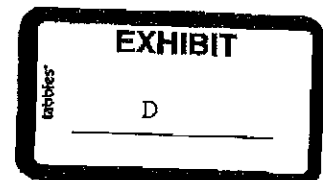


DISTRICT COURT, PARK COUNTY COLORADO 300 - 4 th Street Fairplay, Colorado 80440	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Plaintiffs: ELK FALLS PROPERTY OWNERS ASSOCIATION, a Colorado corporation; KATHRYN WELLS; THE PAUL VASTOLA AND SUZANNE G. NELSON LIVING TRUST, U/A; ROBERT W. PHELPS; and KEVIN O'CONNELL</p> <p>Defendants: VERA B. DUNWODY and DRAYTON D. DUNWODY, and FARM CREDIT OF SOUTHIERN COLORADO, ACA, an agricultural credit association; and the BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF PARK, COLORADO</p> <p>Plaintiffs in Intervention: PETER J. BRAUN and RENAE J. BRAUN</p>	
Victor F. Boog, No. 2561 Amanda B. Cruser, No. 30601 Boog & Cruser, P.C. 3333 S. Wadsworth Blvd., Suite D201 Lakewood, CO 80227 303-986-5769 Fax 303-985-3297 <i>Attorneys for Defendants Vera B. Dunwody and Drayton D. Dunwody</i>	Case Number: 2010 CV 65 Div.: I
AFFIDAVIT OF MICHAEL ARAGON	

STATE OF COLORADO)
)ss
 County of Jefferson)

Michael S. Aragon, being duly sworn upon his oath, deposes and states as follows:

1. I have been a property owner in Elk Falls Subdivision, Block 3 since 1982, when I purchased lot 29, address 34840 Aspen Lane, Pine, Co 80470.



2. I purchased Lot 29, in Block 3 from William Sttat. January 1982.
3. I began building my home in 1983, and completed it with a Certificate of Occupancy in 1984.
4. In 1983, I attended the Annual Meeting held by a group of property owners in the Elk Falls area known as Elk Falls Property Owners Association.
5. A copy of the minutes of the Annual Meeting held July 10, 1983 by the EFPOA is attached. The meeting was held at the Lodge building located at Elk Falls Ranch owned by Elk Falls Ranch Development Co. also known at the Club House and Swimming Pool area.
6. In 1986, there were 20 full time residents including myself that lived in Elk Falls Subdivisions, Block 1, 2, & 3.

<u>Names</u>	Lots
Mike Aragon & family	Blk 3, lt 29
Mark & Katie Felices	Blk 3, lt 41
Joe & Joanie Wakely	Blk 3, lt 21, + easement
Ronald & Kate Biller	Blk 2, lts 89,90,101,102
Jack & Leah Phillips	Blk 3, lt 7
Jack & Jeanie Erickson	Blk 2, lt 115
John & Mary Damsma	Blk 2, lt 95
Haskel & Carole Wade	Blk 2, lts 73 & 87
Gilbert & Lynn Godin	Blk 3, lts 12,13,17
Arthur & Marian Lounsbury	Blk 1, lts 21, 23
Thomas Robertson	Blk 3, lt 38 + easement
Sam & Donna Arundale	Blk 2, lt 72
Lawrence & Mary Ellen Blair	Blk 1, lt 7,8,9a, Blk 2 lt 48,56
Matt & Shelia Bower	Blk 2, lt 75,80
Jay Buck	Blk 1, lt 18
Don Corder	Blk 2, lt 84
Robert & Lee Druva	Blk 1, lt 25
Jim & Jean Ely	Blk 3, lt 24 & 25
Karen Katz	Blk 2, lt 93
Michael & Michelle Szysielski	Blk 3, lt 32

7. In 1986, full residents in the Elk Falls area that accessed their properties through the ranches "Main Gate" operated by Elk Falls Dev. Co employec Andy & Bessie Beye were members of the Sportsman's Club.
8. In 1986, there was confusion about the membership dues that POA members paid to the POA, the confusion was new residences believed their POA dues automatically enrolled them into the Sportsman's club membership. The Sportsman's Club dues were \$325.00 annually with a \$175.00 initiation fec. The POA dues were separate.

claim for prescriptive easement would be better than for adverse possession. He explained that if this went to court

"We don't want to own the property we just want to use the property, because prescriptive easement works better than adverse." Fred explained Colorado law to me about the 18 year requirement to qualify for a prescriptive easement. Fred Wells advised me not to pay the Dunwody's the \$24.00. A few days later I received a bill from Wells Law Firm which describe the conversation as a consultation.

19. When Suzy Nelson said Historical Rights, that was the first time I ever heard of that term used here. Since that conversation I have heard "Historical Rights" use numerous times within the area.

20. After this event I decided to go to Park County Road and Bridge, Mapping Dept, and Clerk and Recorder Office located in Fairplay to do my own research. After visually inspecting the Block 3 plat, Juniper Road does not exist in Park County or on the Dunwody's survey.

21. After my research I notified the Dunwody's that everything you have been saying is correct, I informed the Dunwody's I was building a new driveway off of Lower Aspen Lane.

22. In 2009, Suzy Nelson contacted me several times requesting donations to the EFPOA board's legal battle against the Dunwody's. The legal battle Suzy Nelson described was the road issue.

Further affiant sayeth naught.

Michael S. Aragon
Michael S. Aragon

Subscribed and sworn to before me this 18th day of December, 2010 by Michael S. Aragon.

Janet J. Spitzer
Notary Public

My Commission expires: 5-20-2013

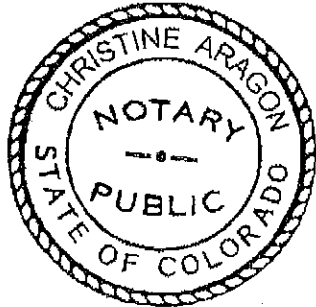
DISCLAIMER

STATE OF COLORADO)
)SS
County of Denver)
) Park

Christine Aragon, being duly sworn upon his/her/their oath, state(s) as follows:

1. Michael S. Aragon is/are the owner(s) of Lot(s) 29, Block 3, of the Elk Falls Subdivision in Park County, Colorado.

2. The undersigned has/have not requested the Elk Falls Property Association (hereinafter the "EFPOA") to assert a claim on his/her/their behalf to the Disputed Roads as defined in paragraph 9 of the Plaintiffs' Amended and Restated Complaint filed in Case No. 2010CV65 in the District Court of Park County, Colorado; and the undersigned hereby disclaim(s) all right, title, and interest in those portions of Juniper Road and Jensen Road which are not included within the meets and bounds descriptions of the land included within the plats of Block 1 and Block 3 of the Elk Falls Subdivision.



