
CHRISTOPHER I. BRAIN
cbrain@tousley.com

June 5, 2015

Susan Allen, President
Mount Dallas Association
2000 Mt. Dallas Road
Friday Harbor WA 98250

Re: Mt. Dallas Road Equitable Maintenance Obligations - Litigation

Dear Ms. Allen:

We represent Clare and Abigail Welker. Enclosed with this letter are the following:

1. May 21, 2015 Letter to Mt. Dallas Association (the "May 21 letter");
2. Copy of the Summons and Complaint for Declaratory Judgment filed in San Juan County Superior Court, under cause number 15-2-05069-0 (the "Litigation"), and
3. Form of Acceptance of Service.

The issues with respect to the management and implementation of an equitable road maintenance obligation for each parcel owner who uses Mt. Dallas Road (the "Benefitted Property Owner") has been ongoing for years. The May 21 Letter outlines the issues and reasons for filing of the Litigation. In a nutshell:

(i) There is no road maintenance agreement which has been agreed to by all Benefitted Property Owners;

(ii) There is no formula for payment of Mt. Dallas road maintenance costs agreed to by all Benefitted Property Owners;

(iii) There is no procedure agreed to by all Benefitted Property Owners by which any individual or group of individuals can make road maintenance decisions and assess, collect or enforce payment of maintenance costs;

(iv) The Mt. Dallas Association, being composed only of voluntary members has no authority to assess or collect maintenance costs, and

(v) Based on experience, the chances of obtaining 100% agreement to an equitable road maintenance cost sharing agreement within a reasonable period of time without incentive to complete the same or go to court for resolution are nil to none.

The purpose of the Litigation is not to cause disruption, conflict or protracted disagreement. It has been brought to cause resolution. It is our clients' goal to achieve an equitable formula which can be agreed to and recommended by the majority of the Benefitted Property Owners and present that and a proposed Mt. Dallas Road Maintenance Agreement to all Benefitted Property Owners for execution. If that cannot be achieved, then the alternative is to present that same maintenance methodology to the Court for adoption pursuant to the *Buck Mountain* case.

If the Litigation is contested, it will take approximately a year to get to a trial in San Juan County Superior Court. That sets a time limit for resolution, one way or the other.

We have advised Mary Stone, attorney for the Association, of our strategy and provided her with copies of the May 21 Letter and Litigation. Although we do not believe the Association has any authority as outlined in the May 21 Letter, we recognize that it has done a lot of groundwork on these issues and that in the end, it is in everyone's best interests to have an association oversee the Mt. Dallas Road maintenance. If we can get agreement to a Road Maintenance Agreement by all Benefitted Property Owners, then a binding owner association could be authorized by such agreement. If that is not possible, then the Court will establish the equitable maintenance obligation for each parcel. Those who agree can then assign the management rights to an association.

Again, it is not only our goal to work toward a recommended equitable maintenance agreement, but to also keep the collective feet to the fire if that is not possible, and get the issue resolved in the Court.

Aside from establishing an equitable road maintenance obligation, the primary benefit to all Benefitted Property Owners is certainty. Right now, no Benefitted Property Owner can represent to any seller or lender that there is any road maintenance agreement in place, or authorized association to manage road maintenance, because there is none. Having an established formula and method of assessment and collection benefits everyone. Again, it provides certainty where none currently exists and protects property values.

We have enclosed a form of Acceptance of Service. The action has been commenced by filing the Complaint with the Court. The next step is service on all defendants. There are several methods – personal service, publication and acceptance of service. We do not desire to cause a process server to personally serve you nor proceed with attempts and then cause publication. The easiest system is to accept service by returning the originally executed Acceptance of Service to our firm. If you have any questions, please consult an attorney.

The Summons requires that you file an answer within 20 days of service within Washington or 60 days if service is outside of Washington. If you return the Acceptance of Service, we will not require you to file an answer at this time and will take no action to obtain a default judgment or affect your rights without further notice to you at this same address. Our plan is to attempt to come up with a recommended equitable maintenance obligation formula and present that to all Benefitted Property Owners for approval. If you agree to that proposed plan, then at that time we will provide a further pleading to you to sign which will be filed with the Court in which you confirm your agreement to be bound by the plan. Hopefully, everyone will agree, but if not and we hopefully proceed forward with a majority who do agree, those who do not, will need to file an answer to the Complaint at that time if they have not already done so.

If you or your attorney have any questions, please contact us.

Very truly yours,

TOUSLEY BRAIN STEPHENS PLLC

A handwritten signature in blue ink, appearing to read 'Chris I. Brain', is written over a large, stylized blue 'B' that serves as a background or initial for the signature.

Christopher I. Brain

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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR SAN JUAN COUNTY

CLARE LINN WELKER and ABIGAIL
METZGER WELKER, Trustees of the Big
Sky Trust UDT 11-14-2002

Plaintiffs,

v.

