

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made and entered into as of November 17, 2015, by and between Cross-Complainant County of El Dorado (“the County”) on the one hand, and Cross-Defendants Bruce Wade and Claudia Wade (“the Wades”) on the other hand (collectively, “the Parties”), with reference to the following:

I. RECITALS

A. The Wades filed a Complaint on May 8, 2012 for public nuisance, private nuisance, trespass, intentional infliction of emotional distress, defamation per se, invasion of privacy, inverse condemnation, preliminary and permanent injunctions, and slander of title against the County, American River Conservancy (“ARC”), and Doe defendants in a lawsuit entitled *Bruce and Claudia Wade v. County of El Dorado, et al.*, Case No. PC20120264 in the Superior Court of California, County of El Dorado. The Wades later filed a First Amended Complaint in the Main Action, naming employees of ARC as individual defendants. (The Complaint and First Amended Complaint will be referred to herein collectively as the “Wade Complaint”).

B. On or about November 11, 2015, the Wades and the County entered into a settlement agreement relating to the Wade Complaint wherein the Wades agreed to release and forever discharge any and all claims against the County, including those set forth in the Wade Complaint, in exchange for a mutual waiver of costs and fees relating to the litigation of the Wade Complaint. The present Agreement is separate from, and in addition to, the settlement entered into between the Parties relating to the Wade Complaint.

C. In response to the Wade Complaint, the County filed a Cross-Complaint on July 12, 2012 against the Wades in Case No. PC20120264 asserting causes of action for trespass, private nuisance, and preliminary and permanent injunctions (“the County Cross-Complaint”). By way of the County Cross-Complaint, the County sought: (1) to confirm an easement in favor of the County and over the Wades’ driveway which was established by way of a 1985 Judgment in a prior lawsuit between predecessor owners of the County’s and Wades’ parcels at Chili Bar; (2) to obtain injunctive relief preventing the Wades from blocking or otherwise unreasonably restricting the County’s use of the easement; and (3) to obtain damages relating to the Wades’ conduct in (a) failing to honor the County’s easement; (b) building a driveway/access road across County property without the County’s permission; (c) continuing to use the County’s property, including the driveway/access road, without permission from the County; and (d) converting, and continuing use of, the County’s electrical source and box at Chili Bar.

D. On or about August 15, 2012, the Wades filed an Answer to the County Cross-Complaint denying liability and asserting twenty-seven affirmative defenses.

E. On November 3, 2015, the Wades and the County entered into a Stipulation By and Between Bruce and Claudia Wade and County of El Dorado Re County of El Dorado’s Easement Across Plaintiff’s Property. In the Stipulation, which was filed with the Court on November 4, 2015, the Wades stipulated to the easement asserted in the County Cross-Complaint.

F. The County and the Wades have agreed to resolve and settle the disputes between them relating to the County Cross-Complaint, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

II. COVENANTS, PROMISES, AND OBLIGATIONS

1. Recitals and Acknowledgments. Recitals A through F, inclusive, are incorporated herein for all purposes and are a material part of this Agreement

2. Agreements. The Parties hereby agree as follows:

(a) The Wades shall pay the total sum of Eleven Thousand Five Hundred Dollars (\$11,500.00) to the County, payable to the "County of El Dorado" within 30 days of the Effective Date of this Agreement.

(b) The Wades shall pay all construction costs relating to the improvement and construction of a road adjacent to their existing paved driveway which provides access to the County's upper parcel and water tank located thereon ("the new road"). The Parties met and conferred on November 11, 2015 and discussed the scope of work necessary to improve and construct the new road. Attached hereto as Exhibits A and B are a plan map and final written estimate and scope of work from Van's Paving & Grading, Inc., a licensed contractor, relating to the work. The Wades shall pay all necessary additional costs as they might arise during actual construction in order to complete construction. The County shall provide an inspector to inspect the improvement/construction of the new road. \$1,500 of the \$11,500 payment identified in Section II 2(a) has been allocated for this purpose; and the Wades shall not be required to pay any additional sums for the County inspector. The improvement/road construction contemplated herein shall be completed by June 1, 2016.

(c) The Wades shall pay all geotechnical engineering and soils testing necessary to complete the improvement/construction set forth in Section II 2(b) of this Agreement. The Wades have hired Youngdahl Consulting Group, Inc. for this purpose at their own, sole cost. Youngdahl shall inspect the earthwork construction to verify that the 1 [foot horizontal] : 1 [foot vertical] slope will be sufficient in the shale. Additionally, Youngdahl shall verify sufficient soils compaction, including sub-grade and Aggregate Base compaction.

