S230104

IN THE SUPREME COURT
OF THE
STATE OF CALIFORNIA

JAIME A. SCHER et al., Plaintiffs, Appellants and Respondents,

v.

JOHN F. BURKE et al., Defendants, Appellants and Respondents.

On Review From The Court Of Appeal For the Second Appellate District,
Division Three, 2nd Civil No. B235892

After An Appeal From the Superior Court For The State of California,
County of Los Angeles, Case Number BC 415646, Hon. Malcolm Mackey

OPENING BRIEF ON THE MERITS

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I.

INTRODUCTION

Imagine not being able to drive your car down the road to your own home. Imagine not knowing, if you can get to your home, whether you will be able to drive out and go to work the next day. Imagine wondering whether, in a life-threatening emergency, an ambulance would be able to get to you in time.

This may sound like a futuristic post-apocalyptic nightmare, but it has been reality for Jaime Scher and Jane McAllister for many years. It is the potential reality of many others who live in rural and semi-rural areas, which often are not that far from urban and suburban commercial centers.

In 1998, Jaime and Jane bought a home in the Topanga Canyon neighborhood of the City of Los Angeles, near the little town of Topanga. All was well at first, but as ownership of other homes in the neighborhood changed hands, neighbors began blocking Jaime and Jane's path of travel south down Henry Ridge Road to Gold Stone Road to Greenleaf Canyon and finally to Topanga Canyon Road to access neighborhood businesses and services, such as the post office, dry cleaners, grocery and feed store. Poor road conditions and gates and barriers on other roads left Jaime and Jane with no alternatives. In the end, a lawsuit to establish access rights became the only option.

Jaime and Jane prevailed at the trial court level in 2011, persuading the judge the portions of Henry Ridge Road and Gold Stone

Road they need to use, and had been using, were public roads due to use by the public over a period of years. They were unsuccessful on their private easement and adverse possession theories, but finally were able to sleep at night – for a while. Despite a judgment in their favor, the neighbors continued to block the roads. Then in 2015 the court of appeal reversed the portion of the judgment finding the roads are public, but affirmed the trial court's rejection of the private right theories, plunging Jaime and Jane back into their nightmare scenario of not being able to get home.

In returning Jaime and Jane to this bleak situation, the court of appeal interpreted Civil Code Section 1009 as having completely repealed the law of implied dedication, even with respect to roads, the situation in which implied dedication had been most commonly applied. This created a conflict with existing case law, necessitating resolution of that conflict by this Court.

Civil Code Section 1009 was enacted in response to a prior decision of this Court which arguably extended the law of implied dedication in a manner various commentators characterized as meaning no property owner's title and right to use his or her property was secure, interfering dramatically with potential development. (*Gion v. City of Santa Cruz* (1970) 2 Cal.3d 29 (consolidated with *Dietz v. King* ("*Gion-Dietz*"). The question is whether the Legislature's reaction was limited to this apparent extension of the law, or also to the underlying doctrine of implied dedication itself. A close examination of section 1009 in light of

principles of statutory construction leads to the conclusion that the Legislature did not intend to completely put an end to implied dedication and that, as to roads used for non-recreational purposes, the law of implied dedication lives on.

II.

ISSUES PRESENTED FOR REVIEW

1. Does Civil Code section 1009 preclude non-recreational use of non-coastal private property from ripening into a public road?

2. Did the enactment of Civil Code section 1009 change the law of implied dedication by prohibiting implied dedication of a road on non-coastal property?

III.

FACTS[1]

The roads which wind through the rural properties which are the subject of this action are situated on Henry Ridge, perched above Topanga Canyon. (Exhibits admitted at trial, hereinafter "Ex.", 1, 2, 3 and 5; *see also* Ex. A to Judgment, 6 CT 1255.) Jaime A. Scher and Jane McAllister ("Plaintiffs"), are the owners of the real property located at 1550 Henry Ridge Motorway, Topanga, California 90290 ("Scher Property"). (6 CT 1230-31.) Richard Erickson, Wendie Malick, Richard B. Schroder, Andrea D. Schroder, Gemma Marshall, and John and Germaine Burke

[1] The statement of facts takes into account judgments are presumed to be correct, and all inferences are to be made to support the judgment (*Denham v. Super.Ct. (Marsh & Kidder)* (1970) 2 Cal.3d 557, 564; *Cahill v. San Diego Gas & Elec. Co.* (2011) 194 Cal.App.4th 939, 956).

("Defendants") are the owners of various parcels of real property located on Henry Ridge Motorway and on Gold Stone Road south of the Scher Property, between Plaintiffs' home and the town center of Topanga. (6 CT 1232-51.)

A. Historical Development of the Henry Ridge Area and Use of Henry Ridge Motorway and Gold Stone Road Before 1972.

Henry Ridge Motorway existed as a road before 1895. The area, divided by the United States into Sections of 160 acres each, was surveyed by the United States three times between 1853 and 1895. These surveys depict a "Road" that corresponds with what is now called Henry Ridge Motorway. (Ex. 194, Maps, Tab 1-3; 5 RT 702:4-25; 720:2-721:23.) In 1895, the Road now known as Henry Ridge Motorway proceeded north, through Section 12, Township 1, Range 17 West. Section 12 encompassed the properties now owned by Defendants Richard and Andrea Schroder ("Schroder Property"), and Richard Erickson and Wendie Malick ("Erickson Property"). Section 1, adjacent to and north of Section 12, encompasses the property owned by Defendant Gemma Marshall (the "Marshall Property"), and the Scher Property. (Ex. 194, Maps, Tabs 1-3, 5 RT 720:2-724:7; See also Ex. 194, Maps, Tab 12.) Plaintiffs also own real property in Section 12 ("Section 12 Property"). (3 RT 91:28-92:11; 6 RT 939:15-18; Ex. 2.)

All Defendants' land owned was owned by the federal government in 1895. (Ex. 194, Maps, Tabs 1-3; 5 RT 724:17-25.)

Government land patents were issued by the United States to homesteaders for surrounding land in 1897 and 1899. (5 RT 737:18-738:4.) Surveys completed in 1853 and 1895 specifically noted a "Road" in the same location as what is now Henry Ridge Motorway, connecting with what is now the intersection of Gold Stone Road and Greenleaf Canyon Road, and continuing across Section 7, encompassing a small portion of land owned by Defendants John and Germaine Burke ("Burke Property"). (Ex. 194, Maps, Tabs 1-4.)

Defendants' lands were patented to homesteaders as follows:

- September 26, 1902: to Casimir Mazet, encompassing some of the Erickson Property. (Ex. 194, Documents, Tab 2; Maps, Tabs 10 and 12; 5 RT 731:2-731:13.)
- December 31, 1903: to Felipe Torres, encompassing the rest of the Erickson Property as well as the Schroder Property. (Ex. 194, Documents, Tab 1; Maps, Tabs 10 and 12; 5 RT 729:11-731:1.)
- June 12, 1911: to Stella S. McAllister, encompassing the Burke Property. (Ex. 194, Documents, Tab 3; Maps, Tabs 11 and 12; 5 RT 731:2-733:18.)
- October 23, 1911: to William D. Reynolds, encompassing the Marshall property. (Ex. 194, Documents, Tab 4; Maps, Tabs 10 and 12; 5 RT 731:2-733:18.)

Exhibits and testimony presented at trial by expert witness Anya Stanley showed the area including Plaintiffs' and Defendants'

properties underwent significant development, with the attendant usage of the roadways, between the late 1800's, continuing through the early 1900's, and up to the present. (5 RT 734:12-740:25; see also 6 RT 967:23-978:11.) Not surprisingly, Ms. Stanley was unable to locate eyewitnesses to usage of the road in the 1890's. (5 RT 734:17-735:3.) Accordingly, she relied upon available documents and information, which showed mail delivery to the Henry Ridge area via wagons started in 1880 (5 RT 743:7-744:18), a tavern and restaurant with cabins behind it were operating in 1905 on the Burke Property (5 RT 744:19-745:17), and in 1885, tourists started visiting the area from Santa Monica (5 RT 745:19-746:20).

John MacNeil, Defendants' expert witness at trial, created historical maps depicting the Henry Ridge area in 1908 as the site of houses, taverns, inns, campsites, a general store, and a post office ("1908 MacNeil Map"). Wagons were prevalent in Old Topanga Canyon at that time. (Ex. 194, Maps 4; 5 RT 741:5-742:19; Ex. 194, Photos, Tabs 1 through 5, 7 and 8.) People who were occupying and cultivating the patented land, whose presence became more prevalent and frequent as the years wore on, utilized the "Road," which became known as "The Ridge Trail" by 1908, and subsequently "Henry Ridge Motorway," as access to and from the post office, general store, taverns, and the like. (5 RT 734:12-742:19.)

The 1908 MacNeil Map provided evidence of the existence of Henry Ridge Motorway in 1908, which at that time was known as "The Ridge Trail." It connected from "Greenleaf's Road," now known as Greenleaf Canyon Road, which extended over and across a portion of Section 7, encompassing the Burke Property, through Section 12, over the Erickson Property and Schroder Property, and over Section 1, the Marshall Property, through the Scher Property, but also extending into Section 36 to the north. (Ex. 194, Maps, Tab 4; 5 RT 727:9 - 728:26; 13 RT 3134:26-3135:27; 13 RT 3136:26 - 3137:3.)

