



CASA SERENA
HOMEOWNERS' ASSOCIATION
8708 E Via de Cerro, Scottsdale, AZ 85258
Phone: 480 332 7294 Email: info@casaserenahoa.org

February 17, 2019

To: Board of Casa Serena Homeowners' Association
Prepared by: Paul Anderson
Re: Ownership and Maintenance of Walls in Casa Serena Community

I was asked to investigate the ownership and maintenance responsibilities for the walls in the Casa Serena community. To prepare this report, I attempted to learn as much as possible about the Casa Serena development. I reviewed the historical aerial photos of the area to learn about the progress of the development. I interviewed Chris Campbell, the Operations Manager of McCormick Ranch Property Owners' Association. As much as I was able, I viewed the walls of the community. I looked for the rebar that the recorded plat designates as the corner markers. I could not find any rebar or other markers. I measured the depth of a lot to attempt to determine if the north wall was included in the measured depth; inconclusive given my measurement techniques. I reviewed the CC&R's concerning the common areas of Casa Serena and the defined responsibilities related to common walls. I talked with an Arizona surveyor about the location of the north wall. Bruce Feicht was very helpful with the resources he provided.

Conversation with Chris Campbell (MRPOA)

I asked Chris Campbell, Operations Manager of McCormick Ranch Property Owners' Association, about how to define the responsibilities for maintaining walls between two properties, both inside an HOA as well as walls that are on the border of the HOA. He stated that the CC&R's define the responsibilities for maintaining and repairing walls within an HOA. If a wall separates the property of two homeowners, the CC&R's define them as "party walls" and Chris said that courts define them as "common walls." Within an HOA where the responsibilities are defined in the CC&R's, a party is responsible for maintaining the side of the wall facing the party's property. If the wall is damaged and needs repair, each party is responsible for half of the repair cost unless one party damaged the wall.

We then talked about the responsibilities for maintaining and repairing walls that border the HOA boundary. The answer depends on whether the wall is directly on the border or whether the wall is on one property but not the other. The accurate way to determine if the wall is on the border or on one property is to retain a surveyor to measure the location of the wall. Chris stated that the Arizona courts have ruled that walls that are on the border between the two properties have the responsibilities of both owners to maintain and repair, like the responsibilities of common walls within an HOA. However, if the wall is on one

property, but not the other, it is the owner of the property who has the responsibility to maintain and repair the wall, unless there is an agreement between the property owners that states otherwise. To be enforceable, such an agreement would need to be recorded with the county in the form of an easement.

I described to Chris my view of the historical photos of the development and the photo that shows that the northern wall had apparently been constructed by the Casa Serena developer. I asked whether the construction of the wall by the developer has any bearing as to whether the wall is solely-owned or is a common wall. He again stated that it depends on if the wall was placed on the border or if the wall was placed solely upon the land owned by the developer. He reiterated that only a survey can accurately answer the question.

Based upon Chris's comments, I reviewed the plat plan that was recorded in 1983 with the initial CC&R's. The plat plan designates triangles as the "common corner of this development and adjacent." The plat plan designates small circles as "survey monuments." There are no survey monuments designated on the plat plan along or near the north wall, but the plat plan notes that pieces of rebar were used to show the corners of the plat. I tried to find the rebar ends but was not successful. It would therefore require a survey to prove the wall's location.

Chris stated that it is clear, as is customary, that, upon completion of the development, the developer deeded the ownership of each portion of the wall to the property adjacent to the wall. Unless the plat plan and CC&R's designate an area as a common area, the area is owned by the individual property owners. If the area abuts a wall, the property owner is responsible for maintaining and repairing part or all the wall.

Chris and I talked about the walls on the western side of the property that separate the parcel 28 property from the property to the west. Chris pointed out that there are two properties that adjoin the western side of parcel 28. It appears that these properties were built prior to the construction of the house on parcel 28. I asked Chris about the responsibilities for maintaining and repairing these walls. He stated that if they are on the property line, they are common walls, but if the walls are solely on one side or the other, the property owner has the responsibilities.

Chris and I talked about the drainage and utility easement on the north side of the property. I described the historical photos seemingly showing a ditch to the north of where the north wall was built, but that the ditch has been filled in. I told him about the issues of water damaging the wall because of water seeping through the wall. I told him that I reviewed the McCormick Ranch master plat filing and the MRPOA CC&R's, but I could not find anything specific about this easement. He stated that I should be able to find the description of the easement by looking at the recorded documents pertaining to the parcels to the north of the wall.

