subdivision. It is your contention that Martis Camp property owners, staff and personnel, as well as staff and personnel from Northstar, are using Mill Site Road beyond the "approved scope allowed by the restricted purpose easement described on both the Plat of Martis Camp (formerly known as Siller Ranch) and the Tract for the Retreat at Northstar." The purpose of this letter is to respond to the issues raised in your letter.

It is my understanding that staff from the Engineering and Surveying Department has met with your client on several occasions to discuss your client's concerns regarding the use of roadways (Schaffer's Mill Road, Mill Site Road) that connect the Martis Camp project with the Northstar-at-Tahoe property. As noted in your letter, there appears to be ongoing confusion regarding the public status of the roadways within the Retreat at Northstar subdivision and the private status of roadways within the Martis Camp subdivision. To address this confusion, this letter will articulate the rights and privileges associated with the public use of Mill Site Road, as well as the rights, privileges and restrictions associated with the private roadways within the Martis Camp development.

As has been discussed with your clients, and as you acknowledge in your letter, the owner/developer of the Retreat at Northstar subdivision – Trimont Land Company – offered certain easements for dedication, which were accepted by the Placer County Board of Supervisors on behalf of the public. The Retreat at Northstar subdivision was created by a Final Map recorded on May 16, 2006. Conditions 37A and 37C of the Tentative Subdivision Map for the project required the dedication of a 40-foot-wide highway easement to Placer County on Mill Site Road and Cross-Cut Court, respectively. Those Conditions of Approval were satisfied by the Owner's Statement and the Board of Supervisor's Statement found on the Final Map. Upon the acceptance of the project as complete on December 8, 2008, the Board accepted

Thomas S. Archer
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The capacity from a Level of Service standpoint (the County's standard Level of Service is LOS C) for a two-lane roadway in mountainous terrain would be approximately 3,400 vehicles per day per lane (for a two-way total of 6,800 daily trips). Accordingly, the design of Mill Site Road is capable of handling approximately 6,800 vehicles per day without violating any County Level of Service issues.

In contrast to the public roadways included with The Retreat at Northstar subdivision, the Martis Camp development was approved with a private roadway system – there are currently no County-maintained roadways within the Martis Camp development (including the entire length of Schaffer Mill Road from its intersection with State Route 267). While you are correct in stating that the plans approved for the Martis Camp project reserved for the County ingress and egress rights over Schaffer Mill Road for emergency access and transit service, the County is not aware of any restrictions that prohibits the residents of Martis Camp from utilizing the public roadways (i.e, Mill Site Road) that abut the Martis Camp development.

As you correctly note in your letter, Mill Site Road was constructed with two 11-foot-wide travel lanes and four feet of shoulder for a total of 26 feet of overall pavement width. However, your statement that, "The allowable use is for less than 50 units on a cul-de-sac or 75 units on a through-road" is incorrect. The County utilizes 11-foot-wide travel lanes in many areas throughout the County, and this lane width is considered to be an acceptable standard for both Minor Residential roadways as well as Local Collector roadways. For example, Eureka Road in the Granite Bay area of the County – which has residences and a public school fronting directly onto the roadway – is constructed with two 11-foot-wide travel lanes and carries an Average Daily Traffic volume of approximately 3,550 daily trips.

Regarding the Zone of Benefit that was created to address drainage, maintenance, snow removal, repair and replacement of Mill Site Road and Cross-Cut Court, you are correct in stating that the original property owner (Trimont Land Company) desired to maintain a higher level of service than provided by Placer County, and the County Service Area Zone of Benefit was self-imposed on the Retreat at Northstar subdivision to provide this higher level of service. Unfortunately, your statement that the "Zone of Benefit does not contemplate either public transit nor unrestricted access by the public or owners of property within the neighboring communities over Mill Site Road" is incorrect. As Zones of Benefit are only created for public roadways, any members of the public are entitled to use roadways included within Zones of Benefit – the County cannot prohibit the public from utilizing a public roadway. As a result, while your clients are able to enjoy a higher level of service over the identified public roadways, so too are other members of the public.

Thomas S. Archer
December 12, 2011
Page Three

On Page 4 of your letter you state, "Martis Camp did not secure a(n) easement or other mechanism allowing for local public transit across the Unsurveyed Remainder." In light of the Conditions of Approval referenced above and the actual development of Mill Site Road to the property line in accordance with those conditions, the County interprets Sheet 3 and Detail C of the Final Map for the Retreat at Northstar, including labeling in that Detail, as establishing Mill Site Road across the Unsurveyed Remainder. While this small triangle of public roadway may not be included within the Zone of Benefit for the subdivision, the small triangle of public roadway is still in fact a public roadway, and the public has rights to use this section of public roadway.

Your letter contends that the County is sitting idly while "Martis Camp improperly attempts to change a(n) Emergency Vehicle Access into a thoroughfare for the owners of lots within its subdivision to drive to and from Northstar for which there has been no CEQA study, compliance nor approval." For the record, while Martis Camp was required to provide Emergency Vehicle Access through its connection with Mill Site Road (which it has in fact provided), I can find nothing in the record that prohibits Martis Camp residents from utilizing the public roadways (i.e., Mill Site Road) that abut the Martis Camp development.

You do not give any specifics as to how the CEQA analysis prepared for both the Retreat at Northstar and Martis Camp projects are not adequate to address traffic generation associated with the respective projects. Further, the time for challenging those projects has long since passed. The usage of public roadways of which your letter complains arises not from a County action, or the County's approval of an action requiring a permit, but rather from the access rights pertaining to land abutting private roadways. Thus, there is no "current" project for purposes of CEQA analysis.

As noted above, Mill Site Road was designed with a 40-foot-wide roadway right-of-way, and Mill Site Road was constructed with two 11-foot-wide travel lanes and four feet of shoulder width. This roadway section is capable of accommodating Average Daily Traffic capacity of 6,800 vehicle trips. There is no indication that the roadway is experiencing anywhere near this level of traffic. The design width for Mill Site Road was predicated upon the intended volume of traffic as identified in the environmental analysis for the project, and the daily use of Mill Site Road is not exceeding the capacity of the roadway.

Based upon my analysis of both the Retreat at Northstar and Martis Camp projects, I cannot agree with your conclusion that the Martis Camp subdivision is not in conformance with its Conditions of Approval. Further, my review has concluded the County did in fact follow and comply with the requirements of the California Environmental Quality Act and the County's Environmental Review Ordinance as well as the Subdivision Map Act and the County's Subdivision Ordinance in its processing and approval of the Tentative and Final Maps for both the Martis Camp and The Retreat at Northstar projects.

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December 12, 2011
Page Four

During some of the previous meetings with your clients, it is my understanding that County staff discussed options available to your clients, including the possible abandonment of the County's interest in Mill Site Road and Cross-Cut Court. As I am sure you are aware, the requirements to allow the County to abandon its interest in those roadways are quite onerous. Should you client choose to pursue an abandonment of the public rights-of-way, it would be my suggestion that further discussion with County staff be held to discuss the viability of such a request prior to investing time and resources into such an endeavor.

I hope that this letter has responded to your client's concerns regarding the public use of Mill Site Road. Should you have any questions regarding the information set forth in this letter, please call me directly at 530-745-3099.

Sincerely,



MICHAEL J. JOHNSON, AICP
Agency Director

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ATTACHMENT 2

Letter and Memorandum from
Randall M. Faccinto to
Robert Sandman, dated
May 1, 2012



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San Francisco, California 94111
main 415 617 8900
fax 415 617 8907
www.stoel.com

May 1, 2012

RANDALL M. FACCINTO
Direct (415) 617-8910
rmfaccinto@stoel.com

VIA E-MAIL (rsandman@placer.ca.gov) and U.S. FIRST-CLASS MAIL

Mr. Robert Sandman
Deputy County Counsel – Placer County
175 Fulweiler Avenue
Auburn, CA 95603

Re: Unauthorized Use of Road Connection Between Martis Camp and Retreat at Northstar Subdivisions

Dear Rob,

Our firm has been retained by the Retreat at Northstar Association and Mr. and Mrs. Lev Leytes, owners of a home in the Retreat subdivision, in regard to the need for Placer County to take immediate action to stop unauthorized use of the road connection between Martis Camp Subdivision and the Retreat. We are aware that this issue has been raised in the past with County staff. I had a lengthy conversation yesterday with County Surveyor, Chuck Grant, and Department of Engineering and Surveying Director, Wes Zicker. Additionally, the County's past position on this matter was stated in a December 12, 2011 letter to the Association's counsel, Tom Archer, and the Community Development Resource Agency Director, Michael Johnson. It is apparent from both Mr. Johnson's letter and my conversation with Mr. Grant and Mr. Zicker, that the County has yet failed to recognize that the emergency access gate required by approvals of the Martis Camp subdivision limit the connection between roads in that subdivision and those in the Retreat only to emergency and possibly future public transit access only.

Our office has made an initial review of the County's records of the approvals for both subdivisions. Enclosed is our memo to the County which provides the answer to questions in Mr. Johnson's letter as to the existence of restrictions on the road connection. Mr. Johnson states the question as, in essence, are there prohibitions on the residents of Martis Camp utilizing the public roadways in the Retreat? There are not. They may use the public roads in the same manner as any other member of the public driving in the Retreat subdivision. However, there are restrictions on those residents, or any other members of the public, using the connection between the public roads in the Retreat and the private roads in Martis Camp

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Mr. Robert Sandman
May 1, 2012
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for any purposes other than those approved by Placer County. The County's governing land use plan, the Martis Valley Community Plan, restricts use of such a connection and the Board of Supervisors respected, and issued their subdivision approvals and consistent with, that restriction by requiring an emergency access gate at the road connection.

I would like the opportunity to meet with you to discuss this mater and as soon as you have a chance to review the enclosed memorandum.

Thank you for your anticipated attention to this matter.

Very truly yours,

Randall M. Faccinto

RMF:dm
Enclosure

cc: Lev Leytes (via e-mail)
Retreat at Northstar Association
Michael Johnson (via e-mail)



MEMORANDUM

May 1, 2012

ATTORNEY-CLIENT PRIVILEGE; ATTORNEY WORK PRODUCT

TO: COUNTY OF PLACER

FROM: STOEL RIVES, LLP

RE: Unauthorized Use of Road Connection Between Martis Camp and Retreat at Northstar Subdivisions

Schaffer Mill Road (Martis Camp Subdivision) connection to Mill Site Road (Retreat at Northstar Subdivision)

Both the Martis Camp and Retreat at Northstar subdivisions were designed and approved with a road connection between them that is to be used only for emergency and public transit, a road connection use limitation that is required by the Martis Valley Community Plan ("MVCP"). Currently there is an ongoing and growing violation of that limitation in that non-emergency or public transit traffic is being allowed to pass through the intended emergency/transit only access gate. That violation results in a change in land use that has not been applied for, studied or approved as required by law. An emergency access gate was required to be installed to limit use of the road connection as specified in the MVCP. No change in the subdivisions' roads or any new condition on either development is needed. It is the duty of Placer County to take action to stop this violation by requiring that the emergency access gate be operated to limit traffic to only the approved uses.

Summary of Background Facts:

Apparently in the fall of 2010, owners of homes and lots in the Martis Camp subdivision, and others permitted by those owners or by the developer of the subdivision, began using Mill Site Road in the Retreat at Northstar ("Retreat") subdivision as a thoroughfare between Martis Camp and the Northstar-at-Tahoe development ("Northstar"), without restriction, by being given the ability to open a gate installed to limit access between the two subdivisions. The gate appears to have been installed by the developer of Martis Camp, DMB Highlands Group, LLC ("DMB") to meet conditions of the January 2005 approval of the Martis Camp (formerly Siller Ranch) Vesting Tentative Map (SUB-424/CUP-3008) ("Martis Camp Map/CUP") that require a gated emergency and public transit access road connection to Northstar. The gate is located on a "remainder" parcel owned by DMB, near its boundary with the Retreat developer's "remainder" parcel and near the

point where an emergency access road extending from the east end of Schaffer Mill Road, a private road in the Martis Camp Subdivision, meets the boundary near the west end of Mill Site Road in the Retreat subdivision (the "connection"). Via Mill Site Road, vehicles from Martis Camp can enter onto Big Springs Drive and the rest of the Northstar road system, through which they can access State Highway 267 at its intersection with Northstar Drive.

The Martis Camp Map/CUP does not authorize any road connection between the two subdivisions at this location, except for emergency access and public transit use. Use of that connection for a public road, or as inter-project private road access for Martis Camp owners, was not a part of the DMB Martis Camp project proposal, or the Retreat developer's (Trimont Land Company) proposal for its project. No plan for a public or private road connection at this point was brought before the Planning Commission or Board of Supervisors of Placer County, nor was it included in the CEQA required environmental impact review for either project, and for that reason a public or private road connection was and is not authorized by either project's approvals. In fact, in granting the Martis Camp approvals, the County expressly stated that use of the road connection for anything other than emergency or transit use would require additional County approval and subsequent environmental review.

DMB did not apply for or receive any form of permit to use the emergency access road connection between the private road system of the Martis Camp subdivision and public roads in Northstar for uses beyond those approved as part of the Martis Camp Map/CUP – gated emergency and public transit access only. Rather, DMB's application for the Martis Camp subdivision stated that DMB would provide "emergency access connections" to the Northstar community. Nevertheless, DMB has commenced making expanded use of the connection and announced that it believes that it has the right to allow up to 650 Martis Camp homeowners, and their invitees, to use the connection and thus the Northstar road system. Such a changed and increased use requires County approval after application, CEQA compliance, and public hearing. As explained below, such increased use cannot possibly be found to be in substantial compliance with the conditions of the Martis Camp Map/CUP, as the project's application was processed without any request for or environmental and other review of such increased road use. Such additional road connection use is not mentioned at all in the Martis Camp Map/CUP for the understandable reason that it was not a part of the application. DMB does not have the legal right to allow non-emergency, private or public access road use of this connection by its lot owners, or anyone else, without additional approval from Placer County.

The private roads in Martis Camp are not freely usable to connect with public roads in the Retreat. The Martis Camp Map/CUP conditions of approval require a gate limiting use of the connection for emergency access to be installed and that it have a "Knox Box" key system to give the Truckee Fire Protection District ("TFPD") and the Northstar Fire Department, a part of the Northstar Public Services District ("NPUD"), control of its use. DMB installed the required emergency access gate and the Knox Box system. However, without asking for or receiving any authority, it also installed a separate gate opening control system that allows others to open the

gate at will for non-emergency vehicle passage onto Mill Site Road and the Northstar road system. DMB has taken the position that, because the roads in the Retreat are dedicated to public use and, as it interprets that dedication, the Martis Camp emergency access area road joins Mill Site Road at the boundary of the two subdivisions, the owners of the over 650 lots in Martis Camp (and, practically, anyone they wish to allow to pass through) may use the connection for any vehicle use they desire. This is contrary to the County's community plan required restrictions on the road connection and the specific conditions on Martis Camp's approvals that the connection be gated for clearly defined emergency and transit use. No other vehicle use is authorized. The connection has unilaterally been opened up to non-emergency or public transit use without application, CEQA review of the impacts of the resulting increase in road use, public or governmental agency comment or prior County approval.

