

Addendum

1 all Benefitted Properties, or impose Road maintenance assessments.

2 As a result, the Welkers have proposed that all of the affected Benefitted Owners come
3 to a binding agreement that would create an authorized association, with proper legal authority,
4 to manage the Road and determine and collect maintenance assessments. The Association, and
5 specifically its Board, has not made any such proposal and instead continues to assert its
6 baseless authority over the Road, at the expense of a legal and long-term solution that would
7 provide certainty to current Benefitted Owners and, importantly, future Benefitted Owners.

8 For that reason, and as set forth below, the Welkers respectfully move the Court for
9 summary declaratory judgment that the Association (1) has no legal rights or interests in the
10 Road, whether established by the Road Easements or otherwise; (2) lacks any legal authority to
11 manage the Road on behalf of all of the Benefitted Properties; (3) lacks any authority to enter
12 into contracts related to the management or maintenance of the Road; and (4) lacks any legal
13 authority to establish, assess, or collect Road maintenance expenses against all of the
14 Benefitted Properties.

15 At the time, the Welkers commenced this litigation, they hoped that it would be possible
16 to reach a binding agreement on Road management, maintenance and assessments. At this
17 point, it appears highly unlikely that all Benefitted Owners will be able to agree. Therefore,
18 following the Court's ruling on this Motion, the Welkers anticipate requesting that the Court
19 enter a declaratory judgment establishing a reasonable, fair, and equitable method of allocating
20 maintenance expenses for the Road under this Court's inherent equitable power to do so.¹

21 II. STATEMENT OF GROUNDS

22 For the convenience of the Court, the Welkers have divided this statement of grounds
23 into two main sections: the first presents the undisputed material facts upon which the Welkers
24 base this Motion; the second section presents background facts that, while useful for a full
25 understanding of the circumstances surrounding this case, are not material facts for the

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¹ This equitable power is set forth in *Buck Mountain Owners' Ass'n v. Prestwich*, 174 Wn. App. 702 (2013).

1 purposes of granting relief on summary judgment.

2 **A. Undisputed Facts**

3 *Mt. Dallas Road*

4 The Welkers' trust owns two contiguous parcels of land on San Juan Island, both of
5 which the Welkers access via the Road. Welker Decl. ¶ 1. The Road was created by recorded
6 easements² that provide access to 84 Benefitted Properties owned by 60 different Benefitted
7 Owners, all of whom are parties to this action. Brain Decl. ¶ 3. In the case of the Defendant
8 property owners further up and down the Road from the Welkers, separate recorded easements
9 link the Road easements together, creating a contiguous roadway that is 10,857 feet in length.³
10 Brain Decl., Ex. 1. As noted earlier and in the Survey, separate recorded Side Road Easements
11 also govern the Side Roads that branch off from the Road, providing access via the Road to the
12 Benefitted Properties located on the Side Roads.⁴ Brain Decl. ¶ 4.

13 Each of the Benefitted Properties owns easement rights over the Road for ingress,
14 egress, and utilities to that property from West Side Road. Brain Decl. ¶ 5. All easement rights
15 in the Road run directly—and *exclusively*—to the Benefitted Properties. Brain Decl. ¶ 6;
16 Welker Decl. ¶ 3. However, no master road maintenance agreement, recorded or otherwise,
17 exists with respect to the methodology and procedure for maintaining the Road and assessing
18 the Benefitted Properties for their share of the Road's maintenance costs.⁵ *Id.* Nor do the Road
19 Easements authorize the creation of a homeowners' association to manage the Road or to
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21 ² Specifically, the Road, as used by the Welkers to access their properties, was originally created as an easement in
22 the "Real Estate Contract" recorded in 1964 under San Juan County Auditor's File No. 58558. Welker Decl. ¶ 4.
23 On March 26, 1987, an "Extinguishment and Grant of Substitute Easement," recorded under File No. 87144952,
24 amended the original easement. Welker Decl. ¶ 5. The right of all Benefitted Properties to use Mt. Dallas Road
25 flows from these two documents, which are the foundation for the easement rights over Mt. Dallas Road of all the
26 Benefitted Properties.

24 ³ The Welkers' properties are 5,455 feet up the Road from West Side Road. Brain Decl. ¶ 7.

25 ⁴ At least eleven side roads branch off from the Road or off another side road: Kiya Way; Larkspur Lane;
26 Nighthawk Lane; Tumac Road; Windridge Lane; Sunridge Lane; Skylark Lane; Rascal Road; Rockledge Road;
Brookshaw Road; and Stormridge Road.

⁵ The Association admits this in its Answer. Mt. Dallas Assoc. Answer at 4:1-5.

