RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes___ No_X)

Pass and adopt this Resolution recommending approval of an amendment to the Road Maintenance Association (RMA) Declaration of Tokosaben by removing the lien rights contained in the Declaration. The Declaration applies to Allan's Way in Greeley Hill. Major Subdivision No. 9-27-90, Kobayashi, et al. was approved by the Planning Commission in 1991 with the condition that a private RMA be formed but with no requirement for lien rights. When the project was nearing completion in 1995, an acceptable RMA Declaration was provided to the group as a sample. The sample document was reproduced for the Tokosaben subdivision and submitted to the California Department of Real Estate (DRE) but it contained the lien rights language which was then required for RMAs. As a result, the DRE considers this subdivision a planned development and fees required for a planned development differ greatly (substantially higher) than for a standard subdivision. The Public Works Department, the Planning Department, and myself do not believe that the existence of lien rights is imperative as the Planning Commission did not require their inclusion in the RMA when the Commission approved the subdivision. Amendment to the RMA will relieve an undue hardship for the group and will enable them to complete the processing of their subdivision with the State.

A copy of the group's request together with related documents are included in this packet.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

None on this action.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

➤ Approve Resolution as presented.
➤ Do not approve Resolution. This group will have to follow through with the DRE process for a planned development.

COSTS:     (x) Not Applicable
A. Budgeted current FY
B. Total anticipated costs
C. Required additional funding
D. Internal transfers

SOURCE:     ( ) 4/5ths Vote Required
A. Unanticipated revenues
B. Reserve for contingencies
C. Source description:
   Balance in Reserve for Contingencies, if approved: $_____

SPECIAL INSTRUCTIONS:
List the attachments and number the pages consecutively:
2. DRE Deficiency Addendum.
3. DRE Subdivision Filing Fees.
5. RMA Declaration of Tokosaben.
6. Proposed Amended RMA Declaration of Tokosaben.

CLERK'S USE ONLY:
Vote - Ayes: ___   Noes: ___   Absent: ___
   ( ) Approved   ( ) Denied
   ( ) Minute Order Attached   ( ) No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.

Date:  

ATTEST:  MARGIE WILLIAMS, Clerk of the Board  
          County of Mariposa, State of California  
          By: Deputy

ADMINISTRATIVE OFFICER'S RECOMMENDATION:
This item on agenda as:  

[Signature]

A.O. Initials:
MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: JEFFREY G. GREEN, County Counsel
FROM: MARGIE WILLIAMS, Clerk of the Board
SUBJECT: AMENDMENT TO ROAD MAINTENANCE ASSOCIATION DECLARATION OF TOKOSABEN; RES. 97-215

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA,

ADOPTED THIS Order on May 27, 1997

ACTION AND VOTE:

Resolution Recommending Approval of Amendment to Road Maintenance Association Declaration of Tokosaben Recorded January 11, 1996 (County Counsel)

BOARD ACTION: (M)Balmain, (S)Reilly, Res. 97-215 adopted. Motion was amended, agreeable with maker and second, to include authorization for County Counsel to add language that failure to pay the assessment can be enforced by other property owners in the association in addition to the County's enforcement ability/Ayes: Unanimous.

cc: Ed Johnson, Planning & Building Director
    Mike Edwards, Public Works Director
    File
May 6, 1997

To The Board of Supervisors
c/o Jeff Green, Esq.
P.O. Box 189
Mariposa, CA 95338

To The Board of Supervisors:

We are writing to request approval to amend the Road Maintenance Association (RMA) Declaration recorded January 1996 in relation to Major Subdivision No. 9-27-90, Kobayashi et al., in Greeley Hill (also known as the Tokosaben subdivision). This subdivision involved separation of a jointly owned 42.5 acre parcel into five individual 8.5 acre parcels, with no subsequent sale of property, change of ownership, or further development of the parcels. The only purpose of the subdivision was for each of the five co-owner families to obtain an individual deed to their property.

The RMA Declaration for our subdivision applies to Allan’s Way, a 12 foot wide Class I gravel road of 1160 linear feet. Annual maintenance cost for the road has been estimated at $150 per year by a reputable local licensed contractor who is very familiar with the road (Bruce Lawson of Groveland). Based on his estimate, annual dues of $50 per year per parcel were incorporated into our RMA Declaration, in order to assure that sufficient funds would be on hand to maintain our road.

Having completed the Mariposa County requirements for subdivision, our group of families recently has been in the process of applying for approval of the subdivision from the California Department of Real Estate (DRE), using a Standard Notice of Intention. In response to our Standard Notice of Intention, Mr. Chris Neely of the DRE has sent us a Deficiency Addendum, a copy of which is included with this letter. In this Deficiency Addendum, an objection was raised to a provision of our RMA. Item 19 of the Deficiency Addendum states that “The provisions of the Road Maintenance Association Declaration of Tokosaben providing for the common easement use and maintenance with enforcement by lien rights causes this subdivision to meet the definition of a ‘planned development.’” Mr. Neely has explained to me that the enforcement by lien provision of our RMA Declaration dictates that our subdivision be classified by the state as a planned development. He has made it clear to me that the DRE has very little flexibility in this regard, due to the California Civil Code Section 1351K.

