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Engineering • Surveying • Planning

The View from Andy's Desk

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November 17, 2015-Andrew R. Cassano is a City/Regional Planner and Professional Land Surveyor with 46 years of experience in Northern California. He is CEO of Nevada City Engineering, Inc., a firm offering regional planning and permitting, land surveying, and civil engineering consulting to the private and public sector since 1978.

Access Rights (and Wrongs)

Friends of a friend bought some land a while back. It was in a beautiful spot in the Sierra near one of the dwindling several hundred acre ranches. They did the normal due diligence, reviewing their title report and doing their best to understand everything about the property. There was a small dirt road crossing the property but the title report confirmed that there were no easements for others in that location. Sometime after closing escrow, they decided to install a gate on the little road. The gate quickly triggered a visit from the adjoining rancher, who explained that his family had access rights over the road to perform routine ranch and livestock maintenance. In fact, their family had owned the ranch since receiving original government patent deeds in the 1800's.

OK, I confess that I don't know exactly how that turned out, but my money is on the rancher. It appears that they enjoyed "prescriptive access rights." These rights are also referred to as "right by use." Like "adverse possession," this is a way that one landowner can effectively create an easement by using a route continually for a prescribed time frame. In most cases, prescriptive rights are simply accepted by mutual consent of the underlying land owner and the road or utility user. This is always best, when neighbors can work it out in a way that is friendly and easy.

But prescriptive rights exist only in the minds of the parties, until there is either a formal easement deed between the parties, or a court decree settling a disagreement. If you are on either end of a prescriptive access dispute, check with the title company that handled your escrow. Your title insurance might help you either assert your prescriptive rights or to defend you against claims.

Matters pertaining to prescriptive access often benefit from a legal consultation, where an attorney experienced in such matters can offer practical advice and odds of success in litigation. Prescriptive easement users might benefit from documenting their use and a few photos on the road. Land owners might benefit from posting signs prescribed by your attorney that declare that "permission to pass is revocable at any time." This could be a controversial step, though, that will bring a reaction similar to putting up a gate. Closing the road periodically to assert control over the road might also be suggested.

As land surveyors, we can assist prescriptive access situations by surveying the location and limits of access or other prescriptive or contested use areas. We can prepare easement grant deeds and easement quit-claim deeds and work with your legal counsel and title company to suggest agreements to accompany such arrangements. Perhaps there should be a maintenance agreement that will allow for equitable sharing of road, drainage upkeep, and erosion control. Maybe an easement deed needs a restriction that limits future use to a single family home or includes some other usage limits.

As civil engineers, we can design improvements to road beds or other routes to improve safety, drainage, buffering, or surfacing. Designing and implementing a realignment might also be an option, accompanied by quit-claiming the old route rights and granting the new route easement. We prepare grading plans and assist with permit processing, if such permits are needed.

So parting advice: consider coming to an agreement with your neighbor and consider memorializing your arrangements with documents that will put the agreement on record. Future generations will thank you.