

**From:** Dean & Patty Wolfe <seawolfe@mcn.org>  
**To:** Frank Lynch <lynchf@co.mendocino.ca.us>  
**CC:** Tom Peters <peterst@co.mendocino.ca.us>, Fred Tarr <tarrf@co.mendocino.c...>  
**Date:** 9/24/2009 10:19 AM  
**Subject:** Grading Permit 2009-0331

Hi Frank,

Thank you for meeting with Patty and I yesterday regarding the grading permit issued for Bill Moores to widen our driveway. Your efforts and understanding are appreciated. We look forward to hearing about the results of your evaluation.

When we met with you we understand that there were several open questions that you need yet to resolve. Two of them that I am unclear about are:

1. The permit does not indicate the lots which the attached drawings show the work to be done. The lot identified on the permit is the lot with the endangered species habitat issue and the unresolved wetland (two lots away from us). The drawings indicate that the work is to be done is on the lot directly behind our home and the easement across our land.

2. The drawings indicate a "no build zone" on each side of the easement. This zone does not exist on the final subdivision map nor is it identified on the grant deed for the easement. Since you stated that there are no County required setbacks from the easement, the drawings potentially represent an unapproved expansion of the easement. I am not clear of the legitimacy of the indicated "no build zone" or what the real impact on us is of Mr. Moores placing this on the drawings attached to the permit. If this restriction were to be binding on our property, it would place additional unreasonable burdens on us that we have not agreed to.

Again based on the questions, conflicts, inaccuracies and ambiguities contained within the permit, we hope that the County will revoke the grading permit (BF-2009-0331). Mr Moores should at least be required to resubmit his application for a permit with correct information indicated regarding the easement, lots numbers, property owners and specifically identified work.

Thank you again for your time and courtesy. We await hearing about your evaluation.

Dean and Patty Wolfe  
707-882-2729

**Fred Tarr - Re: RES 1-2006 Comments Addition**

**From:** Fred Tarr  
**To:** Dean & Patty Wolfe  
**Date:** 4/19/2011 9:09 AM  
**Subject:** Re: RES 1-2006 Comments Addition

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Dean:

The Coastal Zoning Ordinance wasn't approved until October, 1991 and RESub 1-89 was recorded on 12/12/90, however Section 3.8 (Water Supply) of the Coastal Element of the Mendocino County General Plan which was adopted in November, 1985, reads:

*Areas designated on the LCP maps as having a variable density zoning classification, which are proposed for greater density by the development of a surface water supply, shall be required to have adequate engineering, proof of water during the dry season, and operation of the system by a duly licensed Water Treatment Plant Operator of the proper grade. As the County completes its Coastal Groundwater Study, greater densities may be allowable within the variable density zoning classifications.*

*Those areas, utilizing groundwater, and proposed for development to a greater density than recommended in the June 1982 Coastal Groundwater Study shall be required to have a hydrological report prepared by a qualified person which addresses the adequacy of the proposed water supply (proof of water), the direct effects on adjacent and surrounding water users, and the cumulative adverse impacts of the development on the regional water supply.*

As long as the Irish Beach Water District was drawing ground water as part of its source of water when Unit 9 and 9A were approved, the argument could have been made that, when approved, these subdivisions were not consistent with Section 3.8 (Water Supply) of the Coastal Element of the County General Plan. I don't have the answer for that.

It would be best if you provide the Planning Commission with a copy of your amendment to comments. You have done such a thorough job on your comment letter that this additional information may not be needed; it's up to you.

Fred

>>> Dean & Patty Wolfe <seawolfe@mcn.org> 4/18/2011 5:57 PM >>>  
 Hi Fred,

Thank you for meeting with us today. We noted on the way home that one point was not as clear as it could have been in our comment letter. I hope the below explanation clarifies the issue.

The original Unit 9 lot 4 was divided into 3 lots, lot 41, lot 42, and lot 43 by RES 1-89. All of these lots are less than 5 acres. Lot 41 is on top of the hill and part of Unit 9 and is 1.57 acres, Lots 42 and 43, the subject Unit 9A lots Bill is trying to re-subdivide are 4.09 and 4.72 acres respectively. So considering the requirements of Title 20 with regards to flexible zoning RR5(1)PD, none of these lots should have been subdivided to under 5 acres without compliance to Title 20 requirements. So, they represent a variance to Title 20 back in 1989.

Please consider this e-mail as an addendum to our comment letter. If you think it is advisable, we can amend our comment letter specifically and provide it to you on Thursday. Please let us know.

Thank you again for your time.

## Fred Tarr - CDRes 1-2006

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**From:** Fred Tarr  
**To:** Bill@irishbeachrealty.com  
**Date:** 3/22/2011 9:15 AM  
**Subject:** CDRes 1-2006

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Bill:

Sorry I wasn't in yesterday for your call. Adrienne indicated that you had a list of things that you requesting pertaining to the above referenced project and staff report.

Please send me an e-mail outlining your questions and concerns. I will attempt to provide you with the information that you desire, however, we are short staffed and searching through files may be left up to you; I have two boxes in my office which pertain to the previous projects on the subject property.

Sincerely, Fred Tarr

**Dean & Patty Wolfe**  
**43600 Sea Cypress Drive**  
**Manchester, CA 95459**  
**seawolfe@mcn.org**

Tuesday, October 3, 2007

County Of Mendocino  
Planning and Building Services  
501 Low Gap Road, Room 1440  
Ukiah, CA 95482

Attention: Fred Tarr

Subject: Re-subdivision Permit Application 1-2006

Dear Fred,

Thank you for meeting with Patty and I on Monday, September 17. After we met with you, Patty and I met with Tom Peters regarding Bill Moores' application and its status. We have additional concerns that, while we have verbally discussed some of them with you and Tom Peters, we have not documented them to you. The purpose of this letter is to document our additional concerns that we have regarding the project based on the documents and maps that we reviewed in your office that were submitted by Bill Moores to the County June 1, 2007 (Tentative Map and Site Development Plan prepared by Rob Huffman).

There are three additional concerns that arise from our review of the documents.

1. The map shows the installation of a retaining wall down the north edge of our driveway (the easement). This retaining wall is unacceptable because it presents a physical safety hazard along the north edge of our driveway and restricts access to our front yard. It creates a situation where parking on that side of our driveway would be prevented, anyone backing down our rather long and straight driveway would be in danger of going off the edge and damaging their vehicle, and I would even be restricted from running my riding lawnmower from my garage to the front yard.
2. The map shows my culvert going under the concrete apron in front of my garage as "abandon". This is unacceptable. The culvert is used by our roof gutter drains and two french drains along the rear of our home. As you know, the 10 feet bordering the rear property line of our lot is a drainage easement. The drainage easement is used by the Irish Beach Water District. The Water District has a 4" overflow pipe from a tank uphill from Sea Cypress Drive that empties into the subject culvert. The abandonment of the culvert would cause problems with present drainage uses and would make future uses of the drainage easement problematic. In addition, the current 12' paved access driveway that uses the easement passes right over the drainage easement with no provision for water to pass so the culvert under our driveway concrete apron is the only route available for the water from the drainage easement. Any plans for increased use should address the needs of the drainage easement, not "abandon" it.
3. The map does not address the concrete apron providing access to our garage. It shows the proposed 18' of pavement going right over our driveway concrete apron.

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OCT 04 2007

BY  
PLANNING & BUILDING SERVICES  
Ukiah, CA 95482

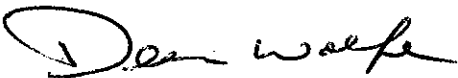


Since I have talked to you, Bill Moores' engineer contacted me to negotiate an access agreement. I refused to enter into an agreement for the same reasons I refused to enter into an agreement with Bill Moores directly. When questioned regarding the paving, the engineer related that the entire asphalt driveway would need to be removed and an appropriate roadbed installed then the area repaved. In addition to the need to allow my access to my own residence during the construction (which has not yet been addressed), another problem is that this is in disagreement with what was related to me by Bill Moores. When I posed the same question to Bill Moores, he told me that he was going to just pave around the current 12' driveway to get his 18' of pavement. When this was related to the engineer, the Engineer stated that patching to get 18' of pavement could not be properly done. This is interesting because Bill Moores specifically refused, when I requested, to provide any assurances that he would complete the project as approved and agreed too. If the County were to approve Mr. Moores' resubdivision request, what assurance can the County provide me that I will be able to access my residence during construction and Bill Moores will complete the project as approved in a timely manner?

As we discussed, were the County to approve Mr. Moores's request for a variance from a 40' access easement, not only would it damage my property for the reasons cited here-in and my previous communications (letter dated September 5, 2006, e-mail dated April 24, 2007 and email dated May 2, 2007), it would damage my neighbor's property. Granting Mr. Moores's request would create the possibility that there could be greater than 4 lots served by the nonconforming access easement. This would make both my lot and my neighbor's lot corner lots which would then require a 20' setback along the easement. This would essentially take away 1/3 of the usability of my neighbor's lot.

I see no logical reason for the County to approve Mr. Moores' variance request to increase the utilization of the 20' easement across my property. There is property available for purchase by Mr. Moores that would allow him to provide the County required 40' easement and negate the necessity for a variance. While we have concerns regarding Mr. Moores' resubdivision request, all of our objections are focused at this point on the access easement across our property.

Sincerely



Dean and Patty Wolfe

Cc: Tom Peters, County of Mendocino DOT  
Doug and Milli Conover (owners of adjacent property, Unit 3 lot 40)

**Fred Tarr - Setbacks applicable to Bill Moores Resubdivision Application**

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**From:** Dean & Patty Wolfe <dpseawolfe@mac.com>  
**To:** Fred Tarr <tarrf@co.mendocino.ca.us>  
**Date:** 7/9/2007 9:58 PM  
**Subject:** Setbacks applicable to Bill Moores Resubdivision Application  
**CC:** Milli & Doug Conover <mcc7221@comcast.net>

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Fred,

Enjoyed talking to you today. I too probably enjoyed the 4th too much.

As far as my question regarding setbacks. My question concerns the applicability to our lot and my next door neighbor's (Conover) lot of the County code reference below to Bill Moores re-subdivision application behind us. Since Moores will have 4 lots, the easement will serve his 4 lots and our lot and would be interpreted as serving 5 lots (more than 4), so it would apply except, if it is interpreted as serving 4 or more lots in addition to our lot, it would serve only 4 lots and it would not apply? I do not know how to read this. Because our house is already built and since my current rear line setback of 20' would be reduced to a sideline setback of 6', I see no problematic impact to our lot. However, it could impact my neighbor significantly. A 20 foot setback from the easement would take away a portion of the current buildable area of his lot, which is not large to start with. I discussed it with him on Saturday.

The County Code reference is at the County Web Site:

<http://webdev.co.mendocino.ca.us/planning/CoastZO/ZO444.htm>

Specifically the reference is:

County Code Division II of Title 20 -- Coastal Zoning Code Chapter 20.444 "General Provisions and Exceptions Districts" Sec. 20.444.015 Yards paragraphs (C) and (H). Which state:

"(C) If a roadway easement or access easement serves, or has the potential to serve, more than four (4) lots or parcels, said easement shall be considered a street for the purpose of establishing a front-yard setback or corridor preservation setback.

(H) In the case of a corner lot in any district, front yard setbacks shall be maintained from all lot lines having street frontage. Side yard setbacks shall be maintained from all other lot lines not having street frontage. (Ord. No. 3785 (part), adopted 1991)"

Please let me know the applicability that County Planning determines of this section.

Thanks

Dean

**Fred Tarr - RES 1-2006 - Bill Moores Re-Subdivision Request - Access Easement**

**From:** Dean Wolfe <seawolfe@mcn.org>  
**To:** Fred Tarr <tarrf@co.mendocino.ca.us>  
**Date:** 4/24/2007 11:01 AM  
**Subject:** RES 1-2006 - Bill Moores Re-Subdivision Request - Access Easement

Fred,

I enjoyed our conversation this am. As I stated in my original letter to you dated September 5, 2006, one of our primary concerns regarding Bill Moores' request to subdivide the two parcels behind our house centers on the access to those parcels across the 20 foot wide access easement on my property. It is my understanding that County requirements require a larger easement than currently exists and Mr. Moores is applying for an exception to those County requirements. Were Mr. Moores to widen the drivable portion of the driveway easement across our property, that drivable portion would come dangerously close to our garage door and represent a significant safety concern and severely negatively impact the use of our property.

An option for Mr. Moores is to develop an alternate access that does not require an exception to the County requirements nor impact our property. **It is my opinion that such an option exists and is available to Mr. Moores.** Lot 3-40 (APN 132-090-01) immediately south and adjacent to our property and the easement is for sale and currently available. Mr. Moores could purchase the lot and develop an appropriate easement providing for two way traffic as required by the County and thus there would be no need for an exception to current County requirements. As everyone is aware, Mr. Moores owns many properties in Irish Beach (>100). It may be possible that Mr. Moores could trade one of his other existing properties for lot 3-40 negating Mr. Moores' having to actually buy the lot from the current owners and thus minimizing his cost.

**Please note the following facts as background:** The County Staff report (dated April 6, 1989, #RES 1-89) regarding the creation of the two subject properties stated that the original intent of Mr. Moores was to have an access easement across two lots, 3-39 (our property) and lot 3-40, the immediately south adjacent property (see page 1 "Project Summary"). However, Mr. Moores opted to place the access easement on our lot (3-39) only. Mr. Moores developing an easement across Lot 3-40, now for sale and available, would be consistent with the original County Staff assessment reflected in the staff report dated April 6, 1989.

Sincerely

Dean Wolfe  
43600 Sea Cypress Dr.  
Manchester, CA 95459  
(707) 882-2729

Frank

April 23, 2007

Mendocino County  
Department of Planning and Building Services  
501 Low Gap Road  
Ukiah, CA 95482

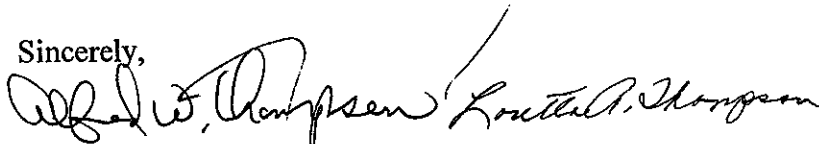
Attention: Director Ray Hall

Reference Case #: RES 1-2006 (Exception Request)

Dear Mr. Hall,

The proposed Coastal Re-Subdivision of two parcels in Irish Beach Subdivision 9 and 9a should be denied. Unit 9 and 9a were a subdivision granted by Mendocino County in 1988 with a total of 45 lots. At this time only 6 lots have been purchased so there are 39 lots that are still being held by Mr. William Moores the original owner. Why would Mendocino County agree to a Re-Subdivision in light of the fact that so many of the parcels in Unit 9-9a remain unsold? Six lot sales over a 19 year period indicates little interest by Mr Moores to price the lots for sale. Since Mendocino County approved the original sub-division plan submitted by Mr. William Moores we see no reason to allow a Re-Subdivision of the two parcels APN 132-320-42 and 132-320-43.

Sincerely,



Alfred W. Thompson and Loretta A. Thompson  
14860 Navarro Way  
P.O. Box 117  
Manchester, CA 95459

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APR 24 2007

BY  
PLANNING & BUILDING SERVICES  
Ukiah, CA 95482

Frank  
Stephen & Suzanne Whitaker  
PO Box 128  
Manchester, CA 95459

April 22, 2007

Raymond Hall, Director  
Planning & Building Services  
501 Low Gap Road  
Ukiah, CA 95482

Re: Subdivision Committee, Case # RES 1-2006  
APN 132-320-42 and APN 132-320-43

Dear Director Hall:

When complete build out finally occurs in Irish Beach, we will find ourselves in a very tightly packed community and any sort of open space will be most welcome. Because of this, the proposed Coastal Re-Subdivision by William and Tona Moores is a matter of concern, not only because it will lead to a reduction of open space, but also because it would appear to be in contradiction to the CC&R's for the Irish Beach subdivision. We understand that the County of Mendocino is not bound by such things as the CC&R's for Irish Beach; nevertheless, that document should be considered by the County when a Coastal Re-Subdivision is proposed.

In the CC&R's recorded on September 17, 1998 (see attached pages), we note the following on page 1:

"The Original Declarations were combined, amended and restated in their entirety by the First Restated Declaration which were incorporated into supplemental Declarations for Units 7, 7A, 8, 9 and 9A as follows:"

while on page 2 we find:

"Declaration of Covenants and Restrictions dated January 1, 1991 and recorded January 18, 1991 at Book 1882 at Page 689 as amended by documents dated March 30, 1996 and recorded on April 30, 1996 at Book 2328 at Page 409 (Unit 9A)."

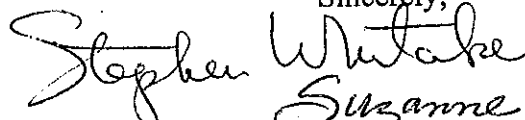
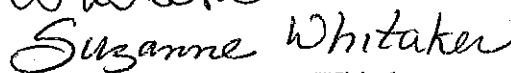
Of special importance is Section 7.19 where one finds:

"Section 7.19 Restriction on Further Subdivision and Severability. No Lot shall be further subdivided nor shall less than all of any such Lot be conveyed by an Owner thereof."

Finally, one page 25 one finds the signature of Gordon Moores, President of Mendocino Coast Properties, dated September 8, 1998.

This material suggests to us that the proposed Re-Subdivision is not consistent with the CC&R's for Irish Beach, and we hope that the Department of Planning & Building Services would take this into account at the hearing on April 27, 2007.

Sincerely,

  
  
Stephen & Suzanne Whitaker

Cc: Fred Tarr  
Enclosure: Pages from 1998 CC&R's

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APR 25 2007

BY  
PLANNING & BUILDING SERVICES  
Ukiah, CA 95482

CONFORMED COPY  
Copy of Document Recorded  
on 09/17/1998 as 1998-17732  
Mendocino County Clerk-Recorder

*Copy From  
Mangione*

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**SECOND DECLARATION OF RESTRICTIONS  
OF MENDOCINO COAST SUBDIVISION  
UNITS ONE, TWO, THREE, and FOUR**

**SECOND DECLARATION  
OF RESTRICTIONS OF MENDOCINO COAST  
SUBDIVISION**

THAT CERTAIN DECLARATION, executed by MENDOCINO COAST PROPERTIES, a corporation ("Declarant"), entitled "Amended and Restated Declaration of Restrictions, Units One, Two, Three and Four, Mendocino Coast Subdivision" dated October 1, 1971, and recorded on November 16, 1971, in Book 868, Page 131, and corrected April 19, 1974, by that certain document recorded on said date in Book 960 at Page 38 of the Official Records of Mendocino County, California (collectively the "First Restated Declaration"), affects all of the properties described and commonly known as Irish Beach, is hereby amended and restated in its entirety to read as follows:

**RECITALS**

1. Declarant was the owner of certain property in the County of Mendocino, State of California, which is more particularly described in Exhibit A through D attached hereto and incorporated herein by reference (the "Properties").

2. Declarant originally conveyed the Properties, subject to certain easements, protective covenants, conditions, restrictions, reservations, liens and charges as set forth in four separate declarations of restrictions that were all part of a common plan and scheme of development, namely: (1) Restrictions and Covenants Unit One - Mendocino Coast Subdivision, recorded in the Office of the County Recorder on June 2, 1965, in Book 690 at Page 508; (2) Amended Restrictions and Covenants Unit Two - Mendocino Coast Subdivision, recorded in the Office of the County Recorder on August 31, 1966, in Book 724 at Page 4; (3) Restrictions and Covenants Unit Three - Mendocino Coast Subdivision, recorded in the Office of the County Recorder on March 16, 1967, in Book 736 at Page 135; and (4) Restrictions and Covenants Unit Four - Mendocino Coast Subdivision, dated June 17, 1969, and recorded in the Office of the County Recorder in Book 794 at Page 237 (collectively, the "Original Declarations").

The Original Declarations were combined, amended and restated in their entirety by the First Restated Declaration which were incorporated into supplemental Declarations for Units 7, 7A, 8, 9 and 9A as follows: a) Supplemental Declaration Of Covenants and Restrictions dated May 5, 1980 and recorded on May 6, 1980 at Book 1257 at Page 642 (Units 7 and 7A); b) Declaration of Covenants and Restrictions dated July 20, 1980 and recorded on July 21, 1980 at Book 1266 at Page 312 and amended by document dated September 8, 1989 and recorded January 2, 1990 at Book 1799 at Page 697 (Unit

8); c) Declaration of Covenants and Restrictions dated January 1, 1989 and recorded January 18, 1989 at Book 1729 at Page 473 (Unit 9); d) Declaration of Covenants and Restrictions dated January 1, 1991 and recorded January 18, 1991 at Book 1882 at Page 689 as amended by document dated March 30, 1996 and recorded on April 30, 1996 at Book 2328 at Page 409 (Unit 9A). APN 132-320-42 PARCELS ARE IN  
APN 133-320-43 UNIT 9A

The purpose of the easements, protective covenants, conditions, restrictions, reservations, liens and charges of the Original Declarations and the First Restated Declaration were to enhance and protect the value, desirability and attractiveness of the Properties and all of which were intended to run with the Properties and be binding on all parties having or acquiring any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner (as defined herein) thereof.

3. On Sept 9, 1998, 75% of the Owners of Lots within the Properties voted by written ballot to amend and restate the Original Declaration, all in accordance with the procedures for amendment set forth in Paragraph 8(b) of the First Restated Declaration. As so amended and restated, these easements, covenants, restrictions, and conditions shall run with the Properties and shall be binding on all parties having or acquiring any right, title or interest in the Properties or any portion thereof, and shall inure to the benefit of each Owner thereof.

## ARTICLE I Definitions

Section 1.1 "Board of Directors" or "Board" shall mean the Board of Directors of IBIC and/or any appointed subcommittee, thereof.

Section 1.2 "Building Envelope" shall mean that area of a Lot upon which a residence can be built after provisions for a septic system and set back requirements or other physical limitations of the Lot are taken into account.

Section 1.3 "Committee" shall refer to the Architectural Design Committee defined in Article IV.

Section 1.4 "Common Area" shall mean all real property owned or leased by IBIC for the common use and enjoyment of the Owners, including all mutual or reciprocal easement rights appurtenant to separate interests.

Section 1.5 "Common Living Area" of a residence shall

*Donner Lake Park - Beach  
Gardner Park*



gravel or soil will be allowed on any Lot; provided, however, that Lots may be excavated to the extent required by construction plans approved by the Committee pursuant to Article V hereof.

Section 7.17 Parking and Vehicle Restrictions.

(a) All driveways and garages shall be maintained in a neat and orderly condition and garage doors shall not be left open unnecessarily.

(b) No motor vehicle shall be constructed, reconstructed or repaired within the Properties and no dilapidated or inoperable vehicle, including vehicles without wheel(s) or an engine, shall be stored on the Properties; provided however that the provisions of this Section shall not apply to emergency vehicle repairs or ordinary vehicle maintenance that can be accomplished in a few hours.

(c) Unused vehicles, (defined as a vehicle not used or moved for more than four (4) consecutive days) trailers, camper shells, boats, recreation vehicles, motor homes and similar equipment shall be stored in a garage or screened from view from the street or any neighboring Lot.

(d) No vehicles shall be permitted to drive or park on any beach within the Properties.

(e) No vehicle may be parked or otherwise stored in any area not intended for vehicle use. This includes lawns, backyards, or other areas not normally used by vehicles. *Kyle*

Section 7.18 Open Fires. No open fires shall be permitted on the beach portions of the Properties. Open fires on Lots for whatever purpose shall be managed by the Lot Owner in accordance with the County regulations and under the supervision of the local fire department. Nothing contained herein shall be construed to prohibit the use and enjoyment of barbecue fires on a Lot so long as the coals are contained in a conventional barbecue.

*942A 46 03 00 00's*  
Section 7.19 Restriction on Further Subdivision and Severability. No Lot shall be further subdivided nor shall less than all of any such Lot be conveyed by an Owner thereof.

*+ to take or carry from one place to another; transport*  
Section 7.20 Use of Private Streets in Common Area. Private streets shall not be used for recreational purposes, including "joy riding" or racing. Motorcycles, mopeds, or cars shall be allowed on such private streets only for ingress and egress.

severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

(c) Gender and Number. As used in this Declaration, the singular shall include the plural and the plural the singular, unless the context requires the contrary, and the masculine, feminine or neuter gender shall each be deemed to include the others whenever the context so indicates.

(d) Captions. All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.

(e) Exhibits. All exhibits attached hereto shall be deemed to be incorporated herein by reference.

DATED: Sept 8, 1991

MENDOCINO COAST PROPERTIES, OR ITS SUCCESSORS,

By

Gordon Moore  
(President)  
GORDON MOORE

////  
///  
//  
/

Rebecca Hinsberger  
319 Arlington St.  
Lynchburg, Va. 24503  
Sept. 22, 2006

RECEIVED  
SEP 29 2006

Mendocino Planning and Building Dept.  
Ukiah, Calif.

Dear Mr. Frank Lynch,

BY  
PLANNING & BUILDING SERVICES  
Ukiah, CA 95482

I am a property owner in the Manchester area of the Mendocino Coast, specifically, just south of Irish Beach. I own the middle parcel of the Nichol's Ranch, A.P.N. 132-210-43. Bill Moores owns the parcel contiguous with mine, directly above me. My two siblings, Margaret Ballou and Gordon Moores own the parcels on the north and south of me. The main access road to all parcels runs through my parcel. Currently, there are two homesites allowed on my parcel and one on each of my siblings' parcels. It is apparent that Bill is trying to get his "hilltop" parcel subdivided into several parcels, since he has done extensive clearing for what looks like about 5 homesites. ( He cut trees without a forestry permit, also).

He has recently approached my siblings and I about joining him on the cost of taking the power under ground in stead of above ground, as it is now, and including the telephone cable, improvements that impact all of our parcels, but would mainly be done on my parcel, which is between his hilltop and Highway 1. Even though getting the existing poles down would increase the aesthetics of the entire area, my siblings and I do not plan to cooperate with him since we have been "burned" on so many deals with Bill, in the past. He may go ahead without us, probably just extending from the end of the existing above ground utilities, and go underground on up to his parcel.

All of this activity signals that Bill has serious plans to develop the hilltop, apparently aiming at multiple parcels. He wouldn't be investing like this if he wasn't reasonably sure he can get his subdivision. My concern is that he NOT be able to subdivide up on his piece. It has always been our reliance that no more homes would exist in the area than is currently allowed. Five homes on Bill's hilltop would mean more traffic than our (gravel) roads were built to bare, not to mention the impact from increased traffic noise, visual impact of multiple travelers on the road and possibly five new homes peering down from the hill onto my two, and invasion of privacy now enjoyed by the two homes on my parcel. In totality, the impact of this development Bill is pursuing would seriously compromise the value of my parcel in particular, but also my siblings' parcels. When we siblings all agreed to allow Bill to trade his equity out of our mother's home for this hilltop, we relied on the fact that it is and would remain one parcel.

Please in form me immediately if any applications are ever made by Bill to gain a subdivision of his parcel. Likewise, if you become aware of any developments that you think I should know about pertaining to this issue,

PLEASE contact me, and if possible my siblings. All contact info is below.  
Thank you, Mr. Lynch.

Sincerely,

  
Rebecca Hinsberger

Rebecca Hinsberger  
319 Arlington St.  
Lynchburg, Va. 24503  
(415) 336-7278  
[dwellinsecretplace@yahoo.com](mailto:dwellinsecretplace@yahoo.com)

Margaret Ballou  
17 Josefa Ct.  
Novato, Calif. 94949  
(415) 884-0878  
[mmballou1@yahoo.com](mailto:mmballou1@yahoo.com)

Gordon Moores  
15280 Irish Beach Dr.  
Manchester, Ca. 95459  
(707) 882-2551  
[smoores@msn.org](mailto:smoores@msn.org)

cc: Margaret Ballou  
Gordon Moores

Dean & Patty Wolfe  
43600 Sea Cypress Drive  
Manchester, CA 95459  
seawolfe@mcn.org

September 5, 2006

County Of Mendocino  
Planning and Building Services  
501 Low Gap Road, Room 1440  
Ukiah, CA 95482

RECEIVED  
SEP 05 2006

Attention: Fred Tarr

Subject: Re-subdivision Permit Application 1-2006  
by Bill Moores

BY  
PLANNING & BUILDING SERVICES  
Ukiah, CA 95482

Dear Fred,

As you suggested I have placed my initial questions regarding Bill Moores' application to subdivide the land behind my home in writing. I probably will have additional questions after I have an opportunity to examine Mr. Moores' permit application. As I related on the phone, my wife and I own and live in our home at 43600 Sea Cypress Drive. The access to the area Mr. Moores wants to subdivide is across a 20' easement on the South side of my lot. I appreciate your time and hope you will find my questions and concerns helpful in your review of Mr. Moores' application.

My wife and I are concerned that if the County grants the permit for subdividing Mr. Moores' property, it will significantly adversely affect my home and any future buyers of the subject property and other surrounding lots. Any future buyers of the proposed subdivided lots may find that building is not possible or at least exceedingly difficult and expensive. My concerns are based on soil stability and erosion impacts, wetland and drainage impacts to surrounding properties, traffic safety impacts to my property, land development restrictions of the Coastal Act, and to the fact that Mr. Moores has apparently either deliberately ignored prior commitments to the County or, at best, failed to implement the terms of previous agreements reflected in the Unit 9 & 9A Site Development Plan (approved by the County 9-27-89) and various aspects of the April 6, 1989 Staff Report initially approving Unit 9 and 9A (#1-89). With this permit application Mr. Moores is ignoring the land use restrictions stated in the subdivision CC&Rs that specifically state that no further subdividing of land in Unit 9 and 9A is permitted. My current specific comments follow.

Soil Stability and Erosion Concerns:

1. The subject property is upslope from my residence. The property is quite steep. Originally development on the land was restricted to areas less than 30% grade, which is quite small. Any development on slopes greater than 30% needs the study of a registered engineer.
2. There are areas on the steep sections of the land that have washed out or slipped and show the potential for additional slippage. These unstable soil areas need to be carefully examined prior to approval of any additional subdivision.
3. The land, possibly into the 30% grade, has been cleared of all vegetation twice since I have owned my property. The first time was in middle 1990s and then again last year. When I questioned Mr. Moores regarding reseeding the area because of erosion concerns, he stated that it was not necessary because it would grow back on its own. Currently there are several

bare dirt areas and the remainder is sparsely covered in thistle and other undesirable weeds. Upon examination of the Site Development Plan such clearing is restricted and reseeding is required. General notes 5 and 6 of the Site Development Plan specifically require reseeding and restrict such work from occurring between November and March. Mr. Moores cleared the land last year between November and March and has yet failed to reseed the land as required. If the upcoming winter rains are initially heavy, I am concerned about mudslides.

#### Wetland and Drainage Concerns:

4. The \*\*8 condition for approval stated in the #RES 1-89 Staff Report specifically requires that the sub divider submit a drainage study prior to any construction. While no construction beyond the initial access road has occurred, has such a drainage study been prepared? My concern is based on the fact that several lots immediately down slope in Units 2, 3 and 5 of the subdivision have drainage problems and are currently unbuildable because of those drainage problems. This is known to Mr. Moores. I have been led to believe that Gordon Moores and Margaret Ballou (Gordon and Bill's sister), as the principles of Mendocino Coast Properties, have submitted to the County (in Fort Bragg) a drainage study and a proposed engineered solution for the Units 2, 3 and 5 drainage problem. I have also been led to believe that this study has been rejected by the County and is being redone prior to any further work by Mendocino Coast Properties. At the very least the impact of the proposed re-subdivision, which is immediately upslope from the problem properties, should be included in the drainage mitigation plan being proposed by Gordon Moores and Margaret Ballou and any approval of Mr. Moores re-subdivision should only proceed after the drainage plans are approved by the County. This would be consistent with the policy taken by Ray Hall regarding other work proposed by the Moores in Irish Beach.
5. On current Lot #3 there exists a spring that feeds a runoff ditch on the south border of the lot and extends through Units 5, 3 and 2 to a pond at the base of Unit 2 & 3 along HWY #1. The drainage has created a known wetland impacting Units 2, 3, & 5. This wetland area is the reason for the studies and engineering being conducted as referenced in #4 above. Upon examination, the low area, south westerly corner, 3% to 10% slope, of both lots requested to be subdivided in Mr. Moores application are also impacted and contain potential wetland areas. This could render them unbuildable and subject some future owner to unnecessary expense.
6. Since the subject lots are impacted by wetland areas, should there be an endangered plant and animal study conducted prior to re-subdivision? This has been required in the past by Planning and Building when property owners apply for permits.

#### Safety, Traffic and Land Development Concerns:

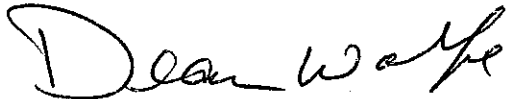
7. We are concerned about safety, traffic and access issues that will result from this proposed re-subdivision. Access to the lots is over a 20-foot easement on my property. The driveway currently installed is 12 feet wide and runs approximately 10 feet from my garage door. If the re-subdivision is approved the increased traffic over the easement will impact my and any future owner's use of my property. The easement was never intended to be a road and if the re-subdivision were approved would create a safety concern.
8. It is our impression that current access requirements for such subdivisions require a larger easement and two-lane access. Approving the re-subdivision would represent a variance to current access requirements. Also, the installation of two lanes for traffic would take the roadway to within 4 feet of my garage door and present a significant safety risk. Even backing out of my garage would be a safety risk because I would not even be able to see if anyone was coming until I was already in the roadway.

9. As stated in the Staff Report reference to the Coastal Act page 3, paragraph 3.9-2 b., no new parcels shall be created unless 50% of the existing usable parcels within the surrounding area have been developed. The existing Unit 9 and 9A and the recently opened Unit 5 contain over 60+ buildable lots and are offered for sale by the Moores. To date, only four lots have had homes built, three in Unit 9 and one in Unit 5, far less than the 50% required by the Coastal Act. Approval of Mr. Moores' application for re-subdivision would appear to violate this provision of the Coastal Act.
10. The \*\*5 condition for approval stated in the #RES 1-89 Staff Report specifically requires that the subdivider shall install water main and services for each lots that was approved at that time. This was never done. The only guarantee that Mr. Moores will comply with the requirement to install services is to require that they be installed prior to permit approval. Other wise the future owners will suffer the expense and possible problems posed by installation of the services.

It appears to me that careful study needs to be performed prior to the County approving Mr. Moores' request for a re-subdivision behind out home. There appears to be significant engineering work yet required and justification yet to be presented by Mr. Moores for the re-subdivision. Such justification should address the facts that the surrounding properties have not been sold (signifying a lack of public demand), the re-subdivision presents a potential **safety** risk to current and future property owners, poses slope and soil stability issues, presents wetland and drainage issues, and apparently would require the County granting of variances to current requirements. These facts coupled with Mr. Moores' history of not meeting requirements previously invoked by the County presents a significant argument for a cautious approach by the County in its review of the re-subdivision permit application of Mr. Moores.

Thank you for your consideration.

Sincerely

A handwritten signature in cursive script, appearing to read "Dean Wolfe", written in dark ink.

Dean and Patty Wolfe



**-MENDOCINO COUNTY PLANNING AND BUILDING SERVICES-  
DIVISION OF LAND REGULATIONS – TITLE 17**



**ARTICLE X -- EXCEPTIONS**

Sec. 17-86 Application.

Sec. 17-87 Planning Commission Action.

Sec. 17-88.

**Sec. 17-86 Application.**

Application for an exception to any of the regulations or requirements set forth in this chapter shall be submitted and considered only in connection with a tentative map for a division of land and shall set forth all of the grounds for requesting such an exception. A request for exception shall be noticed along with the application for the division of land. *(Ord. No. 1813, adopted 1976)*

**Sec. 17-87 Planning Commission Action.**

The Planning Commission may grant a request for an exception only upon the affirmative finding that:

(A) There are special circumstances or conditions affecting the proposed division of land.

(B) The granting of the exception will not be detrimental to the public welfare or injurious to surrounding property. *(Ord. No. 1813, adopted 1976)*

**Sec. 17-88.**

In granting an exception, the Planning Commission shall secure substantially the same objectives of the regulations for which an exception is requested and shall impose whatever conditions it deems necessary to protect the public health, safety, convenience and general welfare.

A decision of the Planning Commission shall become final and effective upon the expiration of the ten (10) day appeal period unless a timely appeal therefrom is filed, in which case the decision of the Board shall be final and the exception, if granted, immediately effective. In the hearing of such appeal, the Board shall not grant an exception without having made the findings set forth in Section 17-87. *(Ord. No. 1813, adopted 1976; Ord. No. 4001 (part), adopted 1998)*





## ARTICLE V. MINOR SUBDIVISIONS

Sec. 17-47.

Sec. 17-48 Procedures.

Sec. 17-48.5 Requirements.

Sec. 17-49 Waiver of Parcel Map.

### **Sec. 17-47.**

A tentative map and a parcel map shall be required for every subdivision deemed to be a minor subdivision within the meaning of Section 17-20, except that a parcel map may be waived pursuant to the procedures established in Section 17-49. Such maps shall conform to the following requirements:

#### **(A) TENTATIVE MAPS.**

(1) **Form.** The tentative map shall be a sketch clearly and legibly drawn. The minimum sheet size shall be 8 ½ x 11 inches. The minimum scale shall be one (1) inch equals one hundred (100) feet unless otherwise approved by the Director of Planning.

(2) **Content.** The tentative map of a minor division shall contain the following information:

(a) Names, addresses, and phone numbers of owners, subdivider, and person who prepared the map.

(b) Date map was prepared, north point, and scale.

(c) The approximate width and location of all proposed or existing easements together with the purpose thereof.

(d) The proposed lot layout, approximate dimensions, and approximate area of all lots or parcels. All proposed lots or parcels shall be numbered consecutively throughout the entire division of land.

(e) A red border on the map to indicate the boundaries of the land to be divided.

(f) Approximate location, width, name and status as public or private of all existing and proposed streets lying within and adjacent to the division of land.

(g) The outline of any existing buildings to remain in place and their approximate locations in relation to existing or proposed lot lines.



**-MENDOCINO COUNTY PLANNING AND BUILDING SERVICES-  
DIVISION OF LAND REGULATIONS – TITLE 17**



- (h) Lines indicating direction of slope and approximate percent of grade or sufficient contour lines to indicate the general slope of the land.
- (i) The approximate locations of areas subject to inundation; the approximate location of existing or proposed lakes, ponds, springs, or reservoirs; and the location, width, and direction of flow of all significant water courses existing and proposed to the same degree of accuracy that road and other proposed improvements are shown.
- (j) The approximate location of property line fences, wells, private sewage systems, culverts, drain pipes, underground structures, above ground structures, major excavations, or other hazards within the area to be divided or within two hundred (200) feet adjacent thereto.
- (k) The Assessor's parcel numbers of the property to be divided, together with the Assessor's parcel numbers and date acquired, transferred, leased, or financed of any property contiguous to the property to be divided in which the owner or subdivider of said property has had any ownership interest subsequent to September 20, 1963.
- (l) A site sketch showing the location of the proposed minor subdivision in relation to the surrounding area.
- (3) Accompanying Statements. The following statements or information shall either appear on or shall be submitted with the tentative map of a minor subdivision:
- (a) A statement detailing both the existing and proposed uses of the subject property and specifying the source of domestic water and the method proposed to handle sewage disposal for the proposed lots or parcels.
- (b) A statement of and specific justification for any variances requested from the provisions of this Chapter or of Chapter 20 of the Mendocino County Code.
- (c) A statement indicating whether or not the property proposed to be divided was the result of a previous minor subdivision approved subsequent to January 1, 1970 and, if so, whether a parcel map or unilateral agreement was recorded to complete that subdivision.
- (4) Accompanying Documents. The following documents shall be submitted with the tentative map of a minor subdivision:
- (a) A preliminary title report, issued within thirty (30) days of the date of the submission of the map, detailing the ownership of the property proposed to be divided.
- (b) A declaration signed under penalty of perjury by each legal owner of the property to be divided to the effect that the tentative map and related exhibits and documents show

*Is stated  
now?*

consistent with the plan's restoration objectives. The plan shall include provisions for making repairs or modification to the restoration site necessary to meet the project objectives. The final plan shall provide either that the restoration site shall be owned in fee by an agency or non-profit organization having among its principal purposes the conservation and management of fish and wildlife, or other habitat resources, or shall provide for dedication of an open space or conservation easement over the restoration area to such an agency or organization.

(H) Review and Approval of Final Restoration Plan.

(1) Following staff review of the final restoration plan for conformance with the approved or conditionally approved Tentative Restoration Plan, the Coastal Zoning Administrator shall determine if the Final Restoration Plan is in substantial conformance with the approved tentative plan.

(2) The Coastal Zoning Administrator's determination that the Final Restoration Plan is in substantial conformance with the approved tentative plan, may be appealed pursuant to the appeals procedures of Chapter 20.544.

(Ord. No. 3785 (part), adopted 1991)

**Sec. 20.532.070 Geologic Hazards--Evaluation and Supplemental Application Information.**

(A) ~~The extent of additional geotechnical study that must accompany Coastal Development applications depends on the site and type of project as follows:~~

(1) Land Use and Building Type.

(a) Type 1: Public, High Occupancy and Critical Use, including: Hospitals, Fire and Police Station, Communication Facilities, Schools, Auditoriums, Theaters, Penal Institutions, High-rise Hotels, Office and Apartment Buildings (over 3 stories), and Major Utility Facilities.

(b) Type 2: Low Occupancy, including: Low-rise Commercial and Office Buildings (one (1) to three (3) stories), Restaurants (except in high-rise category), and Residential (less than eight (8) attached units and less than 3 stories).

(c) Type 3: Residential (less than eight (8) attached units), and Manufacturing and Storage/Warehouse (except where highly toxic substances are involved which should be evaluated on an individual basis with mandatory geotechnical review.).

(d) Type 4: Open Space, Agricultural, Golf Courses, etc.

(2) Required Studies.

(a) Fault Rupture. Prior to proceedings with any Type 1 development, published geologic information shall be reviewed by an engineering geologist or civil engineer, the site shall be mapped geologically and aerial photographs of the site and vicinity shall be examined for lineaments. Where these methods indicate the possibility of faulting, a thorough investigation is required to determine if the area contains a potential for fault rupture. All applications for development proposals shall be reviewed for compliance with the Alquist-Priolo Special Studies Zone Act pursuant to Subsection (D) below and shall be deemed incomplete until such time as the reviewing geologist report is accepted

(b) Seismic-Related Ground Failure. Site investigation requirements for seismic-related ground failure are described as follows:

(i) Land Use/Building Type 2 and 3 within Zone 1 (Low): Current building code requirements must be met, as well as other existing state and local ordinances and regulations. A preliminary geotechnical investigation should be made to determine whether or not the hazards zone indicated by the Land Capabilities/Natural Hazards maps is reflected by site conditions.

(ii) Land Use/Building Type 1 within Zone 1 (Low) and Land Use/Building Type 3 within Zones 2 (Moderate) and Zone 3 (High): In addition to Subsection (i), above, geotechnical investigation and structural analysis sufficient to determine structural stability of the site for the proposed use is necessary. It may be necessary to extend the investigation beyond site boundaries in order to evaluate the shaking hazard. All critical use structure sites require detailed subsurface investigation.

(iii) Land Use/Building Type 1 within Zone 2 (Moderate) and Land Use/Building Type 2 within Zones 2 (Moderate) and Zone 3 (High): In addition to Subsections (i) and (ii), above, surface and/or subsurface investigation and analyses sufficient to evaluate the site's potential for liquefaction and related ground failure shall be required.

(iv) Land Use/Building Type 1 within Zone 3 (High): In addition to Subsections (i), (ii) and (iii), detailed dynamic ground response analyses must be undertaken.

(3) Unspecified land uses shall be evaluated and assigned categories of investigation on an individual basis.

(a) Tsunami. Land Use Types 1, 2 and 3 shall not be permitted in tsunami-prone areas. Development of harbors and Type 4 uses should be permitted, provided a tsunami warning plan is established.

(b) Landsliding. All development plans shall undergo a preliminary evaluation of landsliding potential. If landslide conditions are found to exist and cannot be avoided, positive stabilization measures shall be taken to mitigate the hazard.

(B) Review of Geologic Fault Evaluation Report by County Geologist. An application for development which requires a report or waiver prepared pursuant to the Alquist Priolo Act shall not be accepted as complete unless and until there are:

(1) A fully executed agreement between a geologist registered in the State of California and the County to either review the report required hereinabove or to prepare a request for waiver; and

(2) A fully executed agreement between the County and the applicant to reimburse the County for the costs incurred pursuant to the agreement specified in subparagraph (1) above.

Within thirty (30) days of an application for development located within an Alquist-Priolo special study area, the County shall cause a geologist registered in the State of California (hereinafter called County reviewing geologist) to review the geologic report. The review shall assess the adequacy of the documentation contained in the report, and the appropriateness of the depth of study conducted in consideration of the use proposed for the project site. The County reviewing geologist



**-MENDOCINO COUNTY PLANNING AND BUILDING SERVICES-  
DIVISION OF LAND REGULATIONS – TITLE 17**



(1) Prior to the imposition of any conditions or the determination of any recommendations, the Subdivision Committee shall make findings with respect to the following requirements:

(a) The tentative map, and information supplied therewith, complies with all of the requirements of Section 17-47(A).

(b) The proposed minor subdivision is fully consistent with the General Plan, any applicable specific plan, and any amendment thereto which has been favorably recommended by the Commission to the Board of Supervisors.

(c) The land which is proposed to be subdivided has received a specific zone classification and the proposed subdivision is fully consistent with all of the requirements of such zone classification or, if the land has not been specifically zoned or the proposed subdivision is not fully consistent with applicable zoning, applications for such zoning actions or necessary variances have been made.

(d) The proposed minor subdivision fully complies with all requirements of Article VI of this Chapter.

(e) Access to each parcel is provided by one of the following methods:

(i) Access to each parcel will be provided by fronting on a publicly maintained street or a private road easement of adequate width. If the private road easement serves four or less parcels or lots, adequate width of easement shall be that required to build and maintain an eighteen (18) foot wide road within the easement with a minimum easement width of forty (40) feet. If the private road easement serves more than four (4) parcels or has a potential to serve more than four (4) parcels, adequate width of the easement shall be that required to conform with the provisions of this Chapter pertaining to street requirements for subdivisions or parcel divisions.

(ii) The Planning Commission may approve a tentative map creating parcels with access by way of existing dead-end easements where the length exceeds six hundred (600) feet provided that such easement complies with the minimum width requirements prescribed above. Where the minor division creates lots each having a gross area of ten (10) acres or more, the Planning Commission may approve a tentative map creating a dead-end easement where the length exceeds six hundred (600) feet provided that such easement extends to the exterior boundary line of the proposed division of land so that future connections may be made.

(f) Where lots or parcels front on a County-maintained street or highway of insufficient width or where the existing right of way is not deeded to the County, right of way sufficient for the ultimate street and other improvements will be provided by grant deed

## **Sec. 20.540.020 Findings.**

Before any variance may be granted or modified it shall be shown:

- (A) That there are special circumstances applicable to the property involved, including size, shape, topography, location, or surroundings; and
- (B) That such special circumstances or conditions are not due to any action of the applicant subsequent to the application of the zoning regulations contained in this Division and applicable policies of the Coastal Element; and
- (C) That such variance is necessary for the preservation and enjoyment of privileges possessed by other property in the same vicinity and zone and denied to the property in question because of the special circumstances identified in Subsection (A); and
- (D) That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located; and
- (E) That the variance does not authorize a use or activity that is not otherwise expressly authorized by the zoning provisions governing the parcel; and
- (F) That the granting of such variance is in conformity with all other provisions of this Division and the Mendocino Coastal Element and applicable plans and policies of the Coastal Act.

(Ord. No. 3785 (part), adopted 1991)

## **Sec. 20.540.025 Decisions.**

(A) Action. Upon completion of review and evaluation of an application for a variance, the Coastal Permit Administrator or other approving authority pursuant to Section 20.540.010(A) shall either:

- (1) Make such findings or other determination as is required by the pertinent sections of the zoning code and approve the application. The variance may be granted for the full dimensions and extent as requested by the applicant.
- (2) Notify the applicant of the changes and modifications required for approval of the application, or
- (3) Deny the variance. The Coastal Permit Administrator shall deny the variance if:
  - (a) The variance cannot be conditioned by adequate requirements to insure compliance with applicable regulations and applicable plans and policies of the Coastal Act; or
  - (b) The application for the variance cannot reasonably be modified to conform to the applicable development requirements; or
  - (c) The required findings of Section 20.540.020 cannot be made.

(B) Time Period. Within one hundred eighty (180) days of filing of a complete application for a variance, the Coastal Permit Administrator shall take such action as is specified in subsection (A) above. The one hundred eighty (180) day time period may be extended ninety (90) days with the written consent of the applicant and the department. If the Coastal Permit Administrator does not act within the specified time period or extension thereof, the application shall be deemed to have been approved. The date of the actual filing of the application for the

RECORDING REQUESTED BY  
Fidelity National Title Ins.  
MAIL TAX STATEMENT TO

*Same as below*

WHEN RECORDED MAIL TO

Name  
Street  
Address  
City  
State  
Zip

Fidelity National Title Ins.  
P.O. Box 60  
Ukiah, CA 95482

<input type="checkbox"/>	\$20.00 PAID
<input type="checkbox"/>	PCO FILED
<input checked="" type="checkbox"/>	Exempt

11097  
RECORDED AT REQUEST OF  
FIDELITY NATIONAL TITLE INS. CO.

BOOK 1759 PAGE 467  
JUN 27 10 36 AM '89

OFFICIAL RECORDS  
MENDOCINO COUNTY CALIF  
MARSHA A. YOUNG  
RECORDER

ORDER NO.  
ESCROW NO. 108493

**EASEMENT  
CORPORATION  
GRANT DEED**

RECORDERS USE ONLY  
DOCUMENTARY TRANSFER TAX \$ NONE

COMPUTED ON FULL VALUE OF PROPERTY CONVEYED, OR  
COMPUTED ON FULL VALUE LESS LIENS & ENCUMBRANCES  
REMAINING THEREON AT TIME OF SALE.

*Fidelity National Title - Trudi Cargano*

Signature of declarant or agent determining tax - Firm Name

Unincorporated Area \_\_\_\_\_ City of \_\_\_\_\_

TAX PARCEL NO. \_\_\_\_\_

5.00  
IP

MENDOCINO COAST PROPERTIES

a corporation

FOR A VALUABLE CONSIDERATION, DOES HEREBY GRANT TO

WILLIAM MOORES AND TONA MOORES, his wife

the real property in the County of Mendocino, State of California, described as:

A non-exclusive easement for ingress, egress and public utilities over the most  
Southerly 20 feet of Lot 39, Unit 3, Mendocino Coast Subdivision, recorded  
March 14, 1967 in Map Case 2, Drawer 8, Page 29.

Said easement is appurtenant to Lot 4, Unit 9, Irish Beach Subdivision, recorded  
January 12, 1989 in Map Case 2, Drawer 47, Page 83, Mendocino County Records and  
each and every subdivision and re-subdivision thereof.

Dated: June 12, 1989

MENDOCINO COAST PROPERTIES

By Gertrude J. Elder, vice president  
Gertrude J. Elder, Vice President

(Corporation Acknowledgment)

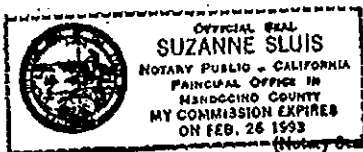
STATE OF CALIFORNIA  
County of Mendocino

On this 20th day of June, in the year 1989, before me, the undersigned, a Notary Public in and  
for said County and State, personally appeared Gertrude J. Elder

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument  
as Vice President or on behalf of the corporation  
therein named, and acknowledged to me that such corporation executed it.

WITNESS my hand and official seal.

*Suzanne Sluis*  
Notary Public in and for said County and State.



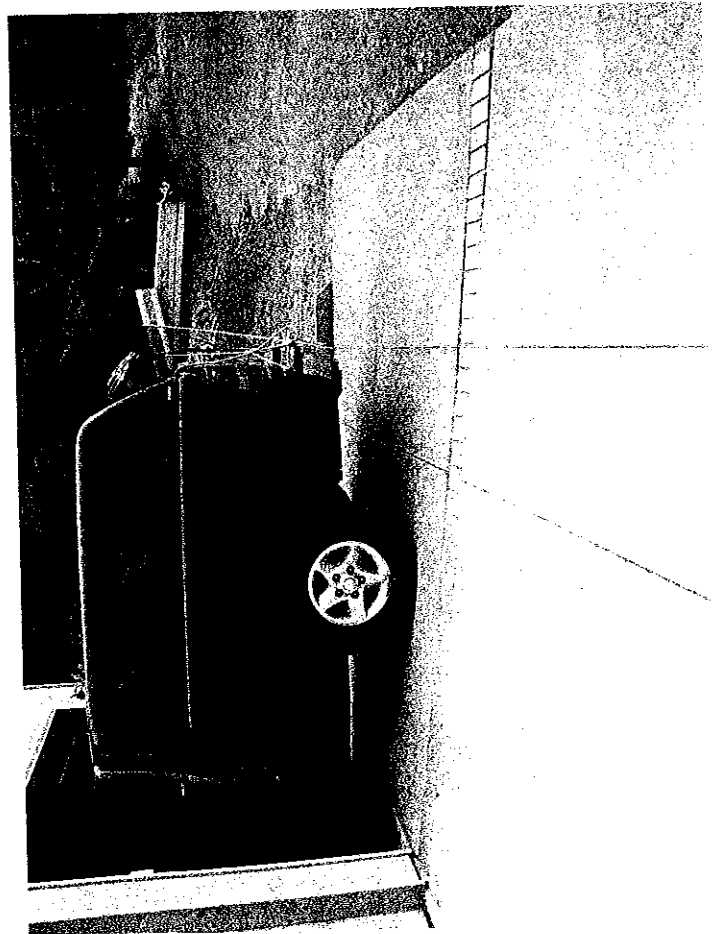
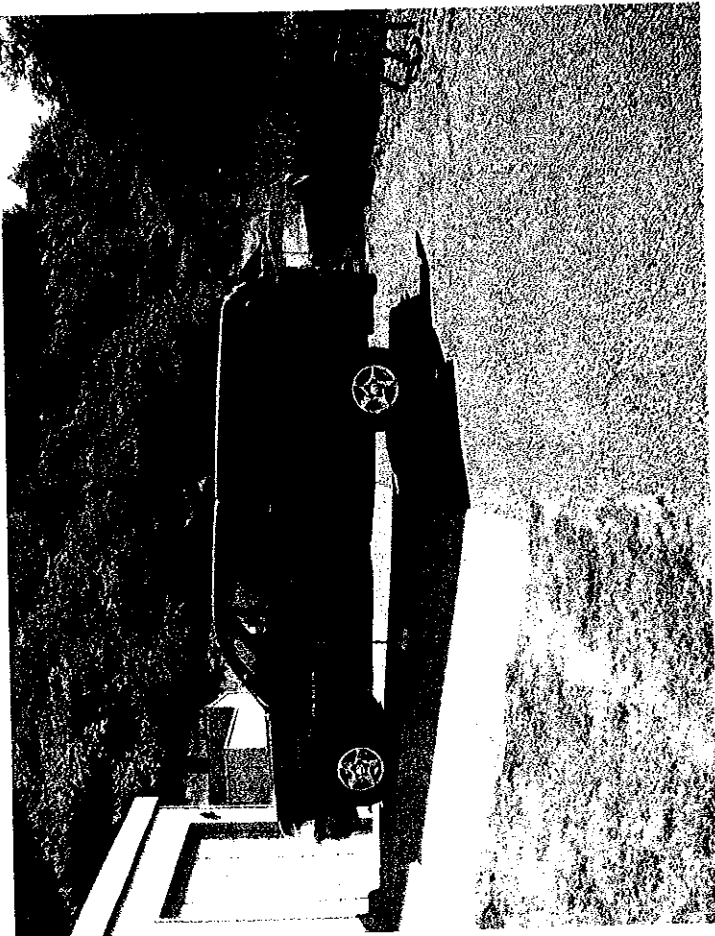
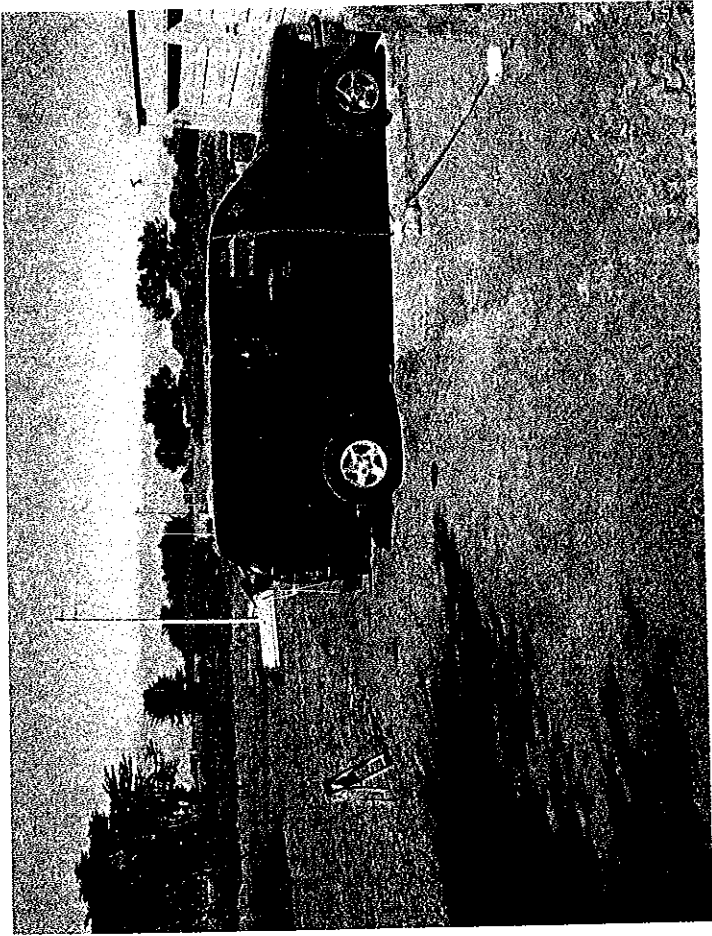


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**Fred Tarr - RES 1-2006 - Bill Moores Re-Subdivision Request - Access Easement**

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**From:** Dean Wolfe <seawolfe@mcn.org>  
**To:** Fred Tarr <tarrf@co.mendocino.ca.us>  
**Date:** 4/24/2007 11:01 AM  
**Subject:** RES 1-2006 - Bill Moores Re-Subdivision Request - Access Easement

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Fred,

I enjoyed our conversation this am. As I stated in my original letter to you dated September 5, 2006, one of our primary concerns regarding Bill Moores' request to subdivide the two parcels behind our house centers on the access to those parcels across the 20 foot wide access easement on my property. It is my understanding that County requirements require a larger easement than currently exists and Mr. Moores is applying for an exception to those County requirements. Were Mr. Moores to widen the drivable portion of the driveway easement across our property, that drivable portion would come dangerously close to our garage door and represent a significant safety concern and severely negatively impact the use of our property.

An option for Mr. Moores is to develop an alternate access that does not require an exception to the County requirements nor impact our property. **It is my opinion that such an option exists and is available to Mr. Moores.** Lot 3-40 (APN 132-090-01) immediately south and adjacent to our property and the easement is for sale and currently available. Mr. Moores could purchase the lot and develop an appropriate easement providing for two way traffic as required by the County and thus there would be no need for an exception to current County requirements. As everyone is aware, Mr. Moores owns many properties in Irish Beach (>100). It may be possible that Mr. Moores could trade one of his other existing properties for lot 3-40 negating Mr. Moores' having to actually buy the lot from the current owners and thus minimizing his cost.

**Please note the following facts as background:** The County Staff report (dated April 6, 1989, #RES 1-89) regarding the creation of the two subject properties stated that the original intent of Mr. Moores was to have an access easement across two lots, 3-39 (our property) and lot 3-40, the immediately south adjacent property (see page 1 "Project Summary"). However, Mr. Moores opted to place the access easement on our lot (3-39) only. Mr. Moores developing an easement across Lot 3-40, now for sale and available, would be consistent with the original County Staff assessment reflected in the staff report dated April 6, 1989.

Sincerely

Dean Wolfe  
43600 Sea Cypress Dr.  
Manchester, CA 95459  
(707) 882-2729

Dean & Patty Wolfe  
43600 Sea Cypress Dr.  
Manchester, CA 95459  
dpseawolfe@mac.com  
(707) 882-2729

RECEIVED  
NOV 07 2007  
BY  
PLANNING & BUILDING SERVICES  
Ukiah, CA 95482

Monday, November 5, 2007

To: Irish Beach Water District Board of Directors  
PO Box 67  
Manchester, CA 95459

Subject: Re-subdivision Permit Application RES 1-2006

Dear Board Members,

As you are aware, Mr. Bill Moores has made an application to subdivide the two 4+ acre lots (APN#132-320-42 and 43) behind our home into four 2-acre lots, thus creating two new buildable lots within Irish Beach. His intent is to use the 20-foot easement across the southern portion of our lot as the access to these new lots. In pursuit of this intent Mr. Moores has requested an exception from the County requirement for a minimum of a 40-foot wide access easement. County Planning and Building Services has yet to complete its evaluation and issue any ruling regarding Mr. Moores's application. We have three concerns that may warrant attention by the Irish Beach Water District Board of Directors with regard to this matter.

1. On June 1, 2007 Mr. Moores submitted documents and maps to the County outlining the details of his application (Tentative Map and Site Development Plan prepared by Rob Huffman). The map shows the culvert going under the concrete apron in front of our garage as "abandon". As you may or may not be aware, the 10 feet bordering the rear property line of our lot is a drainage easement. The Irish Beach Water District currently uses this drainage easement. The Water District has a 4" overflow pipe coming from the tank on Alta Mesa that runs on the surface and subsurface from the tank to daylight at a point next to the southern boundary of our lot, just before the current 20-foot access easement and 12-foot paved access driveway that uses the easement. Since the 12 feet of pavement runs across and blocks the drainage easement and has no provision for water to pass, the culvert under our driveway concrete apron is the only route available for the water from the Water District water tank overflow drainpipe. The abandonment of our culvert would cause problems with the present drainage use by the Water District and would make any future uses of the drainage easement problematic. We have commented to the County that any plans for increased use of the acreage behind our home should address the needs of the drainage easement, not "abandon" the only drainage exit from the easement.

We understand that Mr. Moores is preparing a new submittal to the County that will incorporate any provisions that he proposes to resolve County concerns. The Water Board may find it worthwhile to review and comment on future submittals to the County regarding Mr. Moores's project.

2. On September 18, 2006 the Water District issued a letter to the County agreeing to provide water to the two new lots being created by Mr. Moores's re-subdivision request. Since that time we are aware that the Mallo Pass water source has been placed in jeopardy and there may be uncertainty regarding the future ability of the District to access Mallo Pass water (ref. IBWD July 14, 2007 meeting minutes). Since Mallo Pass water is required in order to supply future hook ups of all lots currently in Irish Beach, the loss of Mallo Pass, without replacement, would create the situation where there may not be sufficient water in the future to supply all current lots with hookups let alone any newly created lots proposed by the developer.

We are aware that the District is pursuing extension of the permit and avoidance of the SWRCB permit revocation. We are also aware that the District is investigating the drilling of wells. However,

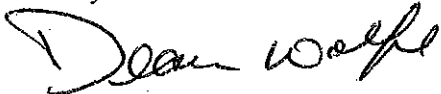
both additional wells and the permit extension for Mallo Pass have yet to be consummated. We suggest that the District consider notifying County Planning and Building Services of the situation and placing on hold this and any other current or future agreements to supply newly proposed/created lots with future water until either the situation with Mallo Pass is resolved or additional water sources are identified and obtained by successfully installing new wells.

3. When researching the Water District's agreement to supply future water to the subject proposed lots, it came to our attention that Mr. Moores has proposed to the County that he may utilize a spring in lieu of hooking up to the Water District (See attached 9/18/07, Moores to Tarr letter). While we were aware of the spring's existence, we question this proposal by Mr. Moores.

