

**From:** [REDACTED]  
**To:** [Julie Patterson-Hunter](#)  
**Subject:** FW: Andresen Response  
**Date:** Friday, September 18, 2020 4:33:07 PM  
**Attachments:** [Appeal Letter Part 1.pdf](#)

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**From:** [REDACTED]  
**Sent:** Friday, September 18, 2020 4:22 PM  
**To:** BOS\_PublicComment@co.nevada.ca.us  
**Subject:** FW: Andresen Response

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**From:** [REDACTED]  
**Sent:** Friday, September 18, 2020 4:07 PM  
**To:** [BOS.PublicComment@co.nevada.us](mailto:BOS.PublicComment@co.nevada.us)  
**Subject:** re: Andresen Response

Dear Honorable Board,  
I am sending the Response letter for Larry and Cheryl Andresen  
This will come in Five Parts for your review for our Appeal

Dear Honorable Board members,

Thank you for this opportunity to respond to our letter of December 20, 2019. This has been a long hard battle with neighbors, and the County. We have spent a lot of time, effort and money trying to resolve this issue at no avail. Please take into consideration everything that is being presented to you in this letter. We presented a road improvement plan at no cost to these neighbors, or the County originally in 2016. This plan was denied by previous Public Works Director. We were told by the new Public Works Director to present our plan to her for her evaluation. She stated she supported our plan and agreed a two-lane road would make for a safer roadway. This is even stated in her deposition and was expressed at our meeting with her. Her comment was "We just need to convince the neighbors it is a good plan"

We have provided gravel, maintenance, and snow removal for these neighbors for years at no cost to anyone including County since 1992. This roadway is a County non maintained roadway. The only neighbors that have shown gratitude is our renters, Martha Mc Bride, Lisa and Greg Lamb, Erin Mc Bride, Tony, and Mary Rivara. They have given us gifts and small compensation toward the cost of our diesel. Not all the neighbors feel the same as the ones fighting against our Road Improvement Plan. Thank you again for taking the time to help understand our position.

February 11, 2020 Appeal was accepted Resolution 20-042

December 20, 2019 Department of Public Works issued a Notice of Encroachment Permit Violation as a follow up for December 3, 2019 letter which Larry Andresen was notified to cease and desist all unpermitted work in the County right of way on Floriston Avenue. The notice included requirements for the Appellant to restore the highway, relocation of water facilities, subject to a mandatory fine of \$100.

The notice also provided revisions to encroachment permit application and plans to be revised and resubmitted within 30 days to reflect the following work:

Highway restoration is necessary as follows:

1. Replacement of railroad ties fronting 10949 Floriston Avenue. (This has been completed by son of Miriam)
2. Relocation of permitted personal property fronting 10949 Floriston Avenue. (This has been completed by son of Miriam)
3. Replacement of a landscape barrier fronting 10941 Floriston Avenue by a licensed landscape contractor. The estimated costs of replacing the landscape barrier are attached for reference and are estimated at \$5,880.00.

Relocation /Possible Repair of Facilities, specifically water utilities under the purview of the TDPUD, for 10941 and 10949 Floriston Avenue. The cost to relocate the water utilities has been estimated by the TDPUD to be \$9,020.00. In addition, the water line is leaking and requires repair of which you may also be responsible for. You must work with the TDPUD directly to have them perform all the work necessary to complete the relocation. This will be a condition of your encroachment permit.

Submittal of the revised plans does not constitute approval of an encroachment permit. The submitted plans will require review and ultimately approval plus the development of conditions of approval prior to issuance of the permit.

In addition, the cost of enforcement is \$970.02 plus the \$100 mandatory fine, for a total cost of \$1,070.02.

This appeal was then set aside by a Tolling Agreement between the County and the parties. The objective was to hopefully come to a Settlement Agreement and resolve the lawsuit, which in turn would also settle issues with the County. The Tolling agreement was to expire. Rhetta reached out to us by email.

**From:** Rhetta VanderPloeg <[Rhetta.VanderPloeg@co.nevada.ca.us](mailto:Rhetta.VanderPloeg@co.nevada.ca.us)>  
**Sent:** Thursday, June 11, 2020 2:41 PM  
**To:** Brown, Michael B. <[michael.brown@stoel.com](mailto:michael.brown@stoel.com)>; Chris Robyn <[crobyn@bateswinterlaw.com](mailto:crobyn@bateswinterlaw.com)>  
**Cc:** Kit Elliott <[kit.elliott@co.nevada.ca.us](mailto:kit.elliott@co.nevada.ca.us)>  
**Subject:** Andresen EP Appeal Tolling status

*Hi Mike, Hi Chris,*

*As you know, Mr. Andresen's Encroachment Permit Violation Tolling Agreement expires at the beginning of August. The Director of Public Works has expressed a desire to have Mr. Andresen proceed with his appeal when the toll expires. Given that the reason to toll was the hope that litigation negotiations would resolve some issues, and that has not happened as far as we know, along with the delays in the case, this appears to be the correct path going forward. Please let us know if you have any concerns or comments with this plan.*

*Best, Rhetta*

**From:** Chris Robyn <[crobyn@bateswinterlaw.com](mailto:crobyn@bateswinterlaw.com)>  
**Sent:** Friday, July 10, 2020 1:38 PM  
**To:** Rhetta VanderPloeg <[Rhetta.VanderPloeg@co.nevada.ca.us](mailto:Rhetta.VanderPloeg@co.nevada.ca.us)>  
**Cc:** Kit Elliott <[kit.elliott@co.nevada.ca.us](mailto:kit.elliott@co.nevada.ca.us)>; Mike Quinn <[mquinn@bateswinterlaw.com](mailto:mquinn@bateswinterlaw.com)>  
**Subject:** Re: Andresen v. Minnis

Rhetta and Kit,

Hope this finds you well.

Just wanted to let you both know that we have forwarded a confidential settlement proposal over to Mrs. Minnis' counsel. It is reasonable and comprehensive and hopefully a path to final resolution of the parties ongoing issues.

As progress continues, I will update you.

Thanks,

Christopher R. Robyn, Esq.

**From:** Rhetta VanderPloeg  
**Sent:** Friday, July 17, 2020 12:59 PM  
**To:** Chris Robyn <[crobyn@bateswinterlaw.com](mailto:crobyn@bateswinterlaw.com)>  
**Cc:** Kit Elliott <[kit.elliott@co.nevada.ca.us](mailto:kit.elliott@co.nevada.ca.us)>; Mike Quinn <[mquinn@bateswinterlaw.com](mailto:mquinn@bateswinterlaw.com)>  
**Subject:** RE: Andresen v. Minnis

Hi Chris,

**Thanks for the update. However, the tolling agreement expires August 3, so we are coordinating with the Clerk to bring Mr. Andresen's appeal to the BOS for his hearing. The Department of Public Works would like to get this violation closed out. Please let me know which of the following dates Mr. Andresen is available:**

Thanks, Rhetta

**From:** Rhetta VanderPloeg <[Rhetta.VanderPloeg@co.nevada.ca.us](mailto:Rhetta.VanderPloeg@co.nevada.ca.us)>  
**Sent:** Friday, July 24, 2020 4:20 PM  
**To:** Brown, Michael B. <[michael.brown@stoel.com](mailto:michael.brown@stoel.com)>; Chris Robyn <[crobyn@bateswinterlaw.com](mailto:crobyn@bateswinterlaw.com)>  
**Cc:** Kit Elliott <[kit.elliott@co.nevada.ca.us](mailto:kit.elliott@co.nevada.ca.us)>; Mike Quinn <[mquinn@bateswinterlaw.com](mailto:mquinn@bateswinterlaw.com)>; Neuhaus, Lauren V. <[lauren.neuhaus@stoel.com](mailto:lauren.neuhaus@stoel.com)>; Forgeur, Dawn R. <[dawn.forgeur@stoel.com](mailto:dawn.forgeur@stoel.com)>  
**Subject:** RE: Andresen v. Minnis

