STATE OF IDAHO)
County of KOOTENAI)ss
FILED 8/15/2022
AT 1:50 O'Clock P. M
CLERK OF DISTRICT COURT
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

MEADOWBROOK WEST ROAD MAINTENANCE ASSOCIATION, an Idaho unicorporated nonprofit association; and ROBERT G. HAYNES and NANCY HAYNES, husband and wife;

Plaintiffs,

vs.

RANCH AT COUGAR CREEK, LLC, ET AL,

Defendants.

Case No. **CV28-22-0257**

MEMORANDUM DECISION AND ORDER ON CROSS MOTIONS FOR PARTIAL SUMMARY JUDGMENT

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on cross motions for partial summary judgment brought by defendant Ranch at Cougar Creek, LLC (Ranch) and plaintiffs Meadowbrook West Road Maintenance Association (Meadowbrook Association) and Robert G. Haynes and Nancy K. Haynes (the Haynes) (collectively plaintiffs). Plaintiffs and Ranch own adjacent parcels of land, both of which have a private road running through them, called Reynolds Road. Def.'s Statement of Undisputed Facts in Supp. of Def.'s Mot. for Summ. J. (Def.'s SUF) ¶¶ 6-12; Compl. ¶ 3. This case involves a dispute surrounding the validity and enforcement of an easement burdening plaintiffs' property, as well as a second easement burdening Ranch's property.

In November 1980, "National Associated Properties, Inc. (hereafter "NAP"), acquired title to 190 acres of real property from Frank L. Reynolds under a **Warranty Deed** recorded on November 24, 1980 . . . . Thereafter, NAP caused the property to be

divided into 19 10-acre parcels known as "Meadowbrook West." Pl.'s Statement of Undisputed Facts (Pls.' SUF) ¶ 3 (bold in original). That same month, NAP acquired title to Meadowbrook West and recorded the "Meadowbrook West Easement" (the 1980 easement). *Id.* ¶¶ 6-7.

The 1980 easement states the following:

> NATIONAL ASSOCIATED PROPERTIES, INC., an Idaho Corporation, hereby grants an easement and right-of-way for road and utility purposes, SIXTY FEET (60) in width, over and across roadways presently constructed and existing in accordance with Exhibit "A", attached, and described as:
>
> PARCEL 1:
>
> The East half of the Southeast quarter, and the Southwest quarter of the Southeast quarter, of Section 18;
>
> The Northeast quarter of the Northeast quarter, and the North 30 areas of the Northwest quarter of the Northeast quarter of Section 19;
>
> All in Township 50 north, Range 4 West Boise Meridian, Kootenai County, Idaho.
>
> EXCEPT any portion of the Northwest quarter of the Northeast quarter of said Section 19, lying within the following described land:
>
> BEGINNING at the Southwest corner of said Northwest quarter of the Northeast quarter; thence, North 20 rods; thence East 80 rods; thence South 20 rods; thence, West 80 rods to the POINT OF BEGINNING.
>
> PARCEL 2:
>
> A right of way for a road three rods wide, the West line of which right of way commences at the Southwest corner of the Northeast quarter of the Northeast quarter of Section 19, Township 50 North, Range 4 West Boise Meridian, Kootenai County, Idaho and thence extends South approximately 14 rods along the West line of the Southeast quarter of the Northeast quarter of Section 19, to the County Road.
>
> The easement shall be determined by measuring thirty feet (30) on each side of the centerline of the roadways presently in existence. The easement and right of way is specifically granted to all owners of real property adjoining the roadways presently in existence and generally to the public. The public in general shall be deemed to include all individuals, corporations, municipalities, public service vehicles including ambulance, police and fire protections vehicles, if a highway district in the state of Idaho had jurisdiction over the roadways.
>
> By granting this easement and right-of-way, the Grantor does not impose any responsibility of the roadways. This responsibility shall be borne by the immediate adjoining land owners at their own discretion. The adjoining land owners may, by common agreement, take such action as is necessary to bring the roadways or a portion thereof to highway district standards and to convey the roadway or a portion thereof to the responsible highway district by easement or Deed. If necessary, National Associated Properties, Inc., or its successor shall sign any documents required by it to be signed to convey said right-of-way and easement to the highway district. If National Associated Properties, Inc. does

not exist at the time of such occurrence, the chairman of the board of the county commissioners in which the roadways are contained shall be authorized to transfer the right-of-way and easement on behalf of National Associated Properties, Inc.

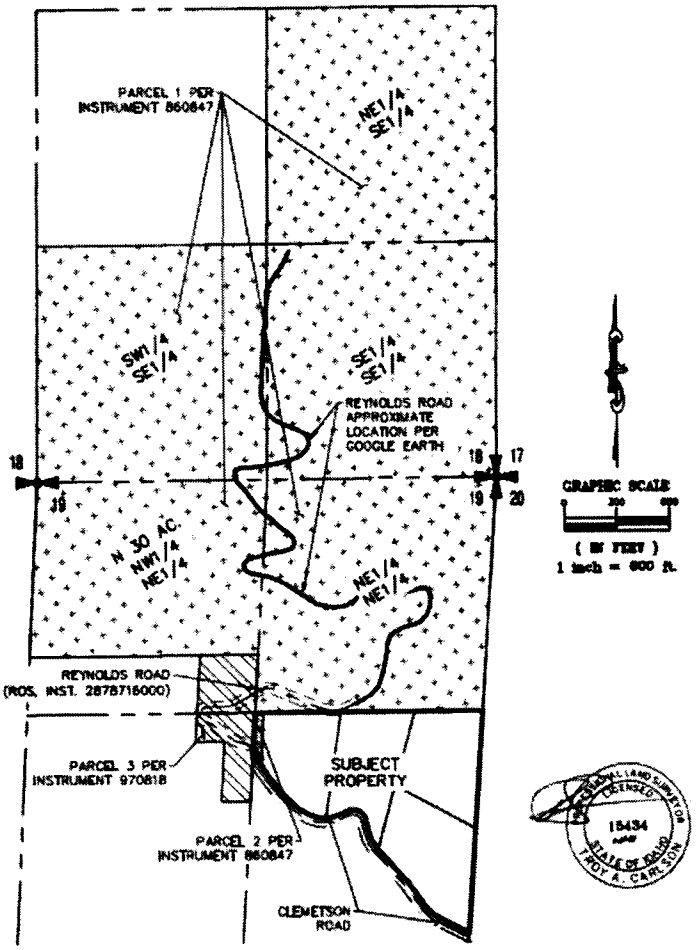
No owner adjoining the roadways established on the real property described above shall have the authority to obstruct the roadways in any manner and shall always allow the free access to all portions of the roadway by the public in general. As such, this portion of this easement and right-of-way may be deemed a covenant against the real property described above, and any violation of this covenant shall give any injured party the right to take such legal action as is necessary to remove the obstruction, and said injured party shall be entitled to damages as determined by a court of law, costs and attorney's fees.

Complaint Ex. 5.

"Parcel 1" describes the property generally depicted as Lots 1 through 19 on Exhibit A to the 1980 Easement and commonly referred to as the Meadowbrook West Subdivision. Meadowbrook West is not a formally platted subdivision.

11. "Parcel 2" describes an area on the western edge of [Ranch's] Property as generally shown on Exhibit A to the 1980 Easement and on Exhibit 13 to the Declaration of Troy Carlson, Professional Land Surveyor.

12. A general depiction of the area at issue is shown below:



13. The Mayhews, not NAP, owned [Parcel 2] at the time of the 1980 Easement. The Mayhews did not sign the 1980 Easement . . . .
14. At this time, NAP also did not own the property located immediately to the west of [Ranch's] Property wherein Reynolds Road has a switch-back before heading easterly and intersecting with the northern boundary of [Ranch's] Property and the southern boundary of Lot 19. The property located to the west of [Ranch's] Property was owned by Mark and Marilyn Billions at the time of the 1980 Easement.

Def.'s SUF ¶¶ 10-14 (internal citations omitted).

On April 5, 1984, NAP executed a Partial Relocation of Existing Easement and Easement Addition (Easement Amendment). Complaint Ex. 6. That Easement Amendment states the following:

> This is meant to amend that Easement recorded November 28, 1980 . . . .
> Recorded to add Parcel 3 described as:
>
> All that portion of the Northeast Quarter of Section 19, Township 50 north, Range 4 West, Boise Meridian, described as follows:
> BEGINNING at the Northeast corner of the Southwest Quarter of the Northeast Quarter of said Section 19; thence North 330 feet; thence West 330 feet; thence South 490 feet; thence East 165 feet; thence South 340 feet; thence East 165 feet to a point on the East line of said Southwest Quarter of the Northeast Quarter; thence North 500 feet to the POINT OF BEGINNING.
>
> And to amend Exhibit "A" showing new access road at South entrance, over and across that property described above, and also provide a 60 foot wide public access to adjoining property to the west currently owned by Mark R. and Marilyn Billions.
> Also, to add a 20 foot wide easement over and across the east portions of parcels 6, 7, 10, 11, 14, and 15, Meadowbrook West, unplatted, as amended in Exhibit "A".

Complaint Ex. 6. "The 1984 Amendment extended easement rights over Reynolds Road to land owned by Mark and Marilyn Billions located to the west of 'Parcel 3' described in the 1984 Amendment." Pls.'s SUF ¶ 8. "Shortly before recording the 1984 Amendment, NAP acquired title to Parcel 3 by means of a Warranty Deed from Mark and Marilyn Billions." Def.'s SUF ¶ 22. That land is currently owned by Erik Smith and Myrna Smith, husband and wife, . . . [who are] members of the Association." Pls.'s SUF ¶ 8.

10. In December of 1985, NAP and the other parcel owners within the Meadowbrook West subdivision formed an association for the maintenance, repair and management of the private roadway (Reynolds Road) serving Meadowbrook West as described the [sic] 1980 Easement and the 1984 Amendment. The Meadowbrook West parcel owners jointly approved and recorded a **Declaration of Road Maintenance and Covenants for Meadowbrook West** . . . [(] the "1985 Declaration").

11. The 1985 Declaration created the Meadowbrook West Road Maintenance Association and the owners of the 19 Meadowbrook West parcels become the voting members of the Association.

12. The 1985 Declaration also gave the Association the authority to ". . . extend the conditions of this Declaration to owners of property adjoining MEADOWBROOK WEST, on adjoining roads, if any, as requests are received, and as the Association deems beneficial and proper acceptance."

13. Plaintiffs Robert Haynes and Nancy Haynes acquired title to Lot 19 of Meadowbrook West under a Warranty Deed recorded on July 17, 1998 . . . .

14. The 1985 Declaration was amended in 1993 with an **Addendum** [which was] recorded . . .

15. The 1993 Addendum admitted an adjoining parcel into the Association, allowed the owners of that adjoining parcel to use Reynolds Road as described in the 1980 Easement and 1984 Amendment, and approved the release and removal of the original Meadowbrook West parcel #17 from the Association.

. . . .

17. In 2004, the Association members approved a **second amendment** to the 1985 Declaration allowing the Association to record a lien against the property of any member who failed to pay road maintenance and repair assessments levied by the Association (hereafter the 2004 Amendment" [sic]). The 2004 Amendment was recorded on April 21, 2004 . . . .

Id. ¶¶ 10-15, 17 (bold in original).