I asked if he had any information about the status of this easement. He did not but he thinks that this drainage easement might have been abandoned at the time the parcels to the north were developed. He is not certain, but he suspects that the utility easement remains in place. He thinks that during the period of the development of the business parks, McCormick Ranch, on a hand-shake basis, was willing to abandon the drainage easement to

promote the development of these business parks. I told him that trees had been planted very close to the wall and appear to be damaging the wall. I also said that the lack of a drainage mechanism allowed water to flow through and under the wall. He said that we should express our concerns to the property owners to the north, but MRPOA would not get involved.

Discussion with Surveyor

I talked with John at Arizona Surveyors and explained that I was trying to determine the location of the north wall. The purpose of my call was to see if he could locate the rebar pieces on the northwest and northeast corners of Casa Serena. I told him that we were trying to determine if the north wall was on the homeowners' property, the property of the owners to the north or on the boundary. He said that he might be able to locate the rebar pieces, but he could not validate as a surveyor that they were accurate determinations of the location of the wall. He said that he has seen too many pieces of marker rebar moved or has seen rebar added to facilitate the construction of walls. He said the only way to accurately determine the location of the wall is to conduct a survey. He looked at our plat and said the price for such a survey to determine the location of the north wall would exceed \$2,000. I told him about the historical photos showing that the wall had been constructed as part of the development. He said, based upon his surveying experience, the wall was most likely built on Casa Serena property, not on the boundary and not on the parcels to the north.

Provisions of CC&R's

The CC&R's for Casa Serena describe the common areas and describe the maintenance obligations for common walls. The pertinent sections of the CC&R's are as follows:

Section 1.7. "Common Areas" shall mean all real and personal property conveyed to and owned by the Association for the common use and enjoyment of the Owners, including, but not limited to the following:

Tracts A through E, inclusive, as shown on the Casa Serena Subdivision Plat recorded in Book 250 of Maps, page 10, records of Maricopa County, Arizona; EXCEPT all groundwaters underlying the surface of said land as reserved in instrument recorded in Docket 9601, page 325, records of Maricopa County, Arizona; and shall also include all recreational facilities, pavement, streets,¹ landscaping, pipes, wires, conduits and other public utility lines located thereon and all additions to such areas made by supplementary declaration.

Section 1.13. "Lot" shall mean any plot of land and the improvements therein designated as a Lot upon any recorded subdivision map of the Property including amendment thereto. The platted Lots are referred to collectively herein as "Lots."

¹ I was told that after the property had been developed, the community entered into an agreement with the City of Scottsdale whereby the City maintains and repairs the streets and sidewalks.

Section 5A. Maintenance Obligations of Owners. Every Owner shall maintain in good condition and repair the exterior and interior of its Living Unit and any and all other improvements located on such Owner's Lot, including without limitation, the roof and walls of the Living Unit or any other Structure on the Lot, and any other walls or fences or other improvements of any nature located on such Owner's Lot (emphasis added.) The Declarant, the Association, or the Owners shall have the right to enforce such maintenance obligations by the same remedies and to the same extent as is provided in Section 12.1 below.

Tract A is the Common Area along the street northwest of the entrance, Tract B is the pool area and the area east of the pool, Tract C is the Common Area at the entrance, Tract D is the Common Area south sliver on the east end of the development and Tract E is the Common Area north sliver on the east end. Each of the five tracts is noted on the two-page copy of the recorded plat.

Any portion of the development not designated as a Common Area tract is divided into Lots, each of which is owned by the individual homeowners. Section 5A obligates each homeowner to maintain the walls or fences or other improvements of any nature located on such Owner's Lot.

According to Chris Campbell, Arizona courts have ruled that any common wall, that being a wall on the border between two properties, shall be maintained by each owner on the respective owner's side. Casa Serena has maintained its side of the Common Area walls located in Tracts A through E, the north and south walls by the entrance, the walls east of the pool area and the walls at the east and west ends of McCormick. The lot owners have maintained their sides of these walls.

