

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

637



FROM: County Counsel

SUBMITTAL DATE:
August 19, 2013

SUBJECT: Report Back to Board of Supervisors on Robert Mabee's Allegation of Defense Counsel's Misrepresentation in Connection with Demurrer in Superior Court Case No. RIC 1214529

RECOMMENDED MOTION: That the Board of Supervisors receive and file report of County Counsel dated August 19, 2013.

BACKGROUND: On July 2, 2013, Supervisor Jeffries requested that County Counsel review the Reply to Robert Mabee's Opposition to the County's Demurrer in the case filed by Mr. Mabee against the County of Riverside (Case No. RIC 1214529) and to determine if outside counsel defending the County had represented that the offer of easement across the Flood Control property had been recorded.

A review of the Reply, along with the Demurrer and the transcript of the Demurrer hearing, revealed that defense counsel represented that this easement had not been recorded. Defense counsel contended that Mr. Mabee had received the easement offer in September 1995 in conjunction with a settlement offer which he rejected. Mr. Mabee could have checked the County Clerk' Recorder's Office to determine if the easement had recorded or not since that time, and his lack of diligence barred his

(cont'd next page)

PAMELA J. WALLS, County Counsel

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	0
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	0
	Annual Net County Cost:	\$ 0	For Fiscal Year:	0

SOURCE OF FUNDS: N/A	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY:

Denise C. Harden

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Jeffries, seconded by Supervisor Tavaglione and duly carried, IT WAS ORDERED that the above matter is received and filed as recommended.

Ayes: Jeffries, Tavaglione, Stone and Benoit
Nays: None
Absent: Ashley
Date: September 10, 2013
xc: Co.Co.

Kecia Harper-Ihem
Clerk of the Board
By:
Deputy

RECEIVED - CLERK OF THE BOARD
SEP 10 2013
COUNTY OF RIVERSIDE, CALIFORNIA

2-23

Prev. Agn. Ref.:

District:

Agenda Number:

Policy ☐ Policy ☐
Consent ☐ Consent ☒

Dep't Recomm.:
Per Exec. Ofc.:

Departmental Concurrence

County Counsel

Re: Report Back to Board of Supervisors on Robert Mabee's Allegation of Defense Counsel's Misrepresentation

August 19, 2013

Page 2

BACKGROUND (cont'd):

ability to pursue this action. Since Mr. Mabee rejected the County's settlement offer in 1995, it should not have been a surprise that the easement offer had not recorded.



MEMORANDUM

RIVERSIDE COUNTY COUNSEL

DATE: August 19, 2013

TO: Supervisor Kevin Jeffries, District 1
Supervisor John Tavaglione, District 2
Supervisor Jeff Stone, District 3
Supervisor John Benoit, District 4, Chairman
Supervisor Marion Ashley, District 5

FROM: Pamela J. Walls, County Counsel *PJW*

RE: Robert Mabee's Allegations Concerning Unrecorded Easements

There are two easements that are the subject of Mr. Mabee's dispute with the County. The first easement was recorded in 1988 (Recordation No. 12798) for the creation of a public road to Mr. Mabee's property [Exhibit "A"] and the second easement that was approved by the Board on October 3, 1995 for access across Flood Control property (Parcel 4030-22) [Exhibit "B" hereinafter "Second Easement"]. The Second Easement was never recorded. Instead, access over this property was granted to Mr. Mabee via an encroachment permit. An illustration depicting the road easement and the access across Parcel 4030-22 is attached as page 3 to Exhibit "A." Mr. Mabee alleges that the County's defense counsel in *Mabee v. Riverside County* (RIC 1214529) misrepresented to the Court that the Second Easement had been recorded. County Counsel has been asked to look into this allegation.

Mr. Mabee contends the misrepresentation that the Second Easement was recorded is contained in the following two statements in the Demurrer Reply:

"Because the easement in question has followed each title holder since foreclosure in 1998, PLAINTIFFS have lacked standing." [Exhibit "C" p. 2, lines 9-11.]

"Here PLAINTIFFS have had the opportunity to inspect the recording of the deed of easement at all times since 1995. The recording of deeds is part of the public record and was readily available to PLAINTIFFS at all times. PLAINTIFFS did not perform any reasonable inspection over the eighteen years since the facts supporting their alleged cause of action occurred. In light of PLAINTIFFS' unreasonable lack of diligence in researching the recording of a deed in which they allegedly had an interest, this Court should summarily find that the First Amended Complaint is barred by the three-year statute of limitations listed in Section 338(d)." [Exhibit "C" p. 2, lines 26-28 & p. 3, lines 1-2.]

Defense counsel in their Demurrer clearly stated that the Second Easement was **not** recorded:

“In 1995, another easement was given to PLAINTIFFS , **but was never recorded.**”
[Emphasis added; Exhibit “D” p. 3, line 19.]

Further, defense counsel notes in the Demurrer that had Mr. Mabee timely performed a public records search of recorded documents since 1995, he would have “discovered” the Second Easement had not been recorded:

“Here, the subject 1995 deed was allegedly supposed to have been recorded. PLAINTIFFS could have performed a public records search at any time since 1995. Therefore, waiting until 2012 to “discover” the fraud did not toll the statute of limitations.” [Exhibit “D” p. 5, lines 11-13.]

Mr. Mabee’s lack of diligence in checking the County Recorder’s records to determine if the Second Easement was recorded or not was also argued by defense counsel at the Demurrer hearing:

“Easements are enforceable regardless of whether or not they are recorded. **And [Mr. Mabee] has had since 1995 when the second easement was given to him to check the record to see if it was, in fact, recorded or not.** And he had every opportunity, because that is public record, to do so, and he didn’t do that until 2012. And he hasn’t had the property since 1998.” [Emphasis added; see Transcript of the hearing on Demurrer; Exhibit “E” p. 7, lines 22-28.]

Mr. Mabee also alleged that he was not aware of the Second Easement until 2012. However, in correspondence to Mr. Mabee dated September 19, 1995 from Paul Reynolds of Kinkle Rodiger and Spriggs, a draft copy of a settlement agreement as well as the Second Easement was sent to Mr. Mabee [Exhibit “F”]. Mr. Mabee confirmed in a statement dated January 19, 1996 that **“The Board through Paul Reynolds offered me a settlement of \$5,000 and a new easement for blocking my access on September 19, 1995”** [Emphasis added; Exhibit “G, p. 2”]. This is consistent with an August 13, 1996 memorandum to the Board from Jay Vickers which states: “September 1995, County and District offer to settle new lawsuit. Amongst terms: (1) District pay Mabee \$5,000, and (2) Encroachment permit from April 29, 1993 to become a permanent easement.” [Exhibit “H” p. 8.] Mr. Mabee’s rejection of this settlement offer, including the Second Easement, is reflected in a statement dated November 8, 1996 from Mr. Mabee: “the only settlement offer by the County was a settlement offer dated September 19, 1996 [sic] which was rejected at this time as not being fair and just compensation.” [Exhibit “I.”]

CONCLUSION

The County's defense counsel did not represent to the Court that the Second Easement had been recorded. Further, there is evidence that Mr. Mabee was aware of the Second Easement since September of 1995, but did not check the public records maintained by the County Recorder's Office to determine if the Second Easement had been recorded or not. Given Mr. Mabee's rejection of the County's settlement offer which included the Second Easement, it was unlikely that the County would have recorded the Second Easement.

PJW:ay

Attachments (*see Exhibits List*)

cc: Robert Mabee
Jay Orr
Mike Stock
Dusty Williams

EXHIBITS TO AUGUST 15, 2013 BOARD MEMORANDUM

- A. Easement from Flood Control and Water Conservation District to County dated May 12, 1988 (Doc. No. 127298) creating County Road
- B. October 3, 1995 Board Minute Order Approving Easement and Easement (unrecorded) Across Flood Control Parcel 4030-500A
- C. Reply to Plaintiff's (Mabee) Opposition to Defendant's (County) demurrer (RIC 1214529)
- D. Notice of Demurrer and Demurrer to Plaintiff's First Amended Complaint (RIC 1214529)
- E. Transcript of Proceedings on Demurrer Hearing on July 10, 2013 (RIC 1214529)
- F. September 19, 1995 letter to Mr. Mabee from attorney Paul B. Reynolds enclosing draft settlement agreement and easement deed (unrecorded)
- G. Statement of Mr. Mabee to Board dated January 19, 1996 confirming settlement offer and new easement (unrecorded)
- H. Memorandum dated August 13, 1996 from Deputy County Counsel Jay G. Vickers to Board of a chronology of Mr. Mabee events, including entry for September 1995 of settlement offer and encroachment permit to become permanent easement (unrecorded)
- I. Statement of Mr. Mabee dated November 8, 1996 rejecting settlement offer.

CERTIFICATE of ACCEPTANCE
 (Government Code Section 27201)

THIS IS TO CERTIFY that the interest in real property conveyed to the County of Riverside, State of California, by the within instrument, is hereby accepted for the purpose of vesting title in the County of Riverside by the undersigned on behalf of the Board of Supervisors pursuant to the authority conveyed by Resolution No. 06-194 of the Board of Supervisors adopted May 13, 1988 and the grantee consents to the recordation thereof by its duly authorized officer.

This certificate of acceptance does not constitute acceptance of any road into the county maintained system pursuant to Section 941 of the Streets & Highways Code.

Dated: 5-11-88

County of Riverside

By Leroy D. Smith
 Leroy D. Smith
 Road Commissioner and County Surveyor

THIS INSTRUMENT IS FOR THE BENEFIT OF THE COUNTY OF SAN BERNARDINO ENTITLED TO BE RECORDED WITHOUT FEES (GOV. CODE § 27202)

FOR RECORDEE'S USE

RETURN TO
 RIVERSIDE
 FLOOD CONTROL
 AND WATER
 CONSERVATION
 DISTRICT

RECEIVED FOR RECORD
 AT 2:00 O'CLOCK P.M.

MAY 12 1988

Forwarded to Official Records
 of Riverside County, California

William J. Smith
 Recorder

EASEMENT

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

grant(s) to the County of Riverside an easement for public road and drainage purposes, including public utility and public services purposes, over, upon, across, and within the real property in the County of Riverside, State of California, described as follows:

Parcel 4030-500 -

Being a portion of Sections 16, 21 and 22, Township 5 South, Range 1 East, San Bernardino Base and Meridian, lying within all or parts of Parcels 4030-16, 4030-17, 4030-17B, 4030-19A, 4030-20, 4030-21A and 4030-22 as shown on Record of Survey, Book 31, Pages 52-59, inclusive, Records of Riverside County, California, described as follows:

A strip of land 40 foot in width measured at right angles, lying Easterly of, parallel and concentric with a line which lies 60 feet Easterly of, parallel and concentric with the centerline of Bautista Creek as shown on said Record of Survey.

The side lines of said 40 foot wide strip of land shall be prolonged or shortened so as to terminate at the Northerly end with the Easterly right of way of Fairview Avenue and terminate at the Southerly end with the Southerly line of Section 22.

Grantor understands that the herein described road shall not become part of the county maintained road system until accepted by subsequent resolution of the Board of Supervisors pursuant to Section 941 of the Street and Highways Code.

Page 2

127290

DATED

APR 12 1988

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

Melba Dunlap
Chairman

State of California)
County of Riverside) ss.

