

Petition #828

PETITION TO ABANDON A PORTION OF THE OLD
ALIGNMENT OF OUSEL FALLS ROAD.

A PORTION OF THE OLD ALIGNMENT OF OUSEL FALLS
ROAD IN GALLATIN COUNTY, MONTANA DESCRIBED AS
BEING LOCATED IN A TRACT OF LAND BEING LABELED
TRACT 1 OF CERTIFICATE OF SURVEY 2343, SAID
TRACT BEING LOCATED IN THE SOUTHWEST QUARTER
AND SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP
6 SOUTH, RANGE 3 EAST, PMM. GALLATIN COUNTY,
MONTANA AND ALSO IN THE NORTHEAST QUARTER OF
SECTION 2, TOWNSHIP 7 SOUTH, RANGE 3 EAST, PMM

Granted Feb. 24, 2009

PETITION TO ABANDON COUNTY ROAD

* * * * *

TO: THE BOARD OF COUNTY COMMISSIONERS, GALLATIN COUNTY, MONTANA:

COME NOW the undersigned freeholders of the road district of Gallatin County, Montana, and petition this Board, pursuant to § 7-14-2601, MCA, to abandon a County road located in Gallatin County, Montana, and represent as follows:

1. The road to be abandoned is particularly describes as follows:

A tract of land being labeled Tract 1 of Certificate of Survey No. 2343, said tract being located in the Southwest Quarter and Southeast Quarter of Section 36, Township 6 South, Range 3 East, P.M.M., Gallatin County Montana, and also in the Northeast Quarter of Section 2, Township 7 South, Range 3 East, P.M.M., Gallatin County Montana.

Certificate of Survey No. 2343.

2. The road is commonly known as: "Old Alignment of Ousel Falls Road."

3. The general route of the road is described as follows:

The Old Alignment of Ousel Falls Road was described in *Michel v. McBride*, Cause No. 16623, Gallatin County, October 5, 1965, as "A roadway which . . . ran generally along the course of the West Fork of the Gallatin River"

4. The lands and owners immediately adjacent to the road are:

///

///

///

///

LANDOWNER(S)/MAILING ADDRESS

- a. Stephen R. Brown
Garlington, Lohn & Robinson, PLLP
199 West Pine Street
P.O. Box 7909
Missoula, MT 59807
Attorneys for Yellowstone Mountain Club, LLC

- b. Jeremy LeFeber
Berg, Lilly & Tollefsen
A Professional Corporation
1 West Main Street
Bozeman, MT 59715-4642
*Attorneys for Moondance Homeowners'
Association, Inc., and Jerry K. and Linda L. Wortman*

- c. William R. Reier, Jr.
3610 W. Broadwater Street
Bozeman, MT 59715

- d. Roy and Lonna Reynolds
P.O. Box 161702
Big Sky, MT 59716-1702

- e. Buod Holdings, LLC
c/o William David Dunn
Gardere Wynne Sewell LLP
Thanksgiving Tower
1601 Elm Street, Suite 3000
Dallas, TX 75201
PERSONAL & CONFIDENTIAL

- f. R. Stephen Conley and Ingela E. Conley
1842 Coral Circle North
Fort Myers, FL 33903-5027

- g. Lloyd H Warren
15900 Flint
Overland Park, KS 66062

- h. Emanuel V. And Sue E. DiMiceli
903 Paradise Way
Palo Alto, CA 94306-2636
- i. Christopher Vance and Kristi Chester
23 Montcalm St.
San Francisco, CA 94110-5323

5. Except for the following landowners, the landowners identified in ¶ 4 consent to the abandonment (if any of the adjacent landowners do not consent, identify them in this paragraph):

All adjacent landowners were contacted regarding the abandonment of Old Ousel Falls Road by virtue of being sent a letter explaining what was being abandoned and what it meant. No landowner objected. *See Exhibit A.*

In addition, this same property was the subject of a lawsuit to have title to Old Ousel Falls Road quieted. *See Complaint, Exhibit B; Summons by Publication, Exhibit C; and Affidavit of Publication, Exhibit D.* The District Court granted two Judgments in that lawsuit after only one party appeared. *See Exhibits E and F.*

6. If a landowner stated in ¶ 4 cannot be found, to determine the landowner's (or landowners') consent, identify the landowner(s) and state the efforts made to locate the landowner(s):

N/A

7. To the best of our knowledge, the following are landowners who do not own land immediately adjacent to the road, but who could be affected by the abandonment of the road:

NONE. The Old Alignment of Ousel Falls Road has not been used since 1997, when the Petitioners were granted a new public road easement. That easement has been passed and in use by all members of the public, and landowners who previously used the old alignment of Ousel Falls Road for accessing property. No landowner has or will be denied access to his or her property, or in any other way affected by this abandonment.

8. The necessity for and advantage of the abandonment of the road are as follows:

The purpose of officially abandoning the Old Alignment of Ousel Falls Road is to

quiet title, and prevent any future dispute over that road, so as to facilitate the development of lands within the rights-of-way of the old road. To further effectuate this matter, Petitioners Simkins Holdings and Westland Enterprises filed a quiet title action in the Gallatin County Eighteenth Judicial District Court. *See* Exhibit B. The district court granted *Judgments*, in favor of Simkins Holdings and Westland Enterprises, on the quiet title action. *See* Exhibits E and F. Only one person affected, or potentially affected, by the quiet title action appeared, and no person affected, or potentially affected, objected in any way to the *Judgments* of the district court.

RESPECTFULLY SUBMITTED this 19th day of December, 2008.

Brian K. Gallik
Trent M. Gardner
Jim Barr Coleman
GOETZ, GALLIK & BALDWIN, P.C.
35 North Grand
P.O. Box 6580
Bozeman, MT 59771-6580
Ph: (406) 587-0618
Fax: (406) 587-5144

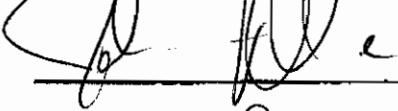
By



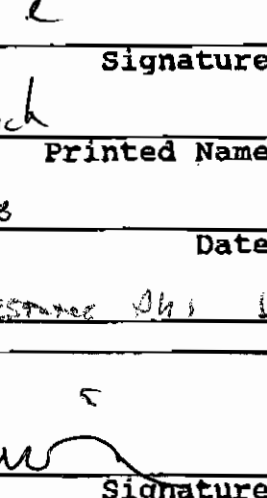
Jim Barr Coleman

ATTORNEYS FOR WESTLAND
ENTERPRISES, INC., AND SIMKINS
HOLDINGS, LLC,

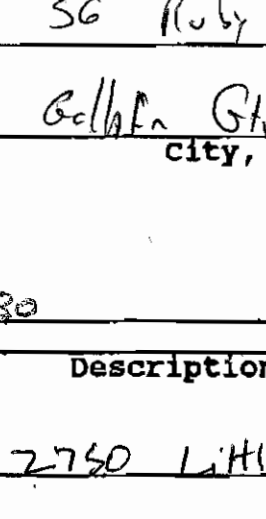
The undersigned state that they are owners of real property in the Gallatin County road district which is taxable for the county general road tax. If more than 10 freeholders sign, use additional pages.

1. ✓  Signature 36 Ruby Range Address
John Radich Printed Name Gallatin Glac MT 59716 City, State & Zip
10/22/08 Date

Spanish peaks ESTATE Sh1 Lot 30
Description of Property

2. ✓  Signature 2750 Little Cayote Address
Andrew Schreiner Printed Name Big Sky, MT 59716 City, State & Zip
10/23/08 Date
Box 160803

Meadow Village Lot 36 B14
Description of Property

3. ✓  Signature 2980 Looking Glass R Address
Noriko Kirschmayr Printed Name Big Sky MT 59716 City, State & Zip
10/23/08 Date
Box 161758

Meadow Village Lot 27 B13
Description of Property

4. ✓ Kim Signature 33 OnePeak Drive Address
Kim Lohss Printed Name Big Sky, MT 59714 City, State & Zip
10/23/08 Date 203 Boyd Rd
Bozeman, MT 59718

House in Gallatin County James C Boyd Sub
G-34-D Lot 2A2
 Description of Property

5. ✓ Jennifer Radick Bierman Signature 119 Robert Ct Address
Jennifer Radick Bierman Printed Name Bozeman, MT 59718 City, State & Zip
10/23/08 Date

House in Gall. County Greenhills Ranch
Lot 36 B16
 Description of Property

6. ✓ [Signature] Signature 2397 Rugby Ct Address
BRIAN D MAT Printed Name BOZEMAN, MT 59715 City, State & Zip
10/23/08 Date

Rugby Ct Condo Unit 2397

Description of Property

7. [Signature] Signature 811 Oconnell Drive Address
No Kevin Emborg Printed Name Bozeman, MT 59715 City, State & Zip
10/23/08 Date

Grats 2nd Lot 16

Description of Property

8. ✓ Mark Sevenson Signature 10 TENNIS COURT Address
Mark SEVENSON Printed Name BOZEMAN MT 59718 City, State & Zip
10-23-2008 Date

W/1/2 CT EST 2 Lot 88

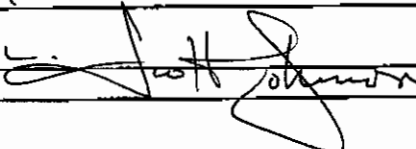
9. See attached page 8 Description of Property
See attached page 8 Signature Address
____ Printed Name City, State & Zip
____ Date

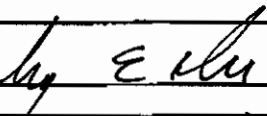
10. _____ Description of Property
____ Signature Address
____ Printed Name City, State & Zip
____ Date


____ Description of Property

Additional Names

ADDRESS

9. ✓ Scott & MARTHA Johnson
 P.O. Box 160730 Big Sky, MT 59716
 1221 Chief Joseph Trail.
 Meadow Village Lot 35 Bl 4 

10. ✓ Greg Isler.
 2903 Lily drive
 Bozeman MT. 59418 
 Harvest Cr 2 Lot 2 Bl 18

11. ✓ Susanne Schreiner
 PO 160507 
 Big Sky, MT 59716
 Meadow Village Lot 36 Bl 4

7. _____

PROPERTY DESCRIPTION

8. _____

PROPERTY DESCRIPTION

9. _____

PROPERTY DESCRIPTION

10. _____

PROPERTY DESCRIPTION

JAMES H. GOETZ
BRIAN K. GALLIK
ROBERT K. BALDWIN
J. DEVLAN GEDDES
TRENT M. GARDNER
BONNIE L. JARRETT
JIM BARR COLEMAN
BENJAMIN J. ALKE

GOETZ, GALLIK & BALDWIN P.C.

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November 5, 2008

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

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*Attorneys for Yellowstone Mountain
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Buod Holdings, LLC
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Lloyd H Warren
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Overland Park, KS 66062

Roy and Lonna Reynolds
P.O. Box 161702
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Emanuel V. And Sue E. DiMiceli
903 Paradise Way
Palo Alto, CA 94306-2636

Christopher Vance and Kristi Chester
23 Montcalm St.
San Francisco, CA 94110-5323

RE: Quiet Title Action/Ousel Falls Road; Cause No. DV-05-595

Dear All:

This firm represents Simkins Holdings, LLC, and Westland Enterprises, Inc., in the quiet title action involving the Old Ousel Falls Road. As you should know, a quiet title action was filed sometime ago to have Simkins Holdings and Westland Enterprises



All Landowners
November 5, 2008
Page 2

determined to be the holders, free and clear, of the land which comprises the "Old Alignment of Ousel Falls Road."

The Old Ousel Falls Road has been out of use for some time, and the new and current Ousel Falls Road is in use, and should stay in use. To complete the quiet title action, Simkins Holdings and Westland Enterprises are going to petition the Gallatin County Commissioners to officially abandon the "Old Alignment of Ousel Falls Road" as a County road. Part of the requirements for petitioning for that abandonment is that we contact all "affected" landowners, and notify the Commissioners whether they consent to the abandonment.

Simkins Holdings and Westland Enterprises will presume that you do consent to the abandonment of the Old Ousel Falls Road, as it will have no effect on you or your property, and because you did not participate in the quiet title action before the Gallatin County District Court.

If for any reason you do not consent to the abandonment of the "Old Alignment of Ousel Falls Road," or if you have any questions, please contact me, "Jim Barr" Coleman, at (406) 587-0618, or 35 North Grand, Bozeman, Montana 59715. Otherwise, Simkins Holdings and Westland Enterprises will proceed with filing the abandonment papers within ten (10) days.

Thank you for your cooperation in this matter.

Sincerely,

GOETZ, GALLIK & BALDWIN, P.C.



Jim Barr Coleman

JBC/pal
cc: Clients
Brian K. Gallik

1 Brian K. Gallik
Trent M. Gardner
2 **GOETZ, GALLIK & BALDWIN, P.C.**
35 North Grand
3 P.O. Box 6580
Bozeman, MT 59771-6580
4 Ph: 406-587-0618
Fax: 406-587-5144
5

2005 SEP 27 PM 3 02

FILED

CLERK

6 ATTORNEYS FOR PLAINTIFFS
7

8 **MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY**

9 WESTLAND ENTERPRISES, INC., and
10 SIMKINS HOLDINGS, L.L.C.,

11 Plaintiffs,

12 v.