The Kobayashi et al. subdivision was approved by the Mariposa County Planning Commission in 1991, with the condition that our group form a private RMA. The Planning Commission’s condition did not specify that our RMA must have lien rights. However, when we were in the process of completing our project in 1995, a sample copy of an acceptable RMA Declaration, which included lien rights, was kindly provided to us.
by the Department of Public Works. Our group dutifully reproduced this document for our own RMA Declaration, little knowing that the inclusion of the lien rights would cause the DRE to consider our small subdivision a “planned development”.

An annual maintenance cost of $50 per parcel is really a very minimal amount of money for each of us to pay in order to keep Allan’s Way serviceable. Thus, the families of the Kobayashi et al. subdivision wish to remove the enforcement by lien rights provision from our RMA, so that our small subdivision does not have to be considered a “planned development” by the California DRE. After all, enforcing lien rights is no small task and would require expenditure of substantial time and legal fees, hardly a reasonable prospect to collect an annual road maintenance assessment of $50 per parcel. Thus, we are writing to the Board of Supervisors to request approval to amend our RMA such that the enforcement of lien provision is removed. We ask the Board to keep in mind that the lien provision was never even required by the Planning Commission when our subdivision was approved in 1991. Would it really be reasonable to require an enforcement by lien provision for Allan’s Way, when the lien provision would, in practice, never be used to collect the relatively small cost of $50 per parcel per year to maintain the road?

We hope that the Board of Supervisors will recognize what a substantial hardship the enforcement by lien provision is presenting to the five families of the Kobayashi et al. subdivision. According to the DRE, a planned development must file a Common Interest Notice of Intention, as opposed to the Standard Notice of Intention which we have already submitted. The fees for a Common Interest Notice of Intention would be $1750 for our subdivision, in contrast to the $650 fee for a Standard Notice of Intention. The difference between these two fees alone is equivalent to over seven years of estimated road maintenance costs for Allan’s Way ($150 per year).

More daunting than the fee, however, is the actual application for the Common Interest Notice of Intention. This form is a 29 page document with sections for a condominium plan, plans for completing common areas and facilities, homeowners association budgets, future phases, etc. In addition, a 15 page budget document, 2 page Common Facilities form, 4 page Bond form, a Reservation Instrument, Reservation Deposit Handling Agreement, 4 page Supplemental Questionnaire, a 5 page Assessment Security Agreement and Instructions to Escrow Depository form, a 16 page Regulation Check Sheet, a Budget Review Request form, and a Certification form are all to be included in the Common Interest package. As the Board can appreciate, the vast majority of the information requested is totally inappropriate for a small group of five families who are not even planning to build a toolshed, let alone a condominium.

Our group already has spent hours and hours of our own personal time preparing our Standard Notice of Intention for the California DRE. The process has been so complicated that we have been obliged to hire a specialized attorney to assist us. Our attorney provided us with an “action list” of 12 items which we could accomplish
ourselves, in order to minimize attorney’s fees. We personally made all necessary inquiries and successfully collected all of the documentation required in the 12-item “action list”, and, in addition, still generated $8124.62 in attorney’s fees preparing the Standard Notice of Intention. And the Standard Notice of Intention is simply a single 20 page form, in contrast to the 79 page Common Interest Notice of Intention package which we described above!

We would like to emphasize here that we are not a condominium complex. We are five ordinary families owning rustic property in Mariposa County for nearly thirty years, on which we have already built simple living quarters and camping sites. Several in our group are retired persons with relatively small fixed retirement incomes. As we have aged, we all have wished to simplify the process of passing our beloved homes and vacation spots to our heirs without the complication of joint ownership. This always has been and remains the sole purpose of the subdivision of our property.

We beg the Board of Supervisors to have mercy on us, and to consider the absurdity of the situation in which our group of families has found itself. We hope that you will consider our individual case carefully and sensibly, and will permit us to amend our RMA such that the enforcement of lien provision is removed. We thank you very much for your consideration of this matter.

Sincerely,

Michael W. Malter

Dawn Smilek Malter

cc: Thea and Richard Benthin
    Theolyn Farley
    Harry and Jessie Kobayashi
    Virginia Tindall
6. Submit copies of those documents shown as exceptions 3 and 4 of the prelim.

11.B. Please fill in the blanks with the information requested, describe the sewer arrangements, and submit supporting documents from the health department.

14. From the information submitted it appears the subdivisions water source will be from a private water system. Private water systems serving more than one lot are subject to regulation by the Public Utilities Commission as a public utilities, or by the Department of Corporations as a mutual water company. To demonstrate there is an adequate source of potable domestic water, you must show the water system has qualified with one of the above named agencies in compliance with current state regulations for private water systems. Alternatively, the subdivision lots may each be served by individual wells with evidence of water quality and quantity from the local health department.

16.B. Submit evidence of completion of the off-site improvements.

19. The provisions of the Road Maintenance Association Declaration of Tokosaben providing for the common easement use and maintenance with enforcement by lien rights causes this subdivision to meet the definition of a "planned development". See additional comments under item 47. below. Submit a copy of the unrecorded agreement for maintenance of the access road, including a map of the road and participating properties.