Isn't all water in the District owned by the Water District thus under its jurisdiction? If this is a viable water source, shouldn't the District develop and use it, even if it requires an exercise of the District's eminent domain rights?

We appreciate the time and effort required of Water Board members to address the complex issues facing the Water District. We will answer any questions that board members may have regarding the above subject, either individually or in public Water Board meetings.

Sincerely

A handwritten signature in black ink that reads "Dean Wolfe". The signature is written in a cursive, flowing style.

Dean and Patty Wolfe

Cc: Fred Tarr, Planner II, Mendocino County Planning and Building Services

**Dean & Patty Wolfe**  
**43600 Sea Cypress Drive**  
**Manchester, CA 95459**  
**seawolfe@mcn.org**

Tuesday, October 3, 2007

County Of Mendocino  
Planning and Building Services  
501 Low Gap Road, Room 1440  
Ukiah, CA 95482

Attention: Fred Tarr

Subject: Re-subdivision Permit Application 1-2006

Dear Fred,

Thank you for meeting with Patty and I on Monday, September 17. After we met with you, Patty and I met with Tom Peters regarding Bill Moores' application and its status. We have additional concerns that, while we have verbally discussed some of them with you and Tom Peters, we have not documented them to you. The purpose of this letter is to document our additional concerns that we have regarding the project based on the documents and maps that we reviewed in your office that were submitted by Bill Moores to the County June 1, 2007 (Tentative Map and Site Development Plan prepared by Rob Huffman).

There are three additional concerns that arise from our review of the documents.

1. The map shows the installation of a retaining wall down the north edge of our driveway (the easement). This retaining wall is unacceptable because it presents a physical safety hazard along the north edge of our driveway and restricts access to our front yard. It creates a situation where parking on that side of our driveway would be prevented, anyone backing down our rather long and straight driveway would be in danger of going off the edge and damaging their vehicle, and I would even be restricted from running my riding lawnmower from my garage to the front yard.
2. The map shows my culvert going under the concrete apron in front of my garage as "abandon". This is unacceptable. The culvert is used by our roof gutter drains and two french drains along the rear of our home. As you know, the 10 feet bordering the rear property line of our lot is a drainage easement. The drainage easement is used by the Irish Beach Water District. The Water District has a 4" overflow pipe from a tank uphill from Sea Cypress Drive that empties into the subject culvert. The abandonment of the culvert would cause problems with present drainage uses and would make future uses of the drainage easement problematic. In addition, the current 12' paved access driveway that uses the easement passes right over the drainage easement with no provision for water to pass so the culvert under our driveway concrete apron is the only route available for the water from the drainage easement. Any plans for increased use should address the needs of the drainage easement, not "abandon" it.
3. The map does not address the concrete apron providing access to our garage. It shows the proposed 18' of pavement going right over our driveway concrete apron.

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OCT 04 2007

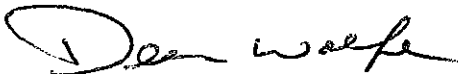
BY

Since I have talked to you, Bill Moores' engineer contacted me to negotiate an access agreement. I refused to enter into an agreement for the same reasons I refused to enter into an agreement with Bill Moores directly. When questioned regarding the paving, the engineer related that the entire asphalt driveway would need to be removed and an appropriate roadbed installed then the area repaved. In addition to the need to allow my access to my own residence during the construction (which has not yet been addressed), another problem is that this is in disagreement with what was related to me by Bill Moores. When I posed the same question to Bill Moores, he told me that he was going to just pave around the current 12' driveway to get his 18' of pavement. When this was related to the engineer, the Engineer stated that patching to get 18' of pavement could not be properly done. This is interesting because Bill Moores specifically refused, when I requested, to provide any assurances that he would complete the project as approved and agreed too. If the County were to approve Mr. Moores' resubdivision request, what assurance can the County provide me that I will be able to access my residence during construction and Bill Moores will complete the project as approved in a timely manner?

As we discussed, were the County to approve Mr. Moores's request for a variance from a 40' access easement, not only would it damage my property for the reasons cited here-in and my previous communications (letter dated September 5, 2006, e-mail dated April 24, 2007 and email dated May 2, 2007), it would damage my neighbor's property. Granting Mr. Moores's request would create the possibility that there could be greater than 4 lots served by the nonconforming access easement. This would make both my lot and my neighbor's lot corner lots which would then require a 20' setback along the easement. This would essentially take away 1/3 of the usability of my neighbor's lot.

I see no logical reason for the County to approve Mr. Moores' variance request to increase the utilization of the 20' easement across my property. There is property available for purchase by Mr. Moores that would allow him to provide the County required 40' easement and negate the necessity for a variance. While we have concerns regarding Mr. Moores' resubdivision request, all of our objections are focused at this point on the access easement across our property.

Sincerely

A handwritten signature in dark ink, appearing to read "Dean Wolfe". The signature is fluid and cursive, with the first name "Dean" being more prominent than the last name "Wolfe".

Dean and Patty Wolfe

Cc: Tom Peters, County of Mendocino DOT  
Doug and Milli Conover (owners of adjacent property, Unit 3 lot 40)

**Fred Tarr - Setbacks applicable to Bill Moores Resubdivision Application**

---

**From:** Dean & Patty Wolfe <dpseawolfe@mac.com>  
**To:** Fred Tarr <tarrf@co.mendocino.ca.us>  
**Date:** 7/9/2007 9:58 PM  
**Subject:** Setbacks applicable to Bill Moores Resubdivision Application  
**CC:** Milli & Doug Conover <mcc7221@comcast.net>

---

Fred,

Enjoyed talking to you today. I too probably enjoyed the 4th too much.

As far as my question regarding setbacks. My question concerns the applicability to our lot and my next door neighbor's (Conover) lot of the County code reference below to Bill Moores re-subdivision application behind us. Since Moores will have 4 lots, the easement will serve his 4 lots and our lot and would be interpreted as serving 5 lots (more than 4), so it would apply except, if it is interpreted as serving 4 or more lots in addition to our lot, it would serve only 4 lots and it would not apply? I do not know how to read this. Because our house is already built and since my current rear line setback of 20' would be reduced to a sideline setback of 6', I see no problematic impact to our lot. However, it could impact my neighbor significantly. A 20 foot setback from the easement would take away a portion of the current buildable area of his lot, which is not large to start with. I discussed it with him on Saturday.

The County Code reference is at the County Web Site:

<http://webdev.co.mendocino.ca.us/planning/CoastZO/ZO444.htm>

Specifically the reference is:

County Code Division II of Title 20 -- Coastal Zoning Code Chapter 20.444 "General Provisions and Exceptions Districts" Sec. 20.444.015 Yards paragraphs (C) and (H). Which state:

"(C) If a roadway easement or access easement serves, or has the potential to serve, more than four (4) lots or parcels, said easement shall be considered a street for the purpose of establishing a front-yard setback or corridor preservation setback.

(H) In the case of a corner lot in any district, front yard setbacks shall be maintained from all lot lines having street frontage. Side yard setbacks shall be maintained from all other lot lines not having street frontage. (Ord. No. 3785 (part), adopted 1991)"

Please let me know the applicability that County Planning determines of this section.

Thanks

Dean

**Fred Tarr - RES 1-2006 - Bill Moores Re-Subdivision Request - Access Easement**

**From:** Dean Wolfe <seawolfe@mcn.org>  
**To:** Fred Tarr <tarrf@co.mendocino.ca.us>  
**Date:** 4/24/2007 11:01 AM  
**Subject:** RES 1-2006 - Bill Moores Re-Subdivision Request - Access Easement

Fred,

I enjoyed our conversation this am. As I stated in my original letter to you dated September 5, 2006, one of our primary concerns regarding Bill Moores' request to subdivide the two parcels behind our house centers on the access to those parcels across the 20 foot wide access easement on my property. It is my understanding that County requirements require a larger easement than currently exists and Mr. Moores is applying for an exception to those County requirements. Were Mr. Moores to widen the drivable portion of the driveway easement across our property, that drivable portion would come dangerously close to our garage door and represent a significant safety concern and severely negatively impact the use of our property.

An option for Mr. Moores is to develop an alternate access that does not require an exception to the County requirements nor impact our property. **It is my opinion that such an option exists and is available to Mr. Moores.** Lot 3-40 (APN 132-090-01) immediately south and adjacent to our property and the easement is for sale and currently available. Mr. Moores could purchase the lot and develop an appropriate easement providing for two way traffic as required by the County and thus there would be no need for an exception to current County requirements. As everyone is aware, Mr. Moores owns many properties in Irish Beach (>100). It may be possible that Mr. Moores could trade one of his other existing properties for lot 3-40 negating Mr. Moores' having to actually buy the lot from the current owners and thus minimizing his cost.

**Please note the following facts as background:** The County Staff report (dated April 6, 1989, #RES 1-89) regarding the creation of the two subject properties stated that the original intent of Mr. Moores was to have an access easement across two lots, 3-39 (our property) and lot 3-40, the immediately south adjacent property (see page 1 "Project Summary"). However, Mr. Moores opted to place the access easement on our lot (3-39) only. Mr. Moores developing an easement across Lot 3-40, now for sale and available, would be consistent with the original County Staff assessment reflected in the staff report dated April 6, 1989.

Sincerely

Dean Wolfe  
43600 Sea Cypress Dr.  
Manchester, CA 95459  
(707) 882-2729



Frank

April 23, 2007

Mendocino County  
Department of Planning and Building Services  
501 Low Gap Road  
Ukiah, CA 95482

Attention: Director Ray Hall

Reference Case #: RES 1-2006 (Exception Request)

Dear Mr. Hall,

The proposed Coastal Re-Subdivision of two parcels in Irish Beach Subdivision 9 and 9a should be denied. Unit 9 and 9a were a subdivision granted by Mendocino County in 1988 with a total of 45 lots. At this time only 6 lots have been purchased so there are 39 lots that are still being held by Mr. William Moores the original owner. Why would Mendocino County agree to a Re-Subdivision in light of the fact that so many of the parcels in Unit 9-9a remain unsold? Six lot sales over a 19 year period indicates little interest by Mr Moores to price the lots for sale. Since Mendocino County approved the original sub-division plan submitted by Mr. William Moores we see no reason to allow a Re-Subdivision of the two parcels APN 132-320-42 and 132-320-43.

Sincerely,



Alfred W. Thompson and Loretta A. Thompson  
14860 Navarro Way  
P.O. Box 117  
Manchester, CA 95459

RECEIVED  
APR 24 2007

BY  
PLANNING & BUILDING SERVICES  
Ukiah, CA 95482

From K  
Stephen & Suzanne Whitaker  
PO Box 128  
Manchester, CA 95439

April 22, 2007

Raymond Hall, Director  
Planning & Building Services  
501 Low Gap Road  
Ukiah, CA 95482

Re: Subdivision Committee, Case # RES 1-2006  
APN 132-320-42 and APN 132-320-43

Dear Director Hall:

When complete build out finally occurs in Irish Beach, we will find ourselves in a very tightly packed community and any sort of open space will be most welcome. Because of this, the proposed Coastal Re-Subdivision by William and Tona Moores is a matter of concern, not only because it will lead to a reduction of open space, but also because it would appear to be in contradiction to the CC&R's for the Irish Beach subdivision. We understand that the County of Mendocino is not bound by such things as the CC&R's for Irish Beach; nevertheless, that document should be considered by the County when a Coastal Re-Subdivision is proposed.

In the CC&R's recorded on September 17, 1998 (see attached pages), we note the following on page 1:

"The Original Declarations were combined, amended and restated in their entirety by the First Restated Declaration which were incorporated into supplemental Declarations for Units 7, 7A, 8, 9 and 9A as follows:"

while on page 2 we find:

"Declaration of Covenants and Restrictions dated January 1, 1991 and recorded January 18, 1991 at Book 1882 at Page 689 as amended by documents dated March 30, 1996 and recorded on April 30, 1996 at Book 2328 at Page 409 (Unit 9A)."

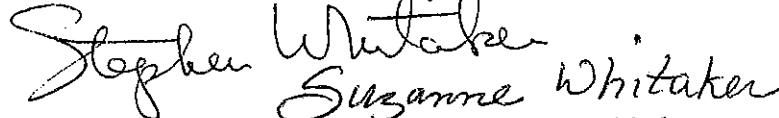
Of special importance is Section 7.19 where one finds:

"Section 7.19 Restriction on Further Subdivision and Severability. No Lot shall be further subdivided nor shall less than all of any such Lot be conveyed by an Owner thereof."

Finally, one page 25 one finds the signature of Gordon Moores, President of Mendocino Coast Properties, dated September 8, 1998.

This material suggests to us that the proposed Re-Subdivision is not consistent with the CC&R's for Irish Beach, and we hope that the Department of Planning & Building Services would take this into account at the hearing on April 27, 2007.

Sincerely,



Stephen & Suzanne Whitaker

Cc: Fred Tarr  
Enclosure: Pages from 1998 CC&R's

RECEIVED  
APR 25 2007

BY  
PLANNING & BUILDING SERVICES

Dean & Patty Wolfe  
43600 Sea Cypress Drive  
Manchester, CA 95459  
seawolfe@mcn.org

September 5, 2006

County Of Mendocino  
Planning and Building Services  
501 Low Gap Road, Room 1440  
Ukiah, CA 95482

RECEIVED  
SEP 05 2006

Attention: Fred Tarr

Subject: Re-subdivision Permit Application 1-2006  
by Bill Moores

BY  
PLANNING & BUILDING SERVICES  
Ukiah, CA 95482

Dear Fred,

As you suggested I have placed my initial questions regarding Bill Moores' application to subdivide the land behind my home in writing. I probably will have additional questions after I have an opportunity to examine Mr. Moores' permit application. As I related on the phone, my wife and I own and live in our home at 43600 Sea Cypress Drive. The access to the area Mr. Moores wants to subdivide is across a 20' easement on the South side of my lot. I appreciate your time and hope you will find my questions and concerns helpful in your review of Mr. Moores' application.

My wife and I are concerned that if the County grants the permit for subdividing Mr. Moores' property, it will significantly adversely affect my home and any future buyers of the subject property and other surrounding lots. Any future buyers of the proposed subdivided lots may find that building is not possible or at least exceedingly difficult and expensive. My concerns are based on soil stability and erosion impacts, wetland and drainage impacts to surrounding properties, traffic safety impacts to my property, land development restrictions of the Coastal Act, and to the fact that Mr. Moores has apparently either deliberately ignored prior commitments to the County or, at best, failed to implement the terms of previous agreements reflected in the Unit 9 & 9A Site Development Plan (approved by the County 9-27-89) and various aspects of the April 6, 1989 Staff Report initially approving Unit 9 and 9A (#1-89). With this permit application Mr. Moores is ignoring the land use restrictions stated in the subdivision CC&Rs that specifically state that no further subdividing of land in Unit 9 and 9A is permitted. My current specific comments follow.

Soil Stability and Erosion Concerns:

1. The subject property is upslope from my residence. The property is quite steep. Originally development on the land was restricted to areas less than 30% grade, which is quite small. Any development on slopes greater than 30% needs the study of a registered engineer.
2. There are areas on the steep sections of the land that have washed out or slipped and show the potential for additional slippage. These unstable soil areas need to be carefully examined prior to approval of any additional subdivision.
3. The land, possibly into the 30% grade, has been cleared of all vegetation twice since I have owned my property. The first time was in middle 1990s and then again last year. When I questioned Mr. Moores regarding reseeding the area because of erosion concerns, he stated that it was not necessary because it would grow back on its own. Currently there are several

bare dirt areas and the remainder is sparsely covered in thistle and other undesirable weeds. Upon examination of the Site Development Plan such clearing is restricted and reseeding is required. General notes 5 and 6 of the Site Development Plan specifically require reseeding and restrict such work from occurring between November and March. Mr. Moores cleared the land last year between November and March and has yet failed to reseed the land as required. If the upcoming winter rains are initially heavy, I am concerned about mudslides.

#### Wetland and Drainage Concerns:

4. The \*\*8 condition for approval stated in the #RES 1-89 Staff Report specifically requires that the sub divider submit a drainage study prior to any construction. While no construction beyond the initial access road has occurred, has such a drainage study been prepared? My concern is based on the fact that several lots immediately down slope in Units 2, 3 and 5 of the subdivision have drainage problems and are currently unbuildable because of those drainage problems. This is known to Mr. Moores. I have been led to believe that Gordon Moores and Margaret Ballou (Gordon and Bill's sister), as the principles of Mendocino Coast Properties, have submitted to the County (in Fort Bragg) a drainage study and a proposed engineered solution for the Units 2, 3 and 5 drainage problem. I have also been led to believe that this study has been rejected by the County and is being redone prior to any further work by Mendocino Coast Properties. At the very least the impact of the proposed re-subdivision, which is immediately upslope from the problem properties, should be included in the drainage mitigation plan being proposed by Gordon Moores and Margaret Ballou and any approval of Mr. Moores re-subdivision should only proceed after the drainage plans are approved by the County. This would be consistent with the policy taken by Ray Hall regarding other work proposed by the Moores in Irish Beach.
5. On current Lot #3 there exists a spring that feeds a runoff ditch on the south border of the lot and extends through Units 5, 3 and 2 to a pond at the base of Unit 2 & 3 along HWY #1. The drainage has created a known wetland impacting Units 2, 3, & 5. This wetland area is the reason for the studies and engineering being conducted as referenced in #4 above. Upon examination, the low area, south westerly corner, 3% to 10% slope, of both lots requested to be subdivided in Mr. Moores application are also impacted and contain potential wetland areas. This could render them unbuildable and subject some future owner to unnecessary expense.
6. Since the subject lots are impacted by wetland areas, should there be an endangered plant and animal study conducted prior to re-subdivision? This has been required in the past by Planning and Building when property owners apply for permits.

#### Safety, Traffic and Land Development Concerns:

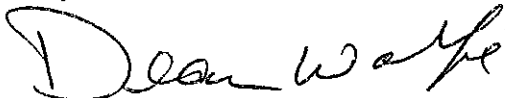
7. We are concerned about safety, traffic and access issues that will result from this proposed re-subdivision. Access to the lots is over a 20-foot easement on my property. The driveway currently installed is 12 feet wide and runs approximately 10 feet from my garage door. If the re-subdivision is approved the increased traffic over the easement will impact my and any future owner's use of my property. The easement was never intended to be a road and if the re-subdivision were approved would create a safety concern.
8. It is our impression that current access requirements for such subdivisions require a larger easement and two-lane access. Approving the re-subdivision would represent a variance to current access requirements. Also, the installation of two lanes for traffic would take the roadway to within 4 feet of my garage door and present a significant safety risk. Even backing out of my garage would be a safety risk because I would not even be able to see if anyone was coming until I was already in the roadway.

9. As stated in the Staff Report reference to the Coastal Act page 3, paragraph 3.9-2 b., no new parcels shall be created unless 50% of the existing usable parcels within the surrounding area have been developed. The existing Unit 9 and 9A and the recently opened Unit 5 contain over 60+ buildable lots and are offered for sale by the Moores. To date, only four lots have had homes built, three in Unit 9 and one in Unit 5, far less than the 50% required by the Coastal Act. Approval of Mr. Moores' application for re-subdivision would appear to violate this provision of the Coastal Act.
10. The \*\*5 condition for approval stated in the #RES 1-89 Staff Report specifically requires that the subdivider shall install water main and services for each lots that was approved at that time. This was never done. The only guarantee that Mr. Moores will comply with the requirement to install services is to require that they be installed prior to permit approval. Other wise the future owners will suffer the expense and possible problems posed by installation of the services.

It appears to me that careful study needs to be performed prior to the County approving Mr. Moores' request for a re-subdivision behind out home. There appears to be significant engineering work yet required and justification yet to be presented by Mr. Moores for the re-subdivision. Such justification should address the facts that the surrounding properties have not been sold (signifying a lack of public demand), the re-subdivision presents a potential **safety** risk to current and future property owners, poses slope and soil stability issues, presents wetland and drainage issues, and apparently would require the County granting of variances to current requirements. These facts coupled with Mr. Moores' history of not meeting requirements previously invoked by the County presents a significant argument for a cautious approach by the County in its review of the re-subdivision permit application of Mr. Moores.

Thank you for your consideration.

Sincerely

A handwritten signature in cursive script, appearing to read "Dean Wolfe".

Dean and Patty Wolfe

Mendocino County  
790 South Franklin st.  
Fort Bragg, CA 95437

To whom it may concern,

We are writing to inform you of a situation that has come to our attention in the Irish Beach subdivision. We believe that careful inspection by the county of Mendocino of the situation is important to the future development of our community.

Our new home was completed in July of 2008. We are retired, permanent residents. As you know, most of the homes here are second homes or vacation rental homes. We chose Irish Beach for its natural beauty, including the meadow and eucalyptus trees and ocean views.

We have recently learned that the 32 acre field west of our property is being considered for development by the owners, Gordon and Margaret Moore, owners of Irish Beach property rentals. The "meadow", as it is now called, was to be left undeveloped, according to the original agreement regarding the purchase of our lot. Development would be a breach of that agreement.

We are concerned that building of 15 new homes will be a detriment to the environment. For example, there is barely enough water to support the existing homes in Irish Beach. Water is expensive here, partially due to mismanagement of the watershed in the past, i.e. diversion of natural run off from the mountain to the east. New property buyers of remaining lots are faced with the expensive costs of paying for French drains to divert water away from new construction, i.e. their homes.

The residents in our neighborhood believe the meadow is not only unsuitable for development, it is the only "green belt" remaining on the land within the subdivision of Irish Beach.

Thank you for consideration of our concerns.

Sincerely,

Ron and Connie Sackman

44280 O'Reorey's Roost (APN 132-300-14)

P.O.Box 355

Manchester, CA 95459

RECEIVED  
MAR 24 2009

BY  
PLANNING & BUILDING SERVICES  
UKIAH, CA 95482

RECEIVED  
MAR 13 2009  
PLANNING & BUILDING SERV  
FORT BRAGG CA

Irish Beach Community Members  
PO Box 242  
Manchester, CA 95459

October 14, 2008

Department of Planning and Building Services  
Mendocino County  
501 Low Gap Road, Room 1440  
Ukiah, CA 95482  
[tarrf@co.mendocino.ca.us](mailto:tarrf@co.mendocino.ca.us)

RECEIVED  
NOV 03 2008  
BY  
PLANNING & BUILDING SERVICES  
Ukiah, CA 95482

Attn: Fred Tarr

Re: Case # RES 1-2006 (APN 132-320-42 and APN 132-320-43)

Dear Mr. Tarr:

This letter is to object to the subdivision of the lots cited above to produce four new parcels in place of the original two parcels. When complete build out finally occurs in Irish Beach, we will find ourselves in a very tightly packed community and any sort of open space will be most welcome. Because of this, the proposed Coastal Re-Subdivision by William and Tona Moores is a matter of concern, not only because it will lead to a reduction of open space, but also because it would appear to be in contradiction to the Mendocino County General Plan Coastal Element and the original subdivision map (see Appendix A) and the CC&R's for the Irish Beach subdivision (see Appendix B).

We believe that the County of Mendocino should be aware that there are currently 195 homes in Irish Beach and 305 bare lots. A significant percentage of the bare lots are owned by W. Moores and the addition of two more bare lots hardly seems necessary. The additional lots and the resulting reduction of open space clearly represents an example of the tragedy of the commons<sup>1</sup> that Hardin describes as:

*The commons dilemma is a specific class of social dilemma in which people's short-term selfish interests are at odds with long-term group interests and the common good.*

Surely the County should consider the *common good* when land is to be re-subdivided. In particular, many people purchased land and built homes in Irish Beach on the basis of a subdivision map and a set of CC&R's. Changes in that subdivision map should not take place without consideration of the public.

Sincerely,

Name

Address

Telephone

<u>Stephen Whitaker</u>	<u>15461 Forest View Rd</u>	<u>882-1992</u>
<u>Nancy Ganchin</u>	<u>15721 Forest View Rd</u>	<u>882-1928</u>

<sup>1</sup> Hardin, G. 1968, "The Tragedy of the Commons", *Science*, Vol. 162, No. 3859, December 1968.

W. G. L. 15721 Forest View Rd 882-1928

Mary Lou Morton 15851 Forest View Rd 882-2406

Richard W Morton 15851 Forest View Rd 882-2406

Sharon Roberts 44621 Pomolake Dr. 882-3122

Patricia L Roberts 44621 Pomolake Dr 882-3122

Dea Ricket 15225 IRISH BENCH 882-2529

Larry Klein 14970 Navarro Way 882-2775

Elaine L. Klein 14970 Navarro Way 882-2775

Smile Vickery 14981 Navarro Way 882-2792

Jim Vickery 14981 NAVARRO WAY 882-2792

Susan Rush 43751 Cypress Parkway 882-2441

Jeff Rush 43751 CYPRESS PKWY 882-2441

Don Wolfe 43600 Sea Cypress Dr. Manchester - 882-2729

Janet 43641 Cypress Pkwy Manchester, CA  
882-1976 95459

Bruce M. Nam 14780 Cypress Circle Manchester CA  
95459 882-2836



Patricia E. Wolfe 43600 Sea Cypress Dr Manchester CA 707-882-2729  
95459  
Denise E. Gammann 43641 Cypress Parkway Irish Beach 95459  
Yvonne Grobe 15001 Forest View Rd Manchester MA 95459  
Dorothy Hensberry 15570 Forest View Rd Manchester 95459  
Suzanne C. Whitake 15461 Forest View Rd Manchester CA 95459  
Ves Bean 14921 Navarro Wg. Manchester, CA. 95459  
Sue Bean 14921 Navarro Way Manchester, Ca. 95459  
Lisa Moulthrop 15470 Forest View Rd Manchester, CA 95459  
Michael Moulthrop 15470 Forest View Rd Manchester CA 95459  
Betty Winters 15000 Navarro Way Manchester 95459  
George Munson 44920 Pomona Lake Dr. 882-4003  
Betty Munson 44920 Pomona Lake Dr. Manchester CA 882-4003  
95459  
Delia A. Grizillo 14770 Cypress Pt Rd. Manchester, CA. 95459  
E E Cady 43850 ACQUISTAPACE MANCHESTER, CA  
Ginger Ralston 14901 Mallo Pass Drive  
PO. Box 212 Manchester CA. 95459

Robert J. Diaz 14551 ALTA MESA DR. 925-426-1470

Pam Harley 15550 Forest View Rd 707-882-4189

Gemma Roberts 15225 IRISH BEACH DR. 707-882-2529

Appendix A (Mendocino County, Case #RES 1-2006)

This re-subdivision by William & Tona Moores would materially damage adjacent properties, might damage a potential wetland and endangered species habitat, and be in potential conflict with the Mendocino County General Plan Coastal Element. In combination with these concerns, it is questionable if RES 1-2006 meets applicable coastal development review criteria. The main concerns associated with this proposed re-subdivision are as follows:

1. By the County's own evaluation (BOS-6, April 6 Staff Report RES#1-89 Page 2 Water (Item 3a) "... did not anticipate residential development behind the two subdivisions and now proposed.") the subject parcels of RES1-2006 were not in the original Irish Beach subdivision plan. RES1-89 limited the re-subdivision on Unit 9 lot 4 in 1989 to 3 lots, which Mr. Moores now wants to make into 5 lots (including Unit 9 lot 4). What does RES 1-2006 do to the conclusions documented in the staff report for RES1-89?
2. The original maps and application of RES 1-89 indicated that there would be an easement over Lots Unit 3-39 and 3-40 (County Staff report dated 4/6/89). It was required then, as well as now, that there be a 40 foot wide easement for access to the parcels. Was the impression of the County in 1989 that there would be a 20-foot easement on both lots, 20 foot on lot 3-39 and 20 foot on lot 3-40? The final map shows only a 20-foot easement over Unit 3 lot 39. There is no indication or any discussion that could be located in County records that there was ever a variance approved by the County for this noncompliant 20-foot easement in 1989.
3. Has Mr. Moores now applied formally for a variance to the 40-foot easement requirement? If he has, it appears from the County web site "The Permit Place" that granting a variance would be problematic according to two specific provisions:

"According to State law and County Code, a variance can only be granted where:(1) The special circumstances or conditions necessitating the variance are not due to any action on your part subsequent to the application of the applicable zoning regulations.

(2) The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which your property is located."

The 40-foot right of way has been a requirement since before the original creation of the subject two lots in 1989. Mr. Moores chose to only establish a 20-foot right of way at that time, thus creating the current need for a variance. Since Mr. Moores' own actions created the need for a variance, the County cannot, under this provision, grant a variance.

Granting of the variance would materially damage the lots that the easement abuts, Unit 3 lot 40 and Unit 9A lot 9 (formerly Unit 3 lot 39). Both lots would

be damaged by safety concerns presented by increased traffic over such a narrow noncompliant access. Additionally, lot 3-40 would be damaged by the required increased side yard setback from 6 feet to 20 feet, limiting the buildable area (see Coastal Zoning Code 20.444.015 c). In order for the lot to have an adequate buildable area, in the future the County would need to grant another variance for lot 3-40.

And finally, there is no need for Mr. Moores to be granted a variance to County Code requirements. There are multiple properties for sale adjacent to Mr. Moores' property that he could obtain by purchase or trade to establish a proper, code compliant, right of way. His family corporation even owns some of those lots.

4. Drawings submitted by Mr. Moores for RES 1-2006 in June of 2007 (Tentative Map and Site development plan prepared by Rob Huffman) do not address disposition of the existing 10-foot drainage easement on the west boundary of lot APN 132-320-42. The current access road on the noncompliant easement blocks the public drainage easement and Mr. Moores has proposed to abandon the only culvert that provides drainage from that drainage easement. This potentially damages the adjacent and down gradient properties as well as the Irish Beach Water District's use of the drainage easement.
5. It appears from recent studies and surveys that there may be a wetland over lot APN 132-320-43 that is fed from an existing spring. There may also be an endangered species habitat. The concern documented in RES 1-89 (Finding 3e) is no longer satisfied and there is a risk of damage to wildlife by development of this lot.
6. There are several provisions of the Coastal Act that are embodied in the Coastal Element of the County General Plan that could be jeopardized by the Granting of RES 1-2006. These are quoted as follows:

**Coastal Act Section 30240 Environmentally sensitive habitat areas; adjacent developments**

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

**Coastal Act Section 30250 implemented by Coastal Element County General Plan 3.9-1.**

An intent of the Land Use Plan is to apply the requirement of Section 30250(a) of the Act that new development be in or in close proximity to existing areas able to accommodate it, taking into consideration a variety of incomes, lifestyles, and location preferences. Consideration in allocating

*Irish Beach Community Members  
PO Box 242  
Manchester, CA 95459*

residential sites has been given to:

- each community's desired amount and rate of growth.

**The community does not desire the additional lots.**

One housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate access...

**Mr. Moores proposes only noncompliant access.**

**In Conclusion:**

The approval of RES 1-2006

- Would legitimize the non-compliant inadequate access to the area,
- Damage adjacent property owners and the subdivision as a whole, and
- Be counter to the Coastal Element of the Mendocino County General Plan.

Appendix B (Mendocino County, Case #RES 1-2006 and Irish Beach CC&R's)

The CC&R's for Irish Beach should be considered by the County when a Coastal Re-Subdivision is proposed. In the CC&R's recorded on September 17, 1998 (see attached pages), we note the following on page 1:

"The Original Declarations were combined, amended and restated in their entirety by the First Restated Declaration which were incorporated into supplemental Declarations for Units 7, 7A, 8, 9 and 9A as follows:"

while on page 2 we find:

"Declaration of Covenants and Restrictions dated January 1, 1991 and recorded January 18, 1991 at Book 1882 at Page 689 as amended by documents dated March 30, 1996 and recorded on April 30, 1996 at Book 2328 at Page 409 (Unit 9A)."

Of special importance is Section 7.19 where one finds:

"Section 7.19 Restriction on Further Subdivision and Severability. No Lot shall be further subdivided nor shall less than all of any such Lot be conveyed by an Owner thereof."

Finally, on page 25 one finds the signature of Gordon Moores, President of Mendocino Coast Properties, dated September 8, 1998.

This material suggests to us that the proposed Re-Subdivision is not consistent with the CC&R's for Irish Beach, and we hope that the Department of Planning & Building Services would take this into account.

CONFORMED COPY  
Copy of Document Recorded  
on 09/17/1998 as 1998-17732  
Mendocino County Clerk-Recorder

*Copy from  
Mangione*

---

Space above this line for Recorder's Use

**SECOND DECLARATION OF RESTRICTIONS  
OF MENDOCINO COAST SUBDIVISION  
UNITS ONE, TWO, THREE, and FOUR**

**SECOND DECLARATION  
OF RESTRICTIONS OF MENDOCINO COAST  
SUBDIVISION**

THAT CERTAIN DECLARATION, executed by MENDOCINO COAST PROPERTIES, a corporation ("Declarant"), entitled "Amended and Restated Declaration of Restrictions, Units One, Two, Three and Four, Mendocino Coast Subdivision" dated October 1, 1971, and recorded on November 16, 1971, in Book 868, Page 131, and corrected April 19, 1974, by that certain document recorded on said date in Book 960 at Page 38 of the Official Records of Mendocino County, California (collectively the "First Restated Declaration"), affects all of the properties described and commonly known as Irish Beach, is hereby amended and restated in its entirety to read as follows:

**RECITALS**

1. Declarant was the owner of certain property in the County of Mendocino, State of California, which is more particularly described in Exhibit A through D attached hereto and incorporated herein by reference (the "Properties").

2. Declarant originally conveyed the Properties, subject to certain easements, protective covenants, conditions, restrictions, reservations, liens and charges as set forth in four separate declarations of restrictions that were all part of a common plan and scheme of development, namely: (1) Restrictions and Covenants Unit One - Mendocino Coast Subdivision, recorded in the Office of the County Recorder on June 2, 1965, in Book 690 at Page 508; (2) Amended Restrictions and Covenants Unit Two - Mendocino Coast Subdivision, recorded in the Office of the County Recorder on August 31, 1966, in Book 724 at Page 4; (3) Restrictions and Covenants Unit Three - Mendocino Coast Subdivision, recorded in the Office of the County Recorder on March 16, 1967, in Book 736 at Page 135; and (4) Restrictions and Covenants Unit Four - Mendocino Coast Subdivision, dated June 17, 1969, and recorded in the Office of the County Recorder in Book 794 at Page 237 (collectively, the "Original Declarations").

The Original Declarations were combined, amended and restated in their entirety by the First Restated Declaration which were incorporated into supplemental Declarations for Units 7, 7A, 8, 9 and 9A as follows: a) Supplemental Declaration Of Covenants and Restrictions dated May 5, 1980 and recorded on May 6, 1980 at Book 1257 at Page 642 (Units 7 and 7A); b) Declaration of Covenants and Restrictions dated July 20, 1980 and recorded on July 21, 1980 at Book 1266 at Page 312 and amended by document dated September 8, 1989 and recorded January 2, 1990 at Book 1799 at Page 697 (Unit



8); c) Declaration of Covenants and Restrictions dated January 1, 1989 and recorded January 18, 1989 at Book 1729 at Page 473 (Unit 9); d) Declaration of Covenants and Restrictions dated January 1, 1991 and recorded January 18, 1991 at Book 1882 at Page 689 as amended by document dated March 30, 1996 and recorded on April 30, 1996 at Book 2328 at Page 409 (Unit 9A).

The purpose of the easements, protective covenants, conditions, restrictions, reservations, liens and charges of the Original Declarations and the First Restated Declaration were to enhance and protect the value, desirability and attractiveness of the Properties and all of which were intended to run with the Properties and be binding on all parties having or acquiring any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner (as defined herein) thereof.

3. On Sept 9, 1998, 75% of the Owners of Lots within the Properties voted by written ballot to amend and restate the Original Declaration, all in accordance with the procedures for amendment set forth in Paragraph 8(b) of the First Restated Declaration. As so amended and restated, these easements, covenants, restrictions, and conditions shall run with the Properties and shall be binding on all parties having or acquiring any right, title or interest in the Properties or any portion thereof, and shall inure to the benefit of each Owner thereof.

## ARTICLE I Definitions

Section 1.1 "Board of Directors" or "Board" shall mean the Board of Directors of IBIC and/or any appointed subcommittee, thereof.

Section 1.2 "Building Envelope" shall mean that area of a Lot upon which a residence can be built after provisions for a septic system and set back requirements or other physical limitations of the Lot are taken into account.

Section 1.3 "Committee" shall refer to the Architectural Design Committee defined in Article IV.

Section 1.4 "Common Area" shall mean all real property owned or leased by IBIC for the common use and enjoyment of the Owners, including all mutual or reciprocal easement rights appurtenant to separate interests.

Section 1.5 "Common Living Area" of a residence shall

*Pomona Lake Park Beach  
Gardens Park*

gravel or soil will be allowed on any Lot; provided, however, that Lots may be excavated to the extent required by construction plans approved by the Committee pursuant to Article V hereof.

Section 7.17 Parking and Vehicle Restrictions.

(a) All driveways and garages shall be maintained in a neat and orderly condition and garage doors shall not be left open unnecessarily.

(b) No motor vehicle shall be constructed, reconstructed or repaired within the Properties and no dilapidated or inoperable vehicle, including vehicles without wheel(s) or an engine, shall be stored on the Properties; provided however that the provisions of this Section shall not apply to emergency vehicle repairs or ordinary vehicle maintenance that can be accomplished in a few hours.

(c) Unused vehicles, (defined as a vehicle not used or moved for more than four (4) consecutive days) trailers, camper shells, boats, recreation vehicles, motor homes and similar equipment shall be stored in a garage or screened from view from the street or any neighboring Lot.

(d) No vehicles shall be permitted to drive or park on any beach within the Properties.

(e) No vehicle may be parked or otherwise stored in any area not intended for vehicle use. This includes lawns, backyards, or other areas not normally used by vehicles. *Kyle*

Section 7.18 Open Fires. No open fires shall be permitted on the beach portions of the Properties. Open fires on Lots for whatever purpose shall be managed by the Lot Owner in accordance with the County regulations and under the supervision of the local fire department. Nothing contained herein shall be construed to prohibit the use and enjoyment of barbecue fires on a Lot so long as the coals are contained in a conventional barbecue.

*942A to not in force*  
Section 7.19 Restriction on Further Subdivision and Severability. No Lot shall be further subdivided nor shall less than all of any such Lot be conveyed by an Owner thereof.

*to take or carry from one place to another; transport*  
Section 7.20 Use of Private Streets in Common Area. Private streets shall not be used for recreational purposes, including "joy riding" or racing. Motorcycles, mopeds, or cars shall be allowed on such private streets only for ingress and egress.

severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

(c) Gender and Number. As used in this Declaration, the singular shall include the plural and the plural the singular, unless the context requires the contrary, and the masculine, feminine or neuter gender shall each be deemed to include the others whenever the context so indicates.

(d) Captions. All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.

(e) Exhibits. All exhibits attached hereto shall be deemed to be incorporated herein by reference.

DATED: Sept 8, 1991

MENDOCINO COAST PROPERTIES, OR ITS SUCCESSORS,

By

Gordon Moore  
(President)  
GORDON MOORE

////  
////  
//  
/

**From:** Dean & Patty Wolfe <seawolfe@mcn.org>  
**To:** Fred Tarr <tarrf@co.mendocino.ca.us>  
**Date:** 5/15/2011 2:50 PM  
**Subject:** RES1-2006

Good Morning Fred,

Two new pieces on information that pertain to the Re-subdivision 1-2006.

1. Attached please find the February 16 2010 Draft Water District Resolution on Well Drilling in Irish Beach. On Page 1, the 3rd Whereas states:

"... the development of groundwater wells can impact both surface water flow and the availability of water from existing wells; ..."

So there is an official position in the Water District on the surface water/groundwater problem.

2. This Saturday the 218 assessment in Irish Beach for the development of additional water sources (wells) was defeated. Mr. Moores and his family voted all of their lots against funding the development of new water sources. Per Steve Whitaker, the President of the Board

"If I were attending the P&B hearing next week, I would certainly argue that the developer should not be adding new parcels to the system while simultaneously voting to eliminate the funds necessary for the development of new water sources."

Dean

**VERSION FIVE: February 16, 2010**

*DRAFT, DRAFT, DRAFT, DRAFT, DRAFT, DRAFT, DRAFT, DRAFT*

**IRISH BEACH WATER DISTRICT**

**RESOLUTION NO. 2009 - \_\_\_\_\_**

**A RESOLUTION OF THE IRISH BEACH WATER DISTRICT BOARD OF  
DIRECTORS  
PERTAINING TO THE DEVELOPMENT OF WELLS WITHIN THE DISTRICT**

**I. Recitals and Findings**

WHEREAS, the Board of Directors of the Irish Beach Water District is responsible for providing water to residents located within the Irish Beach Water District; and,

WHEREAS, sources of water available to the Irish Beach Water District consist of surface water and groundwater; and,

WHEREAS, the development of groundwater wells can impact both surface water flow and the availability of water from existing wells; and,

WHEREAS, California Water Code Section 35409 provides that the District has the power generally to perform all acts necessary or proper to carry out fully its mandate as set forth in the state Water Code; and,

WHEREAS, California Water Code Section 35409 provides that the District may commence, maintain, intervene in, defend and compromise actions and proceedings to prevent interference with or diminution of the natural flow of any natural subterranean supply of waters which may be used or be useful for any purpose of the District, be of common benefit to the land or its inhabitants, or endanger the District's inhabitants or land; and

WHEREAS, the Board held a public hearing on \_\_\_\_\_, 2009 to consider the enactment of this resolution; and,

WHEREAS, the Board of Directors desires to restrict the drilling of wells within the boundaries of the District to those wells certified and supervised and monitored by the District.

NOTE: Resolution 2000-7 (moratorium on the drilling of wells) should be annulled.

**II. Action To Be Taken**

NOW, THEREFORE, BE IT RESOLVED THAT

A. The District has the responsibility to provide water to all residences within the Irish Beach Water District. **NOTE:** *We may want to reference a map filed with the County of Mendocino.*

B. The District will have the sole authority to determine when special purpose wells are necessary to provide water to residential properties within the District.

C. The District will certify and monitor the drilling of special purpose wells that are necessary to provide water to single residences or groups of residences that are not directly connected to THE SYSTEM. By THE SYSTEM it is meant the tanks, distributions lines, wells, pump stations, water appurtenances and treatment plants that provide water directly to personal property boundary lines within the District. The cost of development of special purpose wells will be born by those who are served by these wells. (See Sections 7001-7010 of the California Water Code). All wells and associated easements will be deeded to the District after they have been certified by the County of Mendocino and the State of California.

D. All residences that are served by special purpose wells will have meters that are readily available to District personnel. District personnel will monitor usage on a monthly basis at all residences served by special purpose wells. Limitations on residential usage of well water will be identical to those limitations imposed on residences that are connected directly to THE SYSTEM. Meter installation fees, usage charges and availability charges will be identical to those imposed on residences that are connected directly to THE SYSTEM

**ADOPTED** by the Board of Directors of the Irish Beach Water District at a regular meeting held on \_\_\_\_\_, 2009 by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

APPROVED:

\_\_\_\_\_  
PRESIDENT (Stephen Whitaker)

ATTEST:

\_\_\_\_\_  
SECRETARY (Donald Harley)

**Fred Tarr - Fwd: Hearing in Ukiah**

---

**From:** Dean & Patty Wolfe <seawolfe@mcn.org>  
**To:** Fred Tarr <tarrf@co.mendocino.ca.us>  
**Date:** 5/15/2011 7:30 PM  
**Subject:** Fwd: Hearing in Ukiah

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Begin forwarded message:

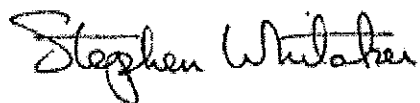
**From:** "Stephen Whitaker" <whitaker@mcn.org>  
**Date:** May 15, 2011 5:03:01 PM PDT  
**To:** "Dean & Patty Wolfe" <seawolfe@mcn.org>  
**Subject:** Hearing in Ukiah  
**Reply-To:** "Stephen Whitaker" <whitaker@mcn.org>

Hi Dean,

Sorry that I will not be able to attend the hearing next week. If you have the opportunity, please quote me as:

"If I were attending the hearing next week, I would certainly argue that the developer should not be adding new parcels to the system while simultaneously voting to eliminate the funds necessary for the development of new water sources."

Steve



Suzanne and Stephen Whitaker  
PO Box 128  
Manchester, CA 95459

**Frank Lynch - CE 23-09/Building Permit #BF 2009-0331**

---

**From:** Frank Lynch  
**To:** bill@irishbeachrealty.com  
**Date:** 12/14/2009 12:56 PM  
**Subject:** CE 23-09/Building Permit #BF 2009-0331  
**CC:** Michael Oliphant; Teresa Spade; Tom Peters

---

Bill: I have reviewed your previously approved Coastal Permit Exclusion and building permit for grading that this office suspended to review concerns regarding health and safety issues. My review included consultation with the Department of Transportation and with the Building Inspection Division of this office. It has been concluded that the grading plans submitted are adequate for our review for the grading permit.

However, it was noted that the work described will impact the County right of way and an encroachment permit from the County's DOT is required. Briefly, I have been advised that drainage impacts to the right of way will need to be addressed.

Upon acquisition of the encroachment permit, you are free to commence construction per the approved plans.

Frank Lynch  
Mendocino County Planning & Building Services  
501 Low Gap Road, Room 1440, Ukiah, CA 95482  
(707)463-4281, FAX (707)463-5709  
<http://www.co.mendocino.ca.us/planning>  
lynchf@co.mendocino.ca.us



**From:** "Bill Moores" <bill@irishbeachrealty.com>  
**To:** "Roger Mobley" <mobleyr@co.mendocino.ca.us>  
**Date:** 5/4/2011 8:58 AM

Hello Roger:

1) It does not appear that we will be acquiring any additional easement from the new owner of the site to the south of the resub application. However, since the county has already issued a permit for the installation of the very same improvements that are required for the resub roadway and the plans attached to that permit show that the improvements fit within the existing easement and a licensed contractor has certified that he can construct the improvements within the easement and the Board of Supervisors has previously approved the existing easement as sufficient for these parcels and there is an outstanding Use Permit for the approved uses, there should be no problem.

2) Can you confirm that you have been in contact with Bob Merrill of the Coastal Commission and that he confirmed to you that the Commission will process my coastal plan amendment without insisting that the county first upgrade its coastal plan so that we can move ahead with that application? Also, that you attempted to resolve the parking lot problem at my office by getting Merrill to agree that we can install a guardrail and tire support retainer so that cars do not back into the ditch.

Bill Moores 707-357-4501

**Fred Tarr - Fwd: Case #CDRES 1-2006**

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**From:** walt rush <rushstudio@starband.net>  
**To:** <tarrf@co.mendocino.ca.us>  
**Date:** 4/20/2011 2:47 PM  
**Subject:** Fwd: Case #CDRES 1-2006

---

Dear Mr. Tarr,  
Please find below an email sent to Supervisor Hamburg. I would also like you to deny Mr. Moores request because of what is stated below.  
Respectfully,  
Walter A. Rush

----- Forwarded message -----

**From:** walt rush <rushstudio@starband.net>  
**Date:** Wed, Apr 20, 2011 at 2:09 PM  
**Subject:** Re: Case #CDRES 1-2006  
**To:** Dan Hamburg <hamburgd@co.mendocino.ca.us>

Dear Supervisor Hamburg,  
This is in regards to case number (CDRES 1-2006 APN 132320-42 and 132-320-43) to be heard on 21 April 2011. On 10 March 2011, Mr. Fred Tarr (Planner II) denied this project due to the following:  
The proposed development will not be provided with adequate access roads;

1. The proposed development is not consistent with the purpose and intent of the zoning district applicable to the property, as well as the provision of the Coastal Zoning Code and does not preserve the integrity of the zoning district;
2. The proposed development will have a significant adverse impact on the environment within the meaning of the California Environmental Quality Act.
  - a. The project as presented represents a substantial alteration of the present or planned land use of the area.
  - b. The project as presented will cause an increase in traffic hazards to motor vehicles, bicyclists or pedestrians; and
3. The granting of the exceptions will be detrimental to the public welfare or injurious to surrounding property.

As it was stated, by Mr. Tarr "It appears that the applicant is attempting to over develop this subject property and again the staff reiterates that the subject property is already developed to the three lot maximum that was specified in U#18-75.

I do not believe the community of Irish Beach has changed its position from 7 October 2008 in which we took the stand that if this is authorized "it will greatly impact the reduction of open space to our development and it appears to be in contradiction to the original subdivision map and the CC&R's for the Irish Beach subdivision". The community is under strict guidelines of CC&R's in which are to abide by, why should the developers be exempt to CC&R's when they instituted them and the community has to abide to them by the letter of the law?

As you may already know, there are approximately 195 homes in Irish Beach with approximately 305 bare lots currently available to be built on. If it were for the fact that there are no longer lots available in

which the developers were not able to turn a profit that would be something to consider but this is not case and, yet, if this even was the case why should the community suffer in not having the open space in which they were promised not be adhered to.

Finally, in 2008 when the original studies took place many things have changed and are constantly changing on the coast regarding restrictions from the Coastal Commission and I believe this should be factored into your decision. In the past, Mr. Moores was indicted and on probation for one year for killing shrubbery on another property owners' lot because he just didn't like where it was located. One can only imagine what he would do to restricted botanicals on his own property before it can be officially looked at by an expert. These lots have been cleared approximately three times in the recent past and, again, if this is to be granted I believe there should be no other work done on this property until the Coastal Commission has an expert examine them.

I would like you to consider denying this above request.

Respectfully,

Walter A. Rush

--

Visit me on the web at

[www.rushstudio.com](http://www.rushstudio.com)

Also, check out more artists' at

[www.northcoastartistsguild.com](http://www.northcoastartistsguild.com)

[www.gualalaarts.org](http://www.gualalaarts.org)

[www.studio-tours.com](http://www.studio-tours.com)

Dean and Patty Wolfe  
43600 Sea Cypress Dr.  
Manchester, CA 95459  
(707) 882-2729

April 20, 2011

Mendocino County Planning Commission  
Mendocino County Planning and Building Services  
501 Low Cap Road, Room 1440  
Ukiah, CA 95482

Attention: Fred Tarr

Subject: Supplemental CDRES 1-2006 Comments

Dear Planning Commission Members:

This letter submits clarification of our Comments submitted on April 18, 2011. Based on our review of our comments and discussions with the County Planner, Fred Tarr, additional details may assist the Planning Commission in their evaluation of CDRES 1-2006 and their consideration to initiate actions to revoke RES 1-89.

As we stated in our original Comment letter, the approval of RES 1-89 represents an approval of an exception to Title 17 whether or not that exception request was properly documented. We take the same position regarding the groundwater requirements applicable to parcels with flexible zoning. Whether or not it was properly documented, RES 1-89 represents a variance to those requirements. There are two questions that need to be resolved for the Planning Commission to evaluate what actions it deems appropriate. What exactly was applicable when RES 1-89 was approved and what authority does the County have to revoke the already approved RES 1-89?

**What was applicable?**

At the time RES 1-89 was approved the cited section of the municipal code, Section 20.516.015(B)(3) for RR5(1)PD flexible zoning was not yet approved (Approved 1991). However, the Coastal Element Policy (dated 1985), Section 3.8-10, was applicable at the time, invoking the same requirement;

"3.8-10 In order to be developed to the smaller parcel size, areas indicated on the map as having a variable density zoning classification shall be required to be served by a public water system which utilizes surface waters, and which does not impact upon the groundwater resource, or by completion of a hydrological study which supports those greater densities."

One does wonder in both cases what exactly is meant by "and which does not impact upon the groundwater resource." A reading of the Coastal Element Narrative for section 3.8 provides some insight to what the concerns were.

"Areas designated on the LCP maps as having a variable density zoning classification, which are proposed for greater density by the development of a surface water supply, shall be required to have adequate engineering, proof of water during the dry season, and operation of the system by a duly licensed Water Treatment Plant Operator of the proper grade. As the County completes its Coastal Groundwater Study, greater densities may be allowable within the variable density zoning classifications.

Those areas, utilizing groundwater, and proposed for development to a greater density than recommended in the June 1982 Coastal Groundwater Study shall be required to have a hydrological report prepared by a qualified person which addresses the adequacy of the proposed water supply (proof of water), the direct effects on adjacent and surrounding water users, and the cumulative adverse impacts of the development on the regional water supply."

It is obvious from a reading of the Coastal Element that there was a concern with regards to the depressing of groundwater levels and negative impacts on groundwater quality from over use. This comes from the fact that there are coastal properties on which wells run dry during the dry season and domestic water must be trucked in from off-site. The County identified such sensitive areas with zoning. The Coastal Element, in my opinion, tries to not be overly restrictive by providing for "Flexible Zoning" where it is essentially saying, again in my opinion, you may subdivide property into higher densities but you must prove it doesn't impact groundwater sources with a hydrological study. RES 1-89 approves the higher density without the proof that groundwater is not

RECEIVED  
APR 20 2011

BY  
PLANNING & BUILDING SERVICES  
Ukiah CA 95482

affected. It has never been shown that surface water extraction from Irish Gulch to support the build-out of Irish Beach will not affect groundwater. It has never been shown that well pumping will not impact groundwater levels. It has never been shown that groundwater pumping will not impact surface water flows (the County plan identifies surface water as a primary source of groundwater recharging). This was the case in 1989 and still is now. In fact, currently, as identified in our original comments, the situation in IBWD has worsened significantly.

**What authority does the County Have to revoke RES 1-89?**

Section 20.540.040 is not specific as to a variance to what. It just states a variance. The thrust here is that the Code wants continuous progress toward completion of a project and that has not happened. It has been 21 years since RES 1-89 was granted and 20 years since 20.540.040 was imposed. It does not make much difference at this point if the two-year clock started in 1990 with the filing of RES 1-89 or in 1991 with the approval of 20.540.040.

The Municipal Code is not the only authority the County has. The **Government Code of the State of California** specifies criteria in Sections 66499.11, .12, and .16 that address the authority to revoke a subdivision:

"66499.11. Subdivided real property may be reverted to acreage pursuant to the provisions of this article."

"66499.12. (a) Proceedings for reversion to acreage may be initiated by the legislative body on its own motion ... "

"66499.16. Subdivided real property may be reverted to acreage only if the legislative body finds that:"

"(a) Dedications or offers of dedication to be vacated or abandoned by the reversion to acreage are unnecessary for present or prospective public purposes; and

(b) Either: ... "

"(2) None of the improvements required to be made have been made within two years from the date the final or parcel map was filed for record, or within the time allowed by agreement for completion of the improvements, whichever is the later; or

(3) No lots shown on the final or parcel map have been sold within five years from the date such map was filed for record."

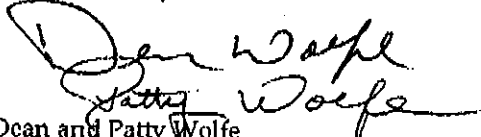
The California Government Code provides the County the authority to revoke RES 1-89 regardless of the date of Title 20.

The original Unit 9 lot 4 was divided into 3 lots, lot 41, lot 42, and lot 43 by RES 1-89. All of these lots are less than 5 acres. Lot 41 is 1.57 acres, Lots 42 and 43, the CDRES 1-2006 subject lots are 4.09 and 4.72 acres respectively. This is a total of 10.38 acres. So considering the requirements applicable to flexible zoning RR5(1)PD in both 1989 and now in 2011, none of these lots should have been or now be subdivided to under 5 acres without compliance to those requirements. The maximum number of lots that could have been created in 1989 from Unit 9 Lot 4 under regulations existing in 1989 was two. RES 1-89 also re-subdivided Unit 9 lot 9 and that property is in the exact same situation with regards implied exception/ variance to Title 17 and 20.

Finally, the 1989 approval of RES 1-89 necessitated approval of an exception to not only Title 17 but a variance to Title 20 of the Mendocino County Coast Zoning Code and to the Coastal Element 3.8-10. Development allowed by the variance has never been implemented on any of the lots of RES 1-89. The lots have never been sold and no improvements have ever been made. It has been over 20 years. Per the Municipal Code Section 20.540.040 and the California State Government Code 66499.11, the variance enabling the Unit 9A subdivision should have expired and be null and void. **The Mendocino Municipal Code Title 20 and the State of California Government Code 66499.11 provide the authority to the County to void the variances and recombine the acreage**

For these reasons we respectfully request that the Planning Commission not only deny the Applicant's requests and reject CDRES 1-2006, we also request that the Planning Commission consider revoking RES 1-89.

Thank you for your time and attention.

  
Dean and Patty Wolfe

From: William M. Moores, applicant-Resub '2006 5/1/11  
To: Each member of Mendocino Co. Planning Commission  
Re: Resub 1-2006 scheduled for the 5/19/11 PC hearing-analysis of staff report

Dear Planning Commissioner:

It is to be noted that staff makes no provision for your approval of the project by proposing conditions of approval to address and mitigate concerns raised by staff. By not attaching conditions approved by the Minor Division Committee for septic systems or proposing an alternative motion for you to approve the application staff is allowing you only to consider their recommendation without regard to whether conditions might be adopted that mitigate. For example staff has stated that it is concerned that subsequent grading to create "building pads" could cause erosion so staff recommends denial. The soils engineer for the project stated on page 3 of the staff report that drilled pier footings might be used and that plans for subsequent grading based on specific house designs and locations should be submitted to an engineer to review and approve. The hypothetical concern of staff can be addressed and mitigated by placing a condition on project approval that proposed grading plans be approved by an engineer. By avoiding discussion of proposed conditions recommended by the soils engineer staff is empowering itself to become the reviewing engineer of subsequent residential grading plans and it is assuming what will be proposed in subsequent house plans. It is inappropriate to recommend denial based on such staff assumptions.

The same applies to the staff concern that the required improvements may not be able to be contained within the existing easement previously approved by the Board. You can resolve the concern by simply adding a condition of approval that the roadway improvements shall be contained within the Board approved easement so that no project approval is effective unless the condition is met but the project can proceed if the improvements can be so contained. The same applies to whether there is adequate sight distance. You apply a condition that adequate sight distance shall be provided. The same applies to water pressure. Provide a condition that adequate water pressure shall be provided. To address Section 17-52(L) a condition is added that the final map shall comply with 17-52(L) requirements.

There is some essential background information missing from the staff report as follows:

- 1) Section 17-48(e)(1) of the county code was already in place in its present form in 1989 and has remained unchanged to the present. The Board of Supervisors approval of a map in 1989 entailed an approval of the 20 ft. easement shown on the map and that land use became part of the existing Use Permit. The approval was justified by the fact that the roadway improvements can be contained in the 20 ft. easement, which is the described objective of this code section. The project was considered consistent with 17-48(e)(1) so no exception was required.
- 2) The county issued permit # 2009-0331 in '2009 (see Exhibit A attached) for the improvements shown on 4 pages of engineered plans to be constructed within the 20 ft. easement. Those improvements were applied for the benefit of the existing parcels 132-320-42 and 43 to implement current Calfire standards (Exhibit A).

- 3) The road improvements recommended by the county and approved by Calfire for the Resub 1-2006 (see Exhibit A) are the very same that are depicted in the plans attached to permit #2009-0331 (i.e. that have already been permitted for 132-320-42). Therefore approval of Resub 1-2006 does not create a requirement for improvements on the 20 ft. easement that are in excess of those already permitted;
- 4) The existing RR1 zoning on the resub 1-2006 area allows for one single-family residence and a cottage on each parcel existing. (See Teresa Spade's 4/4/11 e-mail in Exhibit A.) Therefore there are potentially 4 units contributing traffic on the easement under existing circumstances.
- 5) The applicant has requested a Use Permit condition as part of the Use Permit modification to provide that the uses on all 4 parcels that would exist if the Rebus 1-2006 is approved would be limited to one single family residence (with no additional cottage possible on any of the 4 parcels). Therefore approval of Resub 1-2006 would not increase in traffic. Even if traffic were slightly increased there is no code section that prohibits that nor can the owner of lot 9 complain of the traffic since he agreed to the subdivision and resubdivision of the subject area.
- 6) The county staff required the applicant to submit an exception application or they stated that they would not consider the filing complete and would not process the application. The applicant did not and does not believe that an exception to the outstanding Board access approval is required because the necessary improvements can be maintained within the existing approved easement. Since staff contends that the improvements cannot be so contained they contend that an exception is required. The issue can be resolved by placing a condition on Resub'2006 that the improvements shall be contained within the existing easement. Thus, if the improvements can be so contained no exception is necessary and if they can't, the project cannot meet the conditions so no exception is required since there is no project to implement.

Addressing now the 4 reasons for DOT's recommendation on page 9 of the staff report it is noted that DOT does not address Section 17-52(S-1)(see Exhibit A) and that the prior Board of Supervisors approval of the existing easement satisfied Section 17-48(e)(1). Section 17-52(S-1) specifically says that lots shall be designed <sup>wherever possible</sup> to conform to existing easements unless said easements are relocated to conform to the proposed lot pattern. If the proposed condition of approval (see above) is applied that all required improvements shall be contained within the previously approved easement it is unnecessary to debate whether an exception is needed to the prior Board approval because, if the improvements won't fit, there is no project and if they do there is no need to change the Board's prior approval. As to all 4 reasons for DOT's recommendation the first is incorrect in contending that we did not submit justifications (see bottom of page 12, top of page 13 of staff report), the second is irrelevant in that the owner of lot 9 agreed to the applicant subdividing and resubdividing the subject area, the third is resolved by the proposed project condition that the applicant shall demonstrate that the improvements can be constructed within the easement and the fourth is incorrect in that the required improvements have already been permitted and in that the easement is specifically for the subdivision and resubdivision of the subject area so that all uses and improvements were

already agreed to by the underlying landowner who then has no standing to complain that the easement is being overburdened. No exception is needed under proposed conditions.

Addressing now the 4 reasons offered by staff on page 14 of the staff report:

- 1) The first concern can be addressed by applying the condition that adequate roads shall be provided as described in road ordinances and Calfire standards.
- 2) The staff contention that Resub 1-2006 is not consistent with the purpose and intent of the zoning and does not preserve the integrity of the zone appears to be at odds with the zoning itself, which is RR1 (see Exhibit A). A principal permitted use in the zone is residential, one plot/acre. What integrity is being violated?
- 3) a) The staff contention that the Resub represents a substantial alteration of the planned use of the area is at odds with the zone (which is the planned use), which is residential RR 1 and residential use is applied for.  
b) The staff contention that the application will cause an increase in traffic hazards to vehicles, bicyclists or pedestrians appears to be at odds with the fact that the Resub is entirely on private land not fronting public use areas. Even if there is a traffic increase there is no increase in hazards since the existing one-lane roadway is to be widened to an 18 ft. wide two-lane road, thus increasing safety.
- 4) There is no evidence that approval of the Resub would be detrimental to public welfare or injurious to surrounding property. How could there be any such evidence given that the improvements have previously been permitted for existing lots to the east and there is no adjacent public land? How can staff contend that changing a one-lane road to a two-lane road is injurious or contrary to public welfare? Exhibit A contains deeds for this subject easement. The current owner took title subject to the existing easements and therefore agreed to them in taking title. The easement specifically says that it is for the future subdivision and resubdivision of the land contained in this Resub application. To the extent that the underlying owner claims an injury, it is an injury he previously agreed to.

The Board approved another such 20 ft. access roadway in another location in Unit #7 for a resub on current lot #8, Unit#9A on the same basis: because the improvements could be contained within the easement so that approval of the access was found consistent with 17-48(e)(1) without need for an exception application. (See Exhibit A, item 10).

Exhibit A is attached merely to provide copies of background information and it is not essential that you review it. It should be pointed out that there is a 6 ft. building setback on the south side of the easement and that all buildings on the north of this easement are set back 6 ft. The result is an open corridor of 32 ft. width. The Board of Supervisors was well justified in previously approving the easement and the basis of their approval is still valid because the required improvements previously permitted can be designed so that they are contained within it. All of the staff concerns can be addressed and mitigated by the adoption of conditions of approval to address each. The application should be returned to staff for development of proposed conditions of approval and returned to the Commission for consideration once those conditions are able to be considered by the Commission.