13 WILLIAM R. REIER, JR.; JOHN F. AND LAURA S.)
MICHEL; CATHERINE LOUISE THOMPSON; THE)
14 BLIXSETH GROUP, INC.; R. STEPHEN CONLEY AND)
INGELA E. CONLEY; LLOYD H. WARREN; JERRY K.)
15 AND LINDA L. WORTMAN; EMANUEL V. DIMICELI)
AND SUE E. DIMICELI; MICHAEL A. LAMPE AND)
16 SANDRA L. LAMPE; CHRISTOPHER VANCE AND)
KRISTI CHESTER; MOONDANCE HOMEOWNERS')
17 ASSOCIATION, INC.; and ALL OTHER PERSONS)
UNKNOWN, claiming or who might claim any right, title,)
18 estate, or interest in, or lien, or encumbrance upon, such)
property, or any thereof, adverse to plaintiffs' ownership,)
19 or any cloud upon plaintiffs' title thereto, whether such)
claim or possible claim be present or contingent,
20

21 Defendants.

Cause No. DV-05-595

COMPLAINT

22 COME NOW Plaintiffs, through their undersigned counsel, and for their Complaint for relief
23 against Defendants, allege as follows:
24

NATURE OF ACTION

25 1. This action is brought by Plaintiffs to obtain declaratory relief that no road easement
26 exists for a route described herein as the "old alignment of Ousel Falls Road."
27
28

EXHIBIT

1 **PARTIES**

2 2. Plaintiff Westland Enterprises, Inc. ("Westland") is a Montana business corporation
3 with its principal place of business in Bozeman, Montana. Among other things, Westland is engaged
4 in the business of real estate investment.

5 3. Plaintiff Simkins Holdings a Limited Liability Company ("Simkins") is a Montana
6 limited liability company with its principal place of business in Bozeman, Montana. Among other
7 things, Simkins is engaged in the business of real estate investment.

8 4. Plaintiffs Simkins and Westland are the owners of real property located at Big Sky,
9 in Gallatin County, Montana, and more specifically described as

10 A tract of land being labeled Tract 1 of Certificate of Survey No. 2343, said tract
11 being located in the Southwest Quarter and Southeast Quarter of Section 36,
12 Township 6 South, Range 3 East, P.M.M., Gallatin County Montana, and also in the
Northeast Quarter of Section 2, Township 7 South, Range 3 East, P.M.M., Gallatin
County Montana.

13 This real property is referred to in this Complaint as "Plaintiffs' property." (Certificate of Survey
14 No. 2343 is attached as EXHIBIT A).

15 5. Defendant William R. Reier, Jr. is an individual and is the owner of a piece of land
16 known as "the Amended Subdivision Plot of Firelight Subdivision, Phase 1, Lot 1, Gallatin County,
17 Montana," which property is crossed by the route described herein as the "old alignment of Ousel
18 Falls Road." (The "Amended Plat of Firelight Subdivision, Phase I, is attached as EXHIBIT B).

19 6. Defendants John F. And Laura S. Michel are individuals and are the owners of a piece
20 of land known as "the Amended Subdivision Plot of Firelight Subdivision, Phase 1, Lot 2, Gallatin
21 County, Montana," which property is crossed by the route described herein as the "old alignment of
22 Ousel Falls Road." (See EXHIBIT B).

23 7. Defendant Catherine Louise Thompson is an individual and is the owner of a piece
24 of land known as "the Amended Subdivision Plot of Firelight Subdivision, Phase 1, Lot 3, Gallatin
25 County, Montana," which property is crossed by the route described herein as the "old alignment of
26 Ousel Falls Road." (See EXHIBIT B).

27 8. Defendant The Blixseth Group, Inc. is an Oregon Corporation registered to do
28 business in Montana and is the owner of a piece of land known as "the Amended Subdivision Plot

1 of Firelight Subdivision, Phase 1, Lot 4, Gallatin County, Montana,” which property is crossed by
2 the route described herein as the “old alignment of Ousel Falls Road.” (See EXHIBIT B).

3 9. Defendants R. Stephen Conley and Ingela E. Conley are individuals and are the
4 owners of a piece of land known as “the Amended Subdivision Plot of Firelight Subdivision, Phase
5 1, Lot 5, Gallatin County, Montana,” which property is crossed by the route described herein as the
6 “old alignment of Ousel Falls Road.” (See EXHIBIT B).

7 10. Defendant Lloyd H. Warren is an individual and is the owner of a piece of land
8 known as “the Amended Subdivision Plot of Firelight Subdivision, Phase 1, Lot 6A, Gallatin
9 County, Montana,” which property is crossed by the route described herein as the “old alignment of
10 Ousel Falls Road.” (See EXHIBIT B).

11 11. Defendants Jerry K. And Linda L. Wortman are individuals and are the owners of a
12 piece of land known as “the Amended Subdivision Plot of Firelight Subdivision, Phase 1, Lot 7A,
13 Gallatin County, Montana,” which property is crossed by the route described herein as the “old
14 alignment of Ousel Falls Road.” (See EXHIBIT B).

15 12. Defendants Emanuel V. DiMiceli and Sue E. DiMiceli are individuals and are the
16 owners of a piece of land known as “the Amended Subdivision Plot of Firelight Subdivision, Phase
17 1, Lot 8A, Gallatin County, Montana,” which property is crossed by the route described herein as
18 the “old alignment of Ousel Falls Road.” (See EXHIBIT B).

19 13. Defendants Michael A. Lampe and Sandra L. Lampe are individuals and are the
20 owners of a piece of land known as “the Amended Subdivision Plot of Firelight Subdivision, Phase
21 1, Lot 18A, Gallatin County, Montana,” which property is crossed by the route described herein as
22 the “old alignment of Ousel Falls Road.” (See EXHIBIT B).

23 14. Defendants Christopher Vance and Kristi Chester are individuals and are the owners
24 of a piece of land known as “the Amended Subdivision Plot of Firelight Subdivision, Phase 1, Lot
25 19A, Gallatin County, Montana,” which property is crossed by the route described herein as the “old
26 alignment of Ousel Falls Road.” (See EXHIBIT B).

27 15. Defendant MoonDance Homeowners’ Association, Inc. (f/k/a Firelight Estates
28 Homeowners Association) is a Montana non-profit corporation with property interests in the land

1 crossed by the route described herein as the "old alignment of Ousel Falls Road."

2 16. Plaintiffs do not know the true names of defendants ALL PERSONS UNKNOWN,
3 claiming or who might claim any right, title, estate, or interest in, or lien, or encumbrance upon, such
4 property, or any thereof, adverse to plaintiffs' ownership, or any cloud upon plaintiffs' title thereto,
5 whether such claim or possible claim be present or contingent, and therefore sues them by those
6 fictitious names. Plaintiffs are informed and believe and on that basis allege that each of those
7 defendants claim, or may claim, some interest in the route described in this Complaint as the "old
8 alignment of Ousel Falls Road."

9 **JURISDICTION AND VENUE**

10 17. This Court has jurisdiction of this proceeding as the subject properties are located in
11 Gallatin County.

12 18. This Court is the proper venue as the subject properties are located in Gallatin
13 County.

14 **GENERAL ALLEGATIONS**

15 19. The "old alignment of Ousel Falls Road" is identified as Ousel Falls Road on a
16 Gallatin County Clerk and Recorder's plat book. (A copy of the Gallatin County Clerk and
17 Recorder's plat book is attached as EXHIBIT C). That portion of the road identified on the plat
18 book as Ousel Falls Road, which crosses Plaintiffs' property, as well as the portion that crosses the
19 Firelight Subdivision, including the property of named Defendants, is what is referred to in this
20 Complaint as the "old alignment of Ousel Falls Road." The "old alignment of Ousel Falls Road"
21 was described in *Michel v. McBride*, Cause No. 16623, Gallatin County, October 5, 1965, as "a
22 roadway which . . . ran generally along the course of the West Fork of the Gallatin River . . ."

23 20. In 1997 the Plaintiffs' granted a public road easement over Plaintiffs' property (*see*
24 EXHIBIT A), which relocated the route of Ousel Falls Road (hereinafter "Ousel Falls Road") over
25 Plaintiffs' property. This public road easement is shown on Certificate of Survey No 2343 and is
26 identified on such survey as Doc. #2072629. (The survey attached as EXHIBIT D is labeled "Ousel
27 Falls Road Road Realignment" and shows the new easement as well as a portion of the "old
28 alignment of Ousel Falls Road").

1 21. A new, paved road was constructed over the public road easement granted in 1997
2 and since that time has provided public access through the Plaintiffs' property to the Ousel Falls area
3 and beyond. That road is identified and marked as Ousel Falls Road.

4 22. In conjunction with the construction of the paved Ousel Falls Road over the Plaintiffs'
5 property, the Ousel Falls Road was relocated over the named Defendants' properties. The Amended
6 Plat of Firelight Subdivision, Phase I, shows the "old alignment of Ousel Falls Road" and also shows
7 the present location of Ousel Falls Road. The plat contains the following comment:

8 The original Ousel Falls Road was abandoned and relocated pursuant
9 to the final plat approvals of Firelight Phase I Plat and Firelight Phase
10 I Amended Lots 6, 7, 8 by Gallatin County Commissioners. The Plat
 also dedicates Ousal [sic] Falls Road as shown to the public.

11 (See EXHIBIT B).

12 23. Uncertainty exists whether the Gallatin County Commissioners had the authority to
13 relocate Ousel Falls Road. If the Gallatin County Commissioners did not have the authority to
14 relocate Ousel Falls Road, a judicial decree is necessary to clarify that no easement presently exists
15 for the route described herein as the "old alignment of Ousel Falls Road."

16 24. In late 1997, or early 1998, after the Plaintiffs granted a public road easement for the
17 Ousel Falls Road, as it presently exists, Plaintiffs barricaded each end of the "old alignment of Ousel
18 Falls Road" which crossed their property, closing such route to the public and preventing any public
19 use of that route over their property.

20 25. Prior to January 1, 2000, the County approved the Firelight Subdivision and public
21 roads were granted within the subdivision. The "old alignment of Ousel Falls Road," which ran
22 through the Firelight Subdivision, was destroyed and homes now sit on or near the location of the
23 "old alignment of Ousel Falls Road."

24 26. For more than five years prior to the date of the filing of this Complaint, the public
25 has not used, or been allowed to use, the "old alignment of Ousel Falls Road."

26 27. For more than five years prior to the date of the filing of this Complaint, Plaintiffs,
27 or Plaintiffs' predecessors, and named Defendants and Defendants' predecessors in interest, have
28 been in exclusive control of the land which constituted the "old alignment of Ousel Falls Road."

1 28. The public has not been and will not be harmed in any manner by the closure of the
2 "old alignment of Ousel Falls Road," as the 1997 grant of public easement provides better access to
3 the public. This route is now known as Ousel Falls Road.

4 29. No easement for the "old alignment of Ousel Falls Road" is shown on Certificate of
5 Survey No. 2343, filed with the Clerk and Recorder of Gallatin County.

6 30. A notation for the "old alignment of Ousel Falls Road" has recently appeared on
7 surveys which have been commissioned for Plaintiffs' property. Thus, Plaintiffs bring this action
8 seeking an affirmative ruling that, if an easement ever did exist for the route described herein as the
9 "old alignment of Ousel Falls Road," such easement has been extinguished and/or relocated.
10 Plaintiffs have the right to obtain a judicial decree to be free from questions as to their legal rights.
11

12 **COUNT ONE - DECLARATORY RELIEF**
13 **(NO EASEMENT PRESENTLY EXISTS FOR THE ROUTE DESCRIBED**
14 **HEREIN AS THE "OLD ALIGNMENT OF OUSEL FALLS ROAD")**

14 31. Plaintiffs incorporate the foregoing allegations herein, as if set forth in full.

15 32. If any easement previously existed for the "old alignment of Ousel Falls Road," such
16 easement has not been used by the public or any other person for a period of more than five years,
17 which period is greater than the period prescribed for acquiring title by adverse possession. Further,
18 the public has been provided with an alternative means of access.

19 33. Plaintiffs desire to make clear that no easement exists for the route described herein
20 as the "old alignment of Ousel Falls Road."

21 34. Plaintiffs are entitled, pursuant to the power granted by § 27-8-201, MCA, to a
22 declaration by this Court that, if any easement previously existed, the requirements of § 70-17-111,
23 MCA, have been met and any easement for the route described herein as the "old alignment of Ousel
24 Falls Road" is extinguished.

25 35. Alternatively, Plaintiffs are entitled to a declaration that any easement for the route
26 described herein as the "old alignment of Ousel Falls Road" has been relocated to the present

27 ///
28 ///

1 location of Ousel Falls Road.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

4 1. For a declaration by this Court that no easement for the route described herein as the
5 "old alignment of Ousel Falls Road" exists and Plaintiffs are the owners of Plaintiffs' property free
6 of, and unencumbered by, such easement; and

7 2. For such other and further relief as the court deems proper.

8 RESPECTFULLY SUBMITTED this 27th day of September, 2005.

9
10 GOETZ, GALLIK & BALDWIN, P.C.