Hi Mike,

**We originally agreed to the tolling agreement because of a good faith belief that the situation with Ms. Minnis could be resolved in 6 months. This has not happened. Speaking with Ms. Minnis's attorney they do not see the proposal as a solution, so we need to move on.**

**We view this as 2 independent, separate actions so we will not extend the tolling any further out for the appeal. Mr. Andresen's EP that is being processed through DPW is not related to his unauthorized actions last November.**

**Please provide me your 1<sup>st</sup> and 2<sup>nd</sup> choice of the following dates and we will try to accommodate your request:**

Best, Rhetta

**This email is dated July 24, 2020. We did not hear back from Mr. Haley regarding our very reasonable proposal at "no cost" to Miriam, until a week later.**

**From:** Allan S. Haley <[ashaley@lawhb.com](mailto:ashaley@lawhb.com)>  
**Sent:** Thursday, July 30, 2020 6:13 PM  
**To:** Chris Robyn  
**Subject:** Andresen offer

Hello, Chris --

I have completed going through your client's offer with Miriam, and analyzing it with her.

At this time, she has upcoming hip surgery, and very limited mobility. There is nothing in the offer that she finds worthwhile dealing about or responding to at this time. In particular, it contains no offer to compensate her for the damage to her property that your client already caused, and simply contemplates further damage (albeit not at her expense this time) to make it possible to have the road as your client wants it, rather than as it existed historically before your client bought his property.

Best regards, Allan

**There had been multiple emails and contacts with Mr. Haley and Miriam working toward a resolve. Yet the email from Rhetta "we need to move on" and the statement she received from Mr. Haley one week prior to our even knowing his response motivated the appeal hearing to move forward. Michael Brown also reached out to Rhetta**

**From:** Brown, Michael B. <[michael.brown@stoel.com](mailto:michael.brown@stoel.com)>

**Sent:** Friday, July 24, 2020 1:22 PM

**To:** Rhetta VanderPloeg <[Rhetta.VanderPloeg@co.nevada.ca.us](mailto:Rhetta.VanderPloeg@co.nevada.ca.us)>; Chris Robyn <[crobyn@bateswinterlaw.com](mailto:crobyn@bateswinterlaw.com)>

**Cc:** Kit Elliott <[kit.elliott@co.nevada.ca.us](mailto:kit.elliott@co.nevada.ca.us)>; Mike Quinn <[mquinn@bateswinterlaw.com](mailto:mquinn@bateswinterlaw.com)>; Neuhaus, Lauren V. <[lauren.neuhaus@stoel.com](mailto:lauren.neuhaus@stoel.com)>; Forgeur, Dawn R. <[dawn.forgeur@stoel.com](mailto:dawn.forgeur@stoel.com)>

**Subject:** RE: Andresen v. Minnis

Hi Rhetta,

Thank you for your email. We understand that the Andresens and their consultants are continuing to work with Trisha of Public Works to make sure the road improvement plans and revisions meet County Standards and Codes. This has taken some time to receive responses and make revisions between all parties. The Andresens paid the fees due per Trisha's response email to their engineer yesterday so Trisha can now review the revised plans. Trisha stated until fees were paid the plans could not be reviewed. This proposal has also been provided to Miriam Minis along with a settlement proposal and the improvements contemplated are at "no cost" to her. The proposal includes the removal of limited encroachments to bring the road to a two-lane fire safe roadway without proposing the use of private properties. Again, this proposal is at no cost to Ms. Minnis and we are waiting for her response. The Andresens have put much time, work, expense, and consideration into this plan and request a continuance of the tolling agreement to accomplish this. Let me now if this is acceptable. I am out next week but I have copied my colleague Lauren Neuhaus on this email.

Thank you for your consideration.

Mike Brown

### **LETTERS TO THE BOARD**

Multiple letters to the Board of Supervisors have been sent from our attorneys, which are attached. These letters quote numerous County Code regulations, which have been implemented by the Board. Concerns for roadway access and encroachment issues have been ongoing since 2012, when we first brought this issue to the attention of Mr. Anderson, our Supervisor. We have been extremely frustrated that we have not gotten support from the County to enforce the building and property codes you yourself have implemented. Please read these letters in their entirety, as we know the few new Board members may need background information to consider.

### **BUSH BIRCH TREE ROCK PLANTER**

This obstructing Bush, as you can see on the map 185, is an encroachment into the county right of way. This bush along with other encroachments have caused a one lane road on a 40' wide County dedicated right of way for public use. The attached photos show a big dump truck coming thru the bush on the roadway. The bush is as tall as the diesel dump truck right at the exhaust pipes. The line of site around this bush from either side thereby putting lives and safety at risk for pedestrians and drivers using this roadway in both directions of travel. Minnis' grandson has often been observed playing in this area of the roadway. Attached is a picture of him on the hitch of the truck right at the edge of this area of roadway. The young family renting our 10953 Floriston Avenue property walk with their three-year-old and 5-month-old baby from the rental house to the river and require unobstructed vehicle access from their home working multiple shifts at their places of employment. Visibility along the roadway is critical to the safe use of this area including exposure to wildfire safety concerns

The only reason for this bush to remain as stated from the Fehrts is for privacy, cut down dust and noise while jeopardizing the safety of life and property. It is stated there are no crash records, yet the County was informed when Larry accidentally hit John's ladder that was protruding way off the end of the truck parked behind this bush as it was not visible. It was stated by the neighbors and I agree, Miriam's grandson often plays on this truck as illustrated. Enclosed are picks of this truck and how it was parked. Neighbors wrote to Supervisor and Rhetta to report this incident and made it sound as if it were intentional. The ladder nor his truck was visible. An example of neighbors depicting a story to County. Attached photos and emails

We have brought these issues of this roadway to the attention of the Public Works Director and we applied for a Bush Removal permit. With this application several supporting documents were provided. Some of these documents were direct comments from the Director of Public Works herself. Below are multiple issues that explain this situation in more detail.

### **ROAD BLOCKAGES ON FLORISTON AVENUE**

This roadway is blocked by delivery trucks, UPS trucks, Fed Ex trucks, trash removal vehicles, propane delivery trucks that have their hoses out to fill a tank. With removal of the bush and other encroachments we could then have a wider safe roadway. Blockages would not happen as you would have access around them. If someone needed medical assistance depending on life or death an ambulance could get around a propane truck filling a propane tank. The narrowing of this roadway is caused by a bush that took up over nine feet of roadway causing unsafe driving conditions. Photos of some of these blockages are attached.

### **ALLOWING THESE ENCROACHMENTS TO REMAIN AND HAVING THE ROAD ON PRIVATE PROPERTY RATHER THAN IN THE PUBLIC RIGHT OF WAY**

The roadway as it exists fronts the Rivara's, Minnis, and Fehrt properties and is on private property owned by the Rivara's. This road alignment on Private Property has caused much contention in the neighborhood. We received a note in our mailbox from Jamie Rivara stating we did not have permission to move snow on the road that is on their property. Floriston Avenue is the only road serving everyone needing passage to properties beyond this obstructed area, this is unreasonable. Our renters are of the working class and need access in and out of this subdivision to get to work. They are not retired as others are at this end of the street. They work multiple shifts.

For years, roadway snow removal has been accomplished by Larry Andresen and Tony Rivara. They are a good team. Tony does the upper road and then comes and cleans up the large snowballs and snow left by the Andresen backhoe. The backhoe can remove feet of snow where Tony's small blade on his jeep can do the less deep snow. If Larry did not remove snow on this roadway many would not be able to go in and out of this end of the subdivision. Our roads are not maintained by the County.