Sincerely,

*William Moore*



# HUFFMAN ENGINEERING & SURVEYING

537 College Avenue, Suite A, Santa Rosa, CA 95404  
707-542-6559 Fax 542-6621

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April 29, 2011

Planning Commissioners  
Mendocino County Planning Commission  
790 South Franklin Street  
Fort Bragg, CA 95437

RE: Resubdivision 2006 & Access Easement

Dear Planning Commissioners:

We have been asked to review the staff recommendation for the proposed subdivision. We have been working with Mr. Moores, County of Mendocino and various other agencies over the past few years to meet with their approval of the subdivision. We have met their concerns and prepared a subdivision that meets the criteria of the zoning ordinance. We have taken into consideration the development impacts and the environmental concerns with the careful placement of building envelopes and driveways for a subdivision. The following comments help address some of the concerns brought up by County staff.

Access Easement:

Staff is concerned with the width of the 20 foot access easement across the Lands of Wolfe. Generally, the width of the access easement is determined to contain the road and provide enough room for maintenance of the road. We have submitted a road design for an 18 foot wide road within a 20 foot easement. The County of Mendocino has granted a grading permit, 2009-0331, Sept. 10, 2009, for the construction of this access road within the 20 foot easement. Given that, we recommend that there be a subdivision condition that reads something similar to "The access road across the Lands of Wolfe must be able to be constructed and approved by the County of Mendocino Public Works Department prior to acceptance of the subdivision. This condition cannot be bonded." We recommend that an additional condition be made to require a maintenance agreement between the new lot owners to fund and maintain the access road across the Lands of Wolfe.

Grading on Parcels:

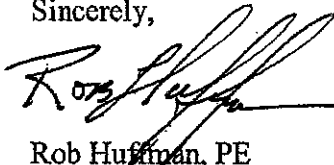
We suggest a note on the map that reads, "All grading on Lot #1, 2, 3 and 4 shall be reviewed and approved by a civil or geotechnical engineer."

Water Pressure:

The following condition should be added to address staff's concerns with water availability to each parcel. "Adequate water pressure must be provided to each lot."

If you have any questions, please call us at (707) 542-6559.

Sincerely,

A handwritten signature in black ink, appearing to read "Rob Huffman", with a horizontal line extending from the end of the signature.

Rob Huffman, PE  
Professional Engineer  
RH:fv  
06-53



## **EXHIBIT A**

- #1 : PERMIT # 2009-0331 + IMPROVEMENT PLANS-PERMITTED**
- #2 : COUNTY CODE SEC. 17-52(S-1)-SAYS USE EXISTING EASEMENT**
- #3 : 4/6/11 LETTER TO TARR-NO NEED TO VOID GRANTED EXCEPTION**
- #4 : HUFFMAN 4/28/11 LETTER TO TARR-STAFF REPORT ERRORS**
- #5 : CALFIRE LETTER:APPROVING MAP AND IMPROVEMENTT PLANS**
- #6 : BAXMAN LETTER-CONFIRMS CAN BUILD WITHIN EASEMENT**
- #7 : TERESA SPADE'S 4/4/11 E-MAIL-CONFIRMS COTTAGES ALLOWED**
- #8 : COPY OF SECTION 17-52(L)**
- #9: COPY EASEMENT DEEDS- SUBDIVISION AND RESUBDIVISION**
- #10 : COPY OF MAP SHOWING ANOTHER BOARD APPROVED ACCESS**
- #11: PHOTOS-SIGHT DISTANCE, TOPOGRAPHY, AERIAL VIEW, PLOTS**

UKIAH OFFICE  
 501 Low Gap Road, Room 1440  
 Ukiah, CA 95402  
 Phone (707) 463-4283



FORT BRAGG OFFICE  
 790 South Franklin Street  
 Fort Bragg, CA 95437  
 Phone (707) 964-8370

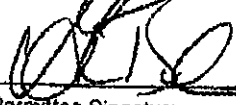
COUNTY OF MENDOCINO  
 DEPARTMENT OF PLANNING AND BUILDING SERVICES

JOB ADDRESS: 43592 SEA CYPRESS DRIVE MANCHESTER		PERMIT NUMBER: BF 2009-0331	
ASSESSOR'S PARCEL NUMBER: 13232043		PERMIT TYPE: GRADING	
		DATE ISSUED: 9/10/2009	
DRIVING: HWY 1 TO SEA CYPRESS DR. LFT ONTO DRIVEWAY OPPOSITE INTERSECTION EAST OF SEA CYPRESS DR AND CYPRESS PARKWAY			
APPLICANT: MOORES, WILLIAM 3880 SLEEPY HOLLOW RD SANTA ROSA, CA 95404 (707) 357-4501		OWNER: MOORES, WILLIAM 3880 SLEEPY HOLLOW RD SANTA ROSA, CA 95404 (707) 357-4501	
CONTRACTOR: BAXMAN GRAVEL CO INC 1221 N. MAIN STREET FORT BRAGG, CA 95437 (707) 964-4033 C:277278		ARCHITECT/ENGINEER:	
WORK CLASS: NEW OCCUPANCY TYPE: USE TYPE: ROAD NO. UNITS: 0 SETBACKS: F: LS: R: RS		SCHOOL DISTRICT: POINT ARENA JOINT FIRE DISTRICT: REDWOOD COAST FPD CDF NUMBER: RECEIPT NUMBER: 90872 PAYMENT METHOD: Check	
REMARKS: GRADING 200 CU YRDS		FEES: Grading Permits 09 64.56 Plan Check Fees 09 44.90	
SPECIFIC USE	SQ FT	COST	VALUE
Direct Valuation Entry	EA	1.00	
TOTAL:		0.00	TOTAL: 109.46


707-964-8370

I hereby affirm that I am licensed under the provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect. I hereby affirm that I have a certificate of Worker's Compensation Insurance, and/or a certified copy thereof.

I certify that I have read this document and state that the above information is correct. I agree to comply with all ordinances and state laws relating to building construction, and hereby authorize representatives of this county to enter upon the above-mentioned property for inspection purposes.

  
 Permittee Signature For Bill Moares

ISSUED BY

  
 Building Official

INSPECTOR

**STATEMENT:**

I hereby certify that my application and/or permit does expire by limitation if work is suspended, or abandoned for 180 days. I agree that I must complete enough progress to call for and receive an approved inspection within 180 days or my permit will expire, and I will pay the required fees necessary to re-instate my permit as per Section 106.4.4 in the Uniform Building Code.

PERMITTEE SIGNATURE \_\_\_\_\_

9/10/07  
DATE

at site address in a conspicuous place at driveway entrance prior to inspection.

**INSPECTION RECORD**

TYPE OF INSPECTION	INSPECTOR	CORRECTION DATE	INSPECTOR	APPROVED DATE	REMARKS
FOUNDATION INSPECTION					
SETBACKS					
TRENCHES/FORMS/REBAR					
CONCRETE BLOCK					
UNDER GROUND					
DO NOT COVER WORK UNTIL ABOVE HAS BEEN SIGNED					
UNDERFLOOR/SLAB INSPECTION					
UNDERFLOOR - ELECTRIC					
UNDERFLOOR - MECHANICAL					
UNDERFLOOR - PLUMBING					
UNDERFLOOR - FRAME					
DO NOT COVER WORK UNTIL ABOVE HAS BEEN SIGNED					
POOL INSPECTION					
POOL STEEL					
POOL ELECTRIC BOND					
POOL PLUMBING					
DO NOT COVER WORK UNTIL ABOVE HAS BEEN SIGNED					
FRAME INSPECTION					
ROUGH ELECTRIC					
SERVICE EQUIPT. & GROUND					
ROUGH MECHANICAL					
ROUGH PLUMBING					
CAULKING/SEALING					
ROUGH FRAME					
SIDING/O.S. LATH					
ROOF NAIL/SHEATHING					
SHEARWALLS					
EGRESS WINDOWS					
DO NOT COVER WORK UNTIL ABOVE HAS BEEN SIGNED					
INSULATION INSPECTION					
UNDERFLOOR					
WALL					
CEILING					
DO NOT COVER WORK UNTIL ABOVE HAS BEEN SIGNED					
WALLBOARD INSPECTION					
SHEETROCK					
NAILING					
FIREWALL					
DO NOT COVER WORK UNTIL ABOVE HAS BEEN SIGNED					
UTILITY INSPECTION					
ELECTRIC METER					
GAS METER					
MOBILE HOME INSPECTION					
CONTINUITY					
MANOMETER					
RIDGEBOLTS					
SOFT SET					
TIE DOWN					
STEPS/STAIRWAYS					
WATER TEST					
FINAL INSPECTION					
ROOF					
ELECTRICAL					
MECHANICAL					
PLUMBING					
BUILDING					
POOL					
MOBILE HOME					
CLASS K					
GRADING					
CALIF. DEPT. OF FORESTRY					

24 HOURS NOTICE REQUIRED FOR INSPECTION REQUESTS

CERTIFICATE OF OCCUPANCY ISSUED/FINAL \_\_\_\_\_

DATE: \_\_\_\_\_

INSP: \_\_\_\_\_

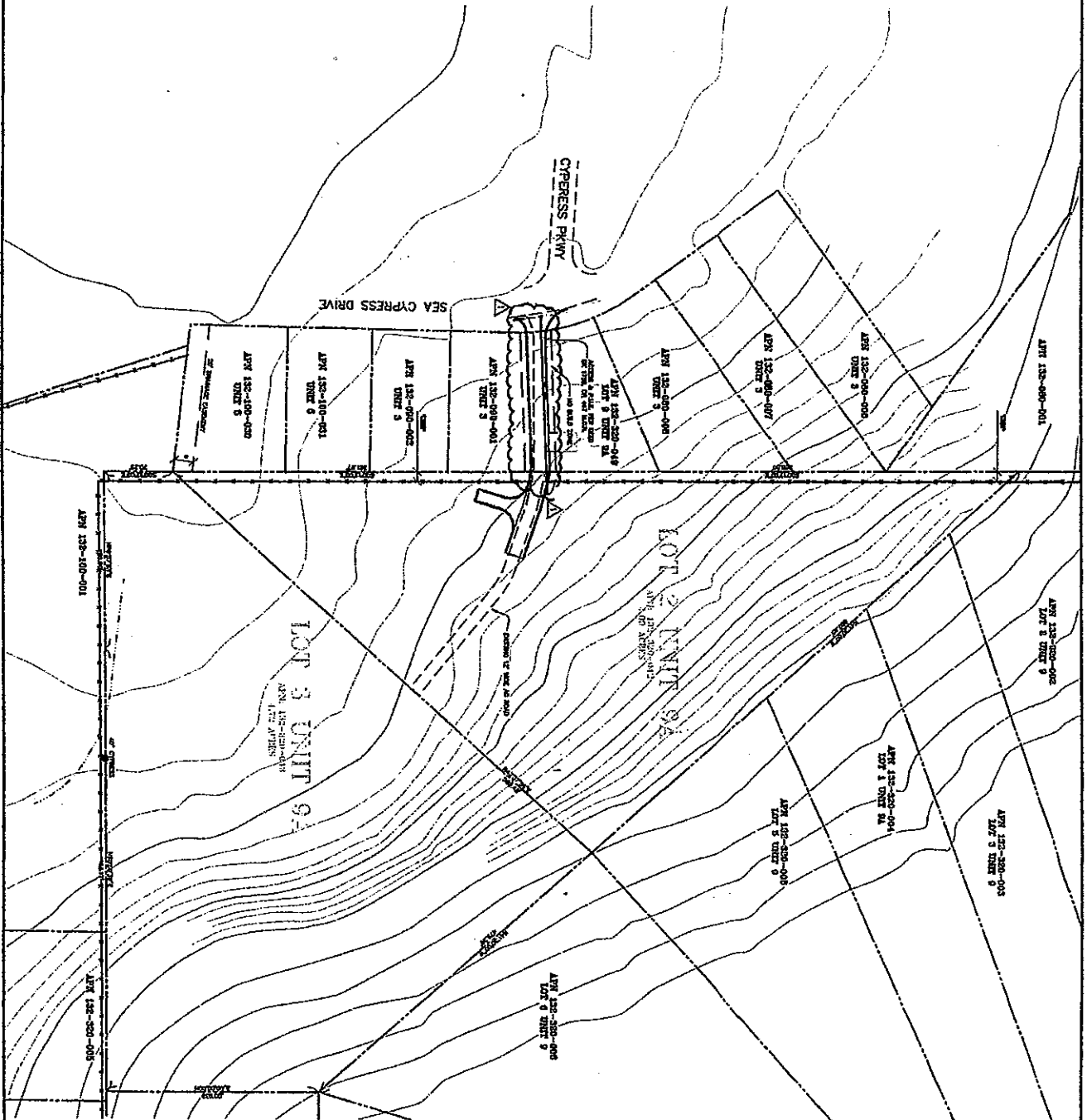
Apr. 01 2011 08:12PM PZ

FROM: MEMPHIS CO PLANNING BUILDING FAX NO.: 7279612427



FOR REDUCED PLANS, THE 0  
ORIGINAL SCALE IS IN INCHES

1 2 3



**SEA CYPRESS DR, 43586**

**SITE PLAN**

**43586 SEA CYPRESS DR.  
MANCHESTER  
A.P.N.:132-320-042**



**REVISIONS**

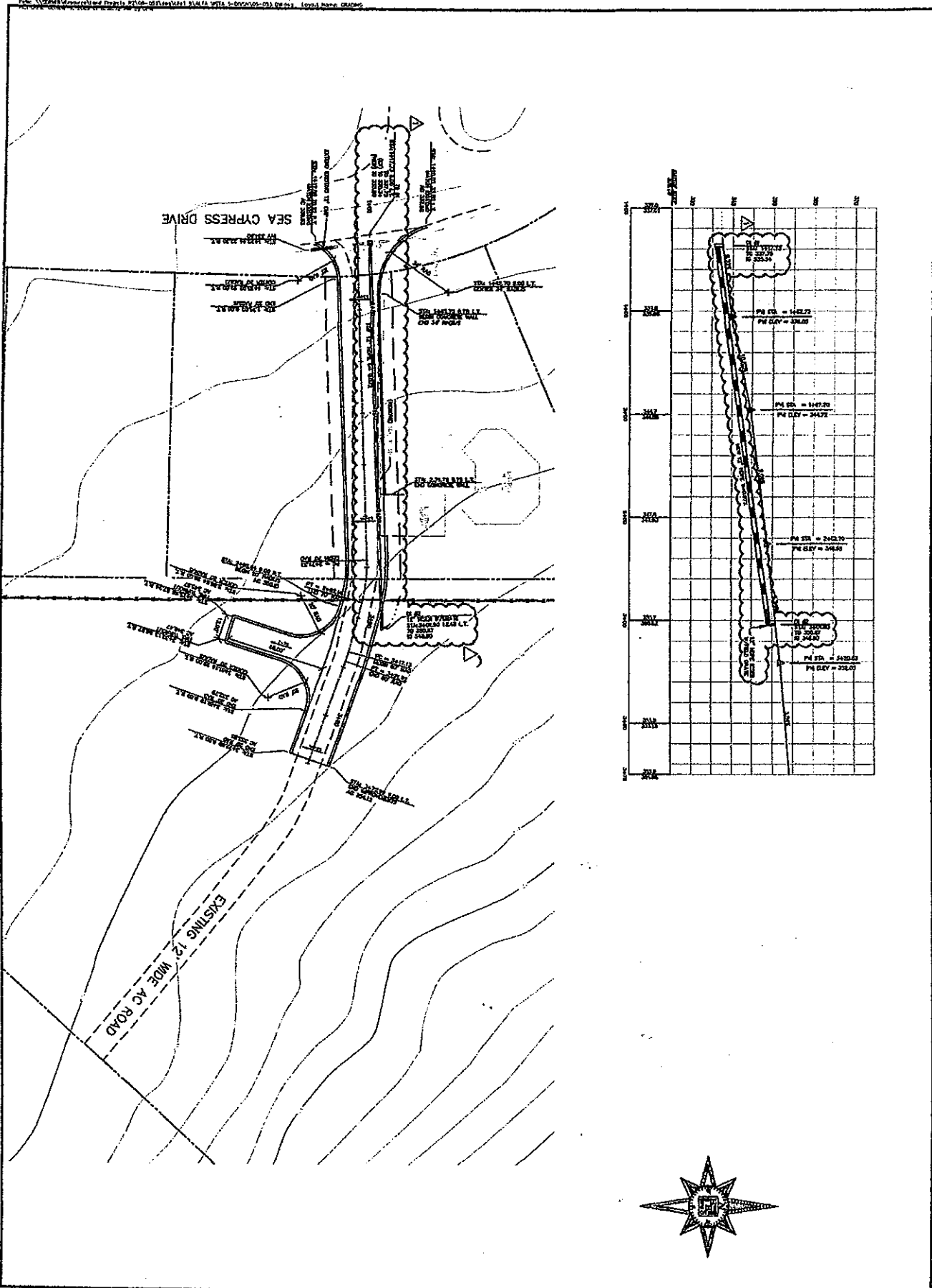
#	Description	Date
1	GRASSHOPPER BAIT AND STORM DRAIN ADDITION	05/23
2		
3		
4		
5		
6		
7		
8		
9		
10		

SEALING  
BY: [Signature]  
DATE: 05/23/2005

NOT TO SCALE  
SEE PLAN FOR  
DIMENSIONS

DATE: 05/23/2005  
BY: [Signature]  
C2  
OF 1 SHEET

FOR REDUCED PLANS, THE 0  
ORIGINAL SCALE IS IN INCHES 1 2 3



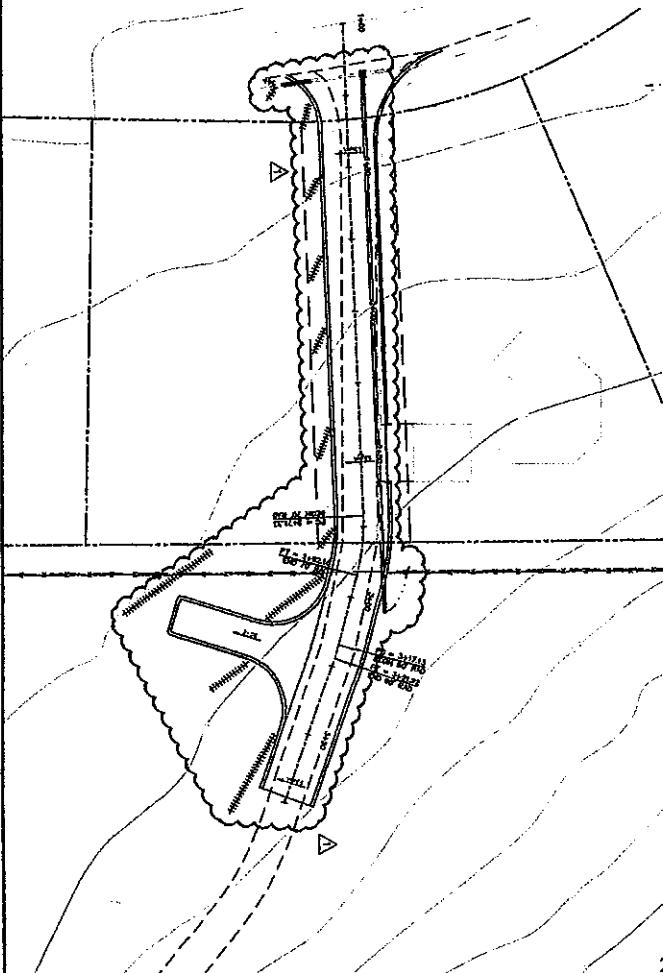
**SEA CYPRESS DR, 43586**  
**GRADING PLAN**  
 43586 SEA CYPRESS DR.  
 MANCHESTER  
 A.P.N.:132-320-042



REVISIONS	
Description	Date
DRABAGE PAET AND STORM DRAIN ADDITION	01/01/00

Scale: 1" = 40'  
 Date: 01/01/00  
 C3







**-MENDOCINO COUNTY PLANNING AND BUILDING SERVICES-  
DIVISION OF LAND REGULATIONS – TITLE 17**



however, that the main portion of the lot meets the provisions of this Chapter as to length, depth, area and design. In no case shall the access strip be less than twenty (20) feet in width nor greater than three hundred (300) feet in depth and improvements shall be constructed therein to provide an all weather driveway.

(M) Lots within frontage on a street, unless otherwise provided for herein, shall not be permitted.

(N) Deed restrictions or tract covenants shall be recorded with the final map or parcel map and shall include a provision that requires that no further division of land may be made unless the improvements, including, but not limited to streets, drainage facilities, and utilities are upgraded to conform to the proposed lot sizes, said regulations and standards being set forth in Articles VI and VII herein. To conform to the regulations and land improvement standards then in effect for the proposed lot sizes, said regulations and standards being set forth in Articles VI and VII herein.

(O) Any lot or parcel created by a division of land but not shown as a part thereof shall be of such size and shape as to conform to the provisions of this Chapter.

(P) No lot or parcel created by a division of land shall be excluded from the boundaries of the division of land for the purpose of avoiding dedication or improvement of any street, drainage, or flood control facility.

(Q) Each lot or parcel on a turn around, cul-de-sac or curved street, where the side lines thereof are diverging from the front to the rear of such lot or parcel, shall have a width of not less than sixty (60) feet, or the width required by this Chapter or the Zoning Code, whichever is greater, measured along the building setback line established by the minimum required front yard for the main building and between the side lines of such lot or parcel.

(R) Each lot or parcel on a curved street, when the side lines thereof are converging from the front to the rear of such lot or parcel, shall have an average width of not less than sixty (60) feet or the width required by this Chapter or the Zoning Code, whichever is greater.

→ (S)(1) Lots containing less than 2.5 acres shall be designed wherever possible to conform to existing easements unless said easements are relocated to conform with the proposed lot pattern. *(As amended by Ord. No. 3527, adopted 1984)*

(S)(2) When calculating the area of a lot or parcel of less than two (2) gross acres to determine compliance with this Chapter or the Zoning Code, all easements, except an easement created exclusively for the purpose of constructing and maintaining roadway slopes, shall be deducted. *(As amended by Ord. No. 3527, adopted 1984)*

From: W. Moores  
To: Fred Tarr  
Re: reply to Tarr 4/6/11 e-mail

4/6/11

- 1) Thank you for confirming that the matter has been rescheduled for May 19.
- 2) We are still attempting to obtain an easement on the lot to the south but we have not yet come to an agreement;
- 3) As regards whether the exception request granted for 1-89 should be applied to Resub 1-2006 I refer you to 17-48(S-1). Tom Peters has suggested that the required improvements for the roadway cannot fit within the 20 ft. easement and you have stated that only a one-lane road can fit within the existing easement. If either of those statements were factual clearly there would be grounds for demands for increased width since it would be demonstrated that the existing easement is insufficient to contain the improvements required. However the county has already permitted the required improvements within the easement with attached engineered plans that show that the improvements can be contained within the easement and the engineer has submitted proof using Santa Rosa ordinances that those improvements are regularly contained within an easement of this width and he has submitted a letter certifying that they can so be contained. In addition a licensed construction contractor has submitted his letter, based upon review of those engineered plans, certifying that he can construct them without need for additional easement area. Therefore, there is no demonstrated proof that the exception granted needs to be changed. I do not contend that the exception granted on 1-89 automatically extends to Resub 1-2006, but I do contend that there does have to be proof that the existing easement is not wide enough to contain the required improvements and I think you are going to have difficulty sustaining a contention that that it is not wide enough given the fact that the county has already permitted the improvements within that easement.
- 3) As regards your statement that there is no need for my proposed Use Permit Condition to eliminate the possibility of cottage additions to reduce the potential density, I think you are wrong in your conclusion and, more to the point, there is no reason offered by you why you should not be willing to add the condition as requested. There are two primary reasons that I think you are wrong in your conclusion that a cottage is prohibited already by Section 20.458.010 of the Coastal code. First and most importantly, Government Code Section 65852.2 (h)(4) defines a second residence as "an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking and sanitation...". The cottage defined in Coastal Code Section 20.308.050(G)(1) does not meet that description. Therefore a cottage is not prohibited by Section 20.458.010. Secondly, Section 20.458.010 states within it that the section is only temporary so that, from a long term planning point of view, the possibility of additional expanded use remains out there. My proposed condition will eliminate the possible cottage use regardless of future events. Therefore we continue to urge its adoption. I don't think anyone would be opposed to the proposed condition and density reduction.

Sincerely,

W. Moores

-----Original Message-----

# HUFFMAN ENGINEERING & SURVEYING

537 College Avenue, Suite A, Santa Rosa, CA 95404  
707-542-6559 Fax 542-6621

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April 28, 2011

Fred Tarr  
Staff Planner  
Mendocino County  
501 Low Gap Road  
Ukiah, CA 95482

RE: Comments in Planning Commission Staff Report

Dear Mr. Tarr:

## **Water Pressure**

I note that on page 11 of your report you are concerned with water pressure within the building envelope areas on the tentative map. The highest building envelope area is approximately at the 380 foot elevation level. The water tank that provides the water and pressure for this area is located on Lot 31, Unit #3 at an elevation of approximately 510 feet. The elevation difference is therefore 130 feet. This should provide adequate pressure to the upper lot.

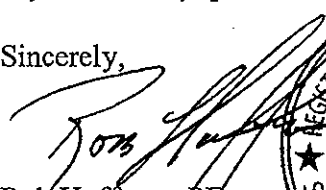
## **Site Distance for Access Easement**

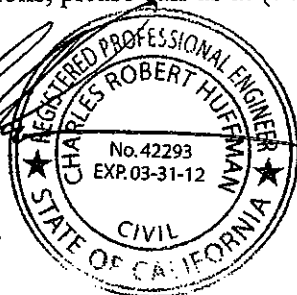
At the top of page 14 of your staff report, you claim that the access drive has a curve and a grade which makes it impossible for drivers to see if traffic is coming from the other direction and the access strip will only support a 12 foot wide paved road sufficient for only one way traffic. Your own department's issuance of grading permit #2009-0331 with improvement plans attached shows that the access easement is sufficient to contain all of the improvements required for the two lane width required by CDF and the County. My office prepared Improvement Plans that show that the improvement can be contained within the easement. Baxman Gravel contracting has confirmed that they can construct the improvements within the easement. As to sight distance, there is clear straight visibility down the common access road to Sea Cypress Drive from both cars entering the driveway and from cars exiting onto the driveway. In addition, there is excellent visibility from cars entering onto Sea Cypress from the driveway or pulling off onto the access driveway from cars traveling Sea Cypress in both directions.

The 300 foot distance limitation provided in Section 17-52(L), as stated in that section, a limitation on the "strip or segment which is a part of said lot", not a limitation on the distance of lot from the County road. The strip or flagpole portion of Lot #2 does not exceed 300 feet. The distance of Lot #2 to the County road is approximately 210 feet.

If you have any questions, please call us at (707) 542-6559.

Sincerely,

  
Rob Huffman, PE  
Professional Engineer



**DEPARTMENT OF FORESTRY AND FIRE PROTECTION**

Mendocino Unit  
17501 North Hwy 101  
Willits Ca. 95490



William Moores  
3880 Sleepy Hollow  
Santa Rosa, CA. 95404

4/14/2011

Mr. Moores

Per our discussion(4/14/11) and review of your revised maps dated 12/16/09 your project (Cal Fire #99-06) will meet Cal Fire's road standards if you include permanent easement to the hammer head "T" located near the location where all four parcels converge. This easement will prevent the blockage of the hammer head "T" providing a permanent turnaround for fire suppression resources, if needed.

My understanding is no driveways will be built during this portion of the project. However, when driveways are constructed you will be required to conform to Cal Fire's driveway standards. If structures are built, additional requirements will also apply.

Larry Grafft  
Battalion Chief

A handwritten signature in black ink, appearing to read "Shawn Zimmermaker".

Shawn Zimmermaker  
Fire Captain  
Fire Prevention

## CONDITIONS OF APPROVAL

CDF File Number **99-06** Date **4/14/2011**  
Owner's Last Name **Moore** Owner's First Name **William**  
Owner's Phone Number **(707) 526-3759**  
Owner's Mailing Address **3880 Sleepy Hollow Santa Rosa CA 95404** Agent/Phone #   
  
Project Street #  Project Street Name **SEA CYPRESS** Type of Project **Minor Subdivision**  
Project City/Community **Gualala** Battalion **6 Fort Bragg**

Finalized ☐

With reference to the above case number, the California Department of Forestry and Fire Protection requires the following MINIMUM standards as set forth in Title 14, "Natural Resources; Div. 1.5, be adhered to in order to gain a "Final Clearance" and "Approval for occupancy" from this Department. Local agencies may have additional requirements that may be more restrictive.

☐ **Address Standard**

California Code of Regulations, Title 14, Section 1274

Address must be posted at the beginning of construction and maintained thereafter. It shall be posted on BOTH sides of a mailbox or post at driveway entrance so it is visible from BOTH directions of travel. Minimum 3 inch letter height, 3/8 inch stroke. Reflectorized, contrasting with background color. Sequential numbering issued by Mendocino County will be utilized. Multiple Addresses will be on a single post.

☒ **Driveway Standard**

California Code of Regulations, Title 14, Section 1273

Driveway will be minimum 10 feet wide, all weather surface. It shall be a maximum of 16 % grade, minimum 50 feet inside radius on turns, and have a minimum 15 feet vertical clearance. Driveways longer than 150 feet, but less than 800 feet require a turnout near the midpoint. Driveways longer than 800 feet require turnouts every 400 feet. Turnouts shall be a minimum 10 feet wide and 30 feet long with a 25 foot taper at each end. A 40 foot radius turnaround or 60 foot hammerhead "T" is required for driveways longer than 300 feet and must be within 50 feet of the building. Gates will be 2 feet wider than the traffic lane and located at least 30 feet in from the road.

☒ **Road Standard.**

California Code of Regulations, Title 14, Section 1273

Roads will have two-9 foot traffic lanes (18 ft. wide road surface), Minimum 40,000 lb. load capacity, and have an all weather surface. Roads will have a maximum grade of 16%, a minimum curve radius of 50 foot, and a minimum of 15 foot vertical clearance. Dead end roads shall not exceed: 800 ft for parcels 1 acre or less - 1320 ft. for parcels 1 to 4.99 acres - 2640 ft. for parcels 5 to 19.99 acres - 5280 ft. for parcels 20 acres or larger. Dead end roads are also required to have turnarounds every 1320 ft. and at terminus. Turnarounds shall be a minimum 40 ft. radius or 60 ft. hammerhead "T". Roads shall be officially recognized by Mendocino County with approved signs at each intersection and visible for 100 feet from both directions. The sign shall be minimum 3 inch letter height, 3/8 inch stroke, reflectorized and contrasting with background color. One Way Road Standards (if approved) are available from this office.

☐ **Bridge Standard**

California Code of Regulations, Title 14, Section 1273

Bridges shall have a minimum 40,000 lb. load capacity, minimum 15 foot vertical clearance. Appropriate signing including: Weight limits, Vertical Clearance, One Way Road, Single Lane conditions shall be posted. One lane bridges shall provide an unobstructed view from one end to the other with turnouts at both ends.

☐ **Emergency Water Supply Standard**

California Code of Regulations, Title 14, Section 1275

Subdivisions shall meet or exceed either PUC Revised General Order #103, NFPA Standard 1231, or ISO Rural Class 8 Standard (local jurisdiction may require more as these are minimum standards). Fire Hydrant shall be 18 inches above grade, minimum 4 feet and maximum 12 feet from road or driveway. Hydrant shall be minimum 50 feet and maximum 1/2 mile from building it serves, and minimum 8 feet from flammable vegetation. Hydrant shall have 2 1/2 inch male National Hose fitting, suitable crash protection and located where Fire Apparatus using it will not block entry. Hydrant shall be identified with a 3 inch reflectorized blue dot on driveway sign, or placed within 3 feet of hydrant, or identified by blue highway marker as specified by State Fire Marshal.

☐ **Setback for Structure (Defensive Spac**

California Code of Regulations, Title 14, Section 1276

All parcels 1 acre or larger shall provide a minimum 30 foot setback for all buildings from all property lines and/or center of a road. All parcels less than 1 acre shall provide for same practical effect by standards set forth by local jurisdiction.

☐ **Maintaining Defensible Space**

Public Resources Code, Section 4291

Any person who owns, leases, or controls any property within the State Responsibility Area, shall at all times maintain around and adjacent to such building or structure a firebreak made by removing and clearing away, for a distance of not less than 100 feet on each side thereof or to the property line, whichever is nearer, all flammable vegetation or other combustible growth. This subdivision does not apply to single specimens of trees, ornamental shrubbery, or similar plants which are used as ground cover, if they do not form a means of rapidly transmitting fire from the native growth to any building or structure.

**CDF: ADDITIONAL COMMENTS.**

See attached letter dated 4/14/11.

Larry Grafft  
Battalion Chief

By:



Reviewing Official

Shawn Zimmermaker

Fire Prevention Bureau

**BAXMAN GRAVEL CO., INC. CONTRACTORS LICENSE 277278**

Phone: 707-964-4033  
Fax: 707-964-7011

1221 N. Main St.  
Fort Bragg, CA 95437  
Email: [glenbeck@hotmail.com](mailto:glenbeck@hotmail.com)

June 27, 2007

To: Robert Huffman  
Huffman Engineering & Surveying  
537 College Ave., Suite A  
Santa Rosa, Ca. 95404  
PH. - (707) 542 - 6559  
FAX - (707) 542 - 6621

Re: Site Plan - Unit 3 Lot 39  
Irish Beach Subdivision.

After review of the site plan forwarded to me from your office I have determined that the existing access road can be widened to satisfy County of Mendocino requirements. Furthermore, It is my determination that all related work in widening the access road can be performed within the existing Right of Way.

Please feel free to contact me at any time if you have any questions.

Respectfully,



Glen Beck  
Office Manager / Estimator

Cc/ Bill Moores



4/2/11

From: William Moores  
3880 Sleepy Hollow  
Santa Rosa, Ca. 95404  
Fax 707-526-3759

To: Teresa Spade, Mendocino Co. Plan Dept  
790 S. Franklin  
Ft. Bragg, Calif. 95437

Re: Confirmation of allowed zoning uses in RR1-PD coastal zone per our 3/31/11  
telephone conversation

Dear Teresa:

Please respond to this letter request by return fax or by e-mail as you prefer today to the  
above fax or to my e-mail address:

This letter is merely to document the contents of our conversation regarding allowed uses  
for AP# 132-320-42 and 43. These parcels are zoned RR1-PD under the coastal plan in  
view of the fact that these parcels are within the Irish Beach Water District which has  
agreed to provide water service to the parcels. I called you last Friday to inquire whether  
the zoned uses allow for a cottage or guest unit in addition to the primary residence on  
the parcel provided that no additional kitchen is provided. You confirmed that the zone  
allows for an additional cottage without separate kitchen and that this cottage use  
included in the zone does not require a permit other than the normally required coastal  
permit, building permit and health-septic permit. Please confirm that this recitation of  
allowed uses is correct (or else correct any inaccuracies in the recitation) by either  
signing below simply to acknowledge the fact, or provide your own separate letter  
confirming or simply provide an e-mail confirmation to my e-mail address. If you have  
any questions or difficulties with this request, please call me at 707-526-3759 to discuss.

Thanking you in advance for your early response and confirmation.

Sincerely,

W.Moores

Acknowledging that the above recitation is  
correct: \_\_\_\_\_

Teresa Spade

**Bill Moores**

**From:** Teresa Spade [spadet@co.mendocino.ca.us]  
**Sent:** Monday, April 04, 2011 12:44 PM  
**To:** bill@irishbeachrealty.com  
**Cc:** Roger Mobley  
**Subject:** Guest Cottage Inquiry

Dear Mr. Moores:

I offer you the following in response to your inquiry regarding guest cottages in the coastal zone:

A guest cottage is defined in Section 20.308.050(G)(I) of the Mendocino County Coastal Zoning Code as follows:

(I) "Guest Cottage" means a detached building (not exceeding six hundred forty (640) square feet of gross floor area), of permanent construction, without kitchen, clear subordinate and incidental to the primary dwelling on the same lot, and intended for without compensation by guests of the occupants of the primary dwelling. (Ord. No. 3 (part), adopted 1991)

It is allowable to have one guest cottage as an accessory use to an existing single family residence in the Rural Residential District of the Coastal Zone in Mendocino County. County approval of a Coastal Development Permit, Building Permit and permit(s) from the Division of Environmental Health will be necessary to establish such a use.

**Teresa Spade**  
Planner II  
Planning and Building Services  
790 South Franklin St., Fort Bragg, CA  
(707)964-5379  
(707)961-2427 (Fax)  
spadet@co.mendocino.ca.us

CHAPTER 20.376 CRR — COASTAL RURAL RESIDENTIAL DISTRICT

Sec. 20.376.005 Intent

This district is intended to encourage and preserve local small scale farming in the Coastal Zone on lands which are not well-suited for large scale commercial agriculture. Residential uses should be located in a manner that will not impact on the agricultural viability.

Sec. 20.376.010 Principal Permitted Uses for CRR Districts

The following use types are permitted in the Coastal Rural Residential District:

(A) Coastal Residential Use Types

Family Residential: Single Family  
Vacation Home Rental

(B) Coastal Agricultural Use Types

Forest Production and Processing: Limited  
Horticulture  
Light Agriculture  
Packing and Processing: Limited  
Row and Field Crops  
Tree Crops

Sec. 20.376.015 Conditional Uses for CRR Districts

The following are permitted uses upon the issuance of a coastal development use permit:

(A) Coastal Residential Use Types

Family Residential: Cluster Development (CRR:L-10 Districts Only)  
Mobile Home Parks

(B) Coastal Civic Use Types

Alternative Energy Facilities: Onsite  
Alternative Energy Facilities: Offsite  
Day Care Facilities/Small School  
Educational Facilities  
Group Care  
Major Impact Services and Utilities  
Minor Impact Utilities  
Religious Assembly

(C) Coastal Commercial Use Types

Animal Sales and Services: Veterinary (Large Animals)  
Animal Sales and Services: Veterinary (Small Animals)  
Cottage Industries

(D) Coastal Agricultural Use Types

Forest Production and Processing: Commercial Woodlots

(E) Coastal Open Space Use Types

General Recreation

(F) Coastal Extractive Use Types

Mining and Processing

(G) Coastal Natural Resource Use Types

Fish and Wildlife Habitat Management  
Watershed Management

Sec. 20.376.020 Minimum Lot Area for CRR Districts

- (A) CRR:L-1: Forty thousand (40,000) square feet.
- (B) CRR:L-2: Two (2) acres.
- (C) CRR:L-5: Five (5) acres.
- (D) CRR:L-10: Ten (10) acres.

Sec. 20.376.025 Maximum Dwelling Density for CRR Districts

- (A) CRR:L-1: One (1) unit per forty thousand (40,000) square feet.
- (B) CRR:L-2: One (1) unit per two (2) acres.
- (C) CRR:L-5: One (1) unit per five (5) acres.
- (D) CRR:L-10: One (1) unit per ten (10) acres.

Sec. 20.376.030 Minimum Front and Rear Yards for CRR Districts

- (A) CRR:L-1; CRR:L-2: Twenty (20) feet each.
- (B) CRR:L-5: Thirty (30) feet each.
- (C) CRR:L-10: Fifty (50) feet each.

Sec. 20.376.035 Minimum Side Yards for CRR Districts

- (A) CRR:L-1; CRR:L-2: Six (6) feet each.
- (B) CRR:L-5: Thirty (30) feet each.
- (C) CRR:L-10: Fifty (50) feet each.

Sec. 20.376.040 Setback Exception

Any nonconforming parcel which is less than five (5) acres and which is zoned CRR:L-5 or CRR:L-10 shall observe a minimum front, side and rear yard of twenty (20) feet.

Sec. 20.376.045 Building Height Limit for CRR Districts

Twenty-eight (28) feet.

Sec. 20.376.050 Maximum Lot Coverage for CRR Districts

Twenty-five (25) percent.

Sec. 20.376.055 Minimum Lot Width for CRR Districts

One hundred (100) feet.

Sec. 20.376.060 Maximum Lot Depth for CRR Districts

Three (3) times the lot width.



**-MENDOCINO COUNTY PLANNING AND BUILDING SERVICES-  
DIVISION OF LAND REGULATIONS – TITLE 17**



not less than sixty (60) feet in width on the building line or less than eighty (80) feet in depth, provided that corner lots shall be not less than seventy (70) feet in width on the building line.

(C) Where a water supply and distribution system is provided, the lot area shall be not less than twelve thousand (12,000) square feet; and a lot width shall be not less than eighty (80) feet, except for residential lots on curved or Cul-de-Sac streets, which shall have a minimum width at the building line of eighty (80) feet.

(D) When neither a water supply and distribution system nor a sanitary sewer system is provided, the lot area shall be not less than forty thousand (40,000) square feet; and a lot width shall be not less than one hundred (100) feet except for residential lots one curved or cul-de-sac streets, which shall have a minimum width at the building line of one hundred (100) feet.

(E) When approved by the Planning Commission, lots or parcels to be used exclusively for, but not limited to, well sites, sewage lift stations, drainage devices, sump pumps, parking lots, and other similar installations and appurtenances, need not meet the minimum lot area, depth-width ratios, or frontage requirements. Such lots or parcels shall be designated on the final map or parcel map for the purpose thereof and be shown as "Not a Building Site".

(F) No lot shall have a depth of greater than three (3) times the average width of the lot; provided, however that the Planning Commission may approve greater width-depth ratios when necessitated by topography or other physical conditions, or where property is to be used for commercial or industrial purposes.

(G) The side lines of all lots, so far as possible, shall be at right angles to the center line of the street, or radial, or approximately radial to curved streets.

(H) No lot shall be divided by a City or County boundary line.

(I) Building setback lines shall be indicated on the final map or parcel map as required by the County Zoning Code or other appropriate restriction.

(J) Lots having double frontage shall not be permitted, except as otherwise provided herein, except when necessitated by topography or other physical condition. In all cases access on one side shall be restricted by proper dedication or legal instrument.

(K) All lots shall be suitable for the purpose for which they are intended.

→ Sec 17-52 (L) Flag lots or parcels whose access to the abutting street is provided by a strip or segment which is a part of said lot or parcel may be approved by the Planning Commission when necessitated by topography or other special condition, provided



**-MENDOCINO COUNTY PLANNING AND BUILDING SERVICES-  
DIVISION OF LAND REGULATIONS – TITLE 17**



→ however, that the main portion of the lot meets the provisions of this Chapter as to length, depth, area and design. In no case shall the access strip be less than twenty (20) feet in width nor greater than three hundred (300) feet in depth and improvements shall be constructed therein to provide an all weather driveway.

(M) Lots within frontage on a street, unless otherwise provided for herein, shall not be permitted.

(N) Deed restrictions or tract covenants shall be recorded with the final map or parcel map and shall include a provision that requires that no further division of land may be made unless the improvements, including, but not limited to streets, drainage facilities, and utilities are upgraded to conform to the proposed lot sizes, said regulations and standards being set forth in Articles VI and VII herein. To conform to the regulations and land improvement standards then in effect for the proposed lot sizes, said regulations and standards being set forth in Articles VI and VII herein.

(O) Any lot or parcel created by a division of land but not shown as a part thereof shall be of such size and shape as to conform to the provisions of this Chapter.

(P) No lot or parcel created by a division of land shall be excluded from the boundaries of the division of land for the purpose of avoiding dedication or improvement of any street, drainage, or flood control facility.

(Q) Each lot or parcel on a turn around, cul-de-sac or curved street, where the side lines thereof are diverging from the front to the rear of such lot or parcel, shall have a width of not less than sixty (60) feet, or the width required by this Chapter or the Zoning Code, whichever is greater, measured along the building setback line established by the minimum required front yard for the main building and between the side lines of such lot or parcel.

(R) Each lot or parcel on a curved street, when the side lines thereof are converging from the front to the rear of such lot or parcel, shall have an average width of not less than sixty (60) feet or the width required by this Chapter or the Zoning Code, whichever is greater.

→ (S)(1) Lots containing less than 2.5 acres shall be designed wherever possible to conform to existing easements unless said easements are relocated to conform with the proposed lot pattern. *(As amended by Ord. No. 3527, adopted 1984)*

(S)(2) When calculating the area of a lot or parcel of less than two (2) gross acres to determine compliance with this Chapter or the Zoning Code, all easements, except an easement created exclusively for the purpose of constructing and maintaining roadway slopes, shall be deducted. *(As amended by Ord. No. 3527, adopted 1984)*

ORDER NO.  
ESCROW NO. 106493

**CORPORATION  
GRANT DEED**

RECORDERS USE ONLY  
DOCUMENTARY TRANSFER TAX \$ TEN 00

COMPUTED ON FULL VALUE OF PROPERTY CONVEYED, OR

COMPUTED ON FULL VALUE LESS LIENS & ENCUMBRANCES

REMAINING THEREON AT TIME OF SALE

Signature of decedent or agent determining tax - Firm Name  
Widely National Title Insurance Co.

Unincorporated Area \_\_\_\_\_ City of \_\_\_\_\_

TAX PARCEL NO. \_\_\_\_\_

MENDOCINO COAST PROPERTIES

FOR A VALUABLE CONSIDERATION, DOES HEREBY GRANT TO

a corporation

WILLIAM KOORES AND TONA KOORES, his wife

the real property in the County of Mendocino, State of California, described as:

A non-exclusive easement for ingress, egress and public utilities over the most southerly 20 feet of Lot 39, Unit 3, Mendocino Coast Subdivision, recorded March 14, 1967 in Map Case 2, Drawer 8, Page 29.

Said easement is appurtenant to Lot 4, Unit 9, Irish Beach Subdivision, recorded January 12, 1969 in Map Case 2, Drawer 47, Page 83, Mendocino County Records and each and every subdivision and re-subdivision thereof.

*DOT / PLANNING  
does not review  
said grant deed easements*

Dated: June 12, 1989

MENDOCINO COAST PROPERTIES

(Corporation Acknowledgment)

By Gertrude J. Elder, Vice President  
Gertrude J. Elder, Vice President

STATE OF CALIFORNIA  
County of Mendocino

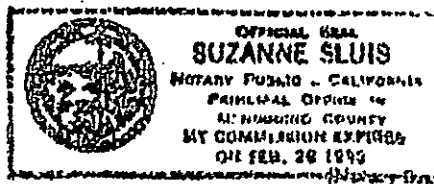
By \_\_\_\_\_

On this 20th day of June, in the year 1989, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Gertrude J. Elder

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as Vice President thereof, and acknowledged to me that such corporation executed it.

WITNESS my hand and official seal.

Suzanne Sluis  
Notary Public in and for said County and State.



MAIL TAX STATEMENT AS DIRECTED ABOVE

11097

FD-104

RECORDING REQUESTED BY  
Fidelity National Title  
MAIL TAX STATEMENT TO  
As shown below

WHEN RECORDED MAIL TO

M/M Dean J. Wolfe  
31 Hampton Ct.  
Alameda, CA 94501

14063  
RECORDED AT REQUEST OF  
FIDELITY NATIONAL TITLE INS. CO.  
OBY 1924 MDE 445

01 JUL 31 AM 11:03

July 31, 1991  
MENDOCINO COUNTY CLERK  
MARTHA A. JONES  
EUREKA

ORDER NO. 113247-SW  
RECORD NO.

**CORPORATION  
GRANT DEED**

DOCUMENTARY TAX  
COMPUTED ON FULL VALUE OF PROPERTY CONVEYED, OR  
COMPUTED ON FULL VALUE LESS ITEMS & ENCUMBRANCES  
REMAINING UNPAID AT TIME OF SALE

UNRECORDED TAX  
TAX LATER NO. 17-580-09-00

**MENDOCINO COAST PROPERTIES**

FOR A VALUABLE CONSIDERATION, DOES HEREBY GRANT TO

DEAN W. WOLFE and PATRICIA E. WOLFE, husband and wife, as  
Joint Tenants

the real property in the County of Mendocino, State of California, described as:

Lot 39 as designated on the map of Unit 3, Mendocino Coast Subdivision,  
Filed for record on March 14, 1967 in Map Case 2, Drawer 8, Page 29,  
Mendocino County Records.

Dated: July 17, 1991

Mendocino Coast Properties

By: Gordon Montes, President

(Corporation Acknowledgment)

STATE OF CALIFORNIA  
County of Mendocino

On the 22nd day of July, 1991, before me, the undersigned a Notary Public in and  
for said County and State, personally appeared Gordon Montes

personally known to me and proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument  
as President of Mendocino Coast Properties, and acknowledged to me that such corporation existed.

WITNESS my hand and official seal.

Notary Public in and for said County and State.



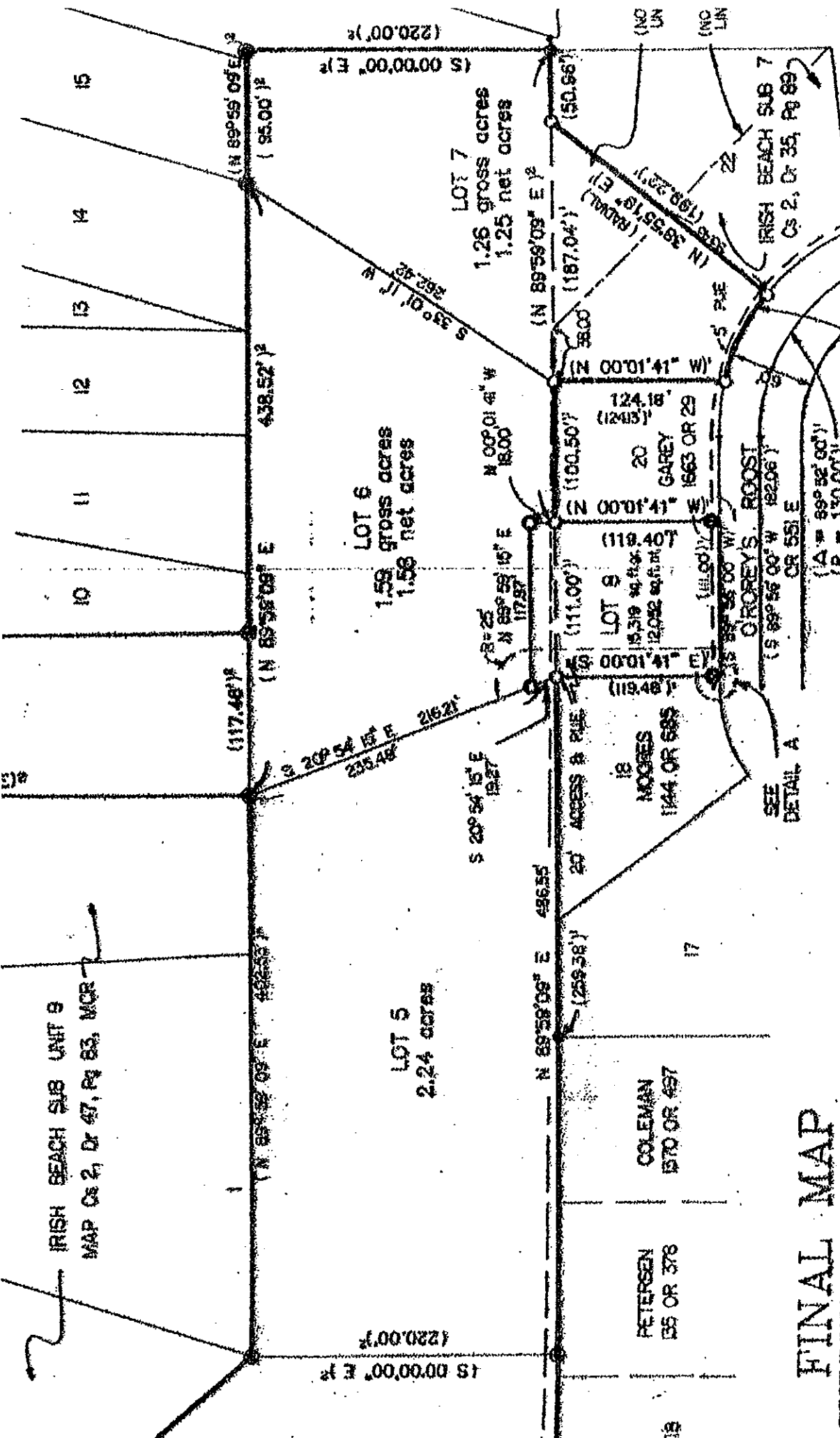
(Notary Seal)

MAIL TAX STATEMENT AS DIRECTED ABOVE

14063



IRISH BEACH SUB UNIT 9  
MAP CS 2, Dr 47, Pg 83, MCR



# FINAL MAP SUBDIVISION UNIT 9A - TRACT 233

1/4 OF LOT 4 AND LOT 9 OF IRISH BEACH SUBDIVISION UNIT 9  
IS 8.21 OF IRISH BEACH SUBDIVISION, UNIT 7  
39 OF MENDOCINO COAST SUBDIVISION UNIT 3  
IN SECTION 6, T 13 N, R 16 W, AND  
SECTION 31, T 14 N, R 16 W, MORIAM  
MENDOCINO COUNTY, CALIFORNIA

APRIL 1989

SCALE: 1"=100'

## BASIS OF BEARINGS

MONUMENTS ON THE EAST LINE 'N00°12' W' OF IRISH BEACH  
SUBDIVISION UNIT 9 ON MAP CASE 2, DRAWER 47, PAGE 83,  
MENDOCINO COUNTY RECORDS  
RECORD DATA ACCORDS WITH THIS SURVEY LINE.FSS SHOWN

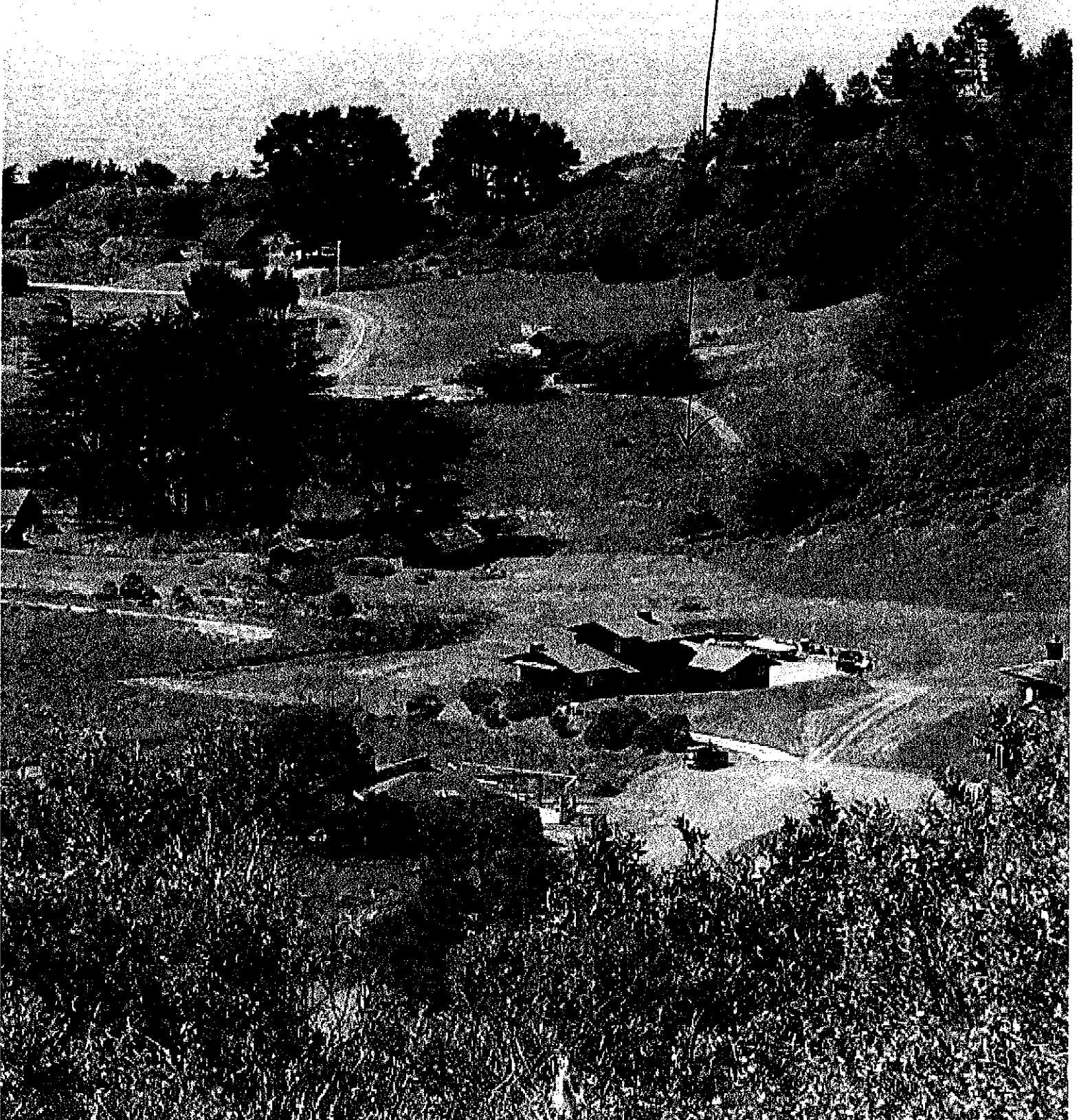
(A = 24° 55' 26")  
(R = 160.00')  
(L = 68.60')

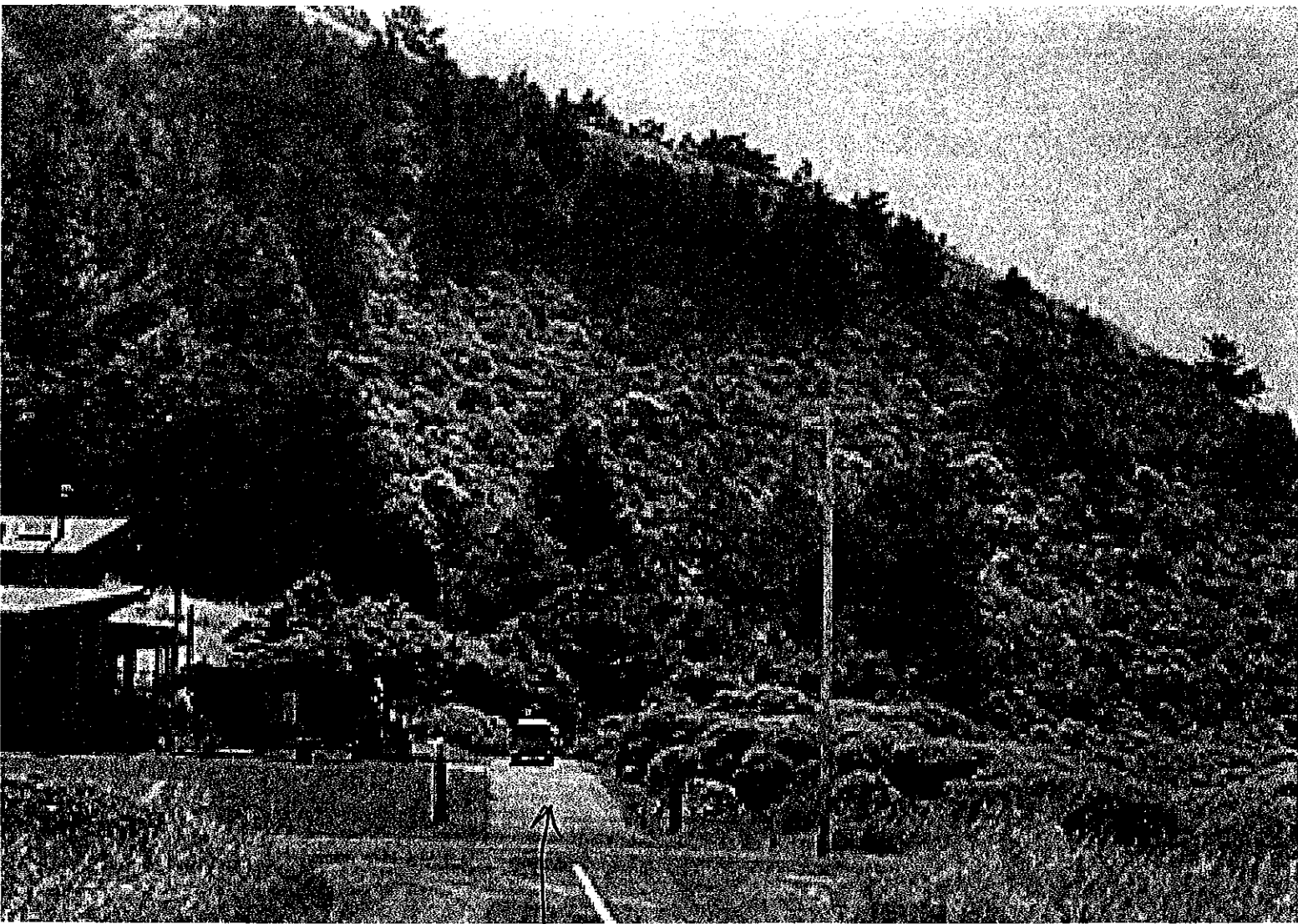
(A = 89° 32' 00")  
(R = 130.00')  
(L = 203.90')

SEE  
DETAIL A

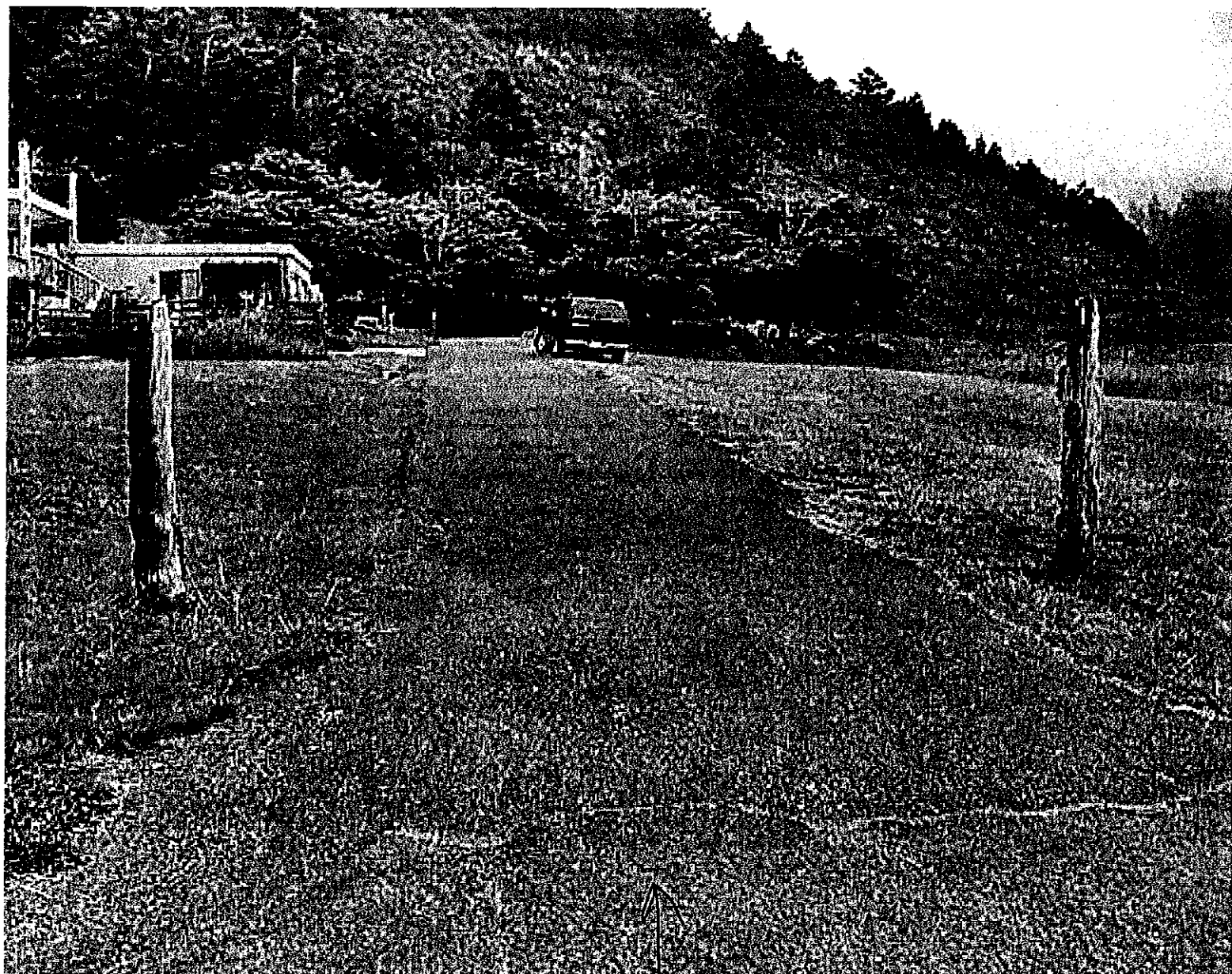


Depub area





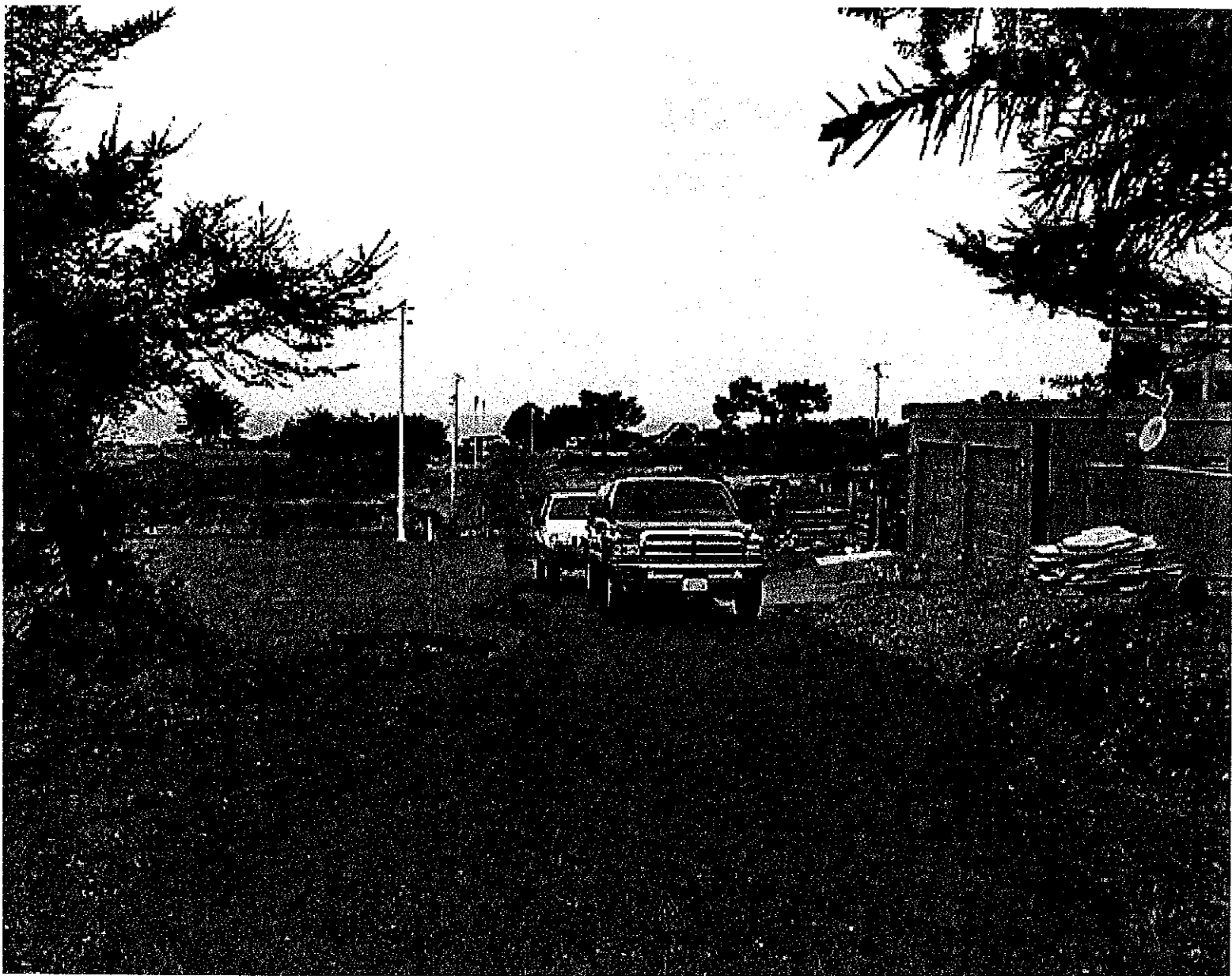
access



Access

# 4





Looking west down access

#5







From: William M. Moores, applicant-Resub '2006 5/1/11  
To: Each member of Mendocino Co. Planning Commission  
Re: Resub 1-2006 scheduled for the 5/19/11 PC hearing-analysis of staff report

Dear Planning Commissioner:

It is to be noted that staff makes no provision for your approval of the project by proposing conditions of approval to address and mitigate concerns raised by staff. By not attaching conditions approved by the Minor Division Committee for septic systems or proposing an alternative motion for you to approve the application staff is allowing you only to consider their recommendation without regard to whether conditions might be adopted that mitigate. For example staff has stated that it is concerned that subsequent grading to create "building pads" could cause erosion so staff recommends denial. The soils engineer for the project stated on page 3 of the staff report that drilled pier footings might be used and that plans for subsequent grading based on specific house designs and locations should be submitted to an engineer to review and approve. The hypothetical concern of staff can be addressed and mitigated by placing a condition on project approval that proposed grading plans be approved by an engineer. By avoiding discussion of proposed conditions recommended by the soils engineer staff is empowering itself to become the reviewing engineer of subsequent residential grading plans and it is assuming what will be proposed in subsequent house plans. It is inappropriate to recommend denial based on such staff assumptions.