Michael S. Aragon

Subscribed and sworn to before me this 21 day of September, 2010, by Michael S Aragon

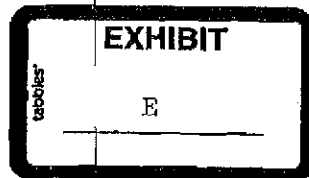
Christine Aragon
Notary Public

My Commission Expires: July 19, 2011

Subscribed and sworn to before me this _____ day of September, 2010, by _____

Notary Public

My Commission Expires: _____





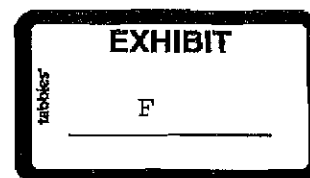
Nov 5 2010
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<p>DISTRICT COURT, PARK COUNTY, COLORADO 300 Fourth Street Fairplay, Colorado 80440</p> <hr/> <p>Plaintiffs: ELK FALLS PROPERTY OWNERS ASSOCIATION, a Colorado nonprofit corporation, KATHRYN WELLS, THE PAUL J. VASTOLA AND SUZANNE G. NELSON LIVING TRUST, U/A, ROBERT W. PHELPS, and KEVIN O'CONNELL</p> <p>v.</p> <p>Defendants: VERA B. DUNWODY, DRAYTON D. DUNWODY, FARM CREDIT OF SOUTHERN COLORADO, ACA, an agricultural credit association, THE BOARD OF COUNTY COMMISSIONERS PARK COUNTY, COLORADO</p> <p>Plaintiffs in Intervention: PETER J. BRAUN and RENAE J. BRAUN</p> <hr/> <p>Frederick B. Skillern, #7983 Nathan G. Osborn, #38951 MONTGOMERY LITTLE & SORAN, P.C. 5445 DTC Parkway, Suite 800 Greenwood Village, Colorado 80111 Phone Number: (303) 773-8100 Fax Number: (303) 220-0412 E-mail: fskillern@montgomerylittle.com E-mail: nosborn@montgomerylittle.com</p>	<hr/> <p>Case Number: 2010cv65</p> <p>Div: B</p>
<p align="center">RESPONSE TO INTERROGATORIES AND REQUESTS FOR ADMISSION TO KATHRYN WELLS</p>	

Plaintiff Kathryn Wells ("Wells"), by her attorneys Montgomery Little & Soran, P.C., submits the following Responses to Requests for Admission to Kathryn Wells.

GENERAL OBJECTION

Wells objects to each Interrogatory and Request for Admission to the extent that they seek disclosure of privileged material including any matter protected by the attorney-client privilege and the attorney work product doctrine. Wells will not disclose



such material. Wells does not intend to waive any such objection by responding to any of these discovery requests.

INTERROGATORIES

1. For each Request for Admission to Kathryn Wells which has been denied:
 - a. describe the factual basis for such denial; and
 - b. identify any document supporting such denial.

RESPONSE: The answers to the above Interrogatories are included within Wells's responses below to the Requests for Admission.

REQUESTS FOR ADMISSION

1. Kathryn Wells is the owner of Lot 14, Block 3, Elk Falls subdivision, located at 35541 Upper Aspen Lane, Pine, Jefferson County, Colorado (hereinafter the "Wells Property").

RESPONSE: Admit.

2. Upper Aspen Lane is a public road.

RESPONSE: Admit.

3. The Wells Property was acquired by Kathryn Wells in 1993, and a residence was constructed on the Wells Property in 1994. Since 1994, the Wells Property has been occupied by Kathryn Wells and Fred Wells.

RESPONSE: Admit.

4. Kathryn Wells acquired the Wells Property from Dr. Frank J. and Maxine Gorishek. Dr. Gorishek was a shareholder of the Elk Falls Ranch Development Company and, by virtue thereof, had permissive use of the Disputed Roads referred to in the Plaintiffs' Complain herein.

RESPONSE: Denied. Wells acquired the Wells Property from William H. Gorishek. Although Dr. Frank Gorishek was a shareholder of the Elk Falls Ranch Development Company, Dr. Gorishek did not have permissive use to use the Disputed Roads. Neither did William H. Gorishek. No Elk Falls Subdivision resident ever received permission from any individual or entity to use the Disputed Roads. Documents supporting this denial include, but are not limited to, the Block 1, 2, and 3 plat maps, the 1966 Berg Warranty Deed to the Elk Falls Ranch Development Company, the 2008 Dunwoody Warranty Deed, the 2008 Dunwoody Title Commitment, other deeds excepting the Disputed Roads, and various other documents already disclosed to Defendants or that may still be disclosed to Defendants during discovery.

5. No portion of the Disputed Roads referred to by the Plaintiffs in this action is a way of necessity to the Wells Property.

RESPONSE: Denied. The Disputed Roads are the main avenue of ingress and egress to the Wells Property. There is only one other route to the Wells Property. The other route is burdensome, inconvenient, and dangerous; especially during adverse weather. The other route would also become increasingly dangerous if all traffic was forced to use it instead of the Disputed Roads. Documents supporting this denial include, but are not limited to, the Block 1, 2, and 3 plat maps, maps relating to the Elk Falls Subdivision, and various other documents already disclosed to Defendants, or that may be disclosed to Defendants during discovery.

6. The chain of title to the Wells Property contains no easement of record over and across any portion of the Disputed Roads.

RESPONSE: Denied. All Elk Falls Subdivision residents were granted a right of way and have easements granted specifically or by inference by virtue of the recorded subdivision plats of Block 1, 2, and 3 of the Elk Falls Subdivision. Documents supporting this denial include, but are not limited to, the Block 1, 2, and 3 plat maps, maps relating to the Elk Falls Subdivision, the 1966 Berg Warranty Deed to the Elk Falls Ranch Development Company, the 2008 Dunwody Warranty Deed, the 2008 Dunwody Title Commitment, other deeds excepting the Disputed Roads, and various other documents already disclosed to Defendants or that may still be disclosed to Defendants during discovery.

7. The plat of Elk Falls subdivision, Block 3, Park County, contains no dedication of any portion of the Disputed Roads for the benefit of lots or lot owners within the Elk Falls subdivision, Block 3, Park County, Colorado.

RESPONSE: Denied. When reading the Block 1 plat map in concert with the Block 3 plat map, all Elk Falls Subdivision residents have easements granted specifically or by inference by virtue of the recorded plat maps and a common plan of development. Documents supporting this denial include, but are not limited to, the Block 1, 2, and 3 plat maps, maps relating to the Elk Falls Subdivision, the 1966 Berg Warranty Deed to the Elk Falls Ranch Development Company, the 2008 Dunwody Warranty Deed, the 2008 Dunwody Title Commitment, other deeds excepting the Disputed Roads, and various other documents already disclosed to Defendants or that may still be disclosed to Defendants during discovery.

8. No portion of the Disputed Roads has ever been dedicated to Park County for the benefit of the public or lot owners within the Elk Falls subdivision.