11
12
13 By: 

14 Brian K. Gallik

15
16
17
18
19
20
21
22
23
24
25
26
27
28 ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SURVEY NO. 2343

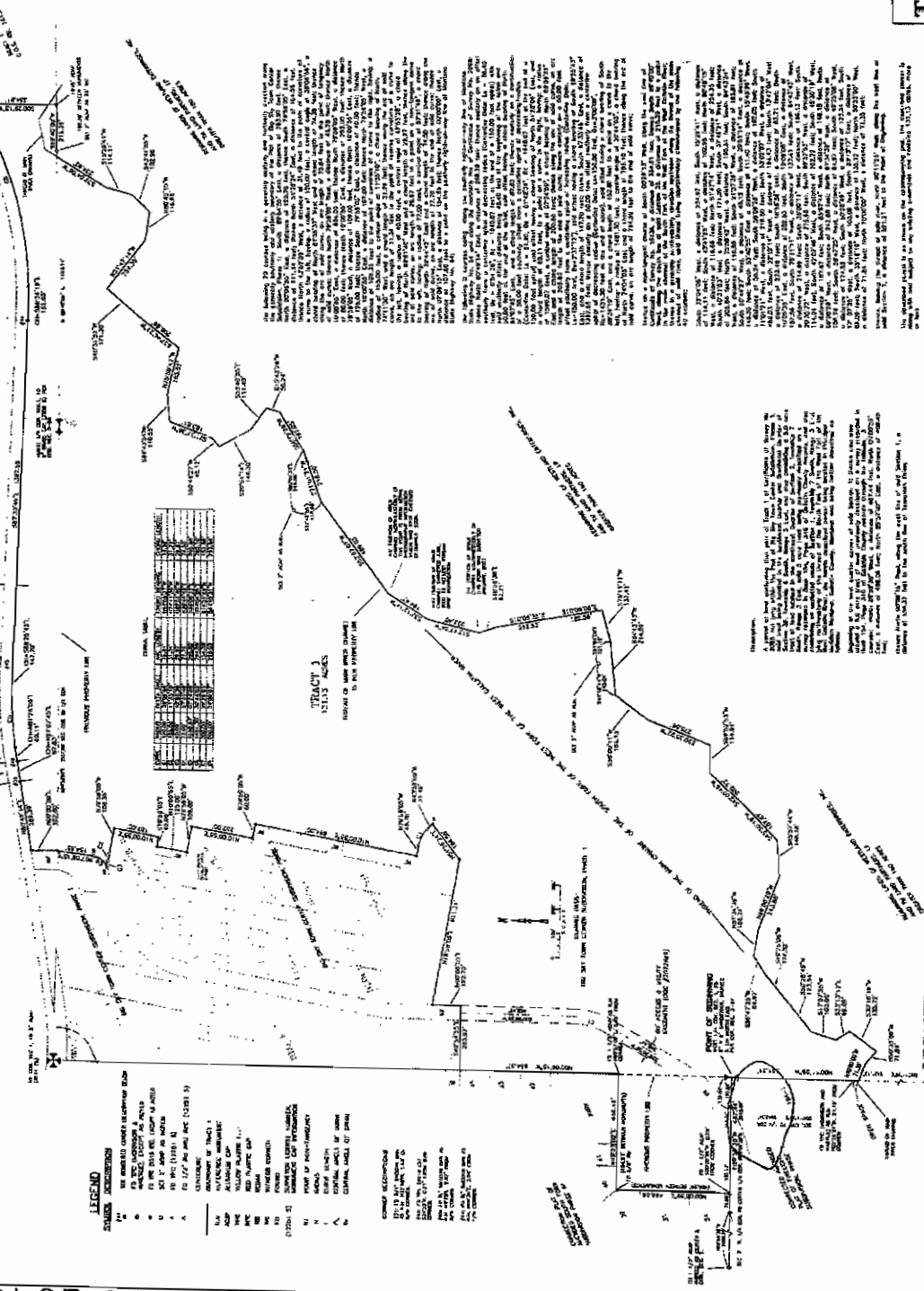
LOCATED IN THE NW 1/4 & NE 1/4 & SW 1/4 OF SECTION 1, NE 1/4 SEC. 2, T7S, R3E,
AND IN THE SW 1/4 & SE 1/4 OF SECTION 36, T6S, R3E, P.M.M.,
GALLATIN COUNTY, MONTANA
TOTAL AREA 131.13 ACRES

SHIRLEY COMMERCE, GALLATIN LAND AND MIN DEVELOPMENT, LLC
BY: _____
ATTORNEY AT LAW, MISSOULA, MONTANA
BY: _____
ATTORNEY AT LAW, MISSOULA, MONTANA

1. AGGREGATE SURVEYING FRASERS OF LAND.
2. QUANTIFY ALL THE SURVEYED LAND.
3. QUANTIFY ALL THE SURVEYED LAND.
4. QUANTIFY ALL THE SURVEYED LAND.

LEGEND
SYMBOL DESCRIPTION

- 1. TO BE ADJUSTED TO THE CORNER OF SECTION 1
- 2. TO BE ADJUSTED TO THE CORNER OF SECTION 1
- 3. TO BE ADJUSTED TO THE CORNER OF SECTION 1
- 4. TO BE ADJUSTED TO THE CORNER OF SECTION 1
- 5. TO BE ADJUSTED TO THE CORNER OF SECTION 1
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FEDERAL BUREAU OF SURVEYING
U.S. GEOLOGICAL SURVEY
WASHINGTON, D.C. 20541
DATE: 10/15/2024
BY: [Signature]
TITLE: CERTIFICATE OF SURVEY NO. 2343

PROPERTY OWNER
SHIRLEY COMMERCE, GALLATIN LAND AND MIN DEVELOPMENT, LLC
BY: [Signature]
ATTORNEY AT LAW

PROPERTY ADDRESS
[Address Information]

PROPERTY TAXES
[Tax Information]

PROPERTY VALUE
[Value Information]

PROPERTY HISTORY
[History Information]

PROPERTY DESCRIPTION
[Description Information]

PROPERTY NOTES
[Notes Information]

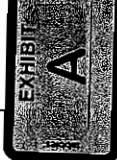
PROPERTY LEGAL
[Legal Information]

PROPERTY MAP
[Map Information]

PROPERTY SUMMARY
[Summary Information]

PROPERTY CONTACT
[Contact Information]

PROPERTY INDEX
[Index Information]



THOMAS DEAN & HOSKINS, INC.
ENGINEERING CONSULTANTS
1000 N. 10TH ST. SUITE 100
BOZEMAN, MONTANA 59717
PHONE: (406) 552-1111
FAX: (406) 552-1112
WWW.TD&H.COM

COS 2343

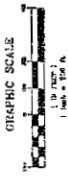
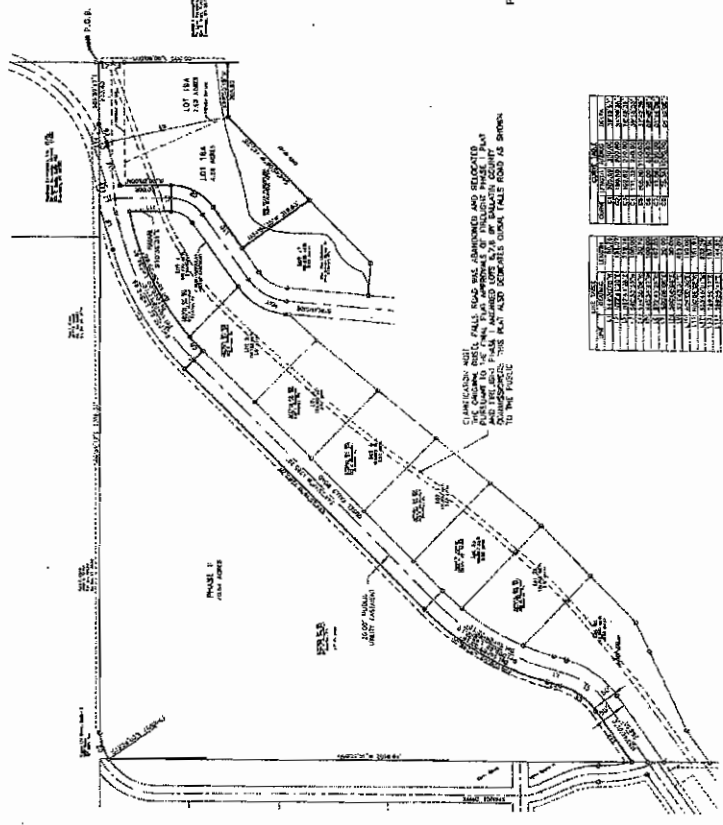
AMENDED PLAT OF FIRELIGHT SUBDIVISION, PHASE I LOTS 18 AND 19, OUSEL FALLS ROAD

LOCATION IN THE SE 1/4 SECTION 2,
TOWNSHIP 7 NORTH, RANGE 1 EAST, T4M,
COUNTY OF GARRETT, MARYLAND.
DALLAS, TEXAS, 75201.



ACREAGE

SECTION	ACRES
18	1.13
19	1.13
TOTAL	2.26



- LEGEND
- ROAD, 10' WIDE, 10' HIGH
 - DRIVEWAY, 8' WIDE, 8' HIGH
 - EASEMENT, 10' WIDE, 10' HIGH
 - P.O.B. POINT OF BEGINNING

NO.	DESCRIPTION	ACRES
1	Lot 18	1.13
2	Lot 19	1.13
3	Lot 20	1.13
4	Lot 21	1.13
5	Lot 22	1.13
6	Lot 23	1.13
7	Lot 24	1.13
8	Lot 25	1.13
9	Lot 26	1.13
10	Lot 27	1.13
11	Lot 28	1.13
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14	Lot 31	1.13
15	Lot 32	1.13
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27	Lot 44	1.13
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29	Lot 46	1.13
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81	Lot 98	1.13
82	Lot 99	1.13
83	Lot 100	1.13

CLAIMED BY THE STATE OF MARYLAND AS A PUBLIC HIGHWAY AND AS SUCH IS NOT SUBJECT TO THE PROVISIONS OF THIS PLAT. THE STATE OF MARYLAND HAS TAKEN POSSESSION OF THIS ROAD AS A PUBLIC HIGHWAY AND AS SUCH IS NOT SUBJECT TO THE PROVISIONS OF THIS PLAT.

CERTIFICATE OF REALESTATE

BEFORE ME, the undersigned authority, on this _____ day of _____, 20____, personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, acknowledged to me that he executed the same for the purposes and consideration therein expressed.

My commission expires _____.

Notary Public for Maryland

CERTIFICATE OF COMPLETION

The maps, instruments and other documents on file in the office of the County Clerk of Garrett County, Maryland, in connection with the above described subdivision, have been examined and found to conform to the laws of the State of Maryland and the rules and regulations of the Board of Assessors of Garrett County, Maryland, and the same are hereby certified to be correct.

CERTIFICATE OF COUNTY COMMISSIONERS

The County Commissioners of Garrett County, Maryland, have examined the maps, instruments and other documents on file in the office of the County Clerk of Garrett County, Maryland, in connection with the above described subdivision, and find that the same conform to the laws of the State of Maryland and the rules and regulations of the Board of Assessors of Garrett County, Maryland, and the same are hereby certified to be correct.

CERTIFICATE OF COUNTY TREASURER

The County Treasurer of Garrett County, Maryland, has examined the maps, instruments and other documents on file in the office of the County Clerk of Garrett County, Maryland, in connection with the above described subdivision, and find that the same conform to the laws of the State of Maryland and the rules and regulations of the Board of Assessors of Garrett County, Maryland, and the same are hereby certified to be correct.

CERTIFICATE OF COUNTY CLERK

The County Clerk of Garrett County, Maryland, has examined the maps, instruments and other documents on file in the office of the County Clerk of Garrett County, Maryland, in connection with the above described subdivision, and find that the same conform to the laws of the State of Maryland and the rules and regulations of the Board of Assessors of Garrett County, Maryland, and the same are hereby certified to be correct.

CERTIFICATE OF COUNTY ENGINEER

The County Engineer of Garrett County, Maryland, has examined the maps, instruments and other documents on file in the office of the County Clerk of Garrett County, Maryland, in connection with the above described subdivision, and find that the same conform to the laws of the State of Maryland and the rules and regulations of the Board of Assessors of Garrett County, Maryland, and the same are hereby certified to be correct.

CERTIFICATE OF COUNTY SUPERVISOR

The County Supervisor of Garrett County, Maryland, has examined the maps, instruments and other documents on file in the office of the County Clerk of Garrett County, Maryland, in connection with the above described subdivision, and find that the same conform to the laws of the State of Maryland and the rules and regulations of the Board of Assessors of Garrett County, Maryland, and the same are hereby certified to be correct.