MOUNT DALLAS ASSOCIATION, a
Washington non-profit corporation; PETER
and KIMBERLY ALBERT; TIMOTHY and
SUSAN ALLEN; DAVID and NANCY
AUTH; ANITA BAILOR; PATRICK and
JOANN BALLENGER; MICAJAH
BIENVENU and AMY ANDERSON;
CONSTANCE BLACKMER; HENRY J.
BORYS and KESHA EWERS; JOHN and
SHARON BOYD; PATRICIA T. CASEY;
KYLE CHAPMAN and LADD JOHNSON;
WENDY CRAWFORD; PETER DAVIS and
SUSAN CRAMPTON DAVIS; CYNTHIA
and MARK DEARFIELD; DAVID
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ROBERT W. EICHLER; ROBERT J.
ERSKINE, JR. and PEGGY ERSKINE;
JAMES L. AND WENDY FRANCIS;
JAMES FRITZ; GREG and JANE
GERHARDSTEIN; GARY GERO; JAMES
GIMLETT and MAGGIE GALLIVAN;
CRAIG and JEAN GRAHAM; JAMES and
MARY GUARD; NASH R. GUBELMAN
and LINDA SOFTING-GUBELMAN;
STERLING TRUST COMPANY FBO;
THOMAS AND COLLEEN HABERMAN;
RONALD and ASHLEY HURST
HENNEMAN; HENNEMAN
IRREVOCABLE TRUST; LISA LYNN
HILL; PAUL A. and JENNIFER

NO.
SUMMONS

1 HOHENLOHE; GLENN and DIANE
2 KAUFMAN; FRED KEELER; JANE B.
3 KROESCHE; GORDON LAGERQUIST;
4 MAURICE and MOLLY LIEBMAN;
5 MADRONA RIDGE, LLC; FLORENCE
6 MCALARY; ROBERT and SARA
7 MCCLELLAN; J. ROYCE MEYEROTT and
8 LEE M. BRYAN; JEROME S. and ANN
9 MOSS; MOSS TRUST; DIANNA PADILLA;
10 MARK PRZYBYLSKI and MAUREEN
11 KAY KOSHI; ROBERT and JILL RATH;
12 PATRICIA ROBERTS; BENJAMIN
13 TROUTMAN and KARLA SABIN;
14 THOMAS SCHILLING; FLORENT
15 SCHOEBEL and JESSICA FARRER; ERIK
and ELAINE SCHUMY; WILLIAM and
LAURA SEVERSON; MARK SHEPPARD;
FRED and ELEANOR SILVERSTEIN; SAN
JUAN PRESERVATION TRUST; DONALD
E. STRAUTON and MARIA SIKORSKI;
GREGORY A. and JANE SWANSON;
RIKKI SWIN; ROBERT TAUSCHER and
SANDRA HAWLEY; JOHN TAYLOR;
BRUCE D. TWOOMEY; CARTER and
JENNIFER WHALEN; L. CURTIS
WIDDOES; SILVERSTEIN-GERSTON
MOUNT DALLAS LLC; SP
INVESTMENTS II LLC;

Defendants.

16 TO: Mount Dallas Association:

17 A lawsuit has been started against you in the above-entitled Court by the above-named
18 Plaintiffs. Plaintiffs' claims are stated in the written Complaint, a copy of which is served upon
19 you with this Summons.
20

21 In order to defend against this lawsuit, you must respond to the Complaint by stating
22 your defense in writing, and serve a copy upon the undersigned attorneys for Plaintiffs within
23 20 days after the service of this Summons, excluding the day of service. If you do not respond,
24 a default judgment may be entered against you without notice. A default judgment is one in
25 which Plaintiffs are entitled to what it asks for because you have not responded. If you serve a
26

1 notice of appearance on the undersigned attorneys, you are entitled to notice before a default
2 judgment may be entered.

3 You may demand that Plaintiffs file this lawsuit with the Court. If you do so, the
4 demand must be in writing and must be served upon Plaintiffs. Within 14 days after you serve
5 the demand, Plaintiffs must file this lawsuit with the Court, or the service on you of this
6 Summons and Complaint will be void.

7
8 If you wish to seek the advice of an attorney in this matter, you should do so promptly
9 so that your written response, if any, may be served on time.

10 This Summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the
11 state of Washington.

12 DATED this 2nd day of June, 2015.

13
14 TOUSLEY BRAIN STEPHENS PLLC

15 By: 

16 Christopher J. Brain, WSBA #5054

17 Email: cbrain@tousley.com

Romney R. Brain, WSBA #6576

18 Email: rbrain@tousley.com

19 1700 Seventh Avenue, Suite 2200
Seattle, WA 98101

20 Tel: (206) 682-5600

21 Fax: (206) 682-2992

22 *Attorneys for Plaintiffs*

ROMNEY R. BRAIN
rbrain@tousley.com

OUR FILE NO:
W-6027-001.B1

May 21, 2015

Susan Allen, President
Mt. Dallas Association
2000 Mt. Dallas Road
Friday Harbor, WA 98250

Re: Mt. Dallas Road and Mt. Dallas Association

Dear Ms. Allen:

We represent Clare and Abigail Welker, who own two properties accessed by Mt. Dallas Road. The Welkers have asked us to review the documentation (including recorded documentation) related to the creation of Mt. Dallas Road and the Mt. Dallas Association. Outlined below are our initial comments and conclusions. We have broken our comments and this letter into three parts. The first part discusses the status and current issues related to Mt. Dallas Road and the Mt. Dallas Association, both factual and legal. The second part sets out our recommendations for resolving the outstanding issues related to Mt. Dallas Road, the Mt. Dallas Association and the maintenance of the Road. The third part discusses what we believe to be the only practical approach for moving forward with a resolution of the outstanding issues, including implementing some or all of the recommendations. Some of the information set forth in this letter was obtained from First American Title Company (San Juan Title). Our comments are intended to be an overview that addresses the main substantive issues related to the Road, the Association and the maintenance of the Road. We have not reviewed every easement or document related to the Road or the Association, and are not attempting to address every provision of the documents that we have reviewed.

