Planning Commission Staff Report

Meeting Date: June 6, 2017

Subject:	Abandonment Case Number WAB17-0001
Applicants:	Stacy & Lesa Ettinger; Jeffrey Church
Agenda Item Number:	**8D**
Summary:	Request to abandon three 33-foot-wide government patent access and utility easements and one 33-foot-wide government patent access easement.
Recommendation:	**Denial**
Prepared by:	Kelly Mullin, Planner Washoe County Community Services Department Planning and Development Division 775.328.3608 kmullin@washoecounty.us

Description

Abandonment Case Number WAB17-0001 (Ettinger/Church) – For possible action, hearing and discussion to abandon three 33-foot-wide government patent access and utility easements along the northern, eastern and southern property lines of 15520 Fawn Lane; and one 33-foot-wide government patent access easement along the southern property line of 15500 Fawn Lane, for the benefit of the applicants.

- Applicant/Property Owner: Stacy and Lesa Ettinger
- Applicant/Property Owner: Jeffrey Church
- Location: 15500 and 15520 Fawn Lane, approximately ½ mile south of Fawn Lane's intersection with Mt. Rose Highway
- Assessor's Parcel Numbers: 150-232-08 and 150-232-09
- Parcel Sizes: ±1.50-acres (APN: 150-232-08) and ±1.496-acres (APN: 150-232-09)
- Master Plan Category: Suburban Residential (both parcels)
- Regulatory Zone: Low Density Suburban (both parcels)
- Area Plan: Forest
- Citizen Advisory Board: South Truckee Meadows/Washoe Valley
- Development Code: Article 806, *Vacations and Abandonments of Easements or Streets*
- Commission District: 2 – Commissioner Lucey
- Section/Township/Range: Section 36, T18N, R19E, MDM, Washoe County, NV

Staff Report Contents

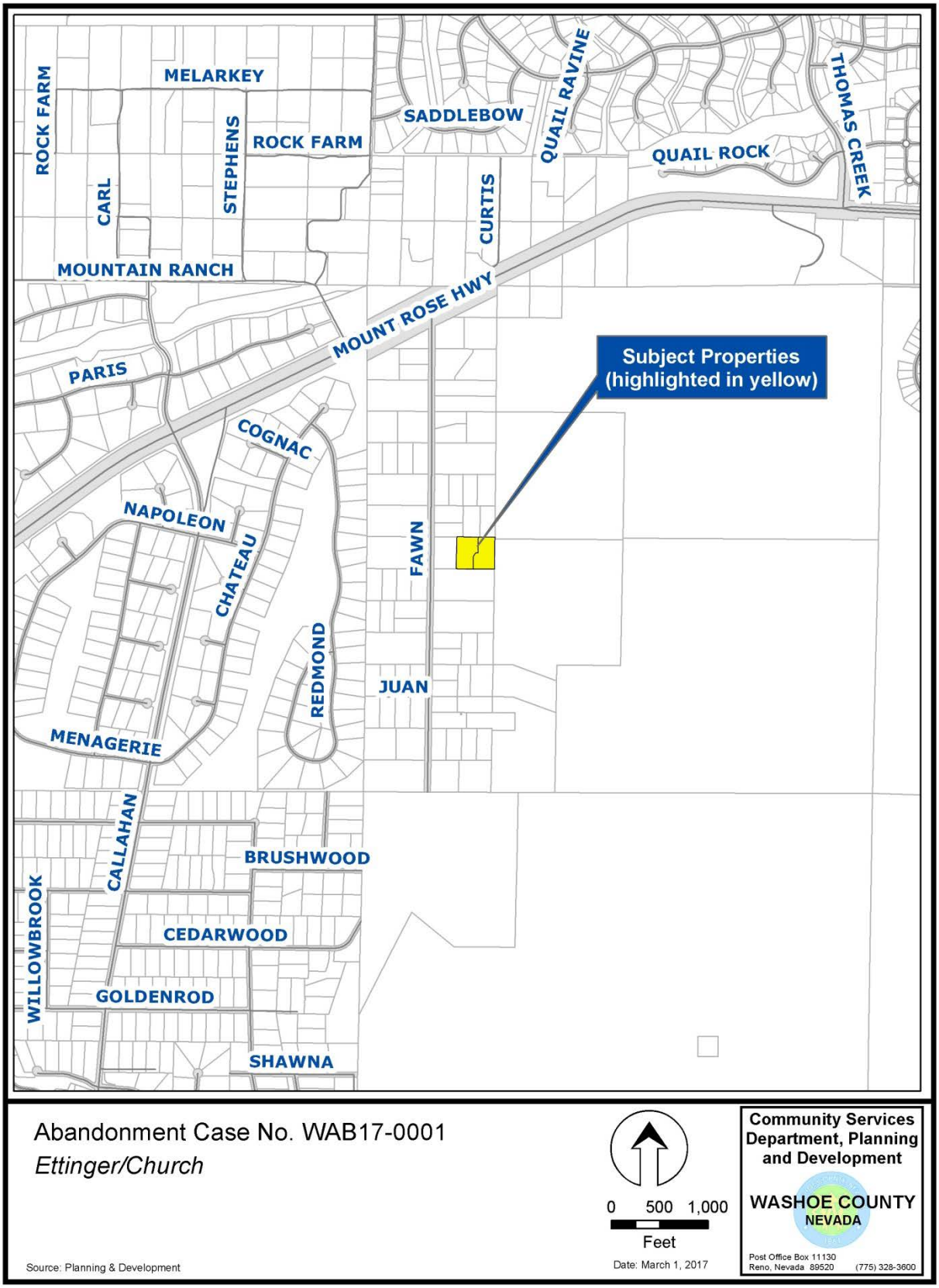
Exhibit Contents

Abandonment Purpose and Process

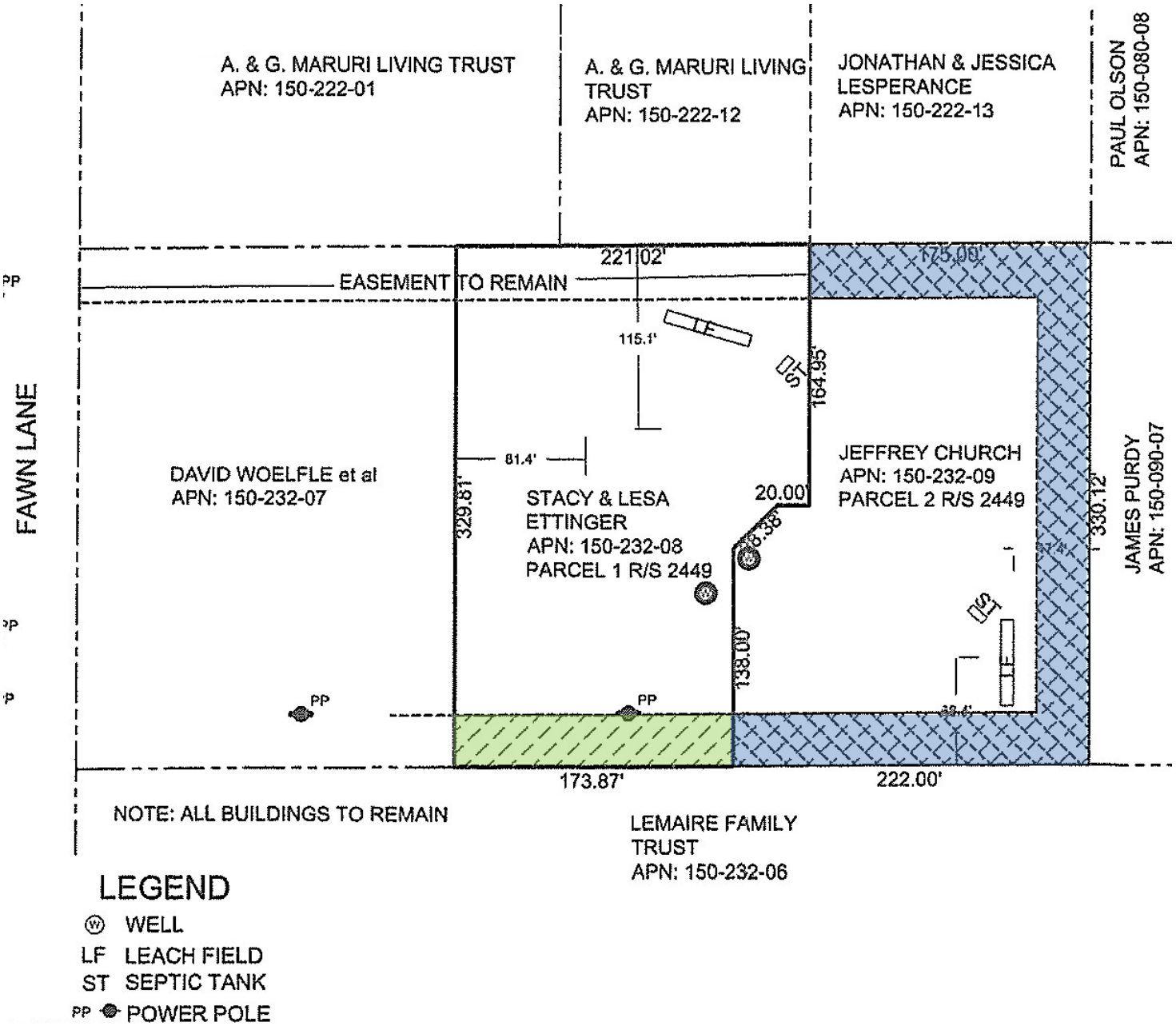
The purpose of an abandonment is to allow for the vacation or abandonment of easements or streets. If the Planning Commission grants an approval of the Abandonment, that approval is subject to Conditions of Approval. Conditions of Approval are requirements that need to be completed prior to the recordation of the ***Resolution and Order of Abandonment***.

The ***Resolution and Order of Abandonment*** is the legal record prepared by the Engineering and Capital Projects Division and recorded to complete the abandonment process. The Engineering and Capital Projects Division completes a technical review of the legal description, exhibit maps and any new easements that are required by the Conditions of Approval and submitted by the applicant's surveyor. When the Engineering and Capital Projects Division is satisfied that all conditions of approval have been met, they record the ***Resolution and Order of Abandonment*** with the County Recorder. An abandonment is complete once that recordation has occurred.

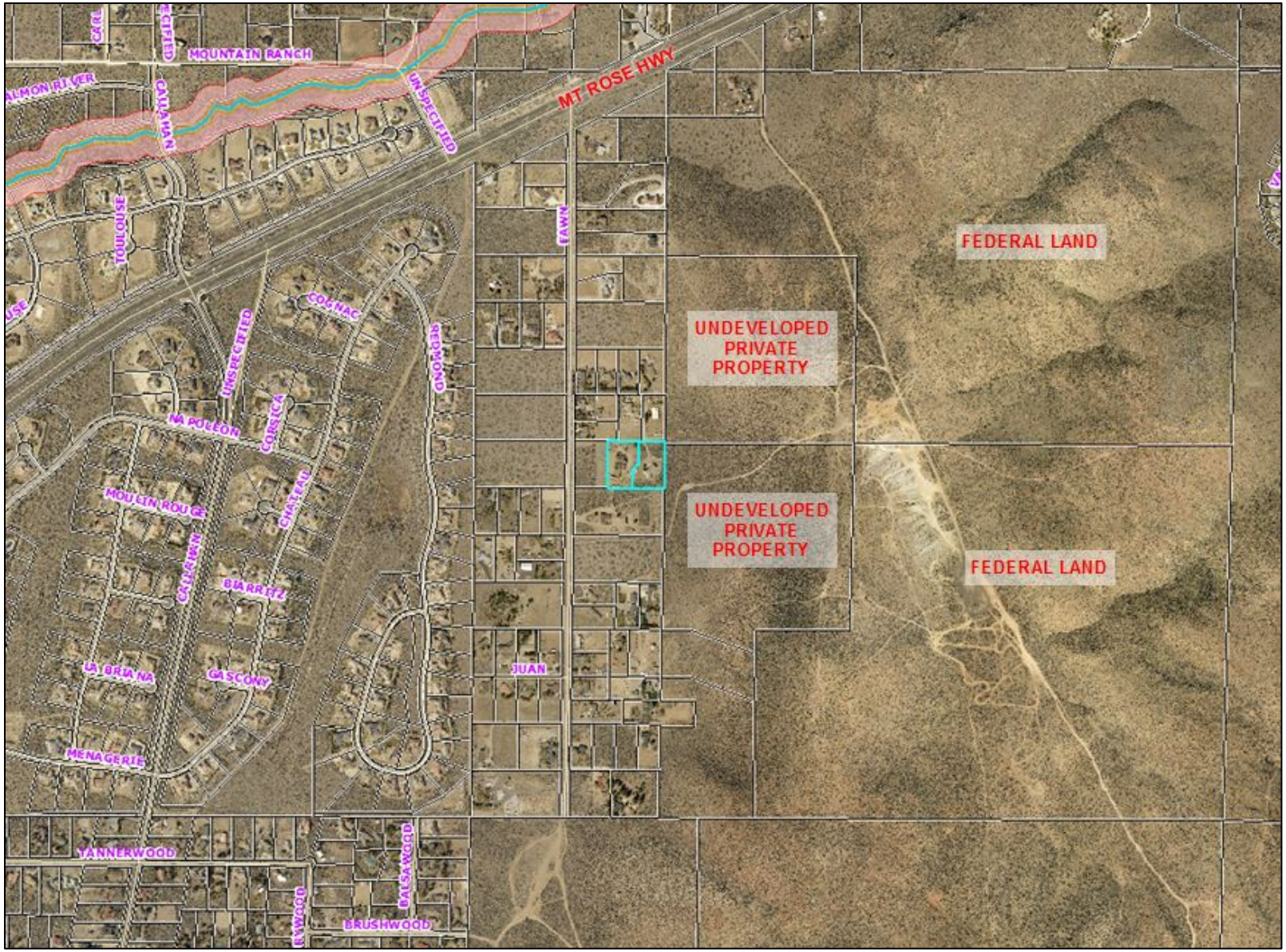
Washoe County Code (WCC) Section 110.806.15 authorizes the Planning Commission to consider abandonments or vacations of streets and easements, including government patent easements. Abandonment Case Number WAB17-0001 seeks to abandon 33-foot-wide government patent easements located on two separate parcels on Fawn Lane, and is asking the Planning Commission to consider that request.



Vicinity Map


A. & G. MARURI LIVING TRUST
APN: 150-222-01
A. & G. MARURI LIVING TRUST
APN: 150-222-12
JONATHAN & JESSICA LESPERANCE
APN: 150-222-13
PAUL OLSON
APN: 150-080-08
EASEMENT TO REMAIN
221.02'
175.00'
115.1'
ST
164.95'
81.4'
329.81'
DAVID WOELFLE et al
APN: 150-232-07
STACY & LESA ETTINGER
APN: 150-232-08
PARCEL 1 R/S 2449
20.00'
16.38'
JEFFREY CHURCH
APN: 150-232-09
PARCEL 2 R/S 2449
330.12'
JAMES PURDY
APN: 150-090-07
FAWN LANE
138.00'
LF
PP
PP
173.87'
222.00'
NOTE: ALL BUILDINGS TO REMAIN
LEMAIRE FAMILY TRUST
APN: 150-232-06
LEGEND
WELL
LF LEACH FIELD
ST SEPTIC TANK
PP POWER POLE
33' ROADWAY EASEMENT PROPOSED TO BE ABANDONED
33' ROADWAY & PUBLIC UTILITY EASEMENT PROPOSED TO BE ABANDONED

Site Plan



Aerial Photo
(*subject sites outlined in blue*)

Project Evaluation

The applicants are seeking to abandon three 33-foot-wide government patent access and utility easements along the northern, eastern and southern property lines of 15520 Fawn Lane; and one 33-foot-wide government patent access easement along the southern property line of 15500 Fawn Lane. These requests are shown on the exhibit on page 4 of this staff report.