By 1920, there were automobiles in the area. (Ex. 194, Photos, Tab 14.) By 1935, the County of Los Angeles commissioned, expended public funds, and conducted County Survey B Series Official Surveys, whereby the "Road," and later "The Ridge Trail," became officially named "Henry Ridge Motorway" from Mulholland Highway to Topanga Canyon Boulevard. (5 RT 748:2-749:24; Ex. 194, Maps, Tabs 6 and 7.) The name change is significant because it reflects the fact that, by 1935, people were travelling the road by automobile or other motorized vehicles, which required the Road be re-graded and re-banked so it was compatible with motor vehicles; thus, the designation of the road as a "Motorway." (Ex. 194, Maps, Tabs 6 and 7; 5 RT 749:4-24.)

In 1948, a Grant Deed recorded in the Official Records of the Los Angeles County Recorder's Office created an express easement south from the Scher Property for ingress and egress along Henry Ridge Motorway, which was then described as "that certain road only, now known as a fire road and connected with proposed Mulholland Blvd" ("1948 Easement"). (4 RT 316:1-317:28; Ex. 52.) Property along Henry Ridge Motorway thereafter was connected to Greenleaf Canyon Road as early as 1949 via a Grant Deed of Roadway across the Burke Property, creating a new roadway which would become known as Gold Stone Road. (6 RT 935:5-937:5; Ex. 194, Documents, Tab 15, Maps, Tab 8; *see also* Ex. 51; 5 RT 648:1-649:4.) The 1952 U.S. Geological Survey Quad Maps showed Gold Stone Road as it exists today, indicating its use to travel from Greenleaf Canyon to Henry Ridge Motorway. (Ex. 194, Maps, Tabs 8 and 9; Ex. 198; Exs. 51 and 53; 6 RT 937:10-941:24; *see also* 8 RT 1617:26-1618:8; 1632:11-18.)

B. <u>Subdivision of Properties Within the Henry Ridge Area and Continued Use of the Roadways Prior to 1972.</u>

When the subject properties in the Topanga Canyon area along Henry Ridge were being subdivided, easements were required to be reserved for access over Henry Ridge Motorway and Gold Stone Road. The Subdivision Ordinance of Los Angeles County in effect in 1968 and 1970 required the subdivider to provide access to the subdivided lots from a public street. The only access available at

that time was via Henry Ridge Motorway and Gold Stone Road. (6 CT 1214-1215; 5 RT 752:24-761:2; 8 RT 1625:27-1629:8; Exs. 53, 54, 55 and 56.)

The first subdivision in the area, of the Schroder Property and parts of the Erickson Property, was effected by a Declaration and Grant of Easements, recorded on December 4, 1968 with an attached map showing Henry Ridge Motorway and Gold Stone Road ("1968 Declaration and Grant of Easements"). (Ex. 53; see also, Ex. 194, Docs., Tab 16; 6 RT 937:10-941:24) The 1968 Declaration and Grant of Easements attached a map which demonstrated the subdivider's intention to dedicate Henry Ridge Motorway and Gold Stone Road as public roads, as the 1968 Declaration and Grant of Easement depicted the subject roads to be dedicated as physically laid out on the ground. (Exs. 51 and 53; 6 RT 937:10-941:24; *see also* 8 RT 1639:9-1641:4.) The easements were specifically granted as appurtenant to and benefitting all land in Section 12, including the Section 12 property owned by Plaintiffs, declaring "the strips of land on said map, attached hereto, to be easements for road purposes." (6 RT 937:10-937:13, 938:1-938:8, 939:3-939:18; 8 RT 1639:9-1642:8.) The 1968 Declaration and Grant of Easements was intended to be connected to the 1949 Grant Deed of Roadway, specifically referencing it by document number on the attached map, granting rights over the section of Gold Stone

Road on the property located at 635 Greenleaf Canyon Road owned by the Burkes. (6 RT 940:6-941:16.)

In addition to the 1968 Declaration and Grant of Easements, the 1952 U.S. Geological Survey Quad Maps showed the existence of Gold Stone Road as it exists today, indicating its use to travel from Greenleaf Canyon to Henry Ridge Motorway, and use of those roads prior to the revision of the Quad Map in 1967. (Ex. 194, Maps, Tabs 8 and 9; Ex. 198; Exs. 51 and 53; 6 RT 937:10- 941:24; *see also* 8 RT 1617:26-1618:8; 1632:11-18.)

In 1970, three "Declarations and Grant of Easements" were recorded concurrently evidencing that Henry Ridge Motorway was the access for multiple subdivisions of properties in the area, including the Marshall Property, and part of the Erickson Property ("1970 Declarations and Grants of Easements"). The 1970 Declarations and Grants of Easements were recorded by a developer, Brett Smithers, whose three companies owned parcels of property along Henry Ridge Motorway, and who had to create access easements as a prerequisite to subdivision and development. (Ex. 54, 55, 56; 5 RT 753:13-761:3; Ex. 194, Documents, Tabs 5, 14, 16 and 25.) The 1970 Declarations and Grants of Easements, which utilized a method authorized at that time called a Certificate of Exception, also specifically "declare the strips of land . . . as easements for road purposes" appurtenant to all land in Section 12, with attached maps depicting Henry Ridge Motorway that

specifically show "Dedicated roads per attached declaration 32 feet from center line ." (5 RT 752:28 - 770:4; 6 RT 911:8-914:22; Exs. 54, 55, 56 and 213.)

Expert witness Steve Opdahl, a land surveyor, confirmed that, as a condition for the approval of the subdivisions by the County, the maps were required to demonstrate the subdivided properties would have access to a public street or highway. (5 RT 755:6-23; see also 8 RT 1625:27-1629:8.) The term "dedicated roads" contained explicitly within the 1970 Declarations and Grants of Easements conclusively demonstrated an intent by the subdivider to dedicate Henry Ridge Motorway to public use in order to provide proper access to and from the subdivisions. (6 CT 1215.)

The recording of the 1970 Declarations and Grants of Easements created a network of roads benefitting all parcels contained within Section 1 and Section 12. (6 CT 1216; 5 RT 764:24-766:26.) These 1970 Declarations and Grants of Easements burden properties along Henry Ridge Motorway South of the Scher Property. (5 RT 768:13-770:4.) Moreover, the 1970 Declarations and Grants of Easements contain maps of Henry Ridge Motorway. The trial court found this network of roads, including the existing Henry Ridge Motorway, was intended to, and did, provide access for homeowners along the ridge. (6 CT 1216; see 5 RT 764:24-766:26.)

The access and utilization of Henry Ridge Motorway and Gold Stone Road prior to 1970 indicates those roadways were

intended to, and did in fact, connect to Greenleaf Canyon Road, thus creating the network of roads for the development of the land, enabling the sale to different individuals who were the predecessors of Defendants in this action, and the use of these roads by the public to access Henry Ridge Motorway and Gold Stone Road from Greenleaf Canyon Road. (6 CT 1216; 5 RT 764:24-766:26.) The existence and use of these roads by the public as a prerequisite to development of the area demonstrated an intention by the subdivider of each respective parcel to dedicate Henry Ridge Motorway and Gold Stone Road. (6 CT 1215-1216.)

C. Use of Subject Roadways by Plaintiffs, Defendants' Predecessors, Defendants and the Public Before and After 1972

Henry Ridge Motorway and Gold Stone Road were used by Defendants, Plaintiffs' predecessors, Plaintiffs, neighbors, and members of the general public for access to, from and through the neighborhoods, and generally, until Defendants began blocking the roads in 2006. (6 CT 1207-1228.)

Plaintiffs' predecessor-in-interest was Pauline Stewart, whom Defendant Marshall referred to as the "Matriarch of the Ridge." (11 RT 2507:21-2508:3.) Ms. Stewart, who was 91 at the commencement of trial, and whose testimony was presented at trial via deposition transcript, had lived in Topanga for many years and in 1977 built the home on what is now the Scher Property. (5 RT

654:17-656:16.) Ms. Stewart testified the public used all the roads in the Henry Ridge area for fifty years. (8 RT 1512:21-1513:12.)

Ms. Stewart held multiple community meetings over the years in a concerted effort, among other things, to maintain and pave Henry Ridge Motorway. (5 RT 663:14-668:17.) Ms. Stewart testified the Fire Department had maintained Henry Ridge Motorway from at least the 1930's. (7 RT 1341:2-1343:6.) Her brother had maintained the road after the Fire Department ceased doing so. (5 RT 658:5-659:3; 8 RT 1516:23-27; 7 RT 1352:4-26.) Ms. Stewart stated she and her family drove Henry Ridge Motorway south of the Scher Property all the way down to the then-existing School Road, and she believed the roads were "public property." (8 RT 1516:4-22; 8 RT 1517:28-1518:18.) She believed she had the right to use Henry Ridge Motorway south of the Scher Property because it had been used by the public for fifty years, and she transferred that right to Plaintiffs when she sold them the Scher Property. (8 RT 1512:19--1514:7; 1516:4-22.)

Documents recorded by the California Coastal Commission,[2] to which are attached Coastal Commission Staff Reports prepared in

[2] Civil Code section 1009 defines "coastal property" in subdivision (f) as land "which lies within 1,000 yards inland of the mean high tide line of the Pacific Ocean." While the Coastal Act states this is generally the inland limit of the "coastal zone," the coastal zone, and the Commission's jurisdiction, extends much further inland in many areas and is defined by maps. (Public Resources Code section 30103.) Thus, portions of the Henry Ridge area are within the Coastal Commission's

1987, state: "Even though Henry Ridge Motorway is sparsely developed at present, these privately maintained roads have become commonly used recreational links between growing clusters of development in the mountains. While currently unimproved, these roads have never-the-less functioned as public thru-ways and have historically been open to unobstructed vehicular and pedestrian traffic." (6 RT 917:6-922:15; Ex. 194, Docs. Tab 7, p. GM 0124.)

