

John W. Schooling
2 Hill Oak Commons
Chico, CA 95928
891-4161
jjckm@digitalpath.net

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Chico City Council
Planning Commission
Bidwell Park and Playground Commission
Mr. Greg Jones, City Manager
Mr. David Frank, City Attorney
Mr. Kim Seidler, Planning Director
Mr. Dennis Beardsley, General Services Director
P.O. Box 3420
Chico, CA 95927

Re: Bidwell Park: Annie Bidwell's South Rim, Parcel 9

The city has a problem on the south rim of Bidwell Park. It needs the park to extend up to the edge of the bluff on the south rim of Big Chico Creek Canyon, and near the edge it needs a rim trail and public access to it. Unfortunately, however, somewhere between 476 feet and 2317 feet of this rim is privately owned, well down into Big Chico Creek Canyon, so that the middle of the rim trails currently in existence are in jeopardy of being lost. All of this problem area is in and adjacent to Parcel 9, a parcel yet to be developed at the east end of Canyon Oaks. The city may or may not have rights to cross it. Fortunately for the city, Parcel 9's owner also has a problem in the form of a severe view restriction placed the parcel map for his property when it was subdivided in 1987, precluding construction which is visible from Bidwell Park. Currently, the city and the owner are playing a chess game on the rim by making moves and counter moves consisting of trail construction, trail blocking, and the placing of restrictive signs. This game should stop. There is a win - win solution here whereby the city is deeded title to all land on Parcel 9 up to the edge of the bluff, and, in consideration of that deed, the owner of Parcel 9 is given an interpretation of his view restriction wherein he can construct homes visible from a portion of the park deeded by Annie Bidwell, as more particularly described below. The land received by the city could not be used by the property owner anyway, and the interpretation of the view easement is not unreasonable. It is a good solution for both parties. This solution needs to be implemented now, for time is not on the side of the city as concerns its legal rights. The remainder of this letter will provide the background and current details of this situation.

1. Current physical situation on Parcel 9. Parcel 9 contains an old dirt road traversing it in an easterly direction. Northerly of this road, on the top of the bluff, is an old but still used section of the Bidwell Park South Rim Trail. This trail intersects with the dirt road near Parcel 9's easterly border, and the trail then uses the road to the city's green gate on the park border at Parcel 9's easterly end. The owner of Parcel 9 has recently constructed a replacement South Rim trail northerly of the old one, down a bit from the edge of the bluff, much of which may be

northerly of Parcel 9 and already in the park. This replacement trail connects on the east with the Guardian's Trail, easterly of the property, and on the west with the old South Rim Trail (shown on some park maps as the Annie Bidwell Trail). Finally, there is a section of the old jeep road which runs either from or just north of the northwestern border of Parcel 9 down into Bidwell Park westerly of Bear Hole. The city has placed a brown trail post at the top of this jeep trail. Except for the recent replacement trail, all of these roads and trails have been used for years by the public to gain access to Bidwell Park. The westerly extension of the jeep road is now under the houses which have been built on top of it on the neighboring Parcel 7.

2. City in difficulty by reason of previous boundary line mistakes on south rim. Annie Bidwell's 1905 deed gave almost a mile and a half of south rim to the city.¹ A depiction of this line was created in 1951 by a USGS topographic map.² For 100 years, the city has essentially ignored this portion of her gift: It let neighboring property owners encroach on the park boundary line; it let them change the lines of the Bidwell deed; and it let them cut off access routes to the south rim, all as follows: Starting on the westerly end, access to the south rim is by a trail which is now cut off from public use.³ Proceeding easterly, a house was constructed many years ago on the bluff overlooking the Bidwell Park golf course clubhouse, which house probably encroaches into the park. The line of the Bidwell deed was changed and a property stake was placed northerly of this house.⁴ Proceeding easterly from the house, the park boundary runs southerly of a park hilltop where there is a beautiful view up the canyon, and from which all of Parcel 9 is visible. Access to this hilltop is by an old dirt road which is now cut off from public use.⁵ The line of the Bidwell deed was changed by a parcel map and although there are no stakes on the hilltop area, subsequent surveyors contend that the boundary line is moved northerly on the hilltop.⁶ Proceeding easterly from the hilltop, there is a trail access into the park under the PG&E transmission lines, which access the city attempted to eliminate.⁷ Again proceeding easterly from the hilltop, the line of the Bidwell deed was changed, moving it to the north, although there were until recently no stakes placed. Although city staff thought that the boundary line was designated by an old barbed wire fence, when property stakes were recently placed, the city acquiesced in them and permitted the construction of the houses on Parcel 7 which are mostly very close to the park. Actually, in the case of the easterly most house which abuts the fence that the city formerly thought was a boundary marker, it is probably partially in the park.⁸ Access to the jeep road down into the Bear Hole area, which constitutes the only trail down into the canyon for miles, is now cut off from public use.⁹ Finally, easterly of the jeep road, the old trail and the dirt road are in jeopardy of being cut off from public use. Both of these extend easterly a bit beyond the easterly extent of the Bidwell deed.¹⁰

