

**To: BOARD OF SUPERVISORS**

**FROM:** Planning and Building Services

**MEETING DATE:** April 23, 2024

**DEPARTMENT CONTACT:** Julia Krog  
**DEPARTMENT CONTACT:**

**PHONE:** 707-234-6650  
**PHONE:**

**ITEM TYPE:** Noticed Public Hearing

**TIME ALLOCATED FOR ITEM:** 1.5 Hours

**AGENDA TITLE:**

Noticed Public Hearing – Discussion and Possible Action to Consider an Appeal of the Coastal Permit Administrator’s Decision to Revoke Boundary Line Adjustments B\_2018-0068 and B\_2019-0054, Located Near the Community of Irish Beach and currently known as APNs: 132-210-61, 132-210-62, 132-210-63 and 132-210-64; and further finding that the Boundary Line Adjustments were void ab initio.

**RECOMMENDED ACTION/MOTION:**

Adopt a resolution denying the appeal and upholding the Coastal Permit Administrator’s decision to revoke Boundary Line Adjustments B\_2018-0068 and B\_2019-0054, located near the community of Irish Beach and currently known as APNs: 132-210-61, 132-210-62, 132-210-63 and 132-210-64, and further finding that the Boundary Line Adjustments were void ab initio; and authorize Chair to sign same.

**PREVIOUS BOARD/BOARD COMMITTEE ACTIONS:**

On February 26, 2002, the Mendocino County Board of Supervisors upheld the action of the Planning Commission and denied Administrative Appeal No. AA 2-2001, finding that County Counsel and the Department of Planning and Building Services were correct in determining that Mr. Moores’ property meets the criteria to be subject to merger.

*Moores v. Board of Supervisors of Mendocino County* (2004) 122 Cal. App. 4th 883. The case affirmed the determination of the County and confirmed that the referenced APNs in AA 2-2001 had been merged by operation of law as of 1981.

**SUMMARY OF REQUEST:**

The Coastal Permit Administrator approved Boundary Line Adjustment B\_2018-0068 on June 13, 2019 reconfiguring two (2) assessor parcel numbers (APNs), at that time known as APNs 132-210-40 and 132-210-41. The Boundary Line Adjustment was finalized on November 21, 2019.

The Coastal Permit Administrator approved Boundary Line Adjustment B\_2019-0054 on June 11, 2020 reconfiguring the boundaries between three (3) assessor parcel numbers and merging a fourth assessor parcel number (then APNs 132-210-37, 132-210-38, 132-210-39, and 132-210-61). Note that APN 132-210-61 is a renumbered APN that was involved in B\_2018-0068; following a boundary line adjustment in Mendocino County, APNs are typically renumbered. The Boundary Line Adjustment was finalized on August 28, 2020.

The applications for both above noted Boundary Line Adjustments were signed under the attestation that the Applicant and Owner signature on the form certifies “that the information submitted with this application is true and accurate”. Both application forms for the above noted Boundary Line Adjustments were signed by William Moores. William and Tona Moores are the owners of all of the APNs listed above.

Subsequent to the finalization of the two above referenced Boundary Line Adjustments, staff conducted research on the parcel history of the above referenced assessor parcel numbers as part of the processing of a General Plan Amendment and Rezoning request for these sites (GP\_2019-0006/R\_2019-0008). This research located documents referencing both a previous Administrative Appeal (AA 2-2001) and a court case between the property owner, William Moores, and Mendocino County that explicitly dealt with several

of the parcels at issue in the General Plan Amendment and Rezoning request.

*Moore v. Board of Supervisors of Mendocino County* (2004) 122 Cal. App. 4th 883 (*Moore*), involved an action by William Moore seeking to set aside the determination of the County that property then-identified as Assessor's Parcel Numbers (APNs) 132-210-37, -38, -39, -40, and -41 had been merged by operation of law into a single legal parcel pursuant to the County's merger ordinance. The case affirmed the determination of the County and confirmed that the referenced APNs had been merged by operation of law as of 1981. As such, the listed APNs are not separate legal parcels.

The effect of the *Moore* case calls into question the approval of Boundary Line Adjustments B\_2018-0068 and B\_2019-0054. These boundary line adjustments both involved adjusting the boundaries of several of the above-referenced APNs. As a result of the Court's determination in *Moore*, there were no boundaries to adjust, since these APNs were not separate legal parcels but a single legal parcel that had been merged by operation of law.

The applications for these boundary line adjustments asserted that these separate APNs were actually separate parcels and thus had boundaries that could be adjusted. However, given that Mr. Moore had full and complete awareness of the *Moore* case in which he was a petitioner, submitting applications that represented there were multiple legal parcels instead of a single parcel was a misrepresentation. Further, the approvals of these boundary line adjustments were contrary to law as there were no separate legal boundaries to adjust.

Pursuant to Mendocino County Code section 20.536.035, the Coastal Permit Administrator revoked Boundary Line Adjustments B\_2018-0068 and B\_2019-0054 on November 9, 2023. The Coastal Permit Administrator determined that Boundary Line Adjustments B\_2018-0068 and B\_2019-0054 were obtained by fraud. In addition, because *Moore* conclusively determined that there were no separate parcel boundaries to adjust, the Boundary Line Adjustments were also void ab initio, or void from the very beginning.

On November 17, 2023, Colin W. Morrow, on behalf of clients William and Tona Moore, filed an appeal of the Coastal Permit Administrator's revocation of Boundary Line Adjustments B\_2018-0068 and B\_2019-0054.

Please see the attached memorandum for further details. The associated staff report, action sheet, appeal document, and additional materials are attached for review.

**ALTERNATIVE ACTION/MOTION:**

Provide direction to staff

**STRATEGIC PLAN PRIORITY DESIGNATION:** A Safe and Healthy County

**SUPERVISORIAL DISTRICT:** DISTRICT 5

**VOTE REQUIREMENT:** Majority

**SUPPLEMENTAL INFORMATION AVAILABLE ONLINE AT:**

<https://www.mendocinocounty.org/government/planning-building-services/public-notice>

**FISCAL DETAILS:**

**SOURCE OF FUNDING:** N/A

**CURRENT F/Y COST:** N/A

**ANNUAL RECURRING COST:** N/A

**BUDGETED IN CURRENT F/Y:** N/A

**IF NO, PLEASE DESCRIBE:**

**REVENUE AGREEMENT:** N/A

**AGREEMENT/RESOLUTION/ORDINANCE APPROVED BY COUNTY COUNSEL:** Yes

[Type text]

**CEO LIAISON:** Steve Dunnicliff, Deputy CEO

**CEO REVIEW:** Choose an item.

**CEO COMMENTS:**

**FOR COB USE ONLY**

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Executed By: Deputy Clerk

Date: Date Executed

Final Status: Item Status

Executed Item Type: item

Number:



**COUNTY OF MENDOCINO**  
**DEPARTMENT OF PLANNING AND BUILDING SERVICES**

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April 12, 2024

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN THAT the Mendocino County Board of Supervisors at their regular meeting on Tuesday, April 23, 2024, will conduct a public hearing on the following project at 9:00 a.m. or as soon thereafter as the item may be heard. This meeting will be held in the **Mendocino County Board Chambers at 501 Low Gap Road, Ukiah California, 95482.**

**Appeal of the Coastal Permit Administrator Decision on November 9, 2023 to Revoke the following Projects, now known as Assessor Parcel Numbers 132-210-61, 132-210-62, 132-210-63 and 132-210-64:**

**PROJECT A:**

**CASE#:** B\_2018-0068

**DATE FILED:** 12/4/2018

**DATE OF APPROVAL:** 6/13/2019

**OWNER:** WILLIAM & TONA MOORES

**APPLICANT:** AT&T MOBILITY

**AGENT:** JARED KEARSLEY

**REQUEST:** Boundary Line Adjustment to reconfigure two (2) legal non-conforming parcels.

Subsequently, a Coastal Development Use Permit will be processed to facilitate construction of a new cellular tower on APN: 132-210-41.

**ENVIRONMENTAL DETERMINATION:** Categorically Exempt

**LOCATION:** In the Coastal Zone, 3.2± miles north of Manchester and located .8± miles east of State Route 1 (SR 1). Site Addressees to be assigned. (APNs: 132-210-40 and 132-210-41)

**SUPERVISORIAL DISTRICT:** 5<sup>th</sup> (Williams)

**STAFF PLANNER:** JULIA KROG

**PROJECT B:**

**CASE#:** B\_2019-0054

**DATE FILED:** 11/21/2019

**DATE OF APPROVAL:** 6/11/2020

**OWNER/APPLICANT:** WILLIAM & TONA MOORES

**REQUEST:** Boundary Line Adjustment to reconfigure the boundaries between three (3) existing parcels and merge a fourth (4th) parcel. Parcel 1 (APN: 132-210-37) will merge with Parcel 3 (APN: 132-210-39) and increase to 35± acres, Parcel 2 (APN: 132-210-38) will increase to 29± acres, and Parcel 4 (APN: 132-210-61) will decrease to 16± acres.

**ENVIRONMENTAL DETERMINATION:** Categorically Exempt

**LOCATION:** In the Coastal Zone, 3.2± miles north of Manchester town center, located 0.8± miles east of State Route 1 (SR 1) on an unnamed access easement. Addressees not yet assigned. (APNs: 132-210-37; 132-210-38; 132-210-39; 132-210-61).

**SUPERVISORIAL DISTRICT:** 5<sup>th</sup> (Williams)

**STAFF PLANNER:** JULIA KROG

The staff report, notice, and related materials will be available for public review 10 days prior to the scheduled hearing on the Department of Planning and Building Services website at: <https://www.mendocinocounty.gov/government/planning-building-services/public-notices>.

**Virtual Attendance:** Meetings are live streamed and available for viewing on the Mendocino County YouTube page, at <https://www.youtube.com/MendocinoCountyVideo> or by toll-free, telephonic live stream at 888-544-8306.

Mendocino County provides for digital attendance through Zoom. Zoom webinar information will be provided on the published agenda for the meeting. Remote Zoom participation for members of the public is provided for convenience only. In the event that the Zoom connection malfunctions for any reason, the Board reserves the right to conduct the meeting without remote access. Therefore, the only ways to guarantee that your participation or comments are received and considered by Board are to attend the meeting in person or submit your comment in writing in advance of the meeting.

The decision of the Board of Supervisors shall be final. If you challenge the project in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Department of Planning and Building Services/Board of Supervisors at, or prior to, the public hearing. All persons are invited to appear and present testimony in this matter.

Additional information regarding the above noted item(s) may be obtained by calling the Clerk of the Board of Supervisors at 707-463-4441, Monday through Friday, 8:00 a.m. through 5:00 p.m., or the Department of Planning and Building Services at 707-234-6650, Monday through Friday, 8:00 a.m. through 5:00 p.m. Should you desire notification of the Board's decision you may do so by requesting notification in writing and providing a self-addressed stamped envelope to the Clerk of the Board of Supervisors.

The County of Mendocino complies with ADA requirements and upon request, will attempt to reasonably accommodate individuals with disabilities by making meeting material available in appropriate alternative formats (pursuant to Government Code Section 54953.2). Anyone requiring reasonable accommodation to participate in the meeting should contact Clerk of the Board of Supervisors at 707-463-4441 at least five days prior to the meeting.

JULIA KROG, Director of Planning and Building Services



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## **MEMORANDUM**

DATE: APRIL 23, 2024

TO: HONORABLE BOARD OF SUPERVISORS

FROM: JULIA KROG, DIRECTOR

SUBJECT: APPEAL OF REVOCATION OF BOUNDARY LINE ADJUSTMENTS B\_2018-0068 AND B\_2019-0054 (MOORES)

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**BACKGROUND:** A boundary line adjustment is defined by Mendocino County Code (“MCC”) section 17-17.5 as the transfer of property by deed to a respective owner or owners of contiguous property for the purpose of adjusting a boundary line and not for the purpose of creating an additional lot or parcel. A boundary line adjustment within the Coastal Zone requires the approval of a coastal development permit pursuant to MCC section 20.532.015(E) in addition to compliance with the County’s Division of Land Regulations (Title 17 of the MCC).

The matter before you refers to property as a legal parcel but also references assessor’s parcel numbers (APNs). It is important to note that the description of property by APNs is solely for the purpose of tax assessment purposes and does not describe property for the purposes of ownership, sale, lease, or financing. While an APN may match the boundaries of a legal parcel, a legal parcel may also contain multiple APNs.

The Coastal Permit Administrator approved Boundary Line Adjustment B\_2018-0068 on June 13, 2019 reconfiguring two (2) assessor parcel numbers (APNs), at that time known as APNs 132-210-40 and 132-210-41. The Boundary Line Adjustment was finalized on November 21, 2019. Please see page 38 of Attachment C for maps showing the property that was the subject of Boundary Line Adjustment B\_2018-0068. The Coastal Permit Administrator approved Boundary Line Adjustment B\_2019-0054 on June 11, 2020 reconfiguring the boundaries between three (3) assessor parcel numbers and merging a fourth assessor parcel number (then APNs 132-210-37, 132-210-38, 132-210-39, and 132-210-61). Note that APN 132-210-61 is a renumbered APN that was involved in B\_2018-0068; following a boundary line adjustment in Mendocino County, APNs are typically renumbered. The Boundary Line Adjustment was finalized on August 28, 2020. Please see page 67 of Attachment C for maps showing the property that was the subject of the B\_2019-0054.

The applications for both above noted Boundary Line Adjustments were signed under the attestation that the Applicant and Owner signature on the form certifies “that the information submitted with this application is true and accurate”. Both application forms for the above noted Boundary Line Adjustments were signed by William Moores. William and Tona Moores are the owners of all of the APNs listed above.

Subsequent to the finalization of the two above referenced Boundary Line Adjustments, staff conducted research on the parcel history of the above referenced assessor parcel numbers as part of the processing of a General Plan Amendment and Rezoning request for these sites (GP\_2019-0006/R\_2019-0008). This research located documents referencing both a previous Administrative Appeal (AA 2-2001, see Attachments D and E) and a court case between the property owner, William Moores, and Mendocino County that explicitly dealt with several of the parcels at issue in the General Plan Amendment and Rezoning request.

*Moore v. Board of Supervisors of Mendocino County* (2004) 122 Cal. App. 4th 883 (*Moore*), involved an action by William Moore seeking to set aside the determination of the County that property then-identified as Assessor's Parcel Numbers (APNs) 132-210-37, -38, -39, -40, and -41 had been merged by operation of law into a single legal parcel pursuant to the County's merger ordinance. The case affirmed the determination of the County and confirmed that the referenced APNs had been merged by operation of law as of 1981. As such, the listed APNs are not separate legal parcels. See Attachment C for a copy of *Moore v. Board of Supervisors of Mendocino County* (2004) 122 Cal. App. 4th 883.

The effect of the *Moore* case calls into question the approval of Boundary Line Adjustments B\_2018-0068 and B\_2019-0054. These boundary line adjustments both involved adjusting the boundaries of several of the above-referenced APNs. As a result of the Court's determination in *Moore*, there were no boundaries to adjust, since these APNs were not separate legal parcels but a single legal parcel that had been merged by operation of law.

The applications for these boundary line adjustments asserted that these separate APNs were actually separate parcels and thus had boundaries that could be adjusted. However, given that Mr. Moore had full and complete awareness of the *Moore* case in which he was a petitioner, submitting applications that represented there were multiple legal parcels instead of a single parcel was a misrepresentation. The approvals of these boundary line adjustments was contrary to law as there were no separate legal boundaries to adjust.

Pursuant to Mendocino County Code section 20.536.035, the Coastal Permit Administrator revoked Boundary Line Adjustments B\_2018-0068 and B\_2019-0054 on November 9, 2023. The Coastal Permit Administrator determined that Boundary Line Adjustments B\_2018-0068 and B\_2019-0054 were obtained by fraud. Findings of Fact were adopted for the project by the Coastal Permit Administrator and are attached to the Coastal Permit Administrator Action Sheet (Attachment B).

**THE APPEAL:** On November 17, 2023, Colin W. Morrow, on behalf of clients William and Tona Moore (the "Appellants"), filed an appeal of the Coastal Permit Administrator's revocation of Boundary Line Adjustments B\_2018-0068 and B\_2019-0054 (the "Appeal"). See copy of filed Appeal in Attachment A.

## **DISCUSSION:**

### **Arguments for Revocation**

Pursuant to MCC section 20.536.035, there are four grounds for revocation or modification of a coastal development permit:

- (1) That such permit was obtained or extended by fraud.
- (2) That one (1) or more of the conditions upon which such permit was granted have been violated.
- (3) 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.
- (4) 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 operations of one (1) or more such conditions.

Revocation proceedings were commenced against the Appellants pursuant to paragraph (1) above, which will be discussed further below. The appeal of the Coastal Permit Administrator's decision is heard by the Board of Supervisors *de novo*, as the Board may affirm reverse, or modify the determination as it finds in compliance with the Coastal Zoning Code and the Coastal Element of the General Plan. MCC section 20.544.015.

After further review of this matter, in addition to revocation of the permit as being obtained or extended by fraud, staff also believes that the prior approvals are void ab initio, as there was never a proper legal basis to approve the subject coastal boundary line adjustments.

### **B 2018-0068 and B 2019-0054 Are Void**

These prior approvals of the County are void in that they are contrary to applicable law. This is because in 2018 and 2019, Appellants applied for lot line adjustments, also known as boundary line adjustments, of property that had already been adjudicated to be one single lot. A lot line adjustment cannot result in more lots than existed prior to the adjustment. MCC section 17-17.5; Government Code section 66412(d). As such, no action by the County in response to these applications could have legally resulted in more lots than actually existed.

The *Moores* case, decided in 2004, specifically determined that certain property owned by Appellants, then identified as APNs 132-210-37, -38, -39, -40 and -41 were actually a single legal parcel, having been merged pursuant to the County's merger ordinance (Mendocino County Code section 17-106), as of 1981. As such, the component APNs are actually one single legal parcel. Because legal parcels are different than an APN, the result of this case did not necessarily require the abolition of the APNs that existed within the boundary of the single legal parcel.

The effect of a court judgment is quite clear and the Court's determination is conclusive. See Code Civ. Proc. § 1908. It is also well settled that a judgment or decree necessarily affirming the existence of any fact is conclusive upon the parties to an action whenever the existence of that fact is again in issue between them, not only when the subject matter is the same but also when the point comes incidentally in question in relation to a different matter in the same or any other court. *People v. Gorman* (1945) 69 Cal.App.2d 54, 58-59. As such, the *Moores* case conclusively determined as between the Appellants and the County that the property at issue in that case was a single legal parcel.

In 2018, fourteen years after the decision in *Moores*, Appellants filed the application for Boundary Line Adjustment B\_2018-0068, a coastal boundary line adjustment regarding APNs known at the time as 132-210-40 and 132-210-41. These are two of the APN's dealt with in *Moores* as being part of a single legal parcel. Because these APNs had been conclusively determined to not be separate legal parcels but merely portions of a single larger legal parcel, there was no legal parcel line boundary to adjust.

Similarly, in 2019, the application for Boundary Line Adjustment B\_2019-0054 sought to reconfigure the boundaries between then-APNs 132-210-37, 132-210-38, 132-210-39 (all three of which were named in *Moores* and determined to be part of the same legal parcel) and 132-210-61 (which was one of the parcels/APNs that "resulted" from B\_2018-0068). None of the APNs at issue in B\_2019-0054 actually existed as a separate legal parcel, given the *Moores* decision.

In applying for both of the above coastal boundary line adjustments, Appellants sought to shift boundaries between what they represented as being legal parcels. But as determined by *Moores*, there were no boundaries to shift. Pursuant to the Subdivision Map Act and the County's own codes on boundary line adjustments, any approval of either application could not have had the legal effect of creating a boundary line, as a boundary line adjustment cannot create more parcels than previously existed. As stated above, it is important to remember that assessor parcel numbers and boundaries are merely for the convenience of the Assessor and have no legal effect beyond that.

Both of the approved coastal boundary line adjustments are *void ab initio*, meaning they were void from the very beginning. As a matter of law there is only one legal parcel that includes all of the subject APNs and thus no interior legal parcel boundaries that could be adjusted by any action of the County. Further, the approval of the applications could not have had the effect of shifting a parcel line that did not exist and the approval of the County could not have created a boundary line as that would be contrary to the Subdivision Map Act. Revocation or setting aside of these past approvals is appropriate.

### **Issues Raised on Appeal**

Appellants raise the following arguments in appealing the CPA's action to revoke the coastal boundary line adjustments that were previously granted.

#### **1. The County Lacks Both a Legal and a Factual Foundation for Any Revocation**

Appellants first argue that there is no ability for the County to revoke the granted coastal boundary line adjustments, as the revocation procedure in MCC section 20.536.035 only speaks to the revocation of a



coastal development permit. Boundary Line Adjustments that are located within the Coastal Zone of Mendocino County are subject to obtainment of a Coastal Development Permit in addition to the standard review procedures and requirements under Mendocino County Code Section 17-17.5.

Lands, such as the subject parcels, that are located within the Coastal Zone and outside the Town of Mendocino are subject to Division II of Title 20 of the MCC. Pursuant to MCC section 20.532.010 any person proposing to undertake any development as defined in MCC section 20.308.035(D) shall obtain a Coastal Development Permit in accordance with the provisions of MCC Chapter 20.532. Pursuant to MCC section 20.532.015(E) “a coastal development standard permit must be secured for any other activity not specified above which is defined as a development in Section 20.308.035(D), including, but not limited to, land divisions, lot line adjustments and any other entitlement for use” (emphasis added). Coastal Boundary Line Adjustments are not given a separate application type or number but are processed under the boundary line adjustment application number assigned at the time of application. As such, the revocation procedures for a coastal development permit apply to a coastal development permit issued for a boundary line adjustment in the coastal zone. The coastal boundary line adjustments at issue in this appeal were originally granted upon the Coastal Permit Administrator making the findings required by MCC Chapter 20.532 and referred to the ability for the approvals to be appealed pursuant MCC Chapter 20.544.

The property owners obtained a Coastal Development Permit and Boundary Line Adjustment for B\_2018-0068 on June 13, 2019 and for B\_2019-0054 on June 11, 2020. Included in the materials provided with this agenda packet are the Coastal Permit Administrator’s approvals of these prior applications (contained in Attachment C). Under MCC section 20.536.035 a Coastal Development Permit may be revoked or modified for cause as provided by the section including section 20.536.035(A)(1) that such permit was obtained or extended by fraud.

Appellants assert that a particular definition of fraud, that for a tort action for deceit, applies to the case at hand. However, none of the cases cited to by Appellants involve any fraud or misrepresentation to a governmental entity, and Appellant has not shown that the standards for fraud in a court action would necessarily apply in the context of the revocation of a use permit. There are other definitions of fraud in California law. Civil Code section 1572 defines actual fraud in the context of contracts as including “the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true.” The assertions of the Appellants on the boundary line adjustment applications would seem to fit this definition. However, revocation of building permits has been supported based on misrepresentations to a governmental entity, with the key factor being that the misrepresentation was made. *Stokes v. Bd. of Permit Appeals* (1997) 52 Cal.App.4th 1348. The standard for a discretionary governmental approval should be no different.

In regards to the issue of fraud, Appellants assert that they has never “represented as a matter of affirmative material fact that the parcels were separate legal parcels.” The application forms, contained in Attachment B to this memorandum, submitted for both B\_2018-0068 and B\_2019-0054 were signed under an attestation on the bottom of page one of both applications, that the Applicant and Owner signature on the form certifies “that the information submitted with this application is true and accurate”. Mr. Moores signed both applications. The maps supplied by the Appellant as part of the application (pages 10 through 22 of Attachment B respectively) call out the “Subject Parcels” and show how the parcels will changed from the “Existing Parcel Configuration” to the “Proposed Parcel Configuration.” Since the submitted applications were for boundary line adjustments, which can only occur between separate legal parcels, the Appellants were certifying that the parcels included in the adjustment request were in fact separate legal parcels. The certification is not that the applicant has an opinion that there are parcels that can be adjusted, but that parcels exist and have boundaries that can be adjusted. The misrepresentation was specifically that multiple parcels existed, which is clearly a fact that is material to a boundary line adjustment.

Appellants also argue that the existence of *Moores* does not show that Appellants had any awareness or recollection of this case or its holding. This is simply not credible. The administrative record for *Moores* includes the Appellants appeal of a County determination to the Planning Commission, which denied the appeal. The Appellants then appealed the Planning Commission determination to the Board of

Supervisors, which also denied the appeal. The Appellants then filed a petition for administrative writ of mandate challenging the Board of Supervisors' decision in the Mendocino County Superior Court, which was denied by the Superior Court. Appellants then appealed that decision to the Appellate Court, which also ruled against the Appellants, in a published decision. The *Moore's* decision notes that the dispute began in 1996; the *Moore's* decision was final in 2004. The time and likely cost of this appeal process is significant, and it simply is not credible to believe that Appellants were not aware of, did not recall or did not understand the impact of the case.

In addition to the Appellants lack of credibility is that the Appellants recollection of the *Moore's* decision is legally irrelevant. As discussed above, *Moore's* is a conclusive determination that the APNs at issue in this case are a single legal parcel and Appellants are barred from arguing to the contrary by virtue of that decision. Even if Appellants had simply forgotten about their eight-year legal dispute with the County, the decision of *Moore's* is binding.

Appellants also argue that the County's involvement in *Moore's* and not raising the case when the boundary line adjustments were applied for means that the County cannot do so now. However, the mere fact that municipal officials fail for a long time to enforce a zoning ordinance against a violator does not estop the municipality to enforce it against him or her subsequently (*Donovan v. City of Santa Monica* (1948) 88 Cal. App. 2d 386) nor does the fact that the officials have failed to enforce an enactment against other violators prevent them from enforcing it in a particular case. *City of Los Angeles v. Gage* (1954) 127 Cal. App. 2d 442; *Donovan v. City of Santa Monica* (1948) 88 Cal. App. 2d 386, 199 P.2d 51 (2d Dist. 1948).

An administrative officer, such as a city building inspector, cannot by his or her conduct estop the legislative body of the city to adopt and enforce an ordinance. *City of Los Angeles v. Gage* (1954) 127 Cal. App. 2d 442; *Donovan v. City of Santa Monica* (1948) 88 Cal. App. 2d 386. Likewise, the doctrine of equitable estoppel is not invoked as a matter of law where a property owner relies on a permit issued by the public entity but the permit violates a zoning ordinance. *Golden Gate Water Ski Club v. County of Contra Costa* (2008) 165 Cal. App. 4th 249. Thus, the fact that a building permit was granted does not authorize the maintenance of a prohibited structure in a restricted district. *Weiner v. City of Los Angeles* (1968) 68 Cal. 2d 697; *Pettitt v. City of Fresno* (1973) 34 Cal. App. 3d 813.

In this case, the coastal boundary line adjustments were issued by staff of the Department of Planning and Building Services in error and without reference to *Moore's*. This does not estop the County from revoking or nullifying the coastal boundary line adjustments that should never have been authorized in the first place.

Appellants applied for boundary line adjustments signing certifications that the information in the applications was true and correct. These applications contained maps seeking to adjust parcel boundaries. However, Appellants were the named parties in a lawsuit against the County that had specifically determined that the APNs on the maps in the applications were a single, legal parcel, and thus had no boundaries to adjust. It is not credible that they simply forgot this case and from a legal perspective cannot reasonably argue this point in a court of law. Moreover, the County cannot be estopped from taking action to revoke the coastal boundary line adjustments at this time because the previously granted adjustments could not legally have been applied for or made. As such, the permit may be revoked pursuant to MCC section 20.536.035(A)(1), as having been obtained or extended by fraud.

## **2. The Moore's Have Relied Upon Their Vested Rights to Their Detriment**

First, an invalid permit vests no rights, even if expenditures have been incurred in good faith reliance on the permit. *Pettitt v. City of Fresno* (1973) 34 Cal.App.3d 813. In addition, there is no vested right when an agency is misled into issuing a permit by a developer. *Stokes v. Board of Permit Appeals* (1997) 52 Cal.App.4th 1348.

The authority cited by Appellants does not apply in this situation. It is true that when a developer expends money, performs work and incurs liabilities in reliance on a governmental permit or decision, the government is generally estopped from applying a subsequent change in the law if the change would

prevent the developer from completing the work of improvement as approved. This is most demonstrable in the context of a building permit – if a building permit is issued, and the permittee begins work on the building, the agency cannot later impose new or additional code requirements. However, even assuming that the boundary line adjustments were proper, Appellants have not shown that the work or improvement on the property was done in reliance or dependence upon the boundary line adjustment. The boundary line adjustment itself is not an approval for any development. Appellants appear to believe that the work they have generally described required multiple parcels or adjusted boundary lines.

Appellants various activities it claims were performed in reliance on the boundary line adjustments. These include (1) the drilling of a groundwater well, (2) installation of 30,000 gallons of water infrastructure, (3) de-brushing activities conducted in relation to the installation of water infrastructure, (4) “further permits have been obtained and paid for”, and (5) “a litany of other regulatory and permitting activities related thereto.”

The improvements listed in the Appeal as completed by the Appellants in reliance of the prior approvals have no bearing on whether the property in question is one legal parcel or multiple legal parcels, or the adjustment of any boundary lines. Regarding water wells, it is common in Mendocino County for a parcel to have multiple wells to support existing or proposed development, particularly if that site is to be developed with a visitor serving facility as indicated by the General Plan Amendment and Rezoning request currently on-file with the Department. Multiple parcels are not required to drill multiple wells. As to the thousands of dollars spent in General Plan Amendment applications, staff will note that the first filed General Plan Amendment application was filed in 2006 roughly 12 years prior to the first Boundary Line Adjustment application and was acted upon in March 2019. The currently submitted General Plan Amendment application was filed in September 2019 and has not yet been acted upon pending resolution of this legal parcel issue. Appellants also cite to no provision of law stating that the mere act of filing applications would create any vested rights.

Staff is concerned about the noted 30,000-gallons of water storage in numerous tank(s), as we were unable to locate a record of a permit for that improvement and any improvement such as this would require the issuance of both a Coastal Development Permit and likely also a building permit. Exemptions from a Coastal Development Permit would not apply as there is no existing residential development on the property for the water storage tanks to be accessory to. “De-brushing activities” were not clearly defined in the prior Comment Letters or the Appeal other than seeming to indicate it may relate to the possibly unpermitted water storage tank and permitted wells. Staff notes that major vegetation removal or harvesting of a certain magnitude would also require review and approval by the Department. Staff cannot speak to the unspecified “litany of other regulatory and permitting activities”.

Under existing case law, an invalid permit vests no rights. Even so, none of the types of development alleged by Appellants would appear to require multiple parcels or rely on the approval by the County of a shift in parcel boundaries. As such, Appellants do not appear to have undertaken any development or work in reliance on the boundary line adjustments that would create any vested right.

**3. Any Revocation of the Boundary Line Adjustments Would Constitute a Taking Without Just Compensation and Would Not Be Proceeding in a Manner Required by Law**

The Appeal alleges that the revocation of the Boundary Line Adjustments would constitute a taking of private property. While much case law is cited, there are minimal statements regarding what exactly is being taken by the County. It appears that Appellants believe they have vested rights that the County would deprive them of as a result of the revocation. As discussed above, it is not clear that the improvements installed by Appellants require multiple parcels or even performed after obtaining the requisite permits from the County.

Appellants go further and appear to assert that the County must follow the provisions of the Eminent Domain Law for this proceeding. On the contrary, the provisions of the Eminent Domain Law apply when the public authority commences the litigation to acquire property. The County is not here attempting to acquire any property or property rights of the Appellant, only negate or revoke approvals that should never have been approved in the first place, and to which Appellant has no right. Appellants cite to no case law requiring the County to undertake the process of the Eminent Domain Law for a revocation

action.

Lastly, it is not clearly stated how revocation of boundary line adjustments would constitute either a physical or regulatory taking. Staff does note that the Appellants would retain ownership of the land.

In summary, Appellants have no legal basis to assert that there were or are multiple legal parcels, and no approval of a boundary line adjustment could have created multiple parcels. Both boundary line adjustments were void at the time they were approved and, given the existence of the *Moore's* decision, the applications for both boundary line adjustments contained fraudulent statements that multiple parcels existed. Both boundary line adjustments should be revoked by the County.

**RECOMMENDED ACTION:** Adopt a resolution denying the appeal and upholding the Coastal Permit Administrator's decision to revoke Boundary Line Adjustments B\_2018-0068 and B\_2019-0054, located near the community of Irish Beach and currently known as APNs: 132-210-61, 132-210-62, 132-210-63 and 132-210-64, and further finding that the Boundary Line Adjustments are void ab initio; and authorize Chair to sign same.