The Road and the Association

1. Mt. Dallas Road (the "Road") was originally created as an easement in the Real Estate Contract recorded in 1964 under San Juan County Auditor's File No. 58558. This easement was amended by the Extinguishment and Grant of Substitute Easement recorded on March 26, 1987 under San Juan County Auditor's File No. 87144952. These easements are reflected in the legal description for the Welker properties. These documents control the easement rights to Mt. Dallas Road from West Side Road to the

Welker properties, as well as establish the easement for Nighthawk Lane. Per the title company, the access to the Road and easement rights of properties further up the Road past the Welker properties are governed by a series of separate easements that link to the lower Road easement, and in various cases, create easements for the additional side roads.

2. The recent survey the Welkers had completed by San Juan Surveying shows the total length of the Road as 10,857 feet (with the Welker properties being about half way at 5,455 feet). The width of the Road is not uniform throughout its whole length. The surveyed length should be compared against the combined length reflected in all of the recorded easements that established the complete Road end to end.
3. The Road easement(s) benefit each of the properties served by the Road (the “Benefitted Properties”). Another way to say this is that all properties benefitted by the Road own easement rights over the Road for ingress, egress and utilities to their respective properties.
4. There is no existing Road Maintenance Agreement (recorded or otherwise) for the Road that would specify the methodology and procedures for maintaining the Road and assessing the Benefitted Properties for their respective share of the cost of maintenance. As such (i.e. where no agreement exists), all Benefitted Properties remain subject to the general holding in the case Buck Mountain Owners’ Association v. Prestwich, 174 Wash. App. 702 (2013) (the “Equitable Maintenance Obligation”). Note that the Buck Mountain case establishes the general principle that where no road maintenance agreement exists, the court has equitable powers to impose reasonable road maintenance obligations. However, the Buck Mountain case does not establish any set methodology for proportioning road maintenance obligations where no agreement exists. In fact, the court specifically stated that “we decline to adopt a fixed rule delimiting the court’s inherent equity power to allocate maintenance costs based on the particular facts and equity of a case”. Which is to say, there is no governing methodology (other than that the allocation be equitable and reasonable), and that each situation will be looked at on a case by case basis by the court if the property owners cannot come to their own agreement. We mention this in part because the April 8, 2015 letter from you and the other officers and directors of the Association that discusses the Buck Mountain case correctly states the general requirement that those using the Road pay an equitable and fair share for maintenance. However, that letter also states “Fair share is to be based on the length of the road that the owner uses”. This statement of the legal obligation of the property owners using a road is not correct. The court did not hold this, and as noted, refused to adopt a specific methodology for allocating shared maintenance expenses. Basing proportional maintenance obligations in part on the length of road used may very well be a fair and equitable way of allocating maintenance expenses under the given circumstances, and may be an appropriate method to apply here in regard to the maintenance of the Road, but it is not an exclusive methodology mandated by the court.
5. The Mt. Dallas Association (the “Association”) was formed upon the filing of its Articles of Incorporation (the “Articles”) on February 21, 1989. The first stated purpose of the

- Association is “To maintain and upgrade the Mt. Dallas Road”. The Articles further provide that “The regulation of the internal affairs of this corporation shall be set forth in the By-Laws”.
6. The most recent version of the By-Laws appear to have been adopted by the Board in July of 2014.
 7. All easement rights in the Road run directly to the individual Benefitted Properties. The Association has no rights or interests in the Road or any of the easements that created the Road. Stated another way, the Association is not a legal beneficiary of the Road easement(s), and therefore (absent the express consent of and grant of authority by all of the property owners), the Association has no enforceable legal authority to exercise its purpose of maintaining the Road. In order to address its lack of authority (and apparently to satisfy lenders) the Association (as executed by the then president of the Association) recorded a purported “Road Maintenance Agreement” on April 21, 2006 under San Juan Auditor’s File No. 2006-0421042. At apparently the same time the Association attached a “Notice to Lenders” to the Articles that stated “To verify road maintenance agreement and payment of related fees on an individual tax parcel contact” These documents created the appearance of a road maintenance agreement and the related authority of the Association to make assessments and maintain the Road, when in fact there was no road maintenance agreement and the Association’s authority was totally limited due to the fact that it (a) had no actual legal or beneficial interest in the Road easement(s), and (b) its authority was limited due to it being only a voluntary association (i.e. the Benefitted Properties are not bound by the Association’s actions regarding the Road). These filings were therefore both incorrect and unauthorized. Note also that the court in the Buck Mountain case (where again there was no road maintenance agreement) specifically declined to require the property owners to sign a road maintenance agreement that would require them “to contribute a share of the sums for road maintenance regularly assessed by the . . . association on its members”. The court in essence recognized that an association has no authority to make road maintenance assessments against property owners where the property owners are not subject to (i.e. burdened by) the association’s authority and have not otherwise entered into an agreement authorizing the association to allocate and assess the maintenance costs.
 8. As noted, the Association is strictly voluntary. Pursuant to the By-Laws, owners of the Benefitted Properties accessed by the Road and having the beneficial right to use the Road are entitled to be members of the Association. No owner of a Benefitted Property is required to join or otherwise become a member of the Association. Not all owners of Benefitted Properties are members of the Association. And not all owners (members or non-members) pay the assessments made by the Association. Here again the April 8, 2015 letter is incorrect when it states that the Association can pursue legal action to collect unpaid assessments. The Association simply has no such legal authority.
 9. Given that the Association has no legal rights or interests in the Road, that membership in the Association by owners of the Benefitted Properties is strictly voluntary, and the above holding in the Buck Mountain case, the Association has no legal or independent right to

