IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SHINGLE SPRINGS RANCHERIA,
Plaintiff,

v.

GRASSY RUN COMMUNITY SERVICES DISTRICT, et al.,
Defendants.

GRASSY RUN COMMUNITY SERVICES DISTRICT,
Counterclaimant and Cross-Claimant,

v.

SHINGLE SPRINGS RANCHERIA, et al.,
Counterdefendants and Cross-Defendants.

CIV-S-96-1414 DFL JFM

MEMORANDUM OF OPINION AND ORDER

Shingle Springs Rancheria is a landlocked 160-acre parcel of land in El Dorado County held in trust by the Bureau of Indian Affairs for the Miwok Indians. The Rancheria is surrounded by the Grassy Run subdivision, a residential community. Road access to the Rancheria requires use of the residential roads constructed for the Grassy Run subdivision. The subdivision roads are narrow asphalt roads without a

shoulder that wend among the residents' homes, through the changing rural terrain of the subdivision. Because plaintiff Shingle Springs Rancheria is constructing a gaming casino at the Rancheria, the Grassy Run roads have become the subject of heated local controversy. Concerned about heavy traffic on neighborhood roads, the residents of Grassy Run argue that the roads through Grassy Run are private. The Rancheria contends that the roads are public because defendant Grassy Run Community Services District ("the District") maintains the roads, and because members of the public may drive on the roads. The parties now move for summary judgment on this issue. The District also requests a preliminary injunction.[1]

I.

The facts are largely undisputed. The Rancheria was formed in 1920, but remained largely unoccupied until the 1970s. Grassy Run was created by a series of four-by-four lot splits

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[1] In the complaint, which was filed on August 1, 1996, the Rancheria alleges that the District is unlawfully restricting the Rancheria's right to use the roads within the District's jurisdiction. The Rancheria alleges that its federal constitutional procedural and substantive due process rights are being violated by the District. In addition to its claims under 42 U.S.C. § 1983, plaintiff requests that the court enjoin the District from interfering with the Rancheria's right to travel freely on the Grassy Run roads, and that the court declare that the roads within the District are public roads and that the District cannot deny access to commercial vehicles traveling along the Grassy Run roads. On October 23, 1996, the District filed counter- and cross-claims. The District requests that the court declare that the Grassy Run roads are private roads, that the District has the authority to regulate the use of the roads, and that the residents of the District have the authority to regulate the use of the roads. The District also alleges that the Rancheria is overburdening its easement and trespassing on the lands within the District's jurisdiction.

beginning in 1974.[2] The original owners of the Grassy Run property, Mr. and Mrs. Marlon Ginney ("Ginney"), created a Homeowners' Association on May 29, 1974. In 1976, the United States Department of the Interior, Bureau of Indian Affairs ("BIA") agreed to an exchange of easements with Ginney. Ginney delivered a "Contract and Grant of Easement" to the BIA granting a public easement of access to the Rancheria over Grassy Run roads. In return, the BIA granted Ginney and the residents of Grassy Run a public easement of access over the Rancheria roads. From 1977 until 1981, the BIA performed occasional maintenance work on the Grassy Run roads.

The parties agree that the Ginney easement was invalid because Ginney had no authority to make the grant. Under the Covenants and Restrictions of the Homeowners' Association, dedications of common areas of the property could only be effective if contained in a recorded written instrument signed by members of the Association entitled to cast three-fourths of the vote of the membership. See Defs.' Request for Judicial Notice Ex. 1. In June 1981, the Association declared the public easement invalid but recorded an express easement granting the Rancheria the private right to use the Grassy Run roads.[3] In

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[2] Accordingly, the provisions of the Subdivision Map Act, Cal. Gov't Code §§ 66410 et seq., do not apply to Grassy Run. A subdivision map is required for all subdivisions creating five or more parcels. Id. § 66426.

