

**EBRPD REQUEST TO SHOW
RECENT TRAIL EASEMENT
ACQUISITION ON
SUBDIVISION MAP
AND
EXCERPT OF DECEMBER 2007
TRAIL SWAP WITH
APPLICANT**

From: "Palmer Madden" <pbm@netvista.net>
To: "'Bob Drake'" <bdrak@cd.cccounty.us>, "'susan paulus'" <slppbm@netvista.net>, <sskaggs@bingham.com>
cc: <deboltcivil@earthlink.net>, "'Michael Henn'" <MHenn@cd.cccounty.us>

Date: Tuesday, January 20, 2009 05:14PM
Subject: RE: Palmer Madden - Alamo Trail Swap

Bob:

We have no objection to such a condition.
Palmer

-----Original Message-----

From: Bob Drake [mailto:bdrak@cd.cccounty.us]
Sent: Tuesday, January 20, 2009 4:25 PM
To: pbm@netvista.net
Cc: deboltcivil@earthlink.net; Michael Henn
Subject: Fw: Palmer Madden - Alamo Trail Swap
Importance: High

Palmer,

See message below from EBRPD.

They are asking us to require you to provide an updated Tentative Map to reflect the Dec. 2007 trail swap you made with them.

We do not think that is necessary at this late hour, but we would like to include a new condition of approval in our report to the Board that the new trail on Las Trampas Road be shown on the Final Map. Please let us know whether you have any issue with that by tomorrow noon.

Bob
X5-1214

----- Forwarded by Bob Drake/CD/CCC on 01/20/2009 04:21 PM -----

Michael Henn/CD/CCC

01/20/2009 09:52 AM

To

bdrak@cd.cccounty.us

cc

Subject

Fw: RE:

Palmer Madden - Alamo Trail Swap

Bob,
a potential hiccup. EBRPD seems to want us to approve an updated tentative map that shows the trail portion along LT Rd. that they swapped for in 2007. I agree De Bolt should have updated the map since they did a couple of new versions in 2008 but the changes dealt with other things. I called Diggins last week to ask why the trail wasn't shown and he said then that he'd have to get back to me. I really don't see why showing the new trail actually matters since the EBRPD already has the easement. Substituting maps at this late date would only require a reference in the COAs, I think.
Mike

-----Forwarded by Michael Henn/CD/CCC on 01/20/2009 09:47AM -----

To: "Michael Henn" <MHenn@cd.cccounty.us>
From: "John Bouyea" <jbouyea@ebparks.org>
Date: 01/15/2009 07:43AM
Subject: RE: Palmer Madden - Alamo Trail Swap

No, you are not missing anything, but we thought that the trail easement should be shown on the Vesting Tentative Map and Final Map. Again, the copy that we received is very poor along Las Trampas Road , so if the easement is shown along the length of property frontage then please disregard.

Thank you,

John Bouyea

John Bouyea

Land Acquisition Specialist

Land Acquisition Department

East Bay Regional Park District

2950 Peralta Oaks Court

Oakland , CA 94605-0381

(510) 544-2604

From: Michael Henn [mailto:MHenn@cd.cccounty.us]
Sent: Wednesday, January 14, 2009 2:19 PM
To: John Bouyea
Subject: Re: Palmer Madden - Alamo Trail Swap

John,

It is my understanding that your district had entered into an agreement to obtain the additional trail easement continuing to the east another 680+/- feet when you recorded the exchange for the so-called Wrap-around portion that was quitclaimed in 12-07. You are right the current tentative map shows the 1040+/- foot portion along LT Rd that was obtained in 1990-91, but none east of that. Not sure why that is a problem if the district has already obtained the exchange and recorded your swap. You did not ask that the County impose any further trail exaction from the developer. Therefore the park district should already have trail easements or valid agreements to obtain said easements for 1700+/- feet along LT Rd. Am I missing something?