Not only do neighbors need to get to their place of employment, but the road also needs to be open for life safety and routine service vehicle access to all the neighbors such as propane trucks, garbage trucks, UPS, and Fed Ex. Access for emergency vehicles is vital for fire and ambulance if needed.

Jamie and Peter Rivara have put up signs on [their] portion of the roadway stating "No Stopping, Trespassing, or Plowing Private Property. Then changed to "Drive by but ... the above and then changed once again to "welcome drive by slowly children No stopping No trespassing No Plowing Private Property". Attached photos.

Pete Rivara has shown particularly aggressive behavior toward Larry including driving his wife's car within inches of Larry's backhoe while swerving the car back and forth to block Larry from going down the roadway. Larry was able to get around him and head down Iceland Road.

This same day a neighbor put on Facebook that one of her neighbor's thinks it is okay to leave her a berm.

The very next day Larry got out of the backhoe to take pictures showing he did not leave a snow berm Pete came running at him pulling on his leg slamming the backhoe door shut so Larry could not get in his backhoe multiple times. Larry pushed him away and finally was able to get back inside and drive away. A neighbor saw this incident and wrote a declaration as to what he saw with Pete and Larry. Shocked at Pete's increasingly aggressive behavior toward Larry, we filed a TRO against Pete Rivara to hopefully stop any further harmful threatening behavior.

Having these neighbors state they do not allow snow removal on this area of roadway because it is on private property imposes a huge problem. This is another reason the road needs to be placed into the right of way and off private property to allow for safe travel without contention.

### **SNOW REMOVAL**

Attached are photos of the snowy roads in our Hirschdale neighborhood. You have been told Duane and Pete clear this area of roadway. This is impossible with large amounts of snow. What they typically do is run their vehicles down the road bank to tear down the snowbank to widen the roadway. When seasonal renters are at both the Brunson's vrbo rental and the Finnemore vrbo rental house the roadway is narrowed with vehicles as occupants are told not to park in their steep driveways of those properties, therefore, vehicles are parked in the roadway. I stood and talked with my full-time tenant

who resides at our rental property at 10953 Floriston Avenue at the end of the road for 20 minutes until someone finally moved their vehicle for him to pass to get to his home. Miriam parks her truck to the edge of railroad ties. She could move her truck more forward, but instead parks the truck up to the edge of the railroad ties leaving no area for snow storage.

Attached photos

In response to Fehrts stating the bush gave them run off protection, they are not full-time residents. Snow in their driveway piles up throughout the winter. This bush did not serve a purpose of run off protection as the snow could be as deep as four feet at times in their entire driveway as they have no snow removal service.

### **NEIGHBORHOOD COMPLAINTS**

Upon receiving multiple emails from neighbors to County officials and our Supervisor through PRA requests we found many false accusations and negative comments written about us. We were called bullies, demented, asinine to name a few of the words and then there were more vulgar words used to describe us. We were given emails from Dick Fehrt 's deposition and received many emails to Dick from one neighbor informing him of every action of Larry. We could not do right in anyone's eyes at the end of the roadway. The accusing neighbors depicted us as horrible individuals. County has acted on these accusations. Mr. Anderson had County officials investigating our permits, property at Iceland Road. Our attorney was told while entering a deposition that we killed John Minnis. Emails from Duane specifically states he hates Larry. For what reasons? Larry has done something good for almost every person in this neighborhood. This contention and emails sent directly to our Supervisor, Director of Public Works, County Counsel many other neighbors. It is as if we have a belligerent gang at the end of Floriston Avenue restricting good faith efforts to achieve common purposes in our neighborhood. Attached of copies of some emails

Also, for informational purposes, we have never been questioned during this eight-year time-period as to if any of the accusations from neighbors were true. There have been no conversations with Mr. Anderson or other county officials receiving neighborhood complaints regarding these issues with the Andresens since our initial conversation in 2012. We are also constituents and it would seem hearing our side directly from us rather than just taking our neighbors word for things could have cleared up some of these false accusations right at the time and also could have kept County from painting their own picture of us from comments from our neighbors.

Our intentions have always been for the betterment of all in the Hirschdale Community, but adverse opinions have created a very contentious relationship with our neighbors and County. It is very unfortunate as issues cannot be seen and resolved clearly. Our plan is proposing the minimum two-lane fire safe roadway within the county right of way, which you as a Board have implemented. Wildfire safety is on everyone's mind today. This roadway meets the Board's "A" objectives. This road improvement plan also meets recommendations proposed by the Grand Jury to the Board considering Wildfire safety.

**It is stated in email above from Rhetta, "We view this as 2 independent, separate actions so we will not extend the tolling any further out for the appeal. "These are not two separate issues as they are very much intertwined. Trisha combines both issues in her NOV letter.**

## COUNTY INVOLVEMENT

We had a tolling agreement with the County to give us time to work on a settlement with Miriam, which we have been working toward and still are. She has had surgery and asked us to put this off until she is healed. The roadway and encroachments the County is allowing are very much a part of this settlement agreements with Miriam.

She was given a very reasonable Settlement offer. We were extremely disappointed with Mr. Haley's response noted in the email above. We want this issue resolved. We all want this resolved.

The opposing attorney went to County one week prior to communicating with our attorney and instead conversed with County Counsel indicating that our settlement offer, as far as they were concerned did not give a solution to the problem.

Working with the County on this issue since 2012, we have spent much time and money on the road improvement plan. We paid for a survey of this roadway, which was done by a professional firm, as we were told County would never fund this survey. County has made some decisions that majorly affect our lawsuit and settlement issues.

While present during mediation efforts in April of 2019, the County was very aware of the agreements that were made from this mediation. They were given a summary of what was agreed upon from each party. This mediation cost us \$4,000.00 for the day. We seemed to have made a lot of progress at this medication. Miriam had agreed to remove "all" of her encroachments. She then went to County and worked directly with County officials, which we were not aware. She was given an encroachment permit after the fact, which has permitted her to have some of these encroachments to remain even though our impression was from mediation she was to have County Code of Compliance work with her to remove these encroachments. In June 2019, she applied for an encroachment permit, and revisions were made October 8, 2019. We had asked for Public records and this revised copy of October was not provided before bush removal. This permit showed railroad ties to be removed. We since found out in March 2020, another revision was made. County and Miriam were not letting us know of these permits, which went against prior negotiations.

After a meeting with Public Works Director, Trisha Tillotson, Larry, Cheryl, their engineer, and Mr. Anderson to discuss the Bush removal Plans, a meeting was set up to meet with Mr. Fehrt. She also that day met with Duane Brunson, Miriam Minnis and Rivas. The very day, she revised Miriam's permit other permits were applied for by both Mr. Fehrt and Mr. Brunson for their encroachments to remain in the County Right of way. Fehrt's permit was permitted January 8, 2020.

Yet, when Mr. Andresen applied for a permit in September, Mr. Anderson insisted Trisha let the Fehrts and Rivas know of our permit application. A letter was sent to both. Yet no letter or acknowledgment of Miriam's permit, Fehrt permit or Brunson permit was sent to the Andresens.

We submitted our plan September 9, 2019 prior to the above permits. We waited over 90 days asking multiple times for a status report. We found out by going online to check the status of our permit these other permits were being permitted. No mention to us of these permits.

At the time the permit was applied for, Mr. Andresen provided several documents to show good cause for this bush, rock planter to be removed. This bush, rock planter was taking up a good portion of this roadway and prevented public use of this roadway as it was dedicated. This bush was a public nuisance.

This bush caused a safety issue to all using this roadway. Line of site was an issue both directions of this roadway as illustrated in the photos provided. This Bush Removal permit was being worked on between the Public Works Director, Dennis Dodd & Associates, Inc., and Mr. Andresen. Trisha Tillotson had asked for revisions to this plan. They were provided.