(a) maintain the Road, or (b) make assessments for the maintenance of the Road that would be binding upon the Benefitted Properties, except through the voluntary agreement of the owners of the Benefitted Properties. Stated another way, any owner of a Benefitted Property who elects not to join and become a member of the Association is not bound by the Road assessments or other Road related decisions made by the Association. And no owner of a Benefitted Property who is a member of the Association is bound by the Associations method or amount of Road expense assessment. All such Benefitted Properties do remain bound by the Equitable Maintenance Obligation, just not the Associations' interpretation of that obligation. Given that the Equitable Maintenance Obligation related to the Road has not been defined by agreement of all of the owners of the Benefitted Properties, without such an agreement it would ultimately have to be determined by the court.

10. Over the years, the Association has taken a number of approaches to making assessments for Road maintenance. Most recently, in 2014, it began to pro-rate the maintenance expenses somewhat in line with the Equitable Maintenance Obligation, but not entirely so. For example, some expenses are still assessed equally, and the proportional assessment was done by grouping properties within various stretches of the Road. This may or may not be "equitable and reasonable". Without agreement of all of the owners of the Benefitted Properties, the court would have to decide that.
11. Over the years, the Association also began making and managing assessments and maintenance expenses for the side roads (the "Side Roads"). This was apparently done by the Board without the knowledge or input of all of the members of the Association. This also exceeds the stated purpose of the Association as set forth in the Articles, which is "To maintain and upgrade Mt. Dallas Road". It appears that the Board amended the By-Laws in 2014 to authorize the Side Road Assessments, and to authorize the Association to manage those Side Road Assessments. However, if the maintenance of the Side Roads is not authorized by the Articles (which it is not), the Board cannot merely amend the By-Laws to create this authority. Stated another way, the authority and purpose of the Association is limited by the Articles and cannot be materially modified or increased by an amendment to the By-Laws. Any change in the purpose and authority of the Association would require an amendment to the Articles approved by 2/3 of the members of the Association. And again, remember that the Association has no legal authority over the Road or the maintenance of the Road aside from the fact that it has no authority over the Side Roads or the maintenance of the Side Roads.
12. So the bottom line here is that the Association has no authority over any Benefitted Property (or to establish Road maintenance assessments obligating a Benefitted Property) except where the owner of the Benefitted Property voluntarily agrees to submit to the Association's authority. Given that you have (a) Benefitted Properties that are not members of the Association, (b) Benefitted Properties that are members of the Association who disagree with the Boards methodologies and procedures for assessments, (c) Benefitted Properties that do not pay all or a portion of the assessments made by the Association, and (d) the Association separately making and managing

assessments for the Side Roads without any authority to do so, you have a rather messy situation that has been ad hoc at best, and that could easily get worse in the future. In order to provide certainty as to the assessments and the legal basis for the assessments, and to protect the value of all Benefitted Properties, a definitive solution is necessary.

Recommendations

In a perfect world where all owners agreed, implementing the following recommendations would address all of the current issues and resolve any of the current uncertainties related to Road maintenance and assessments:

1. Prepare a formal Road Maintenance Agreement (“RMA”) to be signed by the owners of all of the Benefitted Properties. The RMA should reflect the Equitable Maintenance Obligation, as agreed to by all of the property owners. This could resemble the methodology that the Association started to use in 2014, a modification of that, or a new methodology that potentially better allocates the expenses in an equitable and fair manner.
2. The RMA could formally authorize the Association to manage the assessments and maintenance of the Road, giving it the actual authority that it currently lacks. Since the RMA will be recorded and be binding on all of the Benefitted Properties, all of the properties would be formally and legally granting the Association this authority. This would fully resolve the uncertainty that currently exists (and as noted, certainty on these sorts of things adds value to the properties and avoids the prospect of future litigation).
3. Each of the Side Roads should then separately adopt their own respective Side Road Maintenance Agreements (“SRMA”). The SRMA agreements could mirror the main RMA, and could (to the extent desired or appropriate) establish a separate association for each of the Side Roads to handle assessments and maintenance.
4. Other related clean-up items should include the following: (a) Amend the Articles as necessary to clarify the purpose of the Association, to cross-reference the recorded new RMA and to get rid of the earlier “Notice to Lenders”, (b) have the new RMA cancel and supersede the unauthorized “Road Maintenance Agreement” recorded by the Association under San Juan Auditor’s File No. 2006-0421042, and (c) amend and update the By-Laws consistent with the other changes related to the Articles, the Association’s purpose and authority and the terms of the RMA.