The subject properties are each developed with a single-family residence and several accessory structures. As these are government tract homesites, there are 33-foot-wide government patent easements that border several of the property lines of these parcels, as well as those properties located to the north and south.

Surrounding Properties

As shown in the aerial photo on the previous page, the properties to the north and south are developed and have established access via Fawn Lane and/or via the access easements abutting the northern edge of the subject site. To the east, however, are vacant, undeveloped properties that have the potential to be further subdivided and/or developed.

The property to the northeast is ±40-acres in size with a regulatory zone of Medium Density Rural, which would potentially allow for up to four lots on the property. The property southeast of the subject site is ±40.35-acres in size with regulatory zones of Low Density Suburban (±11.25-acres) and General Rural (±28.92-acres), which would potentially allow ±11 lots. Neither of these adjacent properties have been subdivided or developed, and paved access does not exist to either of these parcels. Federal land surrounds the adjacent parcels to the north, east and south.

Statute, Code and Policy Regarding Patent Easements

Washoe County Code (WCC) Section 110.806.70, states, in part, "The abandonment or vacation of a government patent easement … addresses only the County's interest in the subject easement and cannot be relied upon for purposes of clearing title to the property." To the extent other property owners nearby or other entities might have any ownership interests in these easements, the County's action to abandon or not abandon would not affect those interests. In turn, the property owners applying for the abandonment would be responsible for utilizing whatever legal mechanisms are necessary to address those interests on their own.

NRS 278.480 allows for the Planning Commission to consider abandoning government patent easements if they are no longer required for a public purpose. In order to recommend approval of an abandonment, WCC Section 110.806.20 requires that the Planning Commission make three findings, including that such an abandonment would not result in material injury to the public.

In general, patent access easements are presumed to serve a public purpose when they either: (1) function as a point of access; or (2) are adjacent to undeveloped land that does not have developed means of ingress/egress. Except in cases where no adjacent parcels have the opportunity to further develop (ex. subdivide; establish a residence; etc.), staff does not recommend abandoning the County's interest in these easements. If future development occurs, the County may wish to use or develop that access in the interest of the community. It would be precipitous for the County to abandon its interest in these easements when it is not yet known if or how they may be needed in the future.

Additionally, due to the complexities involved with the creation of patent easements, staff does not recommend partial abandonments of patent easements, whether or not they are adjacent to undeveloped parcels.

There are two principal questions for the County to consider in a patent easement abandonment application: first, whether the easement is no longer required for a public purpose; and, second, whether the proposed abandonment would cause a material injury to the public.

Due to the uncertainties inherent with undeveloped land being located to the east of these easements, including how the land may be developed in the future, and if the County may at some point choose to use or develop that access in the interest of the public, staff recommends that the abandonment request **not** be granted. There are no conditions of approval provided with this staff report given staff's recommendation for denial. Should the Planning Commission decide to approve or partially approve the abandonment request, then staff will have conditions of approval ready for the Planning Commission's review and possible approval.

Why Staff Recommendation was Updated

This abandonment request was initially scheduled for a Planning Commission hearing April 4, 2017. At that time, staff's published recommendation was for a partial approval of the request. Prior to the April hearing, the applicant requested that the matter be continued to the June 6, 2017 Planning Commission meeting, and asked staff to consider the item further. Staff did so, and called a meeting with representatives from the Engineering Division, Planning & Development Division, and the District Attorney's Office to discuss this particular case and broader policy implications. Upon further discussion, it was determined by County Planning and Engineering staff that an overall policy was necessary to address how patent easement abandonment requests are handled across the board. That policy direction is summarized in the previous section and resulted in a change to staff's initial recommendation from partial approval to denial.

South Truckee Meadows/Washoe Valley Citizen Advisory Board (STM/WV CAB)

Pursuant to Article 806, Vacations and Abandonments of Easements and Streets, proposals for abandonments or vacations are not required to be noticed to Citizen Advisory Boards. No comments have been received from the public regarding this request.

Reviewing Agencies

The following agencies received a copy of the project application for review and evaluation.

- Washoe County Community Services Department
  - Engineering and Capital Projects Division
  - Planning and Development Division
  - Regional Parks and Open Spaces
  - Utilities
- Washoe County Health District
  - Environmental Health Services Division
  - Emergency Medical Services Program
- Truckee Meadows Fire Protection District
- Washoe County Sheriff's Office
- Regional Transportation Commission
- Washoe-Storey Conservation District
- U.S. Forest Service
- AT&T
- NV Energy
- Truckee Meadows Water Authority
- Paiute Pipeline Company

- Charter Communications

Two of the above-listed agencies/departments provided comments in response to their evaluation of the project application. A **summary** of each agency's comments and their contact information is provided below.

- Washoe County Engineering and Capital Projects has recommended that none of the easements be abandoned. This is due to the possibility the County may potentially need these easements in the future, for the benefit of the County and community.

  Contact: Kimble Corbridge, 775.328.2054, kcorbridge@washoecounty.us

- Truckee Meadows Fire Protection District commented that access to residences be provided and maintained.

  Contact: Amy Ray, 775.326.6005, aray@tmfpd.us

The Regional Transportation Commission and the Washoe County Health District indicated they reviewed the proposal and have no comments.

Staff Comment on Required Findings

WCC Section 110.806.20 and NRS 278.480(3) require that all of the following findings be made to the satisfaction of the Washoe County Planning Commission before granting approval of the abandonment request. Staff has completed an analysis of the application and has determined that the proposal is not in compliance with the required findings as follows.

WCC Section 110.806.20 Required Findings

1. Master Plan. The abandonment or vacation is consistent with the policies, action programs, standards and maps of the Master Plan and the Forest Area Plan.

   Staff Comments: The proposed abandonments do not affect any policies, action programs, standards or maps of either the Master Plan or the Forest Area Plan.

2. No Detriment. The abandonment or vacation does not result in a material injury to the public.

   Staff Comments: The adjacent properties have not all yet been developed. Abandoning the access easements at this time may result in material injury to the public, since the easements may yet still serve a future public purpose. If future development occurs, there is the possibility that the County may wish to use or develop that access in the interest of the community. It would be precipitous for the County to abandon its interest in these easements when it is not yet known if or how they may be needed in the future.

3. Existing Easements. Existing public utility easements in the area to be abandoned or vacated can be reasonably relocated to provide similar or enhanced service.

   Staff Comments: Retaining the patent easements as-is will leave the associated utility easements in place. In order to abandon or relocate utility easements, the appropriate public utilities would need to relinquish their interest in the existing easements.

Additional Finding Required per NRS 278.480(3)

4. Public Purpose. The government patent easement is no longer required for a public purpose.

Staff Comments: As described previously, the patent easements proposed to be abandoned may yet still be necessary to serve a future public purpose.

Recommendation

Due to the uncertainties inherent with undeveloped land being located to the east of these easements, including how the land may be developed in the future, and if the County may at some point choose to use or develop the access on these two properties in the interest of the public, staff recommends that the abandonment request **not** be granted. Staff offers the following motion for the Commission's consideration.

Motion

I move that, after giving reasoned consideration to the information contained in the staff report and information received during the public hearing, the Washoe County Planning Commission deny Abandonment Case Number WAB17-0001 for Ettinger/Church, having been unable to make all four findings in accordance with Washoe County Code Section 110.806.20, and NRS 278.480(3), specifically:

2. No Detriment. The abandonment or vacation would result in a material injury to the public, given that the adjacent properties have not all yet been developed and that abandoning the access easements at this time may result in material injury to the public since the easements may yet still serve a future public purpose.
4. Public Purpose. The government patent easement may still yet be required for a public purpose.

Appeal Process

Planning Commission action will be effective 10 calendar days after the written decision is filed with the Secretary to the Planning Commission and mailed to the applicants, unless the action is appealed to the Washoe County Board of Commissioners, in which case the outcome of the appeal shall be determined by that Board. Any appeal must be filed in writing with the Planning and Development Division within 10 calendar days after the written decision is filed with the Secretary to the Planning Commission and mailed to the applicants.

xc: Applicant/Owner: Stacy and Lesa Ettinger, 15500 Fawn Lane, Reno, NV 89511

Applicant/Owner: Jeffrey Church, 15520 Fawn Lane, Reno, NV 89511

Consultant: Alpine Land Surveyors, Attn: Mike Miller, 7395 Gravel Court, Reno, NV 89502

EXHIBIT A

From: Corbridge, Kimble
To: Mullin, Kelly; Smith, Dwayne E.
Cc: Vesely, Leo; Corbridge, Kimble; Gump, Mike
Subject: WAB17-0001 (Ettington/Church)
Date: Wednesday, May 17, 2017 11:14:15 AM
Attachments: image001.png

Kelly,

After further review and discussions with CSD Planning, Engineering and the District Attorney's office of the referenced abandonment request, Engineering is recommending that none of the patent 33 foot easements be abandoned.
The County does not know how the County may need to use these easements in the future for the benefit of the County and the community.

Thx,
Kimble

Kimble O. Corbridge, P.E., CFM
Washoe County Community Services Department
KCorbridge@washoecounty.us | o 775.328.2041 | f 775.328.3699 | 1001 E. Ninth St., A-255, Reno, NV 89512

Connect with us: cMail | Twitter | Facebook | www.washoecounty.us

Amy Ray
Fire Marshal

Tim Leighton
Division Chief

Charles A. Moore
Fire Chief

March 3, 2017

Washoe County Community Services Department
1001 East Ninth Street
Reno, NV 89512

Re: Abandonment Case WAB17-0001 (Ettinger/Church)

The Truckee Meadows Fire Protection District (TMFPD) will approve the above permit with the following conditions:

- Access to all residents shall be provided and maintained.

Please contact me with any questions at (775) 326-6005.

Thank you,

Amy Ray
Fire Marshal

WAB17-0001
EXHIBIT A

WASHOE COUNTY
HEALTH DISTRICT
ENHANCING QUALITY OF LIFE

March 8, 2017

Kelly Mullin, Planner
Washoe County Community Services
Planning and Development Division
PO Box 11130
Reno, NV 89520-0027

RE: Ettinger/Church; APN 150-232-09
Abandonment; WAB17-0001

Dear Ms. Mullin:

The Washoe County Health District, Environmental Health Services Division (WCHD) has reviewed the above referenced project. Approval by the WCHD is subject to the following conditions:

1. The WCHD has no objections to the approval of the Abandonment as proposed. Both parcels have existing septic system and onsite domestic wells.

If you have any questions or would like clarification regarding the foregoing, please contact Wes Rubio, Senior Environmental Health Specialist at wrubio@washoecounty.us regarding all Health District comments.

Sincerely,

Albert Sack

Bob Sack, Division Director
Environmental Health Services Division
Washoe County Health District

BS:wr

Cc: File - Washoe County Health District

REGIONAL TRANSPORTATION COMMISSION
Metropolitan Planning • Public Transportation & Operations • Engineering & Construction
Metropolitan Planning Organization of Washoe County, Nevada

February 23, 2017

FR: Chrono/PL 183-17

Ms. Kelly Mullin, Planner
Community Services Department
Washoe County
P.O. Box 11130
Reno, NV 89520

RE: WAB17-0001 (Ettinger/Church)

Dear Ms. Mullin,

We have reviewed the above application and have no comments at this time.

Thank you for the opportunity to comment on this application. Please feel free to contact me at 775-332-0174 or email me at rkapuler@rtcwashoe.com if you have any questions or comments.

Sincerely,

Rebecca Kapuler

Rebecca Kapuler
Planner

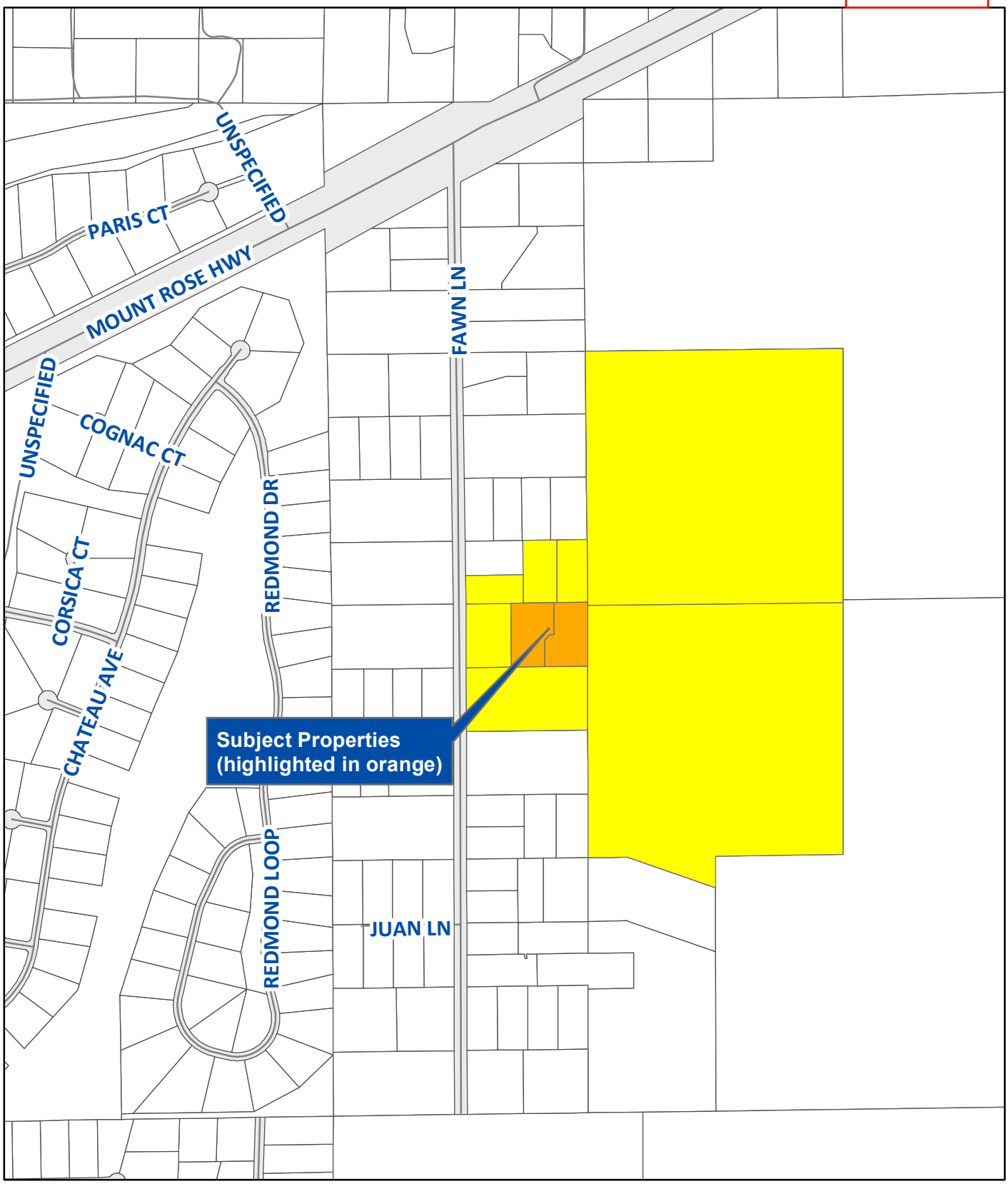
RK/jm

Copies: Bill Whitney, Washoe County Community Services
Jae Pullen, Nevada Department of Transportation, District II
Daniel Doenges, Regional Transportation Commission
Tina Wu, Regional Transportation Commission
Julie Masterpool, Regional Transportation Commission
David Jickling, Regional Transportation Commission

/Washoe County no comment 03032017

WAB17-0001
EXHIBIT A

EXHIBIT B



Public Notice Map

Abandonment Case WAB17-0001 (Ettinger/Church)

Provided with notice: 8 owners of 9 affected or abutting parcels.