**ATTACHMENTS:**

- A. November 17, 2023 Appeal
- B. November 9, 2023 Coastal Permit Administrator Packet
- C. September 14, 2023 Coastal Permit Administrator Packet
- D. Administrative Appeal 2-2001 Board Action and Minutes
- E. Administrative Appeal 2-2001 Planning Commission Minutes and Staff Memo including Maps

## RESOLUTION NO. 24-

### **RESOLUTION OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS DENYING THE APPEAL AND AFFIRMING THE REVOCATION OF BOUNDARY LINE ADJUSTMENTS B\_2018-0068 AND B\_2019-0054, LOCATED NEAR THE COMMUNITY OF IRISH BEACH, AND FURTHER FINDING THAT THE BOUNDARY LINE ADJUSTMENTS WERE VOID AB INITIO.**

WHEREAS, pursuant to Mendocino County Code (MCC) section 20.532.010, any person proposing to undertake any development as defined in MCC section 20.308.035(D) shall obtain a Coastal Development Permit in accordance with the provisions of MCC Chapter 20.532. Pursuant to MCC section 20.532.015(E) “a coastal development standard permit must be secured for any other activity not specified above which is defined as a development in Section 20.308.035(D), including, but not limited to, land divisions, lot line adjustments and any other entitlement for use” (emphasis added); and

WHEREAS, boundary line adjustments within the Coastal Zone and subject to the above-referenced MCC section are assigned a “B” case number and not separately assigned a coastal development permit number and are approved pursuant to the provisions of Chapter 20.532; and

WHEREAS, the Coastal Permit Administrator approved Boundary Line Adjustment B\_2018-0068 on June 13, 2019 reconfiguring two (2) assessor parcel numbers (APNs), at that time known as APNs 132-210-40 and 132-210-41. The Boundary Line Adjustment was finalized on November 21, 2019; and

WHEREAS, the Coastal Permit Administrator approved Boundary Line Adjustment B\_2019-0054 on June 11, 2020 reconfiguring the boundaries between three (3) assessor parcel numbers and merging a fourth assessor parcel number (then APNs 132-210-37, 132-210-38, 132-210-39, and 132-210-61 (resulting APN from B\_2018-0068)). The Boundary Line Adjustment was finalized on August 28, 2020; and

WHEREAS, both Boundary Line Adjustment B\_2018-0068 and Boundary Line Adjustment B\_2019-0054 contained final findings consistent with the requirements of MCC Chapter 20.532 and referred to the ability for the approvals to be appealed pursuant to MCC section 20.544.015, which is for appeals of decisions of the Coastal Permit Administrator; and

WHEREAS, under MCC section 20.536.035, a Coastal Development Permit may be revoked or modified for cause as provided by the section including section 20.536.035(A)(1) that such permit was obtained or extended by fraud; and

WHEREAS, subsequent to the finalization of the two above referenced Boundary Line Adjustments, staff conducted research on the parcel history of the above referenced assessor parcel numbers as part of the processing of a General Plan Amendment and Rezoning request for these sites (GP\_2019-0006/R\_2019-0008). This research located documents referencing a court case between the property owner, William and Tona Moores (“Property Owner” or “Appellants”), and Mendocino County that explicitly dealt with several of the parcels at issue in the General Plan Amendment and Rezoning request; and

WHEREAS, *Moores v. Board of Supervisors of Mendocino County* (2004) 122 Cal. App. 4th 883 (*Moores*), involved an action by the Property Owner seeking to set aside the determination of the County that property then-identified as Assessor’s Parcel Numbers (APNs) 132-210-37, -38, -39, -40, and -41 had been merged by operation of law into a single legal parcel pursuant to the County’s merger ordinance. The case affirmed the determination of the County and confirmed that the five referenced APNs had been merged by operation of law as of 1981; and

WHEREAS, the applications for Boundary Line Adjustments #B\_2018-0068 and B\_2019-

0054 submitted by the Appellants involved adjusting the boundaries of several of the APNs that were the subject of the *Moores* case. These applications are attached to the November 9, 2023 Coastal Permit Administrator Packet as Attachments B and C. The applications included maps showing certain APNs as they existed and as they were proposed to be adjusted. The application forms submitted for both B\_2018-0068 and B\_2019-0054 were signed under an attestation that the applicant and property owner signature on the form certifies “that the information submitted with this application is true and accurate”; and

WHEREAS, the submitted applications were for boundary line adjustments, which can only occur between separate legal parcels. A legal parcel is not the same as an APN, which exists only for assessment purposes and is established by the County Assessor’s office. Boundary line adjustments are reviewed and approved by the Department of Planning and Building Services pursuant to the County’s subdivision regulations and for parcels within the County’s Coastal Zone, pursuant to the County’s Coastal zoning regulations. As such, the applications necessarily asserted that the APNs on the application maps were separate legal parcels and the Appellants certified that the information submitted with the application is true and accurate; and

WHEREAS, pursuant to MCC section 20.536.035(A)(1) the Coastal Permit Administrator found that the permits were obtained or extended by fraud. Given the result of *Moores* there were no boundaries to adjust, since these APNs were not separate legal parcels but a single legal parcel that had been merged by operation of law in 1981. In subsequently applying for boundary line adjustments, the Appellants attested to the information in the applications was true and accurate. However, given the outcome of the *Moores* case, the maps and assertions of the applications that there were legal parcel boundaries to adjust were demonstrably false; and

WHEREAS, the Appellants have argued that there has been no showing that the Appellants were aware of, recalled or understood the precise meanings of the *Moores* case which bears their name and thus did not make any attempt to commit fraud in making the applications. It is not credible that a party to an action which was appealed from a County determination to the County Planning Commission, the County Board of Supervisors, the Superior Court and the Appellate Court, over a course of multiple calendar years would simply not be aware of or remember the case which applies to the specific APNs that are the subject to the boundary line adjustments. The position of the County that was affirmed at every level of the appeal was not arcane or difficult to understand: the subject APNs had been merged by operation of law as of 1981; and

WHEREAS, the *Moores* case also conclusively determined as between the Appellants and the County that the property at issue in the subject Boundary Line Adjustments is a single legal parcel; and

WHEREAS, as a result of the holding of *Moores*, the County’s approval of the previous boundary line adjustments were both *void ab initio*, as there were no separate legal boundaries to adjust and a boundary line adjustment cannot create additional parcels; and

WHEREAS, the Department of Planning and Building Services mailed a written notification of intent to revoke the Boundary Line Adjustments to the Property Owner on November 4, 2022; and

WHEREAS, a Notice of Public Hearing for the Coastal Permit Administrator’s public hearing on September 14, 2023, regarding the revocation of the Project was provided in accordance with MCC section 20.536.015; and

WHEREAS, in accordance with the applicable provisions of law, the Coastal Permit Administrator held a Public Hearing on September 14, 2023, at which time the Coastal Permit Administrator continued said hearing to November 9, 2023; and

WHEREAS, in accordance with the applicable provisions of law, the Coastal Permit Administrator held a Public Hearing on November 9, 2023, at which time the Coastal Permit Administrator heard and received all relevant testimony and evidence presented orally or in writing regarding the Project. All interested persons were given an opportunity to hear and be heard regarding the Project; and

WHEREAS, on November 9, 2023, based on the evidence in the record and findings contained in staff report, the Coastal Permit Administrator revoked Boundary Line Adjustments B\_2018-0068 and B\_2019-0054 finding that such permits were obtained or extended by fraud; and

WHEREAS, on November 17, 2023, Colin W. Morrow, on behalf of Appellants, filed an appeal of the Coastal Permit Administrator's revocation of Boundary Line Adjustments B\_2018-0068 and B\_2019-0054 (the "Appeal"); and

WHEREAS, the Mendocino County Board of Supervisors held a duly noticed Public Hearing on April 23, 2024, to hear all relevant testimony and evidence presented orally or in writing regarding the Project and Appeal. All interested persons were given an opportunity to hear and be heard regarding the Project and Appeal.

NOW, THEREFORE, BE IT RESOLVED that the Mendocino County Board of Supervisors makes the following findings, based on the evidence in the record before it:

1. The Board of Supervisors hereby affirms the determinations of the Coastal Permit Administrator.
2. The Board of Supervisors hereby denies the Appeal and affirms the Coastal Permit Administrator's denial of the project, finding that the applications were obtained or extended by fraud.
3. The Board of Supervisors further revokes Boundary Line Adjustments B\_2018-0068 and B\_2019-0054 on the basis that both approvals were *void ab initio*. As a matter of law there is only one legal parcel that includes all of the subject APNs and thus no interior legal parcel boundaries that could be adjusted by any action of the County. The approval of the applications could not have had the effect of shifting a parcel line that did not exist and the approval of the County could not have created a boundary line as that would be contrary to both Mendocino County Code sections 20.532.010 and 17-17.5 or the provisions of Government Code section 66412, subdivision (d). A boundary line adjustment can only adjust existing parcel boundaries and cannot have the effect of creating more parcels than existed prior to the adjustment.

BE IT FURTHER RESOLVED that the Board of Supervisors designates the Clerk of the Board of Supervisors as the custodian of the documents and other materials, which constitutes the record of proceedings upon which the Board of Supervisors' decision herein is based. These documents may be found at the office of the Office of the Clerk of the Board of Supervisors, 501 Low Gap Road, Room 1010, Ukiah, CA 95482.

The foregoing Resolution introduced by Supervisor \_\_\_\_\_, seconded by Supervisor \_\_\_\_\_, and carried this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by the following vote:

AYES:  
NOES:  
ABSENT:

WHEREUPON, the Chair declared said Resolution adopted and SO ORDERED.

ATTEST: DARCIE ANTLE  
Clerk of the Board

\_\_\_\_\_  
Deputy

*APPROVED AS TO FORM:*  
JAMES R. ROSS  
Interim County Counsel

\_\_\_\_\_

\_\_\_\_\_  
MAUREEN MULHEREN, Chair  
Mendocino County Board of Supervisors

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

BY: DARCIE ANTLE  
Clerk of the Board

\_\_\_\_\_  
Deputy





MENDOCINO COUNTY BOARD OF SUPERVISORS
PLANNING APPEAL FORM

Appeals must be received in the Executive Office within the appeal period, 10 days from the date of the hearing\* (post-marks will NOT be accepted). The Clerk of the Board or Planning and Building Services will verify appeal fee amounts\*. The appeal fee must accompany the appeal letter/form in order to be considered valid.

\*Verify with Planning and Building Services or with the Clerk of the Board of Supervisors

Date Appeal Submitted\*: 11/17/23 Appeal Fee\*: \$ 2674.00
Case No.: Applicant:
Heard by: Hearing Date:
Source: Planning Commission • MHRB • Zoning Administrator • Administrative (Planning) • Coastal Permit Administrator

Printed Name, Address, and Phone No. of Appealing Party:

William and Tona Moores
c/o Colin W. Morrow, Esq.
P.O. Box 1214, Mendocino, CA 95460 (cmorrow@vmm-law.com)
( 707 ) 380 - 1070

Basis for Appeal (Please provide sufficient detail to describe the nature of the appeal. Letters describing appeal may also be attached):

Please see atatched letter detailing appeal of revocation of boundary line adjustments
in B\_2018-0068 & B\_2019-0054.

Signature
Colin W. Morrow, Esq.

Submit completed form to:
Mendocino County Clerk of the Board
501 Low Gap Road, Room 1010
Ukiah, CA 95482
(707) 463-4221

Fee made out to :
County of Mendocino

Staff Use:
Obtain Agenda for meeting/appeal verification
Appeal period verified and confirmed
Appeal fee verified and confirmed
Form distribution completed/Date Stamp form
Copy of receipt and check attached to original appeal form and provided to DCOB
Other

# VANNUCCI MOMSEN MORROW

Attorneys at Law  
An Association of Sole Practitioners

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November 17, 2023

## VIA PERSONAL DELIVERY

Clerk of the Board  
Mendocino County Board of Supervisors  
501 Low Gap Rd., Rm. 1010  
Ukiah, CA 95482

Re: Appeal of Revocation of Boundary Line Adjustments  
Case Nos.: B 2018-0068 & B 2019-0054  
Appellants: William & Tona Moores

Dear Honorable Board of Supervisors:

### I. Introduction

I represent William and Tona Moores in relation to the above referenced matter. The Moores respectfully ask this Board to vacate the Coastal Permit Administrator's unlawful decision to revoke two boundary line adjustments in Manchester, California. The County's unlawful revocation of these boundary line adjustments shockingly came over four years after those boundary line adjustments were approved. During that interval the Moores spent substantial sums in reliance upon the County's prior approvals and the adjustments cannot now be revoked.

The County of Mendocino approved two boundary line adjustments in the above referenced cases around June 13, 2019 and June 11, 2020 based upon the County's independent examination and due diligence. These boundary line adjustments were finalized around November 21, 2019 and August 18, 2020, respectively, to the benefit of my clients based upon the County's independent review. Based upon these boundary line adjustments, my clients then proceeded to invest substantial sums in reliance upon their vested rights afforded by the County. This reliance continued for over four years while the County remained silent following their approval of these applications.

Roughly four years and three months after the first of these two boundary line

adjustments were finalized, the County unlawfully revoked the boundary line adjustments without right in a muddled and improper proceeding before the Coastal Permit Administrator. The Moores now timely appeal to this Board and respectfully request this Board vacate the Coastal Permit Administrator's unlawful revocation. Not only was the Coastal Permit Administrator's revocation contrary to law, but it is an improvident use of resources for this County to spend its dollars and manhours on a war of choice—as contrasted from a war of necessity—that will only stifle economic development.

Should this Board affirm the Coastal Permit Administrator's unlawful revocation, the County would only be opting for expensive and unnecessary litigation that is properly avoided. Should the boundary line adjustments be revoked, the County would be engaging in a taking of private property. When a state actor—such as the County—takes private property it must proceed in a particularized manner required by law, which did not happen here. A condemning authority must also pay the affected private property owners both reasonable compensation and the property owner's attorney's fees incurred in obtaining such just compensation.

## **II. The County Lacks Both a Legal and a Factual Foundation for Any Revocation**

The Coastal Permit Administrator relied upon Mendocino County Code section 20.536.035 as supposedly permitting the County to revoke the relevant boundary line adjustments based upon a supposed “fraud.” This justification is both legally and factually defective.

Mendocino County Code section 20.536.035 does not authorize the revocation of any boundary line adjustments whatsoever. Section 20.536.035 is specifically cabined to—and only authorizes—the revocation of “coastal development permit[s].” Here, however, the approvals at issue are as to boundary line adjustments. Boundary line adjustments are governed by Mendocino County Code section 17-17.5, and nothing therein authorizes the revocation of a boundary line adjustment. Although the Mendocino County Code authorizes certain permits to be revoked, there is no authorization for the County to revoke a boundary line adjustment. This demonstrates that this Board understands how to craft such authorizing language, but has declined to authorize such actions in the case of boundary line adjustments. Under the Latin rule of statutory construction of *expressio unius est exclusio alterius*, when one or more things of a class are expressly mentioned others of the same class are excluded.

Even if the relied upon code section did hypothetically authorize the revocation of a boundary line adjustment (though it does not), there is an absence of

fraud to provide a factual predicate for any revocation. Fraud is narrowly defined as requiring the combination of (1) a knowingly false representation, (2) made with an intent to deceive, with justifiable reliance by the listener, and resulting damages. (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 974; *Service by Medallion, Inc. v. Clorox Co.* (1996) 44 Cal.App.4th 1807, 1816.) “[A] cause of action for misrepresentation requires an affirmative statement, not an implied assertion.” (*RSB Vineyards, LLC v. Orsi* (2017) 15 Cal.App.5th 1089, 1102.) An opinion cannot constitute a fraudulent statement. (*Hauter v. Zogarts* (1975) 14 Cal.3d 104, 112.) Mere “opinions . . . are not a basis for relief on the ground of fraud.” (*Agnew v. Foell* (1952) 113 Cal.App.2d 575, 577.) “The law is well established that actionable misrepresentations must pertain to past or existing *material facts*.” (*Cansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1469 (emphasis added).)

The elements of fraud are absent multiple times over.

The County has done nothing to show that Mr. Moores represented as a matter of affirmative material fact that the parcels were separate legal parcels. Even if such a statement had been shown to be made—though no showing has been made—any such representations would have been mere implied legal opinions. The question of whether two parcels are legally separate is a question of law, and the County cannot read any lay interpretation of what is or is not a parcel as anything more than mere lay opinion. The County has also failed to show that the Moores were aware of, recalled, and understood the precise statements, holdings, and effects thereof in the nearly twenty year old case of *Moores v. Board of Supervisors of Mendocino County* (2004) 122 Cal.App.4th 883. The plain fact that the County—who was also a party to the action—did not itself recall and recognize any perceived relevance of the case is itself conclusive evidence that the Moores were equally unknowing of what an arcane legal opinion did or did not say. The Coastal Permit Administrator specifically applied a defective standard on this point by verbally stating that he could only make a finding of “constructive” knowledge—to use his word—which cannot support a finding of fraud. (See *Dennis v. Burritt* (1856) 6 Cal. 670, 673; *Stafford v. Lick* (1857) 7 Cal. 479, 482.)

Any specter of fraud is further separately and independently lacking because the County has done nothing to show any reasonable reliance upon any representations from the Moores. The County is staffed with an office of multiple attorneys, a multitude of planners who are versed in land use and real property law, and a legion of support staff. They are not in the habit—and should not be in the habit—of merely taking applicants at their word. Their job is to review the merits of applications. If applicants were merely to be given blind trust the department would be surplusage. The Coastal Permit Administrator completely failed to make any

finding whatsoever that the County had reasonably relied upon the Moores representations. Moreover, the very constructive notice determination that the Coastal Permit Administrator imposed upon the Moores cuts the County's argument of reasonable reliance off at the ankles. The County was at least as involved in *Moores v. Board of Supervisors of Mendocino County* (2004) 122 Cal.App.4th 883 as were the Moores. Additionally, the County staff possess the specialized knowledge to understand and appreciate the significance of the decision in the way lay persons like the Moores do not.

In sum, there is no fraud, nor has there ever been any fraud. The boundary line adjustment cannot be revoked.

### **III. The Moores Have Relied Upon Their Vested Rights to Their Detriment**

"When a governmental agency issues a valid grant of authority or other permit, it represents to the developer that he or she may proceed with the work of improvement with the blessing and approval of the government. When the developer thereafter expends money, performs work, and incurs liabilities in reliance on the government's representations, the government is estopped to apply any subsequent change in the law if the change would prevent the developer from completing the work of improvement as approved." (Miller & Starr, 7 Cal. Real Est. (4th Ed., Sept. 2023 Update), Ch. 21, § 21:26; see also *McCarthy v. California Tahoe Regional Planning Agency* (1982) 129 Cal.App.3d 222, 229-230.)

Roughly four years and three months before moving to revoke the Moores rights, the County gave the Moores an affirmative blessing that the Moores boundary line adjustment was proper. Based thereon, the Moores have expended significant time, money, and resources proceeding in reliance upon the County's approvals. A new groundwater well was drilled, roughly thirty thousand (30,000) gallons of water storage infrastructure have been installed upon the real property, de-brushing activities have been conducted in relation thereto, further permits have been obtained and paid for, and a litany of other regulatory and permitting activities relating thereto have consumed substantial time, money, and effort. Put another way, the Moores have likely spent at least six figures in reliance upon the County's affirmative approval of their boundary line adjustments. While the County went out of its way to plead ignorance at the Coastal Permit Administrator hearing as to what work had or had not been performed, the statements of the Moores were unequivocal. There was no question the Moores made financial expenditures in reliance upon the boundary line adjustments. County records alone can demonstrate at least twenty thousand dollars in general plan submissions alone, and it is undisputed that the Moores expended their funds on well development in reliance upon their vested rights.

The Moores possess vested rights, and the County cannot revoke these vested rights.

#### **IV. Any Revocation of the Boundary Line Adjustments Would Constitute a Taking Without Just Compensation and Would Not Be Proceeding in a Manner Required by Law**

Were the County to proceed with the proposed revocation, it would be affecting a taking of private property. The Fifth Amendment to the United States Constitution requires that “private property [shall not] be taken for public use, without just compensation.” (U.S. Const., Amend. V.) Under the California Constitution, “[p]rivate property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner.” (Cal. Const., Art. I, § 19.) “Because the California Constitution requires compensation for damage as well as a taking, the California clause ‘protects a somewhat broader range of property values’ than does the corresponding federal provision.” (*San Remo Hotel L.P. v. City and County of San Francisco* (2002) 27 Cal.4th 643, 664, quoting *Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 9.) “A property owner has an actionable Fifth Amendment takings claim when the government takes his property without paying for it.” (*Knick v. Township of Scott, Pennsylvania* (2019) 139 S.Ct. 2162, 2167.)

The law is crystal clear and well settled that the deprivation of a vested right to develop is a taking. (*Trans-Oceanic Oil Corp. v. City of Santa Barbara* (1948) 85 Cal.App.2d 776, 783 [a valid “permit ripens into a vested property right which may not be taken from him against his will other than by proceedings in eminent domain with the payment of just compensation”]; *Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1526-1527 [owner had a vested fundamental right to continue operating the tavern]; *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 791 [“if a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete construction in accordance with the terms of the permit”].)

Even assuming a rationally keyed public use can be cited that would make the condemnation permissible, (*cf. Lingle v. Chevron U.S.A., Inc.* (2005) 544 U.S. 528), the County would also not be proceeding in a manner required by law because it would not be following the determination of necessity and pre-condemnation offer procedures required by California statute, (*e.g.*, Code Civ. Proc. § 1240.030 *et seq.* & Gov. Code § 7267.1 *et seq.*).

Concluding this topic, the Moores would still be entitled to litigate the question of just compensation and would be entitled to not just their just compensation, but their “reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred.” (Code Civ. Proc. § 1036.) Here, in light of the projects that the Moores would no longer be able to pursue due to such a taking, their diminution in value could be in the tens of millions of dollars, and they are likely to incur a million-plus dollars in attorney’s fees for which the County will need to reimburse them.

#### **V. The Coastal Permit Administrator Acted Improvidently**

While the above has focused on legal arguments, the Board should also weigh functional considerations in reviewing this matter. The Moores are long time—and deeply rooted—property owners in the County. They only want to see this County grow and thrive. They want to bring a broad mix of housing, vacation homes, families, and tourists into the fold. They want to provide infrastructure such as added cell sites to this County. The south coast of this County is a wonderful place with public lands and beachfront horseback rides. The County should welcome and strive for growth in this area.

For over four years from the approval of their boundary line adjustments, the County did not have any issues with what the Moores were doing. It was only after over four years of the Moores striving in compliance with the County’s approval of the boundary line adjustments that the County reached back in time a dusty appellate opinion that will soon be twenty years old to manufacture a problem and seek out a disagreement.

From a policy perspective, the County should be aiming to aid development. The County should not be going out of its way to stifle development. From a budgetary perspective, the County should be looking to increase its tax base and spend its revenues wisely. The County should not be going out of its way to render property less valuable by expending countless manhours from planning and county counsel.

The County gains nothing by picking this fight, but it is a fight that will come at a great—and unnecessary—cost. It will also be a losing fight for the County when the dust settles. The undersigned implores this Board to use our limited resources where they are actually needed and to put this matter to bed. The Moores want to bring money and growth to Mendocino’s south coast and this should not be discouraged.

#### **IV. Conclusion**

For the reasons stated above, William and Tona Moores respectfully pray that this Board vacate the Coastal Permit Administrator's revocation in full.

Respectfully submitted,



Colin W. Morrow  
Attorney for William & Tona Moores







**COUNTY OF MENDOCINO**  
**DEPARTMENT OF PLANNING AND BUILDING SERVICES**  
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## **MEMORANDUM**

**DATE:** November 8, 2023  
**TO:** Coastal Permit Administrator  
**FROM:** Julia Krog, Director  
**SUBJECT:** Update Memorandum regarding Request for Revocation by the Coastal Permit Administrator of Boundary Line Adjustments #B\_2018-0068 and B\_2019-0054 (Moores)

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At the September 14, 2023 Coastal Permit Administrator hearing, Staff requested that the Coastal Permit Administrator continue the matter to a date certain of November 9, 2023 to allow Staff time to review and respond to the September 13, 2023 comment letter submitted by the Colin Morrow, attorney for the property owners, William and Tona Moores, regarding the proposed project (“Comment Letter”). The referenced Comment Letter is attached to this memorandum as Attachment A.

Staff has reviewed the Comment Letter in detail and finds that it does not present any new evidence or facts that would modify staff’s previously recommended action to the Coastal Permit Administrator. This memo will respond briefly to the points raised in the letter.

The Comment Letter asserts that the County lacks the legal and factual foundation for revocation of the subject Boundary Line Adjustments. Boundary Line Adjustments that are located within the Coastal Zone of Mendocino County are subject to obtainment of a Coastal Development Permit in addition to the standard review procedures and requirements under Mendocino County Code Section 17-17.5.

Lands, such as the subject parcels, that are located within the Coastal Zone and outside the Town of Mendocino are subject to Division II of Title 20 of Mendocino County Code (MCC). Pursuant to MCC section 20.532.010 any person proposing to undertake any development as defined in MCC section 20.308.035(D) shall obtain a Coastal Development Permit in accordance with the provisions of MCC Chapter 20.532. Pursuant to MCC section 20.532.015(E) “a coastal development standard permit must be secured for any other activity not specified above which is defined as a development in Section 20.308.035(D), including, but not limited to, land divisions, lot line adjustments and any other entitlement for use” (*emphasis added*). Coastal Boundary Line Adjustments are not given a separate application type or number but are processed under the boundary line adjustment application number assigned at the time of application.

The property owners obtained a Coastal Development Permit and Boundary Line Adjustment for B\_2018-0068 on June 13, 2019 and for B\_2019-0054 on June 11, 2020. Included in the materials provided with this agenda packet are the Coastal Permit Administrator’s approvals of these prior applications. Under MCC section 20.536.035 a Coastal Development Permit may be revoked or modified for cause as provided by the section including section 20.536.035(A)(1) that such permit was obtained or extended by fraud.

The Comment Letter asserts that the permit application was not extended by fraud. The application forms, Attachments B and C to this memorandum, submitted for both B\_2018-0068 and B\_2019-0054 were signed under an attestation that the Applicant and Owner signature on the form certifies “that the information submitted with this application is true and accurate”. Since the submitted application was for a boundary line adjustment, which can only occur between separate legal parcels, Mr. Moores was certifying that the parcels included in the adjustment request were in fact separate legal parcels. Further, the applications included map attachments which showed the existing and proposed parcel configurations of the purported separate legal parcels.

The Comment Letter asserts that Mr. Moores may not have been aware of, recalled, or understood the results of *Moores v. Board of Supervisors of Mendocino County* (2004) 122 Cal. App. 4th 883 (*Moores*).

Staff cannot attest to what Mr. Moores may be aware of, recall or understand, but bases our belief that Mr. Moores was knowledgeable of the results of *Moores* on the fact that he was the plaintiff.

The Comment Letter asserts that the Moores' have relied upon their vested rights and expended significant time, money and resources proceeding in reliance of County approvals. The Comment Letter notes the following costs and improvements: *A new groundwater well was drilled, roughly thirty thousand (30,000) gallons of water storage infrastructure have been installed upon the real property, de-brushing activities have been conducted in relation thereto, further permits have been obtained and paid for, and a litany of other regulatory and permitting activities relating thereto have consumed substantial time, money, and effort.*

In response to this statement in the Comment Letter, staff offers the following commentary. First, an invalid permit vests no rights, even if expenditures have been incurred in good faith reliance on the permit. *Pettit v. City of Fresno* (1973) 34 Cal.App.3d 813. In addition, there is no vested right when an agency is misled into issuing a permit by a developer. *Stokes v. Board of Permit Appeals* (1997) 52 Cal.App.4th 1348.

The improvements listed by Mr. Moores as completed appear to not have any bearing on whether the property in question is one legal parcel or multiple legal parcels. The improvements completed appear to relate to establishment of water wells. It is common in Mendocino County for a parcel to have multiple wells to support existing or proposed development, particularly if that site is to be developed with a visitor serving facility as indicated by the General Plan Amendment and Rezoning request currently on-file with the Department. Multiple parcels are not required to drill multiple wells.

Staff is concerned about the noted 30,000-gallon water storage tank(s) as we were unable to locate a record of a permit for that improvement, and an improvement of this magnitude would likely require both a Coastal Development Permit and a Building Permit. "De-brushing activities" were not clearly defined in the Comment Letter other than seeming to indicate it may relate to the possibly unpermitted water storage tank and permitted wells. Staff notes that major vegetation removal or harvesting of a certain magnitude would also require review and approval by the Department. Staff cannot speak to the unspecified "litany of other regulatory and permitting activities". Below staff has provided a timeline regarding permits submitted and/or obtained since approval of the Boundary Line Adjustments.

Timeline of Permits on properties since Boundary Line Adjustment Approval:

B\_2018-0068 approved on June 13, 2019.

On September 5, 2019, Mr. Moores applied for a General Plan Amendment and Rezoning, GP\_2019-0006/R\_2019-0008, over the property in question. The application requests the relocation of a visitor serving facility designation from a parcel located on the north end of the Irish Beach Subdivision to the subject property.

On October 21, 2019, Mr. Moores applied for a Categorical Exclusion, CE\_2019-0031, to drill a test well on APN 132-210-41. CE\_2019-0031 was granted on October 24, 2019.

On November 4, 2019, a water well permit, WW23575, was submitted and approved by Planning on November 6, 2019 as a test well only, as approved under CE\_2019-0031. This was a dry hole that did not produce water and the permit was closed out.

B\_2018-0068 was finalized on November 21, 2019.

On March 5, 2020, Mr. Moores applied for a Categorical Exclusion, CE\_2020-0006, to drill two test wells on APNs 132-210-39 and 132-210-61. CE\_2020-0006 was granted on June 10, 2020.

B\_2019-0054 approved on June 11, 2020.

On July 21, 2020, a water well permit, WW 23757, was submitted on APN 132-210-61.

On July 21, 2020, a water well permit, WW 23758, was submitted on APN 132-210-39 (at time of issuance APN 132-210-62).

B\_2019-0054 was finalized on August 28, 2020.

On September 14, 2020, water well permit WW 23757 was approved by Planning as a test well only on APN 132-210-61, as approved under CE\_2020-0006.

On September 21, 2020, Mr. Moores applied for a Categorical Exclusion, CE\_2020-0030, to drill a production well on APN 132-210-62. CE\_2020-0030 was granted on October 30, 2020.

On November 5, 2020, water well permit WW 23758 was approved by Planning for a well on APN 132-210-62, as approved under CE\_2020-0030.

On June 22, 2022, WW23757 and WW23758 were finalized.

On November 4, 2022, County staff sent letter to Mr. Moores informing him of intent to revoke the subject Boundary Line Adjustments.

September 13, 2023, initial hearing with the Coastal Permit Administrator on the revocation of the Boundary Line Adjustments. Hearing was continued to November 9, 2023.

Finally, the Comment Letter alleges that the revocation of the Boundary Line Adjustments would constitute a taking of private property. It is not clearly stated how revocation of boundary line adjustments would constitute either a physical or regulatory taking. Staff does note that the Moores would retain ownership of the land.

#### **Recommended Action**

Pursuant to Mendocino County Code section 20.536.035, Staff recommends that the Coastal Permit Administrator revoke Boundary Line Adjustments B\_2018-0068 and B\_2019-0054. Staff has prepared recommended findings of fact for the Coastal Permit Administrator to consider.

#### **Attachments:**

- A. September 13, 2023 Comment Letter from Colin Morrow
- B. B\_2018-0068 Application
- C. B\_2019-0054 Application
- D. Recommended Findings of Fact and Determination to Revoke Approval

# VANNUCCI MOMSEN MORROW

Attorneys at Law  
An Association of Sole Practitioners

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Email: pvannucci@vmm-law  
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45060 Ukiah St., Ste. A  
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Mendocino, CA 95460  
Phone: 707.380.1070  
Email: cmorrow@vmm-law.com

September 13, 2023

## VIA EMAIL AND PERSONAL DELIVERY

Ignacio Gonzales  
Coastal Permit Administrator  
County of Mendocino Planning and Building Services  
860 N Bush St.  
Ukiah, CA 95482  
(pbs@mendocinocounty.org)

Re: Case Nos.: B 2018-0068 & B 2019-0054  
Hearing Date and Time: September 14, 2023 @ 11:00 AM  
Owners: William & Tona Moores

Dear Coastal Permit Administrator Gonzales:

### I. Introduction

I represent William and Tona Moores in relation to the above referenced matter. As the staff report in this matter correctly notes, the County of Mendocino approved two boundary line adjustments in the above referenced cases around June 13, 2019 and June 11, 2020 that benefitted by clients. These boundary line adjustments were finalized around November 21, 2019 and August 18, 2020, respectively

Roughly four years and three months after the first of these two boundary line adjustments were finalized, the County now seeks to unlawfully revoke the boundary line adjustments without right. In addition to the fact that the County lacks any legal or factual predicate for revoking said boundary line adjustments, the County is estopped from any revocation based upon the Moores having relied to their detriment upon their vested rights flowing from the County's approval. Should the boundary line adjustments be revoked, the County would be engaging in a taking of private property. When a state actor—such as the County—takes private property it must proceed in a particularized manner required by law and must pay the affected private property owners both reasonable compensation and the property owner's attorney's fees incurred in obtaining

Ignacio Gonzales  
Coastal Permit Administrator  
County of Mendocino Planning and Building Services  
September 13, 2023  
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such just compensation.

## II. The County Lacks Both Legal And Factual Foundation for Any Revocation

The pertinent staff report relies upon Mendocino County Code section 20.536.035 to suggest that the County may revoke the relevant boundary line adjustments based upon a supposed “fraud.” This justification is both legally and factually defective.

Mendocino County Code section 20.536.035 does not authorize the revocation of any boundary line adjustments whatsoever. Section 20.536.035 is specifically cabined to—and only authorizes—the revocation of “coastal development permit[s].” Here, however, the approvals at issue are as to boundary line adjustments. Boundary line adjustments are governed by Mendocino County Code section 17-17.5, and nothing therein authorizes the revocation of a boundary line adjustment. Although the Mendocino County Code authorizes certain permits to be revoked, there is no authorization for the County to revoke a boundary line adjustment. This demonstrates that the Board of Supervisors understands how to craft such authorizing language, but has declined to authorize such actions in the case of boundary line adjustments. Under the Latin rule of statutory construction of *expressio unius est exclusio alterius*, when one or more things of a class are expressly mentioned others of the same class are excluded.

Even if the relied upon code section did hypothetically authorize a boundary line adjustment (though it does not), there is an absence of fraud to provide a factual predicate for any revocation. Fraud is ordinarily defined as requiring the combination of (1) a knowingly false representation, (2) made with an intent to deceive, with justifiable reliance by the listener, and resulting damages. (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 974; *Service by Medallion, Inc. v. Clorox Co.* (1996) 44 Cal.App.4th 1807, 1816.) “[A] cause of action for misrepresentation requires an affirmative statement, not an implied assertion.” (*RSB Vineyards, LLC v. Orsi* (2017) 15 Cal.App.5th 1089, 1102.) An opinion cannot constitute a fraudulent statement. (*Hauter v. Zogarts* (1975) 14 Cal.3d 104, 112.) Mere “opinions . . . are not a basis for relief on the ground of fraud.” (*Agnew v. Foell* (1952) 113 Cal.App.2d 575, 577 [“The law is well established that actionable misrepresentations must pertain to past or existing *material facts*.”] (*Cansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1469.)