Ranch has legal ownership of "A tract of land in the Southeast Quarter of the Northeast Quarter, Section 19, Township 50 North, Range[;] 4 West, Boise Meridian, Kootenai County, Idaho". Defs.' Statement of Undisputed Facts in Supp. of Defs.' Mot. for Summ. J. ¶ 1 (Defs.' SUF). Ranch acquired title to this property "by Warranty Deed from the Helen Mayhew Trust on September 28, 2006. . . ." *Id.* ¶ 2. The property is a vacant parcel of twenty-two acres, "bordered to the south by W. Clemetson Road ('Clemetson'), a public road maintained by the Worley Highway District." *Id.* ¶ 3. S. Reynolds Road (Reynolds Road) "connects to Clemetson at the southwestern corner of the Subject Property and creates an elbow before heading westerly through adjacent

real property located immediately to the west of the Subject Property." *Id.* ¶ 4. Then, "Reynolds Road enters a switch-back on the parcel immediately to the west before continuing easterly and again intersecting with the Subject Property at its northern border." *Id.* ¶ 5.

> In August of 2009, the Ranch applied to Kootenai County to subdivide the Ranch parcel into 4 lots . . . . The proposed subdivision plat filed by the Ranch with its 2009 application identified Reynolds Road as a "private" [sic] and as a "60' prescriptive easement." The 2009 subdivision application by the Ranch was approved by Kootenai County in 2011, but expired on February 3, 2012 when the Ranch failed to record the Plat for the subdivision project.
>
> In September of 2020, the Ranch applied again to Kootenai County to subdivide the Ranch Parcel into 4 lots.

Pls.' SUF ¶¶ 21-24 (internal paragraph numbers and spacing omitted) (internal citations omitted).

> The Preliminary Plat outlines a 4-lot subdivision for [Ranch's] Property, each parcel being at least 5 acres in size. There is one common driveway commencing at the southwestern corner of [Ranch's] Property, named Baby Cougar Lane, providing primary access for what will be Lots 3 and 4 [of Ranch's property]. A second common driveway is proposed at the northern boundary of [Ranch's] Property off Reynolds Road for access to Lots 1 and 2 [of Ranch's property]. The layout of these driveways was chosen to maximize the topographic limitations of [Ranch's] Property. . . . The Preliminary Plat references the 1980 Easement and the 1984 Amendment as the basis for access for the common driveway serving Lot 1 and 2 [of Ranch's property] by means of Reynolds Road. The Ranch uses Reynolds Road to access [its] Property . . . . The Ranch submitted its application for approval of the Preliminary Plat to the Kootenai County Planning Department on September 23, 2020, identified by the County as MIN20-0057.
>
> Kootenai County Community Development Director David Callahan issued his order of decision for the Preliminary Plat on May 28, 2021, approving the Preliminary Plat subject to conditions. As part of this approval, the County had the access issue reviewed by a third-party contractor, who agreed that [Ranch's] Property was served by the easements at the property's northern boundary. The Meadowbrook West Road Association (the "Association") appealed the Director's approval alleging deficiencies in water supply, incompatibility with the neighborhood, and unreasonable burden on the neighbors by means of Lot 1 and Lot 2 using Reynolds Road to access the common driveway at the northern edge of [Ranch's] Property. The Association does not oppose the use of Reynolds Road by the Ranch where it intersects with [Ranch's] Property at its southwestern corner.
>
> After conducting a public hearing, the Hearing Examiner issued his recommendation to affirm the Director's original approval of the Preliminary Plat.

The Hearing Examiner also found that [Ranch's] Property had the right to use Reynolds Road for purposes of accessing what would be Lots 1 and 2 [of Ranch's] Property.

To ensure there was no confusion with the location of Reynolds Road vis a vis [Ranch's] Property, the Ranch requested that Storhaug Engineering conduct field work and create a record of survey accurately depicting the scope of the Reynolds Road right-of-way vis a vis [Ranch's] Property. This survey was recorded on December 23, 2021 . . . .

. . . Ranch offered to pay the Association $5,000 per lot (for a total of $10,000) to join the Association to avoid any argument that the Ranch was unwilling to pay its 'fair-share' [sic] for its limited use of Reynolds Road. This offer was denied . . . .

The Board of County Commissioners conducted its own public hearing on the matters at issue in the Association's appeal of January 13, 2022. This second public hearing was the same date on which the instant litigation was filed with the District Court.

On March 3, 2022, the Board of County Commissioners issued its final order of decision again affirming the Director's original approval of the Preliminary Plat. With regard to the access issue specifically, the Board reiterated:

> [Bold and italics in original, underline added [in brief]]
>
> The easement that created Reynolds Road states that the 'easement and right of way is specifically granted ***to all owners of real property adjoining*** the roadways presently in existence and generally available to the public. . . By granting this easement and right-of-way, the grantor does not impose any responsibility of the roadways. This responsibility shall be borne by the immediately [sic] landowners ***at their own discretion.***
>
> . . .
>
> [ ]Based [sic] on the plain language of the easement, Cougar Creek has the right to access their parcel there [referring to the northern boundary], as they are not asking or an easement expansion or other taking of portions of property not in their ownership. Further, the County sought a third-party expert opinion, as well as soliciting the opinion of the County's legal counsel. <u>Both concluded that Cougar Creek has legal access via Reynolds Road. Therefore, the decision, insofar as the County concluded that Cougar Creek has legal access via Reynolds Road, was not erroneous.</u>

[All alterations in brief.]

Since 2020, the Ranch's use of Reynolds Road at the northern boundary of [its] Property has been reviewed and approved by the Kootenai County Director of Community Planning and Development, a third-party contractor hired by the County, the Hearing Examiner, the County's own legal counsel and the Board of County Commissioners.

Def.'s SUF ¶¶ 28-44 (internal paragraph numbers and spacing omitted) (internal citations omitted).

Ranch alleges:

> Since applying for the Preliminary Plat in 2020, members of the Association have threatened and attempted to intimidate the Ranch and its representatives from using Reynolds Road. [Ranch's] Property has also been damaged by removal of fencing at the northern boundary and individuals have trespassed onto the property. The Ranch has been forced to delay and reschedule construction plans, including plans for the common driveway for Lots 1 and 2, and related infrastructure improvements because of the Association's appeal of the Preliminary Plat and this litigation. The Ranch also had to delay the sale of the lots at issue, during which time the real estate market has dramatically cooled.

Id. ¶¶ 45-48 (internal paragraph numbers and spacing omitted) (internal citations omitted).

Plaintiffs dispute this allegation:

> Mr. Ramsey's declaration describes interactions with residents of Reynolds Road that have been less than cordial. From the very beginning of the subdivision process, representative of The Ranch at Cougar Creek have been arrogant and dismissive. This kind of attitude is guaranteed to produce a less than friendly response. I have no knowledge of the "verbal assault" alleged by Mr. Ramsey in paragraph 14 of this declaration. Neither I nor my wife were part of any such interaction.
>
> The fence that Mr. Ramsey claims was vandalized in paragraph 16 of his declaration was constructed over 20 years ago. The primary materials were "T" posts and barbed wire. Wire clips were used to attach the wire to the posts. Elk, deer and an occasional moose frequent this area. They don't care whose property they are on. If they need to trample a fence to get to where they want to go, they will. Any farmer or rancher will tell you that yearly maintenance is necessary to have a functioning fence. In the 24 years we have lived on Lot 19, I have never witnessed anyone attempt to repair or maintain that fence. In many locations, the trees have grown into the fence wires.
>
> Exhibit 18 of Mr. Ramsey's declaration is a photo of someone supposedly on The Ranch at Cougar Creek property looking at a well drilling machine. The person is not identified in Mr. Ramsey's declaration. I personally know all of the members of the road Association and I can declare with confidence that the person in the photo is not a resident of Reynolds Road or a member of the Association.
>
> Mr. Ramsey's declaration claims that the "northern access" to the Ranch property is "necessary for construction workers and equipment to make necessary improvements to the site." Again, this is not true. The Ranch at Cougar Creek was able to get a large well drilling rig into the northeast corner of Lot 3 without utilizing Reynolds Road and I have no doubt that North Idaho

> contractors are perfectly capable of building any desired improvements on Lots 1 and 2 without utilizing the northern access from Reynolds Road. All of the 4 lots shown on the Ranch at Cougar Creek plat have direct access off of Baby Cougar Lane, the platted access road. Reynolds Road was not built to support heavy construction equipment or vehicles delivering construction materials such as lumber and concrete. Such vehicles have damaged Reynolds Road in the past and will cause significant damage if allowed to use Reynolds Road for access to the Ranch at Cougar Creek.

Decl. of Robert Haynes in Supp. of Pls.' Cross Mot. for Summ. J. (Haynes Decl.) ¶¶ 19-23 (internal paragraph numbers and spacing omitted) (internal citations omitted).

Plaintiffs also claim:

> Reynolds Road is a private roadway created sometime prior to the summer of 1981. Reynolds Road begins at the intersection with Clemetson Road and dead-ends on Lot 1 of the Meadowbrook West subdivision. Reynolds Road currently provides access to 18 of the 19 original Meadowbrook West lots as subdivided by NAP in 1980. Since the subdivision of Meadowbrook West, two adjacent properties have been added to the Association and granted access to Reynolds Road, and Lot 17 has been excluded from the use of Reynolds Road. Reynolds Road has been exclusively maintained, repaired and improved by the owners of the lots within the Meadowbrook West subdivision, and by the Association since the creation of the Association in 1985. Reynolds Road is posted with a "Private Road" sign and there is a lockable gate at the southern end of the road near the intersection of Clemetson Road. When necessary, the Association closes and locks the gate to prevent members of the public from using Reynolds Road; for example, during the annual 4th of July fireworks display on Lake Coeur d'Alene. The annual assessment levied by the Association for Reynolds Road maintenance and repair is $1,200 per lot plus $500 per residence for winter sanding and snow removal. Additional assessments may be levied as needed to cover extra snow removal services. An existing barb-wire [sic] fence runs south of the common boundary of the Haynes property and the Ranch property. That fence has existed in its current location for over 20 years. There is no existing entrance or approach from the Ranch property onto Reynolds Road along the northern boundary of the Ranch property. No such entrance or approach ever existed in the past.

Pl.s' SUF ¶¶ 26-32 (internal paragraph numbers and spacing omitted) (internal citations omitted).

On January 13, 2022, Meadowbrook Association and the Haynes (plaintiffs) filed a Complaint against Ranch for declaratory relief, interference with easement and injunctive relief, and attorneys' fees. The plaintiffs request the Court issue an order

declaring that "the defendants have no express or implied easement rights to use any portion of Reynolds Road except for that portion intersecting with Clemetson Road . . ." because "defendants' proposed use of Reynolds Road will overburden the plaintiffs' easement rights and constitute a trespass upon the Haynes Parcel." Complaint 5. The plaintiffs also request both a preliminary and permanent injunction "restraining the defendants from constructing a new driveway on Reynolds Road and otherwise interfering with the plaintiffs' easement rights and other private property rights." *Id.* at 6.

On April 11, 2022, Ranch filed its Answer and Counterclaim for Declaratory and Injunctive Relief (Answer and Counterclaim). Defendants/counter-plaintiffs (Ranch) are countersuing the plaintiffs for declaratory judgment, preliminary and permanent injunction, quiet title, and attorneys' fees. Ranch requests the Court to declare the following:

> (a) that the Easement entitles the Ranch and the Subject Property to ingress/egress and utilities over and through Reynolds Road as an adjoining (and benefitted) landowner;
> (b) that the Easement created a public dedication entitling all members of the public (including the Ranch) to use Reynolds Road for ingress/egress purposes;
> (c) that Meadowbrook [Association] and its members have no right to object, obstruct, impede or delay the Ranch's use of Reynolds Road; and
> (d) that Meadowbrook [Association] has violated the terms of the Easement by denying the Ranch of full use and enjoyment of Reynolds Road thereby entitling the Ranch to damages, including attorney fees, in an amount to be determined at trial.