The same applies to the staff concern that the required improvements may not be able to be contained within the existing easement previously approved by the Board. You can resolve the concern by simply adding a condition of approval that the roadway improvements shall be contained within the Board approved easement so that no project approval is effective unless the condition is met but the project can proceed if the improvements can be so contained. The same applies to whether there is adequate sight distance. You apply a condition that adequate sight distance shall be provided. The same applies to water pressure. Provide a condition that adequate water pressure shall be provided. To address Section 17-52(L) a condition is added that the final map shall comply with 17-52(L) requirements.

There is some essential background information missing from the staff report as follows:

- 1) Section 17-48(e)(1) of the county code was already in place in its present form in 1989 and has remained unchanged to the present. The Board of Supervisors approval of a map in 1989 entailed an approval of the 20 ft. easement shown on the map and that land use became part of the existing Use Permit. The approval was justified by the fact that the roadway improvements can be contained in the 20 ft. easement, which is the described objective of this code section. The project was considered consistent with 17-48(e)(1) so no exception was required.
- 2) The county issued permit # 2009-0331 in '2009 (see Exhibit A attached) for the improvements shown on 4 pages of engineered plans to be constructed within the 20 ft. easement. Those improvements were applied for the benefit of the existing parcels 132-320-42 and 43 to implement current Calfire standards (Exhibit A).

- 3) The road improvements recommended by the county and approved by Calfire for the Resub 1-2006 (see Exhibit A) are the very same that are depicted in the plans attached to permit #2009-0331 (i.e. that have already been permitted for 132-320-42). Therefore approval of Resub 1-2006 does not create a requirement for improvements on the 20 ft. easement that are in excess of those already permitted;
- 4) The existing RR1 zoning on the resub 1-2006 area allows for one single-family residence and a cottage on each parcel existing. (See Teresa Spade's 4/4/11 e-mail in Exhibit A.) Therefore there are potentially 4 units contributing traffic on the easement under existing circumstances.
- 5) The applicant has requested a Use Permit condition as part of the Use Permit modification to provide that the uses on all 4 parcels that would exist if the Rebus 1-2006 is approved would be limited to one single family residence (with no additional cottage possible on any of the 4 parcels). Therefore approval of Resub 1-2006 would not increase in traffic. Even if traffic were slightly increased there is no code section that prohibits that nor can the owner of lot 9 complain of the traffic since he agreed to the subdivision and resubdivision of the subject area.
- 6) The county staff required the applicant to submit an exception application or they stated that they would not consider the filing complete and would not process the application. The applicant did not and does not believe that an exception to the outstanding Board access approval is required because the necessary improvements can be maintained within the existing approved easement. Since staff contends that the improvements cannot be so contained they contend that an exception is required. The issue can be resolved by placing a condition on Resub'2006 that the improvements shall be contained within the existing easement. Thus, if the improvements can be so contained no exception is necessary and if they can't, the project cannot meet the conditions so no exception is required since there is no project to implement.

Addressing now the 4 reasons for DOT's recommendation on page 9 of the staff report it is noted that DOT does not address Section 17-52(S-1)(see Exhibit A) and that the prior Board of Supervisors approval of the existing easement satisfied Section 17-48(e)(1). Section 17-52(S-1) specifically says that lots shall be designed to conform to existing easements unless said easements are relocated to conform to the proposed lot pattern. If the proposed condition of approval (see above) is applied that all required improvements shall be contained within the previously approved easement it is unnecessary to debate whether an exception is needed to the prior Board approval because, if the improvements won't fit, there is no project and if they do there is no need to change the Board's prior approval. As to all 4 reasons for DOT's recommendation the first is incorrect in contending that we did not submit justifications (see bottom of page 12, top of page 13 of staff report), the second is irrelevant in that the owner of lot 9 agreed to the applicant subdividing and resubdividing the subject area, the third is resolved by the proposed project condition that the applicant shall demonstrate that the improvements can be constructed within the easement and the fourth is incorrect in that the required improvements have already been permitted and in that the easement is specifically for the subdivision and resubdivision of the subject area so that all uses and improvements were

already agreed to by the underlying landowner who then has no standing to complain that the easement is being overburdened. No exception is needed under proposed conditions.

Addressing now the 4 reasons offered by staff on page 14 of the staff report:

- 1) The first concern can be addressed by applying the condition that adequate roads shall be provided as described in road ordinances and Calfire standards.
- 2) The staff contention that Resub 1-2006 is not consistent with the purpose and intent of the zoning and does not preserve the integrity of the zone appears to be at odds with the zoning itself, which is RR1 (see Exhibit A). A principal permitted use in the zone is residential, one plot/acre. What integrity is being violated?
- 3) a) The staff contention that the Resub represents a substantial alteration of the planned use of the area is at odds with the zone (which is the planned use), which is residential RR 1 and residential use is applied for.  
b) The staff contention that the application will cause an increase in traffic hazards to vehicles, bicyclists or pedestrians appears to be at odds with the fact that the Resub is entirely on private land not fronting public use areas. Even if there is a traffic increase there is no increase in hazards since the existing one-lane roadway is to be widened to an 18 ft. wide two-lane road, thus increasing safety.
- 4) There is no evidence that approval of the Resub would be detrimental to public welfare or injurious to surrounding property. How could there be any such evidence given that the improvements have previously been permitted for existing lots to the east and there is no adjacent public land? How can staff contend that changing a one-lane road to a two-lane road is injurious or contrary to public welfare? Exhibit A contains deeds for this subject easement. The current owner took title subject to the existing easements and therefore agreed to them in taking title. The easement specifically says that it is for the future subdivision and resubdivision of the land contained in this Resub application. To the extent that the underlying owner claims an injury, it is an injury he previously agreed to.

The Board approved another such 20 ft. access roadway in another location in Unit #7 for a resub on current lot #8, Unit#9A on the same basis: because the improvements could be contained within the easement so that approval of the access was found consistent with 17-48(e)(1) without need for an exception application. (See Exhibit A, item 10).

Exhibit A is attached merely to provide copies of background information and it is not essential that you review it. It should be pointed out that there is a 6 ft. building setback on the south side of the easement and that all buildings on the north of this easement are set back 6 ft. The result is an open corridor of 32 ft. width. The Board of Supervisors was well justified in previously approving the easement and the basis of their approval is still valid because the required improvements previously permitted can be designed so that they are contained within it. All of the staff concerns can be addressed and mitigated by the adoption of conditions of approval to address each. The application should be returned to staff for development of proposed conditions of approval and returned to the Commission for consideration once those conditions are able to be considered by the Commission.

Sincerely,

*William Moore*

# HUFFMAN ENGINEERING & SURVEYING

537 College Avenue, Suite A, Santa Rosa, CA 95404  
707-542-6559 Fax 542-6621

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April 29, 2011

Planning Commissioners  
Mendocino County Planning Commission  
790 South Franklin Street  
Fort Bragg, CA 95437

RE: Resubdivision 2006 & Access Easement

Dear Planning Commissioners:

We have been asked to review the staff recommendation for the proposed subdivision. We have been working with Mr. Moores, County of Mendocino and various other agencies over the past few years to meet with their approval of the subdivision. We have met their concerns and prepared a subdivision that meets the criteria of the zoning ordinance. We have taken into consideration the development impacts and the environmental concerns with the careful placement of building envelopes and driveways for a subdivision. The following comments help address some of the concerns brought up by County staff.

## Access Easement:

Staff is concerned with the width of the 20 foot access easement across the Lands of Wolfe. Generally, the width of the access easement is determined to contain the road and provide enough room for maintenance of the road. We have submitted a road design for an 18 foot wide road within a 20 foot easement. The County of Mendocino has granted a grading permit, 2009-0331, Sept. 10, 2009, for the construction of this access road within the 20 foot easement. Given that, we recommend that there be a subdivision condition that reads something similar to "The access road across the Lands of Wolfe must be able to be constructed and approved by the County of Mendocino Public Works Department prior to acceptance of the subdivision. This condition cannot be bonded." We recommend that an additional condition be made to require a maintenance agreement between the new lot owners to fund and maintain the access road across the Lands of Wolfe.

## Grading on Parcels:

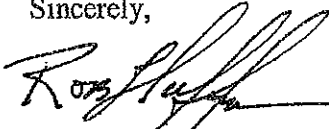
We suggest a note on the map that reads, "All grading on Lot #1, 2, 3 and 4 shall be reviewed and approved by a civil or geotechnical engineer."

## Water Pressure:

The following condition should be added to address staff's concerns with water availability to each parcel. "Adequate water pressure must be provided to each lot."

If you have any questions, please call us at (707) 542-6559.

Sincerely,



Rob Huffman, PE  
Professional Engineer  
RH:fv  
06-53



4/4/11

From: Mr. William M. Moores  
3880 Sleepy Hollow  
Santa Rosa, CA. 95404  
707-357-4501

To: Mr. Roger Mobley  
Mendocino Co. Plan Dept.  
501 Low Gap Road  
Ukiah Calif. 95482

Re: Draft Staff Report for Resub 1-2006

Dear Roger:

The draft staff report for Resub 1-2006 has included in it a letter dated October 14, 2008 signed by 35 individuals (both husband and wife as owners of 17 of the parcels within the Irish Beach Water District). Although these owners represent only about 4% of the parcels within the District and only two of those border the property which is contained in the Resub, I request that the letter and letter attachments be removed from the staff report because the letter is based upon a fundamental misrepresentation by the drafter of it: namely that the Resub property is subject to the C&R's mentioned in the letter. I checked with a number of the signers and it appears that a primary motive for signing the letter was the representation that the Resub property is subject to the C&Rs described and that I was seeking to avoid the restrictions of the C&Rs and that I should be required to be bound by them as other owners of property covered by them are. I have attached Redwood Empire Title Company's 3/22/2011 letter confirming that the Resub property is not subject to the C&R's described in the October 14<sup>th</sup> letter. This confirms that the elemental representation of the letter is in error and therefore the letter should not be admitted into the staff report. We invite you to make further inquiries of Redwood Title if you care to. We did not attach the 25+/- pages of C&R's attached to the Title Company letter but I can send them to you if you like. That won't change the Title companies determination that the C&Rs do not apply to this area. Thanking you in advance for your consideration of this request.

Sincerely,

*W Moores*  
W.Moores

RECEIVED  
APR 07 2011

BY  
PLANNING & BUILDING SERVICES  
Ukiah, CA 95482

Dean and Patty Wolfe  
43600 Sea Cypress Dr.  
Manchester, CA 95459  
(707) 882-2729

April 18, 2011

Mendocino County Planning Commission  
Mendocino County Planning and Building Services  
501 Low Gap Road, Room 1440  
Ukiah, CA 95482

Subject: CDRES 1-2006 Comments

Dear Planning Commission Members:

Our home is located in Irish Beach and we are the owners of the property over which the roadway access easement for CDRES 1-2006 passes. We are significantly impacted by the exception requested to the minimum roadway access width and safety standards of the Division of Land Regulations Title 17. While we are in agreement with the Staff report and its recommendations to deny the requested re-subdivision, we have additional concerns that should be brought to the attention of the Planning Commission during its consideration of CDRES 1-2006. Our concerns are summarized below and detailed in Attachments 1 and 2 to this letter.

- Since approximately 1989, a portion of Irish Beach domestic water has come from a groundwater well. Currently, due to restrictions placed on Irish Beach Water District by the State Water Resources Control Board, as much as 55% of Irish Beach water comes from multiple groundwater wells and all future domestic water will come from yet to be developed groundwater wells. The requirements of Section 20.516.015(B)(3) of the Mendocino County Coastal Zoning Code for RR5(1)PD have not been met thus prohibiting the subdivision of the subject parcels into less than 5 acres. Please review the details of this concern in Attachment 1.
- We agree with the staff report's recommendation that the Applicant's request for an exception to the roadway access standards should be denied. Additional information may be helpful to the Planning Commission to support its decision regarding denial of the exception requested. We have provided in Attachment 2 our response to, in our opinion, the Applicant's misrepresentation of our situation. We disagree with the Applicant's assertion that the exception will not be detrimental to the public welfare or injurious to surrounding property. We detail in Attachment 2 our concerns regarding safety issues and negative impacts to our and our neighbor's beneficial use of our lots. We also detail how the Applicant created the avoidable special conditions he cites for requiring an exception. For these reasons the Applicant's request falls short of satisfying the criteria for granting an exception under Title 17. The applicant has also failed to submit to the County all documents required by Title 17 by his omission of a Road Maintenance Agreement.
- We believe for the reasons detailed in Attachments 1 and 2 that the Applicant's original exception approved in RES 1-89 and the exception request in the current CDRES 1-2006 also represent a variance to Title 20 of the Mendocino County Coastal Zoning Code and must also meet those requirements.

There is no demand for these new lots. The Applicant and his family own in excess of a hundred lots in Irish Beach that **in over 40 years they have failed to successfully market**. In addition, there is no assurance that the existing water sources in Irish Beach Water District can support any additional lots.

Finally, the 1989 approval of RES 1-89 necessitated approval of an exception to Title 17 and a variance to Title 20 of the Mendocino County Coast Zoning Code. Development allowed by the exception and variance has never been implemented. The lots have never been sold and no

improvements have ever been made. It has been over 20 years. Per the Municipal Code Section 20.540.040 the variance enabling the Unit 9A subdivision should have expired and be null and void.

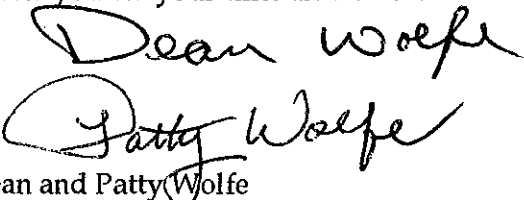
**"Sec. 20.540.040 Expiration.**

Each valid unrevoked and unexpired variance shall expire and become null and void at the time specified in such variance, or if no time is specified, at the expiration of two (2) years after granting except where construction and/or use of the property in reliance on such variance has been initiated prior to its expiration. To remain valid, progress toward completion of the project must be continuous."

There are many reasons presented here in and in the Staff's Report for the Planning Commission to deny the re-subdivision request of CDRES 1-2006. There are questions of water availability and compliance to Title 20 groundwater provisions. There are unresolved safety issues that may unnecessarily subject the County to avoidable liability risks. There are unmitigated negative impacts to surrounding properties. There are several environmental concerns. The staff's report even raises questions regarding the original RES 1-89 approval that created the parcels. Additionally, as presented in the Staff report, the Applicant's actions on the subject property resulted in an agreement between him and the US Fish and Wildlife service to resolve allegations of violation of the Federal Endangered Species Act.

We submit to the Planning Commission that, considering all the issues involved, there are no compelling reasons to approve the re-subdivision request over the recommendations of denial by the County Planning and Building Staff report, objections of the impacted property owners, and objections of the members of community of Irish Beach. For these reasons we respectfully request that the Planning Commission deny the Applicant's requests and reject CDRES 1-2006. Considering the questions regarding RES 1-89, Title 20 applicability, and the over 20 years of no progress toward development, we also request that the Planning Commission consider revoking RES 1-89.

Thank you for your time and attention.

The block contains two handwritten signatures. The first signature is "Dean Wolfe" in a cursive script. The second signature is "Patty Wolfe" in a similar cursive script, positioned directly below the first.

Dean and Patty Wolfe

**Attachments:**

Attachment 1 – Ground Water Issues

Attachment 2 – Roadway Access Easement Issues

Exhibit A – SWRCB "Order of Revocation Permit 1662 ... Mallo Pass ...", Dated 3/11/2009

Exhibit B – SWRCB "...Order Denying Time Extension for Permit 15580 ... Irish Gulch ...", Dated 3/09/2009

Exhibit C – Letter from Moores to Community Opposing Proposition 218 Assessment, Dated 3/25/11

Exhibit D – Photos of Vehicles parked at Irish Beach Weekend Rentals

Exhibit E – Photos Showing Normal Use of Garage Blocking Easement and presenting a Safety Hazard



**CDRES 1-2006 Comments**  
**Attachment 1**  
**Groundwater Issues**

Contrary to the conclusion reached in the Staff report on page PC-8 the Irish Beach Water District (IBWD) is not presently able to provide water to the Applicant's proposed new lots without impacting groundwater. In addition, the IBWD is not able to provide water to all already existing lots within the subdivision until additional wells (groundwater) are located and developed. There is an imminent possibility of a water related building moratorium in Irish Beach.

Even though the Applicant is very familiar with the challenges facing the IBWD, this information was apparently not provided to the Planning and Building Department by the Applicant. This omission by the Applicant led directly to the incorrect conclusion reached in the staff report that the Applicant's request meets code requirements.

The Planning Staff Report on page PC-8 cites the requirements of Section 20.516.015(B)(3) of the Mendocino County Coastal Zoning Code for RR5(1)PD zoning as follows:

"In order to be developed to the smaller parcel size, areas indicated on the adopted Land Use Map as having a variable density zoning classification shall be required to be served by a public water system which utilizes surface waters, and which does not impact upon the groundwater resource, or by completion of a hydrological study, to the satisfaction of the Mendocino County Health Officer, which supports those greater densities."

Based on the incorrect assumption that the Irish Beach Water District uses only surface water, the report goes on to incorrectly (in my opinion) conclude:

"The smaller parcel size of one (1) acre is permitted since the Irish Beach Water District has agreed to provide domestic water for the proposed two additional lots ..."

There are multiple water sources that the IBWD uses or plans to use. Since 1989 the IBWD has used both groundwater sources and surface water sources. Recent events have significantly altered the current and future water source situation in Irish Beach.

- The Mallo Pass Creek water permit has been revoked by the State Water Resources Control Board (SWRCB) (March 11, 2009, "Notice of Revocation, Permit 16622 ...", Exhibit A).
- The request for extension of the permit for Irish Gulch surface water has been denied by the SWRCB ("Petition For Reconsideration Regarding Order Denying Time Extension For Permit 15580 (Application 21902), Irish Gulch", Exhibit B). The SWRCB is taking actions to establish a license for water extraction from Irish Gulch.

The current flow rates (source: April 4, 2011 email from Steve Whitaker, IBWD Board President) from already established IBWD water sources are as follows:

Upper Diversion (Irish Gulch) @ 22 gpm	105 connections allowed
Well #9 (since 1989) @ 12 gpm	57 connections allowed
<u>Well #T5 (since 2010) @ 15 gpm (under litigation)</u>	<u>71 connections allowed</u>
TOTAL	233 connections allowed
	(at the SWRCB mandated 300 gallons per day (0.21 gpm))

Additional facts that the County should be aware of:

- The quantity of water the SWRCB will license to be extracted from Irish Gulch is uncertain and unknown.
- Well #T5 is under litigation (by the Applicant), so its availability is uncertain.
- The IBWD is currently in the process of a Proposition 218 special tax assessment to fund additional well development ([http://www.ibwd.org/Eng\\_Report\\_Assmt\\_2011.pdf](http://www.ibwd.org/Eng_Report_Assmt_2011.pdf)). It is unknown if the voters will approve funding for additional well development. The Applicant and his family oppose this assessment (Exhibit C).

- A groundwater hydrological study as required by the Mendocino County Coastal Zoning Code has not been performed to support higher densities for either the initial Unit 9A subdivision established by RES 1-89 nor for the re-subdivision requested by CDRES 1-2006. It is unknown if groundwater wells can be developed that would be of sufficient capacity to support the complete build-out of the Irish Beach subdivision. It is also unknown if the magnitude of such groundwater development will impact surface water flows in Irish Gulch or in Mallo Pass Creek watersheds.

There are already approximately 460 lots total in the IBWD with 197 lots developed and the remainder undeveloped. Without additional water source development, only 36 more homes can be built before a building moratorium will be required. There could possibly be a requirement for an immediate building moratorium in Irish Beach if Irish Gulch water extraction is restricted to 22 GPM by the SWRCB, Well #T5 is lost through ongoing litigation, and the proposition 218 assessment fails to gain voter approval.

Since well flow can decrease over time and there is uncertainty regarding future well development, the water situation in Irish Beach could worsen significantly.

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***Conclusion:***

It cannot be concluded that the Irish Beach public water system utilizes only surface waters and such use does not impact the groundwater resource. There has not been a hydrological study completed, to the satisfaction of the Mendocino County Health Officer, which supports greater densities. **Because of this failure to meet the requirements of Section 20.516.015(B)(3) of the Mendocino County Coastal Zoning Code, we recommend denial of the Applicant's request for these additional lots.**

CDRES 1-2006 Comments  
Attachment 2  
Roadway Access Easement Issues

We agree with the staff report's recommendation that the **Applicant's request for an exception to the roadway access standards be denied**. However, there are significant factors that further support denial that the Planning Commission should be aware of that are not detailed in the staff report:

1. It is our opinion that the **Applicant misrepresented our agreement** to accept Title to our property with regards to the existing access easement.
2. The Applicant's statement that the additional traffic on the substandard easement would not have detrimental impact to our lot and surrounding lots **grossly underestimates the safety implications and places unnecessary restrictions** on the beneficial use of our and our neighbor's lot.
3. **There are no unavoidable "special" conditions requiring an exception. In addition, the County Coastal Zoning Code specifically prohibits granting a variance** when the Applicant's own actions caused the need for it.
4. The Applicant's request for a private road access is incomplete because it does not include a road maintenance agreement.

1. **We feel that the Applicant has misrepresented the circumstances under which we agreed to purchase our property.** While mostly a civil matter, the circumstances when we purchased our property from the Applicant are germane to his assertion to the County in his application for RES 1-2006. We had no reasonable expectations of further subdivision of the Unit 9A parcels.

The Applicant on page PC-12 in part states:

*"1. ...The underlying landownership that contains the entire easement area agreed to take title subject to the easement rights reserved, including the right to re-subdivide;"*

and on Page PC-13

*"5. ... The owner of the underlying land over which the easement passes elected to construct a garage six (6) feet north of the right-of-way and, therefore, is not willing to grant additional easement width due also to the fact that added width is not required to accommodate improvement;"*

*"2. ... We can say that the fee land ownership over which this easement passes agreed to take title subject to the easement rights retained, which clearly contemplated this re-subdivision application. It does not seem appropriate that someone who agreed to the uses applied for now has standing to complain of those uses being applied. ...".*

- The Grant Deed (DTD June 27, 1989, Book 1759 page 467) for the easement was established prior to the Unit 9A subdivision of Unit 9 Lot 4 and states:

*"Said easement is appurtenant to Lot 4, Unit 9, Irish Beach subdivision, recorded ... and each and every subdivision ...;"*

When questioned, the real estate agent (Gordon Moores, the Applicant's brother and, at that time, business partner) handling our purchase, **assured us that no further subdivision of the subject property was allowed**. We were led to believe that the just completed Unit 9A subdivision would be the only one that would ever be done. The real estate agent directed us to the CC&Rs for the property. The Irish Beach CC&Rs, as incorporated by reference for Unit 9A, stated specifically:

*1971 CC&Rs – "Section 3.01(a) No Unit, except lot 28 of Unit one, shall be further subdivided."*

*1998 amended CC&Rs – "Section 7.19 Restriction on Further Subdivision and Severability. No Lot shall be further subdivided nor shall less than all of any such Lot be conveyed by an Owner thereof."*

- We were not aware that the roadway access to the Unit 9A subdivision did not meet minimum County roadway access width and safety standards and constituted an exception to the subdivision code. We only became aware of the non-compliant easement when informed in 2006 by the County Department of Transportation. Not only was the Applicant's intention to again subdivide the subject parcels **not disclosed to us during the purchase process**, the fact that **the easement did not meet County standards was not**

disclosed. The failure of the County to enforce the requirements to document the exception further prevented our being informed of the true status of the access easement. The Division of Land Regulations Title 17, Article V. Minor Subdivisions, Sec 17-47 (A)(3)(b) requires exceptions to be documented on the Tentative Map and Parcel Map notes as follows:

*"(3) Accompanying Statements. The following statements or information shall either appear on or shall be submitted with the tentative map of a minor subdivision:"*

*"(b) A statement of and specific justification for any variances requested from the provisions of this Chapter or of Chapter 20 of the Mendocino County Code."*

- When processing our permit for construction of our home and garage through the Irish Beach Architectural Design Review Committee the Applicant was furnish copies of our construction drawings and had every opportunity to voice concern over the location and orientation of our garage and to disclose his intentions to further subdivide the Unit 9A parcels. The Applicant did not raise any objections or inform us of his intent to further subdivide the Unit 9A lots.

**Based on these facts, contrary to the Applicant's assertion, no reasonable person would expect further subdivision of the lots accessed by the easement nor expect their driveway to be turned into a roadway.** Had this information been provide to us at the time of purchase by the Applicant or his Real Estate agent, as required by California Real Estate Law, we more than likely would not have purchased the lot.

2. We contend that **the Applicant has grossly understated the deleterious impact of granting the exception** for the substandard roadway access easement on both my property over which the easement exists and my neighbor's property, which borders the easement. The Applicant has not presented any proposals to mitigate the impact of his requested exception. **The Applicant fails to meet the criteria stated in Title 17 Article X Exceptions:**

*"(B) The granting of the exception will not be detrimental to the public welfare or injurious to surrounding property. (Ord. No. 1813, adopted 1976)"*

The Applicant on page PC-13 states that the access easement would not be detrimental to surrounding properties as follows:

*"To the extent that some persons regard any traffic as detrimental we can say that there would be approximately 3 minutes/day of time that additional traffic would use the private driveway easement and that this traffic would primarily affect the ownership over which the easement passes. . . . No other surrounding owners would experience any significant detriment that we could identify."*

**We disagree with the Applicant and contend that approval of the Applicant's exception request will present unnecessary safety issues and restrict the beneficial use of surrounding properties.** Approval of the exception will be detrimental to the public welfare and injurious to surrounding properties.

### **Safety Concerns**

Contrary to the statement made by the Applicant, granting of the exception for a substandard, noncompliant, roadway access easement presents a **significant safety concern for my property, my neighbor's property bordering the easement, and the future owners of the Unit 9A properties.**

Irish Beach homes are used primarily as vacation rentals (there are under 30 homes with full time residents out of the current 197 homes). Typically, vacation rentals have multiple families using a residence at any time. There can be 2 to 4 (or more) families or couples at a home when in use. That results in anywhere up to 16 men, women, and children at any one rental home! If all 4 proposed Unit 9A lots were developed and in the vacation rental market, up to 64 men, women, and children along with 16 vehicles could be present on Unit 9A properties on a popular weekend (see Exhibit D photos of vehicles parked at rental homes in Irish Beach).

Considering these facts, in a fire or medical emergency it is entirely reasonable to expect potentially up to 64 people in 16 vehicles to attempt to exit at the same time from Unit 9A over the substandard access easement roadway while emergency vehicles were attempting to access

the property over the same substandard easement. In these conditions my wife nor I could escape our dwelling in our vehicle if it were parked in the garage because we would not be able to back out of the garage without blocking the access easement (*see photos Exhibit E*). In such a confusing situation accidents would more than likely occur and result in unnecessary personal injury and property damage. **There is no defensible reason for the County to approve an exception to the roadway access requirements when such a situation can be foreseen and prevented by not allowing the exception to County safety standards.**

**Note: Exception vs. Variance**

Since RES 1-2006 was submitted by the Applicant both of the terms "Variance" and "Exception" have been used interchangeably in connection with the Applicant's request. As a point of reference, "Exception" is the term used in Division of Land Regulations – Title 17 and "Variance" is the term used in Title 20 of the Mendocino County Coastal Zoning Code. Since the subject property's location is in the Coastal Zone, both Title 17 and Title 20 are applicable to this project. So is this request for an exception an "exception" under Title 17 or a "variance" under Title 20?

The County Planner states on page PC -13 of the staff report,

"The applicant makes reference to a "variance" (exception) in 1989 which is a reference to the approval of Re-Sub 1-89, however there was no exception requested or acted on"

The original approval of RES 1-89 represents an approval of an exception to Title 17 whether or not that exception request was properly documented. Since Title 20 requires a groundwater hydrological study that has never been performed and Title 20 requires both front yard set backs and corridor preservation set backs that have never been enforced, the RES 1-89 approval also represents a variance under Title 20. At the very least, approval of the exception for RES 1-2006 would also require variances for development of impacted lots. Thus RES 1-2006 and the Applicant's exception request have both Title 17 and Title 20 components. It should also be noted that Title 17, Article V. Minor Subdivisions, Sec 17-47 (A)(3)(b) specifically includes by reference, the requirements for compliance to Title 20 variance provisions.

**It is our opinion that all requirements for variances in Title 20 and exceptions in Title 17 are applicable to the Applicant's exception request and must be met for the exception request to be approved.**

The County Planning Commission should also consider that when RES 1-89 was approved, the County assumed liability for any safety issues that resulted from their approval of the original Unit 9A RES 1-89 exception. If the County Planning Commission approves the current road access exception request of RES 1-2006, the County will confirm the legitimacy of the original exception and variance and confirm that the County accepts liability for any safety issues created by their approvals.

**Unnecessary Restrictions of the Beneficial Use of Our Neighbor's and Our Properties**

**Contrary to the statement of the Applicant, there are significant negative impacts to the beneficial use of both our property and our neighbor's property.**

Mendocino County Coastal Zoning Code, Section 20.444.015(C) states:

(C) If a roadway easement or access easement serves, or has the potential to serve, more than four (4) lots or parcels, said easement shall be considered a street for the purpose of establishing a **front-yard setback or corridor preservation setback**.

Mendocino County Coastal Zoning Code, Section 20.444.020 states:

"There is hereby established a corridor preservation setback. A corridor preservation setback shall apply to all lots or parcels that abut a publicly maintained street or highway. A **corridor preservation setback shall be in addition to front yard setbacks prescribed elsewhere in this Division and shall apply in districts that prescribe no front-yard setback**. Corridor preservation setbacks shall be measured perpendicular from the center line of the existing right-of-way of record or, where no recorded right-of-way exists, from the center of the physical road. Corridor preservation setbacks shall be as follows:

- Approval of the Applicant's RES 1-2006 will result in **the roadway access easement serving more than 4 lots**, the 4 lots proposed in the Applicant's request and our lot (our lot must use the easement for access because any other access from the County street is blocked by our septic system leach field). By approving RES 1-2006 the County is confirming that the property can be subdivided to as small as 1 acre parcels establishing a **potential** of 8 lots to be served by the roadway access easement. The Applicant's agreement with the United

States Fish and Wildlife Service included with the Staff report on page PC-42 indicates that the Applicant intends to further subdivide the property.

"12. Future Subdivision of the Underlying Property. Declarant may divide portions of the underlying ownership of the preserve ..."

The County Coastal Zoning Code (cited above) requires a 35 foot setback on our neighbor's lot and a 35 foot setback from the current easement for our lot (25 foot corridor preservation setback from the center line of the roadway plus a 20 foot front yard setback). Since my neighbor's lot is only 80 feet wide this would impact over 40% of his lot. Approval of RES 1-2006 will also result in a total of 55 feet (20 foot easement plus 35 foot setback) of our property being impacted. Our lot is only 73 feet wide at the County street! The County's approval would require that our already installed improvements be accepted as a pre-existing variance to Title 20. Approval would also necessitate that the County grant a Title 20 variance for my neighbor to build a home and a variance for any future improvements to our lot. **Granting of the Applicant's exception request would unnecessarily burden both our neighbor's lot and our lot.**

- The Applicant has proposed on his drawing included with the staff report a "no build zone" of 6 feet on each side of the access easement. This represents a setback beyond that currently required by the County without a deeded right supporting such "no build zone."
3. **The Applicant's own actions created the special conditions cited by the Applicant as requiring the exception and the variance thus he should not be granted such an exception or variance.**

Title 17 Article – Exception states:

**Sec. 17-87 Planning Commission Action.**

The Planning Commission may grant a request for an exception only upon the affirmative finding that:  
(A) There are special circumstances or conditions affecting the proposed division of land.

The Mendocino County Coastal Zoning Code states

**Sec. 20.540.020 Findings.**

"Before any variance may be granted or modified it shall be shown:..."

"(B) That such special circumstances or conditions are not due to any action of the applicant subsequent to the application of the zoning regulations contained in this Division and applicable policies of the Coastal Element; and ..."

**There were no "special conditions" requiring an exception** when the Applicant originally created Unit 9A in 1989 nor are there any at this time. In 1989 the Applicant either owned personally all of the lots bordering Unit 9A along Sea Cypress Dr. or was in control of all the lots bordering Unit 9A on Sea Cypress Dr. through his family's corporation, *Mendocino Coast Properties* (at that time he was a principle of *Mendocino Coast Properties*). It is my opinion that the Applicant could have easily created a proper 40' wide access roadway by the creation of easements and/or lot line adjustments. **The Applicant chose not to do that.** Since 1989 there have been multiple opportunities for the Applicant to create a compliant access to the Unit 9A parcels. Specifically, since the Applicant submitted his RES 1-2006 request there have been multiple opportunities for him to create a compliant roadway access to his Unit 9A lots from Sea Cypress Dr over Unit 3 Lot 40, the lot bordering the current roadway access easement. Also, there was at least one other lot sold by the Applicant along Sea Cypress Dr since 2000 that could have been used for access to Unit 9A. He has elected to not take those opportunities to create a compliant access easement.

A brief history is appropriate:

1989 – RES 1-89 approved creating Unit 9A

1990 – Unit 3 lot 40 sold for \$59,000 by Mendocino Coast Properties (43580 Sea Cypress Dr. - lot immediately to the South of the access easement, APN 132-090-01)

1991 – Unit 3 lot 39 sold to us for \$88,800 by Mendocino Coast Properties (43600 Sea Cypress Dr., our lot over which the easement exists).

**At this point the Applicant had effectively boxed in the noncompliant access road easement.**

2005 – Unit 3 Lot 40 was again placed up for sale and sold.

**The applicant did not take the opportunity to re-purchase it for his roadway access.**

2008 thru 2010 – Unit 3 lot 40 was again up for sale and eventually went into foreclosure (#11345) in August 2010.

**The Applicant again did not take the opportunity to buy back the lot either from the owner or through foreclosure to create a compliant roadway access.**

December 2010 -- Unit 3 Lot 40 was purchased from the Bank for \$44,000 by another party, \$15,000 less than the Applicant sold it for in 1990.

The Applicant states that our garage location is the reason for his needing an exception. This was an entirely avoidable condition, thus not a special condition. As stated above, when processing our permit for construction of our home and garage through the Irish Beach Architectural Design Review Committee the Applicant was furnish copies of our construction drawings and had every opportunity to voice concern over the location and orientation of our garage and to disclose his intentions to further subdivide the Unit 9A parcels. The Applicant did not raise any objections or inform us of his intent.

**It is our impression that the creation of the need for an exception to County access road requirements was a direct result of actions taken by the Applicant.** There were no pre-existing special conditions that required an exception in 1989 nor are there any at this time. In accordance with Section 17-87 of Title 17 the **Planning Commission should not approve the exception** request since the conditions which the Applicant cites as requiring an exception were avoidable and of his own creation. Also, in accordance with Section 20.540.020 of the Mendocino County Coastal Code, **the County should not grant the exception/ variance** because the special conditions cited by the Applicant requiring a variance were of his own making.

4. **The Applicant has not prepared for the Planning Commission approval a Road Maintenance Agreement as required by Mendocino County Division of Land Regulations Title 17 Section 17-54 Private Roads (1)(A).**

**"Sec. 17-54 Private Roads.**

- (1) Satisfactory provisions shall be made for a lot owner's association or other organization to assume responsibility for the maintenance of said private roads and ownership of the street right of ways. Said provisions for maintenance shall be subject to the approval of the Planning Commission."

---

**Conclusion:**

It cannot be concluded that the exception requested by the Applicant has shown that (A) There are special circumstances or conditions affecting the proposed division of land and (B) The granting of the exception will not be detrimental to the public welfare or injurious to surrounding property.

**Based upon the Applicant's failure to meet the requirements of Title 17 Sec. 17-87 and Sec. 20.540.020 of the Mendocino County Coastal Zoning Code, we recommend denial of the applicant's request for the exception to the access roadway standards.**



Linda S. Adams  
Secretary for  
Environmental Protection

# State Water Resources Control Board



## Division of Water Rights

1001 I Street, 14<sup>th</sup> Floor ♦ Sacramento, California 95814 ♦ 916.341.5300  
P.O. Box 2000 ♦ Sacramento, California 95812-2000  
Fax: 916.341.5400 ♦ www.waterrights.ca.gov

Arnold Schwarzenegger  
Governor

**MAR 11 2009**

In Reply Refer  
to:kdm:24364

**CERTIFIED MAIL # 7004 2510 0003 9148 5913**

Stephen Whitaker  
Irish Beach Water District  
15401 Forest View Road  
P.O. Box 67  
Manchester, CA 95459-0067

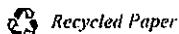
Dear Mr. Whitaker:

### ORDER OF REVOCATION, PERMIT 16622 (APPLICATION 24364), OF IRISH BEACH WATER DISTRICT TO APPROPRIATE WATER FROM MALLO PASS CREEK, IN MENDOCINO COUNTY

On September 28, 2007, the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) issued a Notice of Proposed Revocation for Permit 16622. The Permittee timely requested a hearing. A hearing was scheduled for February 26, 2009, but the hearing was cancelled on January 26, 2009 because the Permittee failed to submit a Notice of Intent to Appear (NOI) at the hearing. Pursuant to the revised Notice of Public Hearing dated December 31, 2008, the failure to submit an NOI is deemed withdrawal of the request for hearing. Therefore, the State Water Board may act on the proposed revocation without a hearing pursuant to Water Code section 1410.1. Accordingly, enclosed is an order revoking Permit 16622.

It is the Permittee's responsibility to remove or modify diversion works and impoundments to ensure that water subject to this revocation is not diverted and used. Unauthorized diversion and use of water is considered a trespass and subject to enforcement action under Water Code sections 1052 and 1831. Pursuant to Water Code section 1052, any diversion of water from the point(s) of diversion identified in this permit may be subject to administrative civil liability of up to \$500 per day without further notice. The State Water Board also may issue a cease and desist order in response to an unauthorized diversion or threatened unauthorized diversion pursuant to Water Code section 1831. It is the Permittee's responsibility to consult with the Department of Fish and Game, and the Regional Water Quality Control Board to ensure that removal of project facilities does not adversely affect a fishery or result in unregulated sediment discharge to a waterway. Permittee must also consult the Department of Water Resources, Division of Safety of Dams if a jurisdictional size dam will be removed or breached (dam height 15 feet or more, or reservoir volume 50 acre-feet or more). These agencies may require a permit or other approval prior to any construction activity.

California Environmental Protection Agency





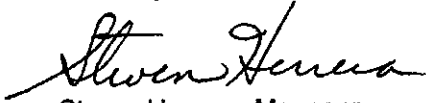
Stephen Whitaker  
Irish Beach Water District

2

If diversions will be made under claim of riparian or pre-1914 water rights, diversions shall be documented by the filing of a Statement of Water Diversion and Use in accordance with Water Code sections 5100 through 5108.

Katherine Mrowka is the senior staff person currently assigned to this matter. Please contact Ms. Mrowka at (916) 341-5363 if you require further assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Steven Herrera".

Steven Herrera, Manager  
Water Rights Permitting Section

Enclosure

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

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In the Matter of Permit 16622 (Application 24364)  
IRISH BEACH WATER DISTRICT

ORDER OF REVOCATION

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SOURCE: Mallo Pass Creek tributary to Pacific Ocean  
COUNTY: Mendocino

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**WHEREAS:**

You are hereby notified, pursuant to sections 1410-1410.2 of the California Water Code, the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), is revoking Permit 16622 because the Permittee has failed to commence, prosecute with due diligence, and complete the work necessary to appropriate water under the permit, the Water Code, and the State Water Board's regulations. In addition, the Division revokes Permit 16622 because the Permittee has failed to use beneficially all or part of the water for the purpose for which it was appropriated in accordance with the Water Code.

The revocation is based upon the following facts, information and conclusions:

The State Water Board issued Permit 16622 on February 27, 1974. The permit authorizes Irish Beach Water District (Permittee) to divert 0.58 cubic foot per second to be diverted from January 1 to December 31 of each year. The maximum amount diverted under this permit shall not exceed 380 acre-feet per year (afa). The permit was modified by Order dated February 7, 1989 to allow diversion of 150 gallons per minute, not to exceed 220 afa. The permit requires that construction work be completed by December 1, 1977, and that the water be applied to the authorized use by December 1, 1984.

**A. PERMITTEE HAS FAILED TO COMMENCE, PROSECUTE WITH DUE DILIGENCE, AND COMPLETE THE WORK NECESSARY TO APPROPRIATE WATER UNDER THE PERMIT.**

1. In the attachment to the May 14, 1984 petition for extension of time, Permittee indicated that project construction had not yet commenced.
2. Permittee requested and on October 12, 1984, the Division granted an extension of time to commence construction or apply the water to full beneficial use. The time extension order required construction to be complete by December 1, 1987, and that water be put to full beneficial use by December 1, 1988.
3. Permittee failed to complete construction of the project by the December 1, 1987 deadline. The Progress Reports by Permittee (progress reports) for 1985 through 1987 state that construction has not commenced.

4. The Division conducted a site inspection on March 17, 1988, and found that work had not yet commenced on the diversion project.
5. Permittee requested and on June 13, 1988, the Division granted an extension of time to commence construction and apply the water to full beneficial use. The time extension order required construction to be complete by December 31, 1995, and that water be put to full beneficial use by December 31, 1997.
6. The progress reports for 1989 through 1998 state that construction has not commenced. The 1998 progress report is the last progress report submitted by the Permittee.
7. The Division conducted a licensing inspection on May 25, 1999, and found that the Permittee had not yet constructed the diversion facility.
8. Permittee requested a ten-year extension of time, by time extension petition dated July 28, 2000. The petition states that no water has been used under this water right permit. The Permittee estimated that construction would begin within "2 to 5 years or more" and water would be fully used in 40 to 50 years.
9. By letter dated October 20, 2004, Division staff requested that Permittee document the basis for approval of a time extension, pursuant to California Code of Regulations, title 23, section 844. Because the Permittee is the lead agency under California Environmental Quality Act (CEQA) and the Division had not seen any documentation to show that the Permittee had completed any necessary CEQA documentation, Division staff also requested the Permittee to identify a date when it will provide the required CEQA documentation for the time extension petition. Division staff advised Permittee that failure to respond within 30 days might result in cancellation of the petition, pursuant to section 1701.4 of the California Water Code. Permittee was further advised that Permit 16622 may be revoked due to non-use if the Permittee is unable to document that it will diligently pursue the project described in the permit.
10. The Permittee responded by letter dated December 21, 2004, stating that there are currently 180 homes in Irish Beach and a total of 460 home sites. Given an assumed growth rate of 10 homes per year, and accounting for a commitment to provide hookups for commercial use, Permittee will be responsible for providing water to the equivalent of 477 homes. Permittee has sufficient water from Irish Creek (a different permitted source) and groundwater to serve 336 homes, which means that Permittee has sufficient water for 15 years. The water to be diverted from Mallo Pass Creek pursuant to Permit 16622 is needed to serve the additional 141 homes at full build-out.
11. The Permittee's December 21, 2004, letter estimated that water use under Permit 16622 would commence in approximately 15 years. The Permittee could not identify when it would provide the Division with the required CEQA documentation.
12. Permittee's time extension petition was not approved. The Division issued an order Denying Petition for Extension of Time on July 20, 2006. In Order WR 2006-0015-EXEC, the State Water Board denied Permittee's petition for reconsideration of the July 20 order. Therefore, the December 31, 1997 deadline to complete application of water to full beneficial use remains in effect.
13. Since the 1998 Progress Report of Permittee, Permittee has not submitted annual Progress Reports, which summarize water use and project status, as required by conditions in the Permit.

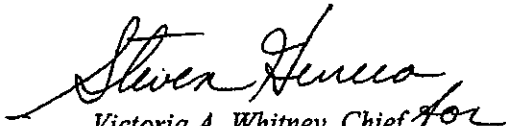
B. BASED ON THE ABOVE FACTS AND INFORMATION, THE DIVISION CONCLUDES THAT CAUSE EXISTS FOR THE REVOCATION OF PERMIT 16622 PURSUANT TO WATER CODE SECTION 1410, SUBDIVISION (A) BECAUSE:

Permittee has failed to commence, prosecute with due diligence, and complete the work necessary to appropriate water under Permit 16622 and has failed to apply to beneficial use all or part of the water authorized for appropriation as contemplated in the permit and in accordance with the Water Code and the regulations of the State Water Board.

On September 28, 2007, the Division issued a Notice of Proposed Revocation. Permittee filed a timely request for hearing. A hearing was scheduled for February 26, 2009, but the hearing was cancelled on January 26, 2009 because the Permittee failed to submit a Notice of Intent to Appear at the hearing.

Based on the above facts and conclusions, the State Water Board, Division of Water Rights hereby revokes Permit 16622, and the water is declared to be subject to appropriation. This revocation may not result in additional water being available for new appropriations if there are applicable restrictions due to past State Water Board decisions regarding water availability.

STATE WATER RESOURCES CONTROL BOARD

  
Victoria A. Whitney, Chief *for*  
Division of Water Rights

Dated: **MAR 11 2009**



**Linda S. Adams**  
*Secretary for  
Environmental Protection*

## State Water Resources Control Board

### Division of Water Rights

1001 I Street, 14<sup>th</sup> Floor ♦ Sacramento, California 95814 ♦ 916.341.5300  
P.O. Box 2000 ♦ Sacramento, California 95812-2000  
Fax: 916.341.5400 ♦ [www.waterrights.ca.gov](http://www.waterrights.ca.gov)

Copy



**Arnold Schwarzenegger**  
*Governor*

GD-1

In Reply Refer  
to:KDM:21902

**MAR 09 2009**

Stephen Whitaker  
Irish Beach Water District  
PO Box 67  
Manchester, CA 95459

Dear Mr. Whitaker:

**PETITION FOR RECONSIDERATION REGARDING ORDER DENYING TIME EXTENSION  
FOR PERMIT 15580 (APPLICATION 21902), IRISH GULCH IN MENDOCINO COUNTY**

The State Water Resources Control Board has reviewed the Irish Beach Water District petition for reconsideration of the Division of Water Rights order denying a petition for extension of time for Permit 15580. Enclosed is an order responding to your petition for reconsideration.

Katherine Mrowka is the senior staff person presently assigned to this matter. If you require further assistance, Ms. Mrowka can be contacted at (916) 341-5363.

Sincerely,

Steven Herrera, Manager  
Permitting Section

Enclosure

6D-2

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2009-0014-EXEC

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In the Matter of the Petition for Reconsideration of

**IRISH BEACH WATER DISTRICT**

Permit 15580 (Application 21902)

Regarding Order Denying Extension of Time

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SOURCE: Irish Gulch tributary to Pacific Ocean

COUNTY: Mendocino

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**ORDER DENYING RECONSIDERATION**

BY THE EXECUTIVE DIRECTOR:

**1.0 INTRODUCTION**

Irish Beach Water District (Petitioner) petitions the State Water Resources Control Board (State Water Board or Board) for reconsideration of the Division of Water Rights' (Division) order denying a petition for extension of time to put water to beneficial use under Permit 15580 (Application 21902). The Executive Director finds that denial of the extension was appropriate and proper, and thus denies the petition for reconsideration. (Cal. Code Regs., tit. 23, § 770.)<sup>1</sup>

**2.0 RECONSIDERATION OF A DECISION OR ORDER**

Any interested person may petition the State Water Board for reconsideration of a decision or order on any of the following grounds:

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<sup>1</sup> The Water Code directs the State Water Board to act on a petition for reconsideration within 90 days from the date on which the State Water Board adopts the decision or order that is the subject of the petition. (Wat. Code, § 1122.) If the State Water Board fails to act within that 90-day period, a petitioner may seek judicial review, but the State Water Board is not divested of jurisdiction to act upon the petition simply because the State Water Board failed to complete its review of the petition on time. (See *California Correctional Peace Officers Ass'n. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1147-1148, 1150-1151 [43 Cal.Rptr.2d 681]; State Water Board Order WQ 98-05-UST at pp.3-4.)

- (a) [i]rregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing;
- (b) [t]he decision or order is not supported by substantial evidence;
- (c) [t]here is relevant evidence which, in the exercise of reasonable diligence, could not have been produced;
- (d) [e]rror in law.

(Cal. Code Regs., tit. 23, § 768.)

The State Water Board may refuse to reconsider a decision or order if the petition for reconsideration fails to raise substantial issues related to the causes for reconsideration set forth in section 768 of the State Water Board's regulations. (*Id.*, § 770, subd. (a)(1).) Alternatively, after review of the record, the State Water Board also may deny the petition upon a finding that the decision or order was appropriate and proper, set aside or modify the decision or order, or take other appropriate action. (*Id.*, subd. (a)(2)(A)-(C).)

State Water Board Resolution 2002-0104 delegates to the Executive Director the authority to supervise the activities of the State Water Board. Unless a petition for reconsideration raises matters that the State Water Board wishes to address or requires an evidentiary hearing before the State Water Board, the Executive Director's consideration of a petition for reconsideration falls within the scope of the authority delegated under Resolution 2002-0104. Accordingly, the Executive Director has the authority to refuse to reconsider a petition for reconsideration, deny the petition, set aside or modify the decision or order, or take other appropriate action. The State Water Board has not designated decisions by the Executive Director as precedent decisions pursuant to the Administrative Procedures Act. (State Water Board Order WR 96-1, at p. 17, fn. 11.)

### 3.0 **FACTUAL BACKGROUND**

The Division issued Permit 15580 to Gertrude J. Moores, Jesse E. Nichols, and the Estate of Williams M. Moores on February 15, 1968, pursuant to Application 21902. On March 20, 1969, the permit was amended to list Irish Beach Water District as an additional Permittee. The permit was subsequently assigned solely to the Irish Beach Water District on March 21, 1973. The permit authorizes direct diversion of 1.31 cubic feet per second (cfs) for municipal,

domestic, and irrigation purposes. The Permit required completion of construction work by December 1, 1970 and full beneficial use of water by December 1, 1971.

At the request of Petitioner, on July 27, 1973, the Division extended the time to complete construction to December 1, 1975 and the time to put water to full beneficial use until December 1, 1976. The same order also established a maximum annual diversion limit of 545 acre-feet per annum (afa). The Division granted a second time extension at the request of Petitioner, extending the time to complete construction to December 1, 1978 and the time to put water to full beneficial use to 1987. At the same time, the Division added a second point of diversion to the permit. On October 17, 1988, the Division inspected the project and found that Petitioner was using 0.05 cfs, with a maximum use of 23 afa. The Division granted Petitioner a third time extension in 1989. Construction was to be completed by December 31, 1995; water was to be put to full beneficial use by December 31, 1997.

Following expiration of the 1997 deadline for putting water to full beneficial use, the Division conducted a licensing inspection on May 25, 1999. The inspection found that 167 of the 450 homes planned for the development had been built. Progress reports indicated maximum use to be 0.05 cfs, and the maximum diversion to be 24.1 afa. On July 28, 2000, two and one-half years after time expired under the permit, Petitioner requested a fourth extension of time. The petition indicated that it was unknown when water would be fully used, but requested a ten-year extension (i.e., until December 31, 2007).

On March 15, 2007, less than a year before the requested ten-year extension period was to expire, and following numerous requests from the Division to complete documentation under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), Petitioner issued a Notice of Determination (NOD) for the time extension environmental document.

On July 22, 2008, the Division denied Petitioner's request for extension of time. The denial was based on a number of factors, the first of which was that the Division could not make a finding of due diligence. At the time the last extension ran out, 28 years had elapsed since issuance of the original permit. At the time of the denial, over 39 years had elapsed. As of 2007, when the extension would have expired, all water had not been put to beneficial use. The Division also noted the long delay, despite prodding by the Division, in completion of CEQA documentation



for the extension. The Division also found that the delay was not occasioned by obstacles that could not be reasonably avoided. The reason given by Petitioner was that only 5 houses per year were being developed. The Division further found that the Mitigated Negative Declaration showed insufficient summer flow to complete the project. The Mitigated Negative Declaration also identified threatened and endangered species and their habitat that could be affected by the project. The extension denial order expressed concern over the State Water Board's public trust duty to protect these species, including the California Red-Legged Frog, the Point Arena Mountain Beaver, Steelhead, and Coho Salmon.

Finally, the Division found that satisfactory progress was not likely to be made if an extension were granted. Petitioner had stated that the project would not be completed during the requested extension. In fact, the contemplated extension period had nearly expired before Petitioner finished CEQA documentation necessary for consideration of the extension. In addition, the Petitioner had made little progress towards reaching full beneficial use. The denial noted that environmental documentation estimated that full beneficial use would not occur until sometime between 2038 and 2067.

On August 19, 2008, the State Water Board received a petition for reconsideration and a request that the extension be extended further, to 2018. Petitioner also requested that the State Water Board hold a hearing on evidence relating to impacts on threatened and endangered species and delays with the development due to financial trouble associated with litigation concerning another water right.

#### **4.0 DISCUSSION<sup>2</sup>**

##### **4.1 Requirements for Obtaining an Extension**

The State Water Board may extend the deadlines specified in a permit for beginning construction, completing construction, and completing application of water to beneficial use upon a showing of good cause. (Wat. Code, § 1398.) The State Water Board will grant a petition for an extension of time only upon such conditions as the Board determines to be in the public interest, and only upon a showing that (1) due diligence has been exercised, (2) failure to comply with previous time requirements was caused by obstacles which could not reasonably

---

<sup>2</sup> To the extent Petitioner raises issues not discussed in this order, those issues are dismissed as not substantial or appropriate for review. (Cal. Code Regs., tit. 23, § 770, subd. (b)(1).)

be avoided, and (3) satisfactory progress will be made if an extension is granted. (Cal. Code Regs., tit. 23, § 844.) "Lack of finances, occupation with other work, physical disability, and other conditions incident to the person and not the enterprise will not generally be accepted as good cause for delay." (*Ibid*; State Water Board Order WRO 2003-0003 [lack of time and money were not valid excuses for failure to diligently pursue a project].) Approval of a petition for an extension of time is a discretionary act that is subject to the requirements of CEQA. (State Water Board Order WR 2008-0045 at p. 4.)

#### 4.2 Due Diligence

The due diligence requirement is an important aspect of water right administration. As a recent State Water Board order explains:

The Water Code and the State Water Board's regulations require appropriative water rights to be developed with due diligence. The purpose of the due diligence requirement is to ensure that appropriators do not hold water rights in "cold storage," thereby preventing water resources from being put to beneficial use. (See *California Trout Inc. v. State Water Resources Control Board* (1989) 207 Cal.App.3d 585, 619 [discussing Water Rights Board's regulations and the fact that "the statutory requirement of diligence does not allow the Water Board to countenance a scheme placing water rights in 'cold storage' for future use"]; see also State Conservation Commission, Report of the Conservation Commission of the State of California to the Governor and Legislature of California (1913) pp. 20-21, 39-40 [not sound public policy to allow cold storage of a valuable natural resource such as water]; and see *Nevada County and Sacramento Canal Company v. G. W. Kidd* (1869) 37 Cal. 282, 314 ["The doctrine is that no man shall act upon the principle of the dog in the manger, by claiming water by certain preliminary acts, and from that moment prevent others from enjoying that which he is himself unable or unwilling to enjoy, and thereby prevent the development of the resources of the country by others"].) (State Water Board Order WR 2008-0045 at p. 2.)

Petitioner argues that it has exercised due diligence because all construction has been completed and full beneficial use of water is nearly complete. But Petitioner goes on to state that only 195 of 502 homes have been built. (Petition, p. 6-7.) This represents only a 39% build-out. Petitioner further notes as evidence of diligence that the lots have been subdivided and fully permitted for development. (Petition, p. 7.) Demonstrating that the lots are ready for homes does not necessarily show diligence, however, especially considering that over a nearly 40 year period the homes have not been built and the water has not been put to beneficial use. Petitioner asserts that "future growth is not merely a gleam in the developer's eye – rather, it is just a matter of time before all approved lots are built." (Petition, p. 7.) However, considering

that the permit was issued in 1968 and that according to the Mitigated Negative Declaration an additional thirty to sixty years may be required to put the water to full beneficial use, the amount of time is not consistent with the requirement for due diligence.

Petitioner also challenges the finding that due diligence was not exercised because Petitioner was slow to complete CEQA documentation. This challenge is based on the assertion that Petitioner's slow completion of CEQA was because of Petitioner's "misunderstanding as to how to proceed with the CEQA documentation and the fact that small public agencies are not always capable of responding quickly due to a variety of factors." (Petition, p. 11.) While this may be true, State Water Board regulations make clear that "conditions incident to the person and not to the enterprise will not generally be accepted as good cause for delay." Petitioner's multi-year delay argues against an assertion that satisfactory progress will be made or that due diligence has been exercised. Thus by the terms of the State Water Board's regulations, it would be improper to consider Petitioner's failure to retain a CEQA consultant as a valid excuse for delay.

#### **4.3 Failure to Comply with Past Time Requirements**

Petitioner asserts that the reasons previous timelines were not met was the slow rate of development along the Mendocino coast and the onerous regulatory process and hurdles to developing large residential subdivisions in the area. In the words of the Petitioner, development of a subdivision on the Mendocino coast, "even back in the 1980's -- is a very complex, expensive, and time consuming undertaking." (Petition, p. 7.) Petitioner fails to note, however, that 1980 was nearly 30 years ago. Even in the relatively slow-moving worlds of coastal development and water regulation, three decades is a substantial amount of time. Petitioner also does not elaborate on how regulatory processes delayed the construction of homes in this particular subdivision or appropriation of water under this particular permit.

Petitioner also argues that past failure to comply with time requirements was caused by litigation over a different water right held by Petitioner. Petitioner does not explain how lack of access to water under another right caused it to delay development under this permit. If anything, one would expect that lack of access to water under another right would speed development under this permit. Further, a lack of finances caused by separate litigation, as claimed by Petitioner, does not supply a valid reason for delay, even if such lack of finances caused a slowdown in development. (Cal. Code Regs., tit. 23, § 844.)

#### 4.4 Likelihood of Satisfactory Progress if an Extension is Granted

Although first noting that it is hard to project future growth within a subdivision, Petitioner claims in its reconsideration request that all the water will be put to beneficial use within ten years. This is based on an expected growth of five new homes per year, which is in line with past and current development rates. Petitioner suggests in the petition for reconsideration that it only intends to service 53 more homes from this permit.