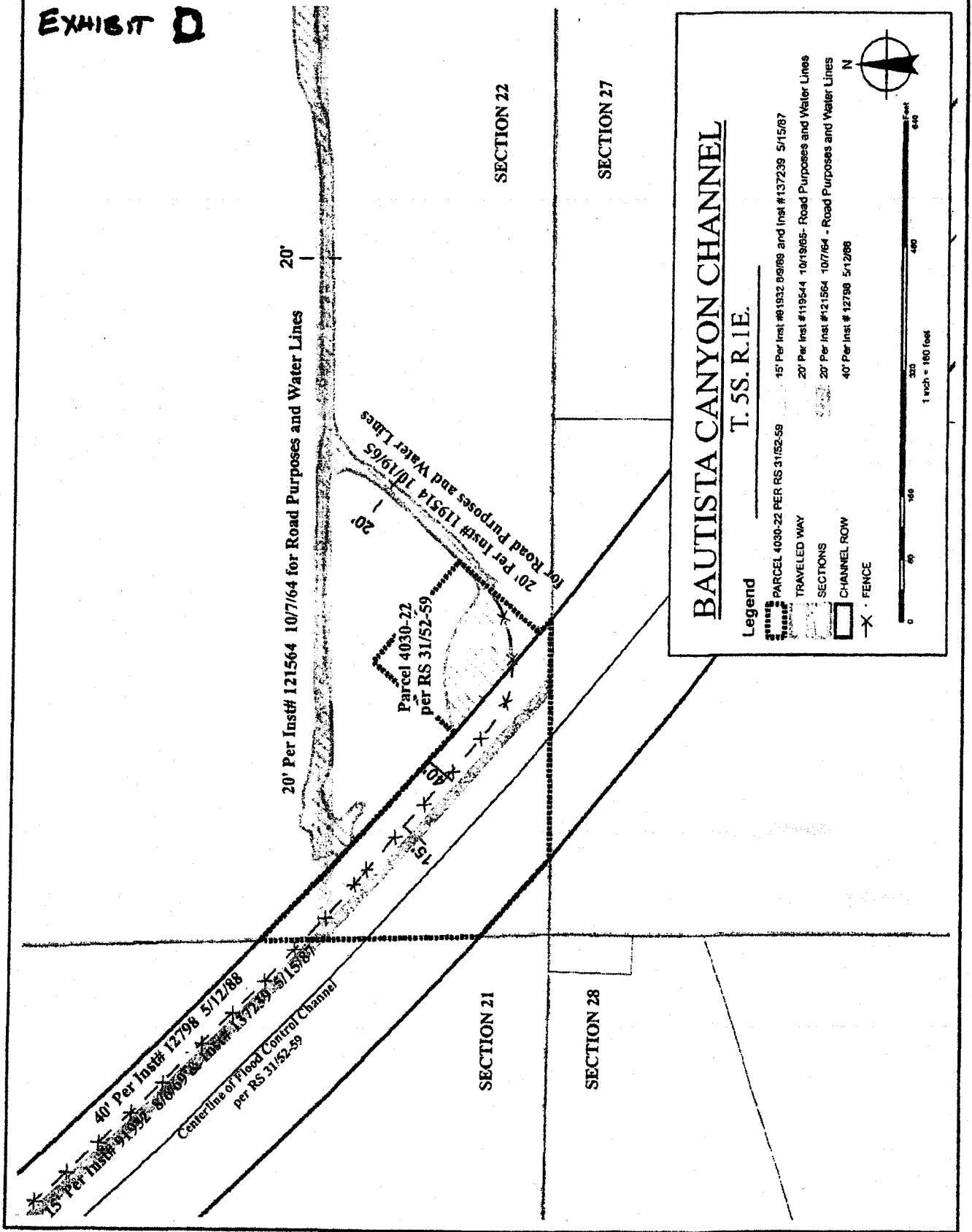
On April 12, 1988, before me personally appeared Melba Dunlap known to me to be the Chairman of the Board of Supervisors of Riverside County Flood Control and Water Conservation District and the person whose name is subscribed to the foregoing instrument, said he acknowledged to me that said District executed the same.

GERALD A. MALONEY, County Clerk

By *Gerald A. Maloney* Deputy

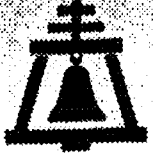
(SEAL)

EXHIBIT D



308

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



FROM: Chief Engineer **SUBMITTAL DATE:** ~~October 3, 1995~~

SUBJECT: Authorization to Convey Non-Exclusive Easements
Bautista Creek Channel Project # 4-0-0030
Resolution No. F95-50

RECOMMENDED MOTION:

The Board approve Resolution No. F95-50, Authorization to Convey four (4) non-exclusive easements for ingress and egress purposes over District owned land.

JUSTIFICATION:

See Page 2

FINANCIAL:

This action grants access easements over existing District right of way. No cost to District.


for KENNETH L. EDWARDS
General Manager-Chief Engineer

REVIEWED BY ADMINISTRATIVE OFFICE

DATE 9/26/95 G

MINUTES OF THE FLOOD CONTROL & WATER CONSERVATION DISTRICT BOARD

On motion of Supervisor Tavaglione, seconded by Supervisor Buster and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione and Wilson
Noes: None
Absent: Cenicerros and Mullen
Date: October 3, 1995
xc: Flood

Gerald A. Maloney
Clerk of the Board
By: 
Deputy

JMP:sen
rcfc\52

FLOOD RESOLUTION BOOK
Prev. Agn. ref. **ATTACHMENTS FILED** Depts., Comments
WITH THE CLERK OF THE BOARD

3rd Dist. **10** AGENDA NO. **3**

FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD SUBMITTAL
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
SUBMITTAL DATE: October 3, 1995
SUBJECT: Authorization to Convey Non-Exclusive Easements
Bautista Creek Channel Project # 4-0-0030
Resolution No. F95-50

JUSTIFICATION:

The District's Bautista Creek Channel from Fairview Avenue upstream has experienced vandalism and trespassing. To prevent this and limit potential liabilities, the District fenced the 15-foot wide maintenance road and modified several side channel conveyances. Certain individuals by virtue of being successors in interest to an access easement (Instrument No. 91932) enjoyed the use of the 15-foot wide strip of land adjacent to said channel. Said access easement provided that if at any time a public highway or street was extended to the described lands in Section 22 lying easterly of Bautista Creek Channel said easement shall cease and determine. To this end, the District granted to the County a 40-foot wide strip of land adjacent to the 15-foot wide easement for acceptance in the County's non-maintained road system (Instrument No. 127298).

A portion of the 15-foot wide access easement is located within a drainage wash, ~~making it dangerous and unusable during times of storm flow.~~ In addition, the side channel modification has obstructed physical access to a portion of the 15-foot side easement. ~~The granting of these easements will provide new unobstructed access to the property owners (see attached Exhibit A).~~

1
2 Board of Supervisors

Riverside County Flood Control
and Water Conservation District

3 RESOLUTION NO. F95-50
4 AUTHORIZATION TO CONVEY NON-EXCLUSIVE EASEMENTS
(THIRD SUPERVISORIAL DISTRICT)

5 BE IT RESOLVED, DETERMINED AND ORDERED by the Board
6 of Supervisors of the Riverside County Flood Control and Water
7 Conservation District in regular session assembled on October 3,
8 1995, that authorization is hereby approved ~~to convey non-~~
9 ~~exclusive easements on Parcel 4030-500A for ingress and egress~~
10 ~~purposes to Robert D. & Martha A. Mabee, Robert A. & Leslie~~
11 ~~Barnes, the Michael H. O'Connell Family Trust and George D.~~
12 ~~O'Connell Family Trust, and DGM Hemet Partners.~~

13 BE IT FURTHER RESOLVED AND DETERMINED that the
14 General Manager-Chief Engineer is authorized to execute all
15 documents associated with the conveyance.
16

17 Roll Call:

18 Ayes: Buster, Tavaglione and Wilson
19 Noes: None
20 Absent: Cenicerros and Mullen

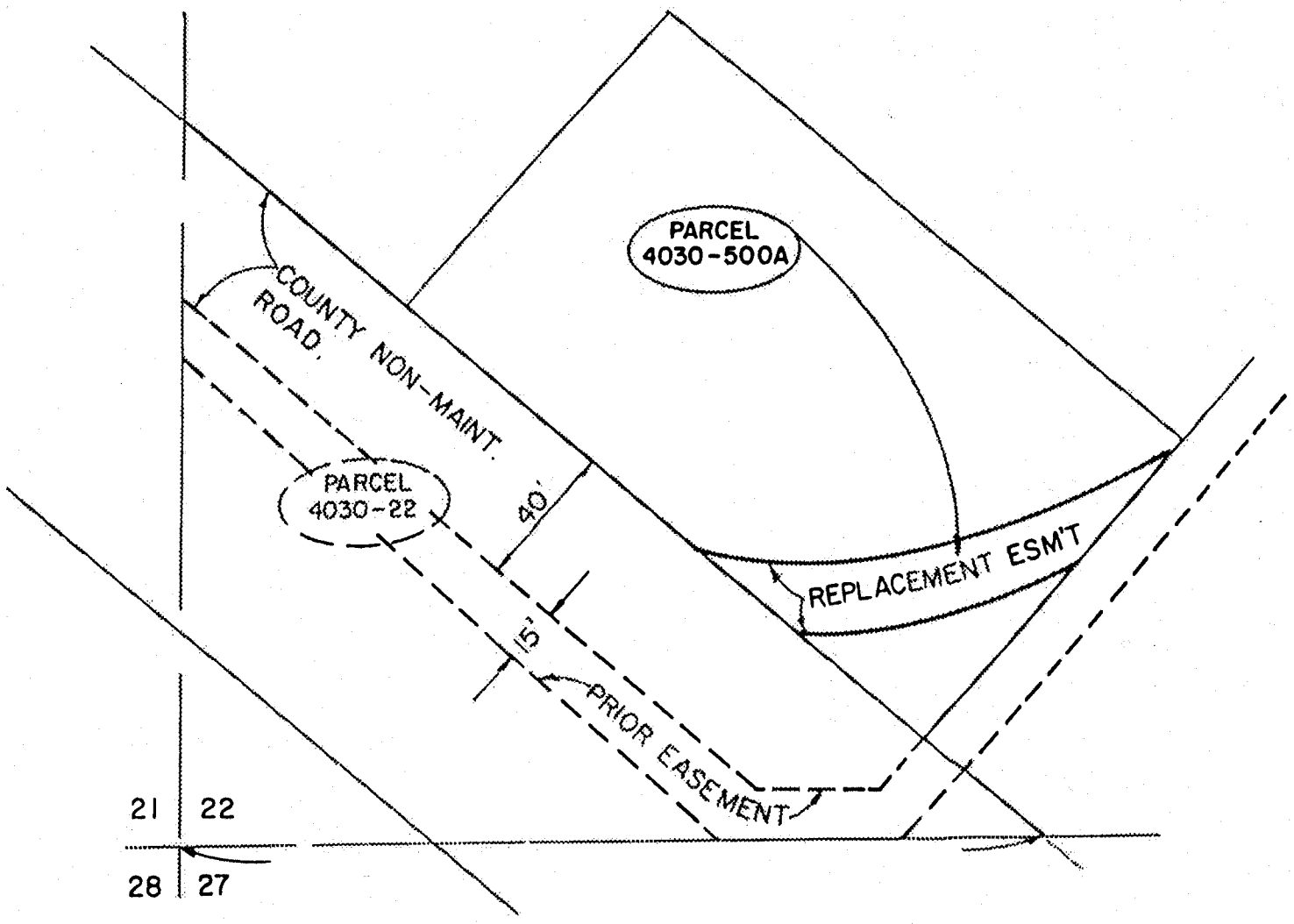
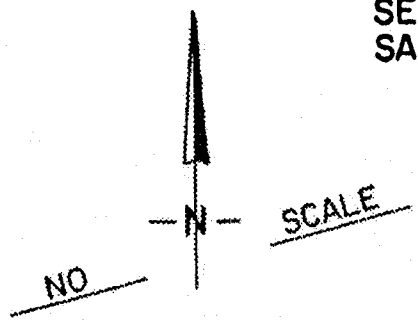
FORM APPROVED
COUNTY COUNSEL

SEP 27 1995

21
22
23
24
25
26
27 JMP:seb
rcfc\5280
28

BAUTISTA CREEK CHANNEL PARCEL 4030-500A

BEING A PORTION OF THE SOUTHWEST QUARTER OF
SECTION 22, TOWNSHIP 5 SOUTH, RANGE 1 EAST,
SAN BERNARDINO BASE AND MERIDIAN.



OCT 3 1995

10.3

TWN. 5S RGE. 1E SEC. 16, 21, 22 ROAD NAME ACCESS ROAD PROJECT NAME BAUTISTA CR. CH. WGS

CERTIFICATE of ACCEPTANCE
(Government Code Section 27281)

THIS IS TO CERTIFY that the interest in real property conveyed to the County of Riverside, State of California, by the within instrument, is hereby accepted for the purpose of vesting title in the County of Riverside by the undersigned on behalf of the Board of Supervisors pursuant to the authority conveyed by Resolution No. 88-194 of the Board of Supervisors adopted May 13, 1988 and the grantee consents to the recordation thereof by its duly authorized officer.

This certificate of acceptance does not constitute acceptance of any road into the county maintained system pursuant to Section 941 of the Streets & Highways Code.