J-245-B

AMEND. FIRELIGHT SUB

SKS E

Tr. 2 COS 2211 (See back)

Tr. 1 COS 2211 (See back)

BLUE GROUSE HILLS SUB, PH2
162 Fm 3544 eas

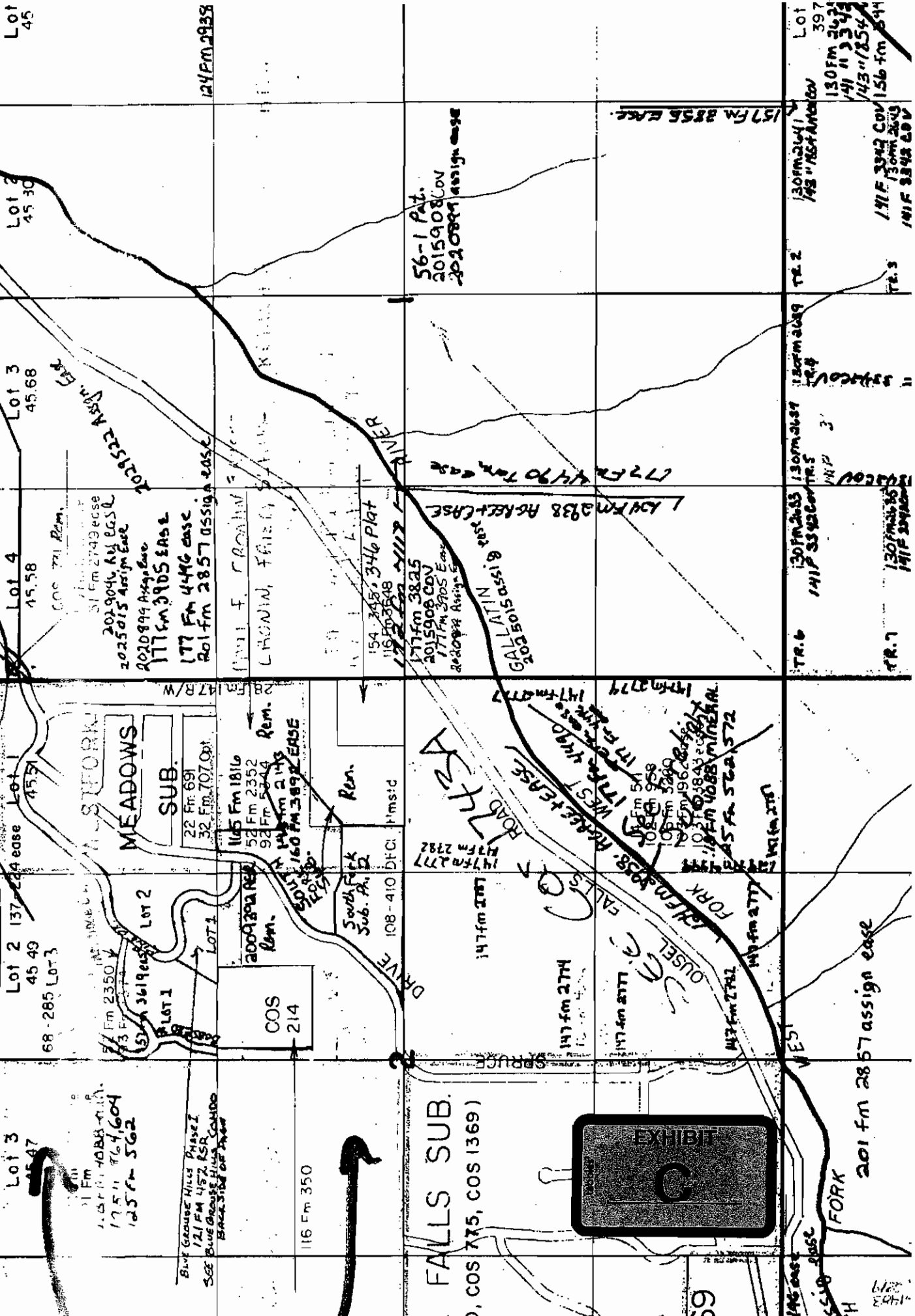


EXHIBIT
C

WEST FORK SUBDIVISION
 PHASE IV
 R-SF-6500

SECTION 1, T. 7 S., R. 3 E., P.M.M.
 GALLATIN COUNTY, MONTANA

WEST FORK SUBDIVISION
 R-SF-1000

WEST FORK SUBDIVISION
 R-SF-1000

BERT R. MCBRIDE
 WILEY A. MCBRIDE

MINUS

$\Delta = 3011'01"$
 $R = 500.00'$
 $T = 134.83'$
 $L = 263.40'$

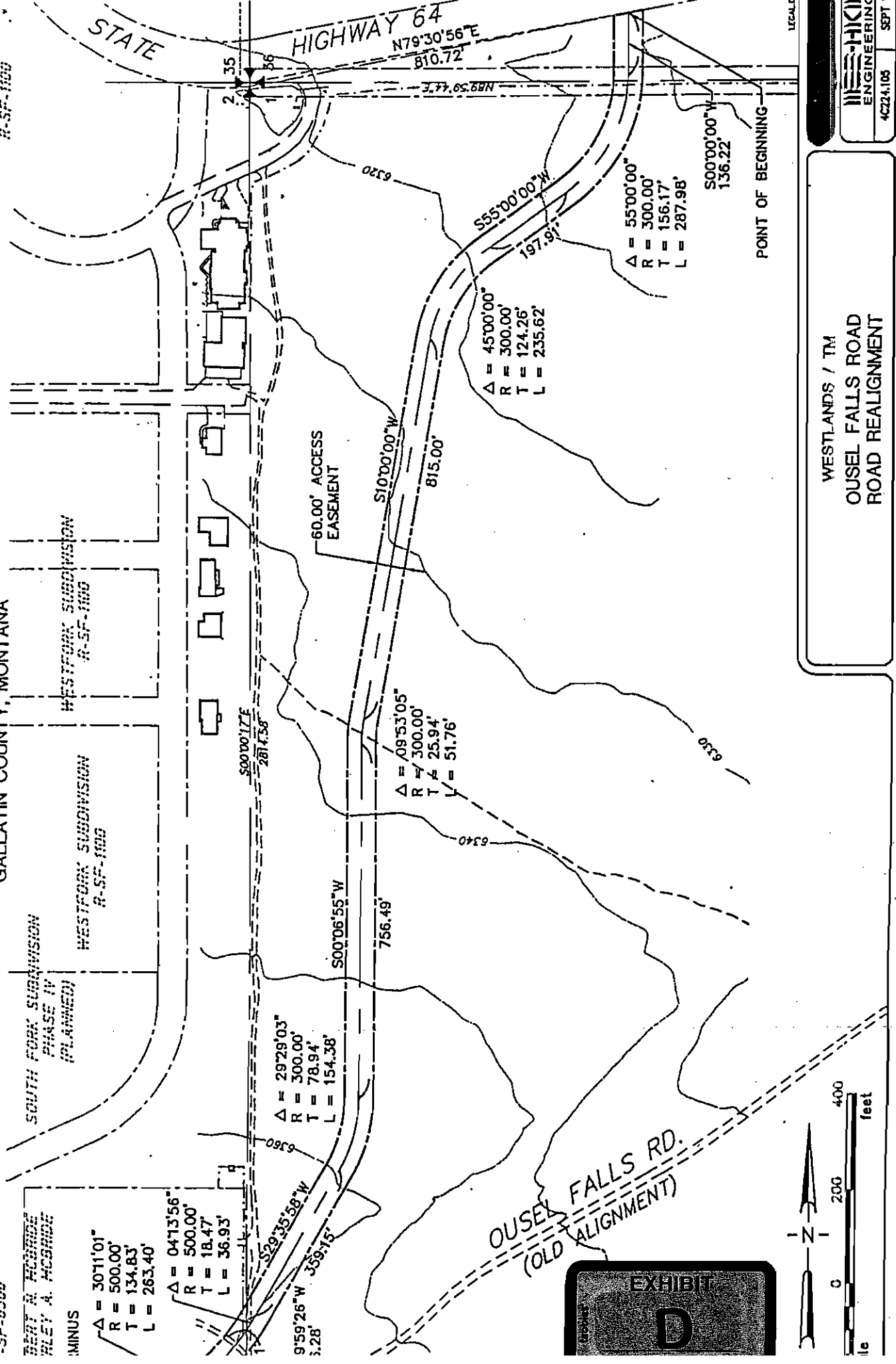
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$\Delta = 0953'05"$
 $R = 300.00'$
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$\Delta = 4500'00"$
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$\Delta = 5500'00"$
 $R = 300.00'$
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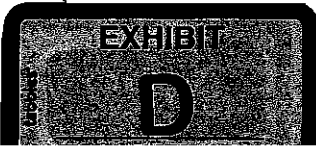
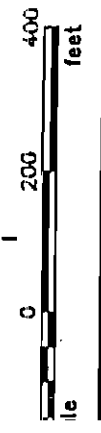


LEGAL D

WESTLANDS / TM
 OUSEL FALLS ROAD
 ROAD REALIGNMENT

LEGAL D

WESTLANDS / TM
 OUSEL FALLS ROAD
 ROAD REALIGNMENT



JUDGE HOLLY B. BROWN
DEPARTMENT 1

Brian K. Gallik
Trent M. Gardner
GOETZ, GALLIK & BALDWIN, P.C.
35 North Grand
P.O. Box 6580
Bozeman, MT 59771-6580
Ph: 406-587-0618
Fax: 406-587-5144

ATTORNEYS FOR PLAINTIFFS

MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

WESTLAND ENTERPRISES, INC., and
SIMKINS HOLDINGS, L.L.C.,

Plaintiffs,

v.

WILLIAM R. REIER, JR.; JOHN F. AND LAURA S.)
MICHEL; CATHERINE LOUISE THOMPSON; THE
BLIXSETH GROUP, INC.; R. STEPHEN CONLEY AND
INGELA E. CONLEY; LLOYD H. WARREN; JERRY K.)
AND LINDA L. WORTMAN; EMANUEL V. DIMICELI
AND SUE E. DIMICELI; MICHAEL A. LAMPE AND
SANDRA L. LAMPE; CHRISTOPHER VANCE AND
KRISTI CHESTER; MOONDANCE HOMEOWNERS')
ASSOCIATION, INC.; and ALL OTHER PERSONS)
UNKNOWN, claiming or who might claim any right, title,
estate, or interest in, or lien, or encumbrance upon, such
property, or any thereof, adverse to plaintiffs' ownership,
or any cloud upon plaintiffs' title thereto, whether such
claim or possible claim be present or contingent,

Defendants.

Cause No. DV-05-595

**S U M M O N S
B Y
P U B L I C A T I O N**

**TO: ALL OTHER PERSONS UNKNOWN, CLAIMING OR WHO MIGHT CLAIM ANY
RIGHT, TITLE, ESTATE, OR INTEREST IN, OR LIEN, OR ENCUMBRANCE
UPON, SUCH PROPERTY, OR ANY THEREOF, ADVERSE TO PLAINTIFFS'
OWNERSHIP, OR ANY CLOUD UPON PLAINTIFFS' TITLE THERETO,
WHETHER SUCH CLAIM OR POSSIBLE CLAIM BE PRESENT OR
CONTINGENT:**

THE STATE OF MONTANA sends greetings to the above-named Defendants Unknown
Persons. You are hereby summoned to answer the *Complaint* in this action, which is filed in the
office of the Clerk of this Court, a copy of which is herewith served upon you, and to file your



1 answer and serve a copy thereof upon the Plaintiffs' attorney, within twenty (20) days after the
2 service of this *Summons*, exclusive of the day of service; and in case of your failure to appear or
3 answer, judgment will be taken against you by default for the relief demanded in the *Complaint*.

4 This action is brought for the purpose of obtaining a judicial decree that no easement exists
5 for the route described in the *Complaint* as the "old alignment of Ousel Falls Road." This action
6 affects Plaintiffs' property, described as:

7 A tract of land being labeled Tract 1 of Certificate of Survey No. 2343, said tract
8 being located in the Southwest Quarter and Southeast Quarter of Section 36,
9 Township 6 South, Range 3 East, P.M.M., Gallatin County Montana, and also in the
Northeast Quarter of Section 2, Township 7 South, Range 3 East, P.M.M., Gallatin
County Montana.

10 This action also affects individual named Defendants' properties, described as:

11 The Amended Subdivision Plot of Firelight Subdivision, Phase 1, Lots 1, 2, 3, 4, 5,
12 6A, 7A, 8A, 18A-1, and 19A-1, Gallatin County, Montana.

13 This action does not involve or affect any interest, right or easement pertaining to the present
14 location of Ousel Falls Road.

15 WITNESS my hand and the seal of said Court, this 27th day of September, 2005.

17 JENNIFER BRANDON
18 Clerk of District Court

21 (COURT SEAL)

22 By: KATHY PUETT
23 () Clerk () Deputy Clerk
24
25
26
27
28

Affidavit of Publication

STATE OF MONTANA, }
County of Gallatin } SS.

Ann L Harms, being duly sworn, deposes and says: That she is Legal Ad Clerk of the Bozeman Daily Chronicle, a newspaper of general circulation, printed and published Bozeman, Gallatin County, Montana; and that the notice here unto annexed (Summon By Publication DV-05-595)

() has been correctly published in the regular and entire issue of every number of said paper for 3 consecutive Thursday's the first of which publication was made on the 29th day of September 2005, and the last on the 13th day of October 2005.



Subscribed and sworn to before me this
13th day of October 2005
Glennady Burton
Notary Public for the State of Montana,
residing at Bozeman, Montana.

Notary Public for the State of Montana
Residing at Bozeman, Montana
My Commission Expires June 27, 2008

WILLIAM R. RIEBER, JOHN
AND LAURA S. SMITH,
CATHERINE LOUIS MOHRE,
SON, THOMAS W. HORN,
ING R. STEPHEN COLE,
AND JOHN W. HORN,
AND ANITA A. WILSON,
EMANUELY DIMICK AND
SUE DIMICK, MICHAELA
LAMPF AND SANDRA L.
LAMPF, CHRISTOPHER
VANCE AND KYSTI CHISTER,
MOONDOG HORN DOW,
ERS ASSOCIATION, INC.,
AND ALL OTHER PERSONS
UNKNOWN, claiming or
who might claim any
right in the estate or
interest in or left or
encumbrance upon,
such property or any
thereof adverse to
plaintiffs' ownership,
or any cloud upon
plaintiffs' title, being
whether such claim or
possible claim be pre-
sented or to be pre-
sented.

TO ALL PERSONS
UNKNOWN, CLAIMING OR
WHO MIGHT CLAIM AN
INTEREST IN ANY
PROPERTY, RIGHT, TITLE,
OR ADVANTAGE OF ANY
OWNERSHIP OR ANY
CLOUD UPON THE TITLE
THEREOF, WHETHER SUCH
CLAIM OR POSSIBLE CLAIM
BE PRESENT OR

This action does not in-
volve or affect any inter-
est, right or easement
pertaining to the present
location of Counsel Fiat
Road.

Witness My hand
and the seal of said
Court, this 27th day of
September, 2005.