While home development may be progressing at the rate of five homes per year, it appears that appropriation under this permit has lagged behind that trend. From issuance of the permit in 1968 until 2005, Petitioner was increasing diversion rates under the permit by an average of 0.0018 cfs per year. By comparison, in the past ten years (1995 to 2005), diversions were increasing by only an average of 0.0017 cfs per year. According to Petitioner, appropriation will be capped at 58 gallons per minute, or 0.1292 cfs. (Petition, p. 12.) If historical rates of development continue, as Petitioner suggests they will, this rate of diversion will not be reached until at least 2039, well past the date of the requested extension, or even the extended date of 2018 that Petitioner requests in the petition for reconsideration. This date is in line with the estimates in the Mitigated Negative Declaration. (Mitigated Negative Declaration, pp. 5, 17.) A mere showing that some increase in water use will occur over a long period of time does not amount to a satisfactory showing that the water will be put to beneficial use in accordance with the permit.

The evidence presented by the Petitioner, including arguments made in the petition for reconsideration, do not convince the State Water Board that satisfactory progress will be made if an extension of time is granted. This finding is only underscored by the fact that we are now well past the 2007 date when the extension would have expired, and even Petitioner estimates that the project is still more than ten years from full beneficial use of the water.

Thus, Petitioner has not made any part of the showing necessary to support an extension of time. Petitioner has not demonstrated that due diligence has been exercised, has not demonstrated that failure to comply with previous time requirements was caused by obstacles

that could not reasonably be avoided, and has not shown that satisfactory progress will be made if an extension is granted.<sup>3</sup> The Division's action was appropriate and proper.

## **5.0 REQUEST FOR HEARING**

Petitioner offers new evidence that Petitioner claims could not, in the exercise of reasonable diligence, have been produced earlier. Petitioner offers this evidence as part of a challenge to paragraph 21 of the denial order, regarding threatened and endangered species. This new evidence suggests that some concerns over certain species may not be as significant as previously thought.

The Division may condition or deny a petition for extension of time based on environmental or public trust impacts, including impacts on threatened and endangered species. (See Wat. Code, § 1398 [the State Water Board "may" grant an extension for good cause]; Cal. Code Regs., tit. 23, § 844 [An extension will be granted only on those conditions that the State Water Board determines to be in the public interest.]) But the absence of any impacts on threatened and endangered species, or evidence that those impacts will not be as serious as anticipated by the Division, cannot support the issuance of an extension if other requirements for approving an extension have not been satisfied. Because the Petitioner has not made the showing necessary to support issuance of an extension, as discussed in Section 4 of this order, there is no reason to hold a hearing to hear evidence concerning impacts on threatened and endangered species.

A hearing was also requested to present new evidence on how litigation related to the development project, but related to a different water permit, impacted Petitioner financially and slowed development. As discussed above, lack of finances, including lack of finances resulting from litigation, does not constitute a valid excuse for delay. As such, there is not a reason to hold a hearing to hear evidence concerning this matter, as such evidence could not affect the outcome of this reconsideration.

---

<sup>3</sup> The Division denied the Petitioner's request for a ten-year extension. The Petitioner's petition for reconsideration requests an additional ten-year extension, for a total of twenty years. Because this order concludes that the requirements for issuing an extension have not been satisfied for either period, it is unnecessary to address the issue whether the State Water Board could grant an extension for more than ten years without first providing notice and an opportunity to protest the longer extension. (See Cal. Code Regs., tit. 23, § 843.)

**6.0 CONCLUSION**

Upon review of the record, the State Water Board finds that the Division's order canceling the application was appropriate and proper.

**ORDER**

**IT IS HEREBY ORDERED** that the Irish Beach Water District petition for reconsideration is denied.

**MAR 04 2009**

Dated: \_\_\_\_\_

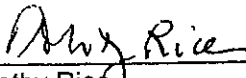
  
\_\_\_\_\_  
Dorothy Rice  
Executive Director

Exhibit C  
Envelope from Gordon Moores

March 25, 2011

Dear Irish Beacher:

The Irish Beach Water District is in the process of requesting your Prop 218 ballot vote in favor of several new assessments as follows:

- \$780,000 to be raised for a new legal fund (passed off as a capital improvement per page 9 of the engineer's report you will receive from the Water District)
- \$340,000 for replacement of the tank at the treatment plant (already previously included in the Prop 218 assessment approved in 2002)
- Drilling new wells (including well #5 already drilled and completed—see page 9)
- Transferring the balance in the Mallo Pass Project fund into the new legal program

These assessments totaling \$1,120,000 will be added to your property tax bill and collected for the next 15 years. The purpose of this letter is to solicit your "NO" vote on these propositions.

Proposition 218 required the Water District to complete a cost benefit analysis to justify assessing property owners. The Prop 218 assessment approved in 2002 decided that assets with designated life spans of over 40 years were the obligation of all property owners, whereas, those with the described life span of less than 40 years were the obligation of the separate Operating Budget financed by assessments on water users.

We are already paying an assessment for these four projects approved in 2002:

- Replacement of designated depreciated assets with life spans of over 40 years
- Repayment of a state loan taken out by the district many years ago
- New system-wide capital improvements including water tank replacements
- Mallo Pass Project (abandoned by the District in 2008)

For your information, the Water District Board voted to let the State Department of Water Resources cancel the District's water rights in Mallo Pass, effectively killing the project. The funds collected into that "trust fund" should be refunded to the tax payer and the assessment terminated.

These are the reasons we think you should reject the new proposed Prop 218 assessments:

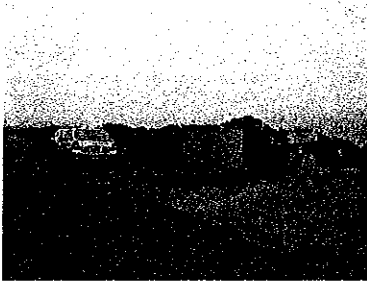
- Tank replacement should be paid from the existing system-wide fund
- Unit #9 replacement well (new well #5) is an Operating Budget expense under the 2002 approved assessments which has been completed.
- Legal expenses cannot be classified as "new capital improvement" as described on page 9 of the engineer's report.

Thank you for considering this very important matter. If you have any questions, please call 707-526-3759.

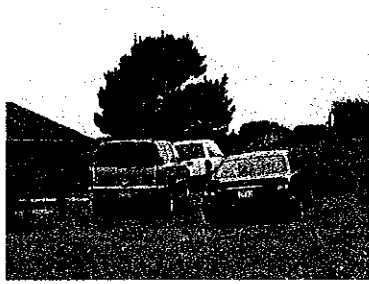
Concerned property owners of Irish Beach

Bill Moores  
phone #

Exhibit D  
Photos of Vehicles Parked at Irish Beach Weekend Rentals



Navarro Way Rental (5/14/10),  
4 Vehicles



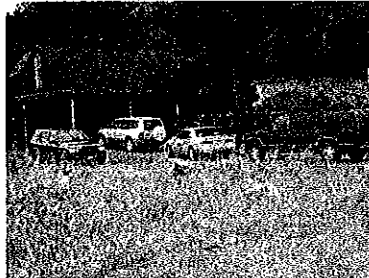
Navarro Way Rental (5/14/10),  
3 Vehicles



Pomo Lake Dr. Rental (5/14/10),  
4 Vehicles



Arena Circle Rental (5/14/10),  
3 Vehicles



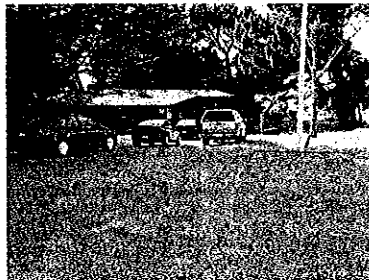
Cypress Parkway Rental (5/14/10),  
4 Vehicles



Sea Cypress Dr. Rental (5/18/10),  
7 Vehicles



Cypress Parkway Rental (5/23/10),  
5 Vehicles



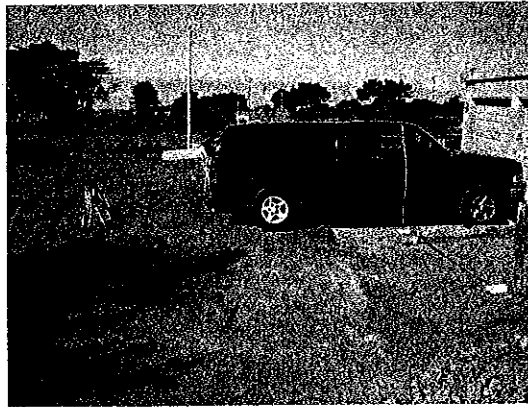
Cypress Point Rd Rental (5/23/10),  
4 Vehicles



# Exhibit E Photos Showing Normal Use of Garage Blocking Easement and Presenting a Safety Hazard



Truck in front of garage. The blue line indicates the edge of the access easement (saw horse marks the other edge) and, that vehicles entering the property from the access easement can not see outgoing traffic when we are pulling out of our garage or in front of our garage.



Truck in front of Garage, the blue line indicates edge of access easement (saw horse marks the other edge). Anyone driving down easement can not see oncoming traffic when our vehicle is pulling out of the garage or in front of garage.



Truck partially backed out of garage up to easement edge., Note that the the driver can not see oncoming access easement traffic without entering and blocking the easement.



## Redwood Empire Title Company of Mendocino County

March 22, 2011

Bill Moores  
3880 Sleepy Hollow Drive  
Santa Rosa, CA 95404

Re: Units 9 & 9A, Irish Beach Subdivision

Dear Mr. Moores:

At your request I looked at the chain of ownership for Units 9 and 9A of Irish Beach Subdivision since August 16, 1974; made copies of the original CC&R's for these units; and determined whether any of Units 9 or 9A are part of the description attached to the document entitled "Second Declaration of Restrictions of Mendocino Coast Subdivision Units One, Two, Three and Four" recorded September 17, 1998 in 1998-17732. Here is what I found:

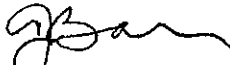
1. The chain of ownership for the land in Unit 9 begins with a deed from Masonite Corporation to Moores Associates recorded August 16, 1964 in Book 943, Page 98. Unit 9 is only a portion of the land in this deed. Moores Associates deeded all of the Unit 9 lands and other property to Margaret Kelly in Book 977, Page 702 and she deeded it back to Moores Associates in Book 1020, Page 389. Moores Associates deeded the property to William and Tona Moores in the deed recorded December 21, 1976 in Book 1068, Page 382.

All of Unit 9 and most of Unit 9A are shown on the subdivision map of Unit 9 recorded January 12, 1989 in Map Case 2, Drawer 47, Page 83. William and Tona Moores have deeded away 6 of the lots in Unit 9 and still own the rest. The map of Unit 9A was recorded December 21, 1990 in Map Case 2, Drawer 52, Page 27. It is mostly a re-subdivision of part of Unit 9, but also includes Lot 39 of Unit 3 and Lots 19 and 20 of Unit 7. William and Tona Moores no longer owns 2 of the lots in Unit 9A.

2. I have enclosed copies of the original CC&R's for Unit 9 recorded January 18, 1989 in Book 1729, Page 473; the amendment to these CC&R's recorded January 7, 1991 in Book 1882, Page 585 which removed the lots in Unit 9A from these CC&R's; and the CC&R's for Unit 9A recorded January 18, 1991 in Book 1882, Page 689.
3. I have enclosed the description attached to the Declaration of Restrictions recorded September 17, 1998 in 1998-17732. These are labeled Exhibits A through D on the document. These are the descriptions for Units 1 through 4 of Mendocino Coast Subdivision.

None of the property in Unit 9 is included in them. Lot 9 of the map of Unit 9A lies within Lot 39 of Unit 3 of Mendocino Coast Subdivision and is therefore described in Exhibit C attached to 1998-17732. No other parts of Units 9 or 9A are included within this description.

Sincerely,

A handwritten signature in dark ink, appearing to read 'John Baron', with a stylized flourish at the end.

John Baron  
Chief Title Officer

RECORDING REQUESTED BY

William M. Moores  
Tona E. Moores  
3880 Sleepy Hollow Dr.  
Santa Rosa, CA 95404  
707-526-3759

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS is made this 5<sup>th</sup> day of June, 2009, by William Moores ("Declarant").

RECITALS

- A. Pursuant to the terms of the "Agreement Between the United States Fish and Wildlife Service and William Moores" ("Agreement"), as executed on June 3rd, 2009, which resolves allegations of take of the federally endangered Point Arena Mountain Beaver (*Aplodontia rufa nigra*) ("PAMB") on Mr. Moores' property on Sea Cypress Drive in the Irish Beach Subdivision, in Mendocino County, California, in violation of the federal Endangered Species Act of 1973 as amended (16 U.S.C. §§ 1531, et seq.) and its implementing regulations (50 C.F.R. part 17), Declarant has agreed to permanently preserve approximately eight (8) acres of PAMB habitat.
- B. Declarant is the sole owner in fee simple of certain real property in the County of Mendocino, State of California, which includes an approximately 3.85 acre property ("the PAMB Preserve A"), (within Assessor's Parcel Number (APN) 131-110-004), as depicted and legally described in Exhibit A, attached hereto and incorporated herein by this reference.
- C. Declarant is the sole owner in fee simple of certain real property in the County of Mendocino, State of California, which includes three parcels consisting of an approximately 2.12 acre property (constituting a portion of Lot 3 of Unit 9A), a .40 acre property (constituting a portion of Lot 2 of Unit 9A) and a .49 acre property (constituting a portion of Lot 6 of Unit 9) for a total of approximately 3.01 acres ("the PAMB Preserve B") (within APNs 132-320-043, 132-320-042 and 132-320-006), as depicted and legally described in Exhibit B, attached hereto and incorporated herein by this reference.
- D. The United States Fish and Wildlife Service ("Service"), an agency within the United States Department of the Interior, has jurisdiction over the conservation, protection, restoration, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the Endangered Species Act, 16 U.S.C. § 1531, et seq. ("ESA"), the Fish and Wildlife Coordination Act, 16 U.S.C. §§661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. §§ 742(f), et seq., and other provisions of federal law.
- E. The PAMB Preserve provides or is capable of providing significant ecological and habitat values that benefit endangered, threatened or other species (collectively "conservation values," and in particular provides habitat for the federally endangered PAMB.

- F. The purpose of this Declaration is to protect the PAMB habitat for the benefit it provides an endangered species, and for the continuing benefit to the American people of preserving such habitat and species:

NOW, THEREFORE, Declarant declares as follows:

1. Covenant Running with the Land. Declarant does hereby covenant and agree to restrict, and by this instrument intends to restrict, the future use of the Preserve as set forth below, by the establishment of this covenant running with the land.

2. Purpose. The purpose of this Declaration of Restrictions is to ensure that the Preserve will be retained forever in a condition contemplated by the Agreement and to prevent any use of the Preserve that will significantly impair or interfere with its conservation values. Declarant intends that this Declaration of Restrictions will confine the use of the Preserve to such activities including, without limitation, those involving the preservation and enhancement of this Preserve for PAMB.

3. Restrictions Concerning the Property. Subject to any presently recorded easements affecting the Preserve, neither Declarant nor any other person shall engage in any of the following restricted activities on the Preserve:

- A. Construction, reconstruction or placement of any building, billboard, sign, structure, or other improvement, except those signs specifically required by Section 4, herein, and the Agreement;
- B. Unseasonably watering; use of fertilizers, herbicides, pesticides, biocides, or other agricultural chemicals; mosquito abatement activities; weed abatement activities; incompatible fire protection activities; and any and all other uses which may adversely affect the conservation purposes of this Declaration of Restrictions;
- C. Grazing and agricultural activity of any kind;
- D. Commercial or industrial uses;
- E. Depositing or accumulating soil, trash, ashes, refuse, waste, bio-solids, equipment, fuel or any other material;
- F. Filling, boring, dumping, excavating, draining, dredging, disking, mining, drilling, removing, exploring for or extracting minerals, loam, gravel, soil, rock, sand or other material on or below the surface of the Preserve, or granting or authorizing surface entry for any of these purposes;
- G. Altering the surface or general topography of the Preserve, including building roads, paving, or otherwise covering the property with concrete, asphalt, or any other impervious material;
- H. Removing, destroying, or cutting trees, shrubs or other vegetation, including any fuel modification zones (strip of mowed land or planting of vegetation possessing low combustibility for purposes of fire suppression); however, the removal of exotic plant species may be permitted with Fish and Wildlife Service concurrence;

- I. Use of motorized vehicles, including off-road vehicles, except on existing roadways;
- J. Transferring any water right within the Preserve necessary to maintain or restore the biological resources of the Preserve;
- K. Planting, introduction or dispersal of non-native or exotic plant or animal species;
- L. Manipulating, impounding or altering any natural watercourse, body of water or water circulation on the Preserve and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters;
- M. Recreational activities including, but not limited to, horseback riding, biking, hunting, hiking, or fishing; however, this prohibition is not intended to prevent foot access by Preserve Owner;
- N. Permitting a general right of access to the Preserve; and
- O. Residential, commercial, retail, institutional, or industrial uses.

4. Declarant's Duties: To accomplish the Purpose of this Declaration of Restrictions, Declarant agrees that it shall:

- A. Undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the conservation values of the Preserve;
- B. Post and maintain appropriate signage identifying the PAMB Preserve, according to the following specifications:
  - 1. Such signage shall state:
 

ENDANGERED SPECIES PRESERVE  
RESTRICTED AREA  
DO NOT ENTER  
DO NOT REMOVE, ALTER OR DESTROY VEGETATION
  - 2. Signs and signposts shall be of material that is durable and weatherproof.
  - 3. Signs shall be at least 6 inches high and 8 inches wide.
  - 4. Lettering shall be black on a light background.
  - 5. Signs shall be mounted 3 to 5 feet above ground.
  - 6. Signposts should be driven into the ground at least two feet, and shall be standard channel metal foot driven signposts.
  - 7. Signs shall be posted no less than every 75 feet around the periphery of the Preserve and maintained in perpetuity, except that no signs shall be necessary along the periphery of the Preserve B where it is on or directly adjacent to APN 132-320-006 and APN 132-320-045, and signs shall only be necessary along the southeast periphery of Preserve A where Exhibit A shows line segments of 190.64 feet and 224.62 feet.

5. No Rights of Public Use. The provisions of this Declaration do not constitute an offer for public use.

6. Successors and Assignees Bound. The Declarant hereby agrees and acknowledges that the Preserve shall be held, sold, conveyed, owned and used subject to the applicable terms, conditions, and obligations imposed by this Declaration relating to the use, repair, maintenance and /or improvement of the Preserve and matters incidental thereto. Such terms, conditions, and obligations are a burden and restriction on the use of the Preserve, as applicable. The provisions of this Declaration shall be enforceable as equitable servitudes and conditions, restrictions and covenants running with the land in perpetuity, and shall be binding upon the Declarant and upon each and all of the Declarant's respective heirs, devisees, successors and assignees, officers, directors, employees, agents, representatives, executors, trustees, successor trustees, beneficiaries and administrators, and upon future owners of the Preserve and each of them, and shall benefit the people of the United States. The United States, acting through any of its agencies, including but not limited to the Service, shall have the right to enforce the terms of this Declaration.

7. Access. The Service is hereby granted access on, over, and across the Preserve for itself and its employees or agents as is reasonably necessary for the Service to exercise its rights hereunder. This Declaration does not convey a general right of access or easement to the public, or a general right of access to the Preserve. With suitable forewarning to the Property owners, the Service shall also have access to the Preserve for the purpose of research or monitoring of Point Arena mountain beavers.

8. Costs and Liabilities. Declarant and its successors or assigns retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Preserve, including transfer costs, costs of title and documentation review. Declarant, its successors or assigns remain solely responsible for obtaining any applicable permits and approvals required for any activity or use permitted on the Preserve by this Declaration, and any such activity or use shall be undertaken in accordance with all applicable Federal, state, local and administrative agency laws, statutes, ordinances, rules, regulations, order and requirements.

9. Amendment. Declarant and its successors or assigns may amend this Declaration only after written concurrence by the Service. Any such amendment shall be consistent with the purposes of this Declaration and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Mendocino County, State of California, and a conformed copy provided to the Service as directed in Section 10, below.

10. Recordation. Declarant shall promptly record this instrument and any future amendments in the official records of Mendocino County, California, and immediately notify the Service through the mailing of a conformed copy to the Office of the Regional Solicitor, Pacific Southwest Region, 2800 Cottage Way, Room E-1712, Sacramento, CA 95825.

11. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Declaration shall be liberally construed in favor of the deed to affect the purpose of this Declaration and the policy and purpose of California Civil Code Section 815, et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Declaration that would render the provision valid shall be favored over any interpretation that would render it invalid.

12. Future Subdivision of Underlying Property. Declarant may divide portions of the underlying ownership of the Preserve, provided that such subdivision does not alter the perpetual restrictions that, pursuant to Section 1, above, constitute a covenant running with the land. All such future subdivisions are subject to the requirements in Section 15, below.

13. Severability. If a court of competent jurisdiction voids or invalidates on its face any provision of this Declaration, such action shall not affect the remainder of this Declaration. If a court of competent jurisdiction voids or invalidates the application of any provision of this Declaration to a person or circumstance, such action shall not affect the application of the provision to other persons or circumstances.

14. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Declarant's title in any respect.

15. Subsequent Property Transfer. Declarant agrees to attach a copy of this Declaration of Restrictions to any deed or other legal instrument by which Declarant divests itself of any interest in all or a portion of the Preserve, including, without limitation, a leasehold interest. Declarant further agrees to give the Service written notice of the intent to transfer any interest at least 30 days prior to the date of such transfer.

16. Additional Interests. Declarant and its successors or assigns shall not grant any additional easements, rights of way or other interests in the Preserve (other than a security interest that is subordinate to this Declaration) without first obtaining the written consent of the Service. The Service may withhold such consent if it determines that the proposed interest or transfer is inconsistent with the purposes of this Declaration or will impair or interfere with the conservation values of the Preserve. This section shall not prohibit transfer of a fee or leasehold interest in the Preserve that is subject to the Declaration and complies with section 15, above.

17. Controlling Law. The interpretation and performance of this Declaration or Restrictions shall be governed by the laws of the State of California and applicable federal law including the ESA.

18. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

19. Term. This Declaration shall run with the land and continue in force and effect in perpetuity.



IN WITNESS WHEREOF, Declarant has executed and delivered this Declaration of Restrictions as of the day and year first above written.

DECLARANT:

WILLIAM MOORES

By: William Moore  
Title: \_\_\_\_\_  
Date: 6/5/09

Approved as to Form:  
By: Randy A. Fran  
U.S. Fish and Wildlife Service  
Date: 6/4/09

STATE OF CALIFORNIA

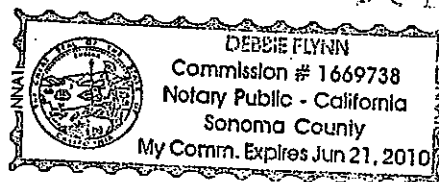
of Sonoma  
COUNTY of ~~MENDOCINO~~

On 6/5/09, before me, the undersigned notary public, personally appeared William Moore who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.




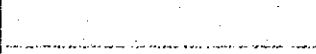
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Debbie Flynn  
Signature of Notary Public



## Legend

-  High Water Line
-  Property Line
-  Easement Line
-  Area to be Preserved

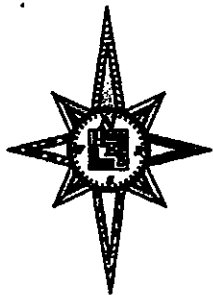
### GRAPHIC SCALE



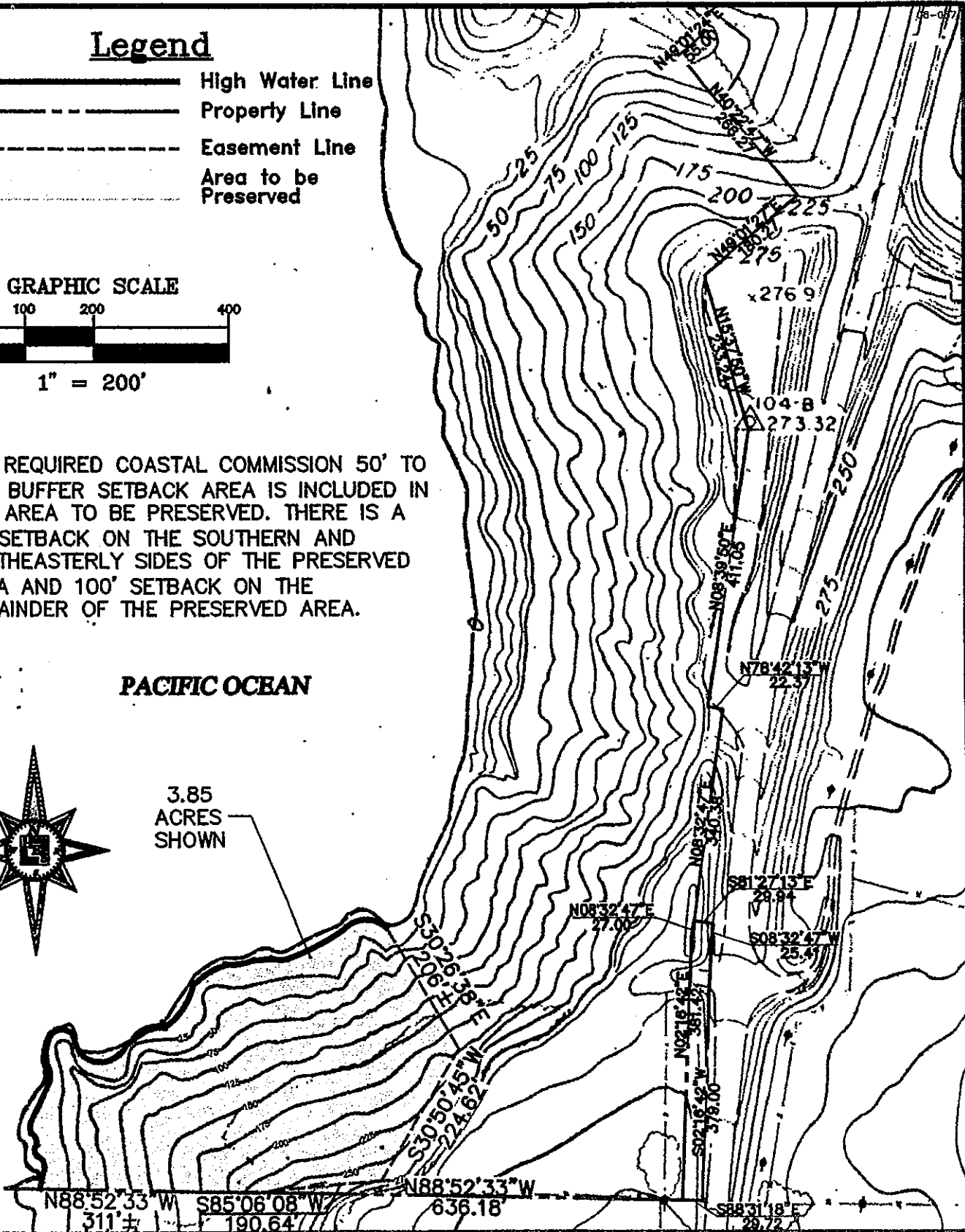
1" = 200'

THE REQUIRED COASTAL COMMISSION 50' TO 100' BUFFER SETBACK AREA IS INCLUDED IN THE AREA TO BE PRESERVED. THERE IS A 50' SETBACK ON THE SOUTHERN AND SOUTHEASTERLY SIDES OF THE PRESERVED AREA AND 100' SETBACK ON THE REMAINDER OF THE PRESERVED AREA.

**PACIFIC OCEAN**



3.85  
ACRES  
SHOWN



## EXHIBIT A

PRMB Habitat & Buffer Preservation Restricted Areas  
Manchester, California  
A.P. N. 131-110-004



**HUFFMAN ENGINEERING  
& SURVEYING**

537 College Ave., Santa Rosa, Ca. 95404 (707) 542-6559 fax 542-6621

EXHIBIT A

Being a portion of the Lands of William M. Moores and Tona E. Moores as described in that grant deed recorded on October 10, 2006 Document Number 2006-21025 Mendocino County Records and being more particularly described as follows;

Commencing at the southeast corner of the said Lands of Moores, said point being marked by a ½ inch iron pipe; thence along the southerly line of Lands of Moores North 88°52'33" West, 947 feet to the Pacific Ocean said point being the True Point of Beginning of herein described portion of land;

Thence South 88°52'33" East, 311, feet more or less along the southerly boundary line of said Lands of Moores to a point that bears North 88°52'33" West, 636.18 feet distant from the southeasterly corner of the said Lands of Moores along the southerly line of said Lands of Moores;

Thence leaving said southerly line of said Lands of Moores North 85°06'08" East, 190.64 feet;

Thence North 30°50'45" East, 224.62 feet;

Thence North 30°26'38" West, 206 feet more or less to the Pacific Ocean.

Said area to contain 3.85 acres more or less.

Figure Name: EXHIBIT A

Arc Length: 71.20	Radius: 44.09	Delta: -92-31-12
Arc Length: 90.56	Radius: 363.48	Delta: 14-16-28
Arc Length: 25.19	Radius: 43.09	Delta: 33-29-33
Arc Length: 26.34	Radius: 122.21	Delta: -12-21-02
Arc Length: 42.97	Radius: 71.47	Delta: 34-26-44
Arc Length: 56.87	Radius: 102.91	Delta: -31-39-55
Arc Length: 77.58	Radius: 97.58	Delta: 45-33-16
Arc Length: 38.92	Radius: 47.75	Delta: -46-42-09
Course: S 52-44-04 W	Distance: 26.15	
Arc Length: 81.86	Radius: 40.78	Delta: 115-00-35
Arc Length: 30.95	Radius: 168.41	Delta: 10-31-44
Arc Length: 39.89	Radius: 20.03	Delta: -114-06-24
Arc Length: 47.81	Radius: 63.53	Delta: -43-07-08
Arc Length: 19.04	Radius: 25.30	Delta: 43-07-08
Course: S 25-09-33 W	Distance: 65.47	
Arc Length: 15.92	Radius: 20.78	Delta: -43-54-27
Arc Length: 19.90	Radius: 13.88	Delta: 82-09-22
Arc Length: 20.25	Radius: 10.49	Delta: -110-37-00
Arc Length: 22.26	Radius: 15.36	Delta: 83-01-19
Course: S 13-44-27 W	Distance: 29.90	
Course: S 88-52-33 E	Distance: 311.62	
Course: N 85-06-08 E	Distance: 190.64	
Course: N 30-50-44 E	Distance: 224.62	
Course: N 30-26-37 W	Distance: 206.77	

Perimeter: 1782.68

Area: 167792.73      3.85 acres

Mapcheck Closure - (Uses listed courses & COGO Units)

Error of Closure: 0.019      Course: N 30-41-27 E

Precision 1: 91715.71

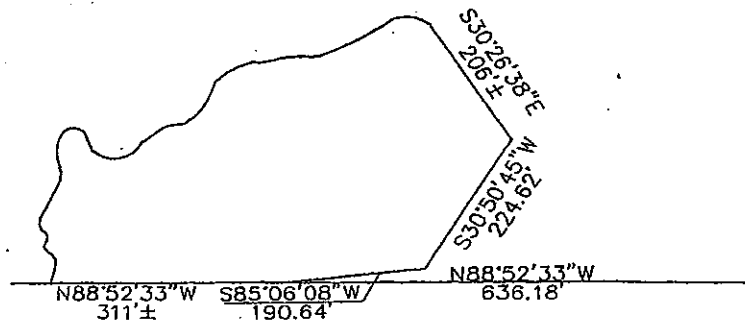


EXHIBIT B

Being a portion of the Lands of Moores also being Lot 3 of Unit 9A as shown on a map filed in the Mendocino records office in Cage 2, Drawer 52, page 27, Filed on December 21, 1990. Being more particularly described as follows;

Commencing at the southeasterly corner of Lot 3 Unit 9A as shown on said map said point also being the True Point of Beginning of the herein described area.

Thence, along the southerly line of said Lands of Moores, South 89° 59' 39" West, 160.13 feet;  
Thence, leaving the southerly line of said Lands of Moores, North 00° 00' 21" West, 58.79 feet;  
Thence, North 34° 43' 50" West, 118.09 feet;  
Thence, North 52° 56' 32" West, 10.85 feet;  
Thence, North 09° 15' 50" East, 51.07 feet;  
Thence, North 36° 49' 35" West, 42.90 feet;  
Thence, North 09° 24' 29" West, 20.15 feet;  
Thence, North 22° 30' 19" West, 35.89 feet;  
Thence, North 29° 28' 40" West, 9.48 feet;  
Thence, North 53° 03' 50" West, 22.36 feet;  
Thence, North 72° 58' 19" West, 6.83 feet;  
Thence, North 49° 20' 00" West, 31.05 feet;  
Thence, North 85° 45' 58" West, 13.57 feet;  
Thence, North 75° 14' 47" West, 40.88 feet;  
Thence, North 17° 27' 59" West, 9.61 feet, to the northwesterly line of said Lands of Moores;  
Thence, leaving the northwesterly line of said Lands of Moores and continuing, North 17° 27' 59" West, 118.72 feet;  
Thence, North 10° 04' 28" East, 37.68 feet;  
Thence, North 45° 56' 15" West, 29.27 feet;  
Thence, North 48° 30' 00" East, 24.79 feet;  
Thence, South 81° 46' 22" East, 135.72 feet, to the northeasterly line of Lot 2 unit 9A also shown on said map in Cage 2, Drawer 52, page 27, Filed on December 21, 1990.  
Thence, along said northeasterly line of said lot, South 41° 30' 00" East, 38.15 feet to a common corner of said Lot 3 unit 9A, said Lot 2 unit 9A, and Lot 6 unit 9 as shown on map filed in the Mendocino records office in Cage 2, Drawer 47, page 83, Filed on January 12, 1989;  
Thence, along the northwesterly line of Lot 6 unit 9, North 47° 47' 05" East, 58.79 feet;  
Thence, leaving said line South 41° 32' 49" East, 343.36 feet, to the southeasterly line of said Lot 6 unit 9;  
Thence, along said southwesterly line, South 16° 56' 35" West, 69.32 feet, to the southeasterly corner of said Lot;  
Thence, along the westerly line of lot 3 unit 9A, South 00° 00' 00" West, 220.00 feet to the True point of Beginning;

Containing 2.12 acres

Excepting therefrom all that land lying outside of said Lot 3 Unit 9A.

EXHIBIT B

Being a portion of the Lands of Moores also being Lot 2 of Unit 9A as shown on a map filed in the Mendocino recorders office in Cage 2, Drawer 52, page 27, Filed on December 21, 1990. Being more particularly described as follows;

Commencing at the southeasterly corner of Lot 2 Unit 9A as shown on said map said point also being the True Point of Beginning of the herein described area.

Thence, along the southerly line of said Lands of Moores, South 89° 59' 39" West, 160.13 feet;  
Thence, leaving the southerly line of said Lands of Moores, North 00° 00' 21" West, 58.79 feet;  
Thence, North 34° 43' 50" West, 118.09 feet;  
Thence, North 52° 56' 32" West, 10.85 feet;  
Thence, North 09° 15' 50" East, 51.07 feet;  
Thence, North 36° 49' 35" West, 42.90 feet;  
Thence, North 09° 24' 29" West, 20.15 feet;  
Thence, North 22° 30' 19" West, 35.89 feet;  
Thence, North 29° 28' 40" West, 9.48 feet;  
Thence, North 53° 03' 50" West, 22.36 feet;  
Thence, North 72° 58' 19" West, 6.83 feet;  
Thence, North 49° 20' 00" West, 31.05 feet;  
Thence, North 85° 45' 58" West, 13.57 feet;  
Thence, North 75° 14' 47" West, 40.88 feet;  
Thence, North 17° 27' 59" West, 9.61 feet, to the northwesterly line of said Lands of Moores;  
Thence, leaving the northwesterly line of said Lands of Moores and continuing, North 17° 27' 59" West, 118.72 feet;  
Thence, North 10° 04' 28" East, 37.68 feet;  
Thence, North 45° 56' 15" West, 29.27 feet;  
Thence, North 48° 30' 00" East, 24.79 feet;  
Thence, South 81° 46' 22" East, 135.72 feet, to the northeasterly line of Lot 2 unit 9A also shown on said map in Cage 2, Drawer 52, page 27, Filed on December 21, 1990.  
Thence, along said northeasterly line of said lot, South 41° 30' 00" East, 38.15 feet to a common corner of said Lot 3 unit 9A, said Lot 2 unit 9A, and Lot 6 unit 9 as shown on map filed in the Mendocino recorders office in Cage 2, Drawer 47, page 83, Filed on January 12, 1989;  
Thence, along the northwesterly line of Lot 6 unit 9, North 47° 47' 05" East, 58.79 feet;  
Thence, leaving said line South 41° 32' 49" East, 343.36 feet, to the southeasterly line of said Lot 6 unit 9;  
Thence, along said southwesterly line, South 16° 56' 35" West, 69.32 feet, to the southeasterly corner of said Lot;  
Thence, along the westerly line of lot 3 unit 9A, South 00° 00' 00" West, 220.00 feet to the True point of Beginning;

Containing 0.40 acres

Excepting therefrom all that land lying outside of said Lot 2 Unit 9A.

EXHIBIT B

Being a portion of the Lands of Moores also being Lot 6 of Unit 9 as shown on a map filed in the Mendocino records office in Cage 2, Drawer 47, page 83, Filed on January 12, 1989. Being more particularly described as follows;

Commencing at the southeasterly corner of Lot 3 Unit 9A as shown on said map said point also being the True Point of Beginning of the herein described area.

Thence, along the southerly line of said Lands of Moores, South 89° 59' 39" West, 160.13 feet;  
Thence, leaving the southerly line of said Lands of Moores, North 00° 00' 21" West, 58.79 feet;  
Thence, North 34° 43' 50" West, 118.09 feet;  
Thence, North 52° 56' 32" West, 10.85 feet;  
Thence, North 09° 15' 50" East, 51.07 feet;  
Thence, North 36° 49' 35" West, 42.90 feet;  
Thence, North 09° 24' 29" West, 20.15 feet;  
Thence, North 22° 30' 19" West, 35.89 feet;  
Thence, North 29° 28' 40" West, 9.48 feet;  
Thence, North 53° 03' 50" West, 22.36 feet;  
Thence, North 72° 58' 19" West, 6.83 feet;  
Thence, North 49° 20' 00" West, 31.05 feet;  
Thence, North 85° 45' 58" West, 13.57 feet;  
Thence, North 75° 14' 47" West, 40.88 feet;  
Thence, North 17° 27' 59" West, 9.61 feet, to the northwesterly line of said Lands of Moores;  
Thence, leaving the northwesterly line of said Lands of Moores and continuing, North 17° 27' 59" West, 118.72 feet;  
Thence, North 10° 04' 28" East, 37.68 feet;  
Thence, North 45° 56' 15" West, 29.27 feet;  
Thence, North 48° 30' 00" East, 24.79 feet;  
Thence, South 81° 46' 22" East, 135.72 feet, to the northeasterly line of Lot 2 unit 9A also shown on said map in Cage 2, Drawer 52, page 27, Filed on December 21, 1990.  
Thence, along said northeasterly line of said lot, South 41° 30' 00" East, 38.15 feet to a common corner of said Lot 3 unit 9A, said Lot 2 unit 9A, and Lot 6 unit 9 as shown on map filed in the Mendocino records office in Cage 2, Drawer 47, page 83, Filed on January 12, 1989;  
Thence, along the northwesterly line of Lot 6 unit 9, North 47° 47' 05" East, 58.79 feet;  
Thence, leaving said line South 41° 32' 49" East, 343.36 feet, to the southeasterly line of said Lot 6 unit 9;  
Thence, along said southwesterly line, South 16° 56' 35" West, 69.32 feet, to the southeasterly corner of said Lot;  
Thence, along the westerly line of lot 3 unit 9A, South 00° 00' 00" West, 220.00 feet to the True point of Beginning;  
Containing 0.49 acres

Excepting therefrom all that land lying outside of said Lot 6 Unit 9.

Figure Name: EXHIBIT B

Course: S 89-59-39 W	Distance: 160.13
Course: N 00-00-21 W	Distance: 58.79
Course: N 34-43-50 W	Distance: 118.09
Course: N 52-56-32 W	Distance: 10.85
Course: N 09-15-50 E	Distance: 51.07
Course: N 36-49-35 W	Distance: 42.90
Course: N 09-24-29 W	Distance: 20.15
Course: N 22-30-19 W	Distance: 35.89
Course: N 29-28-40 W	Distance: 9.48
Course: N 53-03-50 W	Distance: 22.36
Course: N 72-58-19 W	Distance: 6.83
Course: N 49-20-00 W	Distance: 31.05
Course: N 85-45-58 W	Distance: 13.57
Course: N 75-14-47 W	Distance: 40.88
Course: N 17-27-59 W	Distance: 128.33
Course: N 10-04-28 E	Distance: 37.68
Course: N 45-56-15 W	Distance: 29.27
Course: N 48-30-00 E	Distance: 24.79
Course: S 81-46-22 E	Distance: 135.72
Course: S 41-30-00 E	Distance: 38.15
Course: N 47-47-05 E	Distance: 58.79
Course: S 41-32-49 E	Distance: 343.36
Course: S 16-56-35 W	Distance: 69.32
Course: S 00-00-00 W	Distance: 220.00

Perimeter: 1707.45

Area: 131073.50                      3.01 acres

Mapcheck Closure - (Uses listed courses & COGO Units)

Error of Closure: 0.008                      Course: N 36-26-02.4 E

Precision 1: 205004.94



THE REQUIRED COASTAL COMMISSION 50' TO 100' BUFFER SETBACK AREA IS INCLUDED IN THE AREAS TO BE PRESERVED. THERE IS A 50' BUFFER AREA ON THE WESTERN SIDE OF THE PRESERVED AREA, AND 100' BUFFER AREA ON THE REMAINDER OF THE PRESERVED AREAS.

GRAPHIC SCALE



1" = 100'

LEGEND

AREAS TO BE PRESERVED

- PARCEL 2 (1.50 ACRES)
- PARCEL 3 (1.02 ACRES)
- UNIT 9 LOT 6 (0.49 ACRES)
- EXISTING PROPERTY LINE
- PROPOSED PROPERTY LINE

LOT 2 UNIT 9A

APN: 132-320-042  
4.09 ACRES

LINE TABLE

LABEL	BEARING	DISTANCE
L1	N52°56'32"W	10.85'
L2	N09°15'50"E	51.07'
L3	N36°49'35"W	42.09'
L4	N09°24'29"W	20.15'
L5	N22°30'19"W	35.89'
L6	N29°28'40"W	9.48'
L7	N53°03'50"W	22.36'
L8	N72°58'19"W	6.83'
L9	N49°20'00"W	31.05'
L10	N85°45'58"W	13.57'
L11	N75°14'47"W	40.88'
L12	N45°56'15"W	29.27'
L13	N48°30'00"E	24.79'

LOT 6 UNIT 9

APN: 132-320-006

LOT 3 UNIT 9A

APN: 132-320-043  
4.72 ACRES

EXHIBIT B

PAGE 2 OF 2

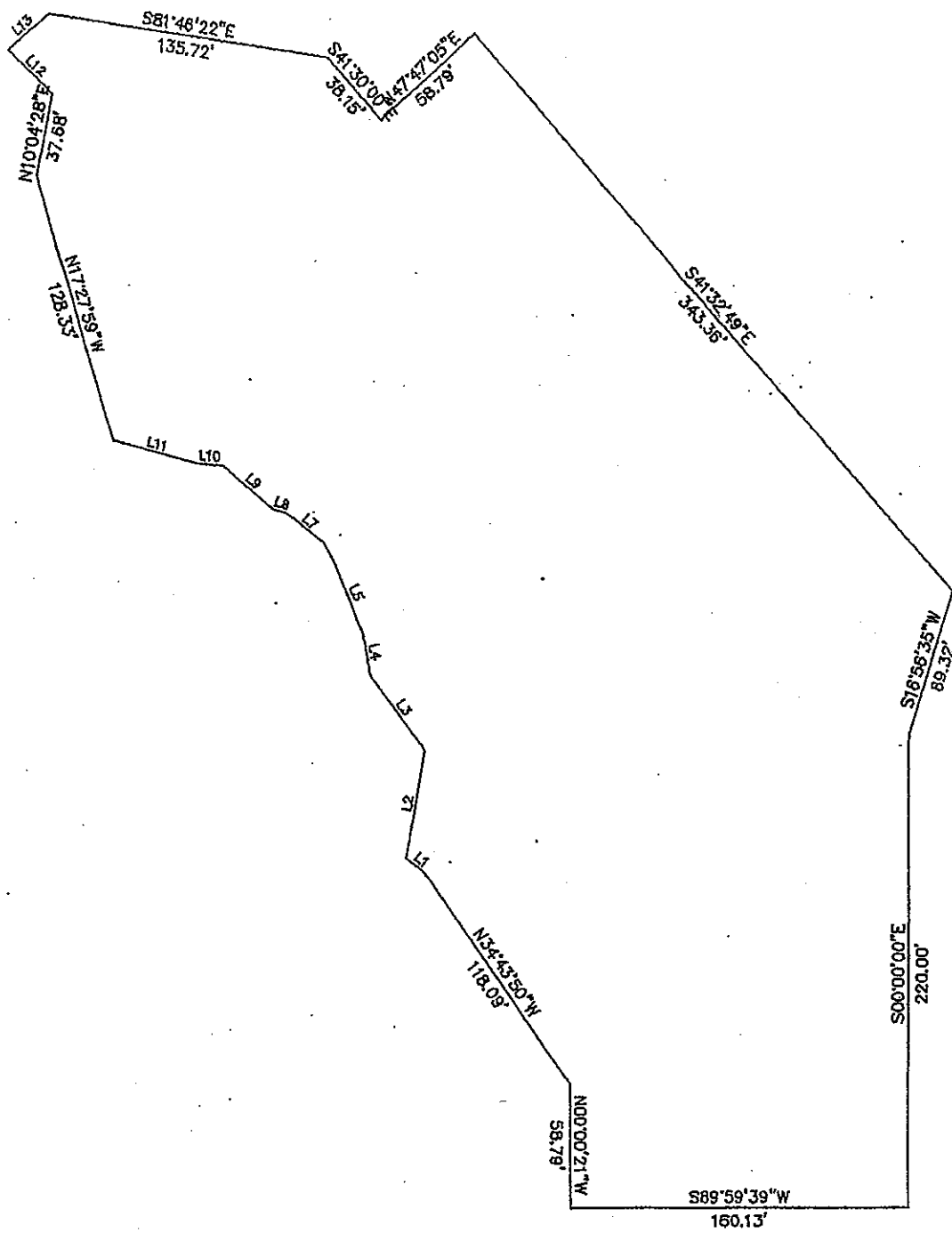
PRMB Habitat & Buffer Preservation Restricted Areas  
Manchester, California

A.P. N. 132-320-006, 042, 043



HUFFMAN ENGINEERING  
& SURVEYING

537 College Ave., Santa Rosa, Ca. 95404 (707) 542-6559 fax 542-6621



Irish Beach Community Members  
PO Box 242  
Manchester, CA 95459

October 14, 2008

Department of Planning and Building Services  
Mendocino County  
501 Low Gap Road, Room 1440  
Ukiah, CA 95482  
[tarrf@co.mendocino.ca.us](mailto:tarrf@co.mendocino.ca.us)

RECEIVED  
NOV 03 2008  
BY  
PLANNING & BUILDING SERVICES  
Ukiah, CA 95482

Attn: Fred Tarr

Re: Case # RES 1-2006 (APN 132-320-42 and APN 132-320-43)

Dear Mr. Tarr:

This letter is to object to the subdivision of the lots cited above to produce four new parcels in place of the original two parcels. When complete build out finally occurs in Irish Beach, we will find ourselves in a very tightly packed community and any sort of open space will be most welcome. Because of this, the proposed Coastal Re-Subdivision by William and Tona Moores is a matter of concern, not only because it will lead to a reduction of open space, but also because it would appear to be in contradiction to the Mendocino County General Plan Coastal Element and the original subdivision map (see Appendix A) and the CC&R's for the Irish Beach subdivision (see Appendix B).

We believe that the County of Mendocino should be aware that there are currently 195 homes in Irish Beach and 305 bare lots. A significant percentage of the bare lots are owned by W. Moores and the addition of two more bare lots hardly seems necessary. The additional lots and the resulting reduction of open space clearly represents an example of the tragedy of the commons<sup>1</sup> that Hardin describes as:

*The commons dilemma is a specific class of social dilemma in which people's short-term selfish interests are at odds with long-term group interests and the common good.*

Surely the County should consider the *common good* when land is to be re-subdivided. In particular, many people purchased land and built homes in Irish Beach on the basis of a subdivision map and a set of CC&R's. Changes in that subdivision map should not take place without consideration of the public.

Sincerely,

Name

Address

Telephone

Stephen Whitaker	15461 Forest View Rd	882-1992
Nancy Ganchin	15721 Forest View Rd	882-1928

<sup>1</sup> Hardin, G. 1968, "The Tragedy of the Commons", *Science*, Vol. 162, No. 3859, December 1968.

W. G. Galt 15721 Forest View Rd 882-1928

Mary Lou Morton 15851 Forest View Rd 882-2406

Richard W Morton 15851 Forest View Rd 882-2406

Sharon Robards 44621 Pono Lake Dr. 882-3122

Patricia L Robard 44621 Pono Lake Dr 882-3122

Dea Rust 15225 IRISH BEACH 882-2529

Larry Klein 14920 Navarro Way 882-2775

Blaine L. Klein 14970 Navarro Way 882-2775

Smile Vickery 14981 Navarro Way 882-2792

Jim Vickery 14981 NAVARRO WAY 882-2792

Susan Rush 43751 Cypress Parkway 882-2441

Scott Rush 43751 CYPRESS PKWY 882-2441

Dan Wolfe 43600 Sea Cypress Dr. Manchester - 882-2729

J. L. Lanan 43641 Cypress Pkwy. MANCHESTER, CA  
882-1976 95459

Beth M. Lann 14780 Cypress Circle Manchester CA  
95459 882-2836

Patricia E. Wolfe 43600 Sea Cypress Dr Manchester CA 707-882-2729 95459  
Denise E. Gammann 43641 Cypress Parkway Irish Beach 95459  
Marsha Burke 15001 Forest View Rd Manchester CA 95459  
Dorothy A. Hensberry 15570 Forest View Rd, Manchester 95459  
Suzanne C. Whitake 15461 Forest View Rd. Manchester CA 95459  
Nels Bean 14951 Navarro Wg. Manchester, CA. 95459  
Sue Bean 14921 Navarro Way Manchester, Ca. 95459  
Lisa Moulthrop 15470 Forest View Rd Manchester CA 95459  
Michael Moulthrop 15470 Forest View Rd Manchester CA 95459  
Betty Winters 15000 Navarro Way Manchester 95459  
George Manson 44920 Pomo Lake Dr. 882-4003  
Betty Manson 44920 Pomo Lake Dr. Manchester CA 882-4003 95459  
Olivia A. Orizillo 14770 Cypress Pt Rd. Manchester, CA. 95459  
G. E. Carley 43850 ACQUISTAPACE MANCHESTER, CA  
Ginger Baker 1401 Mallo Pass Drive  
PO. Box 212 Manchester CA. 95459

ROBERT J. DIAZ 14551 ALMA MESA DR. 925-426-1470

Pam Harley 15550 Forest View Rd 707-882-4169

Liam Killeen 15225 IRISH BEACH DR. 707-882-2529

Appendix A (Mendocino County, Case #RES 1-2006)

This re-subdivision by William & Tona Moores would materially damage adjacent properties, might damage a potential wetland and endangered species habitat, and be in potential conflict with the Mendocino County General Plan Coastal Element. In combination with these concerns, it is questionable if RES 1-2006 meets applicable coastal development review criteria. The main concerns associated with this proposed re-subdivision are as follows:

1. By the County's own evaluation (BOS-6, April 6 Staff Report RES#1-89 Page 2 Water (Item 3a) "... did not anticipate residential development behind the two subdivisions and now proposed.") the subject parcels of RES1-2006 were not in the original Irish Beach subdivision plan. RES1-89 limited the re-subdivision on Unit 9 lot 4 in 1989 to 3 lots, which Mr. Moores now wants to make into 5 lots (including Unit 9 lot 4). What does RES 1-2006 do to the conclusions documented in the staff report for RES1-89?
2. The original maps and application of RES 1-89 indicated that there would be an easement over Lots Unit 3-39 and 3-40 (County Staff report dated 4/6/89). It was required then, as well as now, that there be a 40 foot wide easement for access to the parcels. Was the impression of the County in 1989 that there would be a 20-foot easement on both lots, 20 foot on lot 3-39 and 20 foot on lot 3-40? The final map shows only a 20-foot easement over Unit 3 lot 39. There is no indication or any discussion that could be located in County records that there was ever a variance approved by the County for this noncompliant 20-foot easement in 1989.
3. Has Mr. Moores now applied formally for a variance to the 40-foot easement requirement? If he has, it appears from the County web site "The Permit Place" that granting a variance would be problematic according to two specific provisions:

"According to State law and County Code, a variance can only be granted where:(1) The special circumstances or conditions necessitating the variance are not due to any action on your part subsequent to the application of the applicable zoning regulations.

(2) The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which your property is located."

The 40-foot right of way has been a requirement since before the original creation of the subject two lots in 1989. Mr. Moores chose to only establish a 20-foot right of way at that time, thus creating the current need for a variance. Since Mr. Moores' own actions created the need for a variance, the County cannot, under this provision, grant a variance.

Granting of the variance would materially damage the lots that the easement abuts, Unit 3 lot 40 and Unit 9A lot 9 (formerly Unit 3 lot 39). Both lots would

be damaged by safety concerns presented by increased traffic over such a narrow noncompliant access. Additionally, lot 3-40 would be damaged by the required increased side yard setback from 6 feet to 20 feet, limiting the buildable area (see Coastal Zoning Code 20.444.015 c). In order for the lot to have an adequate buildable area, in the future the County would need to grant another variance for lot 3-40.

And finally, there is no need for Mr. Moores to be granted a variance to County Code requirements. There are multiple properties for sale adjacent to Mr. Moores' property that he could obtain by purchase or trade to establish a proper, code compliant, right of way. His family corporation even owns some of those lots.

4. Drawings submitted by Mr. Moores for RES 1-2006 in June of 2007 (Tentative Map and Site development plan prepared by Rob Huffman) do not address disposition of the existing 10-foot drainage easement on the west boundary of lot APN 132-320-42. The current access road on the noncompliant easement blocks the public drainage easement and Mr. Moores has proposed to abandon the only culvert that provides drainage from that drainage easement. This potentially damages the adjacent and down gradient properties as well as the Irish Beach Water District's use of the drainage easement.
5. It appears from recent studies and surveys that there may be a wetland over lot APN 132-320-43 that is fed from an existing spring. There may also be an endangered species habitat. The concern documented in RES 1-89 (Finding 3e) is no longer satisfied and there is a risk of damage to wildlife by development of this lot.
6. There are several provisions of the Coastal Act that are embodied in the Coastal Element of the County General Plan that could be jeopardized by the Granting of RES 1-2006. These are quoted as follows:

**Coastal Act Section 30240 Environmentally sensitive habitat areas; adjacent developments**

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

**Coastal Act Section 30250 implemented by Coastal Element County General Plan 3.9-1.**

An intent of the Land Use Plan is to apply the requirement of Section 30250(a) of the Act that new development be in or in close proximity to existing areas able to accommodate it, taking into consideration a variety of incomes, lifestyles, and location preferences. Consideration in allocating



residential sites has been given to:

- each community's desired amount and rate of growth.

**The community does not desire the additional lots.**

One housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate access...

**Mr. Moores proposes only noncompliant access.**

**In Conclusion:**

The approval of RES 1-2006

- Would legitimize the non-compliant inadequate access to the area,
- Damage adjacent property owners and the subdivision as a whole, and
- Be counter to the Coastal Element of the Mendocino County General Plan.

Appendix B (Mendocino County, Case #RES 1-2006 and Irish Beach CC&R's)

The CC&R's for Irish Beach should be considered by the County when a Coastal Re-Subdivision is proposed. In the CC&R's recorded on September 17, 1998 (see attached pages), we note the following on page 1:

"The Original Declarations were combined, amended and restated in their entirety by the First Restated Declaration which were incorporated into supplemental Declarations for Units 7, 7A, 8, 9 and 9A as follows:"

while on page 2 we find:

"Declaration of Covenants and Restrictions dated January 1, 1991 and recorded January 18, 1991 at Book 1882 at Page 689 as amended by documents dated March 30, 1996 and recorded on April 30, 1996 at Book 2328 at Page 409 (Unit 9A)."

Of special importance is Section 7.19 where one finds:

"Section 7.19 Restriction on Further Subdivision and Severability. No Lot shall be further subdivided nor shall less than all of any such Lot be conveyed by an Owner thereof."

Finally, on page 25 one finds the signature of Gordon Moores, President of Mendocino Coast Properties, dated September 8, 1998.

This material suggests to us that the proposed Re-Subdivision is not consistent with the CC&R's for Irish Beach, and we hope that the Department of Planning & Building Services would take this into account.

CONFORMED COPY  
Copy of Document Recorded  
on 09/17/1998 as 1998-17732  
Mendocino County Clerk-Recorder

*Copy From  
Mangione*

---

Space above this line for Recorder's Use

**SECOND DECLARATION OF RESTRICTIONS  
OF MENDOCINO COAST SUBDIVISION  
UNITS ONE, TWO, THREE, and FOUR**

SECOND DECLARATION  
OF RESTRICTIONS OF MENDOCINO COAST  
SUBDIVISION

THAT CERTAIN DECLARATION, executed by MENDOCINO COAST PROPERTIES, a corporation ("Declarant"), entitled "Amended and Restated Declaration of Restrictions, Units One, Two, Three and Four, Mendocino Coast Subdivision" dated October 1, 1971, and recorded on November 16, 1971, in Book 868, Page 131, and corrected April 19, 1974, by that certain document recorded on said date in Book 960 at Page 38 of the Official Records of Mendocino County, California (collectively the "First Restated Declaration"), affects all of the properties described and commonly known as Irish Beach, is hereby amended and restated in its entirety to read as follows:

RECITALS

1. Declarant was the owner of certain property in the County of Mendocino, State of California, which is more particularly described in Exhibit A through D attached hereto and incorporated herein by reference (the "Properties").

2. Declarant originally conveyed the Properties, subject to certain easements, protective covenants, conditions, restrictions, reservations, liens and charges as set forth in four separate declarations of restrictions that were all part of a common plan and scheme of development, namely: (1) Restrictions and Covenants Unit One - Mendocino Coast Subdivision, recorded in the Office of the County Recorder on June 2, 1965, in Book 690 at Page 508; (2) Amended Restrictions and Covenants Unit Two - Mendocino Coast Subdivision, recorded in the Office of the County Recorder on August 31, 1966, in Book 724 at Page 4; (3) Restrictions and Covenants Unit Three - Mendocino Coast Subdivision, recorded in the Office of the County Recorder on March 16, 1967, in Book 736 at Page 135; and (4) Restrictions and Covenants Unit Four - Mendocino Coast Subdivision, dated June 17, 1969, and recorded in the Office of the County Recorder in Book 794 at Page 237 (collectively, the "Original Declarations").

The Original Declarations were combined, amended and restated in their entirety by the First Restated Declaration which were incorporated into supplemental Declarations for Units 7, 7A, 8, 9 and 9A as follows: a) Supplemental Declaration Of Covenants and Restrictions dated May 5, 1980 and recorded on May 6, 1980 at Book 1257 at Page 642 (Units 7 and 7A); b) Declaration of Covenants and Restrictions dated July 20, 1980 and recorded on July 21, 1980 at Book 1266 at Page 312 and amended by document dated September 8, 1989 and recorded January 2, 1990 at Book 1799 at Page 697 (Unit

8); c) Declaration of Covenants and Restrictions dated January 1, 1989 and recorded January 18, 1989 at Book 1729 at Page 473 (Unit 9); d) Declaration of Covenants and Restrictions dated January 1, 1991 and recorded January 18, 1991 at Book 1882 at Page 689 as amended by document dated March 30, 1996 and recorded on April 30, 1996 at Book 2328 at Page 409 (Unit 9A).

The purpose of the easements, protective covenants, conditions, restrictions, reservations, liens and charges of the Original Declarations and the First Restated Declaration were to enhance and protect the value, desirability and attractiveness of the Properties and all of which were intended to run with the Properties and be binding on all parties having or acquiring any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner (as defined herein) thereof.

3. On Sept 9, 1998, 75% of the Owners of Lots within the Properties voted by written ballot to amend and restate the Original Declaration, all in accordance with the procedures for amendment set forth in Paragraph 8(b) of the First Restated Declaration. As so amended and restated, these easements, covenants, restrictions, and conditions shall run with the Properties and shall be binding on all parties having or acquiring any right, title or interest in the Properties or any portion thereof, and shall inure to the benefit of each Owner thereof.

## ARTICLE I Definitions

Section 1.1 "Board of Directors" or "Board" shall mean the Board of Directors of IBIC and/or any appointed subcommittee, thereof.

Section 1.2 "Building Envelope" shall mean that area of a Lot upon which a residence can be built after provisions for a septic system and set back requirements or other physical limitations of the Lot are taken into account.

Section 1.3 "Committee" shall refer to the Architectural Design Committee defined in Article IV.

Section 1.4 "Common Area" shall mean all real property owned or leased by IBIC for the common use and enjoyment of the Owners, including all mutual or reciprocal easement rights appurtenant to separate interests.

Section 1.5 "Common Living Area" of a residence shall

*Pomona Lake Park Beach  
Glenview Park*

gravel or soil will be allowed on any Lot; provided, however, that Lots may be excavated to the extent required by construction plans approved by the Committee pursuant to Article V hereof.

Section 7.17 Parking and Vehicle Restrictions.

(a) All driveways and garages shall be maintained in a neat and orderly condition and garage doors shall not be left open unnecessarily.

(b) No motor vehicle shall be constructed, reconstructed or repaired within the Properties and no dilapidated or inoperable vehicle, including vehicles without wheel(s) or an engine, shall be stored on the Properties; provided however that the provisions of this Section shall not apply to emergency vehicle repairs or ordinary vehicle maintenance that can be accomplished in a few hours.

(c) Unused vehicles, (defined as a vehicle not used or moved for more than four (4) consecutive days) trailers, camper shells, boats, recreation vehicles, motor homes and similar equipment shall be stored in a garage or screened from view from the street or any neighboring Lot.

(d) No vehicles shall be permitted to drive or park on any beach within the Properties.

(e) No vehicle may be parked or otherwise stored in any area not intended for vehicle use. This includes lawns, backyards, or other areas not normally used by vehicles. *Kyle*

Section 7.18 Open Fires. No open fires shall be permitted on the beach portions of the Properties. Open fires on Lots for whatever purpose shall be managed by the Lot Owner in accordance with the County regulations and under the supervision of the local fire department. Nothing contained herein shall be construed to prohibit the use and enjoyment of barbecue fires on a Lot so long as the coals are contained in a conventional barbecue.

*942A 46 not in 2000's*  
Section 7.19 Restriction on Further Subdivision and Severability. No Lot shall be further subdivided nor shall less than all of any such Lot be conveyed by an Owner thereof.

*to take or carry from one place to another; transport*  
Section 7.20 Use of Private Streets in Common Area. Private streets shall not be used for recreational purposes, including "joy riding" or racing. Motorcycles, mopeds, or cars shall be allowed on such private streets only for ingress and egress.

severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

(c) Gender and Number. As used in this Declaration, the singular shall include the plural and the plural the singular, unless the context requires the contrary, and the masculine, feminine or neuter gender shall each be deemed to include the others whenever the context so indicates.

(d) Captions. All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.

(e) Exhibits. All exhibits attached hereto shall be deemed to be incorporated herein by reference.