Source: Planning and Development Division

0 200 400 800
Feet

Date: February 20, 2017

Community Services Department

WASHOE COUNTY
NEVADA

Post Office Box 11130
Reno, Nevada 89520 (775) 328-3600

EXHIBIT C

WAB17-0001

Community Services Department

Planning and Development

ABANDONMENT APPLICATION

Community Services Department
Planning and Development
1001 E. Ninth St., Bldg. A
Reno, NV 89520

Telephone: 775.328.3600

Washoe County Development Application

Your entire application is a public record. If you have a concern about releasing personal information, please contact Planning and Development staff at 775.328.3600.

Project Information	**Staff Assigned Case No.:** _____
Project Name: Fawn Lane Abandonment	
Project Description:	Abandon portions of a roadway & public utility easement across APNs 150-232-08 and 150-232-09 created by Patent. BLM Patent No. 1223630.
Project Address:	15500 & 15520 Fawn Lane, Washoe County
Project Area (acres or square feet):	3.00 Ac.
Project Location (with point of reference to major cross streets **AND** area locator):	Lots lie east of Fawn Lane, between Juan Lane and Mt. Rose highway, approximately 2345 feet south of the centerline of Mt. Rose Highway

Assessor's Parcel No.(s):	Parcel Acreage:	Assessor's Parcel No.(s):	Parcel Acreage:
150-232-08	65,496 s.f.		
150-232-09	65,147 s.f.		

Section(s)/Township/Range:

Indicate any previous Washoe County approvals associated with this application:

Case No.(s).

Applicant Information (attach additional sheets if necessary)

Property Owner:	**Professional Consultant:**
Name: Stacy B. & Lesa M. Ettinger	Name: Alpine Land Surveyors
Address: 15500 Fawn Lane	Address: 7395 Gravel Ct.
Reno, NV Zip: 89511	Reno, NV Zip: 89502.
Phone: 775-328-2246 Fax: -	Phone: 775-636-8650 Fax:
Email: SEttinger@washoecounty.us	Email: mike@alpinelandsurveyors.com
Cell: 775-848-0853 Other:	Cell: 775-771-1491. Other:
Contact Person: Stacy Ettinger.	Contact Person:
Applicant/Developer:	**Other Persons to be Contacted:** (other owner)
Name: Alpine Land Surveyors	Name: Jeffrey Church
Address: 7395 Gravel Ct.	Address: 15520 Fawn Lane.
Reno, NV Zip: 89502.	Reno, NV. Zip: 89511
Phone: 775-636-8650 Fax:	Phone: 800-554-9519 Fax:
Email: mike@alpinelandsurveyors.com	Email: renocop@earthlink.net
Cell: 775-771-1491 Other:	Cell: - Other: -
Contact Person: Mike Miller	Contact Person: Jeffrey Church

For Office Use Only

Date Received: Initial:	Planning Area:
County Commission District:	Master Plan Designation(s):
CAB(s):	Regulatory Zoning(s):

WAB17-0001
EXHIBIT C

Property Owner Affidavit

Applicant Name: STACY ETTINGER

The receipt of this application at the time of submittal does not guarantee the application complies with all requirements of the Washoe County Development Code, the Washoe County Master Plan or the applicable area plan, the applicable regulatory zoning, or t hat the application is deemed complete and will be processed.

STATE OF NEVADA)
)
COUNTY OF WASHOE)

I, STACY ETTINGER
(please print name)

being duly sworn, depose and say that I am the owner* of the property or properties involved in this application as listed below and that the foregoing statements and answers herein contained and the information herewith submitted are in all respects complete, true, and correct to the best of my knowledge and belief. I understand that no assurance or guarantee can be given by members of Planning and Development.

(A separate Affidavit must be provided by each property owner named in the title report.)

Assessor Parcel Number(s): 150-232-08

Printed Name STACY ETTINGER

Signed

Address 15500 FAWN LANE

RENO, NV 89511

Subscribed and sworn to before me this 9 day of Nov, 2016.

(Notary Stamp)

Washoe Nevada Leland Honea
Notary Public in and for said county and state

My commission expires: 10/1/2017

LELAND HONEA
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 09-11257-2 - Expires October 1, 2017

*Owner refers to the following: (Please mark appropriate box.)

- ❑ Owner
- ❑ Corporate Officer/Partner (Provide copy of record document indicating authority to sign.)
- ❑ Power of Attorney (Provide copy of Power of Attorney.)
- ❑ Owner Agent (Provide notarized letter from property owner giving legal authority to agent.)
- ❑ Property Agent (Provide copy of record document indicating authority to sign.)
- ❑ Letter from Government Agency with Stewardship

WAB17-0001
EXHIBIT C

Property Owner Affidavit

Applicant Name: Jeffrey Church

The receipt of this application at the time of submittal does not guarantee the application complies with all requirements of the Washoe County Development Code, the Washoe County Master Plan or the applicable area plan, the applicable regulatory zoning, or t hat the application is deemed complete and will be processed.

STATE OF NEVADA)
)
COUNTY OF WASHOE)

I, Jeffrey Church,
(please print name)

being duly sworn, depose and say that I am the owner* of the property or properties involved in this application as listed below and that the foregoing statements and answers herein contained and the information herewith submitted are in all respects complete, true, and correct to the best of my knowledge and belief. I understand that no assurance or guarantee can be given by members of Planning and Development.

(A separate Affidavit must be provided by each property owner named in the title report.)

Assessor Parcel Number(s): 150 232 09

Printed Name Jeffrey Church

Signed

Address 1720 Wind Ranch Rd #B
Reno NV 89521

Subscribed and sworn to before me this 9TH day of NOVEMBER, 2016.

Notary Public in and for said county and state

My commission expires: NOVEMBER 3, 2018

(Notary Stamp)

ANTHONY JACOBS
Notary Public, State of Nevada
Appointment No. 15-1032-2
My Appt. Expires Nov 3, 2018

*Owner refers to the following: (Please mark appropriate box.)

- ☒ Owner
- ☐ Corporate Officer/Partner (Provide copy of record document indicating authority to sign.)
- ☐ Power of Attorney (Provide copy of Power of Attorney.)
- ☐ Owner Agent (Provide notarized letter from property owner giving legal authority to agent.)
- ☐ Property Agent (Provide copy of record document indicating authority to sign.)
- ☐ Letter from Government Agency with Stewardship

Abandonment Application
Supplemental Information

(All required information may be separately attached)

Chapter 110 of the Washoe County Code is commonly known as the Development Code. Specific references to vacations and abandonments may be found in Article 806, Vacations and Abandonments of Easements or Streets.

1. What is the abandonment being requested?

The north, east and south 33' of APN 150-232-09 is to have the roadway and public utility easements abandoned. APN 150-232-08 is requesting that only the roadway easement (not the public utility easement) across the south 33' of the lot be abandoned.

2. On which map or document (please include with application) is the easement or right-of-way first referenced?

Patent from BLM, No. 1223630, issued Oct. 26, 1961.

3. What is the proposed use for the vacated area?

No current plans to improve. This is a large encumbrance on these properties that is not being utilized

WAB17-0001
EXHIBIT C

4. What replacement easements are proposed for any to be abandoned?

None.

5. What factors exist or will be employed to prevent the proposed abandonment from resulting in significant damage or discrimination to other property in the vicinity?

No other parcels use these easements. The large parcel to the east, (APN 150-080-08) has other access it currently uses.

6. Are there any restrictive covenants, recorded conditions, or deed restrictions (CC&Rs) that apply to the area subject to the abandonment request? (If so, please attach a copy.)

☐ Yes	☒ No

IMPORTANT

NOTICE REGARDING ABANDONMENTS:

To the extent that Washoe County does not own the easements in question, it cannot abandon them. Therefore, an abandonment request is in effect a "quitclaim" by the County of whatever interest it might have in the easements in favor of the owners who applied for the abandonment. For example, if the abandonment is approved by Washoe County and recorded, it will likely affect the allowable building envelope on the property, to the benefit of the applicant. However, even if the abandonment is approved, it should not be construed as an assertion by the County of ownership over the easements in question. To the extent other property owners nearby or other entities might have any ownership interests in these easements, an approved abandonment by the County does not affect those interests and the property owners associated with this abandonment are responsible for utilizing whatever legal mechanisms are necessary to address those interests on their own.

EXHIBIT "A"

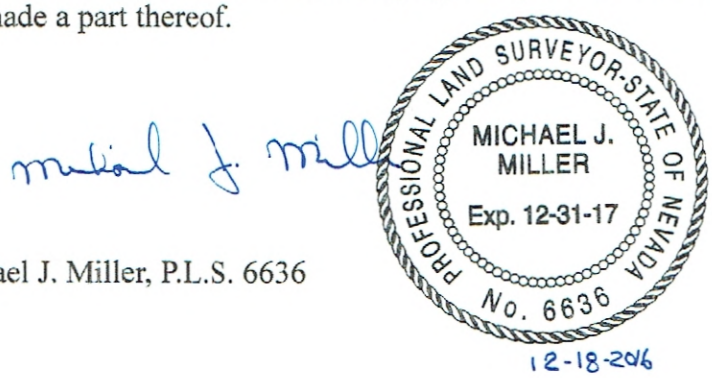
DESCRIPTION
FOR
ABANDONMENT OF PORTIONS OF ROADWAY AND PUBLIC UTILITY EASEMENTS

All those portions of roadway and public utility easements situate in the N ½ of the NE ¼ of the NW ¼ of the SW ¼ of Section 36, Township 18N., Range 19E., M.D.M., as contained within U.S.A. Bureau of Land Management Land Patent No. 1223630, issued October 26, 1961, and recorded per Document No. 347026, recorded Nov.3, 1961, Deed Records, Washoe County Nevada. Said easements being further described as lying within Parcels 1 & 2 of Record of Survey Map No. 2449, recorded July 14, 1992, Official Records, Washoe County, Nevada, more particularly described as follows:

Parcel 1
All those portions of the public utility and roadway easements granted per the documents referenced above, coincident with the north, east, and south line of Parcel 2, as shown on said Record of Survey Map No. 2449.

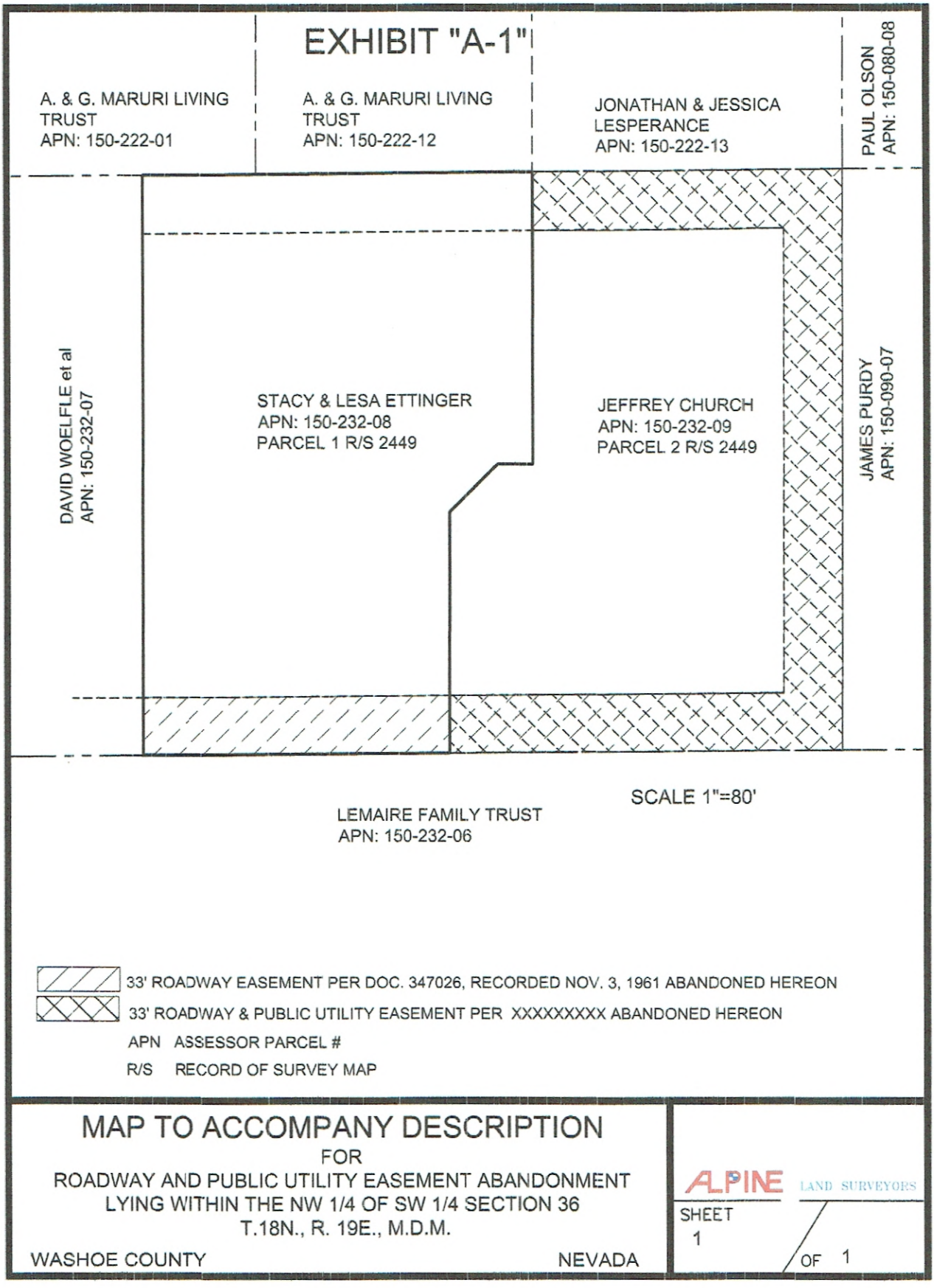
Parcel 2
All those portions of the roadway easement granted per the documents referenced above, coincident with south line of Parcel 1, as shown on said Record of Survey Map No. 2449.

Said easements to be abandoned are graphically shown on attached Exhibit "A-1", referenced hereon and made a part thereof.