Mike

-----"John Bouyea" <jbouyea@ebparks.org> wrote: -----

To: <MHenn@cd.cccounty.us >
From: "John Bouyea" <jbouyea@ebparks.org>
Date: 01/14/2009 12:13PM
Subject: Palmer Madden - Alamo Trail Swap

Hello Mike,

A while back you contacted me here at the East Bay Regional Park District in regard to trail easements we exchanged with Palmer Madden and Susan Paulus (Applicants and Owners), County File #GP07-0004. As you know, we recorded a Grant of Easement (Doc. 2007-0332956) and Quitclaim Deed (#2007-0345664) in Dec. of 2007. My concern is that in reviewing the ?Notice of a Public Hearing? document for the San Ramon Valley Regional Planning Commission? (Wednesday January 7, 2009 meeting) for the Madden-Paulus Residential Project, SD079210 , it does not appear that the Park Districts Trail Easement, located on the easterly portion of the property along the Las Trampas Road frontage is clearly delineated on the ?Vesting Tentative Map? for Subdivision 9210, prepared by DeBolt Civil Engineering. It also could be true that we have a poor quality copy of the map.

Could you confirm for me that the District?s Trail Easement is included on the Vesting Tentative Map, otherwise we have a real problem with the application.

Thank you,

John Bouyea

John Bouyea

Land Acquisition Specialist

Land Acquisition Department

East Bay Regional Park District

2950 Peralta Oaks Court

Oakland , CA 94605-0381

(510) 544-2604

**AGREEMENT
EAST BAY REGIONAL PARK DISTRICT
AND
PALMER B. MADDEN AND SUSAN L. PAULUS**

This Agreement is entered into and is hereby effective this 30th day of November, 2007, by and between the East Bay Regional Park District, a California special district (hereinafter "District"), and Palmer Brown Madden and Susan Lorraine Paulus (hereinafter collectively referred to as "Owner"). This Agreement is intended to and shall set forth the agreement between the District and Owner for the quitclaim by the District of any interest in certain land that had previously been offered as an easement (which offer has never been accepted by the District) and the grant by Owner of an easement over other land located along Las Trampas Road in the County of Contra Costa, State of California.

RECITALS

WHEREAS, District is a California special district authorized under the California State Public Resources Code section 5500 *et seq.*, and operating 65 regional parks and more than 1,100 miles of regional trails in Alameda and Contra Costa counties;

WHEREAS, Owner owns certain real property which contains frontage along Las Trampas Road in an unincorporated area of Contra Costa County (APNs 198-220-052, -053, -054); and

WHEREAS, Owner previously made an offer of dedication to the District for a trail easement along a portion of said real property (located on APN 198-220-054) as a condition of subdivision, by Subdivision Map recorded January 4, 1993 in Book 160 of Parcel Maps, Page 44 (the complete area of this offer is shown on Exhibit "A" attached hereto); and

WHEREAS, Owner now asks the District to quitclaim any interest in a portion of said offer of dedication in exchange for an alternative easement along the Las Trampas Road frontage of APN 198-220-052 and -053 (which easement is shown on Exhibit "A" and identified in Exhibit "B") ("the Easement Parcel"); and

WHEREAS, District has determined that the new easement alignment is of greater value to the District for trail purposes.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

1. **PROPERTY EXCHANGE**

- a) Owner, for a good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, hereby grants to District and its successors and assigns a perpetual, non-exclusive easement in gross and right-of-way (the "Easement") as described in Exhibit "B" and shown on Exhibit "A" attached hereto. Said Easement shall be for the purpose of constructing, operating and maintaining a recreational trail to be used by the general public for hiking, bicycling and equestrian use. Said Easement shall include the right to place appropriate signs within the Easement for the benefit of the general public.
- b) In exchange for said Easement, District hereby quitclaims, releases and remises to Owner all of its interest, if any, in the portion of the Dedication parcel as described in Exhibit "C" and "D" and shown

on Exhibit "A", including the offer of dedication identified in the Recitals and its right to accept said offer ("the Offer of Dedication").

- c) Except as provided herein, Owner and Owner's heirs, successors and assigns shall not place or permit to be placed within the Easement Parcel any building or structure, nor do nor allow to be done anything, which may interfere with the full enjoyment by District and the general public of the rights herein granted. Any conveyance by Owner or any of Owner's successors or assigns of fee simple title to the Easement Parcel or any part thereof shall expressly provide that it is subject to the rights herein granted to District, and to all the conditions of this Agreement.
- d) To have and to hold, all and singular, the rights above-described unto the District and the District's successors and assigns forever.
- e) Owner reserves all other rights to use the Easement Parcel not granted herein, for any purpose including by way of example but not limited to, Owner's right to use the Easement Parcel for access to Owner's remaining property, to culvert the creek for ingress and egress purposes, to construct and maintain a road for vehicular traffic, for utility purposes and for vehicular traffic, including the right to block the easement temporarily while constructing improvements or doing maintenance.
- f) The Easement conveyed hereby is subject to prior rights granted to adjoining landowners or to any others (including utility districts) over, under or above the proposed Easement Parcel. District acknowledges the right of others pursuant to recorded easements to use the property for vehicular traffic, utilities and any other usage allowed in said recorded documents. Such uses include the right to improve, maintain and as needed to temporarily block the easement for maintenance or improvements.

2. INDEMNIFICATION

- a) Property Owner shall indemnify, save, protect, defend and hold harmless the District, its directors, officers, employees, agents and contractors from and against any and all loss, liability, expense, claims, costs, suits and damages, including attorney's fees, arising out of or connected with Owner's acts on the Easement Parcel. This covenant shall be binding upon Owner's successors and assigns, and shall run with the land.
- b) The District shall indemnify, save, protect, defend and hold harmless the Owners, their successors and assigns and their employees, agents and contractors from and against any and all loss, liability, expense, claims, costs, suits and damages, including attorney's fees, arising out of or connected with the District's acts on the Easement Parcel. This covenant shall be binding upon District's successors and assigns, and shall run with the land.

3. RECITALS

The recitals contained in this Agreement shall be conclusive as between the parties hereto. Any such recital shall be incontestable in any dispute resolution proceeding between the parties and no party shall have the right to introduce evidence to the contrary in any such proceeding.

4. ATTORNEY'S FEES

In the event the District or Owner is required to retain an attorney to enforce any of the terms of the Exchange Agreement, the Court, as part of its final judgment, shall award attorney's fees and costs to the prevailing party.

5. WAIVER

The waiver or failure to enforce any provisions of the Exchange Agreement shall not operate as a waiver of any future breach.

6. MERGER

This Agreement is the complete understanding between the parties on the subject of this Agreement. It supersedes any written or oral understanding, agreement or representation.

7. INTERPRETATION

This Agreement is the subject of mutual drafting and is not to be construed against either party.

8. RECORDING

This Agreement is conditioned upon the District's Board of Directors adopting a Resolution (or equivalent formal action) authorizing execution and recordation of this Agreement. (A copy of this formal action is attached as Exhibit "E"). Upon adoption of such formal action by the Board, the Clerk of the Board, or other person expressly authorized by the Board, shall record this Agreement in the Official Records of the County of Contra Costa and promptly provide a copy to the Owner, bearing the stamp of the Recorder evidencing that it has been recorded.

9. EFFECT OF INVALIDITY OF THE QUITCLAIM

If for any reason the Quitclaim is not effective, this entire Agreement is void.

10. OWNERS

This Agreement inures to the benefit of Owners' assigns, successors and heirs.

11. NOTICES

All notices pursuant to this Exchange Agreement shall be addressed as set forth or as either party may subsequently designate by written notice and shall be sent through the United States mail or by personal delivery:

TO: DISTRICT

East Bay Regional Park District
2950 Peralta Oaks Court
P.O. Box 5381
Oakland, CA 94605-0381
ATTN: Land Acquisition Department
(510) 544-2600

TO: PROPERTY OWNER

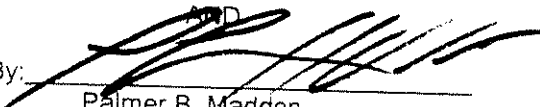
Susan Paulus & Palmer Madden
1900 Las Trampas Road
Alamo, CA 94507
(925) 838-8593

IN WITNESS WHEREOF, the parties have signed and delivered this Agreement on the date above first written.

SUSAN L. PAULUS
PALMER B. MADDEN

By: 
Susan L. Paulus

Date: 11/30/07

By: 
Palmer B. Madden

Date: 11/30/07

EAST BAY REGIONAL PARK DISTRICT,
a California special district

By: 
General Manager

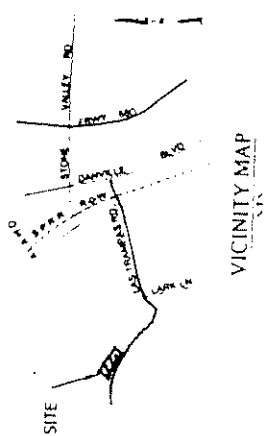
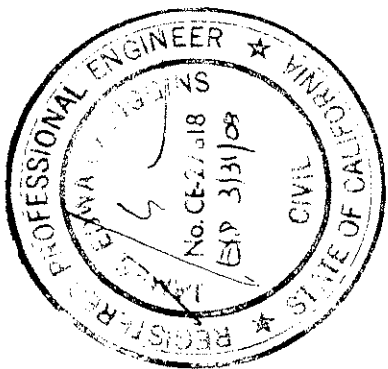
Date: 12-4-07

Approved as to form:

By: 
District Counsel

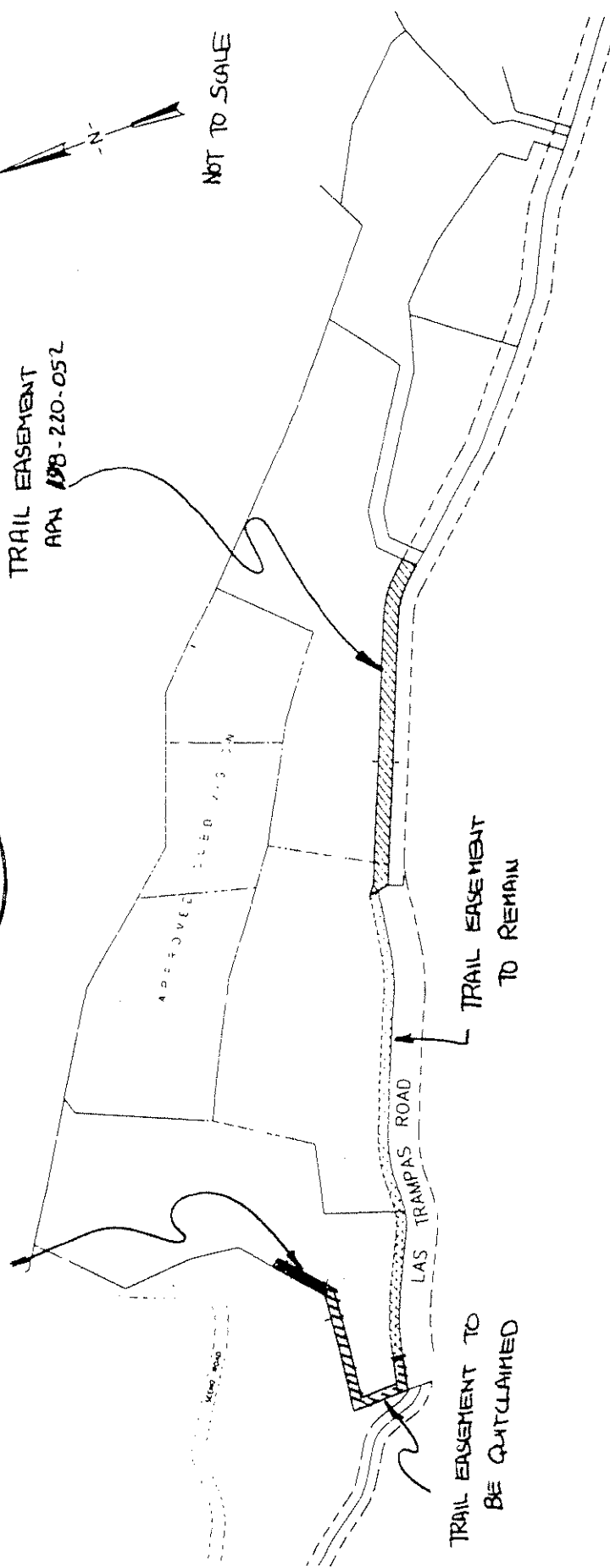
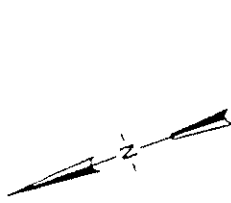
Date: Dec 3, 2007