There are many statements in the County's records of the proceedings on both subdivision approvals showing that this road connection is approved for only emergency and future public transit use. In response to concerns that Martis Camp would use its roads as a thoroughfare through Northstar, and questions as to how the roadway would be guaranteed to remain open for emergency access/transit use only, the Martis Camp (then Siller Ranch) Final EIR includes these crystal clear statements that the road connection was being approved only for emergency and transit access: **"Any future decision to open this roadway would require CEQA review and would be a separate project. The occurrence of emergency traffic along the roadway would be considered a special event and not part of a typical peak weekend or weekday traffic volume"**, and **"Also, as the project would be approved with the transit/emergency access only (consistent with the adopted Martis Valley Community Plan), the opening of the roadway to the public would be a separate project subject to its own environmental review process."** (see attached Appendix 1). No project application has been filed or CEQA review conducted, and no decision to open the road for non-emergency traffic has been made by Placer County. Yet, the residents and guests of Martis Camp are making unauthorized use of the road. Placer County has a ministerial duty to take action to restrict the use of this connection to only that permitted by all prior approvals.

The Retreat approvals are consistent with the limited road connection uses contained in the Martis Camp approvals. The Retreat subdivision was approved by Placer County in February, 2005 on the basis that Mill Site Road use would generate new traffic only from the 18 lots within that subdivision, and the possible emergency and transit tie to Martis Camp. The application for the Retreat Vesting Tentative Map ("Retreat Map") included no proposal to open up the connection with Martis Camp for any use beyond the emergency access and possible future public transit, and no County action related to the approval of the Retreat increased the legally allowed uses of that connection. Dedication of the two roads within the Retreat as public roads for other purposes did not affect the pre-existing limitation on allowed use of the connection between the end of Mill Site Road and the clearly labeled emergency access easement road in the neighboring Martis Camp subdivision. The Retreat Map approval process included conditions to assure the emergency

and transit use of this road connection to Martis Camp. It did not address opening up the road connection to any additional use.

The unpermitted increase in use of the connection has greatly expanded the volume of traffic passing through the 18 lot Retreat subdivision, a neighborhood that was designed, permitted, marketed and sold on the basis that it would be unusually quiet and secluded, and with traffic limited to that generated by the 18 lots. Today, owners of the 50+ built homes (with more under construction), Martis Camp employees and their invitees are using the connection into Northstar. There will be over 650 homes in Martis Camp. The difference in traffic volume (up to 36 times that addressed in the Retreat FEIR) and its impacts on peace, quiet and safety changes the nature of the Retreat neighborhood and is unacceptable to the Retreat's owners. The increased traffic further detrimentally impacts the road system and environment of other neighborhoods in the Northstar project, all without having been applied for, publically reviewed for environmental, safety or engineering impacts, or permitted. Placer County must recognize that this increased use of the road connection is improper and now require a gate that functions to assure that use of the road connection is limited to that approved by the County and allowed under the MVCP.

That a public or private road connection between the two developments at this location was not part of either projects' proposals or approvals is not surprising. It was and is barred by law – a specific provision of the MVCP.

I. Martis Valley Community Plan

The MVCP was adopted by the Placer County Board of Supervisors in December, 2003 after over 30 public meetings and years of work by County staff public participants and consultants. The MVCP specifically requires that the road connection between the two subdivisions be limited to emergency access and possibly public transit use.

a. MVCP Provisions. The Transportation and Circulation element of the MVCP includes as its Implementation Program 1 that the County's Board of Supervisors and Land Development Departments review all development projects for compliance with the goals, policies and specific discussions contained in the Transportation and Circulation Section ("TCS") of the MVCP. TCS Discussion item number 6, Future Transportation Systems, specifically addresses the requirement of limited use of the connection between Schaffer Mill Road in Martis Camp and roads in Northstar, stating, at page 72 of the MVCP,

"The County had an in-depth analysis performed for two road networks for the development of this plan. One scenario included a through connection between Schaffer Mill Road and Northstar Drive. ... [and other connections]. The second scenario removed the through connections from Schaffer Mill Road to Northstar and from Eaglewood to Sierra Meadows/Ponderosa Palisades developments.

Of these two roadway network scenarios the one with the connections was the proposed roadway network initially presented to the community at public meetings due to the overall circulation benefits. Based on community and landowners input, however, this Plan proposes the second scenario and further proposes that Northstar Highlands to Northstar Village connection via Big Springs Road be limited to transit, pedestrian, bicycle and emergency access. **Additionally the proposed roadway system includes transit and emergency access only between Schaffer Mill Road and Northstar.** (emphasis supplied)

The future transportation systems discussion continues at page 73 of the MVCP to describe the intended restricted nature of a road tie-in between Schaffer Mill Road and Northstar's Big Springs Road, stating,

"Big Springs Drive

Big Spring Drive is classified as a collector road and will extend from its current termination southward to the Highlands Development as a pedestrian, bicycle, transit, and emergency access corridor. **In addition, this roadway will tie-in with Schaffer Mill Road as a transit and emergency access corridor.**" (emphasis supplied)

In the following paragraph, the MVCP states,

"The connection from Northstar Drive to Schaffer Mill Road shall be made with the development of the Siller Ranch and the Retreat subdivision at Northstar, or other Northstar developments. All emergency access gates shall be approved by the governing fire district."

b. Legal Impact of MVCP.

The MVCP is a community plan adopted by Placer County to implement the Placer County General Plan and set land use controls specific to the Martis Valley, which includes the land of the Martis Camp and Retreat subdivisions. No subdivision can be approved unless it is consistent with this plan. Gov't Code §65455. Both the Planning Commission and Board of Supervisors, upon the advice and recommendation of County staff, and we assume on advice of County Counsel, made the finding that the Martis Camp Map/CUP as approved was consistent with the MVCP. Given the specificity of i) the MVCP on the issue of allowed use of this road connection, ii) the language in the Martis Camp Map/CUP conditions describing the allowed use of the road connection and required gate, and iii) statements in the FEIR that the project is consistent with the adopted Martis Valley Community Plan precisely because the roadway would be approved for transit/emergency access only, that finding was clearly correct as it applies here.

II. Martis Camp (Siller Ranch) Approvals

As required by the MVCP, the Martis Camp subdivision approvals authorize only limited emergency and public transit access use for a road connection between the end of Schaffer Mill Road and Northstar. The County approvals were consistent with that community plan and are effective to limit the road connection to the legally permitted uses. However, since the landowner responsible to install an effective gate refuses to do so, it is now necessary for the County to take action to see that the intent of the Martis Camp approval conditions is met.

The Martis Camp subdivision was originally known as Siller Ranch. Its initial Placer County approval came in January, 2005 as SUB-424/CUP-3008, a 726 lot planned residential development proposed to be developed in 9 phases. On June 24, 2004, the Placer County Planning Commission approved the project based upon its legally required finding that the approvals were consistent with the MVCP. That action was appealed to the Board of Supervisors. On January, 18, 2005 the Board certified the project's Final Environmental Impact Report ("FEIR") and approved the Martis Camp Map/CUP based upon the same finding of MVCP consistency. The project was considered and voted upon by both the Planning Commission and Board with the clear intent that it not include a public or private road connection to Northstar. Such a road connection was not included in the developer's proposal or in any environmental impact review required for the project. It is not authorized by the project's approvals.

a. Martis Camp EIR. From the beginning, the application for approval of the Martis Camp project proposed only emergency (and later public transit) access from the project site into Northstar from the end of Schaffer Mill Road. A preliminary review of the County's records on the processing of the Siller Ranch tentative map and CUP application discloses repeated instances of County, applicant and commenting parties confirming the intent that the road connection be limited to emergency and public transit uses.

Attached, marked Appendix "1", is a summary of relevant parts of those records. In addition to leaving no doubt that only the limited use was intended to be part of the project, this record highlights the County's clear position that any change to "open" this road to additional use would be a separate project, subject to CEQA review.

The Martis Camp FEIR anticipated only limited, emergency and possibly public transit, use of the road connection from Martis camp to Northstar. Expansion of that use for public or Martis Camp owners' private road use requires application, CEQA review and County approval.

b. Martis Camp Conditions of Approval. The MVCP requirement that the road connection between Martis Camp and Northstar be emergency and public transit access only, and a requirement that the connection between the two roads be gated to restrict its use to those permitted uses, is expressed in the project's conditions and in the fact that in no way does the Martis Camp Map/CUP approve, or even address, any other use of the road connection. The project's conditions include the following:

1. Condition 146 FIRE PROTECTION (FEIR mitigation measure 4.11.1.2a) includes the following:

“(K) emergency access into Northstar-at-Tahoe with direct access to Big Springs Drive shall be provided with the Phase 5 improvements.”

“(L) Knox box system, or equivalent, shall be provided at all gated entrances and emergency access roads to provide access to the fire district.”

It also states at 146 (I), “Emergency access roads shall be designed and gated to the district, county and state standards unless exceptions are approved”.

2. Condition 39. “As a part of the phase that creates lots 595 & 598, or before, construct an emergency access connection between lots 595 & 598 to provide a connection to adjacent Northstar project to satisfaction of the serving fire districts and the DPW.

ADVISORY: prior to acceptance of any phase, emergency access shall be provided to the satisfaction of serving fire districts and the DPW.”

3. Condition 55 (M). “Easements as required for all emergency access roads to provide for the use of roadway during emergencies.”

4. Condition 33 (mitigation measure 4.4.7b). The project was required to “provide an easement or other mechanism acceptable to the County to allow the use of Siller Ranch Road (from the project entrance at Schaffer Mill Road to K Street and along K Street through **the emergency connection to Northstar at Tahoe**) by local public transit vehicles. Local public transit is defined as public transit services provided by Placer County through Tahoe Area Regional Transit or through a contract provider. Local transit service does not include private carriers such as charter companies and tour buses. “The easement or other mechanism acceptable to the county shall include provisions regarding hours of operation, number of stops, and security issues.” (emphasis supplied).

These conditions were placed on a map that did not include a proposal for either a public or private road connection of Schaffer Mill Road with Northstar. An emergency and public transit road out of Martis Camp by way of Northstar was all that was proposed by the developer, as it had to be to meet the requirements of the MVCP. No public or private use of a road connection between the two projects was proposed, studied in the projects’ respective environmental impact reports or approved by any action of Placer County. Rather, that connection was required to be gated to limit its use. Emergency and possible future public transit connection was required, the above conditions were set to assure that access, and they all are consistent with authorizing **only** the emergency and public transit use of the connection that was allowed by the MVCP.

There also can be no doubt that the developer of Martis Camp was aware of the limitations on any road connection into Northstar. Schaffer Mill Road was not proposed to terminate at the boundary with Northstar. Rather, it ends several hundred feet west. An emergency access, transit access and public utilities easement area is all that exists between the east end of Schaffer Mill Road and the Northstar boundary. This is illustrated on the final subdivision map of Martis Camp Unit No.

7A (Book CC of maps of page 004, recorded November 12, 2008). On Sheets 14 and 16 of that map, copies attached, marked Appendix 3, the description of Schaffer Mill Road itself terminates and an area is shown continuing from that point through the "Remainder" parcel to the Retreat subdivision boundary as solely a "50' E.A.E., T.S.E. AND P.U.E." That area is not a part of the private roads created by the map, to be deeded to the Martis Camp Community Association. When the Unit 7A final map was presented to the Board of Supervisors for action to approve its recording in November, 2008, the County's Department of Engineering and Surveying recommended approval by a memorandum from its Director, Wes Zicker (copy attached, marked Appendix 4), that describes the proposed improvements as including "... private subdivision streets, ... and the construction of the emergency access road connection to Northstar." Referencing Sheet 14 of the final map, the memorandum's attached Exhibit "A" shows only an "E.A.E. T.S.E. & P.U.E." route between the end of Schaffer Mill Road and the Northstar boundary. In no way was the approval of this map, or the tentative map on which it is based, authorizing any other use of the road connection into Northstar.

Nothing in the project approvals for Martis Camp permits can be interpreted as approval by Placer County for use of an open road connection between the extension of Schaffer Mill Road and the road system in Northstar. **Other than the one for emergency, and possibly future public transit, access, no road connection between Martis Camp and Northstar has ever been authorized by Placer County.**

c. **Knox Box System Required.** The mechanism by which the County required DMB to limit and control use of the road connection was and is an emergency access gate, which should assure that unauthorized road use cannot be made. The Martis Camp developer was required to install such a gate with a "Knox Box system, or equivalent". A Knox Box system is one designed for emergency access, with a master key controlled by the fire department or other emergency responder. Although a gate was installed with a Knox Box system, an additional control system was added and is now being operated to allow Martis Camp lot and home owners and their invitees to drive through the Retreat at will.

III. Retreat at Northstar Approvals

As shown in the attached copy of Sheet 4 of the Retreat Map, marked Appendix 5, there are only two roads in the Retreat subdivision. Mill Site Road extends from Big Springs Road, a main collector route in the Northstar development, through the Retreat to near its western boundary with the Martis Camp remainder parcel. Mapped (and dedicated) Mill Site Road does not reach the boundary. A small piece of the developer's remainder parcel exists at the boundary, over which an emergency access easement connects with Martis Camp. Cross Cut Court serves the lots not on Mill Site Road. Full CEQA study and an EIR were done for the Retreat. That process, conducted in 2004, resulting in a Final EIR certified by the Board of Supervisors and approval of the Retreat Vesting Tentative Subdivision Map ("Retreat Map") on February __, 2005, less than __ weeks after Board approval of the Martis Camp Map/CUP. Attached, marked Appendix "2", is a summary of the relevant parts of discussion of the road connection found in the County's record of the Retreat approval process.

Like the environmental review for the Martis Camp subdivision, the Retreat EIR repeatedly makes it clear that the road connection to Martis Camp is for limited uses. For example, it states more than once that, **"The proposed project roadway would eventually serve to connect with properties to the west as an emergency access/transit corridor, as discussed in the Martis Valley Community Plan. This would provide a secondary route for emergency access vehicles."** In discussing consistency with the Martis Valley Community Plan, the EIR provides further that **"The project does not propose any roadway connections that would encourage the use of through traffic to use neighborhood roadways."** There is no provision at all in the Retreat approvals for any other public or private use of the connection between the two subdivisions. The developer was proposing a small, 18 lot, secluded, private, "retreat" neighborhood. There was no proposal to allow use of Mill Site Road as a connection to Martis Camp's 650+ lots, except in true emergencies and possibly for future public transit.

The Retreat roads were dedicated as public roads to tie into the Northstar public road system. The public's right to use those roads ends at the west end of Mill Site Road. Except in the case of an emergency, neither the Retreat owners nor the public has any right to use Mill Site Road to connect to Martis Camp. No such connection was proposed or created by the Retreat Map and none exists. Only a dedicated emergency and public transit access easement extends from the west end of Mill Site Road to the Martis Camp emergency access easement road at the boundary.

The roads within each of the two subdivisions can be used as permitted by their respective approvals and applicable law. However, by requiring the installation and maintenance of an emergency access gate, the Board acted to enforce the MVCP restriction on the connection between the two subdivisions and respond to the applicants' proposal for its limited use. The connection between the two can be used only as permitted by those approvals and the MVCP, that is, for emergency and transit access only.

Our clients propose no change in the legal uses of the private roads or emergency access easement area road in Martis Camp, nor any change in the use of the dedicated public roads in the Retreat. Both subdivisions' conditional approvals provide for the roads as needed to service their respective land areas. The only change needed is that the use of the connection between the two roads must be brought into compliance with the Board of Supervisors' actions approving both subdivisions, that is, that the only road connection be in compliance with the MVCP and the conditions of approval that specify **only** emergency and transit access connections. The Board did not intend to, and did not, leave other use of the road connection open to the discretion of Martis Camp. Public or private road connection into Northstar was barred by the MVCP and it is highly improbable that anyone involved in either subdivision map process was not aware of that fact. The Martis Camp Map conditions must be interpreted in that light. Every reference in the record to the use of the road connection is limited to emergency and public transit. That the allowed road connection was limited to those uses cannot be credibly disputed.