Included with this report is a two-page plat map that was recorded with Maricopa County as part the initiation of the development. The map was recorded on February 24, 1983. Also included are copies of historical aerial photos taken in 1976, 1979, 1986 and 1996. I obtained these photos from the Maricopa County website for Casa Serena Lot 1-45 TR A-C. <https://gis.maricopa.gov/GIO/HistoricalAerial/index.html>

- The 1976 photo shows the raw land before any development of Casa Serena. I overlaid the area plats and the current street names over the photo. I was told that the dark areas on the aerial photos are shadows behind trees, shrubs, etc. The trees, shrubs, etc. aren't necessarily visible in the photos, only the shadows they created.
- The 1979 photo without the plat lines shows the current street names and shows that the streets had been laid out. This photo also shows a black line along the top. This black line is the shadow created by the wall that had been built along the north side of the property by 1979. There are black lines to the west as well as black lines along the south.
- I included another 1979 photo showing the overlay of the plat and lot lines. It is not clear to me how accurate the placement of these lines is.
- The 1986 photo shows the partial progress of the development of the community.

- The 1996 photo shows essentially the current community.

Maintenance of North Wall

A significant question about the walls in the community is the responsibility for maintaining the wall that borders the north sides of the parcels 15 - 28.

The enclosed historical photos do not provide any definite determination as to whether the north wall is directly on the boundary between the parcels, solely to the north of the Casa Serena lots or solely on the Casa Serena lots.

The CC&R's do not designate a Common Area tract along the north border of the development. If such a tract has been designated along the north side like Tracts D and E are designated on the east side, the HOA would be responsible for maintaining part or all of the north wall. It appears that each property owner of parcels 15 – 28 owns a section of the north wall and is therefore responsible for maintaining at least the south face of the wall. Whether the property owners to the north have the responsibility to maintain the north face of the wall depends on the location of the wall relative the boundary. However, given the evidence we have at this time, especially the opinion of the surveyor, it appears that the wall sets solely upon the property of the owners of parcels 15 - 28.

Maintenance of Entrance Walls

The wall to the north of the entrance (Tract A) and the wall to the south of the entrance have always been maintained by the HOA as common walls. The HOA has maintained the west side of these walls and the homeowners have maintained the east sides of the walls. For reasons known only to the developer, the west end of parcel 29 extends past the wall to the sidewalk. The owner of parcel 29 and the HOA entered into an agreement whereby the HOA maintains the landscaping west of the wall and maintains the west side of the wall consistent with the maintenance of Tract A. The same type of agreement applies to the area to the west of the wall and landscaping on parcel 1.

Maintenance of South Walls

The historical photos show that the community to the south of Casa Serena was developed in the 1970's prior to the development of Casa Serena, Scottsdale Park Villas, book 154, page 12, recorded in 1972. It is difficult to visually observe these southern walls without access to private property. However, it appears from the plat map of Scottsdale Park Villas that there is a five foot strip of land on the northern edge of this community. The five feet strip appears to be a common area of Scottsdale Park Villas. If this wall is on the border between the two properties, the wall separating Casa Serena parcels 1- 5, 7 and 8 from the land to the south could be a common wall with the Scottsdale Park Villas having a common maintenance obligation.

Maintenance at the End of La Luna

Casa Serena has maintained the northern face of the wall at the south of end of Via de La Luna. The street La Luna continues to the south and this street appears to be a common area of Scottsdale Park Villas. It appears that Scottsdale Park Villas has been maintaining the southern face of the wall.

Maintenance of Walls to the East

East Via de McCormick terminates to the east at a wall at which the City Scottsdale is the owner of the property to the east. The wall appears to be on the boundary and Casa Serena has maintained the west face of the wall. It is uncertain whether the City recognizes the responsibility to maintain the eastern face. The area to the east of the wall consists of a drainage area to which access is restricted.

The north-and-south wall south of Via de McCormick is set five feet to the west of the end of Via de McCormick. Likewise, the north-and-south wall north of Via de McCormick is set five feet to the west of the end of Via de McCormick. There are five foot strips of land that are to the east of each of these north-and-south walls. The five foot section to the north of Via de McCormick is Tract E and the five foot section to the south is Tract D. Pursuant to the provisions of the CC&R's, these walls are "party walls" common to each property owner and Casa Serena. The wall to the west of Tract E is a wall common with parcel 15 and the wall to the west of Tract D is a wall common with parcels 8 – 14. Each parcel owner has the responsibility to maintain the western faces these walls and the HOA has the responsibility to maintain the eastern faces.

