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File Number: 79FK-336971

July 7, 2021

BY EMAIL

Mendocino County Coastal Permit Administrator
Department of Planning and Building Services
860 N Bush St.
Ukiah, CA 95482
pbscommissions@mendocinocounty.org

Re: July 8, 2021 Virtual Meeting, Item 3b, Case No. CDP 2020-0024
34350 Pacific Reefs Road, Albion (Paul & Janis Boothe)

Dear Coastal Permit Administrator:

This firm represents Bill and Cynthia Buechler, who own the home immediately to the east of the proposed residential development at 34350 Pacific Reefs Road (the "Project"). The Buechlers have serious concerns about the Project's current design and its failure to comply with applicable environmental and planning requirements. They request that the County deny the current proposal, require the applicants to redesign the Project to comply with applicable requirements, and conduct a new environmental review process that complies with the California Environmental Quality Act ("CEQA").

The Buechlers do not oppose the development of a new single-family home on the property and they would support an alternative design, including the applicants' "Alternative B" or a similar design. But, as detailed below, the current proposal is legally flawed and cannot be approved for three primary reasons. First, the proposed design is not respectful of neighboring homes and violates the CC&Rs governing the Pacific Reefs neighborhood, including a mandatory requirement for 20-foot sideyard setbacks. Under the CC&Rs, the Buechlers have a private right to enforce the setback requirement. Thus, even if the County grants the requested permit, the applicants will not be able to build the Project. Second, the Project's Initial Study/Mitigated Negative Declaration ("MND") violates CEQA in multiple respects. In particular, the MND demonstrates that the Project will have significant and unavoidable impacts with respect to biology and land use. This requires the County to prepare an environmental impact report ("EIR") and adopt a statement of overriding considerations before approving the Project. Third, the Project violates important coastal planning requirements in the Local Coastal Program ("LCP") and the County Zoning Code, including those related to visual resources and environmentally sensitive

habitat area ("ESHA") buffers. Contrary to the staff report, alternative designs are available that would minimize or avoid conflicts with these policies.[1]

These significant issues could have and should have been addressed earlier in the planning process. Unfortunately, however, the applicants never approached the Buechlers to discuss the Project, and they refused to even meet with the Buechlers in advance of this hearing. The County compounded this problem by failing to properly notify the Buechlers of the Project, as detailed in the Buechlers' previous request for continuance. This failure prevented the Buechlers from participating earlier in the process and raising these issues at the outset. Due to the lack of outreach and noticing, this hearing represents the Buechlers' first opportunity to share their substantive concerns about the Project. We also note that the Buechlers have submitted Public Records Act requests for additional documents related to the Project and are in the process of engaging qualified experts to peer review the applicants' biology and geotechnical reports. Once these additional materials are available, the Buechlers intend to supplement these comments.

I. The Project's Design is Inappropriate and Barred by the Pacific Reefs CC&Rs

The Project's design is inappropriate for the site and inconsistent with surrounding development in the Pacific Reefs neighborhood due to its reduced setbacks, proximity to the bluff edge, and orientation on the lot. Specifically, the applicants propose constructing the new residence only six feet away from the Buechlers' property line and siting the new residence directly across from the Buechlers' home. As a result of this orientation and the substandard setbacks, the Project will invade the Buechlers' privacy, block their scenic views of the Pacific Ocean, and otherwise diminish their enjoyment of their property. In addition, the proposed residence would be located closer to the sea bluff (46 feet) than any of the surrounding residences, presumably to maximize the applicants' own views at the expense of their neighbors' views. When the Buechlers purchased their property, they had a reasonable expectation that such development would not be allowed on the neighboring lot based on the existing development pattern in the neighborhood and the design requirements contained in the CC&Rs, which are discussed below..

From a legal standpoint, the Project's design is fatally flawed because it violates the mandatory setback requirements of the recorded Declaration of Protective Covenants and Restrictions Affecting Pacific Reefs Subdivision ("CC&Rs"). (Attached as Exhibit A.) The CC&Rs govern all lots within the subdivision, including the Project site. Relevant here, Restriction 19 provides that "[n]o building shall be erected or placed nearer than *twenty feet* to any interior lot line." (Emphasis added.) The applicants, however, propose a sideyard setback of only *six feet*, and they propose to construct a significant portion of the residence within 20 feet of the Buechlers' property line. (The Project similarly violates the setback requirement on the western property line.) Thus, the Project violates Restriction 19.