DATED: Sept 8, 1991

MENDOCINO COAST PROPERTIES, OR ITS SUCCESSORS,

By Gordon Moore  
(President)  
GORDON MOORE

////  
///  
//  
/  
/

# Irish Beach Water District

15401 Forest View Road

Post Office Box 67

Manchester, California 95459

Phone (707) 877-3275 Fax (707) 877-3275

October 3, 2008

Department of Planning and Building Services

Mendocino County

501 Low Gap Road, Room 1440

Ukiah, CA 95482

[tarrf@co.mendocino.ca.us](mailto:tarrf@co.mendocino.ca.us)

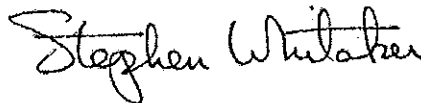
Attn: Fred Tarr

Re: Case # RES 1-2006

Dear Mr. Tarr:

At the September 13, 2008 meeting of the Board of Directors of the Irish Beach Water District, the Board agreed to change its positions stated earlier on February 9, 2008 and July 16, 2008 (see attached letters). Enclosed is a re-referral form indicating that the Board has withdrawn the *conditional approval* and replaced it with *approval*.

Sincerely,



Stephen Whitaker, President  
Board of Directors

cc: Dorothy Cong, Annette Fromwiller, William Moores





COUNTY OF MENDOCINO  
DEPARTMENT OF PLANNING AND BUILDING SERVICES  
501 LOW GAP ROAD • ROOM 1440 • UKIAH • CALIFORNIA • 95482

RAYMOND HALL, DIRECTOR  
Telephone 707-483-4281  
FAX 707-483-5709  
pbs@co.mendocino.ca.us  
www.co.mendocino.ca.us/planning

October 26, 2007

RE-REFERRAL

Planning - Fort Bragg  
Department of Transportation  
Environmental Health - Fort Bragg

Assessor  
Dept of Forestry/ CalFire  
Department of Fish and Game

Coastal Commission  
Addresser  
Irish Beach Fire District  
Irish Beach Water District

CASE#: RES 1-2006

DATE FILED: 6/21/2006

OWNER: WILLIAM & TONA MOORES

REQUEST: Revision of Coastal Re-Subdivision of two legal parcels which total 8.46 acres into four parcels of 2.0 acres, 2.00 acres, 2.34 acres and 2.46 acres and a modification to Use Permit 118-75 to allow for five lots where three lots are permitted.

LOCATION: Within the Coastal Zone, approximately 3.75 miles north of Manchester, approximately 0.33 miles east of the intersection of Highway One and Sea Cypress Drive (CR# 568), in the Irish Beach Subdivision, located at 43586 and 43592 Sea Cypress Drive; AP# 132-320-42 and 132-320-43.

PROJECT COORDINATOR: FRED TARR

RESPONSE DUE DATE: 11/12/2007.

Attached to this form is information describing the above noted project(s). The County Planning and Building Services Department is soliciting your input, which will be used in staff analysis, and will be forwarded to the appropriate public hearing.

You are invited to comment on any aspect of the proposed project(s). Please address any concerns or recommendations on environmental considerations and specific information regarding permits you may require to the project coordinator at the above address or submit your comments by email to [pbs@co.mendocino.ca.us](mailto:pbs@co.mendocino.ca.us). Please note the case number and name of the project coordinator with all correspondence to this department.

8W  
10/31/08  
We have reviewed the above application and recommend the following (please check one):

☒ Recommend approval. The Department has no comment at this time.

☐ Recommend conditional approval (Suggested condition(s) attached).

☐ Applicant to submit additional information (Attach list of items needed).

☐ Recommend denial (Attach reasons for recommend denial).

☐ Recommend preparation of an Environmental Impact Report (Attach reasons why an EIR should be required).

☐ Other comments (Attach additional sheets if necessary).

REVIEWED BY:

Signature

S. Whitaker

Department

I.B.W.D.

Date

02/09/08

2/10/10

From: William M. Moores  
3880 Sleepy Hollow  
Santa Rosa, Ca. 95404  
707-526-3759

To: Fred Tarr  
Mendocino Co. Plan Dept.  
501 Low Gap Rd.  
Ukiah, Ca. 95482

Re: Submittal of revised justifications for submitting the variance request on Res1-06

Dear Mr. Tarr:

I talked with Tom Peters today about his comments in paragraph 2 of his 2/9/10 letter. He agreed with me that there is no detriment to the public welfare. However, he thought that I did a less than thorough job of providing justification for the 20 ft. rather than the 40 ft. right of way suggested by Section 17-48.5(e)(1). In looking over my 4/5/2007 letter previously provided I agree that the justifications are more extensive than provided in my letter. I am therefore submitting this revised letter of justifications to amend my prior answer. You will recall that I had and still do maintain that no variance request was required but your department disagreed and informed me that the application was required to move the project forward in the planning process so I submitted the application you required. The reasons that I maintained and still maintain that no application for a variance to the right of way required is that: A) the county has already granted an variance for the right of way width in 1989 because the improvements required could be contained within it due to the favorable topography as specified in paragraph (i) of section 5e of 17-48.5; B) the county has already issued in 1989 a Use Permit # 118 for the zoned uses which include the two parcels to be created under this application; and © the improvements currently required can still be contained within the existing easement due to the favorable topography. To my mind these outstanding granted, issued and effective variance and Use Permits eliminate the need for additional variance grants. Your department recognized that our current application merely implements the existing zoned uses allowed but because two parcels are being newly created (even though allowed by the zoning) your department required the additional variance application.

The justifications for the granting the of the 20 ft. wide right of way variance as they relate to the 2 additional parcels allowed under the zoning are as follows:

- A) There are special circumstances or conditions affecting the proposed division of land including:
1. There is an outstanding variance granted in 1989 for a 20 ft. right of way to service this area. The underlying landownership that contains the entire easement area agreed to take title subject to the easement rights reserved, including the right to resubdivide;
  2. There is an outstanding Use Permit #118 (113?) for land uses allowed by the zoning. The zoning is not being changed by this application or project.

3. Due to favorable topography there is adequate width within the existing 20 ft. right of way to contain all necessary improvements to meet applicable road standards. Section 17-48.5(e)(i) indicates that the width needed to accommodate the required improvements is the minimum width required. We have a licensed contractors statement that they can install the improvements within the 20 ft. right of way;
4. The County Planning Dept. recently approved issuance of a grading permit for the necessary improvements subject to issuance of a county encroachment permit. The plans approved include that a storm drain is to be installed eliminating the need for a drainage ditch. Additionally the grading plans show no need for additional right of way for cuts and fills due to the favorable topography in the existing road area.
5. The owner of the underlying land over which the easement passes elected to construct a garage 6 ft. north of the right of way and therefore is not willing to grant additional easement width due also to the fact that added width is not required to accommodate improvements.
6. The right of way easement will only serve 4 benefiting parcels, the easement length is only about 160 ft. long and the easement is straight with excellent visibility for its entire length from all parcels that would use it. There is no view blocking vegetation and no need to have added right of way to control adjacent vegetation.
7. Section 17-52(S-1) says easements for new lots shall conform to existing Easements.

B. The granting of this exception will not be detrimental to the public welfare or injurious to surrounding property:

1. This roadway is a private road and utility easement. The easement provides access to a dead-end, pocket area. Therefore there is no detrimental affect on the public welfare.
2. As regards detrimental affects on surrounding property owners: The improvements to be installed are the same improvements required by CAL FIRE Standards for the parcels existing before the creation of the two additional parcels under this project. Since the improvements to be installed would be required for the existing parcels, it would not be correct for anyone to allege that those improvements create any detriment to adjacent surrounding property owners. To the extent that some persons regard any traffic as detrimental we can say that there would be approximately 3 minutes/day of time that additional traffic would use the private driveway easement and that this traffic would primarily affect the ownership over which the easement passes. We can say that the fee land ownership over which this easement passes agreed to take title subject to the easement rights retained, which clearly contemplated this resubdivision application. It does not seem appropriate that someone who agreed to the uses applied for now has standing to complain of those uses being applied. No other surrounding owners would experience any significant detriment that we could identify.

Sincerely, W.Moores

Hello Fred:

I gave a lady in your office a copy of a document dated 8/11/08 from Robert Huffman Engineering to yourself regarding Tom Peters recommendation that we now proceed to the Subdivision Committee with the project for setting conditions. I hope you have recieved it. If not, please contact me.

The essential "nitty gritty" of the most recent comments between Tom Peters and Huffman Engineering are the following:

- 1) Tom Peters proposes the Committee disregard Mendocino County land regulation section 17-88(S-1). No justification for ignoring these section requirements has been offered. We contend that the county is obligated to implement it . Implementing it would be consistent with the existing variance in the form of the outstanding Use Permit # 118-75 issued in 1989 and it is consistent with the road standards spelled out in DOT's recommended conditions #3(e);
- 2) CDF did require changes from the original design and DOT wanted revisions to comply with Section 17-52(L). Huffman Engineering submitted to both CDF and DOT a detailed set of improvement plans for the roadway and the revised tentative map layout requested. Prepartion and submittal of those improvment plans was both to demonstrat that the improvements can be fit and constructed within the existing 20 ft. easement and to show that no ditches are required since there is no natural water course in the easement area. DOT stated in its' recent letter that it will not address the improvement plans. No justification for that decision has been offered. CDF has accepted the improvement plans and the tentative map layout. Thus there is no health and safety issue. With the understanding that there are no ditches required as demonstrated by the plans submitted, we have no problem with the conditions of approval other than the proposed deviation from the requirements of Section 17-88(S-1) proposed by condition 3(a). We applied to implement Section 17-88(S-1) requirements for condition 3(a);
- 3) We obtained a confirmation from a local contractor that the improvements can be constructed by them within the easment without need for any additional adjoining owner permisssions to encroach outside the easement. Huffmand Engineering also submitted its' opiniion that the improvements can be constructed within the existing easement and Huffman submitted documents from the City of Santa Rosa demonstrating that roads of the width required are regularly constructed within a 20 ft. easement. DOT disagrees with Huffmand Engineering, the City of Santa Rosa, and the contractor but has submitted no basis for a contrary opinion.

DOT and Health and ourselves as applicants are now ready to attend a 8/22/08 Subdivision Committee hearing as recommended by DOT.

Bill Moores

-----Original Message-----

**From:** Fred Tarr [mailto:tarrf@co.mendocino.ca.us]

**Sent:** Thursday, August 14, 2008 10:01 AM

**To:** bill@irishbeachrealty.com

**Subject:** Re:

Mr. Moores:

Your e-mail was waiting for me this morning and in response to your concerns;

1. I had requested a site visit with Mr. Macedo and with either Rick Miller or Teresa Spade on July 18, 2008. Mr. Macedo and Teresa are planning on visiting your property today as one of their Coast Site Views. After Mr. Macedo and Teresa have viewed the ESHA areas of concern (the creek and the spring), a determination can be made regarding the request for a 50 foot buffer as opposed to the normally required 100 foot buffer from an ESHA.

2. I did not plan to have anyone from U.S. Fish and Wildlife attend since Ms. Robin Hamlin with Fish and Wildlife conducted a site visit on June 9, 2008.

Sincerely, Fred Tarr



**County of Mendocino**  
**Department of Planning and Building Services**  
501 Low Gap Road · Room 1440 · Ukiah · California · 95482

Raymond Hall, Director  
TELEPHONE 707-463-4281  
FAX 707-463-5709  
PBS@CO.MENDOCINO.CA.US  
WWW.CO.MENDOCINO.CA.US/PLANNING

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MEMORANDUM

TO: Re-Subdivision (Res 1-2006)-William and Tona Moores File

FROM: Fred Tarr

SUBJECT: Conversation Mr. Moores had with Dennis Chaty this day

DATE: April 23, 2008 (4:15P.M.)

Dennis Chaty advised me that he spoke to Mr. Moores and confirmed with Mr. Moores what had been discussed at the Planning Staff meeting this afternoon. Dennis informed Mr. Moores exactly what I have been informing him in my last two letters. If Mr. Moores can provide us with a letter from the Irish Beach Water District Board which states that the District will provide two (2) additional water service hook-ups for the above referenced Re-subdivision, there would be no requirement for approval from the district to drill water wells and there would be no requirement for a hydrological report. Dennis also mentioned that if we received a letter from the President of the Board which rescinded his letter to Planning dated February 9, 2008, and reinstated his letter dated October 13, 2006, there would be no need for Mr. Moores to attempt to provide wells on the proposed parcels.

Mr. Moores asked Dennis who he should contact in the County Counsels office.



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WWW.CO.MENDOCINO.CA.US/PLANNING

May 8, 2008

Mr. William Moores  
3850 Sleepy Hollow  
Santa Rosa, CA.95404

Re: Biological Survey for CD Res. 1-2006


Dear Mr. Moores:

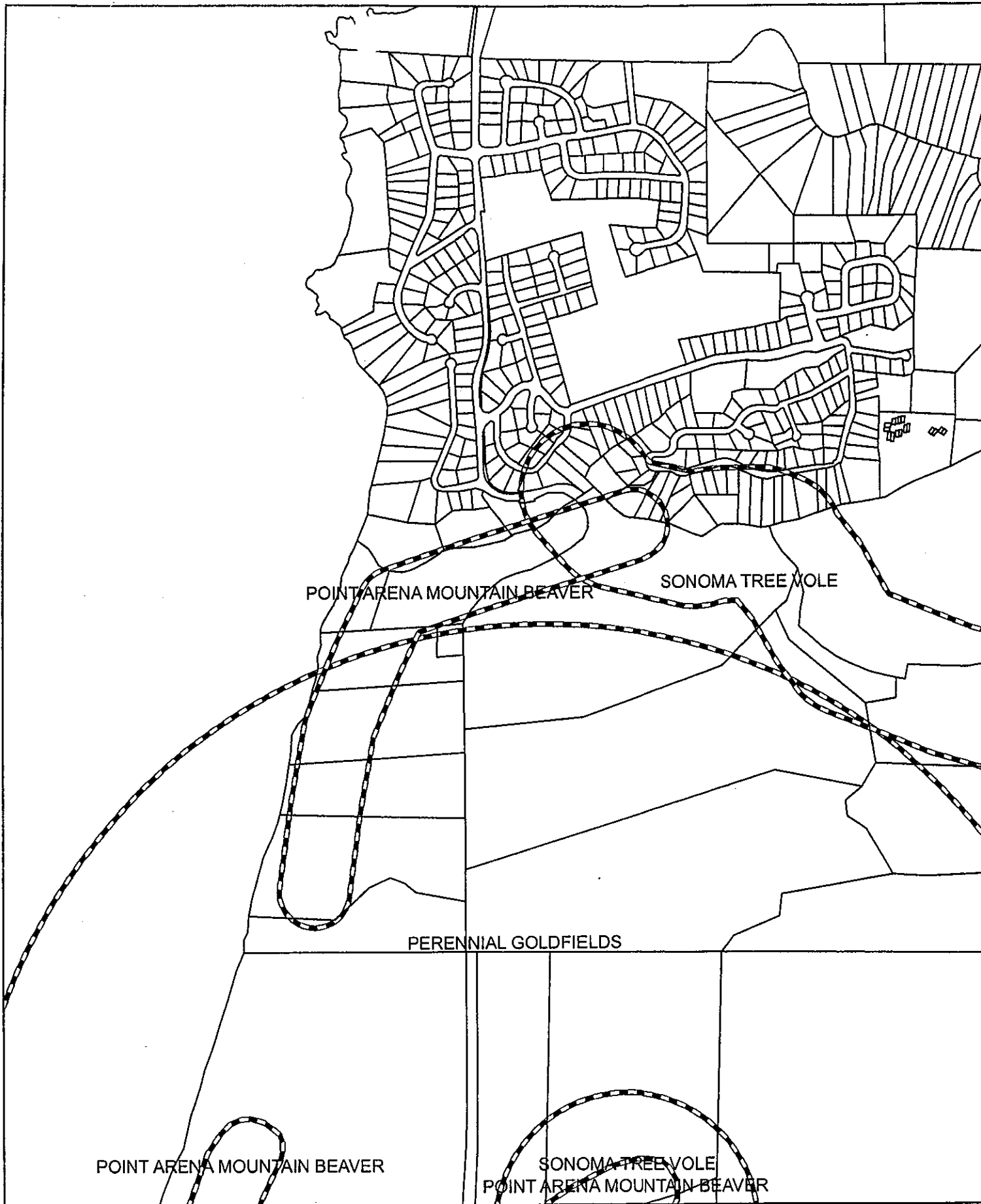
It has been brought to my attention that there are biological issues pertaining to your proposed re-subdivision which must be addressed prior to our presenting your application to the Planning Commission.

The first issue pertains to the natural spring on your property and the possible existence of a wetland located on proposed lots 1 and 2. The other issue pertains to the possible existence, on your property, of the Point Arena Mountain Beaver and the Sonoma Tree Vole, both of which appear on the January, 2008, California Natural Diversity Database Rarefind Map which is made available to Mendocino County Planning and Building Services by the State Department of Fish and Game.

Prior to presenting your application for the resubdivision to the Planning Commission, a comprehensive biological survey will have to be prepared by a qualified biologist to determine whether there is wetland on the property and whether any endangered biological species are in evidence on the property.

Sincerely,

  
Fred Tarr  
Planner II



Parcel lines are approximate. Parcel lines on this map are NOT SURVEY LINES, they are for viewing purposes only and should not be used to determine legal boundary lines. Parcel line can be over 200 feet off. (Parcel lines are as of September 2007)

This map is provided as a visual display of County Information. Map prepared by Mendocino County Department of Planning & Building Services. Reasonable effort has been made to ensure the accuracy of the map and data provided; nevertheless, some information may not be accurate. The positional accuracy of the data is approximate and not intended to represent map accuracy from a published record of survey. THE MAPS AND ASSOCIATED DATA ARE PROVIDED WITHOUT WARRANTY OF ANY KIND. Either expressed or implied, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose. Do not make a business decision based on these data without first validating the information with appropriate County agency or other government entity.

CALIFORNIA NATURAL DIVERSITY  
DATABASE RAREFIND (January 2008)

450 225 0 450  
Feet



**From:** <wmoores@irishbeachrealty.com>  
**To:** "Fred Tarr" <tarrf@co.mendocino.ca.us>  
**Date:** 5/13/2008 5:12:53 PM

Dear Mr. Tarr:

Regarding your belated 5/8/2008 letter requesting a biologic survey for the Pt. Arena Mtn. Beaver and Sonoma Tree Vole and a determination of whether there is a wetland: please provide an e mail explanation of who origininally brought this matter to your attention (not the origin of a study requirement, but who suggested that these matters may be issues and may require a study).

Also, there is a good spring on the property which has been developed with concrete catchment boxs and has been used for a domestic water source for at least 50 years and probably more. I am not going to be open to the suggestion that this water source constitutes a wetland that requires a 50-100 ft. set from any development activity. It is a developed water source which has been developed and will continue to be developed and used adn maintained as it always has been. Health department set backs will be applied-but not wetland setbacks from this spring.

I will proceed to have a survey report prepared.

Bill Moores



7/2/08

From: William Moores  
3880 Sleepy Hollow  
Santa Rosa, Ca. 95404  
707-526-3759  
To: Fred Tarr, Mendo.Co.Plan Dept.  
501 Low Gap Rd  
Ukiah, CA. 954082

Re: Resub application #1-2006

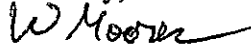
Dear Fred:

In the recent past you requested that I obtain information related to the Pt. Arena Mtn Beaver for this site. I contacted John Hunter from the US Fish and Wildlife office in Arcata and they sent out their agent. The enclosed letter provides the result of their on-site inspection. Since there is no development proposed on the upper NE portions of the property I assume that you agree that this report satisfies your request.

I also hired Alison Gardner to prepare a botanical report and she informed me two days ago that she plans to mail out her report on Thursday or Friday. I will see that you receive a copy of the report when I get it.

As soon as Robert Huffman engineering receives a response to his submitted improvement plans and map revisions required by the county DOT and CDF I will be requesting a date for meeting with the subdivision committee. Perhaps you can tentatively schedule that meeting for a July Date. I seek to insure that this application is before the Planning Commission by the September PC meeting date and before the Board of Supervisors in October. If you see impossibility with that schedule, please call to discuss what makes that schedule impossible so we can address it. This application is now almost 2 years old and most of the time has been consumed by slow agency responses.

Sincerely,

  
W. Moores

# HUFFMAN ENGINEERING & SURVEYING

537 College Avenue, Suite A, Santa Rosa, CA 95404  
707-542-6559 Fax 542-6621

June 17, 2008

Tom Peters, Deputy Director  
Department of Transportation  
340 Mendocino Drive  
Ukiah, CA 95482

RE: Re-subdivision No. RES 1-06 (Moore's)

Dear Tom,

Below are responses to your letter dated 6/5/08.

Comment	Response
1. This revised tentative map and site plan has changed substantially since the original tentative map was referred out on 28 September 2008. The tentative map dated 2/26/08 does not match the description of the project in the referral dated 10/26/07. The description still refers to a 14 ft. wide road with a turnaround at the junction of Parcels 1, 2, and 3, and "a connection to the existing rocked emergency fire access road." This connection is not shown on the latest tentative map.	Although you reference a substantial change, the number of lots has not changed nor the access road leading to Parcels #1 - 4 from Sea Cypress Drive. The access through the common road on Lot #9 Unit 9-A, the Wolfe parcel, has always been designed as a 20' wide road with a 20' easement.
2. The proposed boundary between Parcel 4 and Parcel 3 has changed and a driveway is proposed to serve each parcel from the subdivision road. Parcel 2 has been changed to a flag lot with 20 ft. wide stem extending from the end of the common subdivision road which only extends approximately 27 ft. east of the lot line between Parcel 3 and 4. The new configuration of Parcel 2 does not meet the minimum requirements of Section 17-52(L) of the Mendocino County Division of Land Regulations which states "Flag lots or parcels whose access to the abutting street is provided by a strip or segment which is part of said lot or parcel may be approved by the Planning Commission when necessitated by topography or other special condition, provided however, that the main portion of	We have slightly reconfigured Parcel 2. We have reduced the driveway within the 20' wide access strip of Parcel 2 to less than 300' as required by Section 17-52(L) of the Mendocino County Division of Land Regulations Article VI, General Regulations and Provisions.  The turnaround we have laid out at Lot #4 and #1 is central to the building envelopes on Lots #4, 3, and 2 as well as the home located on Lot 9, Unit 9-A, the Wolfe Parcel. Also, there is an existing fire hydrant located a Sea Cypress Drive which is less than 150' from the turnaround. This location from a Fire Department standpoint is a desirable location to fight a fire.

<p>the lot meets the provision of this Chapter as to length, depth, area and design. In no case shall the access strip be less than twenty (20) feet in width nor greater than three hundred (300) feet in depth and improvements shall be constructed therein to provide an all weather driveway." The stem portion of the flag lot is greater than 300 feet in length and there is no necessity for this parcel to be a flag lot. We recommend that the tentative map be revised to show the subdivision road (20 feet wide), within a forty (40) foot wide easement, extending to the northerly corner of Parcel 2 with a forty (40) foot radius turnaround or, with approval of the Calfire and the local fire department, a hammerhead T turnaround.</p>	
<p>3. We continue to recommend the following conditions of approval for this application (subject to revision upon review of a revised tentative map):</p> <ul style="list-style-type: none"> <li>a) No. 9, modified to read: "There shall be provided an access easement of 40 feet in width (minimum) from a publicly maintained road to each parcel being created. Documentation of access easement shall be provided to the Mendocino County Department of Transportation for their review prior to final approval."</li> <li>b) No 11, to read: "When the Final Map is filed, all easements of record shall be shown on the parcel map. All utility lines shall be shown as easements with widths as shown of record or a minimum of ten (10) feet, whichever is greater."</li> <li>c) No. 12, to read: "If approval of the tentative map is conditioned upon certain improvements being made by the subdivider, the subdivider shall notify the Mendocino County Department of Transportation when</li> </ul>	<ul style="list-style-type: none"> <li>a) The access through the Wolfe property has a 20' wide easement. This 20' wide easement was a variance for a Use Permit Approval #118-75 issued in 1989 for the original subdivision. Section 17-52(S-1) of the Mendocino County Division of Land Regulations Article VI, General Regulations and Provisions lots containing less than 2.5 acres shall conform to existing easements unless that easement is relocated to conform within the proposed lot pattern. We believe that your requirement for a 40' wide easement through the Wolfe Parcel is contrary to both the code and Use Permit/Variance as stated above.</li> <li>b) We agree.</li> <li>c) We agree.</li> </ul>

<p>such improvements have been completed."</p> <p>d) No. 16, to read: "All natural drainage and water courses shall be shown as easements on the Final map. Minimum width shall be twenty (20) feet, or to the high water level plus five (5) feet horizontal distance, whichever is greater. (All parcels 5 acres and less)"</p> <p>e) No. 17E, to read: "A standard private road approach shall be constructed to a minimum width of eighteen (18) feet, area to be improved twenty (20) feet from the edge of the County road, to be surfaced with 2" asphalt concrete over 6 inches of Class 2 aggregate base."</p> <p>f) No. 17G, modified to read: "A 40-foot radius turnaround to be constructed within a 50-foot radius easement at terminus of access easement to the satisfaction of the Mendocino County Department of Transportation. If approved in writing by the applicable fire protection service provider(s), in lieu of the turnaround described above, subdivider shall construct a modified "Hammerhead-T" turnaround (with the leg of the "T" extending 40 feet from the edge of the road, within a forty (40) foot wide by sixty (60) foot long easement, as measured from the centerline of the access easement), at the terminus of the access easement. Turnaround shall be constructed with four (6) inch minimum rock base, two (2) inch asphalt concrete surface eighteen (18) feet wide, with twenty (20) foot radius surfacing returns.</p> <p>g) No 19, modified to read: "Subdivision road shall be improved in accordance with the typical section drawing provided and the following minimum standards:</p>	<p>d) We would like a clarification of natural drainage. We plan to route storm water along the northerly side of the driveway either in a roadside ditch or a gutter pan. We do not believe that the diversion of storm water along the roadway constitutes natural drainage.</p> <p>e) We agree.</p> <p>f) We have shown a hammerhead type turnaround at Parcels #1, 3 and 4.</p> <p>g) We agree with the requirements. We would like to qualify the minimum ditch offset as we are proposing no ditch on portions of the access road. Please clarify 10 year storm with no head; we have assumed you are referring to culverts.</p>
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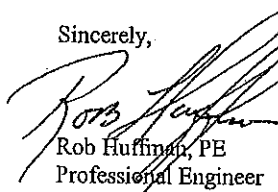
Road width                      20 feet Surface Width                18 feet Minimum Ditch Offset        5 feet Design Speed                25 mph Maximum Grade               15% Base    6 inch min. Class 2 agg. Base Surface Type 2" min. asphalt concrete Drainage 10 yr storm with no head	
Road improvements shall be constructed in accordance with improvement plans prepared by a civil engineer and approved by the Dept. of Transportation; or improvements shall be constructed under the direct supervision of a civil engineer who, upon completion of improvements, shall file a report with the Dept. of Transportation verifying the road improvements have been constructed in substantial compliance with the prescribed minimum standards and accepted industry practices.	We agree.

We have also included the Grant Deed, which grants to William and Tona Moores a non-exclusive easement for ingress, egress and public utilities over the southerly 20' of Lot 39, Unit 3, the Wolfe Parcel. Also, the Grant Deed of easement indicates that this easement is appurtenant to Lot 4, Unit 9, the Moores Parcel and each and every subdivision and re-subdivision thereof.

We believe the tentative map and improvement plans submitted meet all current codes and all standards and variances in the Conditions of Approval. If you do not agree, please contact us as soon as possible so that we may address any issues. County counsel may need to be consulted to determine if the tentative map meets the intent of the code and Use Permit/Variance.

We look forward to hearing from you in the near future.

Sincerely,

  
Rob Huffman, PE  
Professional Engineer  
RH:fv  
06-53



cc: Fred Tarr, Planning and Building Services  
RES 1-06

encl



**County of Mendocino**  
**Department of Planning and Building Services**  
501 Low Gap Road · Room 1440 · Ukiah · California · 95482

Raymond Hall, Director  
TELEPHONE 707-463-4281  
FAX 707-463-5709  
PBS@CO.MENDOCINO.CA.US  
WWW.CO.MENDOCINO.CA.US/PLANNING

September 25, 2008

Mr. Bill Moores  
3880 Sleepy Hollow Rd.  
Santa Rosa, Ca. 95404

Re: CDRes 1-2006-Irish Beach Re-Subdivision

Dear Mr. Moores:

It has come to my attention that you recently had an area cleared on proposed Parcel 2 of the above referenced project and your tractor operator may have stacked the brush on the wetland area. This clearing was done after I had advised you, in a letter dated September 9, 2008, of the need for a complete wetland delineation on proposed Parcel 2 as well as a revised botanical survey on the whole property and a complete general wildlife survey that would include Point Arena Mountain Beaver, raptors, Sonoma Tree Voles and other potentially occurring sensitive wildlife species on the whole property.

As of today, I have not received the certified wetland delineation, the revised botanical survey or the complete general wildlife survey and I have no way of telling, whether or not, the grading that was performed is within an ESHA area, within a buffer area or outside of both.

It is my understanding that you had Mr. Matt Richmond conduct a Point Arena Mountain Beaver survey on this property and that a map was prepared which delineates the Point Arena Mountain Beaver habitat area. At this time, the Planning staff is requiring that you have a licensed land surveyor stake the proposed parcels as well as the Point Arena Mountain Beaver habitat area that Mr. Richmond has delineated on a map. This will allow staff a chance to evaluate the distance between the habitat area and the area that has been graded. This will also assist in defining any building envelopes that are proposed. I also request that you contact me at least seven days in advance of the land survey date so that a staff person may be present.

I reiterate that this project is on hold under CEQA guidelines.

Sincerely,

  
Fred Tarr  
Project Planner

Cc: Rick Macedo, State of California Dept. of Fish and Game  
John Hunter, US Fish and Wildlife  
Frank Lynch, Acting Planning and Building Services Department Director  
Rick Miller, Mendocino Co. Coastal Planning Staff  
Teresa Spade, Mendocino Co. Coastal Planning Staff  
John Speka, Mendocino Co. Planning Staff  
Angie Hamilton, Coastal Code Enforcement  
Frank Zotter, County Counsel

**From:** "Richard Macedo" <RMACEDO@dfg.ca.gov>  
**To:** "Paula Deeter" <deeterp@co.mendocino.ca.us>, "Frank Lynch" <lynchf@co.mendocino.ca.us>, "Teresa Spade" <spadet@co.mendocino.ca.us>, "Fred Tarr" <tarrf@co.mendocino.ca.us>  
**Date:** 9/23/2008 11:42:50 AM  
**Subject:** Fwd: Moores' Veg. Clearing

All:

I thought you may be interested in reading an email I received from Bill Moores (see below).

Rick

Rick Macedo  
Staff Environmental Scientist  
Coastal Conservation Planning  
Northern Region  
California Department of Fish and Game  
P.O. Box 1338  
Cobb, California 95426  
(707) 928-4369

>>> <bill@irishbeachrealty.com> 9/16/2008 4:01 PM >>>  
Dear Rick:

Here are some letters on the two matters (minor division and GP application) and exhibits and maps we recently discussed.

By the way I was doing a minor clearing of a small area of about 70 ft. by 150 ft. this last week-end for a firebreach immediately next to the southerly building site off Sea Cypress Dr. and so that I could have a building topographical map prepared and my tractor operator piling the brush for buring this winter noticed that my neighbor who has opposed my project at prior hearings was taking photos of the clearing and piling work. I made absolutely certain that this work was not anywhere near the designated burrow habitat as flagged out by Matt Richmnond. I assume that there is no problem with this. I certainly am not aware of any coastal regulation or prohibition or permit requirement for clearing backrus or making a firebreak, particularly, when it is not within 100 ft. of any known Mtn. Beaver burrows. The ranchers along our section of coast regularly clear the backrus on their land and I am not aware that any permits that have been required of them. I notice a large area just recently plowed and disced just south of Elk on the ocean front. This same backrus grows on all of the rancher's land and is regularly burned off and plowed by them, just as we have done. If you know of any reason that I should not have done this work, please let me know.

Bill Moores

## **Fred Tarr - Illegal Grading and Plant Removal in an Environmentally Sensitive Habitat Area**

---

**From:** Fred Tarr  
**To:** Angie Hamilton  
**Date:** 9/15/2008 11:10 AM  
**Subject:** Illegal Grading and Plant Removal in an Environmentally Sensitive Habitat Area  
**CC:** James McCleary

---

Angie:

I just received word from a neighboring property owner that there has been grading and plant removal done this past weekend on lands owned by Bill Moores.

The area in question is a portion of APN 132-320-42 and 43 which is located in the Irish Beach Area.

On August 14, 2008, Teresa Spade from our Coastal Planning Office and Rick Macedo from the California Department of Fish and Game conducted a site view of the property and identified wetland areas on the property. It is my understanding from the neighbor that the area near an existing spring on the property was disturbed as were other areas on the parcels.

I am requesting that you conduct a site view of the area to determine what damage to the Environmentally Sensitive Habitat Areas has been done. Mr. Moores is aware of our concerns.

Regards, Fred



F41

Re Sub file



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Arcata Fish and Wildlife Office

1655 Heindon Road

Arcata, California, 95521

Phone: (707) 822-7201 FAX: (707) 822-8411



RECEIVED  
OCT 14 2008

BY  
PLANNING & BUILDING SERVICES  
Ukiah, CA 95482

OCT 09 2008

In Reply Refer To:  
8-14-TA-2008-3448.2

Mr. William Moores  
3880 Sleepy Hollow Road  
Santa Rosa, CA 95404

**Subject:** Potential Unauthorized Activities at Irish Beach Subdivision, Mendocino County, California

Dear Mr. Moores:

It has come to the attention of the U.S. Fish and Wildlife Service (Service) that you have removed habitat known to be occupied by the Federally-listed Point Arena mountain beaver (*Aplodontia rufa nigra*). The habitat was removed from parcel APN 132-320-043 on or about September 13, 2008.

Section 9 of the Endangered Species Act (Act) prohibits the take of any Federally-listed animal species by any person subject to the jurisdiction of the United States. Section 11 of the Act provides both criminal and civil penalties for those convicted of section 9 violations. As defined in the Act, take means "...to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Harm has been defined to include significant habitat destruction when it injures or kills a listed species by significantly impairing essential behavioral patterns, such as breeding, feeding, or sheltering. Thus, not only is the Point Arena mountain beaver protected from such activities as trapping, but also from actions that damage or destroy their habitat, such as the destruction and removal of habitat occupied by Point Arena mountain beavers. The term "person" is defined as "...an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal government, of any State, municipality, or political subdivision of a State, or any other entity subject to the jurisdiction of the United States."

Take incidental to an otherwise lawful activity may be authorized by one of two procedures. In your situation, where a Federal agency is not involved with permitting, funding, or carrying out the project, and Federally-listed species may be taken as part of the project, then an incidental take permit pursuant to section 10(a)(1)(B) of the Act should be obtained. The Service may issue such a permit upon completion of a satisfactory Habitat Conservation Plan (HCP) for listed-species that would be taken by the project. The Service is unaware of any incidental take authorization issued to you that would cover your removal of the subject occupied Point Arena mountain beaver habitat.

We are thus concerned that your activity proceeded ahead of the statutory requirement without exemption from section 9 prohibitions against take. Accordingly, we have referred this matter to

our Office of Law Enforcement for further investigation and potential action under the Act. In addition, we recommend that you immediately stop any additional vegetation removal activities that may result in further potential unauthorized take of Federally-listed species, and obtain the appropriate incidental take authorization as required by the Act for any future work that may result in take of Federally-listed species. As the Service has done many times in the past, we again offer you technical assistance so that your activities avoid take of Federally-listed species, or so that you may obtain an appropriate authorization via section 10(a).

The Service requests your cooperation in this matter. Specifically, we request permission to visit the location in question in order to gather additional information. Please contact Randy Brown, Deputy Field Supervisor, at the letterhead address or at (707) 822-7201 with your response, or if you have any questions.

Sincerely,

Acting  
For

Michael M. Long  
Field Supervisor

cc:

Office of Law Enforcement, USFWS, Sacramento, CA (Attn: Daniel Crum)

Office of the Regional Solicitor, DOI, Sacramento (Attn: Kerry O'Hara)

Mendocino County Planning and Building Services, Ukiah (Attn: Frank Lynch)

## **Fred Tarr - USFWS is pursuing Moores violation**

---

**From:** Teresa Spade  
**To:** john\_e\_hunter@fws.gov  
**Date:** 10/9/2008 8:47 AM  
**Subject:** USFWS is pursuing Moores violation  
**CC:** Frank Lynch; Fred Tarr; John Speka; Richard Miller

---

Hi John,

I have attached the maps (end of the attached report) for the clearing that has apparently occurred on the lots associated with CDV 2005-0009, as you requested over the phone this morning. Hopefully this will be useful at least as background information as your enforcement division pursues the habitat removal violation associated with the subdivision lot CDRes 1-2006 at 43592 and 43586 Sea Cypress Rd. in Irish Beach.

If your enforcement division needs additional information regarding numerous other known violations in the Irish Beach area or associated with Mr. Moores, please have them contact us.

Tess

Teresa Spade  
Planner II  
Planning and Building Services  
790 South Franklin St., Fort Bragg, CA  
(707)964-5379  
(707)961-2427 (Fax)  
[spadet@co.mendocino.ca.us](mailto:spadet@co.mendocino.ca.us)

**STAFF REPORT FOR  
STANDARD COASTAL DEVELOPMENT VARIANCE PERMIT**

**CDV# 9-2005 (Moores)  
November 20, 2006  
CPA-1**

**OWNER:** William Moores  
3880 Sleepyhollow  
Santa Rosa, CA 95404

**REQUEST:** Variance to front yard setback for 3 parcels and reduction of 100-foot riparian vegetation setback to 50 feet for 5 parcels in order to establish a building envelope for future development.

**LOCATION:** In the coastal zone, in the Irish Beach Subdivision, on the north side of Forest View Road (CR 551A), approximately 100 feet south of its intersection with Pomo Lake Drive (CR 551) at 15941, 15961, 15971, and 15981 Forest View Road, and 44451 Pomo Lake Drive (APNs 132-141-05, -06, -07, -08, & -09).

**APPEALABLE AREA:** Yes (variance, ESHA)

**PERMIT TYPE:** Standard (variance)

**TOTAL ACREAGE:** 60,000 sq. feet

**ZONING:** SR

**GENERAL PLAN:** Suburban Residential

**EXISTING USES:** Undeveloped

**SUPERVISORIAL DISTRICT:** 5

**ENVIRONMENTAL DETERMINATION:** Categorical Exemption, Class 5(a)

**PROJECT HISTORY:** The applicant originally requested that a blanket variance be applied to all the subject parcels, reducing the front yard setback from 20 feet to 2 feet. During the course of the application analysis, it was suggested that a reduced buffer to the riparian zone be delineated, and this was then added to the request. The Department of Transportation responded to the project referral that a front yard setback of 2 feet would not be acceptable. The revised request is a reflection of changes made to accommodate DoT requirements as well as the inclusion of the reduced riparian buffer request.

**PROJECT DESCRIPTION:** The applicant requests the establishment of a setback variance for five adjoining parcels in the Irish Beach Subdivision, on the east side of Highway 1. The parcels are each approximately 1,200 sq. feet in size, and are constrained by the presence of riparian habitat along the northern property lines. The applicant requests a variance from the zoned 20-foot front yard setback to 12 feet for parcels 132-141-07 & 132-141-08 along Forest View Road, and a variance from the zoned 20-

**STAFF REPORT FOR  
STANDARD COASTAL DEVELOPMENT VARIANCE PERMIT**

CDV# 9-2005 (Moores)  
November 20, 2006  
CPA-2

foot front yard setback to 10 feet<sup>1</sup> along Forest View Road and Pomo Lake Drive for parcel 132-141-09. The applicant also wishes to establish a reduced buffer to the riparian area from the required 100 feet to 50 feet for parcels 132-141-05, -06, -07, -08 & -09. The purpose of the variance request is to allow for adequately sized building envelopes for future residential developments on the subject parcels.

**PROJECT SUMMARY:** No development is being authorized by this permit. The project request is not for approved building envelopes, and has not been analyzed for approved building envelopes. The extent of the analysis has been to establish a reduced buffer setback from the riparian area, and to establish reduced front yard setbacks for the applicable parcels, as described above. Development occurring on the subject lots will require a complete analysis, possibly including but not limited to botanical, biological, and archaeological surveys. The approval of the setback variances as described above does not in any way suggest an assumption of development approval. The scope of analysis is far too limited for such an assumption.

**Natural Resources** Note: The intent of this natural resources analysis is specific to the riparian vegetation, strictly for the purpose of delineating a possible reduction in the 100 foot default riparian buffer to 50 feet, for possible future development located on the subject parcels. While the Site Plan shows the 50-foot buffer area as a line on a map, in reality the natural environment changes over time, and the edge of the riparian area is likely to shift. When specific developments are proposed on the subject parcels, the location of the riparian edge will then be delineated, and the 50-foot buffer would apply to the riparian edge existing at the time development is proposed. Please note also that this analysis does not include other Environmentally Sensitive Habitat Areas; the potential presence of wetlands, rare or endangered plants, or rare, threatened or endangered animals has not yet been considered. A full analysis for Environmentally Sensitive Habitat Areas would need to be conducted on each parcel when development is proposed.

The applicant requests that a reduced buffer from the standard 100 feet to 50 feet be allowed for future residential developments from the riparian area located along the northern property lines of the 5 adjacent lots. A riparian survey was conducted by William Maslach on October 10, 2005. Mr. Maslach delineated and mapped a 50 foot buffer line from the edge of the riparian zone. A reduced buffer analysis was completed, and the following mitigation measures were proposed:

**Mitigation Measure 1a:** Install temporary fencing to ensure grading and/or material storage does not occur in the stream or riparian vegetation. Temporary fencing or flagging will be placed on the edge of the buffer from the riparian vegetation to ensure no heavy equipment or soil disturbance occurs within this area.

**Mitigation Measure 1b:** Enhancement of native vegetation. Several Monterey pine (*Pinus radiata*) are growing on the north end of some of the parcels. These trees are not native to Mendocino County and are considered invasive plants. Because these trees are growing adjacent to the riparian vegetation they pose a threat to the native biodiversity of the riparian corridor, and should be considered for removal as a mitigating measure to improve the native vegetation.

Other herbaceous non-native plants occur in the drainage. Their removal and replacement with native ferns and shrubs would enhance the riparian vegetation. This work would be overseen by a biologist and reported to the County on an annual basis for several years to ensure compliance and success.

<sup>1</sup> Along the corner of the lot, the setback would increase to a maximum of approximately 16.25 feet to allow for a DoT 100-foot sight distance line along the County roads.

**STAFF REPORT FOR  
STANDARD COASTAL DEVELOPMENT VARIANCE PERMIT**

CDV# 9-2005 (Moores)  
November 20, 2006  
CPA-3

Due to the nature of the application, in that no development is presently proposed, and due changes in the environment that may occur over time between the time the variance is approved and the time in which development may be proposed for the subject parcels, Staff feels that tree removal would be premature and possibly detrimental. The installation of temporary fencing or flagging and other mitigation measures as appropriate to mitigate for specific developments will be included as part of a development permitting process when specific developments are proposed, in order to ensure that natural resources mitigation and protective measures are in step with the proposed developments.

**Transportation** Note: The intent of this transportation analysis is specific to the reduction of the default twenty foot front yard setback for future proposed development for the subject parcels as discussed below. The analysis does not consider the development of future encroachments onto County roads or construction within the County right-of-way. A transportation analysis for encroachment would need to be done in association with development on each of the subject parcels.

The five subject adjoining parcels are located along Forest View Road (CR 551 A). The lot at the end (APN 132-141-09) is a corner lot with frontage on both Pomo Lake Drive (CR 551) and Forest View Road. Tom Peters of the Department of Transportation (DoT) reviewed the original request referral for a front yard setback variance from 20 feet to 2 feet. As this request did not comply with DoT sight distance and other requirements, Mr. Peters met with the applicant and came up with an alternative plan. Comments from DoT regarding the variance referral are as follows:

1. The applicant requested a variance to the front yard setback from twenty (20) feet to two (2) feet for five (5) parcels, to establish building envelopes on each parcel for future development. The subject parcels are located in the community of Irish Beach, on the north side of Forest View Road (CR 551 A) at the intersection with Pomo Lake Drive. Lot 51 (APN 132-141-09) is a corner lot with frontage on both Pomo Lake Drive and Forest View Road. Lots 47, 48, 49, and 50 take access from their frontage on Forest View Road.
2. The original request to reduce the front yard setback from 20 feet to 2 feet is not acceptable due to inadequate sight distance and other issues.
3. After meeting with the applicant, we were given a plan titled "Building Setbacks 47, 48, 49, 50, 51 Irish Beach" (hereinafter called the Plan). The Plan shows proposed building envelopes and septic areas for each parcel. Based on the Plan, the building envelopes proposed for Lot 47 and Lot 48 do not require a variance to the front yard setback since the proposed building envelopes are in excess of fifty (50) feet from the front property line.

**STANDARD COASTAL DEVELOPMENT VARIANCE PERMIT**

November 20, 2006  
CPA-4

Forest View Road and Pomo Drive. Special Condition Number 1 is recommended to ensure that a deed restriction is required for all impacted parcels, outlining the conditions of approval as requested by DoT.

**REQUIRED FINDINGS:** Section 20.540.020 of the Coastal Zoning Code requires that the approving authority make all of the following findings prior to granting variances within the Coastal Zone:

- A. *That there are special circumstances applicable to the property involved, including size, shape, topography, location or surroundings.*

**DISCUSSION:**

The subject parcel is located in a Suburban Residential zoning district. Section 20.384.005 of MCC states: "This district is intended to be applied adjacent to existing developed communities on the urban side of the urban/rural boundary, or in areas suited for future residential growth. Lands within this district

**STAFF REPORT FOR  
STANDARD COASTAL DEVELOPMENT VARIANCE PERMIT**

CDV# 9-2005 (Moores)  
November 20, 2006  
CPA-4

Forest View Road and Pomo Drive. Special Condition Number 1 is recommended to ensure that a deed restriction is required for all impacted parcels, outlining the conditions of approval as requested by DoT.

**REQUIRED FINDINGS:** Section 20.540.020 of the Coastal Zoning Code requires that the approving authority make all of the following findings prior to granting variances within the Coastal Zone:

- A. That there are special circumstances applicable to the property involved, including size, shape, topography, location or surroundings.*

**DISCUSSION:**

The subject parcel is located in a Suburban Residential zoning district. Section 20.384.005 of MCC states: "This district is intended to be applied adjacent to existing developed communities on the urban side of the urban/rural boundary, or in areas suited for future residential growth. Lands within this district should be served by public roads and adjacent to or within a public service area." The minimum parcel size in the district is 12,000 sq. ft. and each parcel has a water district service agreement or commitment. Four of the subject parcels are approximately 12,000 sq. ft. in size, similar in size and shape to the surrounding parcels. The fifth parcel is a corner lot, and as such has two front yards, one for each side adjacent to a road. This lot is approximately 14,576 sq. feet in size. The larger size of this lot compensates in just proportion for the resulting extra area needed for the additional 20-foot front yard setback, which appears to have been assumed when the parcel was created. The special circumstance applicable to these parcels is the presence of riparian habitat located along the northern property lines of the subject parcels. With the application of a 100-foot buffer to the edge of the riparian area, the development area becomes restricted to an area far smaller than that enjoyed by neighboring parcels. A reduced buffer to 50 feet may in and of itself resolve this issue. The riparian area and its associated 100-foot buffer cause a special circumstance of surroundings and that the requested reduction to a 50-foot buffer can be positively assessed based on existing conditions to help rectify these special circumstances due to the following: a reduced buffer analysis has been provided in conjunction with a riparian survey report by a qualified botanist, and that reduced buffer analysis finds that a 50-foot buffer is adequate to protect the resource. For the applicable parcels, a reduced front yard setback can also be legitimized due to constraints applied to the parcels by the riparian setback area, even as reduced to 50 feet. This finding can be made.

- B. That such special circumstances or conditions are not due to any action of the applicant subsequent to the application of the zoning regulations contained in the Division and applicable policies of the Coastal Element.*

**DISCUSSION:**

The subdivision that created these parcels occurred in the 1960s, prior to the inception of the Coastal Act. When the sizes of the subject parcels were delineated, a buffer to the riparian area was not a consideration. This finding can be made.

- C. That such variance is necessary for the preservation and enjoyment of privileges possessed by other property in the same vicinity and zone and denied to the property in question because of special circumstances identified in Subsection (A).*

**STAFF REPORT FOR  
STANDARD COASTAL DEVELOPMENT VARIANCE PERMIT**

**CDV# 9-2005 (Moores)  
November 20, 2006  
CPA-5**

**DISCUSSION:**

With the application of a 100-foot buffer to the riparian area, the development area would be reduced to a size that is unlikely to support a residential development and the necessary accessory improvements such as a septic system. For the applicable parcels as delineated above, the reduced front yard setbacks as proposed would also be needed to allow a development area on said parcels of similar size as surrounding parcels. This finding can be made.

*D. That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property in the same vicinity and zone in which the property is located.*

**DISCUSSION:**

The granting of the variance for a reduced buffer from 100 feet to 50 feet from the riparian area would not be materially detrimental to the public welfare or injurious to the property in the same vicinity and zone in which the property is located. The reduced buffer analysis further indicates that with the mitigations proposed, the reduced buffer would not detrimentally impact the riparian area. For the applicable parcels, the granting of the variance for the reduced front yard setback would not be materially detrimental to public welfare or injurious to the property in the same vicinity if the requirements as set forth by the Department of Transportation are adhered to. With the inclusion of the deed restriction for applicable parcels, this finding can be made.

*E. That the variance does not authorize a use or activity that is not otherwise expressly authorized by the zoning provisions governing the parcel.*

**DISCUSSION:**

The variance does not authorize any specific use or activity. This finding can be made.

*F. That the granting of such variance is in conformity with all other provisions of this Division and the Mendocino Coastal Element and applicable plans and policies of the Coastal Act.*

**DISCUSSION:**

Staff did not identify any other provisions of the County Coastal Zoning Code, Coastal Element or the Coastal Act which conflict with the requested variance. Therefore, this finding can be made.

**RECOMMENDED ACTION FOR CDV #2005-0009:** Staff recommends that the Coastal Permit Administrator approve the proposed coastal development variance request, since the required findings for approval of a variance can be substantiated.

**STANDARD CONDITIONS:**

1. This action shall become final on the 11<sup>th</sup> day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall become effective after the ten (10) working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. The permit shall



**STAFF REPORT FOR  
STANDARD COASTAL DEVELOPMENT VARIANCE PERMIT**

**CDV# 9-2005 (Moores)  
November 20, 2006  
CPA-6**

expire and become null and void at the expiration of two years after the effective date except where construction and use of the property in reliance on such permit has been initiated prior to its expiration.

To remain valid, progress towards completion of the project must be continuous. The applicant has sole responsibility for renewing this application before the expiration date. The County will not provide a notice prior to the expiration date.

2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division II of Title 20 of the Mendocino County Code.
3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
4. That this permit be subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.
5. The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division of the Department of Planning and Building Services.
6. This permit shall be subject to revocation or modification upon a finding of any one (1) or more of the following:
  - a. That such permit was obtained or extended by fraud.
  - b. That one or more of the conditions upon which such permit was granted have been violated.
  - c. That the use for which the permit was granted is so conducted as to be detrimental to the public health, welfare or safety or as to be a nuisance.
  - d. A final judgment of a court of competent jurisdiction has declared one (1) or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one (1) or more such conditions.
7. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.
8. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred (100) feet of the discovery, and make notification

**STAFF REPORT FOR  
STANDARD COASTAL DEVELOPMENT VARIANCE PERMIT**

**CDV# 9-2005 (Moores)  
November 20, 2006  
CPA-7**

of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.

**SPECIAL CONDITION:**

1. Prior to the issuance of the Coastal Development Permit, the applicant as landowner shall execute and record a deed restriction for the following parcels: APNs 132-141-07 & 132-141-08, in a form and content acceptable to the Coastal Permit Administrator, which shall state the following:

The front yard setback shall be reduced from twenty (20) feet to twelve (12) feet, provided that any garage wall containing a vehicular door or vehicular access opening which faces a street, shall be set back twenty (20) feet from the property line. The reduced setback must otherwise conform to all applicable regulations of all applicable agencies.

Prior to the issuance of the Coastal Development Permit, the applicant as landowner shall execute and record a deed restriction for the following parcels: APNs 132-141-09 in a form and content acceptable to the Coastal Permit Administrator, which shall state the following:

The front yard setback shall be reduced from twenty (20) feet to twelve (10) feet, provided that any garage wall containing a vehicular door or vehicular access opening which faces a street, shall be set back twenty (20) feet from the property line. Along the intersection of Forest View Road (CR 551A) and Pomo Lake Drive (CR 551), the setback shall increase to a 16.25 feet, or a distance otherwise determined to allow for a DoT 100-foot sight distance line along the County road intersection. The reduced setback must otherwise conform to all applicable regulations of all applicable agencies.

Staff Report Prepared By:

Nov. 13, 2006

Date

Teresa Beddoe

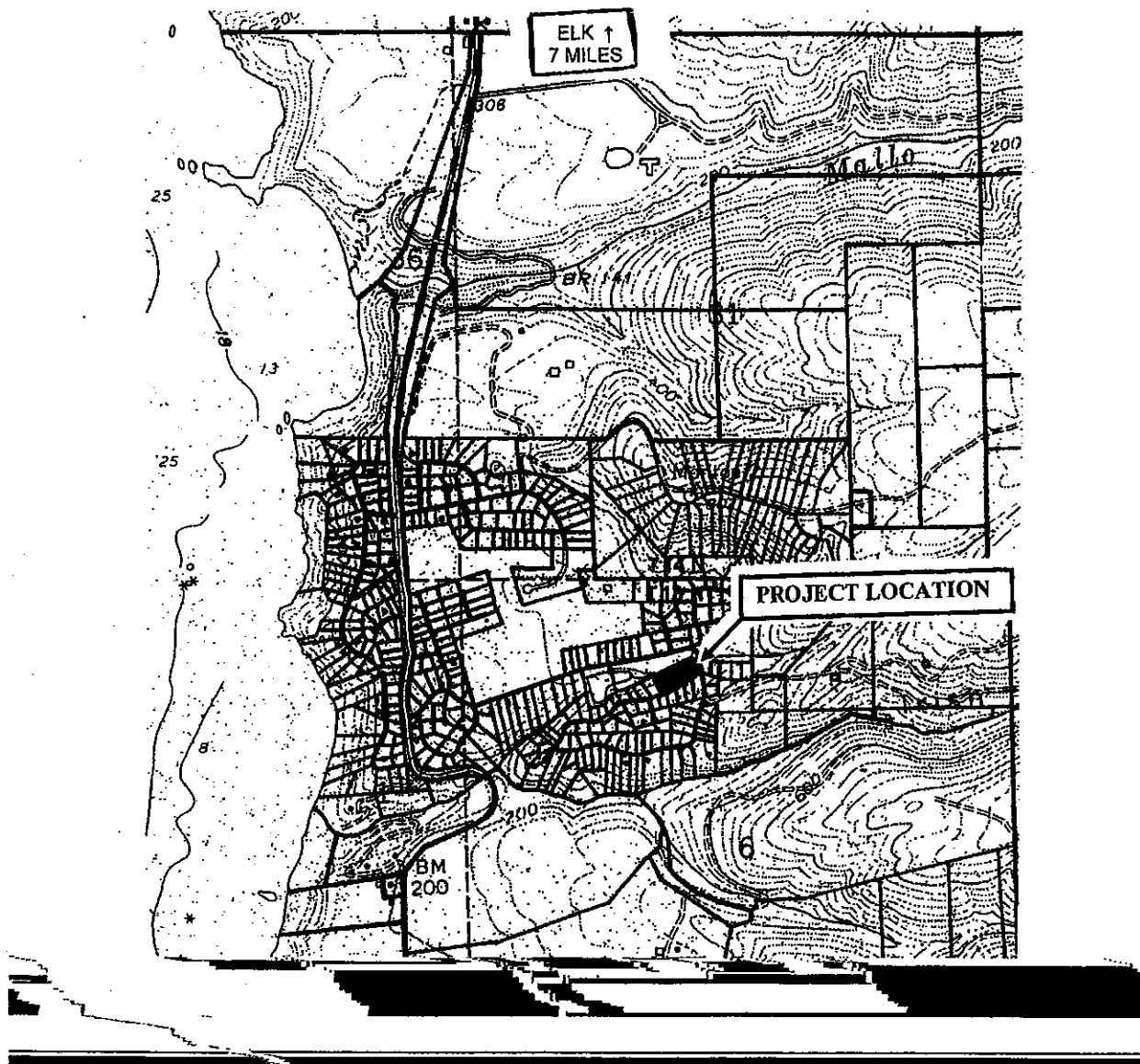
Teresa Beddoe  
Planner I

Attachments: Exhibit A- Location Map  
Exhibit B- Site Plan

Appeal Period: 10 days  
Appeal Fee: \$1,470

STAFF REPORT FOR COASTAL DEVELOPMENT  
STANDARD VARIANCE PERMIT

CDV # 9-2005 (Moore's)  
November 20, 2006



November 20, 2006

STANDARD VARIANCE PERMIT

STAFF REPORT FOR COASTAL DEVELOPMENT  
STANDARD VARIANCE PERMIT

CDV # 9-2005 (Moore's)  
November 20, 2006

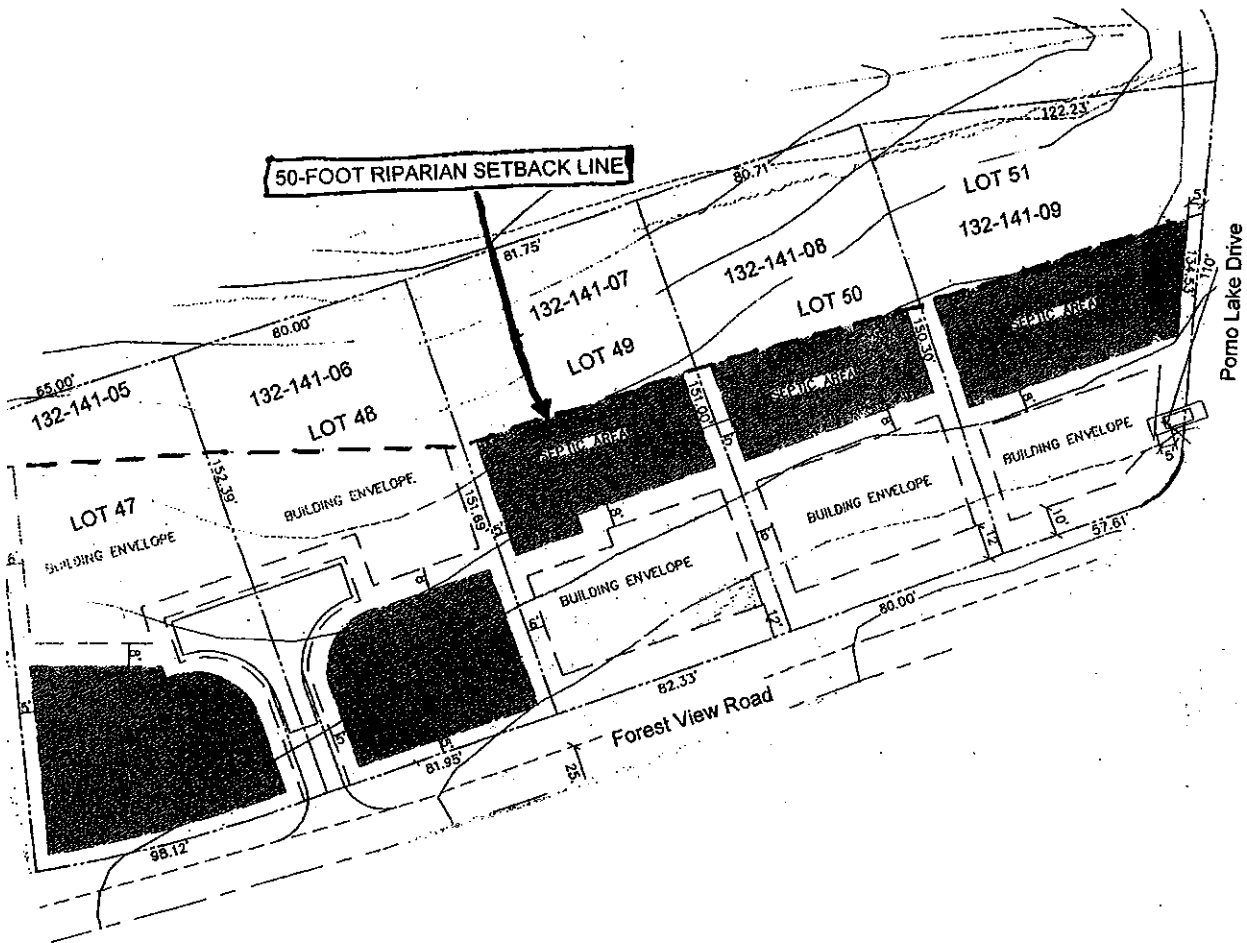


EXHIBIT B

SITE PLAN

NO SCALE



## COASTAL PERMIT ADMINISTRATOR ACTION SHEET

CASE#: QDV 2005-0009 HEARING DATE: 11/20/06OWNER: Moore S

## ENVIRONMENTAL CONSIDERATIONS:

☒ Categorically Exempt☐ Negative Declaration☐ EIR

## FINDINGS:

☒ Per staff report☐ Modifications and/or additions

## ACTION:

☒ Approved☐ Denied☐ Continued

## CONDITIONS:

☐ Per staff report☒ Modifications and/or additions

*Add Special*  
*#2* ~~and the edge of the riparian area is likely to shift.~~ When specific developments are proposed on the subject parcels, the location of the riparian edge will then be delineated, and the 50-foot buffer would apply to the riparian edge existing at the time development is proposed. Please note also that this analysis does not include other Environmentally Sensitive Habitat Areas; the potential presence of wetlands, rare or endangered plants, or rare, threatened or endangered animals has not yet been considered. A full analysis for Environmentally Sensitive Habitat Areas would need to be conducted on each parcel when development is proposed.



Signed: Coastal Permit Administrator

*#3* This variance shall expire for any individual lot within five (5) years.

**From:** <bill@irishbeachrealty.com>  
**To:** "Fred Tarr" <tarrf@co.mendocino.ca.us>  
**Date:** 1/7/2010 1:26 PM

Hello Fred:

I just changed my Alaska trip dates so that I can attend a 2/11/10 subdivision committee hearing. Please disregard my e-mail sent out this morning about rescheduling the matter. Does the committee still meet at the office next to the planning office and should I plan on being there at 9AM on 2/11/10?

Bill Moores 707-357-4501

*I sent Tom Peters an update  
for 2/11/10*

## Fred Tarr - RE: Re-Sub 1-2006

---

**From:** Fred Tarr  
**To:** bill@irishbeachrealty.com  
**Date:** 1/7/2010 11:23 AM  
**Subject:** RE: Re-Sub 1-2006

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That will be March 11, 2009

Fred

>>> <bill@irishbeachrealty.com> 1/7/2010 11:22 AM >>>  
Fred:

Thanks for your reply. Actually I will be in Alaska 2/11. Can you set up the meeting for the next one over?

Bill Moores 707-526-3759

-----Original Message-----

**From:** Fred Tarr [mailto:tarrf@co.mendocino.ca.us]  
**Sent:** Thursday, January 07, 2010 8:33 AM  
**To:** bill@irishbeachrealty.com  
**Subject:** Re: Re-Sub 1-2006

Bill:

Thank you for your prompt submission of copies of the revised tentative subdivision map.

I acknowledge receipt and I acknowledge completion of the various biological, botanical and wetland surveys. I cannot speak for other reviewing agencies and departments.

I will tentatively schedule Re-Subdivision 1-2006 for the February 11, 2010 Subdivision Committee meeting. I should be receiving DOT and DEH comments shortly.