We had a meeting with Trisha, Rhetta and Kit Elliot with our State Farm attorney. We went over the plan in detail. We illustrated how neighbor would have ample parking, two-way traffic and have this roadway moved from private property to the County right of way as it should. This plan provides a safe minimum fire safe roadway.

### **CONCLUSION**

We have attached photos after the bush removal where you can see the line of site distance proves to be a safer roadway both directions. In an email to Mr. and Mrs. Fehrt Trisha Tillotson states "Since the vegetation in question is within county right of way, the County does have the authority to require their removal if deemed necessary. While Floriston Avenue is a one-lane low traffic volume low speed road, the vegetation in question has been observed encroaching into the narrow travel way and its trimming or removal could improve emergency egress should an event such as wildfire occur." Email attached.

#### **Code 1480.5**

The road commissioner may immediately remove, or by notice may require the removal of, any of the following encroachments:

- (a) An encroachment which obstructs or prevents the use of a county highway by the public
- (b) An encroachment which consists of refuse
- (c) An encroachment which is a traffic hazard.

#### **Code 1481.**

The road commissioner may, by notice, require the removal of any other encroachment not specified in Section 1480.5

Appellants respectfully request the Board:

- 1) Rescind the December 20, 2019 NOV;
- 2) Direct immediate correction of the identified encroachments on the right of way; and
- 3) Request the Community Development Agency to issue a final decision on Appellants' pending encroachment permit application as soon as practicable, without the imposition of additional conditions.

Thank you for your consideration concerning this matter and allowing us to give a detailed description as to the issues we face with these encroachments in our roadway along with issues concerning the alignment being on private property rather than in the County right of way, as it was dedicated for public use. Correcting these issues will make for a more peaceful neighborhood as neighbors can no longer make another neighbor feel they have no right to go down this roadway or have a right to clear snow. Having a free unobstructed roadway has been our goal since presenting this roadway issue in 2012.

Respectfully,

Cheryl and Larry Andresen

Supervisor Anderson:

Thank you again for taking the time to meet with the Andresens to discuss the encroachments on Floriston Avenue. Attached is a diagram prepared by Larry Andresen that illustrates the approximate location of the 40 foot County right-of-way (dedicated and accepted by Sub. 1-37 June 8, 1926) and the encroachments located thereon, including storage sheds, tents, and landscaping.

As the Andresens explained, the encroachments obstruct the public's use of, and passage on, Floriston Avenue. The reduced line of sight caused by the encroachments creates safety issues, especially for vehicles pulling trailers. At least one neighbor at the end of Floriston Avenue typically also parks vehicles, boats, and trailers in front of the encroachments (see the Andresen diagram), which blocks access on the entire right-of-way, creating serious ramifications for emergency vehicle access. These encroachments have resulted in a public nuisance over a County highway. (See Penal. Code § 370; Nevada County Code §§ G-IV 4.A.40, L-II 5.22.)

The Andresens have been uniquely impacted by the encroachments as they own two properties east of the encroachments. Delivery drivers and propane trucks typically park in the Andresens' private residential driveway, which impedes access to both of their properties. They have also lost several prospective tenants, who felt they would be unable to park their trailers or recreational vehicles in the Andresen's driveway because of the encroachments, which are located directly across from the driveway.

The Andresens have been advised by County staff to call the sheriff or CHP in the event free travel on Floriston Avenue is obstructed. Officers from both agencies have come out, but informed the Andresens that they need a County survey of the right-of-way before they can take any enforcement action. We are therefore requesting that the County survey the existing right-of-way and take any action necessary to abate this ongoing public nuisance.

We look forward to working with the County in an attempt to rectify this issue. Please do not hesitate to contact me if you have any questions or need further information.

Thank You,  
Greg

Greg C. Gatto  
STOEL RIVES LLP | 10008 S.E. River Street | Truckee, CA 96161  
Direct: (530) 582-2288 | Fax: (530) 582-2281 [gcgatto@stoel.com](mailto:gcgatto@stoel.com) <<mailto:gcgatto@stoel.com>> |  
[www.stoel.com](http://www.stoel.com) <<http://www.stoel.com>>

Supervisor Anderson:

I am writing to request a meeting Monday morning, if possible, between you and Larry and Cheryl Andresen. The Andresens were informed on Friday that Liberty Utilities was proposing to install a power pole within the Floriston Avenue right-of-way, in the approximate location on the attached record of survey. We brought this to the attention of Mr. Castleberry, and he said he would attempt to inspect the area this weekend, and that Liberty would be installing the pole early this week. Liberty began excavation for the pole yesterday, Saturday the 26th.

The proposed pole location violates the County Code and, along with the other encroachments in the right-of-way, unreasonably interferes with free passage over Floriston Avenue by the public. County Code Sec. L-XVII 3.4(J) provides that “[i]n no case shall utility poles, light standards, guy wires, etc. be placed closer than six feet (6’) to the edge of the traveled way.” (Emphasis added.) As can be seen on the attached record of survey, the proposed pole location is within six feet of the travelled way, and therefore, cannot be installed where proposed. Further, it is well established that utility poles must be erected in locations so “as to make their use of the streets as slight an inconvenience to the public as possible.” (12 McQuillin Mun. Corp. § 34:96 (3d ed. 2015).) The proposed pole location leaves only approximately 10-feet over the travelled way on Floriston Avenue, which also violates County standards, and fire safe requirements.

The franchise agreement with Liberty’s predecessor provides that Liberty “shall relocate, without expense to County, any poles, wires, conduits and appurtenances theretofore installed, and then maintained or used under this franchise, if and when made necessary by any lawful change of grade, alignment or width of any public road by said County....” (County Code Sec. Sec. G-II 4.5.) It is in all parties’ interest to avoid a costly relocation, and site the pole in a proper location consistent with County standards in the first instance. The Andresens request a meeting with you as soon as possible (prior to installation of the pole) to discuss appropriate siting of this pole. Please let us know if you are available for a meeting, and if not, if you have time for a conference call.

Thank you for your assistance.

Greg

**Greg C. Gatto**

STOEL RIVES LLP | 10008 SE River Street | Truckee, CA 96161

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February 8, 2016

GREG C. GATTO  
Direct (530) 582-2288  
greg.gatto@stoel.com

**VIA EMAIL**

Nevada County Board of Supervisors  
950 Maidu Avenue Suite 200  
Nevada City, Ca 95959

**Re: Andresen Property, 10953 Floriston Avenue, Hirschdale, Nevada County, California**

Dear Honorable Members of the Board:

This law firm represents Larry and Cheryl Andresen, owners of the residence located at 10953 Floriston Avenue, in the unincorporated area of Hirschdale, Nevada County, California (the "Andresen Property"). It has recently come to our attention that the County will be considering whether to institute a legal action against the Andresens in order to acquire a public easement over the Andresen Property by virtue of implied dedication. We strongly urge the Board to reject any proposal to initiate litigation against the Andresens.

As summarized briefly below, there is no basis in law or fact to claim implied dedication over the Andresen Property. Further, any action attempting to take the Andresen Property for public use will expose the County to liability for, among other things, inverse condemnation, deprivation of substantive and procedural due process rights, and violation of equal protection guarantees. Rather than taking the draconian and unsanctioned step of filing a lawsuit against the Andresens, we respectfully request that the Board convene a committee to consider the Floriston Avenue Road Improvement plans submitted by the Andresens, and meet with community members to resolve this matter, without attempting to illegitimately convert private property to public use.