DMB is seeking to connect a new subdivision road serving 650 lots to a public road that itself was approved based on very limited use, at a location where the applicable land use law restricts just such a connection. This is a significant change in land use that has not been the subject of County

review and approval, not to mention CEQA compliance. In these circumstances, where a gate to limit use is a condition on the Martis Camp use of the connection between the two roads, it is not a right that flows solely from the fact that there is a public road adjacent to its project. A road connection between neighboring subdivisions requires County approval. There has been no such approval. None was requested by either applicant. Our clients ask that Placer County consider the action of DMB adding thru vehicle access to the connection into Northstar one that is in excess of its subdivision approval and order it stopped. If DMB wishes to seek approval for such a road connection, it should be required to apply for it. Currently, Placer County has the duty to enforce the requirement for an effective emergency access gate and limit its use to the approved purposes.

APPENDIX "1"

I. SUMMARY OF PLACER COUNTY SILLER RANCH/MARTIS CAMP RECORDS

A. PROJECT DESCRIPTION FROM APPLICATION

- The application submitted by Siller Ranch states that the project will provide "emergency access connections" to the Northstar community.

B. COMMENTS ON NOTICE OF PREPARATION

- April 2, 2003 Comment Letter From Caltrans
 - "An emergency access connection to the Northstar area roads is shown but it is not clear whether pedestrians, bicyclists, or transit will be able to use this on a daily basis."

C. DRAFT EIR

- **Project Description** - "The project would provide a 22-foot wide emergency access road on the eastern border of the project site connecting to a planned emergency access road in "The Retreat" within Northstar-at- Tahoe that would eventually connect to Big Springs Road." "The three emergency access roads would be gated and have Knox boxes or similar devices to provide access to emergency service providers."
 - "The project would have three emergency access roads that connect with adjacent projects. These include an emergency access road located on the eastern border of the project site connecting to a planned emergency access road in "The Retreat" at Northstar-at- Tahoe that would eventually connect to Big Springs Road, and two emergency access roads that would be located along the northern edge of the eastern half of the project site, which would connect with Lahontan's southern border at Pete Alvertson and John McKinney roads."
- **Impact Discussion**
 - "Implementation of Mitigation Measure MM 4.11.1.2a would result in increased traffic impacts to the communities of Lahontan and Northstar-at-Tahoe in the event of an emergency. The emergency access connections through Lahontan to State Route 267 and Big Springs Drive to Northstar Drive could accommodate the increased traffic with no additional environmental impacts. The emergency access road connection would also benefit the community of Northstar-at-Tahoe by providing secondary access through Siller Ranch to Schaffer Mill Road."
- **Siller Ranch Draft EIR Martis Valley Community Plan Consistency Tables**
 - "Policy 3.A.5. - The County shall require that through traffic be accommodated in a manner that discourages the use of neighborhood roadways, particularly local streets. This through-traffic, including through truck traffic, shall be directed to appropriate routes in order to maintain public safety and local quality of life."
 - "The project does not propose any roadway connections that would encourage the use of through traffic to use neighborhood roadways."

- "Based on direction from CDF and TFPD, the project design includes emergency access roads that connect with Lahontan and "The Retreat" at Northstar."

D. FINAL EIR

- **Siller Ranch FEIR NCS D Comment Letter dated January 2, 2004**
 - The emergency access road to Northstar was heavily debated during the Citizen's Committee meeting and was one of the only issues voted upon. "The Committee voted against it being open for traffic, with its use limited to emergency access.
 - Also attached is a May 16, 2003 letter from NCS D stating this is emergency use only road.
- **Response to Comments Response G**
 - "The adopted Martis Valley Community Circulation Diagram identifies the connection as a Transit and Emergency Access Corridor and designates the corridor for pedestrian and bicycle access. However, this designation may be affected by Policy 7.E.4 if this project is approved as a private gated community. **The applicant has agreed that the extension of Schaffer Mill Road through Siller Ranch (Siller Ranch Road) will be designated and used as an emergency access and public transit provider route, even if Siller Ranch is approved as a private community. (emphasis supplied)**
- **Siller Ranch FEIR Siller Ranch FEIR NCS D Comment Letter dated January 2, 2004**
 - **Comment 4-12** - States a revised traffic analysis indicating the total number of trips on the emergency access road, including transit trips, is required.
 - **Response to Comments 4-12**
 - "Mitigation Measure MM 4.4.7b includes performance standards associated with access control for the emergency access roadway and the extent of transit usage. Use of this roadway for transit is expected to result in beneficial effects to traffic conditions in the project area by providing another point of access for transit to the Northstar-at-Tahoe ski resort. **Any future decision to open this roadway would require CEQA review and would be a separate project. The occurrence of emergency traffic along the roadway would be considered a special event and not part of a typical peak weekend or weekday traffic volume. (emphasis supplied).** The number of transit trips expected on the route has yet to be determined, but Placer County is currently initiating a transit study to identify this number, as required by the Martis Valley Community Plan. However, a preliminary estimate indicates that the number of transit trips would not exceed 20 PM peak-hour trips, which would have a negligible impact on LOS and would provide improved transit service to the area. **The proposed use of this roadway is also consistent with the adopted Martis Valley Community Plan."** (emphasis supplied)
- **January 3, 2004 Comment Letter from Sierra Watch**

- **Comment 4-60** – requests information regarding number of trips on emergency road and asks how the road will be guaranteed to remain an emergency route only.
- **Response to Comments 4-60**
 - “The commentor asks where the trips for the emergency access/transit road are identified and analyzed and how the roadway would be guaranteed to remain open for emergency access/transit use only. The occurrence of emergency traffic along the roadway would be considered a special event and not part of a typical peak weekend or weekday traffic volume. The number of transit trips expected on the route has yet to be determined, but Placer County is currently initiating a transit study to identify this number, as required by the Martis Valley Community Plan. However, a preliminary estimate indicates that the number of transit trips would not exceed 20 PM peak-hour trips, which would have a negligible impact on LOS and would provide improved transit access to Northstar. The proposed use of this roadway is also consistent with the adopted Martis Valley Community Plan. Implementation of Mitigation Measure MM 4.4.7b would include specifications on the use of this roadway.”
- **Comment 4-61** – if Siller Ranch and Retreat plan to share facilities, the EIR must analyze the potential for the emergency access road to become a full access road.
- **Response to Comment 4-61**
 - “The commentor asks what the potential is for facility sharing between Northstar and Siller and requests that the EIR identify impacts associated with the emergency access connection becoming a full access roadway. The commentor is referred to Response to Comment 4-60. As part of the approval of the Northstar Village expansion, the project applicants of both projects are coordinating regarding the development of this emergency access road. **Also, as the project would be approved with the transit/emergency access only (consistent with the adopted Martis Valley Community Plan), the opening of the roadway to the public would be a separate project subject to its own environmental review process. Opening of the roadway would be subject to CEQA and would not change the nature or scope of the Siller Ranch project.** (emphasis supplied). There are no current plans on connecting ski terrain facilities and access between the project and Northstar. As shown in Draft EIR Figure 3.0-4, no ski connection is proposed.”

E. MITIGATION MEASURES AND CONDITIONS OF APPROVAL

- **MM 4.4.7b** – “The project applicant shall provide an easement or other mechanism acceptable to the County to allow the use of Siller Ranch Road (from the project entrance at Schaffer Mill Road to K Street and along K Street through the emergency connection to Northstar-at-Tahoe) by local public transit service vehicles. Local public transit is defined as public transit service provided by Placer County through Tahoe Area Regional Transit or through a contract provider. Local transit service does not include private carriers such as charter companies and tour buses. The easement or other mechanism acceptable to the County shall include provisions regarding hours of operation, number of stops, and security issues.”

- See also Condition of Approval No. 33.
- **MM 4.11.1.2.a** – “Emergency access into Northstar-at-Tahoe with direct access to Big Springs Drive shall be provided with the phase five improvements. A Knox box system, or equivalent, shall be provided at all gated entrances and emergency access roads to provide access to the fire district.”
 - See also Condition of Approval No. 146

Appendix "2"

SUMMARY OF PLACER COUNTY RETREAT AT NORTHSTAR RECORDS RETREAT SUBDIVISION MAP APPLICATION FILES

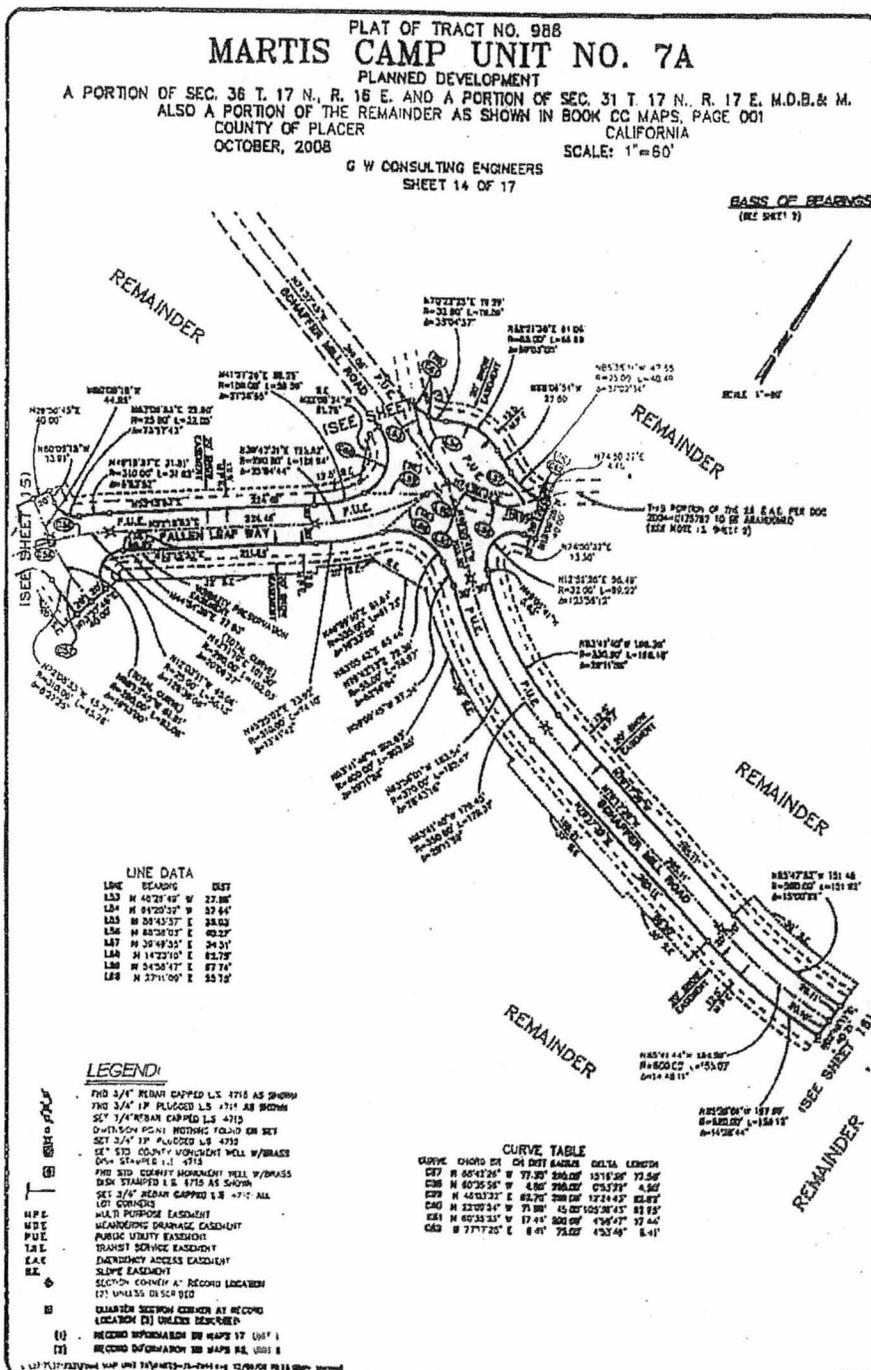
F. DRAFT EIR

- **Impact Discussion**
 - "Impact of Provision of Schaffer Mill Road Emergency/Transit Connection Impact 4.4.13 Under cumulative conditions, an emergency/transit connection would be provided between the project access road and Schaffer Mill Road. This connection would route transit buses through the project site. This would be a less than significant impact."
 - "It is important to note, that the internal project roadway, on the western border of the project site, would connect to the proposed Siller Ranch project as a planned emergency access. The emergency access would connect with the main Siller Ranch roadway, Siller Road, which ultimately connects to Schaffer Mill Road. This connection would serve the entire Northstar community by providing an improved alternative emergency access route for Northstar residents during an emergency."
 - "In addition, it should be noted the internal project roadway, on the western border of the project site, would connect to the proposed Siller Ranch project as a planned emergency access. The emergency access would connect with the main Siller Ranch Road, Siller Ranch Road, which ultimately connects to Schaffer Mill Road. This would provide a secondary route for emergency access vehicles, and the potential avoidance of traffic on State Route 267."
 - "The proposed main subdivision access road would also serve to connect with properties to the west as an emergency access/transit/pedestrian and bike corridor, as discussed in the Martis Valley Community Plan, as well as a connection to proposed public trails on the Siller Ranch property."
 - "The proposed project roadway would eventually serve to connect with properties to the west as an emergency access/transit corridor, as discussed in the Martis Valley Community Plan. This would provide a secondary route for emergency access vehicles."
- **Martis Valley Community Plan Consistency matrix**
 - The project does not propose any roadway connections that would encourage the use of through traffic to use neighborhood roadways (MVCP P 5.A.5).

G. FINAL EIR

- **Comment letter from Northstar Community Services District**
 - A gate is proposed where the emergency access road connects to Siller property. Northstar Community Services District as well as Northstar Fire Department shall approve all gate designs.

