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March 31, 2022

To Whom It May Concern:

This letter explains why the historic "patent easement" on the Timber Sky Block Plat should not affect processing and final plat approval.

In the 1920's, U.S. Route 66 was designated as one of the first transcontinental federal highways. The route was fully paved in the 1930s and became a vital and famous transportation corridor. At that time, the entire area west of Flagstaff (Section 19) was located in the National Forest.

As part of a program to consolidate Forest Service lands, the United States and State of Arizona agreed to a huge land exchange in 1944. As part of that exchange, the United States issued patent No. 1118508 to the State of Arizona. That patent, which covered over 6800 acres, reserved to the United States a "right-of-way for Transcontinental Highway No. 66." The patent did not use the word "easement," but that term best describes the intent of the reservation.

It is critical to understand the odd geography of parcels covered by the patent easement. The easement did not try to duplicate or even contain the route that was already occupied by Route 66 at that time. To the contrary, the patent easement specified five large rectangular parcels with a total area of 115 acres (2 x 40 acres; 1 x 20 acres; 1 x 10 acres; 1 x 5 acres). Three of these five parcels contained segments of Route 66, as well as surrounding area. For example, one 40-acre parcel extended a quarter-mile north of Route 66, while another 40-acre parcel extended south of Route 66. Two of the five parcels, including the one here, were not located near Route 66. Because the five parcels specified were scattered and disconnected, it is clear that the easement was not intended to create a different or substitute right-of-way for Route 66.

In any event, Route 66 has not existed for almost 37 years. The last remaining segment was decertified on June 27, 1985. The road currently signed as "Historic Route 66" has no federal status.

The City has expressed hesitation to approve a final plat of single-family homes on land that falls within this reservation. This is erroneous for three reasons.

First, the patent did not reserve an easement on behalf of the State of Arizona. Indeed, because the patent was issued *to* the State of Arizona, it would have been logically impossible for the patent to reserve an easement in favor of the State of Arizona—impossible because one cannot own an easement in one’s own land. The only owner of this easement (if it still exists) is the United States.

Second, the City of Flagstaff has previously approved final plats, containing hundreds of single-family homes, that were subject to this same easement. The easement applied to 40-acre parcels of what is now private land north and south of old Route 66. This includes a large portion of Presidio in the Pines, Railroad Springs, as well as Wildwood Hills Mobile Home Park, and the manufactured homes on Zepher Ave and Rock Island Ave. The City had no problem with previous plat approvals.

Third, federal case law suggests that the the easement has expired. The easement was created for the specific purpose of “Transcontinental Highway No. 66.” When an easement is created for a specific purpose, the easement terminates when that purpose no longer exists. Bruce & Ely, *The Law of Easements and Licenses in Land* § 1.08 (cataloging cases where highway easements terminated after highway no longer existed). The U.S. Supreme Court explained that old patent easements can disappear in *Marvin B. Brandt Revocable Trust v. United States*, 572 U.S. 93 (2014) (holding that it was “well settled as a matter of property law” that easements can terminate when they “cease to be used.” Citing Restatement (Third) of Property section 1.2(1)).

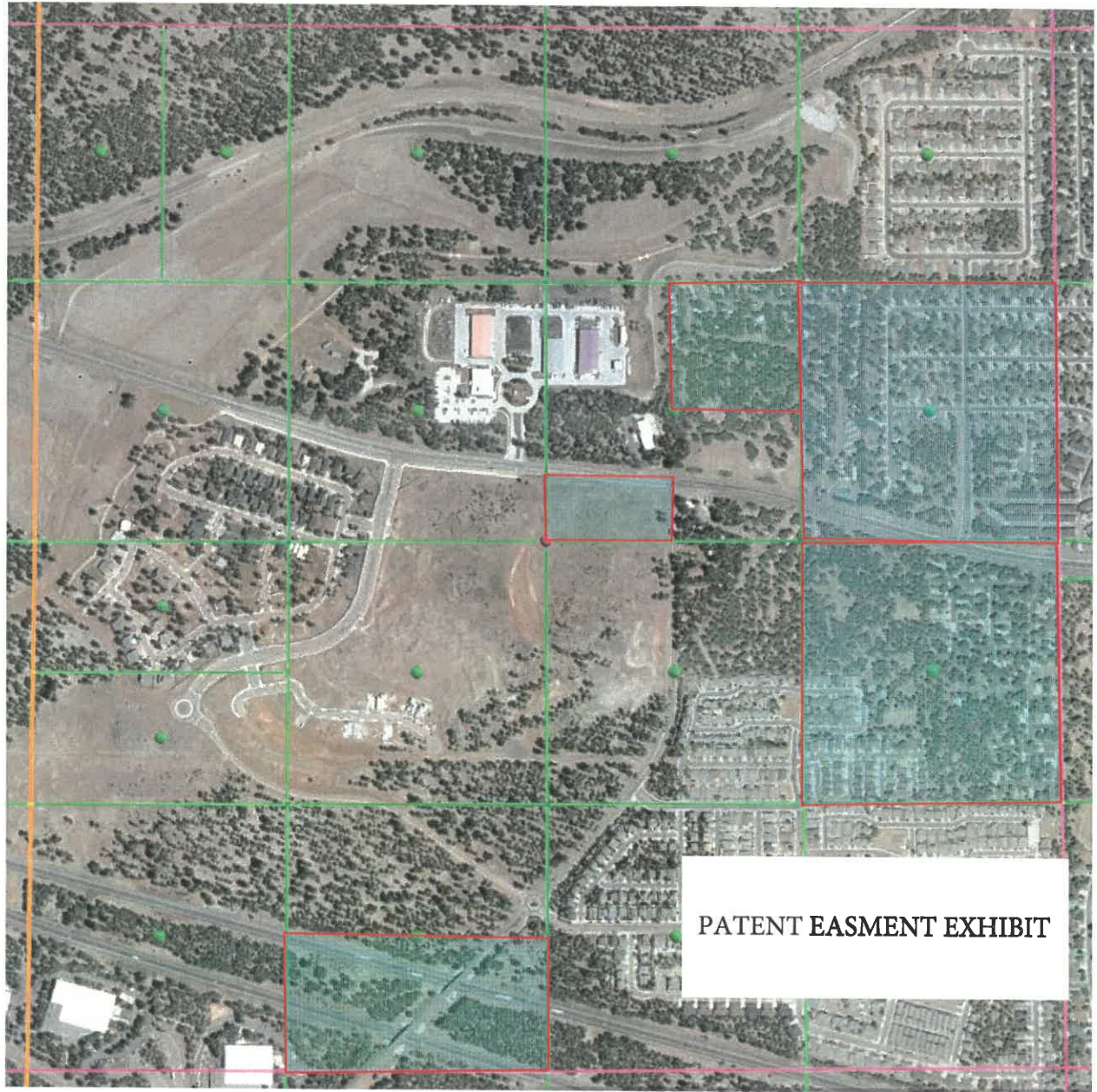
In sum, it is inconceivable that the United States would appear and try to enforce this 80-year-old “Route 66” easement.

Very truly yours,

GAMMAGE & BURNHAM

By  
Cameron C. Artigue

CCA/



**PATENT EASMENT EXHIBIT**