RESPONSE: Denied. The Disputed Roads were dedicated as public roads

to Park County and Jefferson County. Park County and Jefferson County have also taken affirmative steps evidencing that the Disputed Roads are public roads including Jefferson County paving a portion of the Disputed Roads, and Park County and Jefferson County using the Disputed Roads for school bus access. There are also letters from Park County indicating that Park County treated the Disputed Roads as public roads. For over fifty years, Elk Falls Subdivision residents thought the Disputed Roads were public roads and used them accordingly. Documents supporting this denial include, but are not limited to, the Block 1, 2, and 3 plat map, documents relating to the plat maps, maps relating to the Elk Falls Subdivision, letters from Park County about the Disputed Roads, and other documents already disclosed to Defendants or that may still be disclosed to Defendants during discovery.

9. Kathryn Wells and Fred Wells have been a dues paying members of the Elk Falls Ranch Sportsmen's Club (the "Club") for more than five of the 17 years since 1993.

RESPONSE: Admit that the Wells's were due paying members of the Club. Deny the remaining allegations for lack of information. The Wells's are unsure whether they were due paying members for more than five years.

10. As a dues paying members of the Club, Kathryn Wells and Fred Wells were granted access to the property owned by the Elk Falls Ranch Development Company, including access over and across the Disputed Roads.

RESPONSE: Denied. Paying dues to the Club allowed use of Elk Falls Ranch Development property for activities such as fishing, hiking, hunting, and boarding animals. Paying dues to the Club had nothing to do with access to or use of the Disputed Roads.

11. Park County has never included any portion of the Disputed Roads within official Park County maps depicting public roads within Park County,

RESPONSE: Objection. Wells objects to this question because it is overly broad and vague. To determine whether Park County has ever included any portion of the Disputed Roads on any official Park County map is impossible to answer without knowing which maps Defendants are referring to. The Disputed Roads and their predecessors have been in existence for, at least, sixty years. If Defendants provide an example of a specific Park County map, then Wells can answer with regards to that map. It is also unknown what is meant by the term "official map." There are many old and recent maps depicting the Disputed Roads as equivalent to the other subdivision roads. It is unknown whether these maps are "official."

12. Park County has never maintained any portion of the Disputed Roads.

RESPONSE: Denied for lack of information. Wells has knowledge that Jefferson County maintained portions of the Disputed Roads. Wells does not currently know whether Park County has ever maintained portions of the Disputed Roads. As information become available during discovery, Wells will supplement her response in accordance with C.R.C.P. 26(e).

13. Kathryn Wells has no factual or legal basis for claiming any right, title or interest in and to the Disputed Roads by virtue of preexisting use.

RESPONSE: Denied. Use of the Disputed Roads was the only means of ingress and egress for numerous cabins, for numerous years, prior to the subdivision of Elk Falls Ranch. Documents supporting this denial include the USGS aerial map, the Block 1, 2 and 3 plat maps, all maps relating to Elk Falls Ranch prior to subdivision, and other documents already disclosed to Defendants.

14. Kathryn Wells has no factual or legal basis for claiming any right, title or interest in and to the Disputed Roads by virtue of estoppel.

RESPONSE: Denied. Legal arguments under the estoppel theory include, but are not limited to, that when purchasing their residences all Elk Falls Subdivision residents relied on the right of way granted by the Bergs in the plat, the common plan of development as indicated in the plats, and the lack of objection by the Bergs and the Elk Falls Development Company for use of the Disputed Roads for, at least, over fifty years. The Dunwody Defendants also purchased the Dunwody Property with knowledge that the Disputed Roads were not private roads, and used the Disputed Roads as easements or public roads prior to purchasing the Dunwody Property. Documents supporting this denial include, but are not limited to, the Block 1, 2, and 3 plat maps, documents relating to the plat maps, maps relating to the Elk Falls Subdivision, and other documents already disclosed to Defendants.

15. Kathryn Wells' claim that she has the right to use the Disputed Roads by virtue of necessity is substantially groundless, substantially frivolous, and without substantial justification.

RESPONSE: Denied. The Disputed Roads were the only access between the developments of Block 1 and Block 2 of the Elk Falls Subdivision for over fifty years. The Disputed Roads remain the only convenient and safe access to the Wells Property; especially during adverse weather. The other route would also become increasingly dangerous if all traffic was forced to use it instead of the Disputed Roads. Documents supporting this denial include, but are not limited to, the Block 1, 2, and 3 plat maps, maps relating to the Elk Falls Subdivision, and various other documents already disclosed to Defendants or that may still be disclosed to Defendants during discovery.

16. Kathryn Wells' claim that she has the right to use the Disputed Roads by virtue of preexisting use is substantially groundless, substantially frivolous and without substantial justification.

RESPONSE: Denied. Use of the Disputed Roads was the only means of ingress and egress for numerous cabins, for numerous years, prior to the subdivision of Elk Falls Ranch. Documents supporting this denial include the USGS aerial maps, and all maps relating to Elk Falls Ranch prior to subdivision.

17. Kathryn Wells' claim that she has the right to use the Disputed Roads by virtue of estoppel is substantially groundless, substantially frivolous and without substantial justification.

RESPONSE: Denied. Legal arguments under the estoppel theory include, but are not limited to, that when purchasing their residences all Elk Falls Subdivision residents relied on the right of way granted by the Bergs in the plats, the common plan of development as indicated in the plats, and the lack of objection by the Bergs and the Elk Falls Development Company for use of the Disputed Roads for, at least, over fifty years. The Dunwody Defendants also purchased the Dunwody Property with knowledge that the Disputed Roads were not private roads, and used the Disputed Roads as easements or public roads prior to purchasing the Dunwody Property. Documents supporting this denial include, but are not limited to, the Block 1, 2, and 3 plat maps, documents relating to the plat maps, maps relating to the Elk Falls Subdivision, and other documents already disclosed to Defendants.

18. Kathryn Wells' claim that all homeowners within the Elk Falls subdivision have the right to use the Disputed Roads by virtue of recorded subdivision plats is substantially groundless, substantially frivolous, and without substantial justification.

RESPONSE: Denied. All Elk Falls Subdivision residents have easements granted specifically or by inference by virtue of the recorded subdivision plats of Block 1, 2, and 3 of the Elk Falls Subdivision. The right of way is on the face of the plat. Documents supporting this denial include, but are not limited to, the Block 1, 2, and 3 plat maps, maps relating to the Elk Falls Subdivision, the 1966 Berg Warranty Deed to the Elk Falls Ranch Development Company, the 2008 Dunwody Warranty Deed, the 2008 Dunwody Title Commitment, other deeds excepting the Disputed Roads, and various other documents already disclosed to Defendants or that may still be disclosed to Defendants during discovery.

19. Kathryn Wells' claim that the Disputed Roads are public roads is substantially groundless, substantially frivolous, and without substantial justification.

RESPONSE: Denied. The Disputed Roads were dedicated as public roads

to Park County and Jefferson County. Park County and Jefferson County have also taken affirmative steps evidencing the Disputed Roads are public roads including Jefferson County paving a portion of the Disputed Roads, and Park County and Jefferson County using the Disputed Roads for school bus access. There are also letters from Park County indicating that Park County treated the Disputed Roads as public roads. For over 50 years, Elk Falls Subdivision residents thought of the Disputed Roads as public roads and used them accordingly. Documents supporting this denial include, but are not limited to, the Block 1, 2, and 3 plat map, documents relating to the plat maps, maps relating to the Elk Falls Subdivision, letters from Park County relating to the Disputed Roads, and other documents already disclosed to Defendants or that may still be disclosed to Defendants during discovery.