Maintenance of Wall at West End of Via de McCormick

As with the wall at the east end of Via de McCormick, Casa Serena has maintained the east face of the wall. The owner of the parcel to the west of this wall, parcel 5 of the Paseo Village Unit Two, Book 175, Page 26, likely has the responsibility to maintain the western face of the wall, but only if the wall is on the border between the two properties.

Maintenance of Homeowner Courtyard Walls

Many of our courtyard areas are bordered by a structure that is owned by the adjacent property. A "wall" of your courtyard might be the wall of the neighboring house. Inasmuch as this wall is owned by the neighbor, it is the responsibility of the neighbor to maintain the wall.

If a homeowner wishes to paint a courtyard area, the homeowner could ask the adjacent homeowner to incur the cost of painting the adjacent homeowner's wall. Even without asking the adjacent homeowner to incur the painting cost, the adjacent homeowner must grant permission for the colors to be used.

In a similar vein, a homeowner should not drill holes or perform any alterations to an adjacent homeowner's wall without obtaining permission from the adjacent homeowner.

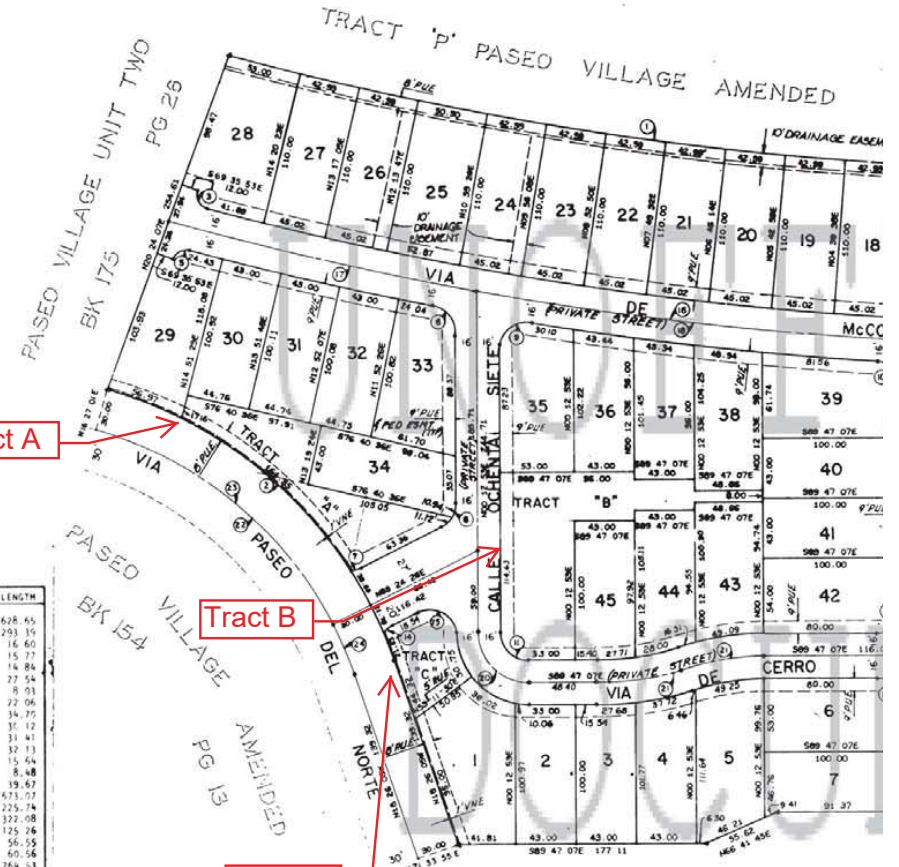
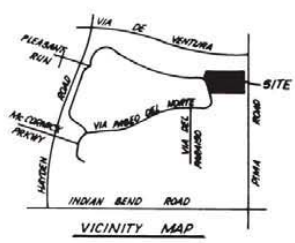
Caveat

There might be facts that we don't know about the location of the walls that would change the conclusions of the report. This report is not a legal opinion. If a homeowner has questions about the boundaries of a lot, the homeowner should consult an attorney.