20. Even though there will be no blanket encumbrance, you must comply with the purchase money handling requirements of §11013.4 of the Business and Professions Code. Please check one of the alternatives listed under item 20.B.

23/39. Please confirm there will be no written agreements or escrow instructions to facilitate the transfer of the subdivision interest. It is noted the proposed grant deed states valuable consideration will be received. Please explain.

47. The provisions of the CC&R's for the common easement use and maintenance with enforcement by lien rights also causes this subdivision to meet the definition of a "planned development". Unless the provisions for assessment liens with power of sale are deleted from the road maintenance agreement and the CC&R's, the Notice of Intention should be refiled as a common interest subdivision on a RE624 with additional fees.

Submit the exhibits to the CC&R's for review.

Please point out the location of the easements described in 3.03(c). The application states the lots will use individual sewage systems, but provisions are made for sewer line easements. Please explain. Please explain the reference to common areas in 4.05 and 4.06.

Please describe the capital improvements on the common pathway, as referenced in 8.04, and submit a plot plan showing the location of these improvements.
# Subdivision Filing Fees

**Basic Fees:**
- **$600** Standard subdivision
- **$1700** Common interest subdivision
- **$1700** Time-share filings (in- and out-of-state)
- **$100** Out-of-state registrations

**Preliminary Public Report/Permit Fees:**
- **$500** Original/amended
- **$600** Renewal

**Conditional Public Report/Permit Fee**
- **$500** Original/amended
- **$600** Renewal

**Amendment Fees:**
- **$500** Standard
- **$500** Common interest subdivision
- **$500** Time-share filings (in- and out-of-state)
- **$100** Out-of-state registrations

**Renewal Fees:**
- **$600** Standard
- **$600** Common interest subdivision
- **$600** Time-share filings (in- and out-of-state)
- **$100** Out-of-state registrations

**Interim Public Report Fee** *(Current thru 6/30/96)*
- **$300**

**Interim Public Report Fee** *(New fee effective 7/1/96)*
- **$500**

**Filing fee for Notice of Intention without a completed subdivision questionnaire.** *(Business and Professions Code §11011(b)(1))*
- **$150**

**Interest Fees** (per lot, unit or interest; does not apply to out-of-state registrations)
- **$10**

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## How to Calculate Initial Filing Fees

### Standard Subdivision
- **$600** Final public report basic fee **PLUS**
- **$10** Per interest
- **$500** Additional fee for preliminary public report

**Example:** Standard subdivision with 120 lots

\[
\begin{align*}
\text{Basic fee} & = 600 \\
\text{$10 per interest fee} & = 1200 \\
\text{Total without a preliminary public report} & = 1800 \\
\text{Preliminary public report fee} & = 500 \\
\end{align*}
\]

### Common Interest Subdivision or Time-Share Filing
- **$1700** Final public report basic fee **PLUS**
- **$10** Per interest
- **$500** Additional fee for preliminary public report (not available for out-of-state filings)

**Example:** Common interest subdivision with 60 units

\[
\begin{align*}
\text{Basic fee} & = 1700 \\
\text{$10 per interest fee} & = 600 \\
\text{Total without a preliminary public report} & = 2300 \\
\text{Preliminary public report fee} & = 500 \\
\text{Total with a preliminary public report} & = 2800 \\
\end{align*}
\]
BRUCE LAWSON
BACKHOE SERVICE
11092 SMITH STATION RD

ESTIMATE FOR DAWN MALTER FOR ROAD MAINTENCE
ON ALLENS WAY IN GREELEY HILL CA.

ROAD IS 1160 ft. LONG 12 ft. WIDE CLASS 1 rd.

$12 HRS GRADING MAINTENCE $ 150.00

50 TONS ROAD BASE EVERY 3 YEARS IF NEEDED $ 325.00

ANNUAL MAINTENCE WOULD BE APP. $ 150.00
ROAD MAINTENANCE ASSOCIATION DECLARATION OF TOKOSABEN

SECTION ONE
OFFICES

The principal office of Tokosaben, an unincorporated association, shall be located in the State of California at 6069 Allan's Way, Coulterville, CA 95311.

SECTION TWO
PURPOSES AND OBJECTS

In amplification of the purposes for which the unincorporated road maintenance association has been formed, the purposes and objects are as follows:

(a) To monitor and maintain a community road system. For any and all legally created parcels whether created now or in the future, in the "SUBDIVISION." "SUBDIVISION" shall be that parcel of land as described as lots A, B, C, D, and E of Tokosaben, and further described as Lots A, B, C, D, and E as shown on the Final Map for Harry Kobayashi, et al, recorded on the 11th day of January, 1996 in the Book of Maps at Page 26-48, Official Records, Mariposa County Recorder.

(1) Association shall perform annual monitoring and maintenance of the road improvements located on Allan’s Way, as such road is depicted on the recorded parcel map. Maintenance shall include but not be limited to drainage and erosion control devices, fuel modification, and upkeep of road surface to the County standards established for the subdivision.

(2) Association shall immediately repair any significant failure. Said failures shall include but not be limited to those identified by the Mariposa County Public Works Department.