Dated: 5-11-88

County of Riverside

By: Leroy O. Smith

Leroy O. Smith
Road Commissioner and County Surveyor

THIS INSTRUMENT IS FOR
THE BENEFIT OF THE
COUNTY OF RIVERSIDE AND
ENTITLED TO BE
RECORDED WITHOUT FEE
(GOV. CODE §1162)

FOR RECORDER'S USE

RETURN TO
RIVERSIDE COUNTY
FLOOD CONTROL
AND WATER
CONSERVATION
DISTRICT

RECEIVED FOR RECORDS
AT 2:08 O'CLOCK P.M.

MAY 12 1988

William F. Blaney
Recorder

EASEMENT

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

grant(s) to the County of Riverside an easement for public road and drainage purposes, including public utility and public services purposes, over, upon, across, and within the real property in the County of Riverside, State of California, described as follows:

Parcel 4030-500 -

Being a portion of Sections 16, 21 and 22, Township 5 South, Range 1 East, San Bernardino Base and Meridian, lying within all or parts of Parcels 4030-16, 4030-17, 4030-17B, 4030-19A, 4030-20, 4030-21A and 4030-22 as shown on Record of Survey, Book 31, Pages 52-59, inclusive, Records of Riverside County, California, described as follows:

A strip of land 40 foot in width measured at right angles, lying Easterly of, parallel and concentric with a line which lies 60 feet Easterly of, parallel and concentric with the centerline of Bautista Creek as shown on said Record of Survey.

The side lines of said 40 foot wide strip of land shall be prolonged or shortened so as to terminate at the Northerly end with the Easterly right of way of Fairview Avenue and terminate at the Southerly end with the Southerly line of Section 22.

Grantor understands that the herein described road shall not become part of the county maintained road system until accepted by subsequent resolution of the Board of Supervisors pursuant to Section 941 of the Streets and Highways Code

Parcel 4030-500

Page 2

127738

DATED

APR 12 1988

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

By Melba Dunlap
Chairman

State of California)
County of Riverside) ss.

On April 12, 1988
Melba Dunlap

before me personally appeared
known to me to be the Chairman of the
Board of Supervisors of Riverside County Flood Control and Water Conservation District and the
person whose name is subscribed to the foregoing instrument, and he acknowledged to me that said
District executed the same.

GERALD A. MALONEY, County Clerk

By Gerald A. Maloney
Deputy

(SEAL)

END RECORD FILE DOCUMENT

Benoit

Bruce E. Disenhouse (SBN 078760)
KINKLE, RODIGER AND SPRIGGS
Professional Corporation
3333 Fourteenth Street
Riverside, California 92501
T: (951) 683-2410
F: (951) 683-7759

Exempt pursuant to Government Code §6103

Attorneys for Defendant, COUNTY OF RIVERSIDE

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

ROBERT MABEE and MARTHA MABEE,

Plaintiffs,

v.

RIVERSIDE COUNTY GOVERNMENT
ENTITY, RIVERSIDE COUNTY FLOOD
CONTROL DISTRICT and DOES 1 to 25,

Defendants.

CASE NO.: RIC 1214529

**REPLY TO PLAINTIFFS' OPPOSITION
TO DEFENDANT'S DEMURRER TO
PLAINTIFFS' FIRST AMENDED
COMPLAINT**

Defendant COUNTY OF RIVERSIDE (hereinafter referred to as "DEFENDANT") hereby submits the following Reply to Plaintiffs ROBERT MABEE AND MARTHA MABEE's (hereinafter jointly referred to as "PLAINTIFFS") Opposition to DEFENDANT's Demurrer to PLAINTIFFS' First Amended Complaint.

MEMORANDUM OF POINTS AND AUTHORITIES

I. PLAINTIFFS LACK STANDING IN THIS MATTER

California Civil Code Section 1460 notes that easements run with the land, stating:

"Certain covenants, contained in grants of estates in real property, are appurtenant to such estates, and pass with them, so as to bind the assigns of the covenantor and to vest in the assigns of the covenantee, in the same manner as if they had personally entered into them. Such covenants are said to run with the land."

//

1 Here, the PLAINTIFFS are no longer the owners of the property, as it was foreclosed upon,
2 by their own admission, in 1998. In their Opposition, PLAINTIFFS are correct in noting that “a
3 party must be beneficially interested in the controversy...or have some special interest to be served
4 or some particular right to be preserved...” in order to have standing before the Court. Cash Call
5 Inc. v. Superior Court (2008) 159 Cal.App.4th 273, 286. However, PLAINTIFFS are unable to
6 specify any benefit, interest, or right in this matter because they no longer own the land or the
7 appurtenant easement.

8 PLAINTIFFS’ nonsensical referral to an exhibit to a previously demurred complaint is
9 woefully insufficient to constitute the pleading of any interest in this matter. ~~Because the easement~~
10 ~~in question has followed each title holder since foreclosure in 1998, PLAINTIFFS have lacked~~
11 ~~standing in the matter for a substantial length of time. Therefore, this Court must sustain the~~
12 Demurrer in its entirety, this time without further leave to amend.

13 **II. PLAINTIFFS’ CLAIM IS BARRED BY THE STATUTE OF LIMITATIONS**

14 PLAINTIFFS have based their Opposition on the ground that California Code of Civil
15 Procedure Section 338(d) states that a cause of action accrues at the time of the discovery of a
16 mistake or fraud. PLAINTIFFS’ claim that they did not learned of the alleged fraud or mistake until
17 February 22, 2012, and therefore their claim falls within the statute of limitations. Although
18 partially correct, PLAINTIFFS failed to mention that Section 338(d) requires due diligence on a
19 plaintiff’s part.

20 The Court has previously noted that “the statute of limitations runs from the discovery of the
21 fraud or **from such time as it could have been discovered that the injured party exercised**
22 **reasonable diligence.**” Rubinstein v. Minchin (1941) Cal.App.2d 115, 119 [Emphasis Added].
23 Courts have further held that they will decline to “reward the plaintiff for his ignorance in fact if he
24 had the opportunity to obtain knowledge from sources open to his investigation, and should, by the
25 exercise of reasonable diligence, have obtained it.” Gutierrez v. Mofid (1985) 39 Cal.3d 892, 898.

26 Here, ~~PLAINTIFFS have had the opportunity inspect the recording of the deed of easement~~
27 ~~at all times since 1995. The recording of deeds is part of the public record, and was readily~~
28 ~~available to PLAINTIFFS at all times. PLAINTIFFS did not perform any reasonably inspection~~

1 over the eighteen years since the facts supporting their alleged cause of action occurred. In light of
2 PLAINTIFFS' unreasonable lack of diligence in researching the recording of a deed in which they
3 allegedly had an interest, this Court should summarily find that the First Amended Complaint is
4 barred by the three-year statute of limitations listed in Section 338(d). To find otherwise would
5 serve to reward PLAINTIFFS for an inexplicable failure to perform an adequate investigation.

6 **III. PLAINTIFFS' TORT CLAIM WAS UNTIMELY FILED**

7 As previously noted, California Government Code Section 911.2 requires a tort claim to be
8 filed within six months of the cause of action. Here, DEFENDANT has already established that the
9 cause of action began to run at the point in which PLAINTIFFS could have reasonably discovered
10 the alleged fraud or mistake through due diligence. Because PLAINTIFFS should have investigated
11 the deed dating back to 1995, PLAINTIFFS' claim, on March 14, 2012, was both moot and
12 egregiously untimely.

13 PLAINTIFFS' Opposition makes several nonsensical references to exhibits attached to the
14 previously successfully demurred to complaint. Even if such references were acceptable, they still
15 fail to explain PLAINTIFFS' lack of due diligence in their investigation of the deed. Therefore,
16 their tort claim was fatally untimely, thereby subjecting the First Amended Complaint to the instant
17 Demurrer and dismissal.

18 **IV. THE FIRST AMENDED COMPLAINT REMAINS VAGUE AND UNINTELLIGIBLE**

19 PLAINTIFFS' Opposition to this portion of the Demurrer once again makes reference to
20 exhibits attached to the previously demurred complaint and does nothing more than restate the prior
21 defectively alleged causes of action. This mere restatement of causes of action fails to clarify the
22 grounds upon which each cause of action is made. The complaint remains riddled with conclusory
23 statements of opinion rather than facts. DEFENDANT is unable to assert any proper defense
24 against vague claims, and therefore requests that this Court sustain the Demurrer in its entirety.

25 **V. THE FIRST AMENDED COMPLAINT FAILS TO STATE ANY CAUSE OF ACTION**

26 PLAINTIFFS' Opposition is wildly vague and unintelligible. Similar to its other sections,
27 the Opposition inexplicably makes references to exhibits attached to a previously successfully
28 demurred to complaint. The Opposition then attaches a host of correspondence that are both utterly

1 inadmissible hearsay and entirely irrelevant to any of the causes of action asserted by PLAINTIFFS
2 in their First Amended Complaint. The corresponding documents all involve separate lawsuits
3 entirely. DEFENDANT is left only to wildly speculate how correspondence from a different
4 lawsuit can in any manner establish the prima facie elements of each of PLAINTIFFS' Causes of
5 Action.

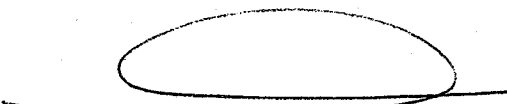
6 PLAINTIFFS claim that the interests of justice require that the litigation not be foreclosed.
7 However, amidst PLAINTIFFS' vague and unintelligible pleadings, they have failed to apprise
8 DEFENDANT of facts establishing the elements of any cause of action. Contrary to plaintiffs'
9 erroneous assertion, the interests of justice and due process dictated that this incoherent amended
10 complaint be demurred to as a result of its complete, overt and repeated failure to allege even the
11 most basic facts necessary to establish the elements for each of the eight causes of action.

12 **VI. CONCLUSION**

13 PLAINTIFFS have now had multiple opportunities to cure the defects of their pleadings.
14 However, they have repeatedly failed to allege any factual basis on which relief can be granted.
15 Given the egregiously unintelligible nature of all pleadings submitted by PLAINTIFFS, and in
16 consideration of the several bars to all Causes of Action, DEFENDANT hereby requests that the
17 Demurrer to the First Amended Complaint now be sustained without leave to amend. PLAINTIFFS
18 have proven, time and again now, that granting any further leave to amend would prove to be
19 ~~nothing more than~~ an exercise in futility, costing further taxpayer expense and wasting this Court's
20 limited judicial resources. This litigation has been ongoing at taxpayer burden for more than 25
21 years. The time has mercifully come for it to end, and this Demurrer must be sustained without
22 further leave to amend.

23
24 DATED: July 2, 2013

KINKLE, RODIGER AND SPRIGGS
Professional Corporation

25
26 

27 BRUCE E. DISENHOUSE
28

1 **PROOF OF SERVICE BY MAIL**

2 **STATE OF CALIFORNIA**)

3 **COUNTY OF RIVERSIDE**)

ss.

4 I, **Aurora Medina**, state that I am employed in the aforesaid County, State of California; I
5 am over the age of eighteen years and not a party to the within action; my business address is 3333
Fourteenth Street, Riverside, California 92501.

6 On **July 2, 2013**, I served the foregoing **REPLY TO PLAINTIFFS' OPPOSITION TO**
7 **DEFENDANT'S DEMURRER TO PLAINTIFFS' FIRST AMENDED COMPLAINT** on the
8 interested parties by placing a true copy thereof, enclosed in a sealed envelope with postage thereon
fully prepaid, in the United States mail at Riverside, California, addressed as follows and/or by one
of the methods of service as follows:

9 **In Propria Persona**

10 Robert D. Mabee
11 Martha A. Mabee
12 3086 Miguel Street
13 Riverside, California 92506
14 T: 951-788-4858

13 X **BY MAIL:** I am readily familiar with this firm's practice of collection and processing of
14 correspondence for mailing with the United States Postal Service, and that the
15 correspondence shall be deposited with the United States Postal Service the same day in the
ordinary course of business pursuant to C.C.P. 1013(a).

16 **BY FAX:** In addition to service by mail as set forth above, a copy of said document(s) were
also delivered by facsimile transmission to the addressee pursuant to C.C.P. 1013(e).

17 **BY PERSONAL SERVICE:** I caused to be hand-delivered said document(s) to the office
18 of the addressee, using an attorney service, pursuant to C.C.P. 1011.

19 **BY EXPRESS MAIL:** I caused said document(s) to be placed in an Express Mail Overnight
Envelope and deposited in an Express Mail DropBox to be delivered the following business
20 day pursuant to C.C.P. 1013(c).

21 I declare under penalty of perjury under the laws of the State of California that the foregoing
is true and correct. Executed on **July 2, 2013**, at Riverside, California.