(d) The Wades shall fully defend, indemnify and hold harmless the County, and its officers, officials, and employees, relating to any and all claims, causes of action, damages, losses, attorneys' fees, and costs, incurred by the County arising out of the performance of the work contemplated for the improvement/construction set forth in Section II 2(b) of this Agreement.

- (e) The agreement between the Wades and Van's Paving & Grading, Inc., a licensed contractor, relating to the improvement/construction set forth in Section II 2(b) of this Agreement shall include an indemnity and hold harmless provision wherein Van's agrees to defend, indemnify, and hold harmless the County relating to the improvement/construction set forth in Section II 2(b) of this Agreement. The agreement between the Wades and Van's shall also require that the County, including its officers, officials, and employees, be named as an additional insured on Van's general liability and automotive policies.
- (f) Upon completion of the improvement/construction identified in Section II 2(b) of this Agreement, the Wades will sever from their own parcel and transfer title to the new road to the County.
- (g) The Wades shall transfer the electric meter/box and related account with PG&E, at issue in the County Cross-Complaint, into the County's name within 30 days of the Effective Date of this Agreement. The Wades will also pay any and all administrative costs charged by PG&E to effectuate the transfer.
- (h) The Wades shall unhook their electrical gate from the aforementioned electric meter/box within 30 days of the Effective Date of this Agreement, and shall find an alternative source of electricity to power their gate.
- (i) The Wades shall, within 90 days of the Effective Date of this Agreement, purchase the "triangle" of County property upon which the driveway/access road at issue in the County Cross-Complaint currently crosses at a price assessed by an independent appraiser. The Wades shall pay all costs related to said independent appraisal. Upon payment of the purchase price, the County shall sever from their own parcel and transfer title to the "triangle" to the Wades.

III. MUTUAL RELEASES, WAIVER AND DISMISSAL

3. Release and Dismissal by County. In consideration of and for the payment, promises, covenants and execution of this Agreement, and except for the obligations expressly set forth in this Agreement, the County hereby releases and forever discharges the Wades, and each of them, and their agents, attorneys, successors and assigns, from any and all claims and potential claims, causes of action, damages, costs, expenses and attorneys' fees which the County now has, or which may hereafter accrue or otherwise be acquired, on account of, or relating to, the issues, claims, and/or causes of action set forth in the County's Cross-Complaint.

As additional consideration of and for the payment, promises, covenants and execution of this Agreement, the County will execute a dismissal with prejudice as to all causes of action asserted in the Cross-Complaint within 30 days of the Effective Date of this Agreement.

4. Release by Wades. In consideration of and for the promises, covenants and execution of this Agreement, and except for the obligations set forth in this Agreement, the

Wades, and each of them, hereby release the County, and its officers, officials, Board of Supervisor members, employees, agents, attorneys, including but not limited to County Counsel and outside counsel retained by the County, successors and assigns, from any and all claims and potential claims, causes of action, damages, costs, expenses and attorneys' fees which the Wades now have, or which may hereafter accrue or otherwise be acquired, on account of, or relating to, the issues, claims, and/or causes of action set forth in the County's Cross-Complaint.

5. Unknown Claims; Waiver of Section 1542. The Parties, and each of them, acknowledge that, following execution of this Agreement and the effectiveness of the above releases, they may discover matters relating to the claims being released which had they been known before the execution, would have caused them not to enter into this Agreement. Nevertheless, the Parties assume this risk and hereby acknowledge that as to claims being released, they waive any rights and benefits arising from section 1542 of the California Civil Code, which states:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

The parties acknowledge that they have been advised to seek independent legal advice as to the waiver of these claims and have sought such advice.

III. GENERAL PROVISIONS

6. Effective Date. The Effective Date, as used in this Agreement, shall be the date when this Agreement is fully executed and delivered by the County, following the execution and delivery of this Agreement by the Wades.

7. Authorization and Capacity. The Parties each represent to the other that he/she/it is fully authorized, under all applicable laws and otherwise, to execute this Agreement as an enforceable obligation and to perform fully and completely the obligations hereunder. The Parties each further represent to the other that they have the capacity to execute this Agreement.

8. Attorneys' Fees. The Wades, and each of them, shall bear their own attorneys' fees and costs arising out of, and/or related to, the County's Cross-Complaint, and neither the County, nor the County's officers, officials, Board of Supervisor members, employees, agents, attorneys, including but not limited to County Counsel and outside counsel retained by the County, successors or assigns, shall be liable or otherwise responsible for any such attorneys' fees or costs.