As noted, one of the primary reasons to clarify and provide certainty with regard to the situation with the Road, maintenance and assessments is to protect the value of all of the Benefitted Properties. Without a clear and binding solution, the maintenance of the Road (and the related impact on the value of the properties) remains potentially subject to any Benefitted Property owner bringing a lawsuit to have the court determine the Equitable Maintenance Obligation on all of the properties (which would by-pass the Association) and which would create a cloud on all of the properties until resolved or the court determination is made. And any court

determination regarding the Equitable Maintenance Obligation of the Benefitted Properties would not necessarily solve all of the administrative problems (i.e. having a system and procedures in place to determine assessments and maintain the Road, given that the Association, as it currently stands, has no authority to do this).

Implementing the Recommendations – A Practical Course of Action

In order to implement the above recommendations, all Benefitted Properties would need to agree to and execute the RMA. There are presently 60 owners of Benefitted Properties. As a practical matter, negotiating and obtaining the agreement of 100% of the property owners to the terms of a RMA and a methodology for assessing Road maintenance expenses is highly unlikely. It would amount to an all or nothing, extremely time consuming approach with a very low chance of success. There needs to be a structured forum in which to address all of these issues and come to a timely resolution. As such, we intend to file (on behalf of the Welkers) an action in San Juan Superior Court to gain the court's assistance in resolving these issues (by agreement, or if not agreement, ultimately by court decision). We desire that this will be more of a managed process than an adversarial process, but in either case, placing this under the court's jurisdiction is the only practical way to proceed as it will require all owners of the Benefitted Properties to agree or be bound by a court decision within a limited time period.

In light of the Buck Mountain case, we believe that if the owners of a solid majority of the Benefitted Properties agreed to a specific RMA methodology for assessing and apportioning the costs of maintaining the Road (i.e. a reasonable and equitable assessment process), there is a strong likelihood that the court would adopt that methodology even without 100% agreement. The owners of the Benefitted Properties that approved the RMA methodology (as approved and/or determined by the court) could then grant the Association the authority to manage the assessments and maintenance of the Road. Although the Benefitted Properties that did not agree to the RMA methodology would still not be bound by the Association's authority and assessments, they would be bound by the methodology and the amount of the assessments as approved and determined by the court. The Benefitted Properties that approved the RMA methodology and the Association's authority to make assessments would have a claim against the other Benefitted Properties for their "fair share" of the cost of the Road maintenance. Those owners could assign that right to the Association, and the Association would then be in a position to collect the amount of the assessments against those other Benefitted Properties.

We also believe that once a court action is brought and "the writing is on the wall", so to speak, the ability to get all of the owners of the Benefitted Properties to agree on a court approved methodology would significantly improve, as the only option would be for those owners to engage in a court battle. As noted, with a solid majority in favor of the RMA methodology, the others would be fighting a significant uphill battle to convince the court that some other methodology should apply. And in the end, if no voluntary agreement can be reached, the court would be making the decision in a timely manner.

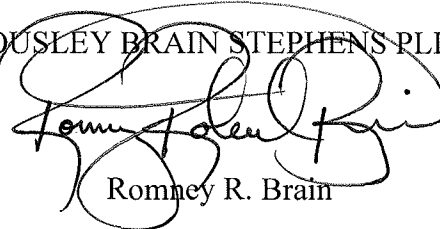
So as noted above, shortly we will be filing an action to get these matters resolved. Hopefully that action will lead to cooperation and agreement, but in any event, it will definitely lead to a

Susan Allen
May 21, 2015
Page 7

resolution. Upon filing the action, a copy will be provided to all of the owners of the Benefitted Properties (who are all necessary parties to the action), including the officers and directors of the Association. As initially filed the action will not ask for any specific methodology for making Road maintenance assessments other than it be "equitable and fair", so from that standpoint, there will initially be no proposal to dispute. As the proceeding progresses there will be several possible outcomes. An acceptable methodology will get developed and be proposed by a majority of owners, or if that does not occur, owners (or groups of owners) may propose their preferred methodology, with the court making the final decision. Those owners who do not wish to be directly involved in the action and who are willing to agree to the final decision of the court on the methodology for Road assessments will, upon such agreement, be able to substantially avoid ongoing involvement in the litigation.

Sincerely,

TOUSLEY BRAIN STEPHENS PLLC

A handwritten signature in black ink, appearing to read "Romney R. Brain", is written over the typed name. The signature is fluid and cursive, with the first name "Romney" being particularly prominent.

