

**SUBMITTAL TO THE FLOOD CONTROL AND
WATER CONSERVATION DISTRICT BOARD
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

941 B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
February 26, 2008

SUBJECT: Resolution of Necessity Regarding the Alessandro Dam Access Project
Project No. 1-0-00043

RECOMMENDED MOTION:

Approve Resolution No. F2008-03, Resolution of Necessity Regarding the Alessandro Dam Access Project.

BACKGROUND:

See Page 2

FINANCIAL:

N/A

GSW:rp

WARREN D. WILLIAMS
General Manager-Chief Engineer

FINANCIAL DATA	Current F.Y. District Cost:	N/A	In Current Year Budget:	N/A
	Current F.Y. County Cost:	N/A	Budget Adjustment:	N/A
	Annual Net District Cost:	N/A	For Fiscal Year:	N/A

SOURCE OF FUNDS: 25110 947400 540040 – Land Acquisition, Zone 1	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input checked="" type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY:
Alex Gann

County Executive Office Signature

Departmental Concurrence
APPROVED COUNTY COUNSEL
Alex Gann
2/14/08
DATE

- Dep't Recomm.: Consent Policy
- Per Exec. Ofc.: Consent Policy

**FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD SUBMITTAL
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

SUBJECT: Resolution of Necessity Regarding the Alessandro Dam Access Project
Project No. 1-0-0043

SUBMITTAL DATE: February 26, 2008

Page 2

BACKGROUND:

Throughout the years the District has been using an easement over Muirfield Road to access Alessandro Dam. As the area developed and access from public streets was made available, the District relinquished its easement in various tracts. This was intended to be the case with Tract No. 26109-2 with public access being available over Lot 11. However, the access was only provided to the City of Riverside and not the District. The access easement which bisects the tract is still in existence.

The District, in conjunction with the City of Riverside, has been using the ingress and egress easement over Lot 11, Tract No. 26109-2 Book 274, Maps 45-49 and not the Muirfield Road easement because the Muirfield Road easement was blocked by the construction of a residence and pool over the easement. The owner of the subject property has requested the City relinquish its access easement which the City will be doing in the very near future. The owner has been reluctant to provide the District access over the existing City easement; the reason is they feel that the easement hampers the residential development of the site.

The District's access is necessary for both routine and emergency maintenance and operation of the dam. The safety and functionality of this State jurisdictional dam is dependent upon implementation of District's strict maintenance regimen. Failure of the dam would likely have catastrophic health, safety and life threatening impacts downstream and throughout the city of Riverside. Alternate sites for access were considered. However, the environmental, physical and cost constraints eliminated the alternatives.

The access is necessary to remove debris and sediment from the dam two to four times a year, each for a period of two weeks. If this removal is not accomplished, the dam will not function properly. Negotiations have been conducted with the affected owner, but to date, have not been successful. Although these negotiations will continue in order to facilitate the timely access to Alessandro Dam, staff is recommending the approval of Resolution No. F2008-03.

1 Board of Supervisors

Riverside County Flood Control
and Water Conservation District

2 Resolution No. F2008-03
3 Resolution of Necessity Regarding
4 Alessandro Dam Access Project

5 WHEREAS, the Parcel of real property that is the subject of this Resolution (the "Subject
6 Property") is located in the City of Riverside, County of Riverside, State of California; is located
7 next to the intersection of Overlook Parkway and Chateau Ridge Lane; is presently designated as
8 Riverside County Assessor's Parcel No. 243-460-011; and is legally described and pictorially
9 depicted on the documents attached hereto as Exhibits "A" and "B" (and incorporated herein by
10 this reference);

11
12 WHEREAS, the proposed project that is the subject of this Resolution (the "Proposed
13 Project") is one to construct public flood control facilities (including but not limited to the use of
14 the Subject Property as a flood control road for heavy vehicle access to the Alessandro Dam, and
15 for other uses incidental thereto and required thereby including "remnants" within the meaning of
16 Code of Civil Procedure Section 1240.410);

17
18 WHEREAS, the interest in property that is the subject of this Resolution (the "Subject
19 Property Interest") is fee simple ownership of Riverside County Assessor's Parcel No. 243-460-
20 011; and

21 WHEREAS, the statutes that authorize the Riverside County Flood Control and Water
22 Conservation District to acquire the Subject Property Interest by eminent domain include Article
23 1, Section 19 of the California Constitution; Section 25350.5 of the Government Code; Section
24 48-9 of the Water Code-Appendix; and Sections 1240.010, 1240.020, 1240.030, 1240.040,
25 1240.110, 1240.410, 1240.510, and 1240.610 of the Code of Civil Procedure.

