

1 BURTON & SWETT
Thomas M. Swett, Esq. (232423)
2 47 Main Street
Sutter Creek, California 95685
3 Phone: (209) 267-9217
Fax: (209) 992-4077
4 Email: tom@burtonswett.com
5 Attorneys for All About Equine, Inc.

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8 **BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS**
9 **FOR THE COUNTY OF EL DORADO**

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11 EL DORADO COUNTY CODE
ENFORCEMENT DIVISION
12
13 Petitioner,
14 vs.
15 ALL ABOUT EQUINE, INC.
16 Respondent.

Case No.: CE20-0198
RESPONDENT’S REPLY BRIEF
DATE: March 10, 2021
TIME: 11:00 a.m.
ALJ: Hon. William M. Wright

17
18 **INTRODUCTION**

19 Petitioner makes a valiant attempt to craft a construction of El Dorado County Code section
20 130.30.090 that will support the position taken by Code Enforcement. In the end, the effort is
21 unconvincing. The Code section at issue is clearly written with the intent to exempt gates serving
22 agricultural purposes from its administrative permitting requirements and it should be construed as
23 such. Respondent’s gates are outside of the scheme established by the ordinance. Moreover,
24 respondent’s preexisting gate is also exempt from the notice to correct issued by Code Enforcement
25 as it was constructed prior to the creation of the Highway 49 Easement at issue.

26 **FACTUAL BACKGROUND**

27 It was not understood by respondent that County Code Enforcement was also contending
28 that the preexisting gate at the southerly end of the Highway 49 Easement was included in the

1 subject notice to correct. (Petitioner’s Brief p. 2:8-14.) Said gate is pictured in the photos attached
2 to this brief as **Exhibit G** and has been in existence for decades.¹ This gate served the larger ranch
3 parcel prior to its subdivision and constituted part of its perimeter fence.

4 As discussed in respondent’s opening brief, the Highway 49 Easement was not created until
5 a parcel map was recorded subdividing the subject property in October of 2011. (Exh. A;
6 Petitioner’s Brief p. 2:1-7.) Prior to that time, there was no easement to obstruct. (*Ibid.*) Before
7 subdivision and the creation of the Highway 49 Easement, the preexisting gate pictured in Exhibit G
8 simply served as an entrance to an owner’s property. Post subdivision, the prior owner kept the
9 preexisting gate in place, and it remained in place at the time individual parcels were sold, including
10 the sale of the subject parcel to respondent.

11 As set forth in the opening brief, respondent is a horse rescue and rehabilitation organization
12 that uses the property at issue in this proceeding for grazing and containing cattle and horses.
13 Because the subject gates are used to contain grazing livestock—an agricultural purpose—the gates
14 do not need an administrative permit regardless of when they were constructed.

15 DISCUSSION

16 **A. The Subject Roadway Is Not a Public Road.**

17 The easement at issue creates a private driveway for the benefit of the appurtenant parcels
18 only—it is not a public road. (Respondent’s Brief p. 3:1-5.) In order to effectuate a dedication of
19 the subject easement as a public road, a statement of dedication needs to be made on the recorded
20 subdivision map. (Gov. Code, § 66439, subd. (d); § 66447; Miller & Starr, California Real Estate
21 (4th ed. 2021) § 22.23.) The dedication of a road for public use must be express—it cannot be
22 implied or acquired by public use. (Civ. Code § 1009, subd. (b); *Scher v. Burke* (2017) 3 Cal.5th
23 136, 149-50.) The subject easement with its unimproved dirt road is in all respects a private drive.
24 This is not a case concerning the potential impediment of *public* access. (E.g. Petitioner’s Brief p.
25 4:1-12.) The road, or private drive, in question serves the owners of three parcels in addition to
26 respondent’s and is regulated as such.

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¹ The photos in Exhibit G were extracted from Code Enforcement’s Exhibit 6.