3. Property owner in difficulty by reason of restrictive language on parcel map. The parcel map that describes Parcel 9 requires that "future subdivision or development of the parcel shall have a minimum setback from the north and northwest property line of 350 feet, and building height shall be restricted to preclude visibility from Bidwell Park."¹¹ It is the height restriction which will cause the property owner great difficulty. Virtually the entire parcel can be seen from the north rim of Bidwell Park. The entire parcel can be seen from the hilltop in the park to the west

of the PG&E transmission lines. The property owner would like to interpret this restriction to preclude visibility only from the park road at the bottom of the canyon, but there is nothing upon which to base this interpretation except for his wish.

4. The city's rights are changing by reason of recent activities in area. The city has prescriptive rights which have ripened into an easement and public dedication to permit continued use of the roads and trails across Parcel 9.¹² However, any prescriptive right may be lost through use with permission of the owner (no adversity) or through non use. As to permission, for many years in order to use this road or the old trail at the top of the bluff, a person would have to pass a No Trespassing sign placed by the Musty Buck Ranch. Recently, however, the owner of Parcel 9 has placed signs at each end of the road permitting use subject to his consent. As to non use, the new trail which is partially on Parcel 9 and partially on park land was initially blocked by the city by a barricade and a sign directing the public to use the road. However, now the city has removed this sign and placed a new sign designating the new trail as the South Rim Trail, thus encouraging use away from the road and the old trail on the top of the bluff.

5. Win - Win solution necessary. In order to effectively use a south rim trail, the city needs to own property to the 1905 Bidwell line, which is at the edge of the bluff, so that the trail may be slightly down into the canyon, yet near the edge of the bluff. This is where the new trail described in this letter is constructed, at least on its eastern end. This is not enough for the city's needs, however. Parcel 9's northwesterly line is 2,115 feet in length. The easterly most 274 feet of it, plus another 202 feet running due east, is east of the Bidwell bluff, being part of the city's later major purchase from Drake and Simmons.¹³ Although the border of the purchased property is a continuation of the Bidwell line, the bluff there curves southerly and the trail as constructed high on the ridge but below the edge of the bluff on this 476 foot portion also there curves southerly. The trail in this section is therefore probably about twenty to thirty yards into Parcel 9, assuming the Bidwell line declination is correct, or much more into it if the stakes behind Parcel 7 are correct.

Both parties have a problem: The owner of Parcel 9 is in jeopardy by reason of a parcel map restriction as discussed above in paragraph 3. which may preclude any construction of homes at all as it is entirely visible from the south rim hilltop deeded by Annie Bidwell. The city is in jeopardy by reason of its past actions and inactions as discussed above in paragraph 2. which may cause it to lose critical park land to the owner of Parcel 9, and in any event it needs a small portion of Parcel 9 adjacent to the Drake and Simmons purchase which in this small area did not reach south to the canyon rim. Facts leading to the conclusion that the city has lost park land are that it approved a parcel map which was described in its title as a boundary line modification; that it recently acquiesced in the placement of survey stakes along the line described in such parcel map, thus permitting the construction of the houses on the south park rim on Parcel 7; and that it is currently contending that the boundary line on Parcel 9 lines up with the line on Parcel 7. Facts which negate this conclusion are the city's understanding prior to the recent placement of the survey stakes on Parcel 7 that the boundary line was designated by