[3] The June 1, 1981 Notice of Invalid Contract and Grant of Easement provides in pertinent part:

> The Association hereby declares that no portion of its road network is or ever has been a public right of way. Although the Contract asserts that a public right of way would be created over the roadways granted to the United States by the

March 1982, the BIA concluded that the June 1981 Grant of Easement gave the Rancheria "only a non-exclusive right to the use of the roadway" and that "while neither the members of the homeowners association nor those people entitled to use or reside in the Shingle Springs Rancheria can in any way interfere with each other's use of the roadway, the road is not open for use by the general public." Defs.' Request for Judicial Notice Ex. 110 at 2. The BIA concluded that because the roads were not public roads, it was no longer authorized to spend monies to help maintain the Grassy Run roads. Id.

At the same time that the BIA determined that it would no longer contribute to the maintenance of the Grassy Run roads, the Grassy Run Homeowners' Association was encountering difficulties in collecting its annual road maintenance assessments from property owners. To better collect the assessments, the Association petitioned the El Dorado County Local Agency Formation Commission ("LAFCO") to form a Community

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> [the Ginneys], this action is without legal foundation and therefore invalid . . . .
> Whereas the Association does not desire to convey any portion of its private road network to any public agency for the use by the public, and through its Board of Directors has the right to "control traffic on the private road network," . . . the public is given notice that all roadways within the boundaries of the Association are private properties and trespassing upon them is unlawful.
> However, recognizing that the United States acted in good faith and with proper authority in consumating [sic] the Contract, the Association through its Board of Directors grants an easement to the United States solely to the benefit of the Miwok Tribe for the use of the private road network beginning at Grassy Run Road to Rolling Rock Road to Reservation Road to the boundaries of the Shingle Springs Rancheria. This grant of use is subject to posted traffic controls.

Defs.' Request for Judicial Notice Ex. 11.

Services District for road maintenance purposes.[4] Such a district would have the power to collect assessments as part of the County's annual property tax billing. Babbitt Decl. ¶ 5. On October 7, 1982 the LAFCO approved the petition to form the Grassy Run Community Service District ("CSD"). Defs.' Request for Judicial Notice Ex. 62, 64. On December 28, 1982, the Governing Board of the LAFCO certified that it had adopted the resolution ordering the formation of the Grassy Run CSD. Id. Ex. 65. Also on December 28, 1982, the El Dorado County Board of Supervisors passed Resolution 340-82 approving the formation of the Grassy Run CSD. Id. Resolution 340-82 states that the CSD was formed for the purposes of "opening, widening, extending, straightening, and surfacing, in whole or part, . . . any street in such district as authorized in subdivision (j) of Section 61600 of the Government Code and the construction and improvement of bridges . . . as authorized in subdivision (k) of Section 61600 of the Government Code." Id. Beginning with fiscal year 1983, the District received ad valorem property taxes as a portion of its funding.[5] The District has maintained the Grassy Run roads from 1983 until the present day. Since 1983, the District has continued to receive a portion of the ad

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[4] A district is defined as "an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries." Id. § 56036 (West Supp. 1997). A community services district is a district of limited power. See Cal. Gov't Code § 56037 (West. Supp. 1997).

[5] Cal. Rev. & Tax code § 2202: "Ad valorem property taxation means any source of revenue derived from applying a property tax rule to the assessed value of the property."

valorem property tax attributable to property in the District; a share of revenues paid to the County by the State based on the homeowner's exemption; and a special annual assessment of $150 collected by the County from owners of each lot of at least five acres within the District.[6]

II.

A property owner may dedicate private property to public use. The Rancheria contends that by creating a public agency and accepting public monies in connection with the maintenance of the Grassy Run roads, the Grassy Run property owners dedicated the roads to public use under the common law doctrine of implied dedication. The District argues that the implied dedication doctrine is irrelevant because the Rancheria's claim of public access is governed by California Civil Code Section 1009, which expressly supersedes the common law of implied dedication. The Rancheria contends that § 1009 applies only to property used for recreational purposes and therefore does not apply here.[7]

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[6] At oral argument, counsel agreed that approximately 70 percent ($20,000) of the funds collected each year are from the special assessment on property owners, while only 30 percent ($9,000) are from the ad valorem taxes.