Although the County and CalFire may support the reduced six-foot setback for their own purposes, the Buechlers have a private right to enforce the CC&Rs outside of the local permitting

[1] This letter also incorporates by reference the previous letters submitted by the Buechlers, Flint Pulskamp, Keith and Deanna Middlesworth, and other Pacific Reefs neighbors opposed to the Project.

process. (See Restriction 17.) Thus, even if the County grants the Coastal Development Permit, the Buechlers will be able to obtain an injunction, and the applicants will not be able to construct the Project. This renders the current administrative process a meaningless exercise.

The applicants and the County should not spend additional resources on permitting a Project that cannot be built. Instead, they should work cooperatively with the Buechlers and other neighbors to prepare an alternative design that complies with the CC&Rs or is otherwise acceptable to all parties. As noted above, the Buechlers would support an alternative design, similar to the applicants' Alternative B, that would reduce the Project's privacy and view impacts.

II. The Project's MND Violates CEQA; An EIR is Required

The MND prepared for the Project violates CEQA in multiple respects. Most importantly, the County's own documentation reveals that the Project will have significant and unavoidable impacts with respect to biology and land use, even with mitigation incorporated. As a result, the County may not legally rely on an MND, but must instead prepare an EIR and adopt a statement of overriding considerations. The MND's environmental analysis also suffers from numerous legal deficiencies, all of which must be corrected and addressed in the EIR. These issues are discussed below by topic.

A. Project Description

The Project description goes beyond construction of the single-family residence and also includes the development of decking, patios, parking garage, mitigation fencing, septic systems, propane tanks, gravel driveway, and utility trenching. (MND, p. 1.) The MND, however, fails to consistently evaluate all components of the Project. For example, the Project includes both a new primary septic system and also a "future vested opportunity to install a replacement septic system." (*Id.*, staff report, p. 8.) Yet the MND does not explain why the first new septic system would need to be replaced with a second new septic system in the future; it does not identify the location of the future replacement system; and it does not evaluate the future replacement system's environmental impacts. The MND also fails to consistently evaluate both the construction and operational phases of the Project under each environmental topic. The failure to fully evaluate all components of the Project renders the MND legally inadequate as an informational document.

B. Mitigation Measures

The MND relies on certain conditions of approval as mitigation measures to reduce the Project's environmental impacts. (Staff report, pp. 11–17.) However, the MND simply recites a list of mitigation measures, without providing any supporting explanation or analysis to justify them. For example, the MND does not explain why the particular mitigations were selected. It does not explain or analyze how the mitigations will operate or actually reduce the Project's impacts to a less-than-significant level. And it does not compare the significance of the Project's impacts before and after mitigation. As a result, the MND fails as an informational document. Moreover, some of the mitigation measures are not mandatory and enforceable as required by CEQA, but instead include recommendations, suggestions, and feasibility qualifications. (*See e.g.*, Mitigation Measure # 20, 23.) These mitigations do not comply with CEQA. Other mitigation measures call

for development and approval of future mitigation plans, but they fail to impose any performance standards. (*See, e.g.,* Mitigation Measure #22.) These mitigations constitute unlawful deferred mitigation.

C. Cumulative Impacts

The MND fails to identify cumulative projects based on either the list approach or the growth projection approach provided by CEQA. And with the exception of air quality and greenhouse gas emissions, the MND does not even attempt to provide a cumulative impact analysis as required by CEQA. This violates CEQA's substantive mandates and renders the MND inadequate as an informational document.

D. Aesthetics

The MND finds that all visual and aesthetic impacts will be less than significant. (MND, pp. 2–3.) However, this finding is not supported by any evidence since the County failed to conduct a visual analysis of the Project, and even declined to require story poles as requested by neighboring property owners. Contrary to the MND's finding, the neighbors have submitted substantial evidence, including photographs, showing that the Project will cause significant aesthetic impacts, as it will be visible from State Highway 1 and will obstruct scenic views of the Pacific Ocean. (*See Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903 [opinions of area residents constitutes substantial evidence of aesthetic impacts].) The Project will also be visible from Whitesboro Cove, the associated beach area, and the Salmon Creek Bridge which provides sweeping views towards the Pacific Ocean. Accordingly, there is a fair argument of a significant aesthetic impact, and the County must prepare an EIR. The MND also fails to explain how the Project will comply with County requirements to avoid light and glare impacts, given that the Project is being built up to the property line in violation of normal setback requirements. (MND, p. 3.)