Appendix "3"

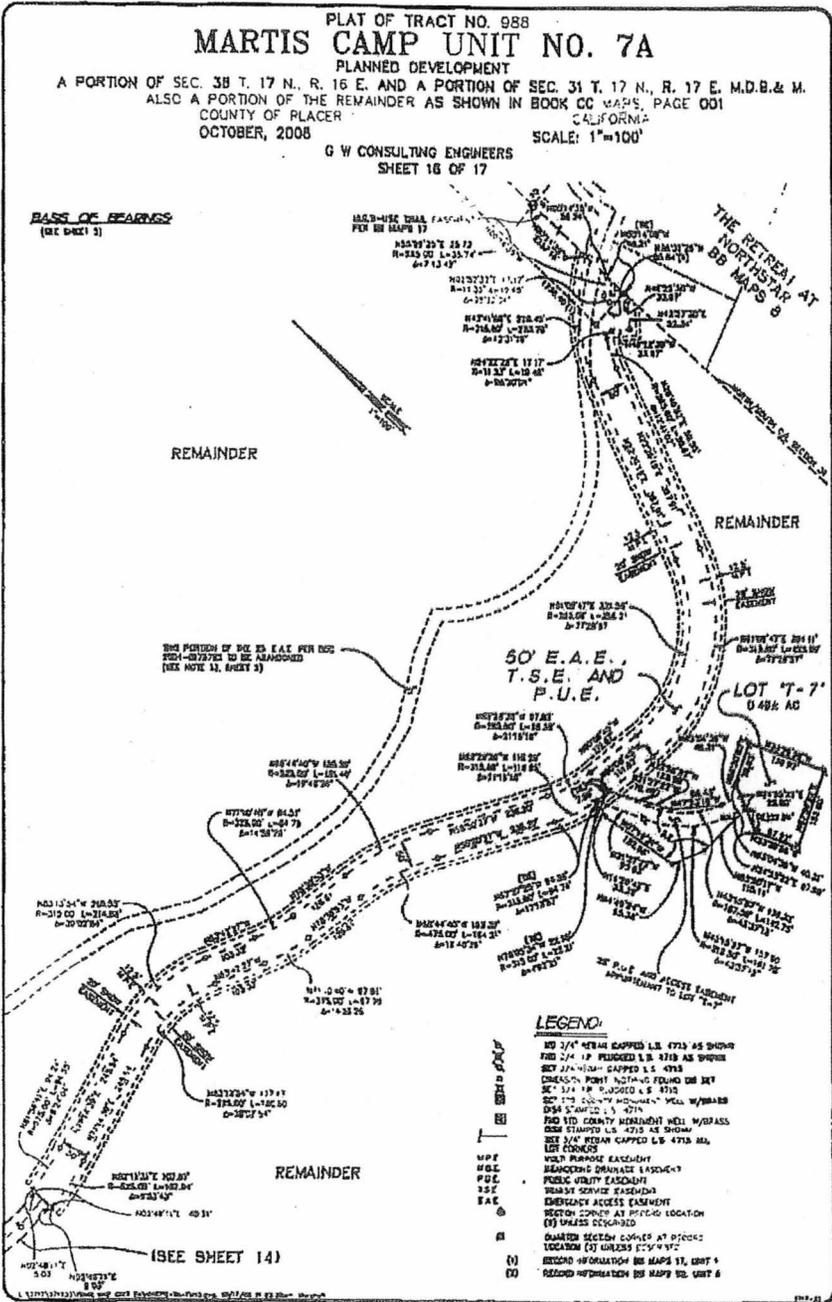


BOOK CC OF MAPS, PAGE 004

PLAT OF TRACT NO. 988
MARTIS CAMP UNIT NO. 7A
 PLANNED DEVELOPMENT

A PORTION OF SEC. 38 T. 17 N., R. 16 E. AND A PORTION OF SEC. 31 T. 17 N., R. 17 E. M.D.B. & M.
 ALSO A PORTION OF THE REMAINDER AS SHOWN IN BOOK CC MAPS, PAGE 001
 COUNTY OF PLACER CALIFORNIA
 OCTOBER, 2008 SCALE: 1"=100'

G W CONSULTING ENGINEERS
 SHEET 16 OF 17



BASE OF BEARINGS
 (SEE SHEET 3)

ALL-USE TRAIL EASEMENT
 PER SB MAPS 17

THE RETRIEVAL AT
 NORTHSTAR 8
 88 MAPS

REMAINDER

REMAINDER

THIS PORTION OF P.U.E. IS KALE PER DEED
 2004-0727261 TO BE ADJUDICATED
 (SEE NOTE 1, SHEET 3)

50' E.A.E.,
 T.S.E. AND
 P.U.E.

LOT '7-7'
 0.48 AC

LEGEND:

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- NO 2 1/4" IRON CAPPED L.S. 4718 AS SHOWN
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BOOK CC OF MAPS, PAGE 004

Appendix "4"



COUNTY OF PLACER
Community Development Resource Agency

John Marin, Agency Director

ENGINEERING
&
SURVEYING

Wes Zicker
Director of Engineering & Surveying

MEMORANDUM

TO: Honorable Board of Supervisors
FROM: Wes Zicker, Director
Department of Engineering and Surveying, Community Development Resource Agency
DATE: November 4, 2008
SUBJECT: MARTIS CAMP (aka SILLER RANCH) UNIT No. 7A, TRACT #988

ACTION REQUESTED:

Approve recording of the Final Map for Martis Camp Unit No.7A located in Martis Valley:

1. Approve recording and authorize the Chairman to sign the Final Map.
2. Authorize the Chairman to sign the Subdivision Improvement Agreement.
3. Instruct the Clerk of the Board to do the following:
 - a. Prepare the Final Map for recording.
 - b. Prepare the Subdivision Improvement Agreement for recording.

BACKGROUND:

Martis Camp originally called Siller Ranch, was approved to create 726 residential units. Subsequent judicial action has limited this development to 653 residential lots. Unit 7A will create 28 single-family residential lots with an average size of 1.33 acres, 3 Open Space Lots and 2 Lots to be granted to PCWA for future facilities, as shown on the attached Exhibit "A." This subdivision is located at the end of Schaffer Mill Road off Highway 267 in Martis Valley.

The improvements proposed to be constructed with this subdivision consist of private subdivision streets, drainage, survey monumentation, and the construction of the emergency access road connection to Northstar. Security sufficient to cover labor / materials and faithful performance has been posted with the County.

Streets within this project are private, with maintenance provided by the property owner's association.

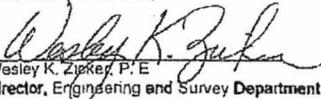
ENVIRONMENTAL CLEARANCE

A Final EIR for Siller Ranch has been found adequate to satisfy the requirements of CEQA for this project. The Final EIR was certified by the Planning Commission on June 24, 2004. Mitigation measures have been addressed by the Conditions of Approval for this subdivision.

FISCAL IMPACT

None

Respectfully submitted,

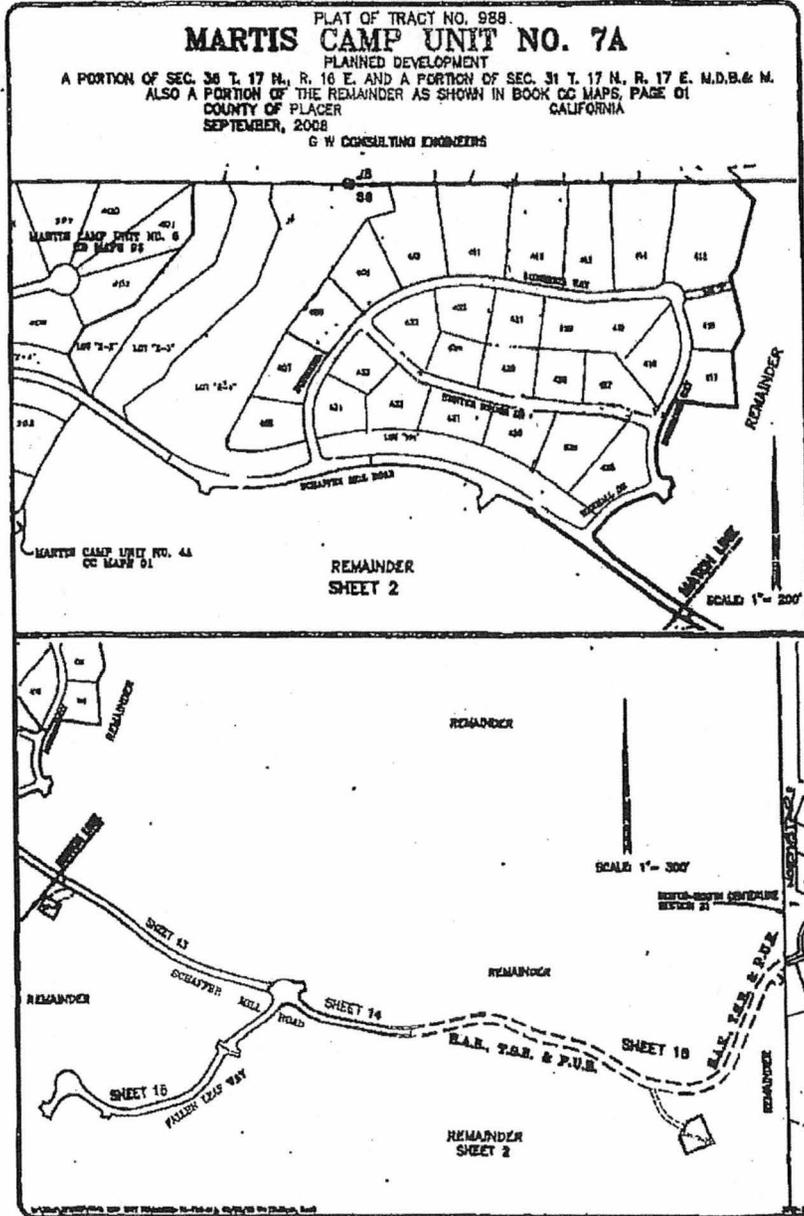

Wesley K. Zicker, P. E.
Director, Engineering and Survey Department

Attached to this report for the Board's information/consideration are:

- Attachment. Exhibit A - Map of Subdivision
- Exhibit A - Vicinity Map

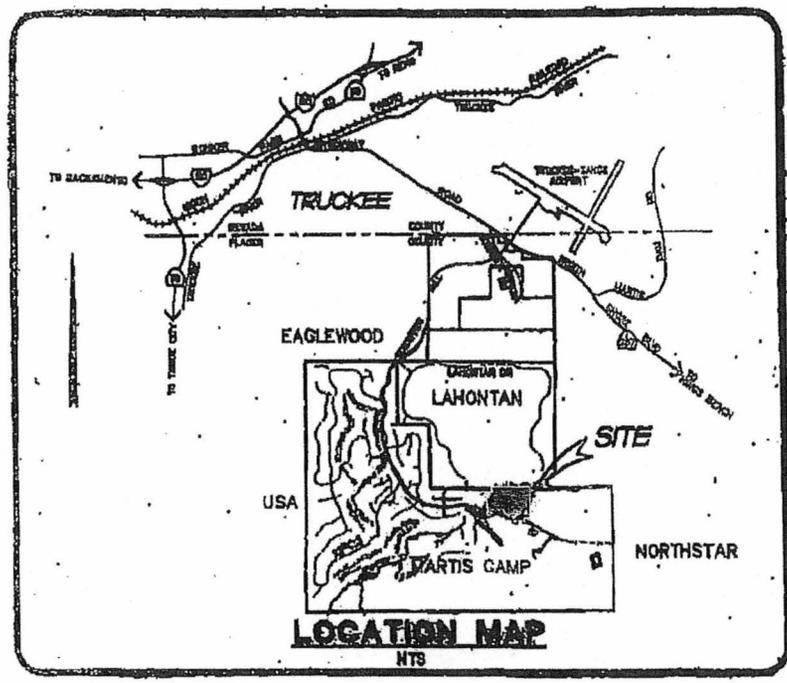
1033

EXHIBIT "A"



1034

EXHIBIT "A"
MARTIS CAMP UNIT 7A



1035

ATTACHMENT 3

Letter and Memorandum from
Lanny Winberry to Robert Sandman,
dated July 24, 2012

LANNY T. WINBERRY
email:ltw@winberrylaw.com

LAW OFFICES OF
LANNY T. WINBERRY

8001 FOLSOM BOULEVARD, SUITE 100
SACRAMENTO, CALIFORNIA 95826

TELEPHONE
(916) 386-4423
FACSIMILE
(916) 386-8952

July 24, 2012

Robert Sandman, Esq.
Deputy County Counsel – Placer County
175 Fulweiler Avenue
Auburn, California

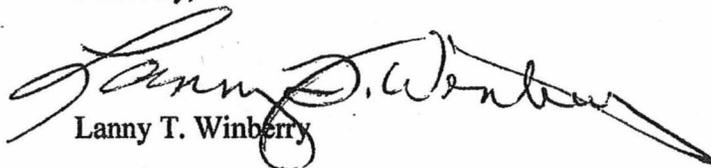
Re: Private Connection to Public Roadway in
The Retreat at Northstar

Dear Mr. Sandman:

Enclosed with this letter are three copies of my Memorandum to you of this date regarding the above-referenced matter.

Please do not hesitate to call me if you have questions in this regard, or if further information or documentation is required.

Sincerely,


Lanny T. Winberry

MEMORANDUM

Date: July 24, 2012

To: Robert Sandman, Esq.
Deputy County Counsel
Placer County, California

From: Lanny T. Winberry, Esq
Legal counsel to DMB Highlands Group, LLC

Re: Martis Camp; Access to
Public Roadway at East End
Of Schaffer Mill Road
Note: Table of Contents Follows on Last Page

I.
INTRODUCTION

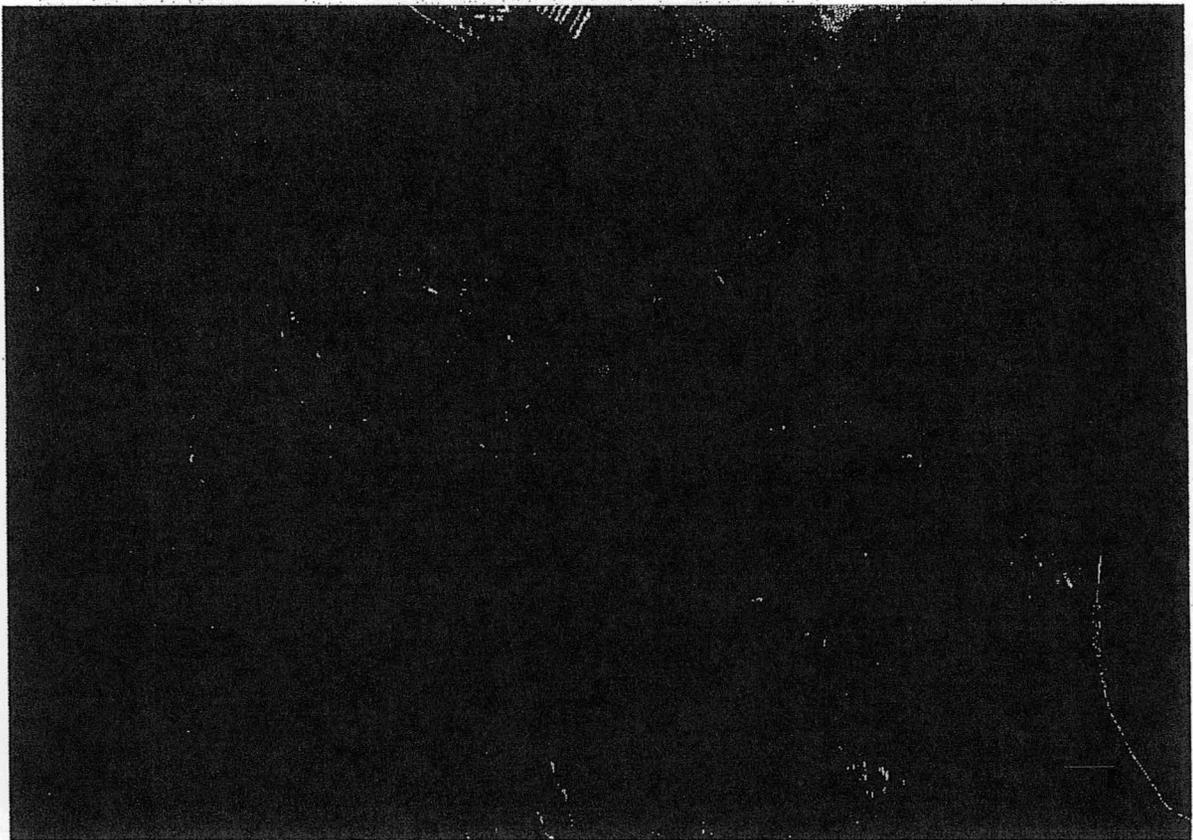
This Memorandum responds to a letter and Memorandum from Randall M. Faccinto of the law firm of Stoel Rives, LLP to Robert Sandman dated May 1, 2012. Mr. Faccinto states that he is writing as legal counsel to The Retreat at Northstar Association and Mr. and Mrs. Lev Leytes who are owners of a home in The Retreat subdivision. The Retreat is one subdivision in the master-planned development known as "Northstar at Tahoe™." The Retreat shares a common boundary on the west with property that is currently owned by my client, DMB Highlands Group LLC, (hereinafter referred to as "DMB Highlands".) My client's land along that common boundary is included in a Vesting Tentative Map of Siller Ranch approved by the County on January 18, 2005 and is identified as potentially annexable property vis-à-vis the Martis Camp common interest development now being developed pursuant to that Vesting Tentative Map. DMB Highlands is the subdivider of the Martis Camp development.

