

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.

6
7
8 **BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS**
9 **FOR THE COUNTY OF EL DORADO**

10
11 EL DORADO COUNTY CODE
ENFORCEMENT DIVISION

Case No.: CE20-0198

RESPONDENT’S BRIEF

Petitioner,

12
13 vs.

DATE: March 10, 2021

TIME: 11:00 a.m.

ALJ: Hon. William M. Wright

14 ALL ABOUT EQUINE, INC.

15
16 Respondent.

17
18 **INTRODUCTION**

19 This is a simple statutory construction case. Respondent has fenced its property for the
20 purpose of grazing or pasturing livestock upon it and said fencing has resulted in the construction of
21 gates across two private easements. Although El Dorado County Code section 130.30.090 sets forth
22 an administrative permitting process for a gate constructed across a private easement, it includes an
23 express exemption for agricultural uses.

24 The language giving rise to the relevant exemption to section 130.30.090 is: “The
25 regulations in this section do not apply to gates serving agricultural uses.” This language is a clear
26 and unambiguous expression of the Board’s intent when it adopted section 130.30.090. The
27 administrative permitting process set forth therein does not apply to the agricultural fencing
28 installed by respondent. Therefore, the subject notice to correct was improperly issued.

FACTUAL BACKGROUND

1
2 Respondent is a nonprofit organization that rescues horses and other farm animals with the
3 intent to preserve their lives, improve their health, and ultimately find them permanent homes.¹ In
4 the normal course of its activities, it engages in the grazing of livestock including horses and cattle.
5 The grazing or pasturage of livestock is an Agricultural Use as defined by the El Dorado County
6 Zoning Code.² (El Dorado County Code § 130.80.020.)

7 Respondent is the owner of approximately 62 acres in Pilot Hill, which are the subject of
8 this proceeding. Respondent’s parcel was created by El Dorado County Parcel Map 48/47, which
9 was recorded on October 31, 2011 in Book 50 of Parcel Maps at Page 128 (the “Parcel Map”). A
10 true and correct copy of the Parcel Map is attached hereto as **Exhibit A**. In addition to respondent’s
11 parcel, the Parcel Map created three additional parcels of approximately 58, 125, and 202 acres
12 each. Due to the size of these lots, the Parcel Map did not create what might commonly be
13 understood to be a residential subdivision—it created four large rural lots upon which Agricultural
14 Uses are allowed by the County’s Zoning Code.³

15 The Parcel Map depicted, and therefore created, an access easement across respondent’s
16 property for the benefit of the parcels shown thereon. That easement is designated as a “50.00’
17 WIDE ROAD & PUBLIC UTILITIES EASEMENT” (the “Highway 49 Easement”). No other
18 documentation exists that might further define this easement. At present, this easement contains an
19 unimproved dirt road as depicted in the photographs contained in the County’s Exhibit 6.

20 A second 50-foot access easement across respondent’s property was purportedly created by
21 language in respondent’s deed, which is the County’s Exhibit 1 (the “Rattlesnake Bar Easement”).
22 Like the easement created by the Parcel Map, the Rattlesnake Bar Easement language does not
23 purport to restrict or prohibit the fencing of the perimeter of its property nor the use of gates to
24 accomplish that end.

25
26

27 ¹ For more information visit <https://www.allaboutequine.org>.
28 ² Unless otherwise specified herein, all section references are to the El Dorado County Code.
³ Respondent’s property is zoned rural estate with a ten-acre minimum or RE-10. A true and correct copy of
respondent’s parcel information report is attached hereto as **Exhibit B**.

1 In early 2020, respondent completed fencing the perimeter of its property (the property was
 2 already partially fenced along the boundaries of the larger parcel divided by the Parcel Map).
 3 Respondent desired to stock its property with cattle for the early grazing season and needed
 4 appropriate facilities for containing them. A true and correct copy of the grazing lease between
 5 respondent and its tenant is attached hereto as **Exhibit C**. Respondent’s neighbors have also
 6 expressed their desire to graze cattle on their property, as might be expected in this rural setting. A
 7 true and correct copy of an example of this communication is attached hereto as **Exhibit D**. Despite
 8 the compatibility of grazing in the subject area and the unambiguous language of County Code
 9 section 130.30.090, it was respondent’s installation of this agricultural fencing that triggered the
 10 subject notice to correct on or about May 1, 2020, which ultimately precipitated this hearing.

11 **DISCUSSION**

12 Respondent has previously provided extensive factual and legal analysis regarding the
 13 subject notice to correct, which is included as Exhibit 5 in petitioner’s exhibit binder. Said analysis
 14 is incorporated herein by this reference but will not be repeated for the sake of brevity.

15 The operative facts in this case do not appear to be in dispute. Instead, this case is a simple
 16 matter of statutory construction. That is, does County Code section 130.30.090 apply to gates
 17 across a private easement that were installed to serve an agricultural use?⁴ The answer to this
 18 question is clearly “no.”