the old barbed wire fence which is perpendicular to the easterly most house on Parcel 7, which understanding is still evidenced on the trail map being distributed by the Park Department; the brown trail post still at the top of the jeep trail; and the same understanding about the property line at the edge of the bluff by the current owner of Parcel 9 as evidenced a few years ago when he placed a barbed wire fence across the trail at the top of the bluff in two places on this line, just as is shown on the city's trail map. This fence, therefore, could constitute an agreed boundary line which will govern in a situation in which adjoining owners do not know the actual location of the line. The city also has in its favor the arguments about prescriptive rights and dedication as discussed above in paragraph 4. The clear win - win solution in this situation is for the city to obtain the land and new trail it needs to complete Bidwell Park and the south rim trail system, and for the owner of Parcel 9 to be able to obtain the interpretation of his view restriction that its only limitation is to prohibit the view of a structure on Parcel 9 from the north rim of Bidwell Park. This would permit him to subdivide and enable construction of several homes on the eastern portion of his property, although they would be visible from the south rim hilltop. It would enable him to recover substantially more than his investment. Finally, the city needs to obtain access to this trail by a new trail to be constructed across the westerly edge of Parcel 9 from the paved road to be constructed in the subdivision..

6. Current south rim trail needs realignment as part of win - win solution. Currently, the new trail dips down into the canyon and back up to near the edge of the bluff at its western end. In placing the trail in this configuration, the owner of Parcel 9 is attempting to retain in private ownership a portion of the property granted in 1905 northerly of the edge of the bluff, being the flat area near the edge of the bluff surrounding and easterly of the top of the jeep trail. The city's brown trail post at the top of the jeep trail is in this flat area. It is a gorgeous viewpoint which was granted to the city by the 1905 Bidwell deed and which was reached by an old dirt road prior to its being cut off by the houses on Parcel 7. This viewpoint needs to be in the park, not in some homeowner's back yard.

Very truly yours,

John Schooling

c: Bill Brouhard
Canyon Oaks Homeowners' Association

Footnotes:

1. The 1905 Bidwell deed is recorded in Book 83, Page 41 et. sec. of Official Records. It gave the city 7740 feet along the edge of the bluff. This is 180 feet short of a mile and a half. The deed uses a metes and bounds description, each segment being a compass declination and a distance. The segments of the property line along the south rim are preceded by distances down

the center of Big Chico Creek to a point near Day Camp where it turns due east and proceeds “1916 feet to the edge of bluff along the South side of Big Chico Canon thence following said edge of bluff the following three courses and distances: 1- S. 63° 30' W. 4580 ft. 2- N. 85° 20' W. 1760 ft. 3- S. 75° 00' W. 1400 ft.” The easterly point on the bluff is on the easterly portion of the northerly boundary of Parcel 9. The westerly point is above the Bidwell Golf Course clubhouse, and from there the Bidwell description proceeds: “N. 16° 00' W. 240 ft. to near the South Bank of Big Chico Creek. Thence generally following fence near said South Bank of Big Chico Creek the following 28 courses and distances ...,” where it proceeds towards the Five Mile area. The Bidwell surveyors left no stakes in this area, although stakes are described in other portions of the deed.

2. A topographic representation of the south park line is shown on the USGS Richardson Springs Quad, published in 1951 (copy attached). The configuration of the line is consistent with the Bidwell deed declinations and distances*, but it is probably placed slightly too far north and east. Moving the configuration slightly west and south on the map would still meet the Bidwell requirement of being in the center of the creek near Day Camp, and it would better fit the western end. Note that on the western end, the map’s cartographer drew the line’s westerly extension on the creek side of the park road. It should be placed a few feet southerly on the cliff side of the road, for the Bidwell deed there follows a fence near the south bank of Big Chico Creek. The fence would have been either under the present road, if the road was not there in 1905, or to the cliff side of the road. It would not have been in the creek or so close to the creek that it would have washed out each spring. The representation of the south park line should also be placed a few feet west, so the creek side corner would be nearer the south bank of the creek, as described on the Bidwell deed, and it would then tie in with an old barbed wire fence at the top of the bluff which may be an agreed westerly boundary line. As discussed in subsequent footnotes, later surveyors did not move these lines as indicated in this footnote, but rather rotated them counter clockwise, putting them at different angles and more northerly than shown on this map. The surveyors’ changes do not meet the Bidwell requirements of putting the line at the edge of the bluff, but rather have it far down in the canyon in the area of Parcel 9, and, if followed back along the Bidwell deed towards Day Camp, would put the point at Day Camp well north of Big Chico Creek. Subsequent discussions in this letter, however, will use the lines as shown on this Richardson Springs Quad, which do, in the area of Parcel 9, line up with old barbed wire fences which may constitute agreed boundary lines.