Answer and Counterclaim 11. Ranch also requests the Court to grant a preliminary and a permanent injunction, enjoining the plaintiffs "from preventing and/or obstructing the Ranch's use of Reynolds Road consistent with the Easement." *Id.* at 12. Finally, Ranch requests the Court to "enter an order and decree quieting title in and to the Subject Property in the name of the Ranch against Meadowbrook [Association] . . . ." *Id.* On June 9, 2022, the plaintiffs filed Plaintiff's Reply to Defendant's Counterclaim.

Neither party has requested a trial by jury.

On June 22, 2022, Ranch filed Defendant's Motion for Summary Judgment, Memorandum in Support of Defendant's Motion for Summary Judgment, Defendant's Statement of Undisputed Facts in Support of Defendant's Motion for Summary Judgment, and declarations of Troy Carlson, P.L.S., Maggie Lyons, Preston Ramsey, and Megan O'Dowd in support of its motion.

On July 7, 2022, the plaintiffs filed Plaintiffs' Cross Motion for Summary Judgment, Plaintiffs' Memorandum in Opposition to Defendant's Motion for Summary Judgment and in Support of Plaintiffs' Cross Motion for Summary Judgment, Plaintiffs' Statement of Undisputed Facts, and declarations of Scott Poorman and Robert Haynes in support of their motion. On July 20, 2022, Ranch filed its Memorandum in Opposition to Plaintiff's Motion for Summary Judgment and Defendant's Objections to Plaintiff's Evidentiary Submissions and Plaintiff's Statement of "Undisputed Facts in Support of Motion for Summary Judgment" (essentially a motion to strike). On July 27, 2022, Plaintiffs filed Plaintiffs' Memorandum in Reply to Defendant's Opposition Memorandum.[1, 2]

Because the parties are not seeking dismissal of all claims, the Court will treat both motions as motions for partial summary judgment. The primary issue on cross motions for partial summary judgment is whether the easement benefits Ranch's

---

[1] This memorandum also included plaintiffs' response to Ranch's "Objection" (motion to strike).
[2] The Court will not consider any **new arguments** made by plaintiffs in their reply brief because: a) plaintiffs' cross motion for partial summary judgment was brought on the exact same grounds as Ranch's motion for partial summary judgment, and b) the Court never considers arguments raised for the first time by a moving party in a reply memorandum. Plaintiffs' new arguments are: (1) "Of course the 1984 Amendment changed the terms of the 1980 Easement." (Pls.' Mem. in Reply to Def.'s Opp'n Mem. 4.), and (2) "The plaintiffs' also argue that there has been no public acceptance of Reynolds Road demonstrated by the fact that the only existing users of Reynolds are the owners of the Meadowbrook West subdivision lots and those additional lots that have been allowed to use Reynolds Road by express

property, thus justifying a claim for declaratory relief and injunctive relief in favor of either party.[3]

A hearing on the cross motions for partial summary judgment took place on August 3, 2022. At the beginning of that hearing, the Court heard additional argument on Ranch's objections to some of the evidence contained in plaintiffs' submissions (certain portions of the declaration of Robert Haynes and plaintiffs' counsel, Scott Poorman). The Court made its rulings on those objections on the record, and directed counsel for Ranch to file a proposed order. Such order was submitted and signed by this Court on August 8, 2022. Then the Court heard argument on the cross-motions for partial summary judgment, following which, the court took those motions under advisement.

II. STANDARD OF REVIEW

Idaho Rule of Civil Procedure 56 governs motions for summary judgment. According to that Rule, summary judgment must be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." I.R.C.P. 56(a). A party asserting that there is no genuine dispute as to any material fact or a party asserting that a genuine dispute exists, must support that assertion by "citing to particular parts of materials in the record" or "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." *Id.*

---

extension from NAP or by joining the road Maintenance Association." *Id.* at 5.

[3] The Cross Motions for Summary Judgment do not address the action for quiet title, which the parties stipulated to defer to a future date. July 12, 2022, Amended Order to Join Summary Judgment Hearing Dates and Dismiss the Quiet Title Claim 2, ¶2.

> If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:
>
> (1) give an opportunity to properly support or address the fact;
> (2) consider the fact undisputed for purposes of the motion;
> (3) grant summary judgment if the motion and supporting materials, including the facts considered undisputed, show that the movant is entitled to it; or
> (4) issue any other appropriate order.

Id. 56(e).

The burden of proof is on the moving party to demonstrate the absence of a genuine issue of material fact. *Rouse v. Household Fin. Corp.*, 144 Idaho 68, 70, 156 P.3d 569, 571 (2007) (citing *Evans v. Griswold*, 129 Idaho 902, 905, 935 P.2d 165, 168 (1997)). "Such an absence of evidence may be established either by an affirmative showing with the moving party's own evidence or by a review of all the nonmoving party's evidence and the contention that such proof of an element is lacking." *Heath v. Honker's Mini-Mart, Inc.*, 134 Idaho 711, 712, 8 P.3d 1254, 1255 (Ct. App. 2000) (citing *Dunnick v. Elder*, 126 Idaho 308, 311, 882 P.2d 475, 478 (Ct. App. 1994)). "A material fact is one upon which the outcome of the case may be different." *Peterson v. Romine*, 131 Idaho 537, 540, 960 P.2d 1266, 1269 (1998).

Once the moving party meets their burden of establishing the absence of a genuine issue of material fact, the burden shifts to the non-moving party to provide specific facts showing there is a genuine issue for trial. *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 864 (2007) (citing *Hei v. Holzer*, 139 Idaho 81, 85, 73 P.3d 94, 98 (2003)). To do so, the non-moving party "must come forward with evidence by way of affidavit or otherwise that contradicts the evidence submitted by the moving party, and that establishes the existence of a material issue of disputed fact." *Chandler v. Hayden*, 147 Idaho 765, 769, 215 P.3d 485, 489 (2009) (citing *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 865 (2007)). "Circumstantial evidence can create a

genuine issue of material fact. . . . However, the non-moving party may not rest on a mere scintilla of evidence." *Shea v. Kevic Corp.*, 156 Idaho 540, 545, 328 P.3d 520, 525 (2014) (quoting *Park West Homes, LLC v. Barnson*, 154 Idaho 678, 682, 302 P.3d 18, 22 (2013)).

> In determining whether material issues of fact exist, all allegations of fact in the record and all reasonable inferences from the record are construed in the light most favorable to the party opposing the motion. *City of Kellogg v. Mission Mountain Interests Ltd., Co.*, 135 Idaho 239, 240, 16 P.3d 915, 919 (2000). When a jury is to be the finder of fact, summary judgment is not proper if conflicting inferences could be drawn from the record and reasonable people might reach different conclusions. *State Dep't of Fin. v. Res. Serv. Co., Inc.*, 130 Idaho 877, 880, 950 P.2d 249, 252 (1997).

Edmondson v. Shearer Lumber Prod., 139 Idaho 172, 176, 75 P.3d 733, 737 (2003).

> However, where . . . no jury has been requested and the facts are to be tried to the court, a somewhat different standard is employed. If the evidentiary facts are not in dispute, the trial court may grant summary judgment despite the possibility of conflicting inferences, because the court alone will be in the position of resolving the conflicting inferences at trial. Findings which are based on such inferences will not be disturbed on appeal if the uncontroverted evidentiary facts are sufficient to justify them.

Crown v. State, Dept. of Agriculture, 127 Idaho 188, 191, 898 P.2d 1099, 1102 (Ct. App. 1994) (citing *Riverside Development Co. v. Ritchie,* 103 Idaho 515, 519, 650 P.2d 657, 661 (1982)) (internal citations omitted).

> Where the parties have filed cross-motions for summary judgment relying on the same facts, issues and theories, the parties effectively stipulate that there is no genuine issue of material fact that would preclude the district court from entering summary judgment. However, the mere fact that both parties move for summary judgment does not in and of itself establish that there is no genuine issue of material fact.
>
> The fact that the parties have filed cross-motions for summary judgment does not change the applicable standard of review, and this Court must evaluate each party's motion on its own merits.

Intermountain Forest Mgmt., Inc. v. Louisiana Pac. Corp., 136 Idaho 233, 235, 31 P.3d 921, 923 (2001) (internal citations omitted).

Usually, when ruling on a motion for summary judgment, the court is not permitted to weigh the evidence or to resolve the controverted factual issues. However, if the court will be the ultimate fact finder and if both parties move for summary judgment, basing their motions on the same evidentiary facts, theories, and issues, then summary judgment is appropriate even though conflicting inferences are possible, so long as all the evidence is confined entirely to the record. *AID Ins. Co. (Mut.) v. Armstrong*, 119 Idaho 897, 900, 811 P.2d 507, 510 (Ct. App. 1991), citing Currie v. Walkinshaw, 113 Idaho 586, 592, 746 P.2d 1045, 1051 (Ct. App. 1987).

III. ANALYSIS

Ranch moves for summary judgment "on Counts I [and II] of its Counterclaim. The issue presented is whether the Ranch has the right to use Reynolds Road to access the northern portion of the Subject Property . . . . The Ranch asserts that such a right exists by means of the Easement pursuant to both a private and public easement grant." Mem. in Supp. of Def.'s Mot. for Summ J. 2. Ranch's primary arguments are: (1) "The Ranch, as owner of [Ranch's] Property, is entitled to a declaration recognizing its right to use Reynolds Road for roadway and utility purposes" because (a) "the easement entitles the Ranch to use Reynolds Road as an adjacent landowner" and (b) "the easement entitles the Ranch to use Reynolds Road as a member of the public at large"; and (2) Ranch is entitled to injunctive relief, prohibiting plaintiffs from "engaging in any activity that would prevent, interfere with or undermine the Ranch's full use and enjoyment of Reynolds Road as a beneficial user thereof."[4] *Id.* at 6, 13, 15-16 (capitalization altered).

[4] Ranch's motion for summary judgment includes the quiet title claim, which the parties stipulated to dismiss from the present motion. July 12, 2022, Amended Order to Join Summary Judgment Hearing Dates and Dismiss the Quiet Title Claim.

Plaintiffs cross move for summary judgment, "ask[ing] this Court to declare that: (A) Reynolds Road is a private road created for the Meadowbrook West subdivision and the Ranch has no legal right to expand the use of Reynolds Road or to add new lots to Reynolds Road without the approval of the Association membership; and (B) the plaintiffs have express easement rights over the westerly 33 feet of the Ranch property." Pl.s' Mem. in Response to Def.'s Mot. for Summ. J. and in Supp. of Pl.s' Cross Mot. for Summ. J. (Pl.s' Opp'n and Mem. in Supp. of Cross Mot.) 3 (underlining in original). Plaintiffs "do not object to the Ranch's use of Reynolds Road at the southwestern corner of the Subject Property, but does object to its use at the northern boundary of the property." Mem in Supp. of Def.'s Mot. for Summ. J. 4, citing Def.'s Statement of Undisputed Facts in Supp. of Def.'s Mot. for Summ J. 12, ¶ 35, in turn citing Decl. of Megan O'Dowd Filed in Supp. of Def.'s Mot. for Summ. J. ¶ 3 (June 22, 2022).

A. The Language of the 1980 Easement is not Ambiguous, the Easement Benefits Ranch's Property, the Easement is Appurtenant, and Ranch's Motion for Partial Summary Judgment is Granted in Part and Denied in Part.

Ranch's first argument is that the 1980 Easement is unambiguous and appurtenant and benefits its property as an adjacent property to Reynolds Road—although Ranch or its land's prior owners have never been members of the Meadowbrook Association. Ranch argues:

> National Associated Property (the servient estate landowner) unambiguously expressed an intent to create an easement for use of Reynolds Road by the Ranch because the Easement is (1) in writing; (2) identifies all roads located within the Meadowbrook West subdivision as the servient estate subject to the easement and (3) expresses the intent to create the easement in favor of all adjoining properties abutting the roadway (like the [Ranch's] Property), and in favor of the public at large.