Similar statements are contained in another recorded Coastal Commission document which mandated that the owners of the Schroder Property and the Erickson Property "shall not interfere with the present public use of this road," referring to Henry Ridge Motorway. (Ex. 194, Docs., Tab 19; 6 RT 946:13-954:3.)

Multiple Coastal Commission deed restrictions, with similar documents attached, have been recorded, imposing conditions on development in the area, and confirming the existence and use of Henry Ridge Motorway and Gold Stone Road. (Ex. 194, Docs., Tabs 17 and 18; 6 RT 943:1-946:12.)

Plaintiffs first used the subject roads beginning with their move to the area in 1988, even before their purchase of the Scher property. They have used the subject roads on a frequent and regular basis since they moved to the Scher Property in 1998. (CT 1224.) At trial, Plaintiff Jaime Scher, testified he began regularly driving the length of Henry Ridge Motorway and Gold Stone Road in 1989. (3 RT 60:26-61:15.)

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jurisdiction even though it is not "coastal property" for purposes of Section 1009. (Ex. 13.)

His use of the roads was without permission and continued steadily through 1998, when it increased substantially. (3 RT 61:27-62:11; 65:19-65:28; 73:21-74:11; 78:4-79:14; 83:6-83:21.) Beginning in 1998, he and his wife regularly drove Henry Ridge Motorway and Gold Stone Road to access the post office, markets, liquor store, music shop, feed store, auto repair shop, restaurants, and dry cleaners. (3 RT 87:22-89:14; 3 RT 92:12-28.)

Mr. Scher drove the length of Henry Ridge Motorway and Gold Stone Road past Defendants' properties approximately 200 times a year between November of 1998 and January of 2005. (3 RT 136:7-136:27.) He witnessed friends, relatives, tenants, workers and others drive north and south on Henry Ridge Motorway to Gold Stone Road. (5 RT 645:16-647:5.) Mr. Scher even encountered Defendant Erickson on the road in 2001. Mr. Erickson objected to Mr. Scher's use of the road, but Mr. Scher advised him of his rights to use the roads which Mr. Scher continued notwithstanding Mr. Erickson's objection. (4 RT 304:6-307:20.) Between the time Defendant Gemma Marshall initially and temporarily closed her gate across Henry Ridge Motorway in 2005, through 2009, Mr. Scher drove Henry Ridge Motorway and Gold Stone Road across Defendants' properties about fifteen times. (4 RT 405:17-406:14.)

Plaintiff Jane McAllister, testified she drove the length of Henry Ridge Motorway and Gold Stone Road in 1986. (7 RT 1245:20-1247:28.) She continued to drive the entirety of Henry

Ridge Motorway and Gold Stone Road approximately two to eight times per year, until 1998 when she moved to Henry Ridge Motorway. (7 RT 1248:20-1249:18.) From November of 1998 through 2005, she testified she drove on Henry Ridge Motorway and Gold Stone Road past all of Defendants' properties between three to seven round trips per week in order to access the post office, veterinarian, grocery stores, liquor store, banks, video store, gas station, lumber yard, clothing store, floral shop, and realty offices. (7 RT 1249:25-1252:19; 1253:11-1253:24.) Ms. McAllister also testified that while driving on Henry Ridge Motorway or Gold Stone Road, she had waved to Defendant Wendie Malick, and has seen Mr. Erickson at least ten times. (7 RT 1286:13-1287:10.) Defendant Gemma Marshall saw Ms. McAllister driving the roads, and sent her a note in 2002 admonishing her not to, but Ms. McAllister continued to do so. (Ex. 38.) Ms. McAllister has never been given permission to use the roads and has never asked for it. (7 RT 1292:13-1292:20.)

Defendants themselves testified at trial regarding their significant use of the roads, and use by the public. Between 1991 and 2005, Ms. Marshall stated she witnessed neighbors, specifically Defendants and one of their tenants, in addition to "lookie-loos," teenagers, and members of the public and strangers driving through her gate on Henry Ridge Motorway, located just north of the Erickson Property. (11 RT 2511:15-2512:20; 2512:27-2513:3;

2519:4-2519:21; 2521:27-2522:3.) Ms. Marshall, who also drove on Gold Stone Road and Henry Ridge Motorway before she purchased her home, testified that over the ten years between 1999 and 2009, there had been even more traffic on Henry Ridge Motorway. (11 RT 2498:14-2502:16; 2545:10-2546:6.)

Defendant Richard Schroder, testified he drove up Gold Stone Road to Henry Ridge Motorway in February of 2005, and later drove up Gold Stone Road three more times prior to purchasing the Schroder Property. (11 RT 2432:2-2433:16.) He further testified he started encountering "random trespassers" driving on Gold Stone Road within four to eight weeks of moving into the Schroder Property. (11 RT 2447:16-2448:24.) Regarding the traffic coming through his property on Gold Stone Road, Schroder testified it took him a year or a year and a half after moving into the Schroder Property in 2005 "to get them all trained," and in 2007 the number of people using Gold Stone Road to Henry Ridge Motorway started to decline. (11 RT 2450:2-2450:19; 2455:10-2455:12.) Defendant Andrea Schroder, testified she occasionally saw random vehicles of people she did not know on the roads. (11 RT 2482:22-2483:1.)

Defendant Richard Erickson drove on Gold Stone Road and Henry Ridge Motorway and knew it ran through his property when he and his wife bought it. He testified he had a copy of the legal description of the real properties located at 999 Henry Ridge Motorway and 721 Henry Ridge Motorway ("Northern Erickson

Property" and "Southern Erickson Property," respectively), which included references to the 1968 Declaration and Grant of Easements, prior to his purchase of the first part of the Erickson Property. (9 RT 1835:4-1840:1; 11 RT 2409:13-2410:4.) Defendant Richard Schroder also drove on Gold Stone Road and Henry Ridge Motorway before he and his wife bought their property. He testified he investigated easements and had an opportunity to review the 1968 Declaration and Grant of Easements prior to the purchase of the Schroder Property. (11 RT 2432:2-2433:16; 11 RT 2436:10-2436:20, 2438:1-2439:8.)

Defendant Wendie Malick has driven Gold Stone Road and Henry Ridge Motorway and testified that, while hiking on a portion of Henry Ridge Motorway near Gold Stone Road, she saw cars "many, many times" traveling on Henry Ridge Motorway going both north and south. (12 RT 2714:28-2717:4; *see also* Ex. 5.) Ms. Malick testified that when she stopped cars on Henry Ridge Motorway or Gold Stone Road, she often inferred from the conversation that the cars came up Gold Stone Road to Henry Ridge Motorway because various maps directed them to access Henry Ridge Motorway via Gold Stone Road. (12 RT 2716:24-2717:1.)

Defendants Burke were aware of the existence of Gold Stone Road as access to their property and testified to witnessing much use of the road. (7 RT 1272:2-1276:13; 8 RT 1559:26-1562:10;

1580:13-1587:25.) Use of Gold Stone Road from the time of the Burkes' purchase prompted them in 2005 to erect signs pursuant to Civil Code Section 1008. (9 RT 1803:20-1808:23.)

Various members of the public, including Candace De Puy, Lisa Salloux, Howell Tumlin, Deborah English and Randi Johnson, who are not parties to this action, testified they had historically driven on Henry Ridge Motorway and Gold Stone Road past Defendants' properties and they have seen others use the roads as well. (12 RT 2736:15-2739:13; 2790:18-21; 2800:16-2801:8; 2803:28-2804:10; 2813:6-2814:2, 2826:4-2828:3.)

Ralph Weiss, a real estate attorney and neighbor who moved to Henry Ridge Motorway in 1994, testified he had driven Henry Ridge Motorway south past the Scher Property and on Gold Stone to Greenleaf Canyon, and he believed he had express easement rights and prescriptive rights over Henry Ridge Motorway and Gold Stone Road. Mr. Weiss drafted a complaint against Defendant Marshall, which was never filed because of a tolling agreement, to establish easement rights and public dedication across Henry Ridge Motorway and Gold Stone Road. (8 RT 1590:11-1601:19; 1608:16-21; Ex. 121.)

Randi Johnson, a neighbor, testified that, since 1991, she herself had driven the roads and had seen many people driving north and south on Henry Ridge Motorway past her property, which is located just to the north of the Marshall Property. (12 RT 2825:24-2835:18.) This included "very heavy usage" by delivery trucks,

neighbors, Plaintiffs, construction trucks, teenagers, and others. (12 RT 2835:10-2839:25.)

John MacNeil, Defendants' surveyor and a local resident of the area, testified that between 1976 and 2006, he drove on Henry Ridge Motorway between fifty and sixty times, and also had driven Gold Stone Road as well. (13 RT 3107:21-27.) Fritz Geisler, who sometimes lived at the Schroder Property testified that, between 1989 and 2005, he drove Henry Ridge Motorway and Gold Stone Road, and he was aware of all sorts of people coming and going along Gold Stone Road. (10 RT 2185:4-2199:5.)

Lisa Salloux testified she was aware of issues related to people driving Henry Ridge Motorway through the Marshall Property as early as 1992. (12 RT 2781:17-2781:19; 2785:22-2786:3; 2791:5-2791:25.) Nobuko Clemens, another neighbor, drove on Gold Stone Road and Henry Ridge Motorway at least once or twice a month between 1999 and 2005. (10 RT 2205:11-2207:22.)