(3) Association shall prepare an annual maintenance report by a qualified individual.

(b) To acquire, own, or lease such real and personal property as may be necessary or convenient for the transaction of its business and the fulfillment of its purposes and objects, and to exercise all rights, powers, and privileges of ownership to the same extent as natural persons might or could do.
(c) This Road Maintenance Association is being formed as a requirement of the subdivision process.

SECTION THREE
MEMBERS

(a) Class of members. The association shall have one class of members. The qualifications and rights shall be as follows:

(1) Every beneficial owner, as distinguished from a security owner, of a "PARCEL" in the "SUBDIVISION" in the County of Mariposa, State of California, as herein particularly described, shall be a member. A "PARCEL" is defined as one of lots A, B, C, D, and E of Tokosaben, and further described as Lots A, B, C, D, and E as shown on the Final Map for Harry Kobayashi, et al, recorded on the 11th day of January, 1996 in the Book of Maps at Page 26-48, Official Records, Mariposa County Recorder.

(2) Membership shall include an undertaking by the owner to comply with and be bound by this declaration and amendments thereto, and the policies, rules and regulations at any time adopted by the association in accordance with this declaration. Membership shall be accompanied by payment of the first year’s dues in advance.

(3) Membership in this association shall terminate on such member’s ceasing to be a beneficial owner of a "PARCEL", in or on the property described in this declaration.

(b) Voting Rights. One member in good standing from each "PARCEL" shall be entitled to vote on each matter submitted to a vote of the members, so that each "PARCEL" shall have one vote. Where two or more members own a "PARCEL", only one vote for such "PARCEL" owned shall be allowed, and such joint members shall designate and register with the secretary of the association the name of that member entitled to cast such single vote.

(1) At membership meetings all votes shall be cast in person, or by proxy registered with the secretary.

(2) The board of directors is authorized to establish regulations providing for voting by mail.

(c) Assignment of Rights. A beneficial owner who is a member of the association may assign his or her membership rights to the tenant residing in or on the beneficial owner’s "PARCEL". Such assignment shall be effected by filing with the secretary of the association a written notice of assignment signed by the beneficial owner.
SECTION FOUR
MEETINGS OF MEMBERS

(a) Annual Meeting. An annual meeting of the members for the purpose of 
hearing reports from all officers and standing committees and for electing officers shall 
be held in the County of Mariposa, State of California, in February of each year, 
beginning with the year 1996. The time and place shall be fixed by the directors.

(b) Regular Meetings. In addition to the annual meetings, regular meetings 
of the members shall be had at such time and place as shall be determined by the 
board of directors.

(c) Special Meetings. A special meeting of the members may be called by 
the board of directors. A special meeting of the members must be called within 10 
days by the president, or the board of directors, if requested by not less than two of the 
members having voting rights.

(d) Notice of Meetings. Written notice stating the place, day, and hour of any 
meeting of members shall be delivered either personally or by mail to each member 
entitled to vote at such meeting, not less than 10 days before the date of such meeting, 
or at the direction of the secretary.

(e) Quorum. The members holding three of the five votes that may be cast at 
any meeting (i.e., sixty percent of the votes) shall constitute a quorum at any meeting of 
the members. In the absence of a quorum, a majority of the members present may 
adjourn the meeting from time to time without further notice.

(f) Proxies. At any meeting of the members, a member entitled to vote may 
vote by proxy executed in writing by the member. No proxy shall be valid after 6 
months from the date of its execution, unless otherwise provided in the proxy.

(g) Voting by Mail. Where officers are to be elected by members, or where 
there is an act requiring the vote of the members, such election or vote on such 
proposed action may be conducted by mail in such manner as the board of directors 
shall determine.

(h) Manner of Acting. The act of three of the five voting members (sixty 
percent of the votes) shall be the act of the Association, unless the act of a greater 
number is required by law or by this declaration.

SECTION FIVE
BOARD OF DIRECTORS

(a) General Powers. The affairs of the association shall be managed by the 
board of directors at a regular meeting.

(b) Number, Tenure, and Qualifications. The number of directors shall be 
three and consist of the Officers of the Association. Each director shall be a member of 
the association.
(c) Regular Meetings. The board of directors shall meet regularly at least annually, at a time and place it shall select.

(d) Special Meetings. A special meeting of the board of directors may be called by or at the request of the president or of any two directors.

(e) Notices. Notice of any special meeting of the board of directors shall be given at least ten (10) days prior to such meeting, by written notice delivered personally or sent by mail to each director. Any director may waive notice of any meeting.

(f) Quorum. A majority of the board of directors shall constitute a quorum for the transaction of business at any meeting of the board.

(g) Manner of Acting. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by law or by this declaration.

SECTION SIX
OFFICERS

(a) Officers. The officers of the association shall be a president, a vice-president, and a secretary/treasurer. No individual member shall hold more than one office at any time.

(b) Qualifications and Method of Election. The officers shall be directors of the association, shall be elected by the members, and shall serve for a term of two years.

(c) President. The president shall preside at all meetings of the association and of the board of directors at which he or she is present, shall exercise general supervision of the affairs and activities of the association, and shall serve as a member ex officio of all standing committees.