Mr. Faccinto contends that the owners of Martis Camp (apparently meaning both DMB Highlands and the persons who have acquired residential properties in the Martis Camp development) and their invitees are not allowed to enter or exit Mill Site Road, a public roadway that traverses The Retreat, at the location where Mill Site Road abuts the eastern boundary of Martis Camp. Mr. Faccinto asks that the County take action to prevent such access. Mr. Faccinto's letter and Memorandum are hereinafter referred to collectively as the "Request."

The Request does not contend that the owners of Martis Camp are precluded from entering or exiting Mill Site Road from the public roadways within Northstar at Tahoe to which Mill Site Road is connected or that any other owner of property that abuts Mill Site Road should be prevented from entering and using that road to access their abutting parcels – only that the owner of Martis Camp and its invitees may not enter or exit the western end of Mill Site Road as a direct means of ingress and egress to and from Martis Camp. In essence, the Request is that the County take action to require owners of property in Martis Camp who desire to visit the Resort at Northstar™ to do so by a circuitous route originating within Martis Camp, passing through the main entrance to Martis Camp, following Schaffer Mill Road to State Route 267 just

south of the Town of Truckee limits and the County line, traveling in a southeasterly direction along State Route 267 to its intersection with Northstar Drive, and following Northstar Drive to reach the Village. If the objective of Mr. Faccinto and his clients is realized, the return trip for Martis Camp residents would be by the same circuitous route. Using the Path Ruler Tool on the Google Earth™ image presented as Figure 1, below, the circuitous route from the eastern boundary line of Martis Camp to the Village at Northstar (solid bold line) measures more than nine (9) miles – compared to less than one (1) mile using the Mill Site Road and Big Springs Drive (dashed bold line) direct public road route.

Figure 1. Aerial Photo of Martis Camp and Northstar showing Circuitous Route (solid bold line) from East End of Schaffer Mill Road via SR-267 and Northstar Drive to the Village at Northstar Compared to the Direct Route (dashed bold line) via Mill Site Road and Big Springs Road.



The Request makes no attempt to show that the interests of the County or the public would be served in any way by the proposed closure of the west end of Mill Site Road so as to require the residents of Martis Camp to needlessly add to the traffic on other public roadways in the area. The Request suggests that if unimpeded access from Martis Camp to and from the Resort at Northstar™ is permitted, the result will be a stream of commuter vehicles traveling through The Retreat via Mill Site Road in order to access the Resort at Northstar™ or to create a heavily traveled “shortcut” route to State Route 267 at the intersection of Northstar Drive. Current information on usage does not support that contention. DMB Highlands does not agree that the actual usage of Mill Site Road by DMB Highlands and/or Martis Camp residents is, or

will be at full build-out, a significant amount of traffic. However, to the extent that the owners in Martis Camp and their guests use the direct route, that usage will reduce, by a factor of nine (9) the potential additional traffic mileage on area roads. That reduction will eliminate the environmental impacts which would otherwise result from unnecessary traffic mileage. There is simply no reason for the County to require that miles be driven needlessly over a circuitous route, regardless of how many, or how few, traffic miles that may be. Clearly, public safety, public convenience and environmental concerns all argue in favor of fewer traffic miles being driven over the local public roadway system.

As explained in greater detail below, the contentions and assertions on which the Request is based are erroneous primarily because they are based on a misinterpretation of the Final Map of The Retreat subdivision. That misinterpretation allows the Request to ignore the well established law in California that the owner or possessor of real property has a fundamental real property right to directly access and use any public roadway which abuts the owner's or possessor's property – even if that owner or possessor has direct access to another public roadway. This right, often referred to as an "abutter's right," is not a right that is dependent on prior receipt of authorization or recognition by a local governmental agency. Instead, as set forth in detail in Section II A, below, abutter's rights are a fundamental property right recognized by state law. Such a right may not be taken from the abutting private property owner by a local regulatory agency without due process and just compensation.

In the sections below, the relevant provisions of the approval documents for The Retreat and the Martis Camp (formerly Siller Ranch) projects are set forth and discussed, the law regarding the nature and extent of abutter's rights is examined and the individual contentions of the Request are analyzed and refuted. That information and analysis supports the conclusion that the County must decline to grant the Request and must decline to take any action to block, restrict or prohibit direct access to or from Mill Site Road by the owners of property within Martis Camp and their invitees. To grant the Request, the County would have to engage in a taking of private property and an improper vacation of a portion of a public roadway. No public purpose would be served by such action. To the contrary, the interests of the traveling public would be impaired.

II.
**THE REQUEST IS BASED ON UNSOUND PREMISES, AND THE RELIEF IT SEEKS
IS BARRED BY CONSTITUTIONAL PROTECTIONS OF PRIVATE PROPERTY
RIGHTS**

A. The County Has Correctly Stated that Martis Camp “Abuts” on Mill Site Road, a Public Roadway.

The Request declines to consider the issue of “abutter’s rights” even though the Director of the Placer County Community Development Resource Agency, in a letter dated December 12, 2011 to Thomas Archer, who then represented Mr. Faccinto’s clients, had stated that Martis Camp abuts on Mill Site Road and that Mill Site Road was a public road at the location of that abutment (the “County Letter”). For ease of reference, a copy of the County Letter is attached hereto as Exhibit A.

The Request’s failure to consider abutter’s rights is not accidental. In fact, the Request letter references the December, 2011 County Letter. However the Request Memorandum – with respect to perhaps the most important issue raised in the Request – essentially ignores the substance of the County Letter in several respects. For example:

- The Request ignores the fact that the County Letter clearly states, (top of page 3, at lines 7 and 8) that the County’s interpretation of the final Map of The Retreat and the related approval documents is that “the small triangle of public roadway is still in fact a public roadway, and the public has a right to use this section of public roadway.”
- The Request also ignores the statement in the County Letter, (page 2, second full paragraph, lines 6 through 8) that, “the County is not aware of any restrictions that prohibit the residents of Martis Camp from utilizing the public roadways (i.e, Mill Site Road) that abut the Martis Camp development.” (Emphasis added.)

Instead of acknowledging and attempting to deal with these clear statements from the County, the Request letter asserts that the County Letter posed “questions” as to the rights to use Mill Site Road. That assertion distorts what was clearly stated in the County Letter. It is not until the bottom of page 8 of the 9 and one-half page Memorandum that the Request asserts that Mill Site Road “does not reach the boundary” but, instead, ends near, but short of, the Retreat’s western boundary. Even at that point, the Request does not acknowledge the fact that the County had formally stated a contrary interpretation of the Map. In support of its assertion that Mill Site Road ends short of The Retreat subdivision’s westerly property line, the Request points to a Detail on Sheet 4 of the final Map of the Retreat – a poor and severely reduced copy of which is attached as Appendix 5 to the Request Memorandum. The Request ignores the statement in the County Letter, (at page 1, second paragraph, lines 1 through 3) that the County’s “Engineering and Surveying department has met with your client on several occasions.” Obviously, the County Surveyor who approved and allowed the filing of the final Map of The Retreat had access to clear copies of the Map and related documents and was unconvinced by Mr. Archer’s arguments that the dedicated portion of Mill Site Road ends a few feet to the east of the Martis Camp

property line. The County's interpretation of its own documents is entitled to great deference from the courts.¹

1. The Vesting Tentative Map of The Retreat, Including the Conditions of Approval, Contemplates a Roadway Connection as Well as an Emergency Access Connection at the Common Property Boundary Between The Retreat and Siller Ranch.

Logic and public policy fully support the position apparently taken by the County's Engineering and Surveying Department and summarized in the County Letter. Contrary to the contention of the Request, the Notes on Sheet 4 and Sheet 6 of the final Map of the Retreat depict and label Mill Site Road as lying both to the east of and within the Remainder along the western edge of the Retreat. Further, the portion of Mill Site Road depicted as, and labeled as, lying within the Remainder is consistent with the Vesting Tentative Map of the Retreat, which was approved by the County on February 23, 2005. (The Request references the Vesting Tentative Map of the Retreat, (at page 8, bottom paragraph at lines 8 and 9) but, inexplicably, fails to provide a copy of that Vesting Tentative Map.) Copies of Sheets 1, 2 and 3 of the Vesting Tentative Map of the Retreat are attached hereto as Exhibit B. The Vesting Tentative Map repeatedly shows Mill Site Road extending all the way to the property line common to the Retreat and Siller Ranch/Martis Camp and denotes no change of status as the road crosses the Remainder. To the contrary, a Note on page 3 points out that: "MILL SITE RD TO THE WEST OF PROPERTY LINE IS A PART OF 'THE VILLAGE' EMERGENCY ACCESS ROAD IMPROVEMENTS AS WELL AS THE 'SILLER RANCH' PROJECT." Thus it is clear that the project approved by the County and illustrated in the Vesting Tentative Map of The Retreat was a project which included a public roadway all the way to the western "property line." Only at the "PROPERTY LINE" was the roadway allowed to be something less than a full-fledged public roadway.

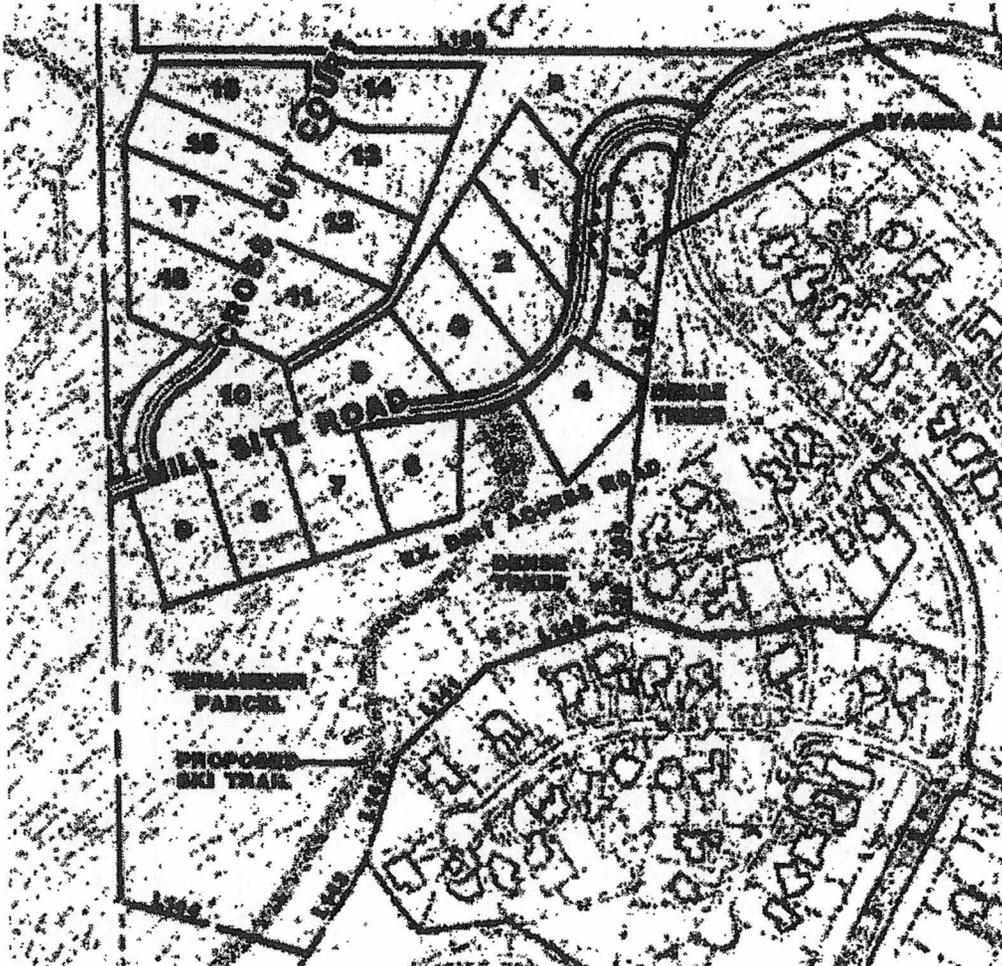
¹ In *Citizens for Responsible Equitable Environmental Development v. City of San Diego*, 196 Cal. App. 4th 515 (4th Dist. 2010) the court held:

"In reviewing the Municipal Code, we apply the framework developed in *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7-8.

...
"In *Yamaha*, the California Supreme Court held that, "Whether judicial deference to an agency's interpretation is appropriate and, if so, its extent — the 'weight' it should be given — is . . . fundamentally *situational*." (*Yamaha, supra*, 19 Cal.4th at p. 12.) Greater deference should be given to an agency's interpretation where "the agency has expertise and technical knowledge, especially where the legal text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion." (*Id.* at p. 12, quoting Cal. Law Revision Com., Tent. Recommendation, Judicial Review of Agency Action (Aug. 1995) p. 11 (Tentative Recommendation).) For example, where an "agency interprets its own regulation . . . the agency is likely to be intimately familiar with regulations it authored and sensitive to the practical implications of one interpretation over another." (*Yamaha, supra*, 19 Cal.4th at p. 12, quoting Tentative Recommendation, *supra*, at p. 11.) In addition, greater deference is appropriate where there are "indications of careful consideration by senior agency officials." (*Yamaha, supra*, 19 Cal.4th at p. 13.)"

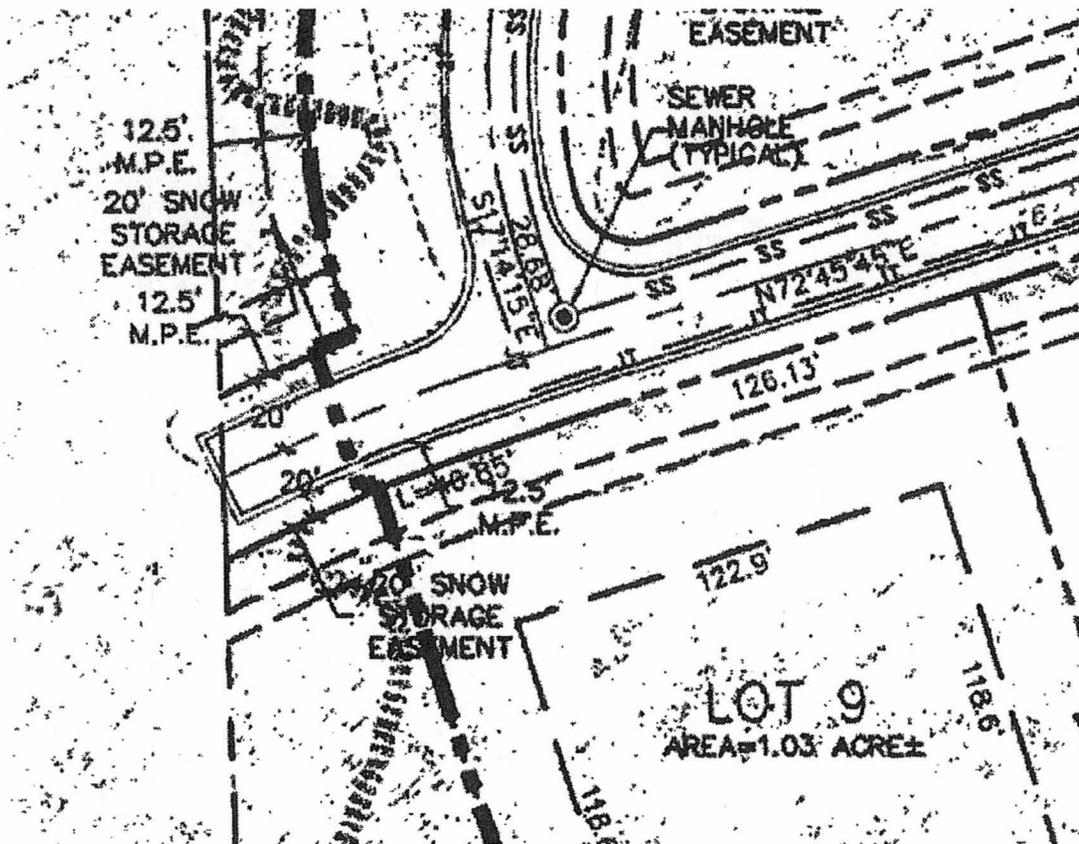
Figure 2 below is an extract of Sheet 1 of the Vesting Tentative Map of the Retreat. This extract shows that Mill Site Road was clearly depicted as extending all the way to the common property line between Siller Ranch/Martis Camp and The Retreat at Northstar.

