

## **GWCS D Formation History & Public Roads Defined**

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### **PURPOSE**

The purpose of this document is to correct misunderstandings concerning GWCS D roads and road policies by residents and those who serve as directors. Primarily, the issues concern the term “public roads” which has two legitimate definitions, but when misused, cause legal and financial problems.

District roads such as Dolomite and Crystal are public roads since they were dedicated to the county in fee simple title and remain in county ownership. Easement roads are roads on private property, held in private ownership and come under different legal conditions. Therefore to determine the proper applicable definition of “public road”, it is necessary to determine the method of the roads original creation. This is the case in particular for an easement road where the extent of a permitted use of an easement is determined by the method and statement in its creation. Information herein is taken from noted legal recorded documents that are available from the County Recorders Office, from letters of opinion by County Counsel in 1988 to 1990, and from GWCS D records.

### **SUMMARY AND CONCLUSION**

GWCS D’s dedicated district (public) roads, documented by the Unit 2 and 5 maps, are Dolomite, Pyrite, Galena, Manganite, Ore, Crystal Boulevard, and short sections projecting from Crystal Boulevard of Ferrite, Sodalite, Obrizo, Calcite, Oakridge, Cinnabar, Talcite, Amalgam, and Barite. Easement roads extend from each of these district road sections to provide access to the more remote parcels that would otherwise be landlocked.

Easement roads were not and have not been irrevocable dedicated to be public roads with public utility easements. They remain on private property/in private ownership, and therefore are not eligible for maintenance and/or improvement using public funds.

The County does not maintain CSD easement roads since it is illegal to spend public funds on private property. Counties and community service districts are both government entities that operate under Government Code 61,000 and must legally operate under the same basic laws that apply to them. This requirement is being upheld throughout California by county governments, but not necessarily by CSD’s

### **BACKGROUND**

The Golden West Paradise Homeowners Association (GWPHA) was established September 1, 1970. All affected parcels and dedicated roads are recorded in <sup>i</sup> Maps of GOLDEN WEST PARADISE UNIT No. 2 and No. 5 .

<sup>ii</sup> Original Covenants, Restrictions and Conditions were extensive in coverage, but coverage was reduced in June 22, 1981.

The Golden West Community Service District (GWCS D) conversion from GWPHA was initiated by LAFCO Resolution L-83-43 on November 3, 1983, and approved by a majority vote of landowners in the GWPHA in the election held on June 5, 1984. It was designated “FORMATION NUMBER F-83-05 (GOLDEN WEST COMMUNITY SERVICES DISTRICT)” to operate in accordance with Government Code Section 61,600 j and k. These paragraphs set forth the authority and operation of GWCS D as follows, verbatim: *(j) The opening, widening, extending, straightening, surfacing, and maintaining, in whole or part of any street in such district, subject to the consent of the governing body of the county or city in which said improvement is to be made. (k) The construction and improvement of bridges, culverts, curbs, gutters, drains, and works incidental to the purposes specified in the subdivision (j), subject to the consent of the governing body of the county or city in which the improvement is to be made.*

### **GWCS D LEGAL DESCRIPTION**

The Maps of the Golden West Paradise Units 2 and 5 define the district roads dedicated to the county, their easements for drainage, etc., and 83 parcels in Unit 2 and 215 parcels in Unit 5 that directly abut the district roads. A property description of the territory concerned is set forth in the legal description of Meets and Bounds entitled

<sup>iii</sup> “District Boundary Golden West Paradise Homeowners Association Community Services District” which includes the Area of Influence. This entire area, the parcels and roads are shown pictorially on the map entitled <sup>iv</sup> “Plat to Accompany Golden West Paradise Homeowners Association Application for Community Services District” by Jack

Sweeney, Surveyor. This territorial entity defined by the Unit 2 and 5 maps, the Meets and Bounds, and the Plat Map were transferred to and became GWCS D upon its formation.