E. Air Quality

With the exception of fugitive dust, the MND completely fails to disclose, analyze, and mitigate air quality impacts from Project construction. (MND, pp. 4–5.) In particular, the MND fails to identify the length of the construction period; fails to identify the construction equipment to be used; fails to identify the specific pollutants that will be emitted; fails to quantify the emissions that will be generated; and fails to compare the Project's anticipated emissions with the Air District's numeric thresholds. These failures violate CEQA's substantive mandates and render the MND inadequate as an informational document.

F. Biology

The MND demonstrates that the Project will have significant and unavoidable impacts on environmentally sensitive habitat areas ("ESHA"). (MND, p. 8.) The MND concedes that the Project will violate ESHA buffer requirements and cause significant impacts to ESHA. Although the MND imposes mitigation measures to partially address these impacts, these mitigations will not will be effective and several fail to comply with CEQA's requirements. For example, mitigation

measure #22 is unlawful deferred mitigation as explained above, and mitigation measure #23 is vague and unenforceable because it includes suggestions and recommendations, rather than mandatory requirements. Indeed, the MND goes on to admit that it is not possible to fully mitigate the ESHA impacts without causing a regulatory taking, and it proposes to approve the Project anyway as the "least damaging alternative." (MND, p. 8.) But the alleged regulatory taking does not excuse CEQA compliance or allow the County to override the significant impact in an MND. Rather, CEQA requires the County to prepare an EIR, correctly identify the significant and unavoidable impact, provide an alternatives analysis (which is properly included in an EIR not an MND), and adopt a statement of overriding considerations. The regulatory takings analysis, if correct, could be a relevant factor for the EIR's statement of overriding considerations.

The MND also fails to properly disclose, evaluate, and mitigate the Project's direct impacts on the Headland Wallflower. (MND, p. 5.) The MND itself includes a single line noting that the Project will directly impact Headland Wallflower, but it provides no further explanation of this impact. Other documents in the record reveal that Project construction will remove five of these special status plants. The County must fully disclose this impact and its severity. Another problem is that the MND does not explain why the mapped Special Status Plant ESHA excludes an area that actually supports the Headland Wallflower. If the plants are growing there in numbers, then by definition that area qualifies as ESHA and should be buffered from development. The MND also fails to impose adequate mitigation for impacts to Headlands Wallflower. As drafted, Mitigation Measure #20 is inadequate and ineffective. It references a future mitigation and monitoring program, but does not clearly impose this as a requirement or explain what the plan would include. The proposed seeding program is speculative and admittedly unlikely to succeed. And the County rejected a recommendation that a qualified botanist oversee the work. The County also failed to incorporate the recommendations of the Coastal Commission and the California Department of Fish and Wildlife, which have special expertise in natural resource issues. The County must impose all recommended mitigations including a detailed mitigation plan, and/or require the applicant to avoid the Headlands Wallflower entirely or to purchase off-site mitigation credits for this and other species that are directly impacted by the Project.

The MND also fails to disclose or analyze the Project's potentially significant impacts on special status birds, special status bats, and special status amphibians. Although the biological report discloses the potential for these species to occur, and the staff report recommends mitigation measures to reduce potentially significant impacts on these species, the MND fails to even disclose, much less discuss, the potential impacts, and it fails to explain how the mitigation measures will reduce the impacts to less-than-significant levels. This renders the MND legally inadequate.

The MND also fails to evaluate the impacts of the proposed grading on biological resources. Although omitted from the Biology section, other sections of the MND indicate that site grading and foundation work will be extensive and potentially environmentally damaging. (*See e.g.,* MND, p. 16 [describing extensive clearing, stripping of soil to a depth of six inches, grubbing, removing stumps and roots, and stockpiling of removed material]; Geotechnical Report [describing the need to drill concrete piers 18 to 19.5 feet to reach bedrock]) The County must analyze the full scope of Project construction and its impacts on biological resources.