[7] Section 1009 provides in full:

(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:

The California legislature enacted § 1009 in reaction to the California Supreme Court's decision in Gion v. City of Santa Cruz holding that owners of beachfront property dedicated their beach property to public use simply by permitting continuous, unimpeded use by members of the general public. Section 1009 prohibits, in all but limited circumstances, an implied dedication through public use alone.[8] The legislature's

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(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.

[8] It appears that no court has addressed whether section 1009 applies to all property or just to property used for recreational purposes.

Section 1009 applies only prospectively to dedications of property that occurred after its effective date. No California court has applied § 1009 because in each case since 1971 involving implied dedication, the public right to use the property vested before 1971. See, e.g., Bess v. County of Humboldt, 5 Cal. Rptr. 2d 399, 402 n.3 (Cal. App. 1992) ("Civil Code sections 813 and 1009 now provide, essentially, that an implied dedication does not arise simply because of permissive use. These statutes, however are to be applied only prospectively and cannot affect any rights which vested prior to 1971. The rights at issue here vested in the 1930s.").

purpose, as stated in subsection (a) of the statute, was to encourage owners of private property to make their lands available for public recreational use by removing the possibility that such use could cloud or diminish title by creating vested rights of public access.

While the purpose of the legislature was directed to access to private property for public recreational use, the language of the statute is not so limited. Indeed, the plain language of § 1009 prohibits the implied dedication of any property to public use regardless of whether the public is using the property for recreational, commercial, or other purposes. None of the operative sections of the statute is limited to property used for recreational purposes. Subsection (b) of the statute states that "no use" of "any particular property . . . 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 a written offer of dedication. Cal. Civ. Code § 1009(b). Subsection (d) addresses the situation "[w]here a governmental entity is using private lands by an expenditure of public funds on visible improvements." In these circumstances a public right of access to use the property, vested in the government body, may be created. Such public use would include "any public use reasonably related" to the purposes of the publicly funded improvements. None of this language is expressly or impliedly limited to expenditures or usage related to recreation. Similarly, subsections (e) and (f), relating to coastal property, are not limited to public use for recreational

purposes. Subsection (e) provides that an implied right of access may arise as to defined coastal property, and subsection (f) limits such an implied right of access so that "no use" by the public shall confer public rights of access if the coastal property owner posts certain signs. Neither of these subsections limits its application to public use of the coast for recreational purposes. Thus, if the public were to use a section of coastline as a fishing area and were to create a community fishmarket there, the property would become public after five years so long as the owner failed to take the measures prescribed in subsections (f) and (g).

Furthermore, had the legislature intended § 1009 to apply only to property used for recreational purposes, it surely would have included a definition of recreational use. The term "recreational use" is not self-defining. It could include driving on country roads to look at the countryside, take the air, go to a roadside fruit stand, or go to a recreational business, such as an amusement park or casino. Almost any activity may fairly be described as recreational.[9] The court would be engaged in legislation were it to try to define "recreational use" and then impose such a limitation on § 1009 when the legislature neither attempted to define "recreational use" nor provided any standards by which a definition might be

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[9] For example, is the public's use of a boardwalk along a beach "recreational" or "commercial" if many of the people are walking along the boardwalk in order to shop at the stores lining the boardwalk? Is the public's use of a roadway to drive to a casino recreational or commercial? From the casino patron's point of view, the use is probably recreational, while from the casino owner's point of view, the use is commercial.

drafted. The absence of any limiting language in the operative subsections of § 1009 coupled with the absence of any definition of recreational use is a clear indication that the statutory language was not intended to be limited to implied dedications based on public recreational use. In short, because the plain language of § 1009 contains no limitations on its application to a particular kind of public use, the court will not imply any such limitation.[10]

