

### **Written Testimony of James Gee (Deposition) (Exhibit Allegra-4)**

GW Consulting Engineers was the original project Engineer for Hidden Lakes Estates and provided services responsible for the development of the Hidden Lakes subdivision. Mr. Gee's firm prepared the improvement plans and final map, including those concerning the embankment and lakes located in Hidden Lakes subdivision. Part of the surveying it performed was related to a determination whether or not there were existing waterways on the site. Deposition of James Gee, at pp. 16:21 -18:10.

Pursuant to a drainage study performed by GW Consulting Engineers, MDEs were placed on the subdivision maps, pursuant to a county ordinance, wherever natural drainage swales existed. James Gee Deposition, at pp. 20:2-22:25.

According to Mr. Gee, the soil within the lake's excavation was treated with Bentonite—it was designed to retain water and not leak. James Gee Deposition, at pp. 59:11 – 61:5.

1 APPEARANCES:  
2  
3 FOR THE PLAINTIFFS:  
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17 FOR THE WITNESS, **JAMES GEE:**  
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25

1 BE IT REMEMBERED that, on Wednesday the 8th day  
2 of December of 2004, commencing at the hour of 10:02  
3 a.m. thereof, at 7447 Antelope Road, Suite 202,  
4 Citrus Heights, California, before me, Julie  
5 Stinnett, a Certified Shorthand Reporter for the  
6 County of Sacramento, State of California, personally  
7 appeared  
8 JAMES GEE,  
9 called as a witness herein, having been administered  
10 an oath in accordance with C.C.P. Section 2094, was  
11 examined and testified as follows:  
12 ---o0o---  
13 (Defendants' Exhibit 1 was marked for  
14 identification.)  
15 EXAMINATION BY MR. FRITSCH  
16 Q. Sir, would you state your full name for the  
17 record.  
18 A. James Grovner Gee.  
19 Q. Good morning, Mr. Gee. My name is John  
20 Fritsch. I represent Hidden Lakes Homeowners  
21 Association in a lawsuit that's been brought by some  
22 homeowners by the name of Wood and Allegra. Today is  
23 my opportunity to ask you questions and receive your  
24 responses under oath.  
25 Do you understand that?

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1 A. Yes.  
2 Q. My office and I have issued a subpoena to  
3 have you attend today and provide deposition  
4 testimony for me.  
5 Have you had your deposition taken before?  
6 A. Yes.  
7 Q. You're represented today by Ms. McKinney, a  
8 very able attorney, I will tell you that, in case you  
9 don't know that. You probably do.  
10 I am going to give you a very, very short  
11 thumbnail of the deposition procedure, and if  
12 anything else comes up, I'm sure Ms. McKinney will  
13 bring it to my attention.  
14 I'm entitled today to your best estimates. I  
15 don't want you to guess.  
16 Will you give me your best estimates?  
17 A. Yes.  
18 Q. Of course, the court reporter needs audible  
19 responses. Not nods of the head, that kind of thing.  
20 Will you do that for me?  
21 A. Yes.  
22 Q. At the end of the deposition you will have an  
23 opportunity to review the transcript, make changes,  
24 that kind of thing, and do that if necessary. What  
25 I'll ask you to do, though, is if during the course

1 need some way to generally make sure that water can  
2 still go downhill, still has the right to be in the  
3 bottom of a swale. And there are many times in this  
4 county where that drain swale will be through a lot,  
5 and a builder might want to move his house a little  
6 bit. So he can go to the county and say it's a  
7 meandering easement. It's not a specific easement on  
8 the final map, therefore, can I move it over a little  
9 bit and I won't disturb the flow of the water.  
10 That's what the definition of a meandering drainage  
11 easement is as opposed to an easement that's got  
12 meets and bounds that's a locked in encumbrance of  
13 the property.  
14 Q. Are you saying, then, that -- first of all,  
15 are you saying in your experience there is a little  
16 more lenience on setback requirements than there --  
17 A. I didn't say anything about setback. I said  
18 only as to the right of passage of that water.  
19 Q. You said that it may influence where the  
20 builder or the owner positions the house I thought?  
21 MS. MCKINNEY: He said it could influence.  
22 THE WITNESS: I said it could, and the  
23 builder could if this happened to go through a lot,  
24 he would have the right to go talk to the county and  
25 say, "I'd sure like to move it a little bit. This is

1 what I propose. Your drainage will work fine I  
2 think. Do you agree? Can I move my house a little  
3 bit, move the ditch just a little bit?" They could  
4 do that. This case is on a property line so it  
5 doesn't make any sense.  
6 Q. (BY MR. PETERSON) Okay. And you've  
7 referenced this as a county issue, the meandering  
8 drainage easement?  
9 A. Yeah. It's a defined thing within the  
10 county's operation.  
11 Q. You are talking about the Placer County  
12 Building --  
13 A. Placer County. Whether it's in the Building  
14 Code or the specs, I don't know where it is for sure.  
15 Q. The reason I'm asking is to understand  
16 whether there is something in your experience that's  
17 unique to Placer County or more a generally  
18 recognized concept.  
19 MR. FRITSCH: Objection. Lacks foundation.  
20 MS. MCKINNEY: You are asking him to  
21 speculate on a lot of other counties. You can ask  
22 him about Placer where he's worked and what his  
23 experience is with other counties. The question's  
24 way too general.  
25 Q. (BY MR. PETERSON) I assume you have worked