JENNIFER BRANDON
Clerk of District Court

The above described
Subdivision, Plotted
Firelight Subdivision
Phase 1, Lots 1, 2, 3,
5, 6A, 7A, 8A, 18A,
and 19A, in Gallatin
County, Montana.

A tract of land being la-
beled "Tract 1" of
Certificate of Survey No.
25357, said tract being lo-
cated in the State of
Montana, in the
Southeast Quarter and
Southeast Subpart of
Section 36, Township 6
South, Range 3, East,
Park County, Montana,
Mantana, and also in
the Northeast Quarter of
Section 36, Township 6
South, Range 3, East,
Park County, Montana,
Montana.

This action also affects
individually, jointly, tenanted
Defendants' properties,
described as:



GALLATIN COUNTY CLERK
OF DISTRICT COURT
JENNIFER BRANDON

2008 JUL 1 AM 11 37

FILED

BY _____
DEPUTY

MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

WESTLAND ENTERPRISES, INC., and
SIMKINS HOLDINGS, L.L.C.,

Plaintiffs,

v.

WILLIAM R. REIER, JR.; ROY AND LONNA
REYNOLDS; BUOD HOLDINGS, LLC;
YELLOWSTONE MOUNTAIN CLUB, LLC;
R. STEPHEN CONLEY AND INGELA E. CONLEY;
LLOYD H. WARREN; JERRY K. AND LINDA L.
WORTMAN; EMANUEL V. DIMICELI AND SUE E.
DIMICELI; MICHAEL A. LAMPE AND SANDRA L.
LAMPE; CHRISTOPHER VANCE AND KRISTI
CHESTER; MOONDANCE HOMEOWNERS'
ASSOCIATION, INC.; and ALL OTHER PERSONS
UNKNOWN, claiming or who might claim any right, title,
estate, or interest in, or lien, or encumbrance upon, such
property, or any thereof, adverse to plaintiffs' ownership,
or any cloud upon plaintiffs' title thereto, whether such
claim or possible claim be present or contingent,

Defendants.

Cause No. DV-05-595

**ORDER
OF
ENTRY OF JUDGMENT**

This is a declaratory relief action. Plaintiffs seek a judgment from this Court that no road easement exists for a route described as the "Old alignment of Ousel Falls Road."

BACKGROUND FACTS

The following background facts were listed in Plaintiffs' Complaint. As demonstrated below, all possible defendants have been served, and no party disputes or has denied the facts as they



1 appear in Plaintiffs' Complaint. As such, the facts in Plaintiffs' Complaint are admitted and taken
2 as true. See Rule 8(d), M.R.Civ.P.

3 The "old alignment of Ousel Falls Road" is identified as Ousel Falls Road on a Gallatin
4 County Clerk and Recorder's plat book. That portion of the road identified on the plat book as
5 Ousel Falls Road, which crosses Plaintiffs' property, as well as the portion that crosses the Firelight
6 Subdivision, including the property of named Defendants, is what is referred to in this Complaint
7 as the "old alignment of Ousel Falls Road." The "old alignment of Ousel Falls Road" was described
8 in *Michel v. McBride*, Cause No. 16623, Gallatin County, October 5, 1965, as "a roadway which
9 . . . ran generally along the course of the West Fork of the Gallatin River"

10 In 1997 the Plaintiffs' granted a public road easement over Plaintiffs' property, which
11 relocated the route of Ousel Falls Road (hereinafter "Ousel Falls Road") over Plaintiffs' property.
12 This public road easement is shown on Certificate of Survey No 2343 and is identified on such
13 survey as Doc. #2072629.

14 A new, paved road was constructed over the public road easement granted in 1997 and since
15 that time has provided public access through the Plaintiffs' property to the Ousel Falls area and
16 beyond. That road is identified and marked as Ousel Falls Road.

17 In conjunction with the construction of the paved Ousel Falls Road over the Plaintiffs'
18 property, the Ousel Falls Road was relocated over the named Defendants' properties. The Amended
19 Plat of Firelight Subdivision, Phase I, shows the "old alignment of Ousel Falls Road" and also shows
20 the present location of Ousel Falls Road. The plat contains the following comment:

21 The original Ousel Falls Road was abandoned and relocated pursuant
22 to the final plat approvals of Firelight Phase I Plat and Firelight Phase
23 I Amended Lots 6, 7, 8 by Gallatin County Commissioners. The Plat
also dedicates Ousal [sic] Falls Road as shown to the public.

24 In late 1997, or early 1998, after the Plaintiffs granted a public road easement for the Ousel
25 Falls Road, as it presently exists, Plaintiffs barricaded each end of the "old alignment of Ousel Falls
26 Road" which crossed their property, closing such route to the public and preventing any public use
27 of that route over their property.

28 Prior to January 1, 2000, the County approved the Firelight Subdivision and public roads

1 were granted within the subdivision. The "old alignment of Ousel Falls Road," which ran through
2 the Firelight Subdivision, was destroyed and homes now sit on or near the location of the "old
3 alignment of Ousel Falls Road."

4 For more than five years prior to the date of the filing of the Complaint, the public has not
5 used, or been allowed to use, the "old alignment of Ousel Falls Road."

6 For more than five years prior to the date of the filing of the Complaint, Plaintiffs, or
7 Plaintiffs' predecessors, and named Defendants and Defendants' predecessors in interest, have been
8 in exclusive control of the land which constituted the "old alignment of Ousel Falls Road."

9 The public has not been and will not be harmed in any manner by the closure of the "old
10 alignment of Ousel Falls Road," as the 1997 grant of public easement provides better access to the
11 public. This route is now known as Ousel Falls Road.

12 No easement for the "old alignment of Ousel Falls Road" is shown on Certificate of Survey
13 No. 2343, filed with the Clerk and Recorder of Gallatin County.

14 **PROCEDURAL HISTORY**

15 On September 27, 2005, Plaintiffs filed their original Complaint in this matter. On May 11,
16 2007, Plaintiffs filed Plaintiffs' Notice of Filing Original Notices of Acknowledgment of Receipt
17 of Summons and Complaint. That Notice indicated that Defendants Reier, Thompson, the Blixseth
18 Group, Inc., Stephen and Ingela Conley, Warren, Wortman, Dimiceli, Christopher Vance and Kristi
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23 Reynolds have also returned their notice and acknowledgment of service.

24 On July 23, 2007 and July 31, 2007 respectively, Plaintiffs caused defendants Buod
25 Holdings, LLC and Michael and Sandra Lampe to be personally served. Neither party has returned
26 their notice and acknowledgment.

27 On October 10, 2007, the Clerk of Court entered a Notice of Entry of Default against
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1 WILLIAM R. REIER, JR.; ROY AND LONNA REYNOLDS; BUOD HOLDINGS, LLC; R.
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6 UNKNOWN, claiming or who might claim any right, title, estate, or interest in, or lien, or
7 encumbrance upon, such property, or any thereof, adverse to plaintiffs' ownership, or any cloud
8 upon plaintiffs' title thereto, whether such claim or possible claim be present or contingent. *See*
9 Exhibit A.

10 For three consecutive Thursdays, from September 29, 2005 through October 13, 2005, a
11 summons was issued by publication in the *Bozeman Daily Chronicle*. No party identified itself as
12 claiming an interest in the subject property.

13 The only party that has filed an Answer is the Yellowstone Mountain Club.

14 Rule 55(b)(2), M.R.Civ.P. states:

15 In all other cases the party entitled to a judgment by default shall apply to the court
16 therefor; . . . If the party against whom judgment by default is sought has appeared
17 in the action, the party (or, if appearing by representative, the party's representative)
18 shall be served with written notice of the application for judgment at least 3 days
19 prior to the hearing on such application. If, in order to enable the court to enter
20 judgment or to carry it into effect, it is necessary to take an account or to determine
the amount of damages or to establish the truth of any averment by evidence or to
make an investigation of any other matter, the court may conduct such hearings or
order such references as it deems necessary and proper and shall accord a right of
trial by jury to the parties when and as required by any statute of the state of
Montana.

21 Rule 55(b)(2), M.R.Civ.P.

22 All defendants have been served, and, with the exception of Yellowstone Mountain Club,
23 have failed to plead or otherwise defend themselves.¹ *See* attached Affidavits. Accordingly,
24 Plaintiffs are entitled to an entry of default judgment against all defendants.

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27 ¹Although the Yellowstone Club did file an answer, the Yellowstone Club has since filed
28 a stipulated motion for entry of judgment in favor of the Plaintiffs. The Yellowstone Club has
abandoned any rights or claims to the subject property.

1 **ORDER**

2 Based on the foregoing and the attached Affidavits, Plaintiffs are entitled to an entry of
3 default judgment against the following Defendants, namely: WILLIAM R. REIER, JR.; ROY AND
4 LONNA REYNOLDS; BUOD HOLDINGS, LLC; R. STEPHEN CONLEY AND INGELA E.
5 CONLEY; LLOYD H. WARREN; JERRY K. AND LINDA L. WORTMAN; EMANUEL V.
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7 CHRISTOPHER VANCE AND KRISTI CHESTER; THE MOONDANCE HOMEOWNERS'
8 ASSOCIATION, INC; and ALL OTHER PERSONS UNKNOWN, claiming or who might claim
9 any right, title, estate, or interest in, or lien, or encumbrance upon, such property, or any thereof,
10 adverse to Plaintiffs' ownership, or any cloud upon Plaintiffs' title thereto, whether such claim or
11 possible claim be present or contingent.

12 If any easement previously existed for the "old alignment of Ousel Falls Road," such
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14 which period is greater than the period prescribed for acquiring title by adverse possession. Further,
15 the public has been provided with an alternative means of access. No easement exists for the route
16 described herein as the "old alignment of Ousel Falls Road."

17 Plaintiffs are entitled, pursuant to the power granted by § 27-8-201, MCA. to a declaration
18 by this Court that, if any easement previously existed, the requirements of § 70-17-111, MCA, have
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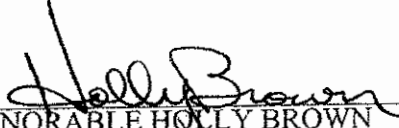
22 Therefore, it is hereby ordered that no easement for the route described herein as the "old
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25 ///

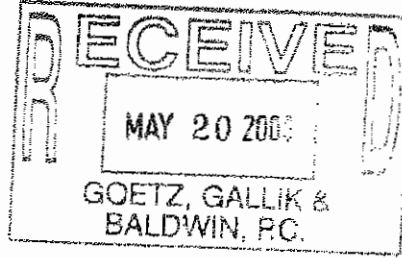
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1 DATED this 1st day of July, 2008

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5 HONORABLE HOLLY BROWN
6 District Court Judge

7 cc: Jim Barr Coleman/Brian Gallik
8 Stephen Brown
9 Jeremy LeFeber
10 William Reier
11 Roy Reynolds
12 Buod Holdings (William Dunn)
13 Stephen and Ingela Conley
14 Lloyd Warran
15 Emanuel and Sue Dimiceli
16 Christopher Vance
17 Kristi Chester



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MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

WESTLAND ENTERPRISES, INC., and
SIMKINS HOLDINGS, L.L.C.,

Plaintiffs,

v.

WILLIAM R. REIER, JR.; ROY AND LONNA
REYNOLDS; BUOD HOLDINGS, LLC;
YELLOWSTONE MOUNTAIN CLUB, LLC;
R. STEPHEN CONLEY AND INGELA E. CONLEY;
LLOYD H. WARREN; JERRY K. AND LINDA L.
WORTMAN; EMANUEL V. DIMICELI AND SUE E.)
DIMICELI; MICHAEL A. LAMPE AND SANDRA L.)
LAMPE; CHRISTOPHER VANCE AND KRISTI
CHESTER; MOONDANCE HOMEOWNERS'
ASSOCIATION, INC.; and ALL OTHER PERSONS
UNKNOWN, claiming or who might claim any right, title,
estate, or interest in, or lien, or encumbrance upon, such
property, or any thereof, adverse to plaintiffs' ownership,
or any cloud upon plaintiffs' title thereto, whether such
claim or possible claim be present or contingent,

Defendants.

Cause No. DV-05-595

**ORDER
OF
ENTRY OF JUDGMENT
REGARDING THE
YELLOWSTONE MOUNTAIN
CLUB, LLC.**

UPON A STIPULATED MOTION by the Plaintiffs and the Yellowstone Mountain Club,
LLC, and good cause appearing therefore,

IT IS HEREBY ORDERED that the Blixeth Group and Yellowstone Mountain Club has
abandoned any and all rights, and can no longer make any claim to any rights, in the property and
easement known as the "Old Alignment of Ousel Falls Road", and better described as:

A tract of land being labeled Tract 1 of Certificate of Survey No. 2343, said tract



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being located in the Southwest Quarter and Southeast Quarter of Section 36, Township 6 South, Range 3 East, P.M.M., Gallatin County Montana, and also in the Northeast Quarter of Section 2, Township 7 South, Range 3 East, P.M.M., Gallatin County Montana.

Entered this 19 day of May, 2008.

Original Signed by
Holly B. Brown

Holly Brown
District Judge

cc: Jim Barr Coleman/Brian Gallik
Stephen Brown
Jeremy LeFeber
William Reier
Roy Reynolds
Buod Holdings (William Dunn)
Stephen and Ingela Conley
Lloyd Warran
Emanuel and Sue Dimiceli
Christopher Vance
Kristi Chester

CHECKLIST OF PROCEDURES FOR ROAD PETITIONS

Original signed petition must be submitted to the Clerk and Recorder along with a map showing the area of the road under consideration. Stamp the date received on the petition. Get name and phone number of contact person for questions.