22
23 
24 **Aurora Medina**

FILED

02/20/2013

N.CABRERA

Superior Court of California
County of Riverside*Exempt pursuant to Government Code §6103*

Bruce E. Disenhouse (SBN 078760)
KINKLE, RODIGER AND SPRIGGS
 Professional Corporation
 3333 Fourteenth Street
 Riverside, California 92501
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Attorneys for Defendant, COUNTY OF RIVERSIDE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

ROBERT MABEE and MARTHA MABEE,

Plaintiffs,

v.

RIVERSIDE COUNTY GOVERNMENT
 ENTITY, RIVERSIDE COUNTY FLOOD
 CONTROL DISTRICT and DOES 1 to 25,

Defendants.

CASE NO.: RIC 1214529

**NOTICE OF DEMURRER AND
 DEMURRER TO PLAINTIFFS' FIRST
 AMENDED COMPLAINT; AND
 [PROPOSED] ORDER**

Date: March 25, 2013

Time: 9:00 a.m.

Dept.: 2

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 25, 2013, at 9:00 a.m., or as soon thereafter as the matter may be heard in Department 2 of the above-entitled court, located at 4050 Main Street, Riverside, California, Defendant, COUNTY OF RIVERSIDE (hereinafter referred to as "DEFENDANT"), will, and hereby does, demur to Plaintiffs ROBERT D. MABEE and MARTHA A. MABEE's (hereinafter jointly referred to as "PLAINTIFFS") First Amended Complaint, as follows:

DEFENDANT's Demurrer will be based on the following grounds:

- 1) PLAINTIFFS do not have standing pursuant to Code of Civil Procedure Section 367;
- 2) The First Amended Complaint is barred by the applicable Statute of Limitations pursuant to Code of Civil Procedure Section 338;

- 1 3) The Tort Claims Act was not timely complied with pursuant to Government Code Section
2 911.2;
3 4) The First Amended Complaint is vague, ambiguous, and otherwise unintelligible under
4 Code of Civil Procedure Section 430.10; and
5 5) The First Amended Complaint fails to state a cause of action under Code of Civil Procedure
6 Section 430.10;

7 This Demurrer will be based on this Notice, the records, pleadings and documents in file in
8 the within action, the accompanying Memorandum of Points and Authorities, and on such further
9 oral and documentary evidence as may be presented at the time of the hearing on this Demurrer.
10

11 DATED: February 20, 2013

KINKLE, RODIGER AND SPRIGGS
Professional Corporation



BRUCE E. DISENHOUSE

MEMORANDUM OF POINTS AND AUTHORITIES**I. HISTORICAL INTRODUCTION**

Commencing in 1960, Riverside County Flood Control and Water Conservation District condemned a portion of Riverside County now known as Bautista Creek Channel. (This court is requested to take judicial notice of Riverside Superior Court Case Number 72010, pursuant to California Evidence Code Section 451, et seq.). Plaintiffs ROBERT D. MABEE and MARTHA A. MABEE (hereinafter jointly referred to as "PLAINTIFFS") purchased their property on October 7, 1964. (This court is requested to take judicial notice of Grant Deed Number 121565, pursuant to California Evidence Code Section 451, et seq.). In 1965, Riverside County Flood Control and Water Conservation District granted a non-exclusive easement over its property. (This court is requested to take judicial notice of Deed Number 91932, pursuant to California Evidence Code Section 451, et seq.).

Between 1985 and 1988, Riverside County Flood Control and Water Conservation District fenced the area where the prior easement had been and instead built a road, which was dedicated to the County of Riverside. PLAINTIFFS filed suit against the County of Riverside and, in November 1990, the trial court found there was no taking of his property, which was affirmed on appeal in October 1991. (This court is requested to take judicial notice of Riverside Superior Court Case Number 187104, pursuant to California Evidence Code Section 451, et seq.).

~~In 1995, another easement was given to PLAINTIFFS, but was never recorded.~~
PLAINTIFFS again filed suit relating to the easements (This Court is requested to take judicial notice of Riverside Superior Court Case Number 254996, pursuant to Evidence Code Section 451, et seq.), which was found to be barred by the Statute of Limitations. Within approximately one month after the judgment in the second lawsuit, PLAINTIFFS lost their home to foreclosure.

PLAINTIFFS initially filed suit alleging one cause of action for fraudulent conversion. DEFENDANT successfully demurred to PLAINTIFFS' Complaint on various grounds. The First Amended Complaint expanded to allege eight causes of action, all premised on the same fact previously alleged: the 1995 easement was never recorded. For the same reasons stated in the Demurrer to the original Complaint, which have not been substantially cured other than

1 summarizing the documents previously attached now into paragraph form, the instant Demurrer
2 must be sustained, this time without leave to amend.

3 **II. STATUTORY AUTHORITY FOR A DEMURRER**

4 Code of Civil Procedure Section 430.10(e) specifically provides that an objectionable
5 ground exists if the "pleading does not state facts sufficient to constitute a cause of action."

6 Code of Civil Procedure Section 425.10(a), provides, in pertinent part, that a Complaint
7 "shall contain a statement of the facts constituting the cause of action in ordinary and concise
8 language." In addition, allegations of an unspecified nature without any supporting facts are
9 ambiguous and uncertain, and, therefore, subject to demurrer. (Ankeny v. Lockheed Missile and
10 Space Company, (1979) 88 Cal.App.3d 531, 537; 151 Cal.Rptr. 828). As used in Code of Civil
11 Procedure Section 430.10(f), "uncertain" includes ambiguous and unintelligible.

12 Demurrers challenge defects that appear on the face of the pleading or from matters that can
13 be judicially noticed. (Blank v. Kirwan (1985) 39 Cal.3d 311, 318). Demurrers should be
14 sustained where the complaint is incomplete or presents a complete bar to recovery. To test the
15 sufficiency of the complaint, the demurrer admits the truth of all facts properly pled but does not
16 admit contentions, deductions or conclusions of law or fact. (Id.).

17 **III. PLAINTIFFS DO NOT HAVE STANDING AS THEY DO NOT OWN THE**
18 **PROPERTY**

19 PLAINTIFFS' First Amended Complaint admits PLAINTIFFS lost their home to
20 foreclosure in 1998. (First Amended Complaint at Paragraphs 3 and 8). Therefore, they are not the
21 holders of the subject easement anymore, which runs with the land. (California Code of Civil
22 Procedure Section 367; California Civil Code Section 801). Since PLAINTIFFS are not the
23 holders of the easement, they do not have standing to bring a claim for any purported damages
24 arising out the easement or failure to record the instrument. On this basis alone, the demurrer must
25 be sustained without leave to amend.

26 //

27 //

28 //

1 **IV. THE STATUTE OF LIMITATIONS BARS THE INSTANT FIRST AMENDED**
2 **COMPLAINT**

3 The gravamen of the lawsuit appears to be the failure to record the deed of easement in
4 1995. All lawsuits are governed by applicable statutes of limitations. (California Code of Civil
5 Procedure Section 312).

6 Specifically for any injury to real property (i.e. failure to record deed) or in the case of
7 fraud, the statute of limitations is three years after the discovery of the fraud. (California Code of
8 Civil Procedure Section 338(d)). Notably, however, discovery of the fraud also obliges the
9 plaintiff to have undertaken a due diligent inquiry. (Rubinstein v. Minchin (1941) 46 Cal.App.2d
10 115, 119; Aaroe v. First American Title Insurance Company (1990) 222 Cal.App.3d 124, 128-129).
11 ~~Here, the subject 1995 deed was allegedly supposed to have been recorded. PLAINTIFFS could~~
12 ~~have performed a public records search at any time since 1995. Therefore, waiting until 2012 to~~
13 ~~"discover" the fraud did not toll the statute of limitations.~~ Since the lawsuit was filed fourteen
14 years after PLAINTIFFS should have discovered the alleged fraud, the lawsuit is barred by the
15 statute of limitations. Therefore, the instant Demurrer must be sustained, without leave to amend.

16 **V. THE TORT CLAIMS WAS NOT TIMELY COMPLIED WITH**

17 Since the First Amended Complaint seeks exclusively money damages, the Tort Claims Act
18 must have timely been complied with, and failure to do so subjects the complaint to a demurrer.
19 (DuJardin v. Ventura Co. General Hospital (1977) 69 Cal.3d 350). Pursuant to California
20 Government Code Section 911.2, prior to suing a public entity (i.e. the County of Riverside, the
21 only Defendant named in the First Amended Complaint), a tort claim must be filed within six
22 months after the accrual of the cause of action. Since the purported cause of action accrued in
23 October 1995 with the alleged failure to record the deed of easement, the Tort Claim had to be filed
24 no later than April 1996. Indeed, PLAINTIFFS' Tort Claim was received on March 14, 2012, and
25 rejected on April 4, 2012, on the sole basis of untimeliness. PLAINTIFFS cannot cure this defect,
26 and therefore, the Demurrer must be sustained without leave to amend. PLAINTIFFS never sought
27 leave to file a late claim, or obtained relief from the filing requirement as required by law.
28 (Government Code Section 946.6).

1 **VI. THE FIRST AMENDED COMPLAINT IS AMBIGUOUS AND UNINTELLIGIBLE**

2 The only defect cured from the original Complaint is that the various exhibits previously
3 identified and explained have been omitted and the explanations put into paragraph form.
4 However, of the eight causes of action, no facts alleging the necessary elements for each cause of
5 action are included. Rather, conclusory statements are made (i.e. an easement is "essentially a
6 contract"). (First Amended Complaint at Paragraph 45). Therefore, the First Amended Complaint
7 is vague, ambiguous, and unintelligible, and this Demurrer must be sustained.

8 **VII. THE FIRST AMENDED COMPLAINT FAILS TO STATE A CAUSE OF ACTION**

9 PLAINTIFFS allege eight causes of action. Not only are the factual allegations necessary
10 for each element glaringly missing, but the First Amended Complaint fails to state any facts to
11 support the causes of action alleged. Notably, it appears the gravamen of the lawsuit arises out of
12 an unrecorded easement. No cause of action can be predicated on an unrecorded deed or easement,
13 since it is enforceable without being recorded. (*Zimmerman v. Young* (1946) 74 Cal.App.2d 623,
14 626; *see also, generally, Russell v. Palos Verdes Properties* (1963) 218 Cal.App.2d 754).
15 Therefore, PLAINTIFFS cannot state any plausible theory of recovery or cause of action, and the
16 Demurrer must be sustained without leave to amend.

17 **1. Breach of Contract**

18 PLAINTIFFS allege "essentially [there] was a contract" with DEFENDANT. (First
19 Amended Complaint at Paragraph 45). As provided in *Otworth v. Southern Pacific Transportation*
20 *Company*, (1985) 166 Cal.App.3d 460:

21 To state a cause of action for breach of contract, [Plaintiff] must
22 plead the contract, his performance of the contract or excuse for
23 nonperformance, [Defendant's] breach and the resulting damage.
24 *Lortz v. Connell*, (1969) 273 Cal.App.2d 286, 290, 78 Cal.Rptr.6.
25 Further, the Complaint must indicate on its face whether the contract
26 is written, oral, or implied by conduct. *California Code of Civil*
27 *Procedure*, Section 430.10(g). If the action is based on an alleged
28 breach of a written contract, the terms must be set out verbatim in the
body of the Complaint or a copy of the written instrument must be
attached and incorporated by reference." *Wise v. Southern Pacific*
Company, (1963) 223 Cal.App.2d 50, 59, 35 Cal.Rptr 652, as quoted
in *Otworth*, 212 Cal.Rptr. 743, 747, 166 Cal.App.3d 460. (Emphasis
added)

//

1 In Otworth, the Second District Court of Appeal held that "the trial court properly sustained
2 the demurrer as to Otworth's complaint as it made no mention of whether the contract is written or
3 oral, sets forth none of the alleged contract's terms, and includes no assertion that Otworth has
4 either performed a contract or is excused from performing." (Id.).

5 The essential elements of a cause of action for breach of contract are: 1) the existence of a
6 contract; 2) plaintiff's performance or excuse for nonperformance; 3) defendant's breach; and 4)
7 resulting damages. (See Reichert v. General Ins. Co. (1968) 68 Cal.2d 822, 830). Here, none of
8 the essential elements are pled. In fact, the First Amended Complaint fails to identify whether the
9 purported contract was written or oral. A deed is not a contract, as there is no performance by
10 PLAINTIFFS and no consideration for the deed. Therefore, the First Amended Complaint fails to
11 state a cause of breach of contract, and the Demurrer must be sustained without leave to amend.