G. Energy

The MND's energy section makes no attempt to quantify or analyze the Project's energy demands. (MND, p. 14.) When the County prepares an EIR for the Project, it must provide this information and analysis consistent with the requirements of CEQA Guidelines, Appendix F.

H. Greenhouse Gas Emissions

The MND's analysis of greenhouse gas emissions is inadequate. (MND, pp. 18–19.) It finds that the Project's impacts will be less than significant based on the Air District's numeric emissions threshold. Yet it makes no attempt to disclose or quantify the Project's construction or operational emissions. The County may not rely on a quantitative threshold of significance without performing a quantitative analysis.

I. Hazards and Hazardous Materials

The MND finds that the proposed use of hazardous materials will not be significant "*if* these materials, particularly construction debris, are properly stored on the project site and then disposed at an approved collection facility such as the nearby Albion Transfer Station." (MND, p. 20 [emphasis added].) But the MND fails to impose these storage and disposal requirements as enforceable mitigation measures, despite admitting that they are necessary to reduce the Project's impacts. The County must incorporate the storage and disposal requirements into an additional mitigation measure.

J. Land Use and Planning

Consistent with the Biology chapter, the MND reveals that the Project will have a significant and unavoidable land use impact because it will not comply with the County's policies adopted to protect ESHA. (MND, p. 23.) For the same reasons discussed above, the County must prepare an EIR and adopt a statement of overriding considerations before approving the Project.

K. Noise

The MND makes no attempt to disclose, analyze, or mitigate the Project's construction noise impacts. (MND, p. 24.) This is a particularly significant oversight because other sections of the MND indicate that Project construction will include significant noise-generating activities, including the drilling of reinforced concrete piers. (*Id.,* p. 16.) To comply with CEQA, the County must identify the construction equipment required for the Project; disclose the decibel levels that will be generated by that equipment; compare those noise levels to the County's numeric noise thresholds; and impose appropriate mitigation measures.

L. Transportation/Traffic

The MND's analysis of traffic impacts is defective because it provides no detail about the length of the construction period or the anticipated number of construction trips. (MND, p. 27.) It also

fails to evaluate traffic impacts under the new vehicle miles traveled (VMT) standard, which became mandatory in July 2020.

M. Mandatory Findings of Significance

The MND incorrectly finds that the Project will not have a significant impact on natural resources. (MND, p. 32.) As explained above, and elsewhere in the MND, the Project will have significant and unavoidable impacts on natural resources, including ESHA. This triggers a mandatory finding of significance.

III. The Project Violates Coastal Planning Requirements

The Project violates several important planning requirements of the Local Coastal Plan and Mendocino County Zoning Code. The applicant must redesign the Project to comply with these requirements before the County may approve it.

A. Coastal Element, Policy 3.5-1 (Visual Resources)

Policy 3.5-1 requires that "[p]ermitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas . . . "

The Project does not comply with this policy. As explained above in the comments on the MND's aesthetics section, the Project will have significant effects on scenic views of the coast and the Pacific Ocean, including from Highway 1. Indeed, the applicants' own Coastal Zone—Site and Project Description Questionnaire admits that the Project will be visible from Highway 1 and Whitesboro Cove, a park, beach, or recreation area. (Question 21.) In addition, the Project is not visually compatible with the character of the surrounding area because, as explained above, the Project's design is inappropriate and inconsistent with other development in Pacific Reefs; the Project fails to comply with required setbacks; and the proposed residence is located closer to the bluff edge than the other houses in the neighborhood.

B. Coastal Element, Policy 3.1-7 & Zoning Code § 20.532.100(A)(1) (Environmentally Sensitive Habitat Areas)

Policy 3.1-7 and Section 20.532.100(A)(1) require 100-foot buffer areas to be established between new development and ESHA. As the MND and the staff report acknowledge, the Project does not comply with this requirement and thus the applicants seek permission to develop within the required buffer areas. (*See* staff report, p. 7.) Under the regulations, the County may only grant such approval if the Project satisfies certain standards and the County can make certain findings. Contrary to the staff report, the County cannot make the required findings for this Project based on this record.