Beginning in 2005, Defendants began intermittently locking gates across the subject roads, frequently preventing vehicular access by Plaintiffs. (CT 1224.) Jaime Scher denied Defendants ever erected proper Civil Code 1008 signage prior to 2005, and testified Gemma Marshall began irregularly closing her gate across Henry Ridge Motorway in 2005, but kept it open after he sent her a letter in April of 2006. (3 RT 124:20-131:6; 4 RT 309:13-310:20; 325:2-325:4; 5 RT 633:25 -634:19.) In April of 2006, Defendant Erickson

began regularly closing and locking a gate across Henry Ridge Motorway, completely blocking access. (4 RT 320:2-328:6; Exs. 41, 42, 43, 44, 45 and 46.) Ms. McAllister testified that, after Defendant Erickson finished construction on his property, he began locking his gate across Henry Ridge Motorway. (7 RT 1294:1-1294:21.) Richard Schroder, a month before trial, further obstructed the roads when he installed an electric gate across Gold Stone Road that prevents vehicular and pedestrian access because he felt it was "long overdue." (11 RT 2449:19-2451:20.)

D. Problems with Emergency Access.

Blocked roads have interfered with prompt emergency access, to the detriment of all concerned. Emergency access in the area is critical, especially because brush fires occur frequently in the area. (10 RT 2172:16-2173:13; 10 RT 2202:11-2202:20.) Emergency response to a fire at the house located next to the Scher Property, a rattlesnake bite, Ms. McAllister's father's heart attack at 3:00 a.m., and Defendants Richard and Andrea Schroder's son's injuries from being hit by a water truck, was delayed due to lack of access. (7 RT 1297:26-1299:24; 1300:5-21; 10 RT 2209:3-2210:10.) Paramedics attempted access from the south via Gold Stone Road to Henry Ridge Motorway, but a locked gate forced them to go back to Topanga Canyon Road and come down Henry Ridge Motorway from the north, causing delays of approximately half an hour. (10 RT 2208:17-

2210:11.) The nearest fire station to the Scher Property is located to the south in the town center of Topanga making the quickest emergency route Gold Stone Road up to Henry Ridge Motorway. (7 RT 1300:22-1300:27, 12 RT 2844:7-2844:11.)

E. Lack of Viable Alternate Access Roads.

Henry Ridge Motorway south to Gold Stone Road is not just a faster route to Topanga. (7 RT 1253:25-1254:27, 1255:12-1255:26.) Realistically, it is the only route.

Vehicular access via other roads to the north has been blocked at one time or another, leaving Plaintiffs no way out. (Exs. 4-5; 4 RT 380:17-381:9, 7 RT 1295:1-1295:9.) Alta Road and Adamsville Avenue have been blocked. (Ex. 15-2; 3 RT 113:8-113:21, 115:22-115:25; 7 RT 1295:10-1295:22, 11 RT 2529:11-2529:13, 12 RT 2845:16-2845:26, 14 RT 3320:14-3320:17.) Summit-to-Summit Motorway has been locked and chained for many years. (Ex. 13; 3 RT 107:10-108:1, 11 RT 2529:14-2529:16, 14 RT 3320:10-3320:12.)

Two neighbors have erected gates across Oldfield Ranch Road, at least one of which has been closed and locked in the past. (Ex. 11; 3 RT 103:5-103:18, 5 RT 635-636; 7 RT 1296:14-1296:20, 11 RT 2529-2530.) Oldfield Ranch Road is not a viable alternative in any event, as it is "unpaved and poorly maintained," "very steep and ... very narrow," and "treacherous and dangerous," impassable in

inclement weather and "not meant for cars." (Exs. 11-12; 3 RT 100:26-101:19, 7 RT 1256:5-1256:6, 10 RT 2136.) Even Defendant Richard Schroder stated he could not imagine driving up Oldfield Ranch Road unless it was in a four wheel drive vehicle. (11 RT 2462:2-2462:5.)

IV.

PROCEDURAL HISTORY

A. Trial Court Proceedings

On June 11, 2009, Plaintiffs filed their complaint for declaratory relief, quiet title, and injunctive relief based upon express easement, prescriptive easement, implied dedication, and equitable easement theories. (1 CT 13-35.) Defendants answered the complaint. (1 CT 55-66, 67-73, 92-98, 99-111, 126-135.)

On January 6, 2011, Defendant Marshall filed a motion for summary judgment, which Plaintiffs opposed. (1 CT 136-230; 2 CT 231-340, 400-460; 3 CT 461-522.) On May 11, 2011, the trial court denied the motion. (2 RT C-2:1-5, C-3:8-14, C-4:6-17.)

From May 16 through June 1, 2011, a twelve-day non-jury trial occurred, on Plaintiffs' causes of action for express, implied, prescriptive, and equitable easements ("private easement theories") and implied dedication over Henry Ridge Motorway south of the Scher Property and the entirety of Gold Stone Road until it intersects with Greenleaf Canyon Road ("public road theories"). (1 CT 17-22.) On June 1, 2011, at the conclusion of the trial, the trial court issued

its tentative ruling in favor of Plaintiffs on causes of action for implied dedication and implied easement over Henry Ridge Motorway south of 1550 Henry Ridge Motorway and Gold Stone Road to Greenleaf Canyon Road, and in favor of Defendants on the causes of action for express easement, prescriptive easement, and equitable easement. (14 RT 3458:25-3459:25, 3461:7-3461:20, 3462:28-3463:6; 4 CT 902-903.)

On June 16 and 17, 2011, Defendants filed requests for a statement of decision. (5 CT 921-924; 925-929.) On July 1, 2011, Plaintiffs served and submitted to the trial court a proposed judgment and a proposed statement of decision. (4 CT 973, 1082.) Defendants timely filed objections. (5 CT 945-971, 972-1071, 1072-1080, 1081-1104.)

On August 3, 2011, the trial court entered its statement of decision. (6 CT 1204-1228.) On September 6, 2011, the court entered the judgment. (6 CT 1229 - 1257.) The statement of decision and judgment cited factual and legal support in the record. (6 CT 1207-57.) The trial court found the subject roads had been dedicated as public roads while they remained in possession of the United States Government. (6 CT 1208-1213.) The trial court also found the subject roads were impliedly dedicated as public roads, and Plaintiffs were entitled to the unimpeded use of the subject roads. (6 CT 1214-1225.) Also, the trial court found an implied easement in favor of Plaintiffs over Henry Ridge Motorway south of the Scher

Property and over a small portion of Gold Stone Road at the Burke Property connecting to Greenleaf Canyon Road. (6 CT 1213-1214.)

The Judgment specifically enjoined Defendants from closing their gates. (6 CT 1252-1253.) On September 9, 2011, Defendants filed an ex parte application requesting a stay of enforcement of judgment. (6 CT 1278-1320.) Plaintiffs opposed the ex parte application and it was denied. (6 CT 1258-1277.)

On September 12, 2011, Plaintiffs filed and served notice of entry of judgment. (6 CT 1321-1354.) Notices of appeal followed. 6 CT 1355-1360.)

On October 4, 2011, Defendants Erickson, Malick, and Schroders filed a petition for writ of supersedeas, seeking to stay enforcement of the judgment pending appeal. On November 9, 2011, the court of appeal denied that petition.[3]

On November 10, 2011, the trial court denied Defendants' motion for new trial. (6 CT 1397.)

B. The Court of Appeal's Decision

On September 15, 2015, roughly four years after the notices of appeal were filed, the court of appeal issued its 46-page opinion. Only portions of the opinion are published. The published portions of the opinion cover the location of the land, dedication of trail easements, use of the road after March 4, 1972, possible alternative

[3] The roads continue to be blocked by Defendants' gates.

routes, portions of a summary of the litigation, the trial court's application of Section 1009, and prior case law regarding Section 1009. (Slip Op. 3-4, 11-12, 13-16, 16-17, 24-35). The non-published portions of the opinion cover evidence of the existence and use of the roads prior to March 4, 1972, the portion of the summary of the litigation describing the trial court's statement of decision, whether there was an implied easement based on federal patents, and the private easement issues (Slip Op. 5-10, 13, 17, 18-23, 35-41, 42-46). Of the 46 pages in the opinion, more than half are not published.

The court of appeal reversed the judgment with respect to the public road theories. On the question of dedication prior to the patenting of the land to the first private owner, the court of appeal found there was no substantial evidence to support the judgment. (Slip Op. 37-41.) On the implied dedication issue, the court of appeal concluded Civil Code section 1009 had superseded prior law on the issue by preventing any public use after 1972 from ripening into a public right. (Slip Op. 26-32.) Nevertheless, the court of appeal went on to conclude the evidence of use after 1972 was inadmissible and in any event "does not begin to describe the number and variety of use that *Gion* and *Blasius* require to find an implied dedication to public use." (Slip Op. 33.)

The court of appeal affirmed with respect to the portions of the judgment rejecting Plaintiffs' private easement theories. (Slip Op. 42-46.)

V.

STANDARD OF REVIEW

The fundamental issue before the Court in this case is an issue of statutory interpretation. Issues of statutory interpretation are reviewed *de novo*. (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432.)

In determining the meaning of a statute, this Court's first task is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. (*Esberg v. Union Oil Co.* (2002) 28 Cal.4th 262, 268; *Central Pathology Service Medical Clinic, Inc. v. Superior Court* (1992) 3 Cal.4th 181, 186.) In determining that intent, a court must look first to the words of the statute, giving to the language its usual, ordinary import. (*Ibid.*, 3 Cal.4th 181, 186-87.) The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible. (*Ibid.*) These canons generally preclude judicial construction that renders part of the statute meaningless or inoperative. (*Manufacturers Life Ins. Co. v. Superior Court* (1995) 10 Cal.4th 257, 274.)