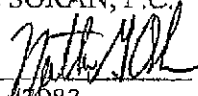
20. Kathryn Wells' claim that she has prescriptive rights to the Disputed Roads is substantially groundless, substantially frivolous, and without substantial justification.

RESPONSE: Denied. Prescriptive use can be established here by an attempted but ineffective grant by the Bergs. Wells, and her predecessor in interest, have also used the Disputed Roads openly, notoriously, adversely, and continuously for over eighteen years. Documents supporting this denial include, but are not limited to, the Block 1, 2, and 3 plat maps, documents relating to the plat maps, maps relating to the Elk Falls Subdivision, and other documents already disclosed to Defendants or that may still be disclosed to Defendants during discovery.

Dated: November 5, 2010.

Respectfully submitted,

MONTGOMERY LITTLE & SORAN, P.C.

By s/ Nathan G. Osborn 
Frederick B. Skillern, #1983
Nathan G. Osborn, #38951

VERIFICATION OF PLAINTIFF KATHRYN WELLS

STATE OF COLORADO)
COUNTY OF Jefferson) SS.

Before me, the undersigned Notary Public, on this day personally appeared, Kathryn Wells, states that the foregoing Objections and Responses are true and correct based upon personal knowledge.

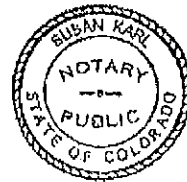
Kathryn Wells
Kathryn Wells

SUBSCRIBED AND SWORN BEFORE ME on this the 5th day of November, 2010.

[SEAL]

Susan Karl
NOTARY PUBLIC

My Commission Expires: 7/16/2012



My Comm. Exp. 07/16/2012

CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2010, a true and correct copy of the foregoing was duly served to the following via LexisNexis:

Victor F. Boog
3333 S. Wadsworth Blvd., Suite D201
Lakewood, CO 80227

s/Vicki Fields Vicki Fields



Nov 5 2010
5:48PM

DISTRICT COURT, PARK COUNTY, COLORADO

300 Fourth Street
Fairplay, Colorado 80440

Plaintiffs: ELK FALLS PROPERTY OWNERS ASSOCIATION, a Colorado nonprofit corporation, KATHRYN WELLS, THE PAUL J. VASTOLA AND SUZANNE G. NELSON LIVING TRUST, U/A, ROBERT W. PHELPS, and KEVIN O'CONNELL

v.

Defendants: VERA B. DUNWODY, DRAYTON D. DUNWODY, FARM CREDIT OF SOUTHERN COLORADO, ACA, an agricultural credit association, THE BOARD OF COUNTY COMMISSIONERS PARK COUNTY, COLORADO

Plaintiffs in Intervention: PETER J. BRAUN and RENAE J. BRAUN

Frederick B. Skillern, #7983
Nathan G. Osborn, #38951
MONTGOMERY LITTLE & SORAN, P.C.
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E-mail: nosborn@montgomerylittle.com

Case Number: 2010cv65

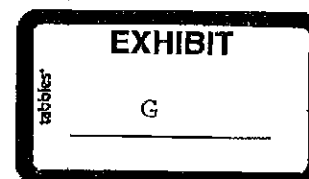
Div: B

RESPONSE TO INTERROGATORIES AND REQUESTS FOR ADMISSION TO KEVIN O'CONNELL

Plaintiff Kevin O'Connell ("O'Connell"), by his attorneys Montgomery Little & Soran, P.C., submits the following Responses to Interrogatories and Requests for Admission to Kevin O'Connell.

GENERAL OBJECTION

O'Connell objects to each Interrogatory and Request for Admission to the extent that they seek disclosure of privileged material including any matter protected by the attorney-client privilege and the attorney work product doctrine. O'Connell will not



disclose such material. O'Connell does not intend to waive any such objection by responding to any of these discovery requests.

INTERROGATORIES

1. For each Request for Admission to Kevin O'Connell which has been denied:

- a. describe the factual basis for such denial; and
- b. identify any document supporting such denial.

RESPONSE: The answers to the above Interrogatories are included within O'Connell's responses below to the Requests for Admission.

REQUESTS FOR ADMISSION

2. Kevin O'Connell is the owner of Lot 38, Block 1, Elk Falls subdivision, located at 34676 Circle Drive, Pine, Jefferson County, Colorado (hereinafter the "O'Connell Property").

RESPONSE: Admit.

3. Circle Drive is a public road.

RESPONSE: Admit. Affirmatively state that Circle Drive is maintained by the Elk Falls Property Owners' Association.

3. The O'Connell Property was acquired by Kevin O'Connell in 1987 and since that time the residence on the O'Connell Property has been occupied by Kevin O'Connell and Kay O'Connell.

RESPONSE: Admit.

4. No portion of the Disputed Roads referred to by the Plaintiffs in this action is a way of necessity to the O'Connell Property.

RESPONSE: Denied. The Disputed Roads are the main avenue of ingress and egress to the O'Connell Property. There is only one other route to the O'Connell Property. The other route is burdensome, inconvenient, and dangerous; especially during adverse weather. The Disputed Roads were the only access to the O'Connell Property for numerous years after 1987. The other route would also become increasingly dangerous if all traffic was forced to use it instead of the Disputed Roads. Documents supporting this denial include, but are not limited to, the Block 1, 2, and 3 plat maps, maps relating to the Elk Falls Subdivision, and various other documents already disclosed to Defendants, or that

still may be disclosed to Defendants during discovery.

5. The chain of title to the O'Connell Property contains no easement of record over and across any portion of the Disputed Roads.

RESPONSE: Denied. Easements have been granted specifically or by inference by virtue of the recorded subdivision plats of Block 1, 2, and 3 of the Elk Falls Subdivision. Documents supporting this denial include, but are not limited to, the Block 1, 2, and 3 plat maps, the 1987 O'Connell deed (attached hereto), maps relating to the Elk Falls Subdivision, the 1966 Berg Warranty Deed to the Elk Falls Ranch Development Company, the 2008 Dunwody Warranty Deed, the 2008 Dunwody Title Commitment, other deeds excepting the Disputed Roads, and various other documents already disclosed to Defendants or that may still be disclosed to Defendants during discovery.

6. The plat of Elk Falls subdivision, Block 1, contains no dedication of any portion of the Disputed Roads for the benefit of lots or lot owners within the Elk Falls subdivision, Block 1.