12 2. Fraud

13 Fraud causes of action are generally disfavored, and thus, heightened pleading requirements
14 must be adhered to, including specific allegations of each element of fraud. (Hills Transportation
15 Company v. Southwest Forest Industries, Inc. (1968) 266 Cal.App.2d 702, 707-708). The essential
16 elements of a cause of action for fraud are: 1) false representation as to a material fact, 2)
17 knowledge of falsity, 3) intent to deceive, 4) justifiable reliance, and 5) resulting damages. The
18 absence of any one of these elements precludes recovery. (Gonsalves v. Hodgson, (1951) 38
19 Cal.2d 91, 100-101).

20 California law requires that a fraud claim be pled specifically with respect to each element
21 of the cause of action. As stated in Lazar v. Superior Court, (1996) 12 Cal.4th 631, 645:

22 "...the policy of liberal construction of the pleadings . . . will not
23 ordinarily be invoked to sustain a pleading defective in any material
24 respect. This particularity requirement necessitates pleading facts
which show how, when, where, to whom, and by what means the
representations were tendered."

25 Here, other than labeling conduct as "fraud," no specific ultimate facts alleging fraud are
26 included anywhere in the First Amended Complaint. In fact, an actor allegedly committing the
27 fraud is not even named. Again, the gravamen of the alleged fraud is the failure to record the
28 ~~easement, despite the admission that a public road was actually built, which was the basis for the~~

1 ~~appellate decision referred to within the cause of action.~~ (First Amended Complaint at Paragraphs
2 7, 16, 18, and 49; *see also* Riverside Superior Court Case Number 187104). ~~Since the First~~
3 ~~Amended Complaint admits a public road was actually constructed, the appellate court already~~
4 ~~found there was no taking, and the only remaining theory is the unrecorded easement, which is not~~
5 a viable cause of action, the Demurrer must be sustained without leave to amend.

6 **3. Conversion**

7 The necessary elements to properly plead conversion are: 1) a rightful ownership or
8 possession of property; 2) defendant's wrongful act regarding the property; and 3) damages.
9 (*Burlesci v. Petersen* (1998) 68 Cal.App.4th 1062, 1066). However, where a plaintiff neither has a
10 rightful title to the property, he cannot maintain an action for conversion. (*Moore v. Regents of*
11 *University of California* (1990) 51 Cal.3d 120, 136).

12 PLAINTIFFS admit they do not own the property to which the easement runs. (First
13 Amended Complaint at Paragraphs 3 and 8). An easement runs with the land. (*California Code of*
14 *Civil Procedure* Section 367; *California Civil Code* Section 801). Therefore, PLAINTIFFS do not
15 have rightful ownership or possession of the easement or the property to which the easement runs.
16 DEFENDANT has not exercised any dominion or control over the easement; rather, the allegation
17 is that the easement was never recorded. However, an unrecorded easement is still enforceable.
18 (*Zimmerman v. Young* (1946) 74 Cal.App.2d 623, 626; *see also, generally, Russell v. Palos*
19 *Verdes Properties* (1963) 218 Cal.App.2d 754). Therefore, none of the elements for conversion
20 have been alleged and the Demurrer must be sustained without leave to amend.

21 **4. Penal Code Section 496**

22 *California Penal Code* Section 496 defines crimes of stealing and receiving stolen property.
23 *California Constitution*, Article V, Section 13, states that only the Attorney General has the
24 ultimate authority over criminal prosecutions. *California Government Code* Section 26501 states
25 that District Attorneys have authority over criminal prosecutions within their jurisdiction. Thus,
26 PLAINTIFFS, who are neither the Attorney General nor a District Attorney, do not have standing
27 to allege crimes allegedly committed by DEFENDANT, and as such, DEFENDANT's Demurrer
28 must be sustained without leave to amend.

1 **5. Breach of Fiduciary Duty**

2 The elements of a cause of action for breach of fiduciary duty are the existence of a
3 fiduciary relationship; the breach thereof; and damages caused by said breach. (Knox v. Dean
4 (2012) 205 Cal.App.4th 417, 432). "Breach of a fiduciary duty is a tort that by definition may be
5 committed by only a limited class of persons. (1-800 Contacts, Inc. v. Steinberg (2003) 107
6 Cal.App.4th 568, 592). "A 'fiduciary relation' in law is ordinarily synonymous with a
7 'confidential relation.'" (Wolf v. Superior Court (2003) 107 Cal.App.4th 25, 30). It includes "any
8 relation existing between parties to a transaction wherein one of the parties is in duty bound to act
9 with the utmost faith for the benefit of the other party." (Id. at 29).

10 PLAINTIFFS allege Defendant County of Riverside had a "duty to make sure that Plaintiffs
11 property has the easement in place..." (First Amended Complaint at Paragraph 65). Again,
12 easements are enforceable regardless of whether they are recorded. (Zimmerman, supra).
13 Furthermore, no duty has been identified anywhere in PLAINTIFFS' First Amended Complaint.
14 (*See infra*, "Negligence"). A breach of a fiduciary duty arises either out of a breach of contract or
15 due to negligence or another tort; no contract has been identified as being breached and no tort has
16 been committed. Therefore, PLAINTIFFS have insufficiently pled the breach of fiduciary cause of
17 action and this Demurrer must be sustained, without leave to amend.

18 **6. Negligence**

19 The First Amended Complaint fails to sufficiently allege any, much less all facts essential
20 to the existence of any alleged statutory duties, making the First Amended Complaint defective.
21 The Second District Court of Appeal clearly stated, in the seminal case of Zuniga v. Housing
22 Authority of the City of Los Angeles, (1995) 41 Cal.App.4th 82, 48 Cal. Rptr. 353, 360, that:

23 **"In order to state a cause of action for government tort liability, "every fact**
24 **essential to the existence of statutory liability must be pleaded with**
25 **particularly, including the existence of a statutory duty. Zufinan v. City of Los**
26 **Angeles, (1979) 269 Cal. App. 2d 803, 809, 75 Cal. Rptr. 240. Duty cannot be**
27 **alleged simply by stating "defendant had a duty under the law;" that is a**
28 **conclusion of law, not an allegation of fact. The facts showing the existence of**
the claim to duty must be alleged. [Citations.] Since the duty of a governmental
agency can only be created by statute or "enactment," the statute or "enactment"
claimed to establish the duty must be at the very least be identified." (Searcy v.
Hemet Unified School District, (1986) 177 Cal.App.3d 792, 802).

1 Even a cursory glance at PLAINTIFFS' First Amended Complaint reveals that no facts
2 essential to the existence of statutory liability are plead, with particularity or otherwise. Not only
3 must PLAINTIFFS specifically allege a statutory section describing the existence of a statutory
4 duty, which they have failed to do, but they must also state "every fact essential to the existence of
5 statutory liability." (*Id.*). Because of this lack of factual pleading, the First Amended Complaint is
6 vague, ambiguous, uncertain, and unintelligible, thus depriving DEFENDANT of its ability to
7 properly defend this action.

8 "In the absence of some constitutional requirement, public entities may be liable only if a
9 statute declares them to be liable. Moreover, under Section 815(b), the immunity provision of the
10 California Tort Claim Act, will generally prevail over any liabilities established by statute."
11 (*Cochran v. Herzog Engraving Co.*, 155 Cal.App.3d 405, 410). In *Cochran*, the Court of Appeal
12 held that:

13 "The City's alleged duties to inspect the company's premises, to
14 correct or remedy any hazardous conditions likely to cause fire, and
15 to require use of adequate protective measures were mandatory, they
16 **still came within the scope of statutory immunity provision; 2)**
17 **the statutory inspection immunity was not restricted to mere**
18 **failure to detect hazards, but also to protect the City from**
19 **liability** for any negligence directly connected to the inspection
20 process itself; and 3) the City was also protected under statutes which
21 provide immunity for unreasonable failure to maintain adequate fire
22 protection service and for injuries resulting from condition of
23 protection, equipment or facilities." (*Id.* at 1).

19 Under subdivision (b) of Section 815, the immunity provisions of the California Tort
20 Claims Act generally prevail over any liabilities established by statute. (*Id.* at 3).

21 Due to the lack of specific factual allegations in the First Amended Complaint, as opposed
22 to legal conclusions, DEFENDANT is unable to determine any statutory defense it may have, and
23 is unable to adequately prepare defensive motions, such as a Motion for Summary Judgment, a
24 Motion for Judgment on the Pleadings or to prepare for trial. Accordingly, this present action
25 comes under the rule established in *Zuniga v. Housing Authority*, *supra*, which mandates that in
26 order to state a cause of action for Government Tort Liability, "every fact essential to the existence
27 of the statutory liability must be plead with particularity, including the existence of a statutory
28 duty." (*Zuniga* at 360).

1 Finally, the case law construing Government Code, Section 815.6 has developed a "three
2 prong test for determining whether liability may be imposed on a public entity: 1) An enactment
3 must impose a mandatory, not discretionary, duty [Citation]; 2) the enactment must intend to
4 protect against the kind of risk of injuries suffered by the party asserting Section 815.6 as a basis
5 for liability [Citations]; and 3) breach of the mandatory duty must be a proximate cause of the
6 injuries suffered." (State of California v. Superior Court (1984) 150 Cal.App.3d 848, 854).

7 PLAINTIFFS cite no statutory basis for liability. They also fail to allege facts tending to
8 establish a mandatory rather than a discretionary duty on behalf of DEFENDANT. "Not every
9 statute or municipal ordinance which using the word "shall" is obligatory rather than permissive."
10 (Cochran, supra, at 4).

11 In the legislative committee comment on Government Code, Section 815, it is stated: "In
12 the following portion of this division there are many sections providing for the liability of
13 governmental entities under specific conditions . . . but there is no liability in the absence of a
14 statute declaring such liability." (Mikkelsen v. State of California (1976) 59 Cal.App.3d 621, 626).
15 In Tolan v. State of California (1979) 100 Cal.App.3d 980, 981, the court stated: "That the
16 exclusive basis of public entity tort liability as statutory has been reiterated in numerous appellate
17 court decisions. (See Morris v. State of California (1979) 89 Cal. App.3d 962, 964, 15 Cal.Rptr.
18 117; Moncur v. City of Los Angeles (1977) 68 Cal.App.3d 118, 122, 137 Cal.Rptr. 239; Peter W.
19 v. San Francisco Unified School District (1976) 60 Cal.App.3d 814, 819, 131 Cal.Rptr. 834).

20 In Susman v. City of Los Angeles (1969) 269 Cal.App.2d 803, in an action for riot damage
21 against the City of Los Angeles and the State of California, the court affirmed the trial court's
22 sustaining of general demurrers and noted at pages 808-809:

23 "In California, all governmental tort liability is now dependent on statute.
24 [Citations] . . ." "In view of the fact that tort causes of action must be pled with
25 particularity is applicable, every fact essential to the existence of statutory liability
26 must be pled. (Van Alstyne, California Government Code Tort Liability (Cont.
27 Ed. Bar 1964) Section 9.13, p. 422; See, Feingold v. County of Los Angeles, 254
28 Cal.App.2d 622, 625, 62 Cal. Rptr, 396)." (Emphasis added). "Because recovery
is based on a statutory cause of action, the plaintiff must set forth facts in his First
Amended Complaint sufficiently detailed and specific to support interference that
each of the statutory elements of liability is satisfied. General allegations are
regarded as inadequate." Mittenhuber v. City of Redondo Beach (1983) 142
Cal.App.3d 1, 5.

1 As PLAINTIFFS' First Amended Complaint does not contain sufficient factual allegations
2 of statutory liability so that DEFENDANT may determine the existence of a duty or defense, the
3 First Amended Complaint is necessarily vague, ambiguous, uncertain and unintelligible, thus
4 requiring that the present Demurrer be sustained.

5 **7. Negligent Misrepresentation**

6 The elements of a claim for negligent misrepresentation are very similar to those for fraud,
7 except they do not require knowledge of falsity or intent to deceive. Instead, the claim requires a
8 showing that the defendant made the representation without any reasonable ground for believing it
9 to be true. (See Continental Airlines, Inc. v. McDonnell Douglas Corp. (1989) 216 Cal.App.3d
10 388). Nevertheless, because negligent misrepresentation is a form of deceit, it has been held to
11 require the same level of particularized pleading as for traditional fraud claims. (See Small v. Fritz
12 Cos., Inc. (2003) 30 Cal.4th 167, 184; Eddy v. Sharp (1988) 199 Cal.App.3d 858). Therefore, for
13 the same reasons that the fraud cause of action fails, PLAINTIFFS have failed to state a cause of
14 action for negligent misrepresentation, and the Demurrer must be sustained without leave to
15 amend.