The paragraph below, copied verbatim from Unit 2 and 5 maps, defines the original intent for GWCS D district roads when the district was created. Note that easement roads (parcel map roads) are excluded and were not dedicated. See **Attachment 1**, which is 5 pages: **Maps of Golden West Paradise Unit No.2, and Unit No. 5.**

*The undersigned, owner of record title interest, hereby consents to the preparation and recording of this map, and hereby conveys and offers for dedication to the county of El Dorado the streets and public ways shown hereon including the underlying fee thereto, for any and all public purposes, subject to the provisions that said streets and public way will not be maintained or improved by the County of El Dorado. Maintenance and improvements of said streets, public ways and common areas will be the responsibility of the Golden West Paradise Property Owners association, approved by the Board of Supervisors, County of El Dorado, having the power of assessment. The undersigned also offer for dedication and do here dedicate for particular purposes the following:*

- (a) The front twenty (20) foot setback of all lots of this subdivision are offered as public utility easements for poles, guy wires, anchors, overhead and underground wires and conduits with the right to trim and remove tree limbs, trees and brush thereon.*
- (b) Easements for drainage of surface water over those strips of land lying between the lines shown hereon and designated "Drainage Easement Line".*

#### **ROADS MAINTAINED WITH PUBLIC FUNDS**

In these transactions the District roads were dedicated in fee simple title to the county, and remain in county ownership. This obviously makes them publicly owned roads for public use, and for their maintenance using public funds. This recorded dedication stipulated that road maintenance is to be by the GWCS D unless or until the roads are brought up to county standards.

These dedicated district roads are clearly documented by the Unit 2 and 5 maps. They are Dolomite, Pyrite, Galena, Manganite, Ore, Crystal Boulevard, and short sections adjoining Crystal Boulevard of Ferrite, Sodalite, Obrizo, Calcite, Oakridge, Cinnabar, Talcite, Amalgam, and Barite.

#### **ROADS NOT ELGIBLE FOR MAINTENANCE WITH PUBLIC FUNDS**

Easement roads, referred to as "parcel map roads" are the unpaved extensions from **district roads**. These easements are on private property and thus remain privately owned. Typically, easements are granted for utilities-- waterlines, drainage, and power and telephone lines. For roads, easements may be granted for the use by specifically designated property owner(s) or for the public in general. The easements that define easement roads within the District Boundary provide for public use of the roads, in order to provide access parcels that may otherwise be landlocked. This however in no way makes them equivalent to the district roads due to the difference in ownership and authority. Had the original intent been to make all roads, district roads, they would have been dedicated to the county during the formation process, which clearly is not the case.

When operating under the Zone of Benefit process, the County recognizes the difference between dedicated roads held in public ownership and easement roads held in private ownership in their operation of the numerous Zones of Benefit. <sup>v</sup> *In Zones of Benefit the County Board of Supervisors, through the "Special Unit of the Department of Transportation", contracts for and manages the road maintenance for CSD's. A CSD has an advisory committee composed of zone property owners.*

The County will not maintain any easement road within a CSD since it is illegal to spend public funds on private property. When initiating a Zone of Benefit, the County requires several conditions, one that is the following (copied verbatim):

- <sup>vi</sup> a) Signatures of one hundred percent (100%) of the property owners who own an interest in the property to be serviced together with a certification by each property owner that the property owner will sign an offer of dedication of the property to be maintained or serviced.

### **EVOLUTION OF THE GWCS D ROAD POLICY**

Looking back in history reveals that:

- August 7, 1984, GWPFA voters approved formation of the Golden West Community Services District.
- July 21, 1994, ten years later, the first District Road Policy was established under Government Code 61,000. Revision 2 was prepared August 17, 1995. Revision 3 was prepared May 17, 1997.
- During this period, County Counsel gave several written “opinions” on the subject of private and public roads. By failing to differentiate that there are two very different types of “public roads” in the vernacular, it appears that the term “public roads” has been misunderstood by numerous people who assume that they are one and the same. The legal difference are: 1) irrevocable dedicated roads that are in public ownership and therefore are eligible for maintenance with public funds, and 2) easement roads can provide for public use on private property, but do not qualify for maintenance with public funds. Typically they are maintained by the owner, or by the owner in collaboration with neighbors who use the easement roads.