26
27 Now, therefore, BE IT RESOLVED AND ORDERED by the Board of Supervisors of the
28 Riverside County Flood Control and Water Conservation District (the "District"), not less than

1 four-fifths of all members concurring, in regular session assembled on February 26, 2008, that
2 this Board finds and determines each of the following:

3 1. Notice of the Board's intention to adopt this resolution of necessity was duly given
4 as required by the California Code of Civil Procedure, Section 1245.235 and, on the date and at
5 the time and place fixed for hearing, this Board did hear and consider all of the evidence
6 presented;

7 2. The public interest and necessity require the Proposed Project;

8 3. The Proposed Project is planned or located in the manner that will be most
9 compatible with the greatest public good and the least private injury;

10 4. The Subject Property Interest is necessary for the Proposed Project;

11 5. The offer required by Section 7267.2 of the Government Code has been made to the
12 owner or owners of record of the Subject Property; and

13 6. To the extent that the Subject Property is already devoted to a public use, the use of
14 the Proposed Project is a compatible use that will not unreasonably interfere with or impair the
15 continuance of the public use as it presently exists or may reasonably be expected to exist in the
16 future (California Code of Civil Procedure, Section 1240.510) or the use of the Proposed Project
17 is a more necessary public use than is the presently existing public use (California Code of Civil
18 Procedure, Section 1240.610).

19
20
21 BE IT FURTHER RESOLVED AND ORDERED that the County Counsel of the County
22 of Riverside (and any associated private attorneys) are hereby authorized and empowered:

23 1. To acquire (in the name of the District) the Subject Property Interest by
24 condemnation in accordance with the Constitution and laws relating to eminent domain;

25 2. To prepare and prosecute in the name of the District such proceedings in the proper
26 court having jurisdiction thereof as are necessary for such acquisition;

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3. To apply to the Court for orders to deposit the probable amount of compensation out of proper funds under the control of the District into the County Treasury and to move for an order permitting the District to take prejudgment possession and use the Subject Property Interest; and

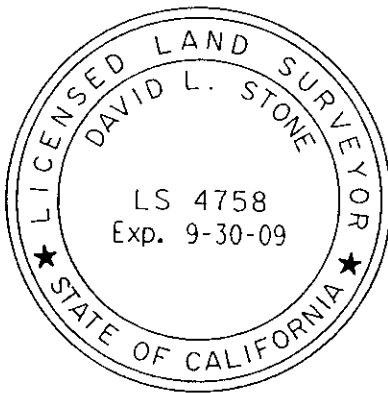
4. To compromise and settle such proceedings if such settlement can be reached and, in that event, to take all necessary actions to complete the acquisition, including stipulations as to judgment and other matters, and the causing of all payments to be made.

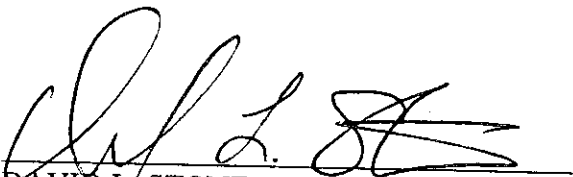
FORM APPROVED COUNTY COUNSEL
BY: Glenn R. Beloit 2/14/08
GLENN R. BELOIAN DATE

EXHIBIT A

ALESSANDRO DAM ACCESS
Parcel 1043-501

All of Lot 11 of Tract No. 26109-2 as shown on Map Book 274, Pages 45 through 49, inclusive,
Records of Riverside County, California, within the City of Riverside.