The current dispute regarding access over Floriston Avenue arises out of several unauthorized encroachments that have been constructed and maintained within the public-right-of-way. A brief summary of the dispute and the legal issues related to the encroachments can be found in the enclosed correspondence with Supervisor Anderson, attached as Exhibit A. This issue appears to have come to a head when the Andresens constructed a fence on their own property, in compliance with all County ordinances, and completely out of the public right-of-way. The neighbors that created the encroachments within the public right-of-way ironically complained that the fence, located entirely on private property, was impeding access by the public over

81183148.1 0638078-00002

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Nevada County Board of Supervisors  
February 8, 2016  
Page 2

Floriston Avenue. Based on the Andresens' actions to safeguard their property rights, County Public Works' staff is recommending the County take the exceptional step of suing the Andresens in an attempt to convert their private property to public use pursuant to the doctrine of implied dedication. As explained below, not only is this doctrine inapplicable to any use of the Andresen Property after 1972, but there is no evidence of the extensive type of general use of the public either prior to or after 1972 that would result in the severe sanction of transforming private property to a public roadway.

In order to give rise to an implied offer of dedication from public use of private property, a high standard of usage must be met so that private property rights of the owner are not too easily diminished. (*Hanshaw v. Long Valley Road Ass'n* (2004) 116 Cal.App.4th 471, 482.) The use required to establish an implied dedication "must be substantial, diverse, and sufficient," and the proponent of access must show "various groups of persons have used the land," rather than "a limited and definable number of persons." (*Ibid.*) While the Courts have limited the application of implied dedication to only very specific and unique circumstances, the California Legislature has taken a further step to protect private property from being converted to public property by virtue of implied dedication. In 1972, Civil Code section 1009 was adopted in order to curtail the effects of dedication implied in law. Civil Code section 1009 provides that no use of "property by the public after the effective date of this section [March 4, 1972] shall ever ripen to confer upon the public or any governmental body or unit a vested right to continue to make such use permanently, in the absence of an express written irrevocable offer of dedication of such property to such use..." (Civil Code § 1009(b).) In essence, this statute limits the application of implied dedication to uses vested before 1972.<sup>1</sup>

In this case, not only is there no evidence of use of the Andresen Property for road purposes prior to 1972, but there is no evidence of any use by the general public for any extended period of time, either pre- or post-1972, sufficient to demonstrate the Andresens' "*clear and unequivocal intent*" to dedicate the Andresen property for a public roadway. (10 Miller & Starr, Cal. Real

<sup>1</sup> There is a currently a split of authority as to whether Civil Code section 1009 applies to only recreational use of private property, or whether it also precludes non-recreational use of private property from ripening into an implied dedication of a public road. This issue is currently pending before the California Supreme Court. (#15-219 *Scher v. Burke*, S230104. (B235892; 240 Cal.App.4th 381; Los Angeles County Superior Court; BC415646.) However, even if the Supreme Court were to rule that Civil Code § 1009 applies only to recreational use, the only use the general public would make of Floriston Avenue beyond the Andresen Property is to access a public recreational area. (See *Puñido v. Pereira* (2015) 234 Cal.App.4th 1246, 1252.) Therefore, regardless how the Supreme Court rules, Civil Code § 1009 would operate to preclude any post-1972 use of the Andresen property from ripening into an implied dedication.



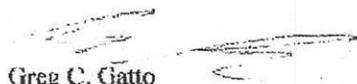
Nevada County Board of Supervisors  
February 8, 2016  
Page 3

Estate (3rd ed. 2012) Dedication, § 26:4 (emphasis in original.) Accordingly, the County cannot establish implied dedication of the Andresen Property.

In addition to the legal principles precluding application of implied dedication in this case, public policy is strongly implicated to discourage the gift of public resources (public right of way) to some property owners, while depriving other property owners of their private property rights. Allowing others to illegally claim private rights over a public right-of-way, while attempting to divest an owner of his or own private property is an affront to all property owners in Nevada County, and violates established constitutional protections.

We sincerely hope that this Board recognizes the folly in pursuing litigation against the Andresens, and instead, adopts a collaborative approach to resolve the obstructive encroachments within Floriston Avenue.

Respectfully,

  
Greg C. Gatto

Attachment

cc: Alison Barratt-Green, County Counsel

# EXHIBIT A

EXHIBIT A

000177

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**Gatto, Greg C.**

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**From:** Gatto, Greg C.  
**Sent:** Friday, August 23, 2013 8:48 AM  
**To:** Richard.Anderson@co.nevada.ca.us  
**Cc:** Larry and Cheryl Andresen [REDACTED] Larry and Cheryl Andresen  
**Subject:** Andresen Meeting re Floriston Ave.  
**Attachments:** Map of Portion of Hirschdale Subdivison.pdf

Supervisor Anderson:

Thank you again for taking the time to meet with the Andresens to discuss the encroachments on Floriston Avenue. Attached is a diagram prepared by Larry Andresen that illustrates the approximate location of the 40 foot County right-of-way (dedicated and accepted by Sub. 1-37 June 8, 1926) and the encroachments located thereon, including storage sheds, tents, and landscaping.

As the Andresens explained, the encroachments obstruct the public's use of, and passage on, Floriston Avenue. The reduced line of sight caused by the encroachments creates safety issues, especially for vehicles pulling trailers. At least one neighbor at the end of Floriston Avenue typically also parks vehicles, boats, and trailers in front of the encroachments (see the Andresen diagram), which blocks access on the entire right-of-way, creating serious ramifications for emergency vehicle access. These encroachments have resulted in a public nuisance over a County highway. (See Penal. Code § 370; Nevada County Code §§ G-IV 4.A.40, L-II 5.22.)

The Andresens have been uniquely impacted by the encroachments as they own two properties east of the encroachments. Delivery drivers and propane trucks typically park in the Andresens' private residential driveway, which impedes access to both of their properties. They have also lost several prospective tenants, who felt they would be unable to park their trailers or recreational vehicles in the Andresen's driveway because of the encroachments, which are located directly across from the driveway.

The Andresens have been advised by County staff to call the sheriff or CIIP in the event free travel on Floriston Avenue is obstructed. Officers from both agencies have come out, but informed the Andresens that they need a County survey of the right-of-way before they can take any enforcement action. We are therefore requesting that the County survey the existing right-of-way and take any action necessary to abate this ongoing public nuisance.

We look forward to working with the County in an attempt to rectify this issue. Please do not hesitate to contact me if you have any questions or need further information.

Thank You,  
Greg

**Greg C. Gatto**  
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000176



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May 23, 2016

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**VIA EMAIL**

Nevada County Board of Supervisors  
c/o Julie Patterson Hunter, Clerk of the Board  
950 Maidu Avenue Suite 200  
Nevada City, Ca 95959

**Re: Appeal of Decision Denying Encroachment Permit #9541**

Dear Honorable Members of the Board:

This law firm represents Larry and Cheryl Andresen, Appellants in the above-referenced matter (the "Appeal"). Appellants submit this letter in response to the Staff Report relating to the Board's consideration of the Appeal pursuant to Section L-II 5.12.G of the County Code. Appellants would like to clarify several matters in the staff report. Additional information will be presented in the event the Board elects to accept the appeal and schedules the matter for public hearing.

First, the encroachment permit does not require any work or expenditure of funds from the County to improve the road. The relocation of the power pole would be the responsibility of the utility provider pursuant to County Code Section G-II 4.5, and the removal of the private property encroaching in the public right-of-way would be the responsibility of the owners of the encroachments pursuant to, among other applicable regulations, County Code Sections G-IV 4.A.43 and L-II 5.21.F.2. All other proposed improvements would be made at Appellants' sole cost.

Second, to the extent that the Director's decision to deny the Encroachment Permit relied on any determination regarding the legal status of a right-of-way, a request to Appellants to remove a fence and/or boulders, and/or a discretionary decision by the County regarding potential code enforcement actions, Appellants reserve all rights to raise such issues on appeal. To the extent the Director's determination did not rely on these matters, Appellants reserve the right to raise these issues at a later date.