The elements of fraud are absent multiple times over. The County has done nothing to show that Mr. Moores represented as a matter of fact that the parcels were separate legal parcels. Even if such a statement had been shown to be made—though no showing has been made—any such representations would have been mere implied legal opinions. The question of whether two parcels are legally separate is a question

Ignacio Gonzales  
Coastal Permit Administrator  
County of Mendocino Planning and Building Services  
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Page 3 of 5

of law, and the County cannot read any lay interpretation of what is or is not a parcel as anything more than mere lay opinion. The County has also failed to show that the Moores were aware of, recalled, and understood the precise statements, holdings, and effects thereof in the nearly twenty year old case of *Moores v. Board of Supervisors of Mendocino County* (2004) 122 Cal.App.4th 883. The plain fact that the County—who was also a party to the action—did not itself recall and recognize any perceived relevance of the case is itself strong evidence that the Moores themselves were equally unknowing of what an arcane legal opinion did or did not say. And finally, any specter of fraud is lacking because the County has done nothing to show any reasonable reliance upon any representations from the Moores. The County is staffed with an office of multiple attorneys, a multitude of planners who are versed in land use and real property law, and a legion of support staff. They are not in the habit—and should not be in the habit—of merely taking applicants at their word. Their job is to review the merits of applications. If applicants were merely to be given blind trust the department would be surplusage. In sum, there is no fraud, nor has there ever been any fraud.

### **III. The Moores Have Relied Upon Their Vested Rights to Their Detriment**

“When a governmental agency issues a valid grant of authority or other permit, it represents to the developer that he or she may proceed with the work of improvement with the blessing and approval of the government. When the developer thereafter expends money, performs work, and incurs liabilities in reliance on the government's representations, the government is estopped to apply any subsequent change in the law if the change would prevent the developer from completing the work of improvement as approved.” (Miller & Starr, 7 Cal. Real Est. (4th Ed., Sept. 2023 Update), Ch. 21, § 21:26; see also *McCarthy v. California Tahoe Regional Planning Agency* (1982) 129 Cal.App.3d 222, 229-230.)

Roughly four years and three months ago, the County gave the Moores an affirmative blessing that the Moores boundary line adjustment was proper. Based thereon, the Moores have expended significant time, money, and resources proceeding in reliance upon the County's approvals. A new groundwater well was drilled, roughly thirty thousand (30,000) gallons of water storage infrastructure have been installed upon the real property, de-brushing activities have been conducted in relation thereto, further permits have been obtained and paid for, and a litany of other regulatory and permitting activities relating thereto have consumed substantial time, money, and effort. Put another way, the Moores have likely spent at least six figures in reliance upon the County's affirmative approval of their boundary line adjustments.

The Moores possess vested rights, and the County cannot revoke these vested rights.

Ignacio Gonzales  
Coastal Permit Administrator  
County of Mendocino Planning and Building Services  
September 13, 2023  
Page 4 of 5

#### **IV. Any Revocation of the Boundary Line Adjustment Would Constitute a Taking Without Just Compensation and Would Not Be Proceeding in a Manner Required by Law**

Were the County to proceed with the proposed revocation, it would be affecting a taking of private property. The Fifth Amendment to the United States Constitution requires that “private property [shall not] be taken for public use, without just compensation.” (U.S. Const., Amend. V.) Under the California Constitution, “[p]rivate property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner.” (Cal. Const., Art. I, § 19.) “Because the California Constitution requires compensation for damage as well as a taking, the California clause ‘protects a somewhat broader range of property values’ than does the corresponding federal provision.” (*San Remo Hotel L.P. v. City and County of San Francisco* (2002) 27 Cal.4th 643, 664, quoting *Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 9.) “A property owner has an actionable Fifth Amendment takings claim when the government takes his property without paying for it.” (*Knick v. Township of Scott, Pennsylvania* (2019) 139 S.Ct. 2162, 2167.)

Here, a revocation of the pertinent boundary line adjustments by the County would constitute a taking. Moreover, it would be an impermissible taking because it would not be for a “public use” as is constitutionally required. The County would also not be proceeding in a manner required by law because it would not be following the determination of necessity and pre-condemnation offer procedures required by California statute. (See, e.g., Code Civ. Proc. § 1240.030 *et seq.* & Gov. Code § 7267.1 *et seq.*)

Even if it were a permissible taking—and effectuated in a manner required by law—the Moores would still be entitled to litigate the question of just compensation and would be entitled to not just their just compensation, but their “reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred.” (Code Civ. Proc. § 1036.) Here, in light of the projects that the Moores would no longer be able to pursue due to such a taking, their diminution in value could be in the tens of millions of dollars, and they are likely to incur a million-plus dollars in attorney’s fees that the County will need to reimburse them for. Insofar as the County already has a structural deficit of roughly ten million dollars a year, this is a war of choice and adventure that the County simply cannot afford.



Ignacio Gonzales  
Coastal Permit Administrator  
County of Mendocino Planning and Building Services  
September 13, 2023  
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**V. Conclusion**

For the reasons stated above, William and Tona Moores respectfully pray that the Coastal Permit Administrator deny the requested revocation in full and with prejudice.

Respectfully submitted,



Colin W. Morrow  
Attorney for William & Tona Moores

ATTACHMENT B



Planning and Building Services

Case No:	132018-0068
CalFire No:	
Date Filed:	12-4-18
Fee:	1586.00
Receipt No:	PBS-024418
Received By:	EG

APPLICATION FORM

APPLICANT Name: AT&T Mobility Phone: (916) 755-1326

Mailing Address: 5001 Executive Parkway City: San Ramon State/Zip: CA 94583 email: js7845@att.com

PROPERTY OWNER Name: William & Tona Moores Phone: (707) 357-4501

Mailing Address: 3880 Sleepy Hollow Drive City: Santa Rosa State/Zip: CA 95404 email: irishbeachrealty@gmail.com

AGENT Name: Jared Kearsley Phone: (916) 755-1326

Mailing Address: 600 Coolidge Drive, Suite 100 City: Folsom State/Zip: CA 95630 email: jared.kearsley@epicwireless.net

Assessor's Parcel Number(s)	Parcel Owner(s)	Street Address	Acreage Adjusted	
			Before	After
132-210-40-00	William & Tona Moores	None Assigned	29.59	25.58
132-210-41-00	William & Tona Moores	None Assigned	27.15	31.16

Briefly describe the proposed parcel adjustments: (Acreage to be adjusted from Assessor's Parcel Number into Assessor's Parcel Number, etc.): This application proposes to adjust 4.01 Acres from APN 132-210-40-00 into APN 132-210-41-00.

I certify that the information submitted with this application is true and accurate.

Signatures of Applicant/Agent, Date, Signature of Owner, Date, Mendocino County

DEC 04 2018

**ATTACHMENT B**

**Project Description Questionnaire  
For Boundary Line Adjustments  
Located In the Coastal Zone**

The purpose of this questionnaire is to provide additional information related to the Coastal Zone concerning your application to the Department of Planning and Building Services and other agencies who will be reviewing your project proposal. Please remember that the clearer the picture that you give us of your project and the site, the easier it will be to promptly process your application. Please answer all questions.

<b>Present Use Of Property</b>		
1. Are there existing structures on the property? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, describe below, and identify the use of each structure on the map to be submitted with your application.		
<hr/> <hr/> <hr/> <hr/> <hr/> <hr/>		
2. Will any existing structures be demolished? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Will any existing structures be removed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes to either question, describe the type of development to be demolished or removed, including the relocation site, if applicable?		
<hr/> <hr/> <hr/> <hr/> <hr/> <hr/>		
3. Lot area (within property lines): <u>56.74</u> <input type="checkbox"/> square feet <input checked="" type="checkbox"/> acres.		
4. Lot Coverage:		
<u>LOT 1</u>	Existing	Proposed after Adjustment
Building Coverage	<u>0</u> sq ft	<u>0</u> sq ft
Paved Area	<u>0</u> sq ft	<u>0</u> sq ft
Landscaped Area	<u>0</u> sq ft	<u>0</u> sq ft
Unimproved Area	<u>1,288,940</u> sq ft	<u>1,114,265</u> sq ft
<b>TOTAL:</b>	<u>1,288,940</u> sq ft	<u>1,114,265</u> sq ft
<u>LOT 2</u>	Existing	Proposed after Adjustment
Building Coverage	<u>0</u> sq ft	<u>0</u> sq ft
Paved Area	<u>0</u> sq ft	<u>0</u> sq ft
Landscaped Area	<u>0</u> sq ft	<u>0</u> sq ft
Unimproved Area	<u>1,182,654</u> sq ft	<u>1,357,330</u> sq ft
<b>TOTAL:</b>	<u>1,182,654</u> sq ft	<u>1,357,330</u> sq ft
(If more than two lots are being adjusted, submit the above information for each additional lot on an attached sheet.)		
5. Parking will be provided as follows:		
LOT 1	Existing Spaces <u>0</u>	Proposed Spaces <u>0</u>
LOT 2	Existing Spaces <u>0</u>	Proposed Spaces <u>0</u>
(If more than two lots are being adjusted, submit the above information for each additional lot on an attached sheet.)		

ATTACHMENT B

6. Is any grading or road construction planned?  Yes  No  
If yes, grading and drainage plans may be required. Also, describe the terrain to be traversed (e.g., steep, moderate slope, flat, etc.):  
\_\_\_\_\_  
\_\_\_\_\_

For grading or road construction, complete the following:

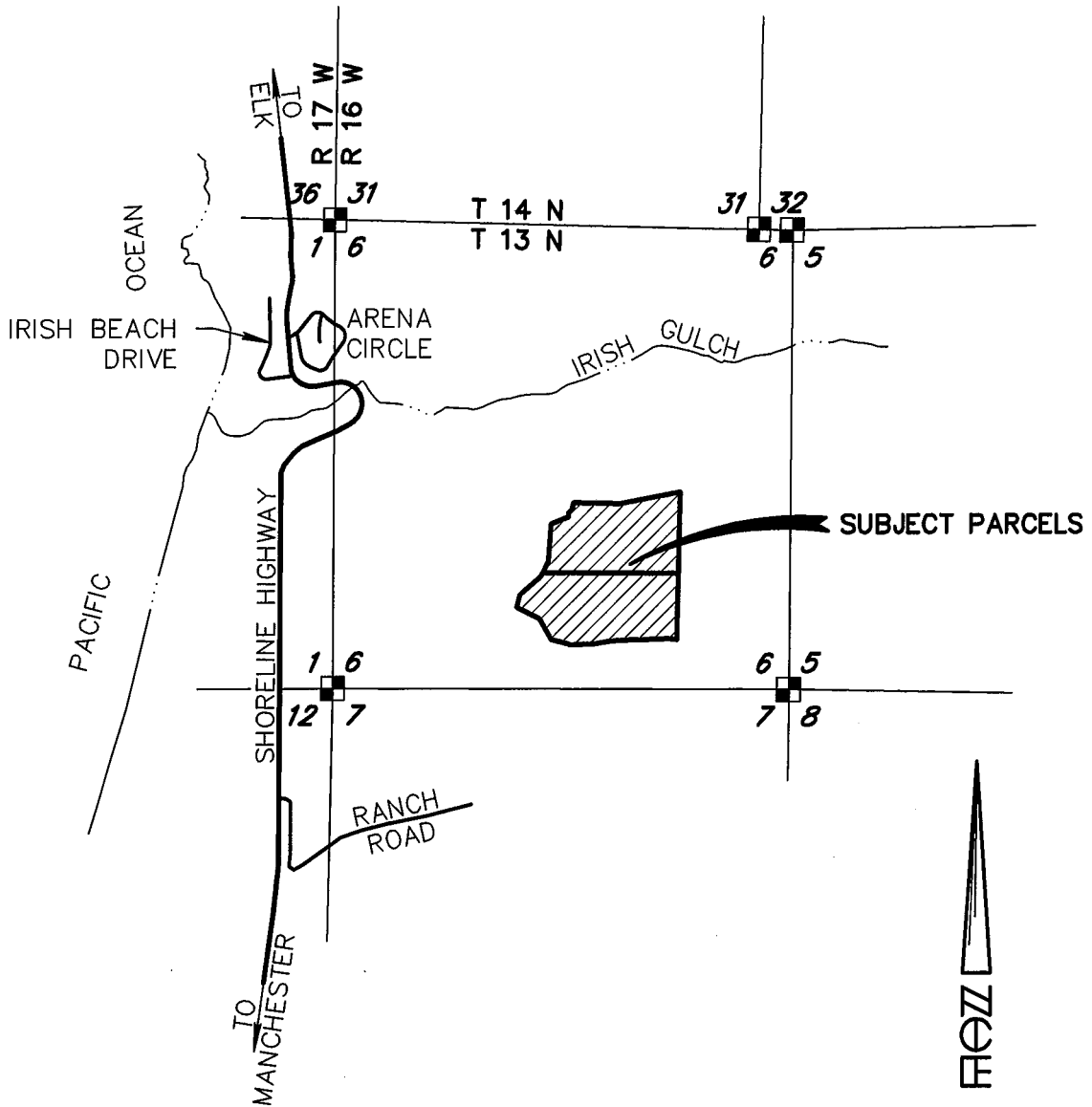
(A) Amount of cut: \_\_\_\_\_ cubic yards  
(B) Amount of fill: \_\_\_\_\_ cubic yards  
(C) Maximum height of fill slope: \_\_\_\_\_ feet  
(D) Maximum height of cut slope: \_\_\_\_\_ feet  
(E) Amount of import or export: \_\_\_\_\_ cubic yards  
(F) Location of borrow or disposal site: \_\_\_\_\_

7. Will the proposed development convert land currently or previously used for agriculture to another use?  Yes  No  
If yes, how many acres will be converted? \_\_\_\_\_ acres. (An agricultural economic feasibility study may be required.)

8. Will the alteration of parcel boundaries create any new building sites which are visible from State Highway 1 or other scenic route?  Yes  No

9. Will the alteration of parcel boundaries create any new building sites which are visible from a park, beach or other recreational area?  Yes  No

If you need more room to answer any question, please attach additional sheets.



**LOCATION MAP**

SCALE: 1" = 2000'

OWNER INFORMATION:

**WILLIAM M. & TONA E. MORRES**  
3880 SLEEPY HOLLOW DRIVE  
SANTA ROSA, CA 95404  
(707) 357-4501

Mendocino County

DEC 04 2018

Planning & Building Services



PLANNING & BUILDING SERVICES



CONSULTANT

ENGINEERING SUPERVISOR:

NEVADA CITY ENGINEERING, INC.  
3818 CANTON BLVD., SUITE 100, NEVADA CITY, CA 95959  
LIC# 00000000

ATTACHMENT B

REVISION	DATE BY	DESCRIPTION
1	ROOM	SUBMITAL
	CSB	

SITE INFORMATION

OWNER INFORMATION:  
WILLIAM M. & TONA E. MORRIS  
3818 CANTON BLVD., SUITE 100  
NEVADA CITY, CA 95959  
(707) 357-4801

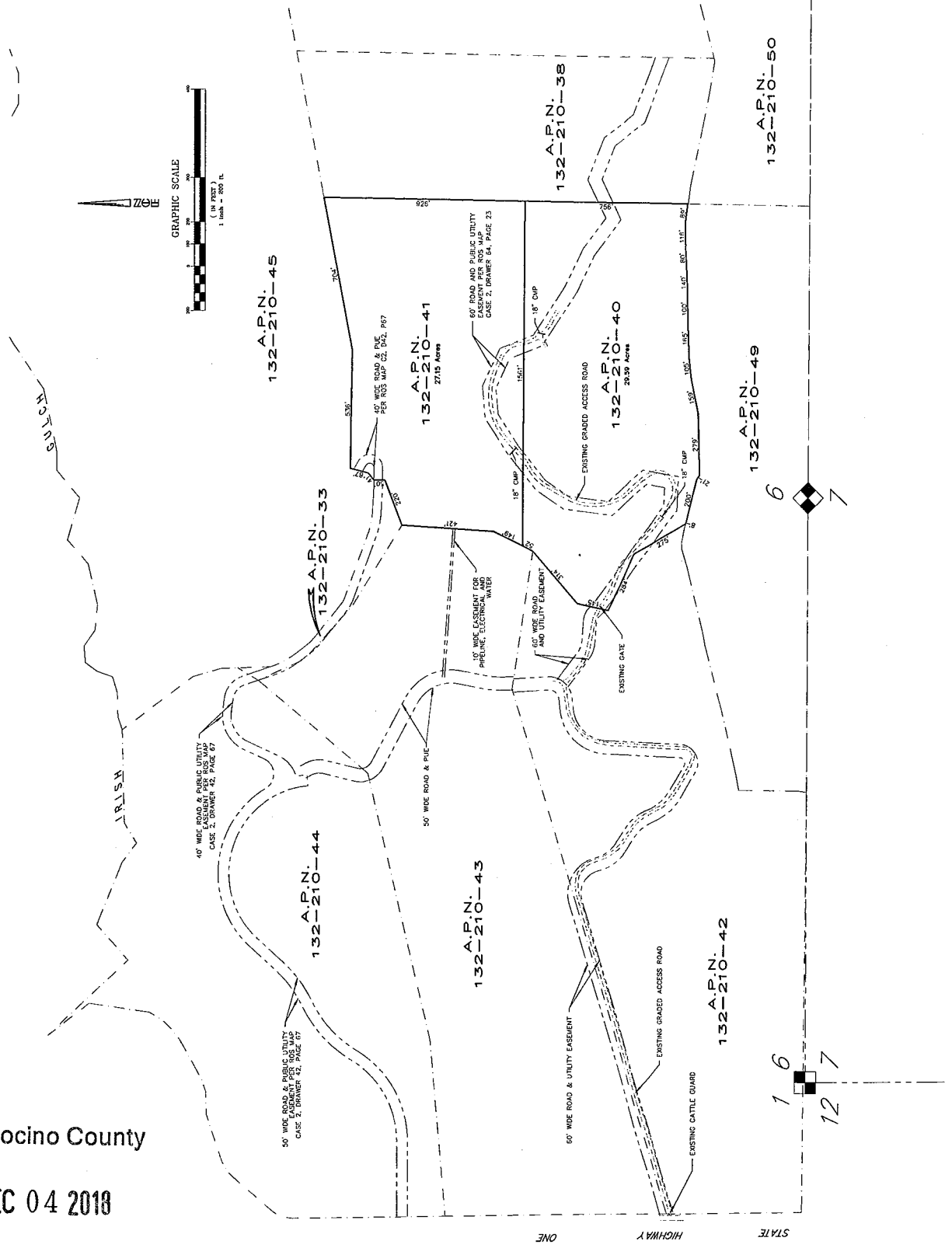
PROPERTY INFORMATION:  
PTN SEC 6, T19 N, R16 W, MDBM  
APN: 132-210-40 & 132-210-41  
MENDOCINO COUNTY

SHEET TITLE

Existing Parcel Configuration

TENTATIVE BOUNDARY LINE ADJUSTMENT

SHEET 1



Mendocino County

DEC 04 2018

Planning & Building Services

ATTACHMENT B

BOUNDARY SHOWN IS BASED ON RECORD INFORMATION AND FOUND INFORMATION. THIS IS NOT A BOUNDARY SURVEY. PROPERTY LINES SHOWN ARE APPROXIMATE.





PLANNING & BUILDING SERVICES

CASE NO: 2019-0054  
 DATE FILED: \_\_\_\_\_  
 FEE: \$3,656-  
 RECEIPT NO: \_\_\_\_\_  
 RECEIVED BY: \_\_\_\_\_  
 Office Use Only

**BOUNDARY LINE ADJUSTMENT APPLICATION FORM**

**APPLICANT**

Name: WILLIAM TIONA MOORES Phone: 707-357-4561  
 Mailing Address: 3880 Sleepy Hollow  
 City: Santa Rosa, Ca State/Zip: 95404 Email: Irish Beach Realty@gmail.com

**PROPERTY OWNER**

Name: SAME FOR ALL 3 Parcels - above Phone: Same  
 Mailing Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State/Zip: \_\_\_\_\_ Email: \_\_\_\_\_

**AGENT**

Name: None Phone: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State/Zip: \_\_\_\_\_ Email: \_\_\_\_\_

LOT NO.	ASSESSOR'S PARCEL NUMBERS	PARCEL OWNER/S	STREET ADDRESS	LOT ACREAGE BEFORE / AFTER	
	132-210-40	ALL MOORES	Above	25.9 <sup>+</sup>	19.00 <sup>+</sup>
	132-210-38			27.33	33.13
	132-210-37			28.85	34.9

BRIEFLY DESCRIBE THE PROPOSED PARCEL ADJUSTMENTS: (ACREAGE TO BE ADJUSTED FROM ASSESSOR'S PARCEL NUMBER INTO ASSESSOR'S PARCEL NUMBER, ETC.)

See "PRE" + "POST" BLA MAPS ATTACHED + ABOVE SIZES OF PARCELS

I certify that the information submitted with this application is true and accurate.

William M. Moore 9/6/19 Tiona F. Moore 9/6/19  
 Signature of Applicant/Agent Date Signature of Owner Date



**Indemnification And Hold Harmless**

ORDINANCE NO. 3780, adopted by the Board of Supervisors on June 4, 1991, requires applicants for discretionary land use approvals, to sign the following Indemnification Agreement. Failure to sign this agreement will result in the application being considered incomplete and withheld from further processing.

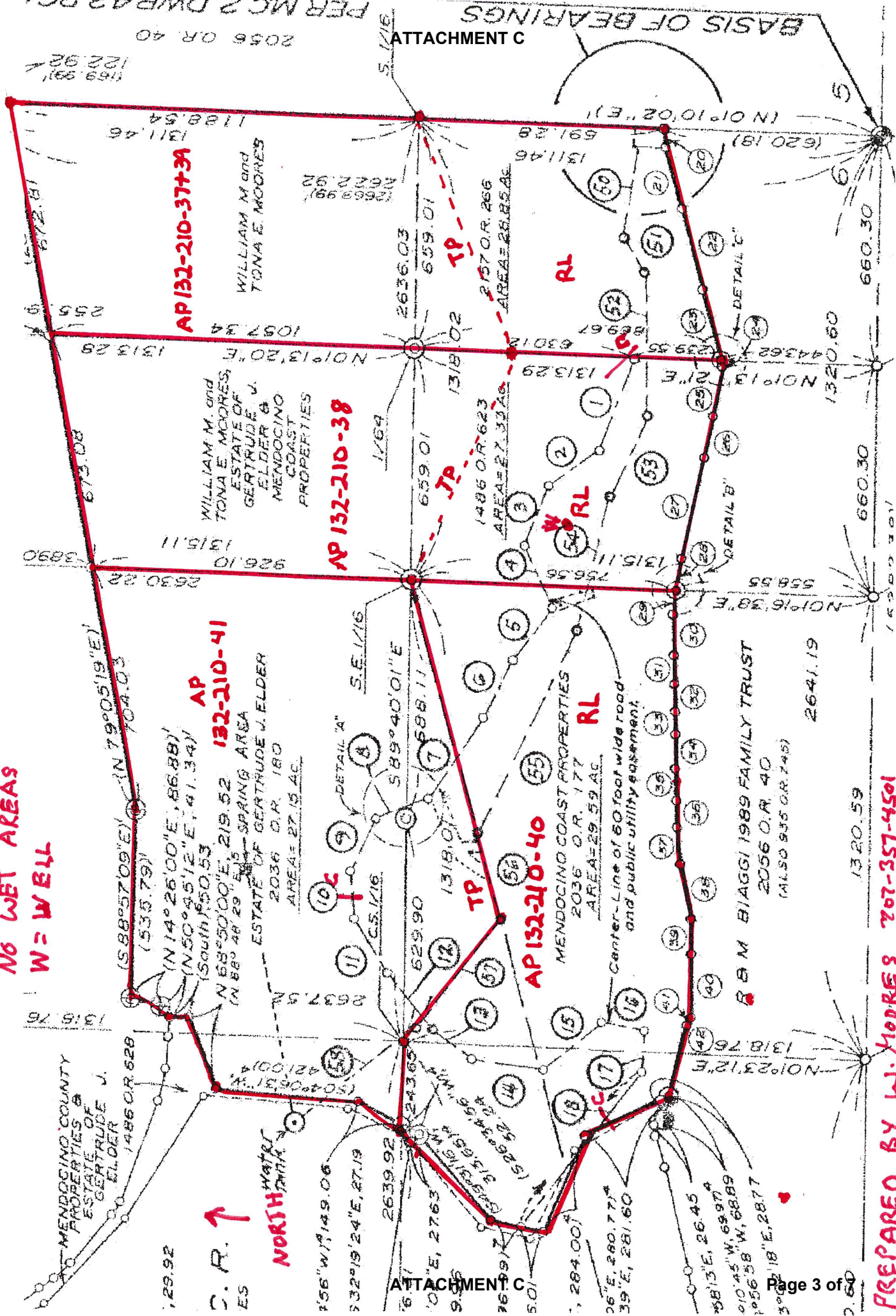
**Indemnification Agreement**

As part of this application, applicant agrees to defend, indemnify, release and hold harmless the County of Mendocino, its agents, officers, attorneys, employees, boards and commissions, as more particularly set forth in Mendocino County Code Section 1.04.120, from any claim, action or proceeding brought against any of the foregoing individuals or entities, the purpose of which is to attack, set aside, void or annul the approval of this application or adoption of the environmental document which accompanies it. The indemnification shall include, but not be limited to, damages, costs, expenses, attorney fees or expert witness fees that may be asserted by any person or entity, including the applicant, arising out of or in connection with the approval of this application, whether or not there is concurrent, passive or active negligence on the part of the County, its agents, officers, attorneys, employees, boards and commissions.

9/6/19  
Date

William M. Moore  
Applicant  
Tona E. Moore

C = CULVERTS 3 EACH  
 N6 = WET AREAS  
 W = WELL



PERMITS BY W. MOORES 707-357-4501  
 OWNER: WM TONA MOORES  
 9/6/19

EXHIBIT A EXISTING

SCALE 1" = 330'



**SURVEYOR'S**

This map correctly shows the me or under my direction and requirements of the request of William M. Moore et al.

*William K. Dodge*  
 WILLIAM K. DODGE  
 Surveyor  
 Expiration Date: June 30, 2018

**CENTERLINE OF A 16 FT. WIDE UNDERGROUND WATER PIPE LINE, POWER AND TELEPHONE EASEMENT**

- 50 = N 80°04'57"W, 253.25
- 51 = S 62°49'44"W, 116.70
- 52 = S 88°48'32"W, 396.91
- 53 = N 67°01'45"W, 234.56
- 54 = N 77°05'57"W, 394.83
- 55 = N 64°02'00"W, 660.21
- 56 = S 74°17'26"W, 250.00
- 57 = N 52°47'32"W, 399.77
- 58 = N 37°47'23"W, 431.07

NOTE: The westerly terminus of line 59 is the center of a 12 ft. diameter circular concrete water tank and a 42 ft. diameter circular water tank easement for maintenance purposes.

**COUNTY RECORD**  
 Filed this 31 day of  
 Map Case 2, Draw  
 request of WILLIAM M.

MARSHA A. YOUNG  
 County Recorder

By: *William K. Dodge*

Record  
 OF  
 WILLIAM M. and  
 ESTATE of  
 MENDOCINO  
 BEING A PART  
 T. 13 N.,  
 COUNTY OF MENDOCINO  
 MARCH 15, 1997  
 JOB No. 6390

**CENTERLINE OF A 60 FT. WIDE ROAD AND PUBLIC UTILITY EASEMENT.**

- 1 = N 68°48'10"W, 297.67
- 2 = N 36°06'20"W, 172.81
- 3 = N 69°30'50"W, 183.53
- 4 = S 64°15'40"W, 198.01
- 5 = N 52°49'10"W, 188.09
- 6 = N 64°16'50"W, 188.51
- 7 = N 56°39'20"W, 273.77
- 8 = N 21°12'00"W, 161.34
- 9 = N 64°53'20"W, 167.75
- 10 = S 85°03'00"W, 132.83
- 11 = S 57°20'50"W, 178.72
- 12 = S 51°36'10"W, 207.27
- 13 = S 34°38'00"W, 138.78
- 14 = S 07°46'00"W, 205.70
- 15 = S 40°29'40"E, 217.06
- 16 = S 10°16'50"W, 125.62
- 17 = N 87°33'00"W, 117.95
- 18 = N 53°11'56"W, 565.32

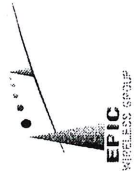
**A PORTION OF THE SOUTHERLY PROPERTY LINE OF THE LANDS OF MENDOCINO COAST PROPERTIES & MOORES ET AL.**

- 29 = N 80°15'18"E, 53.09
- 30 = N 74°29'23"E, 184.93
- 31 = N 74°57'37"E, 238.79
- 32 = N 75°01'49"E, 209.45
- 33 = N 75°01'49"E, 12.95
- 34 = S 80°21'22"E, 146.61
- 35 = S 78°38'25"E, 135.72
- 36 = S 78°25'08"E, 295.06
- 37 = S 82°53'28"E, 87.99
- 38 = S 82°53'28"E, 78.75
- 39 = N 88°43'06"E, 115.96
- 40 = N 86°53'38"E, 80.18
- 41 = N 88°40'06"E, 78.80
- 42 = N 87°05'29"E, 61.68
- 43 = N 89°02'00"E, 99.94
- 44 = N 88°10'07"E, 89.45
- 45 = N 88°00'03"E, 75.75
- 46 = N 83°54'43"E, 104.70
- 47 = N 78°43'52"E, 159.05
- 48 = N 88°50'00"E, 93.11
- 49 = N 88°28'11"E, 185.71
- 50 = S 54°26'58"E, 210.3
- 51 = S 75°51'30"E, 274.02

*William K. Dodge, INC.*  
 Licensed Land Surveyor, L.S. 3184  
 607 Fort Bragg, CA 95437  
 (707) 964-5331



ALL DEVELOPMENT



CONSULTANT

ENGINEERING PLANNING SURVEYING

NEVADA CITY ENGINEERING, INC.

3928 COOTE STREET, PASADENA, CA 91107-1000

# ATTACHMENT C

LEGEND

REVISION	DATE (MM/DD)	DESCRIPTION
1	08/15/17	SUBMITTAL

SITE INFORMATION

OWNER INFORMATION:  
WILLIAM M. & TONIA E. MORRIS  
32000 SANTA ROSA, CA 91404  
(714) 387-4801

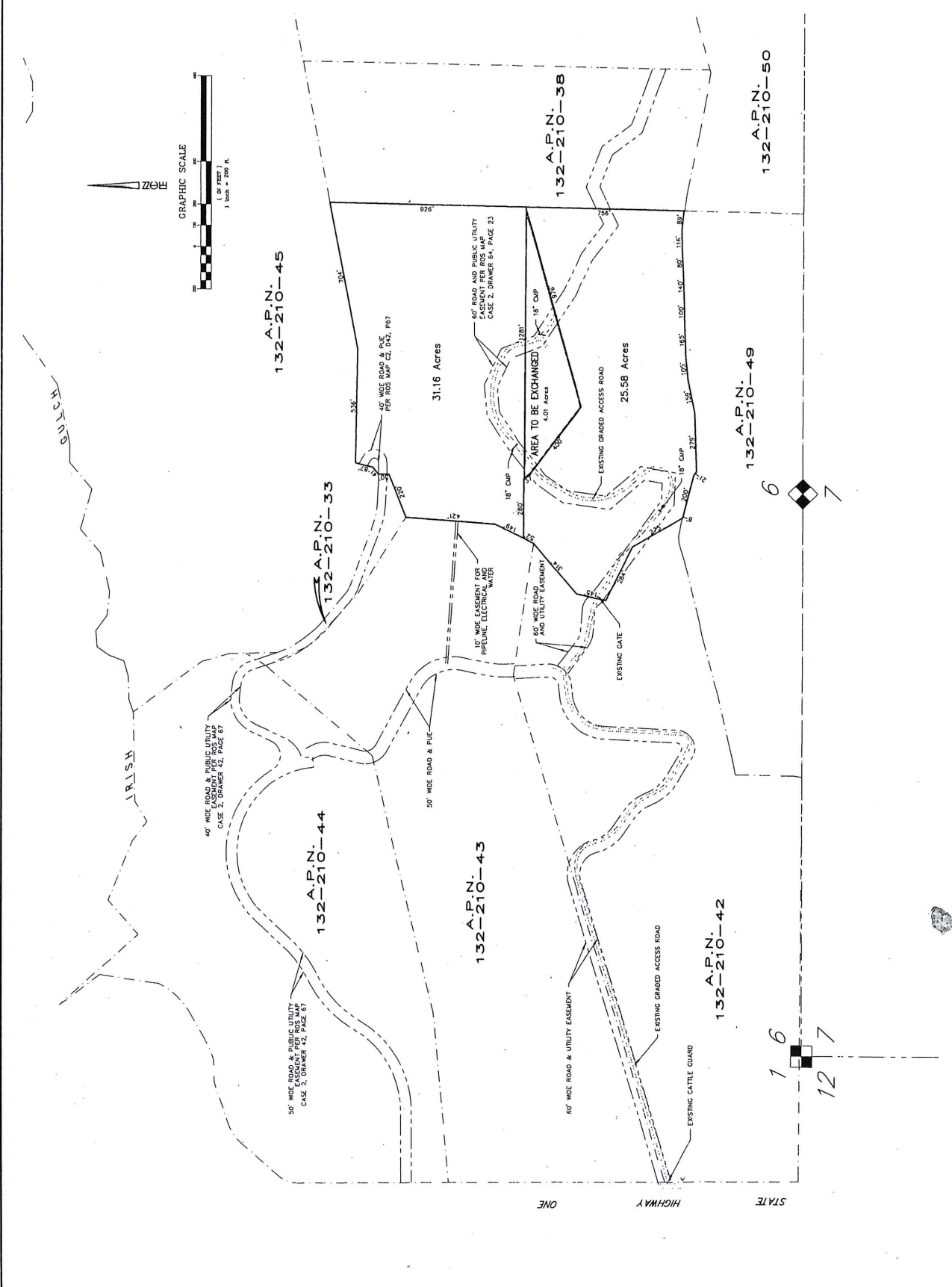
PROPERTY INFORMATION:  
PTN SEC 6, T 13 N, R 16 W, MDBM  
APN: 132-210-40 & 132-210-41  
MENDOCINO COUNTY

SHEET TITLE

## Proposed Parcel Configuration

TENTATIVE BOUNDARY LINE ADJUSTMENT

### SHEET 2



BOUNDARY SHOWN IS BASED ON RECORD INFORMATION AND ROUND DOCUMENTATION. THIS IS NOT A BOUNDARY SURVEY. PROPERTY LINES SHOWN ARE APPROXIMATE.