Fred

>>> <bill@irishbeachrealty.com> 1/6/2010 11:49 AM >>>  
Hello Fred:

On 12/15/09 I asked you to set a date for the subdivision committee hearing on my minor division application and to confirm that we are ready for the hearing. You asked for 10 copies of the subdivision map showing the latest setbacks and that was sent to you the next day. Can you select a hearing date and let me know what it is and confirm that all of your areas of concern were addressed by the studies completed?

Bill Moores 707-357-4501

**From:** <bill@irishbeachrealty.com>  
**To:** "Fred Tarr" <tarrf@co.mendocino.ca.us>  
**Date:** 12/15/2009 10:28 AM

Hello Fred:

It appears to me that we are now ready to proceed to the subdivision committee with my minor division application to establish draft conditions. The county has now issued a grading permit for the roadway improvements within the 20ft. right of way proving that the improvements meet road standards applicable and that the improvements fit within the right of way width. The wetland issues, the Pt. Arena Mtn Beaver issues, the reports on birds and the botanical and animal surveys, and the geotechnical study have all been submitted to you by professionals many months ago. If you do not agree that we are ready to proceed to the committee hearing, please identify the problem you have by identifying the code requirement that has not been satisfied. If you agree that we are now ready for the hearing, please set a date for it and let me know what it is.

Bill Moores 707-357-4501



8/8/08

From: William Moores  
3880 Sleepy Hollow  
Santa Rosa, Ca. 95404  
707-526-3759

To: Frank Lynch, Mendo.Co. Plan Dept.  
501 Low Gap Rd.  
Ukiah, Ca. 95482

Re: Resub 1-2006

Dear Frank:

You asked for my memo outlining why I think that Mr. Tarr's confusion over Mr. Whitaker's letters should not prevent you from putting my application on the August 22 Subdivision Committee agenda for setting conditions. I sent to you earlier today copies of the proposed Subdivision Committee recommended conditions of approval that I are proposed by John Osborn for the committee to consider. Those conditions will adequately protect the county from any final map being filed without final arrangements for obtaining water service being made. Those are the water conditions that should be imposed as a condition of project approval, not some set of conditions Mr. Tarr solicits from the District that could conflict with my existing contract with the District.

Mr. Tarr explained to me previously that the Coastal Commission requires proof of water in advance of processing the tentative map. I have discussed this with Bob Merrill of the Coastal staff. I agree that the Coastal Commission requires proof that an adequate source of water exists. It does not however require that improvement conditions be performed before filing the final map. In my discussions with Mr. Merrill about the circumstance applicable here I think he and I are in agreement that proof has been submitted. I submitted to Mr. Tarr a copy of a section of the State Health Dept. report on the IBWD system in which the State Health Department agrees that the well I conveyed to the District several years ago is capable of serving about 61 connections. I also submitted to Mr. Tarr a copy of my written contract with the District in which, in exchange for my conveying that well to the District and to enable the District to perform its service promises to me, the District has agreed to provide me with 21 connections that are not appurtenant to any particular parcel and can be assigned and transferred by myself to property within the District. Thus I have submitted both proof of an adequate source and a copy of a District commitment to provide the service. Additionally the District provided an October '2006 letter to the County specifically approved and voted upon by the entire Water Board affirming that it will provide the service.

Later in '2007 Chairman Whitaker of the District wrote an unauthorized letter to Mr. Tarr recommending project denial and indicating that the District "may" not have the water to be able to provide the promised service based on a possible future problem with its Mallo Pass creek permit. I say unauthorized because the letter was not heard and voted upon by the IBWD Board. To correct the confusion caused by the unauthorized letter the IBWD Board last month heard the matter and voted to send a revised commendation to the

County (to correct the previously unauthorized recommendation of denial submitted by Mr. Whitaker) and checking "the Box" recommending approval of the application with conditions and specifically instructing the Chairman of the Board not to add anything or to send any accompanying letters (even though he had requested that he be allowed to do so). Contrary to Board instructions the Chairman wrote and submitted a letter attempting to suggest to Mr. Tarr what conditions he should apply (or imply) to the effect that the District was really recommending denial. Your office has the recording of the IBWD hearing and you can easily verify yourself that the action the Board took was to recommend approval, not denial.

Regardless of any communications you receive from a Board Chairman to the contrary you have the District's own written contract promising service and you have the State Health Dept. certification of the well capacity. What happens to the District's Mallo Pass Permit is not relevant to the 21 transferable connections since the identified water source is the well, it was conveyed in consideration of the promises of service and the well water is in the possession of the District. It would be improper for the county to attempt to modify my rights under my contract with the District by trying to provide that my project is approved only if the District retains the Mallo Pass Permit.

The approval conditions are those conditions recommended by John Osborn, not some new conditions suggested by Mr. Tarr, which he urges the District to adopt and impose.

Please let me know if this helps. If you have conflicting thoughts, please call me at 707-526-3759 to discuss.

Sincerely,

W. Moores

**Fred Tarr - RE:**

**From:** <bill@irishbeachrealty.com>  
**To:** "Fred Tarr" <tarrf@co.mendocino.ca.us>  
**Date:** 3/19/2009 3:26 PM  
**Subject:** RE:

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Fred:

- 1) Please resend this letter or your attachment in a word format. My computer can't open the type file you attached;
- 2) Why do I have to ask if you sent out a letter and for a copy of any letter you sent rather than your simply copying me when you send it to the District? I would have thought as a matter of courtesy you would make me aware of letters of inquiry you are sending to agencies.
- 3) This same objection applies to your handling of the wetland consultant's report. You asked for an expensive and time consuming wetland expert report and I submitted it. Prior to sending it your own department took the position that you are not bound by any determinations that would be made by the Corp of Engineer's. Yet in receiving my consultant's report you then send it to the Corp of Engineer's asking for their opinion which causes yet again effectively another consultant' report that then doubles by consultant's cost all because you want to second guess my experts report. If you don't want to accept my consultant's report, get your own in the first place but don't both ask me for a report and then require a second report to analyze the first report.
- 4) Yes the issue with the State of California diversion permit has become mute by the fact that there has been a well drilled on my land right next to the District's smaller forest tank and we obtained an extensive dry season well production report of over 50 gallons per minute production from a test administered by a Hydrogeologist certifying that result in a 30 + page report to the District. In addition the District has drilled a well on an easement they own on the forest area that the same hydrogeologist has tested and certified as producing more than 20gpm. The District has promised to serve my parcels and they are able to do so. You will be wasting your time trying to prove that the District's service promise is no good.

Bill Moores

-----Original Message-----

**From:** Fred Tarr [mailto:tarrf@co.mendocino.ca.us]  
**Sent:** Thursday, March 19, 2009 2:49 PM  
**To:** bill@irishbeachrealty.com  
**Subject:** Re:

Bill:

Attached is a copy of my response to the Board's, October 3, 2008, recommendation of approval of CD Re-Sub 1-06.

Has there been any resolve to the issue that the State of California Water Resources Control Board (Division of Water Rights) has with Permit 16622 (Mallo Pass).

Fred Tarr

>>> <bill@irishbeachrealty.com> 3/19/2009 2:22 PM >>>  
 Fred:

Since you were given the letter from the Irish Beach Water District that they approve of and will service the resub off Sea Cypress drive have you requested any other letters from the District that you have not informed me

**Fred Tarr - Res 1-2006 (revised tentative map, modification to the use permit, and status of corner lots)**

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**From:** Fred Tarr  
**To:** wmoores@sbcglobal.net  
**Date:** 8/15/2007 9:19 AM  
**Subject:** Res 1-2006 (revised tentative map, modification to the use permit, and status of corner lots)  
**CC:** Frank Lynch

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Dear Bill:

I am referencing e-mails that I sent to you on 6/4/07, 6/11/07, 6/12/07, 6/28/07 and 7/12/07 when the topic of the fees for the modification to use permit (U 118-75) was discussed. It is my understanding that you still owe \$600.00 for the modification application fee and until that amount is received, your proposed Res 1-2006 is on hold. Neither the revised tentative subdivision map nor the modification to the use permit have been sent out for referral.

Furthermore, after discussing the set back issue for APN 132-090-01 and APN 132-080-09 at a recent Planning Staff meeting, the consensus was that these two lots would be considered corner lots if your resubdivision was to be approved, see my e-mail dated 8/1/07.

I feel that I must inform you that I am not in support of your request to modify the use permit to allow for a total of 5 lots where the use permit provides for a maximum of 3 lots as indicated on sheet 1 of the December 20, 1988 approved Site Development Plan of Irish Beach Subdivision #9. My primary concerns are the steep slopes, access, high visibility from Highway 1 (Scenic Corridor), impact on neighboring properties, and grading impacts as a result of additional building sites driveways, parking, etc. This is in addition to DOT's access requirements.

I will gladly continue processing once the Use Permit Modification application fee has been resolved.

Regards, Fred



**County of Mendocino**  
**Department of Planning and Building Services**  
501 Low Gap Road · Room 1440 · Ukiah · California · 95482

Raymond Hall, Director  
TELEPHONE 707-463-4281  
FAX 707-463-5709  
PBS@CO.MENDOCINO.CA.US  
WWW.CO.MENDOCINO.CA.US/PLANNING

September 25, 2008

Mr. Bill Moores  
3880 Sleepy Hollow Rd.  
Santa Rosa, Ca. 95404

Re: CDRes 1-2006-Irish Beach Re-Subdivision

Dear Mr. Moores:

It has come to my attention that you recently had an area cleared on proposed Parcel 2 of the above referenced project and your tractor operator may have stacked the brush on the wetland area. This clearing was done after I had advised you, in a letter dated September 9, 2008, of the need for a complete wetland delineation on proposed Parcel 2 as well as a revised botanical survey on the whole property and a complete general wildlife survey that would include Point Arena Mountain Beaver, raptors, Sonoma Tree Voles and other potentially occurring sensitive wildlife species on the whole property.

As of today, I have not received the certified wetland delineation, the revised botanical survey or the complete general wildlife survey and I have no way of telling, whether or not, the grading that was performed is within an ESHA area, within a buffer area or outside of both.

It is my understanding that you had Mr. Matt Richmond conduct a Point Arena Mountain Beaver survey on this property and that a map was prepared which delineates the Point Arena Mountain Beaver habitat area. At this time, the Planning staff is requiring that you have a licensed land surveyor stake the proposed parcels as well as the Point Arena Mountain Beaver habitat area that Mr. Richmond has delineated on a map. This will allow staff a chance to evaluate the distance between the habitat area and the area that has been graded. This will also assist in defining any building envelopes that are proposed. I also request that you contact me at least seven days in advance of the land survey date so that a staff person may be present.

I reiterate that this project is on hold under CEQA guidelines.

Sincerely,

  
Fred Tarr

Project Planner

Cc: Rick Macedo, State of California Dept. of Fish and Game  
John Hunter, US Fish and Wildlife  
Frank Lynch, Acting Planning and Building Services Department Director  
Rick Miller, Mendocino Co. Coastal Planning Staff  
Teresa Spade, Mendocino Co. Coastal Planning Staff  
John Speka, Mendocino Co. Planning Staff  
Angie Hamilton, Coastal Code Enforcement  
Frank Zotter, County Counsel

**Fred Tarr - Re:**

**From:** Fred Tarr  
**To:** bill@irishbeachrealty.com  
**Date:** 2/17/2009 11:15 AM  
**Subject:** Re:

Mr. Moores:

Thank you for your information and I will review the file in search of Mike Powers report.

Sincerely, Fred Tarr

>>> <bill@irishbeachrealty.com> 2/17/2009 10:17 AM >>>  
Dear Mr. Tarr:

Dave Hartesveldt passed on to me your 2/13/09 e-mail to him.

Mike Powers informed me that he had e-mailed direct to you about 10/19/09 a copy of his Raptor and Vole study results and recommendations. He informed me that he recommends only protecting the most northerly potential nesting tree with a 25" ft. setback. Since you seem to have missplaced his report (or perhaps didn't get it) I am going to mail to you today another copy of that original report submitted half a year ago.

As regards the Mtn. Beaver concerns that you have these are being worked on by FWS and myself and Matt Richmond. We have draft resolutions worked out between us but do not have final draft versions yet. The final draft resolution should be available very soon and I expect to present that to the county when we are ready.

As regards flagging proposed boundaries of protection and habitat areas, this was already done for FWS as part of the resolution we are working out with FWS. They are requiring a licensed land surveyor description of the area. This aspect of the resolution has yet to be completed. The surveyor will be able to confirm distances and they will be shown on the final map to be recorded.

Bill Moores

September 12, 2011

Mendocino County Board of Supervisors  
501 Low Gap Road, Room 1010  
Ukiah, Ca 95482

Attention: Tim Mitchell

Subject: Appeal of CDRES 1-2006 Scheduled for the Board of Supervisor's  
October 18<sup>th</sup> meeting

Tim,

Thank you for providing me guidance today regarding submissions to the Board of Supervisors. As you requested, please find, attached, a copy of the letter I submitted to the Board of Supervisors in August for the October 18<sup>th</sup> meeting hearing the subject appeal.

Thank You



Dean Wolfe  
46300 Sea Cypress Dr.  
Manchester, CA 95459

(707)882-2729  
seawolfe@mcn.org



August 23, 2011

Mendocino County Board of Supervisors  
501 Low Gap Road, Room 1010  
Ukiah, Ca 95482

To: Carre Brown, 1<sup>st</sup> District Supervisor  
John McCowen, 2<sup>nd</sup> District Supervisor  
John Pinches, 3<sup>rd</sup> District Supervisor  
Kendall Smith, 4<sup>th</sup> District Supervisor  
Dan Hamburg, 5<sup>th</sup> District Supervisor

Subject: Appeal of CDRES 1-2006, New Information

Members of the Board of Supervisors,

We are directly negatively impacted by CDRES 1-2006 and support the Planning Commission's decision to deny CDRES 1-2006. The applicant, Mr. Moores, is appealing their decision. We understand that his appeal will be heard by the Board of Supervisors in its October 18<sup>th</sup> meeting.

In the last week we have become aware of information not previously included in the County's review of CDRES 1-2006 and not available to the Board of Supervisors. During the County's five-year review of CDRES 1-2006 Mr Moores chose to not bring to the attention of the Planning and Building Department the fact that there is a Deed Restriction against the subject property that materially impacts his application to re-subdivide the property. Mr Moores also chose to not disclose to the Planning and Building Department the fact that the Coastal Permit specifically for the unit being re-subdivided exists and contains requirements that also materially impact his application to re-subdivide the property. We find this omission by Mr. Moores very disturbing.

CDRES 1-2006 is a re-subdivision of a re-subdivision of Unit 9 lot 4. A Deed Restriction (Mendocino County Records Book 1741, Page 678) was required by the Unit 9 Coastal permit 1-87-141 and filed by Mr. Moores on March 30, 1989. The Deed Restriction requires that any additional development not specifically described in 1-87-141 or 1-87-142 be accompanied by an amended or new Coastal Development Permit. This has not been done for re-subdivision request CDRES 1-2006.

A further review of the Deed Restriction and accompanying Coastal Development Permit reveals that the issuance of Coastal Permit 1-87-141 was dependent on the development of a water source, known as Mallo Pass Creek, permitted by 1-87-142. Because of their interdependence these permits were combined in the March 31, 1988 Coastal Commission revised findings. Contrary to Mr. Moores' assertion that there is plenty of water for his new lots, the Coastal Development Permit details the fact that there are insufficient water resources for the Irish Beach subdivision without the Mallo Pass Creek water source. The Mallo Pass Creek Water Permit that was required by 1-87-141 and 142 has been revoked by the State Water Resources Control Board (SWRCB) "March 11, 2009, "Order of Revocation, Permit 16622 (Application 24364), of Irish Beach Water District to Appropriate Water from Mallo Pass Creek, in Mendocino County". The impact on the entire Irish Beach subdivision of the loss of water resources has yet to be fully evaluated by the Irish Beach Water District.



The California Coastal Commission, in the issuance of the Coastal Permits 1-87-141 and 142 and the Deed Restriction, was concerned that the Unit 9 subdivision did not meet the intent nor the requirements of the Coastal Code without the provisions invoked in the permit. The Coastal Commission required their involvement in any further development on the subject property. Since the required water source no longer exists, the Unit 9 subdivision and any re-subdivision of Unit 9 no longer meets the permit requirements. We contend that Mr. Moores would have failed in getting an amended or new Coastal Permit for the proposed re-subdivision.

We have several additional concerns beyond CDRES 1-2006 because of the Deed Restriction and Coastal Permit requirements. We have filed a complaint with the California Coastal Commission regarding CDRES 1-2006 and these additional concerns.

We hope this new information supports the Board of Supervisor's rejection of Mr. Moores appeal and the Board of Supervisors will confirm the Planning Commission's denial of CDRES 1-2006.

Thank you for your consideration.

The image shows two handwritten signatures in black ink. The first signature on the left is 'Dean Wolfe' and the second signature on the right is 'Patty Wolfe'. Both signatures are fluid and cursive.

Dean and Patty Wolfe  
43600 Sea Cypress Dr.  
Manchester CA. 95459  
(707) 882-2729  
[seawolfe@mcn.org](mailto:seawolfe@mcn.org)

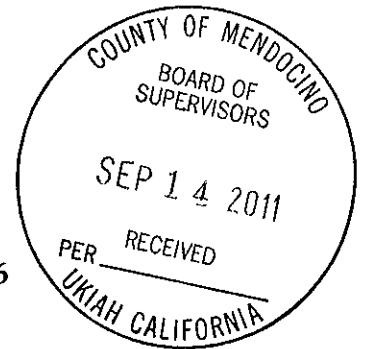
cc: Fred Tarr, Mendocino County Planning and Building Department, Ukiah  
Teresa Spade, Mendocino County Planning and Building Department, Fort Bragg

September 12, 2011

Mendocino County Board of Supervisors  
501 Low Gap Road, Room 1010 - Attention: Tim Mitchell  
Ukiah, Ca 95482

To: Carre Brown, 1<sup>st</sup> District Supervisor  
John McCowen, 2<sup>nd</sup> District Supervisor  
John Pinches, 3<sup>rd</sup> District Supervisor  
Kendall Smith, 4<sup>th</sup> District Supervisor  
Dan Hamburg, 5<sup>th</sup> District Supervisor

Subject: Community Petition Opposing Approval of Appeal of CDRES 1-2006  
Scheduled for Board of Supervisor's October 18 meeting



Dear Members of the Board of Supervisors,

Attached is a petition to the Board of Supervisors signed by 60 members of the Irish Beach community opposing the approval of Mr. Moores' appeal of the Planning Commission's denial of CDRES 1-2006. This petition has been circulating over the summer and represents a consensus of the public's sentiment concerning this proposed project.

The community is not in favor of Mr. Moores' re-subdivision request because granting it:

- Will be detrimental to the public welfare and injurious to surrounding property,
- Will have significant adverse impact on the environment,
- Will be inconsistent with the Coastal Act and coastal zoning code,
- Will not provide adequate access roads,

and, as has been discovered since the Planning Commission meeting denying the re-subdivision request,

- Represents a violation of an existing Coastal Development permit and deed restriction required by the Coastal Commission.

The Irish Beach community also contends that since over 150 lots in Irish Beach remain unsold there is no demand for new lots. Also, consistent with the conclusions documented in Coastal Development permits 1-87-141 & 142, considering recent water permit losses there is insufficient water for additional development in Irish Beach until further alternate water sources are identified and developed.

By this petition, we urge the Board of Supervisors to support the Mendocino Planning Commission and the people of Mendocino County and **not approve Mr. Moores' appeal** of the Planning Commission's denial of CDRES 1-2006.

Sincerely

A handwritten signature in black ink that reads "Dean Wolfe" and "Patty Wolfe" in a cursive script.

Dean and Patty Wolfe  
43600 Sea Cypress Dr.  
Manchester CA 95459

Cc: Fred Tarr, Mendocino County Planning and Building

***Irish Beach Community Members  
P.O. Box 242  
Manchester, CA 95459***

June 17, 2011

Mendocino County Board of Supervisors  
501 Low Gap Road, Room 1020  
Ukiah, CA 95482-4430

Re: CDRES 1-2006/ CDUM 118-75/2008

To The Board of Supervisors:

Mr. William Moores, a full-time resident of Santa Rosa and one of the three developers of Irish Beach located in Manchester (District 5- Supervisor Hamburg's district) is appealing the unanimous decision (7-0) of the Mendocino County Planning Commission which denied the above requested permit. The Irish Beach Community would like to urge the Board of Supervisors to uphold the Planning Commission's thoroughly discussed decision and also deny Mr. Moores appeal.

Mr. Fred Tarr (Planner II), Mendocino Department of Planning this morning (June 9, 2011) provided the following information regarding Mr. Moores application, "It took almost five years for staff to acknowledge that all pertinent information to provide the Planning Commission had been submitted and reviewed by the various agencies and ready for hearing. The applicant submitted at least four revised tentative maps and had to work out a legal issue over the Point Arena Mountain Beaver habitat area clearing with the US Fish and Wildlife." Below is an excerpt from the staff report prepared for this project which was to be heard on March 17, 2011. However, the project was put off in April but was heard on May 19, 2011. This information was provided as part of staffs' determination for denial, but was not actually spoken into the public record during the hearing.

Mr. William Moores (the developer/applicant) is quite persistent and believes his request is to modify U 11875 to allow a lot to be divided into two separate parcels should be heard by you.

This certainly would make some sense if all lots within our development have been sold. However, there are approximately 260 bare lots currently available for sale. Mr. Fred Tarr (Planner II) stated in the staff report, "It appears that the applicant is attempting to over develop this subject property and again the staff reiterates that the subject property is already developed to the three lot maximum that is specified in U#18-75".

Also, in this staff report Mr. Fred Tarr believed this project should be denied due to the following:

1. The proposed development will not be provided with adequate access roads;

2. The proposed development is not consistent with the purpose and intent of the zoning district applicable to the property, as well as the provision of the Coastal Zoning Code and does not preserve the integrity of the zoning district;
3. The proposed development will have a significant adverse impact on the environment within the meaning of the California Environmental Quality Act.
  - a. The project as presented represents a substantial alteration of the present or planned land use of the area.
  - b. The project presented will cause an increase in traffic hazards to motor vehicles, bicyclist or pedestrians; and
4. The granting of the exceptions will be detrimental to the public welfare or injurious to surrounding property.

On May 19, 2011, the Mendocino County Planning Commission met to review the above permit and the outcome was the following: "upon motion by Commissioner Hall, seconded by Commissioner Holtkamp and carried by the following roll call vote (7-0), it is ordered to deny CDRES 1-2006/ CDUM 118-75/2008, denying the Exception Request, finding the project as proposed is inconsistent with the applicable goals and policies of the General Plan." Seven out of seven commissioners denied this request.

Members of the Irish Beach Community have not changed their position from the October 14, 2008 petition (attached) in which we took the stand that if this is authorized "it will greatly impact the reduction of open space to our development and it appears to be in contradiction to the original subdivision map and the CC&R's for the Irish Beach subdivision". The community is under these strict guidelines in which we are to abide by (there have been repercussions for those who did not) and we contend the developers should not be exempt to what they, themselves, instituted.

Since our above petition, the Irish Beach Water District (IBWD) has lost the water rights to Mallo Pass Creek and the request for an extension of the water permit for Irish Gulch has been denied. Because of this, the Irish Beach Water District must apply for a license for Irish Gulch and the amount of water provided under that license will certainly be much less than what was allowed under the water permit first issued in 1964. The permit issued in 1964 allowed for 1.31 cubic feet per second which is 586 gallons per minute. Typical usage from Irish Gulch is less than 22 gallons per minute and it is quite possible that the State Water Resources Control Board will issue a license for something comparable to 22 gallons per minute. Because of the loss of the water permit for Mallo Pass Creek and the necessity of going to license for Irish Gulch, the ability for IBWD to provide water to the Irish Beach community has changed dramatically in the past two years. With the loss of surface water, the IBWD currently relies on wells for approximately 50% of its water. Given the following flow rates: 22 gpm from Irish Gulch and 27 gpm from two wells, the IBWD has sufficient water for 235 homes at 300 gallons per day. This means that the IBWD currently has the ability to provide water for 36 additional homes.

So, it would be difficult for the IBWD to commit to supply water to more lots on top of the 460 which is currently available to Irish Beach. Yes, there could be an alternative source to allow the smaller lot sizes to have a hydrological study performed to see if water may be obtain that way. Unfortunately, due to Mr. Moores lawsuits against IBWD it may be some time before any more wells will be able to be drilled within our community.

Yet, it clearly does not address the first problem - the impact it will have on the "open space" that we, the homeowners, currently have within our community. Possibly, one could understand this request if and only if, there were a few lots available the developer then could possibly argue these lots should be split because there are people standing in line, with money in hand wanting to buy an Irish Beach highly sought after piece of property. However, this is clearly not the case.

Again, we urge the Board of Supervisors to deny Mr. Moores' appeal of the unanimous decision of the Planning Commission.

Respectfully,

NAME

ADDRESS

TELEPHONE

August T. Rush 43751 Cypress Pkwy Manchester 882-2441

[Signature] 43751 CYPRESS " " "

Alfred W. Thompson 44860 NAUARD WAY Manchester 882-3069

W. G. [Signature] 15721 Forest View Rd Manchester • 882-1928

Lois A. Thompson 14860 Nansen Way Manchester 882-3069

Ruth A. Cady 43850 Acquistapace Rd Manchester, CA 95459

NAMEADDRESSTELEPHONE

H E Cady 43850 ACQUISTAPACE, MANCHESTER, CA 882-2347

David C. Roelofs 14951 PALLO PASS DR. MANCHESTER, CA. 95459  
707-882-3264

Diane L. Taylor 14871 Navarro Way Manchester CA 95459

Karl D. Taylor 14871 NAVARROWAY MANCHESTER CA 95459

Nancy Epandian 15721 Forest View Rd. Manchester, CA 95459

George Munson 44920 Pono Lake Drive Manchester, CA 95459

Betsy Munson 44920 Pono Lake Dr. Manchester CA 95459

Kathryn Edelbrock 44151 Garcia Ct. Manchester, CA 95459

Sonja Hearlerry 15570 Forest View Rd. Ca. 95459

Betty Winters 15000 Navarro Wy Manchester 95459

Elisha M. Frame 44550 Pono Lake Dr. Manchester, CA 95459

Lu Vickery 14981 Navarro Way Manchester Ca 95459

NAME

ADDRESS

Ph. 5)

Jim Vickery 14981 NAVARRO WAY Manchester 882-2792

Robert P. Tullrett 15960 Forest View MANCHESTER 707-3745682  
882-2658

Jonathan Noel Bauer 15470 Forest View " Manchester 707-718-0052

Richard Morton 15851 Forest View Rd Manchester 707-882-2406

Mary Lou Morton 15851 Forest View Rd. Manchester 707-882-2406

Louis J. Landron 14741 Navarro Way, Manchester, Ca 92569-1604

Stephen Whitaker 15461 Forest View Rd. Manchester (707) 882-1992  
(707) 882-1992

Suzanne C. Whitaker 15461 Forest View Rd. Manchester CA 95459 (707) 882-1992

Marsa Paiche 15601 Forest View Rd Manchester, CA 95459 707-882-2521

Don D. Harley 15550 Forest View Rd. Manchester, CA 95459 (707) 882-4169

Pamela A. Harley 15550 Forest View Rd Manchester Ca 95459 707-882-4169

Howard W. DeRue 43501 San Cypress Rd. Manchester, Ca 95459 707-882-2423

Susan Louisa Palmer 14840 Navarro Way, Manchester, CA 95459 707-882-1750

HP 14840 NAVARRO way, Manchester, CA 95459 707-882-1750

NAMEADDRESSTELEPHONE

Den Wolfe      43600 Sea Cypress Dr.      882-2729

Patricia Wolfe      43600 Sea Cypress Dr      882-2729

Lee R. D.      14770 CYPRESS POINT RD      707-704-7410

Debra A. Muzik      14770 Cypress Point Rd      707 704-7410

Brian E Carter      14555 Cypress Point Rd      707 882-2204

Roseanna Jones      43800 Alta Mesa      408 268 8502

Debra A.      43800 ALTA MESA      408 268 8502

Barbara Lunningen      14570 Cypress Pt. Rd.      882-2352

Edna L. Taminger      14570 Cypress Pt. Rd.      882-2352

Lynn Verria      43641 Cypress Parkway      707-498-8584

David Verria      43641 Cypress Parkway      707-279-2802

G. M. A.      14660 Cypress Point Rd      707 882 1747

R. L.      44400 GOREY'S ROOST



7)

NAMEADDRESSTELEPHONE

<del>John D.</del>	44400 O'Leary's Roost	882-1957
Ua-See Kassin	14555 Cypress Pt. Rd.	882-2204
<del>ROGER BEAN</del>	15221 FOREST VIEW	(916) 923-6447
Ila Darling	15031 Mallo Pass	707-882-3078
Jim Phelps	43981 Sea Cypress	530 885-1291
Yvonne Phelps	43981 Sea Cypress	(530)-885-1291
Thomas A Darling	15031 Mallo Pass Drive	707-882-3078
Carol Bean	14810 S. Hwy 1	707-882-2960
Rudolf Bean	14810 S. Highway One	707-882-2960
Sandra Moores	15280 Inish Beach Dr.	707-513-8835
Kathleen Bradbury	44000 Garcia Court.	707-542-1071
J.P. Bradbury	44000 Garcia Court	707-542-1071

NAME

Address

Phone

8)

Donna McDell 43951 Mallo Pass Ct. Manchester, Ca. 95459

Stephen Whitaker 15461 Forest View Rd., Manchester, CA 95459

9)

**NAME**

**ADDRESS**

**TELEPHONE**

*[Handwritten signature]*

44400 Orleans's Roost

8821957

Irish Beach Community Members  
PO Box 242  
Manchester, CA 95459

October 14, 2008

Department of Planning and Building Services  
Mendocino County  
501 Low Gap Road, Room 1440  
Ukiah, CA 95482  
[tarrf@co.mendocino.ca.us](mailto:tarrf@co.mendocino.ca.us)

Attn: Fred Tarr

Re: Case # RES 1-2006 (APN 132-320-42 and APN 132-320-43)

Dear Mr. Tarr:

This letter is to object to the subdivision of the lots cited above to produce four new parcels in place of the original two parcels. When complete build out finally occurs in Irish Beach, we will find ourselves in a very tightly packed community and any sort of open space will be most welcome. Because of this, the proposed Coastal Re-Subdivision by William and Tona Moores is a matter of concern, not only because it will lead to a reduction of open space, but also because it would appear to be in contradiction to the Mendocino County General Plan Coastal Element and the original subdivision map (see Appendix A) and the CC&R's for the Irish Beach subdivision (see Appendix B).

We believe that the County of Mendocino should be aware that there are currently 195 homes in Irish Beach and 305 bare lots. A significant percentage of the bare lots are owned by W. Moores and the addition of two more bare lots hardly seems necessary. The additional lots and the resulting reduction of open space clearly represents an example of the tragedy of the commons<sup>1</sup> that Hardin describes as:

*The commons dilemma is a specific class of social dilemma in which people's short-term selfish interests are at odds with long-term group interests and the common good.*

Surely the County should consider the *common good* when land is to be re-subdivided. In particular, many people purchased land and built homes in Irish Beach on the basis of a subdivision map and a set of CC&R's. Changes in that subdivision map should not take place without consideration of the public.

Sincerely,

Name

Address

Telephone

<u>Stephen Whitaker</u>	<u>15461 Forest View Rd</u>	<u>882-1992</u>
<u>Nancy Ganchin</u>	<u>15721 Forest View Rd</u>	<u>882-1928</u>

<sup>1</sup> Hardin, G. 1968, "The Tragedy of the Commons", *Science*, Vol. 162, No. 3859, December 1968.

W. G. L. 15721 Forest View Rd 882-1928

Mary Lou Morton 15851 Forest View Rd 882-2406

Richard W Morton 15851 Forest View Rd 882-2406

Sharon Roberts 44621 Pome lake Dr. 882-3122

Patricia L Roberts 44621 Pome lake Dr 882-3122

Sean Ricket 15225 IRISH BENCH 882-2529

Langy M. Klein 14920 Navarro Way 882-2775

Elaine L. Klein 14970 Navarro Way 882-2775

Lucille Vickery 14981 Navarro Way 882-2792

Jim Vickery 14981 NAVARRO WAY 882-2792

Susan Rush 43751 Cypress Parkway 882-2441

Tim R. Rush 43751 CYPRESS PKWY 882-2441

Dean Wolfe 43600 Sea Cypress Dr. Manchester - 882-2729

Thomas 43641 Cypress Parkway MANCHESTER, CA  
882-1976 95459

Bank M. Nam 14780 Cypress Circle Manchester CA  
95459 882-2836

Patricia E. Wolfe 43600 Sea Cypress Dr Manchester CA 95459  
Denise E. Gammann Samar 43641 Cypress Parkway Irish Beach 95459  
Yvonne Goble 15001 Forest View Rd Manchester CA 95459  
Dorothy A. Hensberry 15570 Forest View Rd, Manchester 95459  
Suzanne C. Whitake 15461 Forest View Rd. Manchester CA 95459  
Nes Bean 14921 Navarro Wg. Manchester, CA. 95459  
Sue Bean 14921 Navarro Way Manchester, Ca. 95459  
Lisa Moulthrop 15470 Forest View Rd Manchester CA 95459  
Michael Moulthrop 15470 Forest View Rd Manchester CA 95459  
Betty Winters 15000 Navarro Way Manchester 95459  
George Munson 44920 Pomo Lake Dr. 882-4003  
Betsy Munson 44920 Pomo Lake Dr. Manchester CA 882-4003 95459  
Alma A. Grigillo 14770 Cypress Pt Rd. Manchester CA. 95459  
E E Cady 43850 ACQUISTAPACE MANCHESTER, CA  
Janet Ralston 14901 Mallo Pass Drive  
P.O. Box 212 Manchester CA. 95459

Robert J. Diaz 14551 ALTA MESA DR. 925-426-1470

Pam Harley 15550 Forest View Rd 707-882-4169

Gemma Dorado 15225 IRISH BEACH DR. 707-882-2529

Appendix A (Mendocino County, Case #RES 1-2006)

This re-subdivision by William & Tona Moores would materially damage adjacent properties, might damage a potential wetland and endangered species habitat, and be in potential conflict with the Mendocino County General Plan Coastal Element. In combination with these concerns, it is questionable if RES 1-2006 meets applicable coastal development review criteria. The main concerns associated with this proposed re-subdivision are as follows:

1. By the County's own evaluation (BOS-6, April 6 Staff Report RES#1-89 Page 2 Water (Item 3a) "... did not anticipate residential development behind the two subdivisions and now proposed.") the subject parcels of RES1-2006 were not in the original Irish Beach subdivision plan. RES1-89 limited the re-subdivision on Unit 9 lot 4 in 1989 to 3 lots, which Mr. Moores now wants to make into 5 lots (including Unit 9 lot 4). What does RES 1-2006 do to the conclusions documented in the staff report for RES1-89?
2. The original maps and application of RES 1-89 indicated that there would be an easement over Lots Unit 3-39 and 3-40 (County Staff report dated 4/6/89). It was required then, as well as now, that there be a 40 foot wide easement for access to the parcels. Was the impression of the County in 1989 that there would be a 20-foot easement on both lots, 20 foot on lot 3-39 and 20 foot on lot 3-40? The final map shows only a 20-foot easement over Unit 3 lot 39. There is no indication or any discussion that could be located in County records that there was ever a variance approved by the County for this noncompliant 20-foot easement in 1989.
3. Has Mr. Moores now applied formally for a variance to the 40-foot easement requirement? If he has, it appears from the County web site "The Permit Place" that granting a variance would be problematic according to two specific provisions:

"According to State law and County Code, a variance can only be granted where:(1) The special circumstances or conditions necessitating the variance are not due to any action on your part subsequent to the application of the applicable zoning regulations.

(2) The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which your property is located."

The 40-foot right of way has been a requirement since before the original creation of the subject two lots in 1989. Mr. Moores chose to only establish a 20-foot right of way at that time, thus creating the current need for a variance. Since Mr. Moores' own actions created the need for a variance, the County cannot, under this provision, grant a variance.

Granting of the variance would materially damage the lots that the easement abuts, Unit 3 lot 40 and Unit 9A lot 9 (formerly Unit 3 lot 39). Both lots would



be damaged by safety concerns presented by increased traffic over such a narrow noncompliant access. Additionally, lot 3-40 would be damaged by the required increased side yard setback from 6 feet to 20 feet, limiting the buildable area (see Coastal Zoning Code 20.444.015 c). In order for the lot to have an adequate buildable area, in the future the County would need to grant another variance for lot 3-40.

And finally, there is no need for Mr. Moores to be granted a variance to County Code requirements. There are multiple properties for sale adjacent to Mr. Moores' property that he could obtain by purchase or trade to establish a proper, code compliant, right of way. His family corporation even owns some of those lots.

4. Drawings submitted by Mr. Moores for RES 1-2006 in June of 2007 (Tentative Map and Site development plan prepared by Rob Huffman) do not address disposition of the existing 10-foot drainage easement on the west boundary of lot APN 132-320-42. The current access road on the noncompliant easement blocks the public drainage easement and Mr. Moores has proposed to abandon the only culvert that provides drainage from that drainage easement. This potentially damages the adjacent and down gradient properties as well as the Irish Beach Water District's use of the drainage easement.
5. It appears from recent studies and surveys that there may be a wetland over lot APN 132-320-43 that is fed from an existing spring. There may also be an endangered species habitat. The concern documented in RES 1-89 (Finding 3e) is no longer satisfied and there is a risk of damage to wildlife by development of this lot.
6. There are several provisions of the Coastal Act that are embodied in the Coastal Element of the County General Plan that could be jeopardized by the Granting of RES 1-2006. These are quoted as follows:

**Coastal Act Section 30240 Environmentally sensitive  
habitat areas; adjacent developments**

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

**Coastal Act Section 30250 Implemented by Coastal  
Element County General Plan 3.9-1.**

An intent of the Land Use Plan is to apply the requirement of Section 30250(a) of the Act that new development be in or in close proximity to existing areas able to accommodate it, taking into consideration a variety of incomes, lifestyles, and location preferences. Consideration in allocating

residential sites has been given to:

- each community's desired amount and rate of growth.

**The community does not desire the additional lots.**

One housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate access...

**Mr. Moores proposes only noncompliant access.**

**In Conclusion:**

The approval of RES 1-2006

- Would legitimize the non-compliant inadequate access to the area,
- Damage adjacent property owners and the subdivision as a whole, and
- Be counter to the Coastal Element of the Mendocino County General Plan.

Appendix B (Mendocino County, Case #RES 1-2006 and Irish Beach CC&R's)

The CC&R's for Irish Beach should be considered by the County when a Coastal Re-Subdivision is proposed. In the CC&R's recorded on September 17, 1998 (see attached pages), we note the following on page 1:

"The Original Declarations were combined, amended and restated in their entirety by the First Restated Declaration which were incorporated into supplemental Declarations for Units 7, 7A, 8, 9 and 9A as follows:"

while on page 2 we find:

"Declaration of Covenants and Restrictions dated January 1, 1991 and recorded January 18, 1991 at Book 1882 at Page 689 as amended by documents dated March 30, 1996 and recorded on April 30, 1996 at Book 2328 at Page 409 (Unit 9A)."

Of special importance is Section 7.19 where one finds:

"Section 7.19 Restriction on Further Subdivision and Severability. No Lot shall be further subdivided nor shall less than all of any such Lot be conveyed by an Owner thereof."

Finally, on page 25 one finds the signature of Gordon Moores, President of Mendocino Coast Properties, dated September 8, 1998.

This material suggests to us that the proposed Re-Subdivision is not consistent with the CC&R's for Irish Beach, and we hope that the Department of Planning & Building Services would take this into account.

Stephen & Suzanne Whitaker  
PO Box 128  
Manchester, CA 95459

October 14, 2011

Mendocino County Board of Supervisors  
501 Low Gap Road, Room 1010  
Ukiah, CA 95482-4430

Re: CDRES 1-2006/ CDUM 118-75/2008

To the Board of Supervisors:



Mr. William Moores, a full-time resident of Santa Rosa and a developer of Irish Beach, is appealing the unanimous decision of the Mendocino County Planning Commission to deny the above request. We urge the Board of Supervisors to also deny this request for two reasons.

I. We live at the south-eastern edge of the Irish Beach subdivision and our principle view is of the hills to the north and the south. The proposed subdivision of two lots to four lots removes some of our view of open space and potentially replaces it with homes built on a south-west facing hillside. It seems reasonable that we have a right to the view that existed when we purchased property in Irish Beach. What was offered in 1980 should not be retracted in 2011.

II. The availability of water in Irish Beach has changed significantly since 2006. At that time the Irish Beach Water District held a permit (see attachment) for water extraction from Mallo Pass Creek in the amount of 150 gallons per minute. This is equivalent to 720 connections at 300 gallons per day per connection. This permit was revoked on March 11, 2009 for failure to put the water to beneficial use. The original permit for water from Mallo Pass Creek was issued on February 27, 1974 and no water was used from 1974 until 2009 when the permit was revoked. The situation here is quite simple: The land has been placed in "cold storage" and thus the water available from Mallo Pass Creek was placed in "cold storage". The State Water Resources Control Board is strongly opposed to the "cold storage" of water and after 35 years of no use, the permit was revoked. The land has been in "cold storage" because Mr. Moores has not been willing to sell the land at the market price. Given these circumstances, there is no justification for the additional subdivision of property in Irish Beach.

Sincerely,

*Stephen Whitaker*  
*Suzanne Whitaker*

Stephen and Suzanne Whitaker

Attached: Revocation of Permit 16622



Linda S. Adams  
Secretary for  
Environmental Protection

# State Water Resources Control Board

## Division of Water Rights

1001 I Street, 14<sup>th</sup> Floor ♦ Sacramento, California 95814 ♦ 916.341.5300  
P.O. Box 2000 ♦ Sacramento, California 95812-2000  
Fax: 916.341.5400 ♦ [www.waterrights.ca.gov](http://www.waterrights.ca.gov)



Arnold Schwarzenegger  
Governor

**MAR 11 2009**

In Reply Refer  
to:kdm:24364

**CERTIFIED MAIL # 7004 2510 0003 9148 5913**

Stephen Whitaker  
Irish Beach Water District  
15401 Forest View Road  
P.O. Box 67  
Manchester, CA 95459-0067

Dear Mr. Whitaker:

**ORDER OF REVOCATION, PERMIT 16622 (APPLICATION 24364), OF IRISH BEACH  
WATER DISTRICT TO APPROPRIATE WATER FROM MALLO PASS CREEK, IN  
MENDOCINO COUNTY**

On September 28, 2007, the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) issued a Notice of Proposed Revocation for Permit 16622. The Permittee timely requested a hearing. A hearing was scheduled for February 26, 2009, but the hearing was cancelled on January 26, 2009 because the Permittee failed to submit a Notice of Intent to Appear (NOI) at the hearing. Pursuant to the revised Notice of Public Hearing dated December 31, 2008, the failure to submit an NOI is deemed withdrawal of the request for hearing. Therefore, the State Water Board may act on the proposed revocation without a hearing pursuant to Water Code section 1410.1. Accordingly, enclosed is an order revoking Permit 16622.

It is the Permittee's responsibility to remove or modify diversion works and impoundments to ensure that water subject to this revocation is not diverted and used. Unauthorized diversion and use of water is considered a trespass and subject to enforcement action under Water Code sections 1052 and 1831. Pursuant to Water Code section 1052, any diversion of water from the point(s) of diversion identified in this permit may be subject to administrative civil liability of up to \$500 per day without further notice. The State Water Board also may issue a cease and desist order in response to an unauthorized diversion or threatened unauthorized diversion pursuant to Water Code section 1831. It is the Permittee's responsibility to consult with the Department of Fish and Game, and the Regional Water Quality Control Board to ensure that removal of project facilities does not adversely affect a fishery or result in unregulated sediment discharge to a waterway. Permittee must also consult the Department of Water Resources, Division of Safety of Dams if a jurisdictional size dam will be removed or breached (dam height 15 feet or more, or reservoir volume 50 acre-feet or more). These agencies may require a permit or other approval prior to any construction activity.

***California Environmental Protection Agency***



Recycled Paper

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

**DIVISION OF WATER RIGHTS**

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In the Matter of Permit 16622 (Application 24364)  
**IRISH BEACH WATER DISTRICT**

**ORDER OF REVOCATION**

---

SOURCE: Mallo Pass Creek tributary to Pacific Ocean  
COUNTY: Mendocino

---

**WHEREAS:**

You are hereby notified, pursuant to sections 1410-1410.2 of the California Water Code, the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), is revoking Permit 16622 because the Permittee has failed to commence, prosecute with due diligence, and complete the work necessary to appropriate water under the permit, the Water Code, and the State Water Board's regulations. In addition, the Division revokes Permit 16622 because the Permittee has failed to use beneficially all or part of the water for the purpose for which it was appropriated in accordance with the Water Code.

The revocation is based upon the following facts, information and conclusions:

The State Water Board issued Permit 16622 on February 27, 1974. The permit authorizes Irish Beach Water District (Permittee) to divert 0.58 cubic foot per second to be diverted from January 1 to December 31 of each year. The maximum amount diverted under this permit shall not exceed 380 acre-feet per year (afa). The permit was modified by Order dated February 7, 1989 to allow diversion of 150 gallons per minute, not to exceed 220 afa. The permit requires that construction work be completed by December 1, 1977, and that the water be applied to the authorized use by December 1, 1984.

**A. PERMITTEE HAS FAILED TO COMMENCE, PROSECUTE WITH DUE DILIGENCE, AND COMPLETE THE WORK NECESSARY TO APPROPRIATE WATER UNDER THE PERMIT.**

1. In the attachment to the May 14, 1984 petition for extension of time, Permittee indicated that project construction had not yet commenced.
2. Permittee requested and on October 12, 1984, the Division granted an extension of time to commence construction or apply the water to full beneficial use. The time extension order required construction to be complete by December 1, 1987, and that water be put to full beneficial use by December 1, 1988.
3. Permittee failed to complete construction of the project by the December 1, 1987 deadline. The Progress Reports by Permittee (progress reports) for 1985 through 1987 state that construction has not commenced.

4. The Division conducted a site inspection on March 17, 1988, and found that work had not yet commenced on the diversion project.
5. Permittee requested and on June 13, 1988, the Division granted an extension of time to commence construction and apply the water to full beneficial use. The time extension order required construction to be complete by December 31, 1995, and that water be put to full beneficial use by December 31, 1997.
6. The progress reports for 1989 through 1998 state that construction has not commenced. The 1998 progress report is the last progress report submitted by the Permittee.
7. The Division conducted a licensing inspection on May 25, 1999, and found that the Permittee had not yet constructed the diversion facility.
8. Permittee requested a ten-year extension of time, by time extension petition dated July 28, 2000. The petition states that no water has been used under this water right permit. The Permittee estimated that construction would begin within "2 to 5 years or more" and water would be fully used in 40 to 50 years.
9. By letter dated October 20, 2004, Division staff requested that Permittee document the basis for approval of a time extension, pursuant to California Code of Regulations, title 23, section 844. Because the Permittee is the lead agency under California Environmental Quality Act (CEQA) and the Division had not seen any documentation to show that the Permittee had completed any necessary CEQA documentation, Division staff also requested the Permittee to identify a date when it will provide the required CEQA documentation for the time extension petition. Division staff advised Permittee that failure to respond within 30 days might result in cancellation of the petition, pursuant to section 1701.4 of the California Water Code. Permittee was further advised that Permit 16622 may be revoked due to non-use if the Permittee is unable to document that it will diligently pursue the project described in the permit.
10. The Permittee responded by letter dated December 21, 2004, stating that there are currently 180 homes in Irish Beach and a total of 460 home sites. Given an assumed growth rate of 10 homes per year, and accounting for a commitment to provide hookups for commercial use, Permittee will be responsible for providing water to the equivalent of 477 homes. Permittee has sufficient water from Irish Creek (a different permitted source) and groundwater to serve 336 homes, which means that Permittee has sufficient water for 15 years. The water to be diverted from Mallo Pass Creek pursuant to Permit 16622 is needed to serve the additional 141 homes at full build-out.
11. The Permittee's December 21, 2004, letter estimated that water use under Permit 16622 would commence in approximately 15 years. The Permittee could not identify when it would provide the Division with the required CEQA documentation.
12. Permittee's time extension petition was not approved. The Division issued an order Denying Petition for Extension of Time on July 20, 2006. In Order WR 2006-0015-EXEC, the State Water Board denied Permittee's petition for reconsideration of the July 20 order. Therefore, the December 31, 1997 deadline to complete application of water to full beneficial use remains in effect.
13. Since the 1998 Progress Report of Permittee, Permittee has not submitted annual Progress Reports, which summarize water use and project status, as required by conditions in the Permit.

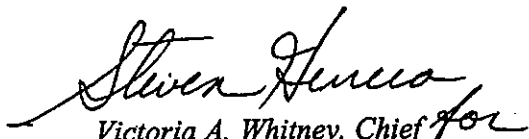
B. BASED ON THE ABOVE FACTS AND INFORMATION, THE DIVISION CONCLUDES THAT CAUSE EXISTS FOR THE REVOCATION OF PERMIT 16622 PURSUANT TO WATER CODE SECTION 1410, SUBDIVISION (A) BECAUSE:

Permittee has failed to commence, prosecute with due diligence, and complete the work necessary to appropriate water under Permit 16622 and has failed to apply to beneficial use all or part of the water authorized for appropriation as contemplated in the permit and in accordance with the Water Code and the regulations of the State Water Board.

On September 28, 2007, the Division issued a Notice of Proposed Revocation. Permittee filed a timely request for hearing. A hearing was scheduled for February 26, 2009, but the hearing was cancelled on January 26, 2009 because the Permittee failed to submit a Notice of Intent to Appear at the hearing.

Based on the above facts and conclusions, the State Water Board, Division of Water Rights hereby revokes Permit 16622, and the water is declared to be subject to appropriation. This revocation may not result in additional water being available for new appropriations if there are applicable restrictions due to past State Water Board decisions regarding water availability.

STATE WATER RESOURCES CONTROL BOARD

  
Victoria A. Whitney, Chief *for*  
Division of Water Rights

Dated: **MAR 11 2009**



LAW OFFICES OF

**CARTER, MOMSEN & KNIGHT, LLP**

444 NORTH STATE STREET  
POST OFFICE BOX 1709  
UKIAH, CALIFORNIA 95482

JARED G. CARTER  
BRIAN C. CARTER  
BRIAN S. MOMSEN  
MATISSE M. KNIGHT

PHONE: (707) 462-6694  
FAX: (707) 462-7839  
E-MAIL: jaredcarter@pacific.net  
WEBSITE: www.cartermomsen.com

November 3, 2011

**VIA HAND DELIVERY**

Nash Gonzales  
Director of Building & Planning  
501 Low Gap Road  
Ukiah, CA 95482

Re: Appeal of CDRES 1-2006 (Scheduled for Hearing 12/06/11)

Dear Mr. Gonzales:

We represent the applicants, Bill and Tona Moores in the above-referenced matter now scheduled for hearing before the Board of Supervisors on December 6, 2011.

The purpose of this letter is to request your agreement that the appeal should be taken off calendar and the project returned to the staff for completion of the application and later resubmission to the Planning Commission and such further action as consistent with the County's regulations as called for thereafter.

The reason for this request is that Mr. Dean Wolfe, in his comment letter of September 12, 2011, has correctly identified a deficiency in the original application that neither the applicants nor the Planning staff caught. The application was not complete and should not have been considered.

The reasons the applicants want the application taken off calendar and returned to the staff for completion is that they do not want to have to start over, including payment of all of the fees involved, in order to have this matter considered after the patent deficiency identified by Mr. Wolfe is corrected. We ask your cooperation in that regard.

The problem with the application, which Mr. Wolfe has pointed out, is that the Coastal Commission Permit, number 1-87-141 and/or 1-87-142, contains a condition that has not been met.  
Nash Gonzales

Director of Building & Planning  
November 3, 2011  
Page Two

That condition requires the Irish Beach Water District to develop water from Mallo Pass Creek under an approved delayed development program or, in the event there was a change in the District Plan to provide water service, to apply to the Coastal Commission for a Water Service Plan Modification, supported by adequate technical reports, which proves that an alternative supply source acceptable to the Commission exists. In 2008, (not before the 2006 resubdivision referred to in Mr. Wolfe's letter) the Water District modified its plans to provide water from Mallo Pass, instead relying upon wells, but did not apply to the Coastal Commission for a modification to the permit as required.

The Moores did not catch this problem nor did the planning staff, but Mr. Wolfe did. And, the problem has to be overcome by an amendment of that permit term before this application can be considered.

Please let me know if you are agreeable to the suggested course of action. We would appreciate a response as soon as practicable in order to avoid the time and expense of preparing for the December 6, hearing.

Let me know if there is any other and further information that we could obtain and supply to you.

Sincerely,



Jared G. Carter

JGC:gtv  
cc: (via hand delivery)  
Tim Mitchell  
Deputy Clerk of Board  
501 Low Gap Road, Room 1010  
Ukiah, CA 95482

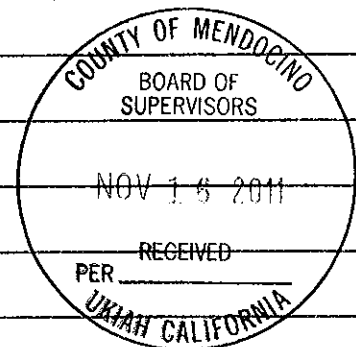
11/14/2011

TO WHOM IT MAY CONCERN;

PLEASE OMIT MY SIGNATURE FROM THE  
PETITION THAT I SIGNED IN REGARDS TO  
BILL MOORES PERMIT APPLICATION 1-2006

THANK YOU,  
ERNEST A. RODRIGUEZ SR.

*Ernest A. Rodriguez Sr.*



11/15/11

Mr. Tim Mitchell, executive office  
Board of Supervisors  
501 Low Gap Road  
Ukiah, Ca. 95482



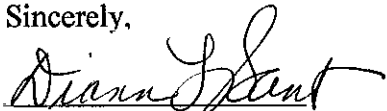
Diann Sant  
14211 Old Wood Road  
Saratoga, Ca. 95070

Re: Resub 1-2006

Dear Board:

I am the owner of a house located at 14771 Navarro Way on Mendocino County Assessor's parcel 132-010-19 at Irish Beach. Mr. Moores has provided me with a copy of the tentative map for the above application. I am writing you to inform you that I am in favor of the Board's approval of the application that Mr. Moores has submitted.

Sincerely,

  
Diann Sant

11/11/11

To: Mr. Tim Mitchell  
Mendocino Co. Board of Supervisors  
501 Low Gap Road  
Ukiah, Ca. 95482



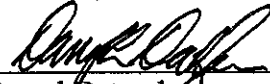
From: Darryl and Bonita Datwyler  
132 Pebble Ct.  
Copperopolis, Ca. 95228

Re: Moores Resub application #1-2006

Dear Board:

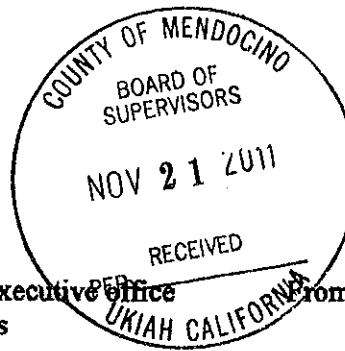
I am the owner of Mendocino County assessor's parcel # 132-020-11 located on Navarro Way at Irish Beach on the Mendocino Coast. Mr. Moores has supplied me with a copy of the tentative map for his application above described. The Resub area is zoned for 1-acre parcels but I am informed that the minimum parcel size on the map is 2+acres and that Mr. Moores has applied to limit the development to the 4 residential sites proposed and to have the attendant existing Use Permit reflect that no guest cottages will be allowed even though allowed under the zoning. We are writing to you to inform you that we are in favor of the Board approving this application.

Sincerely,

  
\_\_\_\_\_  
Darryl Datwyler

  
\_\_\_\_\_  
Bonita Datwyler

11/7/11



To: Mr. Tim Mitchell, executive office  
Board of Supervisors  
501 Low Gap Road  
Ukiah, Calif. 95482

From: Ken and Anne Ching  
10118 Fair Oak Blvd.  
Fair Oaks Calif. 95628

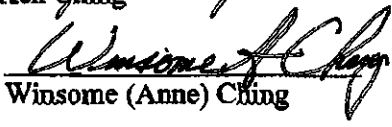
Re: Resub 1-200, Moores

Dear Members of the Board:

We are the owners of Mendocino County Assessor's parcel 132-320-02 at Irish Beach on the Mendocino Coast. Our property is located in Unit #9 and it borders the Moores Resub property 132-320-42 and 43. Mr. Moores has sent us a copy of his tentative map proposing to divide each of two existing 4.5 acre parcels into 2+-acre parcels so that there will be 4 parcels where there are now 2. The property is zoned RR1-acre but Mr. Moores is not proposing to develop these 2 ea. 4+- acre parcels to their maximum density allowed by the zoning. We are writing to you to let you know that we are in favor of your approval of the application. *-SO LONG AS NO CONSTRUCTION EXTENDS ABOVE GROUND ELEVATION AT THE CREST OF OUR LOT 2, UNIT 9.*

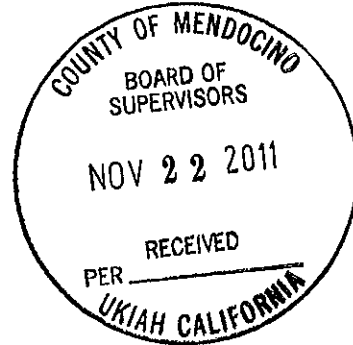
Sincerely,

  
Ken Ching

  
Winsome (Anne) Ching

11/18/11

Tim Mitchell  
Mendocino Co Board of Supervisors  
501 Low Gap Rd.  
Ukiah, CA 95482



Re: Moores Resubdivison Application 1-2006

I would like to withdraw my support for the October 2008 petition opposing the noted subdivision. My concerns at that time were twofold: ability of the development to support the water needs of the community, and the roadway required to access the proposed lots.

In the intervening years, I have, during the course of the developing of our own home in Irish Beach, discovered that ~20% of the remaining undeveloped lots are unbuildable owing to current septic and existing geological conditions, allaying much of the issue around the impact of j2 additional lots.

Initially, I was under the impression that the access was to be a new road, but have since learned that the road in plan all along, showing up on most maps, even the venerable "Google Maps" (Attachment A).

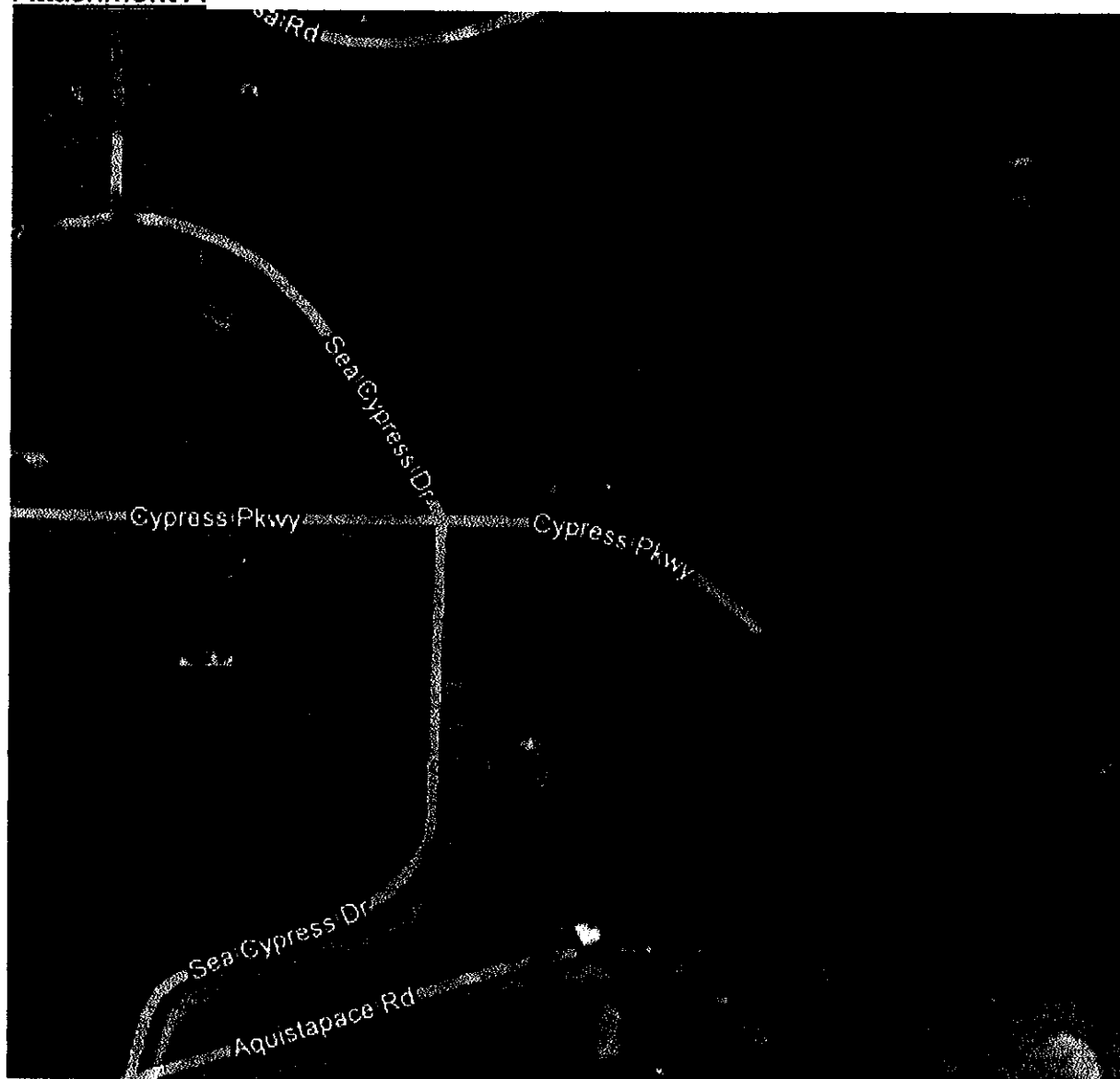
While additional development is never viewed favorably by those homeowners already in place, I see no reason to object to the proposal at this time.

Regards,

A handwritten signature in black ink, appearing to read "RJ Dial".

RJ Dial  
(14751 Alta Mesa Dr.)  
2709 Vista Diablo Ct.  
Pleasanton, CA 94566  
925-426-1470

Attachment A





Robert J. Diaz 14551 ALMA MESA DR. 925-426-1470

Pam Harley 15550 Forest View Rd 707-882-4189

Norma Daniels 15225 IRISH BEACH DR. 707-882-2529

11/11/11

To: Mr. Tim Mitchell  
Mendocino Co. Board of Supervisors  
501 Low Gap Road  
Ukiah, Ca. 95482



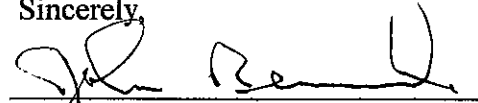
From: John and Diane Remick  
17920 Sencillo Dr.  
San Diego, Ca. 99128

Re: Moores Resub application #1-2006

Dear Board:

I am the owner of Mendocino County assessor's parcel # 132-074-04 located on Sea Cypress Dr. at Irish Beach on the Mendocino Coast. Mr. Moores has supplied me with a copy of the tentative map for his application above described. The Resub area is zoned for 1-acre parcels but I am informed that the minimum parcel size on the map is 2+acres and that Mr. Moores has applied to limit the development to the 4 residential sites proposed and to have the attendant existing Use Permit reflect that no guest cottages will be allowed even though allowed under the zoning. We are writing to you to inform you that we are in favor of the Board approving this application.

Sincerely,

  
A handwritten signature in dark ink, appearing to read "John Remick", written over a horizontal line.

John Remick

  
A handwritten signature in dark ink, appearing to read "Diane Remick", written over a horizontal line.