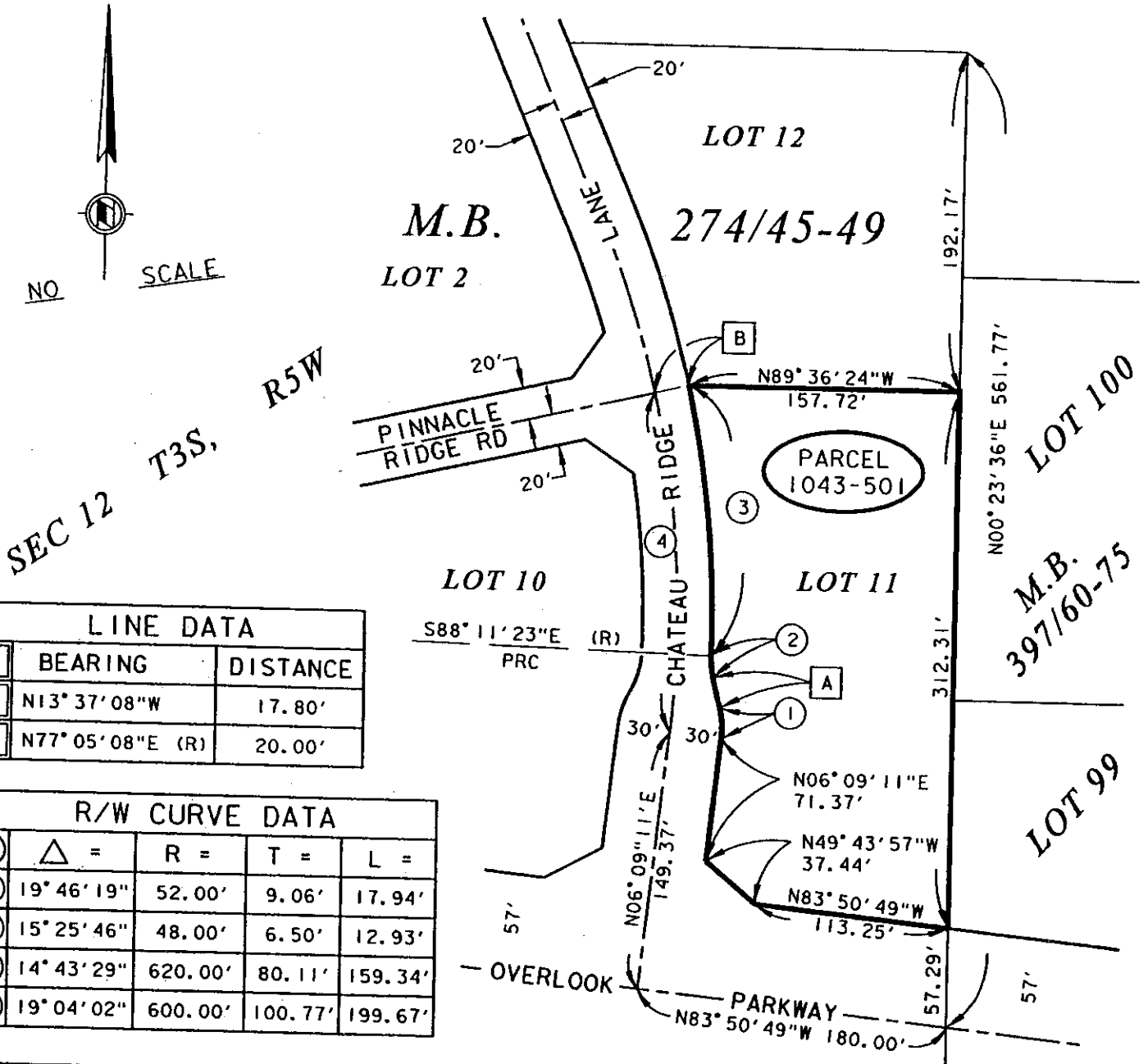
DAVID L. STONE

Land Surveyor No. 4758
Signed For: Riverside County Flood Control
and Water Conservation District

Date: JANUARY 7, 2008

PARCEL 1043-501

LOT 11 OF TRACT NO. 26109-2 AS SHOWN ON MAP BOOK 274, PAGES 45 THRU 49 INCLUSIVE, RECORDS OF RIVERSIDE COUNTY, LYING WITHIN SECTION 12, TOWNSHIP 3 SOUTH, RANGE 5 WEST, SAN BERNARDINO BASE AND MERIDIAN, WITHIN THE CITY OF RIVERSIDE, COUNTY OF RIVERSIDE, CALIFORNIA



LINE DATA		
	BEARING	DISTANCE
A	N13° 37' 08" W	17.80'
B	N77° 05' 08" E (R)	20.00'

R/W CURVE DATA				
①	△ =	R =	T =	L =
①	19° 46' 19"	52.00'	9.06'	17.94'
②	15° 25' 46"	48.00'	6.50'	12.93'
③	14° 43' 29"	620.00'	80.11'	159.34'
④	19° 04' 02"	600.00'	100.77'	199.67'

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
 1995 MARKET ST. RIVERSIDE, CA. 92501

PROJECT: ALESSANDRO DAM ACCESS	PARCEL: 1043-501
THIS PLAT IS SOLELY AN AID IN LOCATING THE PARCEL(S) DESCRIBED IN THE ATTACHED DOCUMENT. IT IS NOT A PART OF THE WRITTEN DESCRIPTION THEREIN.	PREPARED BY: LJC
	SCALE: NO SCALE
APPROVED BY: <i>[Signature]</i>	DATE: JANUARY 04, 2008
DATE: <u>JANUARY 7, 2008</u>	SHEET 1 OF 1