Enclosures: plat map, two pages; historical aerial photos taken in 1976, 1979, 1986 and 1996

CASA S

A REPLAT OF LA MARIPOSA VILLAS II AS REC
AND SITUATED IN A PORTION OF SEC. 1, T2N, R4E



Tract A

Tract B

Tract C

CURVE DATA

NO.	DELTA	RADIUS	TANGENT	LENGTH
1.	15 25' 32"	2135.00	116.24	628.65
2.	55 06' 54"	105.00	159.16	293.16
3.	95 05' 07"	10.00	16.93	16.60
4.	90 22' 52"	10.00	10.07	15.77
5.	85 01' 17"	10.00	9.17	14.84
6.	78 53' 40"	20.00	16.46	27.54
7.	23 00' 26"	20.00	4.07	8.01
8.	63 11' 33"	20.00	12.30	22.06
9.	99 25' 27"	20.00	23.59	34.75
10.	86 17' 55"	20.00	18.75	35.12
11.	90 00' 00"	20.00	20.00	31.41
12.	92 02' 50"	20.00	20.73	32.13
13.	89 37' 36"	10.00	9.94	15.54
14.	24 17' 34"	20.00	4.30	8.48
15.	113 19' 38"	20.00	10.60	19.67
16.	15 40' 12"	2461.00	118.65	671.07
17.	05 15' 29"	2461.00	12.95	225.74
18.	02 29' 54"	2461.00	61.27	322.08
19.	02 54' 58"	2461.00	62.64	325.26
20.	90 00' 00"	36.07	36.07	56.55
21.	17 20' 51"	309.00	30.51	60.56
22.	55 06' 54"	275.00	143.57	264.53
23.	46 57' 25"	275.00	19.45	225.18
24.	38 09' 29"	275.00	19.61	19.16

LEGEND

- * INDICATES SURVEY MONUMENT SET.
 - ▲ INDICATES COMMON CORNER THIS DEVELOPMENT AND ADJACENT SUBDIVISIONS, FOUND 1/2" IRON BAR OR OTHER AS INDICATED.
 - P.U.E. INDICATES PUBLIC UTILITY EASEMENT.
 - V.N.F. INDICATES VEHICULAR NON-ACCESS EASEMENT.
- NOTES:
- CONSTRUCTION WITHIN EASEMENTS SHALL BE LIMITED TO UTILITIES; AND WOOD, WIRE OR REMOVABLE SECTION TYPE FENCING.
 - ALL UTILITIES SHALL BE INSTALLED UNDERGROUND.
 - ELECTRIC LINES TO BE CONSTRUCTED UNDERGROUND AS REQUIRED BY ARIZONA CORPORATION COMMISSION GENERAL ORDER U-48.
 - ALL COMMUNICATION LINES TO BE CONSTRUCTED UNDERGROUND AS REQUIRED BY THE ARIZONA CORPORATION COMMISSION GENERAL ORDER R-14-2-133.

APPROV.

APPROVED BY THE
NAME OF THE
BY: *[Signature]*
I HEREBY CERTIFY
APPROVED BY THE
BY: *[Signature]*
I HEREBY CERTIFY
OF THE ORDINANCE
BY: *[Signature]*
ENGINEER

ERENA

250-10

83-066764

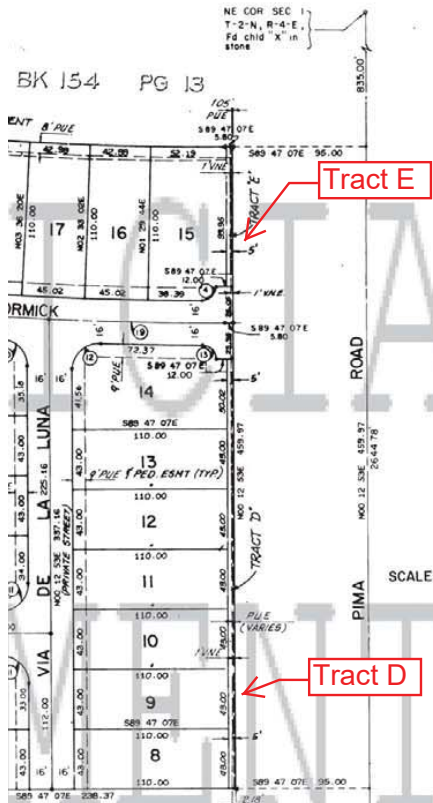
RECORDED IN BOOK 202, PAGE 2, M.C.R.,
G&SRB&M, MARICOPA COUNTY, ARIZONA

2-24-83

July Clark

250

Notary Public and official seal
of the County of Maricopa, Arizona
HARRY ONG
County Recorder
Building No. 26