16 **8. Civil Conspiracy**

17 "As distinguished from a criminal conspiracy, '[a] civil conspiracy, however atrocious,
18 does not per se give rise to a cause of action *unless* a civil wrong has been committed resulting in
19 damage.' [Citations]." (Schick v. Lerner (1987) 193 Cal.App.3d 1321, 1327). Conspiracy,
20 therefore, is akin to negligent infliction of emotional distress, in that such a cause of action is not
21 independent and cannot be pled without first sufficiently alleging negligence.

22 The elements of a civil conspiracy are "(1) the formation and operation of the conspiracy;
23 (2) the wrongful act or acts done pursuant thereto; and (3) the damage resulting." (Mosier v.
24 Southern California Physicians Insurance Exchange (1998) 63 Cal.App.4th 1022, 1048; *see also*
25 CACI 3600). The sole purpose of alleging a civil conspiracy is to impose liability on persons who
26 did not commit a tort themselves – liability can be extended to such persons by reason of their
27 planning of the conspiracy. (Applied Equipment Corp., supra, 7 Cal.4th at 510-511; City of
28 Industry, supra, 198 Cal.App.4th at 211-212).

1 Here, the allegation is that the sole Defendant, the County of Riverside, conspired with
2 itself to commit various intentional torts to obtain the subject easement. (First Amended
3 Complaint at Paragraph 76). There is no third party with whom the sole Defendant allegedly
4 conspired, and therefore, there is no cause of action for conspiring with oneself. (Shafer v. Berger,
5 Kahn, Shafton, Moss, Figler, Simon & Gladstone (2003) 107 Cal.App.4th 54, 84). Therefore,
6 PLAINTIFFS have failed to state a cause of action for civil conspiracy, requiring the Demurrer to
7 be sustained without leave to amend.

8 **VIII. CONCLUSION**

9 As shown above, PLAINTIFFS lack standing to bring the instant lawsuit, their lawsuit is
10 barred by the statute of limitations and their lawsuit is barred for failure to timely present a tort
11 claim. Based on each of these independent reasons, the instant Demurrer must be granted without
12 leave to amend.

13 Even if their lawsuit can survive those challenges, the First Amended Complaint is vague,
14 ambiguous and unintelligible, and fails to state any cognizable cause of action. ~~Since there is no~~
15 ~~cause of action for failure to record a deed of easement,~~ the Complaint cannot be amended to state
16 a cause of action. Finally, facts supporting each element of each cause of action have not been
17 sufficiently stated, and indeed, are impossible to state, for which the Demurrer must be sustained
18 without leave to amend.

19
20 DATED: February 20, 2013

KINKLE, RODIGER AND SPRIGGS
Professional Corporation

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24 BRUCE E. DISENHOUSE
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SUPERIOR COURT OF CALIFORNIA

COUNTY OF RIVERSIDE

ROBERT MABEE and MARTHA MABEE,

Plaintiffs,

VS.

Case No. RIC1214529

RIVERSIDE COUNTY GOVERNMENT ENTITY,
RIVERSIDE COUNTY FLOOD CONTROL
DISTRICT and DOES 1 to 25,

Defendants.)

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

Before The Honorable Matthew C. Perantoni
Judge of the Riverside Superior Court
Department 2
July 10, 2013

APPEARANCES:

For the Plaintiffs: IN PROPRIA PERSONA

For the Defendants: KINKLE, RODIGER AND SPRIGGS
BY: TREVOR D. DEBUS, ESQ.
3333 Fourteenth Street
Riverside, California 92501

Reported by:

SHELLIE A. CAMARATA, CSR NO. 10275
Official Court Reporter

COPY

1 RIVERSIDE, CALIFORNIA - JULY 10, 2013

2 HON. MATTHEW C. PERANTONI, JUDGE PRESIDING, DEPARTMENT 2

3 THE COURT: No. 12, Mabee versus County of
4 Riverside.

5 MR. DEBUS: Good morning, your Honor, Trevor DeBus
6 on behalf of defendant, County of Riverside.

7 THE COURT: Good morning.

8 MR. MABEE: Good morning, your Honor, Robert Mabee
9 representing the plaintiffs.

09:35:31 10 THE COURT: Good morning, sir.

11 We're here on a demurrer on the first amended
12 complaint. The Court's inclination at this point is to
13 sustain the demurrer.

14 MR. MABEE: Your Honor, could I read the one-page
15 reply to the defendant's opposition.

16 THE COURT: Could you say that again, sir?

17 MR. MABEE: Could I -- I have approximately a
18 one-page reply that I would like to read for the record. And
19 in opposition to plaintiff's reply.

09:36:08 20 THE COURT: I will let you read to me what you wish
21 to read to me on the record, but just let me finish what I'm
22 going to say first so you understand where the Court is coming
23 from, and then I will gladly hear from you, sir.

24 MR. MABEE: Okay.

25 THE COURT: The reason that the Court is inclined to
26 sustain without leave is, it doesn't appear as though the
27 complaint alleges any facts that are sufficient to support any
28 cause of action. ~~I think the standing issue really sticks out~~

1 ~~to the Court regarding the lack of standing as well as failure~~
2 ~~to comply with the Torts Claims Act.~~

3 I would note that there is no reasonable
4 possibility, as far as the Court can see, that the complaint
5 could be fixed. So that is the reason for the Court's intent
6 to sustain without leave to amend.

7 But, I will hear from you, sir.

8 What would you like to tell me? And if you could
9 speak into the microphone so I can hear you.

09:37:13 10 MR. MABEE: Yes, I would hope that this would
11 change. I would like to give you a copy of this. It
12 includes -- The County already has it. It includes a one-page
13 letter from the Clerk of the Board and also --

14 THE COURT: Have you seen that, Counsel?

15 MR. DEBUS: I am not sure.

16 MR. MABEE: If you could --

17 THE COURT: Why don't you show it to counsel first,
18 okay. Let Counsel take a look at it.

19 MR. MABEE: And I believe this will address your
09:37:42 20 concerns.

21 MR. DEBUS: This looks like it's a reply to our
22 reply to his opposition, and I haven't seen this before.

23 THE COURT: Do you have any objection to the Court
24 reviewing it and receiving it and reviewing it, Counsel?

25 MR. DEBUS: I do.

26 THE COURT: Let me look at it before you start.
27 Just a moment. Okay, sir.

28 The Court has now reviewed a letter signed by Robert

1 Mabee dated July 10, 2013 and a letter to Mr. Mabee from the
2 Clerk of the Board of Supervisors. It looks like it is dated
3 March 1st, 2012, and a letter by Mr. Mabee to County Counsel
4 and the Board of Supervisors dated March 12th, 2012.

5 And this was -- these will be marked received by the
6 Court.

7 Would you like to be heard now, sir?

8 Would you like to say anything?

9 MR. MABEE: Thank you, your Honor.

09:40:33 10 In Bruce Disenhouse's reply dated 7-2-2013, the
11 Plaintiff's opposition to Defendant's demurrer to Plaintiff's
12 first amended complaint, Page 2, Line 26, 27, 28.

13 THE COURT: And, sir, since you were reading, go a
14 little bit slow because you tend to go fast when you are
15 reading. My court reporter needs to get everything down.

16 MR. MABEE: All right. Thank you. Shall I go over
17 it again?

18 THE COURT: No, where you left off.

19 MR. MABEE: Okay. I am going to quote Disenhouse
09:41:02 20 word for word in Line 26, 27, 28 of his reply:

21 "Plaintiffs have had the opportunity to inspect
22 the recording of the deed of easement at all times
23 since 1995. The recording of deeds is part of the
24 public record and was readily available at all times
25 since 1995." Bruce Disenhouse is an incompetent liar.

26 Plaintiffs request the Court to take judicial notice
27 of Plaintiff's complaint which included Exhibit A, a letter
28 dated March 1st, 2012 from the Clerk of the Board, stating

1 that the County recorder determined that the deeds and agenda
2 10-3, October 3rd, 1995 were never recorded.

3 Plaintiffs were never informed of agenda 10-3. The
4 agenda was discovered after the Clerk of the Board and
5 Plaintiffs went through 24 years of records.

6 Plaintiffs obtained the certified copy
7 February 12th, 2012. A review of the tape of agenda 10-3,
8 October 3rd, 1995 shows not one word describing Plaintiffs or
9 easements -- it was bundled in three other agendas. In other
09:42:10 10 words, if you sat in on that Board of Supervisors meeting, you
11 wouldn't have a clue what it is about because there wasn't one
12 word that it was an easement, not one word concerning the
13 plaintiffs or any details of it.

14 Exhibit 1 of the complaint -- Mr. Disenhouse -- word
15 for word, Disenhouse -- I'm sorry I got to back up a little
16 bit. Justification for granting of the deeds and agenda 10-3
17 was that the modification of the side channel conveyances that
18 land-locked the property owners. Disenhouse's reply Page 2,
19 Line 9, 10, word for word states: "The easement in question
09:42:49 20 has followed each titleholder since 1988."

21 Exhibit 9 of the Complaint the County has refused to
22 record the deeds. As the Court should know, it's very
23 difficult for any deed to file -- that has never even been
24 recorded to even be shown in a title record, in a preliminary
25 title record or a title report. None of the properties there
26 have ever gotten use of this deed because it was never
27 recorded. None of them even knew about it.

28 Exhibit 1 of the Complaint, Supervisor Ashley

1 Chairman of the Board in his report of agenda 3-30,
2 February 12th, 2011 recommended compensation of \$242,628. He
3 stated, I quote:

4 "In a time of rapid expansion and change
5 throughout the County, and the more than ten year
6 process to alleviate increasing liability for the
7 Batista Creek Channel, the events occurred that
8 resulted in an apparent lack of justice in this
9 case."

09:43:54 10 Supervisor Ashley and Exhibit 1 states that Bruce
11 Disenhouse confirmed he deceived the courts and the original
12 case 187104 and states Page 2, Paragraph 4: "The fact that
13 the good faith dispute is taking 24 years if not to alleviate
14 our responsibility and obligation to provide it."

15 Exhibit 4 of the complaint, Assembly Jeffreys now
16 Supervisor Elect wrote the Attorney General 4-22-11, asked him
17 for an investigation. The Attorney General responded stating
18 that it was not a statewide interest. Supervisor Ashley and
19 Tavaloni (phonetic) again quote authored agenda 3-16,
09:44:56 20 6-11-2011, recommended an arbitration.

21 Supervisor Stone threatened the Board that if the
22 agenda passed, he would go to court to stop it. Supervisor
23 Stone has been prosecuted two times by the Attorney General
24 and fined 26,000. One case involving -- he admitted 4 out of
25 the 20 counts which included fraud, corruption, mislabeled
26 drugs, et cetera.

27 Included in Plaintiff's opposition to the Demurrer
28 to the first amended complaint on Exhibit A, B and C,

1 Exhibit A, the Court taking judicial notice of Case 187104
2 surely must ask the question as an officer of the Court, why
3 has Disenhouse not informed the Court of this settlement offer
4 by his firm five years after the Court found the plaintiff to
5 be given a new 40-foot unobstructed public road.

6 And so, I think Disenhouse can no longer use some of
7 these statements that he's made, that Plaintiff would have
8 known of this a long time ago, and they could have done
9 something about it because it's pretty plain from the Clerk of
09:45:58 10 the Board that the deed was timely recorded and it is also
11 plain that one day if a jury got to hear it, the tape would
12 show that no one could have known of that.

13 And I don't see how the Court can make this ruling
14 knowing that Disenhouse plainly has lied to you. This is in
15 his reply word for word. And the County Clerk of the Board,
16 their letter disputes all of that, and also the other reply
17 Line -- Page 2, Line 10, states the easement questions
18 following each title holder since 1998. How could they? To
19 this day, it's land-locked. And it's in the complaint they
09:46:42 20 have the documentation, the exhibits that it's land-locked to
21 this date.

22 I have done everything that a reasonable person
23 could do. And I think that I have filed a timely claim, too.
24 My cause of action wasn't perfected until we had gotten this
25 letter from the Clerk of the Board with the County recorder's
26 Office that searched the records and determined that they
27 never been recorded.

