

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO:

**Golden West Community Services District
P.O. Box 448
El Dorado, CA 95623**

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

ORDINANCE NO. 5

**GOLDEN WEST COMMUNITY SERVICES DISTRICT
CULVERT AND ROADWAY MAINTENANCE AND REPAIR**

WHEREAS, The Tahoe Paradise Inc. dedicated to the County of El Dorado the streets and public ways of this subdivision with the provision that said streets and public ways will not be maintained or improved by the County of El Dorado and that maintenance and improvements of said streets, public ways and common areas will be the responsibility of the Golden West Paradise Property Owners Association (GWPPOA); and

WHEREAS, The Local Agency Formation Commission approved the formation of the Golden West Community Services District (Resolution L-83-43) for the purpose of assuming the road maintenance responsibilities of the GWPPOA; and

WHEREAS, An election called for by a resolution (359-83) of the Board of Supervisors of the County of El Dorado approved the formation of the Golden West Community Services District ; and

WHEREAS, The Board of Directors of the Golden West Community Service District (GWCSD) believes that establishing standards and regulations for culvert, ditch and roadway maintenance and repair within the boundaries of roadway easements of the District will protect the public safety and protect against damage and deterioration of District roadways from excessive water drainage or runoff;

NOW THEREFORE, the Board of Directors of the Golden West Community Services District ordains as follows:

SECTION 1. **PURPOSE**

The purpose of this ordinance is (1) to establish the responsibilities and duties of property owners regarding maintenance and repair of the culverts located on their real property and within any roadway easement dedicated to the County in order to prevent deterioration of Golden West Community Service District roads and increased maintenance expenses due to excessive water drainage or runoff, (2) to preserve and protect the health and safety of community residents by protecting against deterioration of roads maintained by the District and to reduce road maintenance expenses incurred by the District in such cases; and (3) to establish a procedure requiring property owners within the District to pay all costs necessary to maintain or repair defective culverts and/or driveway encroachments within a District roadway easement.

SECTION 2. **AUTHORITY**

010 The District is authorized to adopt ordinance pursuant to California Government Code section 51060.

020 The District is authorized to acquire, construct, improve and maintain streets, roads, right of way, bridges culverts, drains and any incidental works within its boundaries pursuant to California Government Code section 61100(1).

030 California Government Code section 61103 provides that a district with authority granted under Government Code section 61100 shall have the powers, duties and authority of a county with respect to its streets, roads, right-of-way, bridges, culverts, and drains within the District. Such powers include, but are not limited to the powers of a county to: (1) enact and enforce ordinances and regulations for the improvement, maintenance, protection, management, control or use of roads (Streets & Highways Code Section 940 *et seq.*); (2) to adopt all measures necessary to repair or prevent damage to roadways threatened by storm waters or floods, and the power to construct and maintain culverts, flumes, ditches or canals for the propose of directing such water s away from district roadways (Streets & Highways Code Section 964); (3) to issue encroachment permits with respect to district roadways with respect to any pipeline, culvert, driveway, private road, fence mailbox or any structure or object placed in, under or over any portion of an easement dedicated to the County for roadway purposes (Streets & Highway Code Section 1480 *et seq.*); (4) to order the removal of encroachments on District roadway easements at the expense of the owner, occupant or person causing the encroachment and to charge a penalty of \$350 for each day the encroachment remains after providing notice of the need for removal of such encroachment (Streets & Highways Code Section 1480 *et seq.*); (5) to order any person who constructs or injures any District road, or drains water from their property upon any District road which results in damage to the roadway, to immediately cease and discontinue such damage and to repair the road at their own expense and to levy a penalty of \$350 for each day such injury remains (Streets & Highway Code Section 1487).