### **THE WHITTINGTON LETTERS**

Excerpts from these letters that are relevant, but ambiguous, concerning the two definitions of “public roads” follow:

<sup>vii</sup> **David E. Whittington, County Counsel, to EID, March 23, 1988,**

a) *It has been the consistent position of this office over a period of many years that when public monies are expended without objection upon what had previously been a “private” road that the expenditure of public monies is tantamount to an offer of dedication and acceptance thereof by the district and that the road becomes a public road or highway available to public in general.*

b) *The Attorney General for many years has taken the position that, in the absence of statutory authorization, public monies cannot be used to maintain or improve private roads, and “in fact the expenditure of public monies for public purposes is a gift of public monies in violation of Article IV, Section 31, of the California Constitution. [now Article I, Section 6]. 45 Ops. A.G. 98 (1965).*

c) “. . . By necessary implication, the Board’s action permits only such road work in the area as the county is authorized by law to perform. . . . At the March 12, 1974 hearing at which the Board’s decision to call the maximum tax rate was made, the county counsel advised the Board that public funds could not be expended on the roads until a judicial determination had been obtained that they were public roads. It may be presumed that the Board will comply with the law. (Citations)” (Emphasis added.)

Footnote to the March 23, 1988 letter: <sup>1</sup> *Since we have not been supplied with any specific information one way or the other, in this analysis, we assume that in the subdivision process creating lots and roads there was no offer to dedicate the roads to the public in the subdivision(s) which comprise the community services district, by the subdivider or by any express action of the part of the community service district board of directors.*

- Comments on Whittington letter- 1988 , ¶ a,b,c):
  - 1) It is to be noted that an “opinion” of an attorney or County Counsel does not override the conditions and requirements of a legal recorded document – i.e., in this case, the recorded GOLDEN WEST PARADISE UNIT No. 2 and No. 5.documents.

- 2) The opinion stated in paragraph (a) is misleading by being unqualified and therefore ambiguous. It is being incorrectly used to argue and justify that the spending of public funds on an easement road on private property for several years without objection makes it a valid public road that can continue to be maintained using public funds, when in fact California Constitution says that such use of public funds is an illegal act. An easement road is “public” only for public use. The Whittington statement fails to consider the original intent of those who established the easement.
  - First, action should be taken to deal with and stop the illegal use of public funds per the A.G.’s quote from the California Constitution.
  - Second, if such a violation of the law were to make a private road a public road, there is no mechanism to get it properly recorded. Years later, who know which roads are public?
  - This opinion initiates an illegal and unworkable condition. Being that this just “an opinion” it has no legal force and should have never been followed.
  - When does continued violation of a law without objection make the law become valid, or in this case, cause a change in ownership? If one repeatedly fails to stop at a stop sign, does the stop sign law become invalid? Does failing to pay ones federal income tax make that law invalid? Does shoplifting without being stopped make that action permissible? Hardly!
- 3) The footnote’s stated lack of “not being supplied with any specific information regarding the subdivision process” is diametrically opposite to the road definition that was supplied in the GWCSO formation. This further disqualifies the opinion by Counsel Whittington as being applicable for justifying GWCSO’s use of public funds for maintenance of easement roads..

<sup>viii</sup> **Rudy Limon, Legal Assistant, to LAFCO, November 7, 1989,**

A relevant statement in this letter on private vs. public roads is: *the issue of “private” vs. “public” roads most often will involve a question of fact usually as to what was intended by individuals involved in the dispute. . . . Therefore, each case must be considered on its own facts.*

<sup>ix</sup> **David Whittington, County Counsel, to LAFCO, December 28, 1989**

Paragraphs a), b) and c) and the footnote in the December 28, 1989 letter are an exact repeat from that in the March 23, 1988 letter to EID and are not repeated here. However, an important qualification was added after paragraph c). It states:

*The Erven court, then, without any discussion or analysis, in effect adopts the county counsel position as its own to the effect that public moneys may not be expended on private roads. In our research, we have not found any case prior to the Erven that had occasion to address that issue and we may speculate that the reason for that circumstance is that that proposition stated in self-evident. We believe that the fact that since 1975 when Erven was decided, not a single California case has had further occasion to address that issue lends weight to that conclusion.*

*We therefore express the opinion that when the road or roads in a community service district have been maintained by the district with public moneys, such road or roads are public roads or highways to which the public in general has free use and access.*

- Comments on Whittington letter- December 28, 1989

The added qualification expresses the requirement that a county cannot expend public funds on roads that are not public roads, and that this requirement is being upheld through out California. The last paragraph attests to the obvious; the fact that roads maintained by public funds may be used by the general public. Though silent on the issue, there is no implication here that easement roads, which are not public roads, can be maintained or improved with public funds.