Romney R. Brain

RRB/pc
0099/001/299215.1

cc: Clare Welker
Abigail Welker
Royce Meyerott
Sharon Boyd
Sandy Hawley
William Severson
James Fritz

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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
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CLARE LINN WELKER and ABIGAIL
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Plaintiffs,

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MOUNT DALLAS ASSOCIATION, a
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MARY GUARD; NASH R. GUBELMAN
and LINDA SOFTING-GUBELMAN;
STERLING TRUST COMPANY FBO

NO. 15-2-05069-0

COMPLAINT FOR DECLARATORY
JUDGMENT

1 THOMAS and COLLEEN HABERMAN;
2 RONALD and ASHLEY HURST
3 HENNEMAN; HENNEMAN
4 IRREVOCABLE TRUST; LISA LYNN
5 HILL; PAUL A. and JENNIFER
6 HOHENLOHE; GLENN and DIANE
7 KAUFMAN; FRED KEELER; JANE B.
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JENNIFER WHALEN; L. CURTIS
WIDDOES; SILVERSTEIN-GERSTON
MOUNT DALLAS LLC; SP
INVESTMENTS II LLC;

Defendants.

21 Plaintiffs, through their counsel of record, Tousley Brain Stephen PLLC, allege as
22 follows:
23

24 1. Parties.

25 1.1 Plaintiffs. Plaintiffs Clare and Abigail Welker as trustees of the Big Sky
26 Trust UTD 11-14-2001, which owns property in San Juan County. The access to Plaintiffs'

1 property is over a private easement road commonly referred to as the Mount Dallas Road (“Mt.
2 Dallas Road”).

3 1.2 Mt. Dallas Association. The Mt. Dallas Association is a Washington
4 non-profit corporation (the “Association”).

5 1.3 Individual Defendants. Defendants Mount Dallas Association, Peter and
6 Kimberly Albert, Timothy and Susan Allen, David and Nancy Auth, Anita Bailor, Patrick and
7 Joann Ballenger, Micajah Bievenu and Amy Anderson, Constance Blackmer, Henry J. Borys
8 and Kesha Ewers, John and Sharon Boyd, Patricia T. Casey, Kyle Chapman and Ladd Johnson,
9 Wendy Crawford, Peter Davis and Susan Crampton Davis, Cynthia and Mark Dearfield, David
10 Duggins and Megan Dethier, Robert W. Eichler, Robert J. Erskine, Jr. and Peggy Erskine,
11 James and Wedny Francis, James Fritz, Greg and Jane Gerhardstein, Gary Gero, James Gimlett
12 and Maggie Gallivan, Craig and Jean Graham, James and Mary Guard, Nash R. Gubelman and
13 Linda Softing-Gubelman, Sterling Trust Company FBO Thomas and Colleen Haberman,
14 Ronald and Ashley Hurst Henneman, Henneman Irrevocable Trust, Lisa Lynn Hill, Pual A. and
15 Jennifer Hohoenlohe, Glenn and Dianne Kaufman, Fred Keeler, Jane B. Kroesche, Gordon
16 Lagerquist, Maurice and Molly Liebman, Madrona Ridge, LLC, Florence McAlary, Robert and
17 Sara McClellan, J. Royce Meyerott and Lee M. Bryan, Jersome S. and Ann Moss, Moss Trust,
18 Dianna Padilla, Mark Przybylski and Maureen Kay Koshi, Robert and Jill Rath, Patricia
19 Roberts, Benjamin Troutman and Karla Sabin, Thomas Schilling, Florent Schoebel and Jessica
20 Farrer, Erik and Elaine Schumy, William and Laura Severson, Mark Sheppard, Fred and
21 Eleanor Silverstein, San Juan Preservation Trust, Donald E. Strauton and Maria Sikorski,
22 Gregory and Jane Swanson, Rikki Swin, Robert Tauscher and Sandra Hawley, John Taylor,
23 Bruce D. Twoomey, Carter and Jennifer Whalen, L. Curtis Widdoes, Silverstein-Gerston
24 Mount Dallas LLC, SP Investments II, LLC, Town of Friday Harbor (collectively “Individual
25 Defendants”) each own property in San Juan County. The access to all Individual Defendants’
26 properties is over a portion of the Mt. Dallas Road. The access to some Individual Defendants’

1 properties is both over the Mt. Dallas Road and over one of several separate side easement
2 roads (individually “Side Road” and collectively “Side Roads”).

3 2. Jurisdiction and Venue. This court has personal and subject matter jurisdiction
4 over the parties and is the proper venue for this action.

5 3. Background Facts.

6 3.1 Mt. Dallas Road is accessed from West Side Road and is the only access
7 to the Plaintiffs’ and Individual Defendants’ properties (collectively the “Benefitted Properties”
8 and the Plaintiffs and Individual Defendants collectively being the “Benefitted Property
9 Owners”). Attached as Exhibit 1 is a copy of the San Juan Accessor’s map illustrating all
10 parcels of property serviced by Mt. Dallas Road.

11 3.2 Mt. Dallas Road was created by a series of easement grants (the “Mt.
12 Dallas Road Easements”). None of the Mt. Dallas Road Easements set forth any method for
13 allocating maintenance and repair costs for the Mt. Dallas Road.