SECTION 3. CULVERT AND ROADWAY, MAINTENANCE AND REPAIR

010 Definitions.

- a) As used in this ordinance, the terms listed below shall have the meaning assigned to them.
- b) “Culvert” means a transverse drain, conduit or covered channel that conveys a flow under a roadway, driveway, pathway or embankment. Culverts are mainly used to divert rainfall, runoff, stream water or other water drainage or runoff to prevent erosion or flooding and to preserve the roadways and their base.
- c) “Defective culvert” means a culvert that, in the judgment of the General Manager is in a condition such that the flow of water drainage or runoff is impeded or it is in such a condition as to interfere with its intended purpose to prevent erosion or flooding and to preserve the roadways and their base.
- d) “District” means the Golden West Community Service District.
- e) “Encroachment” means any pipeline, culvert, driveway, private road, fence, mailbox or any structure or object placed in, under or over any portion of an easement dedicated to the County for roadway purposes, and includes dirt soil, trees, plants or plant material, water, debris excess water or other objects accumulate in or around the culvert which causes obstruction of the drain or channel or deterioration to the roadway or its base.
- f) “General Manager” means the General Manager of the Golden West Community Service District.
- g) “Maintenance” means work undertaken to extend the life of the culvert and ensure that it functions as designed, including the removal of accumulated encroachment materials that prevent the flow of water drainage or runoff through the culvert, replacement of a crushed or damaged culvert or other encroachment; and activities to preserve and protect the roadways and their base.
- h) “Owner” means any person owning real property within the District where an encroachment exists either on the property or within any roadway easement dedicated to the County.
- i) “Right of Way” means that area of land on which the road is built and that land on each side of the road for the specified distance covered by county road easements or by county owned land acquired for road purposes and within the county owned road system.
- j) “Person” means any natural person, a partnership, corporation, or other entity, public or private.
- k) “Real Property” means a parcel located within the District where an encroachment exists thereon or within a roadway easement dedicated to the County.
- l) “Repair Work” means maintenance work to correct defects or deficiencies as specified by the General Manager or District Engineer and approved by the Board of Directors.
- m) “Roadway” means any road, street or road easement dedicated to the County and located within the boundaries of the District.

020 Owner's Duty to Maintain and Repair Culverts and Protect Roadways

An owner shall have the duty to maintain and repair any culverts on such owner's real property or located within any roadway easement dedicated to the County in order to protect the roadway and its base from damage.

030 Notice to Repair Defective Culvert or Driveway

When the General Manager has actual notice of the existence of a defective culvert, driveway or activity causing deterioration of the road or its base caused by the activities of the owner of property adjacent to such roadway, the General Manager shall give written notice to the owner of such real property where the defective culvert, driveway or activity is located to repair the defective culvert, driveway or to correct the activity. The General Manager may also give notice to the person in possession of the real property, in addition to the notice given to the property owner.

040 Service of Notice

- a) The notice to repair shall be served on the owner by any of the following methods:
- b) Personal service of a copy of the notice on the owner;
- c) Mailing the notice to the owner by first class mail, postage prepaid, to the address of the owner as set forth on the last equalized assessment roll;
- d) Personal service of a copy of the notice on the person in possession of the real property, if a copy of the notice so served is also mailed to the owner in accordance with subsection b) of this section;
- e) Posting the notice in a conspicuous place at the real property, if a copy of the notice so posted is also mailed to the owner in accordance with subsection B on this section;
- f) If the notice is served on the owner by mail, the General Manager shall, not more than ten (10) days after the mailing of the first notice to repair, mail to the owner in the same manner an additional notice to repair, marked "second notice", containing the same information as was set forth in the first notice.

050 Contents of Notice

- a) The notice to repair shall, at a minimum, contain the following information;
- b) That the culvert is defective or the nature of the activity of the property owner that is causing deterioration of the roadway or its base;
- c) The nature of the repair work required to be done, and the cost as estimated by the District or its agents.
- d) The manner in which the repair work is to be done, including the specifications required by the District or its agents as to materials and workmanship, if any;
- e) The General Manager shall, in the notice to repair, provide that the owner may elect to perform the repairs himself or herself, have the repair work performed by a licensed contractor, or have the repair work performed by the District, through a contractor selected by the District. The General Manager shall include with the notice an agreement, in such form as established by the General Manager, which sets forth the election of the owner and the District's requirements with respect to the manner in which

the repair work must be performed. The owner shall make the election on the agreement and shall execute it and return it to the General Manager forthwith. If the owner elects to have the repair work performed by the District, the General Manager shall cause the repair work to be performed by the District within a reasonable period of time thereafter.