WM

**SURVEYOR'S**

This map correctly shows the location of the easement as requested by William M. Young.

**A PORTION OF THE SOUTHERLY PROPERTY LINE OF THE LANDS OF MENDOCINO COAST PROPERTIES & MOORES ET AL.**

- 20 = N 80°15'18"E, 53.09
- 21 = N 74°29'23"E, 184.93
- 22 = N 74°57'37"E, 238.79
- 23 = N 75°01'49"E, 209.45
- 24 = N 75°01'49"E, 12.95
- 25 = S 80°21'22"E, 146.61
- 26 = S 78°38'25"E, 135.72
- 27 = S 78°25'08"E, 295.06
- 28 = S 82°53'28"E, 87.99
- 29 = S 82°53'28"E, 78.75
- 30 = N 88°43'06"E, 115.96
- 31 = N 86°53'38"E, 80.18
- 32 = N 88°40'06"E, 78.80
- 33 = N 87°05'29"E, 61.68
- 34 = N 89°02'00"E, 99.94
- 35 = N 88°10'07"E, 89.45
- 36 = N 88°00'03"E, 75.75
- 37 = N 83°54'43"E, 104.70
- 38 = N 78°43'52"E, 159.05
- 39 = N 88°50'00"E, 93.11
- 40 = N 88°28'11"E, 185.71
- 41 = S 54°26'58"E, 21.03
- 42 = S 75°51'30"E, 274.02

**CENTERLINE OF A 60 FT. WIDE ROAD AND PUBLIC UTILITY EASEMENT.**

- 1 = N 68°48'10"W, 297.67
- 2 = N 36°06'20"W, 172.81
- 3 = N 68°30'50"W, 183.53
- 4 = S 64°15'40"W, 198.01
- 5 = N 52°49'10"W, 188.09
- 6 = N 64°16'50"W, 188.51
- 7 = N 56°39'20"W, 273.77
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- 11 = S 57°20'50"W, 178.72
- 12 = S 51°36'10"W, 207.27
- 13 = S 34°36'00"W, 138.78
- 14 = S 07°46'00"W, 205.70
- 15 = S 40°29'40"E, 217.06
- 16 = S 10°16'50"W, 125.62
- 17 = N 87°33'00"W, 117.95
- 18 = N 53°11'56"W, 565.32

**CENTERLINE OF A 16 FT. WIDE UNDERGROUND WATER PIPE LINE, POWER AND TELEPHONE EASEMENT**

- 50 = N 80°04'57"W, 253.25
- 51 = S 62°49'44"W, 116.70
- 52 = S 88°48'32"W, 396.91
- 53 = N 67°01'45"W, 234.56
- 54 = N 77°05'57"W, 394.83
- 55 = N 64°02'00"W, 660.21
- 56 = S 74°17'26"W, 250.00
- 57 = N 52°47'32"W, 399.77
- 58 = N 37°47'23"W, 431.07

**NOTE:** The westerly terminus of line 50 is the center of a 12 ft. diameter circular concrete water tank and a 42 ft. diameter circular water tank easement for maintenance purposes.

STANLEY TOWNSEND  
County of Mendocino.

By: *Arthur W. Colvin*  
ARTHUR W. COLVIN,  
Deputy County Surveyor  
Expiration Date: March

**COUNTY RECORDER**  
Filed this 31 day of  
Map Case 2, Draw  
request of WILLIAM

MARSHA A. YOUNG  
County Recorder

By: *William K. Dodge*

Recorded  
OF  
WILLIAM M. and  
ESTATE of  
MENDOCINO  
BEING A PORTION  
T. 13 N.,  
COUNTY OF MENDOCINO  
MARCH 15, 1997  
JOB No. 6390

**William K. Dodge, INC.**  
Registered Land Surveyor, L.S. 3184  
2007, Fort Bragg, CA 95437  
(707) 964-5531



---

**FINDINGS OF FACT AND**  
**DETERMINATION TO REVOKE APPROVAL**

NOVEMBER 9, 2023

**Revocation of Boundary Line Adjustments #B\_2018-0068 and B\_2019-0054 (the “Project”)**

---

1. Pursuant to Mendocino County Code (MCC) section 20.532.010, any person proposing to undertake any development as defined in MCC section 20.308.035(D) shall obtain a Coastal Development Permit in accordance with the provisions of MCC Chapter 20.532. Pursuant to MCC section 20.532.015(E) “a coastal development standard permit must be secured for any other activity not specified above which is defined as a development in Section 20.308.035(D), including, but not limited to, land divisions, lot line adjustments and any other entitlement for use” (emphasis added).
2. Boundary line adjustments within the Coastal Zone and subject to the above-referenced MCC section are assigned a “B” case number and not separately assigned a coastal development permit number and are approved pursuant to the provisions of Chapter 20.532.
3. The Coastal Permit Administrator approved Boundary Line Adjustment B\_2018-0068 on June 13, 2019 reconfiguring two (2) assessor parcel numbers (APNs), at that time known as APNs 132-210-40 and 132-210-41. The Boundary Line Adjustment was finalized on November 21, 2019.
4. The Coastal Permit Administrator approved Boundary Line Adjustment B\_2019-0054 on June 11, 2020 reconfiguring the boundaries between three (3) assessor parcel numbers and merging a fourth assessor parcel number (then APNs 132-210-37, 132-210-38, 132-210-39, and 132-210-61 (resulting APN from B\_2018-0068)). The Boundary Line Adjustment was finalized on August 28, 2020.
5. Both Boundary Line Adjustment B\_2018-0068 and Boundary Line Adjustment B\_2019-0054 contained final findings consistent with the requirements of MCC Chapter 20.532 and referred to the ability for the approvals to be appealed pursuant to MCC section 20.544.015, which is for appeals of decisions of the Coastal Permit Administrator.
6. Under MCC section 20.536.035, a Coastal Development Permit may be revoked or modified for cause as provided by the section including section 20.536.035(A)(1) that such permit was obtained or extended by fraud.
7. Subsequent to the finalization of the two above referenced Boundary Line Adjustments, staff conducted research on the parcel history of the above referenced assessor parcel numbers as part of the processing of a General Plan Amendment and Rezoning request for these sites (GP\_2019-0006/R\_2019-0008). This research located documents referencing a court case between the property owner, William and Tona Moores (“Property Owner”), and Mendocino County that explicitly dealt with several of the parcels at issue in the General Plan Amendment and Rezoning request.
8. *Moores v. Board of Supervisors of Mendocino County* (2004) 122 Cal. App. 4th 883 (*Moores*), involved an action by the Property Owner seeking to set aside the determination of the County that property then-identified as Assessor’s Parcel Numbers (APNs) 132-210-37, -38, -39, -40, and -41 had been merged by operation of law into a single legal parcel pursuant to the County’s merger ordinance. The case affirmed the determination of the County and confirmed that the five referenced APNs had been merged by operation of law as of 1981.
9. The applications for Boundary Line Adjustments #B\_2018-0068 and B\_2019-0054 submitted by the Property Owner involved adjusting the boundaries of several of the APNs that were the subject of the

*Moore's* case. These applications are attached to the Staff Memorandum dated November 8, 2023 as Attachments B and C. The applications included maps showing certain APNs as they existed and as they were proposed to be adjusted. The application forms submitted for both B\_2018-0068 and B\_2019-0054 were signed under an attestation that the Applicant and Property Owner signature on the form certifies "that the information submitted with this application is true and accurate".

10. The submitted applications were for boundary line adjustments, which can only occur between separate legal parcels. A legal parcel is not the same as an APN, which exists only for assessment purposes and is established by the County Assessor's office. Boundary line adjustments are reviewed and approved by the Department of Planning and Building Services pursuant to the County's subdivision regulations and for parcels within the County's Coastal Zone, pursuant to the County's Coastal zoning regulations. As such, the applications necessarily asserted that the APNs on the application maps were separate legal parcels and the Property Owner certified that the information submitted with the application is true and accurate.
11. Pursuant to MCC section 20.536.035(A)(1) the Coastal Permit Administrator finds that the permits were obtained or extended by fraud. Given the result of *Moore's* there were no boundaries to adjust, since these APNs were not separate legal parcels but a single legal parcel that had been merged by operation of law in 1981. In subsequently applying for boundary line adjustments, the Property Owner attested to the information in the applications was true and accurate. However, given the outcome of the *Moore's* case, the maps and assertions of the applications that there were legal parcel boundaries to adjust, these applications were demonstrably false,
12. In written materials presented to the Coastal Permit Administrator, counsel for the Property Owner has argued that there has been no showing that the Property Owner was aware of, recalled or understood the precise meanings of the *Moore's* case which bears his name and thus did not make any attempt to commit fraud in making the applications. The Coastal Permit Administrator does not find it credible that a party to an action which was appealed from a County determination to the County Planning Commission, the County Board of Supervisors, the Superior Court and the Appellate Court, over a course of multiple calendar years would simply not be aware of or remember the case which applies to the specific APNs that are the subject to the boundary line adjustments. In addition, the position of the County that was affirmed at every level of the appeal was not arcane or difficult to understand: the subject APNs had been merged by operation of law as of 1981. Lastly, the County's approval of the previous boundary line adjustments was contrary to law, as there were no separate legal boundaries to adjust and a boundary line adjustment cannot create additional parcels.
13. Notification of intent to revoke the Boundary Line Adjustments was sent to the Property Owner on November 4, 2022.
14. A Notice of Public Hearing regarding the revocation of the Project was provided in accordance with MCC section 20.536.015.
15. In accordance with the applicable provisions of law, the Coastal Permit Administrator held a Public Hearing on September 14, 2023, at which time the Coastal Permit Administrator continued said hearing to November 9, 2023.
16. In accordance with the applicable provisions of law, the Coastal Permit Administrator held a Public Hearing on November 9, 2023, at which time the Coastal Permit Administrator heard and received all relevant testimony and evidence presented orally or in writing regarding the Project. All interested persons were given an opportunity to hear and be heard regarding the Project.
17. Based on the evidence in the record and the above findings, the Coastal Permit Administrator hereby revokes Boundary Line Adjustments B\_2018-0068 and B\_2019-0054 finding that such permits were obtained or extended by fraud.
18. Pursuant to MCC Section 20.544.015, this decision may be appealed to the Mendocino County Board of Supervisors by filing a notice of appeal in writing with the Clerk of the Board within ten (10) calendar days after the date of this decision, which notice of appeal shall be accompanied by a fee.







**COUNTY OF MENDOCINO**  
**DEPARTMENT OF PLANNING AND BUILDING SERVICES**  
860 NORTH BUSH STREET • UKIAH • CALIFORNIA • 95482  
120 WEST FIR STREET • FORT BRAGG • CALIFORNIA • 95437

JULIA KROG, DIRECTOR  
PHONE: 707-234-6650  
FAX: 707-463-5709  
FB PHONE: 707-964-5379  
FB FAX: 707-961-2427  
pbs@mendocinocounty.org  
www.mendocinocounty.org/pbs

September 1, 2023

**PUBLIC HEARING NOTICE OF PENDING ACTION**  
**REVOCAION OF STANDARD COASTAL DEVELOPMENT PERMIT**

The Mendocino County Coastal Permit Administrator, at a regular meeting to be held on Thursday, September 14, 2023, at 11:00 a.m. will conduct a public hearing to consider revocation of the following projects located in the Coastal Zone at the time listed or as soon thereafter as the item may be heard. This meeting will take place at the Planning and Building Services Conference Room, located at 860 North Bush Street, Ukiah and Virtual attendance will be available via Zoom. Meetings are live streamed and available for viewing on line on the Mendocino County YouTube page, at <https://www.youtube.com/MendocinoCountyVideo>. In lieu of personal attendance, the public may participate digitally in meeting by sending comments to: pbscommissions@mendocinocounty.org or via Telecomment. The telecomment form may be found at: <https://www.mendocinocounty.org/government/planning-building-services/meeting-agendas>.

The Coastal Permit Administrator will consider revocation of the following projects, now known as Assessor Parcel Numbers 132-210-61, 132-210-62, 132-210-63 and 132-210-64:

**PROJECT A:**

**CASE#:** B\_2018-0068  
**DATE FILED:** 12/4/2018  
**DATE OF APPROVAL:** 6/13/2019  
**OWNER:** WILLIAM & TONA MOORES  
**APPLICANT:** AT&T MOBILITY  
**AGENT:** JARED KEARSLEY  
**REQUEST:** Boundary Line Adjustment to reconfigure two (2) legal non-conforming parcels. Subsequently, a Coastal Development Use Permit will be processed to facilitate construction of a new cellular tower on APN: 132-210-41.  
**ENVIRONMENTAL DETERMINATION:** Categorically Exempt  
**LOCATION:** In the Coastal Zone, 3.2± miles north of Manchester and located .8± miles east of State Route 1 (SR 1). Site Addressees to be assigned. (APNs: 132-210-40 and 132-210-41)  
**SUPERVISORIAL DISTRICT:** 5<sup>th</sup> (Williams)  
**STAFF PLANNER:** JULIA KROG

**PROJECT B:**

**CASE#:** B\_2019-0054  
**DATE FILED:** 11/21/2019  
**DATE OF APPROVAL:** 6/11/2020  
**OWNER/APPLICANT:** WILLIAM & TONA MOORES  
**REQUEST:** Boundary Line Adjustment to reconfigure the boundaries between three (3) existing parcels and merge a fourth (4th) parcel. Parcel 1 (APN: 132-210-37) will merge with Parcel 3 (APN: 132-210-39) and increase to 35± acres, Parcel 2 (APN: 132-210-38) will increase to 29± acres, and Parcel 4 (APN: 132-210-61) will decrease to 16± acres.  
**ENVIRONMENTAL DETERMINATION:** Categorically Exempt  
**LOCATION:** In the Coastal Zone, 3.2± miles north of Manchester town center, located 0.8± miles east of State Route 1 (SR 1) on an unnamed access easement. Addressees not yet assigned. (APNs: 132-210-37; 132-210-38; 132-210-39; 132-210-61).  
**SUPERVISORIAL DISTRICT:** 5<sup>th</sup> (Williams)  
**STAFF PLANNER:** JULIA KROG

The staff report, and notice, will be available 10 days before the hearing on the Department of Planning and Building Services website at: <https://www.mendocinocounty.org/government/planning-building-services/meeting-agendas/coastal-permit-administrator>

As you are an adjacent property owner and/or interested party, you are invited to submit comments, at or prior to the hearing; all correspondence should contain reference to the above noted case number. Written comments should be submitted by mail to the Department of Planning and Building Services Commission Staff, at 860 North Bush Street, Ukiah or 120 W Fir Street, Fort Bragg, California, or by e-mail to [pbscommissions@mendocinocounty.org](mailto:pbscommissions@mendocinocounty.org) no later than September 13, 2023. Individuals wishing to address the Coastal Permit Administrator during the public hearing under Public Expression are welcome to do so via e-mail at [pbscommissions@mendocinocounty.org](mailto:pbscommissions@mendocinocounty.org), or telecomment, in lieu of personal attendance.

All public comment will be made available to the Coastal Permit Administrator, staff, and the general public as they are received and processed by the Clerk, and can be viewed as attachments under its respective case number listed at: <https://www.mendocinocounty.org/government/planning-building-services/meeting-agendas/coastal-permit-administrator>

The decision of the Coastal Permit Administrator shall be final unless a written appeal is submitted to the Board of Supervisors with a filing fee within 10 calendar days thereafter. If appealed, the decision of the Board of Supervisors to approve the project shall be final unless appealed to the Coastal Commission in writing within 10 working days following Coastal Commission receipt of a Notice of Final Action on this project. If you challenge the above case in court, you may be limited to raising only those issues described in this notice or that you or someone else raised at the public hearing, or in written correspondence delivered to the Coastal Permit Administrator at or prior to, the public hearing.

AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE. Mendocino County complies with ADA requirements and upon request, will attempt to reasonably accommodate individuals with disabilities by making meeting material available in appropriate alternate formats (pursuant to Government Code Section 54953.2). Anyone requiring reasonable accommodation to participate in the meeting should contact the Department of Planning and Building Services by calling (707) 234-6650 at least five days prior to the meeting.

Additional information regarding the above noted item may be obtained by calling the Department of Planning and Building Services at (707) 234-6650, Monday through Friday, 8:00 a.m. through 5:00 p.m.

JULIA KROG, Director of Planning and Building Services



## MEMORANDUM

**DATE:** September 14, 2023  
**TO:** Coastal Permit Administrator  
**FROM:** Julia Krog, Director  
**SUBJECT:** Request for Revocation by the Coastal Permit Administrator of Boundary Line Adjustments #B\_2018-0068 and B\_2019-0054 (Moores)

The Coastal Permit Administrator approved Boundary Line Adjustment B\_2018-0068 on June 13, 2019 reconfiguring two (2) assessor parcel numbers (APNs), at that time known as APNs 132-210-40 and 132-210-41. The Boundary Line Adjustment was finalized on November 21, 2019.

The Coastal Permit Administrator approved Boundary Line Adjustment B\_2019-0054 on June 11, 2020 reconfiguring the boundaries between three (3) assessor parcel numbers and merging a fourth assessor parcel number (then APNs 132-210-37, 132-210-38, 132-210-39, and 132-210-61 (resulting APN from B\_2018-0068)). The Boundary Line Adjustment was finalized on August 28, 2020.

Subsequent to the finalization of the two above referenced Boundary Line Adjustments, staff conducted research on the parcel history of the above referenced assessor parcel numbers as part of the processing of a General Plan Amendment and Rezoning request for these sites (GP\_2019-0006/R\_2019-0008). This research located documents referencing a court case between the property owner, William Moores, and Mendocino County that explicitly dealt with several of the parcels at issue in the General Plan Amendment and Rezoning request.

*Moores v. Board of Supervisors of Mendocino County* (2004) 122 Cal. App. 4th 883 (*Moores*), involved an action by William Moores seeking to set aside the determination of the County that property then-identified as Assessor's Parcel Numbers (APNs) 132-210-37, -38, -39, -40, and -41 had been merged by operation of law into a single legal parcel pursuant to the County's merger ordinance. The case affirmed the determination of the County and confirmed that the referenced APNs had been merged by operation of law as of 1981.

Subsequent to the *Moores* decision, Mr. Moores applied for the two above noted boundary line adjustments in 2018 and 2019, Boundary Line Adjustments #B\_2018-0068 and B\_2019-0054. These boundary line adjustments both involved adjusting the boundaries of several of the above-referenced APNs. Given the result of *Moores* there were no boundaries to adjust, since these APNs were not separate legal parcels but a single legal parcel that had been merged by operation of law.

The applications for these boundary line adjustments asserted that these separate APNs were actually separate parcels and thus had boundaries that could be adjusted. However, given that Mr. Moores had full and complete awareness of the *Moores* case in which he was a petitioner, submitting applications showing that there were multiple parcels instead of a single parcel was a fraudulent act. The approvals of these boundary line adjustments was contrary to law as there were no separate legal boundaries to adjust.

Pursuant to Mendocino County Code section 20.536.035, Staff is requesting that the Coastal Permit Administrator revoke Boundary Line Adjustments B\_2018-0068 and B\_2019-0054 as they were obtained by fraud.

**Attachments:**

- A. *Moores v. Board of Supervisors of Mendocino County* (2004) 122 Cal. App. 4th 883
- B. B\_2018-0068 CPA Staff Report and Notice of Final Action
- C. B\_2019-0054 CPA Staff Report and Notice of Final Action
- D. Current Parcel Configuration



Cited

As of: June 28, 2022 10:40 PM Z

## *Moores v. Board of Supervisors*

Court of Appeal of California, First Appellate District, Division Four

September 24, 2004, Filed

A105446

### **Reporter**

122 Cal. App. 4th 883 \*; 19 Cal. Rptr. 3d 206 \*\*; 2004 Cal. App. LEXIS 1602 \*\*\*; 2004 Cal. Daily Op. Service 8814; 2004 Daily Journal DAR 12003

WILLIAM M. MOORES et al., Plaintiffs and Appellants, v. BOARD OF SUPERVISORS OF MENDOCINO COUNTY, Defendant and Respondent.

**Prior History:** [\*\*\*1] Superior Court of Mendocino County, No. 02-88005, Richard Henderson, Judge.

**Disposition:** Judgment affirmed.

### **Case Summary**

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#### **Procedural Posture**

Plaintiff landowners appealed from a judgment of the Mendocino County Superior Court (California), which agreed with defendant, the Board of Supervisors for the County of Mendocino (California), that its merger determination was proper under the Subdivision Map Act, [Cal. Gov't Code § 66410 et seq.](#), and local law.

#### **Overview**

The county took the position that the four contiguous parcels owned by the landowners had merged into one. The landowners maintained that there had been no merger because the county did not comply with the notice recording provision of Mendocino County, Cal., Code § 17-108 or with [Cal. Gov't Code § 66451.13](#). The court held that the county's merger ordinance provided for automatic ordinance, requiring no additional steps to take effect. Because this occurred through legislation, due process did not require notice and opportunity for a hearing. The county's subsequent enactment of an ordinance providing for recording of notice and a hearing did not result in unmerging parcels already automatically merged the previous year by operation of law. Moreover, the plain import of [Cal. Gov't Code §§ 66451.301, 66451.302](#) was to preserve mergers accomplished through local law by exempting them from the requirement of recorded notice and allowing more informal notice. By sending the landowners a letter satisfying the provisions of [Cal. Gov't Code § 66451.302](#), which did not require the use of return receipts, the county preserved the automatic merger of parcels accomplished by operation of law.

#### **Outcome**

The court affirmed the judgment.

## LexisNexis® Headnotes

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Governments > Local Governments > Duties & Powers

Real Property Law > Encumbrances > Adjoining Landowners > General Overview

### [HN1](#) [↓] **Local Governments, Duties & Powers**

See [Cal. Gov't Code § 66451.10\(b\)](#).

Governments > Local Governments > Duties & Powers

Real Property Law > Encumbrances > Adjoining Landowners > General Overview

### [HN2](#) [↓] **Local Governments, Duties & Powers**

See [Cal. Gov't Code § 66451.11](#).

Governments > Local Governments > Duties & Powers

Real Property Law > Encumbrances > Adjoining Landowners > General Overview

### [HN3](#) [↓] **Local Governments, Duties & Powers**

See [Cal. Gov't Code § 66451.14\(c\)](#).

Governments > Local Governments > Duties & Powers

Real Property Law > Encumbrances > Adjoining Landowners > General Overview

### [HN4](#) [↓] **Local Governments, Duties & Powers**

Failure to comply with the requirements in [Cal. Gov't Code §§ 66451.10-66451.21](#) shall render void and ineffective any resulting merger. [Cal. Gov't Code § 66451.19\(d\)](#).

Governments > Local Governments > Duties & Powers

Real Property Law > Encumbrances > Adjoining Landowners > General Overview

### [HN5](#) [↓] **Local Governments, Duties & Powers**

See [Cal. Gov't Code § 66451.13](#).

Governments > Local Governments > Duties & Powers

Real Property Law > Encumbrances > Adjoining Landowners > General Overview

**[HN6](#)** [↓] **Local Governments, Duties & Powers**

See [Cal. Gov't Code § 66451.14](#).

Mergers & Acquisitions Law > General Overview

Real Property Law > Encumbrances > Adjoining Landowners > General Overview

**[HN7](#)** [↓] **Mergers & Acquisitions Law**

See [Cal. Gov't Code § 66451.301](#).

Governments > Local Governments > Duties & Powers

Mergers & Acquisitions Law > Antitrust > Premerger Notifications

Real Property Law > Encumbrances > Adjoining Landowners > General Overview

Mergers & Acquisitions Law > General Overview

**[HN8](#)** [↓] **Local Governments, Duties & Powers**

Local agencies are required to notify owners of merged parcels before January 1, 1987, of the new provisions for merger. [Cal. Gov't Code § 66451.302](#).

Real Property Law > Encumbrances > Adjoining Landowners > General Overview

**[HN9](#)** [↓] **Encumbrances, Adjoining Landowners**

See Mendocino County, Cal., Code § 17-106.

Governments > Local Governments > Duties & Powers

Real Property Law > Encumbrances > Adjoining Landowners > General Overview

**[HN10](#)** [↓] **Local Governments, Duties & Powers**

See Mendocino County, Cal., Code § 17-108.

Governments > Legislation > Effect & Operation > Operability

Mergers & Acquisitions Law > General Overview

Real Property Law > Encumbrances > Adjoining Landowners > General Overview

Governments > Local Governments > Ordinances & Regulations

### [HN11](#) [↓] **Effect & Operation, Operability**

Mendocino County's merger ordinance, Mendocino County, Cal., Code § 17-106, specifies that parcels would be merged upon the effective date of this ordinance. This is an example of what is known as "automatic merger," requiring no additional steps to take effect. Because this occurred through legislation, due process does not require notice and opportunity for a hearing. The county's subsequent enactment of an ordinance providing for recording of notice and a hearing did not result in unmerging parcels already automatically merged the previous year by operation of law.

Governments > Local Governments > Ordinances & Regulations

Mergers & Acquisitions Law > General Overview

Real Property Law > Encumbrances > Adjoining Landowners > General Overview

### [HN12](#) [↓] **Local Governments, Ordinances & Regulations**

[Cal. Gov't Code §§ 66451.301, 66451.302](#) express a conscious policy decision by the legislature not to unmerge resource land mergers accomplished by local ordinances, and not to subject their legality to the requirement of recorded notice.

Mergers & Acquisitions Law > General Overview

Real Property Law > Encumbrances > Adjoining Landowners > General Overview

### [HN13](#) [↓] **Mergers & Acquisitions Law**

See [Cal. Gov't Code § 66451.19\(a\)](#).

Mergers & Acquisitions Law > General Overview

Real Property Law > Encumbrances > Adjoining Landowners > General Overview

Governments > Local Governments > Ordinances & Regulations



Real Property Law > Subdivisions > Local Regulations

## [HN14](#) [↓] **Mergers & Acquisitions Law**

The plain language of [Cal. Gov't Code § 66451.19\(a\)](#), read together with [Cal. Gov't Code § 66451.301](#), is that situations dealt with by [Cal. Gov't Code §§ 66451.301](#) and [66451.302](#) are expressly exempt from the requirement that a notice of merger must be filed prior to January 1, 1988. Resource lands that have been merged by a local ordinance are not subject to the otherwise general principle that failure to comply with the Subdivision Map Act article on merger or local merger ordinances shall render void and ineffective any resulting merger. [Cal. Gov't Code § 66451.19\(d\), \(e\)](#).

Governments > Local Governments > Duties & Powers

Real Property Law > Encumbrances > Adjoining Landowners > General Overview

## [HN15](#) [↓] **Local Governments, Duties & Powers**

[Cal. Gov't Code § 66451.302](#) does not require use of return receipts.

## **Headnotes/Summary**

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### **Summary**

#### **CALIFORNIA OFFICIAL REPORTS SUMMARY**

Property owners brought suit for declaratory relief and for a writ of administrative mandate directing a county board of supervisors to set aside a determination that four contiguous parcels owned by plaintiffs had merged into one. The trial court found that the county's merger determination was proper under the Subdivision Map Act, [Gov. Code, § 66410 et seq.](#), and the county's merger ordinance. (Superior Court of Mendocino County, No. 02-88005, Richard Henderson, Judge.)

The Court of Appeal affirmed. The court held that the county's merger ordinance specified that parcels would be merged upon the effective date of the ordinance. This was an example of "automatic merger," requiring no additional steps to take effect. Due process did not require notice and opportunity for a hearing, since the merger occurred through legislation. By enacting [Gov. Code, §§ 66451.301 & 66451.302](#), the Legislature expressed a conscious policy decision not to unmerge resource land mergers accomplished by local ordinances, and not to subject their legality to the requirement of recorded notice. The county's enactment of an ordinance providing for recording of notice and a hearing did not unmerge the parcels. By sending plaintiffs a letter satisfying the provisions of [Gov. Code, § 66451.302](#), the county preserved the automatic merger of parcels accomplished by operation of law when it enacted its merger ordinance. Although the mailed notices sent to plaintiffs did not request a return receipt, [§ 66451.302](#) did not require use of return receipts. (Opinion by Kay, P. J., with Sepulveda and Rivera, JJ., concurring.)

[\*884]

### **Headnotes**

CALIFORNIA OFFICIAL REPORTS HEADNOTES

Classified to California Digest of Official Reports

[CA\(1\)](#) [↓] (1)

**Real Estate Sales § 118—Subdivision Map Act—Merger of Parcels.**

Until 1983, merger was left largely to local law. Since 1983, however, the Subdivision Map Act, [Gov. Code, § 66410 et seq.](#), constitutes the sole and exclusive authority for local agency-initiated merger of contiguous parcels. On and after January 1, 1984, parcels may be merged by local agencies only in accordance with the authority and procedures prescribed by title 7, division 2, chapter 3, article 1.5, Merger of Parcels, of the [Gov. Code, §§ 66451.10–66451.21](#). Another provision grants that a local agency may, by ordinance which conforms to and implements the procedures prescribed by article 1.5, provide for the merger of a parcel or unit with a contiguous parcel or unit held by the same owner if a number of requirements are met. Among them is that the owner of the affected parcels has been notified of the merger proposal pursuant to [Gov. Code, § 66451.13](#), and is afforded the opportunity for a hearing pursuant to [Gov. Code, § 66451.14](#). Failure to comply with these requirements shall render void and ineffective any resulting merger ([Gov. Code, § 66451.19, subd. \(d\)](#)).

[CA\(2\)](#) [↓] (2)

**Real Estate Sales § 118—Subdivision Map Act—Merger of Parcels.**

Local agencies are required to notify owners of merged parcels before January 1, 1987, of the new provisions for merger.

[CA\(3\)](#) [↓] (3)

**Real Estate Sales § 118—Subdivision Map Act—Merger of Parcels—Automatic Merger—Notice and Opportunity for Hearing Not Required.**

A county's merger ordinance specified that parcels would be merged upon the effective date of the ordinance. This was an example of what is known as "automatic merger," requiring no additional steps to take effect. Because this occurred through legislation, due process did not require notice and opportunity for a hearing. The county's subsequent enactment of an ordinance providing for recording of notice and a hearing did not result in unmerging the parcels already automatically merged the previous year by operation of law.

[4 Witkin, Summary of Cal. Law (9th ed. 1987) Real Property, § 44.]

[CA\(4\)](#) [↓] (4)

**Real Estate Sales § 118—Subdivision Map Act—Merger of Parcels.**

[Gov. Code, §§ 66451.301 & 66451.302](#), express a conscious [\*885] policy decision by the Legislature not to unmerge resource land mergers accomplished by local ordinances, and not to subject their legality to the requirement of recorded notice.

[CA\(5\)](#) [↓] (5)

**Real Estate Sales § 118—Subdivision Map Act—Merger of Parcels—**

The plain language of [Gov. Code, § 66451.19](#), read together with [Gov. Code, § 66451.301](#), is that situations dealt with by [Gov. Code, §§ 66451.301 & 66451.302](#), are expressly exempt from the requirement that a notice of merger must be filed prior to January 1, 1988. Resource lands that have been merged by a local ordinance are not subject to the otherwise general principle that failure to comply with the Subdivision Map Act requirements for merger, or local merger ordinances shall render void and ineffective any resulting merger ([Gov. Code, § 66451.19, subds. \(d\), \(e\)](#)).

[CA\(6\)](#) [↓] (6)

**Real Estate Sales § 118—Subdivision Map Act—Merger of Parcels—Return Receipt Not Required.**

[Gov. Code, § 66451.302](#), does not require use of return receipts. The Legislature knows how to impose such a requirement. It did not do so, and it is not a judicial function to rewrite the statute by inserting such a requirement.

**Counsel:** Carter, Behnke, Oglesby & Bacik and Ginevra King Chandler for Plaintiffs and Appellants.

H. Peter Klein, County Counsel, and Frank Edward Zotter, Jr., Chief Deputy County Counsel, for Defendant and Respondent.

**Judges:** Kay, P. J., with Sepulveda and Rivera, JJ., concurring.

**Opinion by:** KAY

## Opinion

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[\*\*207] **KAY, P. J.**—This appeal involves concepts of merger and unmerger of contiguous parcels having common ownership under the Subdivision Map Act ([Gov. Code, § 66410 et seq.](#)).<sup>1</sup> Plaintiffs William M. Moores and Tona E. Moores brought suit for declaratory relief and for a writ of administrative mandate [\*\*208] directing defendant Board of Supervisors for the County of Mendocino (County) to set aside a determination that plaintiffs' parcels were [\*886] merged. The trial court agreed with the County that its merger determination was proper according to state and local law. We affirm.

## BACKGROUND

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<sup>1</sup> Statutory references are to this code unless otherwise indicated.

[\*\*\*2] The history of this dispute and the litigation it produced is largely without dispute and does not take long to relate.

Starting in 1996, the County has taken the position that the four contiguous parcels owned by plaintiffs have merged into one. Plaintiffs maintain there has been no merger because the County did not comply with its own ordinances. After informal discussion with the county counsel failed to relieve the impasse, plaintiffs appealed to the county planning commission the county counsel's opinion that the parcels were merged. After the commission upheld the county counsel's opinion, plaintiffs appealed to the county board of supervisors, which refused to overturn the commission's decision. Plaintiffs thereupon commenced this litigation. The trial court agreed with the County's interpretation of the governing statutes and ordinances. Following entry of a judgment denying them relief, plaintiffs filed a timely notice of appeal.

## REVIEW

### I

Resolution of this appeal requires an understanding of a number of provisions of the Subdivision Map Act, its approaches to merger and unmerger, and two related ordinances adopted by the County.