1 collect assessments for those costs. *Id.*

2 *The Mount Dallas Association*

3 In 1989, a small number of owners of the Benefitted Properties filed the Articles of
4 Incorporation (the “Articles”), creating the Association. Welker Decl. Ex. 3. As set forth in the
5 Articles, the Association’s first stated purpose is “[t]o maintain and upgrade the Mt. Dallas
6 Road.” *Id.* The “regulation of the internal affairs” of the Association “shall be set forth in the
7 By-Laws. *Id.*

8 The By Laws of Mt. Dallas Association (the “By Laws”) state that owners of the
9 Benefitted Properties are “eligible” for membership in the Association⁶ and that “[m]embership
10 in the [Association] requires the payment of *voluntary* dues covering operations, maintenance
11 and reserve funds.” Brain Decl. Ex. 2 (By Laws § 1.3) (emphasis supplied). Without the
12 payment of voluntary dues, an owner’s membership in the Association automatically expires at
13 the end of the calendar year. *Id.*, § 1.4. Not all of the owners of the Benefitted Properties are
14 members of the Association. Welker Decl. ¶ 8. Nor are they required to be members, given that
15 membership in the Association is expressly voluntary.

16 As the rights in the Road created by the Road Easements run exclusively to the
17 Benefitted Properties, the Association does not possess any rights or interests in the Road.
18 Welker Decl. ¶ 3. In an ostensible effort to address its lack of authority to maintain and upgrade
19 the Road, in 2006 the Association attached a so-called “Notice to Lenders” to its Articles.
20 Welker Decl. Ex. 3. The inefficacious and rather misleading “Notice to Lenders” only stated
21 that “[t]o verify road maintenance agreement and payment of related fees on an individual tax
22 parcel, contact Todd Kromer... or [Defendant and then-Association president] Bob
23 Tauscher]...” *Id.*

24 There are no recorded agreements, documents, or easements that purport to provide the
25 Association with any rights or interests in the Road. Welker Decl. ¶ 3. To be absolutely clear,

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⁶ Brain Decl. Ex. 2 (By Laws § 1.2).

1 and as referenced above, the Road Easements do not provide the Association with any legal
2 authority to manage the Road, make Road maintenance decisions binding upon all Benefitted
3 Properties, or impose Road maintenance assessments.

4 Despite this, by letter dated April 8, 2015, sent to owners of the Benefitted Properties by
5 the Association, the Association stated that recent case law⁷ provided it with legal authority to
6 collect assessments from owners of Benefitted Properties, even absent easements benefitting
7 the Association. Welker Decl. ¶ 8, Ex. 4. It also stated that such case law required owners of
8 the Benefitted Properties to pay “an equitable/fair share of the road maintenance... based on the
9 length of the road that the owner uses.”⁸ *Id.* The Association went on to state that

10 [t]here will be no retroactive enforcement of this [case] law, but
11 going forward, you will be billed and expected to pay per the terms
12 of this law. If no payment is received, then we will have no
13 recourse but to follow the letter of the law and pursue legal action.
2015 invoices are expected to be mailed later this month.

14 *Id.*

15 *The Association’s Actions Subsequent to the Welkers Filing Suit*

16 Since the Welkers commenced this suit, the Association has attempted to have all
17 owners of the Benefitted Properties sign a number of separate “petitions needed to help resolve
18 the Welker lawsuit.” Brain Decl. Ex. 3. In those “petitions,” the Association seeks, *inter alia*,
19 to have Benefitted Owners sign documents stating that the Benefitted Owner “authorize[s]
20 Mount Dallas Association, formed in 1989, to be the managing entity of Mount Dallas
21 Road...” *Id.* at p. 2. Other “petitions” purport to authorize the Association to collect
22 assessments for annual expenses (such as liability insurance, website expenses etc.); general
23 road maintenance; and a reserve fund for major road repairs. *Id.* at p. 2-7. And, like the

24 ⁷ Specifically, the Association cited *Buck Mountain Owners’ Ass’n v. Prestwich*, 174 Wn. App. 702 (2013) (“*Buck Mountain*”).

25 ⁸ However, contrary to the Association’s representation, *Buck Mountain* did not hold that an owner’s equitable
26 share is based on the length of the road that owner uses. Instead, it simply held that, absent an agreement between
owners, a court may exercise its equitable powers to require owners to fairly share road maintenance costs. *Buck Mountain*, 174 Wn. App. at 716-17.

1 Association's Articles and By-Laws, these petitions will not be recorded; will not run with or
2 bind the Benefitted Parcels; will not be signed by all Benefitted Owners (a clear requirement
3 for any agreement or grant of authority regarding management of the Road on behalf of the
4 Benefitted Properties); and, even if they were signed, could be withdrawn by any Benefitted
5 Owner at any time for any reason as a result of the fact that membership in the Association is
6 strictly voluntary.

7 Simply stated, these "petitions" circulated by the Association are another *ad hoc*
8 attempt by the Association to obtain the authority over the Road that it lacks, as well as a clear
9 admission on the part of the Association that it lacks any requisite or actual legal authority to
10 manage the Road.