Diane Remick

**From:** <seawolfe@mcn.org>  
**To:** <bos@co.mendocino.ca.us>  
**Date:** 11/22/2011  
**Subject:** Dear Supervisor Carre... from Web



Dear Supervisor Carre Brown,  
Yesterday I left a phone message requesting to meet with you before December 6. On December 6 the Board is scheduled to hear an appeal of the Planning Commission's denial of CDRES1-2006. While the Planning Staff's report presents a thorough analysis of information they had regarding CDRES 1-2006, significant information has been discovered since the Planning Commission meeting that was not included or considered in the Staff report. While this information would not change the Planning Commission's decision, it does re-enforce the conclusions reached. This information concerns a deed restriction and Coastal Permit against the subject property that was not known to the Planning Staff. The Planning Staff agrees that this new information is valid and material to CDRES 1-2006. However we have been informed that the new information will not be presented to the Board of Supervisors at the appeal hearing by the Planning Staff. We do not agree with withholding significant information from the Supervisors regarding a decision you are being asked to make.

We would like to meet with you to assure that you have all the relevant information regarding the appeal of the denial of CDRES 1-2006. We wait to hear back from you with a date and time that is convenient for you to meet with us.

Dean and Patty Wolfe  
707-882-2729  
seawolfe@mcn.org

Page: <http://www.co.mendocino.ca.us/bos/contact.htm>  
Browser: Mozilla/5.0 (Macintosh; Intel Mac OS X 10\_6\_8) AppleWebKit/534.51.22  
(KHTML, like Gecko) Version/5.1.1 Safari/534.51.22  
IP: 24.52.176.109, DT: 2011-11-22 10:58:35  
d: 1

November 18, 2011

Mendocino County Board of Supervisors  
501 Low Gap Road, Room 1010  
Ukiah, Ca 95482

Attention: Tim Mitchell

To: Carre Brown, 1<sup>st</sup> District Supervisor  
John McCowen, 2<sup>nd</sup> District Supervisor  
John Pinches, 3<sup>rd</sup> District Supervisor  
Kendall Smith, 4<sup>th</sup> District Supervisor  
Dan Hamburg, 5<sup>th</sup> District Supervisor



Subject: December 6, 2011 Public Hearing of Bill Moores' CDRES 1-2006 Appeal

Members of the Board of Supervisors,

Mr. Moores' appeal of the Planning Commission's decision to deny CDRES 1-2006 will be heard by the Board of Supervisors at the December 6, 2011 meeting. **We urge the Supervisors to turn down Mr. Moores' appeal and confirm the Planning Commission's decision to deny CDRES 1-2006.**

As we have previously communicated to the Board of Supervisors, we are directly negatively impacted by the re-subdivision of the subject land because access to the proposed re-subdivision is over our 12 foot wide driveway. We feel that this overuse of the existing easement is an unnecessary direct threat to our safety, is a threat to other current and future property owners, and would compromise emergency access. Our position is well documented in letters and petitions to the County and should be in the information provided to the Board by Planning Staff. The Planning Staff agreed with us and determined that the increased usage presents an unnecessary safety hazard, damages surrounding property owners and does not meet the County road standards that require a 40 to 60 foot easement where a 20 foot easement currently exists. The County Staff found insufficient justification for granting an exception to the County road standards to allow this substandard easement to serve even more lots. This issue, along with others contained in the staff report, led the Planning Commission to unanimously agree with the Staff recommendation to not approve CDRES 1-2006 and the exceptions to County requirements that Mr. Moores has requested.

In addition to inadequate access, there are other issues with Mr. Moores' proposed re-subdivision. The County Staff report provides a thorough analysis of the information made available to the County by Mr. Moores. However, there is additional information that has been discovered since the Planning Commission denied CDRES 1-2006 that was not provided by Mr. Moores. The additional information involves an **existing 1989 deed restriction and 1988 coastal permit against the property**. We have no idea why Mr. Moores elected to not provide all relevant information to County Planning or why during the County Staff review it was not identified. While this information would not change the Planning Staff's recommendations or the Planning Commission's unanimous decision to turn down Mr. Moores' application, it further reinforces and justifies the denial of CDRES 1-2006.

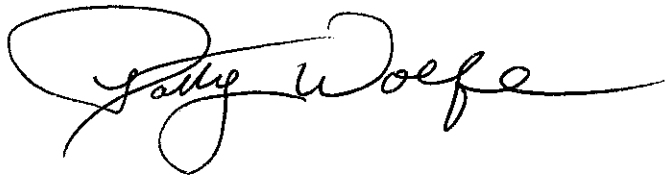
All of the issues and ramifications of CDRES 1-2006 and Mr. Moores' appeal of the Planning Commission's unanimous decision are tedious and time consuming to embrace. In order to assist the Board's understanding, we have attached a summary of the current status of CDRES 1-2006 and an analysis of the arguments Mr. Moores is known to be making in defense of his appeal. Among other things, our analysis

indicates that, in our opinion, Mr. Moores' re-subdivision request and his arguments in support of it present significant water policy issues for the Board of Supervisors. These issues include:

- A private contract and legal settlement being used to circumvent County and State requirements regarding water availability
- Unknown impact of the State Water Resource Control Board (SWRCB) revoking a water permit required by a California Coastal Commission permit
- Unresolved flexible zoning and groundwater well impact on the re-subdivision request and the already existing subdivision

We hope this summary and analysis supports the Board of Supervisor's rejection of Mr. Moores appeal and the Board of Supervisors will confirm the Planning Commission's denial of CDRES 1-2006.

Thank you for your consideration.



Dean and Patty Wolfe  
43600 Sea Cypress Dr.  
Manchester CA. 95459  
(707) 882-2729  
[seawolfe@mcn.org](mailto:seawolfe@mcn.org)

cc: Fred Tarr, Mendocino County Planning and Building Department, Ukiah  
Teresa Spade, Mendocino County Planning and Building Department, Fort Bragg  
Leandra Mosca, Enforcement Officer, California Coastal Commission  
Irish Beach Water District (IBWD) Board of Directors (by email)  
IBWD Legal Counsel, Matthew Emerick (by email)

## **Summary of the Current Status of Re-Subdivision CDRES 1-2006 & Analysis of Bill Moores' Appeal Arguments**

### **CDRES 1-2006 Summary & Current Status:**

CDRES 1-2006 requests that two approximately 4.5 acre lots (Unit 9A Lots 2 and 3) be subdivided into 4 approximately 2 acre lots. These were originally part of Unit 9 Lot 4 that was subdivided in 1989 into 3 lots (Unit 9A Lots 1, 2, & 3). If Mr. Moores is successful in his appeal, there will be 5 lots where there was originally 1.

In order to do this re-subdivision Mr. Moores had to do 3 things:

- Revise the Unit 9A CC&Rs that prohibited further subdivision in Unit 9A to allow this re-subdivision. Since he owns over 2/3s of the lots in Unit 9A he summarily changed the CC&Rs on 2/28/06.
- He is requesting a revision to the County approved site development plan for the parcels which prohibits further subdivision (Use permit U 118-75)
- He is requesting that an exception be granted to the County private road standards to allow a 20 foot wide access easement where a 40 to 60 foot wide access easement is required.

The County Planning and Building Department Staff Report (March 25, 2011) recommended denial of Mr. Moores applications as follows:

- "GENERAL PLAN CONSISTENCY REVIEW: As discussed in pertinent sections of the staff report, the proposed project is inconsistent with applicable goals and policies of the General Plan and Coastal Element, as follows:
1. The proposed development will not be provided with adequate access roads;
  2. The proposed development is not consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of the Coastal Zoning Code and does not preserve the integrity of the zoning district;
  3. The proposed development will have a significant adverse impact on the environment within the meaning of the California Environmental Quality Act.
    - a. The project as presented represents a substantial alteration of the present or planned land use of the area.
    - b. The project as presented will cause an increase in traffic hazards to motor vehicles, bicyclists or pedestrians; and,
  4. The granting of the exception will be detrimental to the public welfare or injurious to surrounding property."

The Planning Commission unanimously turned down Mr. Moores' requests at their meeting on May 19, 2011 as follows:

"Upon motion by Commissioner Hall, seconded by Commissioner Holtkamp and carried by the following roll call vote (7-0), IT IS ORDERED to deny CDRES 1-2006/ CDUM 118-75/2008, also denying the Exception Request, finding the project as proposed is inconsistent with the applicable goals and policies of the General Plan."

The complete Planning Department report and Planning Commission meeting minutes provide the basis for the decisions reached.

### **New Information:**

Since the Planning Commission meeting a deed restriction recorded March 30, 1989 against Unit 9 property has been discovered along with the 1988 coastal permit for the original Unit 9. This includes Unit 9 lot 4 that was re-subdivided later in 1989 into subject lots (Unit 9A 2 & 3). Review of the deed restriction presents several troubling issues, which the following are the most applicable to Mr. Moores' current application:

- Apparently Mr. Moores failed to inform County Planning of the existence of the deed restriction and existing coastal permit at any time during the application and review process for CDRES 1-2006. These documents were not in the Planning and Building Unit 9 files and the Coastal Commission never responded to the Planning and Building Department's request for input. **These omissions led to the deed restriction and**

**coastal permit not being included in the County review of the re-subdivision request CDRES 1-2006.**

- The deed restriction **specifically requires** an amended or new coastal permit prior to any further subdivision of the Unit 9 property. **Mr. Moores has not requested or done this.**
- The coastal permit attached to the deed restriction **specifically requires** an amended or new coastal permit for the use of an alternate water source if Mallo Pass is not to be used. **Mr. Moores has not proposed an alternate water source or requested an amendment to the coastal permit** since the water permit for Mallo Pass was rescinded by the State Water Resources Control Board (SWRCB) 2 ½ years ago in 2009.

### Mr. Moores' Appeal Arguments

Mr. Moores obviously does not agree with the denial of his project. His currently known arguments are extensions of his arguments that failed with the Planning Commission. These issues are more complex than they first seem. His arguments focus on the following:

- RR-1 Zoning
- Water Availability
- Grading Permit
- The Easement Deed and Our Obligation
- The Unit 9A CC&Rs
- Title 17
- Cal Fire

The following is an analysis of each of his arguments along with materials he has been providing to selected Irish Beach residents to solicit their support for his appeal. He would more than likely disagree with our assessments.

### RR-1 Zoning

Mr. Moores argues that the Zoning for the subject area (Unit 9) is RR-1 and allows for more lots. Mr. Moores' claim is only partially correct. It is what is called "flexible" zoning, or RR-5(1)PD. To quote directly from the County Staff report

*"The RR 5(1)PD zoning indicates a variable zoning classification. Section 20.516.015(8)(3) of the Mendocino County Coastal Zoning Code states:*

*In order to be developed to the smaller parcel size, areas indicated on the adopted Land Use Map as having a variable density zoning classification shall be required to be served by a public water system which utilizes surface waters, and which does not impact upon the groundwater resource, or by completion of a hydrological study, to the satisfaction of the Mendocino County Health Officer, which supports those greater densities.*

*The smaller parcel size of one (1) acre is permitted since the Irish Beach Water District has agreed to provide domestic water for the proposed two additional lots (See letter from Stephen Whitaker, President of the Water District which is dated October 3, 2008)."*

It was unknown to the County Planning Staff that the Irish Beach Water District (IBWD) does not exclusively use surface water. In addition to surface water use, IBWD has one operational ground water well (#9) and has drilled two additional wells (wells at tank 5 and tank 2, of which one of the wells is currently under litigation by Mr. Moores).

That led to the apparently incorrect conclusion in the Staff report. When questioned in the Planning Commission meeting (page 10 of the minutes), Mr. Mobley, the County Chief Planner, stated that they had not resolved this issue. He remarked (not in the minutes) that there were questions of whether or not the IBWD should be using any ground water wells since all of the Irish Beach subdivision is flexible zoned. The zoning resulting in 5 acres or 1 acre minimum determines the total number of lots that Irish Beach is allowed or the "density" of the subdivision. To our knowledge no hydrological studies have ever been performed to support the zoning allowance for the smaller lot size in Irish Beach as required if ground water wells are used by IBWD. When we requested the IBWD for copies of

hydrologic studies, the IBWD was not able to provide any such studies. We have no idea what the consequences of this are for the IBWD. It is our understanding from the 1988 Water Development Agreement (1988 *Water Development Agreement*, 7/6/1988, Book 1764 page 92 filed June 1989) that the Unit 9 well was originally drilled by Mr. Moores in the 1980's for the acreage parcels behind Irish Beach and then sold to the Water District. We can only speculate if the well would have been allowed if the Water District were to have drilled it directly for the subdivision without first doing the required hydrological studies.

#### Water Availability

Mr. Moores argues that there is plenty of water available to support his re-subdivision. He cites an excerpt from a 1990s legal settlement with the IBWD regarding the Unit 9 well agreement contained in the 1988 *Water Development Agreement* to support this argument. In our opinion that is somewhat misleading. The coastal permit for Unit 9 specifically requires the use of Mallo Pass water. Alternatives are required to be submitted as a permit amendment or as a new coastal permit. A private agreement or legal settlement between Mr. Moores and the IBWD is not a substitute for this State and County permit requirement. Nor is it a substitute for proving that there is enough water to supply the entire subdivision and the proposed additional lots. The Unit 9 well agreement and associate legal settlement have nothing to do with if there is sufficient water for more lots. The 1988 *Water Development Agreement* was drawn up when the IBWD took over ownership of the well (purchased from Mr. Moores). The subsequent 1990s legal settlement outlines that the IBWD would furnish water in the future to a defined number (21) of unknown lots for Mr. Moores. Over the years and through several Water Boards this has been an issue of contention.

The relevant issue is: "Is there sufficient water for more lots in Irish Beach?" Starting in the late 1980s with the documentation of the Unit 9 coastal permit, it has been known that without Mallo Pass **there is not sufficient water for all 460 already existing lots in Irish Beach**. That is detailed in the 1988 coastal permit for Unit 9 and has been discussed thoroughly over the years. Mallo Pass was required by the permit to support the creation of the Unit 9 lots in 1988. The real issue is that we need more water, but not yet, because the entire Irish Beach subdivision is building out so slowly. In 2009 the State Water Resources Control Board (SWRCB) revoked the IBWD water permit for Mallo Pass and refused to renew the IBWD water permit for Irish Gulch. The reason for these actions is that State regulations require a permittee to use water rights not just keep them for future use (the Mallo Pass water permit was issued in 1974 and never used, 32 years of non use until the IBWD was notified in 2007 of the revocation). Currently the IBWD is waiting for the SWRCB to license Irish Gulch. We do not yet know the quantity of water that will be licensed.

There are several questions that beg to be answered. Does Irish Beach have enough water for currently sold lots? Yes, probably. Does Irish Beach have enough water for all 460 lots? **No, not without the drilling of wells**. But what about the flexible zoning question that limits wells without studies of the impact on ground water? Does Mr. Moores have a contract for the IBWD to supply water to a set number of lots? Yes, apparently. Even if that water does not exist? We have no idea. Does a private contract and legal settlement over-ride County and State requirements? Again, we have no idea.

Per discussions with Steve Whitaker (past IBWD President and current member), there appears to currently be enough water from Irish Gulch and the Unit 9 well for about 235 total homes. There are already just under 200 homes. The allowance for total homes served assumes the SWRCB licenses Irish Gulch for at least what we currently use. It does not include water from the new IBWD wells currently under litigation by Mr. Moores. There is some disagreement on the totals, but the point is, no one thinks we have enough water for 460 homes from current water sources and that is thoroughly documented.



### The Grading Permit

Mr. Moores has argued that we should have no objections to his increased use of the substandard access easement (our driveway) because he has a grading permit to "improve" and widen our driveway to 18 feet of drivable surface within the 20 foot wide access easement. That is not the entire story.

Mr. Moores proposed the improvements to the easement as part of his CDRES 1-2006 re-subdivision application. The Mendocino County DOT would not agree to CDRES 1-2006. Apparently, as an alternative, Mr. Moores approached the County Building Department in Fort Bragg in 2009 and requested a grading permit (BF-2009-0331) and Coastal Permit Exclusion (CE #23-2009) for the same improvements (using the same drawings) of the easement but for supposedly a single residence on one of the existing lots (9A-3). Since a single home is apparently not required to have County DOT review, Fort Bragg was unaware that the proposed work had already been presented as part of CDRES 1-2006 and had not been approved. Mr. Moores received the grading permit on 9/10/2009 from the Building Department in Fort Bragg for the improvements of our driveway (note: we were not identified as the owner on the permit application). We became aware of all of this when a contractor appeared in our driveway. To say the least we were upset.

We brought our objections to the attention of Mendocino County DOT and the then Chief Planner, Frank Lynch. After a review by the County Mr. Moores was told that prior to his proceeding he would need to get Mendocino County DOT (in Ukiah) to issue an encroachment permit. This effectively stopped the grading project. Mr. Moores choose not to pursue the grading permit further. **The grading permit and associated preliminary building permit have since expired and are no longer valid.**

There were several other issues with this effort of Mr. Moores. Except for one additional detail the additional complexity only serves to confuse the matter. Mr. Moores asked for and obtained a Coastal Development Permit Exclusion (CE #23-2009) for this grading permit to proceed. As we have learned since then and discussed above, there is a deed restriction filed against the property in 1989 that requires an amended coastal permit. Mr. Moores apparently did not inform the Planning and Building Department in Fort Bragg of that fact when processing his request. That Coastal Development Permit Exclusion will expire in August of 2012.

### The Easement Deed and Our Obligation

Mr. Moores includes the grant deed for the easement across our property and argues that because we accepted the 20 foot wide access easement when we purchased our lot in 1991, we accepted anything that he wanted to do in the future that increased the use of this substandard easement by re-subdivision. We obviously disagree.

When we purchased our property in 1991, we were told that our lot was Unit 3 lot 39 (that is what our purchase agreement and grant deed say). We were told that the access easement was for just the two 4+ acre lots and the subdivision had already been completed. We were told that no further re-subdivision would be done. **We were not told that the access easement did not meet the County private road standard minimums.** We were told that the CC&Rs guaranteed that no further subdivisions could be done (both Unit 9A and Unit 3 CC&Rs reflected the no further subdivision provision at that time). During the County review and evaluation of CDRES 1-2006, we have learned that the Use Permit (U 118-75) also limits further subdivision and must be changed to allow the re-subdivision. Contrary to Mr. Moores assertion, it never occurred to us that Mr. Moores could change all of that. We never agreed to future re-subdivision and the increased use of our driveway. We feel that any contention otherwise by Mr. Moores is misleading, at best.

A note About the County Private Road Standards

*The County private road standards require access easements for one lot to be 20 feet wide, for more than one lot to be 40 feet wide, and for more than 4 lots, to be 60 feet wide. It can be argued if the access easement across our property would serve 4 or 5 lots if his re-subdivision is granted. Since our only access to our home is via our driveway/access easement we contend that the access easement would serve 5 lots. In the most conservative case, the access easement should be 60 feet wide and setbacks would need to be 20 feet from the easement. While we would be grandfathered, the buildable area of our neighbor's lot (Unit 3 lot 40) would be reduced 25% and his lot could be considered to be under the 12,000 square foot buildable minimum. The current 20 foot wide easement is only allowed for access to one home thus already represents an exception to the road standards.*

The Unit 9A CC&Rs:

Mr. Moores includes a history of the Unit 9A CC&Rs and argues that the CC&Rs for Unit 3 do not apply to Unit 9A. I do not understand why Mr. Moores makes this argument. The Unit 9A CC&Rs also restricted further re-subdivision until they were revised by Mr. Moores on 2/28/2006, as noted above.

As the years have gone by we have discovered that our lot was moved to the Unit 9A map by Mr. Moores/the County in 1989 because the easement across it serves Unit 9A lots. We are now designated Unit 9A Lot 9. We were never informed of this at the time of our purchase in 1991. We received a new APN number in the mail from the County with no explanation in 1992. In other words, this move had been done before we purchased our lot and we were informed (by issuance of a new APN number) after we purchased our lot. What applies to our home, the Unit 9A CC&Rs or Unit 3 CC&Rs? We were presented and accepted the Unit 3 CC&Rs when we purchased our lot because we were led to believe we were Unit 3 Lot 39. But what about Unit 9A CC&Rs? We were never given a copy at that time and were never requested to consent to them later. In reading the two sets of CC&Rs, our lot is covered by the Unit 3 CC&Rs and excluded by Unit 9A CC&Rs. So we are now on the Unit 9A subdivision map as lot 9 but are governed by the Unit 3 CC&Rs. Imagine our confusion.

Title 17

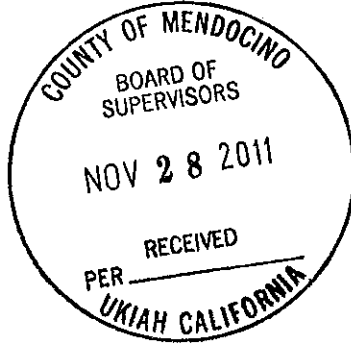
Mr. Moores argues that Title 17-52 (S)(1) endorses using existing easements, like our driveway, when establishing new subdivisions. We do not agree with his premise. This citation is from the section "Lot Design and Configuration." It is our opinion that this out-of-context quote is misleading. The purpose of this section is to provide guidelines on where to draw lot lines, not to address access easements and not as a justification for an exception to minimum road standards. If Mr. Moores' interpretation were correct, it would necessitate the violation of other paragraphs of the same Title 17 section.

The Cal Fire Letter

Mr. Moores argues that Cal Fire has endorsed his re-subdivision and provides a Cal Fire letter to back up his argument. Cal Fire has no responsibility for the minimum County private road standards. The governing document for subdivisions is Title 17. The responsibility rests with Mendocino County DOT to determine what is allowable. Mendocino DOT would not consent to the exception to the minimum road standards requested by Mr. Moores.

We hope that this analysis of Mr. Moores' arguments aids the Board of Supervisors in their evaluation of Mr. Moores' appeal of the Planning Commission denial of CDRES 1-2006 and the Board of Supervisors will confirm the decision of the Planning Commission and turn down the appeal.

Dean and Patty Wolfe



Stephen & Suzanne Whitaker  
PO Box 128  
Manchester, CA 95459

November 22, 2011

Board of Supervisors  
Mendocino County  
501 Low Gap Road  
Ukiah, CA 95482

Re: CDRES 1-2006 / CDUM 118-75/2008, appeal by William Moores

Dear Supervisors:

On May 19, 2011 the Planning Commission rejected William Moores request to subdivide two lots in Unit 9A of the Irish Beach subdivision, and Mr. Moores has appealed that decision to the Board of Supervisors. In the staff report one finds the comment;

“.....the Irish Beach Water District has agreed to provide domestic water for the proposed two additional lots (See letter from Stephen Whitaker, President of the Water District which is dated October 3, 2008).”

however, the situation regarding available water has changed considerably since October 3, 2008. On March 9, 2009, the Irish Beach Water District was informed by the State Water Resources Control Board (letter enclosed) that a request for an extension of Permit 15580 was denied. This means that IBWD must apply for a license to extract water from Irish Gulch and the amount of that extraction is uncertain. On March 11, 2009, the Irish Beach Water District was informed by the State Water Resources Control Board (letter enclosed) that the extraction Permit 16622 for Mallo Pass Creek was revoked. This means that IBWD can extract no water from Mallo Pass Creek.

At this point in time, it is clear that the Irish Beach Water District does not have sufficient water to provide for the current 459 parcels in the Irish Beach subdivision. Given these conditions, it seems unreasonable to allow further subdivision within Irish Beach.

Sincerely,

Stephen Whitaker

Enclosed: (1) Letters from IBWD to Department of Planning and Building Services, (2) Letters from State Water Resources Control Board to IBWD.

# Irish Beach Water District

15401 Forest View Road

Post Office Box 67

Manchester, California 95459

Phone (707) 877-3275 Fax (707) 877-3275

October 3, 2008

Department of Planning and Building Services

Mendocino County

501 Low Gap Road, Room 1440

Ukiah, CA 95482

[tarrf@co.mendocino.ca.us](mailto:tarrf@co.mendocino.ca.us)


Attn: Fred Tarr

Re: Case # RES 1-2006

Dear Mr. Tarr:

At the September 13, 2008 meeting of the Board of Directors of the Irish Beach Water District, the Board agreed to change its positions stated earlier on February 9, 2008 and July 16, 2008 (see attached letters). Enclosed is a re-referral form indicating that the Board has withdrawn the *conditional approval* and replaced it with *approval*.

Sincerely,



Stephen Whitaker, President  
Board of Directors

cc: Dorothy Cong, Annette Fromwiller, William Moores



COUNTY OF MENDOCINO  
DEPARTMENT OF PLANNING AND BUILDING SERVICES  
501 LOW GAP ROAD • ROOM 1440 • UKIAH • CALIFORNIA • 95482

RAYMOND HALL, DIRECTOR  
Telephone 707-463-4281  
FAX 707-463-5709  
pbs@co.mendocino.ca.us  
www.co.mendocino.ca.us/planning

October 26, 2007

RE-REFERRAL

Planning - Fort Bragg  
Department of Transportation  
Environmental Health - Fort Bragg

Assessor  
Dept of Forestry/ CalFire  
Department of Fish and Game

Coastal Commission  
Addresser  
Irish Beach Fire District  
Irish Beach Water District

CASE#: RES 1-2006

DATE FILED: 6/21/2006

OWNER: WILLIAM & TONA MOORES

REQUEST: Revision of Coastal Re-Subdivision of two legal parcels which total 8.46 acres into four parcels of 2.0 acres, 2.00 acres, 2.34 acres and 2.46 acres and a modification to Use Permit 118-75 to allow for five lots where three lots are permitted.

LOCATION: Within the Coastal Zone, approximately 3.75 miles north of Manchester, approximately 0.33 miles east of the intersection of Highway One and Sea Cypress Drive (CR# 568), in the Irish Beach Subdivision, located at 43586 and 43592 Sea Cypress Drive; AP# 132-320-42 and 132-320-43.

PROJECT COORDINATOR: FRED TARR

RESPONSE DUE DATE: 11/12/2007.

Attached to this form is information describing the above noted project(s). The County Planning and Building Services Department is soliciting your input, which will be used in staff analysis, and will be forwarded to the appropriate public hearing.

You are invited to comment on any aspect of the proposed project(s). Please address any concerns or recommendations on environmental considerations and specific information regarding permits you may require to the project coordinator at the above address or submit your comments by email to [pbs@co.mendocino.ca.us](mailto:pbs@co.mendocino.ca.us). Please note the case number and name of the project coordinator with all correspondence to this department.

8W  
10/3/08 We have reviewed the above application and recommend the following (please check one):

☒ Recommend approval. The Department has no comment at this time.

☐ Recommend conditional approval (Suggested condition(s) attached).

☐ Applicant to submit additional information (Attach list of items needed).

☐ Recommend denial (Attach reasons for recommend denial).

☐ Recommend preparation of an Environmental Impact Report (Attach reasons why an EIR should be required).

☐ Other comments (Attach additional sheets if necessary).

REVIEWED BY:

Signature

S. Whitake

Department

I.B.W.D.

Date

02/09/08

# Irish Beach Water District

15401 Forest View Road

Post Office Box 67

Manchester, California 95459

Phone (707) 877-3275 Fax (707) 877-3275

July 16, 2008

Department of Planning and Building Services

Mendocino County

501 Low Gap Road, Room 1440

Ukiah, CA 95482

[tarrf@co.mendocino.ca.us](mailto:tarrf@co.mendocino.ca.us)

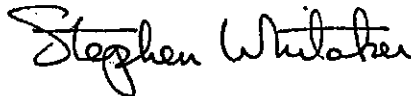
Attn: Fred Tarr

Re: Case # RES 1-2006

Dear Mr. Tarr:

The Board of Directors of the Irish Beach Water District has directed me to send you an amended form (attached with my letter of February 9, 2008) in which the "reasons for recommended denial" have become the "suggested conditions".

Sincerely,



Stephen Whitaker, President  
Board of Directors

cc: Dorothy Cong



COUNTY OF MENDOCINO  
DEPARTMENT OF PLANNING AND BUILDING SERVICES  
501 LOW GAP ROAD • ROOM 1440 • UKIAH • CALIFORNIA • 95482

RAYMOND HALL, DIRECTOR  
Telephone 707-463-4281  
FAX 707-463-5709  
pbs@co.mendocino.ca.us  
www.co.mendocino.ca.us/planning

October 26, 2007

RE-REFERRAL

Planning - Fort Bragg  
Department of Transportation  
Environmental Health - Fort Bragg

Assessor  
Dept of Forestry/ CalFire  
Department of Fish and Game

Coastal Commission  
Addresser  
Irish Beach Fire District  
Irish Beach Water District

CASE#: RES 1-2006

DATE FILED: 6/21/2006

OWNER: WILLIAM & TONA MOORES

REQUEST: Revision of Coastal Re-Subdivision of two legal parcels which total 8.46 acres into four parcels of 2.0 acres, 2.00 acres, 2.34 acres and 2.46 acres and a modification to Use Permit 118-75 to allow for five lots where three lots are permitted.

LOCATION: Within the Coastal Zone, approximately 3.75 miles north of Manchester, approximately 0.33 miles east of the intersection of Highway One and Sea Cypress Drive (CR# 566), in the Irish Beach Subdivision, located at 43586 and 43592 Sea Cypress Drive; AP# 132-320-42 and 132-320-43.

PROJECT COORDINATOR: FRED TARR

RESPONSE DUE DATE: 11/12/2007.

Attached to this form is information describing the above noted project(s). The County Planning and Building Services Department is soliciting your input, which will be used in staff analysis, and will be forwarded to the appropriate public hearing.

You are invited to comment on any aspect of the proposed project(s). Please address any concerns or recommendations on environmental considerations and specific information regarding permits you may require to the project coordinator at the above address or submit your comments by email to [pbs@co.mendocino.ca.us](mailto:pbs@co.mendocino.ca.us). Please note the case number and name of the project coordinator with all correspondence to this department.

We have reviewed the above application and recommend the following (please check one):

☐ Recommend approval. The Department has no comment at this time.

☒ Recommend conditional approval (Suggested condition(s) attached).

☐ Applicant to submit additional information (Attach list of items needed).

☐ Recommend denial (Attach reasons for recommend denial).

☐ Recommend preparation of an Environmental Impact Report (Attach reasons why an EIR should be required).

☐ Other comments (Attach additional sheets if necessary).

REVIEWED BY:

Signature

*S. Whitaker*

Department

*I.B.W.D.*

Date

*02/09/08*

# Irish Beach Water District

15401 Forest View Road

Post Office Box 67

Manchester, California 95459

Phone (707) 877-3275 Fax (707) 877-3275

February 9, 2008

Department of Planning and Building Services  
Mendocino County  
501 Low Gap Road, Room 1440  
Ukiah, CA 95482  
[tarrf@co.mendocino.ca.us](mailto:tarrf@co.mendocino.ca.us)

Attn: Fred Tarr

Re: Case # RES 1-2006

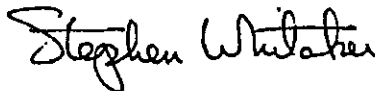
Dear Mr. Tarr:

The Board of Directors of the Irish Beach Water District had intended to discuss your request dated October 26, 2007 at a meeting scheduled for January 12, 2008. However, that meeting was cancelled because of problems caused by the lack of power in our area. Today the Board of Directors was able to meet and discuss RES 1-2006.

Our letter of October 13, 2006 indicated that the District *could provide* water service to the two parcels in question; however, since that time we have received a Notice of Proposed Revocation of our water right permit for Mallo Pass Creek (see enclosed letter from SWRCB dated September 28, 2007). The District requested a hearing on October 12, 2007 (letter enclosed) and the District's attorney reiterated our position in a letter (enclosed) to SWRCB on December 7, 2007. The response from David Rose (enclosed) dated January 25, 2008 contains the phrase "should you decide to pursue a hearing" which indicates a certain degree of confusion on the part of SWRCB. It is certainly the District's intention to demand a hearing.

Our request for water from Mallo Pass Creek is a moderate 48 gallons per minute which, in connection with the extraction of 58 gallons per minute from Irish Gulch and 10 gallons per minute from a well, would allow us to provide service to 502 connections in Irish Beach. In the absence of water from Mallo Pass Creek, the Irish Beach Water District will be in a position to supply water to 297 connections, of which approximately 190 are currently active. Given the uncertainty of providing water to lots that already exist, the Board believes that it cannot confirm that water will be available for *newly created* lots that are within the District but not within District's service area.

Sincerely,



Stephen Whitaker, President  
Board of Directors

cc: Dorothy Cong





**Linda S. Adams**  
*Secretary for  
Environmental Protection*

# State Water Resources Control Board

## Division of Water Rights

1001 I Street, 14<sup>th</sup> Floor ♦ Sacramento, California 95814 ♦ 916.341.5300  
P.O. Box 2000 ♦ Sacramento, California 95812-2000  
Fax: 916.341.5400 ♦ [www.waterrights.ca.gov](http://www.waterrights.ca.gov)



**Arnold Schwarzenegger**  
*Governor*

GD-1

In Reply Refer  
to:KDM:21902

**MAR 09 2009**

Stephen Whitaker  
Irish Beach Water District  
PO Box 67  
Manchester, CA 95459

Dear Mr. Whitaker:

### PETITION FOR RECONSIDERATION REGARDING ORDER DENYING TIME EXTENSION FOR PERMIT 15580 (APPLICATION 21902), IRISH GULCH IN MENDOCINO COUNTY

The State Water Resources Control Board has reviewed the Irish Beach Water District petition for reconsideration of the Division of Water Rights order denying a petition for extension of time for Permit 15580. Enclosed is an order responding to your petition for reconsideration.

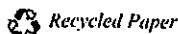
Katherine Mrowka is the senior staff person presently assigned to this matter. If you require further assistance, Ms. Mrowka can be contacted at (916) 341-5363.

Sincerely,

Steven Herrera, Manager  
Permitting Section

Enclosure

**California Environmental Protection Agency**



GD-2

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2009-0014-EXEC

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In the Matter of the Petition for Reconsideration of

**IRISH BEACH WATER DISTRICT**  
Permit 15580 (Application 21902)

Regarding Order Denying Extension of Time

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SOURCE: Irish Gulch tributary to Pacific Ocean

COUNTY: Mendocino

---

**ORDER DENYING RECONSIDERATION**

BY THE EXECUTIVE DIRECTOR:

**1.0 INTRODUCTION**

Irish Beach Water District (Petitioner) petitions the State Water Resources Control Board (State Water Board or Board) for reconsideration of the Division of Water Rights' (Division) order denying a petition for extension of time to put water to beneficial use under Permit 15580 (Application 21902). The Executive Director finds that denial of the extension was appropriate and proper, and thus denies the petition for reconsideration. (Cal. Code Regs., tit. 23, § 770.)<sup>1</sup>

**2.0 RECONSIDERATION OF A DECISION OR ORDER**

Any interested person may petition the State Water Board for reconsideration of a decision or order on any of the following grounds:

---

<sup>1</sup> The Water Code directs the State Water Board to act on a petition for reconsideration within 90 days from the date on which the State Water Board adopts the decision or order that is the subject of the petition. (Wat. Code, § 1122.) If the State Water Board fails to act within that 90-day period, a petitioner may seek judicial review, but the State Water Board is not divested of jurisdiction to act upon the petition simply because the State Water Board failed to complete its review of the petition on time. (See *California Correctional Peace Officers Ass'n. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1147-1148, 1150-1151 [43 Cal.Rptr.2d 681]; State Water Board Order WQ 98-05-UST at pp.3-4.)

- (a) [i]rregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing;
- (b) [t]he decision or order is not supported by substantial evidence;
- (c) [t]here is relevant evidence which, in the exercise of reasonable diligence, could not have been produced;
- (d) [e]rror in law.

(Cal. Code Regs., tit. 23, § 768.)

The State Water Board may refuse to reconsider a decision or order if the petition for reconsideration fails to raise substantial issues related to the causes for reconsideration set forth in section 768 of the State Water Board's regulations. (*Id.*, § 770, subd. (a)(1).)

Alternatively, after review of the record, the State Water Board also may deny the petition upon a finding that the decision or order was appropriate and proper, set aside or modify the decision or order, or take other appropriate action. (*Id.*, subd. (a)(2)(A)-(C).)

State Water Board Resolution 2002-0104 delegates to the Executive Director the authority to supervise the activities of the State Water Board. Unless a petition for reconsideration raises matters that the State Water Board wishes to address or requires an evidentiary hearing before the State Water Board, the Executive Director's consideration of a petition for reconsideration falls within the scope of the authority delegated under Resolution 2002-0104. Accordingly, the Executive Director has the authority to refuse to reconsider a petition for reconsideration, deny the petition, set aside or modify the decision or order, or take other appropriate action.

The State Water Board has not designated decisions by the Executive Director as precedent decisions pursuant to the Administrative Procedures Act. (State Water Board Order WR 96-1, at p. 17, fn. 11.)

### 3.0 **FACTUAL BACKGROUND**

The Division issued Permit 15580 to Gertrude J. Moores, Jesse E. Nichols, and the Estate of Williams M. Moores on February 15, 1968, pursuant to Application 21902. On March 20, 1969, the permit was amended to list Irish Beach Water District as an additional Permittee. The permit was subsequently assigned solely to the Irish Beach Water District on March 21, 1973. The permit authorizes direct diversion of 1.31 cubic feet per second (cfs) for municipal,

domestic, and irrigation purposes. The Permit required completion of construction work by December 1, 1970 and full beneficial use of water by December 1, 1971.

At the request of Petitioner, on July 27, 1973, the Division extended the time to complete construction to December 1, 1975 and the time to put water to full beneficial use until December 1, 1976. The same order also established a maximum annual diversion limit of 545 acre-feet per annum (afa). The Division granted a second time extension at the request of Petitioner, extending the time to complete construction to December 1, 1978 and the time to put water to full beneficial use to 1987. At the same time, the Division added a second point of diversion to the permit. On October 17, 1988, the Division inspected the project and found that Petitioner was using 0.05 cfs, with a maximum use of 23 afa. The Division granted Petitioner a third time extension in 1989. Construction was to be completed by December 31, 1995; water was to be put to full beneficial use by December 31, 1997.

Following expiration of the 1997 deadline for putting water to full beneficial use, the Division conducted a licensing inspection on May 25, 1999. The inspection found that 167 of the 450 homes planned for the development had been built. Progress reports indicated maximum use to be 0.05 cfs, and the maximum diversion to be 24.1 afa. On July 28, 2000, two and one-half years after time expired under the permit, Petitioner requested a fourth extension of time. The petition indicated that it was unknown when water would be fully used, but requested a ten-year extension (i.e., until December 31, 2007).

On March 15, 2007, less than a year before the requested ten-year extension period was to expire, and following numerous requests from the Division to complete documentation under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), Petitioner issued a Notice of Determination (NOD) for the time extension environmental document.

On July 22, 2008, the Division denied Petitioner's request for extension of time. The denial was based on a number of factors, the first of which was that the Division could not make a finding of due diligence. At the time the last extension ran out, 28 years had elapsed since issuance of the original permit. At the time of the denial, over 39 years had elapsed. As of 2007, when the extension would have expired, all water had not been put to beneficial use. The Division also noted the long delay, despite prodding by the Division, in completion of CEQA documentation

for the extension. The Division also found that the delay was not occasioned by obstacles that could not be reasonably avoided. The reason given by Petitioner was that only 5 houses per year were being developed. The Division further found that the Mitigated Negative Declaration showed insufficient summer flow to complete the project. The Mitigated Negative Declaration also identified threatened and endangered species and their habitat that could be affected by the project. The extension denial order expressed concern over the State Water Board's public trust duty to protect these species, including the California Red-Legged Frog, the Point Arena Mountain Beaver, Steelhead, and Coho Salmon.

Finally, the Division found that satisfactory progress was not likely to be made if an extension were granted. Petitioner had stated that the project would not be completed during the requested extension. In fact, the contemplated extension period had nearly expired before Petitioner finished CEQA documentation necessary for consideration of the extension. In addition, the Petitioner had made little progress towards reaching full beneficial use. The denial noted that environmental documentation estimated that full beneficial use would not occur until sometime between 2038 and 2067.

On August 19, 2008, the State Water Board received a petition for reconsideration and a request that the extension be extended further, to 2018. Petitioner also requested that the State Water Board hold a hearing on evidence relating to impacts on threatened and endangered species and delays with the development due to financial trouble associated with litigation concerning another water right.

#### **4.0 DISCUSSION<sup>2</sup>**

##### **4.1 Requirements for Obtaining an Extension**

The State Water Board may extend the deadlines specified in a permit for beginning construction, completing construction, and completing application of water to beneficial use upon a showing of good cause. (Wat. Code, § 1398.) The State Water Board will grant a petition for an extension of time only upon such conditions as the Board determines to be in the public interest, and only upon a showing that (1) due diligence has been exercised, (2) failure to comply with previous time requirements was caused by obstacles which could not reasonably

---

<sup>2</sup> To the extent Petitioner raises issues not discussed in this order, those issues are dismissed as not substantial or appropriate for review. (Cal. Code Regs., tit. 23, § 770, subd. (b)(1).)

be avoided, and (3) satisfactory progress will be made if an extension is granted. (Cal. Code Regs., tit. 23, § 844.) "Lack of finances, occupation with other work, physical disability, and other conditions incident to the person and not the enterprise will not generally be accepted as good cause for delay." (*Ibid*; State Water Board Order WRO 2003-0003 [lack of time and money were not valid excuses for failure to diligently pursue a project].) Approval of a petition for an extension of time is a discretionary act that is subject to the requirements of CEQA. (State Water Board Order WR 2008-0045 at p. 4.)

#### 4.2 Due Diligence

The due diligence requirement is an important aspect of water right administration. As a recent State Water Board order explains:

The Water Code and the State Water Board's regulations require appropriative water rights to be developed with due diligence. The purpose of the due diligence requirement is to ensure that appropriators do not hold water rights in "cold storage," thereby preventing water resources from being put to beneficial use. (See *California Trout Inc. v. State Water Resources Control Board* (1989) 207 Cal.App.3d 585, 619 [discussing Water Rights Board's regulations and the fact that "the statutory requirement of diligence does not allow the Water Board to countenance a scheme placing water rights in 'cold storage' for future use"]; see also State Conservation Commission, Report of the Conservation Commission of the State of California to the Governor and Legislature of California (1913) pp. 20-21, 39-40 [not sound public policy to allow cold storage of a valuable natural resource such as water]; and see *Nevada County and Sacramento Canal Company v. G. W. Kidd* (1869) 37 Cal. 282, 314 ["The doctrine is that no man shall act upon the principle of the dog in the manger, by claiming water by certain preliminary acts, and from that moment prevent others from enjoying that which he is himself unable or unwilling to enjoy, and thereby prevent the development of the resources of the country by others"].) (State Water Board Order WR 2008-0045 at p. 2.)

Petitioner argues that it has exercised due diligence because all construction has been completed and full beneficial use of water is nearly complete. But Petitioner goes on to state that only 195 of 502 homes have been built. (Petition, p. 6-7.) This represents only a 39% build-out. Petitioner further notes as evidence of diligence that the lots have been subdivided and fully permitted for development. (Petition, p. 7.) Demonstrating that the lots are ready for homes does not necessarily show diligence, however, especially considering that over a nearly 40 year period the homes have not been built and the water has not been put to beneficial use. Petitioner asserts that "future growth is not merely a gleam in the developer's eye – rather, it is just a matter of time before all approved lots are built." (Petition, p. 7.) However, considering

that the permit was issued in 1968 and that according to the Mitigated Negative Declaration an additional thirty to sixty years may be required to put the water to full beneficial use, the amount of time is not consistent with the requirement for due diligence.

Petitioner also challenges the finding that due diligence was not exercised because Petitioner was slow to complete CEQA documentation. This challenge is based on the assertion that Petitioner's slow completion of CEQA was because of Petitioner's "misunderstanding as to how to proceed with the CEQA documentation and the fact that small public agencies are not always capable of responding quickly due to a variety of factors." (Petition, p. 11.) While this may be true, State Water Board regulations make clear that "conditions incident to the person and not to the enterprise will not generally be accepted as good cause for delay." Petitioner's multi-year delay argues against an assertion that satisfactory progress will be made or that due diligence has been exercised. Thus by the terms of the State Water Board's regulations, it would be improper to consider Petitioner's failure to retain a CEQA consultant as a valid excuse for delay.

#### **4.3 Failure to Comply with Past Time Requirements**

Petitioner asserts that the reasons previous timelines were not met was the slow rate of development along the Mendocino coast and the onerous regulatory process and hurdles to developing large residential subdivisions in the area. In the words of the Petitioner, development of a subdivision on the Mendocino coast, "even back in the 1980's -- is a very complex, expensive, and time consuming undertaking." (Petition, p. 7.) Petitioner fails to note, however, that 1980 was nearly 30 years ago. Even in the relatively slow-moving worlds of coastal development and water regulation, three decades is a substantial amount of time. Petitioner also does not elaborate on how regulatory processes delayed the construction of homes in this particular subdivision or appropriation of water under this particular permit.

Petitioner also argues that past failure to comply with time requirements was caused by litigation over a different water right held by Petitioner. Petitioner does not explain how lack of access to water under another right caused it to delay development under this permit. If anything, one would expect that lack of access to water under another right would speed development under this permit. Further, a lack of finances caused by separate litigation, as claimed by Petitioner, does not supply a valid reason for delay, even if such lack of finances caused a slowdown in development. (Cal. Code Regs., tit. 23, § 844.)

#### **4.4 Likelihood of Satisfactory Progress if an Extension is Granted**

Although first noting that it is hard to project future growth within a subdivision, Petitioner claims in its reconsideration request that all the water will be put to beneficial use within ten years.

This is based on an expected growth of five new homes per year, which is in line with past and current development rates. Petitioner suggests in the petition for reconsideration that it only intends to service 53 more homes from this permit.

While home development may be progressing at the rate of five homes per year, it appears that appropriation under this permit has lagged behind that trend. From issuance of the permit in 1968 until 2005, Petitioner was increasing diversion rates under the permit by an average of 0.0018 cfs per year. By comparison, in the past ten years (1995 to 2005), diversions were increasing by only an average of 0.0017 cfs per year. According to Petitioner, appropriation will be capped at 58 gallons per minute, or 0.1292 cfs. (Petition, p. 12.) If historical rates of development continue, as Petitioner suggests they will, this rate of diversion will not be reached until at least 2039, well past the date of the requested extension, or even the extended date of 2018 that Petitioner requests in the petition for reconsideration. This date is in line with the estimates in the Mitigated Negative Declaration. (Mitigated Negative Declaration, pp. 5, 17.) A mere showing that some increase in water use will occur over a long period of time does not amount to a satisfactory showing that the water will be put to beneficial use in accordance with the permit.

The evidence presented by the Petitioner, including arguments made in the petition for reconsideration, do not convince the State Water Board that satisfactory progress will be made if an extension of time is granted. This finding is only underscored by the fact that we are now well past the 2007 date when the extension would have expired, and even Petitioner estimates that the project is still more than ten years from full beneficial use of the water.

Thus, Petitioner has not made any part of the showing necessary to support an extension of time. Petitioner has not demonstrated that due diligence has been exercised, has not demonstrated that failure to comply with previous time requirements was caused by obstacles



that could not reasonably be avoided, and has not shown that satisfactory progress will be made if an extension is granted.<sup>3</sup> The Division's action was appropriate and proper.

#### **5.0 REQUEST FOR HEARING**

Petitioner offers new evidence that Petitioner claims could not, in the exercise of reasonable diligence, have been produced earlier. Petitioner offers this evidence as part of a challenge to paragraph 21 of the denial order, regarding threatened and endangered species. This new evidence suggests that some concerns over certain species may not be as significant as previously thought.

The Division may condition or deny a petition for extension of time based on environmental or public trust impacts, including impacts on threatened and endangered species. (See Wat. Code, § 1398 [the State Water Board "may" grant an extension for good cause]; Cal. Code Regs., tit. 23, § 844 [An extension will be granted only on those conditions that the State Water Board determines to be in the public interest].) But the absence of any impacts on threatened and endangered species, or evidence that those impacts will not be as serious as anticipated by the Division, cannot support the issuance of an extension if other requirements for approving an extension have not been satisfied. Because the Petitioner has not made the showing necessary to support issuance of an extension, as discussed in Section 4 of this order, there is no reason to hold a hearing to hear evidence concerning impacts on threatened and endangered species.

A hearing was also requested to present new evidence on how litigation related to the development project, but related to a different water permit, impacted Petitioner financially and slowed development. As discussed above, lack of finances, including lack of finances resulting from litigation, does not constitute a valid excuse for delay. As such, there is not a reason to hold a hearing to hear evidence concerning this matter, as such evidence could not affect the outcome of this reconsideration.

---

<sup>3</sup> The Division denied the Petitioner's request for a ten-year extension. The Petitioner's petition for reconsideration requests an additional ten-year extension, for a total of twenty years. Because this order concludes that the requirements for issuing an extension have not been satisfied for either period, it is unnecessary to address the issue whether the State Water Board could grant an extension for more than ten years without first providing notice and an opportunity to protest the longer extension. (See Cal. Code Regs., tit. 23, § 843.)

**6.0 CONCLUSION**

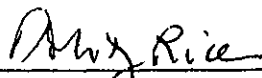
Upon review of the record, the State Water Board finds that the Division's order canceling the application was appropriate and proper.

**ORDER**

**IT IS HEREBY ORDERED** that the Irish Beach Water District petition for reconsideration is denied.

**MAR 04 2009**

Dated: \_\_\_\_\_

  
\_\_\_\_\_  
Dorothy Rice  
Executive Director



# State Water Resources Control Board



Linda S. Adams  
Secretary for  
Environmental Protection

Division of Water Rights  
1001 I Street, 14<sup>th</sup> Floor ♦ Sacramento, California 95814 ♦ 916.341.5300  
P.O. Box 2000 ♦ Sacramento, California 95812-2000  
Fax: 916.341.5400 ♦ www.waterrights.ca.gov

Arnold Schwarzenegger  
Governor

**MAR 11 2009**

In Reply Refer  
to:kdm:24364

**CERTIFIED MAIL # 7004 2510 0003 9148 5913**

Stephen Whitaker  
Irish Beach Water District  
15401 Forest View Road  
P.O. Box 67  
Manchester, CA 95459-0067

Dear Mr. Whitaker:

**ORDER OF REVOCATION, PERMIT 16622 (APPLICATION 24364), OF IRISH BEACH  
WATER DISTRICT TO APPROPRIATE WATER FROM MALLO PASS CREEK, IN  
MENDOCINO COUNTY**

On September 28, 2007, the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) issued a Notice of Proposed Revocation for Permit 16622. The Permittee timely requested a hearing. A hearing was scheduled for February 26, 2009, but the hearing was cancelled on January 26, 2009 because the Permittee failed to submit a Notice of Intent to Appear (NOI) at the hearing. Pursuant to the revised Notice of Public Hearing dated December 31, 2008, the failure to submit an NOI is deemed withdrawal of the request for hearing. Therefore, the State Water Board may act on the proposed revocation without a hearing pursuant to Water Code section 1410.1. Accordingly, enclosed is an order revoking Permit 16622.

It is the Permittee's responsibility to remove or modify diversion works and impoundments to ensure that water subject to this revocation is not diverted and used. Unauthorized diversion and use of water is considered a trespass and subject to enforcement action under Water Code sections 1052 and 1831. Pursuant to Water Code section 1052, any diversion of water from the point(s) of diversion identified in this permit may be subject to administrative civil liability of up to \$500 per day without further notice. The State Water Board also may issue a cease and desist order in response to an unauthorized diversion or threatened unauthorized diversion pursuant to Water Code section 1831. It is the Permittee's responsibility to consult with the Department of Fish and Game, and the Regional Water Quality Control Board to ensure that removal of project facilities does not adversely affect a fishery or result in unregulated sediment discharge to a waterway. Permittee must also consult the Department of Water Resources, Division of Safety of Dams if a jurisdictional size dam will be removed or breached (dam height 15 feet or more, or reservoir volume 50 acre-feet or more). These agencies may require a permit or other approval prior to any construction activity.

*California Environmental Protection Agency*



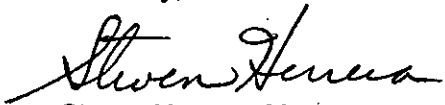
Stephen Whitaker  
Irish Beach Water District

2

If diversions will be made under claim of riparian or pre-1914 water rights, diversions shall be documented by the filing of a Statement of Water Diversion and Use in accordance with Water Code sections 5100 through 5108.

Katherine Mrowka is the senior staff person currently assigned to this matter. Please contact Ms. Mrowka at (916) 341-5363 if you require further assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Steven Herrera".

Steven Herrera, Manager  
Water Rights Permitting Section

Enclosure

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

---

In the Matter of Permit 16622 (Application 24364)  
IRISH BEACH WATER DISTRICT

ORDER OF REVOCATION

---

SOURCE: Mallo Pass Creek tributary to Pacific Ocean  
COUNTY: Mendocino

---

**WHEREAS:**

You are hereby notified, pursuant to sections 1410-1410.2 of the California Water Code, the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), is revoking Permit 16622 because the Permittee has failed to commence, prosecute with due diligence, and complete the work necessary to appropriate water under the permit, the Water Code, and the State Water Board's regulations. In addition, the Division revokes Permit 16622 because the Permittee has failed to use beneficially all or part of the water for the purpose for which it was appropriated in accordance with the Water Code.

The revocation is based upon the following facts, information and conclusions:

The State Water Board issued Permit 16622 on February 27, 1974. The permit authorizes Irish Beach Water District (Permittee) to divert 0.58 cubic foot per second to be diverted from January 1 to December 31 of each year. The maximum amount diverted under this permit shall not exceed 380 acre-feet per year (afa). The permit was modified by Order dated February 7, 1989 to allow diversion of 150 gallons per minute, not to exceed 220 afa. The permit requires that construction work be completed by December 1, 1977, and that the water be applied to the authorized use by December 1, 1984.

**A. PERMITTEE HAS FAILED TO COMMENCE, PROSECUTE WITH DUE DILIGENCE, AND COMPLETE THE WORK NECESSARY TO APPROPRIATE WATER UNDER THE PERMIT.**

1. In the attachment to the May 14, 1984 petition for extension of time, Permittee indicated that project construction had not yet commenced.
2. Permittee requested and on October 12, 1984, the Division granted an extension of time to commence construction or apply the water to full beneficial use. The time extension order required construction to be complete by December 1, 1987, and that water be put to full beneficial use by December 1, 1988.
3. Permittee failed to complete construction of the project by the December 1, 1987 deadline. The Progress Reports by Permittee (progress reports) for 1985 through 1987 state that construction has not commenced.

4. The Division conducted a site inspection on March 17, 1988, and found that work had not yet commenced on the diversion project.
5. Permittee requested and on June 13, 1988, the Division granted an extension of time to commence construction and apply the water to full beneficial use. The time extension order required construction to be complete by December 31, 1995, and that water be put to full beneficial use by December 31, 1997.
6. The progress reports for 1989 through 1998 state that construction has not commenced. The 1998 progress report is the last progress report submitted by the Permittee.
7. The Division conducted a licensing inspection on May 25, 1999, and found that the Permittee had not yet constructed the diversion facility.
8. Permittee requested a ten-year extension of time, by time extension petition dated July 28, 2000. The petition states that no water has been used under this water right permit. The Permittee estimated that construction would begin within "2 to 5 years or more" and water would be fully used in 40 to 50 years.
9. By letter dated October 20, 2004, Division staff requested that Permittee document the basis for approval of a time extension, pursuant to California Code of Regulations, title 23, section 844. Because the Permittee is the lead agency under California Environmental Quality Act (CEQA) and the Division had not seen any documentation to show that the Permittee had completed any necessary CEQA documentation, Division staff also requested the Permittee to identify a date when it will provide the required CEQA documentation for the time extension petition. Division staff advised Permittee that failure to respond within 30 days might result in cancellation of the petition, pursuant to section 1701.4 of the California Water Code. Permittee was further advised that Permit 16622 may be revoked due to non-use if the Permittee is unable to document that it will diligently pursue the project described in the permit.
10. The Permittee responded by letter dated December 21, 2004, stating that there are currently 180 homes in Irish Beach and a total of 460 home sites. Given an assumed growth rate of 10 homes per year, and accounting for a commitment to provide hookups for commercial use, Permittee will be responsible for providing water to the equivalent of 477 homes. Permittee has sufficient water from Irish Creek (a different permitted source) and groundwater to serve 336 homes, which means that Permittee has sufficient water for 15 years. The water to be diverted from Mallo Pass Creek pursuant to Permit 16622 is needed to serve the additional 141 homes at full build-out.
11. The Permittee's December 21, 2004, letter estimated that water use under Permit 16622 would commence in approximately 15 years. The Permittee could not identify when it would provide the Division with the required CEQA documentation.
12. Permittee's time extension petition was not approved. The Division issued an order Denying Petition for Extension of Time on July 20, 2006. In Order WR 2006-0015-EXEC, the State Water Board denied Permittee's petition for reconsideration of the July 20 order. Therefore, the December 31, 1997 deadline to complete application of water to full beneficial use remains in effect.
13. Since the 1998 Progress Report of Permittee, Permittee has not submitted annual Progress Reports, which summarize water use and project status, as required by conditions in the Permit.

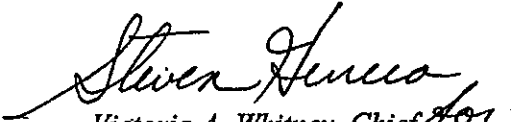
B. BASED ON THE ABOVE FACTS AND INFORMATION, THE DIVISION CONCLUDES THAT CAUSE EXISTS FOR THE REVOCATION OF PERMIT 16622 PURSUANT TO WATER CODE SECTION 1410, SUBDIVISION (A) BECAUSE:

Permittee has failed to commence, prosecute with due diligence, and complete the work necessary to appropriate water under Permit 16622 and has failed to apply to beneficial use all or part of the water authorized for appropriation as contemplated in the permit and in accordance with the Water Code and the regulations of the State Water Board.

On September 28, 2007, the Division issued a Notice of Proposed Revocation. Permittee filed a timely request for hearing. A hearing was scheduled for February 26, 2009, but the hearing was cancelled on January 26, 2009 because the Permittee failed to submit a Notice of Intent to Appear at the hearing.

Based on the above facts and conclusions, the State Water Board, Division of Water Rights hereby revokes Permit 16622, and the water is declared to be subject to appropriation. This revocation may not result in additional water being available for new appropriations if there are applicable restrictions due to past State Water Board decisions regarding water availability.

STATE WATER RESOURCES CONTROL BOARD

  
Victoria A. Whitney, Chief *for*  
Division of Water Rights

Dated: **MAR 11 2009**

11/6/11

Mendocino County Board of Supervisors  
c/o Tim Mitchell, Executive office  
501 Low Gap Road  
Ukiah, Ca 95482



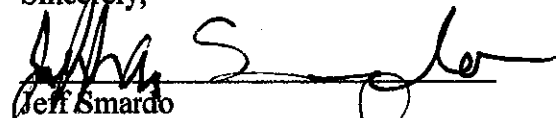
Mr. Jeff Smardo  
45112 Daystar Ct.  
Kenai, Alaska 99611

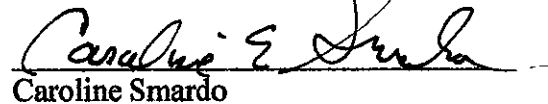
Re: Resub 1-2006 Moores

Dear Board of Supervisors:

We are the owners of parcel 17, Unit #7 at Irish Beach, assessor's parcel # 132-300-17 located on O'Rorey's Roost and which nearly borders William and Tona Moores resub application assessor's parcel numbers 132-320-42 and 43. Mr. Moores has provided us with a copy of the tentative map. We understand that the location of the access off of Sea Cypress County road is not proposed to be changed. The property has one-acre zoning and each of the two existing parcels is more than 4 acres in size. Mr. Moores application would create 2 additional parcels of more than 2 acres in size each and he has proposed a use permit condition that eliminate a guest cottage use on existing and new parcels (which cottage use is part of the zoned use). We are writing you this letter to let you know that we are in favor of approval of the application.

Sincerely,

  
Jeff Smardo

  
Caroline Smardo



28Nov11

To: Executive Officer Tim Mitchell, Board of Supervisors, Mendocino County

From: Robert and Nancy Tillisch, 15960 Forest View Road, Irish Beach, Manchester, Ca. 95459

Assessor's Parcel Number 13214216

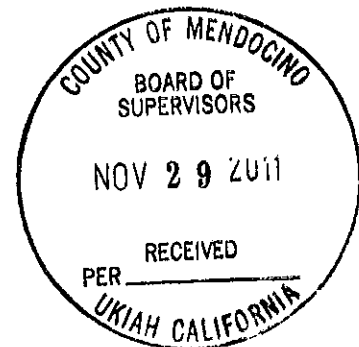
Dear Sir,

Please remove our names from the Petition we signed in June 2010 against Bill Moores plan to divide some existing large lots in Irish Beach to smaller parcels. We misunderstood the actual location for the subdividing. As a former City Planning Commissioner I see no adverse effect or impact to the neighboring residential property. Being the lots are inside the Irish Beach Subdivision we do not see any problem with letting Mr. Moore continue with his plan.

The added benefits to us as property owners would be increases of taxes for the county and the new home construction would provide jobs . Not to mention added value to the Irish Beach Development as a whole.

Thank you,

*Robert Tillisch*  
*Nancy Tillisch*



11/25/2011

James and Yvonne Phelps

2521 Bird Haven Ct.

Ukiah, CA 95614-1100



Mr. Tim Mitchell, executive office  
Board of Supervisors  
501 Low Gap Road  
Ukiah, CA 95482

Re: Re-Subdivision CDRES 1-2006

Dear Board;

We are owner of a house at Irish Beach located on Mendocino County Assessor's parcel number 132-074-01 located at 43981 Sea Cypress Drive. We previously signed a petition circulated by Mr. Dean Wolfe opposing the above referenced project. We have been asked by Mr. Bill Moores to reconsider our support of the petition that he feels makes a number of incorrect assertions of fact. We have since reviewed documents provided by Mr. Moores as well as a summary of the appeal from Mr. Wolfe. I find the issues of easement, property open space, lot sub-divide, and CC&R's to be complicated and confusing at best and therefore we are unable to provide an opinion either way. The Planning Dept. and Board have codes/rules/guidelines to sort this out so we leave it in your capable hands.

We do have major concerns regarding adequacy of District water and the cost thereof – this being the primary reason for signing Mr. Wolfe's petition. There have been water adequacy issues/concerns throughout the periods since we bought in 1987. In 2011 payments for water at Irish Beach consist of:

1. "Availability" \$737.88/Yr to IBWD
2. "Usage" \$3.90 per 1,000 gal to IBWD
3. "Capital Improvements" \$210.88 to Mendocino Co. Tax bill (2010-11)
4. Unknown Liability due to Lawsuits by Developer – see Newsletter IBWD  
To date \$100,000 w/current legal cost in budget are \$26,000  
Projected \$74,000 to \$100,000

Mr. Moores provided a partial copy page 3 of 5 paragraph 7 where the District agrees to additional water from Irish Creek lower diversion, develop Mello Pass, and will attempt to process Proposition 218 for Capital Improvements. Mr. Moores indicated verbally that he has a well in the hill to support Unit 9 & 9A. We now know, the permit for Mallo Pass was rescinded by the SWRCB 2 ½ years ago and the Proposition 218 Capital Improvements was rejected by water rate payers. One of the wells at tank 5 or tank 2 is currently under litigation by Mr. Moores. **Do we have enough water for the potential 460 +/- homes – currently around 200? Why should current rate payers have to continue to pay to support development of new water sources for developer lot expansions – IBWD cost is shared among all paid connections (currently 198)? There is a proposed availability charge increase of \$5.00 per month (\$797.88 per yr.) effective in 2012 if passed.**

The water issues are also unnecessarily complicated, confusing, and costly. We respectfully request that this Board initiate a thorough study and determination to be reached by all agencies involved regarding the adequacy of District water at Irish Beach and a reasonable limit at which water development cost can be passed back to existing water rate payers.

Thank you for your time & consideration of these issues,  
James & Yvonne Phelps

Handwritten signatures of James and Yvonne Phelps. The signature of James is on top, and Yvonne's is below it, both in dark ink.

CC: Bill Moores / Dean Wolfe