It is important to note that, per Government Code 61,000, a Community Services District is an official government entity, just as is a county government. Both come under the same basic California laws and requirements, but that the county has a highly expanded coverage and authority over that than what a CSD has. Therefore, the prohibition of using public funds on private property and easement roads applies equally to CSD's.

**<sup>x</sup> David Whittington, County Counsel, to Under-sheriff, September 17, 1990**

*There is no question that the roads, which are contained within the district boundaries are public roads and highways.*

*The roads which are contained within the district boundaries were created by rural subdivision maps, Golden West Paradise Unit No. 2 and Golden West Paradise Unit N. 5. Such maps were recorded in the county recorders office . . . . In each of such maps, roads and ways were offered for dedication to the county of El Dorado by virtue of the following statements of each of the maps:*

*"The undersigned . . . . offers for dedication to the County of El Dorado the streets and other public ways shown hereon including the underlying fee thereto, for any and all public purposes . . . .*

*Without question, the offers of dedication which were accepted by the county not only established the streets within the map areas as public streets, but also vested in the county the fee simple interest in and to such streets as shown on the maps.*

- Comments of Whittington's letter—September 17, 1990

This letter responded to the specific question concerning the County Sheriffs authority to enforce GWCSO's traffic codes on GWCSO roads. Here Whittington recognizes dedicated district roads, but fails to recognize that within the District boundary there are parcels that are not included in the Unit 2 and 5 Maps and use easement roads for access to Highway 49 through district roads.

**COMMENTS ON WITTINGTON LETTER'S IMPACT OF GWCSO ROAD POLICY**

When reviewing the 1994 GWCSO and subsequent Road Policies, there are problems that appear to have been influenced by some of Whittington's opinions wherein he failed to define differences in two types of "public roads". As a result, the policies have incorrectly defined Side Roads (easement roads) as qualifying for maintenance with public funds. **A simple change made herein to the 1994 Road Policy under the heading "ROADS THAT DO NOT QUALIFY FOR SERVICE" rectifies this problem, along with the deletion of the "SIDE ROADS" definition.**

<sup>xi</sup> Verbatim statements from the 1994 policy are:

- **MAIN ROADS: Those roads identified on the approved subdivision map of GOLDEN WEST PARADISE UNIT 2 & UNIT 5 (no extensions), and which required an easement. (Note, these "easements" are for the ditches, etc. for district roads)**
- **SIDE ROADS--DELETED**

- **ROADS THAT QUALIFY FOR SERVICE:** *All roads that meet all four of the following criteria:*
  - They must be open for public use;
  - They must be within the District Boundary;
  - They must be roads whose service is being paid for through the District assessments; and
  - They must have been in existence at the time of the formation of the District, or
  - They must have been formally accepted by the Board after a public hearing
- **ROADS THAT DO NOT QUALIFY FOR SERVICE:** *Roads and extensions within the GWCS D boundaries, but beyond the boundaries defined by Unit No. 2 and Unit No. 5 maps, that have not been accepted by Board.*
- **SIDE ROAD ACCEPTANCE:** *All roads or extensions open to the public that have been constructed after District Formation shall comply to “Minimum Standards” established by the Board. Property owners must petition the Board for acceptance. A public hearing will be held. If the petition is approved the Board after the hearing, then the board will respond with a Letter of Acceptance.*
- **SIDE ROAD MINIMUM STANDARDS FOR ACCEPTANCE:** *Minimum standards shall be as follows:” Any road that is open to the public and had been constructed to County requirements. That is “a road that was constructed with a county building permit and has received a Final Inspection and a Completion Notice is on file*

#### **iii THE GWCS D ILLEGAL ORDINANCE, WRITTEN IN 2003**

This Ordinance, under District Roadways lists Collector Roads, Feeder Roads, and incorrectly adds, *“Potential Feeder Roads are easement roads and driveways that serve two or more parcels.”*