19 Section 130.30.090 creates a set of design standards for the placement of gates across non-
 20 county-maintained roads and private driveways. However, as clearly expressed in the first
 21 paragraph of the ordinance, “The regulations in this section [130.30.090] *do not apply to gates*
 22 *servicing agricultural uses.*” (Emphasis added.) The plain meaning of the language used in the
 23 ordinance is unambiguous and should be applied as written.

24 The rules of statutory construction that are applicable to California’s statutes are equally
 25 applicable to municipal ordinances. (*Lateef v. City of Madera* (2020) 45 Cal.App.5th 245, 253.)

26
 27

28 ⁴ A true and correct copy of El Dorado County Code section 130.30.090 is attached hereto as **Exhibit E**. The original exhibit binder published by Code Enforcement neglected to include the operative language in the ordinance that exempts respondent’s gates from its provisions.

1 First and foremost, an ordinance must be construed according to its plain and common sense
2 meaning, which is the most reliable indicator of the legislative body's intent. (*Ibid.*) "It is
3 axiomatic that in the interpretation of a statute where the language is clear, its plain meaning should
4 be followed." (*Security Pacific National Bank v. Wozab* (1990) 51 Cal.3d 991, 998.) Therefore, no
5 tribunal is empowered to insert or delete language from a statute so as to alter a statute's plain
6 meaning; to do so would be to judicially (and improperly) create a new law. (*Lateef, supra*, 45
7 Cal.App.5th at p. 253.) The ordinance stands on its own and is not subject to reinterpretation by
8 County staff or otherwise.

9 Here, the ordinary, common-sense meaning of section 130.30.090 is clear—it "does not
10 apply to gates serving agricultural uses." The grazing of livestock, for which the subject gates are
11 used, is undisputedly an agricultural use. Tellingly, one of the as-of-right *agricultural uses* in the
12 RE zone is grazing. (§ 130.24.020.) And grazing is defined as the raising of cattle and horses upon
13 vegetation grown on the land. (§ 130.24.020.) Respondent's fences and gates were built for the
14 purpose of containing livestock grazing upon its property. That is an agricultural use pursuant to
15 the County Code, which renders the subject gates exempt from the requirements of section
16 130.30.090. It's that simple.

17 This construction is the only reasonable construction of the subject ordinance. It is
18 respondent's understanding that Code Enforcement takes the position that because another property
19 owner might use the private easement across respondent's property for residential purposes, that
20 somehow nullifies the exclusion of agricultural uses from the effect of section 130.30.090. The
21 ordinance contains no such language, and this tribunal cannot take the place of the Board of
22 Supervisors and add it sua sponte.

23 Code Enforcement's position relies upon an analysis of any one individual's *use of the road*.
24 This is not consistent with the plain language of the statute, which focuses on the *use of the gate*.
25 Gates serving agricultural uses are exempt. If that exemption could be nullified by the mere
26 possibility that a parcel serviced by a private easement might have a home constructed upon it, the
27 exception would be rendered meaningless. All agricultural and residential zoning laws allow for the
28 construction of a single-family residence along with appropriate agricultural uses—every parcel has

1 the potential to support a residential use. (§§ 130.21.020 & 130.24.020.) Under Code
2 Enforcement's construction, the exception for gates serving agricultural uses could never apply as
3 every private easement has the potential to serve a residential use. This would be an unreasonable,
4 even absurd, construction of section 130.30.090.

5 In contrast, the common-sense construction of section 130.30.090 advanced by respondent is
6 the only reasonable construction. Grazing is allowed as of right in all agricultural zones and
7 therefore the provisions of 130.30.090 governing gates would never apply to gates serving that
8 agricultural use. (§ 130.21.020.) In residential zones, grazing is allowed in the lower density zones
9 such as respondent's, but not allowed in the higher density zones. Therefore, the requirements of
10 section 130.30.090 may or may not apply to gates depending on a residential parcel's specific
11 zoning; for the higher density residential zones, grazing is not allowed. And in commercial zones,
12 grazing is not allowed at all so section 130.30.090 would always apply to gates across private
13 easements. Respondent's construction leads to a statutory scheme that makes progressive and
14 logical sense.

15 **CONCLUSION**

16 The notice to correct issued by El Dorado County Code Enforcement is not supported by the
17 statutory authority cited therein. Code section 130.30.090 does not apply to gates that service
18 agricultural uses such as those installed by respondent. As such, the notice to correct should be
19 rescinded and this code enforcement matter concluded without sanction upon respondent.

20 DATED: March 10, 2021

21 **BURTON & SWETT**

22 

23 **Thomas M. Swett, Esq.**
Attorneys for Respondent

24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

DocuSigned by:

D409699CDBA749A

Wendy Digiorno

Exhibit A

871-09

50-128

PARCEL MAP

BEING PCL 1 OF P.M. 48/47
AND PORTIONS OF THE S 1/2 SEC 30 &
A PORTION OF SEC 31, T.12 N., R.9 E., M.D.M.