Mem. in Supp. of Def.'s Mot. for Summ. J. 7. Ranch continues:

The 1980 Easement satisfies all requirements for an enforceable express easement.[5] The document defines the servient estate as any roadways located on Parcel 1 and Parcel 2. The scope of the easement is identified as a 60' right of way (measured 30' on each side of the centerline) for roadway and utility purposes. The dominant estate is defined to include all owners of real property adjoining the roadways located on Parcel 1 or Parcel 2: "The easement and right of way is specifically granted to all owners of real property adjoining the roadways presently in existence and generally to the public. The legal description for Parcel 1 corresponds to Lots 1 through 19 depicted on Exhibit A to the 1980 Easement. The [Ranch's] Property is located immediately to the South of Lot 19. Exhibit A to the 1980 Easement shows the roadway at issue "adjoining" [Ranch's] Property both at its western and northern border: [image omitted]. The document is signed and notarized by NAP, the grantor and owner of the servient estate described as Parcel 1, is recorded in the land records of Kootenai County, and creates an appurtenant right in favor of all property owners adjoining the roadway located on Parcel 1.

. . . .

The 1984 Amendment does not change the scope of the easement from a 60' wide right-of-way for roadway and utilities purposes. However, it adds an additional servient estate (Parcel 3) and adds an additional dominant estate (the property located to the west of Parcel 3 and owned by the Billions). Otherwise, the 1980 Easement remained unmodified.

. . . . Exhibit "A" to the 1984 Amendment provides another un-surveyed [sic] depiction of Reynolds Road from Clemetson, crossing [Ranch's] Property because winding up through the newly added Parcel 3, and through the rest of Meadowbrook West [image omitted.]

The amended Exhibit A continues to show Reynolds Road as "adjacent" to [Ranch's] Property at its southwestern boundary. As such, the Ranch, as the owner of real property adjoining a portion of the roadway located on Parcel 3 is expressly entitled to use the entirety of Reynolds Road for ingress/egress purposes. Notably, the easement grant is not limited in scope to only that portion of Reynolds Road necessary to grant access to the parcel at issue. In other words, even without addressing the adjacency of Reynolds Road at the northern boundary of [Ranch's] Property, the undisputed adjacency of this roadway at [Ranch's] Property's southwestern boundary entitles the Ranch to use the entire length of Reynolds Road. ("The easement and right of way is [sic] specifically granted to all owners of real property adjoining the roadways presently in existence . . . .").

Furthermore, while amended Exhibit A no longer shows Reynolds Road touching the northern boundary of [Ranch's] Property, this depiction does not alter the intent of NAP to grant this easement to all adjoining landowners. Exhibit A is not a surveyed map. The 2021 Survey accurately depicts Reynolds Road and confirms that this roadway not only encumbers the southwestern corner of [Ranch's] Property but also encumbers the property at its northern boundary: [image omitted].

---

[5] Plaintiffs do not appear to dispute the validity of the easement but merely question the scope of the easement, so the Court will not address whether the easement is valid.

> The express intent of NAP was to benefit all owners with real property adjoining the roadway. Although Exhibit A was not drawn with exact precision, [Ranch's] Property is adjacent to Reynolds Road at both its northern and southwestern boundaries thereby entitling the Ranch to the full use of Reynolds Road. Given the illustrated adjacency (as shown in Exhibit A to the 1980 Easement and the amended Exhibit A to the 1984 Easement), the physical adjacency (as shown in the 2021 Survey at both the northern and southwestern boundaries), and NAP's unenforceable attempt to create another right-of-way directly through [Ranch's] Property vis a vis Parcel 2, the only reasonable interpretation of the Easement is that Nap intended to grant the Ranch . . . the right to use Reynolds Road.

Id. at 8-13 (underline in original) (internal citations omitted).

Plaintiffs respond:

> Initially, the Ranch relies on language in the 1980 Easement document as creating an express easement for the benefit of the Ranch property. The Ranch claims the 1980 Easement is unambiguous and entitles the Ranch to use Reynolds Road as "an adjacent landowner." . . . . [P]laintiffs assert that the 1980 Easement is ambiguous and unenforceable as a stand-alone document.
>
> The 1980 Easement does not use the word "adjacent," but the opening paragraph of that document does purport to grant, "an easement and right-of-way for road and utility purposes, SIXTY FEET (60) in width, over and across roadways presently constructed and existing in accordance with Exhibit "A" attached, and described as: . . ." (emphasis added [in brief]). What follows are legal descriptions for Parcel 1 and Parcel 2. Parcel 1 is the area comprising the 19 lots of the Meadowbrook West subdivision, and Parcel 2 is an *expanded* description of a right-of-way granted by Bittleston to Sundin in 1923. The Exhibit "A" attached to the 1980 Easement generally depicts the 19 lots within Meadowbrook West and an unnamed "private access" road beginning at Clemetson Road and ending near the eastern boundary of Lot 1 in the Northeast corner of Meadowbrook West. There is no indication in Exhibit "A" whether the roads depicted were actually "constructed" or "existing" when the 1980 Easement was recorded. This initial grant language identifies no grantee and is not appurtenant to any identified land.
>
> The next paragraph of the 1980 Easement states, "The easement and right of way is specifically granted to all owners of real property adjoining the roadways presently in existence and generally to the public. The public in general shall be deemed to include all individuals, corporations, municipalities, public service vehicles including ambulance, police and fire protection vehicles, if a highway district in the state of Idaho had jurisdictions over the roadways." (emphasis added [in brief]) [sic] This paragraph does not refer back to Exhibit "A" and appears to describe an easement in gross.

Pl.s' Opp'n and Mot. in Supp. of Cross Mot. for Summ. J. 5-6 (underline in original)

(internal citations omitted). Plaintiffs continue:

It is undisputed that the Ranch was not an owner of adjoining land when the 1980 Easement was granted; and to the extent that document granted any right to use roadways then in existence, that right was personal to the owners at that time and did not run with any appurtenant land.

The last paragraph on page 1 of the 1980 Easement identifies a third category of potential beneficiary: "By granting this easement and right-of-way, the Grantor does not impose any responsibility of the roadways. This responsibility shall be borne by the immediate adjoining land owners [sic] at their own discretion." (emphasis added [in brief]). The 1980 Easement contains no explanation of the difference between adjoining land owners [sic] and *immediate* adjoining land owners [sic]. This paragraph also states that ". . . adjoining land owners [sic] may, by common agreement, take such action as is necessary to bring the roadways . . . to highway district standards and to convey the roadway . . . to the responsible highway district by easement or Deed." This language appears to refer to "adjoining land owners" as successors of NAP to the servient property.

Id. at 7 (emphasis in original) (internal citations omitted). "As detailed below, a *common agreement* was eventually created by the Meadowbrook West property owners and NAP." *Id.* at 7 n.5 (italics in original). Plaintiffs continue:

However, there is no language in the 1980 Easement stating the easement rights run with any land or that the rights benefit the heirs, successors or assigns of NAP or any potential grantee.

In addition to these ambiguities, it is undisputed that Exhibit "A" to the 1980 Easement did not accurately depict the location of Reynolds Road from Clemetson Road through Lot 19 as it existed in 1980. In fact, in 1980, Reynolds Road turned west after the intersection with Clemetson Road and passed through land that NAP did not own when the 1980 Easement was recorded. For this reason alone, the 1980 Easement was invalid to create any create [sic] easement rights over Lot 19 of Meadowbrook West.

Presumably, NAP recognized the errors and defects in the original 1980 Easement and in May of 1983, NAP contracted to purchase the land over which Reynolds Road actually passed from Mark and Marilyn Billions. That purchase was followed by a Record of Survey recorded in May of 1994 and showing the Meadowbrook West lots in Section 19, the NAP purchase from Billions, and the intersection of Reynolds Road and Clemetson Road.

In April of 1984, NAP recorded a **Partial Relocation of Existing Easement and Easement Addition** . . . . to correct the defects in the 1980 Easement and to add "Parcel 3" describing the land acquired from Mr. and Mrs. Billions. The 1984 Amendment also included an amended Exhibit "A" to show the correct route of Reynolds Road from Clemetson Road. The 1984 version of Exhibit "A" also revised the depiction of Reynolds Road passing through Lot 19. The 1984 version does not show Reynolds Road adjacent to or touching the Ranch property to the South of Lot 19. Most importantly, the 1984 Amendment expressly provided, ". . . a 60 foot wide public access to adjoining property to the west currently owned by Mark R. and Marilyn Billions." The Billions land

benefitted by this easement extension is currently owned by Erik Smith and Myrna Smith, husband and wife, and Mr. and Mrs. Smith are members of the Meadowbrook West Road Maintenance Association.

This express extension of the Reynolds Road easement to Mr. and Mrs. Billions as owners of "adjoining property" was not necessary if the original 1980 Easement already provided easement rights to all parcels "adjacent to" the roadway as claimed by the Ranch. In addition, an express extension of easement rights to Billions in 1984 would not be necessary if the 1980 Easement already granted the right to use Reynolds Road "generally to the public." Obviously, NAP believed it was necessary to include an express extension of the easement to the Billions property outside of the boundary of the Meadowbrook West subdivision. The express extension language in the 1984 Amendment is evidence that NAP intended the 1980 Easement to only benefit land adjoining the roadways within the 190 acres that comprise the Meadowbrook West subdivision. Additionally, the 1984 Exhibit "A" does not show Reynolds Road touching the northern boundary of the Ranch property . . . . After purchasing additional land to cure a defect in the 1980 Easement and after obtaining and recording a survey of the intersection of Reynolds Road and Clemetson Road in 1983, it is reasonable to infer that the 1984 version of Exhibit "A" was more accurate than the 1980 version of that exhibit. Based on the 1984 Amendment, it appears NAP did not consider the Ranch land to the South of Lot 19 to be included as a benefitted parcel. Of course, in 1980 and in 1984, the Ranch property had unrestricted access to Clemetson Road, a Highway District maintained public road.

NAP began selling lots within the Meadowbrook West subdivision after the 1984 Amendment was recorded, and by December of 1985, NAP still held title to 7 of the Meadowbrook West lots; and the other 12 were either deeded or under contract to be sold to third parties.

In December of 1985, NAP further clarified its intentions under the 1980 Easement and 1984 Amendment by creating a nonprofit association to control the maintenance, repair and management of Reynolds Road as a private road. NAP and the other lot owners within Meadowbrook West approved and recorded the **Declaration of Road Maintenance and Covenants for Meadowbrook West** . . . (hereafter referred to as the "1985 Declaration"). The 1985 Declaration identifies the owners of the 19 lots within Meadowbrook West as the members of the Association and specifically references the 1980 Easement and 1984 Amendment by instrument number. Article I, paragraph F of the 1985 Declaration states:

> "F. The association may extend the conditions of this Declaration to owners of property adjoining MEADOWBROOK WEST, on adjoining roads, if any, as requests are received, and as the Association deems beneficial and proper acceptance."

This paragraph further clarifies the ambiguous and inconsistent references to "adjoining" land and property in the 1980 Easement by distinguishing between land within the Meadowbrook West subdivision (included under the 1980 Easement) and land outside of that subdivision (such as the Billions [sic] land added under the 1984 Amendment). Further evidence of this distinction is found in Article II, paragraph A which declares:

"A. Each owner shall have the right and privilege of the enjoyment and use of the road and easement for the purpose of providing utility and vehicle access to their individual properties, and the Association has the right to dedicate or transfer any part of all the road system to any public agency, authority for such purposes and subject to such conditions as may be agreed upon hereto by the members of the Association."