12-18-206

Michael J. Miller, P.L.S. 6636



MAP TO ACCOMPANY DESCRIPTION

FOR

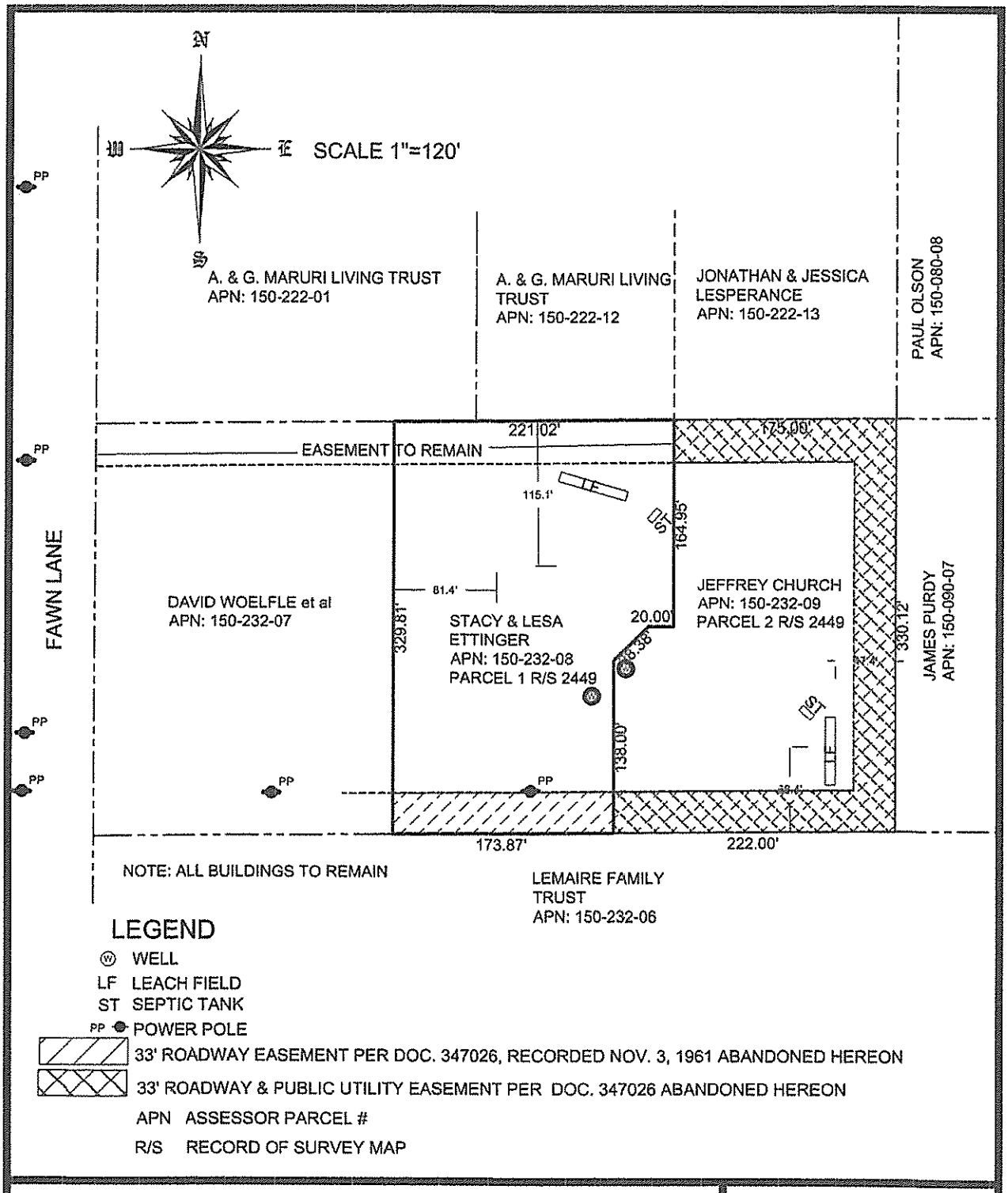
ROADWAY AND PUBLIC UTILITY EASEMENT ABANDONMENT
LYING WITHIN THE NW 1/4 OF SW 1/4 SECTION 36
T.18N., R. 19E., M.D.M.

WASHOE COUNTY NEVADA

ALPINE LAND SURVEYORS

SHEET 1 OF 1

WAB17-0001
EXHIBIT C



LEGEND

- Ⓦ WELL
- LF LEACH FIELD
- ST SEPTIC TANK
- PP POWER POLE
- 33' ROADWAY EASEMENT PER DOC. 347026, RECORDED NOV. 3, 1961 ABANDONED HEREON
- 33' ROADWAY & PUBLIC UTILITY EASEMENT PER DOC. 347026 ABANDONED HEREON
- APN ASSESSOR PARCEL #
- R/S RECORD OF SURVEY MAP

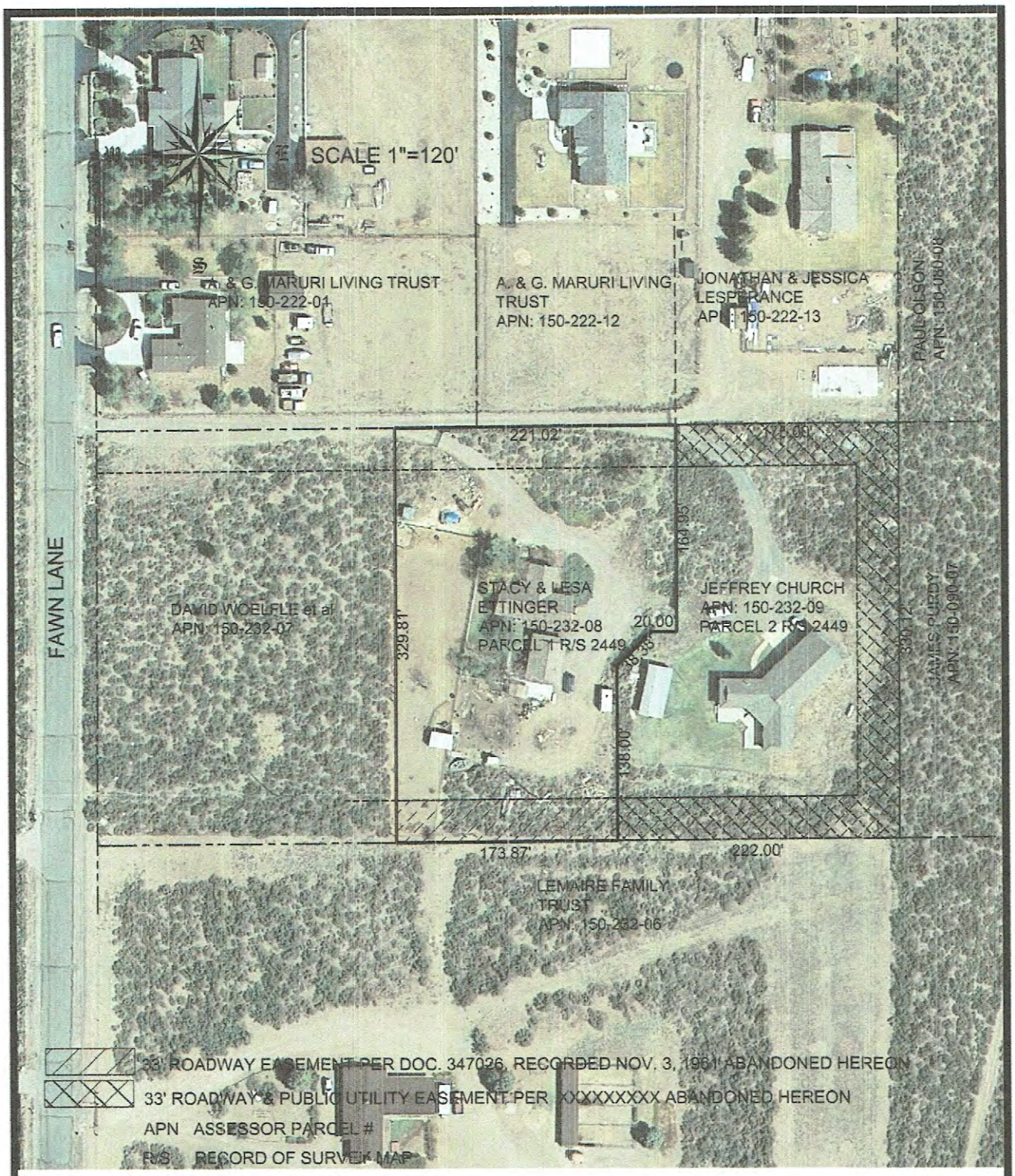
SUPPLEMENTARY MAP TO ACCOMPANY ABANDONMENT APPLICATION

WASHOE COUNTY NEVADA

ALPINE LAND SURVEYORS

SHEET 1 OF 1

WAB17-0001
EXHIBIT C



SUPPLEMENTARY MAP TO ACCOMPANY ABANDONMENT APPLICATION

WASHOE COUNTY NEVADA

ALPINE LAND SURVEYORS

SHEET 1 OF 1

WAB17-0001
EXHIBIT C

Washoe County Treasurer
P.O. Box 30039, Reno, NV 89520-3039
ph: (775) 328-2510 fax: (775) 328-2500
Email: tax@washoecounty.us

Washoe County Treasurer
Tammi Davis

Account Detail

Back to Search Results | Change of Address | Print this Page

Washoe County Parcel Information

Parcel ID	Status	Last Update
15023209	Active	2/15/2017 2:10:05 AM

Current Owner:
CHURCH, JEFFREY

1720 WIND RANCH RD UNIT B
RENO, NV 89521

SITUS:
15520 FAWN LN

Taxing District
4000

Geo CD:

Legal Description

Section 36 SubdivisionName _UNSPECIFIED Lot 2 Township 18 Range 19 Block

Tax Bill (Click on desired tax year for due dates and further details)

Tax Year	Net Tax	Total Paid	Penalty/Fees	Interest	Balance Due
2016	$3,515.26	$2,671.60	$0.00	$0.00	$878.81
2015	$3,508.55	$3,508.55	$0.00	$0.00	$0.00
2014	$3,399.70	$3,399.71	$0.00	$0.00	$0.00
2013	$3,300.66	$3,300.66	$0.00	$0.00	$0.00
2012	$3,276.24	$3,276.24	$0.00	$0.00	$0.00
				Total	$878.81

Important Payment Information

- ALERTS: If your real property taxes are delinquent, the search results displayed may not reflect the correct amount owing. Please contact our office for the current amount due.
- For your convenience, online payment is available on this site. E-check payments are accepted without a fee. However, a service fee does apply for online credit card payments. See Payment Information for details.

Pay Online

Payments will be applied to the oldest charge first.

Select a payment option:

(•) Total Due $878.81
( ) Partial

ADD TO CART

$0.00

Pay By Check

Please make checks payable to:
WASHOE COUNTY TREASURER

Mailing Address:
P.O. Box 30039
Reno, NV 89520-3039

Overnight Address:
1001 E. Ninth St., Ste D140
Reno, NV 89512-2845

Payment Information

Special Assessment District

Installment Date Information

Assessment Information

WAB17-0001
EXHIBIT C

Washoe County Treasurer
P.O. Box 30039, Reno, NV 89520-3039
ph: (775) 328-2510 fax: (775) 328-2500
Email: tax@washoecounty.us

Washoe County Treasurer
Tammi Davis

Bill Detail

Back to Account Detail | Change of Address | Print this Page

Washoe County Parcel Information

Parcel ID	Status	Last Update
15023209	Active	2/15/2017 2:10:05 AM

Current Owner:
CHURCH, JEFFREY
1720 WIND RANCH RD UNIT B
RENO, NV 89521

SITUS:
15520 FAWN LN

Taxing District
4000

Geo CD:

Legal Description

Section 36 SubdivisionName _UNSPECIFIED Lot 2 Township 18 Range 19 Block

Installments

Period	Due Date	Tax Year	Tax	Penalty/Fee	Interest	Total Due
INST 1	8/15/2016	2016	$0.00	$0.00	$0.00	$0.00
INST 2	10/3/2016	2016	$0.00	$0.00	$0.00	$0.00
INST 3	1/2/2017	2016	$0.00	$0.00	$0.00	$0.00
INST 4	3/6/2017	2016	$878.81	$0.00	$0.00	$878.81
		Total Due:	**$878.81**	**$0.00**	**$0.00**	**$878.81**

Tax Detail

	Gross Tax	Credit	Net Tax
State of Nevada	$209.30	($24.89)	$184.41
Truckee Meadows Fire Dist	$664.82	($79.05)	$585.77
Washoe County	$1,713.39	($203.73)	$1,509.66
Washoe County Sc	$1,401.66	($166.68)	$1,234.98
TRUCKEE MDWS/SUN VALLEY WATER BASIN	$0.44	$0.00	$0.44
Total Tax	**$3,989.61**	**($474.35)**	**$3,515.26**

Payment History

Tax Year	Bill Number	Receipt Number	Amount Paid	Last Paid
2016	2016106613	B16.138895	$878.82	10/24/2016
2016	2016106613	B16.190508	$878.81	1/6/2017
2016	2016106613	B16.51410	$878.82	8/16/2016
2016	2016106613	U16.14409	$35.15	11/9/2016

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Reno, NV 89520-3039

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Reno, NV 89512-2845

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WAB17-0001
EXHIBIT C

Washoe County Treasurer
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Email: tax@washoecounty.us

Washoe County Treasurer
Tammi Davis

Account Detail

Back to Search Results | Change of Address | Print this Page

Washoe County Parcel Information

Parcel ID	Status	Last Update
15023208	Active	2/15/2017 2:10:05 AM

Current Owner:
ETTINGER, STACY B & LESA M

15500 FAWN LN
RENO, NV 89511

SITUS:
15500 FAWN LN

Taxing District
4000

Geo CD:

Legal Description

Section 36 Township 18 Range 19 SubdivisionName _UNSPECIFIED

Tax Bill (Click on desired tax year for due dates and further details)

Tax Year	Net Tax	Total Paid	Penalty/Fees	Interest	Balance Due
2016	$1,489.52	$1,117.14	$0.00	$0.00	$372.38
2015	$1,486.47	$1,486.47	$0.00	$0.00	$0.00
2014	$1,443.14	$1,443.14	$0.00	$0.00	$0.00
2013	$0.00	$0.00	$0.00	$0.00	$0.00
2013	$0.00	$0.00	$0.00	$0.00	$0.00
2013	$1,401.08	$1,401.08	$0.00	$0.00	$0.00
2012	$1,402.52	$1,402.52	$0.00	$0.00	$0.00
				Total	$372.38

Important Payment Information

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- For your convenience, online payment is available on this site. E-check payments are accepted without a fee. However, a service fee does apply for online credit card payments. See Payment Information for details.

Pay Online

Payments will be applied to the oldest charge first.

Select a payment option:

(•) Total Due $372.38
( ) Partial

ADD TO CART

$0.00

Pay By Check

Please make checks payable to:
WASHOE COUNTY TREASURER

Mailing Address:
P.O. Box 30039
Reno, NV 89520-3039

Overnight Address:
1001 E. Ninth St., Ste D140
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Payment Information

Special Assessment District

Installment Date Information

Assessment Information

WAB17-0001
EXHIBIT C

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Washoe County Treasurer
Tammi Davis

Bill Detail

Back to Account Detail | Change of Address | Print this Page

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Parcel ID	Status	Last Update
15023208	Active	2/15/2017 2:10:05 AM

Current Owner:
ETTINGER, STACY B & LESA M
15500 FAWN LN
RENO, NV 89511

SITUS:
15500 FAWN LN

Taxing District
4000

Geo CD:

Legal Description

Section 36 Township 18 Range 19 SubdivisionName _UNSPECIFIED

Installments

Period	Due Date	Tax Year	Tax	Penalty/Fee	Interest	Total Due
INST 1	8/15/2016	2016	$0.00	$0.00	$0.00	$0.00
INST 2	10/3/2016	2016	$0.00	$0.00	$0.00	$0.00
INST 3	1/2/2017	2016	$0.00	$0.00	$0.00	$0.00
INST 4	3/6/2017	2016	$372.38	$0.00	$0.00	$372.38
		Total Due:	**$372.38**	**$0.00**	**$0.00**	**$372.38**

Tax Detail

	Gross Tax	Credit	Net Tax
State of Nevada	$105.21	($27.08)	$78.13
Truckee Meadows Fire Dist	$334.18	($86.02)	$248.16
Washoe County	$861.26	($221.69)	$639.57
Washoe County Sc	$704.58	($181.36)	$523.22
TRUCKEE MDWS/SUN VALLEY WATER BASIN	$0.44	$0.00	$0.44
Total Tax	**$2,005.67**	**($516.15)**	**$1,489.52**

Payment History

Tax Year	Bill Number	Receipt Number	Amount Paid	Last Paid
2016	2016106226	B16.109313	$372.38	10/3/2016
2016	2016106226	B16.191233	$372.38	1/9/2017
2016	2016106226	B16.66586	$372.38	8/22/2016

Pay By Check

Please make checks payable to:
WASHOE COUNTY TREASURER

Mailing Address:
P.O. Box 30039
Reno, NV 89520-3039

Overnight Address:
1001 E. Ninth St., Ste D140
Reno, NV 89512-2845

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Reno, NV 89520-3039

WAB17-0001
EXHIBIT C

4-1922
(Aug. 1937)

Nevada 052059

The United States of America,

To all whom these presents shall come, Greeting:

WHEREAS, a Certificate of the Land Office at Reno, Nevada,
has been issued showing that full payment has been made by the claimant
Robert F. Montgomery
pursuant to the provisions of the Act of Congress approved June 1, 1938 (52 Stat. 609), entitled "An Act to provide for the purchase of public lands for home and other sites," and the acts supplemental thereto, for the following-described land:

Mount Diablo Meridian, Nevada.