RESPONSE: Denied. All Elk Falls Subdivision residents have easements granted specifically or by inference by virtue of the recorded plat maps and a common plan of development. Documents supporting this denial include, but are not limited to, the Block 1, 2, and 3 plat maps, the 1987 O'Connell deed (attached hereto), maps relating to the Elk Falls Subdivision, the 1966 Berg Warranty Deed to the Elk Falls Ranch Development Company, the 2008 Dunwody Warranty Deed, the 2008 Dunwody Title Commitment, other deeds excepting the Disputed Roads, and various other documents already disclosed to Defendants or that may still be disclosed to Defendants during discovery.

7. No portion of the Disputed Roads has ever been dedicated to Park County for the benefit of the public or lot owners within the Elk Falls subdivision.

RESPONSE: Denied. The Disputed Roads were dedicated as public roads to Park County and Jefferson County. Park County and Jefferson County have taken affirmative steps evidencing that the Disputed Roads are public roads including Jefferson County paving a portion of the Disputed Roads, and Park County and Jefferson County using the Disputed Roads for school bus access. There are also letters from Park County indicating that Park County treated the Disputed Roads as public roads. For over fifty years, Elk Falls Subdivision residents thought the Disputed Roads were public roads and used them accordingly. Documents supporting this denial include, but are not limited to, the Block 1, 2, and 3 plat map, documents relating to the plat maps, maps relating to the Elk Falls Subdivision, letters from Park County about the Disputed Roads, and other documents already disclosed to Defendants or that may still be disclosed to

Defendants during discovery.

8. Kevin O'Connell has been a dues paying member of the Elk Falls Ranch Sportsmen's Club (the "Club") for more than seven of the 23 years since 1987.

RESPONSE: Admit. Affirmatively state that from 1998 to 2005 O'Connell was a dues paying member of the Club. The primary purpose of his membership was for boarding a horse at the barn. O'Connell was not a dues paying member from 1987 to 1998.

9. As a dues paying member of the Club, Kevin O'Connell was granted access to the property owned by the Elk Falls Ranch Development Company, including access over and across the Disputed Roads.

RESPONSE: Denied. Paying dues to the Club allowed use of Elk Falls Ranch Development property for activities such as fishing, hiking, hunting, and boarding animals. Paying dues to the Club had nothing to do with access to or use of the Disputed Roads. O'Connell accessed the Disputed Roads almost daily from 1987 to 1998 when he was not a Club member.

10. Park County has never included any portion of the Disputed Roads within official Park County maps depicting public roads within Park County.

RESPONSE: Objection. O'Connell objects to this question because it is overly broad and vague. To determine whether Park County has ever included any portion of the Disputed Roads on any official Park County map is impossible to answer without knowing which maps Defendants are referring to. The Disputed Roads and their predecessors have been in existence for, at least, sixty years. If Defendants provide an example of a specific Park County map, then O'Connell can answer with regards to that map. It is also unknown what is meant by the term "official map." There are many old and recent maps depicting the Disputed Roads as equivalent to the other subdivision roads. It is unknown whether these maps are "official."

11. Park County has never maintained any portion of the Disputed Roads.

RESPONSE: Denied for lack of information. O'Connell has knowledge that Jefferson County maintained portions of the Disputed Roads. O'Connell does not currently know whether Park County has ever maintained portions of the Disputed Roads. As information become available during discovery, O'Connell will supplement his response in accordance with C.R.C.P. 26(e).

12. Kevin O'Connell has no factual or legal basis for claiming any

right, title or interest in and to the Disputed Roads by virtue of preexisting use.

RESPONSE: Denied. Use of the Disputed Roads was the only means of ingress and egress for numerous cabins, for numerous years, prior to the subdivision of Elk Falls Ranch. Documents supporting this denial include the USGS aerial map, the Block 1, 2 and 3 plat maps, all maps relating to Elk Falls Ranch prior to subdivision, and other documents already disclosed to Defendants.

13. Kevin O'Connell has no factual or legal basis for claiming any right, title or interest in and to the Disputed Roads by virtue of estoppel.

RESPONSE: Denied. Legal arguments under the estoppel theory include, but are not limited to, that when purchasing their residences all Elk Falls Subdivision residents relied on the right of way granted by the Bergs in the plat, the common plan of development as indicated in the plats, and the lack of objection by the Bergs and the Elk Falls Development Company for use of the Disputed Roads for, at least, over fifty years. The Dunwoody Defendants also purchased the Dunwoody Property with knowledge that the Disputed Roads were not private roads, and used the Disputed Roads as easements or public roads prior to purchasing the Dunwoody Property. Documents supporting this denial include, but are not limited to, the Block 1, 2, and 3 plat maps, documents relating to the plat maps, maps relating to the Elk Falls Subdivision, and other documents already disclosed to Defendants.

14. Kevin O'Connell's claim that he has the right to use the Disputed Roads by virtue of necessity is substantially groundless, substantially frivolous, and without substantial justification.

RESPONSE: Denied. The Disputed Roads were the only access between the developments of Block 1 and Block 2 of the Elk Falls Subdivision for over fifty years. The Disputed Roads remain the only convenient and safe access to the O'Connell residence; especially during adverse weather. The other route would also become increasingly dangerous if all traffic was forced to use it instead of the Disputed Roads. Documents supporting this denial include, but are not limited to, the Block 1, 2, and 3 plat maps, maps relating to the Elk Falls Subdivision, and various other documents already disclosed to Defendants or that may still be disclosed to Defendants during discovery.

15. Kevin O'Connell's claim that he has the right to use the Disputed Roads by virtue of preexisting use is substantially groundless, substantially frivolous and without substantial justification.

RESPONSE: Denied. Use of the Disputed Roads was the only means of ingress and egress for numerous cabins, for numerous years, prior to the subdivision of Elk Falls Ranch. Documents supporting this denial include the

USGS aerial maps, and all maps relating to Elk Falls Ranch prior to subdivision.

16. Kevin O'Connell's claim that he has the right to use the Disputed Roads by virtue of estoppel is substantially groundless, substantially frivolous and without substantial justification.

RESPONSE: Denied. Legal arguments under the estoppel theory include, but are not limited to, that when purchasing their residences all Elk Falls Subdivision residents relied on the right of way granted by the Bergs in the plat, the common plan of development as indicated in the plats, and the lack of objection by the Bergs and the Elk Falls Development Company for use of the Disputed Roads for, at least, over fifty years. The Dunwody Defendants also purchased the Dunwody Property with knowledge that the Disputed Roads were not private roads, and used the Disputed Roads as easements or public roads prior to purchasing the Dunwody Property. Documents supporting this denial include, but are not limited to, the Block 1, 2, and 3 plat maps, documents relating to the plat maps, maps relating to the Elk Falls Subdivision, and other documents already disclosed to Defendants.

17. Kevin O'Connell's claim that all homeowners within the Elk Falls subdivision have the right to use the Disputed Roads by virtue of recorded subdivision plats is substantially groundless, substantially frivolous, and without substantial justification.