1 **B. Respondent Cannot Add Language to Section 130.03.090.**

2 There is nothing ambiguous about the language used in El Dorado County Code section
3 130.30.090—gates erected for agricultural purposes are not subject to its requirements. “It is
4 axiomatic that in the interpretation of a statute where the language is clear, its plain and
5 commonsense meaning should be followed.” (*Pacific National Bank v. Wozab* (1990) 51 Cal.3d
6 991, 998.) Nevertheless, petitioner argues that section 130.30.090 should be rewritten to insert the
7 word “exclusively” into the exception for agricultural uses. To do so would be to make new law,
8 which is beyond the province of this tribunal. (*Lateef v. City of Madera* (2020) 45 Cal.App.5th 245,
9 253 [a court is “not empowered to insert language into a statute...”].) Petitioner’s invitation to have
10 this tribunal act in a legislative capacity should be declined.

11 **C. Petitioner’s Construction Is Unreasonable and Would Result in Regulatory Chaos.**

12 It is difficult to imagine how petitioner’s proposed construction of the ordinance would be
13 implemented. What does it mean for a gate to “exclusively” serve agricultural purposes? Is that
14 determined by the property owner constructing the gate? Or, would it be determined by reference to
15 all users of the *road* even if they have no practical need for the gate? Here, the gate in question is
16 used exclusively for agricultural purposes—respondent’s agricultural purposes. There are no
17 residents using the road at this time. Should not the subject gate be allowed under petitioner’s
18 construction? If the test is actually the *potential* uses of any given parcel, as discussed in
19 respondent’s opening brief, all parcels zoned for agriculture also allow residential use. If that is the
20 test, petitioner’s construction renders the exception sentence meaningless surplusage as no parcel
21 could be held *exclusively* for agricultural use.

22 If petitioner’s construction were adopted, virtually (or actually) ever single wire gate that
23 crosses an easement of any nature with El Dorado County, if newly constructed, would have needed
24 a permit (there are probably tens of thousands of them). Considering that it took a year just to have
25 the scheduled administrative hearing, one can only imagine how long it would take to process the
26 applications for every new agricultural gate installed or substantially modified in El Dorado County
27 each year. There is absolutely no evidence that such a permitting morass was ever contemplated by
28 the Board of Supervisors. Quite the contrary, they clearly intended that gates serving agricultural

1 uses not be burdened by requirements intended to govern residential security gates, gated
2 communities, and public roads.

3 **D. The Southerly Gate is an Existing Nonconforming Use.**

4 Finally, the southerly gate at issue in this proceeding predates the creation of the easement
5 that it crosses. If this tribunal were to adopt petitioner's construction of section 130.30.090, that
6 gate must be allowed to remain as an existing nonconforming use. (§ 130.61.010, et seq.; see
7 *Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal.4th 533, 551-52.)

8 **CONCLUSION**

9 This case is really about respondent's neighbors attempting to use the County as a lever in a
10 private dispute about the use of an easement. For whatever reason, Code Enforcement has allowed
11 itself to be so used to that end, notwithstanding the plain language of section 130.30.090.
12 Respondent's gates are exempt from that statute's permitting requirements, the statute should be so
13 construed as to allow the gates for agricultural purposes, and the notice to correct issued to
14 respondent should be rescinded.

15 DATED: April 2, 2021

16 **BURTON & SWETT**

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18 **Thomas M. Swett, Esq.**
19 *Attorneys for Respondent*

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VERIFICATION

I, Wendy Digiorno, declare:

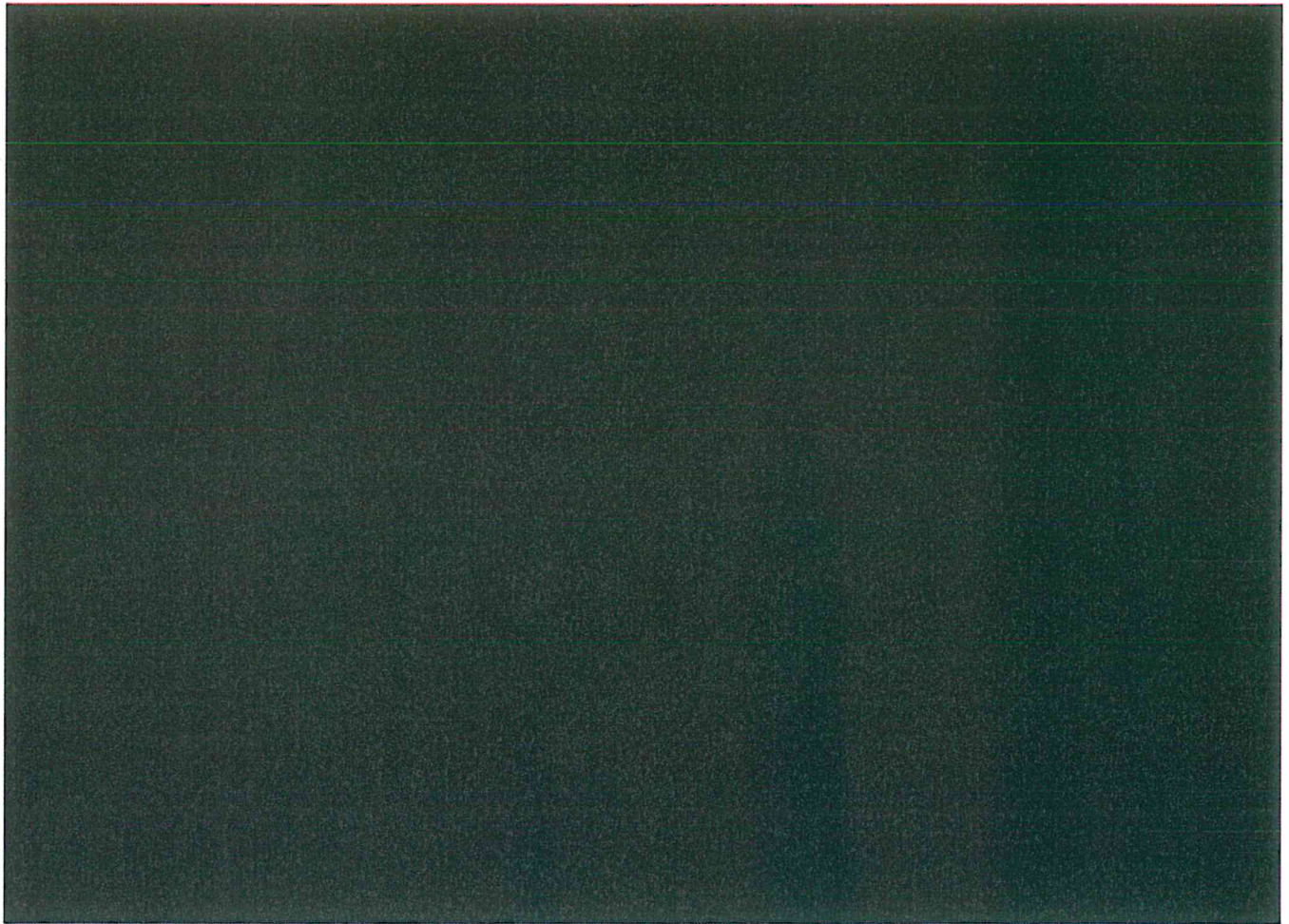
I certify and declare that I have read the foregoing and know the contents thereof. I have personal knowledge that the facts set forth above and the authenticity of the exhibits attached hereto are all true and correct, by virtue of my position as CEO of respondent All About Equine Animal Rescue, Inc.