T. 18 N., R. 19 E.,

Sec. 36, N½NE¼NW¼SW¼.

The area described contains 5.00 acres, according to the Official Plat of the Survey of the said Land, on file in the Bureau of Land Management:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT unto the said claimant and to the heirs of the said claimant the Tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and there is reserved from the lands hereby granted, a right-of-way thereon for ditches or canals constructed by the authority of the United States. Excepting and reserving, also, to the United States all oil, gas and other mineral deposits, in the land so patented, together with the right to prospect for, mine, and remove the same according to the provisions of said Act of June 1, 1938. This patent is subject to a right-of-way not exceeding 33 feet in width, for roadway and public utilities purposes, to be located along the boundaries of said land.

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat., 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the TWENTY-SIXTH day of OCTOBER in the year of our Lord one thousand nine hundred and SIXTY-ONE and of the Independence of the United States the one hundred and EIGHTY-SIXTH.

(SEAL)

For the Director, Bureau of Land Management.

By Ruth W. Talley
(Chief, Patents Section.)

Patent Number 1223630
1223630

GPO 866837

WAB17-0001
EXHIBIT C

EXHIBIT D

DRAFT

Washoe County:

Subj: Easement abandonment # WAB17-0001
and Spittler v. Routsis, (56681, Nev. 2013)

SUMMARY: Under this case #, Property owners Church and Ettinger have requested abandonments of the easements listed in the application. Owners have complied with all requests. No one has objected to the abandonment, yet Washoe County has sought to impose a less than full abandonment. Based on past practice and the listed court case, it seems clear that such easements actually already no longer exist and such recordation should be removed in their entirety.

DETAILS:

In addition to those documents in the application, three additional documents are provided:

1. The letter from nearby property owner and attorney John Routsis
2. Copy of the District Court decision in this matter in favor of Routsis
3. Copy of the Nevada Supreme Court review of and in support of the District Court findings

Frankly, it doesn't seem that it could be any more clear.

In refusing to approve a complete removal of any recordation of these easements, Washoe County is potentially exposing the taxpayer to liability by attempting to create a new easement that might be construed as Slander of Title or a Taking and other improper legal actions.

The County has mistakenly relied upon an "Apples and Oranges" unrelated matter referred to as City of Las Vegas vs. Cliff Shadows. Spittler was decided after and still applies to and directly references Small Tract Act (STA) issues.

According to court records, Spittler is currently suing Washoe County for bad advice related to these Small Tract Act (STA) easements. Now Washoe is compounding that!

I note the following: Letters were sent and no one has objected yet the County is attempting to impose new 20 ft. easements upon us.

Secondly, the County code was specifically amended in early 2000s to specifically apply to the Small Tract Easements and a review of the County Commission staff reports and minutes show that the intent was to allow us to abandon these alleged easements. In fact it has been past practice to do so on many occasions.

As noted by the on-site inspection, the alleged easements in question are bare land that has never been used for any purpose, no roads or other use.

Most troubling is the opinion of some at the County that the Spittler decision does not apply in favor of the City of Las Vegas vs. Cliff Shadows case. If that is the case then my only option is litigation. Please refer this to your legal counsel for review.

I won't regurgitate all the legal references in the Court's decision or in Attorney John Routis' letter but please carefully review them all if any doubt remains.

The Spittler case is the law of the land having been decided by the Nevada Supreme Court AFTER the Cliff Shadows case. The Spittler case is so relevant because it actually dealt with one of the5 properties cited by county personnel in this abandonment case.

History: Spittler owned the 52 acres right behind my house: 15009007/ 08/ 09. Spittler sought access to Fawn Lane and sued Larry Purdon and John Routsis. He lost on each and every count in Washoe County District Court and appealed to the Nevada Supreme Court and lost on all counts.

The Supreme Court's ruling dealt in part specifically with the Small Tract Act (STA) easements including those we seek to abandon.

Please note from the Nevada Supreme Court:

"The district court concluded that the Classification Order provided no easement to private owners of land not designated as STA land. We agree."

It is 100% clear under the ruling that persons outside the tract have no legal right to access tract easements! But it gets better: The court also ruled and concurred with the federal government guidance that the easements, if unused, disappeared in 1976 with the repeal of the law. In other words: there are no easements on my property to abandon. More correctly I'm seeing to remove the recordation of said prior easements. My purpose is to build a garage off set from the property line and not the prior 33 ft.

easement line as well as clarifying to buyers the lack of any easement. Please read what the court said:

"As the record demonstrates and the district court concluded, the easements on the Purdon and Routsis properties were never used as roads under the express language of the Classification Order. The Interior Dept. memorandum clarified that unless such common law rights-of-way were actually used for the purpose of serving a small tract parcel, the dedication no longer existed upon the termination of the classification. Thus, upon the STA's repeal in 1976, the existing rights-of-way on the Purdon and Routsis properties terminated." (Underline added)

These findings mirror the well-reasoned and detailed decision of Judge Kosach in the District Court (see attached). Simply put, The STA does not apply to the Purdy/Spittler properties behind ours. Any unused easements, as in this case, disappeared in 1976. The Department of Interior memo was "entitled to deference". The parcel maps only reference the prior easements.

If needed, I urge your legal counsel to contact the prevailing defendants counsel with any questions but this seems clear. POC: Mark Wray: 608 Lander Street, Reno, NV 89509 Phone: (775) 348-8877, Email : mwray@markwraylaw.com and Michael G. Chapman, 300 E. 2nd St, Suite 1510, Reno, NV 89501, 775-788-2271, email: mchapman@fclaw.com

But this matter gets worse- or better:

Are you aware that Scott Spittler the plaintiff is currently suing Washoe County for giving him bad advice? Yes, it would seem he is suing "you" for telling him he has STA access. So now you are again telling him/Purdy/ others that they again have access under "Cliff Shadows"? Insanity! (Spittler v. Craig, 65499 Nev. 2016, and Spittler v Washoe County - Second Judicial District - CV12-00242, Related Case(s): 61300.)

In that civil matter, the Washoe County Attorney repeatedly admitted the validity of the court's decision. In the County's "Motion to Dismiss Amended Complaint" dated 10 April 2012, the County (Deputy D.A. Kaplan) supported our position repeatedly. You can't have it both ways! I direct your attention to that filing as follows:
Line 25: The County acknowledges the court's decision that those outside the tract have no benefit.
Line 26 The County acknowledges the Department of Interior memo and opinion in support of our position.
Importantly on line 29 the County argues that the easement disappeared when it was not actually used as a roadway.

Very important on line 28, the County mirrored the court's decision that the Parcel Maps comments on easements did not grant any easement but only referenced the prior STA easements.
Again important, Line 31 the County claimed that Spittler's case was "Not based on reasonable grounds" yet now the county seeks to re-create an easement on those same unreasonable grounds!
Finally, the County spells out its position on the matter quite clearly in saying that the County has no interest in contesting the claim (page 24 Section 3, Declaratory relief).

Moving on, in the Routsis matter, when he sought to build a house off set from the property line he too ran into Washoe County incompetence and resistance (see his attached letter). In that matter the County came to their senses and agreed the easements were null and then approved the building offset without regard to any prior easements. The County did not even require him to go through the formality of the abandonment process. Now the county seeks to treat us differently and create a new easement. This creates legal issues for the county that could be construed but not limited to as a Taking or Slander of Title. I note too that the court assessed attorney fees against Spittler for Slander of Title in that matter.

This is truly insanity. I assume this is an oversight that can be quickly corrected but we need county legal review and we need to know if in fact it is the position of Washoe County that "Cliff Shadows" somehow over rides the Spittler decision, Routsis building approval and County's own position in defending itself in your own civil suit.

I note City of Las Vegas vs. Cliff Shadows was decided before Spittler, makes absolutely no reference to the STA issues, and deals with the narrow issue of compensation for the government taking of property; not remotely related.

CONCLUSION:

The District Court's decision is detailed and addresses all issues related to access and the STA and found in favor of the owners in all respects. That included that the parcel maps did not grant easements, only referenced them; the STA did not apply to those outside the tract; and the unused easements disappeared when the act was rescinded in 1976.

It can't be more clear.

The Nevada Supreme Court, as detailed above, upheld each and every ruling and upheld attorney fees for Slander of Title.

The detailed Routsis letter to Washoe County and resolution of that matter in his favor shows the County's acknowledgement that the easements are void.

The County in the Spittler v Washoe County argued in favor of our position and agreed with the court's decisions. You can't have it both ways!

Sincerely,

Jeffrey Church
Owner: APN: 15023209 (15520 Fawn Ln)
Mailing address: 1720 Wind Ranch Rd #B
Reno, NV 89521
775 544 7366
renocop@earthlink.net

From: Corbridge, Kimble
Sent: Friday, March 31, 2017 2:45 PM
To: Ettinger, Stacy
Subject: Small Tract easements

http://caselaw.findlaw.com/nv-supreme-court/1622296.html

Stacy,

I understand that this is the reversal case. I have not studied it…

FYI

Kimble

From: john@routsishardycooper.com
Sent: Wednesday, September 18, 2013 9:02 AM
To: Lloyd, Trevor
Subject: Suncrest Builders

Mr. Lloyd,

I am writing you this letter in regards to my property in which I received an email that you wrote stating my property is subject to 63 feet setbacks. I sent you an Order of Affirmance in regards to my litigation about these easements. Specifically in regards to the appeal, Mr. Spittler wished to use the small tract road easements that are 33 feet along all of the borders of the properties on Fawn Lane subject to the Small Tract Act. What happened in this case is that there was a Classification Order which specifically stated that the Small Tract Act easements are terminated unless they are used for a roadway purpose for parcels within the Small Tract.

Furthermore, this explains why Mr. Purdon's property is built approximately 10 feet from the back line of his property. It is my understanding that you believe that the easements when they existed were 63 feet. Pursuant to the Supreme Court Order, the easements are only 33 feet as according to the Nevada Supreme Court.

I direct you to page 7 of the Nevada Supreme Court Order of Affirmance, which specifically states: "Tracts will be subject to all existing rights-of-way and to rights-of-way 33 feet in width along or as near as practicable to the boundaries thereof for road purposes and public utilities. Such rights-of-way may be utilized by the Federal Government, or the State, County or municipality in which the tract is situated, or by any agency thereof."

The Supreme Court further found "Pursuant to the plain language of the Classification Order, only those existing rights-of-way that were used by a governmental entity for road and public utility purposes survived." In this case, there is no road on my property and there are no utility lines on the back east end of my property, thus the easements have not survived.

The Nevada Supreme Court went on to further state "As the record demonstrates and the district court concluded, the easements on the Purdon and Routsis properties were never used as roads under the express language of the Classification Order. The Interior Dept. memorandum clarified that unless such common law rights-of-way were actually used for the purpose of serving a small tract parcel, the dedication no longer existed upon the termination of the classification. Thus, the STA's repeal in 1976, the existing rights-of-way on the Purdon and Routsis properties terminated."

Thus, clearly stated by the Nevada Supreme Court, those right-of-way easements and road easements terminated in 1976. Specifically in this case, Mr. Spittler's position was that those easements were not terminated

and the Nevada Supreme Court clearly determined that those easements no longer existed. I hope in this situation that the Nevada Supreme Court ruling that the small tract easements have terminated to my property is a clear enough determination that there are no 63 feet setbacks based upon these easements.

I believe that the Supreme Court's Order and the years of litigation have culminated in a final and clear determination that there is no right-of-way road easement or other public utility easements. As stated by the Supreme Court, the common law rights-of-ways were never used for that purpose during the time and determination of the Small Tract Act.

These road easements were there was so individuals in those properties would not be land-locked and a common road could be built all the way back to the properties that are the furthest east. In regards to my parcel, I am the last parcel that the easements accessed. On the Purdon property, to the direct south, he is the last parcel. Thus, there is no road through my property or no property utilities easement, which is why they have extinguished according to the Classification Order, the Nevada District Court and the Nevada Supreme Court.

Again, than you for your time and consideration.

Sincerely,
John B. Routsis

John B. Routsis, Esq.
Routsis Hardy-Cooper
571 California Ave.
Reno, NV 89509
(775)-785-9116
john@routsishardycooper.com

IN THE SUPREME COURT OF THE STATE OF NEVADA

SCOTT SPITTLER,
Appellant,
vs.
JOHN ROUTSIS; CHRISTINE ROUTSIS; AND LAWRENCE C. PURDON,
Respondents.

No. 56681

FILED

APR 24 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment in a real property action and a post-judgment order denying a new trial. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

Appellant Scott Spittler appeals the district court's judgment and denial of his motion for new trial, arguing that: (1) the district court abused its discretion in refusing to grant a new trial; (2) the district court erred in determining that access roadway easements on parcels patented under the Small Tract Act (STA) are to benefit only small tract parcels; (3) his reliance on the advice of a former county employee indicated a lack of malice, a required element for a finding of slander of title; (4) the district court erred in finding that he was not entitled to an easement by necessity; and (5) the district court erred in awarding attorney fees and costs as special damages to respondents.

The district court did not abuse its discretion in refusing to grant a new trial based on allegations of judicial misconduct

It is within the trial court's discretion to grant or deny a motion for a new trial, *BMW v. Roth*, 127 Nev. ___, ___, 252 P.3d 649, 657 (2011), "and this court will not disturb that decision absent palpable

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abuse." *Bass-Davis v. Davis*, 122 Nev. 442, 453, 134 P.3d 103, 110 (2006) (internal quotations omitted). "'While review for abuse of discretion is ordinarily deferential, deference is not owed to legal error.'" *Roth*, 127 Nev. at ___, 252 P.3d at 657 (quoting *AA Primo Builders v. Washington*, 126 Nev. ___, ___, 245 P.3d 1190, 1197 (2010)); *see Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405, (1990) (A district court's ruling relying "on an erroneous view of the law or on a clearly erroneous assessment of the evidence" is an abuse of discretion).

Pursuant to NRCP 59(a) allows a new trial to be granted if irregularity in the court's proceedings or abuse of discretion by the court prevents either party from having a fair trial. The Nevada Code of Judicial Conduct (NCJC), Canon 1 states that "[a] judge shall uphold and promote the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety." Pursuant to NCJC Canon 1, Rule 1.2, comment 5,

> [a]ctual improprieties include violations of law, court rules, or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

Here, the district court judge held an in-chambers conference with Spittler to discuss settlement at the end of the third day of trial. "Although efforts on the part of a trial judge to expedite proceedings and to encourage settlements out of court are ordinarily to be commended, such efforts should never be so directed as to compel either litigant to make a forced settlement." *Empire Etc. Bldgs. Co. v. Harvey Mach. Co.*, 265 P.2d 32, 35 (Cal. Ct. App. 1954). According to Spittler, the judge

advised him that if he did not accept the settlement offer, the judge "would enter a direct verdict stopping the trial and any further evidence produced," causing Spittler serious financial costs. However, this conference was held after Spittler had presented his own testimony and the testimony of two witnesses. The only evidence Spittler presented after the in-chambers conference with the judge was brief testimony from a realtor, after which Spittler rested his case. Based on this, we conclude that Spittler's rights were not materially affected by the district court's in-chambers conference and no irregularity in the proceedings occurred to prevent Spittler from having a fair trial. *See* NRCP 59(a); *Empire*, 265 P.2d at 35 (determining that there was no undue pressure placed on the parties to force a settlement and thus no abuse of discretion by the trial judge where "[t]he trial proceeded at some length, the defendant's case was fully presented, and the case [was] taken under submission before being decided").

Accordingly, we conclude that the district court did not abuse its discretion in refusing to grant a new trial as it is unwarranted under NRCP 59(a).[1] *See* NCJC Canon 1, Rule 1.2, cmt. 5; *Empire*, 265 P.2d at 35.

