



Sent via Regular Mail

February 17, 2023

Re: Mount Diablo Scenic Boulevard Maintenance

To Whom It May Concern:

The California Department of Parks and Recreation (State Parks) is respectfully requesting your participation in a partnership between State Parks and adjacent landowners to address the long-standing need for a maintenance agreement for Mount Diablo Scenic Boulevard (MDSB). State Parks would like to work collaboratively with all adjacent landowners towards an agreement that will result in road improvements that benefit all users.

State Parks has received complaints about the maintenance of MDSB. However, maintenance of the road is not State Parks' sole responsibility. Because State Parks only has an easement for access to Mount Diablo State Park, it shares maintenance responsibility with all adjacent landowners under California Civil Code section 845, according to proportionate use. In 1992, the Contra Costa County Superior Court issued an order reflecting this shared responsibility in the attached Order For Reference In Lieu Of Trial (*Siders Order*). The Court retains jurisdiction over this matter.

The *Siders Order* required an arbitrator to "join into this action all property owners who abut or use the roadway, and all other parties who may benefit from the easement and have a responsibility to contribute to the maintenance of the roadway." An arbitrator was never pursued, but the maintenance issues persist. State Parks is initiating this process with the goal of resolving this long-standing issue. State Parks believes your property qualifies you as a party with responsibility to contribute to the maintenance of the roadway.

State Parks proposes reaching out to any of the following neutral parties to assist with negotiating the maintenance agreement:

1. Sarah Burke – (415) 307-9740; <http://burkeadr.com>
2. Joel P. Franciosa – (510) 272-5103; <http://jpfmediation.com>
3. Kathryn N. Richter – (925) 376-1500; <http://www.richteradr.com>
4. Hon. Marshall Whitley (Ret.) – (415) 772-0900;
<http://adrservices.com/neutrals/whitley-marshall>

If you would like to recommend a different neutral third-party, please let us know as soon as possible. The parties may share the cost of the neutral party according to the agreed-upon proportionate use.

Please return pages 2 and 3 of this letter by **March 30, 2023**, with your information, your attorney's contact information if applicable, and your preference on a neutral third-party. You may e-mail your response to Olivia Chiu, Staff Counsel, at Olivia.Chiu@parks.ca.gov, or you may mail your response to the following address:

Olivia Chiu
California State Parks – Legal Office
P.O. Box 942896
Sacramento, CA 94296

To establish good-faith efforts towards collaboration, State Parks is preparing a traffic safety assessment of MDSB to determine what work is needed and what may be required of various parties. Additionally, State Parks may start repairing some of the bigger safety concerns on MDSB that it can address immediately. By performing this work, State Parks does not waive any rights or defenses it may have related to MDSB.

Thank you for your participation. If you have any questions, please contact me at Emma.Siverson@parks.ca.gov, with a copy to Olivia.Chiu@parks.ca.gov, or (916) 653-9905.

Sincerely,



Emma Siverson
Senior Staff Counsel

Enclosures

cc (email only): Clint Elsholz, Acting Diablo Range District Superintendent

Property Owner

Name: _____

Address: _____

Email: _____

Phone: _____

Attorney

Name: _____

Email: _____

Phone: _____

Third Party Neutral

Name: _____

Email: _____

Phone: _____

1 HAL F. SEIBERT
2 Attorney At Law
3 1200 Concord Ave., Ste. 260
4 Concord, CA 94520
5 (510) 945-1991
6
7 Attorney for Plaintiff

FILED
CONTRA COSTA COUNTY
MAR 17 1 12 PM '92
CO CLERK
BY *M. Buda*
DEPUTY

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA

10 BARRY SIDERS,
11 Plaintiff, NO. 282534
12 vs. ORDER FOR REFERENCE
13 STATE OF CALIFORNIA, IN LIEU OF TRIAL
14 Defendants.

15 The above captioned matter was duly called for Court trial in
16 department 2X of the above entitled court on June 14, 1991. The
17 court having read the trial briefs of both parties, and hearing
18 preliminary statements, stipulations and admissions, the court
19 finds that the only two issues presented are (1) whether the
20 State's use of the easement over the roadway in question
21 constitutes a public nuisance, and (2) the extent to which the
22 parties, or non parties, must share in the expense of maintaining
23 the easement over the roadway.

24 IT IS HEREBY ORDERED ADJUDGED AND DECREED AS FOLLOWS:

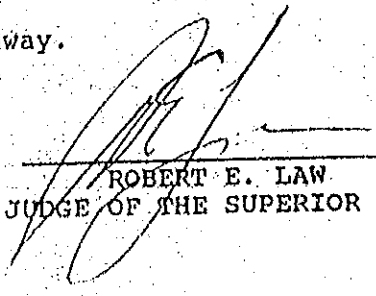
25 1. To the extent the State's right of way over Mt. Diablo
26 Scenic Blvd, Contra Costa County, California, is a "public
27

1 easement" it cannot as a matter of law be deemed a nuisance.

2 2. Under Civil Code §845 the State of California has a duty to
3 maintain the roadway easement in proportion to its use. Pursuant
4 to CCP §639 the court shall refer this matter to an arbitrator in
5 order to determine how to proportion the cost of maintaining the
6 roadway amongst those using the roadway. The arbitrator is ordered
7 to join into this action all property owners who abut or use the
8 roadway, and all other parties who may benefit from the easement
9 and have a responsibility to contribute to the maintenance of the
10 roadway. After hearing from all such parties, the arbitrator is to
11 make a recommendation to this court as to a formula to be used to
12 determine the proportion of cost of maintenance to each party,
13 property owner, or other person or entity.

14 3. The current parties to this action shall agree upon a
15 neutral arbitrator. The cost of the arbitrator shall be borne by
16 all parties in proportion to the ultimate finding of each party's
17 responsibility to maintain the roadway.

18
19 Dated: June 14, 1991.
20 Presented for signature
21 and signed 3/17/92


ROBERT E. LAW
JUDGE OF THE SUPERIOR COURT

22 Approved as to Form:
23

24 _____
25 Anne Jennings,
26 Deputy Attorney General
27 Attorney for State of California
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