* Verification of the accuracy of the topographic map was made by use of satellite technology. Topozone.com uses the Richardson Springs Quadrangle. Clicking on a point on the map will center the map at that point, place a marker cross, and provide the GPS position. The position on the Bidwell deed’s western bluff corner was found on the topographic map by this method, and all other corners were calculated by trigonometry, both for the map and for Parcel Map 42 discussed in footnote 6. These calculated points were then verified by centering the map on them. The corners on the topographic map were thus found to correlate with the Bidwell deed, and the Parcel Map 42 corners were found to be well to the north. The fence by the easterly

most house on Parcel 7 discussed in footnote 8 was found to be on the Bidwell line using a GPS receiver with a five meter stated inaccuracy.

3. This trail is currently behind the locked gates of Falcon's Point, just southerly of the intersection of Centennial and Chico Canyon Road. This subdivision initially had a walking gate just to the east of the automobile gate with a gravel path leading from it to the park road, but the walking gate has been locked shut for years. It is not known whether the city made any attempt to preserve the public's rights to this trail.

4. The house on the bluff is not shown on the 1951 map. The map's 1969 photo revision, however, shows this house and places it inside the park. Almost all of it would be inside the park if the line were moved southerly as described above in footnote 2. The surveyors for this homesite put a boundary stake north of the house, showing the house to be south of the park, by creating two errors in which the city acquiesced: First, they came in from the westerly edge of the park on the bluff, but they changed the Bidwell deed declination by over two degrees, from S 75° W to N 72° 57' 07" E, thus running the line easterly in a more northerly direction. Second, they started closer to the edge of the bluff than the Bidwell deed provided, which is 240 feet southerly of the fence near the south bank of Big Chico Creek. The Bidwell deed surveyors left no stakes at the top edge of the bluff. Finally, old barbed wire fences, which may provide an agreed park boundary, run towards the southerly edge of the house, where calculations from the Bidwell deed show the boundary line should be.

5. This dirt road was closely followed and replaced by Shadybrook Drive running through the Pinnacles portion of Canyon Oaks. However, Shadybrook Drive's easterly end turns southerly of the dirt road and misses the hilltop. A house is currently being built across the eastern end of the dirt road, by the hilltop. The city has provided no other access to the park hilltop to replace the road. In fact, the entire south rim is now behind the gates of the Canyon Oaks subdivision, which, if no public access is permitted, is the city's single largest mistake for its citizens. However, the roads and trails to access the south rim through Canyon Oaks long predated the subdivision, were previously in heavy use by the public, and still are in heavy use by the public, primarily pedestrians and bicyclists, even though they must now pass a "No Trespassing" sign. The gates remain open several hours a day, and numerous cars daily go through the gates without permission, all preserving the public's prescriptive rights to the park access routes. Further, there is case law in California prohibiting landowners to cut off park access by a locked gate (see footnote 12).

6. The parcel map is Parcel Map No. 42 and Boundary Line Modification, recorded January 14, 1983, Book 92. pages 11-13. The boundary line commences from the stake to the north of the house (see footnote 4), thus feeding off of the earlier error, and changes the next Bidwell deed declination by over two degrees, from N 85° 20' W to S 87° 22' 53" E, thus running the boundary line more northerly on the hilltop. Again, the Bidwell deed placed no stakes in this area, only describing the line generally as following the edge of the bluff. The 1983 surveyors also placed

no stakes on the hilltop, or anywhere else along the park boundary.

7. The city's initial comments to the parcel map filed by the property owner of Parcel 7 required the fencing off of this trail and a locked gate to be accessed only by PG&E. This requirement was defeated by the property owner. The trail access remains open.

