

James S. Grill
P.O. Box 129
Washington, CA 95986
(530) 265-2829

Plaintiff, James S. Grill, pro se

FILED

MAR 25 2020

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY DEPUTY CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAMES S. GRILL,

Plaintiff,

vs.

THE UNITED STATES, and the
U.S.D.A. DEPARTMENT OF
AGRICULTURE, FOREST SERVICE and
Does 1-20,

Defendants.

) Case No.: **2:20 - CV - 641 - TLN EFB PS**

)
) COMPLAINT FOR QUIET TITLE TO AN
) EASEMENT TO REAL PROPERTY

) Date: April 1, 2020

I. NATURE OF THE ACTION

1. This lawsuit is brought to adjudicate a disputed title to a roadway easement ("the Historic Road") created as a public road in 1866 to which the lands of the Plaintiff are appurtenant and are therefore benefited as the dominate estate and the lands of the Defendant are burdened as the servient estate within the meaning of the Quiet Title Act.

2. The Defendants have denied Plaintiff the use of the Historic Road to access his lands (the "Property") beginning on April 2, 2008. This denial of access has caused, inter alia, his loss

1 of the "reasonable use and enjoyment" of the Property, as well as all economic beneficial uses
2 thereof.

3 **II. JURISDICTION AND VENUE**

4 3. This case arises under the laws of the United States and presents a federal question
5 within this Court's jurisdiction under 28 U.S.C. Section 2409a, "THE QUIET TITLE ACT"
6 (regarding quiet title to an easement to real property); and 28 U.S.C. 1346 (regarding the United
7 States as defendant). An actual controversy exist between the parties within the meaning of 28
8 U.S.C. 2201 (regarding Declaratory Judgments).

9 4. Venue properly lies in this Court pursuant to 28 U.S.C 139(e) because the Plaintiff
10 resides in, and the Property is located in, the Tahoe National Forest, Nevada County, California
11 known by Nevada County as 12771 Scotchman Falls Rd., Washington, CA 95986; Assessor's
12 Parcel No. 064-110-083 and 064-110-084 (a true and correct copy of the map of the Property
13 (highlighted in yellow) is attached hereto as Exhibit A).

14 **III. PARTIES**

15 5. Plaintiff, JAMES S. GRILL, a United States Citizen who resides in Nevada County,
16 California and has a titled interest in the Property. Also, as a member of the public, he has a
17 vested right to use and enjoy reasonable access on the Historic Road.

18 6. Defendants, the UNITED STATES, and DEPARTMENT OF AGRICULTURE,
19 FOREST SERVICE (Tahoe National Forest).

20 7. Plaintiff is unaware of the true identities, nature and capacities of each the
21 Defendants designated as Does 1-20. Plaintiff is informed and believes, and thereon alleges, that
22 each of Defendants designated herein as Does is in some manner responsible for the claims
23 alleged within this Complaint. Upon learning the true identities, nature and capacities of the Doe
24 Defendants, Plaintiff will amend the Complaint to allege their true names and capacities, and to
25 amend the Complaint to more fully allege Plaintiff's claim as to each Doe.
26

8. The Plaintiff and Defendants are collectively "the Parties".

IV. STATEMENT OF FACTS

9. In 1994, Plaintiff and Defendants negotiated a settlement of a quiet title lawsuit brought by Plaintiff's title insurance company to assert Plaintiff's right to use the Historic Road easement to access the Property across 46/100th (.46) miles of the lands of the Tahoe National Forest. As a negotiated condition of the settlement of that quiet title action, Plaintiff made an application to the Defendants for the recognition of the Historic Road as the easement to the Property together with a application for a Special Use Permit ("SUP") as an easement component document to contractually define the right-of-way of the Historic Road, as well as to contractually define the methods of improvements to that road (A true and correct copy of the SUP is attached hereto as Exhibit B). As the first component of that application, Defendants authored an Environmental Analysis ("EA") that conducted numerous environmental and cultural studies. They also commissioned within the EA a licensed survey of the Historic Road right-of-way to determine whether the present location of the Historic Road was identical to the 1866 constructed location (it did) (A true and correct copy of the EA is attached hereto as Exhibit C). Upon completion of the EA, the Defendants authored the second component of the application, a Decision Notice and Findings Of No Significant Impact ("FONSI") wherein they determined that Plaintiff had an easement to the Property via the Historic Road under 16 U.S.C. Sections 3210 and 1323(a) The Alaska National Interest Land Conservation Act of Dec. 2, 1980 P.L. 96-487, Title XIII 94 Stat. 2457 ("ANILCA") (A true and correct copy of the FONSI is attached hereto as Exhibit D). Thereupon, Defendants issued the SUP that defined: (a) the Historic Road Right-of-Way vis a vis the licensed survey plat that was attached as the binding Exhibit A-1 thereto; (b) the methods of construction, reconstruction and maintenance of that

roadway including an engineered bridge to replace the historical wet crossing still in use at the time of the SUP issuance; and (c) defined it as an easement component document...."is subject to all existing easements and rights existing on this date". As with any easement component document, it was recorded with the Nevada County Recorder on May 17, 1999 as Instrument No. 99017236. Most importantly, as with any easement component document, it existed in perpetuity under its own terms and conditions.

10. Notwithstanding that it was an irrevocable easement component document in perpetuity, Defendants formally revoked and terminated the SUP and the ANILCA easement access on April 2, 2008 stating that any reinstatement would be a new application (A true and correct copy of Defendants termination letter is attached hereto as Exhibit E). Moreover, when Plaintiff subsequently attempted a formal appeal of Defendants termination action (unlawfully denied), Defendant's response was that a new ANILCA easement application would require a new EA, EIR and more, all of which would require indeterminable time frames to complete, together with an indeterminable price tag. And by the way, Defendants stated that there would be no guarantee that the easement would be approved upon completion of the new application. In other words by their termination action, Defendants unlawfully redefined the Historic Road from an ANILCA easement into a license. Moreover, as a license, any use of it thereafter was subject to Defendants prior approval using the criteria stated above. Even then they declared, the easement access could be unilaterally approved or disapproved for any reason they chose.

V. GENERAL ALLEGATIONS:

NATURE OF THE PLAINTIFFS RIGHT, TITLE AND INTEREST TO THE HISTORIC ROAD EASEMENT AQUIRED UNDER THREE CONGRESSIONAL ACTS

1 **1. Easement by the Congressional "The Railroad Grant" Act of 1862:**

2 11. The Property was grant patented ("Grant Patent") to the Central Pacific Railway
3 Company by the United States Government on April 4, 1901 by authority of the July 1, 1862
4 Grant Railroad Union and Central Pacific Act (12 Statute 489); (see Bureau of Land
5 Management General Office Record Accession No. 1097094 @ Meridian Mt. Diablo, T017N,
6 R011E, Section 7 a true and correct copy is attached hereto as Exhibit E).

7 12. With the Grant Patent was conveyed an implied easement and easement by
8 necessity. Easements by implication and necessity run with the land and are therefore
9 appurtenant, or benefit the Property as the dominate estate. Easements by implication and
10 necessity are said to be created by operation of law. Therefore successors in title to the Property,
11 such as Plaintiff as an individual and in-holder of the Property surrounded by Defendants lands,
12 are the lawful beneficiaries of those easements (see *Lester Adams v. The United States* 3F.3d 1254
13 (9th Cir. 1980) "*In Montana Wilderness Ass'n. v. United States Forest Service*, 496 F. Supp. 880
14 (D. Mont. 1980) the district court found that a railroad has access to its property surrounded by
15 federal land through an easement of necessity, implication and under the Organic Act".

16 13. Under the Railroad Grant Act of 1862 therefore, Plaintiff has an easement of
17 implication and necessity to access the Property via the Historic Road.

18 **2. Easement by Congressional "RS 2477" Act of 1866:**

19 14. Again quoting the 9th Circuit Court in *Lester Adams v. United States Forest*
20 *Service*: "To establish an easement under RS 2477 [the Plaintiff] must show that the road is
21 question was built in its present location before the surrounding land lost its public character in
22 1906; see *Humbolt County v. United States*, 684 F.2d 1276, 1281 (9th Cir. 1982)".

23 15. The Defendants are on record via the EA that the Historic Road was build in its
24 present location as a public road prior to 1866 to connect the gold rush towns of Washington and
25 Omega. The EA then went on to state relative to the SUP improvements to the Historic Road:
26

1 "The road would follow an historic roadbed that currently exist"; "Designing the road to follow
2 the historic road bed"

3 16. Moreover, the Defendants obligation to acknowledge and enable the Plaintiff to use
4 the Historical Road as the easement to the Property under RS 2477 is authoritatively defined by
5 Forest Service Land Management Policy within the FOREST SERVICE MANUAL FSM 2700 -
6 CHAPTER 2730 - ROAD AND TRAIL RIGHT-OF-WAY GRANTS:

7 2734.5: RS 2477 Rights-of-Way Granted by Statute: "Although the 1866 act was
8 repealed...in 1976, rights, which preexisted the establishment of the National Forest [in 1906]
9 are preserved";

10 2734.51: Responsibility of the Agency [USDA Forest Service] and Right-of-Way holder
11 [Plaintiff]: "This policy addresses the creation and abandonment of property interest under RS
12 2477 and the respective property rights of the holder of a R/W and the owner of the servient
13 estate. Under the grant offered by RS 2477, and validly accepted, the interest of the Agency are
14 that of the owner of the servient estate and adjacent lands/reserves. In this context, the
15 Department has no management control under RS 2477 over proper uses of the highway and
16 highway R/W unless we can demonstrate degradation of the servient estate. Reasonable activities
17 within the R/W are within the jurisdiction of the holder. As such, the Department has no
18 authority under RS 2477 to review and/or approve such reasonable activities".

19
20 17. Under the Congressional RS 2477 Act of 1866 therefore, Plaintiff as the holder
21 thereof, has an easement to access the Property via the Historic Road.

22 **3. Easement by Congressional "ANILCA" Act of 1980:**

23 18. Again quoting the 9th Circuit Court in *Lester Adams v. the United States Forest*
24 *Service*: "[ANILCA] provides the Adam's easement. It commands the Secretary of Agriculture to
25 provide access to secure the owner's reasonable use and enjoyment. The Adam's reasonable use
26

1 and enjoyment clearly rest on their ability to freely access their property. We find the Adam's
2 have an easement over the Forest Service Road".

3 19. The Defendants are on record within the FONSI that the Property had an ANILCA
4 easement via the Historic Road: "The reasons for selecting this action are that the [Historic
5 Road] provides reasonable access to private property as required by [ANILCA]"; "During the
6 analysis it was apparent that an issue was Mr. Grill's access to the federal lands ...through the
7 [Historic Road]. Mr. Grill does have legal access via this road".

8 20. Moreover, the Defendants obligations to acknowledge and enable the Plaintiff to
9 use the Historic Road as the easement to the Property is authoritatively defined by Forest Service
10 Land Management Policy within FSH 2709.12 CHAPTER 60 ALASKA NATIONAL
11 INTEREST LAND CONSERVATION ACT (ANILCA) RIGHTS OF WAY: "ANILCA is a
12 statutory right of access that attaches to the land in order to secure to the owner the reasonable
13 use and enjoyment thereof"; "Appropriate access to non-federal land to use and manage that land
14 constitutes entry for lawful and proper purpose and must be allowed"; "Access rights to non-
15 federal land are not affected by land management planning considerations or procedures";
16 "Statutory rights of access attach to the land. Therefore applications for ANILCA access must be
17 made by the landowner" (Plaintiff as the landowner/holder in 1994 did apply for an application
18 and it was granted in 1999 vis a vis the EA, FONSI and the SUP).

19 21. If ANILCA easements run with the land, as defined by Defendants above, then it is
20 a property interest and entitlement that is subject to protection under the 5th Amendment to the
21 United States Constitution (see *United States v. Welch* US 333, 305 CT 527 (1910). As a
22 constitutional protected right, it cannot be terminated by Defendants. (see *Wedges/Ledges of*
23
24
25
26

1 *Cal., Inc. v. City of Phoenix* 24 F.3d, 56, 62 (9th Cir. 1994). Also see *Stiesberg v. State of*
2 *California*, 80 F.3d 353, 356 (9th Cir. 1996).

3 22. Under Congressional ANILCA Act of 1980 therefore, Plaintiff has an easement to
4 access the Property via the Historic Road.

5 **4. Easement by California Appellate Common Law:**

6 23. California appellate case law also recognizes easements by implication and
7 necessary. "An easement by way of necessity arises...when it is established that (1) there is a
8 strict necessity for a right-of-way, as when the claimant's property is landlocked and (2) the
9 dominant and servient tenements were under the same ownership at the time of conveyance
10 giving rise to necessity"; *Kellogg v. Garcia* 102 P.3d (Cal.Ct.App. 2002) citing *Moore v. Walsh*
11 (1995) 38 Cal.App. 4th 1046 (Moore). "In analyzing the Moores' claim that an easement by
12 necessity existed, the appellate court ruled that an easement by way of necessity may arise from
13 lands owned by the federal government...In coming to this conclusion, the Moores' court cited
14 two federal cases finding that an easement by necessity can exist where the federal government
15 conveyed a property landlocked by other federal property [Grant Patent]: *State of Utah v. Andrus*
16 (D Utah 1979) 486 F. Supp. 995, 1002; and *Kinsherp v. United States* (10th Cir. 1979) 586 F.2d
17 159, 161". The *Kellogg* court then concludes: "Since the Kellogg's property was landlocked at
18 the time it was conveyed to their predecessor-in-interest, and the dominant and servient
19 tenements were under the same ownership at the time of the conveyance, that of the federal
20 government, an easement by way of necessity arose. And since there was no evidence that the
21 necessity ceased to exist, the Kellogg's are entitled to an easement by way of necessity through
22 the existing roadway that crosses the Garcia's property so that they can access their landlocked
23 property".
24
25
26

24. California appellate case law also recognizes RS 2477 easements rights as both the informal and customary use by the public and formal action by public authority as sufficient to constitute the dedication of a public highway to among other things, allow landowners as members of the public to access their private property that was appurtenant to that highway (see *Ball v. Stephens*, 158 P2d 207 (Cal. Ct. App. 1948): "Acceptance of the offer of government [Congressional RS 2477 Act of 1866] could be manifested and dedication could be effected by selection of a route [Historic Road R/W] and its establishment as a highway by public authority [Nevada County]. Dedication could also be effected without action by the state or county, by laying out of a road and its use by the public sufficient in law to constitute acceptance by the public of an offer of dedication...".

5. Definition of an Easement:

25. The 9th Circuit Court in its discussion of *Lester Adams v. the United States Forest Service* made the following reference: "(See 25 Am. Jur.2d Easements and Licenses Sec's 64, 77, 78 (1966)) 'The extent of a way of necessity is that which is required for the complete and beneficial use of the land to which such way is impliedly attached'. at Sec/83)". (see *Lester Adams* in Paragraphs 12, 14 and 18 above). Also see the Court Note No. 3 attached to *Montana Wilderness Ass'n. v. United States*: "See, generally, 3 Powell on Real Property sec. 410 (1979); 2 Thompson on Real Property sec. 363, at 424-27 (1961 and 1978 Supp.; Comment, Easement by Way of Necessity Across Federal Lands, 35 Wash.L.Rev. 105, 107 (1960)". (see *Montana Wilderness* in Paragraph 12 above). A summary of the text within the foregoing easement references are as follows:

What is an Easement: An easement is a property right that gives its holder a non-possessory property interest to use property that the holder does not own. The holder can be a governmental

1 entity and/or an individual(s). Land affected or burdened by an easement is called a servient
2 estate while the party benefited by the easement is called the dominant estate. If the easement
3 benefits a particular piece of land, it is said to be appurtenant to that land.

4 **Use of the Easement:** The person or entity who uses the easement is the easement holder. The
5 holder has a duty to maintain the easement. The owner of the land, the servient estate, may not
6 interfere with the easement holder's use and enjoyment of the easement.

7 **Termination of an Easement:** Easements run with the land and therefore do not terminate when
8 title is transferred to successor owners of the dominant estate. Moreover, easement will continue
9 indefinitely and cannot be terminated except by one of the following: (a). express agreement of
10 the servient and dominant estates to terminate the easement; (b). abandonment where the holder
11 takes affirmative action to abandon the easement. Non-use of the easement does not qualify as
12 abandonment; (c). ending by necessity when not needed; (d). merger if the dominant estate
13 purchases the servient estate; (e). condemnation by a government authority in consideration of
14 just compensation for the value of the dominant estate and land benefited thereof.
15

16 **VI. CLAIMS FOR RELIEF FOR QUIET TITLE TO AN EASEMENT:**

17 **FIRST CLAIM FOR RELIEF**

18 **Violation of the Congressional Railroad Grant Act of 1862**

19 26. Plaintiff incorporates all preceding paragraphs as if fully set forth herein.

20 27. The Railroad Grant Act of 1862 that conveyed the lands of the United States to
21 Plaintiff's predecessor in property interest also conveyed an easement by implication and
22 necessity. Both Federal and State courts have firmly ruled that easements by implication and
23 necessity are black letter common law. In 1901 when the foregoing conveyance was made,
24 pursuant to the findings of the EA the Historic Road was in constant public use for both private
25 and commercial uses. By implication therefore, it constituted an easement to and through the
26

1 Property during its course between the town sites. It was similarly used by Plaintiff predecessors
2 in interest up to when he purchased the Property in 1992 and had been similarly used by Plaintiff
3 up to April 2, 2008 when Defendants closed the Historic Road, (the only "reasonable" access to
4 the Property"; see FONSI page 2).

5 28. Because such willful acts by the Defendants have unlawfully violated the
6 Congressional Railroad Act of 1862, Plaintiff has suffered the loss of the easement access to the
7 Property and therefore Plaintiff is entitled to a judgment that the Historic Road is an easement of
8 which Plaintiff is the holder; and as the holder of that easement, he is also entitled to a judgment
9 that he can use that easement pursuant to the foregoing Section 5, Paragraph 25 "Definition of an
10 Easement".

11
12 **SECOND CLAIM FOR RELIEF**
13 **Violation of the Congressional RS 2477 Act of 1866:**

14 29. Plaintiff incorporates all preceding paragraphs as if fully set forth herein.

15 30. The Congressional RS 2477 of 1866 granted the right of the public to build roads on
16 public lands. As mentioned heretofore, both Federal and State Courts have firmly ruled as black
17 letter law that RS 2477 road right-of-ways ("R/W") are easements to lands that are appurtenant
18 thereto, such as the Property, and the Plaintiff therefore as holder of that easement has the lawful
19 right to use that easement. The construction of the Historical Road by the County of Nevada
20 prior to 1866, and subsequent continual use of the roadway since that time constituted a valid
21 acceptance and dedication to the public and landowners along the right-of-way under the RS
22 2477 Congressional Act.

23
24 31. The creation of the Forest Service in 1906 did not invalidate that acceptance and
25 dedication. Furthermore, by the Defendants own Policy Statement, the Defendants have ... "no
26 management control over proper uses of the [Historical Road and Historical Road R/W.

1 ... "Reasonable activities within the R/W are within the jurisdiction of the holder [Plaintiff]....the
2 [Forest Service] has no such authority to review and/or approve such reasonable activities".

3 32. Notwithstanding the above, Defendants on April 2, 2008 violated their own Policy
4 Statement and the law when they refused Plaintiff access to his Property on the Historic Road by
5 audaciously demanding that any new reinstatement of the of use the access easement would be
6 under their "authority to review and/or approve such reasonable activities" and thereafter
7 Defendants would unilaterally exercise whatever "management control" over use of the
8 Historical Road as they thought proper.

9
10 33. Because such willful acts by the Defendants have unlawfully violated the
11 Congressional RS 2477 Act of 1866, Plaintiff has suffered the loss of an easement access to the
12 Property and therefore Plaintiff is entitled to a judgment: (a). that the Historic Road is an
13 easement of which Plaintiff is the holder; (b). that reasonable activities by the holder on the
14 easement is not subject to Defendants review and/or approval; (c). that use of the easement is not
15 subject to Defendants management control such as prior approval; and (d) that Plaintiff as the
16 holder can use the easement pursuant to foregoing Section 5, Paragraph 25 "Definition of an
17 Easement".

18
19 **THIRD CLAIM FOR RELIEF**
Violation of the Congressional ANILCA Act of 1980:

20 34. Plaintiff incorporates all preceding paragraphs as if fully set forth herein.

21
22 35. The Congressional ANILCA Act of 1980 commanded the Secretary of Agriculture
23 to granted access easements to inholder private lands within the National Forest System for the
24 owner's reasonable use and enjoyment thereof. Plaintiffs reasonable use and enjoyment of the
25 Property, as defined by the 9th Circuit Court in *Lester Adams v. the United States Forest Service*
26 "clearly rest on [his] ability to freely access" his Property.

1 36. On April 2, 2008, the Defendants denied Plaintiff the use of his ANILCA easement
2 on the Historical Road that they had unconditionally acknowledged and granted in 1999.
3 Furthermore, Defendants thereafter mandated that a reinstatement of that easement would be a
4 new application that would be conditioned on Defendants prior approval. Furthermore,
5 Defendants stated that any prior approval by them was discretionary by whatever decision
6 process they solely elected it would be, or not be. Or maybe they stated, no easement would be
7 forth coming in any event.

8 37. Because such willful acts by the Defendants have unlawfully violated the
9 Congressional ANILCA Act of 1980, Plaintiff has suffered the loss of the easement access to the
10 Property and therefore he is entitled to a judgment that: the Historic Road is an easement and
11 Plaintiff is the holder thereof; that as holder of that easement, he is entitled to the use of that
12 easement pursuant to the foregoing Section 5, Paragraph 25 "Definition of an Easement".
13

14 **WHEREFORE** Plaintiff prays for judgment against the Defendants and each of them as
15 to all claims for relief as follows:

16 A. Judgment by the court declaring that the easements created under the foregoing three
17 Congressional Act are valid easements insomuch the Defendants are burdened as the servient
18 estate thereto, and that Plaintiff is benefitted as the dominant estate thereto, and that the Property
19 is appurtenant to those easements;
20

21 B. Judgment by the court declaring that Defendants cannot exercise any discretionary
22 reviews, approvals or management controls over Plaintiffs use of the easements created by the
23 three Congressional Acts, and therefore Plaintiffs reasonable use of the easement are defined by
24 the foregoing Section 5, Paragraph 25 "Definition of an Easement";
25
26

1 C. Judgment by the court that the three Congressional Acts conveyed a property right
2 and an entitlement right that under the definition of the foregoing United States Supreme Court
3 decision are protected under the 5th Amendment to the United States Constitution;

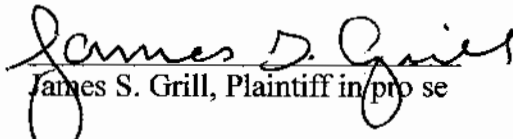
4 D. A judicial determination of any liability of the Defendants, and each of them, is
5 necessary and appropriate at this time in order that Plaintiff may ascertain its rights against
6 Defendants, and each of them;

7 E. Attorney fees if applicable, and the cost of the suit;

8 F. Any other cost or damages that this court shall deem proper.
9

10 Dated March 27, 2020

Respectfully submitted

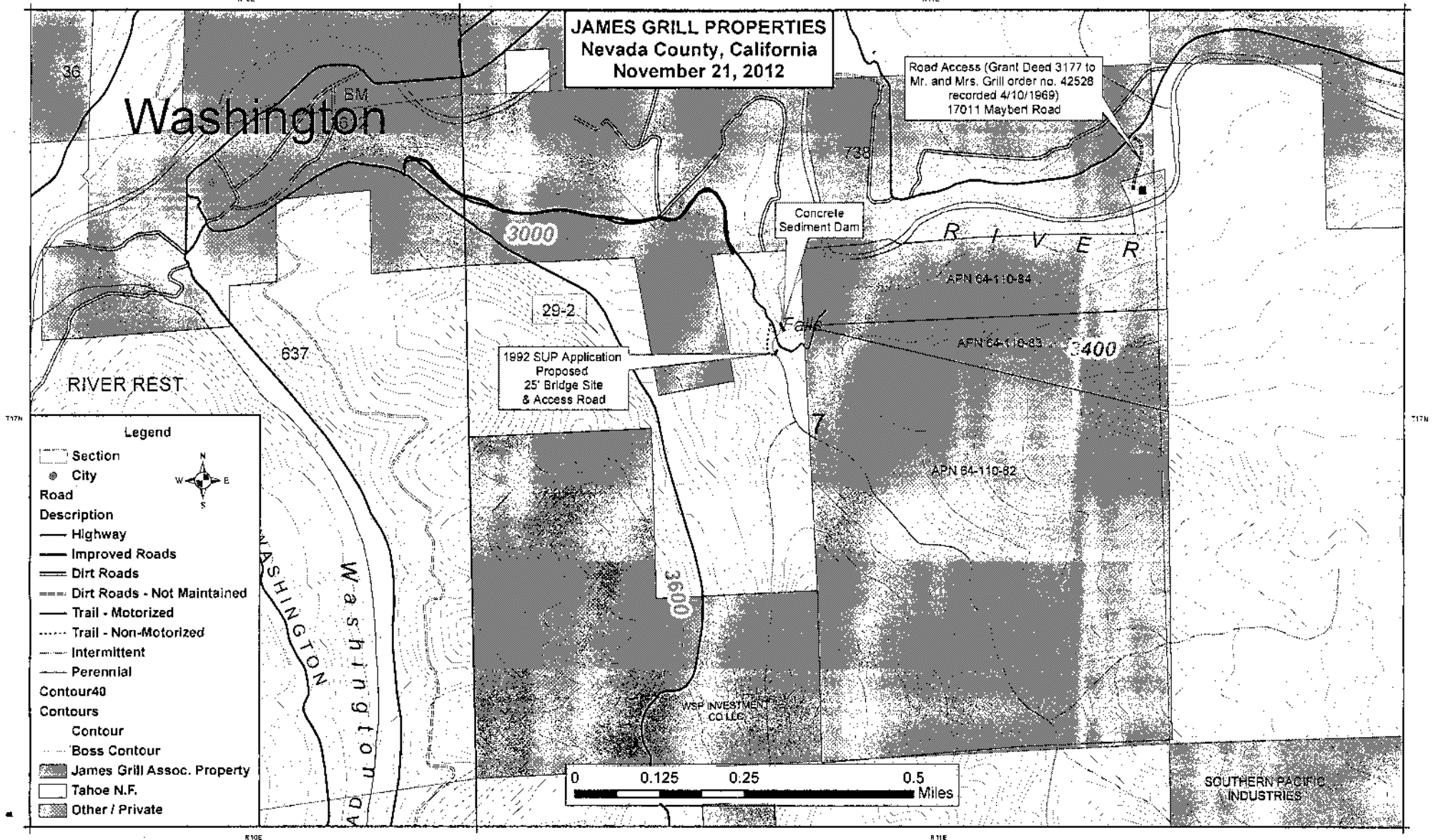
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13 James S. Grill, Plaintiff in pro se
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24 This document contains 4,040 words according to the word count on this computers "Micro-soft
25 Words" program.
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EXHIBIT A

MAP OF "THE PROPERTY" (HIGHLIGHTED IN YELLOW)

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SER 000097

EXHIBIT B

SPECIAL USE PERMIT ("SUP")

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United States
Department of
Agriculture

Forest
Service

Tahoe
National
Forest

631 Coyote Street
Nevada City, CA
95959-2250
530 265-4531
530 478-6118 TDD
530 478-6109 FAX

File Code: 2730-3-1

Date: FEB 23 1999

James S. Grill
3555 Fourth Street
Santa Rosa, CA 95405

Dear Mr. Grill:

Enclosed is a fully executed and notarized copy of your Special-use Permit for the access road to your private property east of Scotchman Creek (Holder #6516-01). Upon receipt and approval of your engineering plans and drawings, a fully executed copy of the construction stipulations will be sent to you.

If you have any questions, please call Art Umland, Special Use Administrator, Nevada City Ranger District, at (530) 478-6228.

Sincerely,


STEVEN T. EUBANKS
Forest Supervisor

Enclosure

cc:
A.Umland, NCRD



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10

RECORDING REQUESTED BY:

A |

99017236

RETURN TO:

JAMES GRILL
3850 MONTECITO AVE
SANTA ROSA, CA

Recorded in Official Records, County of Nevada, Lorraine Jewett-Burdick, Clerk/Recorder

64.00

99017236 12:21pm 05/17/99

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2/11 Prelim

95404

DOCUMENT TITLE

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION

(Govt. Code 27361.6)

Additional Recording Fee Applies

SER 000024

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99017236

PS-2700-4c (4/97)
OMU No. 0596-0082

U. S. DEPARTMENT OF AGRICULTURE Forest Service PRIVATE ROAD SPECIAL-USE PERMIT Act of October 21, 1976 (PL 94-579); 36 CFR 251.50, et seq	Holder No.	Issue Date	Expir. Date
	6 5 1 6-0 1	11/17/98	12/31/01
	Type Site	Authority	Auth. Type
	7 5 3/6 4 4	6 2 6	- 2 0 -
	Region/Forest/District		State/County
	0 5/1 7/5 5		0 6/ 0 5 2
	Cong. Dist.	Latitude	Longitude
	0 2	- - - - -	- - - - -

James S. Grill of 3555 Fourth Street, Santa Rosa, CA 95405 (hereafter called the Permittee) is hereby authorized to use National Forest lands for the, construction, reconstruction, maintenance, and use of a road, within the Tahoe National Forest for the following purposes:

to gain vehicle access to private property, which is landlocked by National Forest System Lands. Use also includes construction and maintenance of a bridge on said roadbed and burying and maintaining a 6" or less utility conduit in said roadbed.

The lands covered by this permit are located in the County of Nevada, State of California and are described as follows:

A portion of the E 1/2 SE 1/4 NW 1/4 Section 7, T.17N., R.10E., MDM.

This permit covers a right-of-way 0.46 miles in length, 14 feet in width, containing approximately .78 acres, and is located upon the ground according to the survey line, figures, measurements, widths, and other references shown on the maps or plat attached hereto and made a part hereof. (See Exhibits A and A-1)

This permit is made subject to the following terms, provisions, and conditions:

1. This permit is subject to all existing easements and valid rights existing on this date.
2. The Permittee in exercising the privileges granted by this permit shall comply with all applicable State and Federal laws, Executive Orders, and Federal rules and regulations, and shall comply with all State standards for public health and safety, environmental protection, and siting construction, operation, maintenance of or for rights-of-way for similar purposes if those standards are more stringent than applicable Federal standards.
3. The Permittee shall cut no timber except as authorized by construction stipulations or maintenance agreements, which will be made a part of this permit (Exhibit B), after final design specifications are submitted.
4. The Permittee shall provide maintenance so that no damage occurs on adjacent National Forest land. The Permittee shall construct and maintain lead-off drainage and water barriers as necessary to prevent erosion.

99017236

5. Permittee shall pay the United States for all injury, loss, or damage, including fire suppression costs, in accordance with Federal and State laws.

6. Permittee shall pay annually in advance a sum determined by the Forest Service to be the fair market value of the use authorized by this permit. The initial payment is set at \$30.00 for the remainder of the calendar year. Payments for each subsequent calendar year shall be the amount of \$30.00 adjusted using the Implicit Price Deflator-Gross National Product index (IPD-GNP), or other factor selected by the Forest Service, to reflect more nearly the current fairmarket value of the use. At intervals to be determined by certain changes in the indexes used to establish the linear rights-of-way fee schedule, the fee shall be reviewed and adjusted as necessary to assure that it is commensurate with the value of the rights and privileges authorized. Failure of the Permittee to pay the annual payment, late charges, or other fees or charges shall cause the permit to terminate.

7. The Permittee shall pay an interest charge on any fee amount not paid by the payment due date.

Interest shall be assessed using the most current rate prescribed by the United States Department of Treasury Financial Manual (TFM-6-8020). Interest shall accrue from the date the fee payment was due. In addition, certain processing and handling administrative costs may be assessed in the event the account becomes delinquent and added to the amounts due.

A penalty of 6 percent per year shall be assessed on any fee amount overdue in excess of 90 days from the due date of the first billing.

Payments will be credited on the date received by the designated collection officer or deposit location. If the due date(s) for any of the above payments or fee calculation statements fall on a nonworkday, the charges shall not apply until the close of business of the next workday.

8. All construction or reconstruction of the road shall be in accordance with plans, specifications, and written stipulations approved by the Forest Service prior to beginning such reconstruction. (See Exhibit B)

9. The Permittee shall repair fully all damage to National Forest roads and trails caused by the exercise of the privileges granted by this permit.

10. The United States may use the roads without cost for all purposes deemed necessary or desirable in connection with the protection and administration of the lands or resources of the United States, provided that it will use the road for commercial hauling purposes, other than the removal of timber cut in construction or maintenance of the road or other occasional incidental use, only after arranging to pay or perform its pro rata share of road maintenance.

11. The Forest Service alone may extend rights and privileges for use of the road constructed on the premises to other non-Federal users provided that such users shall pay a fair share of the current replacement cost less depreciation of the road to the permittee, and reconstruct the road as necessary to accommodate their use.

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12. The Forest Service retains the right to occupy and use the right-of-way and to issue or grant rights-of-way for land uses, for other than road purposes, upon, over, under, and through the permit area provided that the occupancy and use do not interfere unreasonably with the rights granted herein.

13. The Forest Service shall have the right to cross and recross the premises and road at any place by any reasonable means and for any purpose in such manner as does not interfere unreasonably with use of the road.

14. The Permittee shall maintain the right-of-way clearing by means of chemicals only after the Forest Supervisor has given specific written approval. Application for such approval must be in writing and must specify the time, method, chemicals, and the exact portion of the right-of-way to be chemically treated.

15. This permit may be terminated or suspended upon breach of any of the conditions herein.

16. Upon termination or revocation of this special-use authorization, the Permittee shall remove within a reasonable time the structures and improvements and shall restore the site to a condition satisfactory to the authorized officer, unless otherwise waived in writing or in the authorization. If the Permittee fails to remove the structures or improvements within a reasonable period, as determined by the authorized officer, they shall become the property of the United States, but this does not relieve the Permittee from liability for the removal and site restoration costs.

17. Nonexclusive Use and Public Access. Unless expressly provided for in additional terms, use of the permit area is not exclusive. The Forest Service reserves the right to use or allow others to use any part of the permit area, including roads, for any purpose, provided, such use does not materially interfere with the holder's authorized use. A final determination of conflicting uses is reserved to the Forest Service.

18. Forest Service Right of Entry and Inspection. The Forest Service has the right of unrestricted access of the permitted area or facility to ensure compliance with laws, regulations, and ordinances and the terms and conditions of this permit.

19. Liability. For purposes of this section, "holder" includes the holder's heirs, assigns, agents, employees, and contractors.

- a. The holder assumes all risk of loss to the authorized improvements.
- b. The holder shall indemnify, defend, and hold the United States harmless for any violations incurred under any such laws and regulations or for judgments, claims, or demands assessed against the United States in connection with the holder's use or occupancy of the property. The holder's indemnification of the United States shall include any loss by personal injury, loss of life or damage to property in connection with the occupancy or use of the property during the term of this permit. Indemnification shall include, but is not limited to, the value of resources damaged or destroyed; the costs of restoration, cleanup, or

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other mitigation; fire suppression or other types of abatement costs; third party claims and judgments; and all administrative, interest, and other legal costs. This paragraph shall survive the termination or revocation of this authorization, regardless of cause.

- c. The holder has an affirmative duty to protect from damage the land, property, and interests of the United States
- d. In the event of any breach of the conditions of this authorization by the holder, the Authorized Officer may, on reasonable notice, cure the breach for the account at the expense of the holder. If the Forest Service at any time pays any sum of money or does any act which will require payment of money, or incurs any expense, including reasonable attorney's fees, in instituting, prosecuting, and/or defending any action or proceeding to enforce the United States rights hereunder, the sum or sums so paid by the United States, with all interests, costs and damages shall, at the election of the Forest Service, be deemed to be additional fees hereunder and shall be due from the holder to the Forest Service on the first day of the month following such election.
- e. With respect to roads, the holder shall be proportionally liable for damages to all roads and trails of the United States open to public use caused by the holder's use to the same extent as provided above, except that liability shall not include reasonable and ordinary wear and tear.
- f. The Forest Service has no duty to inspect the permit area or to warn of hazards and, if the Forest Service does inspect the permit area, it shall incur no additional duty nor liability for identified or non-identified hazards. This covenant may be enforced by the United States in a court of competent jurisdiction.

20. Unless sooner terminated in accordance with the provisions of the permit, this permit shall expire and terminate on December 31, 2007. At that time, if the permittee still needs the road for the purposes for which the permit is granted, the permit will be reissued for successive periods of 10 years. At the time of reissuance, the terms and conditions may be modified and new conditions or stipulations added at the discretion of the Forest Service.

In Witness Whereof, the parties hereto have caused this permit to be duly executed on this 17 day of NOVEMBER 1998.

Permittee

USDA - Forest Service
Forest Service
Tahoe National Forest

by James S. Grill
JAMES S. GRILL

by Stevin T. Eubanks
STEVEN T. EUBANKS
Forest Supervisor

STATE OF CALIFORNIA)
COUNTY OF Sonoma) SS

99017236

On 11.17/98, before me, Kathleen L. Engler,
personally appeared James S. Grill

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal:

Kathleen L. Engler
Signature



(Seal)

***** OPTIONAL *****

THIS CERTIFICATE MUST BE ATTACHED TO
THE DOCUMENT DESCRIBED AT RIGHT:

TITLE OR TYPE OF DOCUMENT: _____

NO. OF PAGES: _____ DATE OF DOCUMENT: _____

Though the data requested here is not
required by law, it could prevent
fraudulent reattachment of this form.

SIGNER(S) OTHER THAN NAMED ABOVE: _____

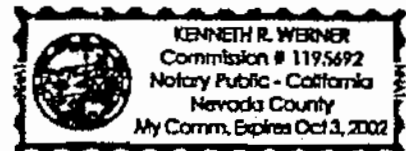
STATE OF CALIFORNIA)
COUNTY OF Nevada) SS

On 1/6/1999, before me, Kenneth R. Werner,
personally appeared STEVEN T. EUBANKS

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal:

Kenneth R. Werner
Signature



(Seal)

***** OPTIONAL *****

THIS CERTIFICATE MUST BE ATTACHED TO
THE DOCUMENT DESCRIBED AT RIGHT:

TITLE OR TYPE OF DOCUMENT: Private Road Special -
Use Permit

NO. OF PAGES: 34 DATE OF DOCUMENT: 11/17/1998
including exhibits and acknowledgment

Though the data requested here is not
required by law, it could prevent
fraudulent reattachment of this form.

SIGNER(S) OTHER THAN NAMED ABOVE: _____

James S. Grill

SER 000029

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99017236

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082.

This information is needed by the Forest Service to evaluate requests to use National Forest System lands and manage those lands to protect natural resources, administer the use, and ensure public health and safety. This information is required to obtain or retain a benefit. The authority for that requirement is provided by the Organic Act of 1897 and the Federal Land Policy and Management Act of 1976, which authorize the Secretary of Agriculture to promulgate rules and regulations for authorizing and managing National Forest System lands. These statutes, along with the Term Permit Act, National Forest Ski Area Permit Act, Granger-Thye Act, Mineral Leasing Act, Alaska Term Permit Act, Act of September 3, 1954, Wilderness Act, National Forest Roads and Trails Act, Act of November 16, 1973, Archeological Resources Protection Act, and Alaska National Interest Lands Conservation Act, authorize the Secretary of Agriculture to issue authorizations for the use and occupancy of National Forest System lands. The Secretary of Agriculture's regulations at 36 CFR Part 251, Subpart B, establish procedures for issuing those authorizations.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.

Public reporting burden for this collection of information, if requested, is estimated to average 1 hour per response for annual financial information; average 1 hour; response to prepare or update operation and/or maintenance plan; average 1 hour per response for inspection reports; and an average of 1 hour for each request that may include such things as reports, logs, facility and user information, sublease information, and other similar miscellaneous information requests. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB # 0596-0082), Washington, D.C. 20503.

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Document 1

Filed 03/30/2010

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JAMES S. GRILL
T.17N. R.10E. S.7 MDH
AREA MAP (EXHIBIT A)

7/97 grs

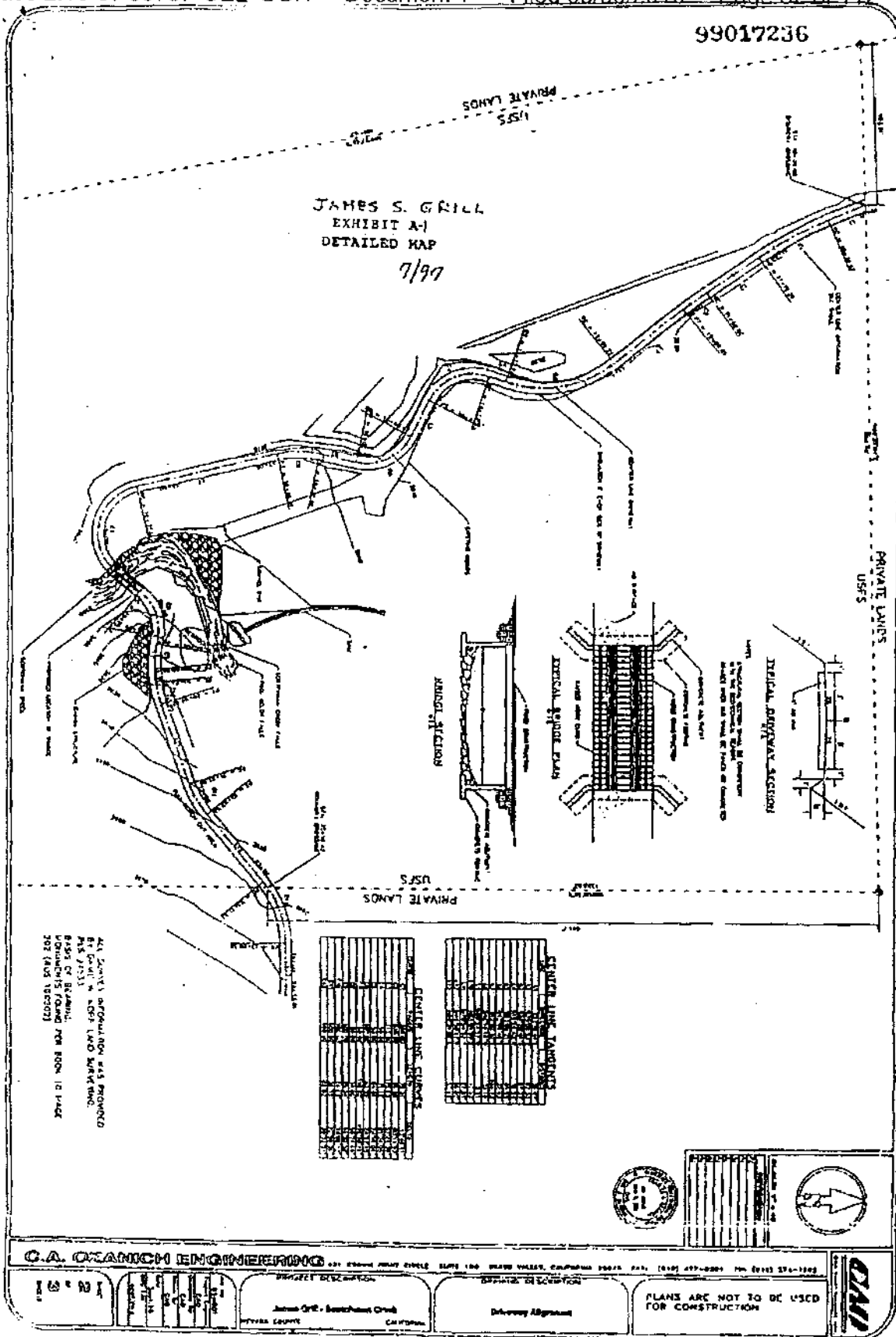
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See Exhibit A-1

LEGEND

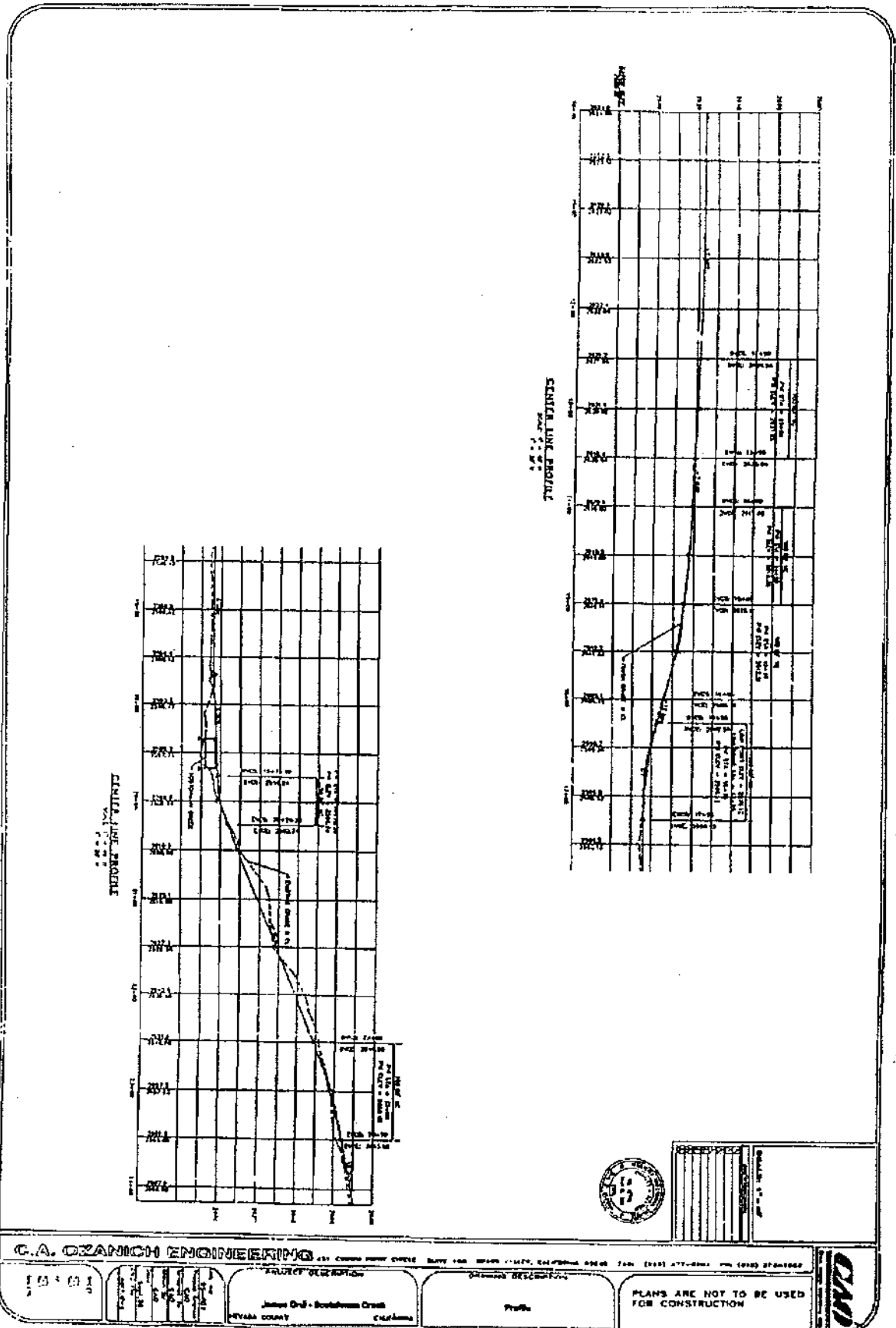
*** GENERAL PERMIT AREA
— NP/PRIVATE LANDS

SER 000031



SER 000032

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SER 000033

END OF DOCUMENT

EXHIBIT C

Environmental Assessment ("EA")



United States
Department of
Agriculture

Forest
Service

Nevada City
Ranger
District

P.O. Box 6003
Nevada City, CA 95959-6003
(916) 265-4531
TDD (916) 478-6118
FAX (916) 478-6109

File Code: 2720

Date: October 23, 1995

Dear Forest User:

Enclosed is a copy of the Environmental Assessment prepared for the Special Use Application submitted by Mr. James Grill, to access his private property with a road in the Scotchman Creek area near the town of Washington, California.

The assessment documents Alternatives A,B and C in detail. Alternatives D-G, were considered but eliminated from detailed analysis, as discussed within the document. Alternative C, crossing Scotchman Creek upstream from the falls area and utilizing an existing, previously disturbed roadbed, is the preferred alternative. This alternative minimizes impacts to National Forest soils, timber, visual resources, and hydrologic concerns.

Your comments are invited on this proposed action. Comments should be specific to this document and clearly explain your concerns. To be considered, comments must be presented orally or postmarked no later than November 20, 1995. Please provide your name, address, telephone number, and organization represented, if any. Comments received will be considered in reaching a decision on this proposed action.

The final decision will be subject to appeal pursuant to the Forest Service regulations at 36 CFR 217. Please address comments to:

Julie Lydick, District Ranger
Attn: Grill SUP
P.O.Box 6003
Nevada City, CA 95959

Please direct any questions to Greg Schimke, Nevada City Ranger District, at (916) 478-6273.

Sincerely,

JULIE LYDICK
District Ranger

Enclosures



Caring for the Land and Serving People

SER 000037



JAMES GRILL PROPERTY
SPECIAL USE PERMIT
FILE: 940069
AFFILIATED RESEARCHERS

FILE COPY

**ENVIRONMENTAL ASSESSMENT
for**

Mr. James Grill Special Use Application

**USDA, FOREST SERVICE
Tahoe National Forest**

**Nevada City Ranger District
Nevada County, California**

INTRODUCTION

The purpose of this document is to analyze the impacts of the proposed road upgrade and bridge construction requested by Mr. James Grill in order to access his private property. Six alternative routes have been identified as possible avenues to access Mr. Grill's property. This document will analyze the impacts of the proposed routes and post a decision on the preferred location. A Special Use Permit has been submitted by Mr. Grill for access to his private property located in the NW 1/4 of Section 7. T17N., R11E., MDM, near the town of Washington, in Nevada County. Mr. Grill has requested a permit to cross Scotchman Creek with a low water ford or bridge structure. The Forest Service is obligated by the Alaska National Interest Lands Conservation Act (Section 1323(a)), to provide reasonable access to private lands surrounded by National Forest System Lands. The kind of access given must be one that minimizes damage or disturbance to public lands. However, where alternate access or that can be made adequate, is available, there is no obligation to grant additional access through National Forest System Lands.

There is currently no normal access route to Mr. Grill's 260 acre parcel of land. A county/private road system enters forest service land and continues to Scotchman Creek where it terminates before entering Mr. Grill's property. Mr. Grill has proposed an upgrade to this existing road, a stream crossing of some kind, and construction of a new segment of road across Forest Service land to connect with an existing logging road within the boundaries of his property. The planning process for this document included gathering public and agency input, as well as inputs from a private environmental engineering firm, in order to analyze and prioritize all feasible alternative means to access this property.

DECISIONS TO BE MADE

Whether to issue a Special Use Permit to Mr. James Grill for the

James Grill Special Use Permit
Environmental Assessment Page 2

purpose of road upgrade, construction, and stream channel crossing. Which of the six alternatives submitted as possible routes, would be the preferred route. Whether there will be significant effects to the environment if the Special Use Permit is granted.

SCOPING

During the scoping process, the following members of an interdisciplinary team of resource management specialists and private consultants provided input during the development of this assessment:

Marcus H. Bole, Affiliated Researchers Project Manager
Ann Carlson, USFS Fisheries Biologist
Dave Connel, USFS Wildlife Biologist
Robert Husk, Affiliated Researchers Hydrologist
Scott Husman, USFS Engineering
Mary Levy, Affiliated Researchers Botanist
Dick Markley, USFS Cultural Resources
Charles A. Ozanich, Affiliated Researchers Engineering
Rollin Reineck, Affiliated Researchers Fisheries Biologist
Greg Schimke, USFS Resource Assistant
Bill Slater, USFS Cultural Resources
Julie Tupper, USFS Hydrologist
Kathy VanZuuk, USFS Botanist

On December 12, 1994 a letter encouraging comments was sent to interested individuals. Comments were received in written form from nine individual. Eight comments were received by phone contact. Comments received focused on the merits of the proposed Special Use Permit.

On (Date) a letter inviting individuals to attend an "Open House" for the purpose of airing public comment, and a presentation of the collected scientific evidence, was sent out from the Nevada City Ranger District office. Additionally, this Open House was advertised on (date) in the Grass Valley Union. The open house on July 17, 1995 was attended by (XX number) individuals, including representatives of the USFS and Affiliated Researchers.

On January 24, 1995, copies of the *Proposed Projects Being Considered on the Tahoe National Forest, NEPA Status Report January 1995*, was mailed to interested individuals. The Grill Special Use Permit was listed on page 5 of that document.

A notice of this decision will be published in the Grass Valley Union. Copies of this document will be sent to those who have participated in the project and those who have requested notice of this Special Use Permit.

James Grill Special Use Permit
Environmental Assessment Page 3

ISSUES

During the scoping process, numerous issues were identified. These issues will be further discussed in context with respect to each alternative evaluated. The issues to be addressed are:

1. What effect will granting this Special Use Permit have on :
 - a) Cultural Resources (historic mining activities)
 - b) Recreational Uses (Scotchman Falls, tourism)
 - c) Water Quality (watershed, 100-year flood plain)
 - d) Threatened, endangered or sensitive species
 - e) Visual Impacts (Visual Quality Objective)

THE ALTERNATIVES CONSIDERED

ALTERNATIVE A: No Action, Do not grant Special Use Permit.

ALTERNATIVE B: Issue Special Use Permit requiring use of wet ford to cross Scotchman Creek. Road upgrades start at the intersection of Scotchman Creek Falls Road and the USFS property, which is west of the site. The road then continues for approximately 900 feet across USFS land to Scotchman Creek. It is at this location where the wet ford would be constructed. Location of the ford would be approximately 30 feet from the Falls. The road then continues across USFS land for another 300 feet, where it intersects with the site boundary. The crossing is called a wet ford because water flows over the top during high flows. Typically this type of crossing is designed to handle the 50 year flows through culverts in the structure, while 100 year flows overtop the structure. Total length of improved road with ford would be 2200 feet. Of this road, 1300 feet would cross USFS property.

ALTERNATIVE C: Issue Special Use Permit requiring use of an engineered bridge to cross Scotchman's Creek. Access would be the same as in Alternative A. The bridge would be located at a site further upstream from the site proposed for the wet ford. The bridge would be placed at a point on the creek where defined banks exist, and would span the creek entirely. There would be no intrusion upon the creek, and no altering of the stream bed. The total length of the improved road would 2400 feet. Of this road, 1500 feet would cross USFS property.

James Grill Special Use Permit
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ALTERNATIVE D: Issue Special Use Permit requiring the construction of a bridge to span the South Yuba River. Access would start on Maybert Road approximately one mile east of Washington and continue south over the Yuba River by means of a bridge. From that point the access continues across private property for approximately 400 feet, and eventually winds its way onto the site. The bridge is a major consideration in this alternative. The span would need to be built entirely above the 100 year flood plain, which increases its span to approximately 600 feet. The total length of improved road with bridge would be 1600 feet. None of this road would be on USFS property.

ALTERNATIVE E: Issue Special Use Permit requiring the construction of new road from the end of Omega Road, three miles from State Highway 20, in the Old Omega Diggings. The beginning of this access is on private property for approximately 3700 feet. It then continues down the ridge across USFS for 4000 feet, where it meets the site. Steep, heavily forested ridges characterize this route. Omega Road is not a county maintained road. Therefore, in the winter, the road would be impassible due to snow accumulation. The total length of improved road would be 9600 feet. Of this road, 4000 feet would be on USFS property.

ALTERNATIVE F: Issue Special Use Permit requiring the construction of new road following historic trail that connected the Omega Diggings with the town of Washington. This alternative is very similar to alternative E in that both start from the Old Omega Road in the Omega Diggings. However, this route begins only two and three quarters miles from State Highway 20. Access follows the old trail that connected the Omega Diggings with the town of Washington. The beginning of this access crosses private property for approximately 5500 feet. It then continues down across the side hill to the USFS land, traversing that property for 400 feet. From that point it continues down the hill again for 3500 feet. Steep, heavily forested ridges characterize this route. The total length of improved road would be 9400 feet. Of this road, 400 feet would be on USFS property.

ALTERNATIVE G: Issue Special Use Permit requiring the construction of new road starting on the Old Alpha Road. This route starts on the Old Alpha Road, which connects Washington and State Highway 20 together, one and one half miles off Highway 20. The beginning of this access crosses USFS property for approximately 4500 feet. It then continues down the ridge across the site for 1800 feet, where it again meets USFS property. From that point is

James Grill Special Use Permit
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continues down the ridge for 1200 feet to a location prior to the wet ford described in Alternative B. From the wet ford it continues to Mr. Grill's property. This access is the same as Alternative B from the wet ford to Mr. Grill's property. Steep, heavily forested ridges characterize this route. Total length of improved road would be 8800 feet. Of this road, 5700 feet would be on USFS property.

ENVIRONMENTAL IMPACT AND CONSEQUENCES OF ALTERNATIVES

ALTERNATIVE A: No Action. The no action alternative would preclude reasonable access to Mr. Grill's private property. The Forest Service is obligated by the Alaska National Interest Lands Conservation Act (Section 1323(a)), to provide reasonable access to private lands surrounded by National Forest System Lands.

CULTURAL RESOURCES: The no action alternative would leave all historic landmarks untouched.

RECREATIONAL USES: The no action alternative would not affect the current recreational uses of Scotchman's Creek, or the Falls area.

WATER QUALITY: The no action alternative would result in access to the Grill property by wading through Scotchman's Creek. Only foot/horse traffic would be possible. This could result in intrusions to the stream bed near the Falls, and possibly minor siltation. During high water flows, crossing Scotchman's Creek by foot/horse would be dangerous, if not impossible. Forced attempts to cross the creek could result in bank collapse and erosion.

THREATENED, ENDANGERED OR SENSITIVE SPECIES: The no action alternative would not affect the status of these species. Mitigation in the form of habitat enhancement and willow planting would not take place.

VISUAL IMPACTS: The no action alternative would meet the Visual Quality Objective - Partial Retention (VQO-PR).

ALTERNATIVE B: Scotchman Creek Falls Road with wet ford access.

CULTURAL RESOURCES: Alternative B lies within an historic-era, mining-related complex, comprised of four primary features or feature areas located within a single locale. These features include a gabion dam, a concrete dam, additional features directly related to the dam(s) (including a "spillway" formed by what appears to be a natural "notch"

James Grill Special Use Permit
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in exposed bedrock outcrops), and the remnants of a narrow historic trail or roadway leading from Washington to the mining operations to the southeast at Omega. This fourth feature -- the trail or roadway -- proceeds through the central portion of the primary site area. To the southeast of Scotchman Creek, the trail is only sporadically visible as a narrow, poorly defined treadway along steep hillsides forming the eastern margin of Scotchman Creek. A telegraph/telephone line was strung on single loop insulators attached to trees along the trail route, and several insulators and wire sections remain attached to trees along this segment of the trail. That portion of the roadway located immediately northwest of Scotchman Creek has been substantially modified for vehicle traffic, and continues to be utilized today to access private and U.S. government parcels in this area immediately north of the primary site area.

Engineered road and ford construction plans reveal that all known historic features within the project area are to be avoided without exception. This project should have "No Effect" upon existing cultural resources.

RECREATIONAL USES: The proposed road and wet ford lies within an area locally known for its natural beauty and "swimming hole". The swimming hole lies below the Falls. Alternative B lies entirely above the Falls. The area above the Falls is characterized by an expanse of debris retained by the concrete dam over several decades. Scotchman Creek winds through this debris, eventually spilling over the dam through a natural notch that has developed in the bedrock. Originally, Scotchman's Creek had been channelized to flow over the dam through a concrete spillway designed for that purpose. The notch has altered the course of the creek, directing the flow of water over a natural drop of approximately 70 feet, creating a spectacular waterfall environment. The proposed road and wet ford would not alter the course of Scotchman Creek, and would therefore not affect the Falls or the swimming hole beneath it. This project should have "No Effect" on the recreational uses of this area.

WATER QUALITY: This alternative would result in fill being placed within the 100 year floodplain. In theory, this action could result in the possibility of the concrete ford, or parts thereof, being dislodged and washed over the Falls. This in turn could alter the course of Scotchman Creek, and possibly destroy the recreational value of the swimming hole. In actuality, this possibility is very small for the following reasons:

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1) The wide, flat nature of the debris behind the concrete dam would provide a stable foundation for a ford that was engineered according to acceptable standards. Engineering plans would have to pass county and federal scrutiny. The ford would be designed to allow large flows to pass over the structure with little or no resistance.

2) The ford surface would be within the normal variation of the level of the floodplain.

Vehicular traffic crossing the ford during high flows would be difficult, possibly polluting the creek by depositing foreign materials into the waters. A vehicle that was swept from the ford would certainly find itself being pushed towards, if not over the Falls. Such a situation would result in significant damage to the swimming hole environment. During the construction of the ford, significant amounts of silt and debris will be dislodged and carried over the Falls, and eventually in the South Yuba River. While this type of structure is not common in Nevada County, they have been approved and constructed with few negative consequences.

The wet ford option would be the least disruptive to the riparian area adjacent to both sides of Scotchman Creek. The access road would transverse the creek at right angles, with minimum disruption to existing vegetation. Since this portion of Scotchman Creek contains no fish, a wet ford would have no negative effect upon the movement of this resource.

Wet fords result in minimum stream channel disturbance and related sediment production when built following Standard Trail Construction Specifications 912 for a Shallow Stream ford. Following established guidelines for water quality protection, minimizing rutting, failures, sidecasting and blockage of drainage facilities, would result in this alternative having No Significant Impact on Scotchman Creek water quality.

THREATENED, ENDANGERED AND SENSITIVE SPECIES: A listing of threatened or endangered species was requested from the U.S. Fish and Wildlife Service. No listed threatened or endangered species are present in the area. Candidate species for listing which may occur in the general area include: California spotted owl (*Strix occidentalis occidentalis*), and Foothill Yellow-legged Frog (*Rana boylei*). From the Tahoe National Forest Sensitive Plants

James Grill Special Use Permit
Environmental Assessment Page 8

List, one species, Butte Fritillary (*Fritillaria eastwoodiae*), is known to exist within one mile of the Scotchman Creek Falls. Potential habitat for Butte Fritillary, Woolly Violet (*Viola tomentosa*), California Yew (*Taxus brevifolia*), California Nutmeg (*Torreya californica*), Clustered Lady's Slipper (*Cypripedium fasciculatum*), and Mountain Lady's Slipper (*Cypripedium montanum*), was identified within the proposed project area. Potential habitat for the above species was determined by using vegetation, soil and elevation maps, previous survey records, and two on-site complete, intensive, systematic inspections. These on-site inspections were conducted in mid and late April, 1995, by botanist Mary Levy.

Spotted Owl. California Spotted Owls are on the Forest Service Region 5 Sensitive Species list and are listed as category two (2) candidate by the U. S. Fish and Wildlife Service. USFS surveys, using call stations, (Alpha Digging Road) have not found the owls. There are no accounts or historic records indicating spotted owl use within the area. Wildlife specialists from Affiliated Researchers conducted routine level, systematic searches of the entire Scotchman Falls environment without finding the owl or its habitat. The project should have "No Effect" on this species.

Foothill Yellow-legged Frog. Four sightings of the foothill yellow-legged frog have been documented in Sections 17, 18, and 20. This species is considered to be present throughout the drainage. Amphibian habitat is present within the riparian zone on either side of Scotchman Creek. During the months of April, May and June, 1995, routine level, systematic searches of the project site did not reveal the actual presence of this species. Two tree frogs were noted. No other species of frog or turtle were observed within the project area. The small amount of soil/stream bed disruption that the road and wet ford would require in relation to the large amount of available habitat within the project site area, confirms that this project will have "No Effect" on these species.

Butte Fritillary, and other sensitive/candidate species. The proposed project area is a mixed conifer forest with an overstory of Douglas fir, white fir, incense cedar, ponderosa pine and black oak. Shrub species include deer brush, manzanita, dogwood, blackberry, and gooseberry. Intercepting this is Scotchman Creek, flowing north, then east where it joins the south fork of the Yuba River. Within the project area a riparian zone exists along the west side of Scotchman Creek with an overstory of dogwood, alder, willow and maple. The elevation range is 2800 to

James Grill Special Use Permit
Environmental Assessment Page 9

2880 feet. Alternative B traverses through a mixed conifer forest. It follows an existing level road, west of Scotchman Creek, with evidence of use. There is minimal plant growth in the road bed and only minor encroachment of herbs and shrub seedlings along the road perimeter. East of the creek the road gains elevation. Here the road bed is made up of platy, shale-like rock, and the area appears disturbed. The road crossing at the creek is round river rock eight inches in diameter and smaller. The existing vegetation is primarily willow, black alder, maple and blackberry, with a few struggling Douglas fir and ponderosa pine. The herbaceous layer consists of chickweed, sorrel, plantain, buttercup, dandelion, dock, grass and other weedy species.

No sensitive, threatened or endangered plants or plant species of special concern were found in the project area. The project should have "No Effect" on these species.

VISUAL IMPACTS (Visual Quality Objective): Visual quality objectives are a set of measurable maximum levels of future alteration of a characteristic landscape. VQO-PR is defined as: Human activity may be evident but must remain subordinate to the characteristic landscape. Alternative B follows historic, and thus characteristic, roads and trails through the project area. A minimum amount of disruption would be required to upgrade the existing road, and construct a wet ford. Properly constructed, the wet ford could blend in with the native rock structure. This project would meet the Visual Quality Objective - Partial Retention standard.

ALTERNATIVE C: Scotchman Creek crossing via bridge. The impacts of this proposal are similar of Alternative B with the following exceptions:

RECREATIONAL USES: Under this proposal, Scotchman Creek is crossed further upstream than the wet ford discussed in alternative B. The proposed bridge would be located approximately 200 feet further upstream, and around the first bend in the creek. Consequently, the foreground view is more aesthetically pleasing. The bridge will completely span the creek, eliminating any intrusion to the stream bed, lessening the likelihood of debris being loosened and washed over the Falls.

WATER QUALITY: This alternative would result in no fill being placed within the 100 year floodplain. The bridge would be engineered to span the entire creek. An additional 200 feet of improved road would be required to tie the

James Grill Special Use Permit
Environmental Assessment Page 10

bridge to Scotchman Creek Falls Road. The road would follow an historic trail/roadbed that currently exists in the riparian zone. Designing the road to follow the historic road bed, following established guidelines for water quality protection, and proper use of culverts, would result in this alternative having "No Effect" on Scotchman Creek water quality.

THREATENED, ENDANGERED AND SENSITIVE SPECIES: An additional two hundred linear feet of road bed would be needed to join the Bridge to Scotchman Creek Falls Road. The existing historic road bed has been overgrown with shrubs and saplings as well as with tree blow down and debris. The road avoids frog habitat, and would cause little if any disruption to the riparian zone or its habitat. Culverts would insure that travel corridors are not disrupted, and allow proper seasonal drainage. No sensitive, threatened or endangered plants or animal species were found along this propose route, or in the near vicinity. Alternative C would have fewer negative consequences on habitat disruption than Alternative B. The project should "No Effect" on threatened, endangered or sensitive species.

VISUAL IMPACTS (Visual Quality Objective - Partial Retention): The bridge would be more visual than a wet ford, however, it's location further away from the recreational area would result in the view from the Falls (looking upstream) being more pleasing. The size and location of the bridge insures the project would meet the VQO-PR objective.

ALTERNATIVE D: Bridge over the South Yuba River.

CULTURAL RESOURCES: The proposed site for building a span across the South Yuba River is approximately one mile east of the city of Washington, on Maybert Road. An existing bridge across the South Yuba River is within one-half mile of the proposed site. In order for the bridge to span the 100 year floodplain, an expanse in excess of 600 feet would have to be engineered and constructed. This stretch of the South Yuba River is rich in mining and native American history. A project of this magnitude would undoubtedly destroy or alter an unacceptable amount of historic, as well as scenic, river and riparian environment. This alternative would require a full Environmental Impact Report (EIR) before a final decision could be made on the total impact on cultural resources.

RECREATIONAL USES: The South Yuba River is protected by the Federal Wild and Scenic Rivers Act of 1968. As such, any

James Grill Special Use Permit
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disturbance to the stream bed, riparian zone or watershed would require extensive analysis, most likely in the form of an EIR. Building another bridge so close to the existing bridge, would result in a negative effect upon the "wild" and "scenic" nature of this stretch of the river.

WATER QUALITY: This alternative would result in placing fill within the 100 year floodplain, as well as intrusive structures within the stream bed itself. The South Yuba River watershed has been subject to extensive, historic disturbance due to mining and development activities over the past decades. Further disturbances would not be easily justified. The California State Water Quality Control Board has placed restrictions upon disturbances to this watershed. These restrictions would preclude any permits being issued for a project of this nature. An EIR would be necessary to evaluate all of the water quality issues that a bridge of this size and dimension would create.

THREATENED, ENDANGERED AND SENSITIVE SPECIES: The impacts of this alternative are similar to those in alternative B. In addition, the South Yuba River has an active fishery. A properly engineered bridge would have little impact upon fish and amphibian movements. The Natural Diversity Data Base of the California Department of Fish and Game does not indicate the presence of threatened, endangered or sensitive plant/animal species on this segment of the South Yuba River. The bridge should have "No Effect" on these species.

VISUAL IMPACTS (Visual Quality Objective). A bridge of any size, especially a bridge with a span of 600 feet, would dominate the visual landscape as seen from Maybert Road. Even with extensive mitigation, this alternative would fail the VQO-PR requirement.

ALTERNATIVE E: Omega Road, Option 1. This alternative requires constructing new roads starting at the end of Omega Road, three miles from State Highway 20, in the Old Omega Diggings. The beginning of this access is on private property for approximately 3700 feet. It then continues down the ridge across USFS land for 4000 feet to the Grill property line. From that point, the road would continue down the ridge for 1900 feet. This access has slopes up to 58% longitudinally and cross-sections of up to 30%. The steep cross-slopes are heavily forested.

CULTURAL RESOURCES: Originally known as Delirium Tremens City, and located a mile east of Hell-Out-For-Noon, Omega was founded in 1851 by E. Paxton, John Douglass, and others. It went by that name for six years until the residents

James Grill Special Use Permit
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decided to use the more respectful name Omega, the last letter in the Greek alphabet, for their post office. The Post Office was established on June 19, 1857 by William Seward. It was discontinued on November 30, 1891; and after that date, residents received their mail at Washington. In 1850, J. A. Dixon was the first to develop the Omega Diggings. Three years later, mining commenced on a large scale with some 30 gravel claims being worked. By 1871, ten claims were still being worked; but by 1880, only two companies were in operation. Over \$2,500,000 worth of gold, at \$16 per ounce, was removed from the mines of Omega by 1880.

Omega reached the height of its prosperity in 1858-1859, when it contained four provision stores, one clothing store, two meat markets, three blacksmith shops, four saloons, one tin shop, and a population of 200. Omega was destroyed by fire on August 24, 1861, and again on November 12, 1863. In 1880, Omega had one hotel, one store, a post office, a school house, and a population of about 150. No activity at the Omega Mine was reported by the California State Mining Bureau in the late 1880s. In 1895, Chinese were leasing the Omega Gravel Mine. The Chinese continued to lease the area and perform most of the hydraulic mining activity until 1915. Hydraulicking was resumed on March 9, 1941, utilizing the recently completed Upper Narrows Debris Dam at Smartsville as storage space for tailing. Three monitors worked three shifts at Omega in 1941. In 1946, Omega was owned by the South Yuba Mining and Development Company of San Francisco. No activity occurred there after 1943.

Any road improvements within the Omega Diggings would have a impact upon the cultural resources of the area. The extend of impact would be difficult to determine at this time. A more detail evaluation, possibly an EIR, would be necessary if this alternative route were chosen for development.

RECREATIONAL USES: Currently, there is little public recreation taking place in the Omega Diggings. It is unknown what effects this project would have on recreational activities. Road improvements could possibly open the area to more vehicular traffic, and thus more opportunities for the public to enjoy this historic area.

WATER QUALITY: This alternative would result in road grading and filling activities in a watershed that has already experienced a tremendous amount of historic necessitate a more detailed geotechnical survey, or perhaps an EIR, before the full effect of improving this trail to County driveway standards could be estimated.

James Grill Special Use Permit
Environmental Assessment Page 13

THREATENED, ENDANGERED AND SENSITIVE SPECIES: The impacts of this proposal are similar to those of Alternative B. The Natural Diversity Data Base of the California Department of Fish and Game does not identify any species of concern within this project area. The amount of new road construction, however, would result in a significant amount of wildlife habitat disturbance. Although the first portion of road would follow the existing road in the Omega Diggings, the majority of the remaining road would be cut through previously undisturbed habitat. A large number of trees would be removed in order to accommodate the switchbacks required to mitigate the 30% to 58% road and cross slopes.

VISUAL IMPACTS: (Visual Quality Objective) The amount of tree removal and soil disturbance required for this alternative may not meet the Visual Quality Objective - Partial Retention (VQO-PR) standard.

ALTERNATIVE F: Omega Road, Option 2. This alternative is very similar to Alternative E in that they both start from Old Omega Road in the Omega Diggings. However, this route starts only two and three quarters miles from State Highway 20. Alternative F follows the old trail that connected the Omega Diggings with the town of Washington. The beginning of this route crosses private property for approximately 5500 feet. It then continues down across the side hill to the USFS land, where it transverses that property for 400 feet. Exiting USFS land, the route continues down the side hill again to Mr. Grill's property. This access has slopes of up to 30% longitudinally and cross-slopes of up to 58%. The steep cross-slopes are heavily forested.

CULTURAL RESOURCES: Alternative E lies within and between the historic Old Omega Diggings complex and Scotchman Creek Falls. Cultural Resources are the same as in alternative B, however, a greater area is impacted. The cultural significance of this alternative lies in its use as the main transportation route between the city of Washington and the Diggings at Omega. In order to access the mining operations at Alpha and Omega, a trail was blazed from Washington to Omega. This transportation corridor was first documented in the summer of 1866 by James E. Freeman, Deputy Surveyor for the Surveyor's General Office of San Francisco. Freeman's original field notes (i.e. Freeman's "calls") were followed by Engineer Al Beeson in 1993. Beeson has concluded unequivocally that the present route, so far as it can be followed on the ground, conforms with Freeman's route of 1866. An examination of the available literature failed to identify any evidence that significant improvements had been made to the roadway during it's 70+ years of use nor

James Grill Special Use Permit
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subsequently. Indeed, this same conclusion is supported by observations made during the present site recording and by Mr. Beeson during his own field work which involved following the transportation corridor and verifying various features along the route as referenced by Freeman in his original field log book.

Three historic maps depict the existence, and document the route, of the historic trail. These three maps include: Map #1, 1866 original survey of T17N, R11E, MDM; Map #2, 1866 original survey of T17N, R10E, MDM; and Map #3, 1913 Official Map of the County of Nevada. Historic artifacts include glass insulators and attached single-strand wire, still in trees along segments of the route.

RECREATIONAL USES: The trail is only sporadically visible as a narrow, poorly-defined treadway along the steep hillsides forming the eastern margin of Scotchman Creek. Difficult to transverse, the trail has little or no recreational value. Upgrading the trail to County driveway standards would open a historic route to the public. However, much of the historic roadbed would be graded and destroyed in the process. This alternative would have "No Effect" upon current recreational uses of the area.

WATER QUALITY: This alternative would result in road grading and filling activities in watershed that has already experienced a tremendous amount of historic disturbance. The amount of soil disturbance would necessitate a more detailed geotechnical survey, or perhaps an EIR, before the full effect of improving this trail to County driveway standards could be estimated.

THREATENED, ENDANGERED AND SENSITIVE SPECIES: The impacts of this proposal are similar to those of Alternative B. The Natural Diversity Data Base of the California Department of Fish and Game does not identify any species of concern within this project area. The amount of improved road construction, however, would result in a significant amount of wildlife habitat disturbance. Although this route follows a historic trail, the amount of grading and filling required to bring the trail up to County driveway standards would result in an unacceptable level of habitat disturbance.

VISUAL IMPACTS: (Visual Quality Objective) The amount of tree removal and soil disturbance required for this alternative may not meet the Visual Quality Objective - Partial Retention (VQO-PR) standard.

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ALTERNATIVE G: Old Alpha Road. This proposed route starts on the Old Alpha Road which connects the city of Washington with State Highway 20. From a point approximately one and one-half miles from Highway 20 the route heads northeast across USFS property for approximately 4500 feet. It then continues down the ridge approximately 3000 feet to a location prior to the wet ford described in Alternative B. From this point, the access is the same as Alternative B. Alternative G has slopes of up to 40% longitudinally and cross-slopes of up to 25%. The steepest section occurs on USFS property approximately 1200 feet from the wet ford. As in Alternatives E & F, this alternative is also heavily forested. This alternative still requires that a wet ford or bridge be constructed to cross Scotchman Creek.

CULTURAL RESOURCES: Located two miles south of Washington was the town of Alpha. Charles Phelps is credited with beginning the settlement, originally known as Hell-Out-For-Noon, in the spring of 1853. The population was at its largest in 1854 and 1855 when 59 men were registered to vote there. The more respectful name Alpha, the first letter in the Greek alphabet, was chosen when the post office was established on April 12, 1855 with A.J. Alston as its first postmaster. On September 4, 1862, it was discontinued, and its patrons received their mail at the re-established Washington Post Office two miles northwest. Considered one of the liveliest mining towns in Nevada County, Alpha was nearly worked out by 1867, and the town was virtually abandoned by 1880; only two men remained there in that year. During its occupation, over \$2,000,000 worth of gold was removed from the area.

Any road improvements within the Alpha Diggings would have a impact upon the cultural resources of the area. The extend of impact would be difficult to determine at this time. A more detail evaluation, possibly an EIR, would be necessary if this alternative route were chosen for development.

RECREATIONAL USES: Currently, there is little public recreation taking place in the Alpha Diggings. It is unknown what effects this project would have on recreational activities. Road improvements could possibly open the area to more vehicular traffic, and thus more opportunities for the public to enjoy this historic area.

WATER QUALITY: This alternative would result in road grading and filling activities in a watershed that has already experienced a tremendous amount of historic disturbance. The amount of soil disturbance would necessitate a more detailed geotechnical survey, or perhaps an EIR, before the full effect of improving this trail to

James Grill Special Use Permit
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County driveway standards could be estimated.

THREATENED, ENDANGERED AND SENSITIVE SPECIES: The impacts of this proposal are similar to those of Alternative B. The Natural Diversity Data Base of the California Department of Fish and Game does not identify any species of concern within this project area. The amount of new road construction, however, would result in a significant amount of wildlife habitat disturbance. Although the first portion of road would follow the existing road in the Alpha Diggings, the majority of the remaining road would be cut through previously undisturbed habitat. A large number of trees would be removed in order to accommodate the switchbacks required to mitigate the 25% to 40% road and cross slopes.

VISUAL IMPACTS: (Visual Quality Objective) The amount of tree removal and soil disturbance required for this alternative may not meet the Visual Quality Objective - Partial Retention (VQO-PR) standard.

Signature

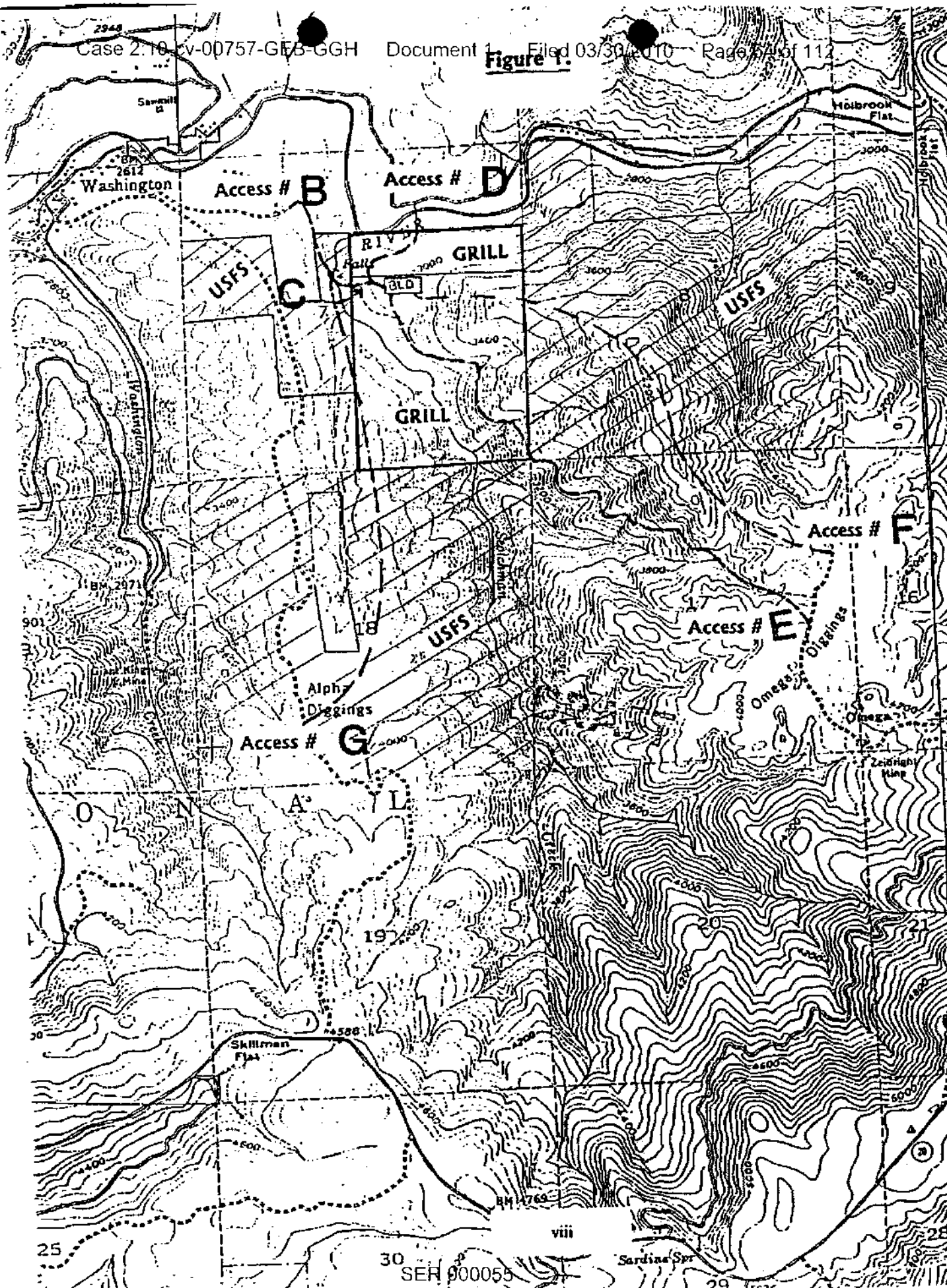
Date

Summary Of Findings

Findings	Alternatives					
	A No Action	B Wet Ford	C Scotchman Cr. Bridge	D S. Yuba Bridge	E Omega Road 1	F Omega Road 2
						G Alpha Road
Road Length Improved to County Driveway Standard	0	2200'	2400'	1800'	9600'	8400'
Length Of Forest Service Land	0	1300'	1500'	0	4000'	400'
Road Slopes/ Cross Slopes (max.)	N/A	32% / 10%	32% / 10%	35% / 44%	56% / 30%	30% / 58%
Structures Required For Access	N/A	Seasonal Wet Ford Over Scotchman Creek	Bridge Over Scotchman Creek	Bridge Over South Yuba	Minor Drainage Culverts	Minor Drainage Culverts & One Major Culvert Crossing Scotchman Tributary
Allows Access To Private Property	Denies Vehicle Access	Provides Vehicle Access	Provides Vehicle Access	Provides Vehicle Access	Seasonal Access Only	Seasonal Access Only
Visual Impacts	N/A	Visitors Will See Structure	Visitors Will See Structure	Public Using Mayburt Rd. Will See Structures	Cut & Fill Seen From Nearby Roads & Properties	Cut & Fill Seen From Nearby Roads & Properties
Visual Quality Objective- Partial Retention	N/A	Meets Requirements	Meets Requirements	Does Not Meet Requirements	May Not Meet Requirements	May Not Meet Requirements
Environmental Impacts	None	Construction Within 100 Year Flood Plain	Construction To Span 100 Year Flood Plain	Construction Within 100 Year Flood Plain	Approx. 0.8 Ac. Land Disturbed 2.8 Ac. In Forest Service Land	Approx. 6.0 Ac. Land Disturbed 4.0 Ac. In Forest Service Land
Historical Significance	N/A	Surveys Complete No Sites Eligible For The National Register Of Historic Places	Surveys Complete No Sites Eligible For The National Register Of Historic Places	N/A	Road Through Omega Diggings	Road Through Alpha Diggings
Other	N/A	N/A	N/A	Require Private Land Easements Or Purchase Land	Require Private Land Easements Or Purchase Land	Access Leads To Wetland Crossing Of Access Rd. Other Routes Too Steep
Water Quality & Aquatic Resources	May Cause Foot & Hoof Stream Bank Damage	Scotchman Creek- May Cause Water Pollution From Vehicles Crossing Stream After Stream Channel Morphology & Increase Sedimentation	No Fisheries. Least Likely To Adversely Affect Water Quality & Aquatic Resources	South Yuba River- Abundant Fisheries & Habitat	None	Tributary Of Scotchman Creek (SC-1) - No Fisheries
Threatened & Endangered Sensitive Plants	N/A	Botanical Survey Revealed NONE	Botanical Survey Revealed NONE	*NDDB Identified NONE	*NDDB Identified NONE	*NDDB Identified NONE
Estimated Cost To Construct	\$0	\$39,140	\$40,000	\$817,311	\$144,477	\$185,878

NDDB is Natural Diversity Data Base, California Department of Fish and Game

Figure 1.



Permanent Trinomial: CA-Nev-
Forest Service No: 05-17-55-412
Common Name: "Gabion Dam"

Page 9 of 20

Date: June 2, 1993

The Chinese continued to lease the area and perform most of the hydraulic mining activity in the immediate vicinity through 1915. By this date they had removed approximately 13,000,000 cubic yards which averaged 13-1/2 cents per cubic yard. An estimated 40,000,000 cubic yards remained to be worked (Logan 1918:106).

Transportation Between Washington and the Diggins at Omega

In order to access the mining operations at Alpha and Omega, a trail was blazed from Washington to Omega. This is Feature 4 in the present site record. This transportation corridor was first documented in the summer of 1866 by James E. Freeman, Deputy Surveyor for the Surveyor's General Office of San Francisco. Freeman's original field notes (i.e., Freeman's "calls") were followed by Engineer Al Beeson in 1993. Beeson has concluded unequivocally that the present route, so far as it can be followed on the ground, conforms with Freeman's route of 1866. An examination of the available literature failed to identify any evidence that significant improvements had been made to the roadway during its 70+ years of use nor subsequently. Indeed, this same conclusion is supported by observations made during the present site recording and by Mr. Beeson during his own field work which involved following the transportation corridor and verifying various features along the route as referenced by Freeman in his original survey field log book.

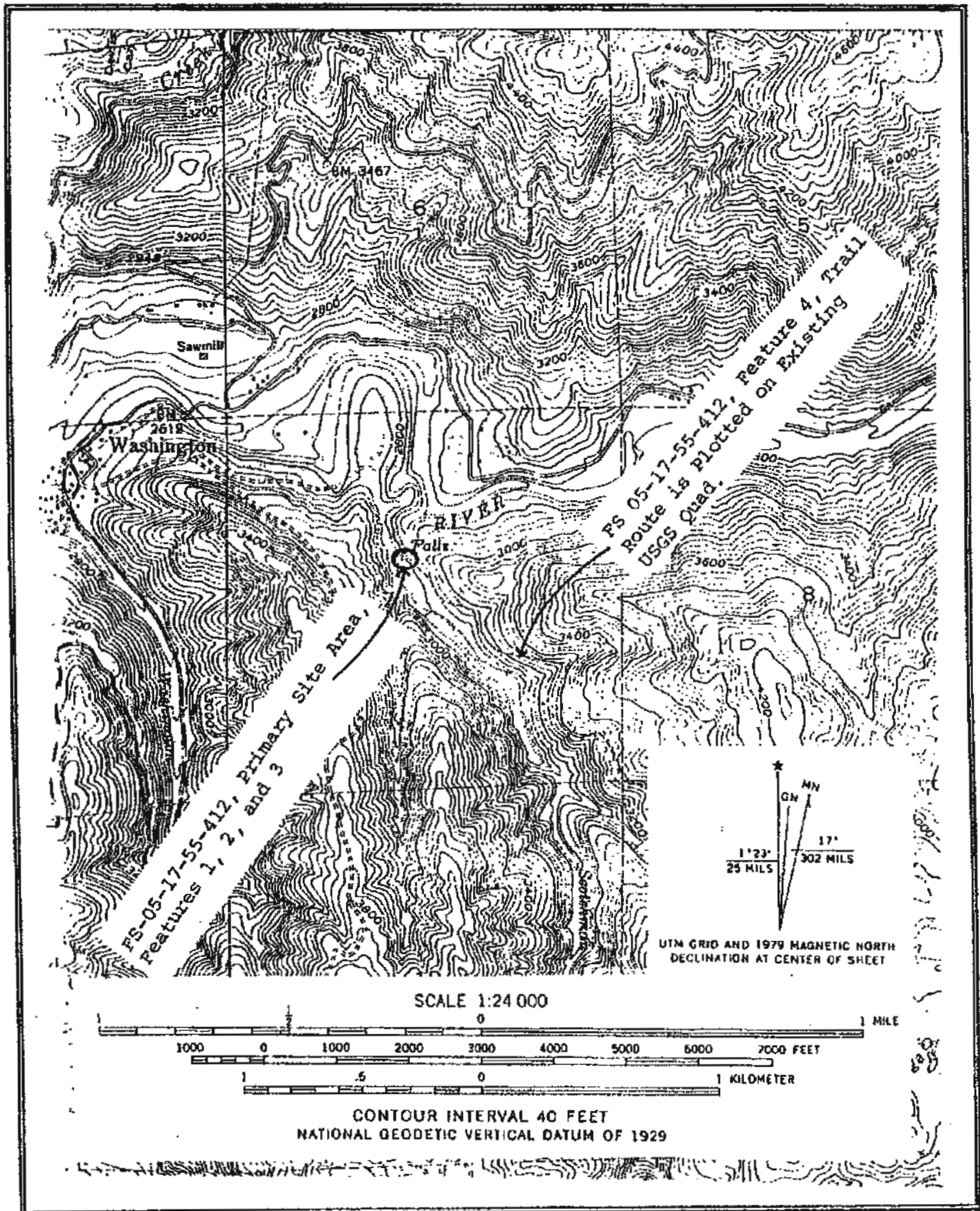
Three historic maps depict the existence, and document the route, of the historic trail. Copies of all three of these maps have been provided to the USFS to accompany their copy of the site record, but are not officially made a part of the present document owing to their size and their availability elsewhere. These three maps include:

- Map #1: 1866 original survey of T17N, R11E, MDM;
- Map #2: 1866 original survey of T17N, R10E, MDM;
- Map #3: 1913 Official Map of the County of Nevada.

In addition to the above maps, notices appeared in newspapers concerning the various stage coaches that operated from Washington to Omega between 1856 and 1880. The heaviest traffic via stage occurred in 1870, when R.W. Latta ran a 14-passenger stage on a daily basis from Washington to Omega. The stage service to Omega was discontinued on June 26, 1880, due to lack of public demand (Slyter 1964: 52). It is not clear whether the stage route followed the present transportation corridor, or some other route.

13. Artifacts: Glass insulators and attached single-strand wire, still in trees along segments of Feature 4 trail route, but unavailable for direct inspection.
14. Non-Artifactual Constituents and Faunal Remains: Mining gravels from Alpha Diggings and Omega Diggings, within Scotchman Creek, above concrete debris dam.
15. Date Recorded: June 2, 1993.
16. Recorded By: Peter M. Jensen and Sean M. Jensen.
17. Affiliation and Address: Jensen & Associates, 9726 Lott Road, Durham, CA 95938.

ARCHAEOLOGICAL SITE LOCATION MAP
Permanent Trinomial: _____ F.S. Site #: 05-17-55-412.
Por. of SE 1/4 of NW 1/4 of Sect. 7, T17N, R11E,
USGS Washington, Calif., 7.5' Series Quad.



JENSEN & ASSOCIATES • CHICO, CALIFORNIA
ARCHAEOLOGICAL • HISTORICAL • CULTURAL RESOURCE MANAGEMENT SERVICES

NEVADA COUNTY

CALIFORNIA



OFFICIAL MAP

Compiled by

Fred. M. Miller, County Surveyor
and

Pierce-Bosquit Abstract & Title Co.



Gerald K. Essex, Del.



Scale



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Table

NAME OF CLAIMANT	DATE OF CLAIM	AMOUNT OF CLAIM	DATE OF PAYMENT	DATE OF CLOSURE
...	...	...	...	...



EXHIBIT D

FINDING OF NO SIGNIFICANT IMPACT ("FONSI")



Case 2:10-cv-00757-GEB-GGH Document 1 Filed 03/30/2010 Page 66 of 112 3

United States
Department of
Agriculture

Forest
Service

Nevada City
Ranger
District

P.O. Box 6003
Nevada City, CA 95959-6003
(916) 265-4531
TDD (916) 478-6118
FAX (916) 478-6109

File Code: 2720

Date: November 28, 1995

Dear Forest User:

Enclosed is the Decision Notice and Finding of No Significant Impact for the Mr. James Grill Special-Use Application, Road Use Permit. You were previously sent a copy of the environmental assessment. The 30 day public comment period ended November 20, 1995. Two oral comments were received during this period. The comments were of a clarification nature and have not resulted in new information or issues to be considered. No changes have been to the alternatives or final decision as a result of the two comments.

Sincerely,

JULIE LYDICK
District Ranger

Enclosure



Caring for the Land and Serving People

SER 000057





Mr. James Grill

Page 2

If you have any questions, please contact Resource Assistant Greg Schimke, at 916-478-6273. Your patience through this process is appreciated.

Sincerely,

JULIE LYDICK
District Ranger

cc:

Nevada County Planning Dept.
c/o Sharon Boivin
950 Maidu Avenue
Nevada City, CA 95959

Affiliated Researchers
c/o Marcus Soles
431 Crown Point Circle Suite 100
Grass Valley, CA 95945

Alexander Constantino
251 Auburn Ravine Road, Suite 105
Auburn, CA 95603



Caring for the Land and Serving People

SER 000058



REASONS:

The reasons for selecting this action are that this alternative provides reasonable access to private property as required by the Alaska National Interest Lands Conservation Act (Section 1323 (a)), while minimizing disturbances to public lands. This route will cross Scotchman Creek upstream from the falls area, minimizing the direct impact of viewers at the falls, consequently, there will be less of a visual impact to the foreground view than if Alternative B, with a low water ford was constructed directly above the falls. Armoring the streambank with rocks, and replanting vegetation on cut banks will reduce the visual impact of the bridge and the road construction cuts and fills above the creek. Bridging the creek is the preferred alternative for maintaining water quality and providing for movement of aquatic-dependent species. This alternative results in no fill within the 100 year floodplain.

The No Action Alternative was not selected because the Alaska National Interest Lands Conservation Act (Section 1323 (a)) does allow private property holders access to their property when surrounded by public lands, and as deemed adequate to secure the owner the reasonable use and enjoyment thereof.

Alternative D, Bridge Across the South Yuba River, would not directly encumber federal lands, however, the impact and magnitude of such access outweighs consideration of this alternative as reasonable. The South Yuba does support a fishery, unlike Scotchman Creek. This alternative would result in placing fill and structures within the 100 year floodplain, and the streambed. It would have a significant impact that would affect visual quality of objectives of "partial retention" that the Forest Service has established for federal lands along the river. Additional disturbances in the South Yuba watershed would be difficult to justify considering the large amount of disturbances in the past from historic mining and development, from which the watershed has not totally recovered.

During the analysis it was apparent that an issue was Mr. Grill's access to the federal lands and private property through the Alpha Loop road. Mr. Grill does have legal access via this road, however, the agency did look at three other alternatives, E, F, and G which provide access to the same creek crossing as Alternatives B and C, from the Omega and Old Alpha roads. As summarized in the table, Summary of Findings, alternatives E, F, and G would require considerably more new road construction. These roads options are in the lower Scotchman Creek watershed, which is above the threshold of concern for watershed disturbance due to the Alpha and Omega historic diggings. Because other legal access was available, which would not cause additional disturbance in the lower Scotchman watershed, alternatives E, F and G were dropped from further consideration.

Visual quality, and recreation use of the falls has been an issue. After the public meeting, held July 17, 1995, District Ranger Lydick, was approached about whether the bridge crossing in alternative C could be moved further up stream away from the falls, and make use of an existing skid trail on the north side of Scotchman Creek. This was reviewed in the field on July 24, 1995 by District Ranger Lydick, and Resource Assistant Greg Schimke. The option was not feasible because it would necessitate road construction in the streamside management zone on the west side of the creek, and due to the width of the creek up stream, locating a bridge and anchoring the bridge would be difficult, and would require more disturbance than Alternative C. The visual quality objective of partial retention will be met by Alternative C. The bridge under

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this alternative is located far enough up stream so that it is not visible from the falls.

Field surveys were conducted for historic and cultural resources. All features were evaluated and found to be ineligible for the National Register of Historic Places. No further protection of those features is required. Based on the U.S. Fish and Wildlife Service listings, there are not endangered, or threatened wildlife or plant species in the project area. Surveys were conducted for sensitive plant species, Fritillaria eastwoodiae, and none were found. California spotted owl, Strix occidentalis occidentalis habitat is not found in the project area, and no spotted owls have been found during past surveys. Bridging the creek minimizes water quality impacts and movement of aquatic species.

SCOPING AND PUBLIC INVOLVEMENT:

The scoping process for this project was initiated with a letter dated December 12, 1994 to over one hundred individuals, groups and agencies. It has also been announced quarterly since January 24, 1995 in the Tahoe National Forest, NEPA Status Report, which is mailed to over two hundred individuals, groups and agencies. A public meeting was held July 17, 1995, which was announced in the Grass Valley Union newspaper, and by invitation to individuals who had previously commented about the project. Thirteen individuals attended the public meeting. Availability of the EA for public comment was made in the Grass Valley Union on October 26, 1995. Copies of the EA were mailed to fifteen people. Two oral comments were received. The comments were seeking clarification of where the road went once it crossed the creek, (confirmed that the access will make use of the existing road cut), and who is responsible for road maintenance on the Alpha road (it's a private road, so decisions regarding road maintenance are outside Forest Service authority).

Issues identified through internal and public scoping include:

The issues considered in development of the analysis and alternatives were:

- Cultural Resources (historic mining activities)
- Recreational Uses (Scotchman Falls)
- Water Quality (watershed, 100 year flood plain)
- Threatened, endangered or sensitive species
- Visual impacts (Visual Quality Objectives)

The decision notice will be mailed to the fifteen individuals who have previously participated in the development of the analysis, and a notice will be published in the Grass Valley Union newspaper.

ALTERNATIVES CONSIDERED:

The alternatives were developed by the interdisciplinary team to respond to the issues developed through scoping. In addition to the proposed action, other alternative(s) considered were:

Alternative A - No Action: Do not grant special-use permit, or access through National Forest System lands.

Alternative B - Scotchman Creek Falls Road with Wet Ford: Issue a special-use permit for approximately 900 feet of new road construction across National Forest System land. Cross Scotchman Creek with a wet ford.

Alternative D - Bridge Across South Yuba River: This alternative does not involve National Forest System lands. A bridge would be built from the Maybert Road across the South Yuba River.

Alternative E - Omega Road, Option 1: Issue a special-use permit for approximately 4000 feet of new road construction across National Forest System land off the Omega Road. Creek crossing would be the same as Alternative C.

Alternative F - Omega Road, Option 2: Issue a special-use permit for approximately 400 feet of new road construction across National Forest System land off the Omega Road. Creek crossing would be the same as Alternative C.

Alternative G - Old Alpha Road: Issue a special-use permit for approximately 5700 feet of new road construction across National Forest System land off the Alpha Road. Creek crossing would be the same as Alternative C.

FINDINGS REQUIRED BY OTHER LAWS:

All management practices and activities of the selected Alternative C are consistent with the management direction, including standards and guidelines, in the final Land and Resource Management Plan for the Tahoe National Forest (June 14, 1990), as amended, and its provisions, which were developed in accordance with the National Forest Management Act of 1976. 16 USC 1604(i) and 36 CFR 219.10(e)

A complete cultural resource inventory has been accomplished for the area of project effect. Cultural resources identified have been evaluated for their eligibility for the National Register of Historic Places. None met the criteria for eligibility. The State Historic Preservation Officer has been afforded an opportunity to review the project in accordance with 36 CFR 800.

FINDING OF NO SIGNIFICANT IMPACT:

In assessing the impacts, I have determined that this project is not a major federal action, individually or cumulatively, and will not significantly affect the quality of the human environment. Therefore, an environmental impact statement will not be prepared. Specifically, this determination is based upon the following factors:

1. The proposed action is expected to have little effect upon public health and safety.
2. There are no unique historic or cultural resources, park lands, prime farm lands, wetlands, wild or scenic rivers, or ecologically critical areas in the vicinity that could be adversely affected. A cultural resources inventory and site evaluation has been conducted. No features or sites were found to be eligible for the National Register for Historic Places.
3. Based on public participation, the effects on the quality of the human environment are not likely to be highly controversial.
4. There are no known effects on the human environment that are highly uncertain or involve unique or unknown risks.
5. This action is not expected to establish a precedent for future actions with significant effects or represent a decision in principle about future considerations.

6. This decision is not related to other actions which individually have insignificant effects, but that cumulatively have the potential to result in significant impacts upon the human environment.
7. There is no potential for adverse effects of the action upon sites that are listed in, or eligible to be listed in, the National Register of Historic Places, or, could cause a loss or destruction of significant scientific, cultural, or historic resources. No sites were found eligible.
8. There is no potential for the action to adversely affect a species that is sensitive, listed, or is being evaluated for listing, as an endangered or threatened species under the Act of 1973. Biological evaluations have been completed for plant and animal species. There is no endangered or threatened species habitat. Surveys have been conducted and there is no evidence of sensitive species. Aquatic habitat and movement of aquatic creatures will be protected by construction of a bridge.
9. This action does not threaten the violation of Federal, State, or local law or requirements imposed for the protection of the environment.

ADMINISTRATIVE REVIEW OR APPEAL; IMPLEMENTATION DATE:

This decision is subject to appeal pursuant to the Forest Service regulations at 36 CFR 215.7(b). Any written appeal of this decision must be fully consistent with 36 CFR 215.14, "Content of an Appeal," and must be postmarked or received by the Appeal Deciding Officer, Regional Forester Ronald E. Stewart, USDA Forest Service, 630 Sansome Street, San Francisco, CA 94111 within 45 days after the date of publication of the legal notice of this decision appeared in the Grass Valley Union, Grass Valley, California.

It is the appellant's responsibility to provide sufficient written evidence and rationale to show why the Responsible Official's decision should be remanded or reversed. An appeal must meet the following requirements: 1) That the document is an appeal filed pursuant to 36 CFR 215; 2) The appellant's name, address, and telephone number; 3) Identify the decision being appealed (include the title of this document, its date, and the name and title of the Responsible Official who signed it); 4) Identify the specific change(s) in the decision that appellant seeks or the portion of the decision to which the appellant objects; 5) State how the Responsible Official's decision fails to consider comments previously provided, either before or during the 30-day comment period and, if applicable, how the appellant believes the decision violates law, regulation, or policy. Your appeal can be dismissed if it fails to meet the minimum requirements of 36 CFR 215.14 to such an extent that the Appeal Deciding Officer lacks adequate information on which to base a decision.

If an appeal is not received on this project, the project can be implemented 5 days after the close of the 45-day appeal period. If an appeal is received, this project can be implemented 15 days after appeal disposition.

EXHIBIT E

DEFENDANTS TERMINATION LETTER APRIL 2, 2008



United States
Department of
Agriculture

Forest
Service

Yuba River
Ranger
District

15924 Highway 49
Camptonville, CA
95922-9707
530-288-3231
530-288-3656 TDD
530-288-0727

April 2, 2008

File: 2720

Certified Mail RRR

Michael V. Brady Esq.
Sierra Oaks Financial Center
2625 Fair Oaks Blvd., Ste. 7
Sacramento, CA 95864

Dear Mr. Brady:

Reference is made to your letter dated February 4, 2008 in regards to James Grill's Special Use Permit # NCD6516-01, and your conversation with Greg Schimke on March 18, 2008.

As discussed, this letter will allow you to provide current and accurate information to fully disclose to any potential purchaser of the Grill property, the status of the road and bridge construction across National Forest Lands.

The bridge should have been constructed under the terms of the permit, prior to its expiration on December 31, 2007. As the permit use was never established by maintenance and use of the road, or construction of the bridge, it is appropriate that the permit terminated. Any future proposal will be considered as a new, non-existing, use. Therefore, any such new proposal must comply with the National Environmental Policy Act of 1969 as amended (Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Publ. L. 94-52, July 3, 1975, Publ. L. 94-83, August 9, 1975, and Publ. L. 97-258, 4(b), Sept. 13, 1982).

Since the original issuance date of the expired permit in 1998, the Tahoe National Forest land and Resource Management Plan (USDA Forest Service 1990) was amended by the Sierra Nevada Forest Plan Amendment Record of Decision (USDA Forest Service 2004). Under this amendment, new Management Standards and Guidelines were incorporated into our land management plan. These can be found on pages 49-66 of the Record of Decision. Copies of these pages are enclosed for your convenience.

Additionally, your project has the potential to affect species that are on the Region 5 Regional Forester's Sensitive Species list, some of which may have been added since the completion of the original environmental assessment under which your permit was issued. Enclosed are copies of lists that contain our current Region 5 sensitive species for the Tahoe National forest and a summary statement of key policies and requirements.



Under the Alaska National Interest Lands Conservation Act of Dec. 2, 1980 (copy enclosed), landlocked private in holdings within the National Forest System boundaries, have a statutory right to reasonable access, subject to conditions determined by the Forest Service.

Lastly, Special use Permits are non-transferable. Therefore, even if the original permit to Mr. Grill were still valid, a new owner would have to submit a new application that would be subject to analysis with current laws, regulations and policies, as stated above. Also under new regulation, all such permits are now subject to cost recovery from the proponent.

I hope this letter answers your questions, and provides prospective purchasers the information they need to make an informed decision.

Sincerely,

JEAN M. MASQUELIER
District Ranger

Enclosure:

Cc: Mr. James Grill

Enclosures:

EXHIBIT F

BUREAU OF LAND MANAGEMENT RECORD OF ACCESSION

CLERK OF COURT