DEDICATION

STATE OF ARIZONA
COUNTY OF MARICOPA

KNOW ALL MEN BY THESE PRESENTS THAT BAYWOOD EQUITIES CORPORATION, A CALIFORNIA CORPORATION, AS OWNER, HAS REPLATED LA MARIPOSA VILLAS II AS RECORDED IN BOOK 202, PAGE 2, M.C.R. UNDER THE NAME OF CASA SERENA AS SHOWN HEREON, AND HEREBY PUBLISHES THIS PLAT AS AND FOR THE PLAT OF SAID CASA SERENA, AND HEREBY DECLARES THAT SAID PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF THE LOTS, PRIVATE STREETS AND TRACTS CONSTITUTING SAME AND THAT EACH LOT, PRIVATE STREET, AND TRACT SHALL BE KNOWN BY THE NUMBER, NAME, OR LETTER GIVEN TO EACH RESPECTIVELY ON SAID PLAT, AND BAYWOOD EQUITIES CORPORATION, A CALIFORNIA CORPORATION AS OWNER, HEREBY DEDICATES THE PRIVATE STREETS AS SHOWN HEREON AS EASEMENTS FOR PRIVATE ACCESSWAY, PUBLIC UTILITIES AND THEIR MAINTENANCE, REFUSE COLLECTION AND EMERGENCY VEHICLE ACCESS. OTHER EASEMENTS ARE HEREBY DEDICATED FOR THE PURPOSES SHOWN HEREON. TRACTS A, B, & C ARE HEREBY DECLARED AS RECREATION AREAS FOR THE USE AND ENJOYMENT OF THE HOMEOWNERS IN CASA SERENA SUBDIVISION AS MORE FULLY SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS. PORTIONS OF SAID TRACTS A, B, & C ARE RESERVED FOR STORM DRAINAGE RETENTION. TRACTS D & E ARE HEREBY DEDICATED FOR WATER LINE EASEMENTS.

IN WITNESS WHEREOF, BAYWOOD EQUITIES CORPORATION, AS OWNER, HAS HERETO CAUSED ITS NAME TO BE SIGNED BY THE UNDERSIGNED OFFICER, THEREUNTO DULY AUTHORIZED THIS 1st DAY OF October, 1982

BAYWOOD EQUITIES CORPORATION, A CALIFORNIA CORPORATION
BY: *Thomas Cinella*
THOMAS CINELLA, PRESIDENT

ACKNOWLEDGEMENT

STATE OF ARIZONA
COUNTY OF MARICOPA

ON THIS 1st DAY OF October, 1982, BEFORE ME THE UNDERSIGNED OFFICER, PERSONALLY APPEARED THOMAS CINELLA WHO ACKNOWLEDGED HIMSELF TO BE PRESIDENT OF BAYWOOD EQUITIES CORPORATION AND THAT HE AS SUCH OFFICER BEING AUTHORIZED SO TO DO, EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSES THEREIN CONTAINED BY SIGNING THE NAME OF THE COMPANY BY HIMSELF AS SUCH OFFICER.

IN WITNESS WHEREOF I HERETO SET MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC: *Rita Allen*
MY COMMISSION EXPIRES: Aug. 8, 1986



CERTIFICATION

I, ROBERT H. MURPHY, HEREBY CERTIFY THAT I AM A REGISTERED CIVIL ENGINEER OF THE STATE OF ARIZONA AND THAT THIS PLAT CORRECTLY REPRESENTS A SCHEMATIC MADE UNDER MY SUPERVISION AND THAT THE SECTIONS SHOWN ON THIS PLAT ARE TRUE AND CORRECT TO THE EXTENT THAT ALL MONUMENTS SHOWN AND ALL EXISTING OR WILL BE SET AS SHOWN; THAT THEIR DIMENSIONS ARE CORRECTLY SHOWN AND THAT SAID MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE REPRODUCED.

BY: *Robert H. Murphy* DATE: _____
REGISTERED CIVIL ENGINEER NO. 4499

VILLAS 12

ALS

DESIGNED BY THE CITY OF SCOTTSDALE, ARIZONA UNDER THE LA MARIPOSA VILLAS II, THIS DAY OF June, 1978.

BY: *Thomas T. Adams*
ATTORNEY AT LAW
CITY CLERK

BY: *W. H. Adams* DATE: 10/19/82
DIRECTOR

BY: *W. H. Adams* DATE: 10/17/82
ENGINEERING SERVICES DIRECTOR

I, E. CLARE GARDNER, HEREBY CERTIFY THAT I AM A REGISTERED CIVIL ENGINEER IN THE STATE OF ARIZONA AND THAT THE PURPOSE OF THIS REPLAT IS TO CHANGE THE NAME OF THE SUBDIVISION FROM LA MARIPOSA VILLAS II TO CASA SERENA.