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

Wendy Digiorno
Wendy Digiorno (Apr 2, 2021 15:36 PDT)

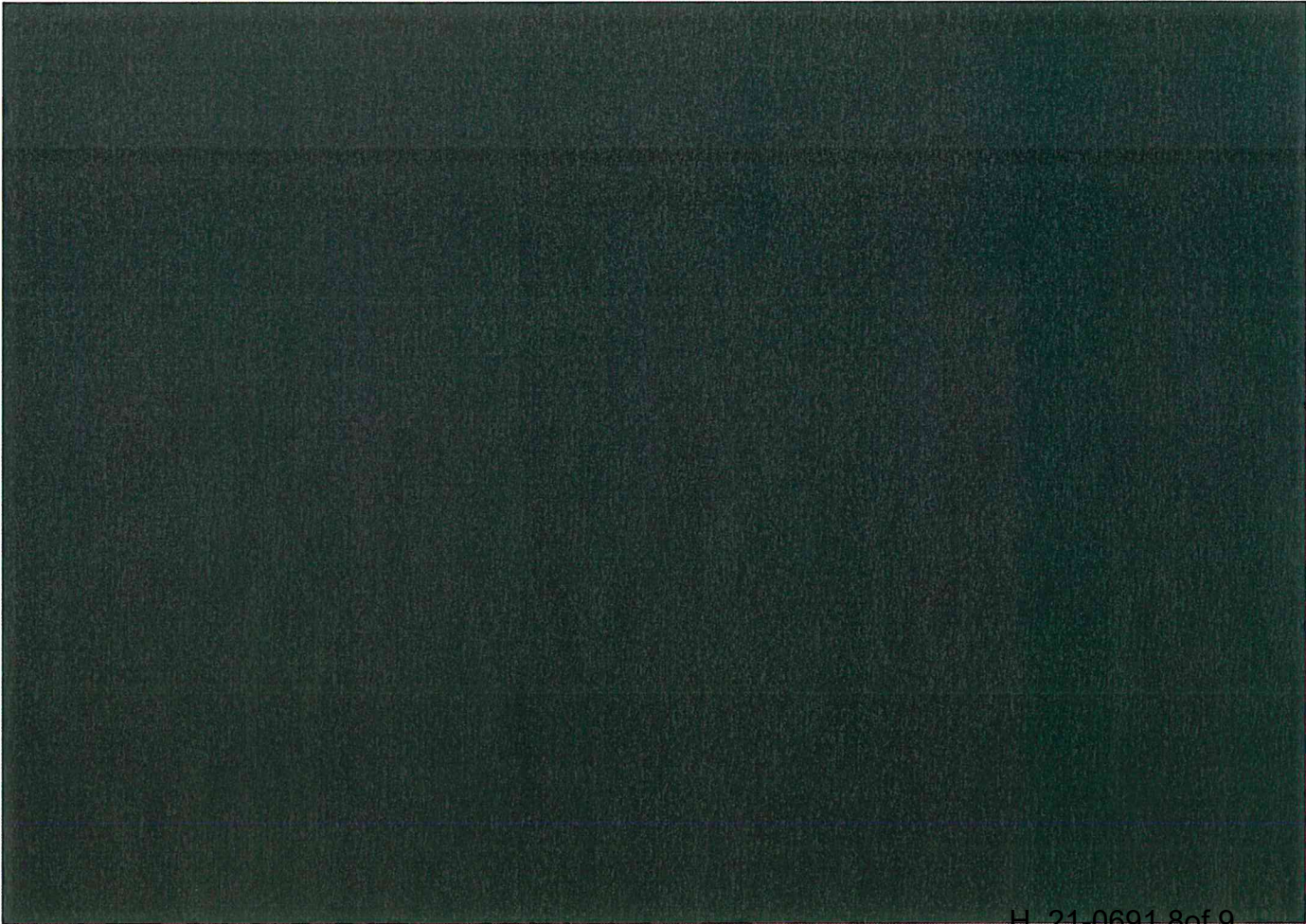
Wendy Digiorno

Exhibit G





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Final Audit Report

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