As an initial matter, it is not clear that the applicants' consultant properly identified the ESHA on the property, calling into question the validity of the entire buffer analysis. For example, five Headland Wallflower plants are located within the proposed development footprint and will be

removed during construction. (Staff report, p. 6.) Despite the fact that the plants actually occur in this area, it was excluded from the mapped Special Status Plant ESHA. No explanation is given in the staff report and MND, and this appears to be inappropriate. The ESHA should be mapped to include the plants it is designed to protect. A related point is that throughout the staff report and mitigation measures, the County defers to the applicants' consultant on resource issues. (*See e.g.,* staff report, p. 9 ["In WCPB's opinion . . . ."]; mitigation measure 21a. ["In WCPB's opinion, the project as proposed is in the least impacting location"].) The County should not uncritically defer to the applicants' view, but instead must exercise its own independent judgment and make its own determinations. This is particularly true because the applicants' analysis appears to be motivated by a desire to construct a large home and to maximize scenic and ocean views, rather than to reduce environmental impacts as required. The Buechlers are therefore retaining an experts to peer review the applicants' reports. They intend to submit the results of this peer review for use in future administrative proceedings.

Even on the existing record, however, the Project still does not meet the required standards and findings.

Standard 3 provides: "Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution." The Project does not comply with Standard 3 because, as explained above, other feasible development sites may exist on the parcel that reduce ESHA impacts. The Buechlers' biologist will peer review the applicants' reports and confirm whether other development sites would reduce environmental impacts. In addition, the County has not imposed the mitigation measures required by Standard 3. The County must require the applicant to plant replacement vegetation at a minimum ratio of 1:1 for each of the impacted ESHAs.

Required Finding 1 is that the "[t]he resource as identified will not be significantly degraded by the proposed development." (Zoning Code Section 20.532.100(A)(1).) The County cannot make Finding 1 because, as explained in the CEQA comments, the Project design has a significant and unavoidable impact on ESHA and Headland Wallflower, and will significantly degrade the identified resources. In addition, as noted above, it is not clear that the applicants' consultant properly mapped the ESHA on the Project site. The proposed development footprint includes five Headland Wallflower plants, and this area should have been included in the Special Status Plant ESHA. Proper mapping would demonstrate that the Project would degrade this ESHA even more significantly than presently assumed.

Required Finding 2 is that "[t]here is no feasible less environmentally damaging alternative." (Zoning Code Section 20.532.100(A)(1).) The County cannot make Finding 2 because it is not supported by the evidence in the record and it appears there may be feasible less environmentally damaging alternatives. In addition to the points raised about biological resource avoidance, the applicants' bluff analysis is also erroneous. The applicants state that they selected the current design because it will minimize potential failure of sensitive bluff edges. (Staff report, p. 6.) The evidence does not support this statement, however, because the applicants also identified a design alternative (Alternative B) that would actually place the residence *further away* from the

sensitive bluff. The applicants also found that the ESHA impacts of Alternative B would be similar to the proposed design and could likewise be mitigated. The applicants suggest that placing the septic field between the residence and the bluff would threaten the bluff, but there is no evidence that the septic system will saturate the soils along the bluff. Indeed, the surrounding properties on both sides have installed septic fields in this way, without any negative impacts on the bluff. Moreover, the applicants' consultant identified a mitigation measure (planting soil stabilizing species) to address this theoretical impact. Against that backdrop, the applicants' selected design appears intended to place the house closer to the bluff in order to maximize ocean views, rather than to protect environmental resources. Moreover, the applicants failed to consider other alternatives specifically recommended by the Coastal Commission, or other alternatives involving a reduced-size home or driveway, any of which would further reduce environmental impacts. Accordingly, Alternative B, or perhaps another unstudied alternative, would be the less environmentally damaging alternative, and the County therefore cannot make Finding 2 for the Project.

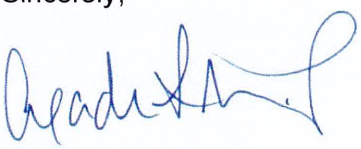
Required Finding 3 is that "[a]ll feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted." (Zoning Code Section 20.532.100(A)(1).) The County cannot make Finding 3 because it has not evaluated and adopted all feasible mitigation measures. As explained above, the mitigation measures identified in the MND are inadequate to reduce the Project's impacts to ESHA and special status species. Additionally, other feasible mitigation measures are available, including avoidance of the five Headland Wallflowers, on-site replanting of affected ESHA, or the purchase of off-site mitigation credits for affected ESHA.