416-54729 / 416-18078-00012

A 2016 California Encroachment  
Permit Decision Order New Building on

000257

000257

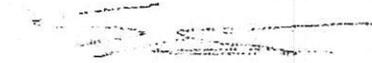


Nevada County Board of Supervisors  
May 23, 2016  
Page 2

Finally, in submitting this letter, Appellants in no way waive, and hereby reserve all rights and remedies related to Appellants contention that the Board of Supervisors should be disqualified from hearing this Appeal, for the reasons set forth in the Appeal application.

Thank you for your consideration of this matter.

Respectfully,

  
Greg C. Gatto

cc: Alison Barratt-Green, County Counsel



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GREG C. GATTO  
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January 27, 2017

**VIA EMAIL AND  
US MAIL**

Rhetta VanderPloeg  
Office of County Counsel, Nevada County  
950 Maidu Ave, Ste 240  
Nevada City, CA 95959

**Re: Floriston Avenue Right of Way Acquisition and Roadway Improvement**

Dear Ms. VanderPloeg:

I am writing in response to Mr. Joshua Pack's January 6, 2017 letter to Larry and Cheryl Andresen regarding the Floriston Avenue right of way.<sup>1</sup> We appreciate that staff is exploring options to address the issues affecting this right of way. As we've discussed, the best alternative would include removal of existing unlawful encroachments within the dedicated right of way, and minor road improvements allowing for a widening of the dedicated right of way to current County standards. The Andresens are continuing to work on road improvement plans consistent with the foregoing to submit to the County as part of an encroachment permit application.

Regarding an appraisal for the acquisition of the Andresen property to expand the existing right of way, the Andresens would like to accompany the appraiser during the inspection of the property, and hereby request a copy of any appraisal prepared pursuant to the proposed acquisition. Please have the appraiser contact us to schedule a mutually agreeable time to conduct the appraisal. The Andresens also request costs for an independent appraisal pursuant to Code of Civil Procedure section 1263.025.

Please be advised that the Andresens vehemently oppose any action by the County to take their property for a right-of-way via eminent domain. The County already has a forty-foot right-of-way over Floriston Avenue, which is sufficient for all present and contemplated uses. An additional right-of-way over the Andresens' property is unnecessary, and therefore,

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<sup>1</sup> Mr. Pack's letter erroneously asserts that "[a] portion of the current road alignment is located outside the right of way owned by the County." As you are aware, there is no current road alignment that traverses outside the County right of way on the Andresen property. A fence was erected on the Andresen property and outside of the dedicated right of way, in compliance with the County Code, to prevent any unauthorized use of the Andresen property.

Rhett VanderPloeg  
January 27, 2017  
Page 2

condemnation is not authorized under the eminent domain statutes. (*City of Los Angeles v. Keck* (1971) 14 Cal.App.3d 920.) Moreover, the condemnation of the Andresens' property, while allowing adjacent neighbors to illegally maintain encroachments within the right-of-way, is a taking under the pretext of public use, when the actual purpose is to bestow a private benefit on these neighbors. (*Kelo v. City of New London, Conn.* (2005) 545 U.S. 469, 478.)

There is no reason to expend public funds to acquire additional right-of-way when the County already has a forty-foot easement, and need only enforce its own Code to require property owners to remove their private property from the public right-of-way. We hope the County engages in a fiscally responsible manner, rather than utilizing public funds in a protracted litigation to benefit a few private individuals who are in blatant violation of the County Code.

Again, the Andresens are open to discuss alternative solutions to the Floriston Avenue issue, however, condemnation of the Andresen property is neither good policy nor legally justified. Thank you for your consideration, and please do not hesitate to contact me with any questions.

Respectfully,



Greg C. Gatto



Nevada County Board of Supervisors  
April 10, 2017  
Page 3

continuing to unlawfully use public property. The taking of the Andresen Property under such circumstances would be a gross abuse of discretion with obvious discriminatory intent.

The real question before the Board is whether the people of the County should be paying public funds in an attempt to continue to allow a few individuals to illegally appropriate public property for their own private benefit. No reasonable decision maker could conclude that under such circumstances an eminent domain action is in the best interest of its constituents.

We respectfully request that the Board refrain from an attempt to unlawfully take the Andresen Property for the private benefit of those individuals who are in violation of state and County law.

Respectfully,



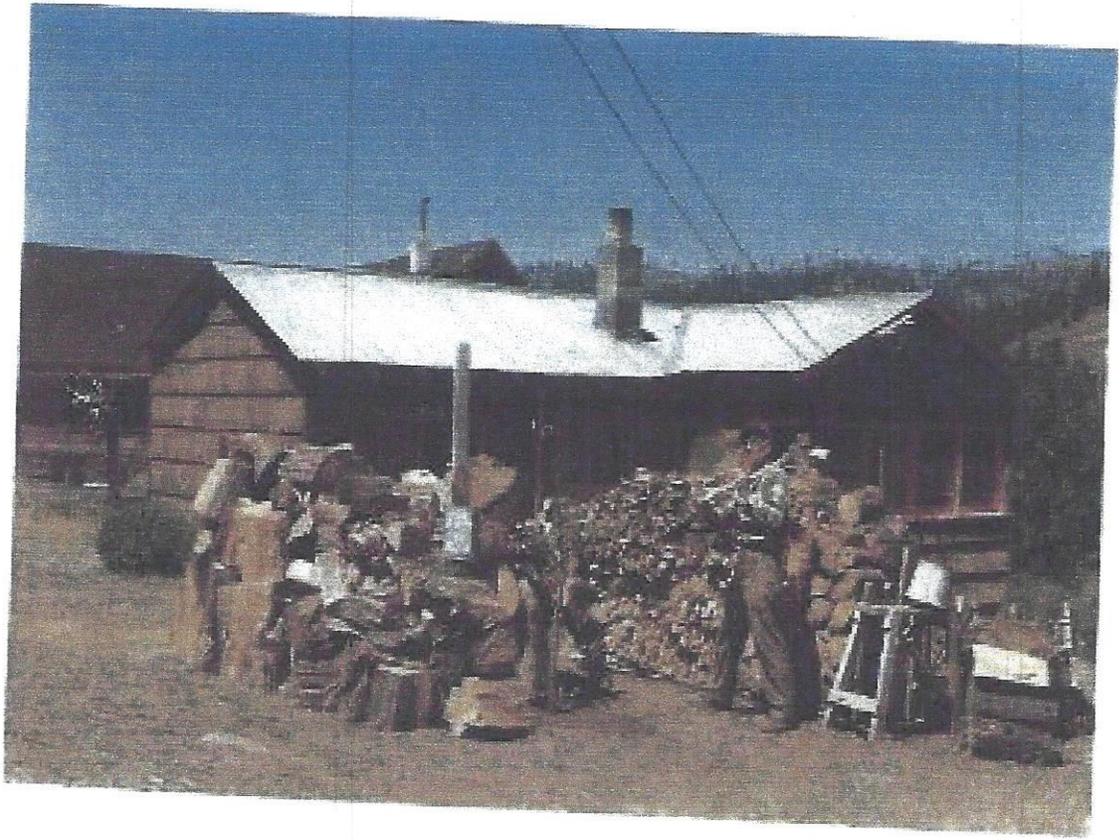
Greg C. Gatto

Attachments

cc: Julie Patterson Hunter, Clerk of the Board  
Alison Barratt-Green and Rhetta VanderPloeg, Nevada County Counsel  
Michael B. Brown, Stoel Rives LLP