RESPONSE: Denied. All Elk Falls Subdivision residents were granted a right of way and have easements granted specifically or by inference by virtue of the recorded subdivision plats of Block 1, 2, and 3 of the Elk Falls Subdivision. The right of way is on the face of the plat. Documents supporting this denial include, but are not limited to, the Block 1, 2, and 3 plat maps, the 1987 O'Connell deed (attached hereto), maps relating to the Elk Falls Subdivision, the 1966 Berg Warranty Deed to the Elk Falls Ranch Development Company, the 2008 Dunwody Warranty Deed, the 2008 Dunwody Title Commitment, other deeds excepting the Disputed Roads, and various other documents already disclosed to Defendants or that may still be obtained by Plaintiffs during discovery.

18. Kevin O'Connell's claim that the Disputed Roads are public roads is substantially groundless, substantially frivolous, and without substantial justification.

RESPONSE: Denied. The Disputed Roads were dedicated as public roads to Park County and Jefferson County. Park County and Jefferson County have also taken affirmative steps evidencing the Disputed Roads are public roads including Jefferson County paving a portion of the Disputed Roads, and Park County and Jefferson County using the Disputed Roads for school bus access. There are also letters from Park County indicating that Park County treated the

Disputed Roads as public roads. For over fifty years, Elk Falls Subdivision residents thought of the Disputed Roads as public roads and used them accordingly. Documents supporting this denial include, but are not limited to, the Block 1, 2, and 3 plat map, documents relating to the plat maps, maps relating to the Elk Falls Subdivision, letters from Park County relating to the Disputed Roads, and other documents already disclosed to Defendants or that may still be disclosed to Defendants during discovery.

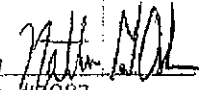
19. Kevin O'Connell's claim that he has prescriptive rights to the Disputed Roads is substantially groundless, substantially frivolous, and without substantial justification.

RESPONSE: Denied. Prescriptive use can be established here by an attempt but ineffective grant by the Bergs. O'Connell has used the Disputed Roads openly, notoriously, adversely, and continuously for over eighteen years. Documents supporting this denial include, but are not limited to, the Block 1, 2, and 3 plat maps, documents relating to the plat maps, maps relating to the Elk Falls Subdivision, and other documents already disclosed to Defendants or that may still be disclosed to Defendants during discovery.

Dated: November 5, 2010.

Respectfully submitted,

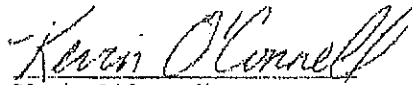
MONTGOMERY LITTLE & SORAN, P.C.

By s/ Nathan G. Osborn 
Frederick B. Skillern, #4983
Nathan G. Osborn, #38951

VERIFICATION OF PLAINTIFF KEVIN O'CONNELL

STATE OF COLORADO)
) SS.
COUNTY OF DENVER)

Before me, the undersigned Notary Public, on this day personally appeared, Kevin O'Connell, states that the foregoing Objections and Responses are true and correct based upon personal knowledge.

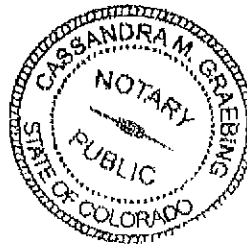

Kevin O'Connell

SUBSCRIBED AND SWORN BEFORE ME on this the 5th day of November, 2010.

[SEAL]


NOTARY PUBLIC

My Commission Expires: 6-19-2012



CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2010, a true and correct copy of the foregoing was duly served to the following via LexisNexis:

Victor F. Boog
3333 S. Wadsworth Blvd., Suite D201
Lakewood, CO 80227

s/Vicki Fields *Vicki Fields*

THIS DEED, Made this day of April, 1987
between

D BAR K CONSTRUCTION, INC.
a corporation duly organized
and existing under and by virtue of the laws of the State of Colorado
of the first part, and

KEVIN E. O'CONNELL and KAY E. O'CONNELL

whose legal address is 19126 E. Oxford Drive, Aurora, Colorado
of the County of
and State of Colorado, of the second part:

WITNESSETH: That the said party of the first part, for and in con- sideration of the sum One hundred ten thousand and 00/100-----DOLLARS,

to it in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, sold and conveyed and by these presents does grant, bargain, sell, convey and confirm unto the said parties of the second part, not in tenancy in common but in joint tenancy, the survivor of them, their assigns and the heirs and assigns of such survivor forever, all the following described lot or parcel of land, situate, lying and being in the County of Jefferson and State of Colorado, to wit:

Lot 38,
ELK FALLS - BLOCK I,
County of Jefferson,
State of Colorado.

also known as street and number 34676 Circle Drive, Pine, Colorado

TOGETHER with all and singular the hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever of the said party of the first part, either in law or equity of, in and to the above bargained premises, with the hereditaments and appurtenances.

TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto the said parties of the second part, the survivor of them, their assigns, and the heirs and assigns of such survivor forever. And the said party of the first part, for itself, its successors and assigns, doth covenant, grant, bargain and agree to and with the said parties of the second part, the survivor of them, their assigns and the heirs and assigns of such survivor, that at the time of the executing and delivery of these presents, it is well seized of the premises above conveyed, as of good, sure, perfect, absolute and indefeasible estate of inheritance, in law, in fact simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, leases, taxes, assessments and encumbrances of whatever kind or naturesoever except for the general taxes and assessments for the year 1987 and subsequent years thereto. Subject to restrictions, reservations, easements, covenants and rights of way of record, if any.

and the above bargained premises, in the quiet and peaceable possession of the said parties of the second part, the survivor of them, their assigns and the heirs and assigns of such survivor, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will WARRANT AND FOREVER DEFEND.

IN WITNESS WHEREOF, The said party of the first part has caused its corporate name to be hereunto sub- scribed by its President and its corporate seal to be hereunto affixed, attested by its Secretary, the day and year first above written.

Attest:

D BAR K CONSTRUCTION, INC.

Secretary

By: *George E. Hollon*
George E. Hollon, President

STATE OF COLORADO,
County of Jefferson } ss.

The foregoing instrument was acknowledged before me this 9th day of April, 1987 by George E. Hollon as President and Secretary of

D Bar K Construction, Inc., A Colorado Corporation.

My notarial commission expires February 24, 1991

Witness my hand and official seal.

Notary Public



Nov 5 2010
6:48PM

DISTRICT COURT, PARK COUNTY, COLORADO
300 Fourth Street
Fairplay, Colorado 80440

Plaintiffs: ELK FALLS PROPERTY OWNERS ASSOCIATION, a Colorado nonprofit corporation, KATHRYN WELLS, THE PAUL J. VASTOLA AND SUZANNE G. NELSON LIVING TRUST, U/A, ROBERT W. PHELPS, and KEVIN O'CONNELL

v.