1 in other counties besides Placer; is that correct?  
2 A. Yes.  
3 Q. Okay. El Dorado?  
4 A. Not as much. I work in Placer County  
5 primarily, but, yes, I've worked in other counties.  
6 Q. Sacramento?  
7 A. Yes.  
8 Q. Nevada?  
9 A. Yes.  
10 Q. Okay. And so based on that experience, which  
11 I understand is 30 years plus --  
12 A. Uh-huh.  
13 Q. -- have you encountered meandering drainage  
14 easement issues in other counties besides Placer?  
15 A. This is the only one I worked in that has  
16 this one, to my knowledge.  
17 Q. Okay. All right. I think you said in  
18 response to one or more of Mr. Fritsch's questions  
19 that the meandering drainage easement, I think you  
20 referenced it as a fact of life or words to that  
21 effect?  
22 A. Well, I used that. It's probably not -- it's  
23 too colloquial. It is whatever it is in the spec. I  
24 don't know exactly where to find it, but I'm sure I  
25 could go through my books back there and pull it out.

1 Q. I think you also referred to the meandering  
2 drainage easement as necessary to maintain the  
3 existing drainage. In other words, the storm water  
4 drainage, that I guess naturally existed before the  
5 subdivision.  
6 A. Right. That's what the whole purpose is, to  
7 make sure the storm drainage has the right to pass.  
8 MR. PETERSON: Okay. All right. Okay. I  
9 think that's all the questions I have, subject to  
10 working with your counsel to see about reviewing and  
11 maybe even copying some more of the job file  
12 contents.  
13 Okay. Fine. I appreciate your time.  
14 FURTHER EXAMINATION BY MR. FRITSCH  
15 Q. Mr. Gee, you indicated in response to  
16 Mr. Peterson's question that you would expect storm  
17 waters to pass through the drainage. Would you  
18 expect naturally occurring waters -- other kinds of  
19 waters in that waterway?  
20 MR. PETERSON: Calls for --  
21 Q. (BY MR. FRITSCH) Strike that.  
22 What are the other sources of water that  
23 might occur in that waterway?  
24 MR. PETERSON: Objection. Calls for  
25 speculation, and, as I understand it, is outside the

1 A. Yes.  
2 MR. FRITSCH: That's all I have for you.  
3 MR. PETERSON: Okay. I have one final  
4 question. I hope it's one. Litigators should never  
5 say, "I have one more question."  
6 MR. FRITSCH: You are going to be here two  
7 days from now.  
8 FURTHER EXAMINATION BY MR. PETERSON  
9 Q. Yeah. But let me try and make it one  
10 question.  
11 As far as you know, based on anything in the  
12 plans or anything in your institutional memory having  
13 supervised the work of your firm on this project, was  
14 this lake shown on sheet seven of 12 designed to seep  
15 water through the earth and dam?  
16 MR. FRITSCH: Objection. Lacks foundation.  
17 MS. McKINNEY: Again, perhaps a definition of  
18 seepage may be in order. Are you asking him if this  
19 was supposed to be a watertight dam? Is that the  
20 question?  
21 MR. PETERSON: Yeah. That's exactly it.  
22 MR. FRITSCH: It's an incomplete  
23 hypothetical. It's vague and ambiguous as to time.  
24 Over what period of time? Under what factors?  
25 Q. (BY MR. PETERSON) I'll rephrase it.

1 the time. I believe some of the questions that you  
2 are asking him borderline on soils engineers'  
3 expertise. His design was based on more than likely  
4 what a soils engineer told him to do. And I don't  
5 believe he qualifies to answer some of the questions  
6 that you are asking him.  
7 MR. PETERSON: Well, there is only one  
8 question pending. I've heard the objections and the  
9 question stands. I think it's a fair question. It's  
10 specifically qualified at his personal knowledge  
11 based on what's in front of him or what he carries in  
12 his head, and I think it's a very simple question, so  
13 I want an answer.  
14 MS. McKINNEY: Reask the question. I will  
15 reiterate again my objections and he will be  
16 answering it as his opinion -- it's not an opinion.  
17 It's based on his --  
18 MR. PETERSON: I don't think I asked it as an  
19 opinion. I would appreciate the reporter reading it  
20 back, please.  
21 (Record read.)  
22 MR. FRITSCH: My objection is lacks  
23 foundation for all the reasons I discussed in the  
24 previous objections, so we can incorporate that. And  
25 it's vague and ambiguous as to time.