14 3.3 None of the Mt. Dallas Road Easements authorizes or creates any
15 association, board, homeowners association or any type of entity or individual with the
16 authority to (a) maintain and repair Mt. Dallas Road or (b) assess, allocate, and/or pursue
17 collection of repair and maintenance costs for the Mt. Dallas Road.

18 3.4 There is no existing road maintenance agreement (recorded or otherwise
19 agreed to among all Benefitted Property Owners) which sets forth the allocation of repair and
20 maintenance costs for the Mt. Dallas Road and how the costs of such maintenance and repair
21 are to be allocated to the Benefitted Property Owners.

22 3.5 There is no method for allocation of Mt. Dallas Road repair and
23 maintenance costs which has been agreed to by all Benefitted Property Owners.

24 3.6 In addition to primary access via Mt. Dallas Road, some Individual
25 Defendants access their properties over the Side Roads that connect to Mt. Dallas Road.

1 20060421042. The document implies that there is some form of road maintenance agreement
2 which binds the Association to pay costs for a Benefitted Property on Kiya Way.

3 5.4 In addition, at or about this same time, a “Notice to Lenders” was printed
4 on copies of the Articles which stated:

5 “To verify road maintenance agreement and payment of related
6 fees on an individual tax parcel contract....”

7 5.5 The two documents indentified in paragraphs 5.3 and 5.4 create the
8 appearance of the existence of a road maintenance agreement and the related authority of the
9 Association to make assessments and maintain Mt. Dallas Road when in fact there is no road
10 maintenance agreement and the Association has no authority to assess or collect for
11 maintenance costs.

12 5.6 The Bylaws of the Association provide that membership is voluntary
13 only. There is no authority to require individual Benefitted Property Owners to join the
14 Association or to maintain membership in the Association.

15 5.7 The Association has taken a number of approaches to allocating road
16 maintenance costs, but no integrated fair and equitable system which binds all Benefitted
17 Properties has been adopted or agreed to.

18 5.8 The Association has also attempted to manage assessments for the
19 maintenance of Side Roads and in 2014 amended its Bylaws to authorize Side Road
20 assessments.

21 6. Declaratory Judgment. A real and justiciable issue exists as to the authority of
22 the Association and the Plaintiffs are entitled to a declaratory judgment that:

23 (i) The Association has no authority to establish and enforce a road
24 maintenance agreement, or any maintenance and assessment
25 methodology which is not adopted and agreed to by all Benefitted
26 Property Owners;

1 (ii) The Association has no authority to assess maintenance costs against the
2 Benefitted Properties; and

3 (iii) The Association has no authority to collect or pursue collection of
4 maintenance costs from the Benefitted Property Owners.

5 **SECOND CLAIM FOR RELIEF**

6 **Declaratory Judgment**

7 For its second claim for relief for a declaratory judgment against all individual
8 defendants, Plaintiffs allege:

9 7. Reallegation. Plaintiffs reallege and incorporate paragraphs 1 – 6 herein.

10 8. Site. There is no road maintenance agreement by and among the Benefitted
11 Property Owners which binds the Benefitted Properties. Based on the holding in *Buck*
12 *Mountain Owners' Association v. Prestwich*, 174 Wash.App. 702 (2013), Plaintiffs are entitled
13 to a declaratory judgment which establishes a reasonable, fair and equitable method of
14 allocation of the expenses for the maintenance of Mt. Dallas Road (the "Expense Allocation
15 Method"). Plaintiffs also request a declaratory judgment that the Owners of Benefitted
16 Properties allocated a majority of the expenses for the maintenance of Mt. Dallas Road under
17 the Expense Allocation Method are authorized to maintain Mt. Dallas Road in accordance with
18 the Expense Allocation Method.

19 **RELIEF REQUESTED**

20 Plaintiffs request that the Court grant the following relief:

21 A. Enter a Declaratory Judgment in accordance with Plaintiffs' First Claim for
22 Relief;

23 B. Enter a Declaratory Judgment in accordance with Plaintiffs' Second Claim for
24 Relief;

25 C. For Plaintiffs' statutory attorney's fees and costs; and

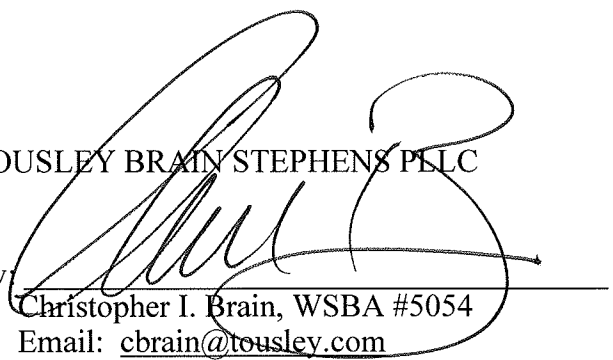
26 D. For such other relief as may be proven at the time of trial.

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DATED this 2nd day of June, 2015.