Under § 1009 the Grassy Run roads remain private. Section 1009(d) permits a limited implied dedication of property to public use where a governmental entity expends public funds on "visible improvements on or across [private lands] or on the cleaning or maintenance related to the public use of such lands in a manner so that the owner knows or should know that the public is making such use of his land" for five years without the owner either granting express permission to continue or taking steps to prohibit such use. Id. § 1009(d). If the governmental activity and improvements or "any public use reasonably related to the purposes of such improvement" continue unimpeded for five years, such use, "shall . . . ripen to confer upon the governmental entity a vested right to continue such use." Id. Thus, even if the Rancheria were to prove that the homeowners in Grassy Run accepted the District's maintenance of

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[10] Additionally, the fact that no other statute regarding the dedication of property limits its application to property used for a specific purpose suggests that § 1009 is not limited to property used for recreational purposes. See Cal. Civ. Code § 1008; Cal. Civ. Code § 813; Cal. Gov't Code § 7050. These other statutes are referenced in § 1009 (b) and (c).

the Grassy Run roads as well as whatever associated public use of the roads occurred as a result, the Rancheria would prove at most that the District has a right to continue maintaining the roads and a right to continue permitting public use of the roads. It would not prove that a right to use the roads had vested in the general public. Aside from the exemption for coastal property contained in subsection (e), § 1009 nowhere permits an implied dedication of property to unlimited use by the general public.

III.

Alternatively, even under the common law doctrine of implied dedication, the Grassy Run roads would remain private. A common law dedication of property to the public can be proved either by showing acquiescence of the owner in use of the land under circumstances that negate the idea that the use is under a license (implied dedication in fact) or by establishing open and continuous use by the public for the prescriptive period (implied dedication in law). Gion v. City of Santa Cruz, 84 Cal. Rptr. 162, 167 (Cal. 1970); see also Union Transp. Co. v. Sacramento County, 42 Cal. 2d 235, 240 (1954). A party alleging implied dedication in fact must prove that the owner intended to dedicate the property to the public. "The question of intent is paramount" and unless such intent "expressly appears" or can be fairly inferred from the acts of the donor, there is no valid dedication." People v. Marin County, 103 Cal. 223, 228 (1894). Whether an owner has made an offer is a question of fact requiring an examination of all the pertinent circumstances.

Hays v. Vanek, 266 Cal. Rptr. 856, 861 (Cal. App. 1989) (citing Flavio v. McKenzie, 32 Cal. Rptr. 535, 537 (Cal. App. 1963)). The party must also prove that the public accepted the owner's offer. "It is not necessary that the acceptance by the public be manifested by any direct action . . . . Such acceptance may be shown by mere use without any formal action in relation thereto by the municipal authorities." City of Venice v. Short Line Beach Land Co., 180 Cal. 447, 450 (1919).

Where a party alleges implied dedication in law, however, direct proof of the owner's intent is not necessary. The party merely needs to prove that the public used the property continuously for at least the previous five years in a manner that indicates that the users thought the property was public. This determination is made by examining the totality of the circumstances. Union Transp. Co., 42 Cal. 2d at 240-41. The party must show that various groups of people used the property, Gion, 84 Cal. Rptr. at 168, and that their use was "substantial." County of Orange v. Chandler-Sherman Corp., 126 Cal. Rptr. 765, 768 (Cal. App. 1976); Aptos Seascape Corp. v. County of Santa Cruz, 188 Cal. Rptr. 191, 201 (Cal. App. 1982). "If only a limited and definable number of persons have used the land, those persons may be able to claim a personal easement but not dedication to the public." Gion, 84 Cal. Rptr. at 168. If the party shows uninterrupted public use for more than five years, the owner's intent to dedicate the property is presumed. The burden then shifts to the owner of the property to "either affirmatively prove the grant of a license to use the property,

or demonstrate a bona fide effort to attempt to prevent public use." Aptos Seascape, 188 Cal. Rptr. at 201.