Where uncertainty exists, consideration should be given to the consequences that will flow from a particular interpretation. (*Central Pathology Service Medical Clinic, Inc. v. Superior Court, supra,* 3 Cal.4th at p. 187.) While the primary focus is the language of the statute, departure from the literal meaning of the text of a statute is proper when necessary to effectuate the Legislature's intent. (*Demchuk v. State Dept. of Health Services* (1991) 4 Cal.App.4th Supp. 1, 5.) Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent. (*Central Pathology Service Medical Clinic, Inc. v. Superior Court, supra,* 3 Cal.4th at p. 187.)

The Legislature is presumed to be aware not only of the laws it has enacted, but of the judicial decisions interpreting them. (*Maloy v. Municipal Court of Los Angeles Judicial Dist.* (1968) 266 Cal.App.2d 414, 418; *Loken v. Century 21-Award Properties* (1995) 36 Cal.App.4th 263, 272-73.) The Legislature should not be presumed to overthrow long-standing principles of law unless such intention is made clear either by express declaration or by necessary implication. (*Theodor v. Superior Court* (1972) 8 Cal.3d 77, 92; *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149-50.)

VI.

ARGUMENT

A. CIVIL CODE SECTION 1009 DID NOT ENTIRELY ELIMINATE THE LAW OF IMPLIED DEDICATION, PARTICULARLY WITH REGARD TO ROADS

1. The Law of Implied Dedication Prior to *Gion-Dietz* and Civil Code Section 1009

The Legislature adopted Civil Code section 1009 in direct response to a decision of this Court that certain privately owned beach properties long used by the public had been impliedly dedicated to public recreational use. (*Gion v. City of Santa Cruz* (1970) 2 Cal.3d 29 (consolidated with *Dietz v. King* ("*Gion-Dietz*"); *see Friends of the Trails v. Blasius* (2000) 78 Cal.App.4th 810, 822-823.) A brief look at the law of implied dedication before addressing the issues supposedly created by *Gion-Dietz* helps to focus the apparent controversy.

It is hornbook law that an "easement may be created by either statutory or common law dedication." (6 Miller & Starr, *Cal. Real Estate* (4th Ed. 2015) Easements, § 15:43, p. 15-154.) "A common law dedication may be accomplished in any manner in which a property owner evidences an intention to offer his or her property for a public use by his or her acts or conduct, and the public evidences an intention to accept the offer. Use of the property by the public may be sufficient, by

itself, to indicate both the property owner's intention to dedicate his or her property and the public's acceptance of the offer." (*Ibid.*)

There are two types of implied dedications. An implied in law dedication can be found where public use of a roadway continues for more than the period of prescription, which is five years in California, irrespective of the intent to offer or not to offer the road for dedication to public use, which may be deduced from the acts or omissions of the owner. (*County of Los Angeles v. Berk* (1980) 26 Cal.3d 201, 214; *Friends of the Trails v. Blasius* (2000) 78 Cal.App.4th 810, 824-25.) An implied in fact dedication can be found where an offer to dedicate is made by an act or omission of the landowner, such as recording a map showing roads to be dedicated to public use. (See *Union Transp. Co. v. Sacramento County* (1954) 42 Cal.2d 235; *Friends of the Trails v. Blasius, supra,* 78 Cal.App.4th 810, 821.) Acceptance of an implied in fact dedication may occur by formal action of a government body, or, less formally, by use of the roads. (10 Miller & Starr, Cal. Real Estate (4th ed. 2011) Dedication §22:22, p. 26-5; *Baldwin v. City of Los Angeles* (1999) 70 Cal.App.4th 819, 837.)

California courts have found implied dedications in favor of the public based upon claims brought by individual plaintiffs. (See *Burch v. Gombos* (2000) 82 Cal.App.4th 352; *Hanshaw v. Long Valley Road Ass 'n* (2004) 116 Cal.App.4th 471.) For example, in *Burch v. Gombos*, the Court of Appeal upheld both (1) an injunction in favor of the respondent, and (2) a simultaneous finding of an implied

dedication to the public of a roadway at issue, stating the "trial court found that the portion of the road in issue has been impliedly dedicated to the public as a result of public recreational use of the road in the 1950's and 1960's. The court enjoined appellants from interfering with respondents' use of the road." *(Burch v. Gombos, supra,* 82 Cal.App.4th at p. 355.)

2. The Problem Perceived to Have Been Created by *Gion-Dietz*

In 1970, the California Supreme Court in *Gion-Dietz* decided certain beach properties and roads leading to them, though privately owned, had been impliedly dedicated to public recreational use because they were used by the public for a period of more than five years without significant objection from the property owner. While roads made up part of the property at issue in *Gion-Dietz,* what generated concern was the application of implied dedication to establish a public use on open land that could prevent the property owner from using the property for some other purpose.

Implied dedication of roads predominated in the case law prior to *Gion-Dietz,* but was not the exclusive situation in which implied dedication had been recognized.

> A final question that has concerned lower courts is *whether the rules governing shoreline property differ from those governing other types of property, particularly roads.*

Most of the case law involving dedication in this state has

concerned roads and land bordering roads. (See, e.g., *Venice v. Short Line Beach Co.* (1919) 180 Cal. 447 [181 P. 658]; *Union Transp. Co. v. Sacramento County, supra.*, 42 Cal.2d 235; *Schwerdtle v. County of Placer, supra.*, 108 Cal. 589; *Hare v. Craig, supra., 206 Cal. 753; People v. Marin County (1894) 103 Cal.* 223 [37 P. 203]; *Diamond Match Co. v. Savercool* (1933) 218 Cal. 665 [24 P.2d 783]; *Hartley v. Vermillion* (1903) 141 Cal. 339 [74 P. 987].) This emphasis on roadways arises from *the ease with which one can define a road, the frequent need for roadways through private property,* and perhaps also the relative frequency with which express dedications of roadways are made. *The rules governing implied dedication apply with equal force, however, to land used by the public for purposes other than as a roadway.* In this state, for instance, the public has gained rights, through dedication, in park land (see, e.g., *Archer v. Salinas City* (1892) 93 Cal. 43 [28 P. 839]; *Phillips v. Laguna Beach Co.* (1922) 190 Cal. 180 [211 P. 225]; *Slavich v. Hamilton* (1927) 201 Cal. 299 [257 P. 60]) in athletic fields (see, e.g., *Morse v. Miller* (1954) 128 Cal.App.2d 237 [275 P.2d 545]; *E. A. Robey & Co. v. City Title Ins. Co.* (1968) 261 Cal.App.2d 517 [68 Cal.Rptr. 38]), and in beaches (see, e.g., *Washington Blvd. Beach Co. v. City of Los Angeles, supra.*, 38 Cal.App.2d

135; *Morse v. Miller, supra.*, 128 Cal.App.2d 237; *Morse v. E.A. Robey Co.* (1963) 214 Cal.App.2d 464 [29 Cal.Rptr. 734]; *E.A. Robey & Co. v. City Title Ins. Co., supra.*, 261 Cal.App.2d 517).

(*Gion-Dietz, supra,* 2 Cal.3d at pp. 41-42 [emphasis added].)

This Court went on to find further support for application of implied dedication to public use of shoreline recreational areas in the state Constitution and other legislative enactments. (*Id.* at pp. 42-43.) "Even if we were reluctant to apply the rules of common-law dedication to *open recreational areas*, we must observe the strong policy expressed in the constitution and statutes of this state of encouraging public use of shoreline recreational uses." (*Id.* at p. 42 [emphasis added].) In light of those constitutional and statutory provisions, and other more practical realities, this Court concluded a change in the application of implied dedication in the context of recreational use of beach areas was necessary.

> This court has in the past been less receptive to arguments of implied dedication when *open beach lands* were involved than it has been when *well-defined roadways* are at issue [citations]. With the increased urbanization of this state, however, beach areas are now as well-defined as roadways. This intensification of land use combined with the clear public policy in favor of encouraging and expanding public access to and use of shoreline areas leads

> us to the conclusion that the courts of this state must be as receptive to a finding of implied dedication of shoreline areas as they are to a finding of implied dedication of roadways. [Citation.]

(*Id.* at p. 43 [emphasis added].)

The *Gion-Dietz* case solely dealt with use of open land "for public recreation purposes," "various kinds of recreational activities," "public recreation purposes, and uses incidental," "recreational uses," and "recreational purposes," not roads for non-recreational use (*Id.* at pp. 35, 36, 42.)

Eight years later, in *County of Los Angeles v. Berk, supra,* 26 Cal.3d at p. 213, this Court rejected claims *Gion-Dietz* gave birth to a major change in the law. "*Gion-Dietz*, far from signaling the momentous 'redefinition of property rights' which defendant would depict, simply represents a restatement and clarification of well-established former law and an application of that law, as so restated and clarified, to a *unique pattern of factual circumstances*." [Emphasis added.] *Gion-Dietz* was a departure from prior law, if at all, in the application of implied dedication doctrine to something other than a roadway. (*Id.* at pp. 214-215.)

Gion-Dietz was followed by an outpouring of articles in law journals and law reviews.[4] These articles accuse the Court of extending

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[4] *Public Access to Beaches*, 22 Stan. L. Rev. 564 (1972); Christiansen, *Environment, Public Recreation, Public Beaches and the Opportunities Presented by Gion v. City of Santa Cruz*, Proceedings of City Attorney's Department of the League of California Cities 1, 9 (1970); Michael M. Berger,

the application of the law of implied dedication too far, applying the law of implied dedication improperly, rendering titles to open land unknowable, allowing the taking of private property for public use without compensation. What these articles generally do *not* do is suggest the law of implied dedication should be entirely repealed.