* * * * *

As a result of the design flaws and legal violations discussed above, the County cannot approve the Project in its current form. We request that the County deny the requested Coastal Development Permit and conduct a new public review and environmental process focusing on alternative designs that comply with the CC&Rs, CEQA, and the LCP.

Thank you for considering these comments.

Sincerely,



Alexander L. Merritt
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

cc: Bill and Cynthia Buechler
Supervisor Ted Williams, District 5 (williamst@mendocinocounty.org)

Attachment: Pacific Reefs CC&Rs

25501 BOOK 677 PAGE 284 #40830

DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS
AFFECTING PACIFIC REEFS SUBDIVISION

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned persons being the owner of all the real property situate in the County of Mendocino, State of California, delineated on that certain map entitled "Pacific Reefs" filed in the office of the County Recorder of the County of Mendocino, State of California, on the 9th day of December 1964, in Map Case 2 Drawer 3 Page 49 desires to and intends by these presents to subject all that certain real property to the certain conditions, covenants, restrictions and charges between it and all subsequent purchasers of said property or any part thereof.

NOW, THEREFORE, it is hereby declared by the undersigned persons that they have a general plan for improvement for the benefit of all the lots or portions of lots shown upon said subdivision map and that all said real property shall be conveyed subject to the following restrictions and covenants running with the land.

AND, WHEREAS, in consideration of that object said persons DO HEREBY DECLARE that all of the property lots and parcels here and above described shall be conveyed, held, used, improved and occupied subject to the following covenant, restrictions which may be enforced by the parties hereto, their heirs, assigns, and/or grantees:

1. No lots shall be used except for residential purposes.

2. No buildings shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached single family dwelling not to exceed one (1) story in height, and consisting of 900 square feet, or more, exclusive of garage or carport.

3. No commercial business, noxious, noisy, offensive trade or activity shall be carried on upon any lot nor any street, nor shall anything be done nor permitted, thereon, which may become an annoyance or nuisance to the neighbors or neighborhood, or the property owners of the herein embraced subdivision.

4. No trailer, basement, tent, shack, garage, or any out-buildings shall be at any time used as a residence temporarily or permanently; nor shall any structure of a temporary character be used as a residence.

5. No barbed wire fences shall be permitted. Fences of other types and materials may be built.

6. No building of any character shall be permitted to be moved upon any of the lots in said subdivision. Lots shall be reserved for new construction only.

7. Easements are reserved for utility installation and maintenance, and water line installation and maintenace.

8. The grantees, their heirs and assigns, individually or severally shall not use the said premises for any other than residential purposes as here and above provided.

9. No excavating for stone, gravel, earth or sand shall be made on said property, unless such excavation is made in connection with the erection of a building or structure thereon or with the written consent of the undersigned.

10. Trash, garbage and other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. Said containers shall be enclosed so as not to be visible from the street or any other lot.

11. No individual sewage disposal system shall be permitted on any lot unless such system is designed, located and constructed in accordance with the requirements, standards and recommendations of the Health Department of the County of Mendocino. Approval of such systems as installed shall be obtained from said Health Department.

#40830

12. No well for the production of, or from which there is produced oil, or gas, or any other mineral substance (excluding water for private consumption) shall be dug or operated upon said property.

13. No building, fence, wall or other permanent structure shall be erected, placed or altered on any lot until building plans, specifications and plot plans showing the location of the structure have been submitted to, and approved in writing by, the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with the existing structure, and as to location with respect to topography and finished grade elevation.

14. The Architectural Control Committee is composed of JAMES H. NASH, Chairman, 191 Yulupa Avenue, Santa Rosa, California; DORIS M. NASH, 191 Yulupa Avenue, Santa Rosa, California; JAMES B. TOBIN, 3191 Tobin Lane, Santa Rosa, California. A majority of the Committee may designate a representative to act for it. In the event of the death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor. Either the members of the Committee or its designated representative shall not be entitled to any compensation for services performed pursuant to this covenant. At any time the then record owners of a majority of the lots in said subdivision shall have the power through a duly recorded written instrument to change the membership of the Committee or to withdraw from the Committee or restore to it any of its powers and duties.

15. The approval or disapproval of said Architectural Control Committee as required in these covenants shall be in writing. In the event the Committee or its designated representative fails to approve or disapprove within sixty (60) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to completion, thereof, written approval will not be required and the related covenants shall be deemed to have been fully complied with.