Article III of the Declaration makes the obligation to share road maintenance expenses binding upon the Association members and their successors in interest; Article IV defines the road repair and maintenance obligations of the Association; and Article V allocates assessments for road maintenance and repair equally among the owners of the 19 Meadowbrook West lots, ". . . or in increments as may be later amended by the addition of adjoining property as covered herein, regardless of parcel size or persons who are using the road."

Again, if the 1980 Easement was intended by NAP to include all owners of real property "adjoining" Reynolds Road, both inside and outside of the 19 original Meadowbrook West subdivision lots, as claimed by the Ranch, then these specific provisions from the 1985 Declaration would not be necessary.

In 1993, the Association exercised its authority under Article I, paragraph F of the 1985 Declaration, by adding a parcel located outside of the Meadowbrook West subdivision to the Association and extending easement rights over Reynolds Road to the owners of that parcel. An **Addendum to Declaration of Road Maintenance and Covenants for Meadowbrook West** was approved by the Association members and recorded on November 2, 1993 . . . . That Addendum brought the Knapp parcel into the Association membership and excluded the original Lot 17 of Meadowbrook West from the Association. Mr. and Mrs. Knapp agreed to pay $2,500 to join the Association and to pay future assessments and snow removal charges levied by the Association for maintenance of Reynolds Road.

If the 1980 Easement benefitted real property located outside of the Meadowbrook West subdivision, but adjoining Reynolds Road as depicted in Exhibit A of the 1980 Easement, then the Knapp property would already have easement rights over Reynolds Road in 1993 and would not have needed to join the Association in 1993. The 1993 Addendum is additional evidence that the 1980 Easement and 1984 Amendment were intended to only benefit the original 19 lots within Meadowbrook West.

The Association members adopted a second amendment to the 1985 Declaration under a Resolution recorded in April of 2004 . . . . That document was approved according to the amendment provision found in Article VII of the 1985 Declaration and authorized the Association to record a lien against the land of any member who failed to pay assessments or other charges levied by the Association.

This series of documents recorded by NAP and the subsequent purchasers of lots within the Meadowbrook West subdivision clearly show that Reynolds Road was intended to serve the original 19 lots within the subdivision, and any other adjacent land that requested to use Reynolds Road for access and was approved by the Association members on terms that the Association deemed beneficial. All of these documents were recorded before the Ranch

purchased its land located south of Lot 19 and the Ranch had constructive notice of the contents of these documents.

. . . .

In its subdivision application and through its counterclaims in this case, the Ranch proposes to add a new driveway to Reynolds Road where no driveway has ever existed. If allowed, that driveway could, and probably will, allow access to Reynolds Road for 4 additional parcels. If allowed, the Ranch proposal will burden Reynolds Road and the Association members who have paid hundreds of thousands of dollars to improve, repair and maintain Reynolds Road for nearly 40 years. The Ranch does not propose to simply use Reynolds Road as it currently exists; but to alter the Road without regard for the rights, interests and investments of the Association and its members.

Id. at 7-14 (emphasis in original) (internal citations omitted).

. . . The Ranch necessarily relies upon the 1984 Amendment that fixed the defects in the original Easement, but wants to ignore the revised Exhibit "A" in the 1984 Amendment which shows Reynolds Road in a location that does not support the arguments the Ranch now makes. The Ranch also wants to ignore the subsequent documents recorded by NAP and the Association members that clarify the original intent of NAP and support the plaintiffs' claims herein.

Id. at 19.

The Court will first address the issue of ambiguity and whether the easement benefits Ranch's property, followed by whether the easement is appurtenant or in gross.

1. The 1980 Easement is not Ambiguous and the 1980 Easement Benefits Ranch's Property.

In their reply in support of their cross motion for partial summary judgment, plaintiffs summarize the provisions in the 1980 Easement that they allege are ambiguous. The Court will address each of these alleged ambiguities in turn. Plaintiffs argue:

. . . Plaintiffs maintain that the 1980 Easement includes both patent and latent ambiguities. The patent ambiguities include:

a. Whether the "private access road" depicted in Exhibit A [of the 1980 Easement] was "presently constructed and existing" in 1980;

b. The difference between the 2 rod wide right-of-way granted to NAP's predecessor and the 3 rod wide "Parcel 2" described in the 1980 Easement;

c. Whether the easement is appurtenant or in gross;

d. The meaning of "the public in general . . . if a highway district in the state of Idaho had jurisdiction over the roadways;"
e. The meaning of "immediate adjoining land owners" vs. "owners of real property adjoining the roadways;"
f. The meaning of the reference to "owner adjoining the roadways established on the real property described above" on page 2 of the 1980 Easement; and
g. Whether the references to "adjoining land owners" in the document was intended to mean successors of NAP.

The primary latent ambiguity is revealed by the undisputed fact that Exhibit A to the 1980 Easement was not an accurate depiction of roads presently constructed and existing." [sic] This is shown by the fact that NAP amended the 1980 Easement in 1984 and corrected Exhibit A to show the true location of the private road serving the Meadowbrook West subdivision lots.

Pl.s' Mem. in Reply to Def.'s Opp'n Mem. 3-4.

"An easement is the right to use the land of another for a specific purpose that is not inconsistent with the general use of the property by the owner." *Hughes v. Fisher*, 142 Idaho 474, 480, 129 P.3d 1223, 1229 (2006) (citing *Hodgins*, 139 Idaho at 229, 76 P.3d at 973 [internal citations omitted]). "An express easement may be created by a written agreement between the owner of the dominant estate and the owner of the servient estate." *Capstar Radio Operating Co. v. Lawrence*, 143 Idaho 704, 707, 152 P.3d 575, 578 (2007). "[W]hether a contract is ambiguous is a question of law which may be freely reviewed by an appellate court." *Hughes v. Fisher*, 142 Idaho 474, 480, 129 P.3d 1223, 1229 (2006) (citing *Clark v. St. Paul Prop. and Liability Ins. Cos.*, 102 Idaho 756, 757, 639 P.2d 454, 455 (1981)). If the language of a deed is ambiguous, "determining the parties' intent is a question of fact and may only be settled by a trier of fact." *Hoch v. Vance*, 155 Idaho 636, 639, 315 P.3d 824, 827 (2013) (internal citation omitted). "The trier of fact must then determine the intent of the parties according to the language of the conveyance and the circumstances surrounding the transaction." *Marek v. Lawrence*, 153 Idaho 50, 53, 278 P.3d 920, 923 (2012). "However, when the

language of a deed is unambiguous, the intention of the parties is a matter of law ascertained from the deed's plain language without the aid of extrinsic evidence." *Id.* (internal citations omitted). When a Court interprets or construes a deed or an easement agreement, "the primary goal is to seek and give effect to the real intention of the parties." *Machado v. Ryan*, 153 Idaho 212, 218, 280 P.3d 715, 721 (2012) (internal quotations omitted). "[I]t is not only the words in an instrument that must be considered, but also their context, in order to ascertain whether a deed is ambiguous." *Lorenzen, Trustee of the Phyllis E. Lorenzen Revocable Trust v. Pearson*, 167 Idaho 385, 391, 470 P.3d 1194, 1200 (2020).

> "Ambiguity may be found where the language of the deed is subject to conflicting interpretations." *Marek v. Lawrence*, 153 Idaho 50, 53, 278 P.3d 920, 923 (2012). "However, ambiguity is not present merely because the parties present different interpretations to the court." *Jasso v. Camas Cnty.*, 151 Idaho 790, 798, 264 P.3d 897, 905 (2011). To determine whether a deed is ambiguous, it must be reviewed as a whole." *Neider v. Shaw*, 138 Idaho 503, 508, 65 P.3d 525, 530 (2003).

Hoch, 155 Idaho at 639, 315 P.3d at 827.

In *Marek*, the Idaho Supreme Court held:

> Conflicting interpretations may arise when no potential boundary line unambiguously fits the language contained in the deed. In *Read [v. Harvey*, 141 Idaho 497, 499-500, 112 P.3d 785, 787-88 (2005)], the language of the deed stating 'centerline of the creek,' 'centerline of the main tributary of the creek,' and 'centerline of the main tributary to Gold Creek' may have referred to one of two drainage ditches or a comparatively dry historical natural creek channel. Neither of the drainage ditches, nor the creek channel, unambiguously fit the language contained in the deeds, making the intentions of the drafters unclear. [Where the intention of the drafters is unclear, the determination is a question] of fact with reference to the surrounding facts and circumstances.
>
> [C]onflicting interpretations may arise when a phrase lends itself, without contortion, to a number of inconsistent meanings . . . [Also,] inconsistencies in a deed may throw such a shadow of ambiguity over [an] instrument as to warrant the introduction of parol evidence as an aid to discovering the intention of the parties.

Marek v. Lawrence, 153 Idaho 50, 53-54, 278 P.3d 920, 923-24 (2012) (quoting *Porter v. Bassett*, 146 Idaho 399, 404-05, 195 P.3d 1212, 1217-18 (2008).

> [W]here facts regarding intent are not yet fully developed, but appear to be disputed, summary judgment is not proper. *Currie v. Walkinshaw*, 113 Idaho 586, 591, 746 P.2d 1045, 1050 (Ct. App. 1987). In *Currie*, the deed description began with a call of "'along the high water level' of the river 'to a point exactly midway between the Northeast and Northwest corners of Lot 10.'" *Id.* at 590, 746 P.2d at 1049. The court noted that while marked corners would normally be conclusive in a property description, a meander line was also involved which opened up the possibility that the boundary line was to follow the sinuosities of the river. *Id.* The court determined the parties' respective arguments that the "midpoint" was to be found by following the shoreline of the river, or that it was to be a straight line between the two given points, were both reasonable, and, therefore, a question of fact existed.

Porter v. Bassett, 146 Idaho 399, 405, 195 P.3d 1212, 1218 (2008). There are two kinds of ambiguity—patent and latent. A patent ambiguity "'is evident from the face of the instrument.'" *Cool v. Mountainview Landowners Co-Operative Ass'n, Inc.*, 139 Idaho 770, 773, 86 P.3d 484, 487 (2004) (citing *Estate of Kirk* at 824, 907 P.2d at 801). "'A latent ambiguity is not evident on the face of the instrument alone, but becomes apparent when applying the instrument to the facts as they exist.'" *Cool v. Mountainview Landowners Co-Operative Ass'n, Inc.*, 139 Idaho 770, 773, 86 P.3d 484, 487 (2004) (citing *Estate of Kirk* at 824, 907 P.2d at 801).

The Court will address each of the items in plaintiffs' reply brief. First, is the alleged ambiguity that "Whether the 'private access road' depicted in Exhibit A [of the 1980 Easement] was 'presently constructed and existing' in 1980." Pl.s' Mem. in Reply to Def.'s Opp'n Mem. 3, ¶ a. This Court finds Reynolds Road appears to be the same as the "private road" depicted in the map attached to the 1980 Easement. While plaintiffs argue, "[t]here is no indication in Exhibit 'A' whether the roads depicted were actually 'constructed' or 'existing' when the 1980 Easement was recorded," (Pl.s' Opp'n and Mot. in Supp. of Cross Mot. for Summ. J. 6), Robert Haynes' declaration,

filed in support of plaintiffs' cross motion for partial summary judgment, attests that Reynolds Road was constructed prior to the summer of 1981. Haynes Decl. ¶ 4. Plaintiffs have offered no evidence to show that Reynolds Road is different from the "private road" depicted on Exhibit A of the 1980 Easement, so the Court finds that Reynolds Road is the road referred to in the easement.

Next, the Court does not find that a "latent ambiguity is revealed by the undisputed fact that Exhibit A to the 1980 Easement was not an accurate depiction of roads presently constructed and existing . . . [and] that NAP amended the 1980 Easement in 1984 and corrected Exhibit A to show the true location of the private road serving the Meadowbrook West subdivision lots." Pl.s' Mem. in Reply to Def.'s Opp'n Mem. 4. The fact that the 1984 Amendment amended the portions of Reynolds Road that are the subject of the present litigation, really only creates a singular argument that ambiguity is created. The Court finds there is no actual ambiguity created by the 1984 Amendment. This is because Robert Haynes stated in his declaration that the road has not moved since at least before 1981. Additionally, plaintiffs' retained surveyor, Troy Carlson, stated in his declaration that Reynolds Road in its current location is the same as the land described in the 1980 Easement, notwithstanding the apparent discrepancy between the two maps. Carlson Decl. ¶ 31. These two statements together are enough to show that there is no ambiguity in this regard.

Next, the Court will address "The meaning of 'immediate adjoining land owners' vs. 'owners of real property adjoining the roadways;' "The meaning of the reference to 'owner adjoining the roadways established on the real property described above' on page 2 of the 1980 Easement; and . . . Whether the references to 'adjoining land owners' in the document was intended to mean successors of NAP." Pl.s' Mem. in Reply to Def.'s Opp'n Mem. 3-4, ¶¶ e, f, g.

"[I]t is not only the words in an instrument that must be considered, but also their context, in order to ascertain whether a[n instrument] is ambiguous." *Lorenzen*, 167 Idaho at 391, 470 P.3d at 1200. "To determine whether a[n instrument] is ambiguous, it must be reviewed as a whole." *Neider v. Shaw*, 138 Idaho 503, 508, 65 P.3d 525, 530 (2003). "Where [an instrument's] language is unambiguous, the trier of fact settles the intention of the parties as a matter of law by using the plain language of the instrument." 167 Idaho at 390, 470 P.3d at 1199.

Plaintiffs assert that there are three separate ambiguous sentences in the 1980 Easement and request the Court to determine the meaning of each individual sentence. The Court will not parse out each statement from the Easement and overanalyze what each one means; rather, the Court will review the document as a whole and determine if the drafter's intent in using this language is unambiguous.

Taken as a whole, the document reads:

> The easement and right of way is specifically granted to all owners of real property adjoining the roadways presently in existence and generally to the public. . . . By granting this easement and right-of-way, the Grantor does not impose any responsibility of the roadways. This responsibility shall be borne by the immediate adjoining land owners at their own discretion. The adjoining land owners may, by common agreement, take such action as is necessary to bring the roadways or a portion thereof to highway district standards and to convey the roadway or a portion thereof to the responsible highway district by easement or Deed. . . .
>
> No owner adjoining the roadways established on the real property described above shall have the authority to obstruct the roadways in any manner and shall always allow the free access to all portions of the roadway by the public in general.

Complaint, Ex. 5.

When reviewing the plain language of the Easement as a whole and in context, the Court finds that the drafters of the 1980 Easement intended to grant the easement to all property adjacent to, that is, touching, Reynolds Road. The Easement also does not "impose any responsibility" on any of the adjacent (neighboring) properties but

rather leaves that to the discretion of those landowners. Additionally, the Easement does not purport to give the adjacent landowners any right to alter the easement, to impose maintenance responsibilities on new landowners, or to prohibit new adjacent landowners from accessing the road. The language is clear that the drafters intended all properties that touched Reynolds Road in 1980 to benefit from the use of the road for ingress, egress and utility purposes. Although the members of Meadowbrook West may have subsequently decided to form an association and to draft various Declarations on behalf of the subdivision residents, those Declarations cannot be binding on nonparties to those agreements. *See, e.g., Greater Boise Auditorium Dist. v. Frazier*, 159 Idaho 266, 273 n.6, 360 P.3d 275, 282 n.6 ("Non-parties are generally not bound by contracts they did not enter into.") (citing *Trolley v. THI Co.*, 140 Idaho 253, 262, 92 P.3d 503, 512 (2004)). Therefore, the 1980 Easement benefits Ranch's property, as an adjoining property to Reynolds Road, and Ranch is entitled to use the road without regard to whether it is a member of the Association. Ranch may add new lots to Reynolds Road without the approval of the Association membership, with the Board of County Commissioner's permission, because the 1980 Easement does not prohibit that. However, Ranch may not obstruct Reynolds Road in any way.

The Court will not address the issue of "The difference between the 2 rod wide right-of-way granted to NAP's predecessor and the 3 rod wide 'Parcel 2' described in the 1980 Easement" because that is only pertinent to the matter of Ranch's quiet title action, which the parties agreed would not be addressed in the present cross-motions for partial summary judgment.

The Court will next address whether the easement is appurtenant or in gross and the meaning of "the public in general" below.

/

2. The Easement Is Appurtenant.

Plaintiffs argue that the easement, even if the Court interprets it to benefit landowners outside of the Association, may not benefit Ranch because it is in gross rather than appurtenant. Specifically, they argue: "Th[e] initial grant language identifies no grantee and is not appurtenant to any identified land." Pl.s' Opp'n and Mot. in Supp. of Cross Mot. for Summ. J. 6. ". . . [T]o the extent that document granted any right to use roadways then in existence, that right was personal to the owners at that time and did not run with any appurtenant land." *Id.* at 7. "[T]here is no language in the 1980 Easement stating the easement rights run with any land or that the rights benefit the heirs, successors or assigns of NAP or any potential grantee." *Id.*

Ranch responds:

> Meadowbrook would have this Court engage in a painful interpretation exercise to support the position that the Easement is ambiguous and an easement in gross, so that Meadowbrook can attempt to redefine the dominant estate created in the Easement to exclude the Ranch at Cougar Creek from using Reynolds Road. Such a position is contrary to the language in the Easement and inconsistent with Idaho law.

Mem. in Supp. of Def.'s Mot. for Summ. J. 2-3. Ranch continues:

> . . . Plaintiff's [sic] attempt to convert this to an Easement in gross is completely unsupported by the language in the Easement and Idaho law. All easements in Idaho are *assumed* to be appurtenant, not in gross. . . .
>
> For example, where an easement grant is to a particular family and their immediate relatives without any connection to the underlying land being benefited [sic], the easement would be in gross; however, a grant to an owner of property regarding a particular piece of benefitted and burdened property would be an easement appurtenant. This was the situation in *King v. Lang*, 136 Idaho 905, 909 (2002) where the [Idaho Supreme] Court found that an easement grant created two easements, one that was appurtenant where a dominant and servient estate were identified, and one in gross where only a particular family was identified without any connection to a benefited [sic] estate. . . . Thus, where a dominant and servient estate are defined, there is no doubt that an easement appurtenant has been created.
>
> In this case, there is absolutely no support for the proposition that the Easement is in gross, rather than appurtenant. Plaintiff seems to suggest that because the words "heirs, successors and assigns" are not used and the word "owner" is used when describing the benefitted property, the grant must be in

gross. This position, however, does not follow the rule outlined in *Lorenzen* [*Trustee of the Phyllis E. Lorenzen Revocable Trust v. Pearson*, 167 Idaho 385, 393, 470 P.3d 1194, 1202 (2020)] and *King*. First, the presumption is that all easements are appurtenant, not in gross. Second, if there is a description of a servient and dominant estate, the easement is appurtenant because the use right has been "inextricably" connected to the underlying lands described. The grant language in this case is not just to an owner unconnected to any property like that in the case of *King*, but rather, is granted to an owner of property adjoining the roadways within Parcel 1 and Parcel 2: "The easement and right of way is specifically granted to all owners **of real property adjoining the roadways** presently in existence and generally to the public." Only if a person owns real property adjoining the roadway, does that adjoining land become benefited [sic] by the easement. These "adjoining lands" are the real property inextricably tied to the purpose of the roadway and utility easement expressly stated in the Easement. This is not a personal grant to a particular family without any connection to the land like the in-gross easement created in *King*. Rather, it is a right-of-way grant for roadway and utilities granted to all adjacent properties inextricably tied to the benefitted and burdened land described therein. The presumption is always in favor of easements appurtenant, and Plaintiff has failed to undermine this presumption.

Id. at 5-7 (internal citation omitted) (bold and underlining in original).

The Idaho Supreme Court in *Hoch v. Vance*, 155 Idaho 636, 315 P.3d 824 (2013), held:

> There are two general types of easements: easements appurtenant and easements in gross. *Hodgins v. Sales*, 139 Idaho 225, 230, 76 P.3d 969, 974 (2003). This Court has explained the difference between these two types of easements as follows:
>
> > An easement appurtenant is a right to use a certain parcel, the servient estate, for the benefit of another parcel, the dominant estate. Essentially, an easement appurtenant serves the owner of the dominant estate in a way that cannot be separated from his rights in the land. When an appurtenant easement is created, it becomes fixed as an appurtenance to the real property, which is subject to the prescriptive use and may be claimed by a successor in interest. In contrast, an easement in gross benefits the holder of the easement personally, without connection to the ownership or use of a specific parcel of land. Thus, easements in gross do not attach to the property. In cases of doubt, Idaho courts presume the easement is appurtenant. .

155 Idaho at 639-40, 315 P.3d at 827-28; *see also, e.g.*, *Nelson v. Johnson*, 106 Idaho 385, 387-88, 679 P.2d 662, 664-65 (1984). In Idaho, most easements are found to be appurtenant. Occasionally, a Court may find an easement to be in gross, however, the

party claiming that the easement is in gross must overcome this presumption. *See, e.g.*, *King v. Lang*, 136 Idaho at 909, 42 P.3d at 702 (finding an easement in gross where the easement "identified no dominant or servient estate, and gave a right of access to the river so people who may have no interest in the land itself, such as members of the Waggoners' immediate family").

In *Lorenzen*, the Idaho Supreme Court distinguished *King*, finding the easement to be appurtenant rather than in gross for three reasons:

> King's river-access easement was expressly created only to benefit the immediate Waggoner family, not the land. *King*, 136 Idaho at 908, 42 P.3d at 701. There was no dominant or servient estate and the right of access was the individuals without any interest in the grantor's land itself. *Id.* In contrast, the easement here is appurtenant and attached to a dominant estate. This was determined . . . based on several factors from the record. First, the record established continuous use of the shared driveway and oval driveway by both the cabin and Red Barn property owners. . . . Second, the Pearsons purchased their property with actual notice that there was a recorded easement that burdened his property. Third, the Williamses and Lorenzens were close friends. . . .

167 Idaho at 393, 470 P.3d at 1202.

Here, the Court is unconvinced by plaintiffs' argument that any right to use Reynolds Road granted in the 1980 Easement was "personal to the owners at that time and did not run with any appurtenant land." Pls.' Opp'n and Mot. in Supp. of Cross Mot. for Summ. J. 7. The Court agrees with Ranch's argument. Here, unlike in *King*, the 1980 Easement gives access rights to members of the subdivision, who do have interest in the land itself. Additionally, the road runs through the subdivision property and clearly runs through the Haynes' and other NAP members' property, as well as Ranch's. Moreover, as in *Lorenzen*, assuming the easement is valid, the Haynes and other subdivision parcel owners had constructive notice of the easement because it was recorded in 1980, and the easement did not expressly declare that it was only for the benefit of a specific person or persons, but rather applied to the "general public"

(notwithstanding the below-discussed ambiguities found regarding this term) and "adjoining landowners". Plaintiffs have simply not provided enough to overcome the strong presumption that easements are appurtenant. Therefore, the easement benefits Ranch.

B. Genuine Issues of Material Fact Exist Regarding Whether the Easement Created a Common Law Road Dedication to the Public, and Ranch's Motion for Partial Summary Judgment is Denied as to this Issue.

Next, Ranch argues that it is "entitled to use Reynolds Road based on the unequivocal grant to use of the roadway by the public at large and acceptance of the same by the Ranch." Mem. in Supp. of Def.'s Mot. for Summ. J. 13.

> In this case, the Easement unequivocally expresses an intent to grant the use of Reynolds Road to the public at large:
>
> > The easement and right of way is specifically granted to all owners of real property adjoining the roadways presently in existence and generally to the public. The public in general shall be deemed to include all individuals, corporations, municipalities, public services vehicles including ambulance, police and fire protection vehicles, if a highway district in the state of Idaho had jurisdiction over the roadways.
>
> The right to public use is reiterated again when prohibiting any adjoining landowner from interfering with such use: "No owner adjoining the roadways established on the real property described above shall have the authority to obstruct the roadways in any manner and shall always allow the free access to all portions of the roadway by the public in general." This grant language expresses NAP's unequivocal intent to allow the public at large the right to use Reynolds Road.
>
> Additionally, like *Paddison* [*Scenic Properties, Fam. Tr., L.C. v. Idaho County*, 153 Idaho 1, 278 P.3d 403 (2012)], while the Worley Highway District had not formally "accepted" this roadway for public dedication, the Ranch has accepted the offer of public use by making use of Reynolds Road thereby creating a common law dedication. Taken together, this unequivocal grant from public use and acceptance by the Ranch, [sic] entitles the Ranch, as a member of the public, use of Reynold [sic] Road.

Id. at 14-15 (internal citations omitted) (underline in original).

Plaintiffs respond:

> The Declaration of Robert Haynes filed herewith includes photographs of several signs posted at the entrance of Reynolds Road near the Clemetson Road intersection. Those signs and the metal gates send a clear message to adjacent land owners [sic] and the public that Reynolds Road is a "Private

Road," "For Landowner's Use Only," and that the road is a "Dead End" road across "Private Property." The Association has even taken the affirmative step to close the gate and restrict access to Reynolds Road during the 4th of July to prevent unauthorized persons from using the roads to find a high point from which to watch the annual fireworks display over Lake Coeur d'Alene, and to prevent the unauthorized use of fireworks on the Meadowbrook West subdivision property.

. . . .

There is no evidence in the record that Reynolds Road has ever been used as a public road or that any public funds have ever maintained or improved Reynolds Road. On the contrary, the only evidence is that Reynolds Road has been exclusively used and maintained by the owners of lot within the Meadowbrook West subdivision and two additional parcels that petitioned and were allowed to join the Association.

. . . .

The Ranch claims Reynolds Road is a public road by virtue of a common law dedication in the 1980 Easement. . . .

Neither [required] element [for a common law road dedication] is present in this case. First, there is no clear and unequivocal language in the 1980 Easement declaring the intent to dedicate Reynolds Road to a public use. Exhibit "A" to the 1980 Easement labels Reynolds Road as a "Private Access Rd." and as a "Private Rd." These labels directly contradict any ambiguous language in the body of the document that references the public. There is nothing on the map of Meadowbrook West to indicate that this "private" road was offered or dedicated to the public. . . . Second, the 1980 Easement includes a specific definition of "the public in general" that appears to be conditional upon Reynolds Road actually becoming a public highway under the jurisdiction of a highway district. Reynolds Road has not been accepted by any Highway District and probably never will be due to its grade, width and other non-compliance with public road standards. Third, there has been no public acceptance of Reynolds Road as a public road. As detailed above, the documents approved and recorded by NAP and the Association members unequivocally declare that Reynolds Road is a private road owned, maintained and managed by the members of the Association. Those documents, and the posted signs and gates maintained by the Association leave no doubt that public use of Reynolds Road is permissive and not an unrestricted right. The only persons who have "accepted" any dedication of Reynolds Road are the members of the Association and their predecessors who purchased lots within Meadowbrook West in reliance on the road documents recorded by NAP. . . . To the extent there has been any common law dedication of Reynolds Road, the dedication was for private use, not public use.

The facts of this case are similar to the circumstances at issue in *Stafford v. Klosterman*, 134 Idaho 205, 998 P.2d 1118 (2000) . . . .

Here, the Ranch also asserts a public road easement for which they, and every other member of the general public, has no responsibility for maintenance, repair or snow removal. As in *Klosterman*, this species of public road does not exist under Idaho law and the defendant's public dedication claim should be denied for the same reasons cited in *Klosterman*.

Pl.s' Opp'n and Mot. in Supp. of Cross Mot. for Summ. J. 13-16 (emphasis in original) (internal citations omitted).

The Idaho Supreme Court has held: "Idaho law recognizes both common law and statutory road dedication." *Paddison Scenic Props. Family Trust, L.C. v. Idaho Cnty.*, 153 Idaho 1, 3, 278 P.3d 403, 405 (2012).

> The elements of a common law dedication as established in *Pullin v. Victor* are "(1) an offer by the owner, clearly and unequivocally indicated by his words or acts evidencing his intention to dedicate the land to a public use, and (2) an acceptance of the offer by the public." 103 Idaho 879, 881, 655 P.2d 86, 88 (Ct. App. 1982). . . . The second element—acceptance of the offer by the public—"is not evidenced by the subjective intent of purchasers of property whose instruments of title make specific reference to a plat, but rather by the fact that lots had been sold or otherwise conveyed with specific reference to the apposite plat." [*Worley Hwy Dist. V. Yacht Club of Coeur d'Alene, Ltd.*, 116 Idaho 219,] 225, 775 P.2d [111,] 117 [(1989).

Farrell v. Bd. Of Comm'rs Lehmi Cnty., 138 Idaho 378, 384, 64 P.3d 304, 310 (2002), overruled on other grounds by *City of Osburn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012). "[P]ublic acceptance of a road dedication requires no specific formality. Indeed, the [Idaho Supreme] Court has explained that public use of a dedicated easement constitutes acceptance." *Paddison Scenic Props. Family Trust, L.C. v. Idaho Cnty.*, 153 Idaho 1, 3, 278 P.3d 403, 405 (2012) (internal citation omitted).

In *Kepler-Fleenor v. Fremont County*, 152 Idaho 207, 211, 268 P.3d 1159, 1163 (2011), the Idaho Supreme Court found a plat with very similar language to that in the deed in question indicated a common law dedication of a private road. In that case, the owners of a subdivision put up roadblocks to keep construction traffic from a nearby subdivision off their road. *Id.* at 209, 268 P.3d at 1161. The county removed the roadblocks, "believing the disputed road to be public." *Id.* The subdivision owners sued the county, seeking declaratory judgment indicating that the road was private. *Id.* The Idaho Supreme Court held:

> The plat depicts the disputed road with a label saying "60' road & utility easement." The owners' certificate states, "The dedicated 60ft. roadway and utility right-of-way will allow sewer, water, electrical, telephone and other utilities to be installed in the right of way." Importantly, the certificate further provides: "All roads are hereby dedicated to the public," and that the developer or the homeowners association will "maintain all roadways until such time as Fremont County accepts said maintenance...."
> . . . [T]he plat unambiguously dedicates the disputed road to the public. The only reasonable interpretation of the phrase "all roads are hereby dedicated to the public" is that the owners intended for all the roads that appear on the plat to be public unless specifically designated otherwise. *See Ponderosa Home Site Lot Owners,* 139 Idaho at 701, 85 P.3d at 677 (finding a dedication where the plat stated that the owners "dedicate to the public, for the use of the public as highways the roads shown upon the plat"); *Deffenbaugh v. Wash. Water Power Co.,* 24 Idaho 514, 514-21, 135 P. 247, 247-48 (1913) (observing that the streets on the plat were public because plat stated that it dedicated "the streets and avenues shown"). Further, this road is sixty feet wide, the same width as the C-shaped public road on the map. Because the disputed road unambiguously appears on the plat, it is a dedicated road.

Kepler-Fleenor v. Fremont Cnty., 152 Idaho 207, 212, 268 P.3d 1159, 1164 (2011).[6]

The terms of the instrument in this case are very similar to that of *Kepler-Freenor*. The primary difference is that the instant case involves a recorded easement, whereas the dispute in *Kepler-Freenor* involved a recorded plat, which included an easement. *Id.* However, in this particular case, there is little difference between a plat and an easement. The Idaho Supreme Court has held that, in determining whether a dedication has occurred, plats are interpreted the same way as deeds. *Id.* (citing *Lattin v. Adams Cnty.*, 149 Idaho 497, 501, 236 P.3d 1257, 1261 (2010). If a deed or plat "does or not dedicate land, the plain language of the instrument controls." *Id.* (citing *Lattin v. Adams Cnty.*, 149 Idaho 497, 501, 236 P.3d 1257, 1261 (2010). In this case,

---

[6] Plaintiffs cite to Plaintiffs cite to *Stafford v. Klosterman*, 134 Idaho 205, 208, 998 P.2d 1118, 1122 (2000), for the proposition that Idaho law requires public responsibility of maintenance, repair, and snow removal in order for a public road dedication to take effect. Pl.s' Opp'n and Mot. in Supp. of Cross Mot. for Summ. J. 16. While plaintiffs correctly summarize *Stafford*, *Stafford* appears to be in conflict with the holding of *Kepler-Fleenor*, which was decided eleven years after *Stafford*. Because of this conflict and the similarity of facts between this case and that of *Kepler-Fleenor*, this Court makes its decision based on the holding of *Kepler-Fleenor*.

the Idaho Supreme Court seems to imply that the only extrinsic evidence it would have considered in the case of an unambiguous public dedication was evidence of the intent of the drafter of the plat. *Id.* Here, the easement was recorded in November 1980. Pl.'s Statement of Undisputed Facts (Pls.' SUF) ¶¶ 3, 5-6. The recorded easement included a map of the subdivision and granted "an easement and right-of-way for road and utility purposes, SIXTY FEET (60) in width, over and across roadways presently constructed and existing in accordance with [the attached map]." Complaint Ex. 5. It further states:

> The easement shall be determined by measuring thirty feet (30) on each side of the centerline of the roadways presently in existence. The easement and right of way is specifically granted to all owners of real property adjoining the roadways presently in existence and generally to the public. The public in general shall be deemed to include all individuals, corporations, municipalities, public service vehicles including ambulance, police and fire protections vehicles, if a highway district in the state of Idaho had jurisdiction over the roadways.
>
> By granting this easement and right-of-way, the Grantor does not impose any responsibility of the roadways. This responsibility shall be borne by the immediate adjoining land owners [sic] at their own discretion. The adjoining land owners [sic] may, by common agreement, take such action as is necessary to bring the roadways or a portion thereof to highway district standards and to convey the roadway or a portion thereof to the responsible highway district by easement or Deed. If necessary, National Associated Properties, Inc., or its successor shall sign any documents required by it to be signed to convey said right-of-way and easement to the highway district.

Id. The language in this deed is so similar to the language in the plat in *Kepler-Fleenor* that it cannot be questioned whether the drafter's intent was to create a public road dedication of any "roadways presently constructed and existing" at the time the deed was drafted. The Court has already found above that Reynolds Road is the road depicted in the 1980 Easement. Therefore, it appears that, under *Kepler-Fleenor*, the drafters of the 1980 Easement intended to create a public road dedication of Reynolds Road.