While establishment of a public easement for recreational use over an entire parcel of property could prevent the owner from making any use of the property at all, the same cannot be said of an implied dedication of a road. Implied dedication of a road does not appear to have historically interfered with private property rights to such a degree it would prevent all other use of an entire parcel of property. Depending on what the property owner wants to do with the property, a road could even facilitate a productive use. Moreover, the location of such a road could be changed, if need be, to facilitate use of the remainder of the property. There was no need to change the law of implied dedication of *roads* to address the application of the law of implied dedication in *Gion-Dietz* to *open land used for recreational purposes*.

Nice Guys Finish Last--At Least They Lose Their Property, 8 Cal. Western L. Rev. 75 (1971); Comment, *This Land Is My Land: The Doctrine of Implied Dedication and Its Application to California Beaches*, 44 So.Cal.L.Rev. 1092 (1971); Comment, *Implied Dedication: A Threat to the Owners of California's Shoreline*, 11 Santa Clara Law. 327 (1971); Comment, *Public or Private Ownership of Beaches: An Alternative to Implied Dedication*, 18 UCLA L.Rev. 795 (1971); Note, *Californians Need Beaches Maybe Yours!*, 7 San Diego L.Rev. 605 (1970); Note, *Implied Dedication in California: A Need for Legislative Reform*, 7 Cal.Western L.Rev. 259 (1970); Note, *The Common Law Doctrine of Implied Dedication and Its Effect on the California Coastline Property Owner*; 4 Loyola U.L.Rev. 438 (1971); Note, 59 Cal.L.Rev. 231 (1971).)

3. The Language of Civil Code Section 1009 Does Not Repeal the Law of Implied Dedication As It Relates to Roads for Non-Recreational Use

In direct response to *Gion-Dietz,* the California Legislature enacted Section 1009 of the Civil Code. The Legislature's "solution" to the "problem" created by *Gion-Dietz,* reads as follows:

> (a) The Legislature finds that:
>
> (1) It is in the best interests of the state to encourage owners of private real property to *continue to make their lands available for public recreational use* to supplement opportunities available on tax-supported publicly owned facilities.
>
> (2) Owners of private real property are confronted with the threat of loss of rights in their property if they allow or continue to allow members of the public to use, enjoy or pass over their property *for recreational purposes.*
>
> (3) The stability and marketability of record titles is clouded by such public use, thereby compelling the owner to exclude the public from his property.
>
> (b) Regardless of whether or not a private owner of real property has recorded a notice of consent to use of any particular property pursuant to Section 813 of the Civil Code or has posted signs on such property pursuant to Section 1008 of the Civil Code, except as otherwise

provided in subdivision (d), *no use of such property by the public after the effective date of this section shall ever ripen to confer upon the public or any governmental body or unit a vested right to continue to make such use permanently, in the absence of an express written irrevocable offer of dedication of such property to such use, made by the owner thereof in the manner prescribed in subdivision (c) of this section, which has been accepted by the county, city, or other public body to which the offer of dedication was made, in the manner set forth in subdivision (c).*

(c) *In addition to any procedure authorized by law and not prohibited by this section*, an irrevocable offer of dedication may be made in the manner prescribed in Section 7050 of the Government Code to any county, city, or other public body, and may be accepted or terminated, in the manner prescribed in that section, by the county board of supervisors in the case of an offer of dedication to a county, by the city council in the case of an offer of dedication to a city, or by the governing board of any other public body in the case of an offer of dedication to such body.

(d) Where a governmental entity is using private lands by an expenditure of public funds on visible improvements on or across such lands or on the cleaning or

maintenance related to the public use of such lands in such a manner so that the owner knows or should know that the public is making such use of his land, such use, including any public use reasonably related to the purposes of such improvement, in the absence of either express permission by the owner to continue such use or the taking by the owner of reasonable steps to enjoin, remove or prohibit such use, shall after five years ripen to confer upon the governmental entity a vested right to continue such use.

(e) *Subdivision (b) shall not apply to any coastal property* which lies within 1,000 yards inland of the mean high tide line of the Pacific Ocean, and harbors, estuaries, bays and inlets thereof, but not including any property lying inland of the Carquinez Straits bridge, or between the mean high tide line and the nearest public road or highway, whichever distance is less.

(f) *No use, subsequent to the effective date of this section, by the public of property described in subdivision (e) shall constitute evidence or be admissible as evidence that the public or any governmental body or unit has any right in such property by implied dedication if the owner does any of the following actions*:

(1) *Posts signs*, as provided in Section 1008, and renews the same, if they are removed, at least once a year,

or publishes annually, pursuant to Section 6066 of the Government Code, in a newspaper of general circulation in the county or counties in which the land is located, a statement describing the property and reading substantially as follows: "Right to pass by permission and subject to control of owner: Section 1008, Civil Code."

(2) *Records a notice* as provided in Section 813.

(3) *Enters into a written agreement* with any federal, state, or local agency providing for the public use of such land.

After taking any of the actions set forth in paragraph (1), (2), or (3), and during the time such action is effective, the owner shall not prevent any public use which is appropriate under the permission granted pursuant to such paragraphs by physical obstruction, notice, or otherwise.

(g) The permission for public use of real property referred to in subdivision (f) may be conditioned upon reasonable restrictions on the time, place, and manner of such public use, and no use in violation of such restrictions shall be considered public use for purposes of a finding of implied dedication.

[Emphasis added.]

The cases on statutory interpretation require interpretation of Section 1009 to begin with consideration of the language of the statute.

Viewed individually, the various subdivisions of Section 1009 point in a variety of directions. None, however, points down the path of a total repeal of the law of implied dedication as applied to roads, on non-coastal property, for non-recreational use.

In subdivision (a), the Legislature states its intention to encourage the continued use of private property for recreational use by ensuring property owners who allow such use will not lose their property entirely to the public. Here, it is easy to "ascertain the intent of the enacting legislative body" because the Legislature expressly stated its intent in the statute. What the Legislature did not say is as important was what it did. In distinguishing between recreational use and non-recreational use, and in distinguishing between coastal property and non-coastal property, the Legislature did not state any intent to change the law of implied dedication as it relates to roads.

The court of appeal looked to *Klein v. United States* (2010) 50 Cal.4th 68, 80, stating that when one part of a statute contains a term or provision, the omission of that term or provision from another part of the statute indicates the Legislature intended to convey a different meaning. (Slip Op. 29.) *Klein*, however, and the cases therein cited, do not involve statutes that, like section 1009, contain an express statement of the Legislature's intent in enacting the statute. An express statement of legislative intent in the statute itself cannot simply be ignored. Doing so would be contrary to the fundamental tenet of statutory interpretation, to ascertain the intent of the Legislature so as to effectuate the purpose of

the law. (*Burden v. Snowden* (1992) 2 Cal.4th 556, 562.) In light of the Legislature's clear expression of its intent, departure from the literal meaning of subdivision (b) of Section 1009 ("no use of such property by the public") *is necessary* to effectuate the Legislature's intent. (*Demchuk v. State Dept. of Health Services, supra,* 4 Cal.App.4th Supp. 1, 5.)

Section 1009 included the Legislature's statement of intent, subdivision (a), from its inception, but did not include subdivisions (d), (e) and (f). (See Exhibit 1 to Motion for Judicial Notice filed concurrently herewith.) The original bill, Senate Bill 504, included the following justification for urgency: "Large areas of privately owned property now open to public use may be closed in the forthcoming recreational season unless owners are assured by this action that they will not lose property rights through future public use." If the statute were intended to prevent non-recreational use of land from becoming a permanent public right, the basis for urgency would be something other than ensuring recreational property would not be closed to the public; it would be a broader concern – the potential, at any moment, for public use of some property to ripen into a vested right.

The same is true with respect to subdivision (a). The legislative intent expressed is not directed at the law of implied dedication per se; it is directed at deterring property owners from closing their property to recreational use. If the intent were to completely do away with the law

of implied dedication, the expression of intent would not have been so limited.

This statement of legislative intent is followed by subdivision (b), which appears to state the only methods of dedicating property to public use is the method set forth in subdivision (c) and (d). "[N]o use of *such* property by the public after the effective date of this section shall ever ripen to confer upon the public or any governmental body or unit a vested right to continue to make such use permanently . . . " [Emphasis added.] The word "such" harks back to the recreational use the Legislature focused on in its statement of intent found in subdivision (a), "such property" being "private real property made available for public recreational use" (paraphrasing subdivision (a)). (*Hanshaw v. Long Valley Road Ass 'n, supra,* 116 Cal.App.4th at p. 485.)

Subdivision (c) states, *in addition to any procedure authorized by law and not prohibited by this section,* an irrevocable offer of dedication to a public body (but not to "the public") *may* be made and accepted pursuant to Government Code section 7050. Subdivision (b) appears to say Government Code section 7050 is the only means of dedicating property to public use, but subdivision (c) makes that method permissive, not mandatory, and provides other procedures exist as well. The introductory clause of subdivision (c) must mean other methods of dedication are *not completely eliminated* by Section 1009.[5] Otherwise,

[5] Other methods include dedication of land for roads, parks and other public facilities through the subdivision map process. (Govt. Code sections 66475, 66477, 66479.)

the introductory clause of subdivision (c) would be rendered meaningless, contrary to principles of statutory construction urging every word in a statute be given meaning. (*Hughes Electronics Corp. v. Citibank Delaware* (2004) 120 Cal.App.4th 251, 270 n. 18.)