1 As designed and based only on your personal  
2 knowledge or what you see in front of you on the  
3 plans, do you have any reason to think that this lake  
4 was designed -- well, strike that. Let me try it  
5 again.  
6 Based on what's in front of you and based on  
7 your involvement in the project itself, it's true,  
8 isn't it, that this lake was designed to hold water?  
9 MS. McKINNEY: Yes.  
10 THE WITNESS: Yes.  
11 Q. (BY MR. PETERSON) Okay. It was not designed  
12 to seep water through the dam. The dam was designed  
13 to be relatively watertight, right?  
14 MR. FRITSCH: Objection. Vague and ambiguous  
15 as to the term "relative." He's already testified  
16 you have to have a soils engineer look at this.  
17 MR. PETERSON: I --  
18 MR. FRITSCH: Let me finish. Let me finish.  
19 Ultimately the question lacks foundation as to  
20 historical watertight.  
21 MS. McKINNEY: What I do not want to happen  
22 today is I do not want you to ask my client to give  
23 you an opinion on the tightness, the seepage of this  
24 swale, this lake. You can ask him what he knows  
25 about the construction of it, on the design of it at

1 Go ahead.  
2 THE WITNESS: Can I talk?  
3 Q. (BY MR. PETERSON) Yeah.  
4 A. The reason for the note adding the bentonite  
5 was to try to prevent leakage of the dam.  
6 MR. PETERSON: Thank you. Okay. I have no  
7 further questions.  
8 MR. FRITSCH: Thanks.  
9 (Deposition concluded at 11:10 a.m.)

1 DEPONENT'S SIGNATURE  
 2 Please be advised I have read the foregoing  
 3 deposition, pages 1 through 61, inclusive. I hereby  
 4 state there are:  
 5  
 6 (check one) \_\_\_\_\_no corrections  
 7 \_\_\_\_\_corrections per attached  
 8  
 9 \_\_\_\_\_  
 10 Date JAMES GEE  
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1 REPORTER'S CERTIFICATION OF TRANSCRIPT  
 2  
 3  
 4 I certify that the above named witness in the  
 5 foregoing deposition, was present at the time and  
 6 place specified, and was by me administered an oath  
 7 to testify as to the truth, the whole truth, and  
 8 nothing but the truth, in the within-entitled cause;  
 9 that said deposition was taken at the time and place  
 10 therein named, and that the testimony of said witness  
 11 was reported by me, a duly certified shorthand  
 12 reporter and a disinterested person, and was  
 13 thereafter transcribed into typewriting.  
 14 I further certify that I am not of counsel or  
 15 attorney for either or any of the parties to said  
 16 deposition, nor in any way interested in the outcome  
 17 of the cause named in said caption.  
 18 IN WITNESS WHEREOF, I hereunto set my hand  
 19 this \_\_\_\_\_day of \_\_\_\_\_, 2004.  
 20  
 21  
 22 \_\_\_\_\_  
 23 Julie Stinnett, CSR 11578  
 24  
 25

1 DEPONENT'S CHANGES OR CORRECTIONS  
 2 DEPONENT: JAMES GEE  
 3 READ BY: JANUARY 21, 2004  
 4 DATE OF DEPOSITION: DECEMBER 8, 2004  
 5 Note: If you are adding to your testimony, print the  
 6 exact words you want to add. If you are deleting  
 7 from your testimony, print the exact words you want  
 8 to delete. Specify with "Add" or "Delete" and sign  
 9 below.  
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 21  
 22 Pursuant to Section 2025 (g) (1) of the Code of Civil  
 23 Procedure of the State of California, I hereby  
 24 certify that I have read my deposition transcript,  
 25 made those changes and corrections that I deem  
 necessary, and declare under penalty of perjury the  
 testimony therein to be true and correct.  
 Dated: \_\_\_\_\_ Signature: \_\_\_\_\_

1 GOLDEN STATE COURT REPORTING  
 2 3800 Watt Avenue, Suite 155  
 3 Sacramento, California 95821  
 4 Phone (916) 489-5900  
 5  
 6 December 13, 2004  
 7  
 8 James Gee  
 9 c/o Betty McKinney  
 10 Pagano & McKinney, LLP  
 11 1424 Chapin Ave.  
 12 Burlingame, CA 94010  
 13  
 14 Re: Wood, et al., vs. Hidden Lakes Estates  
 15 Date of Deposition: December 8, 2004  
 16 The transcript of your deposition taken in the  
 17 above-entitled matter has now been completed. The  
 18 original transcript will be held in this office for  
 19 35 days from the date of this letter before it is  
 20 sealed and forwarded to the deposing attorney. You  
 21 have the right to review, sign and make corrections  
 22 to your transcript within the 35-day period by coming  
 23 to our office. Please call the above number to make  
 24 an appointment for your review. It is standard  
 25 policy not to release the original transcript and  
 complimentary copies are not provided.  
 If you are represented by an attorney, I advise that  
 you contact your attorney to discuss this matter.  
 You may read your attorney's copy of the transcript  
 and forward any changes to our office by letter or by  
 filling out the correction page included in the  
 transcript. If you are an independent witness and  
 have any questions, please contact the attorney who  
 requested you to testify or this office for further  
 instructions.  
 There is no need to contact this office if you do not  
 wish to read your transcript.  
 Very truly yours,  
 Julie Stinnett, CSR 11578  
 cc: John J. Fritsch, Esq.  
 Betty McKinney, Esq.  
 Glenn W. Peterson, Esq.