FIORE RACOBS & POWERS

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JANET L.S. POWERS*
CHESTER A. PUCHALSKI
PETER E. RACOBS*
SARAH M. REED
DANIEL B. SMITH
PAUL M. VARGAS
MARGARET G. WANGLER*

February 7, 2008

REPLY TO Riverside
File No. 27003-07

*DENOTES SHAREHOLDER
**OF COUNSEL

Hon. Roy Wilson (District 4), Chairman
Board of Supervisors
P.O. Box 1647
Riverside, CA 92502-1647

Re: Resolution No.: F2008-02
Board Meeting Date: February 26, 2008
Project No.: 1-0-00043 (Alessandro Dam Access Project)
My Client: Hawarden Summit, Inc.

Honorable Chairman and Members of the Board:

My client, Hawarden Summit, Inc., is the homeowners' association for the gated residential project known as Hawarden Summit which includes, among other residential lots, Lot 11 of Tract 26109-2. My client's association and all the individual lot owners therein are subject to and have the right to enforce a Declaration of Covenants, Conditions and Restrictions. (CC&Rs recorded March 19, 1997, as Instrument No. 085176, in the Riverside County Recorder's Office.)

Lot 11, which has been used by the District for heavy truck traffic and storage of a grader and other equipment during past cleanouts behind the Alessandro Dam, is required by the CC&Rs to be used only for residential purposes, i.e., for the construction of and subsequent occupancy of a custom single-family house and related uses. Simply put, the CC&Rs for Hawarden Summit do not contemplate or permit use of a residential lot as a thruway to outside parcels for off-hauling by and storage of construction equipment.

Public agency use of property in violation of recorded deed restrictions constitutes a taking under California law and would give rise to a right, on the part of not only my client but its individual members, to damages. (*See, e.g., Southern Cal. Edison Co. v. Bourgerie* (1973) 9 Cal.3d 169, 174.)

While the District does have a recorded easement that predates my client's CC&Rs, that easement has effectively been abandoned as millions of dollars in residential improvements have been constructed, blocking that easement. The District acknowledges that fact and is seeking a new access route.

Hon. Roy Wilson, Chairman, District IV
February 7, 2008
Page 2

As the Association has previously pointed out to the District, the District's operation of numerous trucks hauling sand out from behind the dam has created noise, dust and disruption within the Hawarden Summit private community, interfering with the quiet enjoyment of residential lot owners. The truck traffic and occasional storage of a grader and other equipment at Lot 11 immediately adjacent to the Association's gated entrance have created an eyesore at what should be an attractive focal point of the community.

The District has purported to use a now abandoned easement which belonged to the City of Riverside to justify its occasional past use of Lot 11, but the City's easement was neither for purpose of access to the Alessandro Dam nor for the benefit of the District. The purpose of the City's easement, to allow the City access to its Whitegate Reservoir No. 2, is no longer needed, and the City's Public Utilities Department has repeatedly expressed its intention to quitclaim that obsolete easement back to the owner of Lot 11. But for objections by the District, we understand that the City would have accomplished that quitclaim more than a year ago.

Upon being advised by outside counsel for the District of the District's intention to acquire Lot 11 for access purposes and recognizing the important role that the District performs, the Association has proposed settlement deal points to the District's attorneys so that upon the District's lawful acquisition of fee ownership of Lot 11, the adverse impacts on the Hawarden Summit community and the members and residents therein could be mitigated while the District is afforded access. (A copy of my letter of October 30, 2007, to Jennifer Wood Dienhart of Luce, Forward, Hamilton & Scripps is enclosed.)

Although the Association's settlement deal points were orally rejected by the District's attorney, my request for a written response to the letter of October 30, 2007, has been ignored. Nor was the Association advised by the District of your hearing on the proposed resolution.

The Association, which consists of the owners of 48 residential lots, all but eight of which are now built out and occupied by families, respectfully requests the Board to consider the adverse impacts that the unplanned use of Lot 11 will have on the residential environment of the Hawarden Summit community and accommodate the Association's concerns in order to mitigate the adverse impacts.

I respectfully point out that the scope of your proposed Resolution of Necessity for the taking of "fee simple ownership of Riverside County Assessor's Parcel No. 243-460-011" does not authorize the taking of the interests of the Association and the owners of 47 other residential lots' private property rights to enforce the use restrictions which burden Lot 11. The Association and each of its lot owner members are entitled to offers pursuant to Government Code Section 7267.2 and notice of and a right to attend any subsequent hearing on a proposed Resolution of Necessity to take the Association's CC&Rs.