TOUSLEY BRAIN STEPHENS PLLC

By



Christopher I. Brain, WSBA #5054

Email: cbrain@tousley.com

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Seattle, WA 98101

Tel: (206) 682-5600

Fax: (206) 682-2992

Attorneys for Plaintiffs

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5 IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
6 IN AND FOR SAN JUAN COUNTY

7 CLARE LINN WELKER and ABIGAIL
8 METZGER WELKER, Trustees of the Big
9 Sky Trust UDT 11-14-2002

10 Plaintiffs,

11 v.

12 MOUNT DALLAS ASSOCIATION, a
13 Washington non-profit corporation; et al

14 Defendants.

NO. 15-2-05069-0

PRAECIPE

15 TO: CLERK OF THE COURT;

16 AND TO: ALL PARTIES OF RECORD.

17 YOU ARE HEREBY REQUESTED to substitute the attached page 4 to the Complaint
18 which was filed in San Juan County Superior Court under the above-referenced cause number
19 on June 3, 2015. The last sentence in paragraph 3.1, referencing Exhibit 1, should have been
20 deleted before filing the complaint.

21 DATED this 4th day of June, 2015.

22 TOUSLEY BRAIN STEPHENS PLLC

23 By. 

24 Christopher I. Brain, WSBA #5054

25 Email: cbrain@tousley.com

26 Romney R. Brain, WSBA #6576

Email: rbrain@tousley.com

1700 Seventh Avenue, Suite 2200

Seattle, WA 98101

Tel: (206) 682-5600

Attorneys for Plaintiffs

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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR SAN JUAN COUNTY

CLARE LINN WELKER and ABIGAIL
METZGER WELKER, Trustees of the Big
Sky Trust UDT 11-14-2002

Plaintiffs,

v.

MOUNT DALLAS ASSOCIATION, a
Washington non-profit corporation; PETER
and KIMBERLY ALBERT; TIMOTHY and
SUSAN ALLEN; DAVID and NANCY
AUTH; ANITA BAILOR; PATRICK and
JOANN BALLENGER; MICAJAH
BIENVENU and AMY ANDERSON;
CONSTANCE BLACKMER; HENRY J.
BORYS and KESHA EWERS; JOHN and
SHARON BOYD; PATRICIA T. CASEY;
KYLE CHAPMAN and LADD JOHNSON;
WENDY CRAWFORD; PETER DAVIS and
SUSAN CRAMPTON DAVIS; CYNTHIA
and MARK DEARFIELD; DAVID
DUGGINGS and MEGAN DETHIER;
ROBERT W. EICHLER; ROBERT J.
ERSKINE, JR. and PEGGY ERSKINE;
JAMES L. AND WENDY FRANCIS;
JAMES FRITZ; GREG and JANE
GERHARDSTEIN; GARY GERO; JAMES
GIMLETT and MAGGIE GALLIVAN;
CRAIG and JEAN GRAHAM; JAMES and
MARY GUARD; NASH R. GUBELMAN
and LINDA SOFTING-GUBELMAN;
STERLING TRUST COMPANY FBO;
THOMAS AND COLLEEN HABERMAN;
RONALD and ASHLEY HURST
HENNEMAN; HENNEMAN
IRREVOCABLE TRUST; LISA LYNN

NO. 15-2-05069-0

ACCEPTANCE OF SERVICE

1 HILL; PAUL A. and JENNIFER
2 HOHENLOHE; GLENN and DIANE
3 KAUFMAN; FRED KEELER; JANE B.
4 KROESCHE; GORDON LAGERQUIST;
5 MAURICE and MOLLY LIEBMAN;
6 MADRONA RIDGE, LLC; FLORENCE
7 MCALARY; ROBERT and SARA
8 MCCLELLAN; J. ROYCE MEYEROTT and
9 LEE M. BRYAN; JEROME S. and ANN
10 MOSS; MOSS TRUST; DIANNA PADILLA;
11 MARK PRZYBYLSKI and MAUREEN
12 KAY KOSHI; ROBERT and JILL RATH;
13 PATRICIA ROBERTS; BENJAMIN
14 TROUTMAN and KARLA SABIN;
15 THOMAS SCHILLING; FLORENT
16 SCHOEBEL and JESSICA FARRER; ERIK
17 and ELAINE SCHUMY; WILLIAM and
18 LAURA SEVERSON; MARK SHEPPARD;
19 FRED and ELEANOR SILVERSTEIN; SAN
20 JUAN PRESERVATION TRUST; DONALD
21 E. STRAUTON and MARIA SIKORSKI;
22 GREGORY A. and JANE SWANSON;
23 RIKKI SWIN; ROBERT TAUSCHER and
24 SANDRA HAWLEY; JOHN TAYLOR;
25 BRUCE D. TWOOMEY; CARTER and
26 JENNIFER WHALEN; L. CURTIS
WIDDOES; SILVERSTEIN-GERSTON
MOUNT DALLAS LLC; SP
INVESTMENTS II LLC;

Defendants.

YOU WILL PLEASE TAKE NOTICE that the undersigned hereby accepts service of process on behalf of Defendant Mount Dallas Association, a Washington non-profit corporation, without waiving any defense, including, without limitation, lack of jurisdiction over the person or improper venue.

DATED this ____ day of June, 2015.

MOUNT DALLAS ASSOCIATION

By: _____
(name)

Its: _____