Defendants: VERA B. DUNWODY, DRAYTON D. DUNWODY, FARM CREDIT OF SOUTHERN COLORADO, ACA, an agricultural credit association, THE BOARD OF COUNTY COMMISSIONERS PARK COUNTY, COLORADO

Plaintiffs in Intervention: PETER J. BRAUN and RENAE J. BRAUN

Case Number: 2010cv65

Div: B

Frederick B. Skillern, #7983
Nathan G. Osborn, #38951
MONTGOMERY LITTLE & SORAN, P.C.
5445 DTC Parkway, Suite 800
Greenwood Village, Colorado 80111
Phone Number: (303) 773-8100
Fax Number: (303) 220-0412
E-mail: fskillern@montgomerylittle.com
E-mail: nosborn@montgomerylittle.com

RESPONSE TO INTERROGATORIES AND REQUESTS FOR ADMISSION TO PAUL J. VASTOLA AND SUZANNE G. NELSON LIVING TRUST, U/A DATED AUGUST 10, 2001

Plaintiff Paul J. Vastola and Suzanne G. Nelson Living Trust, U/A Dated August 10, 2001 (the "Trust"), by its attorneys Montgomery Little & Soran, P.C., submits the following Responses to Interrogatories and Requests for Admission to the Trust.

GENERAL OBJECTION

The Trust objects to each Interrogatory and Request for Admission to the extent that they seek disclosure of privileged material including any matter protected by the



attorney-client privilege and the attorney work product doctrine. The Trust will not disclose such material. The Trust does not intend to waive any such objection by responding to any of these discovery requests.

INTERROGATORIES

1. For each Request for Admission to the Trust which has been denied:
 - a. describe the factual basis for such denial; and
 - b. identify any document supporting such denial.

RESPONSE: The answers to the above Interrogatories are included within the Trust's responses below to the Requests for Admission.

REQUESTS FOR ADMISSION

1. The Trust is the owner of Lot 115, Block 2, Elk Falls subdivision, located at 33629 Berg Lane, Pine, Jefferson County, Colorado (hereinafter the "Trust Property").

RESPONSE: Admit.

2. The Trust Property was acquired by the Trust in 1988 and since that time the residence on the Trust Property has been occupied by Paul Vastola and Suzanne G. Nelson.

RESPONSE: Denied. The Trust did not exist in 1988 when the Trust Property was purchased. The Trust Property has been occupied by Paul Vastola and Suzanne G. Nelson since 1988. Documents supporting denial include, but are not limited to, the Paul Vastola and Suzanne G. Nelson vesting deed, and subsequent Trust deed.

3. The Trust Property has legal and physical access via Berg Lane to Upper Ranch Road, a public road.

RESPONSE: Admit.

4. No portion of the Disputed Roads referred to by the Plaintiffs in this action is a way of necessity to the Trust Property.

RESPONSE: Admit. Affirmatively state that Paul Vastola and Suzanne G. Nelson frequently use the Disputed Roads to access the residences of neighbors and for walking or bicycling. It is also a necessity for Paul Vastola and Suzanne G. Nelson to use the Disputed Roads, to reach Elk Creek Road, to get in or out of the Elk Falls Subdivision if there is anything prohibiting access to the lower section of Upper Ranch Road (e.g. car crash, or washout).

5. The chain of title to the Trust Property contains no easement of record over and across any portion of the Disputed Roads.

RESPONSE: Denied. All Elk Falls Subdivision residents were granted a right of way and have easements granted specifically or by inference by virtue of the recorded subdivision plats of Block 1, 2, and 3 of the Elk Falls Subdivision. The right of access is written on the face of the plat. Documents supporting this denial include, but are not limited to, the Block 1, 2, and 3 plat maps, maps relating to the Elk Falls Subdivision, the 1966 Berg Warranty Deed to the Elk Falls Ranch Development Company, the 2008 Dunwody Warranty Deed, the 2008 Dunwody Title Commitment, other deeds excepting the Disputed Roads, and various other documents already disclosed to Defendants or that may still be disclosed to Defendants during discovery.

6. The plat of Elk Falls subdivision, Block 2, Jefferson County, Colorado contains no dedication of any portion of the Disputed Roads for the benefit of lots or lot owners within the Elk Falls subdivision, Block 2, Jefferson County, Colorado.

RESPONSE: Denied. When reading the Block 1 plat map in concert with the Block 2 plat map, all Elk Falls Subdivision residents have easements granted specifically or by inference by virtue of the recorded plat maps and a common plan of development. Documents supporting this denial include, but are not limited to, the Block 1, 2, and 3 plat maps, maps relating to the Elk Falls Subdivision, the 1966 Berg Warranty Deed to the Elk Falls Ranch Development Company, the 2008 Dunwody Warranty Deed, the 2008 Dunwody Title Commitment, other deeds excepting the Disputed Roads, and various other documents already disclosed to Defendants or that may still be disclosed to Defendants during discovery.

7. No portion of the Disputed Roads has ever been dedicated to Park County for the benefit of the public or lot owners within the Elk Falls subdivision.

RESPONSE: Denied. The Disputed Roads were dedicated as public roads to Park County and Jefferson County. Park County and Jefferson County have also taken affirmative steps evidencing that the Disputed Roads are public roads including Jefferson County paving a portion of the Disputed Roads, and Park County and Jefferson County using the Disputed Roads for school bus access. There are also letters from Park County indicating that Park County treated the Disputed Roads as public roads. For over fifty years, Elk Falls Subdivision residents thought the Disputed Roads were public roads and used them accordingly. Documents supporting this denial include, but are not limited to, the Block 1, 2, and 3 plat maps, documents relating to the plat maps, maps relating to the Elk Falls Subdivision, letters from Park County about the Disputed Roads, and

other documents already disclosed to Defendants or that may still be disclosed to Defendants during discovery.

8. Paul Vastola and Suzanne G. Nelson have been dues paying members of the Elk Falls Ranch Sportsmen's Club (the "Club") for more than six of the 22 years since 1988.

RESPONSE: Admit.

9. As dues paying members of the Club, Paul Vastola and Suzanne G. Nelson were granted access to the property owned by the Elk Falls Ranch Development Company, including access over and across the Disputed Roads.

RESPONSE: Denied. Paying dues to the Club allowed use of Elk Falls Ranch Development property for activities such as fishing, hiking, hunting, and boarding animals. Paying dues to the Club had nothing to do with access to or use of the Disputed Roads.

10. Park County has never included any portion of the Disputed Roads within official Park County maps depicting public roads within Park County.

RESPONSE: Objection. The Trust objects to this question because it is overly broad and vague. To determine whether Park County has ever included any portion of the Disputed Roads on any official Park County map is impossible to answer without knowing which maps Defendants are referring to. The Disputed Roads and their predecessors have been in existence for, at least, sixty years. If Defendants provide an example of a specific Park County map, then the Trust can answer with regards to that map. It is also unknown what is meant by the term "official map." There are many old and recent maps depicting the Disputed Roads as equivalent to the other subdivision roads. It is unknown whether these maps are "official."

11. Park County has never maintained any portion of the Disputed Roads.

RESPONSE: Denied for lack of information. The Trust has knowledge that Jefferson County maintained portions of the Disputed Roads. The Trust does not currently know whether Park County has ever maintained portions of the Disputed Roads. As information become available during discovery, the Trust will supplement its response in accordance with C.R.C.P. 26(e).