8. The map referenced in footnote 6 further changed the easterly most Bidwell line by yet another rotation to the north in excess of two degrees, from S 63° 30' W to N 61° 27' 07" E. There were no prior stakes in the area, and the 1983 surveyors placed no stakes. To support their new line, these surveyors recited in a note that they found a rock mound on the hilltop and followed a fence line. There are numerous rock mounds on the hilltop, of which none is distinctive, and the fence they followed easterly down from the hilltop is far from being straight. That fence, proceeding easterly, curves to the south, goes up towards the edge of the bluff, reaches the edge of the bluff at the easterly most house on Parcel 7, and then proceeds easterly across the edge of the bluff on Parcel 9. By following only the westerly portion of this fence, the surveyors ignored the rest of it to the east, ignored its westerly extension which curves south to a point on the hilltop, used instead an undefined rock mound on that hilltop, and through this method produced a line which encroaches further into the park, going far down into the canyon instead of staying on the edge of the bluff. Even with this 1983 map, however, prior to the actual placement of the survey stakes just prior to the construction of the houses on the rim of the bluff, the city staff actually thought that the park boundary was along the old barbed wire fence as it is positioned on Parcel 9, running easterly from the easterly most house on Parcel 7. Indeed, the map of Trails of Upper Bidwell Park currently available from the city Park Department still shows the boundary line running at the edge of the bluff through Parcel 9, crossing the old trail across Parcel 9 on the top of the bluff in two places, and coinciding with the fence which abuts the easterly most house on Parcel 7. This fence is along the line shown on the 1951 topographic map. Nevertheless, when the stakes were placed, the city immediately acquiesced and permitted the houses to be built on or near the edge of the bluff on Parcel 7. Unquestionable evidence that the property line is too far north in the vicinity of the houses is the statement on the 1983 parcel map that the line easterly thereof falls over the edge of the bluff. It actually falls several hundred feet down the bluff, which is nearly vertical at this point, whereas the Bidwell deed describes the line as following the edge of the bluff.

9. The jeep road is now under houses which have been built on Parcel 7. The remainder of it is still in use, but there is no close access to it. It remains on or northerly of Parcel 9, with the only current approach being the South Rim Trail accessed either at the junction of Centennial Avenue and Chico Canyon Road or at the PG&E transmission lines. The city has not yet provided access directly to the jeep trail; one needs to be preserved through Parcel 9.

10. The northerly line of Parcel 9 extends easterly along the purchase from Drake and Simmons. The extension follows the declination of the Bidwell deed in a straight line until the far eastern end of Parcel 9, where it turns directly east, and then south. Thus, the correction of the Bidwell

line will also affect the boundary of this purchase. Access to the east through Parcel 9 needs to be retained when it is developed. The road and both trails now on Parcel 9 are heavily used by pedestrians and bicyclists. East of the Bidwell corner, on the Drake and Simmons extension, the northerly trail is about 20 yards into the park.

11. The parcel map is Parcel Map No. 76 for E.M. West, a division of Parcel 1 as shown on Parcel Map No. 42 and Boundary Line Modification (see footnote 6) dated March, 1987. No stakes were set along the Bidwell Park boundary in 1987; all points along the line are noted as "calculated point, nothing set."

12. See *Bess v. Humboldt* (1992) 3 C.A.4th 1544, in which a finding of public dedication required only a showing that the public had used a road to a park for a period of more than five years with full knowledge of the owner without asking or receiving permission to do so and without objection being made by anyone. This is the case here, except the owner is now giving permission and the public through city efforts is starting to use the alternate trail. The *Bess* court cites the leading case of *Gion v. Santa Cruz* (1970) 2 C.3d 29, in which there was found an easement in the city on behalf of the public to use a privately owned beach for recreational purposes. See also generally *Witkin, Summary of California Law*, Real Property Sections 121, 130, 131.

13. There is more than one Drake and Simmons deed. The one which is believed to be last, and which is understood to contain the same description as all of them, was dated May 9, 1995 and recorded on May 16, 1995 as document 95-015909. It grants an undivided 1/4 interest as a gift. Although this letter primarily concerns the city's actions and inactions resulting in loss of land deeded by Annie Bidwell, this major park purchase extending to the south rim and beyond missed one key area, and it now sits entirely in Parcel 9. The property line along Parcel 9 continues in the same Bidwell northeast direction for 274 feet and then for another 202 feet due east before turning south and proceeding up and over the rim, leaving this keystone of 476 feet well down into the canyon. The new south rim trail runs 20 yards or less into this property as it traverses high on the hillside, assuming the Bidwell line is used, but the edge of the bluff is still well south of this. The city needs to do the right thing and acquire all the way to the rim in this area; it is of no use to the owner of Parcel 9 as building sites.