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[1]Although Spittler challenges the impartiality of the district court judge on appeal, Spittler concedes that he did not object to the in-chamber conference at trial. Spittler argues, however, that he was not required to object because the district court's error infringes on his constitutional rights such that plain error applies. Objections to the impartiality of the tribunal must be timely made; otherwise, such objections are waived. *See Snyder v. Viani*, 112 Nev. 568, 573, 916 P.2d 170, 173 (1996); *see also Venetian Casino Resort v. Dist. Ct.*, 118 Nev. 124, 130, 41 P.3d 327, 331 (2002) (holding that if a party has knowledge of potentially disqualifying circumstances concerning a special master and fails to object within a

continued on next page...

The district court did not err in determining that access roadway easements on parcels patented under the STA are to benefit only small tract parcels

Under the Small Tract Act of 1938, the United States disposed of certain 5-acre parcels of government land. 43 U.S.C. § 682a (1940), *repealed by* Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, § 702, 90 Stat. 2743, 2789 (1976). In Nevada, those properties disposed of are governed by the requirements of the STA Nevada Classification Order. Bureau of Land Management, Nevada Classification Order (May 18, 1953) (Classification Order). It is undisputed that respondents purchased 5-acre parcels that were part of the original distribution of government land under the STA. What is disputed is the application of the STA's access roadway easements to the properties involved in this case.

The district court's deference to a Department of the Interior memorandum was warranted

Spittler argues that the district court erroneously deferred to the agency interpretation provided in a Department of the Interior memorandum. *See* Bureau of Land Management, *Easements Reserved in Small Tract Act Leases and Patents*, Instructional Memorandum No. 91-196 (February 25, 1991) (Interior Dept. memorandum). He contends that the district court was required to first make a determination that Congressional intent was unclear from the statute itself, and the district

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...continued
reasonable time, the objection is waived). Therefore, we conclude that Spittler waived his right to object to the alleged impartiality or bias of the judge and, accordingly, waived his right to seek review of this issue on appeal. *See* NCJC Canon 1, R. 1.2, cmt. 5; *Empire*, 265 P.2d at 35.

court never made such a determination prior to relying on the memorandum. We disagree.

"'[R]eview in this court from a district court's interpretation of a statute is de novo.'" *State, Div. of Insurance v. State Farm*, 116 Nev. 290, 293, 995 P.2d 482, 484 (2000) (quoting *State, Dep't. of Mtr. Vehicles v. Frangul*, 110 Nev. 46, 48, 867 P.2d 397, 398 (1994)). Additionally, "matters involving the construction of an administrative regulation are a question of law subject to independent appellate review." *Id.* at 293, 995 P.2d at 484-85. Regardless, this court will generally defer to the "'agency's interpretation of a statute that the agency is charged with enforcing,'" when determining the meaning of an administrative regulation. *Public Agency Compensation Trust v. Blake*, 127 Nev. ___, ___, 265 P.3d 694, 697 (2011) (quoting *State Farm*, 116 Nev. at 293, 995 P.2d at 485). However, no deference will be given "to the agency's interpretation if, for instance, a regulation 'conflicts with existing statutory provisions or exceeds the statutory authority of the agency.'" *Id.* (quoting *State Farm*, 116 Nev. at 293, 995 P.2d at 485); *see also Jerry's Nugget v. Keith*, 111 Nev. 49, 54, 888 P.2d 921, 924 (1995) ("[A]dministrative regulations cannot contradict the statute they are designed to implement.").

In *Lengerich v. Department of Interior*, the Federal Circuit Court of Appeals stated that substantial deference should be given to an agency's interpretation of its own regulations, and that the United States Supreme Court has advised that clear administrative interpretations warrant enforcement. 454 F.3d 1367, 1372 (Fed. Cir. 2006). "To merit deference, however, an 'agency's interpretation (1) must have been directed to regulatory language that is unclear; (2) must have been actually applied in . . . agency action[s]; and (3) must not be plainly

erroneous or inconsistent with the regulation.'" *Id.* (quoting *Gose v. U.S. Postal Service*, 451 F.3d 831, 839 (Fed. Cir. 2006)).

Our review of the Interior Dept. memorandum at issue in this case indicates that it was offered to clarify regulatory language within the STA, it has been applied in agency actions and is not a "post hoc rationalization," *Gose*, 451 F.3d at 839, and the Department of the Interior's interpretation is consistent with the statutory language of the STA. Thus, we conclude that the district court's deference to this memorandum was warranted in its assessment of rights-of-way available under the STA, and as requested in this instance by Spittler.

The district court did not err in finding that STA patents limit roadway easements to the sole benefit of already patented parcels

This court will not disturb a trial court's findings of fact unless they are "'clearly erroneous and not based on substantial evidence.'" *Chateau Vegas Wine v. So. Wine & Spirits*, 127 Nev. ___, ___, 265 P.3d 680, 684 (2011) (quoting *Beverly Enterprises v. Globe Land Corp.*, 90 Nev. 363, 365, 526 P.2d 1179, 1180 (1974)). "Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion." *Jones v. SunTrust Mortgage, Inc.*, 128 Nev. ___, ___, 274 P.3d 762, 764 (2012) (internal quotations omitted).

On appeal, Spittler relies solely on the Interior Dept. memorandum in contending that the district court erred in failing to find that the parcel maps of the parties' properties show the respective roadways to be permanent easements. Respondents argue that the district court did not err in finding that a roadway easement over respondents' properties in no way benefitted Spittler's property, and Spittler fails to show on appeal how any of the district court's findings were clearly erroneous.

The Classification Order states, in pertinent part, that

> Tracts will be subject to all *existing* rights-of-way and to rights-of-way 33 feet in width along or as near as practicable to the boundaries thereof for *road purposes and public utilities*. Such rights-of-way may be *utilized by* the Federal Government, or the State, County or municipality in which the tract is situated, or by any agency thereof. (Emphases added.)

The district court concluded that the Classification Order provided no easement to private owners of land *not* designated as STA land. We agree. "When construing a statute, this court looks to the words in the statute to determine the plain meaning of the statute, and this court will not look beyond the express language unless it is clear that the plain meaning was not intended." *Hernandez v. Bennett-Haron*, 128 Nev. ___, ___, 287 P.3d 305, 315 (2012). Rules of statutory construction also apply to administrative regulations. *Silver State Elec. v. State, Dep't of Tax.*, 123 Nev. 80, 85, 157 P.3d 710, 713 (2007).

Pursuant to the plain language of the Classification Order, only those existing rights-of-way that were used by a governmental entity for road and public utility purposes survived. As the record demonstrates and the district court concluded, the easements on the Purdon and Routsis properties were never used as roads under the express language of the Classification Order. The Interior Dept. memorandum clarified that unless such common law rights-of-way were actually used for the purpose of serving a small tract parcel, the dedication no longer existed upon the termination of the classification. Thus, upon the STA's repeal in 1976, the existing rights-of-way on the Purdon and Routsis properties terminated.

Accordingly, we conclude that Spittler has failed to demonstrate that the district court's findings were clearly erroneous.

Because substantial evidence in the record supports the district court's findings, we further conclude that the district court did not err in determining that a roadway easement over respondents' properties in no way benefited Spittler's property. *See Chateau Vegas Wine*, 127 Nev. at ___, 265 P.3d at 684.

The district court did not err in granting respondents' slander of title claims

The district court concluded that respondents met their burden of proof in establishing their slander of title claims. In reaching its decision, the district court specifically concluded that "Spittler's actions. . . , including but not limited to suing the defendants in order [to] harass them into a settlement, . . . were not based on reasonable grounds, but rather, were in bad faith."

Malice is a necessary element of a slander of title claim. "In order to prove malice it must be shown that the defendant knew that the statement was false or acted in reckless disregard of its truth or falsity." *Rowland v. Lepire*, 99 Nev. 308, 313, 662 P.2d 1332, 1335 (1983). However, there is no malice if a person has valid reasons to support his or her claim. *Id.* "Additionally, evidence of a defendant's reliance on the advice of counsel tends to negate evidence of malice." *Id.*

Here, the evidence presented at trial demonstrates that upon first seeking access to his land, Spittler communicated to the United States Forest Service that he had no other access to his property and was therefore landlocked. It was only after Spittler observed the tactics of another neighbor in subdividing his land and suing owners of neighboring properties to force access did Spittler engage in similar conduct against respondents. Spittler claims that his reliance on the advice of Jeff Cruess, an employee of the Washoe County Surveyor's Office, indicates a lack of

malice. Although Cruess testified in support of Spittler's claim for right-of-way, the district court concluded that Cruess was misinformed about key facts and found his testimony "to be admittedly biased, uninformed, and incorrect." The district court then carefully weighed the evidence presented before concluding that Spittler knew as early as 2002 that he had no claimed right of access across respondents' properties. This court generally defers to the district court regarding witness credibility and will not reweigh evidence. *Castle v. Simmons*, 120 Nev. 98, 103, 86 P.3d 1042, 1046 (2004) (noting that this court "will not reweigh the credibility of witnesses on appeal; that duty rests within the trier of fact's sound discretion").

Because substantial evidence supports the district court's conclusion, we conclude that the district court did not err in granting respondents' slander of title claim. *See Chateau Vegas Wine*, 127 Nev. at ___, 265 P.3d at 684.

The district court did not err in finding that Spittler was not entitled to an easement by necessity

"Although an implied easement arises by operation of law, the existence of an implied easement is generally a question of fact." *Jackson v. Nash*, 109 Nev. 1202, 1208, 866 P.2d 262, 267 (1993). "An easement by necessity will generally be found to exist if two requirements are met: (1) prior common ownership, and (2) necessity at the time of severance." *Id.* at 1209, 866 P.2d at 268. "A way of necessity arises from the 'application of the presumption that whenever a party conveys property, he conveys whatever is necessary for the beneficial use of that property and retains whatever is necessary for the beneficial use of land he still possesses.'" *Id.* (quoting *Daywalt v. Walker*, 31 Cal. Rptr. 899, 901 (Ct. App. 1963)).

The party who seeks to burden the property of another by way of necessity carries the burden of proof. *Id.* "In order for an easement by necessity to exist, both the benefited parcel and the burdened parcel must have been once owned by the same person." *Id.* If such common ownership does not exist, there can be no easement by necessity. *Id.* at 1210, 866 P.2d at 268.

Here, the record reflects that respondents' small tract parcels were originally patented in 1956 and 1960 to the properties' predecessors under the STA, while Spittler's land was originally patented to his predecessors in 1973 pursuant to a separate Congressional Act. The patents of these parcels were issued at different periods of time to different predecessors and the parcels were subsequently subdivided by these predecessors. Thus, we perceive no common ownership that would have allowed for a severance of title, creating the need for an easement by necessity benefitting Spittler's property. We conclude that Spittler fails to meet the first requirement under *Jackson*, and has thus failed to prove an easement by necessity is warranted.

We further conclude that Spittler has failed to demonstrate that he is landlocked, thereby further negating his easement by necessity argument. The Forest Service had already granted Spittler an easement at the time he sought access across respondents' land. The easement required Spittler to construct a road on the granted access way; however, Spittler never constructed a road because, upon obtaining the easement, he decided he no longer wanted to build a home and live on the property.

Thus, we conclude that the district court did not err in finding that Spittler was not entitled to an easement by necessity.

The district court did not err in awarding attorney fees and costs as special damages to respondents

Spittler argues that the Routsises waived their right to attorney fees as special damages when they failed to plead accordingly in their counterclaim.[2]

A party's failure to properly plead special damages "does not necessarily bar an award of attorney fees when evidence of attorney fees as damages has been litigated at trial. In such a case, motions under NRCP 54(c) or NRCP 15(b) may be appropriate mechanisms for resolving a conflict between the pleadings and the trial evidence." *Sandy Valley Assocs. v. Sky Ranch Estates*, 117 Nev. 948, 959, 35 P.3d 964, 971 (2001) *receded from on other grounds in Horgan v. Felton*, 123 Nev. 577, 586, 170 P.3d 982, 988 (2007). However, there must be "sufficient evidence to support the award and the reasonableness of the fee." *Id.*

In the Routsises' slander of title counterclaim, they alleged that "[a]s a direct, proximate and foreseeable result of [Spittler]'s slander of title, [they] have been damaged in excess of $50,000.00 to be shown according to proof at trial," but they did not include a claim for attorney fees. However, at trial the Routsises presented evidence to support a claim for attorney fees without objection and the district court granted their motion, filed pursuant to NRCP 15, to amend their counterclaim to add attorney fees as special damages. Therefore, we conclude that the Routsises did not waive their right to recover attorney fees as special damages.

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[2]Spittler does not assert this argument as to Purdon as he properly pleaded special damages.

Spittler further argues that in a slander of title claim, a party's costs incurred to litigate the action itself cannot be designated as special damages. Instead, only those litigation costs incurred to clear title are properly designated as special damages. Spittler contends that the district court failed to limit the special damages award to only those fees necessary to clear title.

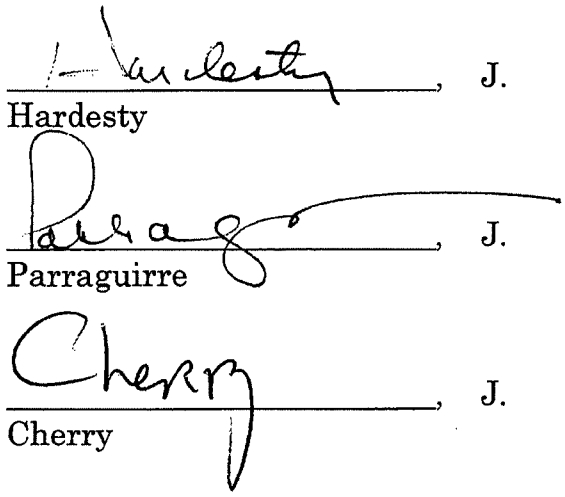
"Generally, attorney fees are not recoverable absent a statute, rule, or contractual provision to the contrary." *Horgan*, 123 Nev. at 583, 170 P.3d at 986. "As an exception to the general rule, a district court *may* award attorney fees as special damages in limited circumstances." *Id.* (emphasis added). "[A]ttorney fees are only available as special damages in slander of title actions and *not* simply when a litigant seeks to remove a cloud upon title." *Id.* at 586, 170 P.3d at 988 (emphasis added) (holding that where the district court failed to find a valid claim for slander of title to real property, attorney fees were not warranted).

Here, the district court concluded that Spittler's actions constituted slander of title, and that respondents had suffered special damages in the form of attorney fees and costs spent to clear title to their real property. During trial, the district court allowed the respondents to present evidence in support of their claims for special damages. The court also permitted the respondents to prove additional attorney fees and costs through post-trial motions, which Purdon did.

Because the district court is permitted to award attorney fees as special damages in slander of title actions, and because there is sufficient evidence to support the reasonableness of the fees awarded here, we conclude that the district court did not err in awarding respondents their attorney fees and costs associated with removing the cloud upon

their titles.[3] *Horgan*, 123 Nev. at 586, 170 P.3d at 988; *Sandy Valley*, 117 Nev. at 959, 35 P.3d at 971.

For the reasons set forth above, we ORDER the judgment of the district court AFFIRMED.



Hardesty, J.

Parraguirre, J.

Cherry, J.

cc: Second Judicial District Court Dept. 8
Robert G. Berry, Settlement Judge
Jeffrey A Dickerson
Law Offices of Mark Wray
Chapman Law Firm, P.C.
Washoe District Court Clerk

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[3]Spittler also argues that respondents failed to apportion and show by admissible evidence of actual work done and costs incurred, and also failed to demonstrate that the rate charged was reasonable and customary in the community. However, Spittler fails to provide any cogent argument or legal authority to support these issues on appeal, and thus we do not consider them. *See LVMPD v. Coregis Insurance Co.*, 127 Nev. ___, ___ n.2, 256 P.3d 958, 961 n.2 (2011) ("Because [the appellant] failed to provide any argument or citation to authority on the issues . . . we will not address these issues."); *see also* NRAP 28(a)(9)(A).