12. Park County has never claimed that any portion of the Disputed Roads are public roads.

RESPONSE: Denied. The Disputed Roads were dedicated as public roads to Park County and Jefferson County. Park County and Jefferson County have also taken affirmative steps indicating that the Disputed Roads are public roads including Jefferson County paving a portion of the Disputed Roads, and Park County and Jefferson County using the Disputed Roads for school bus access. There are also letters from Park County indicating that Park County believed the Disputed Roads were public roads. Documents supporting this denial include, but are not limited to, the Block 1, 2, and 3 plat maps, documents relating to the plat maps, maps relating to the Elk Falls Subdivision, letters from Park County, and other documents already disclosed to Defendants.

13. The Trust has no factual or legal basis for claiming any right, title or interest in and to the Disputed Roads by virtue of preexisting use.

RESPONSE: Denied. Use of the Disputed Roads was the only means of ingress and egress for numerous cabins, for numerous years, prior to the subdivision of Elk Falls Ranch. Documents supporting this denial include the USGS aerial map, the Block 1, 2, and 3, plat maps, all maps relating to Elk Falls Ranch prior to subdivision, and other documents already disclosed to Defendants.

14. The Trust has no factual or legal basis for claiming any right, title or interest in and to the Disputed Roads by virtue of estoppel.

RESPONSE: Denied. Legal arguments under the estoppel theory include, but are not limited to, that when purchasing their residences all Elk Falls Subdivision residents relied on the right of way granted by the Bergs in the plat, the common plan of development as indicated in the plats, and the lack of objection by the Bergs and the Elk Falls Development Company for use of the Disputed Roads for, at least, over fifty years. The Dunwody Defendants also purchased the Dunwody Property with knowledge that the Disputed Roads were not private roads, and used the Disputed Roads as easements or public roads prior to purchasing the Dunwody Property. Documents supporting this denial include, but are not limited to, the Block 1, 2, and 3 plat maps, documents relating to the plat maps, maps relating to the Elk Falls Subdivision, letters from Park County, and other documents already disclosed to Defendants.

15. The Trust's claim that all homeowners within the Elk Falls subdivision, including the Trust, have the right to use the Disputed Roads by virtue of necessity is substantially groundless, substantially frivolous and without substantial justification.

RESPONSE: Denied. The Disputed Roads were the only access between the developments of Block 1 and Block 2 of the Elk Falls Subdivision for over fifty years. The Disputed Roads remain the only convenient and safe access to many Elk Falls Subdivision residences; especially during adverse weather. The

other route would also become increasingly dangerous if all traffic was forced to use it instead of the Disputed Roads. Documents supporting this denial include, but are not limited to, the Block 1, 2, and 3 plat maps, maps relating to the Elk Falls Subdivision, and various other documents already disclosed to Defendants or that may still be disclosed to Defendants during discovery.

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18. The Trust's claim that all homeowners within the Elk Falls subdivision, including the Trust, have the right to use the Disputed Roads by virtue of recorded subdivision plats is substantially groundless, substantially frivolous, and without substantial justification.

RESPONSE: Denied. All Elk Falls Subdivision residents were granted a right of way and have easements granted specifically or by inference by virtue of the recorded subdivision plats of Block 1, 2, and 3 of the Elk Falls Subdivision. The right of way is on the face of the plat. Documents supporting this denial include, but are not limited to, the Block 1, 2, and 3 plat maps, the Wells deed, maps relating to the Elk Falls Subdivision, the 1966 Berg Warranty Deed to the

Elk Falls Ranch Development Company, the 2008 Dunwody Warranty Deed, the 2008 Dunwody Title Commitment, other deeds excepting the Disputed Roads, and various other documents already disclosed to Defendants or that may still be obtained by Plaintiffs during discovery.

19. The Trust's claim that the Disputed Roads are public roads is substantially groundless, substantially frivolous, and without substantial justification.

RESPONSE: Denied. The Disputed Roads were dedicated as public roads to Park County and Jefferson County. Park County and Jefferson County have also taken affirmative steps evidencing the Disputed Roads are public roads including Jefferson County paving a portion of the Disputed Roads, and Park County and Jefferson County using the Disputed Roads for school bus access. There are also letters from Park County indicating that Park County treated the Disputed Roads as public roads. For over 50 years, Elk Falls Subdivision residents thought of the Disputed Roads as public roads and used them accordingly. Documents supporting this denial include, but are not limited to, the Block 1, 2, and 3 plat maps, documents relating to the plat maps, maps relating to the Elk Falls Subdivision, letters from Park County relating to the Disputed Roads, and other documents already disclosed to Defendants or that may still be disclosed to Defendants during discovery.

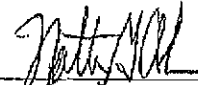
20. The Trust's claim that it has prescriptive rights to the Disputed Roads is substantially groundless, substantially frivolous, and without substantial justification.

RESPONSE: Denied. Prescriptive use can be established here by an attempted but ineffective grant by the Bergs. Paul Vastola and Suzanne Nelson have also used the Disputed Roads openly, notoriously, adversely, and continuously for over eighteen years. Documents supporting this denial include, but are not limited to, the Block 1, 2, and 3 plat maps, documents relating to the plat maps, maps relating to the Elk Falls Subdivision, and other documents already disclosed to Defendants or that may still be disclosed to Defendants during discovery.

Dated: November 5, 2010.

Respectfully submitted,

MONTGOMERY LITTLE & SORAN, P.C.

By s/ Nathan G. Osborn 
Frederick B. Skillern, #7983
Nathan G. Osborn, #38951

VERIFICATION OF PLAINTIFF THE PAUL VASTOLA AND SUZANNE G.
NELSON LIVING TRUST, U/A DATED 8/10/01

STATE OF COLORADO)
) SS.
COUNTY OF Arapahoe

Before me, the undersigned Notary Public, on this day personally appeared, Suzanne G. Nelson, states that the foregoing Objections and Responses are true and correct based upon personal knowledge.

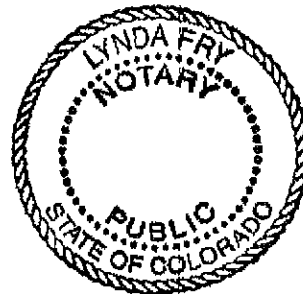
Suzanne G. Nelson
Suzanne G. Nelson
Trustee of the Paul Vastola and Suzanne G.
Nelson Living Trust, U/A Dated 8/10/01

SUBSCRIBED AND SWORN BEFORE ME on this the 5th day of
November, 2010.

[SEAL]

Lynda Fry
NOTARY PUBLIC

My Commission Expires: _____



My Commission Expires 04/27/2013

CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2010, a true and correct copy of the foregoing was duly served to the following via LexisNexis:

Victor F. Boog
3333 S. Wadsworth Blvd., Suite D201
Lakewood, CO 80227

s/Victi Fields Victi Fields