(d) Vice-president. The vice-president shall assume the duties of the president during the president’s absence.

(e) Secretary/Treasurer. The secretary/treasurer shall keep the minutes of all of the meetings of the association and of the board of directors, which shall be an accurate and official record of all business transacted. The secretary/treasurer shall be custodian of all association records. The secretary/treasurer shall receive all association funds, keep them in a bank or other savings institution approved by the board of directors, and pay out funds only on notice signed by one other officer.

(g) Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise, may be filled by a majority of the remaining officers appointing a member for the unexpired portion of the term. If the two
remaining officers cannot agree on an appointment, an election by the membership shall be held to fill the vacancy.

SECTION SEVEN
FEES, DUES, AND ASSESSMENTS

(a) Admission without Fee. Record ownership of a "PARCEL" of the property particularly described, without payment of an admission fee, shall establish the owner as a member of the association.

(b) Annual Dues. The annual dues shall be same for each "PARCEL" and shall be Fifty Dollars ($50.00) per year subject to such modification as a majority of the directors may require, provided, however, that no increase above Twenty-five Dollars ($25.00) per year may be determined without a majority of the voting members approving such increase. Each member shall be jointly and severally liable for the dues assessed against such member's "PARCEL".

(c) Payment of Dues. The annual dues shall be payable in equal semi-annual installments, due July 1 and January 1, the first such installment to be paid on the first day of the next semi-annual payment date after which a member is elected to membership, and all subsequent installments to be paid on the first day of each and every semi-annual payment date thereafter during the period of such membership.

(d) Special Assessments. Special assessments may be levied on members of this association only by a vote of the majority of all voting members of the association. The procedure for voting on proposed assessments shall be the same as the procedure provided in these bylaws for voting on amendments to this declaration.

(e) Default in Payment of Dues or Assessments. When any member shall be in default of dues or assessments for a period of ninety (90) days from the date on which such dues or assessments become payable, he or she shall, for purposes of voting, not be considered as a member in good standing. In addition, such member shall be dropped from active membership and placed on the inactive list. Such member shall not be reinstated until he or she has paid dues and assessments in full, and until such time as such member is reinstated, he or she shall have no rights of any kind arising out of a membership in the association.

(f) Assignment of Dues. In the event any member whose dues are paid shall, during the year in which such dues are paid, terminate his or her membership by sale of his or her "PARCEL" in the "SUBDIVISION" he or she shall not be entitled to a refund but shall assign to the buyer of such "PARCEL" the benefit of paid dues. Any such buyer shall acquire the benefit of such paid up dues.

(g) Life of Unincorporated Association. This agreement for purposes of road maintenance is to be part of the deed to the property and run with the land unless said maintenance is taken over by the County of Mariposa, a special district or other governmental agency. The agreement shall be binding on all parties and all persons claiming under them until December 31, 2025, at which time said covenants shall be automatically extended for successive periods of five years, unless by vote of the
majority of the then voting members for the "PARCELS", it is agreed to change said covenants in whole or in part.

(h) Enforcement of Liens. The amount of any one or more delinquent Regular and/or Special Assessment which is or has been assessed in accordance with this Declaration and not paid, together with any late charge and/or costs and interest (including reasonable attorneys' fees) attributable thereto and/or incurred in the collection thereof, shall be and the same is hereby declared and agreed to be a lien with power of sale only upon the "PARCEL" so assessed when the Association causes to be recorded in the Office of the Mariposa County Record, a Notice of Assessment executed by an authorized representative of the Association which shall state the amount of such assessment and such other charges thereon as may be authorized by this Declaration, a description of the "PARCEL" against which the same has been assessed and the name of the record owner thereof and shall be signed by an authorized representative of the Board of Directors or as otherwise provided in this Declaration; provided that no such Notice of Assessment shall be so recorded until the Association or a person designated by the Association shall have first mailed to the Owner of the "PARCEL" against which such Assessment was assessed at the street address of said Owner's "PARCEL" and/or to such Owner at such other place as said Owner may designate in writing (with a copy thereof to any Mortgagee named in any Mortgage encumbering said Owner's "PARCEL" if such Mortgage has requested such notice in writing) a Notice of Default in substantially the form prescribed by Section 2924 of the California Civil Code (as said Section may from time to time be amended) or any other form permitted by law, together with a demand upon such Owner to pay such delinquent Assessment and any charges for delinquent payment thereof as is attributable thereto. If the Association has not, within thirty (30) days from the mailing of said Notice of Default, received full payment of all such delinquent Assessments and any charges and/or cost (including reasonable attorney' fees) attributable thereto and/or incurred in the collection or attempted collection thereof, the Board shall promptly cause said Notice of Assessment to be recorded as provided above. Promptly after the recordation of said Notice of Assessment (unless the lien so created is sooner satisfied or released), the Board shall in addition to any other action cause the above-mentioned Notice of Default to be recorded in the Office of the Mariposa County Recorder and thereafter cause the "PARCEL" of the defaulting Owner to be sold in the manner provided in Sections 2924 et seq. of the California Civil Code as said Sections may from time to time be amended, or in any other manner permitted by law. At any such foreclosure sale, the Association or its designee shall have the right to credit bid any one or more delinquent Regular or Special Assessments duly levied against the "PARCEL" of the defaulting Owner together with all late charges, interest, costs and expenses incurred in connection with such foreclosure including, without limitation, the cost of any trustee sale guarantee or similar guarantee, reasonable attorneys' fees, trustees fees and recording charges and, if the Association shall be the successful bidder, thereafter hold, lease, mortgage and convey the "PARCEL" so acquired as permitted herein. The defaulting Owner hereby waives all rights of redemption. Upon payment (prior to such a foreclosure) of any delinquent Assessment, together with all late charges, interest, costs and expenses (including, without limitation, reasonable attorneys' fees, trustees fees, the cost of any title, sale or similar guarantee) attributable thereto and/or incurred in the collection thereof, or other satisfaction thereof, with respect to which a notice of Assessment has been recorded,
the Board shall promptly cause to be recorded a further notice reflecting the satisfaction and the release of the lien thereof. Except as otherwise provided by law, the lien created as provided herein shall be prior to all other liens and all other matters of record recorded subsequent to the recordation of said Notice of Assessment, and unless sooner satisfied and released or the enforcement thereof initiated as herein provided, such lien, once created, shall expire and be of no further force or effect one (1) year from the date of recordation of said Notice of Assessment; provided that there shall be extended from said one (1) year period any period that enforcement of such lien is stayed by any filing in or order of any court and further provided that said one (1) year period may be extended by the Board for not to exceed one (1) additional year by recording in the Office of the Mariposa County Recorder, a written extension of said Notice of Assessment. Any "PARCEL" in the Project which is acquired by the Association and subsequently sold shall continue to be subject to the provisions of this Declaration.