Figure 2. Extract of Sheet 1 of the Vesting Tentative Map of The Retreat at Northstar



An extract of Sheet 2 of the Vesting Tentative Map of The Retreat, presented as Figure 3 below, includes a dark dashed line which is the eastern edge of the Remainder parcel. This shows that even though the western end of Mill Site Road was to pass over the Remainder parcel, the character and status of that roadway was no different in the Remainder than in the portion outside the Remainder.

Figure 3. Extract of Sheet 2 of VTM for The Retreat at Northstar



In addition to the depiction of Mill Site Road on Sheets 1 and 2, the Vesting Tentative Map of The Retreat includes a note box on Sheet 3 which states: "MILL SITE RD TO THE WEST OF PROPERTY LINE IS A PART OF 'THE VILLAGE' EMERGENCY ACCESS ROAD IMPROVEMENTS AS WELL AS THE 'SILLER RANCH' PROJECT." (See Exhibit B, Sheet 3, Note box in lower left margin .)

Were there any doubt as to the fact that Mill Site Road was to be offered for dedication as a public roadway all the way to the western property boundary of The Retreat as depicted on the Vesting Tentative Map of the Retreat, such doubt would be resolved by reference to the Conditions of Approval for The Retreat. (An extract of those Conditions of Approval, adopted by the County on February 23, 2005 as a part of the approval of the "Retreat at Northstar Vesting Tentative Map")

is attached hereto as Exhibit C.) Condition of Approval 37 A, under the heading "GENERAL DEDICATIONS/EASEMENTS" provides in pertinent part:

37.

A) Dedicate to Placer County a 40'-wide (minimum) highway easement (Ref. Chapter 16, Placer County Code) along Mill Site Road for road and utility purposes.

The use of the words "highway" and "road," in Condition 37, without any words of limitation, shows that Mill Site Road was to be offered for dedication as a public roadway. In light of the fact that Sheets 1, 2 and 3 of the Vesting Tentative Map show Mill Site Road as extending all the way to the property boundary, the reference to "Mill Site Road" can only mean the entirety of Mill Site Road – rather than some undefined portion thereof. Thus, at the time of the County's conditional approval of the Vesting Tentative Map of The Retreat at Northstar, Mill Site Road was required to be offered for dedication as a public roadway all the way to the western property boundary of The Retreat.

In addition to requiring that the entirety of Mill Site Road be offered for dedication as a public roadway, the County, also required, as Condition 26, that Mill Site Road be fully "constructed," (in accordance with the County Standards prescribed in Condition 20, at page 10 of Exhibit C) all the way to the property line. Section 26 of the Conditions of Approval provides:

26. Mill Site Road shall be constructed at a minimum to the west property line for a future emergency access / transit access road connection.

The Vesting Tentative Map of the Retreat, particularly when interpreted in the light of Conditions 37 and 26, make it clear that the west end of Mill Site Road would be on the west property line, and that, at that property line, Mill Site Road, as a public road, would make a physical "connection" with the private road already approved (January 18, 2005) in the Siller Ranch development. As shown below, the "emergency access / transit access road" referenced in Condition 26 would lie directly over the roads then planned as Siller Ranch Road and K Street in the Siller Ranch/Martis Camp development. The County's intent that Mill Site Road would be a public road all the way to the property line is, in light of Sheets 1, 2 and 3 of the Vesting Tentative Map and Conditions of Approval 20, 26 and 37, beyond reasonable dispute. The connection point between Mill Site Road as a public roadway and the emergency access roadway to which it would connect was required to be at the west property line of The Retreat and not a few feet short of that line as the Request erroneously contends.

Section 66474.1 of the Government Code requires that a final Map must be in "substantial compliance with the previously approved tentative map." The Vesting Tentative Map of The Retreat depicts, and the Conditions of Approval describe and require, a public roadway extending all the way to the west property line of the Retreat and not a road which terminates just short of the property line so as to create a "spite strip." The County has correctly determined that Mill Site Road, including the "small triangle" at the property line is a public roadway." The Request's erroneous contention that Mill Site Road, as a public road, does not touch on Martis Camp, falls of its own weight.

2. The Vesting Tentative Map of Siller Ranch Contemplates a Roadway Connection as Well as an Emergency Access Connection.

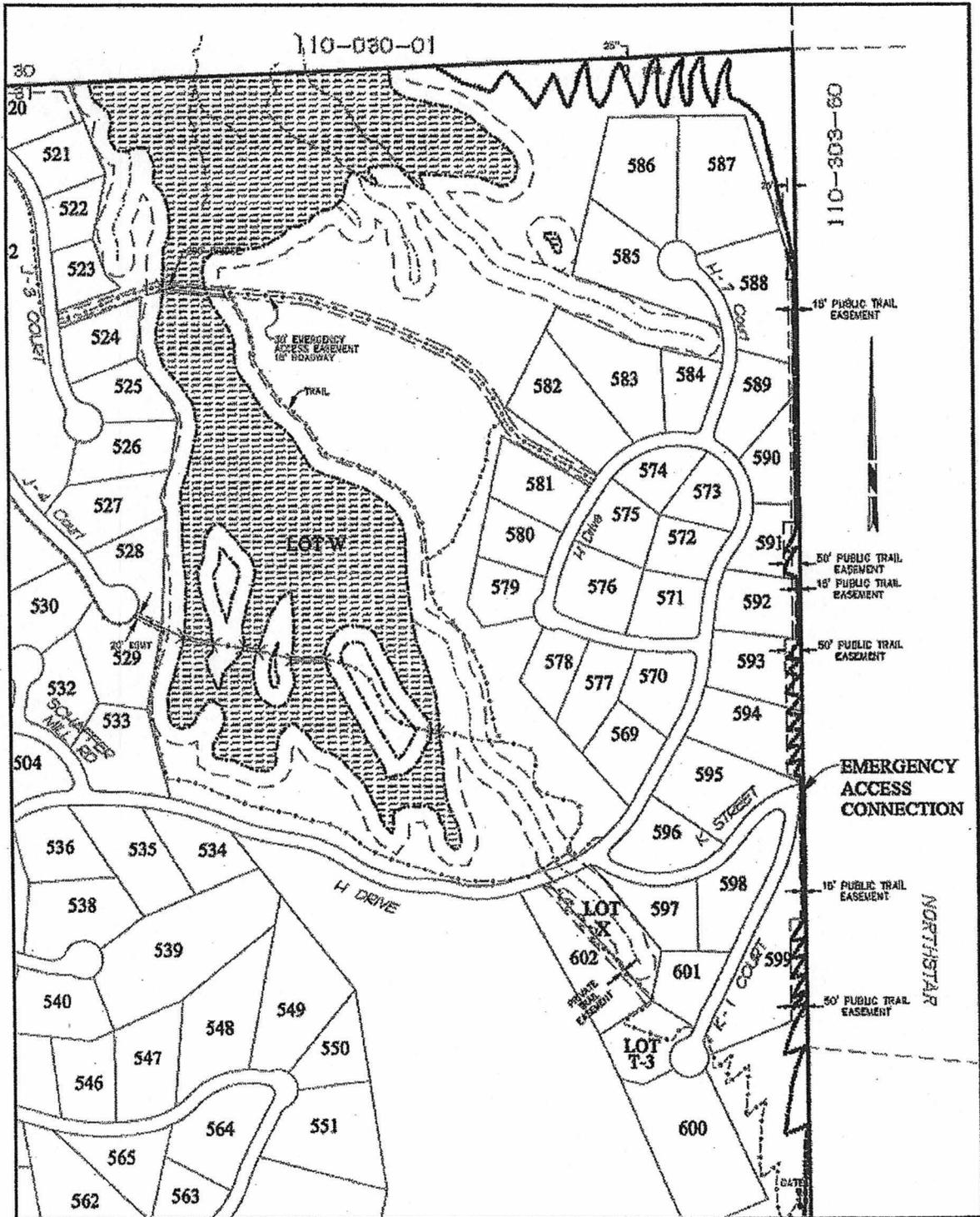
Following, as Figure 4, is an extract of the northeastern portion of the Vesting Tentative Map of Siller Ranch, approved with conditions on January 18, 2005. Figure 4 shows that the roadway referred to thereon as "K Street" was mapped so as to extend all the way to the common property line between Siller Ranch and The Retreat and to reach that property line at the same point as Mill Site Road in The Retreat as depicted in Figures 2 and 3 above. Figure 4 also shows that the point of connection between K Street in Siller Ranch and what was, on February 23, 2005, approved as Mill Site Road in The Retreat was labeled as "EMERGENCY ACCESS CONNECTION." The arrow emanating from that label points directly to, and ends precisely on, the property line separating Siller Ranch/Martis Camp from The Retreat at Northstar. Thus, it is clear, on the Vesting Tentative Maps of both projects that the Emergency Access Connection point was at the property line and not at some undefined point inside The Retreat as the Request erroneously contends. As discussed below, Schaffer Mill Road has now been fully developed so as to align perfectly with, and to match the grade of, the western end of Mill Site Road at the common boundary between Siller Ranch/Martis Camp and The Retreat.²

² At the point, of its juncture with Mill Site Road, K Street was envisioned as also swinging to the southwest (K-1 Court) so as to serve other lots planned in Siller Ranch/Martis Camp. In order to avoid crossing a water of the United States, (a "WOUS") Schaffer Mill Road, as developed, swings to the south of that WOUS and proceeds in a northeasterly direction to reach the juncture with Mill Site road from the southwest along the course shown as K-1 Court on the Siller Ranch Vesting Tentative Map. (See Appendix "3"-2 of the Request for a depiction of the alignment of the easternmost segment of Schaffer Mill Road.

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Figure 4. Extract of Vesting Tentative Map of Siller Ranch

Figure 4. Extract of Vesting Tentative Map of Siller Ranch



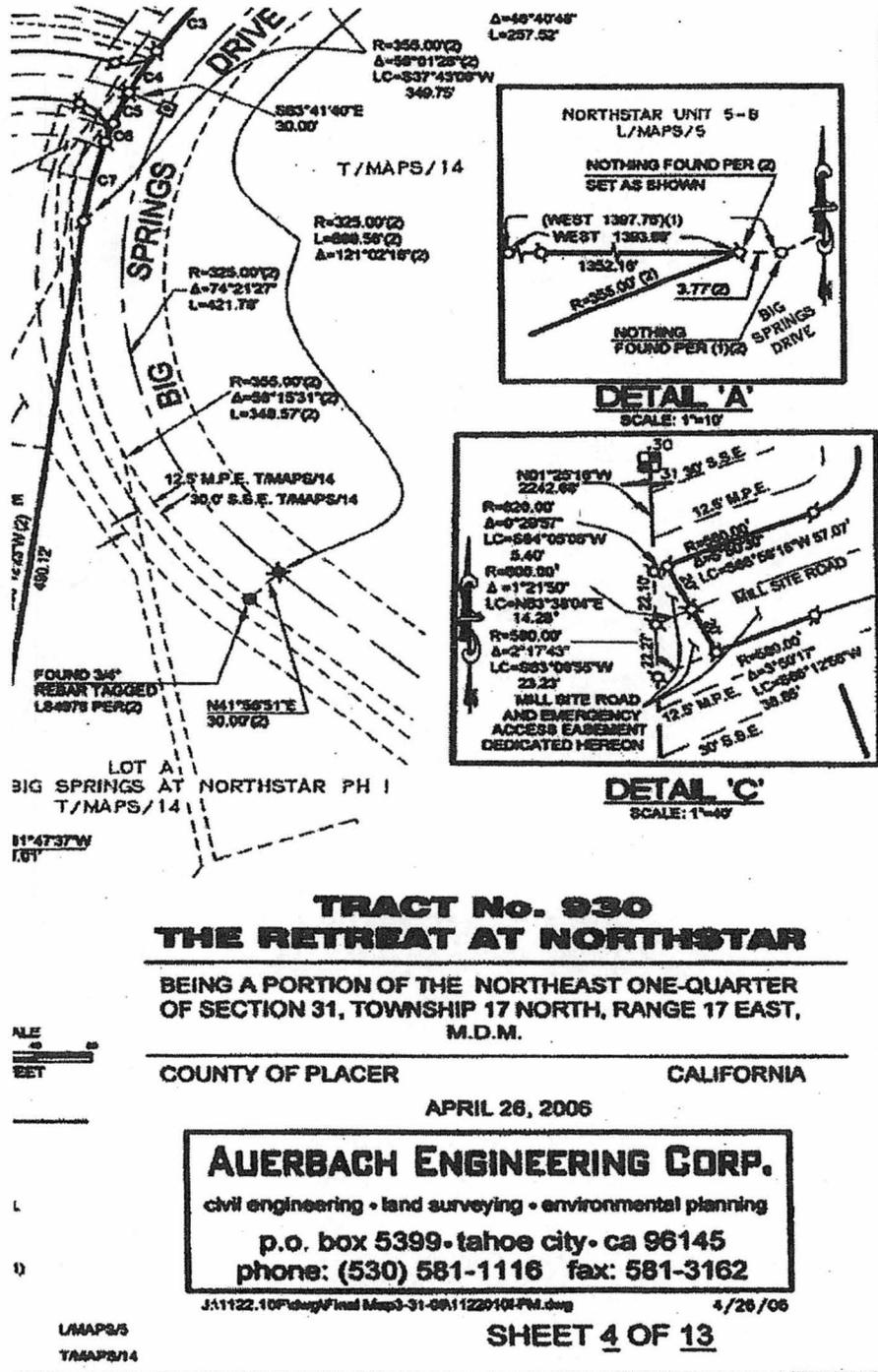
The Vesting Tentative Maps of Siller Ranch and The Retreat, depict both a roadway connection and an Emergency Access connection.³ Therefore, as of February 23, 2005, when the Vesting Tentative Maps were approved by the County, it was clear that the subdivision entitlement plans approved by the County showed a private road in Siller Ranch connecting to a public road, Mill Site Road, in The Retreat at Northstar. The Request identifies no public discussion (because there was none) as to a change in the approved plans so as to create a “spite strip” separating the west end of Mill Site Road from the common property line and its connection with what is now the east end of Schaffer Mill Road.

3. The Final Map of The Retreat Depicts and Describes a Public Roadway All the Way to the Western Property Boundary.

Attached as Exhibit D is a copy of Sheets 1, 4 and 6 of the Final Map of the Retreat at Northstar. Following as Figure 5 is an extract of that Sheet showing Detail C, the part of the Map relied upon in the Request. In Detail C, the area of Mill Site Road lying within the Remainder is labeled as both “Mill Site Road and Emergency Access as Dedicated Hereon.” By use of the word “and” the labeling in the Detail makes it clear that Mill Site Road traverses the Remainder parcel as a public road and as an EAE in favor of other land in Northstar – just as it was depicted in the Vesting Tentative Map of The Retreat.