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

SCOTT SPITTLER, an individual,

Plaintiff,

vs.

Case No. CV08-02467

JOHN ROUTSIS, an individual, CHRISTINE ROUTSIS, an individual, LAWRENCE C. PURDON, an individual, and DOES 1 through 25, inclusive,

Dept. No. 8

Defendants

_____/

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

Procedural History

Plaintiff Scott Spittler (Spittler) filed a Complaint to Quiet Title on September 9, 2008, against John Routsis (Routsis),Christine Routsis (Haberstroh), and Lawrence C. Purdon (Purdon). The complaint sought access across the land of Routsis, Haberstroh, and Purdon and framed this request for equitable relief four ways: declaratory relief, injunctive relief, easement by necessity, and nuisance.

The defendants denied the allegations. Routsis and Haberstroh counterclaimed for Declaratory Relief, Declaratory Relief - Termination of Easement, and Slander of Title. Purdon counter-claimed, by amended answer and counterclaim, filed September 8, 2009, for slander of title.

The parties submitted cross-motions for summary judgment, supported by detailed affidavits, documents, and points and authorities. The court denied the motions on April 23, 2009, because the court could not make a finding that no genuine issue as to any material fact existed, that is, the court could not make a finding that any party was entitled to judgment as a matter of law.

On February 22, 23, 24, and 25, 2010, the court conducted a bench trial. At the close of the evidence offered by Spittler, defendants Routsis, Haberstroh and Purdon moved pursuant to NRCP 52 for judgment as a matter of law. After hearing counsel in argument, the court granted this motion.

Routsis, Haberstroh, and Purdon then presented additional evidence in support of their counterclaims. At the close of the evidence offered by Routsis, Haberstroh, and Purdon, plaintiff Spittler moved pursuant to NRCP 52 for judgment as a matter of law. Routsis and Haberstroh withdrew their counterclaims for Declaratory Relief and Declaratory Relief - Termination of Easement. After hearing counsel in argument, the court denied Spittler's motion with respect to the slander of title counterclaims.

The court announced from the bench the general findings that Spittler had no easement across the land of the defendants, that the defendants prevailed on the slander of title claim, and were entitled to recover attorneys fees and costs as special damages therefor. The court requested the defendants to draft Findings of Fact, Conclusions of Law and Judgment for the Court's review and consideration, and requested defendants to show the draft to Spittler's counsel before submitting the same.

NOW, THEREFORE, having heard the testimony and judged the credibility of the witnesses, and having reviewed the evidence admitted at trial and on the cross-motions for summary judgment, including affidavits, having reviewed the law at the trial and at the summary judgment stage, and having heard the arguments of counsel, the court enters Findings of Fact, Conclusions of Law, and Judgment, as follows, based upon the entire court record, including all

of the pleadings and papers herein. The Court also reviewed two other Second Judicial District Court cases, *Church v. Olson* CV04-02492, and *Bracket v. Turner,* CV92-06329.

Findings of Fact

1. Plaintiff Scott Spittler owns 58.45 acres of land in Washoe County, Nevada identified by Assessor's Parcel Number 150-090-07. He seeks to access his land from Fawn Lane, across the land of the defendants.

2. Defendants John Routsis and Christine Routsis (now known as Christine Haberstroh) own 1.75 acres of land in Washoe County, Nevada identified by Assessor's Parcel Number 150-242-11, 15750 Fawn Lane. Defendant Larry Purdon owns 1.38 acres of land in Washoe County Nevada identified by Assessor's Parcel number 150-242-10, 15800 Fawn Lane. Defendants object to Spittler accessing his property, from Fawn Lane, across their property.

3. The defendants' land was originally classified by the United States for disposal under the Small Tract Act, (June 1, 1938, 52 Stat. 609) (as part of 600 acres) in 5 acre blocks. Classification Order, Exhibit 6. Paragraph 9 of the Classification Order stated in pertinent part:

> Tracts will be subject to all existing rights-of-way and to rights of way 33 feet in width along or as near as practicable to the boundaries thereof for road purposes and public utilities. Such rights-of-way may be utilized by the Federal Government, or the State, County, or municipality in which the tract is situated, or by any agency thereof.

4. Purdon's land was originally patented from the United States to Purdon's predecessors by patent number 1166839 (5 acres in size) in 1956 (Exhibit 9). The Routsis/Haberstroh land was originally patented from the United States to their predecessors in title by patent number 1210156 (5 acres in size) in 1960. (Exhibit 2).

5. Both patents read identically, except for the name of the patentee and the land's metes and bounds description. The court finds the following language important:

> This patent is subject to a right-of-way not exceeding 33 feet in width, for roadway and public utilities purposes, to be located along the boundaries of said land.

These rights of way are located along the interior boundaries of the parcel to allow access to the various owners of that five acre parcel; they do not benefit other, non-Small Tract land.

6. Spittler's land was originally patented from the United States to Spittler's predecessors in interest as a 100 acre tract, pursuant to a different Congressional Act (Act of June 28, 1934, 48 Stat. 1272), not the Small Tract Act. Spittler's predecessor's patent was issued in 1973, as patent number 27-74-0009. Exhibit 103. This patent was recorded with the Washoe County Recorder as document no. 300333, Exhibit 134.

7. Purdon's 5 acre small tract was further divided by Purdon's predecessor's by Parcel Map 483 and Parcel Map 2130, said numbers being assigned to the maps by the Washoe County Recorder. Exhibits 77 and 104.

8. The Routsis/Haberstroh 5 acre small tract was further divided by their predecessor by Parcel Map 520 and Parcel Map 684, said numbers being assigned to the maps by the Washoe County Recorder. Exhibits 64 and 65.

9. The 100 acres patented by Exhibit 103 (the 1973 patent no. 27-74-0009) was later subdivided by Spittler's predecessors, into the 58.45 acres purchased by Spittler, and a 40 + or - acre parcel purchased by Paul Olson. Record of Survey Map 3880 (ROS 3880), Exhibit 75.

10. Map 684 states with respect to the Routsis property:

> Owners certificate:
>
> The undersigned do hereby certify they are the owners of the tract of land shown hereon, and hereby consent to the preparation and recordation of this map and hereby grant forever those permanent easements for access and utility installation shown hereon.
>
> Notes:
>
> The north, south, and east sides of this property have a 33' Federal Easement Grant for roadway and public utility purposes. Federal Patent No. 1210156

11. Map 2130 states with respect to the Purdon property:

> Owner's certificate:
>
> The undersigned does hereby certify that she is the owner of the

tract of land shown hereon, and hereby consents to the preparation and recordation of this map and does hereby grant forever those permanent easements for access and utility installation shown hereon.

Notes:

The north, east, and west sides of this property have a 33-foot right-of-way for roadway and public utilities as granted by Federal Patent Number 1166839.

The easements depicted on these maps run to the interior of the lot lines only; in other words, they benefit and burden the original Small Tract Land referenced in the Notes (now the Purdon and Routsis property) and do not burden or benefit the now-Spittler property.

12. Purdon purchased his 1.38 acre lot in 1997. The driveway to his parcel lies along the north boundary of the original five acre tract, Exhibit 9, within the 33 foot patent easement.

13. Routsis and Haberstroh purchased their lot in 1996. The driveway to their parcel lies along the north boundary of the original five acre tract, Exhibit 2, within the 33 foot patent easement.

14. Spittler purchased his 58.45 acre property in 2002. Generally, Exhibits 21, 22, 23, 24, 25, 106, 111, 112, 113, 114. The exhibits, together with the testimony of Scott Spittler, show that he bought the property with the only access being on two easements across U. S. Forest Service property, which access had been secured by his seller, Pomfret Estates, Inc. Pomfret informed Spittler this was the only access, and the preliminary title report, Exhibit 23, confirmed this, and confirmed the Forest Service access was not an insurable access. At the time of his purchase, Spittler signed an offer and acceptance agreement waiving any contingency based on lack of access to the property. Exhibits 22 and 114. The court finds as a fact that Spittler knew, when he bought the property, he had no access across the federal patent easements affecting the Purdon or Routsis/Haberstroh properties. While Spittler had Thiel Engineering identify the location of these patent easements prior to his purchase of the 58 acres, Exhibit 17, Thiel did not opine that Spittler had any right to use the easements. Thiel did not appear at trial. Spittler paid

$240,000.00 for the 58.45 acres, a bargain price which took into account the "as-is" nature of the purchase including access limitations.

15. Pomfret submitted an application to transfer the Forest Service easements to Spittler. Spittler chose to use only the southern access, not both access points that Pomfret had used. Exhibit 108. Because Pomfret never constructed an access road on the easement, the Forest Service decided the Pomfret permit became invalid. Exhibit 109. Spittler proceeded to secure his own easement permit, which was eventually granted in November, 2003. Exhibit 109. The court finds as a fact that the Forest Service issued the easement, Exhibit 29, at least in part in reliance upon the representations of Scott Spittler to the federal government that he had no other access, and, specifically, that he had no access across the Small Tract easements. Exhibits 27 and 42 are letters Mr. Spittler sent to the Forest Service urging that agency to approve his request for grant of easement. In exhibit 27, he quotes the language used by Federal Government in the Small Tract Patents, and states that he has been advised by lawyer Judith Otto that he cannot use the easements to access his own property without the permission and agreement of each individual property owner along these easements. Such owners would include Purdon and Routsis/Haberstroh. In Exhibit 42, Mr. Spittler also complains that an adjoining landowner, Paul Olson, is seeking to use the same Forest Service access that Spittler is applying for to access a proposed subdivision. Mr. Spittler told the Forest Service that he did not want the only access to his 58 acre parcel to be a thorough-fare to a subdivision. The court finds as a fact that Spittler had his access easement restricted to one home in order to prevent Olson from increasing the traffic thereon for the benefit of any Olson subdivision. Spittler also threatened to turn the matter over to attorney Tom Hall if the Forest Service did not grant his demand for an easement.

16. The Forest Service granted the easement, which is located at the entrance to Spittler's property whose address is 15600 Fawn Lane. The court finds Spittler is not land locked because he has the Forest Service easement. Moreover, the evidence showed Spittler has potential access to his property through a development known as Matera Ridge. Roads linking Spittler's property

were on plans for that project. Mr. Spittler chose not to cooperate with Matera's suggestion that they jointly explore opportunities. Exhibit 50. Mr. Spittler has also refused to purchase land from Jeff Church, which would provide access to the Spittler property without burdening Purdon and Routsis/Haberstroh. Indeed, Spittler's own complaint claims lack of access only to the two parcels (out of the 3 parcels existing after he subdivided them), which are located to the east of Purdon's property and to the east of the Routsis/Haberstroh property. The court concludes from these contested facts that alternative accesses do exist, albeit they may be more expensive or less convenient to Mr. Spittler.

17. The Forest Service required Spittler construct a road on the easement. He has not done so; the easement remains an undeveloped dirt trail. Spittler originally planned to build one house on his property, but changed his mind because he realized he did not like the people who lived on Fawn Lane, and decided to sell the land, instead.

18. The court finds that after securing the Forest Service easement, Exhibit 29, Spittler made no immediate attempts to secure access across the Purdon and Routsis/Haberstroh property. Instead, the testimony showed that Spittler waited while Paul Olson pursued access across different five acre small tracts that separated his property from Fawn Lane. First, Olson subdivided his 40 acres (also purchased from Pomfret Estates, Inc.). Washoe County did not require individual notice to the neighbors for this process, and Washoe County approved it at the staff level: County policy held that for this size parcel map, general notice only would suffice, and the map could be approved without submission to either the Planning Commission or the Board of County Commissioners. A lawsuit, Church v. Olson CV04-02492, followed. The case was settled with Mr. Olson securing an access across the land of one of the small tract holders.

19. After Church v. Olson was settled, Spittler filed for his own parcel map seeking to divide his 58 acres into 3 parcels. The court received into evidence many exhibits dealing with this process, including: 5, 13, 14, 15, 30 (same as 81), 33, 35, 36, 37, 38, 39, 55, 56, 60, 67, 80 and others. The parcel map of Scott Spittler was admitted under 2 exhibit numbers: Parcel Map

4807 is Exhibit 62, and Parcel Map 4807A is Exhibit 41. These two pages constitute one map. The county required general notice only, and the map was eventually approved at the staff level, not going to the Board of County Commissioners or the County Planning Commission. Hence, the map became finally approved before any of the neighbors, including Purdon or Routsis/Haberstroh, found out about it. The county required Spittler to make certain roadway improvements to his property and also to the Purdon and Routsis/Haberstroh driveways, and post a bond of $11,133.00 as security for the same. Spittler posted the bond. Exhibit 96. PM 4807 showed that Spittler wanted to use the Routsis/Haberstroh property to access a 5 acre parcel, and the Purdon driveway to access a 13 acre parcel, both of which had been newly created by the map. These new parcels were given Assessor's Parcel Numbers 150-090-08; 150-090-09. The new roads sandwich Routsis/Haberstroh on their north and south sides, and run within 8 feet of Purdon's front door on his north side.

20. Jeff Cruess, an employee of the County Surveyor's office during the approval process for the Spittler map, (and now retired), testified for many hours at trial. He testified that in his opinion, documented access existed allowing Spittler to use the Small Tract Act easement, bordering the interior of those tracts. He believed Spittler had the right to use the Purdon and Routsis/Haberstroh driveways to access the Spittler land to and from Fawn Lane. He testified that his basis for this conclusion was two-fold: first, that the federal patent easements, Exhibits 2 and 9 Spittler to burden the defendants' property to access his own. Second, Cruess testified that the said 33 foot easements became public ways, available for the use of any one, when the parcel maps 684 and 2130 were recorded. He based this opinion on NRS 405.191 (3).

Cruess testified he was unaware of Spittler's letters to the Forest Service at the time he processed the Spittler map, Exhibits 42 and 60, but that those letters would not have mattered to him anyway. He was also unaware of the Stewart Title preliminary report, Exhibit 23, which opined that Spittler's only access was via the Forest Service land, and was not insurable. He was

aware, however, of a second report from Western Title, Exhibits 30 and 81 in evidence, which stated, in pertinent part, in the exceptions to title:

> 11. The fact that the ownership of said land does not include rights of access to or from any road, street or highway, nor to be served by any contiguous rights of way or easements over adjoining property to any such public road or highway. The following exception will be included in any policy of title insurance concerning the subject property: Notwithstanding the insuring clauses of the policy, the Company does not insure against loss or damage by reason of a lack of access to and from the land.

Title reports are required by the county from applicants for parcel maps, because the county as a matter of policy does not create landlocked parcels. Cruess testified that he believed the title report was wrong, and he decided not to follow its conclusion of no-access, and issued the parcel map, anyway. Even though he believed the report was wrong, PM 4807 lists this report under Title Company Certificate, indicating the county relied upon it at least to the extent that it showed Spittler was the owner of his own land. Cruess also testified that he was not a lawyer, nor a title examiner, and had no particular expertise in deciphering titles. The court finds that Cruess was not an expert in easements. Cruess further testified he had no particular expertise in the Small Tract Act, and that he had never seen, before trial, the Classification Order, Exhibit 6, which gave birth to the easements at issue in this case. It was clear when he was shown the Classification Order that Cruess did not understand it: he referred to it as "a legal description".

Concerning the maps 684 and 2130, Cruess stated his basis for concluding that the recording of maps reconfirmed the patent easements as public way available for all people because of the operation of NRS 405.191 (3), which was enacted in 1979, after repeal of the Small Tract Act in 1976. Again, Cruess testified he was not a lawyer and had no particular expertise interpreting statutes. The court finds Cruess was not an expert in legal matters.

Cruess further testified that the county does not guarantee title. He gives his opinion regarding access; and if private landowners in the area disagree, then the Subdivider, as the

county referred to Spittler herein, must seek a court determination. Cruess also confirmed that the county has a bias in favor of developers. The Court finds Cruess was not objective.