SECTION EIGHT
FISCAL YEAR

The Fiscal year of the association shall be the calendar year.

SECTION NINE
AMENDMENTS

Any proposed amendment of this declaration must be submitted in writing at any meeting of the members of the association. Such proposed amendments shall be discussed at the meeting of the members following the meeting at which the proposed amendment was submitted, and shall be voted on by the members of the association at a date that shall not be earlier than the second meeting following the initial submission of the proposed amendment. Such proposed amendment must be signed by two members of the association, shall be read to the meeting by the secretary, and shall be printed on ballots distributed to all members by mail.

A proposed amendment shall become effective when approved by a majority of the members entitled to vote. Any proposed amendment which makes substantive changes relative to the assessment, lien or maintenance provisions of this document shall not be adopted without prior approval of the Board of Supervisors of Mariposa County. The terms of the association shall not be amended to a shorter life than that set forth in Section Seven(g) without prior approval of the Board of Supervisors of Mariposa County.

SECTION TEN
LIABILITIES

Nothing in this declaration shall constitute members of the association as partners for any purpose. No member, officer, agent, or employee shall be liable for the acts or failure to act of any other member, officer, agent, or employee of the association. Nor shall any member, officer, agent, or employee be liable for his or her acts or failure to act under this declaration, excepting only acts or omissions arising out of his or her willful misfeasance.
SECTION ELEVEN
FUNDS

(a) Finances. This association is not intended as a profit-making organization, nor is it founded with the expectation of making a profit. The association shall use its funds only for objects and purposes specified in this declaration.

(b) Bonding. Persons entrusted with the handling of association funds may be required, at the discretion of the board of directors, to furnish, at association expense, a suitable fidelity bond.

SECTION TWELVE
EXECUTION OF THE AGREEMENT

This agreement may be signed in counterpart and read together as if all individual owners had executed the same page.

Virginia Thindall, Trustee

Richard Benthin, Trustee

Thea Benthin, Trustee

Theolyn Farley

Harry Kobayashi, Trustee

Jessica Kobayashi, Trustee

Michael W. Mäter

Dawn E. Smilek
RECORDING REQUESTED BY AND
WHENRecorded MAIL TO:

VIRGINIA TINDALL
6069 Allan’s Way
Coulterville, CA 95311

APNs 003-040-0210, 003-040-0240, 003-010-0100

RESTATED AND AMENDED ROAD MAINTENANCE
ASSOCIATION DECLARATION OF TOKOSABEN

This Declaration restates and amends in its entirety the Road Maintenance
Association Declaration of Tokosaben, Document 960160, recorded on the 11th day of
January, 1996.

SECTION ONE
OFFICES

The principal office of Tokosaben, an unincorporated association, shall be
located in the State of California at 6069 Allan’s Way, Coulterville, CA 95311.

SECTION TWO
PURPOSES AND OBJECTS

In amplification of the purposes for which the unincorporated road maintenance
association has been formed, the purposes and objects are as follows:

(a) To monitor and maintain a community road system. For any and all
legally created parcels whether created now or in the future, in the “SUBDIVISION.”
“SUBDIVISION” shall be that parcel of land as described as lots A, B, C, D, and E of
Tokosaben, and further described as Lots A, B, C, D, and E as shown on the Final Map
for Harry Kobayashi, et al, recorded on the 11th day of January, 1996 in the Book of

(1) Association shall perform annual monitoring and maintenance of
the road improvements located on Allan’s Way, as such road is depicted on the
recorded parcel map. Maintenance shall include but not be limited to drainage and
erosion control devices, fuel modification, and upkeep of road surface to the County
standards established for the subdivision.