EXHIBIT A



TRAIL EASEMENT TO
BE QUITCLAIMED

TRAIL EASEMENT
APN 198-220-052



TRAIL EASEMENT EXHIBIT

LAS TRAMPAS ROAD

ALAMO

COSTA COSTA COUNTY

CALIFORNIA

DATE	REVISION



DuBois Civil Engineering
11111 1st Street, Suite 100
San Diego, CA 92108
Tel: 619.441.1111
Fax: 619.441.1112

Recorded at the request of:

East Bay Regional Park District

When recorded please mail to:

East Bay Regional Park District

Land Acquisition Department

2950 Peralta Oaks Court

P. O. Box 5381

Oakland, CA 94605-0381

Attn: John Bouyea

APN 198-220-052 and -053 (portion)

Las Trampas Wilderness Regional Preserve

CONTRA COSTA Co Recorder Office
STEPHEN L. WEIR, Clerk-Recorder
DOC- 2007-0332956-00

Friday, DEC 07, 2007 13:22:56

FRE \$0.00

Ttl Pd \$0.00

Nbr-0003937234
1rc/R9/1-6

GRANT OF EASEMENT

For value received, **PALMER BROWN MADDEN AND SUSAN LORRAINE PAULUS**, hereinafter called GRANTORS,

Grant to **EAST BAY REGIONAL PARK DISTRICT**, a California special district, hereinafter called GRANTEE,

A perpetual nonexclusive easement and right-of-way for the purpose of constructing, operating and maintaining a multi-use recreational trail, together with the right to place appropriate signs within the easement for the benefit of the general public and to be used by the general public for hiking, bicycling and equestrian use, along and across that certain real property in an unincorporated area of the County of Contra Costa, State of California, as described as follows and made a part thereof:

SEE EXHIBIT "A" AND EXHIBIT "B" ATTACHED HERETO

Owner reserves all other rights to use the Easement Parcel not granted herein, for any purpose including by way of example but not limited to, Owner's right to use the Easement Parcel for access to Owner's remaining property, to culvert the creek for ingress and egress purposes, to construct and maintain a road for vehicular traffic, for utility purposes and for vehicular traffic, including the right to block the easement temporarily while constructing improvements or doing maintenance.

The Easement conveyed hereby is subject to prior rights granted to adjoining landowners or to any others (including utility districts) over, under or above the proposed Easement Parcel. District acknowledges the right of others pursuant to recorded easements to use the property for vehicular traffic, utilities and any other usage allowed in said recorded documents. Such uses include the right to improve, maintain and as needed to temporarily block the easement for maintenance or improvements.

TO HAVE AND TO HOLD, all and singular, the rights above described unto the GRANTEE and the GRANTEE'S successors and assigns forever.

IN WITNESS WHEREOF, the GRANTOR has executed this indenture this 30th day of November, 2007.

PALMER B. MADDEN

By

SUSAN L. PAULUS

By

ATTACH APPROPRIATE ACKNOWLEDGMENTS