16. The covenants are to run with the land and shall be binding upon all parties and all persons claiming under them for a period of fifteen (15) years from the date these covenants are recorded. After which time said covenants shall be extended automatically for successive periods of ten (10) years each until an instrument signed by a majority of the then owners of the lots in said subdivision has been recorded agreeing to change said covenants in whole or in part.

17. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any of these covenants, but failure by any person or persons entitled so to enforce any measure or provision hereof, upon violation thereof, shall not stop or prevent enforcement thereafter, or be deemed a waiver of the right to do so.

18. The various measures and provisions hereof are declared to be severable and invalidation of any one of these covenants shall in no way affect any of the other provisions hereof.

19. No building shall be erected or placed on any lot nearer than twenty feet to any street. No building shall be erected or placed nearer than twenty feet to any interior lot line. For the purpose of this covenant, eves, steps and open porches shall be considered as part of a building.

20. There shall not be allowed within the prescribed twenty feet designated as set-back area, any containers, tanks of bottled gas, gasoline or any inflammable or combustible liquids, including all hydrocarbons which may be kept in a liquid or gaseous material known to be of any inflammable nature, such as paints, etc., within said set-back area. Any such containers, such as bottled gas must be enclosed so as not to be visible from the street or any other lot.

21. There shall be permitted no trailers, automobiles or other vehicles or machinery on said property which are unlicensed or unregistered and which do not bear current tags or other license identification. At no time shall there be permitted any mechanical work relative to said autos, trailers, etc., other than minor adjustments, or care, which might be performed by the average person.

#40830

22. No animals, livestock or poultry of any kind or description shall be raised, bred, or kept on any lot, except that dogs, cats, or other small household pets may be kept, provided they are not kept, bred, or maintained for any commercial purpose.

23. There shall be no metallic roof material or siding material on any house or out building, except as approved by the Architectural Control Committee.

24. All commercial trucks, trailers, etc., must be parked out of public view.

25. In addition to the utility easements shown on the recorded map, a five foot wide strip on both sides of all parcels shall be reserved for drainage and other utility purposes as may be required.

26. When the erection of any residence or other structure is once begun, work thereon must be prosecuted diligently and it must be completed (the exterior) within a period of six months, barring strikes and the acts of God.

27. None of said lots may be resubdivided except that the undersigned, its successors or assigns, may divide any of said lots so as to increase the size of adjoining lots. Should two or more contiguous lots be acquired by the same grantee, such lots will, unless otherwise stipulated, be treated and considered by the undersigned and/or said grantee as one entire lot for the purpose of these restrictions.

28. It is expressly understood that no part or portion of the above-named subdivision may be used in any form or manner which is contrary to the ordinances of the County of Mendocino, or the laws of the State of California, or the Federal Government of the United States.

29. Each Grantee of any conveyance, or Purchaser by any contract or agreement of sale, describing land in said subdivision, by accepting such deed or contract of sale or agreement of purchase, accepts the same subject to all the covenants, restrictions and

#40830

agreements set forth herein and agree to be bound by same.

30. It is expressly understood that any covenant, restriction or change set forth above applying to all Grantees or Vendees, also applies to Lessees hereof.

IN WITNESS WHEREOF, the undersigned executed these presents this 2nd day of December, 1964 A.D.

ENCHANTED MEADOWS

James H. Nash President

Doris M. Nash Secretary

STATE OF CALIFORNIA

County of Sonoma } ss.

On December 2, 1964

before me ALBERT H. MILLER

a Notary Public, in and for said County and State,

personally appeared JAMES H. NASH and DORIS M. NASH known to me

to be the President and the Secretary of the corporation that executed the within instrument, and also known to me to be the persons who executed it on behalf of such corporation, and acknowledged to me that such corporation executed the same, and further acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its Board of Directors.

Albert H. Miller

My commission expires April 12, 1968

ALBERT H. MILLER
NOTARY PUBLIC-CALIFORNIA
COUNTY OF SONOMA

25501

RECORDED AT REQUEST OF
COLONIAL TITLE GUARANTY COMPANY
BOOK 677 PAGE 284
DEC 9 2 58 PM '64
OFFICIAL RECORDS
MENDOCINO COUNTY, CALIF.
FEE $6.00

INDEXED CHECKED