(2) Association shall immediately repair any significant failure. Said
failures shall include but not be limited to those identified by the Mariposa County
Public Works Department.

(3) Association shall prepare an annual maintenance report by a
qualified individual.
(b) To acquire, own, or lease such real and personal property as may be necessary or convenient for the transaction of its business and the fulfillment of its purposes and objects, and to exercise all rights, powers, and privileges of ownership to the same extent as natural persons might or could do.

(c) This Road Maintenance Association is being formed as a requirement of the subdivision process.

SECTION THREE
MEMBERS

(a) Class of members. The association shall have one class of members. The qualifications and rights shall be as follows:

(1) Every beneficial owner, as distinguished from a security owner, of a "PARCEL" in the "SUBDIVISION" in the County of Mariposa, State of California, as herein particularly described, shall be a member. A "PARCEL" is defined as one of lots A, B, C, D, and E of Tokosaben, and further described as Lots A, B, C, D, and E as shown on the Final Map for Harry Kobayashi, et al, recorded on the 11th day of January, 1996 in the Book of Maps at Pages 26-48, Official Records, Mariposa County Recorder.

(2) Membership shall include an undertaking by the owner to comply with and be bound by this declaration and amendments thereto, and the policies, rules and regulations at any time adopted by the association in accordance with this declaration. Membership shall be accompanied by payment of the first year’s dues in advance.

(3) Membership in this association shall terminate on such member’s ceasing to be a beneficial owner of a "PARCEL", in or on the property described in this declaration.

(b) Voting Rights. One member in good standing from each "PARCEL" shall be entitled to vote on each matter submitted to a vote of the members, so that each "PARCEL" shall have one vote. Where two or more members own a "PARCEL", only one vote for such "PARCEL" owned shall be allowed, and such joint members shall designate and register with the secretary of the association the name of that member entitled to cast such single vote.

(1) At membership meetings all votes shall be cast in person, or by proxy registered with the secretary.

(2) The board of directors is authorized to establish regulations providing for voting by mail.

(c) Assignment of Rights. A beneficial owner who is a member of the association may assign his or her membership rights to the tenant residing in or on the beneficial owner's "PARCEL". Such assignment shall be effected by filing with the
secretary of the association a written notice of assignment signed by the beneficial owner.

SECTION FOUR
MEETINGS OF MEMBERS

(a) Annual Meeting. An annual meeting of the members for the purpose of hearing reports from all officers and standing committees and for electing officers shall be held in the County of Mariposa, State of California, in February of each year, beginning with the year 1996. The time and place shall be fixed by the directors.

(b) Regular Meetings. In addition to the annual meetings, regular meetings of the members shall be had at such time and place as shall be determined by the board of directors.

(c) Special Meetings. A special meeting of the members may be called by the board of directors. A special meeting of the members must be called within 10 days by the president, or the board of directors, if requested by not less than two of the members having voting rights.

(d) Notice of Meetings. Written notice stating the place, day, and hour of any meeting of members shall be delivered either personally or by mail to each member entitled to vote at such meeting, not less than 10 days before the date of such meeting, or at the direction of the secretary.

(e) Quorum. The members holding three of the five votes that may be cast at any meeting (i.e., sixty percent of the votes) shall constitute a quorum at any meeting of the members. In the absence of a quorum, a majority of the members present may adjourn the meeting from time to time without further notice.

(f) Proxies. At any meeting of the members, a member entitled to vote may vote by proxy executed in writing by the member. No proxy shall be valid after 6 months from the date of its execution, unless otherwise provided in the proxy.

(g) Voting by Mail. Where officers are to be elected by members, or where there is an act requiring the vote of the members, such election or vote on such proposed action may be conducted by mail in such manner as the board of directors shall determine.

(h) Manner of Acting. The act of three of the five voting members (sixty percent of the votes) shall be the act of the Association, unless the act of a greater number is required by law or by this declaration.

SECTION FIVE
BOARD OF DIRECTORS

(a) General Powers. The affairs of the association shall be managed by the board of directors at a regular meeting.
(b) Number, Tenure, and Qualifications. The number of directors shall be three and consist of the Officers of the Association. Each director shall be a member of the association.

(c) Regular Meetings. The board of directors shall meet regularly at least annually, at a time and place it shall select.

(d) Special Meetings. A special meeting of the board of directors may be called by or at the request of the president or of any two directors.

(e) Notices. Notice of any special meeting of the board of directors shall be given at least ten (10) days prior to such meeting, by written notice delivered personally or sent by mail to each director. Any director may waive notice of any meeting.

(f) Quorum. A majority of the board of directors shall constitute a quorum for the transaction of business at any meeting of the board.

(g) Manner of Acting. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by law or by this declaration.

SECTION SIX
OFFICERS

(a) Officers. The officers of the association shall be a president, a vice-president, and a secretary/treasurer. No individual member shall hold more than one office at any time.

(b) Qualifications and Method of Election. The officers shall be directors of the association, shall be elected by the members, and shall serve for a term of two years.