**EXHIBIT A**

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**EXHIBIT B**

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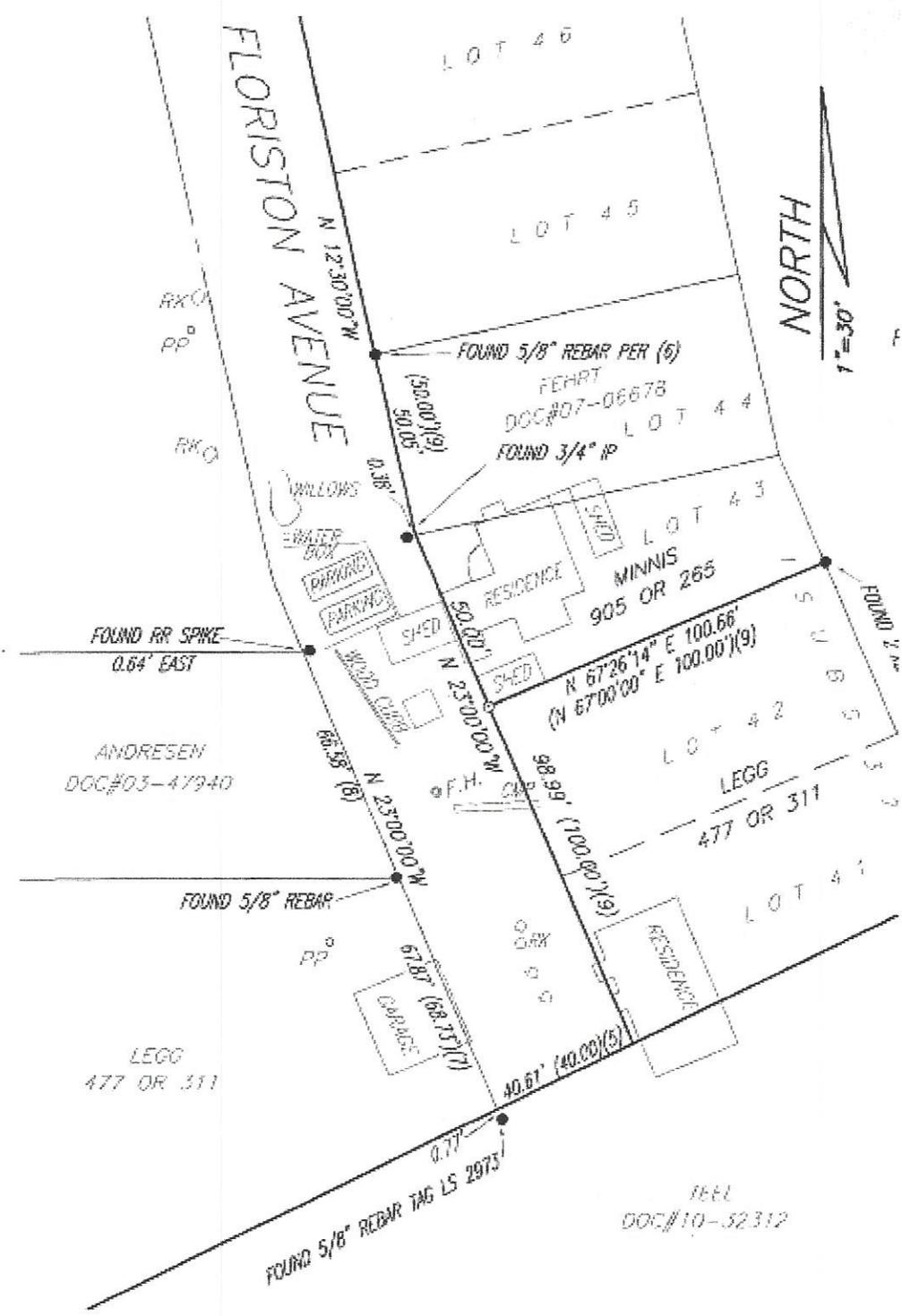
Picture 6/12/2016 showing th bush as  
wide a truck parked behind it the tall  
gate is barely showing

Exhibit 4  
Truck parked  
behind bush  
not visible

(1)

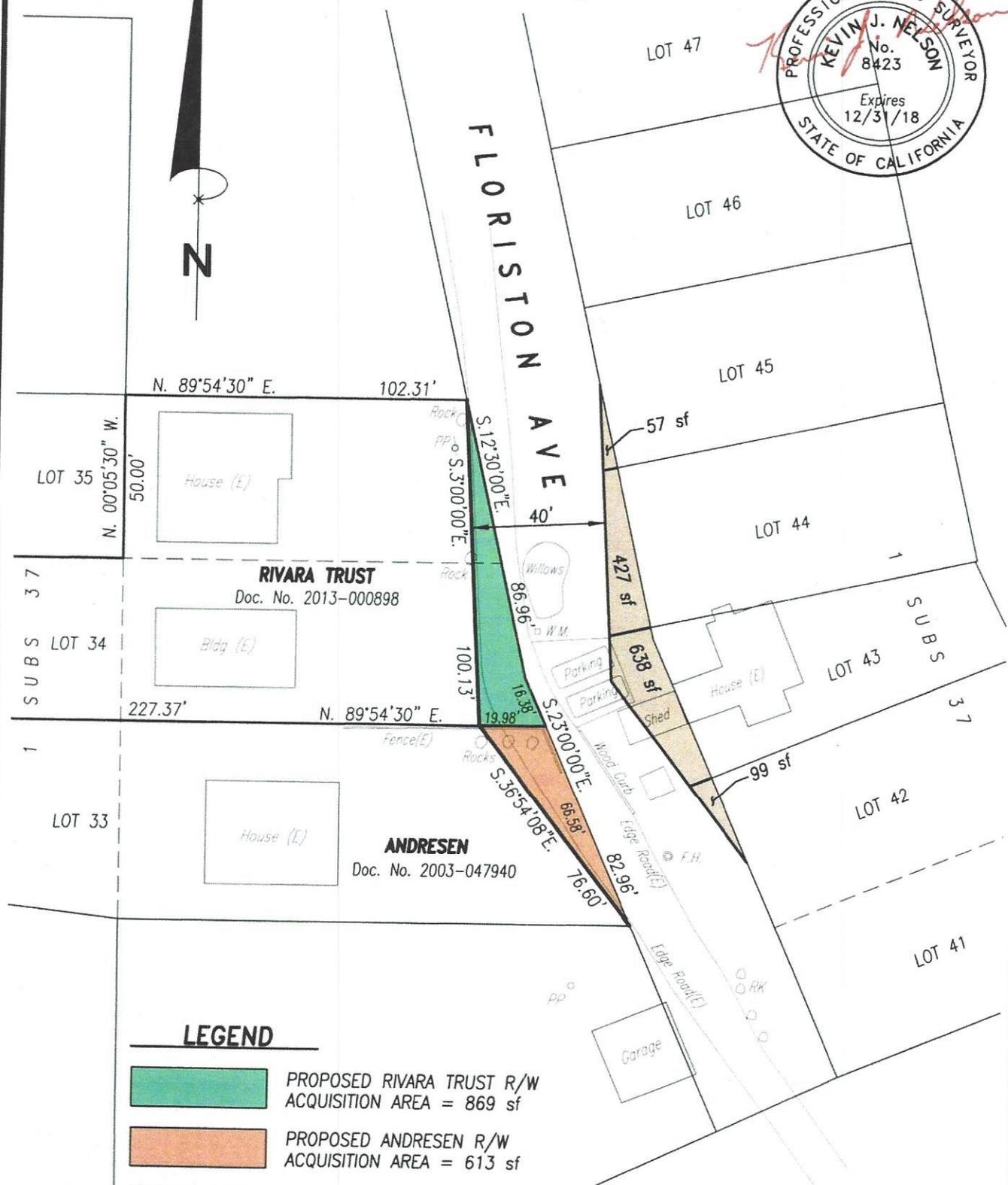
**EXHIBIT C**

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# EXHIBIT MAP

SCALE: 1" = 40'