Under the circumstances, the approach offered by the Association in its settlement deal points of October 30, 2007, is far more economical and less time-consuming than the District's

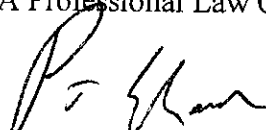
Hon. Roy Wilson (District 4), Chairman
February 7, 2008
Page 3

alternative of pursuing eminent domain against the Association and its member owners. Moreover, by protecting the residential environment at Hawarden Summit, the District will help avoid future impacts on quality of life and property values in the community. Finally, the Association's proposed approach would fairly recognize the substantial personal and financial investments of Hawarden Summit's property owners.¹

Your consideration of the foregoing is sincerely appreciated.

Very truly yours,

FIORE, RACOBS & POWERS
A Professional Law Corporation



Peter E. Racobs

PER:cin

Enclosure

cc: Hon. Bob Buster, Supervisor, District 1
Hon. John F. Tavaglione, Supervisor, District 2
Hon. Jeff Stone, Supervisor, District 3
Hon. Marion Ashley, Supervisor, District 5
Clerk, Board of Supervisors
Board of Directors, Hawarden Summit, Inc.
Jennifer Wood Dienhart, Esq.
Mr. Warren D. Williams, General Manager-Chief Engineer
Mr. Glenn R. Beloian, County Counsel's Office
Mr. Edward J. Goepfinger, Trustee
Mr. Kevin Milligan, Riverside Public Utilities

¹"The constitutional requirement of just compensation derives as much content from the basic equitable principles of fairness . . . as it does from technical concepts of property law." (Southern Cal. Edison Co. v. Bourgerie, *supra*, at p. 175, quoting from a U.S. Supreme Court case.)

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PAUL M. VARGAS
MARGARET G. WANGLER*

October 30, 2007

REPLY TO Riverside
File No. 27003-07

*DENOTES SHAREHOLDER
**OF COUNSEL

FOR SETTLEMENT PURPOSES ONLY

VIA FACSIMILE TRANSMISSION

Ms. Jennifer Wood Dienhart
Luce, Forward, Hamilton & Scripps
2040 Main Street, Suite 590
Irvine, CA 92614

Re: My Client: Hawarden Summit, Inc. ("Association")
Your Client: Riverside County Flood Control District

Subject: Use of Lot 11 of Tract 26109-2 for Access to the Alessandro Dam

Dear Ms. Dienhart:

Pursuant to your request, the following are the conceptual deal points you and I discussed last week which my client's Board of Directors believes would be appropriate to resolve the use of Lot 11 which is currently contrary to the Association's CC&Rs. Of course, we assume that the District will properly acquire the necessary rights from the current owners of Lot 11 as a necessary prerequisite to such a resolution.

SETTLEMENT DEAL POINTS

1. Your client will vacate any other easements in the tract, including, but not limited to, the easement referred to by your client's Supervising Real Property Agent, Morris Reynolds, in his letter to me dated June 21, 2007.

2. Lot 11's access will be taken from Overlook Parkway, not through the Association's gate or private street, and the area across Lot 11 used for access will be screened by an architecturally compatible sound wall and landscaped buffer area. The design of the wall and landscaped area is to be mutually agreed upon between our clients and constructed at District expense.

Ms. Jennifer Wood Dienhart
October 30, 2007
Page 2

FOR SETTLEMENT PURPOSES ONLY

3. The District will contract for landscape maintenance of the landscaped buffer area on Lot 11 with the same contractor used by the Association for its landscape maintenance to help maintain a consistent appearance.

4. If alternate access is developed for the District to get to and from Alessandro Dam, then Lot 11 will once again be subject to all Association CC&Rs and revert to residential use only.

5. Lot 11's membership in the Association will continue, as will its duty to pay assessments.

6. Lot 11 is only to be used by your client as a means of access; in particular, it would not be used permanently as a storage yard. However, in conjunction with the District's access use, the District's contractors could use the area behind the sound wall as a staging area only during seasonal cleanouts behind the dam.

7. The foregoing will be reduced to a recorded agreement or other mutually enforceable instrument (depending on the means the parties select as most appropriate to authorize this variance from the uses permitted by the Association's CC&Rs).

If you have any questions regarding the foregoing, please advise. Otherwise, I look forward to your advice as to whether the foregoing concepts will be acceptable to the District.

Very truly yours,

FIORE, RACOBS & POWERS
A Professional Law Corporation



Peter E. Racobs

PER:cin

cc: Board of Directors, Hawarden Summit, Inc.