(c) President. The president shall preside at all meetings of the association and of the board of directors at which he or she is present, shall exercise general supervision of the affairs and activities of the association, and shall serve as a member ex officio of all standing committees.

(d) Vice-president. The vice-president shall assume the duties of the president during the president's absence.

(e) Secretary/Treasurer. The secretary/treasurer shall keep the minutes of all of the meetings of the association and of the board of directors, which shall be an accurate and official record of all business transacted. The secretary/treasurer shall be custodian of all association records. The secretary/treasurer shall receive all association funds, keep them in a bank or other savings institution approved by the board of directors, and pay out funds only on notice signed by one other officer.
(g) Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise, may be filled by a majority of the remaining officers appointing a member for the unexpired portion of the term. If the two remaining officers cannot agree on an appointment, an election by the membership shall be held to fill the vacancy.

SECTION SEVEN
FEES, DUES, AND ASSESSMENTS

(a) Admission without Fee. Record ownership of a "PARCEL" of the property particularly described, without payment of an admission fee, shall establish the owner as a member of the association.

(b) Annual Dues. The annual dues shall be same for each "PARCEL" and shall be Fifty Dollars ($50.00) per year subject to such modification as a majority of the directors may require, provided, however, that no increase above Twenty-five Dollars ($25.00) per year may be determined without a majority of the voting members approving such increase. Each member shall be jointly and severally liable for the dues assessed against such member's "PARCEL".

(c) Payment of Dues. The annual dues shall be payable in equal semi-annual installments, due July 1 and January 1, the first such installment to be paid on the first day of the next semi-annual payment date after which a member is elected to membership, and all subsequent installments to be paid on the first day of each and every semi-annual payment date thereafter during the period of such membership.

(d) Special Assessments. Special assessments may be levied on members of this association only by a vote of the majority of all voting members of the association. The procedure for voting on proposed assessments shall be the same as the procedure provided in these bylaws for voting on amendments to this declaration.

(e) Default in Payment of Dues or Assessments. When any member shall be in default of dues or assessments for a period of ninety (90) days from the date on which such dues or assessments become payable, he or she shall, for purposes of voting, not be considered as a member in good standing. In addition, such member shall be dropped from active membership and placed on the inactive list. Such member shall not be reinstated until he or she has paid dues and assessments in full, and until such time as such member is reinstated, he or she shall have no rights of any kind arising out of a membership in the association.

(f) Assignment of Dues. In the event any member whose dues are paid shall, during the year in which such dues are paid, terminate his or her membership by sale of his or her "PARCEL" in the "SUBDIVISION" he or she shall not be entitled to a refund but shall assign to the buyer of such "PARCEL" the benefit of paid dues. Any such buyer shall acquire the benefit of such paid up dues.

(g) Life of Unincorporated Association. This agreement for purposes of road maintenance is to be part of the deed to the property and run with the land unless said maintenance is taken over by the County of Mariposa, a special district or other
governmental agency. The agreement shall be binding on all parties and all persons claiming under them until December 31, 2025, at which time said covenants shall be automatically extended for successive periods of five years, unless by vote of the majority of the then voting members for the "PARCELS", it is agreed to change said covenants in whole or in part.

SECTION EIGHT
FISCAL YEAR

The Fiscal year of the association shall be the calendar year.

SECTION NINE
AMENDMENTS

Any proposed amendment of this declaration must be submitted in writing at any meeting of the members of the association. Such proposed amendments shall be discussed at the meeting of the members following the meeting at which the proposed amendment was submitted, and shall be voted on by the members of the association at a date that shall not be earlier than the second meeting following the initial submission of the proposed amendment. Such proposed amendment must be signed by two members of the association, shall be read to the meeting by the secretary, and shall be printed on ballots distributed to all members by mail.

A proposed amendment shall become effective when approved by a majority of the members entitled to vote. The terms of the association shall not be amended to a shorter life than that set forth in Section Seven(g) without prior approval of the Board of Supervisors of Mariposa County.

SECTION TEN
LIABILITIES

Nothing in this declaration shall constitute members of the association as partners for any purpose. No member, officer, agent, or employee shall be liable for the acts or failure to act of any other member, officer, agent, or employee of the association. Nor shall any member, officer, agent, or employee be liable for his or her acts or failure to act under this declaration, excepting only acts or omissions arising out of his or her willful misfeasance.

SECTION ELEVEN
FUNDS

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(b) Bonding. Persons entrusted with the handling of association funds may be required, at the discretion of the board of directors, to furnish, at association expense, a suitable fidelity bond.
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Jessie Kobayashi, Trustee

Michael W. Malter

Dawn E. Smilek
STATE OF CALIFORNIA       )
     ) ss.
COUNTY OF MARIPOSA       )

On this the ________________ day of ________________, 19__, before me the
undersigned, a Notary Public in and for said County and State, personally appeared

__________________________________________, personally known to me or proved to me on the basis
of satisfactory evidence to be the person whose name is subscribed to the within
instrument and acknowledged that she executed the same in her authorized capacity,
and that by her signature on the instrument the person, or the entity upon behalf of
which the person acted, executed the instrument.

______________________________
Signature of Notary

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