11 **B. Background Facts**

12 *Prior Efforts to Collect Road Maintenance Costs*

13 Over the years since its formation, the Association has used a number of methods for
14 calculating and seeking assessments for maintenance of the Road. Welker Decl. ¶ 6. For
15 instance, in 2014, the Association began to prorate maintenance expenses by grouping certain
16 Benefitted Properties within various stretches of the Road, while still seeking assessments for
17 other expenses equally among Benefitted Owners. *Id.* The Association also began seeking and
18 managing assessments for maintenance expenses for the Side Roads, apparently without the
19 knowledge or input of all of the Benefitted Owners.⁹ *Id.*

20 Also in 2014, apparently recognizing that the Articles and By Laws did not contemplate
21 the Association seeking assessments for maintenance of the Side Roads, the Association's
22 board of directors amended the By Laws to include a provision for assessments for
23 maintenance of the Side Roads. *Id.* ¶ 7. The recorded Articles, however, do not provide
24 authorization for the Association to seek assessments for Side Roads. *Id.*, Ex. 3.

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26 ⁹ This Motion focuses exclusively on the Association's lack of authority to manage the Road. As set forth above,
the Side Road Easements are standalone easements separate from the Road Easements. And, as the Side Roads are
not legally part of the Road, this issue is not currently before the Court in this Motion.

1 Because membership in the Association is voluntary, and because the Association lacks
2 the legal authority to impose mandatory maintenance assessments on the Benefitted Owners,
3 some Benefitted Owners are simply not members of the Association; some who are members
4 disagree with the Association's methodology and procedures for seeking assessments; and
5 some do not pay all or a portion of the assessments sought by the Association. *Id.* ¶ 8.
6 Moreover, despite the fact that the Articles do not address the Association seeking assessments
7 for maintenance of the Side Roads, the Association continues to seek such assessments from
8 the Benefitted Owners. *Id.*

9 *Background of the Present Dispute*

10 Following the Welkers' receipt of the Association's April 8, 2015, letter, they
11 responded through counsel and noted that they, too, desired a formal methodology by which
12 maintenance assessments for the Road could be collected, ensuring the continued value of their
13 and the other Benefitted Owners' properties. Brain Decl. Ex. 4. However, and aside from the
14 Association's lack of legal authority, they noted the problems inherent in the Association's plan
15 to collect assessments and sue those Benefitted Owners who did not pay, including that the
16 Association lacked authority under its Articles to collect mandatory assessments; that *Buck*
17 *Mountain* did not authorize the Association to collect mandatory maintenance assessments for
18 the Road; and that *Buck Mountain* did not prescribe a specific formula for assessments based
19 on the length of road used by a Benefitted Owner, as the Association stated it would do. Brain
20 Decl. ¶ 11.

21 In light of these significant problems and the fact that the maintenance of the Road
22 benefitted all owners using it, and desiring to reach an amicable long-term solution to the issue
23 of assessments, the Welkers set forth a proposed course of action to "clarify and provide
24 certainty with regard to the situation with the Road" so as to "protect the value of all of the
25 Benefitted Properties." Brain Decl. ¶ 12. Specifically, the Welkers proposed, *inter alia*, as
26 follows:

- 1 • That a formal Road Maintenance Agreement (“RMA”) be prepared that
2 reflected the equitable maintenance obligations and that all Benefitted
3 Properties Owners could agree to. *Id.* at p. 5.
- 4 • That the RMA would be recorded, be binding all of the Benefitted Properties,
5 and formally authorize the Association to manage the assessments and road
6 maintenance—providing it with the actual authority that it currently lacked. *Id.*
- 7 • That each of the Side Roads could then separately adopt their own respective
8 maintenance agreements and could even establish separate associations to
9 handle assessments and maintenance of the Side Roads. *Id.*

10 However, in recognition of the fact that obtaining the agreement of 60 different
11 Benefitted Owners to a formal road maintenance agreement would be, from a practical
12 perspective, highly unlikely, the Welkers stated that they would also seek this Court’s
13 assistance in resolving the issues surrounding maintenance of the Road and Side Roads. *Id.*

14 **III. STATEMENT OF ISSUES**

15 Whether the Welkers are, under the Uniform Declaratory Judgments Act, RCW 7.24 *et*
16 *seq.*, entitled to summary declaratory judgment that the Association lacks the authority to
17 manage the Road, or to allocate or impose maintenance assessments for the Road when

18 (1) the benefits of the recorded Road Easements creating the Road inure only to the
19 Benefitted Properties;

20 (2) no agreement or recorded document establishes any association or entity to manage
21 or maintain the Road or to determine Road maintenance requirements, assess Road
22 maintenance expenses against the Benefitted Properties, or collect Road maintenance
23 assessments from the Benefitted Owners or Benefitted Properties;

24 (3) no agreement or recorded document mentions, authorizes, appoints, or designates
25 the Association to act in any such capacity, or grants the Association any rights in or to the
26 Road whatsoever; and