Except as stated and required in Section II 2(d), and (e) of this Agreement, the County shall bear its own attorneys' fees and costs arising out of, and/or related to, the County's Cross-Complaint, and neither the Wades, nor their agents, attorneys, successors or assigns, shall be liable or otherwise responsible for any such attorneys' fees or costs.

Notwithstanding the above, should any motion, or separate action, be brought in connection with the enforcement or interpretation of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs relating to any such motion or action.

9. Enforcement and Jurisdiction. The Parties hereby agree that this Agreement is fully enforceable pursuant to California Code of Civil Procedure § 664.6, which states: "If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement." Any Party may invoke the jurisdiction of the Court in Case No. PC20120264 to enforce the terms of this Agreement. Contemporaneously with the execution of this Agreement, the Parties shall sign a stipulated request to be filed with the Court requesting that the Court retain jurisdiction to enforce the settlement until performance in full of the terms of this Agreement.

10. Assignment. The Parties hereby represent that they own all claims hereby released, and that they have not assigned any claim to another party, insurance carrier, or to any third party. The parties agree that they are the owners of all subrogation rights related to the Cross-Complaint, including attorneys' fees and costs of suit.

11. Representation by Counsel. Each Party acknowledges that (i) it has had the opportunity to be represented by independent legal counsel of its own choice throughout all of the negotiations which preceded the execution of this Agreement, and retained counsel, (ii) it has executed this Agreement with the consent and on the advice of such independent legal counsel, (iii) it and its counsel have had an adequate opportunity to make whatever investigation or inquiry they may deem necessary or desirable in connection with the subject matter of this Agreement prior to the execution hereof and the delivery and acceptance of the consideration specified herein, and (iv) it has executed this Agreement voluntarily, knowingly, and without coercion.

12. Binding on Successors. This Agreement shall be binding upon the Parties and their respective heirs, representatives, successors and assigns. All of the covenants and agreements herein contained in favor of the Parties are for the express benefit of each and all of them.

13. Non-Assignability. Neither this Agreement nor any rights or obligations hereunder shall be assigned or transferred by any Party, in whole or in part, by operation of law or otherwise, without the prior written consent of the other Parties. Any attempted assignment without such consent shall be void.

14. No Third Party Beneficiaries. Except to the extent expressly set forth herein, this Agreement does not create, and shall not be construed as creating, any rights enforceable by any person not a Party to this Agreement.

15. Other Documents. The Parties agree to execute any agreement or other documents that are required in order to effectuate the terms, conditions, purposes and objectives of this Agreement.

16. Severability. Should any part, term or provision of this Agreement be declared or determined by any court to be illegal or invalid, such part, term or provision shall be deemed not to be a part of this Agreement and the remainder of the Agreement shall remain valid and enforceable.

17. Integration/Entire Agreement. This Agreement and any documents, instruments and/or agreements referred to herein, and any other agreements being executed concurrently herewith, set forth the entire agreement between the Parties with regard to the subject matter hereof. All agreements, covenants, representations and warranties, express or implied, oral and written, of the parties with regard to the subject matter hereof are contained herein, in any exhibits hereto, and in any documents, instruments, and agreements referred to herein, or implementing the provisions hereof. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any Party to another with respect to the subject matter of this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter hereof are waived, merged herein and therein and superseded hereby and thereby. This is an integrated agreement. Each of the Parties acknowledges that no party or agent or attorney of any other Party has made any promise, representation or warranty whatsoever, express or implied, written or oral, not contained herein concerning the subject matter hereof to induce it to execute this Agreement, and each of the Parties acknowledges that it has not executed this Agreement in reliance on any promises, representation or warranty not contained herein.

18. Amendment. No modification, amendment or waiver of any of the provisions of this Agreement shall be effective unless in writing signed by all the Parties.

19. Waiver. The failure to enforce at any time any of the provisions of this Agreement or to require at any time performance by another Party of any of the provisions hereof shall in no way be construed to be a waiver of said provision or to affect either the validity of this Agreement, or any part hereof, or the right of any Party thereafter to enforce each and every such provision in accordance with the terms of this Agreement. Any waiver of any condition in, or breach of, this Agreement in a particular instance, shall not operate as a waiver of other or subsequent conditions or breaches of the same or a different kind. The Parties' exercise or failure to exercise any rights under this Agreement in a particular instance shall not operate as a waiver of their right to exercise the same or different rights in subsequent instances.

20. Captions. The captions of the various paragraphs herein are for convenience only, and none of them is intended to be any part of the body or text of this Agreement nor is intended to be referred to in construing any of the provisions hereof.

21. Interpretation. This Agreement has been prepared and negotiations in connection therewith have been carried on by the joint efforts of the Parties. This Agreement is to be construed and fairly and not strictly for or against any of the Parties hereto.