28 I don't think that the Court is being fair in this

1 case. I think you are being one-sided, taking the side of the
2 County. And I think that, I don't see how you can ignore what
3 I have given you this morning. You can't ignore this letter
4 from the Clerk of the Board. You can't ignore Disenhouse's
5 statement in his reply that we have known about this and it's
6 been available, and it's been on record since 1995. It
7 hasn't.

8 THE COURT: Thank you, sir.

9 Would you like to be heard?

09:47:31 10 MR. DEBUS: Yes, your Honor.

11 The first issue is the standing issue. And even in
12 1998, ~~I believe it was his -- the property was foreclosed on.~~
13 ~~And since then, he has not had any interest in this easement~~
14 ~~and this property.~~ So I agree with your initial ruling that
15 this should fail on the standing grounds.

16 Secondly, the statute of limitations comes up
17 wherein that he's talking about Mr. Disenhouse saying that
18 since 1998 it's been on record that the easement -- or the
19 easement has been on record. And the easement in question has
09:48:07 20 followed each titleholder since foreclosure in 1998.

21 ~~Easements don't have to be recorded to be enforceable.~~

22 ~~Easements are enforceable regardless of whether or~~
23 ~~not they are recorded.~~ And he has had since 1995 when the
24 ~~second easement was given to him to check the record to see if~~
25 ~~it was, in fact, recorded or not.~~ And he had every
26 ~~opportunity, because that is public record, to do so, and he~~
27 ~~didn't do that until 2012.~~ And he hasn't had the property
28 since 1998.

1 Thirdly, even if it was timely, it was within the
2 statute of limitations, even the letter that he presented
3 today doesn't add anything new to his complaint or his first
4 amended complaint. It's just a lot of conclusions and
5 opinions from the Board of Supervisors, but nothing -- no
6 indications of what Mr. Disenhouse actually did that was
7 fraud.

8 And in order to be a viable complaint, it must
9 argue -- or it must present facts that show that fraud was
09:49:08 10 committed. And in this case, he's just accusing us of fraud
11 or accusing us of lying. He has no facts showing that what he
12 did was a lie, or what was said was a fraud.

13 THE COURT: Okay.

14 Did you want to say anything else?

15 MR. MABEE: There is no documentation that we ever
16 knew about this from 1995. To give a for instance of that,
17 the second court case, when I simply went to court and asked
18 them to remove the encroachment in the public road, Disenhouse
19 never brought that up. He never brought up that there was an
09:49:36 20 easement given like that.

21 He deceived the court in that. His firm deceived
22 the Court in the first court case. You have three
23 supervisors, three supervisors all declaring based on their
24 investigation and their independent investigation that they
25 committed fraud upon the Court in the first court case. It's
26 plain.

27 I don't know if you have read Supervisor Ashley's
28 agenda and his report that was included in the original

1 complaint, but you know this should and would have been
2 finished a long time ago and should have been finished with
3 the Board of Supervisors.

4 It should have been voted for on the agenda. But
5 that is on the tape, too. That was pure harassment by
6 Supervisor Stone that he told the Board of Supervisors, if you
7 vote for this, I will take it to Court. I know -- I don't
8 think that I have ever been given -- you know, what you have
9 on the Disenhouse law firm, you have a group of magnificent
09:50:30 10 liars. I always thought when you came to court, you told the
11 truth and you could win based off the truth.

12 Well, you know what, you can't. You can't do it. I
13 still have some faith, but one day when we have anarchy in the
14 country, you will realize why we have it. Simply coming to
15 court and telling the truth and presenting your case and
16 trying to be an honest citizen, a good citizen --

17 If you look at the papers that have been submitted
18 to this Court, how could you say that a human being could have
19 done any more than I have done. And the facts are there, the
09:51:00 20 documents are there to show that we knew nothing about this.
21 We knew nothing about this agenda.

22 The deeds were never recorded. And, once again,
23 Disenhouse states plainly to the court, "again Plaintiffs have
24 had the opportunity to inspect the recording of deed of
25 easement at all times since 1995."

26 How could I inspect the recording of the deed of
27 easement? I never seen it. It's never been recorded. We
28 were never notified of the agenda. No one knew of the agenda.

1 The deeds weren't recorded. Why weren't they
2 recorded? And another thing that I would ask the Court to
3 take a look at, why does this one document that showed up that
4 you have a copy of where they offered this \$5,000 settlement 5
5 years after the court case.

6 Why? What was the purpose of that? The only
7 purpose was that they lied and deceived the Court in the first
8 court case. That paper, too, it disappeared from the Clerk of
9 the Board's office. It is no longer there.

09:51:56 10 You do, you have a firm of magnificent liars. They
11 are the best. I'm at a disadvantage.

12 THE COURT: Thank you, sir.

13 I can tell that you feel very, very strongly about
14 your position. But the Court has reviewed the moving and
15 opposing papers, and at this time the Court is required by law
16 to sustain the demurrer for the reasons stated. So the
17 demurrer is sustained without leave to amend. Okay.

18 MR. DEBUS: Thank you.

19 Would you like me to give notice?

09:52:39 20 THE COURT: Yes.

21 (Proceedings concluded.)
22
23
24
25
26
27
28

REPORTER'S CERTIFICATE

ROBERT MABEE and MARTHA MABEE,

Plaintiffs,

VS.

Case No. RIC1214529

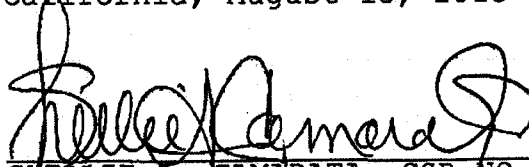
RIVERSIDE COUNTY GOVERNMENT ENTITY,
RIVERSIDE COUNTY FLOOD CONTROL
DISTRICT and DOES 1 to 25,

Defendants.)

I, SHELLIE A. CAMARATA, Certified Shorthand
Reporter, No. 10275, do hereby certify:

That on July 10, 2013, in the County of
Riverside, State of California, I took in stenotype a true and
correct report of the testimony given and proceedings had in
the above-entitled case, Pages 1 through 10, and that the
foregoing is a true and accurate transcription of my stenotype
notes, taken as aforesaid, and is the whole thereof.

DATED: Riverside, California, August 13, 2013



SHELLIE A. CAMARATA, CSR NO. 10275
Official Court Reporter

LAW OFFICES OF
KINKLE, RODIGER AND SPRIGGS

PROFESSIONAL CORPORATION
3333 FOURTEENTH STREET
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September 19, 1995

WILLIAM B. RODIGER
EVERETT L. SPRIGGS
GUILLERMO W. SCHNAIDER
THOMAS J. DOWLING
A. J. PYKA
DAVID P. LENHARDT
JOHN V. HAGER
BRUCE E. DISENHOUSE
TOBY J. ELDER
PAUL B. REYNOLDS
CLAUDIA L. REYNOLDS
CHARLES S. HAUGHEY, JR.
SCOTT B. SPRIGGS
R. DENYSE GREER
EDWIN C. MANN
DANIEL S. ALDERMAN
JOHN M. DWYER
ROXANE STAFFORD

STEPHEN J. CHIASSON
EMILY KORDYBAN
DAVID D. BOYER
CAROL J. KNOBLOW
JEFFREY C. MILLER
JAMES A. STATHAS
JOHN W. SHORT
LISA C. JACOBS
EILEEN MONAGHAN TEICHERT
VICTOR A. BULLOCK
JULIA A. LONGJOHN
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SANTA BARBARA, CALIFORNIA 93101-2239
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IN REPLY REFER TO
OUR FILE

RIV-18223-7

Mr. Robert Mabee
27750 Grant Street
Hemet, California 92544

RE: Mabee v. County of Riverside, et al.

Dear Mr. Mabee:

~~Enclosed you will find draft copies of the Settlement Agreement and General Release, as well as the Easement Deed, for your review. As we explained to you, the Settlement Agreement is merely a draft, and that if it is acceptable, we will forward a final original of the document to you (together with exhibits) for signing by you and your wife.~~

~~Please be advised that the Easement Deed is merely in draft form, and that it must be approved by the Board of Supervisors prior to it being valid.~~

Should you have any questions, please do not hesitate to contact the undersigned.

Yours very truly,

KINKLE, RODIGER AND SPRIGGS

Paul B. Reynolds
Paul B. Reynolds

PBR:tli:9-19-95.car
Enclosures

MAR 11 1996

W. H. H. H. H.

Robert Mabee
(909) 780-7690

337 LEAFWOOD CT

RIVERSIDE COUNTY BOARD OF SUPERVISORS RIVERSIDE - 92506

I ask that this statement be taped.

This concerns Bautista Canyon Access Road. I came before this Board December 15, 1992 and accused Kay Cenicerros and Kenneth Edwards of misuse of County funds of over \$400,000 and violation of the State Environmental Act. I gave Norton Younglove notarized documents showing that the County did not have clear title for the transfer of this land to the Road Dept. Mr. Younglove also had a sworn statement from Edwards that permits and environmental work was necessary for the construction of this road. His statement under oath states he had not permits or environmental work as required. I had a meeting with supervisor Younglove and he told me he knew for a fact that construction of a road by Flood Control would have had to come under section 18 of statutes of 1945 Act 6642 of State Legislature creating the Riverside County Flood Control which would require public hearings. I also told the board that this road was a abortion conceived by Kay Cenicerros and fathered by Ken Edwards. Kay Cenicerros conceived the idea of the road and Ken Edwards constructed the road without any authority from the board. I asked the board to make a fair settlement for blocking my legal access. Most of the above statements were on tape at the board meeting Dec 15, 1992 on Jan 5, 1993 I submitted to the board 26 pages of documents to prove my charges. I personally gave the new supervisor Bob Buster copies. again I asked the board to stop Edwards and Cenicerros from blocking my access to my property. Cenicerros and Edwards denied that my access was blocked, this also was on a tape on Jan 5, 1993. on Dec 31, 1992 four days before this board meeting Norton Younglove gave his report to the supervisors including Bob Buster the new supervisor and County Counsel on page 3, question C "Does the transfer from flood to roads for road and related purposes satisfy the phrase public highway or street as found in the August 1965 grant deed by Flood Control? Is the condition of the road as constructed sufficient to satisfy that condition, Youngloves conclusion "As to the first question I don't know, as to the second question a review of the property raises serious doubts as to its ability to meet the conditions" to provide answers to the legal questions and conclusions there was five recommendations by Youglove, I was informed by supervisor Tavaglione office manager Jan 18, 1996 that Norton Younglove informed them that no written record exists of any answer from County Counsel or any other agency, it is no wonder that County Counsel never put anything in writing. In a deposition by Kenneth Edwards, he states County counsel gave Edwards legal opinion that he did not need any

permits etc, to build a new 1.7 mile road 40 ft. wide. County Counsel does not want this can of worms opened. He has unclean hands along with Cenicerros and Buster. County Counsel has ordered Flood Control not to release to anyone any records concerning the construction of this road. I have been threatened by Cenicerros in the past and by Paul Reynolds a contract attorney for the County. I have a complaint with the State Bar against Paul Reynolds. ~~The Board through Paul Reynolds offered me a settlement of \$5,000:~~

~~and a new easement for blocking my access on Sept 19, 1995.~~ This brands Cenicerros and Edwards as liars. Bob Buster after seeing first hand the damage of floods in his area should have been concerned. For over 3 years he sat on the Flood Control Board and has had complete knowledge of Cenicerros and Edwards misuse of county funds which by now amounts to well over \$500,000.00. His guilt is greater than Cenicerros who was trying to cover up for Edwards. Bob Buster was informed of Youngloves concerns and I gave him the same documents that were given to County Counsel. The construction of this road is a monument to stupidity. Bob Buster does not want to give the Sheriff extra money, but he has helped Cenicerros and Edwards cover up misuse of county funds. The voters need to demand from buster some answers. Buster has no regard for the truth or the voters in his area. Mr. Buster and Cenicerros would do well to read the statutes governing the Flood Control District along with County Counsel. Mr Buster must not be reelected. He and Cenicerros are the last of the supervisors that should be held responsible for the problems that this county now faces.

Robert Mabee

Robert Mabee

~~Jan 19, 1996~~

COUNTY COUNSEL



Memorandum

DATE: August 13, 1996

TO: Kay Cenicerros, Chairman, Board of Supervisors
Robert Buster, Supervisor, District I
John Tavaglione, Supervisor, District II
Roy Wilson, Supervisor, District IV
Tom Mullen, Supervisor, District V
Dave Zappe, General Manager/Chief Engineer, RCFC&WCD

FROM: Jay G. Vickers, Deputy County Counsel *JGV*

RE: Robert Mabee
Summary Chronology of events with Mr. Mabee

The following is a chronological summary of events related to Mr. Mabee and/or the Bautista Creek access road. It is not exhaustive and reflects only documents in County Counsel files. There may be other departments that have items that we are not aware of.