The court concludes Mr. Cruess was unaware of, and did not understand, key facts, (Spittler bought the property as-is without access, told the Forest Service so, and incorrectly understood the import of other facts (Western Title Report). The court also finds Mr. Cruess' legal analysis to be admittedly biased, uninformed, and incorrect (explained under Conclusions of Law). Accordingly, the court concludes Mr. Cruess' opinion is not entitled to deference.

21. After securing the parcel maps (4807 and 4807A) Spittler demanded from Purdon and Routsis/Haberstroh that they allow him to use their driveways for access, including making the roadway improvements required by the county in Spittler's Subdivision Improvement Agreement, Exhibit 36. The defendants refused to grant this permission.

22. Larry Purdon testified that since he purchased his property in 1997, he maintained the driveway himself, and that it has never been open for public transportation purposes. Mr. Purdon has paid all taxes on his property, including the driveway. A fence or locked gate has always separated the Spittler property from the Purdon property, and Purdon has maintained "No Trespassing" signs for the entire time since 1997. He testified Spittler visited him at the property, and claimed he had a right to use the driveway. Purdon denied the right, although he did allow Spittler to go through the gate, one time, to clean up some trash. Mr. Purdon received two letters from Spittler lawyers threatening lawsuits and threatening to record *lis pendens* upon his property. Exhibits 44 and 45.

23. Spittler also claimed the right to go through the Routsis/Haberstroh property, which Mr. Routsis and Ms. Haberstroh denied. Mr. Routsis said he would see Mr. Spittler in court. A fence has always separated the Routsis/Haberstroh property from Spittler's property, and their driveway has never been open to the public. Routsis/Haberstroh paid all property taxes.

24. Spittler sued the defendants. Spittler did not, however, sue the owners of the two parcels between each of the defendants and Fawn Lane (Mr. and Mrs. Connelly and Mr. and Mrs.

Ellis): they have never been parties to this action. The practical effect of Spittler's tactical decision is that Purdon and Routsis/Haberstroh had to bear all of the expense of defending the action on behalf of all of the neighbors.

25. The defendants testified as to the impacts of Spittler's plans on their property, including their belief that Spittler would continue subdividing in an effort to increase the density of development allowed on his property once he secured an access across defendants' land. Spittler denied any such intentions, but the court received documentary evidence to the contrary. On August 19, 2008, Gray and Associates submitted a proposal to land-plan the Spittler and Olson properties together to create "many half to two acre parcels". Exhibit 52. On January 5, 2009, Mr. Spittler's land use consultant, Greg Evangelatos, wrote to the Chairman of the Washoe County Commission seeking to increase the density allowed by the current zoning of the Spittler parcel from General Rural to Low Density Suburban: "the Low Density Suburban designation would allow for a maximum of 58 housing units...". Exhibit 39. The proposed Spittler roads across the defendants' driveways would put traffic within 8 feet of the Purdon residence, and would destroy a water well on the Routsis/Haberstroh land. The development plans would constitute an undue burden and make the defendants' property a thoroughfare to a subdivision.

26. The defendants each pled their attorneys fees and costs as special damages for slander of title. (Discussed more under Conclusions of Law). The court finds that Purdon incurred $100,418.50, and that Routsis/Haberstroh incurred $34,000.00, and that these amounts are reasonable.

Conclusions of Law

1. Plaintiff Spittler has failed to establish the causes of action set forth in his Complaint to Quiet Title by a preponderance of the evidence.

2. Routsis and Haberstroh withdrew their counterclaims for Declaratory Relief and Declaratory Relief - Termination of Easement

2. *Church v. Olson* CV04-02492 and *Brackett v. Turner* CV92-06329 were cases that dealt with similar subject matter, but which were settled by the parties. They offer no guidance or help to the court in deciding the legal issues. As previously stated, however, *Church v. Olson* was interesting to the court because it appeared Spittler followed Olson's lead in securing his own parcel map and suing the defendants herein in the hopes of securing access.

3. The Classification Order did not reserve an easement to private owners of adjoining, non-Small Tract Act land.

4. The patent number 1166839 did not reserve an easement to private owners of adjoining non-Small Tract Act land.

5. The patent number 1210516 did not reserve an easement to private owners of adjoining non-Small Tract Act land.

6. The patent number 27-74-0009 did not grant access to Spittler's predecessors over the Purdon or Routsis/Haberstroh property.

7. The United States repealed the Small Tract Act in 1976. Prior to its repeal in 1976, the Small Tract Act, 43 USCA § 682a, *et. seq.* established rights-of-way for neighboring owners within the tract to access their parcels. This Act was intended to benefit parcels within the tract, and was not intended to establish rights-of-way to private parties outside the tract, like Spittler, to build roads across parcels within the tract.

8. The federal agency that administered the Small Tract Act was the U.S. Department of the Interior. In 1992, the Department of the Interior published Instruction Memorandum 91-196, entitled "Easements Reserved in Small Tract Act Leases and Patents", which rejected certain legal arguments presented by Spittler in this action.

9. The Interior Department memo is entitled to deference. "The Supreme Court has advised that 'cogent administrative interpretations not [the] products of formal rulemaking . . . warrant respect.' [Citations]. Moreover, "an agency's construction of its own regulations is entitled to substantial deference." *Lengerich v. Dept. of Interior*, 454 F.3d 1367, 1372 (2006).

10. Rights of way for small tracts "were intended to provide a corridor for access and utilities to small tracts." *See,* Memo, p. 1. Thus, as the memo shows, the purpose of the rights-of-way is to provide access to the tract, not to provide access from the tract to parcels outside it.

11. "It is generally accepted that the small tract rights-of-way are common law dedications to the public to provide ingress and egress to the lessees or patentees and to provide access for utility services." *See,* Memo, p. 1. Again, Spittler's 58 acres is not one of the lessees or patentees in the tract, and thus his property is not one that was intended to be benefitted from the Small Tract Act.

12. From 1949 until the Small Tract Act was repealed in 1976, rights-of-way were available for public use. "The right-of-way remained available as long as the lands were classified for small tract use. These rights-of-way were determined to be common law dedications and had the effect of a public easement. However, until acceptance by use of the easement made the dedication complete, the United States could revoke or modify the offer to dedicate in whole or in part. Said another way, unless the common law rights-of-way were actually used for a road or public utilities to serve a small tract, the dedication disappeared with the termination of the classification. To the extent that the common law dedications were accepted through use by appropriate parties prior to revocation of the classification, those rights are protected by the provisions of 43 U.S.C. 1701(a) and 43 U.S.C. 1769." *See,* Memo, p. 2, par. 2.

13. The foregoing section establishes: (1) Since the rights-of-way on the Routsis and Purdon properties were not "actually used for a road", the dedication for that purpose disappeared when the classification terminated. This occurred no later than 1976, when the law was repealed, 25 years before Spittler even purchased his 58 acres; and (2) The rights-of-way are "to serve a small tract", not to serve parcels outside the tract, like Spittler's.

14. "When small tract classifications are terminated, the common law right-of-way dedication disappears to the extent that it was not accepted by actual use." *See,* Memo, par. 1(a).

The 33-foot rights-of-way along the boundaries of the defendants' parcels were not "accepted by actual use" as a road prior to repeal of the Act, and therefore, there is no claim to an easement by Spittler.

15. The example illustration included with the Memo confirms that roads actually used are the ones that survive repeal of the Act. Notably, the illustration deals with parcels that are within the tract, because only parcels within the tract are intended to be benefitted by the rights-of-way. *See,* Memo, p. 2, par. 1(a) and attached diagram.

16. "After termination of the classification, additional rights-of-way uses may be made within the borders of the existing rights-of-way for roads and utilities that serve the small tract patents without additional authorization from the United States." *See,* Memo, p. 2, par. 1(b). The uses made of the rights-of-way are those that benefit the small tract patents, not outsiders.

17. As to those parcels that had rights-of-way that were not accepted by actual use as a road, "the right to construct within the small tract easement terminated upon termination of the small tract classification. Authorization for the new road where it crosses lot 10 must be secured from the private landowner." *See,* Memo, p. 3, par 2 (top). Because the 33-foot rights-of-way on the boundaries of the defendants' properties were never used as roads, and because Spittler was not within the small tract, Spittler was required to obtain permission from Routsis and Purdon to built his road. He never obtained it.

18. "The intent of the Small Tract Act easement was to provide access and utility accessibility to the affected tracts. No apparent "public" purpose or governmental use was contemplated except to carry out the purposes of the Small Tract Act to provide for intensive utilization of public lands. . . . Roads or utilities that cross public lands outside the tract borders (regardless whether the rights-of-way serve the small tracts) or other facilities constructed within the rights-of-way borders that do not serve the small tracts require a separate rights-of-way authorization." *See,* Memo, p. 3, par. 1-2. As the memo demonstrates in repeated fashion, the

rights-of-way were for the use of the affected tracts, not for properties outside the tract, and for any uses that did not serve the small tracts, a separate authority was required.

19. There is no reported decision supporting the claim that a property owner outside the small tract has a right-of-way (easement) to a road over parcels within the small tract.

20. The case cited by Spittler, is *Bernal v. Loeks,* 196 Ariz. 363, 364, 997 P.2d 1192, 1193 (Ariz.App. 2000), is inapposite. In that case, all the parties owned parcels of land within the Small Tract Act itself. *Id.* To access the western portion of his property by vehicle, Bernal had to cross the Loekses' and McCuskers' property from the west using an *existing* roadway. *Bernal,* 196 Ariz. at 363, 997 P.2d at 1192. The neighbors blocked this access road. *Bernal,* 196 Ariz. at 364, 997 P.2d at 1193. The court required the obstructions be removed to allow Bernal access. Bernal was not simply an adjacent property owner, but a member within the small tract. In addition, the road to which access was blocked was in existence before the neighbors blocked it.

21. The Parcel Maps admitted into evidence, including PM 684 and PM 2130 do not grant easements over tracts depicted thereon to Spittler's property. These maps merely reference the pre-existing federal grants, and do not expand the scope of the same to surcharge the Small Tract Act easements. The maps depict the 33 foot easement entirely within the boundaries of the Small Tract, not on Spittler's property.

22. NRS 405.191, 193, and 195 do not extend the benefit of the Small Tract easements to Spittler's property, and do not act to surcharge the Small Tract easements, which are for the purpose of access to the interior and rear of the original small tracts, to the burden of the Purdon and Routsis/Haberstroh property. These statutes do not apply to this case because NRS 405.191 only applies defines public road for the purposes of section 193 (county need not maintain road it has not accepted), and section 195 (5 persons in the county can petition the county commission to make an historic road public).

23. Assuming *arguendo* that Spittler had a common law easement, it was extinguished by prescription by use adverse to the Spittler that was hostile and continuous for the period of prescription. *Horgan v. Felton*, 170 P.3d 982, 985 (Nev. 2007). The prescription period is five years. NRS 11.150. Proof of adverse possession is based on the evidence that the land was protected by a substantial enclosure, had been improved, and the parties Routsis/Haberstroh and Purdon paid all of the required taxes on the property. NRS 11.140; NRS 11.150; *United States v. Orr Water Ditch Co.*, 256 F.3d 945, 946 (9th Cir. 2001).

24. Spittler's claims are barred based on estoppel. *Nadjarian v. Desert Palace, Inc.*, 111 Nev. 763, 768, 895 P.2d 1291, 1295 (1995) *citing Heckler v. Community Health Services of Crawford County, Inc.*, 467 U.S. 51, 59 (1984); *Pincolini v. Steamboat Canal Co.*, 167 P. 314, 316 (1917) ("It is a maxim of jurisprudence that he who consents to an act is not wronged by it."). Spittler is estopped to take two different positions. He was successful in asserting his first position to the federal government in securing the Forest Service easement, and now cannot be heard to assert the totally inconsistent position in this court. Mr. Spittler took his first position with the federal government intentionally, to receive a benefit, and not upon the basis of ignorance, fraud, or mistake. *Marcuse v. Del Webb Communities, Inc.*, 123 Nev. 278, 163 P. 3d 462 (2007).

25. Defendants have established their claims for relief for slander of title by a preponderance of the evidence. The requisites to an action for slander of title are that the words spoken be false, that they be maliciously spoken and that Purdon and Routsis/Haberstroh sustain damages. *Rowland v. Lepire,* 99 Nev. 308, 662 P.2d 1332 (1983). Spittler claimed a right of way across the land of Purdon and Routsis/Haberstroh, and has represented to third parties that he has the right to cross said land of the defendants. These representations have been verbal and in writing, including but not limited to the parcel map of Scott Spittler (Exhibits 41 and 60), which depicts access to the Spittler parcels over and across the defendants' land, and the *lis pendens* recorded herein. These statements are false.

Spittler knew these statements were false, or, at the very least, he acted in reckless disregard of their truth or falsity, in other words, with malice. *Rowland v. Lepire,* 99 Nev. 308, 662 P.2d 1332 (1983). Spittler knew he had no access across the land of the defendants when he bought the property, for a bargain price, in 2002. While Spittler testified at trial, and his counsel argued in closing, that Spittler had reasonable grounds for claiming access across the defendants property, the court, having weighed the evidence, finds just the opposite. Spittler told the U.S. Forest Service he had no access. He told the Forest Service that he was acting on the advice of attorneys Judith Otto and Tom Hall in support of his claim that he had no access. Then, once receiving the federal easement, he acted in direct disregard of the advice of these attorneys, and made claim to access across the land of the defendants. Spittler's actions as set forth herein, including but not limited to suing the defendants in order harass them into a settlement, (as was the result in the Paul Olson case) were not based on reasonable grounds, but rather, were in bad faith.

This constitutes slander of title. *Potosi Zinc Co. v. Mahoney*, 36 Nev. 390, 135 P. 1078 (1913); *Rowand v. Lepire*, 99 Nev. 308, 662 P. 2d 1332 (1983).

27. Defendants have suffered special damages in the form of attorneys fees and costs expended in clearing their titles. The court may award attorneys fees and costs as damages in slander of title cases. *Horgan v. Felton*, 123 Nev. 577, 170 P. 3d 982 (2007). At trial, Purdon proved attorneys fees and costs in the amount of $100,498.50. Testimony of Larry Purdon and Exhibits 120, 135, and 136. Routsis/Haberstroh proved attorneys fees and costs in the amount of $34,000.00 through the testimony of Mr. Routsis. The court awards these amounts plus any costs or fees the parties did not have available at the time of trial, including any amount incurred in preparing the draft Findings of Fact and Conclusions of law, which come to $13,300.23 for Purdon and $0.00 for Routsis and Haberstroh, for total awards of $113,718.73 for Purdon and $34,647.67 for Routsis/Haberstroh.

28. The court is aware that other bases may exist supporting the award of fees and costs. The defendants may submit these bases by post-trial motion for fees and costs.

Judgment

Judgment is hereby entered against the plaintiff on all causes of action stated in the complaint with respect to John Routsis and Christine Routsis (Haberstroh).

Judgment is hereby entered against the plaintiff on all causes of action stated in the complaint with respect to Lawrence Purdon.

Judgment is hereby entered in favor of the defendants John Routsis and Christine Routsis (Haberstroh) on their counterclaim for slander of title.

Judgment is hereby entered in favor of the defendant Lawrence Purdon on his counterclaim for slander for title.

The *lis pendens* is hereby released.

Defendant Purdon is awarded fees and costs in the amount of $$113,718.73.

Defendants Routsis and Haberstroh are awarded fees and costs in the amount of $34,647.67.

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A copy of this Findings of Fact, Conclusions of Law, and Judgment shall be recorded with the Washoe County Recorder to make it clear the defendants' property is not encumbered by any easement of access depicted on PM 4807 and 4807A.

STEVEN R. KOSACH
District Judge

DATED: April 21, 2010

SUBMITTED BY:
LAW OFFICE OF MICHAEL G. CHAPMAN, P.C.

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