Subdivision (d) addresses the circumstances in which a governmental entity can obtain a vested right to continued use of private property. If a government agency is expending public funds to improve or maintain land in such a way that the property owner would be aware of it, and the owner neither grants permission nor takes steps to prevent the use, after five years, the government entity – not the public, per se – acquires a vested right to continue the use. One might wish to say subdivision (d) *requires* expenditure of public funds, coupled with public use, to establish the vested right in the governmental entity. However, as discussed above, Section 1009 leaves open the possibility of dedication by "any procedure authorized by law and not prohibited by this section," with there being no clear prohibition of implied dedication of roads by non-recreational use or by imperfect acceptance of a dedication coupled with non-recreational use.

Subdivision (e) defines "coastal property" and states subdivision (b) does not apply to it, leaving open the potential for implied dedication of coastal property to public use, preserving the holding of *Gion-Dietz* with respect to coastal property. Subdivisions (f) and (g) establish the means by which owners of coastal property can permit use of their property and still protect their rights. Curiously, subdivision (e) allows a

dedication to public use to continue to arise from exactly the sort of circumstances that existed in *Gion-Dietz*. Rather than providing no use, recreational or otherwise, can ever ripen into an implied dedication of coastal property, Section 1009 allows that potential to exist – and then provides owners of coastal property with apparently relatively simple ways to give notice to the public their use of coastal property is with the owner's permission and can be terminated at any time.

The court of appeal concluded "construction of subdivision (b) to ban only recreational use from ripening into a permanent vested public right would eliminate the statute's disparate treatment of coastal and non-coastal land." (Slip Op. 30.) Disparate treatment remains even though subdivision (b) does not affect non-recreational use of property.

Subdivision (b) makes compliance with Sections 813 and 1008 of the Civil Code *unnecessary* to prevent public use from ripening into a vested right, unless a government entity has improved or is maintaining the land pursuant to subdivision (d). The owner of non-coastal property thus has nothing to fear from leaving property open to recreational use. The same would be true for the owner of coastal property absent subdivision (f). In contrast to subdivision (b), subdivision (f) requires the owner of coastal property to do more to protect it, by requiring the owner of coastal property to post signs, publish or record a notice, or enter into an agreement with a government agency providing for public use of the land, in order to prevent public use from ripening into a vested right. Further, a property owner who exercises one of the options set

forth in subdivision (f) must not interfere with public use that is appropriate with the permission granted. Subdivision (f) thus makes it *more difficult* for an owner of coastal property to protect his or her interest in the property than the owner of non-coastal property.

However one looks at Section 1009, there is nothing in the statute, and nothing in the *Gion-Dietz* decision, expressly or necessarily eliminating implied dedication of roads.

4. The Court of Appeal's Reading of Section 1009 Results in a Major Departure from Long-Standing Law Without A Clear Expression of Legislative Intent Supporting That Departure

Interpreting Section 1009 to repeal the law of implied dedication would be a major departure from long-standing law without a clear expression of legislative intend to do so. Cases on implied dedication of roads date back at least to the late nineteenth and early twentieth centuries in California. (*Schwerdtle v. County of Placer* (1895) 108 Cal. 589; *Hartley v. Vermillion* (1903) 141 Cal. 339; *Venice v. Short Line Beach Co.* (1919) 180 Cal. 447.) The Legislature should not be presumed to overthrow long-standing principles of law unless such intention is made clear either by express declaration or by necessary implication. (*Theodor v. Superior Court* (1972) 8 Cal.3d 77, 92; *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149-50.) There is no clear expression of legislative intent to completely repeal the law of implied dedication. Further, nothing in the case law or events following

adoption of Section 1009 indicates repeal of the law of implied dedication must necessarily be implied.

5. The Legislature Has Not Responded to the Authorities Applying Section 1009 Only to Recreational Use by Amending the Statute

Cases regarding the application of Section 1009 to roads have focused on the recreational versus non-recreational use issue rather than addressing the related question whether roads – which may or may not be a recreational use – are a use affected by that section. Prior published cases, however, conclude, one way or another, implied dedication of roads is not prevented by Section 1009.

In *Burch v. Gombos* (2000) 82 Cal.App.4th 352, 356, n. 1, 361, n. 12, and *Friends of the Trails v. Blasius* (2000) 78 Cal.App.4th 810, 817, the court concluded use of a road prior to the effective date of Section 1009 had resulted in implied dedication. Because Section 1009 applied prospectively only, the court found it unnecessary to consider the statute.

In *Hanshaw v. Long Valley Road Ass'n* (2004) 116 Cal.App.4th 471, 475, 482, there was an explicit dedication of a road, and the court concluded use of the road constituted acceptance of the dedication, even though the use began *after* the effective date of Section 1009. The court found Section 1009 inapplicable because the road use was not a recreational use.

Civil Code Section 1009 involves the inability to establish a public road by *public recreational uses* of

private property. . . . [T]hat statute was enacted to limit the scope of *Gion* . . . which had found an implied dedication of shoreline access for recreational purposes . . . [T]he purpose of the statute is to allow owners to open land for *recreational use* without fear of losing land due to public user. [There are no cases cited] construing Civil Code Section 1009 as applying to nonrecreational use of land.

(*Id.*, at pp. 484-485 [italics in original].)

The *Hanshaw* court went on to conclude "Civil Code Section 1009 — which allows a landowner to open land for public recreational use without fear of an implied dedication finding — *has no application to nonrecreational use of land.*" [Emphasis added.] (*Id.*, at 474.)

A third published decision follows the same route as *Hanshaw*.

> The statute "must be given a reasonable and commonsense interpretation consistent with the apparent purpose and intention of the Legislature, practical rather than technical in nature, and which, when applied, will result in wise policy rather than mischief or absurdity." (*Beaty v. Imperial Irrigation Dist.* (1986) 186 Cal.App.3d 897, 902.) [¶] There is no need to interpret the words of Section 1009 in order to ascertain the Legislature's intent because *the Legislature itself in the statute expressly stated its intent, i.e., to encourage land owners to allow their land to be used for recreational purposes* without having to

> worry about members of the public obtaining an interest in the property as a result of that use. The statute effectuates this purpose by providing that no recreational use of private property "shall ever ripen to confer upon the public ... a vested right to continue to make such use permanently" unless the property owner dedicates the land to public use and the dedication of property is accepted by the government.

(*Bustillos v. Murphy* (2006) 96 Cal.App.4th 1277, 1280-1281 [emphasis added]; see also *Pulido v. Pereira* (2015) 234 Cal.App.4th 1246, 1252-1253, citing *Bustillos* on the limitation of Section 1009 to recreational use, but concluding the statute was inapplicable because the plaintiff was seeking a prescriptive easement.)

In addition to *Hanshaw* and *Bustillos,* there are two cases in which one would have expected Section 1009 to have been an issue, even if only to note its impact is prospective only, but the statute was never mentioned.

In *Hays v. Vanek* (1989) 217 Cal.App.3d 271, the court of appeal found use of the road by residents of the subdivision and their visitors was sufficient to establish public acceptance of the offer of dedication. (*Id.* at pp. 277, 283.) *Hays* cites *Gion-Dietz,* but does not mention Section 1009, probably because the use of the road predated Section 1009. (*Id.* at p. 281.) As in the case now before this Court, the use of the road in *Hays* predated the issuance of land patents and involved

allegedly incomplete dedication through a subdivision process. The use of the road was not recreational. (*Id.* at pp. 276-278, 280-282.) Arguably, the lengthy historical use of the road prior to 1972 made it unnecessary to consider Section 1009.

However, in *Biagini v. Beckham* (2008) 163 Cal.App.4th 1000, the question was whether the road in question had been impliedly dedicated to public use or whether private express easements controlled the outcome. The period of use was after the effective date of Section 1009 and the use was not recreational. The court of appeal concluded the use of the road was consistent with private express easements, but was not sufficient to establish an implied dedication. Nevertheless, the court of appeal analyzed the implied dedication issue rather than dismissing the issue on the basis of Section 1009. (*Id.* at pp. 1009-1011.)

The Legislature is presumed to be aware of these judicial opinions addressing the scope and impact of Section 1009 extending back over a period of approximately fifteen years prior to the decision of the court of appeal in this case. Yet the Legislature has taken no action to correct what Defendants contend is a misinterpretation of the statute. Based on the language of Section 1009, which does not clearly indicate the Legislature intended to overthrow the longstanding law on implied dedication, the only plausible conclusion is the law of implied dedication survives today with respect to roads used for non-recreational purposes.

B. The Trial Court Judgment Should be Reinstated

The most fundamental rule of appellate review is that an appealed judgment or order is presumed to be correct. (*Denham v. Super.Ct. (Marsh & Kidder)* (1970) 2 Cal.3d 557, 564; *Cahill v. San Diego Gas & Elec. Co.* (2011) 194 Cal.App.4th 939, 956.) The court of appeal was required to view the record in the light most favorable to the respondent and to resolve all evidentiary conflicts and indulge all reasonable inferences in support of the judgment. (*Leung v. Verdugo Hills Hosp.* (2012) 55 Cal.4th 291, 308; *Le v. Pham* (2010) 180 Cal.App.4th 1201, 1205-1206.)

Whether there is "substantial evidence" is *not* a question of whether there is "substantial conflict" in the evidence, as there clearly was in this case, but, rather, whether the record as a whole demonstrates substantial evidence in support of the appealed judgment or order. (*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053; *Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874.) In applying the substantial evidence test, the appellate court must affirm even if the reviewing justices personally would have ruled differently had they presided over the trial proceedings, and even if other substantial evidence would have supported a different result. Stated another way, when there is substantial evidence in support of the trial court's decision, the reviewing court has no power to substitute its deductions. (*Ibid.* at p. 874; *Rupf v. Yan* (2000) 85 Cal.App.4th 411, 429-430, fn. 5.)