#### **GENERAL COMMENTS ON GWCS D BOARD OPERATION**

- A Board of Directors cannot make easement roads into public roads. This can only be done by the parcel owner’s) funding road improvements to bring them up to district standards, and then offering the roadway to the county. Upon acceptance, dedication will be recorded in fee title, and will become a district road.
- It is a “conflict of interest” for any public official to vote on any issue in which they may directly benefit in a manner not available to the community in general. Four directors who live on easement roads have spent thousands of dollars on their easement roads.
- Further Mistletoe, a private driveway for two “recent past” board members had their driveway graded and graveled. District funds paid for their driveway improvement under the management of the current Board President.

#### **RESIDENTS ON UNPAVED ROADS THAT ACCESS HWY 49 THROUGH DISTRICT ROADS:**

- Pay the road fee for the use of district roads and thus avoid being landlocked.
- Paid less for their property since it did not abut a paved road.
- Must pay the current GWCS D \$120 per year road fee which is collected by the County with the property tax statements.

#### **RECOMMENDATIONS**

Quite probably this misinterpretation of Road Policy has been an honest mistake by early Board members who were misled by County Counsel’s opinions when they wrote the original 1994 Road Policy and updates. As such, it would be pointless to take any action whatever against them.

However, the road maintenance, along with many other decisions and actions, or lack thereof, of the 2003 board (but prior to June 28, 2007) must to be corrected to prevent further financial and/or legal problems, including proper contracting, record keeping, communication, and in particular, knowledge of and abiding by governing laws and policies

The 2003 Board had four board members including the president who lived on easement roads. Some of the more egregious actions by this board concern the awarding of a large contract for maintenance/improvement of easement roads without having adequate funds to cover the cost of the contract, which led to the present lawsuit. During the same time period, this board neglected needed maintenance of district roads, ditches, and culverts that has resulted in flood damage to one home and the district roads. They also neglected weed abatement for fire prevention---all actions that could lead to further litigation against the district.

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## **REFERENCES**

- <sup>i</sup> Map of Golden West Paradise Unit No.2, a Rural Subdivision, and Map of Golden West Paradise and Unit No. 5 in Book E of Maps, No. 71 and No. 90, September 1, 1970
- <sup>ii</sup> Covenants, Restrictions and Conditions, September 14, 1970, Book 1006, pages 218 to 243.  
Updated CC&R's, in Book 1989, pages 260 & 270 to 278, June 22, 1981
- <sup>iii</sup> District Boundary Golden West Paradise Homeowners Association Community Services District, Book 2304, Pages 735 to 737
- <sup>iv</sup> Plat to Accompany Golden West Paradise Homeowners Association Application for Community Services District", by Jack Sweeney-Land Surveyor in 1971.
- <sup>v</sup> Policy And Procedure Guidelines For Creation And Administration Of Zones Of Benefit Within A County Service Area, Amended version adopted June 2, 1987
- <sup>vi</sup> Questions and Answers about Road Zones of Benefit, June 27, 2006
- <sup>vii</sup> Inter-office Memo, To: Ron Duncan, From: David E. Whittington, Date: March 23, 1988, Re: Private vs. Public Roads
- <sup>viii</sup> Inter-office Memo, To: Margaret Wilkenfeld, LAFCO, From: Rudy Limon, Legal Assistant, Date: November 7, 1989, Re: Roads in a Community Service District (CSD) Public Roads
- <sup>ix</sup> Inter-office Memo, To: Margaret Wilkenfeld, LAFCO, From David Whittington, County Counsel, Date: December 28, 1989, Re: Private vs. Public Roads in Community Service Districts
- <sup>x</sup> Inter-office Memo Margaret, to: Don McDonald, Undersheriff, From David Whittington, County Counsel, September 17, 1990, Re: Sheriffs Department Duty to Enforce Speed Ordinances of the Golden West Community Services District
- <sup>xi</sup> GOLDEN WEST COMMUNITY SERVICES DISTRICT, July 21. 1994, ROAD POLICY
- <sup>xii</sup> GOLDEN WEST COMMUNITY SERVICES DISTRICT, ORDINANCE 1, Effective Date April 13, 2003, Chapter 1: Road Encroachments, Article 1. General Provisions