[CA\(L\)](#)<sup>[↑]</sup> (1) Until 1983, merger was [\*\*\*3] left largely to local law. (See [Morehart v. County of Santa Barbara \(1994\) 7 Cal.4th 725, 752–754 \[29 Cal. Rptr. 2d 804, 872 P.2d 143\]](#); Stats. 1976, ch. 928, § 4, p. 2120, adding former § 66424.2, providing that undersized, unimproved, contiguous parcels held by the same owner would merge “unless a local ordinance specifically exempts such parcels”; [69 Ops.Cal.Atty.Gen. 209, 210 \(1986\)](#).) Since 1983, however, the Subdivision Map Act constitutes “[HN1](#)<sup>[↑]</sup> the sole and exclusive authority for local agency initiated merger of contiguous parcels. On and after January 1, 1984, parcels may be merged by local agencies only in accordance with the authority and procedures prescribed by this article.” ([§ 66451.10, subd. \(b\)](#), added by Stats. 1983, ch. 845, § 2, pp. 3097–3098.) Another provision grants that “[HN2](#)<sup>[↑]</sup> [a] local agency may, by ordinance which conforms to and implements the procedures prescribed by this article [i.e., art. 1.5,” ‘Merger of Parcels,’ “[§§ 66451.10–66451.21](#)], provide for the merger of a parcel or unit with a contiguous parcel or unit held by the same owner” if a number of requirements are met. ([§ 66451.11](#).) Among them is that “[HN3](#)<sup>[↑]</sup> [t]he owner of the affected [\*887] parcels has been notified [\*\*\*4] of the merger proposal pursuant to [Section 66451.13](#), and is afforded the opportunity for a hearing pursuant to [Section 66451.14](#).” (*Id.*, [subd. \(c\)](#).)<sup>2</sup> [HN4](#)<sup>[↑]</sup> Failure [\*\*209] to comply with these requirements “shall render void and ineffective any resulting merger” ([§ 66451.19, subd. \(d\)](#)).

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<sup>2</sup> [Section 66451.13](#) provides in pertinent part: “[HNS](#)<sup>[↑]</sup> Prior to recording a notice of merger, the local agency shall cause to be mailed by certified mail to the then current record owner of the property a notice of intention to determine status, notifying the owner that the affected parcels may be merged pursuant to standards specified in the merger ordinance, and advising the owner of the opportunity to request a hearing on determination of status and to present evidence at the hearing that the property does not meet the criteria for merger ... .” [Section 66451.14](#) provides: “[HN6](#)<sup>[↑]</sup> At any time within 30 days after recording of the notice of intention to determine status, the owner of the affected property may file with the local agency a request for a hearing on determination of status.”

[\*\*\*5] All of these statutes are in the article governing merger, which was added to the Subdivision Map Act in 1983. (Stats. 1983, ch. 845, § 2, p. 3097.) Immediately, questions arose as to the validity of mergers completed pursuant to local ordinance prior to enactment of these state statutes. Two years later, the article governing “Unmerger of Parcels” (art. 1.7, §§ 66451.30–66451.33) was amended to provide:

“[HN7](#)<sup>[↑]</sup> If any parcels or units of land merged under a valid local merger ordinance which was in effect prior to January 1, 1984, but for which a notice of merger had not been recorded before January 1, 1988, and one or more of the merged parcels or units of land is within one of the categories specified in [paragraphs \(1\) to \(5\), inclusive, of subdivision \(b\) of Section 66451.30](#), <sup>[3]</sup> the parcels or units of land shall be deemed not to have merged unless all of the following conditions exist:

[\*\*\*6] “(a) The parcels or units are contiguous and held by the same owner.

“(b) One or more of the contiguous parcels or units do not conform to minimum parcel size under the applicable general plan, specific plan, or zoning ordinance.

“(c) At least one of the affected parcels is undeveloped by any structure for which a building permit was issued or for which a building permit was not required at the time of construction, or is developed only with an accessory structure or accessory structures, or is developed with a single structure, other than an accessory structure, that is also partially sited on a contiguous parcel or unit.

[\*888] “(d) The parcels or units which do not conform to minimum parcel size were not created by a recorded parcel or final map... .” ([§ 66451.301](#), added by Stats. 1985, ch. 796, § 5, p. 2575 [hereinafter section .301].) Plaintiffs concede that their parcels satisfy all of these conditions.

[CA\(2\)](#)<sup>[↑]</sup> (2) At the same time the Legislature enacted a provision requiring [HN8](#)<sup>[↑]</sup> local agencies to notify owners of merged parcels before January 1, 1987 of the new provisions for merger. ([§ 66451.302](#), added by Stats. 1985, ch. 796, § 6, pp. 2574–2576 [hereinafter section .302]. [\*\*\*7] )

The County has had a merger ordinance since October 1981. Entitled “Merger,” it provides in pertinent part: “[HN9](#)<sup>[↑]</sup> Merger of lots, parcels and units of land classified or zoned range land, forest land, or agricultural land or a successor zone under the Mendocino County Code, as amended, shall occur when at least two contiguous lots, parcels or units of land are held by the same owner, one of which does not conform to standards for minimum parcel size to permit use or development ... and at least one of such contiguous parcels or units is not developed with a building for which a permit has been issued by the County or which was built prior to the time that building permits were required by the County... .” (Mendocino County Code, § 17-106.)

This provision was reenacted in January of 1982, together with a new provision entitled “Due Process.” The relevant language of the new ordinance reads: “[HN10](#)<sup>[↑]</sup> Whenever the Mendocino County Planning Department has knowledge that real property has merged pursuant to Section [\*\*\*210] 17-106 of the Mendocino County Code, it shall cause to be filed for the record with the recorder of the County ... a notice of such merger specifying the names of the record owners [\*\*\*8] and particularly describing the real property, provided that, at least 30 days prior to the recording of the notice, the owner of the parcels

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<sup>3</sup> This section deals with land devoted to certain uses—timberland, mining extraction, open-space, and inclusion within the coastal zone—that are commonly known as “resource lands.” There is no dispute that plaintiffs’ parcels qualify and have been zoned as resource lands since 1977.

or units to be affected by the merger, shall be advised in writing of the intention to record the notice specifying the time, date and place at which the owner may present evidence to the Planning Commission as to why such notice should not be recorded. The decision of the Planning Commission may be appealed to the Board of Supervisors.” (Mendocino County Code, § 17-108.)

In accordance with [section .302](#), the County notified plaintiffs in December of 1986 that their parcels may have merged unless qualified for exemption according to [section .301](#).<sup>4</sup>

[\*\*\*9]

## [\*889] II

Plaintiffs' major contention is that their parcels have not merged, or should be treated as unmerged, because the County did not comply with its own merger ordinances, particularly the notice recording provision of Mendocino County Code section 17-108. Moreover, the County also did not comply with the equivalent notice provision of state law ([§ 66451.13](#), quoted at fn. 2, *ante*). Plaintiffs see [sections .301](#) and [.302](#) as bringing no aid to the County because “the purpose of the legislation was to allow the County additional time to provide notice to property owners of potential merger, not to avoid giving such notice.” Therefore, plaintiffs reason, the merger attempted or accomplished by the County is “void and ineffective” ([§ 66451.19, subd. \(d\)](#)).

The County's position is that plaintiffs' parcels merged with the adoption of Mendocino County Code section 17-106 in 1981, before a notice provision was imposed by the County the following year, and by the Legislature with enactment of the Subdivision Map Act in 1983. The only subsequent requirement was that the County notify property owners in accordance with [section .302](#), which it did. The [\*211] trial court agreed with [\*10] the County's analysis. So do we.

[HNII](#) [CA\(3\)](#) (3) The County's merger ordinance specified that parcels would be merged “upon the effective date of this ordinance ... .” This is an example of what is known as “automatic merger,” requiring no additional steps to take effect. Because this occurred through legislation, due process did not require notice and opportunity for a hearing. (E.g., [Horn v. County of Ventura \(1979\) 24 Cal.3d 605, 612–616 \[156 Cal. Rptr. 718, 596 P.2d 1134\]](#); [San Diego Bldg. Contractors Assn. v. City Council \(1974\)](#)

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<sup>4</sup> The letter, addressed “Dear Property Owner,” advised that “[t]he County of Mendocino is required, by a recent state law [i.e., [§ .301](#)], to notify any property owners whose property may be subject to the County's Merger Ordinance. Because this notice is being sent to so many [approximately 2,300] property owners it was not possible to review each case individually, therefore, the information provided is general in nature. [¶] [¶] The effect of the recent state law change and the County's Merger Ordinance is that any land which is in the Agricultural Preserve Program ... or is zoned Timber Production Zoning (TPZ) will remain subject to merger or merged ... . [¶] ... [¶] NOTE: Your property is zoned one of the above... . [¶] ... [¶] This notice was sent to all property owners whose property is in the Agricultural Preserve Program or is zoned TPZ. Because of the magnitude of this mailing, it has not been possible to review each property to determine if it is exempt from merger. It is IMPORTANT that you are aware of several exemptions to the County's Merger Ordinance.”

The letter goes on to notify the recipient that “your property is not merged if any of the following conditions exists: [¶] a. A subdivision of land was processed and the subdivision was approved pursuant to the County's Subdivision Ordinance. [¶] b. Each of the parcels was acquired by the current owner or the immediate previous owners on separate deeds. [¶] c. The parcels are not contiguous. [¶] d. Each of the parcels have a structure (other than an accessory structure) for which a building permit was issued or for which a building permit was not required at the time of construction.” The letter concluded by “strongly suggest[ing] that you contact, within the next few months, the County Planning and Building Services Department and/or an attorney if you have any questions.”

[13 Cal.3d 205, 210–211 \[118 \[\\*890\] Cal. Rptr. 146, 529 P.2d 570\]](#); [California Gillnetters Assn. v. Department of Fish & Game\(1995\) 39 Cal.App.4th 1145, 1160 \[46 Cal. Rptr. 2d 338\]](#).) The County's subsequent enactment of an ordinance providing for recording of notice and a hearing did not result in unmerging parcels already automatically merged the previous year by operation of law.

[CA\(4\)\[↑\]](#) (4) Even if that was the intention of the notice ordinance, it was to preserve such mergers that [sections .301](#) and [.302](#) were adopted. [Sections .301](#) and [.302 HNI2\[↑\]](#) express a conscious policy decision by the Legislature not to unmerge resource land mergers accomplished by local ordinances, and not to subject their [\[\\*\\*\\*11\]](#) legality to the requirement of recorded notice. There is a sound basis for believing that these statutes were specifically enacted with Mendocino in mind. The author of the bill enacting [sections .301](#) and [.302](#) advised the Legislature: “ ‘The current merger law specifies that if by January 1, 1986, cities and counties haven't notified the owners of merged parcels that those lots have been merged, the property will automatically unmerge. We now know that this would be disastrous for some counties which merged hundreds of parcels ... . [¶] The problem which we are trying to fix with AB 643 is serious in Mendocino County... . [¶] The County believes that these parcels have merged under their local ordinance and ought to stay merged. The only way to keep them from unmerging next January, however, is to do a complex title search ... on each piece of property ... . The County simply does not have the staff or money to complete this task by January and has asked for relief ... .’ ” (See [69 Ops.Cal.Atty.Gen. 209, 213](#).) The Legislature responded by enacting [sections .301](#) and [.302](#) as urgency legislation; they became effective on September 19, 1985. (Stats. 1985, [\[\\*\\*\\*12\]](#) ch. 796, §§ 5–6, pp. 2575–2577.) The plain import of [sections .301](#) and [.302](#) was to preserve mergers accomplished through local law by exempting them from the requirement of recorded notice and allowing the more informal notice outlined in [section .302](#). Imposing the recorded notice requirement of Mendocino County Code section 17-108 would contravene the purpose of [sections .301](#) and [.302](#), and would encroach upon a subject impliedly preempted by state law. (See, e.g., [Morehart v. County of Santa Barbara, supra, 7 Cal.4th 725, 751, 762–763](#).)

[CA\(5\)\[↑\]](#) (5) [Section 66451.19](#) does not aid plaintiffs. Its [subdivision \(a\)](#) provides in pertinent part: “[HNI3\[↑\]](#) Except as provided in [Sections ... 66451.301](#), and [66451.302](#), a city or county shall no later than January 1, 1986, record a notice of merger for any parcel merged prior to January 1, 1984. After January 1, 1986, no parcel merged prior to January 1, 1984, shall be considered merged unless a notice of merger has been recorded prior to January 1, 1986.” [HNI4\[↑\]](#) The plain language of this statute, read together with [section .301](#), is that situations dealt with by [sections .301](#) and [.302](#) are expressly exempt from the requirement that a notice of merger [\[\\*\\*\\*13\]](#) must be filed [\[\\*891\]](#) prior to January 1, 1988. Resource lands that have been merged by a local ordinance are not subject [\[\\*\\*212\]](#) to the otherwise general principle that failure to comply with the Subdivision Map Act article on merger or local merger ordinances “shall render void and ineffective any resulting merger” ([§ 66451.19, subs. \(d\), \(e\)](#)).

[Section .301](#) addresses the precise situation before us. By sending plaintiffs the letter satisfying the provisions of [section .302](#) (see fn. 4 and accompanying text, *ante*), the County preserved the automatic merger of parcels accomplished by operation of law when it first enacted its merger ordinance in October of 1981. <sup>5</sup> [\[\\*\\*\\*14\]](#) The County's compliance with [section .302](#) renders moot the issue of any lack of compliance by the County with its own notice ordinance (Mendocino County Code, § 17-108). <sup>6</sup>

<sup>5</sup> We note a very persuasive opinion by the Attorney General, requested by the Mendocino County Counsel, which has been helpful to our analysis. Asked “May a county with a valid merger ordinance in existence prior to January 1, 1984, continue to treat ‘resource lands’ as

### III

[CA\(6\)](#)<sup>[↑]</sup> (6) Plaintiffs' final contention is that the letter mailed by the County in December of 1986 did not satisfy [section .302](#) because it did not request a return receipt. As for the mailed notices, plaintiffs argue none was actually received by them, and not all owners of record were mailed the notice.

Section .302 [HN15](#)<sup>[↑]</sup> does not require use of return receipts. The Legislature knows how to impose such a requirement. (See, e.g., [Civ. Code, §§ 798.55, 1584.6](#); [Code Civ. Proc., §§ 116.330, 415.40](#).) It did not do so, and it is not a judicial function to rewrite the statute by inserting such **[\*\*\*15]** a requirement. (E.g., [Stop Youth Addiction, Inc. v. Lucky Stores, Inc. \(1998\) 17 Cal.4th 553, 573 \[71 Cal. Rptr. 2d 731, 950 P.2d 1086\]](#).)

**[\*892]** The County presented evidence that plaintiffs, as owners of record shown by the record of the county assessor, were sent three letters pursuant to [section .302](#). This created a presumption that plaintiffs received the notices. (E.g., [Conservatorship of Wyatt \(1987\) 195 Cal. App. 3d 391, 396 \[240 Cal. Rptr. 632\]](#).) The trial court impliedly found that plaintiffs had not rebutted it. The court also found that plaintiffs had failed to demonstrate the existence of any actual owners of record who were not sent notice. Plaintiffs cite to nothing in the record to show that the court's findings are not supported by substantial evidence. Their claim fails accordingly. (E.g., [In re Marriage of Fink \(1979\) 25 Cal.3d 877, 887–888 \[160 Cal. Rptr. 516, 603 P.2d 881\]](#).)

### DISPOSITION

The judgment is affirmed.

Sepulveda, J., and Rivera, J., concurred.

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End of Document

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merged thereunder where the county has not given notice of the merger to the landowner or recorded a notice of the merger?" the Attorney General answered affirmatively. ([69 Ops.Cal.Atty.Gen. 209 \(1986\)](#).) This opinion is not binding, but we have accorded it considerable respect. (E.g., [Personal Watercraft Coalition v. Marin County Bd. of Supervisors \(2002\) 100 Cal.App.4th 129, 151 \[122 Cal. Rptr. 2d 425\]](#); [Thorpe v. Long Beach Community College Dist. \(2000\) 83 Cal.App.4th 655, 662 \[99 Cal. Rptr. 2d 897\]](#).)

<sup>6</sup> In light of this conclusion, there is no need to determine whether the County planning department had "knowledge" that plaintiffs' parcels had merged, thus triggering the provisions of Mendocino County Code section 17-108. In any event we would agree with the trial court that there is insufficient evidence in the record to prove the necessary predicate—the prior legal existence of separate parcels.





**COUNTY OF MENDOCINO**  
**DEPARTMENT OF PLANNING AND BUILDING SERVICES**  
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June 24, 2019

**NOTICE OF FINAL ACTION**

Action has been completed by the County of Mendocino on the below described project located within the Coastal Zone.

**CASE#:** B\_2018-0068

**DATE FILED:** 12/4/2018

**OWNER:** WILLIAM & TONA MOORES

**APPLICANT:** ATT MOBILITY

**REQUEST:** Boundary Line Adjustment to reconfigure two (2) legal non-conforming parcels. Subsequently, a Coastal Development Use Permit will be processed to facilitate construction of a new cellular tower on APN: 132-210-41.

**ENVIRONMENTAL DETERMINATION:** Categorically Exempt

**LOCATION:** In the Coastal Zone, 3.2± miles north of Manchester and located .8± miles east of State Route 1 (SR 1). Site Addressees to be assigned. (APNs: 132-210-40 and 132-210-41)

**SUPERVISORIAL DISTRICT:** 5

**STAFF PLANNER:** KEITH GRONENDYKE

**ACTION TAKEN:**

The Coastal Permit Administrator on June 13, 2019, approved the above described project. See attached documents for the findings and conditions in support of this decision.

The above project was not appealed at the local level.

This project is appealable to the Coastal Commission pursuant to Public Resources Code, Section 30603. An aggrieved person may appeal this decision to the Coastal Commission within 10 working days following Coastal Commission receipt of this notice. Appeals must be in writing to the appropriate Coastal Commission district office.

Attachments

cc: Coastal Commission  
Assessor



**FINAL FINDINGS AND CONDITIONS OF APPROVAL**  
**CASE# B\_2018-0068 - WILLIAM & TONA MOORES**  
**JUNE 13, 2019**

The Coastal Permit Administrator approves Coastal Development Boundary Line Adjustment B\_2018-0068, subject to the following conditions of approval, finding that the application and supporting documents and exhibits contain sufficient information and conditions to establish, as required by the Coastal Zoning Code, that:

1. The proposed boundary line adjustment is in conformance with the Coastal Element specifically with portions of MCC Section 20.532.100(C)(1); and,
2. The proposed development will be provided with adequate utilities, access roads, drainage, and other necessary facilities. There currently is no development on these parcels that would require utilities, access roads, drainage or other necessary facilities. If development does occur, access could still be obtained via a long access driveway that intersects with State Route 1, utilities could be provided by PG&E and a septic system for waste removal and a well for potable water needs could be drilled on each site.;
3. The proposed boundary line adjustment is 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 preserves the integrity of the zoning district. The RL 160 Zoning District which encompasses both subject parcels, has a 160 acre minimum parcel size. Each parcel is much less than that minimum parcel size and, as such, any Boundary Line Adjustment within Mendocino County is okay to be processed as the lot sizes will not be reduced from a conforming lot size of 160 acres to a non-conforming size of less than 160 acres; and
4. The proposed boundary line adjustment will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act (CEQA). §15305 Minor Alterations in Land Use Limitations (a) exempts minor lot line adjustments from CEQA;
5. The proposed boundary line adjustment will not have any adverse impacts on any known archaeological or paleontological resource. Minor adjustments of only parcel lines and no development will not have any effect on any known archaeological or paleontological resource as no ground disturbance will be occurring;
6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development. As noted in #5 above, no development is proposed with this Boundary Line Adjustment. If development does occur in the future, solid waste disposal is available at a nearby transfer station, or curbside pickup also is available. State Route 1, which is the closest paved roadway accessible by the properties, is a two lane highway with ample capacity for the development of single family residences on each parcel, if residential development were to occur;
7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and the Coastal Element of the General Plan.
8. The proposed use is compatible with the long term protection of resource lands. The proposal is for a Boundary Line Adjustment with the only change being to existing lot lines with the resulting parcels being modestly reduced and increased in size respectively. As such, the Rangeland designation will remain as will the possible use of each parcel as resource lands.

**CONDITIONS OF APPROVAL:**

1. This action shall become final on the 11th 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. This application is valid for 24 months from the effective date. No extensions can be granted.
2. That for each proposed adjusted parcel provides one perimeter description of each parcel. The new deed description submitted shall be prepared by, and bear the seal of a Licensed Land Surveyor.
3. That each transfer of real property be by means of a quit claim deed containing the following wording to be contained within the legal description:

*"Any and all lands and any and all interest thereto lying within the following described real property (perimeter description of the adjusted parcel(s))."*

And,

*"This deed is given pursuant to Mendocino County Coastal Development Boundary Line Adjustment B\_2018-0068 and is intended to create no new parcel."*

4. Per Mendocino County Code Section 17-17.5(l) (2):

*"That the Treasurer-Tax Collector certifies that all taxes and assessments due on each parcel affected by the adjustment have been paid or cleared, and that a deposit to secure payment of the taxes and assessments which are due but not yet payable have been made."*

The enclosed **Certificate of the Official Redeeming Officer form** must be certified by the Treasurer-Tax Collector and a copy returned to the Department of Planning and Building Services.

5. After you have been given clearance to record the new documents, you must send a **copy** of the recorded deed(s) to the Department of Planning and Building Services. Upon review and approval of this information, you will receive a Completion Certificate.
6. In the event that archaeological resources are encountered during development of the property, work in the immediate vicinity of the find shall be halted until all requirements of Chapter 22.12 of the Mendocino County Code relating to archaeological discoveries have been satisfied.
7. A note shall be placed on the deeds and/or legal descriptions stating that *"Future development may require additional studies and/or may be subject to restrictions"* and that *"Future development shall be in conformance with the criteria for development within the Environmentally Sensitive Habitat and Special Treatment Areas as set forth in the Coastal Plan and Coastal Zoning Code."* Any development proposal for either parcel will be subject to review by both the California Department of Fish and Wildlife and the California Coastal Commission along with all other applicable Federal, State and County agencies.
8. A note shall be placed on the deeds and/or legal descriptions stating, *"The Boundary Line Adjustment shall not relinquish, remise, release or terminate any prior right, interest in rights-of-way, easements, or other rights which may be appurtenant to and/or an encumbrance to the subject properties."*
9. All structures within the RL district must maintain fifty (50) foot setbacks from property lines as required by Mendocino County Code Section 20.368.030.

Once the deed(s) and/or instrument(s) have been prepared, please send a copy to the Department of Planning and Building Services. After we have reviewed the documents and accepted them as correct and all conditions of approval have been met, we will notify you. DO NOT RECORD ANY DOCUMENTS UNTIL YOU HAVE RECEIVED APPROVAL OF THE DEED(S)

NOTE: APPLICANTS OR OTHER PERSONS WHO ARE DISSATISFIED WITH A DECISION OF THE COASTAL PERMIT ADMINISTRATOR FOR A COASTAL DEVELOPMENT PERMIT FOR A BOUNDARY LINE ADJUSTMENT MAY APPEAL THE ACTION TO THE BOARD OF SUPERVISORS. AN APPEAL MUST BE MADE IN WRITING ALONG WITH THE APPLICABLE FEE TO THE CLERK OF THE BOARD OF SUPERVISORS WITHIN TEN (10) DAYS OF THE COASTAL PERMIT ADMINISTRATOR'S DECISION. THE APPEAL ISSUE WILL BE PLACED ON THE NEXT AVAILABLE BOARD OF SUPERVISOR'S AGENDA FOR CONSIDERATION AND THE APPELLANT WILL BE NOTIFIED OF THE TIME AND DATE. APPEALS TO THE BOARD OF SUPERVISORS DO NOT NECESSARILY GUARANTEE THAT THE COASTAL PERMIT ADMINISTRATOR'S DECISION WILL BE OVERTURNED. IN SOME CASES, THE BOARD OF SUPERVISORS MAY NOT HAVE THE LEGAL AUTHORITY TO OVERTURN THE DECISION OF THE ADMINISTRATOR.



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**COASTAL PERMIT ADMINISTRATOR  
STAFF REPORT- COASTAL BOUNDRY LINE**

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**JUNE 13, 2019  
B\_2018-0068**

**SUMMARY**

**OWNER:** WILLIAM MOORES  
3880 SLEEPY HOLLOW DRIVE  
SANTA ROSA CA 95404

**APPLICANT:** AT&T MOBILITY  
5001 EXECUTIVE PARKWAY  
SAN RAMON CA 94583

**AGENT:** JARED KEARSLY  
600 COOLIDGE DRIVE SUITE 100  
FOLSOM CA 95630

**REQUEST:** Coastal Development Boundary Line Adjustment to transfer 4.01 acres from (APN: 132-210-40) to (APN: 132-210-41), resulting in new parcel configurations containing 25.58 acres and 31.16 acres respectively.

**LOCATION:** In the Coastal Zone, 3.2± miles north of Manchester and located .8± miles east of State Route 1 (SR 1). Site Addressees to be assigned. (APNs: 132-210-40 and 132-210-41)

**TOTAL ACREAGE:** 1. William and Tona Moores APN: 132-210-40  
(29.59→25.58 Acres)  
2. William and Tona Moores APN: 132-210-41  
(27.15→31.16 Acres)

**GENERAL PLAN:** Rangeland 160 acre minimum parcel size (RL 160)

**ZONING:** Rangeland 160 acre minimum parcel size (RL 160)

**SUPERVISORIAL DISTRICT:** 5<sup>th</sup> District (Gjerde)

**ENVIRONMENTAL DETERMINATION:** Categorically Exempt – Class: 5a (Minor boundary line adjustment not resulting in the creation of any new parcel).

**RECOMMENDATION:** Approve Boundary Line Adjustment B\_2018-0068 with Standard Conditions.

**STAFF PLANNER:** Keith Gronendyke

**BACKGROUND**

**PROJECT DESCRIPTION:** A Coastal Development Boundary Line Adjustment to transfer 4.01 acres from APN 132-210-40 (Moores) to APN 132-210-41 (Moores), resulting in new parcel configurations containing 25.58 acres and 31.16 acres respectively. Subsequent to this boundary line adjustment, a Coastal Development Use Permit (U\_2018-0028) will be processed to facilitate the construction of a 130 foot tall monopine type cellular antenna tower for eight cellular antennae and placement of appurtenant ground equipment within a 1,800 square foot fenced area.

**RELATED APPLICATIONS ON-SITE:**

- GP\_ 2006-0008 and R\_2006-0012 were denied by the Planning Commission in 2018. This project was a proposal to amend the General Plan designations and rezone said parcels. Staff ultimately could not support this proposal and recommended that the Planning Commission deny the application, which the commission ultimately did.

**Neighboring Property**

- No applicable projects.

**SITE CHARACTERISTICS:** Both (APN: 132-210-40) and (APN: 132-210-41) are undeveloped properties. The area of the boundary line adjustment includes an existing unimproved sixty-foot wide road and public utility easement. The topography of the site is hilly and features a mix of oak woodland and evergreen trees. The proposed property line has been developed based upon the planned location of a new 130 foot tall cellular antenna tower disguised as a monopine. The boundary line adjustment site is located approximately one-half a mile southeast of the nearest house within the Irish Beach subdivision.

**SURROUNDING LAND USE AND ZONING:**

	<b>ADJACENT GENERAL PLAN</b>	<b>ADJACENT ZONING</b>	<b>ADJACENT LOT SIZES</b>	<b>ADJACENT USES</b>
<b>NORTH</b>	Forest Lands (FL 160)	Forest Lands (FL 160)	112± Acres	Residential
<b>EAST</b>	Range Lands (RL 60)	Range Lands (RL 60)	27± Acres	Vacant
<b>SOUTH</b>	Range Lands (RL 60)	Range Lands (RL 60)	36± Acres	Vacant
<b>WEST</b>	Range Lands (RL 60)	Range Lands (RL 60)	2± Acres; 61± Acres and 60± Acres	Vacant; Residential

**PUBLIC SERVICES:**

**Access:** State Route 1 (SR 1)  
**Fire District:** Calfire/Redwood Coast Fire District  
**Water District:** Irish Beach Water District  
**Sewer District:** None  
**School District:** Manchester Union Elementary

**AGENCY COMMENTS:** On March 1, 2019 project referrals were sent to the following responsible or trustee agencies with jurisdiction over the Project. Their submitted recommended conditions of approval are contained in Exhibit A of the attached resolution. A summary of the submitted agency comments are listed below. Any comment that would trigger a project modification or denial are discussed in full as key issues in the following section.

REFERRAL AGENCIES	COMMENT
Department of Transportation	No Comment
Planning-Fort Bragg	No Comment
Environmental Health-Fort Bragg	No Comment
Building Department-Fort Bragg	No Response
Department of Forestry-CALFIRE	No Comment
Coastal Commission	Comments
County Addresser	No Comment
Department of Fish and Wildlife	Comments

### KEY ISSUES

#### 1. General plan and zoning consistency:

**General Plan consistency:** The two lots involved in the proposed lot adjustment are classified Rangeland RL:160. Currently, both lots would be considered legal non-conforming, given their respective acreages. This adjustment would transfer 4.01± acres from APN: 132-210-40 to APN: 132-210-41, resulting in new parcel configurations of 25.58 acres and 31.16 acres respectively. The resulting parcels would remain legal non-conforming. Policy DE-5 of the Mendocino County General Plan states: *"Designate sufficient land to accommodate the projected commercial, industrial, residential, and infrastructure needs of each community, compatible with General Plan policies, site planning constraints and local community objectives."*

The purpose of this boundary line adjustment is to shift parcel lines to accommodate the installation of a cellular antenna tower to increase cell phone coverage, which would improve the infrastructure needs of the community of Manchester. As such, this boundary line adjustment application is consistent with the Mendocino County General Plan. Neither of the lots are currently developed, and any future development may be subject to a Coastal Development Permit. *Per Mendocino County Code Section 20.484.010(A) "When any lot has been legally created and which has not merged and is zoned to a minimum parcel size larger than the existing parcel size, said lot(s) shall be found to be legally nonconforming and shall not be subject to requirements for variance to minimum lot size."*

The present configuration of the subject parcels was created in 1997 (Record of Survey C2 D64 P24). At that time, the zoning was Rangeland (RL 60). Because each parcel is below the minimum parcel size of 160 acres, they remain legal nonconforming. Therefore, this boundary line adjustment application is consistent with the Mendocino County Coastal Zoning Code

**2. Division of Land Regulations:** This project is scheduled to be reviewed by the County Subdivision Committee on **June 13, 2019** at which time the Subdivision Committee will make recommendations concerning approval to the Coastal Permit Administrator per the required findings in Section 17-17.5 of the Mendocino County Code. No conflicts with the County Division of Land Regulations were identified.

**3. Environmental Protection:** The project region is within the estimated habitat zone of the Point Arena Mountain Beaver and Perennial Goldfields also are possibly located in the project vicinity. Future development of a cellular antenna site will be subject to a Coastal Development Permit and all the associated review. No additional environmental concerns were identified and no environmental impacts are anticipated by this project.

**COASTAL POLICY CONSISTENCY REVIEW:** Staff reviewed the project relative to coastal issues and determined the following:

1. The boundary line adjustment will not result in a change in density. The proposed adjustment does not provide for future divisions beyond that which currently exist;
2. The boundary line adjustment will not create any new parcels;
3. No substandard lot will result from the adjustment. Both lots are currently substandard in size and are consistent with Section 20.484.010 of the Mendocino County Coastal Zoning Ordinance.
4. The properties subject to the adjustment are in an area designated CWR (Critical Water Resources) identified in the Mendocino County Groundwater Study, which states in part:

*"Areas designated CWR (Critical Water Resources) shall have a minimum lot size of 5 acres and demonstration of "proof of water". All lots less than 5 acre shall demonstrate "proof of water" and may require an environmental impact statement."*

5. The project is not located on property containing pygmy vegetation.
6. The project is not located within a designated "Highly Scenic" area.

7. The project is an appealable project, as it is a boundary line adjustment.

**ENVIRONMENTAL RECOMMENDATION:** The application is Categorically Exempt – Class 5a. Therefore, no further environmental review is required.

**COASTAL ELEMENT CONSISTENCY RECOMMENDATION:** The proposed project is consistent with applicable goals and policies of the General Plan and Coastal Element.

**RECOMMENDED MOTION:** The Coastal Permit Administrator approves Coastal Development Boundary Line Adjustment B\_2018-0068, subject to the following conditions of approval, finding that the application and supporting documents and exhibits contain sufficient information and conditions to establish, as required by the Coastal Zoning Code, that:

1. The proposed boundary line adjustment is in conformance with the Coastal Element; and,
2. The proposed development will be provided with adequate utilities, access roads, drainage, and other necessary facilities;
3. The proposed boundary line adjustment is 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 preserves the integrity of the zoning district; and
4. The proposed boundary line adjustment will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act (CEQA);
5. The proposed boundary line adjustment will not have any adverse impacts on any known archaeological or paleontological resource;
6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development;
7. The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and the Coastal Element of the General Plan.
8. The proposed use is compatible with the long term protection of resource lands.

**CONDITIONS OF APPROVAL:**

1. This action shall become final on the 11th 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. This application is valid for 24 months from the effective date. No extensions can be granted.
2. That for each proposed adjusted parcel provides one perimeter description of each parcel. The new deed description submitted shall be prepared by, and bear the seal of, a Licensed Land Surveyor.
3. That each transfer of real property be by means of a quit claim deed containing the following wording to be contained within the legal description:

*"Any and all lands and any and all interest thereto lying within the following described real property (perimeter description of the adjusted parcel(s))."*

And,

*"This deed is given pursuant to Mendocino County Coastal Development Boundary Line Adjustment B\_2018-0068 and is intended to create no new parcel."*



4. Per Mendocino County Code Section 17-17.5(I) (2):

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7. A note shall be placed on the deeds and/or legal descriptions stating that "*Future development may require additional studies and/or may be subject to restrictions*" and that "*Future development shall be in conformance with the criteria for development within the Environmentally Sensitive Habitat and Special Treatment Areas as set forth in the Coastal Plan and Coastal Zoning Code.*"
8. A note shall be placed on the deeds and/or legal descriptions stating, "*The Boundary Line Adjustment shall not relinquish, remise, release or terminate any prior right, interest in rights-of-way, easements, or other rights which may be appurtenant to and/or an encumbrance to the subject properties.*"
9. All structures within the RMR district must maintain fifty (50) foot setbacks from property lines as required by Mendocino County Code Section 20.356.030. The existing structure within the RL district must maintain a twenty (20) foot setback as specified in section 20.368.035.