NAME Jim Barr Coleman PHONE 587-0618

- 1) Determine if there are sufficient qualified signatures as per 7-14-2601 MCA.
- 2) Check list of adjacent landowners for completeness and that they consent as per 7-14-2602(4) and 7-14-2615(4) MCA.
- 3) Complete "Report of Qualified Signatures".
- 4) Schedule petition on Commissioner's agenda. DATE: 1/13/09
- 5) Make copies of petition and report. Forward to:
 - County Attorney (attach note of date on Commissioner's agenda)
 - County Road Superintendent (attach note of date on Commissioner's agenda)
 - County Commission (3 copies)

- 6) Commissioners receive petition and assign viewing committee.
- 7) Assign Road Petition Number. 328

- 8) a) Type regular mail envelopes for:
 - All landowners named on the petition
 - All signers on the petition
 - All individuals named in the petition who could be affected
 - The postmaster of the area
 - The Public Lands Access Associationb) Type and prepare certified mail envelopes for:
 - All owners of land abutting the road
 - All individuals named in the petition who could be affected
 - The postmaster of the area
 - The Public Lands Access Association

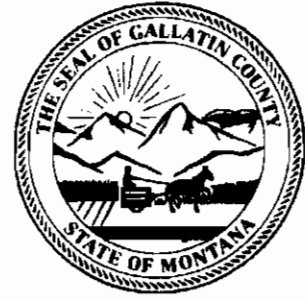
- 9) Viewing committee completes road report.
- 10) Schedule public hearing on Commissioner's agenda and prepare notice. DATE 2-24-2009
- 11) Publish public hearing notice one time for a county road (7-14-2615 MCA) or two times for a street or alley (7-14-2616 MCA). DATES 2-15-09
- 12) Send a copy of the viewing committee report and public hearing notice to the following:
 - Persons listed in #8a
 - County Road Superintendent (certified copy per 7-14-2613)
 - County Attorney
 - County Commissioners (3 copies)

- 13) Prepare affidavit of mailing for petition file (regarding the viewers report).
- 14) Commissioners hold public hearing to grant or deny petition.
- 15) County Attorney drafts resolution for Commissioners to consider at next public hearing.
- 16) Commissioners pass resolution
- 17) Within 10 days of passage of resolution send copies of resolution to all persons listed in #8b (BY CERTIFIED MAIL) and forward certified copy to County Road Superintendent (per 7-14-2613).
- 18) Type affidavit of mailing for petition file (regarding the boards decision).
- 19) If the petition is granted, a certified copy of the resolution must be recorded.

State of Montana

County of Gallatin

Bozeman



CERTIFICATE OF THE COUNTY CLERK AND RECORDER
RELATING TO
QUALIFICATIONS OF THE SIGNERS

Statement of Purpose: Petition to abandon a portion of the Old Alignment of Ousel Falls Road.

Legal Description: A portion of the Old Alignment of Ousel Falls Road in Gallatin County, Montana described as being in a tract of land being labeled Tract 1 of Certificate of Survey No. 2343, said tract being located in the Southwest Quarter and Southeast Quarter of Section 36, Township 6 South, Range 3 East, P.M.M. Gallatin County, Montana and also in the Northeast Quarter of Section 2, Township 7 South, Range 3 East, P.M.M. Gallatin County, Montana.

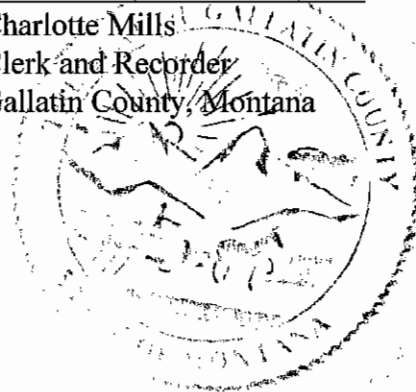
STATE OF MONTANA)
)ss
COUNTY OF GALLATIN)

I, Charlotte Mills, do hereby certify that I am the qualified and acting County Clerk and Recorder for Gallatin County, State of Montana; that I have examined the petition to which this certificate is attached, and that pursuant to Section 7-14-2601 M.C.A. 2007, it contains the signatures of at least 10 qualified freeholders in Gallatin County.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of my office at Bozeman, the County Seat of Gallatin County, State of Montana, this 29th day of December 2008, A.D.

Charlotte Mills

Charlotte Mills
Clerk and Recorder
Gallatin County, Montana



JAMES H. GOETZ
BRIAN K. GALLIK
ROBERT K. BALDWIN
J. DEVLAN GEDDES
TRENT M. GARDNER
BONNIE L. JARRETT
JIM BARR COLEMAN
BENJAMIN J. ALKE

GOETZ, GALLIK & BALDWIN P.C.

ATTORNEYS AT LAW
35 NORTH GRAND 59715
P.O. BOX 6580
BOZEMAN, MONTANA 59771-6580
PH. (406) 587-0618 FAX (406) 587-5144

EMAIL:
goetzlawfirm@goetzlawfirm.com
WEBSITE:
www.goetzlawfirm.com

RECEIVED
Date 12-19-08
Clerk & Recorder
Gallatin County, Mont.

December 19, 2008

BY HAND

Bill Murdock, Chairman
Steve White
Joe Skinner
Gallatin County Commissioners
311 West Main
Room 306
Bozeman, MT 59715

RE: "Old" Ousel Falls Road

Dear Honorable Gallatin County Commissioners:

This firm represents Westland Enterprises, Inc., and Simkins Holdings, L.L.C., regarding the enclosed *Petition to Abandon County Road* (the "Old" alignment of Ousel Falls Road). The undersigned has been in contact with the County Attorney's Office, and understands that the County Attorney's Office does not object to the filing of the *Petition to Abandon County Road*.

By way of background, the Commission should be aware that the "old alignment of Ousel Falls Road" has been the subject of litigation in the Eighteenth Judicial District Court (*Westland Enterprises, Inc., and Simkins Holdings, LLC. v. William R. Reier, Jr., et al.*; Cause No. DV-05-595). In that case, Westland Enterprises and Simkins Holdings asked the district court to quiet title on the "old alignment of Ousel Falls Road." All concerned landowners were served, and no landowner, with the exception of the Yellowstone Club, made an appearance or filed an answer. Apparently, no landowner objected to the quieting of title. Regarding the Yellowstone Club, it also did not object, but rather only made an appearance, and agreed to the *Judgments* entered by the court (attached hereto as Exhibits 1 and 2).

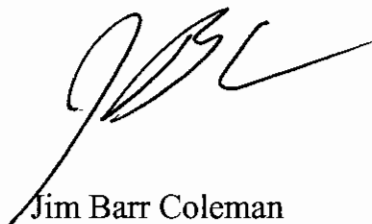
Gallatin County Commissioners
December 19, 2008
Page 2

The relief sought in the enclosed *Petition to Abandon County Road* is for this Commission to abandon the road.

If the Commission has any questions about this *Petition*, or any other matter, it should feel free to contact me. Otherwise, Westland Enterprises, Inc., and Simkins Holdings, L.L.C., respectfully request that the Commissioners set this matter on their January agenda.

Sincerely,

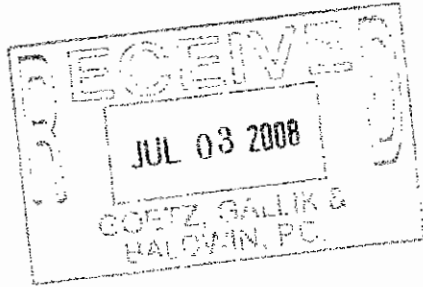
GOETZ, GALLIK & BALDWIN, P.C.



Jim Barr Coleman

BKG/pal
Attachments
cc: Clients
Brian K. Gallik

U:\BRIAN\PATTY\Westland TM\Quiet Title-Ousel Falls Road 4118-656\Correspondence\County Commissioners.1.wpd



GALLATIN COUNTY CLERK
OF DISTRICT COURT
JENNIFER BRANDON

2008 JUL 1 AM 11 37

FILED

BY _____
DEPUTY

MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

WESTLAND ENTERPRISES, INC., and
SIMKINS HOLDINGS, L.L.C.,

Plaintiffs,

v.

WILLIAM R. REIER, JR.; ROY AND LONNA
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R. STEPHEN CONLEY AND INGELA E. CONLEY;
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or any cloud upon plaintiffs' title thereto, whether such
claim or possible claim be present or contingent,

Defendants.

Cause No. DV-05-595

**ORDER
OF
ENTRY OF JUDGMENT**

This is a declaratory relief action. Plaintiffs seek a judgment from this Court that no road easement exists for a route described as the "Old alignment of Ousel Falls Road."

BACKGROUND FACTS

The following background facts were listed in Plaintiffs' Complaint. As demonstrated below, all possible defendants have been served, and no party disputes or has denied the facts as they



1 appear in Plaintiffs' Complaint. As such, the facts in Plaintiffs' Complaint are admitted and taken
2 as true. See Rule 8(d), M.R.Civ.P.

3 The "old alignment of Ousel Falls Road" is identified as Ousel Falls Road on a Gallatin
4 County Clerk and Recorder's plat book. That portion of the road identified on the plat book as
5 Ousel Falls Road, which crosses Plaintiffs' property, as well as the portion that crosses the Firelight
6 Subdivision, including the property of named Defendants, is what is referred to in this Complaint
7 as the "old alignment of Ousel Falls Road." The "old alignment of Ousel Falls Road" was described
8 in *Michel v. McBride*, Cause No. 16623, Gallatin County, October 5, 1965, as "a roadway which
9 . . . ran generally along the course of the West Fork of the Gallatin River"

10 In 1997 the Plaintiffs' granted a public road easement over Plaintiffs' property, which
11 relocated the route of Ousel Falls Road (hereinafter "Ousel Falls Road") over Plaintiffs' property.
12 This public road easement is shown on Certificate of Survey No 2343 and is identified on such
13 survey as Doc. #2072629.

14 A new, paved road was constructed over the public road easement granted in 1997 and since
15 that time has provided public access through the Plaintiffs' property to the Ousel Falls area and
16 beyond. That road is identified and marked as Ousel Falls Road.

17 In conjunction with the construction of the paved Ousel Falls Road over the Plaintiffs'
18 property, the Ousel Falls Road was relocated over the named Defendants' properties. The Amended
19 Plat of Firelight Subdivision, Phase I, shows the "old alignment of Ousel Falls Road" and also shows
20 the present location of Ousel Falls Road. The plat contains the following comment:

21 The original Ousel Falls Road was abandoned and relocated pursuant
22 to the final plat approvals of Firelight Phase I Plat and Firelight Phase
23 I Amended Lots 6, 7, 8 by Gallatin County Commissioners. The Plat
also dedicates Ousal [sic] Falls Road as shown to the public.

24 In late 1997, or early 1998, after the Plaintiffs granted a public road easement for the Ousel
25 Falls Road, as it presently exists, Plaintiffs barricaded each end of the "old alignment of Ousel Falls
26 Road" which crossed their property, closing such route to the public and preventing any public use
27 of that route over their property.

28 Prior to January 1, 2000, the County approved the Firelight Subdivision and public roads

1 were granted within the subdivision. The "old alignment of Ousel Falls Road," which ran through
2 the Firelight Subdivision, was destroyed and homes now sit on or near the location of the "old
3 alignment of Ousel Falls Road."

4 For more than five years prior to the date of the filing of the Complaint, the public has not
5 used, or been allowed to use, the "old alignment of Ousel Falls Road."

6 For more than five years prior to the date of the filing of the Complaint, Plaintiffs, or
7 Plaintiffs' predecessors, and named Defendants and Defendants' predecessors in interest, have been
8 in exclusive control of the land which constituted the "old alignment of Ousel Falls Road."

9 The public has not been and will not be harmed in any manner by the closure of the "old
10 alignment of Ousel Falls Road," as the 1997 grant of public easement provides better access to the
11 public. This route is now known as Ousel Falls Road.

12 No easement for the "old alignment of Ousel Falls Road" is shown on Certificate of Survey
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1 **ORDER**

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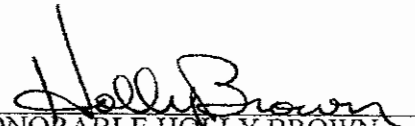
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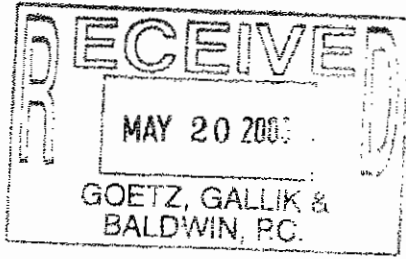
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1 DATED this 1st day of July, 2008

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6 HONORABLE HOLLY BROWN
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7 cc: Jim Barr Coleman/Brian Gallik
8 Stephen Brown
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MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

WESTLAND ENTERPRISES, INC., and
SIMKINS HOLDINGS, L.L.C.,

Plaintiffs,

Cause No. DV-05-595

v.

**ORDER
OF
ENTRY OF JUDGMENT
REGARDING THE
YELLOWSTONE MOUNTAIN
CLUB, LLC.**

WILLIAM R. REIER, JR.; ROY AND LONNA
REYNOLDS; BUOD HOLDINGS, LLC;
YELLOWSTONE MOUNTAIN CLUB, LLC;
R. STEPHEN CONLEY AND INGELA E. CONLEY;
LLOYD H. WARREN; JERRY K. AND LINDA L.
WORTMAN; EMANUEL V. DIMICELI AND SUE E.
DIMICELI; MICHAEL A. LAMPE AND SANDRA L.
LAMPE; CHRISTOPHER VANCE AND KRISTI
CHESTER; MOONDANCE HOMEOWNERS'
ASSOCIATION, INC.; and ALL OTHER PERSONS)
UNKNOWN, claiming or who might claim any right, title,
estate, or interest in, or lien, or encumbrance upon, such
property, or any thereof, adverse to plaintiffs' ownership,
or any cloud upon plaintiffs' title thereto, whether such
claim or possible claim be present or contingent,

Defendants.