There is, however, ambiguity regarding the interpretation of the easement's definition of "the public". The easement states, "The public in general shall be deemed to include all individuals, corporations, municipalities, public service vehicles including ambulance, police and fire protections vehicles, if a highway district in the state of Idaho had jurisdiction over the roadways." *Id.* This could be interpreted two ways. The first, as plaintiffs argue, is that the road shall only be dedicated to the public "**if** a highway district in the state of Idaho had jurisdiction over the roadways." Pl.s' Opp'n and Mot. in Supp. of Cross Mot. for Summ. J. 6. The second meaning would be if a typographical error were present, and the sentence should have read, "as if a highway district in the state of Idaho had jurisdiction over the roadways"—meaning that the easement adopts the same definition of the "public in general" as the highway district does and that the general public is limited to its use of the road as they would be on a public highway. Because there is an ambiguity in this sentence, the Court may look outside the four corners of the easement to determine the drafter's intent. However, this is not possible in this case because the parties have not offered evidence regarding the drafter's intent in using this language beyond the subsequent amendment and declarations. The intent of the drafter must be determined at the time of drafting, not later. *Marek v. Lawrence*, 153 Idaho 50, 53, 278 P.3d 920, 923 (2012). Whether the drafter "made an error" and allegedly tried to correct that error in 1984 is irrelevant to the Court's analysis of the intent of the drafters in 1980. Pl.s' Opp'n and Mot. in Supp. of Cross Mot. for Summ. J. 8. It could have been the case that NAP fully intended to make a public dedication in 1980 and then regretted its decision in 1984 and sought to reflect this in its amendment.

Plaintiffs argue that any dedication of Reynolds Road would be conditional on it "actually becoming a public highway under the jurisdiction of a highway district." *Id.* at 14. Plaintiffs do not offer any evidence of the drafter's intent of conditionality besides

this bald assertion. Accordingly, the Court declines to determine whether Reynolds Road has been publicly dedicated until the parties establish whether the dedication was intended to be conditional.

Regarding the second element of acceptance, in *Kepler-Fleenor*, both parties agreed that the offer of dedication had been accepted "when the Appellants' lots were sold with reference to the recorded Sawtelle Subdivision plat". 152 Idaho at 212, 268 P.3d at 1164. The Idaho Supreme Court seemed to agree with the parties' stipulation when it cited to *Smylie v. Pearsall*, 93 Idaho 188, 191, 457 P.2d 427, 430 (1969), referencing the Idaho Supreme Court's prior holding that "a dedication is complete when the owner 'sells lots by reference to the recorded plat.'" *Id.* This does not apply here, however, because the Haynes' deed does not reference the recorded 1980 Easement. *See* Poorman Decl. Ex. I. Thus, the only way such a dedication could be accepted in accordance with *Smylie* and *Kepler-Fleenor* is if the Court determines that the public accepted the invitation by using the road. The Court finds plaintiffs' argument that there cannot have been an acceptance because Reynolds Road is currently "maintained and managed by the members of the Association" and there are "no trespassing" signs posted along the road unpersuasive. Pl.s' Opp'n and Mot. in Supp. of Cross Mot. for Summ. J. 16. Although it may be true that, currently, no members of the public use the road, that is not enough to show that at some point between 1980 and now members of the public have not used the road and thus accepted an offer of road dedication. Indeed, Ranch asserts that it has used the road and thus "accepted" any such offer. Mem. in Supp. of Def.'s Mot. for Summ. J. 15. Because there are disputed material facts, the motion for summary judgment on this point must be denied.

Though it is not pertinent to the cross-motions for partial summary judgment, the

Court raises the following jurisdictional issue as the parties move forward on the issue of common law dedication. The Hearing Examiner and the Board of County Commissioners determined that the easement benefits Ranch's property when it issued Ranch's approval of a Preliminary Plat for its proposed subdivision. However, the Idaho Supreme Court has made it clear that county commissioners must make their approvals "expressly contingent upon judicial resolution of scope of the easement.") *See In re Variance ZV011-2*, 156 Idaho 491, 495-96, 328 P.3d 471, 475-76 (2014). Although plaintiffs appealed the board's decision to the appropriate administrative body (and submitted "objections") to that same body, the board used their legal counsel to determine whether or not the easement was valid and what the scope of it was before approving the preliminary subdivision plat. The Court is concerned as to whether the issue would be that the board's decision is simply invalid and would the party have to officially appeal the decision to the Court in order for this Court to potentially reverse the decision? This Court is convinced that there is no general jurisdiction issue at this point, because this litigation is about the interpretation of the easement and has nothing to do with the preliminary plat on Ranch's property (although the Court certainly understands the plaintiffs' primary reason for opposing Ranch's access to Reynolds Road is because the plaintiff does not want the subdivision property purchasers to be able to use the road).

C. Ranch's Motion for Summary Judgment on the Issue of a Permanent Injunction Is Denied Because It Is not Ripe.

Next, Ranch argues:

> Plaintiffs Meadowbrook and Haynes have attempted to prevent the Ranch's access to and use of Reynolds Road despite the express prohibition of such conduct in the Easement . . . . Plaintiffs' conduct is injurious to the Ranch because it is interfering with the Ranch's full use and enjoyment of [Ranch's] Property, including the pursuit of the lawful improvements planned for the property.

Mem. in Supp. of Def.'s Mot. for Summ. J. 15-16 (internal citations omitted). In support of this argument, Ranch refers to "appeals filed by the association regarding the Preliminary Plat"; "threats, trespasses, vandalism and attempts to intimidate the Ranch regarding its use of Reynolds Road"; "delays to construction and lot sales"; "the need to use Reynolds Road to access the northern part of [Ranch's] Property to develop the site consistent with the approved Preliminary Plat"; and "the immediate, real and irreparable harm that is being caused by Plaintiffs". *Id.* at 16.

> The Easement entitles the Ranch to use Reynolds Road at the northern boundary of [its] Property for roadway and utility purposes—such a declaration is the final resolution being sought by the Ranch. The Association and Haynes have knowingly and willfully attempted to interfere with such rights by trying to block the Ranch's full use and enjoyment of its own property. The Court should order that Plaintiffs and all others acting by, through or under them, be and are permanently enjoined from engaging in any activity that would prevent, interfere with or undermine the Ranch's full use and enjoyment of Reynolds Road as a beneficial user thereof.

Id.

Plaintiffs respond:

> As set forth in the Declaration of Scott L. Poorman at Exhibit A, a right-of—way was granted by C.A. Bittleston (predecessor-in-interest of the Ranch) to A.P. Sundin (predecessor-in-interest of the plaintiffs) in 1923 over an area described as:
>
> > "a strip of land along the West boundary of [the SE ¼ of the NE ¼ of Section 19, Township 50 North Range 4 W.B.M., in Kootenai County, Idaho] from the North line of said forty at the NW corner thereof, and along said West line for a distance of thirteen rods more or less, to the county road now located over and across said SE ¼ of the NE ¼ Sec. 19, Twp. 50 R4 W.B.M., said strip of land so granted and dedicated being two rods in width, to be used by the said A.P. Sundin, his successors and assigns for road purposes."
>
> A depiction of this right-of-way strip is included on Exhibit "A" of the 1984 Amendment . . . [image omitted]
>
> This right-of-way was also drawn and labeled in the Record of Survey prepared by Smith & Smith Consulting Engineers and recorded on May 24, 1984 in Book 4 of Surveys at Page 14. The Ranch asserts that the plaintiffs have no easement rights for that portion of Reynolds Road located on the Ranch property. It is true that NAP did not own the Ranch property in 1980 when the original Meadowbrook West easement was recorded, or in 1984 when that

> Easement was amended. However, NAP was the successor of A.P. Sundin to the right-of-way granted over the Ranch property when it was owned by C.A. Bittleston. It appears that NAP inadvertently increased the width of the right-of-way area in the description of Parcel 2 in the 1980 Easement. That description refers to a "right of way for a road three rods wide . . ." Nevertheless, the plaintiffs enjoy a 33 foot (2 rods) wide express easement over the Ranch property and, if necessary, can certainly claim a prescriptive easement over the remaining 16.5 feet of land for Reynolds Road as utilized by the plaintiffs and their predecessors for over 40 years.

Pl.s' Opp'n and Mot. in Supp. of Cross Mot. for Summ. J. 16-18 (emphasis in original) (internal citations omitted). Again, the parties have agreed that plaintiff's quiet title action claim is omitted from these cross-motions for summary judgment. Stipulated Mot. to Amend the parties' Notice of Hr'g to Reflect a Single Hr'g for Cross Motions for Summ. J. 2, ¶ 2.

In order for a Court to issue an order, "an actual or justiciable controversy" is required. *ABC Agra, LLC v. Critical Access Group, Inc.*, 156 Idaho 781, 783, 331 P.3d 523, 525 (2014). "Idaho has adopted the constitutionally based federal justiciability standard." *Id.* "Ripeness is that part of justiciability that 'asks whether there is any need for court action at the present time.'" *Id.* (quoting *Davidson v. Wright,* 143 Idaho 616, 620, 151 P.3d 812, 816 (2006) (internal quotations omitted)). The ripeness doctrine requires the moving party to prove "1) that the case presents definite and concrete issues, 2) that a real and substantial controversy exists, and 3) that there is a present need for adjudication." *Paddison Scenic Props., Family Trust, L.C. v. Idaho Cnty.,* 153 Idaho 1, 4, 278 P.3d 403, 406 (2012) (quoting *Noh v. Cenarrusa,* 137 Idaho 798, 801, 53 P.3d 1217, 1220 (2002)) (underline added).

A permanent injunction is "entered at the resolution of the case, and requires a showing of threatened or actual irreparable injury[.]" *Gem State Roofing, Inc. v. United Components, Inc.*, 168 Idaho 820, 488 P.3d 488 (2021). While litigation is still pending,

the correct petition to the Court would be a preliminary injunction, rather than a permanent injunction. *See id.* The parties have not yet resolved this case. The parties stipulated to omit plaintiffs' quiet title action from the present motions. Accordingly, the issue of permanent injunction is not ripe at this moment because there is not "a present need for adjudication", and the Court denies Ranch's motion for summary judgment on the grounds of the issuance of a permanent injunction.

D. Plaintiffs' Cross-Motion for Partial Summary Judgment is Denied.

Plaintiffs provide scant additional arguments in support of their cross motion for partial summary judgment:

> [P]laintiffs' cross motion [for partial summary judgment should be] granted declaring that the Ranch has no express easement to add a new approach to Reynolds Road or to use Reynolds Road outside of the boundaries of the Ranch property unless the Ranch property is admitted into the Association on conditions approved by the Association members.

Pl.s' Opp'n and Mot. in Supp. of Cross Mot. for Summ. J. 14. "On this uncontested evidence [pertaining to Plaintiffs' use of Ranch's property], . . . summary judgment should be granted declaring the plaintiffs have an express easement and right-of-way over the west 33 feet of the defendant's property." *Id.* at 18. Again, the parties have agreed that plaintiff's quiet title action claim is omitted from these cross-motions for summary judgment. Stipulated Mot. to Amend the parties' Notice of Hr'g to Reflect a Single Hr'g for Cross Motions for Summ. J. 2, ¶ 2.

For the same reasons discussed above, the Court denies plaintiffs' cross-motion for partial summary judgment.

IV. CONCLUSION AND ORDER.

For the foregoing reasons,

IT IS HEREBY ORDERED Defendant's Motion for (partial) Summary Judgment is **GRANTED IN PART** (as to the Language of the 1980 Easement is not ambiguous,

the Easement benefits Ranch's property, and the Easement is appurtenant), and **DENIED IN PART** (as to common law road dedication to the public and to permanent injunction).

IT IS FURTHER ORDERED Plaintiffs' Cross Motion for (partial) Summary Judgment is **DENIED**.

Entered this 15th day of August, 2022.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the 15th day of August, 2022, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer	email	Lawyer	email
Scott Poorman	office@poormanlegal.com	Megan O'Dowd	megan@lyonsodowd.com

Jeanne Clausen, Deputy Clerk