- f) If the owner or the person in possession of the property disagrees with the determination of the General Manager that the culvert is defective, that repair work is necessary, and/or that the specified activity is causing deterioration to the roadway or its base, such owner or person in possession of the property may appear at the next meeting of the District Board of Directors, which meeting date shall be specified in the notice, and at such time and place, show cause why the District should not order such repair work to be done.

060 Hearing

At the time stated in the notice to repair, the District Board of Directors shall hear and consider all objections for the doing of such repair work. Upon the conclusion of such hearing, the District Board of Directors shall, (a) if it overrules such objections, confirm the order of the General Manager, or (b) if it finds good cause for the objections, make such order as it deems appropriate, including, rescission of the order of the General Manager directing the repair work. A written notice of the decision of the Board of Directors shall be mailed to the owner of the property.

070 Time for Commencement and Completion of Repair Work by Owner

The owner shall commence the repair work required by the notice to repair within fourteen (14) days after the owner elects either to perform the repair work himself or herself, or hire a licensed contractor to perform the repairs. Once commenced the repairs shall be diligently prosecuted without interruption to completion to the satisfaction of the District.

If the owner appears at a hearing of the Board as specified in the notice, and Board of Directors confirms the order of the General Manager, then such work shall be commenced within fourteen (14) days from receipt of written notice of the decision confirming such order.

080 Failure to Make Required Repairs

If the repair work is not commenced by the property owner within the time specified in the notice, or, once commenced, is not prosecuted diligently and without interruption to completion to the satisfaction of the District, the General Manager shall immediately commence and complete the repair work at the expense of the District, which shall constitute a service charge of the District payable by the offending property owner. The cost of such repairs in addition to administrative and legal costs incurred by the District in completing the required repairs shall constitute a service charge of the District imposed on the property owner for the maintenance and repair services provided to the property owner by the District pursuant to Government Code section 61115.

090 Collection Proceedings

The service charge imposed on any property owner for maintenance and repair of defective culverts or damaged roadways found to have been caused by the property owner's defective culvert or other activities impacting the District's roadways may be collected in the same manner as any other charges for services and facilities provided by the District as specified in Government Code sections 61115(a) (b) and (c). Specifically, the District may provide for a basic penalty for the nonpayment of such service charge of not more than ten percent (10%) plus an additional penalty of not more than one percent (1%) per month for the nonpayment of such service charge and the basic 10% penalty.

In addition, the Board of Directors may recover any such service charge and penalty by recording in the office of the County Recorder of El Dorado County a certificate declaring the amount of the service charge and penalties due, the name and last known address of the person liable for those charges and penalties. From the time of recordation of the certificate, the amount of the charges and penalties shall constitute a lien against all real property of such property owner in El Dorado County.

As an alternative, the Board of Directors may provide that such service charge and penalty may be collected on the tax roll in the same manner as property taxes pursuant to the procedure specified in Government Code section 61115(b) after a public hearing has been afforded to the owner of such affected parcel.

100 Civil Liability for Injuries

A property owner who fails to repair a defective culvert or protect against deterioration of District roadways after notice by District of the need to repair such condition pursuant to Section 030 hereof shall bear the civil liability for any personal injury or property damage arising out of failure to repair such condition, until such condition has been repaired by either the District or the property owner.

SECTION 4. SEVERABILITY

If any section, subsection, clause, phrase, or portion of this ordinance is from any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The District Board of Directors hereby declares that it would have adopted this ordinance and each section, subsection, clause, phrase, or portion thereof irrespective of the fact that any one or more sections, subsections, clauses, phrases, or portions be declared invalid or unconstitutional.

SECTION 5. **EFFECTIVE DATE.**

This Ordinance shall become effective thirty (30) days from and after its final passage and adoption, provided it is published in full within fifteen (15) days after its adoption in the Mountain Democrat newspaper.

This Ordinance was introduced and the title thereof read at the regular meeting of the Golden West Community Services District Board of Directors on _____, and further reading was waived.

On a motion by _____ seconded by _____ the foregoing ordinance was passed and adopted by the Board of Directors of the Golden West Community Services District on _____ by the following vote:

| | |
|-----------------|-------------------|
| Ayes: | Directors: |
| Noes: | Directors: |
| Abstain: | Directors: |
| Absent: | Directors: |

Attest:

Marc Regelbrugge, Secretary