BY: *E. Clare Gardner*
REGISTERED CIVIL ENGINEER NO. 5336

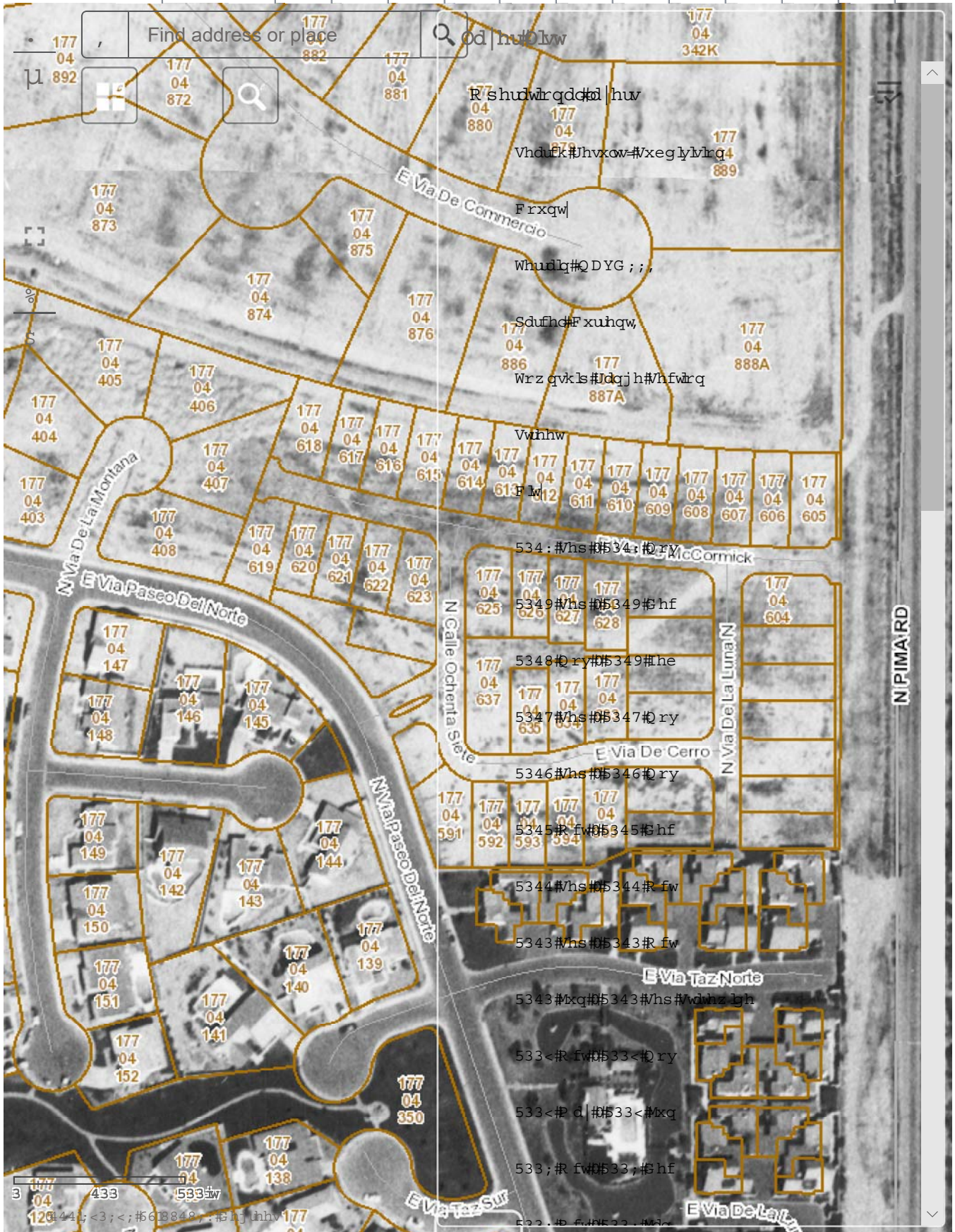
DATE: 1-30-78 JOB NO. 3088-002 SHEET 2 OF 7