UPON A STIPULATED MOTION by the Plaintiffs and the Yellowstone Mountain Club,
LLC, and good cause appearing therefore,

IT IS HEREBY ORDERED that the Blixeth Group and Yellowstone Mountain Club has
abandoned any and all rights, and can no longer make any claim to any rights, in the property and
easement known as the "Old Alignment of Ousel Falls Road", and better described as:

A tract of land being labeled Tract 1 of Certificate of Survey No. 2343, said tract



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being located in the Southwest Quarter and Southeast Quarter of Section 36, Township 6 South, Range 3 East, P.M.M., Gallatin County Montana, and also in the Northeast Quarter of Section 2, Township 7 South, Range 3 East, P.M.M., Gallatin County Montana.

Entered this 19 day of May, 2008.

Original Signed by
Holly B. Brown

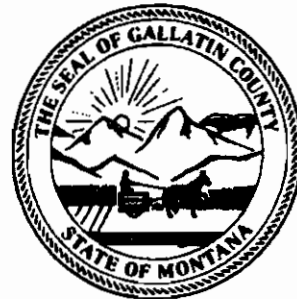
Holly Brown
District Judge

cc: Jim Barr Coleman/Brian Gallik
Stephen Brown
Jeremy LeFeber
William Reier
Roy Reynalds
Buod Holdings (William Dunn)
Stephen and Ingela Conley
Lloyd Warran
Emanuel and Sue Dimiceli
Christopher Vance
Kristi Chester

State of Montana

County of Gallatin

Bozeman



February 9, 2009

Board of County Commissioners
Gallatin County Courthouse
Bozeman, MT 59715

RE: Petition to abandon a portion of the Old Alignment of Ousel Falls Road.

Legal Description: A portion of the Old Alignment of Ousel Falls Road in Gallatin County, Montana described as being in a tract of land being labeled Tract 1 of Certificate of Survey No. 2343, said tract being located in the Southwest Quarter and Southeast Quarter of Section 36, Township 6 South, Range 3 East, P.M.M. Gallatin County, Montana and also in the Northeast Quarter of Section 2, Township 7 South, Range 3 East, P.M.M. Gallatin County, Montana.

Dear Board,

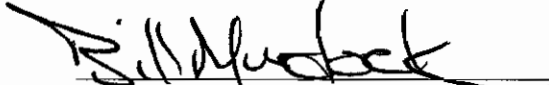
According to 7-14-2603 M.C.A., the Board of County Commissioners shall cause an investigation to be made of the feasibility, desirability, and cost of granting the prayer of the petition. The investigation shall be sufficient to properly determine the merits or demerits of the petition.

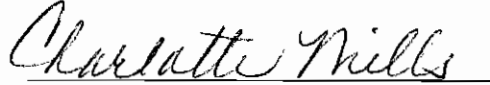
On Wednesday, January 28, 2009, the undersigned met to view the road being petitioned for abandonment. We drove to Big Sky Town Center where we were able to view each end of that portion of the Old Alignment of Ousel Falls Road. Ousel Falls Road has been relocated through the Big Sky Town Center Subdivision, and is the main road through the property giving access to the Firelight, Uplands Residential Cluster B, and Spanish Peaks subdivisions. In addition, Aspen Leaf Drive is a road that gives access to the properties within the Firelight and Uplands Residential Cluster B subdivisions.

The property surrounding this portion of the road to be abandoned is owned by the petitioners Westland Enterprises, Inc., and Simkins Holdings, LLC.

Therefore, it is our conclusion that no one would be land-locked, nor denied access to public lands if the abandonment of this road were granted. The viewing committee believes that it is feasible and desirable to grant the petition.

Respectfully submitted,

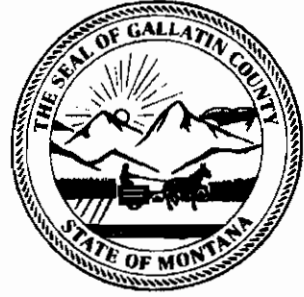

Bill Murdock, County Commissioner


Charlotte Mills, Clerk and
Recorder/Surveyor

State of Montana

County of Gallatin

Bozeman



AFFIDAVIT OF MAILING

STATE OF MONTANA)

)ss

COUNTY OF GALLATIN)

CHARLOTTE MILLS, BEING FIRST DULY SWORN ON OATH, deposes and says:

That she is the duly elected, qualified and acting County Clerk and Recorder of Gallatin County, Montana.

I hereby certify that a copy of the notice of public hearing of a petition to abandon that portion of the Old Alignment of Ousel Falls Road in Gallatin County, Montana described as being in a tract of land being labeled Tract 1 of Certificate of Survey No. 2343, said tract being located in the Southwest Quarter and Southeast Quarter of Section 36, Township 6 South, Range 3 East, P.M.M. Gallatin County, Montana, and the Northwest Quarter, Northeast Quarter and Southwest Quarter of Section 1, Township 7 South, Range 3 East, P.M.M. Gallatin County, Montana, and also in the Northeast Quarter of Section 2, Township 7 South, Range 3 East, P.M.M. Gallatin County, Montana. and a copy of the viewing committee report was mailed to the following land owners on: February 12, 2009.

Scott & Martha Johnson, PO Box 160730 Big Sky, MT 59716
Susanne Schreiner, PO Box 160507 Big Sky, MT 59716
Mark Severson, 10 Tennis Court Bozeman, MT 59718
Kevin Emborg, 811 O'Connell Drive Bozeman, MT 59715
Greg Iszler, 2903 Lilly Drive Bozeman, MT 59718
Jennifer Radick Bierman, 179 Robert Court Bozeman, MT 59718
Brian May, 2397 Rugby Court Bozeman, MT 59715
Markus Kirchmayr, 2980 Looking Glass Road Big Sky, MT 59716
Kim Lohss, 33 Lone Peak Drive Big Sky, MT 59716
Andrew Schreiner, 2750 Little Coyote Big Sky, MT 59716
John Radick, 36 Ruby Range Gallatin Gateway, MT 59730
Emanuel V. & Sue E. DiMiceli, 903 Paradise Way Palo Alto, CA 94306-2636
Jim Barr Coleman, PO Box 6580 Bozeman, MT 59771-6580
Christopher Vance & Kristi Chester, 23 Montcalm San Francisco, CA 94110-5323
Lloyd H. Warren, 15900 Flint Overland Park, KS 66062
R. Stephen & Ingela E. Conley, 1842 Coral Circle North Fort Myers, FL 33903-5027
Jeremy LeFaber, Berg, Lilly, & Tollefsen 1 West Main Street Bozeman, MT 59715-4642
Roy & Lonna Reynolds, PO Box 161702 Big Sky, MT 59716
William R. Reier, JR, 3610 W. Broadwater Street Bozeman, MT 59715
Buod Holdings, LLC c/o William David Dunn, Gardere Wynne Sewell LLP Thanksgiving Tower 1601 Elm Street, Ste 300 Dallas, TX 75201
Stephen R. Brown, Garlington, Lohn & Robinson PLLP 199 West Pine Street PO Box 7909 Missoula, MT 59807
Big Sky Post Master, PO Box 9998 Big Sky, MT 59716

Done this 12th day of February, 2009.

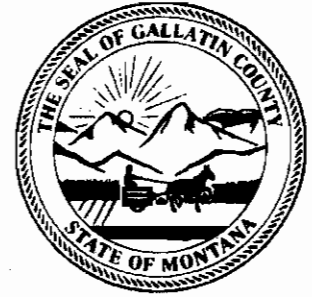
Charlotte Mills

CHARLOTTE MILLS
Clerk and Recorder
Gallatin County, Montana

State of Montana

County of Gallatin

Bozeman



NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Board of Gallatin County Commissioners will conduct a public hearing on February 24, 2009, at 9:00 A.M., in the Community Room, 311 W. Main, Bozeman, Montana. Public opinion shall be heard regarding a petition to abandon that portion of the Old Alignment of Ousel Falls Road in Gallatin County, Montana described as being in a tract of land being labeled Tract 1 of Certificate of Survey No. 2343, said tract being located in the Southwest Quarter and Southeast Quarter of Section 36, Township 6 South, Range 3 East, P.M.M. Gallatin County, Montana, and the Northwest Quarter, Northeast Quarter and Southwest Quarter of Section 1, Township 7 South, Range 3 East, P.M.M. Gallatin County, Montana, and also in the Northeast Quarter of Section 2, Township 7 South, Range 3 East, P.M.M. Gallatin County, Montana. All interested parties are encouraged to attend.

Further information may be obtained from Gallatin County Commissioners Bill Murdock, Joe Skinner, or Steve White at 311 W. Main, Room 306, Bozeman, Montana 59715, telephone 582-3000.

Dated this 10th day of February, 2009.

Charlotte Mills

Charlotte Mills
Clerk and Recorder
Gallatin County, Montana

Certified to be a full, true and correct copy of a document containing 3 pages. Dated at Bozeman, MT, 2/20/09, Charlotte Mills, Clerk and Recorder for Gallatin County, State of Montana.

2322350

Page: 1 of 3 02/26/2009 09:12:09 AM Charlotte Mills - Gallatin County, MT

Fee: \$0.00 MISC

PLATTED



RESOLUTION NO. 2009- 027



Deputy

A RESOLUTION MADE PURSUANT TO ROAD ABANDONMENT PETITION NO. 828 TO ABANDON A PORTION OF THE OLD ALIGNMENT OF OUSEL FALLS ROAD LOCATED IN TRACT 1 OF COS 2343

CLERK & RECORDER

This Resolution was introduced by CHARLOTTE MILLS; moved by Commissioner MURDOCK and seconded by Commissioner SKINNER. This Resolution was adopted UNANIMOUSLY.

WHEREAS, the Gallatin County Clerk and Recorder received a Petition to abandon a portion of the Old Alignment of Ousel Falls Road located in Tract 1 of Certificate of Survey No. 2343, said tract being located in the Southwest Quarter and Southeast Quarter of Section 36, Township 6 South, Range 3 East, P.M.M. Gallatin County, Montana, and the Northwest Quarter, Northeast Quarter and Southwest Quarter of Section 1, Township 7 South, Range 3 East, P.M.M. Gallatin County, Montana, and also in the Northeast Quarter of Section 2, Township 7 South, Range 3 East, P.M.M. (hereinafter referred to as the "Road"), pursuant to Title 7, Chapter 14, Part 26 Montana Code Annotated; and

WHEREAS, the Road is located in Tract 1 of Certificate of Survey No. 2343, said tract being located in the Southwest Quarter and Southeast Quarter of Section 36, Township 6 South, Range 3 East, P.M.M. Gallatin County, Montana, and the Northwest Quarter, Northeast Quarter and Southwest Quarter of Section 1, Township 7 South, Range 3 East, P.M.M. Gallatin County, Montana, and also in the Northeast Quarter of Section 2, Township 7 South, Range 3 East, P.M.M., and is commonly known as the Old Alignment of Ousel Falls Road and is generally located south and east of the Big Sky Town Center; and,

WHEREAS, upon acceptance of the Petition, the Clerk & Recorder assigned the Number 828 to the Petition; and,

WHEREAS, the Petition states "The purpose of officially abandoning the Old Alignment of Ousel Falls Road is to quiet title, and prevent any future dispute of that road, so as to facilitate the development of lands within the rights-of-way of the old road;" and

WHEREAS, Section 7-14-2601(2)(b), MCA, defines the term "abandonment" to mean the cessation of use of right-of-way (easement) or activity thereon with no intention to reclaim or use again; and,

WHEREAS, Section 7-14-2603, MCA, authorizes the Gallatin County Board of County Commissioners to, after considering the petition and the results of an investigation, make an entry on the minutes regarding its decision on whether to grant the petition to abandon a county road; and,

WHEREAS, on December 29, 2008, the Gallatin County Clerk and Recorder certified that the Petition contained sufficient signatures as required by Section 7-14-2601, MCA; and

WHEREAS, according to Section 7-14-2603, MCA, the Board of County Commissioners shall cause an investigation to be made of the feasibility, desirability, and cost of granting the prayer of the Petition. The investigation shall be sufficient to properly determine the merits or demerits of the Petition; and

WHEREAS, on January 13, 2009, the Gallatin County Clerk and Recorder presented the Petition to abandon the road to the Commission and the Commission appointed a viewing committee consisting of County Commissioner William A. Murdock and the County Surveyor, Charlotte Mills, as required by Section 7-14-2603(1), MCA; and

WHEREAS, on February 9, 2009, the viewing committee reported to the County Commission they met to view the road being petitioned for abandonment. They drove to Big Sky Town Center where they were able to view each end of that portion of the Old Alignment of Ousel Falls Road. Ousel Falls Road has been relocated through the Big Sky Town Center Subdivision, and is the main road through the property giving access to the Firelight, Uplands Residential Cluster B, and Spanish Peaks subdivisions. In addition, Aspen Leaf Drive is a road that gives access to the properties within the Firelight and Uplands Residential Cluster B subdivisions.