Once the deed(s) and/or instrument(s) have been prepared, please send a copy to the Department of Planning and Building Services. After we have reviewed the documents and accepted them as correct and all conditions of approval have been met, we will notify you. **DO NOT RECORD ANY DOCUMENTS UNTIL YOU HAVE RECEIVED APPROVAL OF THE DEED(S).**

PLEASE NOTE: Title must be transferred identical to the title now being held (all owners with their exact names).

NOTE: APPLICANTS OR OTHER PERSONS WHO ARE DISSATISFIED WITH A DECISION OF THE COASTAL PERMIT ADMINISTRATOR FOR A COASTAL DEVELOPMENT PERMIT FOR A BOUNDARY LINE ADJUSTMENT MAY APPEAL THE ACTION TO THE BOARD OF SUPERVISORS. AN APPEAL MUST BE MADE IN WRITING ALONG WITH THE APPLICABLE FEE TO THE CLERK OF THE BOARD OF SUPERVISORS WITHIN TEN (10) DAYS OF THE COASTAL PERMIT ADMINISTRATOR'S DECISION. THE APPEAL ISSUE WILL BE PLACED ON THE NEXT AVAILABLE BOARD OF SUPERVISOR'S AGENDA FOR CONSIDERATION, AND THE APPELLANT WILL BE NOTIFIED OF THE TIME AND DATE. APPEALS TO THE BOARD OF SUPERVISORS DO NOT NECESSARILY GUARANTEE THAT THE COASTAL PERMIT ADMINISTRATOR'S DECISION WILL BE OVERTURNED. IN SOME CASES, THE BOARD OF SUPERVISORS MAY NOT HAVE THE LEGAL AUTHORITY TO OVERTURN THE DECISION OF THE ADMINISTRATOR.

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DATE

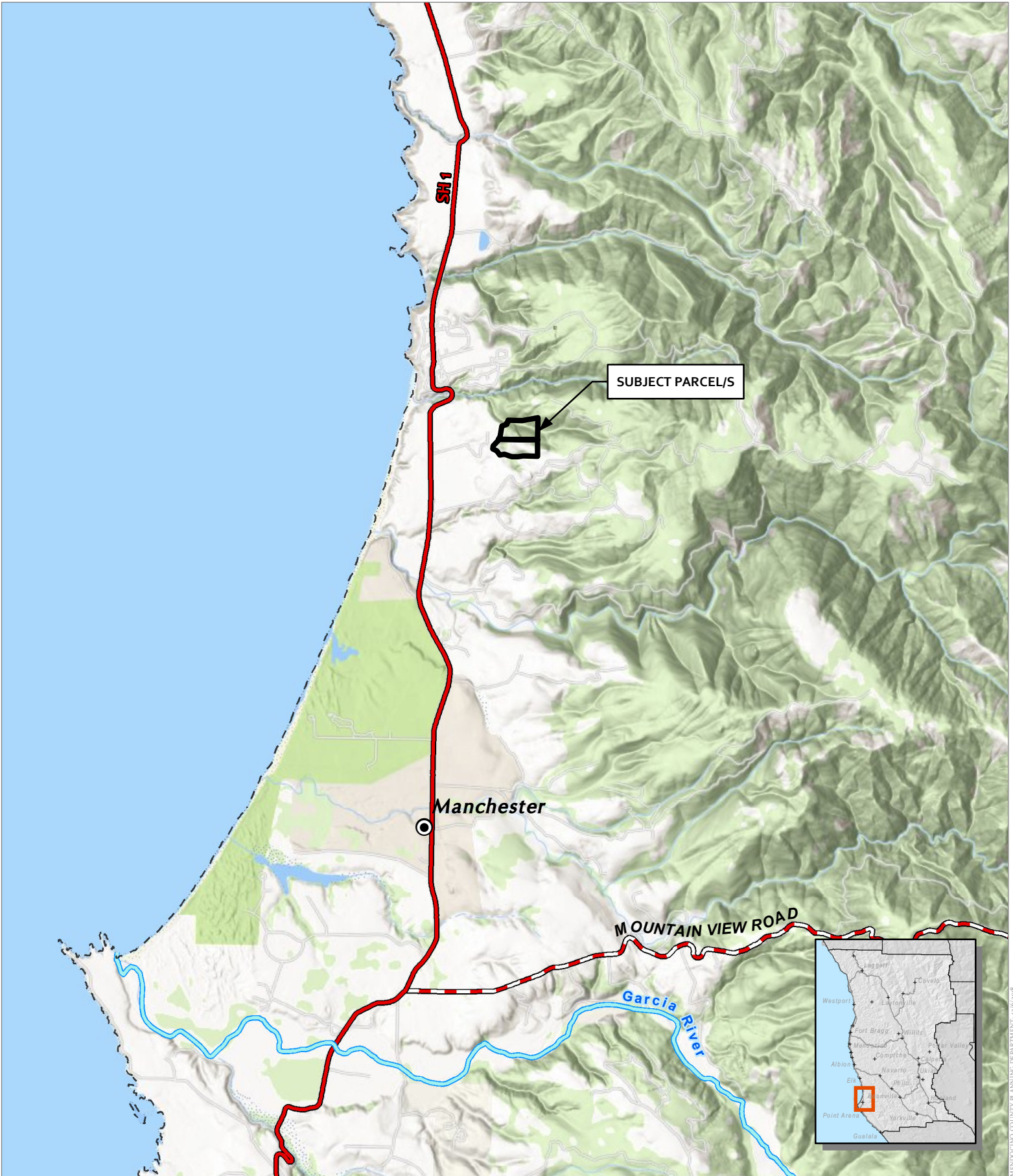
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KEITH GRONENDYKE  
PLANNER III

Appeal Fee: \$1,616.00

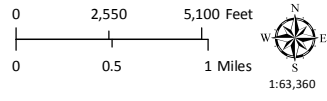
**ATTACHMENTS:**

- A. Location Map
- B. Topographical Map
- C. Vicinity Aerial Map
- D. Aerial Map
- E. Existing Lots
- F. Proposed Lots
- G. Zoning Map
- H. General Plan
- I. LCP Land use Map
- J. LCP Land Capabilities and Natural Hazards Map
- K. LCP Habitats and Resources Map
- L. Adjacent
- M. Fire Hazards Map
- N. Soils Map
- O. Appeals Map



CASE: B 2018-0068  
 OWNER: MOORES, William & Tona  
 APN: 132-210-40, 41  
 APLCT: AT&T Mobility  
 AGENT: Jared Kearsley  
 ADDRESS: None Assigned, Manchester

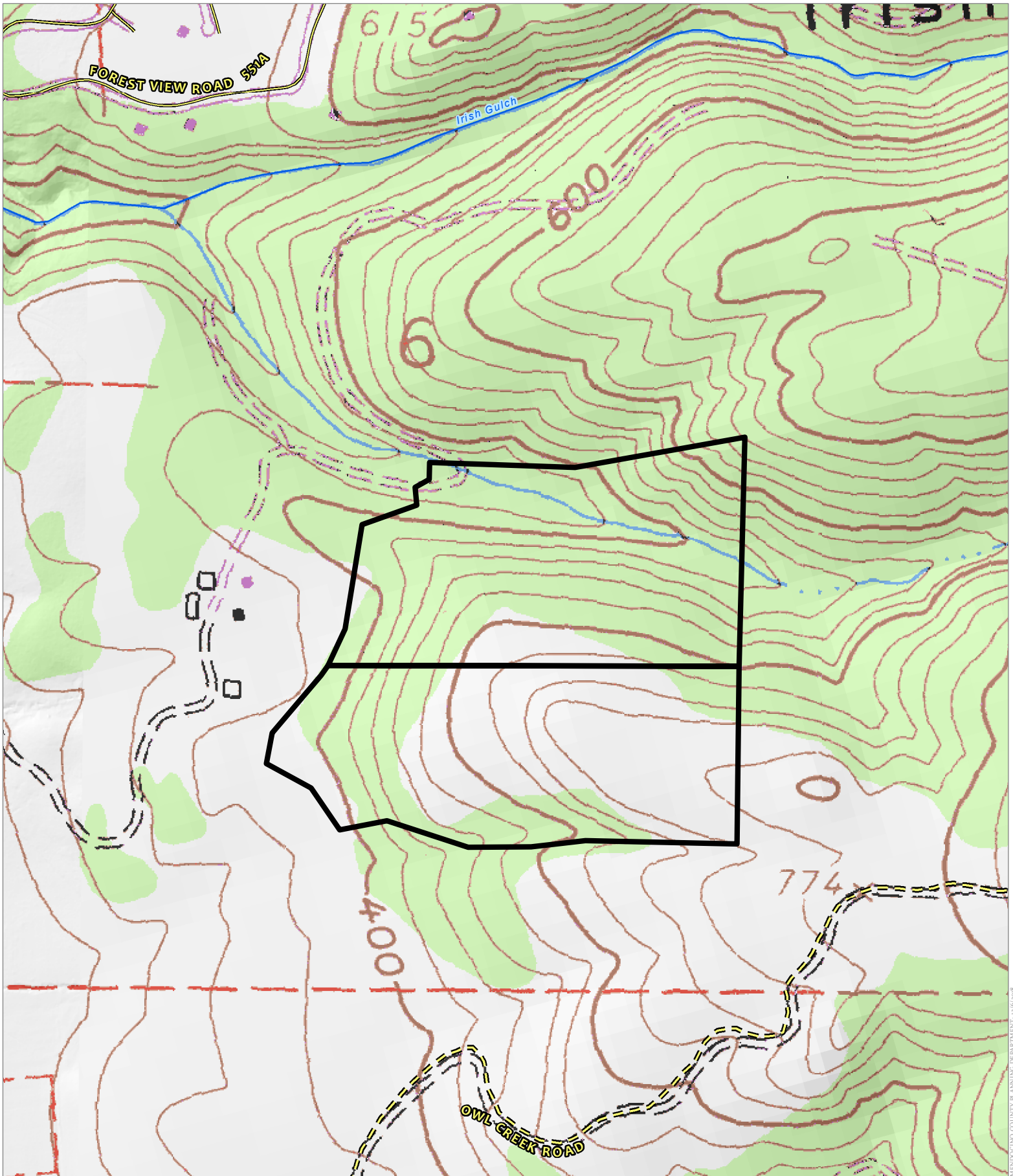
- Major Towns & Places
- Highways
- City Limits
- Major Roads
- Major Rivers






**LOCATION MAP**  
**ATTACHMENT A**

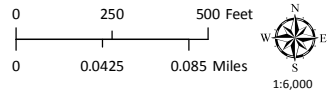
**THIS MAP AND DATA ARE PROVIDED WITHOUT WARRANTY OF ANY KIND.**  
 DO NOT USE THIS MAP TO DETERMINE LEGAL PROPERTY BOUNDARIES

MENDOCINO COUNTY PLANNING DEPARTMENT - 12/06/2018



CASE: B 2018-0068  
 OWNER: MOORES, William & Tona  
 APN: 132-210-40, 41  
 APLCT: AT&T Mobility  
 AGENT: Jared Kearsley  
 ADDRESS: None Assigned, Manchester

-  Named Rivers
-  Public Roads
-  Private Roads

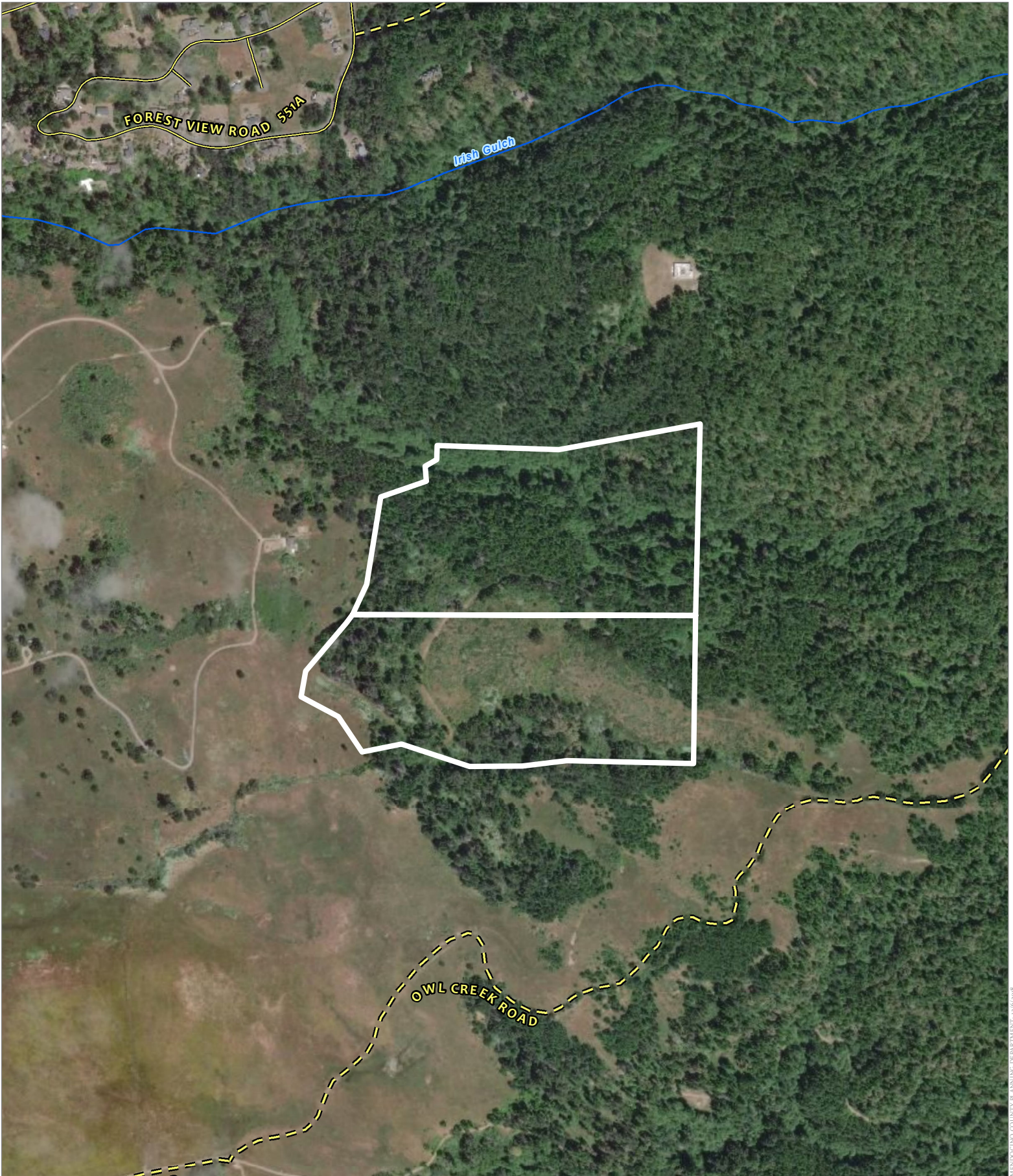


TOPOGRAPHIC MAP  
 CONTOUR INTERVAL IS 40 FEET




ATTACHMENT B

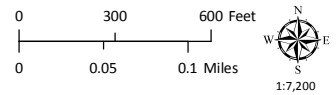
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 DO NOT USE THIS MAP TO DETERMINE LEGAL PROPERTY BOUNDARIES

MENDOCINO COUNTY PLANNING DEPARTMENT 12/19/2018



CASE: B 2018-0068  
 OWNER: MOORES, William & Tona  
 APN: 132-210-40, 41  
 APLCT: AT&T Mobility  
 AGENT: Jared Kearsley  
 ADDRESS: None Assigned, Manchester

-  Named Rivers
-  Public Roads
-  Private Roads



VICINITY AERIAL IMAGERY  
 ATTACHMENT C

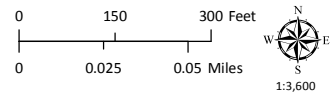
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 DO NOT USE THIS MAP TO DETERMINE LEGAL PROPERTY BOUNDARIES



MENDOCINO COUNTY PLANNING DEPARTMENT - 12/16/2018

CASE: B 2018-0068  
OWNER: MOORES, William & Tona  
APN: 132-210-40, 41  
APLCT: AT&T Mobility  
AGENT: Jared Kearsley  
ADDRESS: None Assigned, Manchester

== Private Roads



AERIAL IMAGERY  
ATTACHMENT D

**THIS MAP AND DATA ARE PROVIDED WITHOUT WARRANTY OF ANY KIND.**  
DO NOT USE THIS MAP TO DETERMINE LEGAL PROPERTY BOUNDARIES

A.P.N.  
132-210-45

A.P.N.  
132-210-33

A.P.N.  
132-210-41  
27.15 Acres

A.P.N.  
132-210

A.P.N.  
132-210-40  
29.59 Acres

A.P.N.  
132-210-49

A.P.N.  
132-2



40' WIDE ROAD & PUE  
PER ROS MAP C2, D42, P67

60' ROAD AND PUBLIC UTILITY  
EASEMENT PER ROS MAP  
CASE 2, DRAWER 54, PAGE 23

60' WIDE EASEMENT FOR  
PHONE LINE, ELECTRICAL AND  
WATER

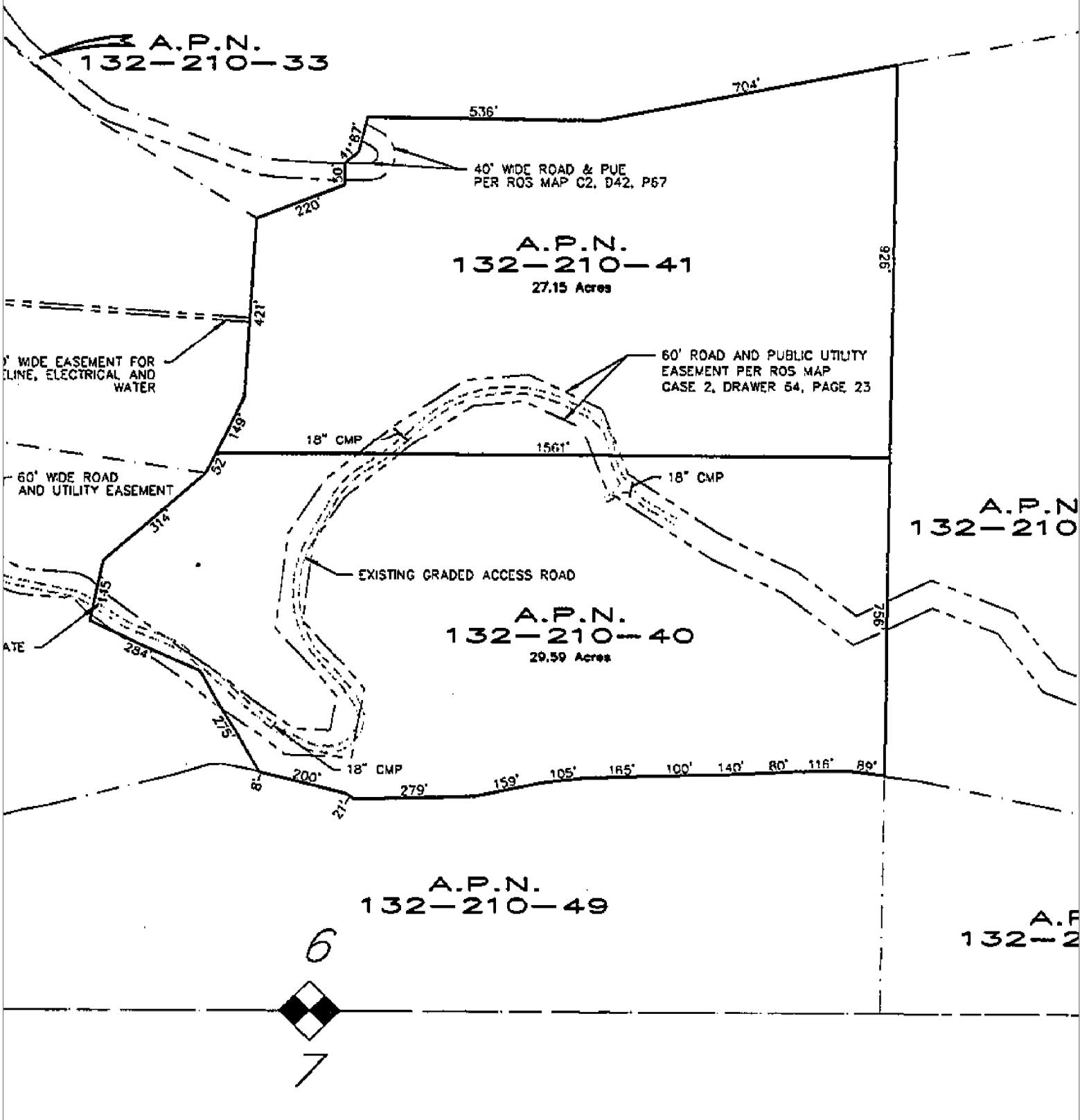
60' WIDE ROAD  
AND UTILITY EASEMENT

EXISTING GRADED ACCESS ROAD

18" CMP

18" CMP

18" CMP



CASE: B 2018-0068  
OWNER: MOORES, William & Tona  
APN: 132-210-40, 41  
APLCT: AT&T Mobility  
AGENT: Jared Kearsley  
ADDRESS: None Assigned, Manchester

NO SCALE

EXISTING LOTS  
ATTACHMENT E

THIS MAP AND DATA ARE PROVIDED WITHOUT WARRANTY OF ANY KIND.  
DO NOT USE THIS MAP TO DETERMINE LEGAL PROPERTY BOUNDARIES

MENDOCINO COUNTY PLANNING DEPARTMENT 11/2018

A.P.N.  
132-210-45

A.P.N.  
132-210-33

40' WIDE ROAD & PUE  
PER ROS MAP C2, D42, P67

31.16 Acres

60' WIDE EASEMENT FOR  
LINE, ELECTRICAL AND  
WATER

60' ROAD AND PUBLIC UTILITY  
EASEMENT PER ROS MAP  
CASE 2, DRAWER 64, PAGE 23

60' WIDE ROAD  
AND UTILITY EASEMENT

AREA TO BE EXCHANGED  
4.01 Acres

A.P.N.  
132-210

EXISTING GRADED ACCESS ROAD

25.58 Acres

A.P.N.  
132-210-49

A.P.N.  
132-2



CASE: B 2018-0068  
OWNER: MOORES, William & Tona  
APN: 132-210-40, 41  
APLCT: AT&T Mobility  
AGENT: Jared Kearsley  
ADDRESS: None Assigned, Manchester

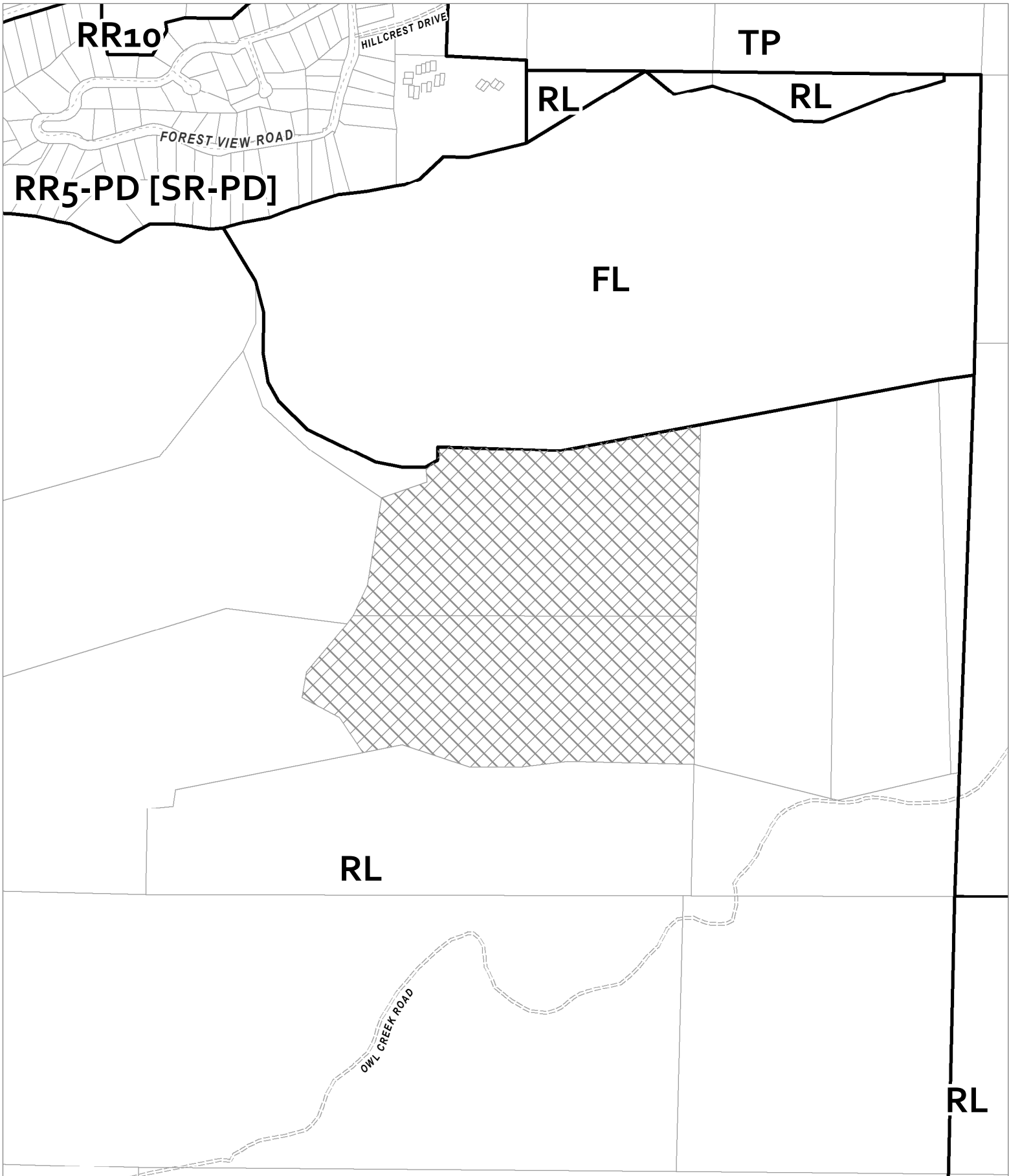
NO SCALE

PROPOSED LOTS  
ATTACHMENT F



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DO NOT USE THIS MAP TO DETERMINE LEGAL PROPERTY BOUNDARIES

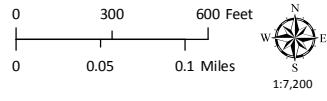
MENDOCINO COUNTY PLANNING DEPARTMENT





CASE: B 2018-0068  
 OWNER: MOORES, William & Tona  
 APN: 132-210-40, 41  
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 ADDRESS: None Assigned, Manchester

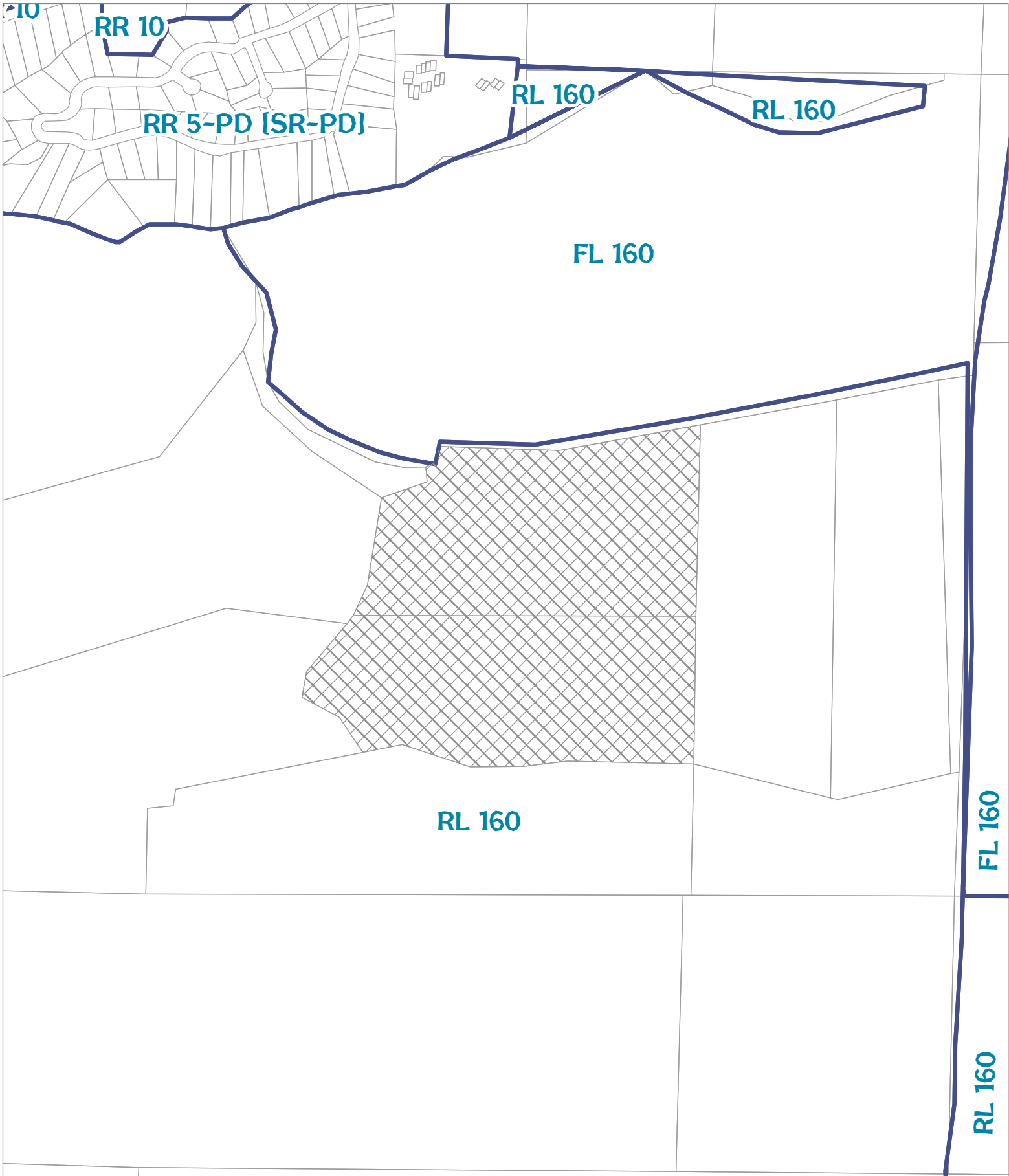
 Zoning Districts  
 Public Roads




ZONING DISPLAY MAP  
 ATTACHMENT G

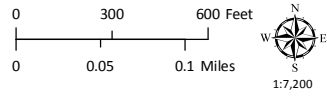
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MENDOCINO COUNTY PLANNING DEPARTMENT 12/16/2018



CASE: B 2018-0068  
 OWNER: MOORES, William & Tona  
 APN: 132-210-40, 41  
 APLCT: AT&T Mobility  
 AGENT: Jared Kearsley  
 ADDRESS: None Assigned, Manchester

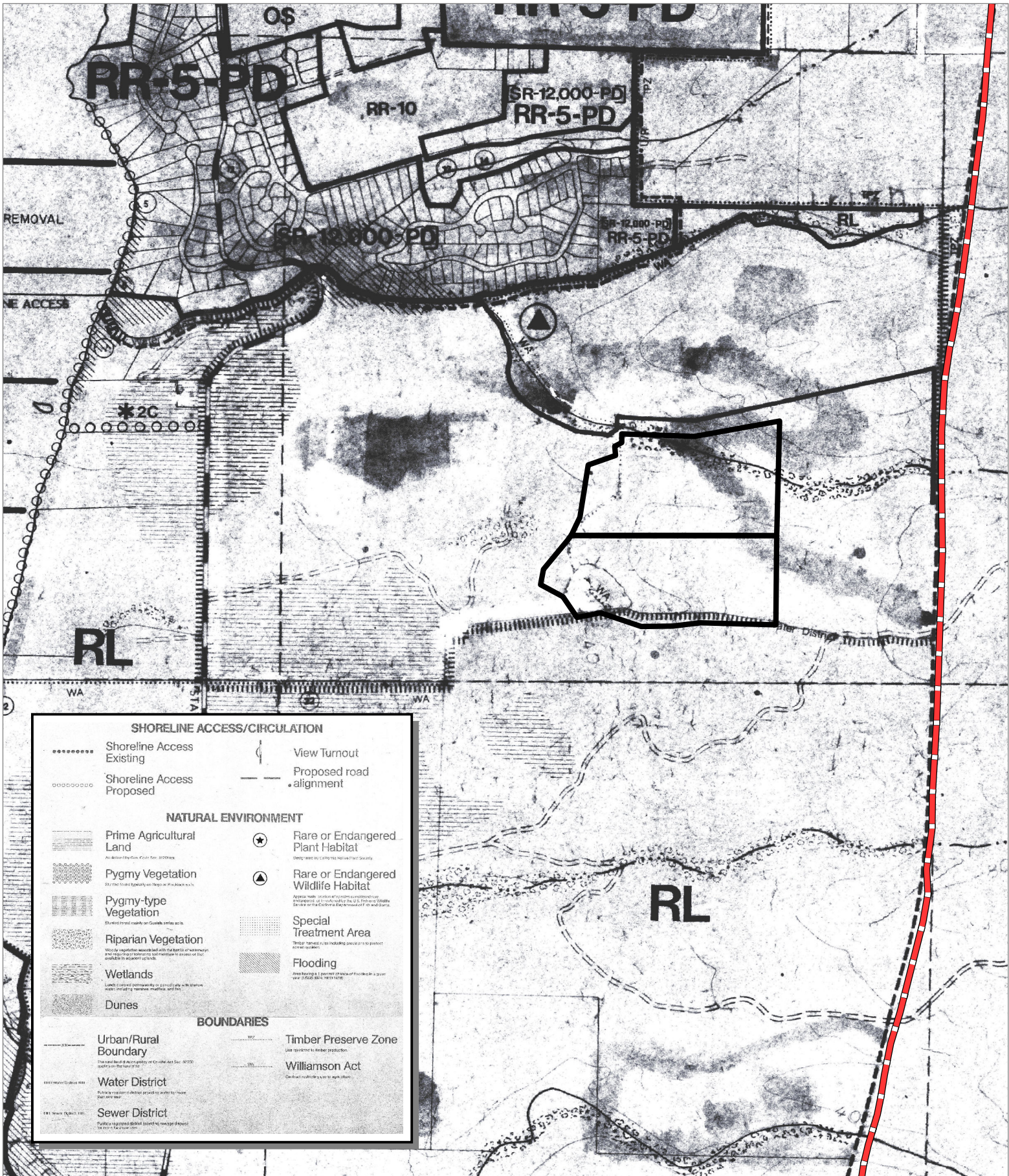
 General Plan Classes



GENERAL PLAN CLASSIFICATIONS  
 ATTACHMENT H

**THIS MAP AND DATA ARE PROVIDED WITHOUT WARRANTY OF ANY KIND.**  
 DO NOT USE THIS MAP TO DETERMINE LEGAL PROPERTY BOUNDARIES