> Whether an owner's efforts to halt public use are adequate in a particular case will turn on the means the owner uses in relation to the character of the property and the extent of the public use. . . . If the fee owner proves that he has made more than minimal and ineffectual efforts to exclude the public, then the trier of fact must decide whether the owner's activities have been adequate. If the owner has not attempted to halt public use in any significant way, however, it will be held as a matter of law that he intended to dedicate the property.

Gion, 84 Cal. Rptr. at 169.

Neither an implied in fact nor an implied in law dedication occurred on the facts here. There was no implied in law dedication for the reason that the Rancheria has shown no more than intermittent public use for the last five years. The record is notably lacking in any evidence demonstrating substantial public use over the past five years. As to an implied in fact dedication, the circumstances do not support it. The District and the Association never intended to make a public dedication. The clearest demonstration of the Association's intent is the June 1, 1981 Notice of Invalid Contract and Grant of Easement filed by the Association which simultaneously disclaimed any public right of access and granted to the BIA for the Rancheria a private easement. Moreover, the members of the Rancheria understood that the Association had not intended to dedicate the subdivision roads to the public. In an August 15, 1994, letter to the Assistant Secretary of the BIA, the Chair of the Rancheria explained that the 1981 "non-exclusive easement does not provide adequate access to the Rancheria for Tribal members. . . . Any plans the Tribe has for economic or social

development are negated if the public cannot obtain access to the Rancheria. The Tribe does not have public use rights to these roads, and so the Tribe does not have adequate access to the Rancheria." Johnson Decl. Ex. 3 at 2. Finally, the absence of any sustained or substantial public use again is significant in suggesting an absence of intent by the property owners to make a dedication or acceptance of a dedication by the public.

The Rancheria argues that a dedication may be found from the acceptance of public funds by the District, by the very creation of the District, and by the invitation to members of the public to attend District meetings. Even taken together, these factors are not sufficient to find a dedication. Although "[e]vidence that the users looked to a governmental agency for maintenance of the land is significant in establishing an implied dedication to the public,"[11] the Rancheria has pointed to no case finding an implied dedication merely on the basis of such evidence. Similarly, the court is directed to no provision of law that conditions the creation of a community services district on a dedication to the public of the property subject to the district. The fact that the private landowners in the Grassy Run subdivision created a community services district and accepted public monies is not enough to fairly infer an intent to dedicate the roads to public use, especially in the face of the clear statements of the landowners to the contrary and the absence of substantial public use. Cf. Tischauer v. City of

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[11] Gion v. City of Santa Cruz, 84 Cal. Rptr. 162, 168 (Cal. 1970) (citing Washington Boulevard Beach Co. v. City of Los Angeles, 38 Cal. App. 2d 135, 137-38 (1940)).

Newport Beach, 37 Cal. Rptr. 141 (Cal. App. 1964) (finding that entire 40-foot width of avenue had been dedicated to public use because in 1915 the City adopted and recorded an official map declaring the avenue to be an open public street, the City thereafter maintained a six-foot sidewalk along with street lighting facilities, the City did not assess property taxes against the street areas, and because the public used the sidewalk as a public walk); City of Laguna Beach v. Consolidated Mortg. Co., 155 P.2d 844, 849 (Cal. App. 1945) (finding that 14-foot wide strip of land adjacent to ocean had been dedicated to public use because owners had voluntarily built a 14-foot wide wooden boardwalk on the land, thus inviting and encouraging "a continuous use by the public which is inconsistent with any idea that [the use] was intended to be temporary and merely permissive"). Finally, a limited invitation to the public to attend infrequent District meetings does not establish an intent by property owners to make an unrestricted grant of access to members of the public. Nor is there any evidence that members of the public in any substantial number ever attended these meetings.

Thus, even if the court is mistaken as to the application of § 1009, the Rancheria is not entitled to a declaration that the subdivision roads are public under the common law doctrine of implied dedication.

IV.