1961

April District acquires some property from Mr. & Mrs. Raymond Deichsel. One of the terms of the agreement is that District grant Deichsel encroachment permit for ingress and egress to other Deichsel property. Deichsel property apparently lacks "legal" access even before [and without] District acquisition of a portion of the Deichsel holdings..

May ~~Deichsel~~ applies for and is granted an Encroachment Permit (access) over District access and maintenance road.

1964

October ~~Grant Deed of property from Deichsel to Robert D. Mabee and Martha A. Mabee.~~
(Instrument No. 121565 [Bk. 3820, pg. 467])

October ~~Easement for "road purpose and for installation and maintenance of water pipelines and meter" from Deichsel to Mabee~~ (Instrument No. 121564 [Bk. 3820, pg. 431])

For future reference we will call this Easement No. 1.

~~A copy of this easement is attached.~~

1965

- April 10 Letter from Deichsel to Supervisor McCall (Supervisor 5th District) complaining about their limited use of District property for access.
- April 21 Robert Mabee applies for Encroachment Permit for "purpose of ingress and egress."
- May 3 ~~District grants Mabee an encroachment permit~~ which contain the following special notes:

14. NO CONVEYANCE OF TITLE. No right, title, or interest in the land of Riverside County Flood Control and Water Conservation District is vested in Permittee by issuance of this permit. Permittee by acceptance of this permit agrees that he has no right, title, or interest in the land of Riverside County Flood Control and Water Conservation District.

15. DURATION. This permit may be canceled upon 30 days written notice.

- May 18 ~~District responds to April 10th letter from Deichsel to McCall.~~ Letter reads, in part, as follows:

"It was not contemplated nor is it desirable that wholesale use of District land be permitted. Neither was it intended that use of District right of way be permanent. However, it was intended that the Deichsels have limited use of District land until other access became available. This is specifically set out in the right of way agreement.

The Deichsels have sold a portion of their land to Robert and Martha Mabee, and the District has, as an accommodation, provided the Mabees with a permit to use District land for access to their property. Meanwhile, the problem continues to grow. The Deichsels propose sale of additional portions of their land, and Mr. Mabee, we have learned, is a real estate developer. Buyers from either Deichsel or Mabee will doubtless seek to use District right of way for access.

The right of way is fenced and has a locked gate at Fairview Avenue to discourage trespassers and protect District facilities. The Deichsels and Mabees maintain a lock on the gate as does the District. Keeping the gate locked has already become a problem. If more users become involved, control of the right of way will totally degenerate and the hazard of

damage to District facilities or injury to individuals will become very great."

- July 1 District letter "To Whom It May Concern" advising that ~~Mabee~~ has an Encroachment Permit to use Bautista Creek right of way.
- August 9 District ~~grants easement to Deichsel~~ in accordance with 1961 agreement [Instrument No. 91932].
- September 20 Letter from Cox, Pendleton & Swan (Attorney at Law) representing Deichsel to Supervisor McCall complaining about the language in the August Easement Deed. Deichsel wants a 30 foot permanent right of way.
- October 14 District response to letter from Cox, Pendleton & Swan.
- October 19 ~~Deichsel conveys easement to Mabee~~ "for road purposes for installation, maintenance of water pipelines and water meter" [Instrument No. 119544].

For future reference we will call this Easement No. 2.

NOTE: Legal description is not the same as Easement No. 1 [October 1964].
Please also note that the "and" is missing from Easement No. 2.

A copy of this easement is attached [Joint Tenancy Grant Deed].

1966

- February 11 Mildred Hess writes to District purchase of Deichsel property and extent of the easement.
- February 18 District advises Ms. Hess that unless she is acquiring all of the Deichsel property, the easement granted to Deichsel would not go to Ms. Hess.
- August 19 ~~Letters from District to both Mabee and Deichsel~~ to please keep the cable locked "in order to prevent unauthorized use of the road and what could be a very serious accident in the event someone drove into the channel."

1967

- January 26 Deichsel records notice that Mabee has deviated from easement deeds by up to 40 feet from the right of way for "road and pipeline purposes" granted in 1964 [Easement No. 1]. That Mabee may continue to use the "existing way" but such use is with permission and may be revoked at any time.

1968

Mabee sells a portion of the property acquired from Deichsel in 1964 to Washburn.

- June 25 District learns of the Mabee to Washburn transaction and cancels the encroachment permit issued to Mabee in 1965.
- December 9 Mabee makes an oral request to Board for an easement. Matter referred to District.
- December 10 District issues new Encroachment Permit to Mabee.

1969

- January 2 County Counsel response to referral of December 9, 1968.
- January 7 District's response to referral of December 9, 1968. Because of the contents of this letter, we are attaching a copy.

1973

- October D&B Management request an easement for ingress and egress next to Bautista Creek Channel. Matter referred to Flood and County Counsel.
- November 20 District advises Board:
- (a) People aren't keeping cable gate locked,
 - (b) At lease seven (7) successors to Deichsel are using the maintenance road, and
 - (c) The maintenance road is being over burdened and liability exposure is increasing.
- December 3 County Counsel reports to Board and advises that the easement granted to Deichsel is being both misused and overburdened.
- December 11 Board refers matter to Road Department.

1974

- February 7 Letter from Road and District to Board that both agencies are looking for resolution of access issue.

Board of Supervisors
August 13, 1996
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- April 5 Letter from Road and District to Board advising Board not to grant the requested easement to D&B Management.
- April 9 Board denies the D&B Management request for an access easement along the Bautista Creek Flood Control Channel.

1981

September 17 ~~BLM grants right of way to Mabee for "Operation and maintenance of an existing road, 60 feet wide, being 30 feet from center line."~~

~~For future reference we will call this Easement No. 3.~~

This plus other recorded easements and maps appears to establish access from the Mabee property to the intersection of Chambers Street and Buena Vista in the City of Hemet.

Between 1981 - 1985

Fatal accident (see attached)

1985

July District requests permission from Corps of Engineers new access road so we can fence and close old maintenance road to private access use. Corps approves of fencing.

1986

District attempts to resolve the matter with Mabee and others. Some of the terms to Mabee are:

- (1) Mabee to abandon any claim he may have in Deichsel easement.
- (2) District to construct an unpaved road for Mabee's use and District will grade and maintain.
- (3) ~~District to convey separate access easement to Mabee.~~
- (4) District to pay Mabee \$1,000.00.

~~[Proposal not acceptable to Mabee]~~

1987

February 10 Mabee threatens to sue for work done in construction of alternate road.
[see attached letter]

April 27 Mabee sues County and Ken Edwards for "Nuisance/Trespass." Suit
request \$1,000,000 damages.

May 6 Law suit served.

June Mabee files claim with Ticor [Title Insurance} regarding "access."

June 27 Board adopts Resolution F87-30 Intent to condemn Deichsel easement.
Sets hearing for July 14, 1987.

July 14 Public Hearing on condemnation. Mabee opposed. Others have
questions. Hearing continued, open, to various dates.

July 15 Memo from County Counsel to Supervisor Cenicerros i.e. Deichsel
easement.

July 22 Memo from District to Board requesting continuance of condemnation
proceeding so District may attempt to resolve issues.

August 18 Mabee files police report with Sheriff regarding construction activities of
District.

September 20 District writes Corps of Engineers for permission to construct alternate
access road and modify existing structures.

December 14 Corps response to request to modify existing structures.

1988

April 12 Condemnation of Deichsel Easement taken off calendar.

~~District given permission to convey easement to County (road) [copy of
this Form 11 is attached]~~

May 10 District advises Mabee that it has granted easement to County for road
purposes.

May 12 Easement to County recorded [Instrument No. 127298]

1989

October Arbitrator rules in favor of County, District and Edwards regarding lawsuit filed by Mabee in April 1987.

Mabee requests trial by Superior Court Judge.

1990

October Mabee v. County of Riverside goes to trial. Mabee is represented by counsel.

November Judgment entered in favor of Defendants and against Mabee. ~~Court signs a formal Statement of Decision and Judgment [copy attached].~~

December 13 ~~Lake Hemet Municipal Water District~~ writes a "To Whom it May Concern" letter regarding the right of way.

Mabee appeals the Judgment in *Mabee v. County*.

1992

June Court of Appeal affirms Judgment in *Mabee v. County*.

August California Supreme Court declines review of *Mabee v. County*.

October 13 Oral communication from Mabee to Board.

October 22 County Counsel report to Board of Supervisors.

December 21 Memorandum from Mabee to Board regarding Supervisor Younglove.

December 30 Memorandum from Supervisor Younglove to Supervisors Larson, Cenicerros, Dunlap and Buster and Parrish, Edwards and Katzenstein regarding Mabee.

1993

January 19 Form 11 from Supervisor Cenicerros regarding Supervisor Younglove report of December 30, 1992.

March Flood Control District response to Form 11 of January 19.

County Counsel response to Form 11 of January 19.

April 29 ~~Letter from District to Mabee and others offering an additional encroachment permit across district property to the road conveyed to County in 1988.~~

1994

June Mabee writes to Bellanca [Auditor/Controller] regarding Bautista Creek access road and alleges fraud, violation of CEQA, violation of District Act, violation of Water Resources Act, violation of Ord. 460, perjury, etc.

September Mabee sues County and District .

November Bellanca writes to Mabee responding to Mabee's accusations.

1995

January Memo from Barnhart (Transportation) to Bellanca re Bautista Road (non-county maintained) [Mabee].

February Letter from Bellanca to Mabee with copy of Barnhart memo.

March Mabee amends his lawsuit against County and District [copy attached].

September ~~County and District offer to settle new law suit.~~ Amongst terms:

- (1) District pay Mabee \$5,000.00, and
- (2) ~~Encroachment permit from April 29, 1993 to become a permanent easement.~~

October 3 ~~Per settlement, District gets Board authority to grant Mabee and others permanent easement.~~

October 25 County and District file the Arbitration Brief with Arbitrator.

October 27 Arbitrators award in favor of County and District and against Mabee is entered.

November 6 Mabee files request for trial in the Superior Court.

December 1 Mabee offers to settle current litigation for \$161,000.00.

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1996

March County Counsel report regarding the Mabee matter.

April Letter from Transportation to Jeff Burnes regarding Bautista Creek access Road.

July Letter from Corps of Engineers to Mabee.

[We do not have copies of Mabee's letters of 5/22/96, 6/7/96 or 6/10/96 to the Corps or the Corps' letters of 5/7/96 and 6/9/96 to Mabee]]

Letter from Fran Victor, Permit Engineer, to Mabee advising that Transportation [Road] Department has been unable to determine if an encroachment permit was issued to Flood Control District.

August Letter from Mabee to Gerald Stayner, County Surveyor.

Letter from Mark Bernas, Assistant County Surveyor to Mabee.

Future

October 7, 1996 Mandatory Settlement Conference in current litigation with Mabee.

November 18, 1996 Trial on current litigation with Mabee.

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NOV-8-1996

EXHIBIT-4

I Robert D MABEE, DECLARE AS FOLLOWS. I met BRUCE E-DISENHOUSE FOR THE FIRST TIME AT HIS OFFICE IN LATE JANUARY OR EARLY FEBRUARY 1996 - THE MEETING WAS ALSO ATTENDED BY SUPERVISORIAL CANDIDATE JOHN BELL. JOHN BELL WAS PRESENT AT ALL TIMES - THERE WAS NO DEMAND FOR 240,000.00 - NOR WAS THERE A SETTLEMENT OFFER AT THIS TIME - ~~THE ONLY SETTLEMENT OFFER BY THE COUNTY WAS A SETTLEMENT OFFER DATED SEPT-19-1996, WHICH WAS REJECTED AT THIS TIME AS NOT BEING FAIR AND JUST COMPENSATION.~~ THE MEETING WAS REGARDING LETTERS BY SEVERAL GOVERNMENT OFFICIALS AND AGENCIES - MR DISENHOUSE IN HIS OPPOSITION TO IMPOSE SANCTIONS - RULE 222 D, DID PURSUE HIMSELF - PAGE-5 - LINE 14 THROUGH LINE 20. I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. SEE PAGE-2

NOV-8-1996

Robert D. Mabee