SEPTEMBER 2011 ~ SCALE 1" = 400'
COUNTY OF EL DORADO ~ STATE OF CALIFORNIA
SWEENEY LAND SURVEYING
PAGE 1 OF 2

References:

- (A) SUB F89
- (B) PM 47/148
- (C) PM 25/18
- (D) RS 2/86
- (E) RS 18/35
- (F) RS 18/30
- (G) RS 13/41
- (H) PM 48/47
- (I) PM 41/110
- (J) PM 42/118
- (K) RS 10/89
- (L) Doc. 1999-48165
- (M) PM 7/106
- (N) PM 8/134
- (O) PM 36/71
- (P) SD F7/1
- (Q) SD F/68
- RS 19/20

BASIS OF BEARINGS:

The meridian of this survey is identical with PM 36-71 which is true North.

DEVELOPMENT SERVICES DIRECTOR'S STATEMENT:

This map conforms with the requirements of section 66412(d) and 66467 of the subdivision map act.

Dated 10-26-11

ROGER TROUT
Roger Trout
Development Services Director
County of El Dorado
State of California

Pierre Rivas
PIERRE RIVAS
Principle Planner
County of El Dorado
State of California

OWNERSHIP NOTE:

Refer to Document No. 2011-50404
for the consent of all parties having record title interest.

SURVEYOR'S STATEMENT:

This map was prepared by me or under my direction and is based upon a field survey in conformance with the requirements of the Subdivision Map Act and local ordinance at the request of Idaho Capital LLC. I hereby state that this Parcel Map substantially conforms to the approved or conditionally approved Tentative Map, if any. All monuments are of the character and occupy the positions indicated and are sufficient to enable the survey to be retraced.

Dallas M. Sweeney
Dallas M. Sweeney C.S. 8575

Oct 24, 2011
Date



COUNTY SURVEYOR'S STATEMENT:

I have examined the map. The subdivision as shown is substantially the same as it appeared on the tentative map, if required, and any approved alterations thereof. All provisions of chapter 2 of the subdivision map act and of any local ordinances applicable at the time of approval of the tentative map, if required, have been complied with. I am satisfied the map is technically correct.

Dated 10-26-11
Richard L. Briner
Richard L. Briner L.S. 5084
County Surveyor
County of El Dorado, California



COUNTY RECORDER'S CERTIFICATE:

I, William E. Schultz hereby certify that Placer Title Co. parcel map guarantee No. 102-352844 was filed with this office and that this parcel map was accepted for record and filed this 31 day of October, 2011 at 11:24:21 in book 50 of parcel maps at page 128 at the request of Idaho Capital LLC.

Document No. 2011-50403

William E. Schultz
William E. Schultz
County Recorder, Clerk
County of El Dorado, State of California

By: Joan Kach
Deputy

50-128

50-128

50-128A

50-128A

PARCEL MAP

BEING PCL 1 OF P.M. 48/47
AND PORTIONS OF THE S 1/2 SEC 30 &
A PORTION OF SEC 31, T.12 N., R.9 E., M.D.M.

SEPTEMBER 2011 - SCALE 1" = 400'
COUNTY OF EL DORADO - STATE OF CALIFORNIA
SWEENEY LAND SURVEYING

PAGE 2 OF 2



FOUND 1 1/2" IRON PIPE
CAPPED WITH 2" GLO
BRASS CAP:



DETAIL A
NOT TO SCALE

FOUND 1 1/2" CAPPED
IRON PIPE STAMPED:



NOTE(S)

The exact location and extent of the following easements are not disclosed of record:

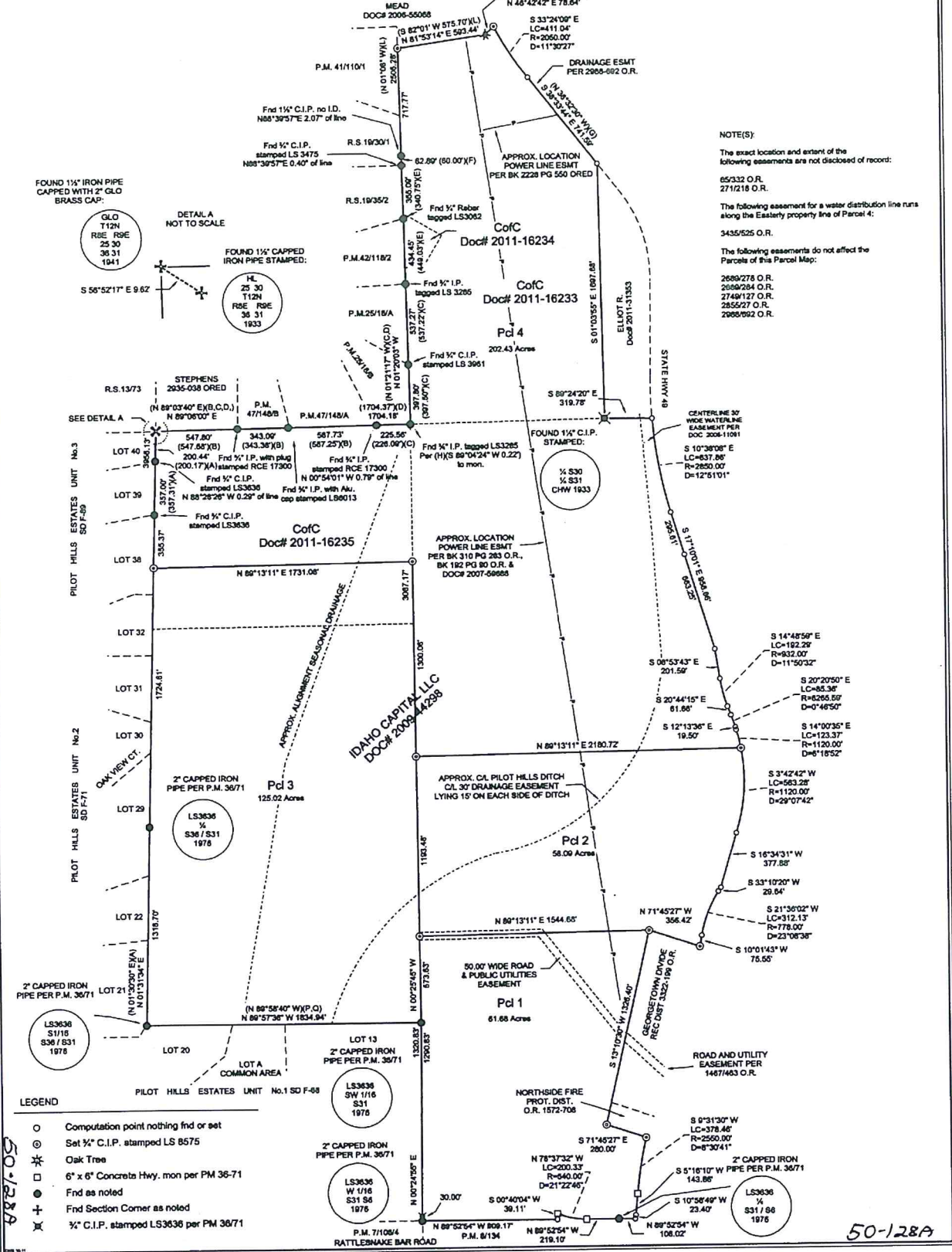
65/332 O.R.
271/218 O.R.

The following easement for a water distribution line runs along the Eastern property line of Parcel 4:

3435/625 O.R.

The following easements do not affect the Parcels of this Parcel Map:

2689/278 O.R.
2689/284 O.R.
2749/127 O.R.
2855/27 O.R.
2988/692 O.R.



- LEGEND**
- Computation point nothing found or set
 - ⊙ Set 1/2" C.I.P., stamped LS 8575
 - ⊛ Oak Tree
 - 6" x 6" Concrete Hwy. mon per PM 36-71
 - Find as noted
 - ⊕ Find Section Corner as noted
 - ⊗ 1/2" C.I.P., stamped LS3636 per PM 36/71

50-128A

Exhibit B



Planning Services

Home > Government > Planning

PARCEL DATA INFORMATION

Disclaimer: This information may not be accurate.

3/9/2021

Enter Another Parcel

Assessor's Parcel Number: 071-051-56

PROPERTY INFORMATION:

STATUS	JURISDICTION	TAX RATE	MAP	GIS EST. ACREAGE*
ON ASSESSMENT ROLL AND TAXED	COUNTY OF EL DORADO	83 - 48	PM 50/128/1	61.68

2015 GENERAL PLAN LAND USE INFORMATION:

LAND USE DES.	AG DIST.	ECOLOGICAL PRESERVES	IMPORTANT BIOLOGICAL CORRIDOR	MINERAL RESOURCES	PLATTED LANDS	COMMUNITY REGIONS	RURAL CENTERS	SPECIFIC PLANS	ADOPTED PLAN NAME
LDR									

2015 ZONING INFORMATION:

ZONING DESIGNATION	DESIGN CONTROL	PLANNED DEVELOPMENT	OTHER OVERLAYS
RE-10			

2004 GENERAL PLAN LAND USE INFORMATION:

LAND USE DES.	AG DIST.	ECOLOGICAL PRESERVES	IMPORTANT BIOLOGICAL CORRIDOR	MINERAL RESOURCES	PLATTED LANDS	COMMUNITY REGIONS	RURAL CENTERS	SPECIFIC PLANS	ADOPTED PLAN NAME
MDR, LDR, C, PF			IBC				. PLTH		

2004 ZONING INFORMATION:

ZONING DESIGNATION	DESIGN CONTROL	PLANNED DEVELOPMENT	OTHER OVERLAYS
RF, RA-20, R1, RE-5, R1A			

DISTRICTS:

FIRE	CSD	SCHOOL	WATER
EL DORADO COUNTY FPD		BLACK OAK MINE UNIFIED	GEORGETOWN DIVIDE PUD

FLOOD ZONE INFORMATION (See Note below):

FIRM PANEL NUMBER & REVISION	PANEL REVISION DATE	FLOOD ZONE	FLOOD ZONE BUFFER	FLOODWAY
06017C0450E	09/26/2008	X		

MISCELLANEOUS DATA:

SUPERVISORIAL DISTRICT	AG PRESERVE	RARE PLANT MITIGATION AREA	MISSOURI FLAT MC&FP
4	LORI PARLIN		NO

REMARKS:

No Eligibility Review Required

NOTE: The flood zone information presented here is based solely on data derived from the FEMA Flood Information Rate Maps, and does not include data from any other flood studies. * Estimated area calculated by GIS. Actual acreage is determined by a field survey, shown on a recorded map, or stated in a deed.

- Information
- About us
- Building Closures
- Policies and Disclaimers
- Maps
- Enterprise System Catalog - SB272

- Support
- Contact Us
- Download Adobe Reader
- Site Map

- Accessibility
- Translation Disclaimer
- Select Language

- Employee Resources
- EDONET-County Employees Only
- Human Resources
- Risk Management

Exhibit C

Pasture (Grazing) Lease Agreement

Date and names of parties. This lease is entered into on JUNE 1, 2020
 Between ALL ABOUT EQUINE (Landlords) Lessor(s),
 at (address) _____
 and Rick Douglas DBA Wind Dances Ranch (Tenants) Lessee(s),
 at (address) 4521 Barnett Ranch Rd. Shingle Springs, CA 95682

The parties to this lease agree to the following provisions.

Description of land. The Lessor rents and leases to the Lessee, to occupy and to use for agricultural purposes only, the following real estate located in the County of El Dorado and the State of CA described as follows: 60 acres +/- intersection of CA HWY 49 and Rattle Snake Bar commonly know as the AAE farm and consisting of approximately 60 acres, together with all buildings and improvements thereon belonging to the Lessor, except _____

Length of tenure. The term of this lease shall be from 6/1, 2020, to 6/31/21, 2020 and the Lessee shall surrender possession at the end of this term or at the end of any extension thereof. Extensions must be placed in writing on this lease, and both parties agree that failure to execute an extension at least 1 months before the end of the current term shall be constructive notice of intent to allow the lease to expire.

Amendments and alterations to this lease may be made in writing in the space provided and the end of this form at any time by mutual agreement. If the parties fail to agree on proposed alterations, the existing provisions of the lease shall control operations.

Section 1. Animal Units

Not more than 15 animal units shall be kept in the pasture at any one time without the express written consent of the Lessor. Deliberate violation of this provision shall constitute grounds for termination of this lease. (In general, each 1,000 pounds of average weight shall be one animal unit. If the pasture owner and the owner of the livestock prefer, they can use the following basis for calculating animal units: one bull, 1.25 animal units; one 1,000-pound cow, 1 animal unit; one yearling steer or heifer, .075 animal unit; calf, 6 months to 1 year, 0.5 animal unit; 3 to 6 months, 0.3 animal unit; sheep, 5 per animal unit; horse, 1.25 animal unit.)

Stocking rate	Number head	Number animal units
Bulls	<u>1</u>	<u>1</u>
Cows	<u>8</u>	<u>8</u>
Yearling steers	<u>3</u>	<u>1.5</u>
Yearling heifers	<u>6</u>	<u>1.5</u>
Calves, 6 to 12 mos.		
Calves, 3 to 6 mos.	<u>2</u>	<u>.5</u>
Other		
Other		

Section 2. Rental Calculations and Payment Schedule

(Use method I, II or III and strike out the two methods not used.)

Method I

The Lessor agrees to pay \$ 1.00 per acre for use on the property described in paragraph I. Total rent of \$ 1.00 shall be paid as follows:



\$ _____ on or before _____ day of _____ (month)
 \$ _____ on or before _____ day of _____ (month)
 \$ _____ on or before _____ day of _____ (month)
 \$ _____ on or before _____ day of _____ (month)

Rental adjustment. Additional agreements in regard to rental payment:

cattle used for star thistle control + fire break control.

Method II

The Lessee agrees to pay the rates outlined in Table 1 (the period may be a month, pasture season, or year).

The minimum rent shall be \$ _____. Such rent shall be required regardless of whether or not livestock are actually being pastured. The total rent of \$ _____ (from Table 1) shall be paid as follows:

\$ _____ on or before _____ day of _____ (month)
 \$ _____ on or before _____ day of _____ (month)
 \$ _____ on or before _____ day of _____ (month)
 \$ _____ on or before _____ day of _____ (month)

Table 1 — Rental Rates

	Number		Rental rate per period		Total rent per period
Bulls	_____	X	\$ _____	=	\$ _____
Cows	_____	X	\$ _____	=	\$ _____
Yearling steers.....	_____	X	\$ _____	=	\$ _____
Yearling heifers.....	_____	X	\$ _____	=	\$ _____
Calves, 6 to 12 mos.....	_____	X	\$ _____	=	\$ _____
Calves, 3 to 6 mos.....	_____	X	\$ _____	=	\$ _____
Other	_____	X	\$ _____	=	\$ _____
Other	_____	X	\$ _____	=	\$ _____
TOTAL RENT					\$ _____

Rental adjustment: Additional agreements in regard to rental payment: _____

Method III — Other rental arrangements (share-of-gain, etc.)



Section 3. Lessor and Lessee Responsibilities

Lessor and Lessee agree to divide and assume the following responsibilities: (Use X or initials to indicate responsibility.)

	Lessor	Lessee
Inspect fences not less than once per <u>week</u>	_____	<u>D</u>
Furnish labor for repair of fences.	_____	<u>D</u>
Furnish materials for repair of fences.	_____	<u>D</u>
Supervise supply of water to livestock.	_____	<u>D</u>
Furnish labor for repair of water system.	_____	<u>D</u>
Furnish materials for repair of water system.	_____	<u>D</u>
Furnish salt & mineral.	_____	<u>D</u>
Count livestock not less than once per <u>week</u> .	_____	<u>D</u>
Return stray animals to pasture.	_____	<u>D</u>
Call veterinarian in case of emergency.	_____	<u>D</u>
Pay veterinary expenses.	_____	<u>D</u>
Provide loading and unloading facilities	_____	_____
Furnish supplementary feed, if needed.	_____	<u>D</u>
Notify other party of shortage in count <u>19</u> .	_____	<u>D</u>
Provide facilities for fly control. <u>NT</u>	_____	<u>NT</u>
Keep fly-control facilities in working order. <u>NT</u>	_____	<u>NT</u>
Additional agreements: _____		

Section 4. Lessee's Obligations and Duties

The Lessee further agrees to perform and carry out the stipulations below. (Strike out any not desired.)

A. Activities required:

1. ~~To furnish health certificates as follows: _____~~
2. ~~To prevent noxious weeds from going to seed on said premises and to destroy the same and keep the weeds cut.~~
3. ~~To prevent all unnecessary waste, or loss, or damage to the property of the Lessor.~~
4. ~~To comply with pollution control, water quality, and environmental protection requirements as required by local, state, and federal agencies, as well as to implement soil erosion control practices to comply with the soil loss standards mandated by local, state, and federal agencies.~~
5. ~~Insurance: For the term of the lease, Lessee shall maintain insurance with a carrier acceptable to the Lessor, insuring Lessee while performing on these premises hereunder for the following types and in stated minimum amounts:

 - i) Liability Insurance: \$ 100 per person
 - ii) Property Damage: \$ 1 mil per occurrence
 - iii) Workers Compensation: Full Statutory Limits
 Lessee shall furnish a Certificate of Insurance and agrees that all applicable insurance policies name the Lessor as an additional insured and to receive notice of termination of coverage.~~
6. To use prudence and care in transporting, storing, handling, and applying all fertilizers, pesticides, herbicides, and other chemicals and similar substances; to read and follow instructions on the labels for the use of such materials in order to avoid injury or damages to persons or property or both on the leased premises and adjoining areas; and to comply with state pesticide training, licensing, storing, and usage. Any chemicals for weed or insect control or other use, when used, should be applied at levels not to exceed the manufacturer's recommendation.

7. To be solely responsible for all employer obligations on hired labor with respect to safety requirements and social security and workers' compensation contributions, and the Lessor shall have no responsibilities therefore.

B. Activities restricted. The Lessee further agrees:

1. Not to pasture livestock that continue to break through fences. Should any animal be found outside the pasture on at least three occasions, the Lessor may request its removal.
2. Not to put any cattle in pasture without getting specific approval from the Lessor in advance regarding number, health, sex, breed, and age.
3. Not to assign this lease to any person or persons or sublet any part of the premises herein leased.
4. Not to erect or permit to be erected any structure or building or to incur any expense to the Lessor for such purposes.
5. Not to permit, encourage, or invite other persons to use any part or all of this property for any purpose or activity not directly related to its use for agricultural production, except as specifically noted here: _____
6. Not to cut live trees for sale purposes or personal uses.
7. Not to erect or permit to be erected any commercial advertising signs on the farm.
8. Not to enter into any agreement, contract, or other farming or business arrangement that alters rights in the Lessor's security interest, right of entry, default or possession.

C. Additional agreements: _____



Section 5. Default, Possession, Right of Entry, Mineral Rights, Extent of Agreement, Liability

The Lessor and Lessee agree to the following provisions. (Strike out any not desired.)

A. Termination upon default. If either party fails to carry out substantially the terms of this lease in due and proper time, the lease may be terminated by the other party by serving a written notice citing the instance(s) of default and specifying a termination date of 30 days from the date of such notice.

B. Yielding possession. The Lessee agrees at the expiration or termination of this lease to yield possession of the premises to the Lessor without further demand or notice, in as good order and condition as when they were entered upon by the Lessee, loss by fire, flood, or tornado, and ordinary wear excepted. If the Lessee fails to yield possession, the Lessee shall pay to the Lessor a penalty of \$ 10 per day or the statutory double rent, whichever is less, for each day the Lessee remains in possession thereafter, in addition to any damages caused by the Lessee to the Lessor's land or improvements, and said payments shall not entitle the Lessee to any interest of any kind or character in or on the premises.

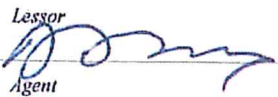
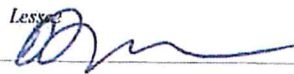
C. Lessor's right of entry. The Lessor reserves the right personally or by agents, employees, or assigns to enter upon the premises at any reasonable time to view them, to work or make repairs or improvements thereon, to care for and dispose of the Lessor's share of livestock, to develop mineral resources as provided in Clause D and to hunt and fish.

D. Mineral rights. Nothing in this lease shall confer upon the Lessee any right to minerals underlying the land. Such mineral rights are hereby reserved by the Lessor together with the full right to enter upon the premises and to bore, search, excavate, work, and remove the minerals, to deposit excavated rubbish, to pass over the premises with vehicles, and to lay down and work any railroad track or tracks, tank, pipelines, power lines, and structures as may be necessary or convenient for the above purpose. The Lessor agrees to reimburse the Lessee for any actual damage the Lessee may suffer for pasture destroyed by these activities and to release the Lessee from obligation to continue pasturing this property when development of mineral resources interferes materially with the Lessee's opportunity to make a satisfactory return.

E. Extent of agreement. The terms of this lease shall be binding on the heirs, executors, administrators, and assigns of both Lessor and Lessee in like manner as upon the original parties.

F. Lessor liability. The Lessee takes possession of the leased premises subject to the hazards of operating a farm, and assumes all risk of accidents personally as well as for family, employees, or agents in pursuance of farming operations, or in performing repairs on building, fences, tile, and other improvements.

Section 6. Additional Agreements

_____	<i>Lessor</i>	_____	<i>Date</i>
By _____	<i>Lessor</i>  <i>Agent</i>	_____	<i>Date</i> 6/1/20
_____	<i>Lessee</i> 	_____	<i>Date</i> 6/1/20



Lessee

Date

Amendments to the Lease

A. Lessor's written consent to Lessee's participation in Items in Section 4, Clause B.

1. Item: _____ Description and restrictions: _____

_____ Date: _____ Lessor's Signature _____

2. Item: _____ Description and restrictions: _____

_____ Date: _____ Lessor's Signature _____

B. Other amendments:

1. see section 4 _____ Date _____ Lessor _____

2. _____ Date _____ Lessee _____

_____ Date _____ Lessor _____

3. _____ Date _____ Lessee _____

_____ Date _____ Lessor _____

_____ Date _____ Lessee _____


Extension	Extension	Extension
This lease shall be extended from <u>June 21, 2021</u>	This lease shall be extended from _____, 20____,	This lease shall be extended from _____, 20____,
to <u>July May 31, 2022</u>	to _____, 20____	to _____, 20____
Signed: _____, 20____	Signed: _____, 20____	Signed: _____, 20____
_____ Lessor	_____ Lessor	_____ Lessor
 Lessee	_____ Lessee	_____ Lessee



Exhibit D

3:19



< Fence



(530) 863-3188



Mar 13, 2019



0:00



0:32

Wendy this is Alex bird your neighbor over here in Pilot Hill. I'm just calling we would like to bring the cows back out and we're just kind of considering maybe putting that fence up, but obviously rather just let them run on everywhere if you're not. If you're not going to start any kind of construction or anything like that, so if you'd like to give me a call, I'd love to hear from you by [308-600-3188](tel:308-600-3188).



Call (530) 863-3188



Text (530) 863-3188

From: Wendy Digiorno wendy@allaboutequine.org
Subject: Fwd: Cattle/grazing
Date: June 2, 2020 at 11:26 AM
To: Thomas Swett tom@burtonswett.com



----- Forwarded message -----

From: Wendy Digiorno <wendy@allaboutequine.org>
Date: Thu, May 16, 2019 at 5:55 PM
Subject: Re: Cattle/grazing
To: <alexbyrd@thevollmancompany.com>

Hey Alex.....no luck w/the cattle? If not, still interested? One of our fosters has a small number he could bring out from his herd?

On Wed, Mar 20, 2019 at 9:10 AM Alexander Byrd <alexbyrd@gmail.com> wrote:
Thanks Wendy. I will advise the ranchers.

I have to think about the fencing, I have to get some advice on keeping cows in with non-climb.

I'd rather not build two fences right next to each other, but I am definitely having cows and I don't want them to creat problems on the fence line.

On Tue, Mar 19, 2019, 9:31 AM Wendy Digiorno <wendy@allaboutequine.org> wrote:
Hey Alex....

Thanks for VM. I understand the grazing isn't significant \$, just wondering about actual lease. I didn't see one before....I guess the other question is damages.....whether fencing (or they get out and in accident coming off one of our properties).

Agree on Having them there, and help with fire prevention. I have no idea what's happening with timing on our things, probably not likely but were pushing to get started. It may not be before June or July, but I'd like to think so.

Re:fencing, we've purchased 5' no-climb horse wire and t-posts....would love help w/installation on N and W border Areas, so it's there or should we need it.....but we can't complete entirely until grading is one. (We will need gates over the ditch areas.)

Wendy Digiorno
All About Equine Animal Rescue, Inc.
(916) 520-4223
allaboutequine.org



"By saving the life of one horse, we may not be changing the world, but we are changing the world for that one horse." - Author Unknown



[Event Information Here](#)

Join Us at [Horse Expo](#)



MURIETA EQUESTRIAN CENTER

MAY 9-12, 2019

----- Forwarded message -----

From: Wendy Digiorno <wendy@allaboutequine.org>
Date: Mon, Mar 11, 2019 at 9:08 PM
Subject: Cattle/grazing
To: <alexbyrd@thevollmancompany.com>

Hi Alex,

I got your message about the cattle. What are you all thinking? I have a BOD meeting tomorrow evening and can put it out there.

We're open to it, but need more info and with caveat...we are working on permits....and fencing as soon as ground dries up a bit. i'm not sure of timing w/permit approvals or what conflicts or concerns or interference might come up. I've got an email out to our insurance co, too.

Do they have a grazing agreement available to preview?

While we're here, we've noticed the gate has been left open/unlocked on several occasions. The gate needs to stay locked and secure, please.

Thanks,

Wendy Digiorno
All About Equine Animal Rescue, Inc.
(916) 520-4223
allaboutequine.org



"By saving the life of one horse, we may not be changing the world, but we are changing the world for that one horse." - Author Unknown



[Event Information Here](#)

Join Us at Horse Expo



MURIETA EQUESTRIAN CENTER

MAY 9-12, 2019

Exhibit E

Sec. 130.30.090 - Gates.

The placement of gates across county-maintained rights-of-way shall be prohibited. The following regulations establish a supplemental review and approval procedure for placing gates across non-county maintained roads or private driveways entering residential and nonresidential development. **The regulations in this section do not apply to gates serving agricultural uses.**

- A. Single- and Multi-unit Residential Development. Single- and multi-unit residential dwellings located on one lot are allowed to construct gates across driveways providing the gates are located a minimum of 20 feet from the edge of pavement, will not swing into a county right-of-way or non-county maintained road or alley, are constructed consistent with applicable fire and building codes, and are in compliance with Subsections D.2 to D.5 (Design Standards for Gated Developments), inclusive, and D.9 ("Anti-directional" devices...) below in this Section.
- B. Nonresidential Development. An Administrative Permit is required, in compliance with Section 130.52.010 (Administrative Permit, Relief, or Waiver) in Article 5 (Planning Permit Processing) of this Title, to establish gates at nonresidential driveway entrances that will prohibit free access/egress to and from the site by either remaining closed during business hours, such as with manned or automatic toll booths, or when being used to prevent public access after close of business. In addition to requirements under Section 130.52.010 (Administrative Permit, Relief, or Waiver), the permit shall be in compliance with Subsections D.1 to D.5 (Design Standards for Gates Developments), inclusive, and D.9 ("Anti-directional" devices at gated entrances...) below in this Section.
- C. Residential Subdivisions. An Administrative Permit shall be required to establish gates across non-county maintained road(s) within a residential subdivision consisting of two or more lots, including condominium developments. An Administrative Permit to establish gates shall not be approved unless the Director finds all of the following:
 1. The gate will not impede public access to a public resource, such as a public park, or interfere with existing or planned traffic circulation patterns; and
 2. The project conforms to the standards of Subsection D (Design Standards for Gates Developments) below in this Section.
- D. Design Standards for Gated Developments. The following standards shall be required in the design of gated developments. Deviation from these standards shall require a Conditional Use Permit in compliance with Section 130.52.021 (Conditional Use Permits) in Article 5 (Planning Permit Processing) of this Title, except where conditions are included in a development plan permit or other project conditions.
 1. All Administrative Permits shall be subject to review by the Department of Transportation and the local fire district.
 2. Design and location of gates shall be consistent with Title 12 (Streets, Sidewalks, and Public Places) of the County Code of Ordinances.
 3. Road widths and gate openings shall conform to the minimum requirements of Title 14 Fire Safe Regulations.
 4. At least one lane in each direction shall provide a minimum of 14 feet of unobstructed vertical clearance.
 5. Gates shall be equipped with an emergency access lock system (approved by the fire department) that shall consist of a padlock in series on manual gates or a key switch on automatic gates. Automatic gates shall also be equipped with a receiver to allow remote activation by emergency vehicles to the satisfaction of the Sheriff's Department and the applicable fire department. Automatic gates shall be equipped with a mechanical release and a loop system to keep the gate open as long as traffic is passing through, and shall be designed to remain in the unlocked position during a power failure.

6. Gated entrances shall be designed in compliance with the Design and Improvement Standards Manual (DISM)/Land Development Manual (LDM), or successor document as to approach distance between the gate and the road in order to accommodate vehicular stacking, and between the gated entrance and the gate controller to allow vehicles to turn around within the driveway without backing onto the adjacent road.
7. Where entrance gates will create a dead-end road in excess of 150 feet in length, an area shall be provided along said road to allow fire trucks and equipment to turn around. The gradient of the road shall be level enough to allow for safe parking of the emergency vehicle when it is necessary to exit the vehicle for manual gate activation.
8. One pedestrian access shall be provided at each gated entrance to a residential or non-residential development. This requirement does not apply to a gate to a single family residence.
9. "Anti-directional" devices at gated entrances and exits, such as metal spikes that can cause tire damage, are prohibited.
10. Unless already provided for in the recorded Covenants, Conditions & Restrictions (CC&Rs) for the property or subdivision, a maintenance agreement shall be established and recorded for the gated development. The agreement shall identify, and at all times keep in effect, a legal entity responsible for maintaining the gates and associated features.