MENDOCINO COUNTY PLANNING DEPARTMENT - 12/16/2018



**SHORELINE ACCESS/CIRCULATION**

- Shoreline Access Existing
- Shoreline Access Proposed
- View Turnout
- Proposed road alignment

**NATURAL ENVIRONMENT**

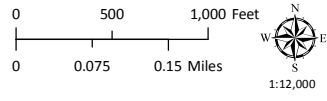
- Prime Agricultural Land
- Pygmy Vegetation
- Pygmy-type Vegetation
- Riparian Vegetation
- Wetlands
- Dunes
- Rare or Endangered Plant Habitat
- Rare or Endangered Wildlife Habitat
- Special Treatment Area
- Flooding

**BOUNDARIES**

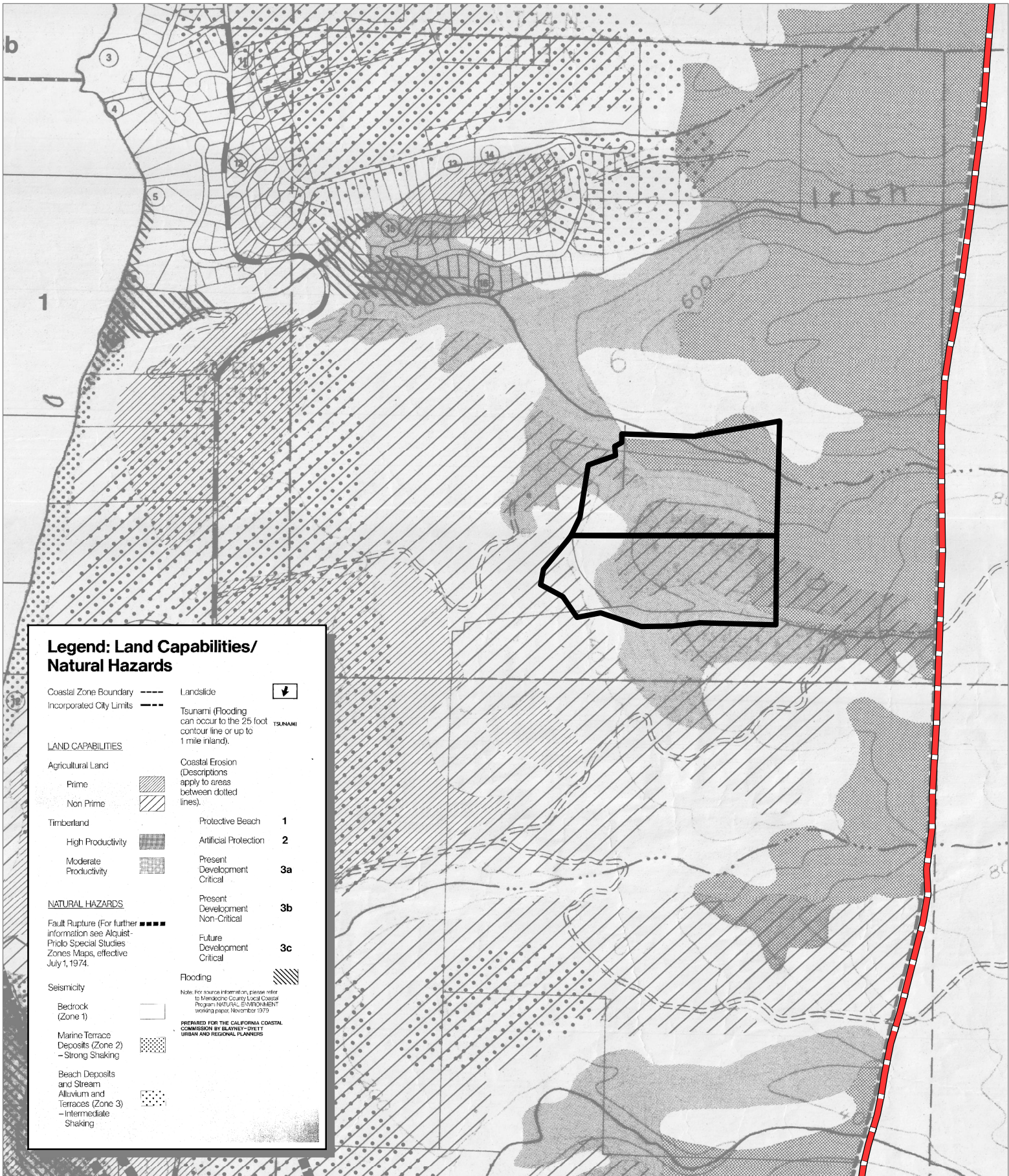
- Urban/Rural Boundary
- Water District
- Sewer District
- Timber Preserve Zone
- Williamson Act

CASE: B 2018-0068  
 OWNER: MOORES, William & Tona  
 APN: 132-210-40, 41  
 APLCT: AT&T Mobility  
 AGENT: Jared Kearsley  
 ADDRESS: None Assigned, Manchester

Coastal Zone Boundary



VENTNOCING COUNTY PLANNING DEPARTMENT 12/16/2018



**Legend: Land Capabilities/  
Natural Hazards**

Coastal Zone Boundary ---  
 Incorporated City Limits ---

**LAND CAPABILITIES**

Agricultural Land  
 Prime [diagonal lines] Coastal Erosion (Descriptions apply to areas between dotted lines).  
 Non Prime [cross-hatch]

Timberland  
 High Productivity [grid] Protective Beach 1  
 Moderate Productivity [diagonal lines] Artificial Protection 2

**NATURAL HAZARDS**

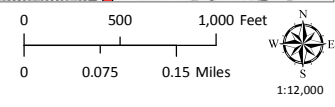
Fault Rupture (For further information see Alquist-Philo Special Studies Zones Maps, effective July 1, 1974.) [thick dashed line] Present Development Critical 3a  
 Seismicity [dotted line] Present Development Non-Critical 3b  
 Bedrock (Zone 1) [white] Future Development Critical 3c  
 Marine Terrace Deposits (Zone 2) - Strong Shaking [cross-hatch] Flooding [diagonal lines]

Beach Deposits and Stream Alluvium and Terraces (Zone 3) - Intermediate Shaking [dotted]

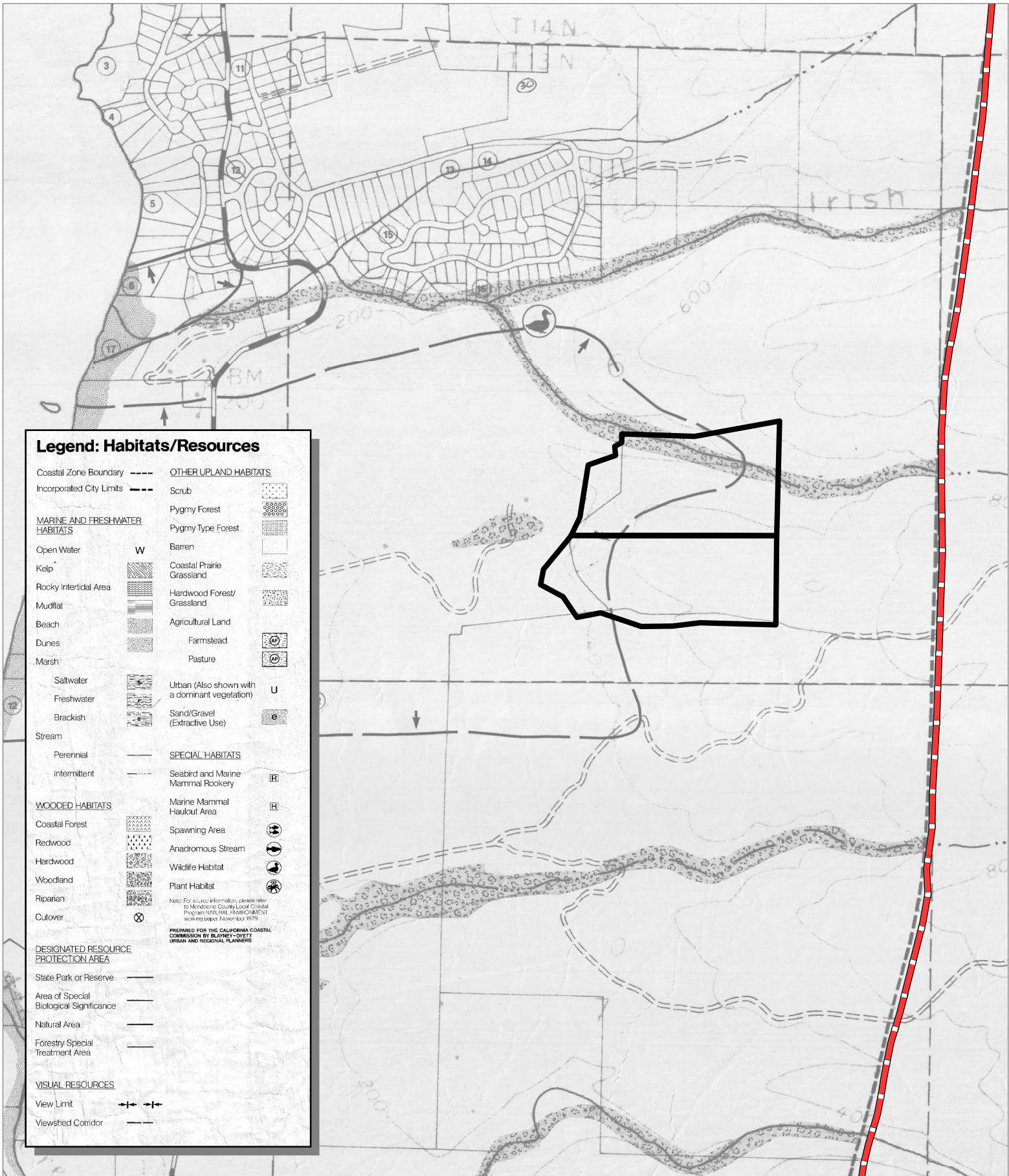
Note: For source information, please refer to Mendocino County Local Coastal Program (MCP) Update, ENVIRONMENTAL WORKING PAPER, November 1979.  
 PREPARED FOR THE CALIFORNIA COASTAL COMMISSION BY BLANEY-OVETT URBAN AND REGIONAL PLANNERS

CASE: B 2018-0068  
 OWNER: MOORES, William & Tona  
 APN: 132-210-40, 41  
 APLCT: AT&T Mobility  
 AGENT: Jared Kearsley  
 ADDRESS: None Assigned, Manchester

Coastal Zone Boundary



MENDOCINO COUNTY PLANNING DEPARTMENT 12/16/2018

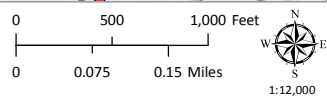


**Legend: Habitats/Resources**

Coastal Zone Boundary	---	OTHER UPLAND HABITATS	
Incorporated City Limits	---	Scrub	[Pattern]
<b>MARINE AND FRESHWATER HABITATS</b>		Pygmy Forest	[Pattern]
Open Water	W	Pygmy Type Forest	[Pattern]
Kelp	[Pattern]	Barren	[Pattern]
Rocky Intertidal Area	[Pattern]	Coastal Prairie Grassland	[Pattern]
Mudflat	[Pattern]	Hardwood Forest/Grassland	[Pattern]
Beach	[Pattern]	Agricultural Land	[Pattern]
Dunes	[Pattern]	Farmstead	[Pattern]
Marsh	[Pattern]	Pasture	[Pattern]
Saltwater	[Pattern]	Urban (Also shown with a dominant vegetation)	U
Freshwater	[Pattern]	Sand/Gravel (Extractive Use)	e
Brackish	[Pattern]		
Stream		<b>SPECIAL HABITATS</b>	
Perennial	—	Seabird and Marine Mammal Rookery	[Symbol]
Intermittent	---	Marine Mammal Haulout Area	[Symbol]
<b>WOODED HABITATS</b>		Spawning Area	[Symbol]
Coastal Forest	[Pattern]	Anadromous Stream	[Symbol]
Redwood	[Pattern]	Wildlife Habitat	[Symbol]
Hardwood	[Pattern]	Plant Habitat	[Symbol]
Woodland	[Pattern]		
Riparian	[Pattern]		
Cutover	[Symbol]		
<b>DESIGNATED RESOURCE PROTECTION AREA</b>			
State Park or Reserve	—		
Area of Special Biological Significance	—		
Natural Area	—		
Forestry Special Treatment Area	—		
<b>VISUAL RESOURCES</b>			
View Limit	--- --- ---		
Viewshed Corridor	---		

Note: For source information, please refer to Mendocino County Local Coastal Program NATURAL ENVIRONMENT working paper November 1979.

PREPARED FOR THE CALIFORNIA COASTAL COMMISSION BY BLAYNEY-OVETT URBAN AND REGIONAL PLANNERS



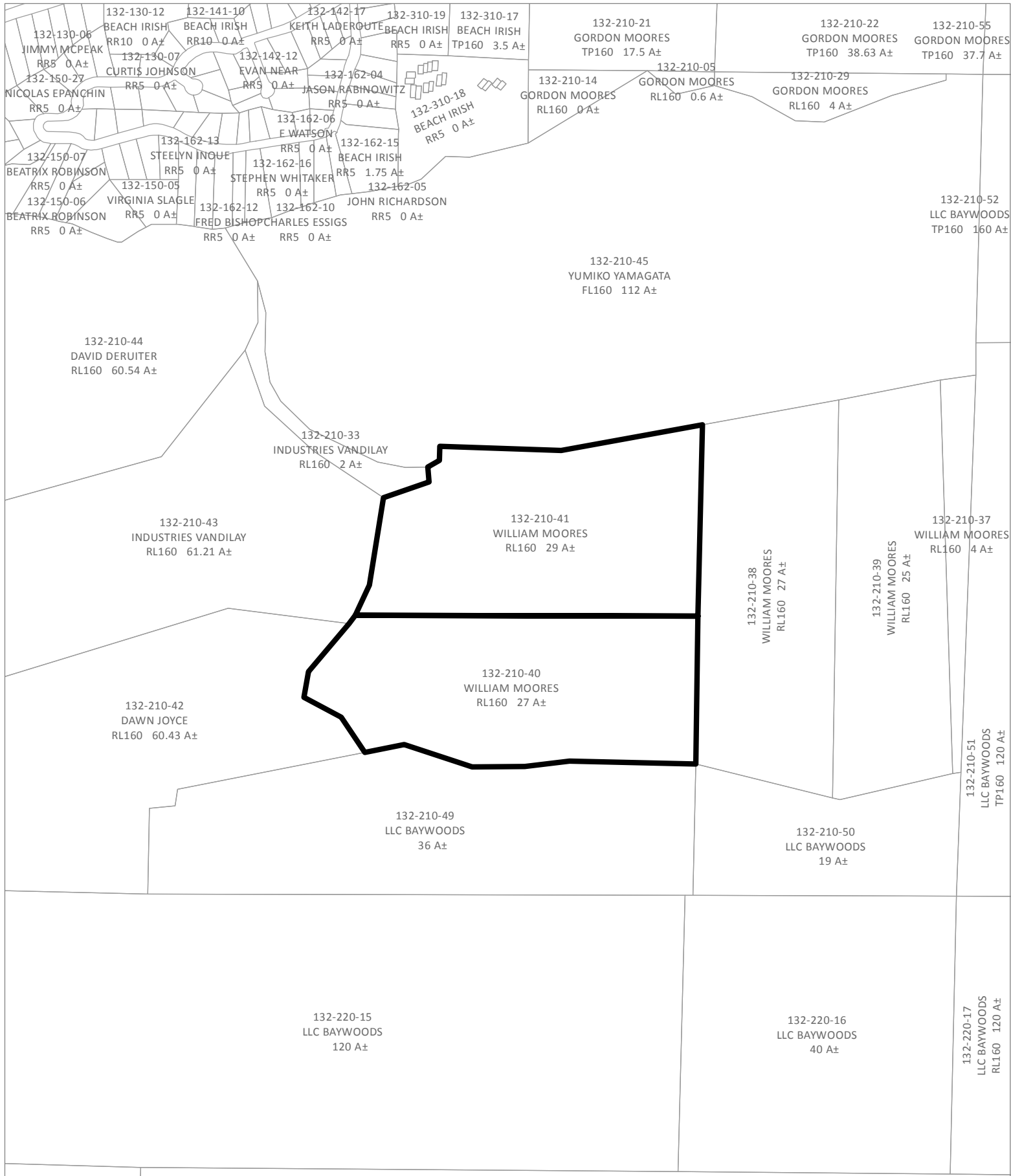
CASE: B 2018-0068  
 OWNER: MOORES, William & Tona  
 APN: 132-210-40, 41  
 APLCT: AT&T Mobility  
 AGENT: Jared Kearsley  
 ADDRESS: None Assigned, Manchester

Coastal Zone Boundary

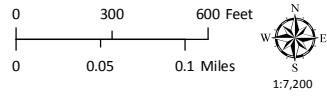
LCP HABITATS & RESOURCES  
 ATTACHMENT K

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MENDOCINO COUNTY PLANNING DEPARTMENT - 12/16/2018



CASE: B 2018-0068  
 OWNER: MOORES, William & Tona  
 APN: 132-210-40, 41  
 APLCT: AT&T Mobility  
 AGENT: Jared Kearsley  
 ADDRESS: None Assigned, Manchester



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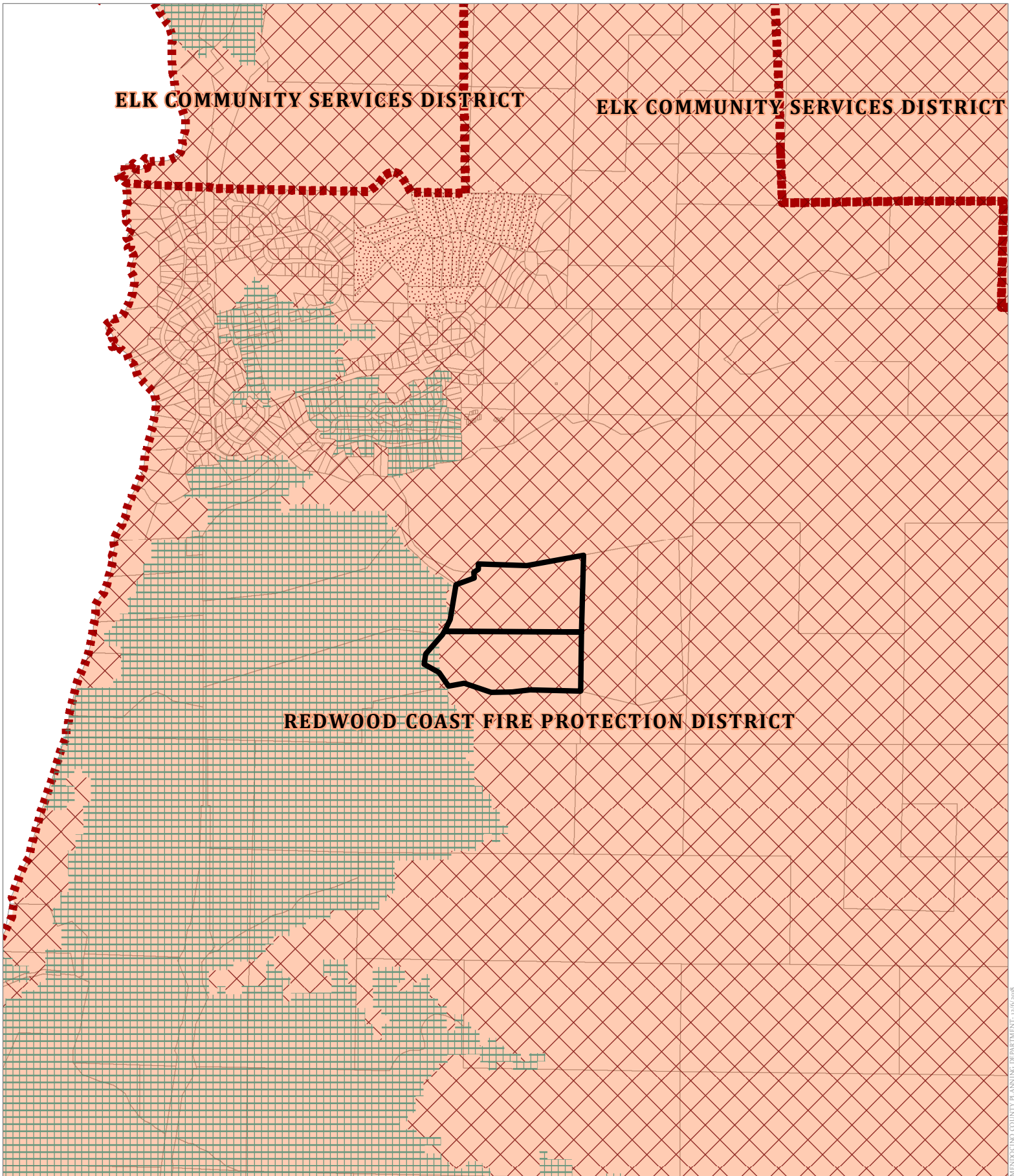
ADJACENT PARCELS  
 ATTACHMENT L

MENDOCINO COUNTY PLANNING DEPARTMENT - 12/16/2018





**ELK COMMUNITY SERVICES DISTRICT**

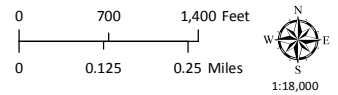
**ELK COMMUNITY SERVICES DISTRICT**

**REDWOOD COAST FIRE PROTECTION DISTRICT**



CASE: B 2018-0068  
 OWNER: MOORES, William & Tona  
 APN: 132-210-40, 41  
 APLCT: AT&T Mobility  
 AGENT: Jared Kearsley  
 ADDRESS: None Assigned, Manchester

-  Very High Fire Hazard
-  High Fire Hazard
-  Moderate Fire Hazard
-  County Fire Districts

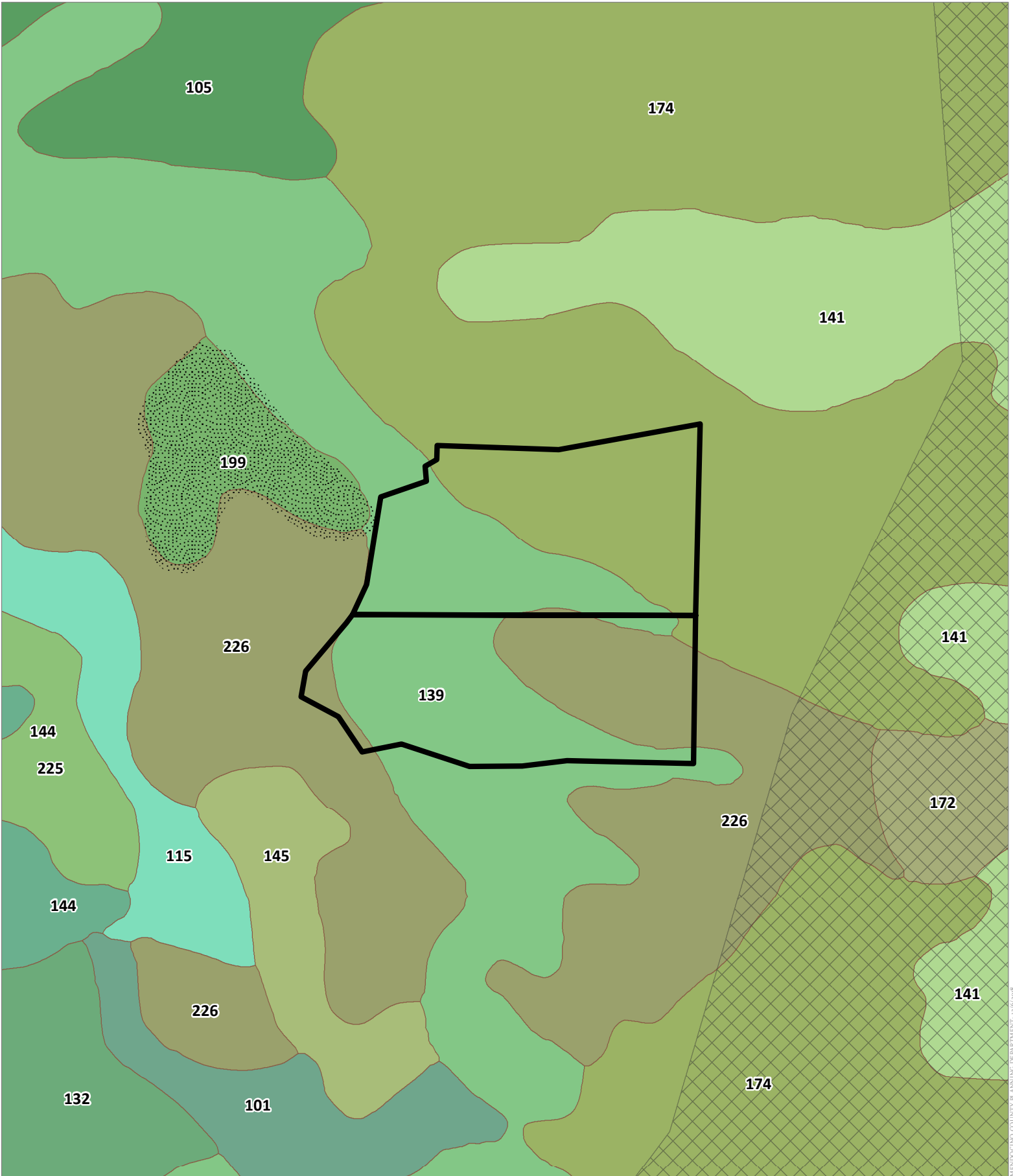


**FIRE HAZARD ZONES & RESPONSIBILITY AREAS**  
 STATE RESPONSIBILITY AREA




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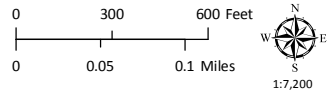
**ATTACHMENT M**

MERCED COUNTY PLANNING DEPARTMENT 12/26/2018



CASE: B 2018-0068  
 OWNER: MOORES, William & Tona  
 APN: 132-210-40, 41  
 APLCT: AT&T Mobility  
 AGENT: Jared Kearsley  
 ADDRESS: None Assigned, Manchester

-  Shinglemill-Gibney Complex
-  Bishop Pine
-  Western Study Soil Types



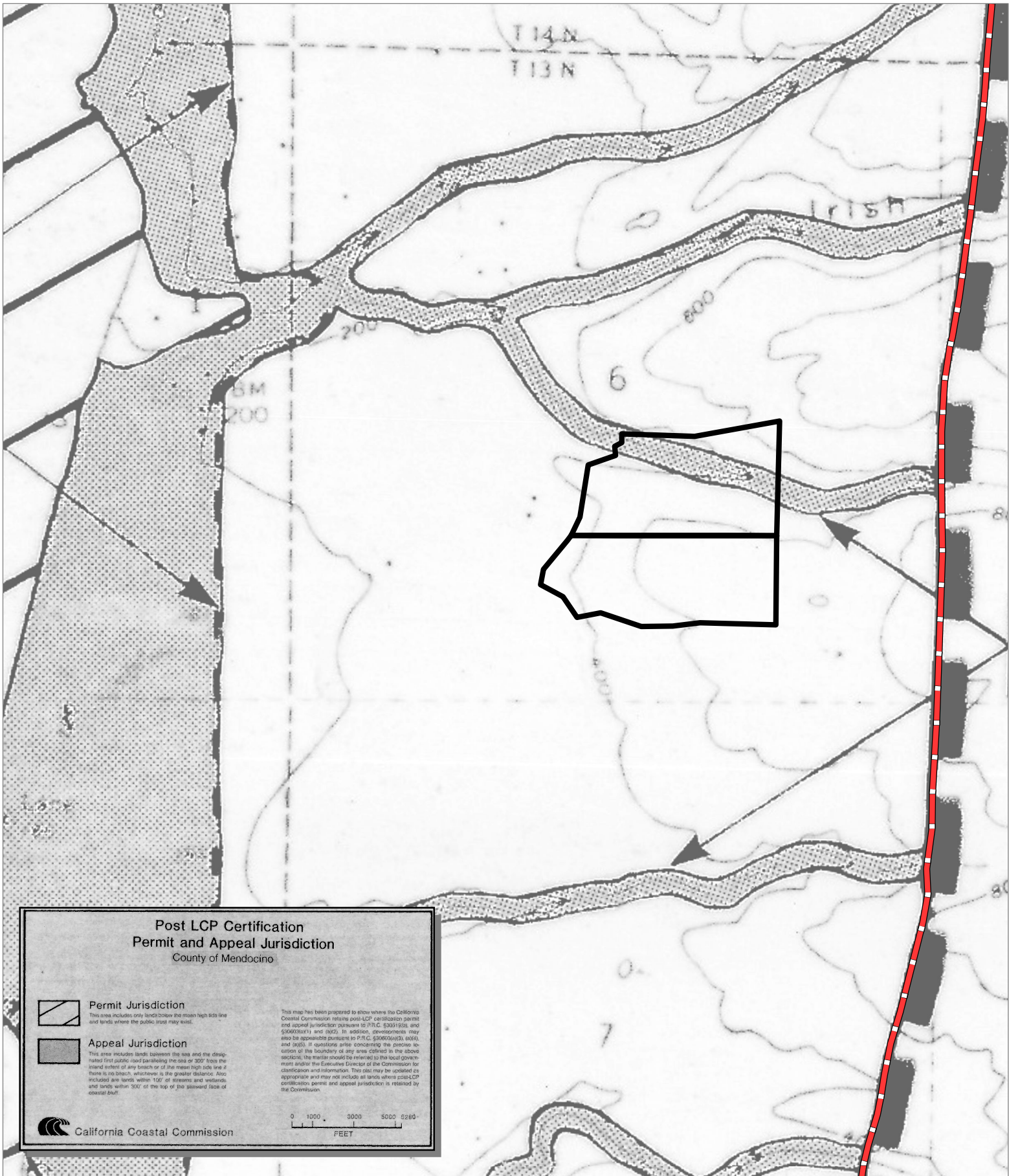
LOCAL SOILS

ATTACHMENT N

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MENDOCINO COUNTY PLANNING DEPARTMENT 12/16/2018





**Post LCP Certification  
Permit and Appeal Jurisdiction**  
County of Mendocino

**Permit Jurisdiction**  
This area includes only lands above the mean high tide line and lands where the public trust may exist.

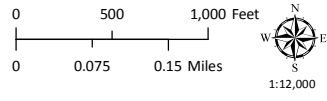
**Appeal Jurisdiction**  
This area includes lands between the sea and the designated first public road paralleling the sea or 300' from the inland extent of any reach or of the mean high tide line if there is no reach, whichever is the greater distance. Also included are lands within 100' of streams and wetlands and lands within 300' of the top of the seaward face of coastal bluff.

This map has been prepared to show where the California Coastal Commission retains post-LCP certification permit and appeal jurisdiction pursuant to P.C. (300193), and (50603a)(1) and (a)(2). In addition, developments may also be appealable pursuant to P.C. (30603)(a)(3), (a)(4), and (a)(5). If questions arise concerning the precise location of the boundary of any area defined in the above sections, the matter should be referred to the local government and/or the Executive Director of the Commission for clarification and information. This plan may be updated as appropriate and may not include all lands where post-LCP certification permit and appeal jurisdiction is retained by the Commission.

FEET

CASE: B 2018-0068  
 OWNER: MOORES, William & Tona  
 APN: 132-210-40, 41  
 APLCT: AT&T Mobility  
 AGENT: Jared Kearsley  
 ADDRESS: None Assigned, Manchester

Coastal Zone Boundary



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**APPEALABLE AREAS  
 ATTACHMENT O**

MENDOCINO COUNTY PLANNING DEPARTMENT 12/16/2018



**COUNTY OF MENDOCINO**  
**DEPARTMENT OF PLANNING AND BUILDING SERVICES**

860 NORTH BUSH STREET • UKIAH • CALIFORNIA • 95482  
120 WEST FIR STREET • FORT BRAGG • CALIFORNIA • 95437

BRENT SCHULTZ, DIRECTOR  
PHONE: 707-234-6650  
FAX: 707-463-5709  
FB PHONE: 707-964-5379  
FB FAX: 707-961-2427  
pbs@mendocinocounty.org  
www.mendocinocounty.org/pbs

June 23, 2020

**NOTICE OF FINAL ACTION**

Action has been completed by the County of Mendocino on the below described project located within the Coastal Zone.