22. Counterparts. This Agreement may be executed in any number of counterparts, any of which shall be deemed to be the original. Signatures by email or facsimile shall be effective as originals.

23. Choice of Law. Any and all disputes arising with respect to this Agreement shall be determined in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and their attorneys have indicated their approval as to form by their respective signatures in the appropriate spaces below.

Dated: November 23, 2015



Bruce Wade

Dated: November 23, 2015



Claudia Wade

Dated: December __, 2015

County of El Dorado

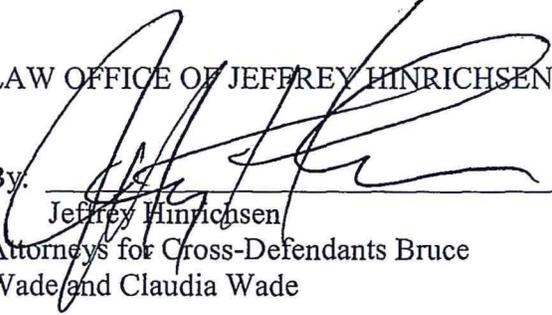
By: _____

Title: _____

Approved as to Form:

Dated: November 23, 2015

LAW OFFICE OF JEFFREY HINRICHSEN

By: 

Jeffrey Hinrichsen
Attorneys for Cross-Defendants Bruce
Wade and Claudia Wade

Dated: November __, 2015

CAULFIELD LAW FIRM

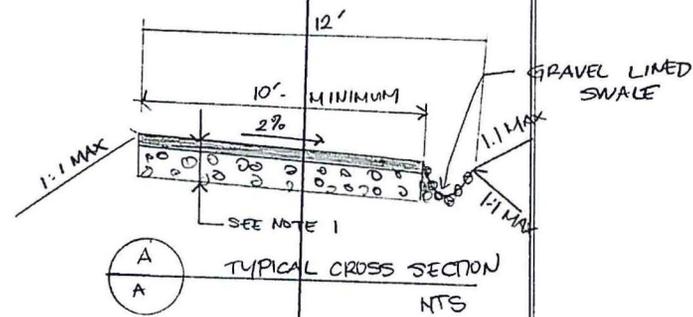
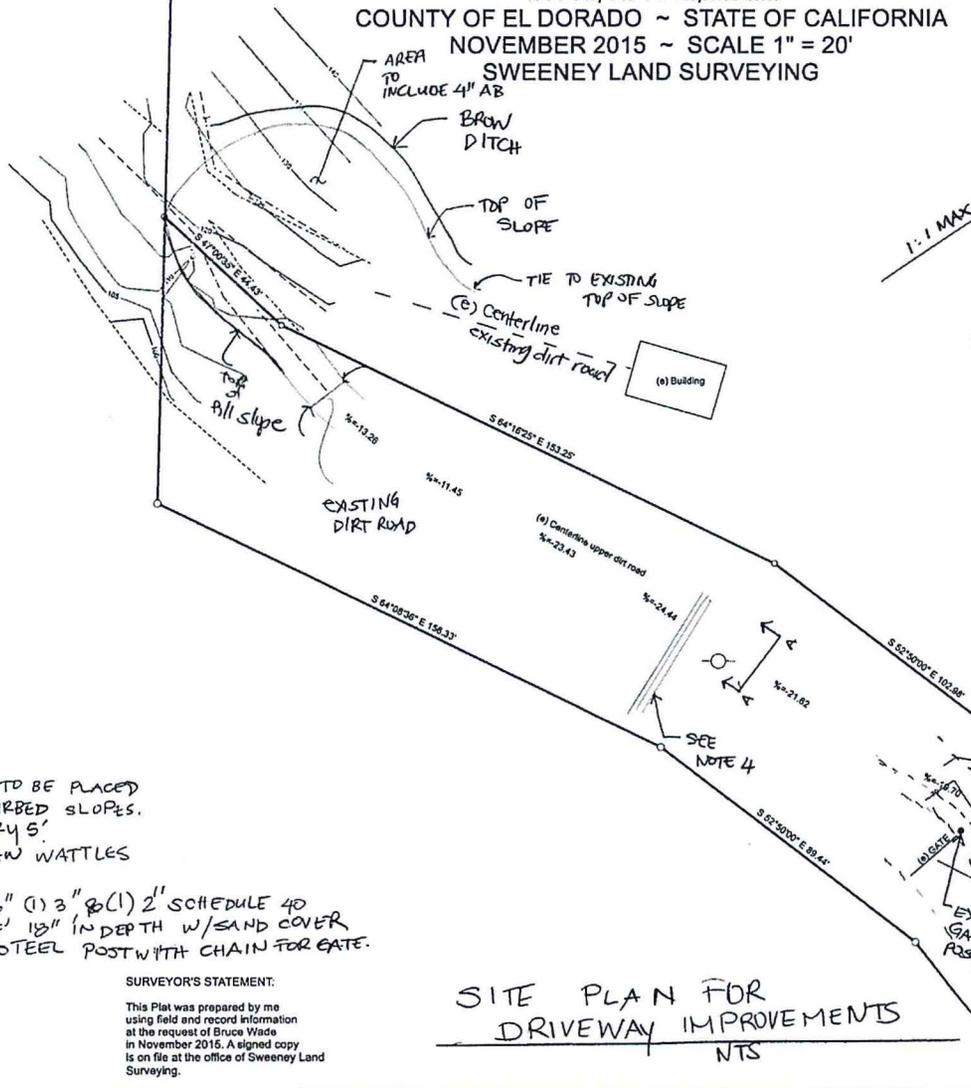
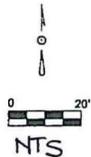
By: _____