WHEREAS, on February 9, 2009, the viewing committee also reported the property surrounding this portion of the road to be abandoned is owned by the petitioners Westland Enterprises, Inc., and Simkins Holdings, LLC; and,

WHEREAS, on February 9, 2009, the viewing committee also reported that no one would be landlocked, nor denied access to public lands if the petition were granted and that the viewing committee believes it is feasible and desirable to grant the petition; and

WHEREAS, all the landowners immediately adjacent to the Road to be abandoned have consented to its abandonment; and

WHEREAS, a Notice of Public Hearing to be held on February 24, 2009, was published in the Bozeman Daily Chronicle on February 15, 2009; and

WHEREAS, on February 24, 2009, the Gallatin County Commissioners conducted a public hearing, after notice, on the Petition and the results of the investigation; and

WHEREAS, on February 24, 2009, the Gallatin County Commissioners found that granting the Petition and abandoning the Old Alignment of Ousel Falls Road would

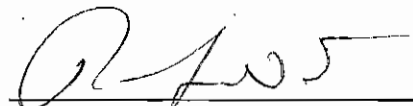
serve the best interests of Gallatin County which is consistent with the Order of the Eighteen Judicial District in Cause No. DV-05-595.

NOW THEREFORE BE IT RESOLVED:

1. The Road located in Tract 1 of Certificate of Survey No. 2343, said tract being located in the Southwest Quarter and Southeast Quarter of Section 36, Township 6 South, Range 3 East, P.M.M. Gallatin County, Montana, and the Northwest Quarter, Northeast Quarter and Southwest Quarter of Section 1, Township 7 South, Range 3 East, P.M.M. Gallatin County, Montana, and also in the Northeast Quarter of Section 2, Township 7 South, Range 3 East, P.M.M., as requested in the Petition, is hereby abandoned;
2. The Road is located within land owned in fee by Westland Enterprises, Inc., and Simkins Holdings, LLC, said land being located in Tract 1 of Certificate of Survey No. 2343 and Westland Enterprises, Inc., and Simkins Holdings, LLC. shall hold all right, title and interest to the Road now abandoned that lies within said property;
3. The Commission hereby requests the Clerk and Recorder, within ten (10) days from the date of passage of this Resolution of Abandonment, to send a copy of this Resolution by certified mail to all owners of and abutting on the abandoned road. The owners shall be those listed on the last county assessment roll; and
4. The Clerk and Recorder shall notify the county road supervisor by furnishing a certified copy of this Resolution to the supervisor.

DATED this 24TH day of February, 2009.

BOARD OF COUNTY COMMISSIONERS OF
GALLATIN COUNTY



R. Stephen White

2/24/09

Date

ATTEST:

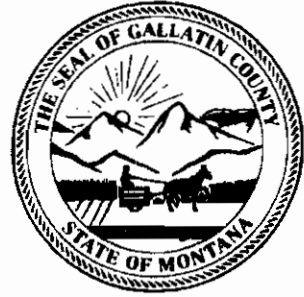


Charlotte Mills
Clerk and Recorder
Gallatin County

State of Montana

County of Gallatin

Bozeman



AFFIDAVIT OF MAILING

STATE OF MONTANA)

)ss

COUNTY OF GALLATIN)

CHARLOTTE MILLS, BEING FIRST DULY SWORN ON OATH, deposes and says:

That she is the duly elected, qualified and acting County Clerk and Recorder of Gallatin County, Montana.

I hereby certify that copies of Resolution 2009-027 were sent certified mailed to all owners of land abutting the road; all individuals named in the petition who could be affected; the postmaster of the area; and the Public Lands Access Association on February 25, 2009.

Westland Enterprises Inc, PO Box 938 Bozeman, MT 59771
Simkins Holdings LLC, 326 N Broadway Ave Bozeman, MT 59715
Jim Barr Coleman, PO Box 6580 Bozeman, MT 59771-6580
Christopher Vance & Kristi Chester, 23 Montcalm San Francisco, CA 94110-5323
Emanuel V. & Sue E. DiMiceli, 903 Paradise Way Palo Alto, CA 94306-2636
Lloyd H. Warren, 15900 Flint Overland Park, KS 66062
R. Stephen & Ingela E. Conley, 1842 Coral Circle North Fort Myers, FL 33903-5027
Roy & Lonna Reynolds, PO Box 161702 Big Sky, MT 59716
William R. Reier, JR, 3610 W. Broadwater Street Bozeman, MT 59715
Buod Holdings, LLC c/o William David Dunn, Gardere Wynne Sewell LLP Thanksgiving Tower
1601 Elm Street, Ste 300 Dallas, TX 75201
Jeremy LeFaber, Berg, Lilly, & Tollefsen 1 West Main Street Bozeman, MT 59715-4642
Stephen R. Brown, Garlington, Lohn & Robinson PLLP 199 West Pine Street PO Box 7909
Missoula, MT 59807
Big Sky Post Master, PO Box 9998 Big Sky, MT 59716

Charlotte Mills

Charlotte Mills
Clerk and Recorder
Gallatin County, Montana





Gallatin County Clerk and Recorder
 Recording Department
 311 West Main, Room 203
 Bozeman, Montana 59715-4574

CERTIFIED MAIL™



7005 1160 0001 9971 142



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 0004248147 FEB 25 2009
 MAILED FROM ZIP CODE 59715

WJ 2/26

UNCLAIMED
 William J. Reier, JR
 3610 W. B. Water Street
 Bozeman, MT 59715

NIXIE 591 SE 1 86 03/17/09
 RETURN TO SENDER
 UNCLAIMED
 UNABLE TO FORWARD
 BC: 59715457453 *1995-07750-25-42
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Gallatin County Clerk and Recorder
 Recording Department
 311 West Main, Room 203
 Bozeman, Montana 59715-4574

CERTIFIED MAIL™



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 0004248147 FEB 25 2009
 MAILED FROM ZIP CODE 59715



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P.O. Ex
 DELIVERY ATTEMPT NOTICE
 1ST NOTICE 2-27-09
 2ND NOTICE 3-4-09
 RETURN DATE 3-14

Emanuel V. & Sue E. DiMicele
 903 Paradise Way
 Palo Alto,

NIXIE 591 SE 1 86 03/17/09
 RETURN TO SENDER
 UNCLAIMED
 UNABLE TO FORWARD
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 5971504574

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Unit 101
 William R. Reier, Jr
 3610 W. Broadwater St.
 Bozeman, MT 59715
 59718

2. Article Number
 (Transfer from service label) 7005 1160 0001 9971 1420
 PS Form 3811, February 2004 Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes No

Brookline, MA 01918
 Unit 101
 59718

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Emanuel V. & Sue E. DiMiele
 903 Paradise Way
 Palo Alto, CA 94306-2636

2. Article Number
 (Transfer from service label) 7005 1160 0001 9971 1468
 PS Form 3811, February 2004 Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

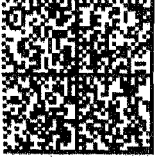
4. Restricted Delivery? (Extra Fee) Yes No



Gallatin County Clerk and Recorder
 Recording Department
 311 West Main, Room 203
 Bozeman, Montana 59715-4574

**TEMP-RETURN
 SERVICE REQUESTED**

PRESORTED
 FIRST CLASS

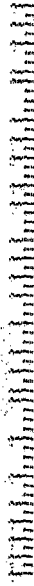


UNITED STATES POSTAGE
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Emanuel V. & Sue E. DiMiceli
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 Palo Alto, CA 94

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 PO BOX 151563
 BIG SKY MT 59715-1563
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Gallatin County Clerk and Recorder
 Recording Department
 311 West Main, Room 203
 Bozeman, Montana 59715-4574

**TEMP-RETURN
 SERVICE REQUESTED**

PRESORTED
 FIRST CLASS



UNITED STATES POSTAGE
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 0004248147 FEB 11 2009
 MAILED FROM ZIP CODE 59715

Kim Lohss
 33 Lone Peak Drive
 Big Sky, MT

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 NO MAIL RECEIPT
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EC: 59715457453 *1995-10447-11-42
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Gallatin County Clerk and Recorder
 Recording Department
 311 West Main, Room 203
 Bozeman, Montana 59715-4574

**TEMP-RETURN
 SERVICE REQUESTED**

PRESORTED
 FIRST CLASS



UNITED STATES POSTAGE
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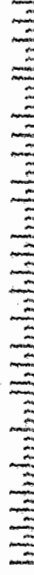
Markus Kirchmayr
 2980 Looking Glass Road
 Big Sky, MT 59715

NIXIE 591 90 1 01 02/19/09

RETURN TO SENDER
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 UNABLE TO FORWARD

BC: 59715457453 *1995-10448-11-42

59715457453 0000
 5971504574



Gallatin County Clerk and Recorder
 Recording Department
 311 West Main, Room 203
 Bozeman, Montana 59715-4574

**TEMP-RETURN
 SERVICE REQUESTED**

PRESORTED
 FIRST CLASS



UNITED STATES POSTAGE
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 MAILED FROM ZIP CODE 59715

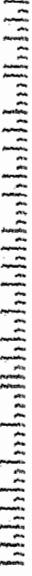
Andrew Schreiner
 2750 Little Coyote
 Big Sky, MT

NIXIE 591 90 1 01 02/19/09

RETURN TO SENDER
 NO MAIL RECEIPTABLE
 UNABLE TO FORWARD

BC: 59715457453 *1995-10452-11-42

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 5971504574



SENDER: COMPLETE THIS SECTION

1. Article Addressed to: Jeremy LeFeber, Berg, Lilly & Tollefsen, 1 West Main St., Bozeman, MT 59715-4642

2. Article Number (Transfer from service label) 7005 1160 0001 9970 7690

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature R.L. McKiernan, B. Received by (Printed Name) R.L. McKiernan, C. Date of Delivery 2-26-09, D. Is delivery address different from item 1? No

3. Service Type: Certified Mail, Registered, Insured Mail, Express Mail, Return Receipt for Merchandise, C.O.D., Restricted Delivery? (Extra Fee)

1. Article Addressed to: Jim Barr Coleman, P.O. Box 6580, Bozeman, MT 59711-6580

2. Article Number (Transfer from service label) 7005 1160 0001 9971 1482

A. Signature [Signature], B. Received by (Printed Name) Bill Bobie, C. Date of Delivery 2-26-09, D. Is delivery address different from item 1? No

3. Service Type: Certified Mail, Registered, Insured Mail, Express Mail, Return Receipt for Merchandise, C.O.D., Restricted Delivery? (Extra Fee)

1. Article Addressed to: Westland Enterprises Inc, PO Box 938, Bozeman, MT 59711

2. Article Number (Transfer from service label) 7005 1160 0001 9971 1628

A. Signature [Signature], B. Received by (Printed Name) [Signature], C. Date of Delivery [Date], D. Is delivery address different from item 1? No

3. Service Type: Certified Mail, Registered, Insured Mail, Express Mail, Return Receipt for Merchandise, C.O.D., Restricted Delivery? (Extra Fee)

1. Article Addressed to: Simkins Holdings LLC, 306 N. Broadway Ave., Bozeman, MT 59715

2. Article Number (Transfer from service label) 7005 1160 0001 9971 1628

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Roy & Donna Reynolds
 P.O. Box 161702
 Big Sky, MT 59716

2. Article Number

7005 1160 0001 9971 1437

Domestic Return Receipt

PS Form 3811, February 2004

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature *[Signature]* Agent Addressee

B. Received by (Printed Name) _____ C. Date of Delivery _____

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Stephen R. Brown
 Garlington, John & Robinson Pl
 199 West Pine Street
 P.O. Box 7909
 Missoula, MT 59807

2. Article Number

7005 1160 0001 9970 7683

Domestic Return Receipt

PS Form 3811, February 2004

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature *[Signature]* Agent Addressee

B. Received by (Printed Name) _____ C. Date of Delivery _____

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Christopher Vance
 Kristi Chester
 23 Montcalm
 San Francisco, CA
 94110-5323

2. Article Number

7005 1160 0001 9971 1475

Domestic Return Receipt

PS Form 3811, February 2004

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature *[Signature]* Agent Addressee

B. Received by (Printed Name) _____ C. Date of Delivery _____

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Big Sky Post Master
 P.O. Box 9998
 Big Sky, MT 59716

2. Article Number

7005 1160 0001 9971 1604

Domestic Return Receipt

PS Form 3811, February 2004

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature *[Signature]* Agent Addressee

B. Received by (Printed Name) _____ C. Date of Delivery _____

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

R. Stephen & Ingela E. Conley
 1842 Coral Circle North
 Fort Myers, FL
 33903-5027

2. Article Number

(Transfer from service label)

7005 1160 0001 9971 1444

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*

Agent

Addressee

B. Received by (Printed Name)

F. Conley

C. Date of Delivery

2-28-07

D. Is delivery address different from item 1? Yes

If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail

Registered

Return Receipt for Merchandise

Insured Mail

C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Lloyd H. Warren
 15900 Flint
 Overland Park, KS
 66062

2. Article Number

(Transfer from service label)

7005 1160 0001 9971 1451

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*

Agent

Addressee

B. Received by (Printed Name)

L.H. Warren

C. Date of Delivery

D. Is delivery address different from item 1? Yes

If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail

Registered

Return Receipt for Merchandise

Insured Mail

C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Buod Holding, LLC
 c/o William Davis Dunn
 Gardere Wynne Sewell LLP
 Thanksgiving Tower
 1601 Elm St, Ste 3000
 Dallas, TX 75201

2. Article Number

(Transfer from service label)

7005 1160 0001 9970 7706

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*

Agent

Addressee

B. Received by (Printed Name)

David J. Hill

C. Date of Delivery

03/02/07

D. Is delivery address different from item 1? Yes

If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail

Registered

Return Receipt for Merchandise

Insured Mail

C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes