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OFFICIAL RECORD  
Requested By:  
DC/DISTRICT ATTORNEY

Assessor's Parcel Number: 1418-34-110-011  
1418-34-110-012  
1418-34-110-013

Douglas County - NV  
Werner Christen - Recorder  
Page: 1 Of 36 Fee: 0.00  
BK-0508 PG- 5498 RPTT: 0.00

Recording Requested By: Cynthea Gregory, DDA



✓ Name: Douglas County District Attorney's Office  
Address: P.O. Box 218  
City/State/Zip: Minden, NV 89423

Real Property Transfer Tax: \$ N/A

*I the undersigned hereby affirm that this document submitted for recording does not contain any personal information of any person or persons.*

Per NRS 239B

Cynthea Gregory  
Cynthea Gregory, Deputy District Attorney

**COURT ORDERS CONFIRMING EASEMENTS FOR COMMON AREA IN LINCOLN PARK SUBDIVISION**

(Title of Document)

IN THE SUPREME COURT OF THE STATE OF NEVADA

MILLIGAN-TAHOE, LLC; JACKSON RANCHERIA BAND OF MIWUK INDIANS; JEFFREY AND SUZANNE LUNDAHL; THOMAS H. AND NANCY T. TORNGA, TRUSTEES OF THE TORNGA 1998 TRUST; PAUL K. AND N. K. CHAMBERLAIN; AND TODD AND ANNE TARICCO,

Appellants,

vs.

DOUGLAS COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA; WILLIAM C. ALLEN; JOHN C. ALLEN; EDWIN M. MILLER, TRUSTEE; GERALD GODFREY PAGE AND ALMA IRENE PAGE, CO-TRUSTEES; JOSEPH POHL; MEGAN CLANCY; DICK L. ROTTMAN; JEAN M. ROTTMAN; ROBERT F. STELLABOTTE; GLORIA STELLABOTTE; WARREN C. TUCKER; LUANN M. TUCKER; WILBUR E. TWINING; ROSMARIE M. TWINING; GRETA MARKS VALLERGA, TRUSTEE; JAMES M. WILHOYTE, JR; MARY WILHOYTE; THOMAS CHARLES WILHOYTE; JOHN GEORGE WILHOYTE; DONALD W. WINNE; AND DORIS L. WINNE,

Respondents.

No. 46015

**FILED**

FEB 26 2008

TRAZIE L. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

ORDER DENYING REHEARING AND AMENDING PRIOR ORDER




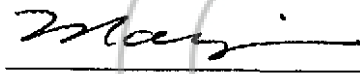
08-04623

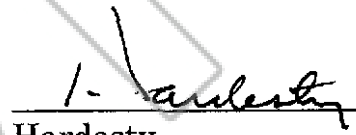
We have considered the rehearing petition in this matter and have determined that rehearing is not warranted.<sup>1</sup> Accordingly, we deny the petition. Nevertheless, we have concluded that our order in this matter affirming in part, reversing in part and remanding, entered on November 21, 2007, includes a footnote regarding attorney fees that is too restrictive and that should be amended. We therefore vacate the text of footnote 10 in our November 21, 2007 order and issue the following replacement text for footnote 10:

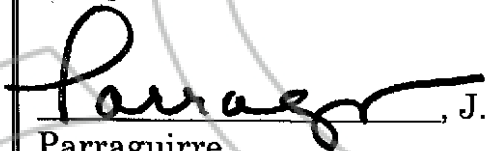
We note that it is not clear from the record whether attorney fees may be permissible on some other basis. The district court remains free to consider such an award, if appropriate.


It is so ORDERED.

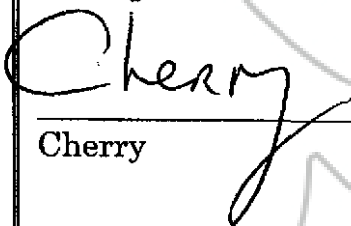
  
\_\_\_\_\_, C.J.  
Gibbons

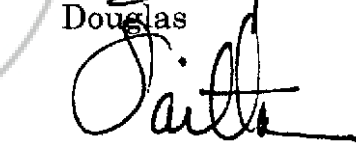
  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

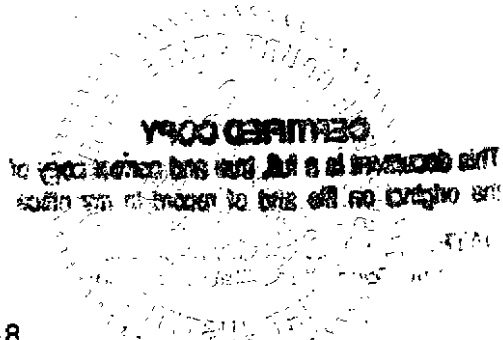
<sup>1</sup>NRAP 40(c).



cc: Hon. David R. Gamble, District Judge  
Alling & Jillson, Ltd.  
Douglas County District Attorney/Minden  
Thomas J. Hall  
Douglas County Clerk

SUPREME COURT  
OF  
NEVADA

(C) 1947A 



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DATE: 5-21-08

Supreme Court Clerk, State of Nevada

S. Young Deputy



BK- 0508  
PG- 5502

IN THE SUPREME COURT OF THE STATE OF NEVADA

MILLIGAN-TAHOE, LLC, ET AL.,  
Appellants,  
vs.  
DOUGLAS COUNTY, A POLITICAL  
SUBDIVISION OF THE STATE OF  
NEVADA, ET AL.,  
Respondents.

No. 46015

**FILED**

FEB 25 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER CORRECTING CLERICAL ERRORS IN ORDER AFFIRMING  
IN PART, REVERSING IN PART, AND REMANDING

On November 21, 2007, this court entered an order affirming in part and reversing in part the judgment of the district court and remanding for further proceedings consistent with our order. Several respondents have filed a motion to correct clerical errors in our November 21, 2007, order. In support of the motion, the respondents note that the November 21, 2007, order incorrectly states that the district court had determined that no easement existed when the district court "did find that public and private easements exist over the unnamed beach road." Respondents also request that one of the court's conclusions be restated, apparently to clarify that both public and private easements exist over the unnamed beach road. No party has opposed the motion.

Cause appearing, we grant the motion to correct clerical errors. We direct the clerk to delete the sentence on lines 1 and 2 of page 3 of the November 21, 2007, order that currently reads: "The district court ultimately determined that no easement for Douglas Country [sic] or the Intervenor exists" and replace it with the following sentence: "The district court determined that Douglas County and the Intervenor did possess easements over the disputed strip of land." We further direct the clerk to



modify the sentence beginning on line 7 of page 4 of the order that begins:  
"We conclude that substantial evidence supports" to read as follows: "We  
conclude that substantial evidence supports the district court's  
determination that public and private easements exist over the unnamed  
beach road behind the lakefront lots."

It is so ORDERED.

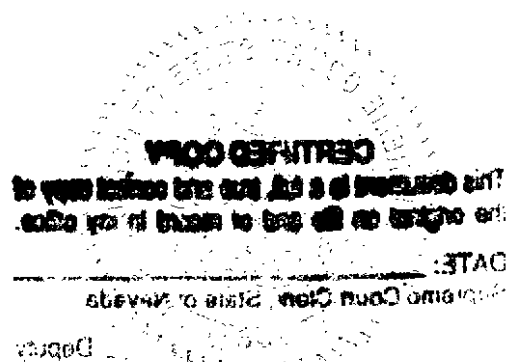
  
\_\_\_\_\_, C.J.

cc: Hon. David R. Gamble, District Judge  
Alling & Jillson, Ltd.  
Douglas County District Attorney/Minden  
Thomas J. Hall  
Douglas County Clerk

SUPREME COURT  
OF  
NEVADA

(0) 1947A 



  
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Douglas County Clerk - State of Nevada  
J. Gillson

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DATE: 5-21-08

Supreme Court Clerk, State of Nevada

By S. Young Deputy





IN THE SUPREME COURT OF THE STATE OF NEVADA

MILLIGAN-TAHOE, LLC; JACKSON RANCHERIA BAND OF MIWUK INDIANS; JEFFREY AND SUZANNE LUNDAHL; THOMAS H. AND NANCY T. TORNGA, TRUSTEES OF THE TORNGA 1998 TRUST; PAUL K. AND N. K. CHAMBERLAIN; AND TODD AND ANNE TARICCO,  
Appellants,

vs.

DOUGLAS COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA; WILLIAM C. ALLEN; JOHN C. ALLEN; EDWIN M. MILLER, TRUSTEE; GERALD GODFREY PAGE AND ALMA IRENE PAGE, CO-TRUSTEES; JOSEPH POHL; MEGAN CLANCY; DICK L. ROTTMAN; JEAN M. ROTTMAN; ROBERT F. STELLABOTTE; GLORIA STELLABOTTE; WARREN C. TUCKER; LUANN M. TUCKER; WILBUR E. TWINING; ROSMARIE M. TWINING; GRETA MARKS VALLERGA, TRUSTEE; JAMES M. WILHOYTE, JR.; MARY WILHOYTE; THOMAS CHARLES WILHOYTE; JOHN GEORGE WILHOYTE; DONALD W. WINNE; AND DORIS L. WINNE,  
Respondents.

No. 46015

**FILED**

NOV 21 2007

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK



ORDER AFFIRMING IN PART, REVERSING IN PART, AND  
REMANDING

This is an appeal from a district court judgment concerning title to a recreational easement. Ninth Judicial District Court, Douglas County; David R. Gamble, Judge.

FACTS

Appellants are lakefront property owners on Lake Tahoe who dispute the right of other homeowners in a subdivision to use a strip of land between the homes and Lake Tahoe. Douglas County is a respondent along with various other property owners in the subdivision that originally moved to intervene (Intervenors).

A 1921 plat map dedicated a piece of irregularly-shaped property that runs in a north-northwest direction, approximately one thousand feet long along Lake Tahoe. The width of the property fluctuates between fifteen and fifty feet and is just south of Cave Rock, alongside the Lincoln Park subdivision. On the plat map, an eighteen-foot strip of the dedicated property is designated for a future street referred to as the "unnamed beach road". The eighteen-foot strip runs along the original property lines of blocks A, C, E, and F. Two perpendicular roads join the unnamed beach road to a parallel road (Lincoln Park Circle). Douglas County possesses an easement for public use, and for highway and street purposes, excluding the previously abandoned areas of blocks A, B, and C. The irregular strips of land bordering the unnamed beach road were dedicated to Douglas County and later accepted in 1946.

Appellants filed a petition for declaration of rights as to real property seeking a determination as to Douglas County's interest in the



deleted and replaced per order 2-25-08 sy

The district court determined that Douglas County and the Intervenor did possess easements over the disputed strip of land.

subdivision. ~~The district court ultimately determined that no easement for Douglas County or the Intervenor exists.~~ This appeal followed.

DISCUSSION

We review questions of law de novo.<sup>1</sup> The district court's findings of fact will not be disturbed if supported by substantial evidence.<sup>2</sup> An award of attorney fees will not be overturned absent a manifest abuse of discretion.<sup>3</sup>

On appeal, the lakefront owners challenged 1) the district court's finding that a public and private easement exists over the unnamed beach road behind the lakefront lots; 2) the district court's finding that three prior quiet title actions were void for lack of notice; 3) the district court's finding that the appellants did not terminate the easement by adverse possession; and 4) the district court's \$69,229.74 award of attorney fees to the Intervenor.

Implied easement for public and private use

The district court found that the recording of a plat map in 1921 created an implied easement over the disputed strip of land for public and private use. We agree. In Shearer v. City of Reno,<sup>4</sup> we held that a plat map was controlling on the use of the land. Under Shearer, a plat map cannot be changed once it is filed, advertised, or any of the lots

<sup>1</sup>State Industrial Insurance System v. United Exposition Services, 109 Nev. 28, 30, 864 P.2d 294, 295 (1993).

<sup>2</sup>Keife v. Logan, 119 Nev. 372, 374, 75 P.3d 357, 359 (2003).

<sup>3</sup>Bergmann v. Boyce, 109 Nev. 670, 676, 856 P.2d 560, 564 (1993).

<sup>4</sup>36 Nev. 443, 447, 136 P. 705, 707 (1913).

modified per  
order 2-25-08  
sy

described by the map are sold.<sup>5</sup> Here, the 1921 Map clearly notes that a strip along the beach is designated as a future street. The 1921 Map also contains an easement possessed by Douglas County for the public use and for highway and street purposes. The district court found that it was reasonable to conclude that "a dedication of a street over a beach area should be interpreted as providing a path for access along the beach to those that may also make use of the public streets." We conclude that substantial evidence supports the district court's determination that a public and private ~~easement exists~~ <sup>easements exist</sup> over the unnamed beach road behind the lakefront lots.

Prior quiet title actions

Appellants also argue that the district court erred in finding that three prior quiet title actions were void for lack of notice. The appellant lakefront owners brought three actions quieting title. Two judgments were entered in 1999, and one in 2002. Respondent Douglas County was served by mail. The intervening backlot residents of Lincoln Park were served by publication, pursuant to a district court order for publication. No one was present to contest the matters. All three judgments quieting title were awarded to appellants by default.

NRS 40.090(2) states in pertinent part that:

The complaint must include as defendants in such action, in addition to such persons as appear of record to have some claim, all other persons who are known, or by the exercise of reasonable diligence could be known, to plaintiff to have some claim to an estate, interest, right, title,

<sup>5</sup>Id. at 448, 136 P. at 707.



lien, or cloud in or on the land described in the complaint adverse to plaintiff's ownership.

The plat map shows sixty-five lots in the entire Lincoln Park subdivision. The only named defendants were "[t]he eight original owners, Does 1-100, and Douglas County," in those actions. The district court overruled the previous default actions for a lack of "reasonable diligence" in ascertaining individuals who may have had some claim to the beachfront. Although reasonable diligence would have revealed the identity of the backlot owners who may have had some claim to the beach front, the only certificate of mailing available in the record is on the Douglas County District Attorney's office.<sup>6</sup> We conclude that the district court was provided substantial evidence with which it could find that the backlot owners were not notified of the default actions going forward, and that the disputed judgments quieting title are of no effect and are not valid given the lack of service on the backlot owners.

#### Termination by adverse possession

Appellants also contend that the district court erred in finding that the appellants did not terminate the easement by adverse possession. But title to government land cannot be obtained through adverse possession.<sup>7</sup> "[A]bsent a statute allowing adverse user against the state,

---

<sup>6</sup>Mullane v Central Hanover Bank & Trust Co., 339 U.S. 306, 313, (1950) (providing that the U.S. Constitution's Due Process Clause requires that "deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case").

<sup>7</sup>See Sloat v. Turner, 93 Nev. 263, 266, 563 P.2d 86, 88 (1977).

no rights as to state property can be acquired by prescription.”<sup>8</sup> The 1921 plat map established the government’s fee interest through a statutory dedication. It is irrelevant that the landowners had made improvements to the land and had fenced it in. The dedication was complete under the filing of the plat map on September 7, 1921. Because government land cannot be taken through adverse possession, we agree with the district court that the lakefront landowners do not own title in fee to this parcel of land.

Attorney fees

Appellants contend that the district court erred in awarding attorney fees to the Intervenor in the amount of \$69,229.74. We agree. We have recently concluded in Horgan v. Felton,<sup>9</sup> that attorney fees generally cannot be recovered unless authorized by an agreement, statute, rule, and we recently clarified that “in cases concerning title to real property, attorney fees are only allowable as special damages in slander of title actions.” No authority supports the award of attorney fees in this case.<sup>10</sup> We therefore

---

<sup>8</sup>Id.

<sup>9</sup>Horgan v. Felton, 123 Nev. \_\_\_\_, \_\_ P.3d \_\_\_\_ (Adv. Op. No. 53, Nov. 21, 2007); see also Young v. Nevada Title Co., 103 Nev. 436, 442, 744 P.2d 902, (1987); see Sun Realty v. District Court, 91 Nev. 774, 776, 542 P.2d 1072, 1074 (1975).

<sup>10</sup>~~Notwithstanding, the district court may consider whether the award of attorneys fees is appropriate pursuant to NRS 18.010(2)(b) or under any provisions of the Nevada Rules of Civil Procedure.~~

*We note that it is not clear from the record whether attorney fees may be permissible on some other basis. The district court remains free to consider such an award, if appropriate.*

*51  
Vacated & replaced  
text of fn 10  
per 2-26-08  
order. lc*



conclude that the district court's award of attorney fees as an abuse of discretion, and

ORDER the judgment of the district court AFFIRMED IN PART, REVERSED IN PART, AND REMANDED for further proceedings consistent with this order.

Gibbons, J.  
Gibbons

Hardesty, J.  
Hardesty

Parraguirre, J.  
Parraguirre

Douglas, J.  
Douglas

Cherry, J.  
Cherry

Saitta, J.  
Saitta

cc: Hon. David R. Gamble, District Judge  
Madelyn Shipman, Settlement Judge  
Alling & Jillson, Ltd.  
Douglas County District Attorney/Minden  
Thomas J. Hall  
Douglas County Clerk



MAUPIN, C.J., concurring:

I concur in the result reached by the majority.

Maupin, C.J.  
Maupin

SUPREME COURT  
OF  
NEVADA

(0) 1947A 



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DATE: 5-21-08

Supreme Court Clerk, State of Nevada

By S. Young Deputy

0723735  Page: 17 Of 36

BK- 0508  
PG- 5514  
05/22/2008

1 Case No. 03-CV-0020

2 Dept. No. 1

2008 AUG 22 PM 1:33

3  
4  
5 BY: *[Signature]*

FILED  
AUG 22 2008  
DOUGLAS COUNTY  
CLERK

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF DOUGLAS

8  
9 MILLIGAN-TAHOE, LLC, JACKSON  
10 RANCHERIA BAND OF MIWUK INDIANS,  
11 JEFFREY and SUZANNE LUNDAHL,  
12 THOMAS H. and NANCY T. TORNGA, Trustees  
of the TORNGA 1998 TRUST, PAUL H.  
and N. K. CHAMBERLAIN, and TODD and  
ANNE TARICCO,

13 Plaintiffs and Cross-Defendants,

14 vs.

15 DOUGLAS COUNTY, a Political Subdivision  
16 of the State of Nevada,

17 Defendant,

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND JUDGMENT**

18  
19 vs.

20 WILLIAM C. ALLEN AND JOHN C. ALLEN,  
21 EDWIN M. MILLER, TRUSTEE, GERALD GODFREY  
22 PAGE AND ALMA IRENE PAGE, CO-TRUSTEES,  
23 JOSEPH POHL AND MEGAN CLANCY, DICK L.  
24 ROTTMAN AND JEAN M. ROTTMAN, ROBERT F.  
25 STELLABOTTE AND GLORIA STELLABOTTE,  
26 LUANN M. TUCKER, WILBUR E. TWINING AND  
ROSMARIE M. TWINING, GRETA MARKS VALLERGA,  
TRUSTEE, JAMES M. WILHOYTE, JR., MARGARET  
WILHOYTE, THOMAS CHARLES WILHOYTE AND  
JOHN GEORGE WILHOYTE, AND DONALD W. WINNE  
AND DORIS L. WINNE

27 Interveners and Cross-Petitioners  
28

DAVID R. GAMBLE  
DISTRICT JUDGE  
DOUGLAS COUNTY  
P.O. BOX 218  
MINDEN, NV 89423



1 This cause first came on to be heard before the Court for  
2 oral argument on May 5, 2004. Plaintiffs Milligan-Tahoe, LLC,  
3 Jackson Rancheria Band of Miwuk Indians, Jeffrey Lundahl and  
4 Suzanne Lundahl, Thomas H. Tornga and Nancy T. Tornga, Trustees  
5 of the Tornga 1998 Trust, Paul H. Chamberlain and N. K.  
6 Chamberlain, and Todd Taricco and Anne Taricco, having appeared  
7 in person and through their counsel Ronald D. Alling, Esq., and  
8 Michael K. Johnson, Esq. Defendant Douglas County, having  
9 appeared by and through its counsel Thomas E. Perkins, Esq.,  
10 Intervenor/Cross-Petitioners William C. Allen and John C.  
11 Allen, Edwin M. Miller, Trustee, Gerald Godfrey Page and Alma  
12 Irene Page, Co-Trustees, Joseph Pohl and Megan Clancy, Dick L.  
13 Rottman and Jean M. Rottman, Robert F. Stellabotte and Gloria  
14 Stellabotte, Luann M. Tucker, Wilber E. Twining and Rosmarie  
15 Twining, Greta Marks Vallergera, Trustee, James M. Wilhoyte, Jr.,  
16 Margaret Wilhoyte, Thomas Charles Wilhoyte and John George  
17 Wilhoyte, and Donald W. Winne and Doris L. Winne (herein  
18 collectively "Intervenors"), having appeared in person and  
19 through their counsel Thomas J. Hall, Esq.

20  
21  
22 Before the Court on May 5, 2004 were Plaintiffs' Motion for  
23 Summary Judgment and Intervenors' Motion for Partial Summary  
24 Judgment. During a status conference held with all parties on  
25 April 22, 2004, the Court determined, based upon the proffers of  
26 counsel, that the main issues raised within the two motions were  
27 matters of law, rather than matters of fact. Therefore, the Court  
28



1 entertained and accepted a suggestion to treat the trial date as  
2 one for oral arguments for summary judgment, in which all  
3 relevant exhibits would be reviewed. All parties mutually agreed  
4 to this suggestion, with the recognition that if factual  
5 testimony became necessary, based upon the Court's ruling after  
6 oral argument, that a further hearing could be scheduled to  
7 resolve any remaining fact issues. The Court, having considered  
8 the oral arguments heard and exhibits presented on May 5, 2004,  
9 and having examined all relevant pleadings and papers on file  
10 herein, including the Joint Stipulation of Facts, filed herein  
11 May 4, 2004. On August 16, 2004, the Court entered its Order  
12 denying Summary Judgment to Plaintiffs and granting Partial  
13 Summary Judgment to Intervenor.

14  
15 On June 13, 2005 through June 16, 2005, at the request of  
16 Plaintiffs, the legal and factual matters of prescription,  
17 adverse possession and abandonment were heard by the Court,  
18 sitting without a jury. On June 15, 2005, the Court viewed the  
19 premises. On June 16, 2005, at the conclusion of Plaintiffs'  
20 case, the Court rendered its oral decision on the oral Motion for  
21 Involuntary Dismissal made by Douglas County, which Motion was  
22 joined in by Intervenor.

23  
24 Good cause appearing, the Court being duly informed, hereby  
25 enters the following Findings of Fact, Conclusions of Law and  
26 Judgment.

27  
28 //

FINDINGS OF FACT

WHEREFORE, the Court finds as follows:

1  
2  
3 1. Plaintiffs Paul K. Chamberlain and N.K. Chamberlain own  
4 Lots 14 and 16, Block C, Lincoln Park Subdivision, APN 1418-34-  
5 110-020.

6 2. Plaintiffs Paul K. Chamberlain and N.K. Chamberlain own  
7 Lot 2, Block E, Lincoln Park Subdivision, APN 1418-34-110-021.

8 3. Plaintiff Jackson Rancheria Band of Miwuk Indians owns  
9 Lot 13, Block A, Lincoln Park Subdivision, APN 1418-34-110-008.

10 4. Plaintiffs Jeffrey Lundahl and Suzanne Lundahl, owned  
11 at the commencement of litigation and during subsequent  
12 litigation, sold *pendente lite* to Jackson Rancheria Development  
13 Corporation, Lot 14, Block A, Lincoln Park Subdivision, APN 1418-  
14 34-110-009.

15 5. Plaintiff Milligan-Tahoe, LLC, owns Lot 1, Block A,  
16 Lincoln Park Subdivision, APN 1418-34-110-001.

17 6. Plaintiffs Todd Taricco and Ann Taricco own Lots 10 and  
18 12, Block C, Lincoln Park Subdivision, APN 1418-34-110-019.

19 7. Plaintiffs Thomas H. Tornga and Nancy T. Tornga own Lot  
20 2, Block C, Lincoln Park Subdivision, APN 1418-34-110-015.

21 8. Plaintiffs Thomas H. Tornga and Nancy T. Tornga own the  
22 northerly 20 feet of Lot 6 and all of Lot 4, Block C, Lincoln  
23 Park Subdivision, APN 1418-34-110-016.

24 9. Intervenors William C. Allen and John C. Allen own Lot  
25 12, Block B, Lincoln Park Subdivision, APN 1418-34-110-037.  
26  
27  
28

1 10. Intervenors Edwin M. Miller, Trustee, and LuAnn M.  
2 Tucker own Lot 7, Block B, Lincoln Park Subdivision, APN 1418-34-  
3 110-040.

4 11. Intervenors Gerald Godfrey Page and Alma Irene Page,  
5 Co-Trustees, own Lot 10, Block B, Lincoln Park Subdivision, APN  
6 1418-34-110-038.

7 12. Intervenors Joseph Pohl and Megan Clancy own Lot 3,  
8 Block B, Lincoln Park Subdivision, APN 1418-34-110-044.

9 13. Intervenors Dick L. Rottman, Jean M. Rottman, Donald W.  
10 Winne and Doris L. Winne own Lot 5, Block B, Lincoln Park  
11 Subdivision, APN 1418-34-110-022.

12 14. Intervenors Gloria Stellabotte and Robert F.  
13 Stellabotte own Lot 15, Block B, Lincoln Park Subdivision, APN  
14 1418-34-110-035.

15 15. Intervenors Wilbur E. Twining and Rosmarie M. Twining  
16 own Lot 2, Block D, Lincoln Park Subdivision, APN 1418-34-110-  
17 033.

18 16. Intervenors James M. Wilhoite, Jr., Margaret Wilhoite,  
19 Thomas Charles Wilhoite and John George Wilhoite own Lots 8 and  
20 9, Block B, Lincoln Park Subdivision, APN 1418-34-110-039.

21 17. Intervenors Donald W. Winne and Doris L. Winne own Lots  
22 3 and 4, Block E, Lincoln Park Subdivision, APN 1418-34-110-042.

23 18. The above described properties owned by the parties  
24 were created by approval of the Douglas County Commission on  
25 September 7, 1921, and by the recordation on September 7, 1921,  
26  
27  
28



1 of that certain Map entitled Lincoln Park, Lake Tahoe, Nevada, in  
2 Book D of Miscellaneous, at Page 40A, as Document 305, Douglas  
3 County Records (the "Map").

4 19. The Map particularly sets forth and describes all of  
5 the parcels of land so laid out and platted by their boundaries,  
6 course and extent, and whether they are intended for avenues,  
7 streets, lanes, alleys, commons or other public uses, together  
8 with such as may be reserved for public purposes, and all lots  
9 therein intended for sale by numbers and their precise length and  
10 width.  
11

12 20. All documents and instruments conveying an interest in  
13 a lot within Lincoln Park Subdivision make reference to the Map.

14 21. The Map includes an offer of dedication of an 18 foot  
15 wide area, sometimes called "Unnamed Street" or later "Lincoln  
16 Park Beach Road," located immediately lakeward of Blocks A, C, E  
17 and F in the Lincoln Park Subdivision, which dedication was made  
18 pursuant to the statute in effect at that time and which  
19 dedication was accepted by Douglas County without exception,  
20 reservation, qualification or limitation.  
21

22 22. In living memory, no street, highway, avenue or roadway  
23 of any sort has been constructed in the Lincoln Park Beach Road  
24 area between 1921 and the present.

25 23. On May 7, 1946, a Resolution was adopted by the Douglas  
26 County Board of Commissioners granting a petition that an  
27 irregular parcel of land depicted on the Map, lying west of the  
28



1 Lincoln Park Beach Road (aka "Unnamed Street"), be dedicated for  
2 public uses for highway and street purposes. The Resolution  
3 granting that petition determined that said tract of land be  
4 dedicated for public uses and for highway and street purposes,  
5 thereby amending the Map previously recorded. Exhibits 2 and 16.  
6 The Resolution was recorded on May 7, 1946 in Book D, at Page  
7 338, as Document 2705, Douglas County Records. The newly  
8 dedicated and accepted area and the Lincoln Park Beach Road  
9 merged together and later became known as the Common Beach Area.  
10

11 24. The Common Beach Area is shown on the Douglas County  
12 Assessor's Maps and is an amenity of substantial value to the  
13 Intervenors. Exhibits 42, 43 and 67.

14 25. According to documents on file with the Douglas County  
15 Recorder's Office, including the Map and the Resolution recorded  
16 on May 7, 1946, in Book D, at Page 338, as Document 2705 (Exhibit  
17 12) and in conjunction with the decision from Douglas County  
18 Community Development, as of March 9, 1983, the Douglas County  
19 Assessor's Office believed the beachfront property noted as  
20 Common Beach Area on Map Book 03, at Page 16 is public property  
21 controlled by Douglas County. Exhibit 19.  
22

23 26. In 1997, Douglas County abandoned three small portions  
24 of the Common Beach Area lying under improvements owned by  
25 Plaintiffs Milligan, Jackson and Lundahl, and denominated Parcels  
26 A, B and C, pursuant to An Order of Abandonment Vacating Portions  
27 of the Lincoln Park Beach Road (the "Order of Abandonment"),  
28

DAVID R. GAMBLE  
DISTRICT JUDGE  
DOUGLAS COUNTY  
P.O. BOX 218  
MINDEN, NY 89423



1 recorded on November 19, 1997, in Book 1197, at Page 3696, as  
2 Document 0426667, Douglas County Records. Exhibit 33.

3 27. While the Order of Abandonment ordered a reversion to  
4 the abutting property owners, Douglas County expressly reserved  
5 any Public Utility Easement embracing the limits of the original  
6 roadway, therein named the Lincoln Park Beach Road, for the  
7 continuation, maintenance, expansion and operation of the public  
8 utilities contained within the limits of the abandonment.  
9

10 28. The Intervenors make no claim to Parcels A, B and C  
11 described in the Order of Abandonment.

12 29. Various Quiet Title Actions, specifically Case Numbers  
13 97-CV-0225, 99-CV-0122 and 01-CV-0240, were previously brought  
14 before this Court, which resulted in stipulated Orders and  
15 Judgments Quieting Title that acknowledged fee ownership of the  
16 area lakeward of Plaintiffs' lots subject, however, to a right-  
17 of-way easement held by Douglas County. The right-of-way easement  
18 has no limitation on the extension of its area. The Court has  
19 taken judicial notice of each case and having reviewed these  
20 actions, it does not appear to the Court that Intervenors  
21 received specific and personal notice regarding these actions.  
22 Exhibits 34-36.  
23

24 30. The three Judgments Quieting Title referenced in  
25 Finding 29, were recorded on April 26, 1999, in Book 0499, at  
26 Page 5138, as Document 0466488; on September 9, 1999, in Book  
27 0999, at Page 1316, as Document 0476114 and on March 12, 2002 in  
28

1 Book 0302, at Page 03906, as Document 0536777, Douglas County  
2 Records. Exhibits 34-36.

3 31. Prior to July 1, 2002, the Douglas County Assessor  
4 designated and renumbered the three tax parcels comprising the  
5 Common Beach Area as APN 1418-34-110-011, 1418-34-110-012 and  
6 1418-34-110-013, with a nominal land value of \$1.00 each. Exhibit  
7 47.

8  
9 32. No taxes have been assessed, levied or paid with  
10 respect these three tax parcels.

11 33. The Common Beach Area is burdened by a recreational  
12 easement in favor of all lot owners within Lincoln Park  
13 Subdivision including the Intervenors, which recreational  
14 easement has been integrated from its inception on September 7,  
15 1921 and May 7, 1946, and which recreational easement affects  
16 every piece and portion of the Common Beach Area with the  
17 exception of Parcels A, B and C.

18  
19 34. The recreational easement over the Common Beach Area is  
20 a valuable property right to each lot owner within Lincoln Park  
21 Subdivision.

22 35. Some of the Plaintiffs have installed lawn sprinkler  
23 systems and landscaping on portions of the Common Beach Area.

24 36. At various times, some of the Plaintiffs have erected  
25 fences on or across portions of the Common Beach Area.

26  
27 37. Because it was possible to climb over or merely walk  
28 around the fences erected by Plaintiffs on the Common Beach Area,



1 access by Intervenor to the Common Beach Area was not completely  
2 obstructed.

3 38. No substantial enclosure has surrounded any part or  
4 portion of the Common Beach Area except for a small area adjacent  
5 to Parcel B, constructed within the easement reserved by Douglas  
6 County. Exhibit 63.

7 39. Plaintiffs did not give Intervenor specific and  
8 personal notice that Plaintiffs were claiming the Common Beach  
9 Area, or any part or portion thereof, as their own, by any theory  
10 of prescription or adverse possession.

11 40. Plaintiffs have not had open, notorious or continuous  
12 possession of the Common Beach Area, or any part or portion  
13 thereof, for five (5) years preceeding the filing of this action  
14 on January 23, 2003.

15 41. As of June 23, 2005, Intervenor have incurred attorney  
16 fees in the amount of \$69,229.74.

17  
18 **CONCLUSIONS OF LAW**

19  
20 Based on the foregoing Findings of Fact, the Court makes its  
21 Conclusions of Law, as follows:

22 1. The Map originally delineated the lot boundaries and  
23 access rights in 1921, and particularly sets forth and describes  
24 all of the parcels of land so laid out and whether they are  
25 intended for avenues, streets, lanes, alleys, commons or other  
26 public use, together with such as may be reserved for public  
27 purposes.  
28

1           2.    The Map notes that all streets and avenues are 18 feet  
2 in width and an 18-foot partial delineation is marked along the  
3 beach area immediately west of Block A, establishing a strip of  
4 land along the beach for a future street, the so called Lincoln  
5 Park Beach Road.

6           3.    Douglas County possesses an easement extending along  
7 the streets and beach area from the original western edge of the  
8 lots at issue in this matter to Lake Tahoe Datum at 6,223 feet  
9 elevation ("Datum"), creating a right of access over lands west  
10 of the original property lines of Blocks A, C, E and F, to the  
11 Datum, for public uses and for highway and street purposes,  
12 excluding Parcels A, B and C previously abandoned by Douglas  
13 County, as set forth in Findings 26, 27 and 28, and as to those  
14 three areas (see Exhibit 33),  
15

16           Any Public Utility Easement embracing the limits of  
17 the original roadway is expressly reserved [to Douglas  
18 County] for the continuation, maintenance, expansion,  
19 and operation of the public utilities contained within  
the limits of this abandonment.

20           4.    In reaching this determination, the Court concludes  
21 that reserving access for purposes of public highways must be  
22 interpreted as it pertains to the era in which such reservations  
23 were made.

24           5.    Considering that horses, bicycles and pedestrian means  
25 were still viable modes of transportation in the early 20<sup>th</sup>  
26 century, it is entirely reasonable to conclude that a dedication  
27 of a street over a beach area should be interpreted as providing  
28



1 a path for access along the beach to those that may also make use  
2 of the public streets.

3 6. In 1946, Douglas County again resolved to accept an  
4 offer of dedication of certain land for public uses and for  
5 highway and street purposes, and later reserved a right-of-way  
6 easement in the Quiet Title Actions. See Findings 23-30, Exhibits  
7 16 and 33.

8  
9 7. All parties were always on notice of the record Map,  
10 the dedications and the amendments, both actually and  
11 constructively pursuant to NRS 111.315 and NRS 111.320, as it may  
12 affect title to their respective properties and interests in the  
13 Lincoln Park Subdivision.

14 8. A dedication is a gift of land by the owner for an  
15 appropriate public use, such as a street. Dedications may be  
16 classified as either by statute or by common law. A statutory  
17 dedication operates by way of grant, vesting in the municipality  
18 the fee for public use. Under a common law dedication however,  
19 the fee of the land dedicated for a street remains in the owner,  
20 subject to a public easement in the land which is vested in the  
21 municipality. A common law dedication rests upon the doctrine of  
22 estoppel in pais, which extends to an owner permitted use of  
23 private property to protect the public's expectation of continued  
24 use. The recording of a plat may qualify as a statutory  
25 dedication, or, at least, provides evidence of an intent to make  
26 a common law dedication. Finally, the party asserting a  
27  
28

1 dedication bears the burden of proof. Carson City v. Capitol City  
2 Entertainment, Inc., 118 Nev. 415, 421, 49 P.3d 632, 635 (2002).

3 9. Sufficient evidence exists in the record of an intent  
4 to make, at a minimum, a common law dedication. A dedication of  
5 land for public purposes is simply a devotion of it, or an  
6 easement in it, to such purposes by the owner, manifested by some  
7 clear declaration of fact. Shearer v. City of Reno, 36 Nev. 443,  
8 449, 136 Pac. 705, 707 (1913). The sale of lots with express  
9 reference to the Map qualifies as such evidence. Exhibits 5  
10 through 12.

12 10. If a party contracts for a valuable consideration to be  
13 made by others founded upon a supposed appropriation of the  
14 property to the uses indicated, the dedication becomes  
15 irrevocable. The lot sale contract with the Lincoln Park  
16 Subdivision owner estops him from later asserting any interest  
17 except in common with the lot purchasers from him. Shearer,  
18 supra, 36 Nev. at 449, 136 Pac. at 708.

20 11. In this instance, access to the beach area within the  
21 Map has been demonstrated as previously described. Upon  
22 recordation of the Map, subsequent lot purchasers were notified  
23 that beach access was allowed as an amenity.

24 12. As described previously, the Map delineates a portion  
25 of the Common Beach Area at issue in this matter to serve as a  
26 street with a designated width of 18 feet. Again, in 1946 Douglas  
27 County resolved to accept the dedication of certain additional  
28



1 land for public uses and for highway and street purposes and  
2 later retained certain right-of-way easements in the Abandonment  
3 and Quiet Title Actions. Exhibits 33-36.

4 13. The Intervenor, as lot owners within Lincoln Park  
5 Subdivision, have and possess an easement and right to use and  
6 enjoy the Common Beach Area for recreational purposes, hence the  
7 recreational easement.

8  
9 14. All the lot owners within Lincoln Park Subdivision  
10 possess a recreational easement and right for beach access over  
11 the same ground described in Plaintiffs' Petition, being the  
12 Common Beach Area.

13 15. An easement is a right, distinct from ownership, to use  
14 the land of another in some limited way, and gives no right to  
15 actually possess the land affected.

16 16. A servient estate owner cannot unreasonably restrict or  
17 interfere with the proper use of an easement established for  
18 joint use.

19  
20 17. When an easement is non-exclusive, as here, the common  
21 users must accommodate each other.

22 18. Use of a portion of the easement is use of the whole.

23 19. The easement rights held by Intervenor cannot be  
24 divested except by due process of law.

25 20. The prior quiet title actions described in the Petition  
26 and in Findings 29 and 30 did not comply with due process of law  
27 relative to the Intervenor and therefore did not affect  
28

1 Intervenor's interests in and to the Common Beach Area. Exhibits  
2 34-36.

3 21. An easement is a vested interest in real property and  
4 cannot be lost or terminated by mere non-use alone, for any  
5 period, however long it may continue.

6 22. Mere use does not constitute adverse use.

7 23. The statutory provisions governing the acquisition of  
8 title by adverse possession must be strictly construed and  
9 strictly followed.  
10

11 24. Plaintiffs have not met their burden of proof to  
12 demonstrate compliance with the statutory provision governing the  
13 acquisition or loss of title by adverse possession.

14 25. A permissive use cannot ripen into an adverse use  
15 absent specific notice to the owner of the servient estate that  
16 such use is henceforth adverse for purposes of creating a  
17 prescriptive easement.  
18

19 26. The Plaintiffs failed to show any evidence of a hostile  
20 claim of right to the Common Beach Area for the requisite five  
21 years.

22 27. Just as creation of an easement by prescription is not  
23 favored in the law, the termination of an easement by adverse  
24 possession or prescription is not favored.

25 28. Between co-tenants, the tenant out of possession may  
26 assume that the permissive possession of his co-tenant is  
27 amicable until notified that it has become hostile. Here, the  
28



1 Plaintiffs failed to give notice of any adverse or hostile use to  
2 Intervenor.

3 29. The use by Plaintiffs of the Common Beach Area has been  
4 a matter of convenience and not of necessity.

5 30. An adverse possession claimant has the burden of  
6 establishing his or her claim by clear and competent proof in  
7 order to overcome the presumption that possession of the land is  
8 under the regular title. The Plaintiffs failed to establish their  
9 claims of adverse possession or prescription by clear and  
10 competent proof.  
11

12 31. Plaintiffs have not adversely possessed any portion of  
13 the Common Beach Area for five years preceding the filing of this  
14 action on January 23, 2003.

15 32. Plaintiffs have not extinguished any part or portion of  
16 the recreational easement over the Common Beach Area by  
17 prescription.  
18

19 33. The easement rights held by Intervenor have not been  
20 lost by non-use, abandonment, forfeiture, prescription or adverse  
21 possession.

22 34. There can be no adverse possession or prescriptive  
23 claim against Douglas County.

24 35. Attorney fees may be awarded as special damages in  
25 those cases in which a party incurred the fees in recovering real  
26 property acquired through the wrongful conduct of a party or in  
27 clarifying or removing a cloud upon the title to real property.  
28



1 36. Intervenors shall be awarded their costs and reasonable  
2 attorney fees as special damages.

3 37. Intervenors are entitled to judgment against the  
4 Plaintiffs quieting title in and to a recreational easement over  
5 the Common Beach Area described in the Petition, at trial and  
6 herein and at the location and for the uses herein described  
7 above.

8  
9 38. If a Conclusion of Law is found to be a Finding of  
10 Fact, or Finding of Fact is really a Conclusion of Law, the same  
11 should be freely substituted as the case may be.

12 JUDGMENT

13 Judgment based on the foregoing Findings of Fact and  
14 Conclusions of Law, the Court enters Judgment as follows:

15 1. To the extent Plaintiffs' Petition seeks a declaration  
16 that the Lincoln Park Subdivision beach area was dedicated to  
17 Douglas County for highway and street purposes but not for public  
18 use, highway and street purposes, and that the same area is not  
19 subject to an easement for beach or recreation purposes, those  
20 portions of the Petition are DENIED.

21  
22 2. To the extent Intervenors' Cross-Petition requests a  
23 judgment confirming the rights of Intervenors to have, use and  
24 enjoy the Common Beach Area for recreational purposes, that  
25 request is GRANTED.

26  
27 3. The Intervenors jointly have, own and possess a  
28 recreational easement over the Common Beach Area, being that area



1 lakeward of the west side of Blocks A, C, E and F originally  
2 shown on the Plat of Lincoln Park Subdivision, recorded on  
3 September 7, 1921, in Book D of Miscellaneous, at Page 40A, as  
4 Document 305, with the provision however, that the recreational  
5 easement over all such area be extended lakeward, pursuant to NRS  
6 321.595, to the low water mark of Lake Tahoe at a line whose  
7 elevation is 6,223 feet, Lake Tahoe Datum, and with the further  
8 provision that such recreational easement be reduced for Parcels  
9 A, B and C as described in the Order of Abandonment, recorded on  
10 November 18, 1997, in Book 1197, at Page 3696, as Document  
11 0426667, Douglas County Records.  
12

13 4. Douglas County has a right-of-way, including a  
14 recreational easement over the Common Beach Area, that being the  
15 area lakeward of the west side of Blocks A, C, E and F, as shown  
16 on the Map, with the provision that the recreational easement was  
17 reduced by abandonments for Parcels A, B and C as ordered on  
18 November 18, 1997 and recorded in Book 1197, at Page 3696, as  
19 Document No. 0426667, Douglas County Records.  
20

21 5. Plaintiffs shall remove all fences from the Common  
22 Beach Area within sixty (60) days of this Judgment. If not so  
23 removed, Intervenor shall be entitled to apply to the Court for  
24 further relief.  
25

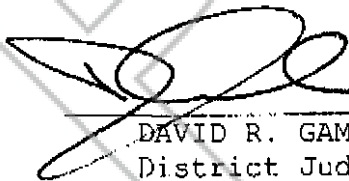
26 6. Intervenor are entitled to Judgment against the  
27 Plaintiffs Milligan-Tahoe, LLC, Jackson Rancheria Bank of Miwuk  
28 Indians, Jeffrey and Suzanne Lundahl, Thomas H. and Nancy T.



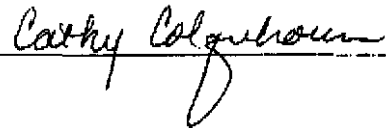
1 Tornga, Trustees of the Tornga 1998 Trust, Paul K. and N.K.  
2 Chamberlain and Todd and Anne Taricco, jointly and severally, for  
3 damages in recovering real property acquired through the wrongful  
4 conduct of the Plaintiffs and in clarifying or removing clouds  
5 from their title to the recreational easement over the Common  
6 Beach Area in the amount of \$69,229.74, plus interest at the  
7 lawful rate thereon from the date of Judgment.

8  
9 7. Costs shall be awarded to Douglas County and to  
10 Intervenor and against Plaintiffs.

11 DATED this 22 day of August, 2005.

12  
13  
14  
15   
16 DAVID R. GAMBLE  
17 District Judge

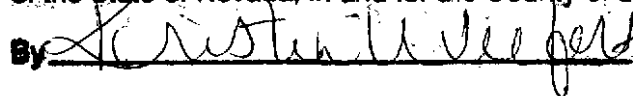
18 Copies served by mail this 22 day of August, 2005, to: Thomas  
19 Hall, Esq., P. O. Box 3948, Reno, NV 89505; Ronald Alling, Esq.,  
20 P. O. Box 3390, Lake Tahoe, NV 89449; Thomas Perkins, Esq., (hand  
21 delivered).

22 

23 **SEAL**

24 **CERTIFIED COPY**

25 The document to which this certificate is attached is a  
26 full, true and correct copy of the original on file and of  
27 record in my office.

28 DATE: 5/22/08  
Barbara J. Griffin, Clerk of the 9th Judicial District Court  
of the State of Nevada, In and for the County of Douglas,  
By  Deputy

DAVID R. GAMBLE  
DISTRICT JUDGE  
DOUGLAS COUNTY  
P.O. BOX 218  
MINDEN, NV 89423