Andrew T. Caulfield
Attorneys for Cross-Complainant County of
El Dorado

EXHIBIT A

TOPOGRAPHIC PLAT

BEING A PORTION OF THE SE ¼ OF SEC 26
 T.11 N., R. 10 E., M.D.M.
 COUNTY OF EL DORADO ~ STATE OF CALIFORNIA
 NOVEMBER 2015 ~ SCALE 1" = 20'
 SWEENEY LAND SURVEYING



- NOTES:
1. 3/4" PG604 HDT MIX ASPHALT OVER 2" AB WHERE GRADES EXCEED 15%
 2. 4" AB ONLY WHERE GRADES EQUAL TO OR LESS THAN 15%

CONTRACTORS NOTE:

1. Horizontal and Vertical positions on utilities to be verified in the field.
2. STRAW MAT TO BE PLACED ON ALL DISTURBED SLOPES. STAPLE EVERY 5'
3. PLACE STRAW WATTLES AS NEEDED.
4. INSTALL (1) 6" (1) 3" & (1) 2" SCHEDULE 40 PVC SLEEVE 18" IN DEPTH W/SAND COVER
5. INSTALL 1 STEEL POST WITH CHAIN FOR GATE.

LEGEND

- Power Pole
- (e) Toe
- - - (e) Top
- Property corner

SURVEYOR'S STATEMENT:

This Plat was prepared by me using field and record information at the request of Bruce Wade in November 2015. A signed copy is on file at the office of Sweeney Land Surveying.

SITE PLAN FOR DRIVEWAY IMPROVEMENTS
 NTS

EXHIBIT B

Van's Paving & Grading Inc

5310 Merchant Circle
Placerville, CA 95667

*Providing Quality Service
In El Dorado County Since 1958*

Claudia Wade
1740 Chili Bar Ct
Placerville, Ca 95667

Estimate

Date	Estimate No
11/13/2015	4626

530 626-8059 Fax # 530 622-6787

mona@vanspaving.com

			P.O.Number
			205 5635
Description	Qty	Rate	
ACCESS ROAD			
1) Roadway slope to remain the same. Excavate cut side of existing access road to provide for 12' wide path of travel. Native shale rock to be d1:1 slope. Construct turn area at top. Place and compact base rock to a depth of 4". Pave with 3/4" PG64 hot mix asphalt.			
Excavation and compaction, LS	1	8,464.00	8,464.00
Base rock, 320'x 12' = 3840 SF	3,840	1.92	7,372.80
Asphalt paving, 3840 SF	3,840	2.78	10,675.20
2) Place straw mat on all disturbed slopes. Staple every 5'. 15 rolls Material and labor	15	181.66	2,724.90
3) Place straw wattle as needed. Materials and labor	1	750.00	750.00
4) Trench and install (1) 6" (1) 3" and (1) 2" sch 40 PVC sleeve 18" in depth with sand cover. Ends to be marked with 2"x 4"s. Equipment, labor and materials LS	1	670.00	670.00
5) Install (1) steel post. Install chain for gate. Lock to be provided by other. Equipment, labor and materials LS	1	600.00	600.00
			\$31,256.90

Authorized by **Mona Warren**

Acceptance Signature _____

Payments are to be made as follows: PAYMENT UPON COMPLETION OF ITEM. Any cost for permits, testing, inspections, surveying or rock removal beyond normal excavation procedures or blasting would be an extra, if required. 2% late charge will be applied to unpaid balance monthly. This proposal may be withdrawn if not signed and returned in 30 days. CONTRACTOR LIC #884557