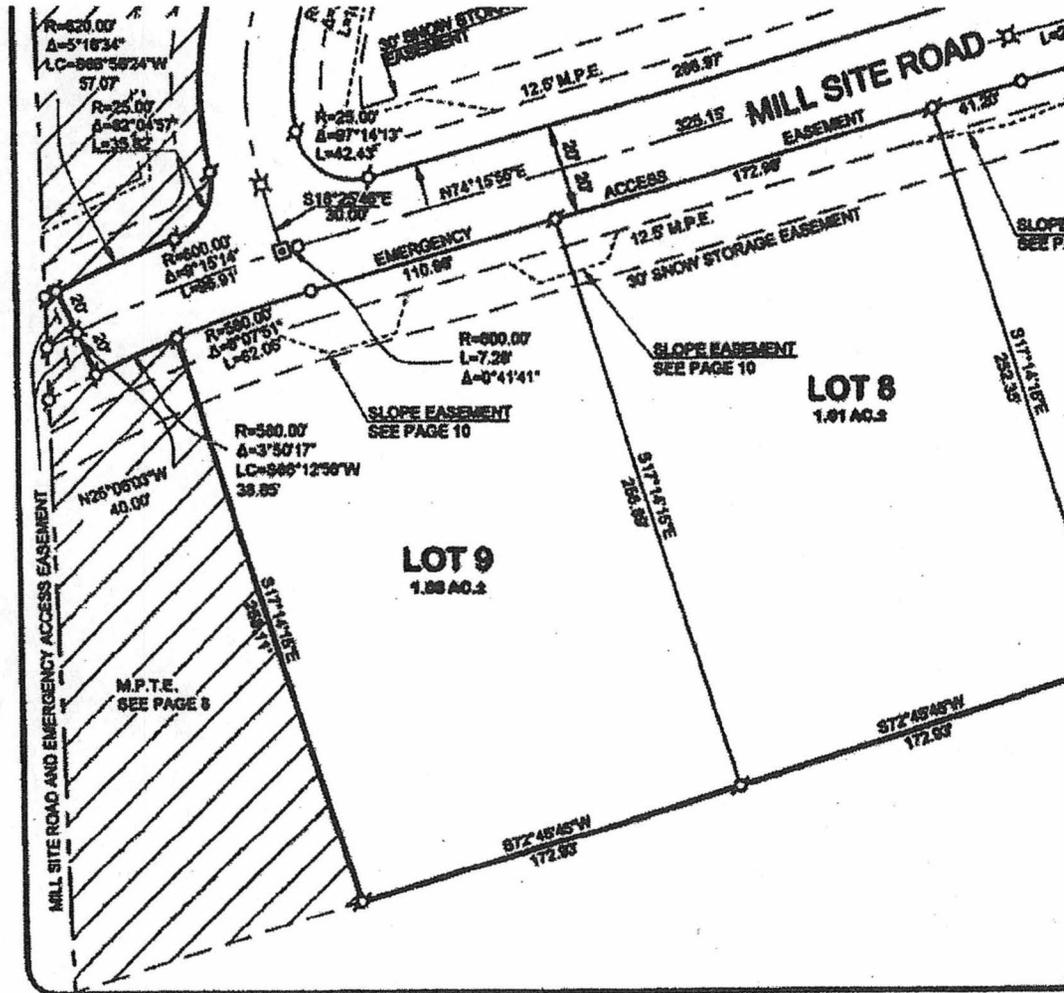
³ Condition of Approval 33 for Siller Ranch required an easement in favor of the County for the operation of public transit vehicles over Siller Ranch Road and K Street through the emergency connection to Northstar-at-Tahoe. Condition 55 M) required “Easements as required for all emergency access roads to provide for the use of the roadway during emergencies.” See Exhibit F, an Extract of the Siller Ranch Conditions of approval.

Figure 5. Extract of Page 4 of the Final Map of The Retreat at Northstar Showing Detail C.



Sheet 6 of the Final Map of The Retreat includes a special note which labels the portion of Mill Site Road lying within the Remainder, and only that portion, as "Mill Site Road and Emergency Access Easement." Again, by the use of the word "and" on Sheet 6, and by pointing only to the portion of Mill Site Road lying within the Remainder, any ambiguity in Detail C on Sheet 4 is resolved and it is made even more clear that Mill Site Road was dedicated as a public road all the way to the common boundary with Siller Ranch/Martis Camp when the Final Map was recorded. Figure 6 below is an extract of that sheet showing the note discussed above.

Figure 6. Extract of Sheet 6 of the Final Map of The Retreat at Northstar



Following is an extract of the relevant dedicatory provisions set forth on Sheet 1 of the Final Map of the Retreat at Northstar.

OWNER'S STATEMENT:

THE UNDERSIGNED HEREBY CERTIFY THAT THEY ARE THE ONLY PERSONS HAVING ANY RECORD TITLE INTEREST IN THE REAL PROPERTY INCLUDED WITHIN THIS SUBDIVISION, AND THEY HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF THIS MAP, AND THEY HEREBY IRREVOCABLY OFFER FOR DEDICATION TO THE PUBLIC AN EASEMENT FOR ROAD AND PUBLIC UTILITY PURPOSES OVER, UNDER AND ACROSS MILL SITE ROAD AND CROSS CUT COURT AS SHOWN HEREON, AND THEY DO HEREBY IRREVOCABLY OFFER FOR DEDICATION TO THE PUBLIC FOR THE HERENAFTER DESCRIBED PURPOSES THE FOLLOWING:

BOARD OF SUPERVISORS'S STATEMENT:

THE BOARD OF SUPERVISORS OF THE COUNTY OF PLACER, ON THE 15 DAY OF MAY 2004, DID APPROVE THIS MAP OF THE RETREAT AT NORTHSTAR TRACT 630, AND HAS ACCEPTED ON BEHALF OF THE PUBLIC THE EASEMENTS AND RIGHTS-OF-WAY FOR MILL SITE ROAD AND CROSS CUT COURT OFFERED FOR DEDICATION FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF DEDICATION. THE EXCEPTIONS ARE LISTED AS FOLLOWS:

1. THE ROAD AND UTILITY RIGHTS-OF-WAY ARE PUBLIC, BUT MAINTENANCE OF THE ROADS IS BY COUNTY SERVICE AREA NO. 20 ZONE 1B7. THE ACCEPTANCE OF THIS OFFER OF DEDICATION DOES NOT CONSTITUTE ACCEPTANCE OF THE PROPERTY DESCRIBED INTO THE COUNTY HIGHWAY SYSTEM.

(The foregoing is extracted from Sheet 1 of Exhibit D hereto.)

The offer and acceptance of dedication set forth above are not limited to some portion of Mill Site Road. If the developer of The Retreat at Northstar intended to offer for dedication only a portion of the area depicted and labeled on the Vesting Tentative Map and Final Map as Mill Site Road that intention was not made known. Similarly, if the County did not intend to accept the dedication of the entirety of Mill Site Road as a "public" road, that intention was not made known. As noted above, approval of the Vesting Tentative Map of The Retreat, including the Conditions of Approval required that the entirety of Mill Site Road be offered for dedication as a public highway and road. The law requires that a final subdivision map comport with the tentative map on which it is based. Therefore, upon acceptance and filing of the Final Map of The Retreat, the County accepted Mill Site Road as a "public" road extending all the way to the property boundary.

As was, in effect, pointed out in the County Letter, (Exhibit A, page 2, second full paragraph, lines 6 through 8) even though the various documents referenced in the Request may not expressly authorize direct access to Mill Site Road by the adjoining land owner to the west and its invitees, such access was envisioned and provided for, and no approval provisions or limitations were ever promulgated which precluded such direct access. Moreover, express authorization for direct access would have been superfluous. As explained in Section II B, below, an abutter's right to directly access and use a public roadway exists unless and until it is voluntarily surrendered or until that right is condemned and taken by governmental action following due process of law and the payment of just compensation to the owner of the land

abutting a public roadway.⁴ The law supporting the County Letter and the County's analysis in this regard is summarized in Section II. B. below.

Stripped of its self-serving, result-driven and incorrect interpretation of the Map of the Retreat, the Request cites no documents, (because there are none) which expressly, or by implication, deprive the current or future owners of Martis Camp of any abutter's rights to directly access and use Mill Site Road.

B. Abutter's Rights are Fundamental, Constitutionally Protected Property Rights.

California Jurisprudence 3rd, Highways and Streets, Sections 70 and 71 cite numerous California Appellate Decisions holding:

1. "An owner of land abutting upon a public street has a property right in the nature of an easement in the street which is appurtenant to his or her property and which is his or her private right as distinguished from his or her right as a member of the public. This right is described as a right of ingress and egress or as the right of access to the property." (Cal. Jur. 3d, Vol. 37, Highways and Streets, §71, p. 209, citing *People v. Ricciardi*, 23 Cal. 2d 390 (1943); *Lane v. San Diego Elec. Ry. Co.* (208 Cal. 29 (1929)); *Leonard v People ex rel. Dept. of Transp.* 62 Cal. App. 4th 1296 (2nd Dist. 1998) and numerous other cases.)
2. "These rights are easements and are private property as fully as the ownership of the land itself." (Cal. Jur. 3d, Vol. 37, Highways and Streets, §70, p. 207, citing *Ratchford v. County of Sonoma*, 22 Cal. App. 3d 1056 (1st Dist. 1972); *Kitzman v Newman*, 230 Cal. App. 2d 715 (2d Dist. 1964 and other cases.)
3. "These rights arise by operation of law irrespective of the public's rights and may not be taken away or substantially impaired by the public without compensation." (Cal. Jur. 3d, Vol. 37, Highways and Streets, §70, pp. 207-208, citing *Short Line Associates v. City and County of San Francisco*, 78 Cal. App. 3d 50 (1st Dist. 1978) (these rights arise by operation of law) and *McCandless*

⁴ In *People v Ricciardi* (1943) 23 Cal 2d 390, the California Supreme Court noted:

"The courts of this state, from time immemorial and in cases too numerous to mention, have declared and enforced the abutting property owner's right to a free and convenient use of and access to the highway on which his property abuts. (*Eachus v. Los Angeles etc. Ry. Co.*, 103 Cal. 614, 617 [37 P. 570, 42 Am.St.Rep. 149]; *Geurkink v. City of Petaluma*, 112 Cal. 306, 308 [44 P. 570]; *O'Connor v. Southern Pacific R. R. Co.*, 122 Cal. 681 [55 P. 688]; *Brown v. Board of Supervisors*, 124 Cal. 274, 280 [57 P. 82]; *Eachus v. City of Los Angeles*, 130 Cal. 492 [62 P. 829, 80 Am.St.Rep. 147]; *Smith v. Southern Pacific R. R. Co.*, 146 Cal. 164 [79 P. 868, 106 Am.St.Rep. 17]; *Williams v. Los Angeles Railway Co.*, 150 Cal. 592 [89 P. 330]; *Wilcox v. Engebretsen*, 160 Cal. 288, 299 [116 P. 750]; *Lane v. San Diego Elec. Ry. Co.*, 208 Cal. 29, 33 [280 P. 109]; *McCandless v. City of Los Angeles*, 214 Cal. 67, 71 [4 P.2d 139]; *Rose v. State*, supra, 19 Cal.2d 713, 727 [123 P.2d 505]; *Lewis*, *Eminent Domain* (3d ed.), p. 177; *McQuillin*, *Municipal Corporations* (2d ed.), vol. 4, pp. 79, 85; *Nichols*, *Eminent Domain* (2d ed.), p. 503.) It was declared in the case of *Eachus v. Los Angeles etc. Ry. Co.*, supra, 103 Cal. 614 [37 P. 570, 42 Am.St.Rep. 149], at p. 617, that this right of ingress and egress attaches to the lot and is a right of property as fully as is the lot itself and any act by which that easement is destroyed or substantially impaired for the benefit of the public, is a damage to the lot itself, within the meaning of the constitutional provision under which the owner is entitled to compensation." See also, *People ex rel Dept. of Public Works v Lipari* (1963) 213 Cal App 2d 485.

- v. *City of Los Angeles*, 214 Cal. 67 (1931) (right to compensation on taking or impairment); *Schaufele v. Doyle*, 86 Cal. 107 (1890).)
4. "Thus, the owner of land in a rural community in an unincorporated county area has a right of access by way of an abutting street to both the general system of public streets and of public highways and is entitled to compensation for substantial impairment by the county of such right of access." (Cal. Jur. 3d, Vol. 37, Highways and Streets, §70, p. 208, citing *Valenta v. Los Angeles County*, 61 Cal. 2d 669 (1964).)
 5. "The abutting owner may be requires to defer to public regulation of the manner and location of access but access itself cannot be impaired, substantially interfered with or denied without compensation." (Cal. Jur. 3d, Vol. 37, Highways and Streets, §71, pp. 209-210, citing *Lexington Hills Assn. v. State of California*, 200 Cal. App. 3d 415 (6th Dist. 1988).)
 6. "... an abutting owner's rights with respect to a particular street may not be defeated because there are other streets abutting the property by which the owner has access to the street system. (Cal. Jur. 3d, Vol. 37, Highways and Streets, §71, p. 21, citing *Bacich v. Board of Control of California*, 23 Cal. 2d 343 (1943) and *Ratchford v. County of Sonoma*, 22 Cal. App. 3d 1056 (1st Dist. 1972).

When the foregoing tenets of the well established law of California are considered, it is obvious that, because Martis Camp abuts Mill Site Road, a public road, the County may not grant the Request. The request asks for relief which would require the County to violate each of the principles of law summarized above and to effectuate a taking of valuable property rights. There is simply no legal reason, no policy reason and no equitable reason on which the County could premise, much less, accomplish such a taking.

C. The Request Fails to Recognize That the Voluntary Decision to Dedicate Mill Site Road as a Public Street Confers Benefits on Owners in The Retreat.

The Request ignores the fact that throughout the planning and approval processes referenced therein, it was widely known that DMB Highlands, as the owner of the property that is now the Martis Camp community, was only interested in developing the residential mountain resort project if all the roadways within Siller Ranch (now Martis Camp) were approved as private roadways. Some of the documents cited in the Request note that one plan considered in the Martis Valley Community Plan update process was one in which not only what is now Mill Site Road was to be public, but also, all of what was then envisioned as Siller Ranch Road and K Street in Siller Ranch/Martis Camp would be a public road and a through connection between Truckee and the public roads in Northstar. As indicated in the Request, various persons who owned property in Northstar opposed the idea of creating a public road or "through connection" from Truckee to Northstar via Siller Ranch. Thus, the proposal for a public road, through connection was ultimately rejected in favor of allowing what was then envisioned as Siller Ranch Road and K Street in Siller Ranch to be developed as private roads. What the Request fails to point out in this respect is that there is no approval document which mentions that owners of property in Siller Ranch/Martis Camp might be forbidden to exercise their abutter's rights so as to access the western end of Mill Site Road in the Retreat.

The approval of the Martis Camp roads as "private roads" eliminated a public through connection from Truckee to Northstar via Siller Ranch/Martis Camp, but did not destroy any abutter's rights appurtenant to the Siller Ranch/Martis Camp property, for the reasons set forth in sub-sections II A, and II B, above.

The Request also fails to point out any evidence that, during the planning and approval time frame, there was any public discussion of making any of the roadways in the Retreat "private." Indeed, if there were any discussions between the developer of The Retreat and the County in that regard, we know that the resolution of that issue was against approving any portion of The Retreat's streets as private roadways. We know that decision was reached at or before the Vesting Tentative Map of The Retreat was approved by the County Board of Supervisors on February 23, 2005 because Condition of Approval 26, quoted above, was a part of that approval, and it set the connection point between the public roadway and the Emergency Access Easement at the west property line of The Retreat.