In addition, the appellate court must not re-weigh evidence or re-determine credibility of witnesses. (*Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 925-26; *Johnson v. Pratt & Whitney Canada, Inc.* (1994) 28 Cal.App.4th 613, 622-623.) The testimony of a single credible witness—even if a party to the action—may constitute "substantial evidence." (*In re Marriage of Mix* (1975) 14 Cal.3d 604, 614; *Greenwich S.F., LLC v. Wong* (2010) 190 Cal.App.4th 739, 767-768.) These rules apply with equal force when the trial court, in a nonjury trial, rendered a statement of decision. (*In re Marriage of Davenport* (2011) 194 Cal.App.4th 1507, 1531.)

In this case, the court of appeal did not follow these rules of appellate review, did not draw inferences supporting affirmance of the judgment, and reweighed the evidence. The most glaring example of the court of appeal's reweighing of the evidence pertains to testimony regarding use of the roads by Plaintiffs and others.

Plaintiffs testified regarding their use of the roads in question, which predated their purchase of the Scher Property, and the frequency of that use after their purchase of the Scher Property. There was testimony from the Defendants and others that they had not seen Plaintiffs driving on the roads, which some of the witnesses attempted to support with testimony regarding the visibility of the roads from their property or their vigilance in policing the use of the roads. Some of the Defendants testified they did not believe the testimony given by Plaintiffs regarding their use of the roads. There was also testimony

regarding the use of the roads by persons who did not live in the area. The trial court, in concluding the roads had been impliedly dedicated to public use, inherently had to have found credible and accepted the testimony regarding the use of the roads by Mr. Scher, Ms. McAllister and others. Out of this thicket of conflicting evidence, the court of appeal chose to believe, in effect, the testimony of Defendants who said the testimony of Plaintiffs was not credible. (Slip Op. at 43.) In doing so, the court of appeal improperly made a credibility determination different from that of the trial court.

The court of appeal also viewed Plaintiffs use of the roads in question as a matter of convenience, despite the evidence there is no other safe, secure, and viable route. (Slip Op. 45; Section III.E. above.)

Despite having erroneously concluded Section 1009 completely did away with the law of implied dedication, the court of appeal went on to discuss the evidence related to implied dedication. (Slip Op. 33-37.) Not surprisingly, given the court of appeal's failure to adhere to principles of appellate review, the court of appeal erroneously found there was no substantial evidence to support a finding the roads had been impliedly dedicated to public use. This conclusion is wrong, contrary to the record, and, with regard to the public road theories, the judgment of the trial court, which had the opportunity to assess the credibility of the witnesses and resolved the conflicts in the evidence, must be reinstated.

1. Substantial Evidence Supports Implied in Law Dedication.

An implied in law offer of dedication can be found where public use of a roadway continues for more than the period of prescription, which is five years in California, irrespective of the intent to offer or not to offer which may be deduced from the acts or omissions of the owner. *(County of Los Angeles v. Berk* (1980) 26 Cal.3d 201, 214.) Here, the trial court properly found an implied in law dedication over both Henry Ridge Motorway and Gold Stone Road over Defendants' properties as a result of use of the roads by Plaintiffs, and by Defendants (including use prior to their purchase of their properties), and by non-parties passing through or spending time in the area for various reasons. This evidence is discussed in Section III.C. above.

The court of appeal dismissed this evidence by saying "it does not begin to describe the number and variety of use that *Gion* and *Blasius* required to find an implied dedication to public use." (slip Op. at 33.) But the use of the roads is consistent with their nature and location. This is a semi-rural residential neighborhood. It is not a thruway or a commercial street.

There is no requirement for an exact number of people who must use a road in order for it to be dedicated by use. Consistent with the semi-rural residential environment of the roads, the people using the roads were people who are considering buying property in the neighborhood (including several of the defendants), the people

who live in the neighborhood, their friends and tenants, their employees, construction workers, the postal service, delivery drivers. While the people using the road may have had a known destination, to reach that destination, they had to cross other properties, and did so without regard to whether they had the permission of the property owner. As to the person whose property is being crossed, the other persons using the roads are "the public."

Use by the public need not be a flood to establish the public character of the road. In *Hays v. Vanek*, use by persons entering the area to view property they were considering purchasing, and use by residents and their visitors, was found to be enough to result in an implied dedication. (*Hays v. Vanek, supra,* 217 Cal.App.3d 271, 277-278.) Here, there is evidence of use for those purposes, and more.

2. Substantial Evidence Supports Implied in Fact Dedication

An implied in fact dedication involves an offer to dedicate made by an explicit act of the landowner such as recording a map showing streets or trails to be dedicated to public use. (See *Union Transp. Co. v. Sacramento County* (1954) 42 Cal.2d 235, 240.) "An offer to dedicate private property to public use may be shown by the sale of lots with reference to a map that indicates that streets or other areas will be devoted to public use." (10 Miller & Starr, *Cal. Real Estate* (3d Ed. 2001) Deeds, § 26:6, p. 15.) If a map is recorded

which complies with the Subdivision Map Act, there is a statutory offer of dedication of the property shown on the map for use by the public. (See *McKinney v. Ruderman* (1962) 203 Cal.App.2d 109, 115 ["The filing of a subdivision map delineating a street thereon is an offer to dedicate the land identified by such delineation to street purposes."])

Here, there was substantial evidence presented at trial to prove an implied in fact dedication of both Henry Ridge Motorway and Gold Stone Road. (See Sections III.B. and C., above.) The trial court properly focused on the term "dedicated roads" contained within the 1970 Declarations and Grants of Easements. "'[D]edicate' is a term of art with a particularized meaning. [Citation.] It is highly unlikely [the grantor] would have used the word in the . . . deed had he not intended the road to be a public road." *(Hays v. Vanek* (1989) 217 Cal.App.3d 271, 282; see also *Palos Verdes Corp. v. Housing Authority* (1962) 202 Cal.App. 827, 835.)

The 1968 Declaration and Grant of Easements showed the subdivider's intention to dedicate Henry Ridge Motorway and Gold Stone Road, as the 1968 Declaration and Grant of Easement depicted the subject roads to be dedicated as physically laid out on the ground. Significantly, the map attached to the 1968 Declaration and Grant of Easements noted specifically the connection of Gold Stone Road to the portion of the road over the Burke Property created in the

recorded 1949 Grant Deed of Roadway, which is the only access between the subdivided parcel and Greenleaf Canyon Road.

The Subdivision Ordinance of Los Angeles County in effect when the subdivisions were being done in 1968 and 1970 required the subdivider to provide access to the subdivided properties from a public street. The trial court interpreted the existence of Henry Ridge Motorway and Gold Stone Road to signify those roadways intended to connect to Greenleaf Canyon Road, thus creating a network of roads for the development of those particular parcels of land, their sale to the predecessors of the Defendants in this action, and the use by the public to access Henry Ridge Motorway and Gold Stone Road from Greenleaf Canyon Road. The existence and use by the public of these roads as a prerequisite to development of the area demonstrated the requisite intention to dedicate the roads.

An offer to dedicate must be accepted by the public either expressly by formal governmental action, or impliedly, by public use. *(Hays v. Vanek, supra,* 217 Cal.App.3d at p. 283.) Acceptance of a dedication may be implied "when a use has been made of the property by the public for such a length of time as will evidence an intention to accept the dedication." (*Biagini v. Beckham, supra,* 163 Cal.App. at p. 1009, citing *County of Inyo v. Given* (1920) 183 Cal. 415, 418; see also *McKinney v. Ruderman, supra,* 203 Cal.App.2d at p. 115.) The Statement of Decision supported its findings with material facts, and specifically found the implied dedication had

been accepted by use prior to Defendants' efforts to block the roads. (6 CT 1217-1220.) The voluminous trial testimony contains more than sufficient evidence of public use.

VII.

CONCLUSION

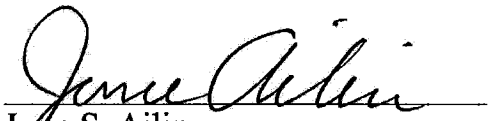
Civil Code section 1009 did not repeal the law of implied dedication with respect to roads for non-recreational use. Further, substantial evidence in the record supports the judgment finding Henry Ridge Motorway and Gold Stone Road are public roads by virtue of the use of those roads by the public. Accordingly, the opinion of the court of appeal must be reversed and the trial court judgment must be reinstated. Let Jaime and Jane go home.

DATED: March 14, 2016 ALESHIRE & WYNDER, LLP
JUNE S. AILIN

By: 
JUNE S. AILIN
Attorneys for Plaintiffs, Appellants and Respondents JAIME A. SCHER and JANE McALLISTER

CERTIFICATE OF WORD COUNT

I certify pursuant to Rule 8.204(c) of the California Rules of Court, the attached Opening Brief on the Merits was produced on a computer and contains 13,816 words, excluding cover pages, tables of contents and authorities and signature lines, as counted by the Microsoft Word 2010 word-processing program used to generate the Opening Brief on the Merits.



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At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 2361 Rosecrans Ave., Suite 475, El Segundo, CA 90245.

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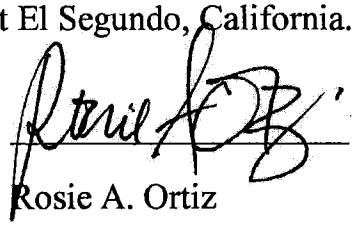

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