The Rancheria offers three other arguments that the Grassy Run roads are public roads. None is persuasive. First, the

Rancheria contends that because the District was formed to maintain "streets" within the District's boundaries, the roads must be public. Under California Vehicle Code § 590 a street is defined as "a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel." The El Dorado County Board approved the formation of the District in Resolution 340-82. The Resolution states that the "purposes for which the Grassy Run Community Services District is formed is the opening, widening, extending, straightening, and surfacing, in whole or in part, of any street . . . as authorized in subdivision (j) of Section 61600 of the Government Code."[12] Defs.' Request for Judicial Notice Ex. 65. According to the Rancheria, because the District was formed for the purpose of maintaining "streets," and because "streets" are defined elsewhere as public ways, the roads within the District's boundaries must be public ways. This argument is rather attenuated. Resolution 340-82 adopts almost verbatim the language of Government Code § 61600(j). Neither § 61600(j) nor Resolution 340-82 cross-references the Vehicle Code definition of "street," and it would be quite a leap to find a public dedication merely by the use of a term that is in common use.

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[12] Section 61600 provides in part:
A district formed under this law may exercise the powers hereinafter granted for such of the following purposes as have been designated in the petition for the formation of such district . . . (j) The opening, widening, extending, straightening, surfacing, and maintaining, in whole or part of any street in such district, subject to the consent of the governing body of the county or city in which said improvement is to be made.
Cal. Gov't Code § 61600.

The Rancheria also argues that because the California legislature has granted to certain community services districts the express authority to limit public access to district roads, see Cal. Gov't Code § 61621.8,[13] no such limits can be placed on any other district's roads without a similar grant of authority. The Rancheria misses the point of this code section. The purpose of the legislation, as stated by the Legislature, was to give added authority to a district when the district was itself the owner of the roads. In such a situation, without expanded authority, a district might lack the power to regulate access because such power is not among the enumerated powers in Gov't Code § 61600 et seq. In this case, the District is not the owner of the roads and the ultimate question is whether the property owners can place limitations on public use of the roads. Indeed, by providing authority to limit access to districts when the districts own the roads, the legislation suggests that the same authority already resides in the landowners in districts in which the district is not the owner of the roads. Thus, if anything, the legislation suggests that

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[13] This section provides in relevant part:

(a) This section shall apply only to the Bear Valley Community Services District, the Bell Canyon Community Services District, the Wallace Community Services District, the Lake Sherwood Community Services District, and the Saddle Creek Community Services District, and subdivisions (b) and (d) to the Cameron Estates Community Services District.

(b) Notwithstanding any other provisions of law, in the case of roads which a district owns and which are not formally dedicated to or kept open for use by the public for the purpose of vehicular travel, the district may by ordinance adopt regulation which limit access to and the use of those roads to landowners and residents of the district.

Cal. Gov't Code § 61621.8.

roads maintained by a district retain their private status.

Finally, the Rancheria argues that the roads within the District's boundaries must be public because the California Constitution prohibits gifts of public funds for private purposes. The Rancheria argues that because the District accepted the public funds generated by the ad valorem taxes, the court must find that the roads are public or that the District has violated the California Constitution. The District contends that the County "acted illegally in allocating [the tax funds] to the District." Defs.' Reply at 9 n.11. Whether there has been a State constitutional violation is a question for another day. Even if it is correct that the funds should not have been given to the District, this would not transform the status of the otherwise private roads into public roads.

V.

Defendants request a preliminary injunction. However, it is unclear to the court what the precise terms of such an injunction would be. The court will require further briefing on this request after the parties have had an opportunity to reconsider their positions in light of this opinion.

Accordingly, defendants' motion for partial summary

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judgment is GRANTED and plaintiff's motion for partial summary judgment is DENIED. Defendants' request for injunctive relief is DENIED.

IT IS SO ORDERED.

Dated: 25 April 1997.

David F. Levi

DAVID F. LEVI
United States District Judge