The roadways in The Retreat, including Mill Site Road, might have been initially proposed, and could, potentially, have been approved, as private roadways. All of the roadways in the neighboring Lahontan development had been approved as private roads in 1994, and some of the roadways in the Highlands portion of Northstar were approved as private roadways prior to 2004.⁵ The roads in Siller Ranch/Martis Camp were approved as private roads on January 18, 2005. Had the Retreat roadways been approved as private roadways, there would have been no useable abutter's rights appurtenant to Martis Camp precisely because there would have been no direct connection to a matrix of public thoroughfares within the Northstar Resort. The fact is that, the roadways in The Retreat, were voluntarily dedicated to public use. Neither the County nor any other public agency sought or exacted from the developer of Martis Camp any relinquishment of the abutter's rights that are appurtenant to the Martis Camp property and which were given life when Mill Site Road was offered and accepted as a public roadway.

The Request fails to acknowledge that because the roadways in The Retreat are public, the owners of lots in The Retreat and their Association are free of potential liability for actions, losses and damages which occur in those roadways. Thus, they avoid potential tort liability that the owners in Martis Camp may have with respect to their private roadways. Even though the developers of The Retreat voluntarily elected to offer the roadways in the Retreat for unlimited public use – knowing full well that there would be a private roadway in Siller Ranch Martis Camp aligning with and abutting upon Mill Site Road on its western end – and even though the County elected to accept those roadways for public use, certain persons who own property in The Retreat now ask the County to prevent an abutting property owner and its invitees from entering or exiting Mill Site Road – a public roadway – at the point where Mill Site Road reaches the abutting property. In effect, a group of neighbors whose lots in the Retreat are served by the public street on which they abut now come to the County demanding that a parcel which abuts that same public street be stripped of its abutter's right of direct access to that public street at the point of abutment. The Fifth Amendment to the United States Constitution precludes such a taking of private property rights unless due process of law is followed and just compensation is paid. The Request does not offer to pay the costs of such a taking.

⁵ Condition of Approval 80 for the Northstar Highlands development, (at sub-sections D), E), F) & G), pages 37 and 38) designates those streets in the Highlands which are private. See Exhibit E, an Extract of those Conditions of Approval attached hereto.

D. The Request Misconstrues the Word "Only" in the Documents it Cites.

The Request uses the term "only" many times. It cites and quotes excerpts from various documents in an attempt to convince the reader that "only" emergency access and public transit vehicles may access and exit Mill Site Road at its western end. However, when those excerpts are placed in proper chronological and legal context, it becomes clear that the word "only" was intended to make it clear that the County *required* "only" a public transit easement and an emergency access easement for the benefit of the public through Siller Ranch/Martis Camp, and did not require a dedication of what was then envisioned as Siller Ranch Road and K Street within the Siller Ranch development as a public road. As demonstrated above, Mill Site Road, approved as a public road in the Vesting Tentative Map of The Retreat linked up with the required emergency access and public transit easements at the common property line. The documents cited in the Request do not purport to limit, eliminate or prohibit other lawful uses of the private roadways within Siller Ranch/Martis Camp, including its abutting connection with Mill Site Road.

In other words, the County "only" required an Emergency Access Easement ("EAE") and a Public Transit Easement ("PTE") over the main private roadway proposed for Siller Ranch/Martis Camp. The County did not require that only an EAE/PTE connection exist between Siller Ranch/Martis Camp and Northstar. Clearly, the Siller Ranch/Martis Camp Conditions of Approval did not require an express or implied relinquishment of the abutter's rights appurtenant to the Siller Ranch/Martis Camp property. In this case, the County did not at any time, during its general plan update process or its subdivision approval process or otherwise, take any action to prohibit a private connection from Siller Ranch to Northstar, and most certainly did not take action to condemn any abutter's rights or to condition approval of Siller Ranch/Martis Camp upon the surrender of the abutter's rights held by DMB Highlands, the owner of Siller Ranch, or its successors in interest.

E. The Request Misconstrues the Word "Connection" in the Documents it Cites.

The Request invites the reader to conclude, incorrectly, that the word "connection," as used in the discussion of the Martis Valley Community Plan update process, refers to that point at which the present-day Schaffer Mill Road connects to Mill Site Road at Mill Site Road's western terminus. While that is true with respect to the implementation of the Community Plan as disclosed in the two Vesting Tentative Maps discussed above, the "connection" is at and on the property line, the discussion presented in subsection II C, above, demonstrates that the "connection" under discussion during the Martis Valley Community Plan update process, and during the approval processes for Siller Ranch/Martis Camp and the approval process for The Retreat, was the "connection" over the entire distance between the then developed or approved portion of Big Springs Drive in Northstar and Schaffer Mill Road as it then existed. In 2004, Schaffer Mill Road extended only from State Route 267 to the entrance to the Lahontan Community and the northern edge of Siller Ranch. Indeed, there was also discussion of a connection between the entrance to Lahontan and the Sierra Meadows community, thereby establishing a connection between Truckee and Northstar which did not involve State Route 267. The discussion in subsections II A and C above also establish that the connection point between the public roadway system and the Emergency Access and Transit easements over the private

roads in Siller Ranch/Martis camp was ultimately determined to be at the common property line between Siller Ranch and The Retreat at Northstar.

While it is true that there was to be (and is) no public connection between Truckee and Northstar via Siller Ranch/Martis Camp, (except for Emergency Access and Public Transit Vehicles) the January 18, 2005 Vesting Tentative Map of Siller Ranch and the February 23, 2005 Vesting Tentative Map of The Retreat at Northstar and Conditions of Approval No. 26 and 37 for the Retreat (quoted in subsection II, A. above) establish beyond reasonable dispute that there was to be a direct physical connection between Mill Site Road in Northstar and the private road system in Siller Ranch. In light of this, one must ask: "Why is the Request unable to point to a single mention of the idea or suggestion that the owners of Martis Camp would not be able to access the west end of Mill Site Road via the private roadway system approved for Siller Ranch/Martis Camp? The answer is that the idea that owners in Martis Camp would be forced to take a circuitous route on those relatively rare occasions when they wished to travel from their homes to the Northstar facilities or anywhere else in the County was as ludicrous then as it is now and would certainly have been denounced by the County. Had DMB Highlands been asked to give up its abutter's rights as a condition of approval, it would have challenged that condition as an improper exaction having no relationship to the impacts of the project. Indeed, such a condition would have made the Siller Ranch/Martis Camp project more burdensome on the public roadway system and the environment than it needed to be.

The argument that the "connection" between Northstar and Schaffer Mill Road was to be "only" an EAE/PTE is based on a false and illogical reading of the documents on which the Request relies and is also contrary to basic real property and land planning law. Except as specifically set forth in the Conditions of Approval of the Siller Ranch project, the private rights of the owners of Siller Ranch/Martis Camp, including their abutter's rights, were never restricted or relinquished, and there is no reason for, or legal basis upon which, the County may attempt to impose such restrictions now.

F. The Request Incorrectly Asserts that Private Access from Martis Camp to Mill Site Road Amounts to a Through Connection.

The Request asserts that because there may ultimately be 625 homes or more in Martis Camp, access to Mill Site Road directly from Martis Camp by Martis Camp owners and their guests and invitees amounts to "opening" Schaffer Mill Road as a "through connection," and that it converts Schaffer Mill Road from a private road into a "thoroughfare." (See, e.g., the Request Memorandum at page 3, first full paragraph and at page 4, item 1 a.). On that false premise, the Request contends that the use of Schaffer Mill Road by Martis Camp residents to access the west end of Mill Site Road would, "require CEQA review and would be a new project." The passage of the Siller Ranch EIR set forth on page 1 of Appendix 1 to the Request shows that the word "opening" means "opening of the roadway [Schaffer Mill Road] to the public would be a separate project subject to its own environmental review process." (Emphasis added.) But Shaffer Mill Road has not been opened to the public.

Schaffer Mill Road is a private road throughout the length of Martis Camp.⁶ It is gated at both ends. The Martis Camp owners actively and continuously prevent the general public from using Schaffer Mill Road within Martis Camp. The public is prevented from coming "through" Martis Camp (except during emergencies or while on public transit vehicles) so as to reach, or to exit, Northstar via Schaffer Mill Road. The exercise of abutter's rights is, by definition, private and only available to the owners of the abutting property and their invitees and permittees. The actions of the owners of Martis Camp of which the Request complains have not created, and will never create, a "through connection" and do not violate either the letter or the spirit of the Martis Valley Community Plan or the approval documents pertaining to Siller Ranch/Martis Camp or The Retreat at Northstar.

It is respectfully submitted that the specter raised by Mr. Faccinto of 625 families in Martis Camp and their guests using Mill Site Road regularly will never occur. Martis Camp is, primarily a vacation home community rather than a primary residence community. The Martis Camp community has been developed by DMB Highlands to include extensive internal recreational and community facilities of the highest quality, including, a renowned 18-hole golf course with an exquisite clubhouse facility, a putting course, a Family Barn recreation center with a movie theatre, bowling alley and restaurant. In cooperation with the developers of the Resort at Northstar,TM DMB Highlands has arranged for a ski lift connection the base of which is within Martis Camp. That lift gives the residents of Martis Camp direct access to all the ski facilities in Northstar without the necessity of driving to Northstar and adding to the traffic on the local roadway system. Because most Martis Camp owners are not year-around residents, when those owners are in residence the community's common facilities are the focus of their recreational and social activities. Never-the-less, as explained in some detail in subsection II B, above, the right to access the most direct public roads to and from Northstar or other destinations is a right which may not be taken from the land on which Martis Camp has been developed and to which its private roadways connect.

G. The Siller Ranch/Martis Camp Conditions of Approval Do Not Require the Installation of Gates but, Rather, Provide that If Gates are Installed Across an Emergency Access Easement, They Must Be Equipped with Knox Boxes or Their Approved Equivalent.

The Request incorrectly asserts that the developer of Siller Ranch/Martis Camp was required to install a gate at the east end of Siller Ranch Road and K Street by the terms of the

⁶ Currently, Schaffer Mill Road is fully developed, paved and approved by the County as meeting the standards imposed in the Siller Ranch/Martis Camp Conditions of Approval all the way to the common boundary between Martis Camp and The Retreat at Northstar. The easternmost segment of Schaffer Mill Road lies in the Remainder parcel of Martis Camp and has not yet been transferred to the Martis Camp Community Association as a part of the "Common Area." Although such a transfer could be completed by Grant Deed at any time, DMB Highlands' current intent is that the transfer of the easternmost Segment of Schaffer Mill Road will be made on the face of the final subdivision map of a phase of the Martis Camp development known as Unit 7B, which lies to the east of Unit 7A. The Request refers to the Map of Unit 7B, which lies to the west of Unit 7B. Thus, the current situation is that the homeowners in Martis Camp are the permittees and invitees of the owner of the land which abuts Mill Site Road. As pointed out above, access to Schaffer Mill Road is controlled at both ends of Schaffer Mill Road as it passes through Martis Camp as a private road on private land. DMB Highlands has not, and will not allow the general public to enter or exit Martis Camp at any point on its boundary, particularly via Mill Site Road.

Siller Ranch approval documents. (See the Request Memorandum at page 7, top of page.) The truth is that the County and the interested public knew that the developer of Siller Ranch/Martis Camp would, almost certainly, elect to erect gates at various points along its boundary in order to maintain the privacy of its roadways – particularly at any point where a public roadway might abut on Siller Ranch. In light of that expectation, the County simply imposed a condition of approval which required that if the developer elected to install gates on a roadway which was also to be used as access for transit vehicles and in an emergency, that it equip those gates with Knox boxes, or their approved equivalent, so that public transit vehicles, emergency vehicles and members of the public during a declared emergency could pass through the gates without undue delay. In other words, the County did not require the installation of gates on private roadways in order to keep the general public from entering Siller Ranch/Martis Camp. Instead, the County required that if the owners of Martis Camp elected to erect gates to prevent the public from entering the development via a private roadway, that the gates allow usage of the roadway for emergency and transit purposes.

It is true that a gate was installed by DMB Highlands across Schaffer Mill Road approximately 40' west of the eastern property line of Siller Ranch/Martis Camp. The main gate across Schaffer Mill Road is located a few hundred feet from the northernmost property line at the common round-about with the Lahontan entrance. Those locations were chosen by DMB Highlands and were not prescribed by the County. If there had been a County requirement that such a gate be installed at the eastern boundary of Siller Ranch/Martis Camp, the location of the gate would have been prescribed. But no such requirement existed. The east gate, as well as the main gate, is operated so as to allow only invitees and permittees of DMB Highlands to pass through the gate. The gate is also readily operable by the local emergency agencies.

Page 7 of the Request Memorandum includes an extract of portions of Siller Ranch Condition of Approval 146. However, that Memorandum fails to quote the introductory paragraph of that Condition. The sentence which precedes the items listed states: "The final map and improvement plans shall contain the following items, as appropriate . . ." (Siller Ranch Conditions of approval at page 46 of 51, second sentence of Condition 146. Emphasis added.) Sub-part L) of Condition 146 provides: "A Knox box system, or equivalent shall be provided at all gated entrances and emergency roads to provide access to the fire district." That wording makes it plain that the fire districts need access and that if the developer is going to erect a gate, the gate must be equipped so as to provide access to the fire district's personnel. The Condition does not say: All entrances shall be gated and all gates equipped with a Knox box system or equivalent.

The Request also attempts to rely on sub-part I) of Condition 146, which reads: "Emergency access roads shall be designed and gated to the district, county and state standards unless exceptions are approved. However, the Request fails to point out any "standards" which require a property owner to install gates across an emergency access road. The listed governmental entities have no interest in making sure owners of private properties erect gates to keep the public from entering private properties – particularly when such efforts make access by emergency personnel more difficult.

H. Schaffer Mill Road Extends to the Property Line.

On page 7, the Request asserts that Schaffer Mill Road "ends several hundred feet west" of the common property boundary. While it is true that the title to the eastern segment of Schaffer Mill Road has not yet been transferred to the Martis Camp Community Association, DMB Highlands currently intends to make that transfer on the face of the Map of Unit 7B of Martis Camp. (See footnote 6 above.) The Request fails to point out that Note 13 on Sheet 2 of the Final Map of Unit 7A of Martis Camp provides as follows: "Upon Placer County's acceptance of the improvements within the easement for Schaffer Mill Road, the EAE and the TSE connecting Schaffer Mill Road to the east line of the west one half of Section 31, an application will be filed to request the abandonment of the EAE described in Doc. No. 2004-175762." The County has since accepted those improvements as meeting the County's standards, and a request for vacation of the old routing of the Emergency Access Easement (EAE) is pending. Thus, both the developer and the County recognize that, (just as the 2004 EAE on The Retreat side of the line (Doc. No. 2004-175761) was abandoned in the Board of Supervisor's Statement on Sheet 1 of the Final Map of The Retreat) at the appropriate time the easternmost segment of the 2004 EAE on the Siller Ranch/Martis Camp side of the line will be abandoned in favor of the EAE over Schaffer Mill Road. At the appropriate time the Martis Camp Community Association will hold title to all of Schaffer Mill Road, subject, of course to the Emergency Access and Public Transit Easement over Schaffer Mill Road in favor of the County.

At the present time, DMB Highlands holds title to the easternmost segment of Schaffer Mill Road and is entitled to exercise its abutters rights in favor of itself and its invitees, provided it does not invite the general public to make use of Schaffer Mill Road as a through connection between Truckee and Northstar. DMB Highlands group has no intention of allowing the public to traverse any segment of Schaffer Mill Road except during a declared emergency or as passengers on a public transit vehicle.

III. CONCLUSION

For all of the foregoing reasons, the Request presented by Mr. Faccinto on behalf of his clients must be denied. The County should maintain the well-reasoned position it announced in response to Mr. Archer's prior inquiry. DMB Highlands is prepared to vigorously defend against any action, or proposed action, which would have the effect of depriving DMB Highlands and/or its intended successors in interest of any of their fundamental property rights.

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