## LEGEND

- PROPOSED RIVARA TRUST R/W  
ACQUISITION AREA = 869 sf
- PROPOSED ANDRESEN R/W  
ACQUISITION AREA = 613 sf
- PROPOSED AREA TO BE ABANDONED  
ABANDONED AREA = 1,221 sf (Total)

# RECORD OF SURVEY

FOR JOHN MINNIS, RONALD LEGG, AND MATT KOLES  
 OF A PORTION OF HIRSCHDALE ON THE TRUCKEE SUBDIVISION, BOOK 1 OF SUBDIVISIONS, PAGE 37, N.C.O.R.,  
 BEING, AND TOGETHER WITH, A PORTION OF SECTION 34, TOWNSHIP 18 NORTH, RANGE 17 EAST M.D.M. IN THE UNINCORPORATED AREA OF NEVADA COUNTY, CALIFORNIA  
 COOMBS ENGINEERING INC. P.O. BOX 2495 TRUCKEE, CA 96160 DECEMBER 2014

## COUNTY SURVEYOR'S STATEMENT

THIS MAP HAS BEEN EXAMINED IN ACCORDANCE WITH SECTION 8786 OF THE LAND SURVEYORS' ACT THIS 19<sup>TH</sup> DAY OF FEBRUARY, 2015.  
 KEVIN WELSON PLS 8423  
 DEPUTY COUNTY SURVEYOR  
 EXPIRES 12/31/16



## SURVEYOR'S STATEMENT

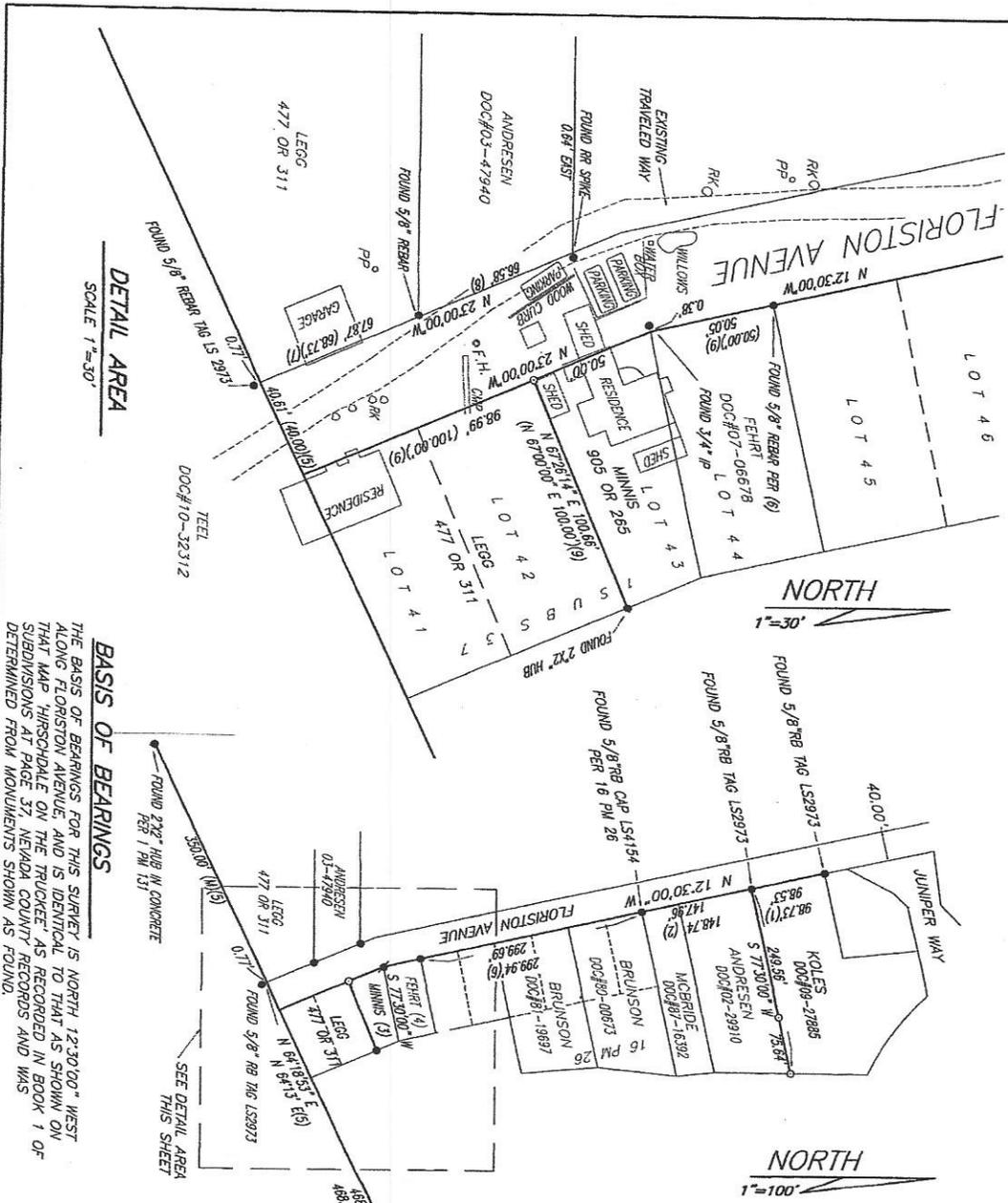
THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN COMPLIANCE WITH THE REQUIREMENTS OF THE PROFESSIONAL LAND SURVEYORS' ACT AT THE REQUEST OF JOHN MINNIS IN SEPTEMBER 2014.

ROBERT H. COOMBS  
 DATE: 2-17-15  
 EXPIRES 3/31/16



## LEGEND

- FOUND POINT AS NOTED
  - FOUND 3/4" IP AND TAG
  - SET 3/4" REBAR WITH CAP RCE 27787
  - = NOTHING FOUND, NOTHING SET (MINS)
  - (1) = DOC# 09-27885, NCCR
  - (2) = DOC# 02-29910 AND #87-16382
  - (3) = 905 OR 285 NCCR
  - (4) = DOC# 97-08678 NCCR
  - (5) = 1 PM 131 NCCR
  - (6) = 16 PM 28 NCCR
  - (7) = 477 OR 311 NCCR
  - (8) = DOC# 03-47940 NCCR
  - (9) = 1 SUBS 37 NCCR
- NCCR = NEVADA COUNTY OFFICIAL RECORDS  
 F.H. = FIRE HYDRANT  
 RK = ROCK  
 PP = POWER POLE  
 CMP = CORRUGATED METAL PIPE



## DETAIL AREA

SCALE 1" = 30'

**BASIS OF BEARINGS**  
 THE BASIS OF BEARINGS FOR THIS SURVEY IS NORTH 12°30'00" WEST ALONG FLORISTON AVENUE, AND IS IDENTICAL TO THAT AS SHOWN ON THAT MAP HIRSCHDALE ON THE TRUCKEE AS RECORDED IN BOOK 1 OF SUBDIVISIONS AT PAGE 37, NEVADA COUNTY RECORDS AND WAS DETERMINED FROM MONUMENTS SHOWN AS FOUND.

## RECORDER'S STATEMENT

FILED THIS 26<sup>TH</sup> DAY OF FEBRUARY, 2015, AT 9:33 AM IN BOOK 15 OF SURVEYS AT PAGE 185, AT THE REQUEST OF ROBERT COOMBS.  
 DOCUMENT NO. 2015-00038917  
 FEE: \$720  
 GREGORY J. DIAZ  
 COUNTY RECORDER  
 DEPUTY  
 SHEET 1 OF 1

MAP 185

RS 15/185