PREPARED BY
TOUPS CORPORATION
3111 NORTH 24TH STREET
PHOENIX, ARIZONA 85016
(602 264 9655)

250-10 FILE NO. PL 20006 D-25



Historic Aerial Photograph 1976 Aerial Photo



1979 Aerial Photo



Historical Aerial Photograph



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E Via De McCormick

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Map coordinates and scale information

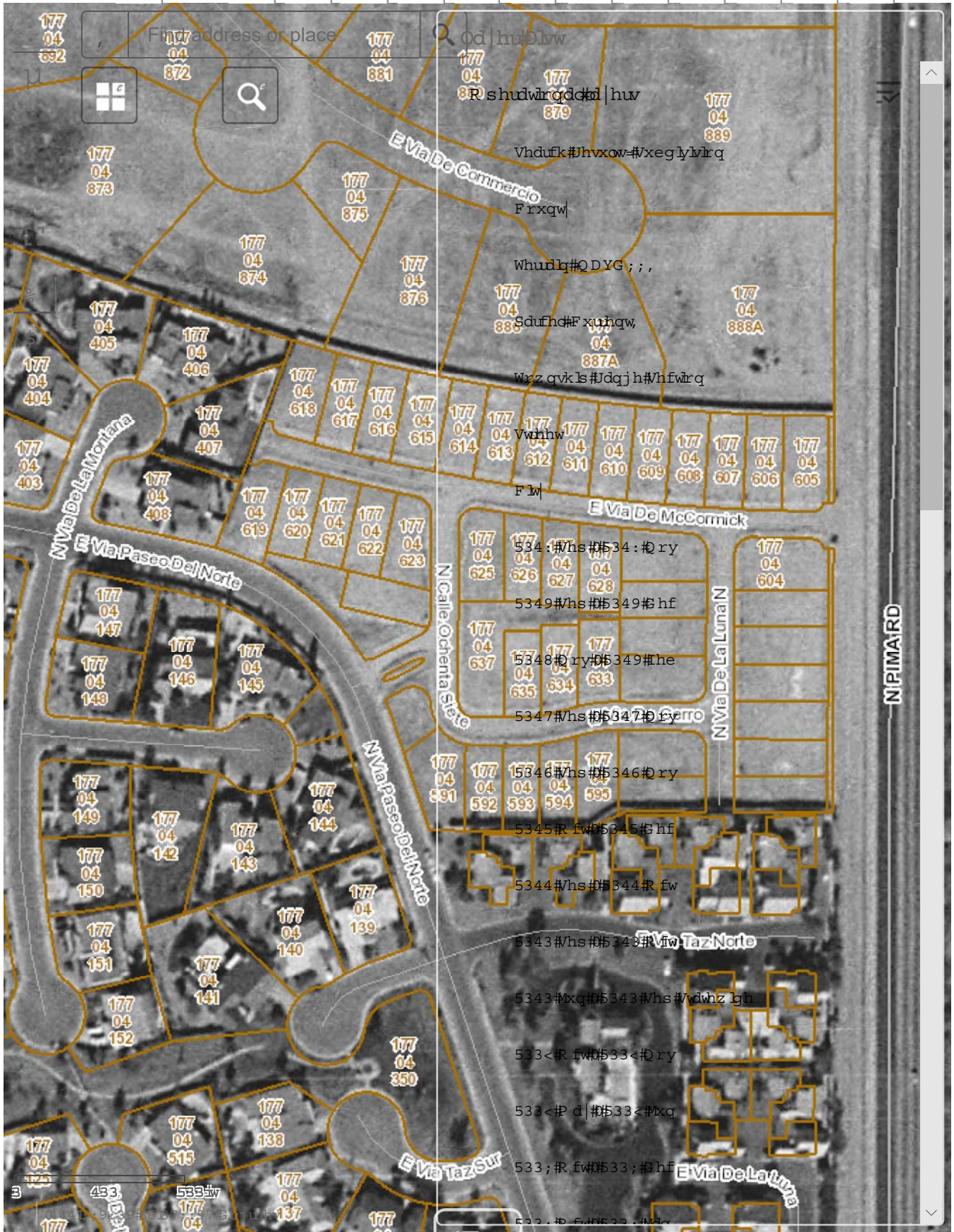
Map coordinates and scale information

Map coordinates and scale information

1979 Photo w/ Overlays



Historic Aerial Photograph



1986 Aerial Photo



Historic Aerial Photograph





Historic Aerial Photograph

