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The View from Andy's Desk

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October 15, 2012-Andrew R. Cassano is a City/Regional Planner and Professional Land Surveyor with over 43 years of experience in Northern California. He is CEO of Nevada City Engineering, Inc., a firm offering regional planning, surveying, and civil engineering consulting to the private and public sector since 1978.

Is Your Road in Your Easement or do You Even Care?

As a courtesy to you speed readers and article skimmers, let's get this out of the way right now: I am perfectly fine with "don't care". If your private road is working and everyone is happy, then by all means, stop reading now. Why go out looking for trouble?

How does it happen that the road is not in the easement? In years gone by, road locations were informal or based on handshakes between owners and not a lot of thought went into easement details.

Under the minor land division laws before 1972, there was no need to prove access rights, build roads, prove septic, or to demonstrate that the lot was entirely usable. The developer might have scratched in a quick dirt road in one place but set up the easement locations elsewhere.

Many parcels were created before new subdivision rules, the California Environmental Quality Act (CEQA), and local laws like Nevada County's innovative variable road standards forced greater scrutiny and regulation of minor land divisions.

So many easement locations were just in the wrong place and sometimes the road could not even possibly be built within it on a reasonable grade, or there was a need to avoid a humongous rock outcrop or a beautiful grove of trees or wetlands (then called swamps).

Based on our experience, we suggest giving easement versus road locations some thought under these conditions:

1. Whenever you or your private road association is planning significant improvements to the roadway, it would be good to make sure that no easement problems will arise.

2. If you know there is a problem, you might consider addressing the issue as a part of your estate planning so that your heirs won't need to deal with it.

3. Whenever it makes sense to reduce the burden footprint on your land by eliminating an unused easements or moving the road over where it belongs.

We can review and plot easement documents and survey the road location to determine whether there is an issue, and to what extent, helping you to decide whether it is worthwhile to consider realigning the road or the easement, so that they are in the same place.

Realignment will require working with your neighbors and may require obtaining formal agreements through deed exchanges. We can prepare exhibit drawings that can show all parties what is proposed. We typically don't handle the actual negotiations, which sometime involves an exchange of money or other consideration.

Once all are in agreement, we can prepare appropriate legal descriptions to be used by your title company in quit-claim deeds for abandoning old segments and easement deeds for new segments. Again, your title company can prepare the actual deeds as a part of an escrow and title insurance reflecting the changes.

If you will move the road to the easement, we can help you evaluate whether grading plans, management plans, or other permits are required. We can prepare such plans or coordinate sub-consultants if needed. We can also assist with bidding, construction staking, and construction supervision. Contact us if we can help.