**CASE#:** B\_2019-0054

**DATE FILED:** 11/21/2019

**OWNER/APPLICANT:** WILLIAM & TONA MOORES

**REQUEST:** Boundary Line Adjustment to reconfigure the boundaries between three (3) existing parcels and merge a fourth (4th) parcel. Parcel 1 (APN: 132-210-37) will merge with Parcel 3 (APN: 132-210-39) and increase to 35± acres, Parcel 2 (APN: 132-210-38) will increase to 29± acres, and Parcel 4 (APN: 132-210-61) will decrease to 16± acres.

**ENVIRONMENTAL DETERMINATION:** Categorically Exempt

**LOCATION:** In the Coastal Zone, 3.2± miles north of Manchester town center, located 0.8± miles east of State Route 1 (SR 1) on an unnamed access easement. Addresses not yet assigned. (APN's: 132-210-37, 38, 39, 61).

**SUPERVISORIAL DISTRICT:** 5

**STAFF PLANNER:** DIRK LARSON

**ACTION TAKEN:** APPROVED WITH CONDITIONS.

The Coastal Permit Administrator on June 11, 2020, approved the above described project. See attached documents for the findings and conditions in support of this decision.

The above project was not appealed at the local level.

This project is appealable to the Coastal Commission pursuant to Public Resources Code, Section 30603. An aggrieved person may appeal this decision to the Coastal Commission within 10 working days following Coastal Commission receipt of this notice. Appeals must be in writing to the appropriate Coastal Commission district office.

Attachments

cc: Coastal Commission  
Assessor



**COUNTY OF MENDOCINO**  
**DEPARTMENT OF PLANNING AND BUILDING SERVICES**

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**FINAL FINDINGS AND CONDITIONS OF APPROVAL**  
**CASE# B\_2019-0054 - WILLIAM & TONA MOORES**

**JUNE 11, 2020**

**COASTAL POLICY CONSISTENCY REVIEW:**

1. The Boundary Line Adjustment will not result in a change in density. The proposed adjustment does not provide for future divisions beyond that which currently exists.
2. The Boundary Line Adjustment will not create any new parcels.
3. No substandard lot will result from the adjustment. All parcels are currently substandard in size and are consistent with Section 20.484.010 of the Mendocino County Coastal Zoning Ordinance.
4. The properties subject to the adjustment are in an area designated Critical Water Resources as identified in the Mendocino County Groundwater Study.
5. The project is not located on property containing Pygmy vegetation.
6. The project is not located within a designated "Highly Scenic Area".
7. An identified riparian area is located within the project boundary. No impacts to any riparian area are anticipated as a result of the Boundary Line Adjustment.
8. The project is an appealable project, as it is a boundary line adjustment.

**COASTAL ZONE FINDINGS:**

1. The Boundary Line Adjustment will not result in a change in density. The proposed adjustment does not provide for future divisions beyond that which currently exists.
2. The Boundary Line Adjustment will not create any new parcels.
3. No substandard lot will result from the adjustment. All parcels are currently substandard in size and are consistent with Section 20.484.010 of the Mendocino County Coastal Zoning Ordinance.
4. The properties subject to the adjustment are in an area designated Critical Water Resources as identified in the Mendocino County Groundwater Study.
5. The project is not located on property containing Pygmy vegetation.
6. The project is not located within a designated "Highly Scenic Area".

**CONDITIONS OF APPROVAL:**

1. This action shall become final on the 11th 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. This application is valid for 24 months from the effective date. No extensions can be granted.

2. That for each proposed adjusted parcel provides one perimeter description of each parcel. The new deed description submitted shall be prepared by, and bear the seal of, a Licensed Land Surveyor.
3. That each transfer of real property be by means of a quit claim deed containing the following wording to be contained within the legal description:

*“Any and all lands and any and all interest thereto lying within the following described real property perimeter description of the adjusted parcel(s).”*

And,

*“This deed is given pursuant to Mendocino County Coastal Development Boundary Line Adjustment B\_2019-0054 and is intended to create no new parcel.”*

4. Per Mendocino County Code Section 17-17.5(l)(2):

*“That the Treasurer-Tax Collector certifies that all taxes and assessments due on each parcel affected by the adjustment have been paid or cleared, and that a deposit to secure payment of the taxes and assessments which are due but not yet payable have been made.”*

The enclosed **Certificate of the Official Redeeming Officer Form** must be certified by the Treasurer-Tax Collector and a copy returned to the Department of Planning and Building Services.

5. After you have been given clearance to record the new documents, you must send a copy of the recorded deed(s) to the Department of Planning and Building Services. Upon review and approval of this information, you will receive a Completion Certificate.
6. In the event that archaeological resources are encountered during development of the property, work in the immediate vicinity of the find shall be halted until all requirements of Chapter 22.12 of the Mendocino County Code relating to archaeological discoveries has been satisfied.
7. A note shall be placed on the deeds and/or legal descriptions stating that *“The Boundary Line Adjustment shall not relinquish, remise, release or terminate any prior right, interest in rights-of-way, easements, or other rights which may be appurtenant to and/or an encumbrance to the subject properties.”*
8. A note shall be placed on the deeds and/or legal descriptions stating that, *“Future development may require additional studies and/or may be subject to restrictions” and that “Future development shall be in conformance with the criteria for development within the Environmentally Sensitive Habitat and Special Treatment Areas as set forth in the Coastal Plan and Coastal Zoning Code.”*
9. All structures within the Rangleland zoning district must maintain fifty (50) foot setback from property lines, per Mendocino County Code Section 20.368.030.

Once the deed(s) and/or instrument(s) have been prepared, please send a copy to the Department of Planning and Building Services. After we have reviewed the documents and accepted them as corrected all conditions of approval have been met, we will notify you. **DO NOT RECORD ANY DOCUMENTS UNTIL YOU HAVE RECEIVED APPROVAL OF THE DEED(S).**

PLEASE NOTE: Title must be transferred identical to the title now being held (all owners with their exact names).

NOTE: APPLICANTS OR OTHER PERSONS WHO ARE DISSATISFIED WITH A DECISION OF THE COASTAL PERMIT ADMINISTRATOR FOR A COASTAL DEVELOPMENT PERMIT FOR A BOUNDARY LINE ADJUSTMENT MAY APPEAL THE ACTION TO THE BOARD OF SUPERVISORS. AN APPEAL MUST BE MADE IN WRITING ALONG WITH THE APPLICABLE FEE TO THE CLERK OF THE BOARD OF SUPERVISORS WITHIN TEN (10) DAYS OF THE COASTAL PERMIT ADMINISTRATOR'S DECISION. THE APPEAL ISSUE WILL BE PLACED ON THE NEXT AVAILABLE BOARD OF SUPERVISOR'S AGENDA FOR CONSIDERATION, AND THE APPELLANT WILL BE NOTIFIED OF THE TIME AND DATE. APPEALS TO THE BOARD OF SUPERVISORS DO NOT NECESSARILY GUARANTEE THAT THE COASTAL PERMIT ADMINISTRATOR'S DECISION WILL BE OVERTURNED. IN SOME CASES, THE BOARD OF SUPERVISORS MAY NOT HAVE THE LEGAL AUTHORITY TO OVERTURN THE DECISION OF THE ADMINISTRATOR.

7. An identified riparian area is located within the project boundary. No impacts to any riparian area are anticipated as a result of the Boundary Line Adjustment.
8. The project is an appealable project, as it is a boundary line adjustment.



**COUNTY OF MENDOCINO**  
**DEPARTMENT OF PLANNING AND BUILDING SERVICES**  
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www.mendocinocounty.org/pbs

May 26, 2020

**AMENDED**  
**PUBLIC NOTICE OF PENDING ACTION**  
**STANDARD COASTAL DEVELOPMENT PERMIT**

NOTICE IS HEREBY GIVEN THAT the Mendocino County Permit Administrator at its regular meeting on Thursday, June 11, 2020 at 1:00 p.m. will conduct a public hearing on the following project at the time listed or as soon thereafter as the item may be heard. This meeting will be conducted virtually and not available for in person public participation (pursuant to State Executive Order N-29-20). In order to minimize the risk of exposure during this time of emergency, the public may participate digitally or via telecomment, in meetings by sending comments to [pbscommissions@mendocinocounty.org](mailto:pbscommissions@mendocinocounty.org) and is available for viewing on the Mendocino County YouTube page, at <https://www.youtube.com/MendocinoCountyVideo>.

**CASE#:** B\_2019-0054

**DATE FILED:** 11/21/2019

**OWNER/APPLICANT:** WILLIAM & TONA MOORES

**REQUEST:** Boundary Line Adjustment to reconfigure the boundaries between three (3) existing parcels and merge a fourth (4th) parcel. Parcel 1 (APN: 132-210-37) will merge with Parcel 3 (APN: 132-210-39) and increase to 35± acres, Parcel 2 (APN: 132-210-38) will increase to 29± acres, and Parcel 4 (APN: 132-210-61) will decrease to 16± acres.

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**SUPERVISORIAL DISTRICT:** 5

**STAFF PLANNER:** DIRK LARSON

The staff report and notice will be available 10 days before hearing on the Department of Planning and Building Services website at: <https://www.mendocinocounty.org/government/planning-building-services/meeting-agendas/coastal-permit-administrator>.

Your comments regarding the above project(s) are invited. Written comments should be submitted by mail to the Department of Planning and Building Services Commission Staff, at 860 North Bush Street, Ukiah or 120 W. Fir Street, Fort Bragg, California.

In order to minimize the risk of exposure during this time of emergency, the public may participate digitally in meetings by sending comments to [pbscommissions@mendocinocounty.org](mailto:pbscommissions@mendocinocounty.org) by **June 10, 2020** or orally via telecomment in lieu of personal attendance. All public comment will be made immediately available to the Coastal Permit Administrator, staff, and the general public as they are received and processed by staff, and can be viewed as attachments to this meeting agenda at <https://www.mendocinocounty.org/government/planning-building-services/meeting-agendas/coastal-permit-administrator>

To submit public comments via telecomment, a request form must be received by 8:00 a.m. the morning of the meeting. The telecomment form may be found at: <https://www.mendocinocounty.org/government/planning-building-services/meeting-agendas> .

The decision of the Coastal Permit Administrator shall be final unless a written appeal is submitted to the Board of Supervisors with a filing fee within 10 calendar days thereafter. If appealed, the decision of the Board of Supervisors to approve the project shall be final unless appealed to the Coastal Commission in writing within 10 working days following Coastal Commission receipt of a Notice of Final Action on this project.

If you challenge the above case in court, you may be limited to raising only those issues described in this notice or that you or someone else raised at the public hearing, or in written correspondence delivered to the Coastal Permit Administrator at or prior to, the public hearing.

AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE. Mendocino County complies with ADA requirements and upon request, will attempt to reasonably accommodate individuals with disabilities by making meeting material available in appropriate alternate formats (pursuant to Government Code Section 54953.2). Anyone requiring reasonable accommodation to participate in the meeting should contact the Department of Planning and Building Services by calling (707) 234-6650 at least five days prior to the meeting.

Additional information regarding the above noted case may be obtained by calling the Planning and Building Services Department at 964-5379, Monday through Friday.

BRENT SCHULTZ, Director of Planning and Building Services



**COUNTY OF MENDOCINO**  
**DEPARTMENT OF PLANNING AND BUILDING SERVICES**  
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[pbs@mendocinocounty.org](mailto:pbs@mendocinocounty.org)  
[www.mendocinocounty.org/pbs](http://www.mendocinocounty.org/pbs)

## MEMORANDUM

**DATE:** April 30<sup>th</sup>, 2020  
**TO:** Coastal Permit Administrator  
**FROM:** Dirk Larson, Project Planner  
**SUBJECT:** Boundary Line Adjustment **B\_2019-0054**

The Boundary Line Adjustment referenced above involves a portion of land that was part of previous Boundary Line Adjustment project that has recently been approved. The approved project, B\_2018-0068, has satisfied all conditions of approval and was given final certification on November 21, 2019. The project involved Assessor's Parcel Numbers (APNs) 132-210-40 and 132-210-41. Both parcels have since been retired and new APNs have been assigned to represent the new parcel boundaries created from the project.

The newly created parcel(s) resulting from the approval of project B\_2018-0068 have new APNs of 132-210-60 and 132-210-61. Parcel -61, that was once part of APN 132-210-40, is included in this current proposed BLA project. The Assessor's Parcel Map reflecting these new changes noted above is attached.

If additional information is required, or you have additional questions, please do not hesitate to contact me.

Dirk Larson  
Planner II

/attachments  
-parcel map

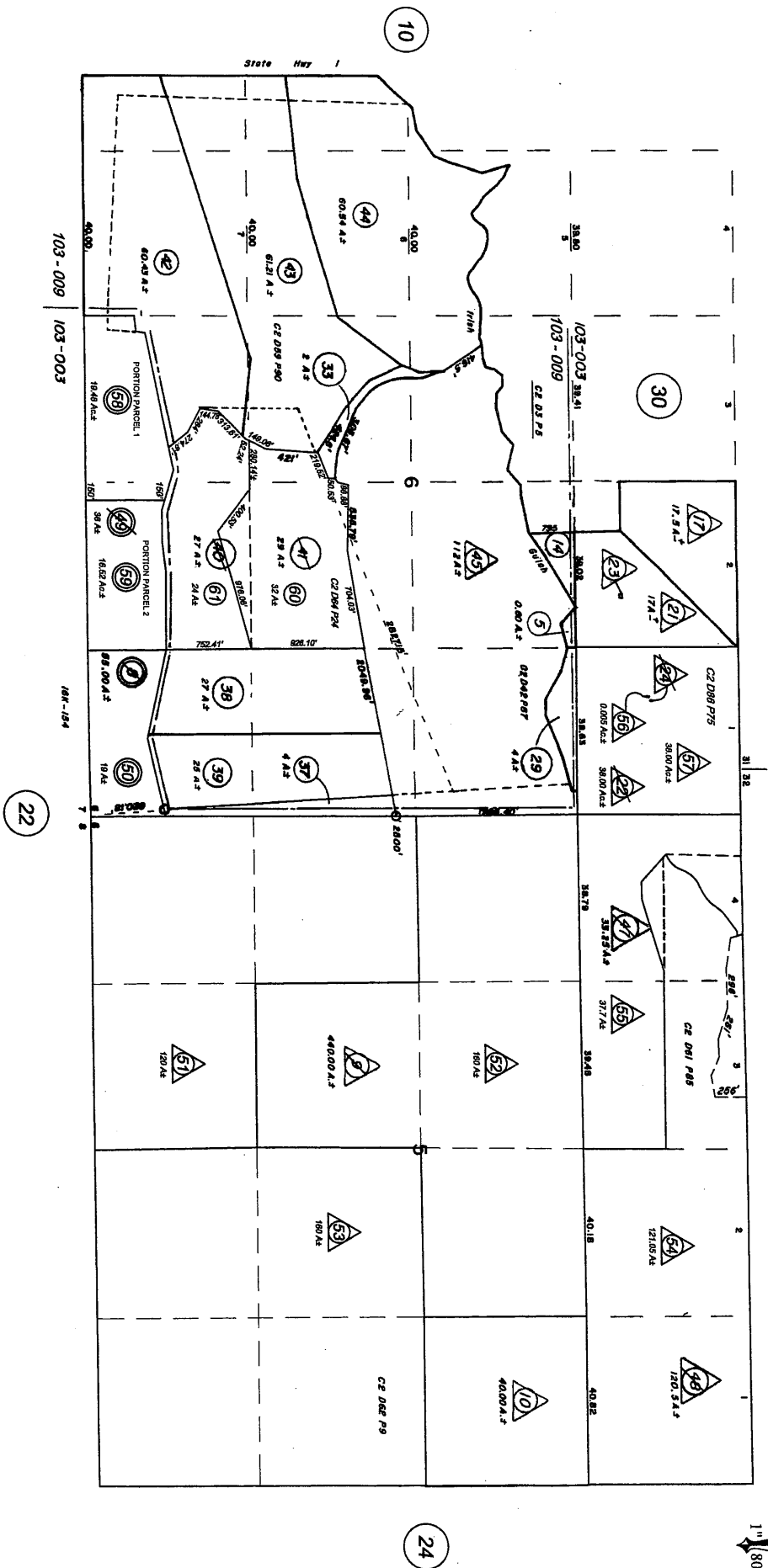


Sec. 5 & 6 T.13N. R.16W. M.D.B.&M.

Bk  
131  
11

103-003  
103-009

132-21



NOTE: This map was prepared for assessment purposes only. No liability is assumed for the data delineated hereon.

Assessor's Map  
County of Mendocino, Calif.  
March 17, 2020



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**COASTAL PERMIT ADMINISTRATOR  
STAFF REPORT- BOUNDARY LINE ADJUSTMENT**

---

**JUNE 11, 2020  
B\_2019-0054**

**SUMMARY**

**OWNER/APPLICANT:** WILLIAM & TONA MOORES  
3880 SLEEPY HOLLOW DR  
SANTA ROSA, CA 95404

**REQUEST:** Boundary Line Adjustment to reconfigure the boundaries between three (3) existing parcels and merge a fourth (4<sup>th</sup>) parcel. Parcel 1 (APN: 132-210-37) will merge with Parcel 3 (APN: 132-210-39) and increase to 35± acres, Parcel 2 (APN: 132-210-38) will increase to 29± acres, and Parcel 4 (APN: 132-210-61) will decrease to 16± acres.

**LOCATION:** In the Coastal Zone, 3.2± miles north of Manchester town center, located 0.8± miles east of State Route 1 (SR 1) on an unnamed access easement. Addresses not yet assigned, (APN's: 132-210-37, 38, 39, and 61).

**TOTAL ACREAGE:** Parcel 1: APN: 132-210-37 (4± Acres→ 0 Acres);  
Parcel 2: APN: 132-210-38 (27.33± Acres→33.13± Acres);  
Parcel 3: APN: 132-210-39 (28.85± Acres → 33.13± Acres);  
Parcel 4: APN: 132-210-61 (24± Acres → 19± Acres)

**GENERAL PLAN:** Coastal Element, Rangeland-160 acre minimum-(RL160): R\*

**ZONING:** Rangeland-160 acre minimum - (RL: 160)

**SUPERVISORIAL DISTRICT:** 5 (Williams)

**ENVIRONMENTAL DETERMINATION:** Categorically Exempt-Class 5a (Minor Boundary Line adjustment not resulting in the creation of any new parcel).

**RECOMMENDATION:** APPROVE WITH CONDITIONS

**STAFF PLANNER:** DIRK LARSON

**BACKGROUND**

**PROJECT DESCRIPTION:** A Boundary Line Adjustment to reconfigure the boundaries between three (3) existing parcels and a merger of a fourth (4<sup>th</sup>) parcel. Parcel 1 (APN 132-210-37) will merge with Parcel 3 (APN 132-210-39) and increase to 35± acres, Parcel 2 (APN 132-210-38) will increase to 29± acres, and Parcel 4 (APN 132-210-61) will decrease to 16± acres.

**RELATED APPLICATIONS:** **B\_2018-0068**, an approved Boundary Line Adjustment to accommodate the setback requirements for development of a Cellular Site; **U\_2018-0028**-Use Permit for AT&T Mobility 130 ft. tower, currently in progress and located on adjacent property under the same ownership.

**SITE CHARACTERISTICS:** The subject parcels are located in the Coastal Zone, 3.2± miles north of Manchester town center, located 0.8± miles east of State Route 1 (SR 1) on an unnamed access

easement. No addresses have yet been assigned to the subject parcels (APN's: 132-210-37, 132-210-38, 132-210-39, & 132-210-61).

All parcels maintain a High Fire Hazard designation within a State Responsibility Area and the nearest Local Response Agency is the Redwood Coast Fire Protection District. The project is not located in an area designated as Highly Scenic (See Fire Hazard Zones & Responsibility Areas Maps). The immediate area is predominately rangeland with forestland to the north and a parcel zoned Timberland Production Zone abutting the eastern boundary of the subject property (See Farmland & Adjacent Parcels Maps).

The topography of the subject area is moderate to mostly steep, densely forested with open, grassy slopes present in the southern portion of the ownership. There is an existing access easement to a potential home-site on one of the parcels, but is currently void of any structures or utilities.

The northern section of the subject area has Freshwater Forested/Shrub Wetland (See Wetlands Map) running from north to south that is a tributary of Irish Gulch to the north.

**SURROUNDING LAND USE AND ZONING:**

	<b>GENERAL PLAN</b>	<b>ZONING</b>	<b>LOT SIZES</b>	<b>USES</b>
<b>NORTH</b>	FL160	FL:160	112 ± Acres	Residential
<b>EAST</b>	TP160	TP:160	120 ± Acres	Vacant
<b>SOUTH</b>	RL160	RL:160	19 ± Acres; 16.5 ± Acres	Vacant
<b>WEST</b>	RL160	RL:160	2 ± Acres; 61 ± Acres; 60± Acres	Vacant

**PUBLIC SERVICES:**

Access: Private Easement  
 Fire District: CalFire  
 Water District: Irish Beach  
 Sewer District: None

**AGENCY COMMENTS:** On March 19<sup>th</sup>, 2020 project referrals were sent to the following responsible or trustee agencies with jurisdiction over the Project. A summary of the submitted agency comments are listed below.

<b>REFERRAL AGENCIES</b>	<b>COMMENT</b>
Planning Division (FB)	No Comment
Assessor's Office	No Response
Environmental Health (FB)	No Response
County Addressor	No Comment
Department of Transportation (DOT)	No Comment
CalFire (Land Use)	No Comment
California Coastal Commission	No Response
Calif. Dept. of Fish & Wildlife	No Response
Cloverdale Rancheria	No Response
Manchester Band of Pomo	No Response
Redwood Valley Rancheria	No Response
Sherwood Valley Band of Pomo	No Comment

**KEY ISSUES**

- 1. General Plan and Zoning Consistency:** The four parcels involved in the proposed Boundary Line Adjustment are classified as Rangeland (RL:160). All subject parcels included are considered legal

non-conforming, due to their present acreages. Based on the tentative map, the proposed parcels will remain legal non-conforming. Per Mendocino County Code Section 20.484.010(A):

*“When any lot has been legally created and which has not merged and is zoned to a minimum parcel size larger than the existing parcel size, said lot(s) shall be found to be legally nonconforming and shall not be subject to requirements for variance to minimum lot size.”*

The proposed boundary line adjustment is consistent with the purpose and intent of the zoning district applicable to the property, as well the provisions of the Coastal Zoning Code and preserves the integrity of the zoning district;

**2. Division of Land Regulations:** This project is scheduled to be reviewed by the County Subdivision Committee on **June 11, 2020** at which time the Subdivision Committee will make recommendations concerning approval to the Coastal Permit Administrator per required findings in Section 17-17.5 of the Mendocino County Code. No conflicts with the County Division of Land Regulations have been identified.

**3. Natural Resources:** After review of the LCP land use maps, the county’s Biological Resources Map and the State of California’s Natural Diversity Database, no sensitive species have been identified via the California Natural Diversity Database, and no impacts are anticipated from this Boundary Line Adjustment. As a Boundary Line Adjustment, no development or site disturbance is requested or condoned by this request. Any further development may require a Coastal Development Permit and will be further reviewed at that time.

**COASTAL POLICY CONSISTENCY REVIEW:** Staff reviewed the project relative to coastal issues and determined the following:

1. The Boundary Line Adjustment will not result in a change in density. The proposed adjustment does not provide for future divisions beyond that which currently exists.
2. The Boundary Line Adjustment will not create any new parcels.
3. No substandard lot will result from the adjustment. All parcels are currently substandard in size and are consistent with Section 20.484.010 of the Mendocino County Coastal Zoning Ordinance.
4. The properties subject to the adjustment are in an area designated Critical Water Resources as identified in the Mendocino County Groundwater Study.
5. The project is not located on property containing Pygmy vegetation.
6. The project is not located within a designated “Highly Scenic Area”.
7. An identified riparian area is located within the project boundary. No impacts to any riparian area are anticipated as a result of the this Boundary Line Adjustment.
8. The project is an appealable project, as it is a boundary line adjustment.

### **RECOMMENDED MOTION**

The Coastal Permit Administrator approves Boundary Line Adjustment B\_2019-0054, subject to the following conditions of approval, finding that the application and supporting documents and exhibits contain sufficient information and conditions to establish, as required by the Coastal Zoning Code, that:

1. The proposed boundary line adjustment is in conformance with the Coastal Element; and,
2. The proposed boundary line adjustment is 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 preserves the integrity of the zoning district; and

3. The proposed boundary line adjustment will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act (CEQA);
4. The proposed boundary line adjustment will not have any adverse impacts on any known Archaeological or paleontological resource;
5. The proposed use is compatible with the long term protection of resource lands.
6. The project is an appealable project, as it is a boundary line adjustment.

**CONDITIONS OF APPROVAL:**

1. This action shall become final on the 11th 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. This application is valid for 24 months from the effective date. No extensions can be granted.
2. That for each proposed adjusted parcel provides one perimeter description of each parcel. The new deed description submitted shall be prepared by, and bear the seal of, a Licensed Land Surveyor.
3. That each transfer of real property be by means of a quit claim deed containing the following wording to be contained within the legal description:

*“Any and all lands and any and all interest thereto lying within the following described real property perimeter description of the adjusted parcel(s).”*

And,

*“This deed is given pursuant to Mendocino County Coastal Development Boundary Line Adjustment B\_2019-0054 and is intended to create no new parcel.”*

4. Per Mendocino County Code Section 17-17.5(1)(2):

*“That the Treasurer-Tax Collector certifies that all taxes and assessments due on each parcel affected by the adjustment have been paid or cleared, and that a deposit to secure payment of the taxes and assessments which are due but not yet payable have been made.”*

The enclosed **Certificate of the Official Redeeming Officer Form** must be certified by the Treasurer-Tax Collector and a copy returned to the Department of Planning and Building Services.

5. After you have been given clearance to record the new documents, you must send a copy of the recorded deed(s) to the Department of Planning and Building Services. Upon review and approval of this information, you will receive a Completion Certificate.
6. In the event that archaeological resources are encountered during development of the property, work in the immediate vicinity of the find shall be halted until all requirements of Chapter 22.12 of the Mendocino County Code relating to archaeological discoveries has been satisfied.
7. A note shall be placed on the deeds and/or legal descriptions stating that *“The Boundary Line Adjustment shall not relinquish, remise, release or terminate any prior right, interest in rights-of-way, easements, or other rights which may be appurtenant to and/or an encumbrance to the subject properties.”*

8. A note shall be placed on the deeds and/or legal descriptions stating that, "Future development may require additional studies and/or may be subject to restrictions" and that "Future development shall be in conformance with the criteria for development within the Environmentally Sensitive Habitat and Special Treatment Areas as set forth in the Coastal Plan and Coastal Zoning Code."
9. All structures within the Rangleland zoning district must maintain fifty (50) foot setback from property lines, per Mendocino County Code Section 20.368.030.

Once the deed(s) and/or instrument(s) have been prepared, please send a copy to the Department of Planning and Building Services. After we have reviewed the documents and accepted them as corrected all conditions of approval have been met, we will notify you. **DO NOT RECORD ANY DOCUMENTS UNTIL YOU HAVE RECEIVED APPROVAL OF THE DEED(S).**

PLEASE NOTE: Title must be transferred identical to the title now being held (all owners with their exact names).

NOTE: APPLICANTS OR OTHER PERSONS WHO ARE DISSATISFIED WITH A DECISION OF THE COASTAL PERMIT ADMINISTRATOR FOR A COASTAL DEVELOPMENT PERMIT FOR A BOUNDARY LINE ADJUSTMENT MAY APPEAL THE ACTION TO THE BOARD OF SUPERVISORS. AN APPEAL MUST BE MADE IN WRITING ALONG WITH THE APPLICABLE FEE TO THE CLERK OF THE BOARD OF SUPERVISORS WITHIN TEN (10) DAYS OF THE COASTAL PERMIT ADMINISTRATOR'S DECISION. THE APPEAL ISSUE WILL BE PLACED ON THE NEXT AVAILABLE BOARD OF SUPERVISOR'S AGENDA FOR CONSIDERATION, AND THE APPELLANT WILL BE NOTIFIED OF THE TIME AND DATE. APPEALS TO THE BOARD OF SUPERVISORS DO NOT NECESSARILY GUARANTEE THAT THE COASTAL PERMIT ADMINISTRATOR'S DECISION WILL BE OVERTURNED. IN SOME CASES, THE BOARD OF SUPERVISORS MAY NOT HAVE THE LEGAL AUTHORITY TO OVERTURN THE DECISION OF THE ADMINISTRATOR.

  
DATE

  
DIRK LARSON  
PLANNER II

Appeal Period: 10 Days  
Appeal Fee: \$1616.00

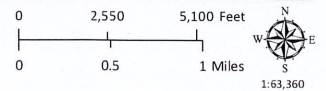
**ATTACHMENTS:**

- |  |                                       |
|--|---------------------------------------|
| A. Location Map                                | I. LCP Habitats & Resources Map       |
| B. Aerial Vicinity Map                         | J. Appealable Areas Map               |
| C. Aerial Imagery                              | K. Adjacent Parcels Map               |
| D. Topographic Map                             | L. Fire Hazard & Responsibilities Map |
| E.1 Existing Lots Maps                         | M. Farmland Classifications Map       |
| E.2 Proposed Lots Maps                         | N. Ground Water Resources Map         |
| E. Zoning Map                                  | O. Estimated Slope Map                |
| F. General Plan Classification Map             | P. Soils Map                          |
| G. LCP Land Use Map                            | Q. Wetlands Map                       |
| H. LCP Land Capabilities & Natural Hazards Map |                                       |



CASE: B 2019-0054  
 OWNER: MOORES, Bill & Tona  
 APN: 132-210-37, 38, 40  
 APLCT: William & Tona Moores  
 AGENT:  
 ADDRESS: None Assigned, Manchester

- Major Towns & Places
- Major Roads
- ▬ Coastal Zone Boundary
- Highways

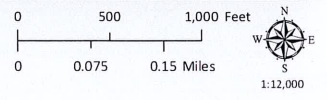


LOCATION MAP  
 ATTACHMENT A

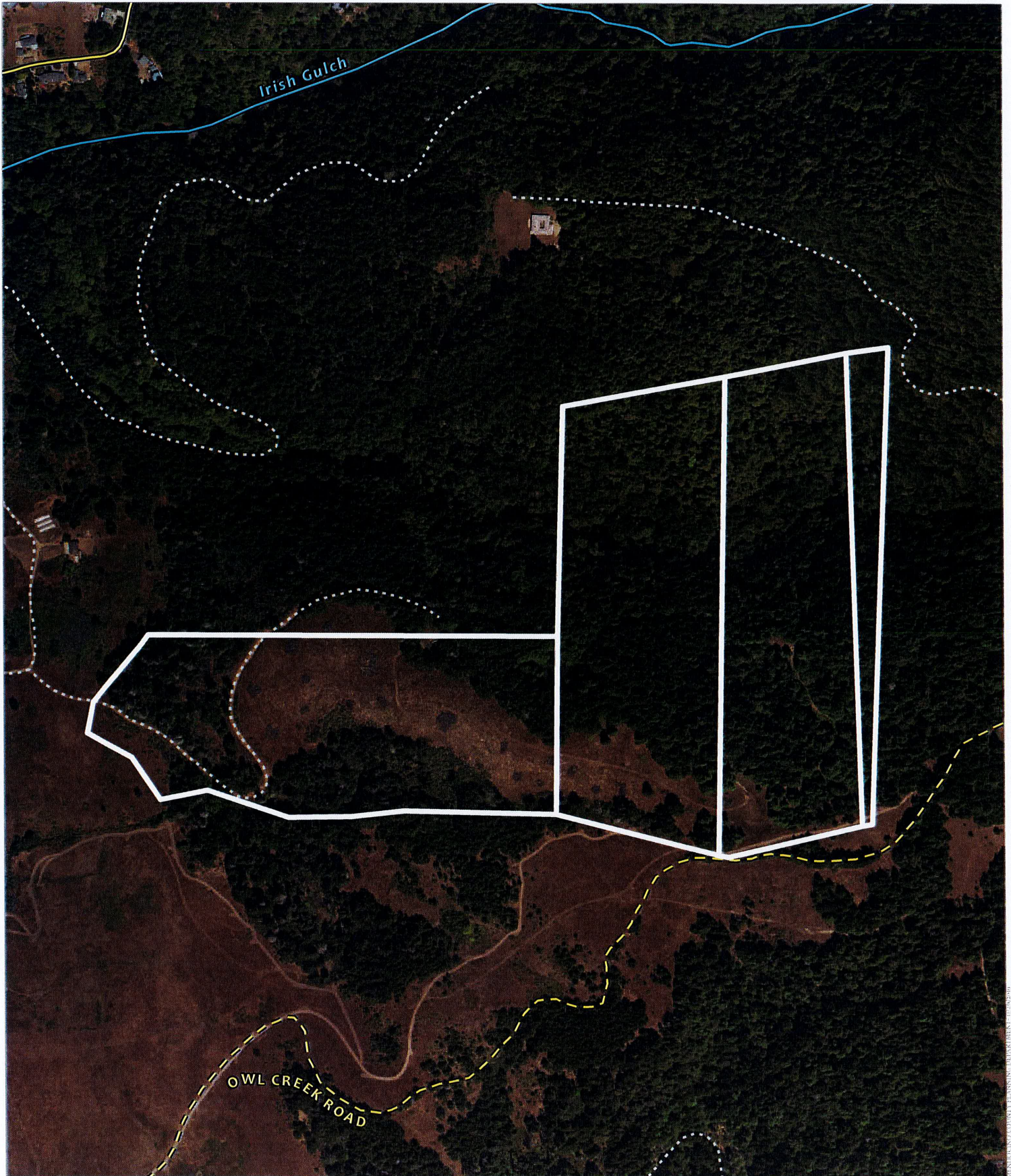


CASE: B 2019-0054  
 OWNER: MOORES, Bill & Tona  
 APN: 132-210-37, 38, 40  
 APLCT: William & Tona Moores  
 AGENT:  
 ADDRESS: None Assigned, Manchester





- Public Roads
- - - Private Roads
- · · · · Driveways/Unnamed Roads

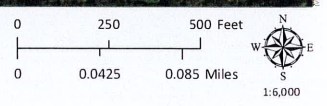


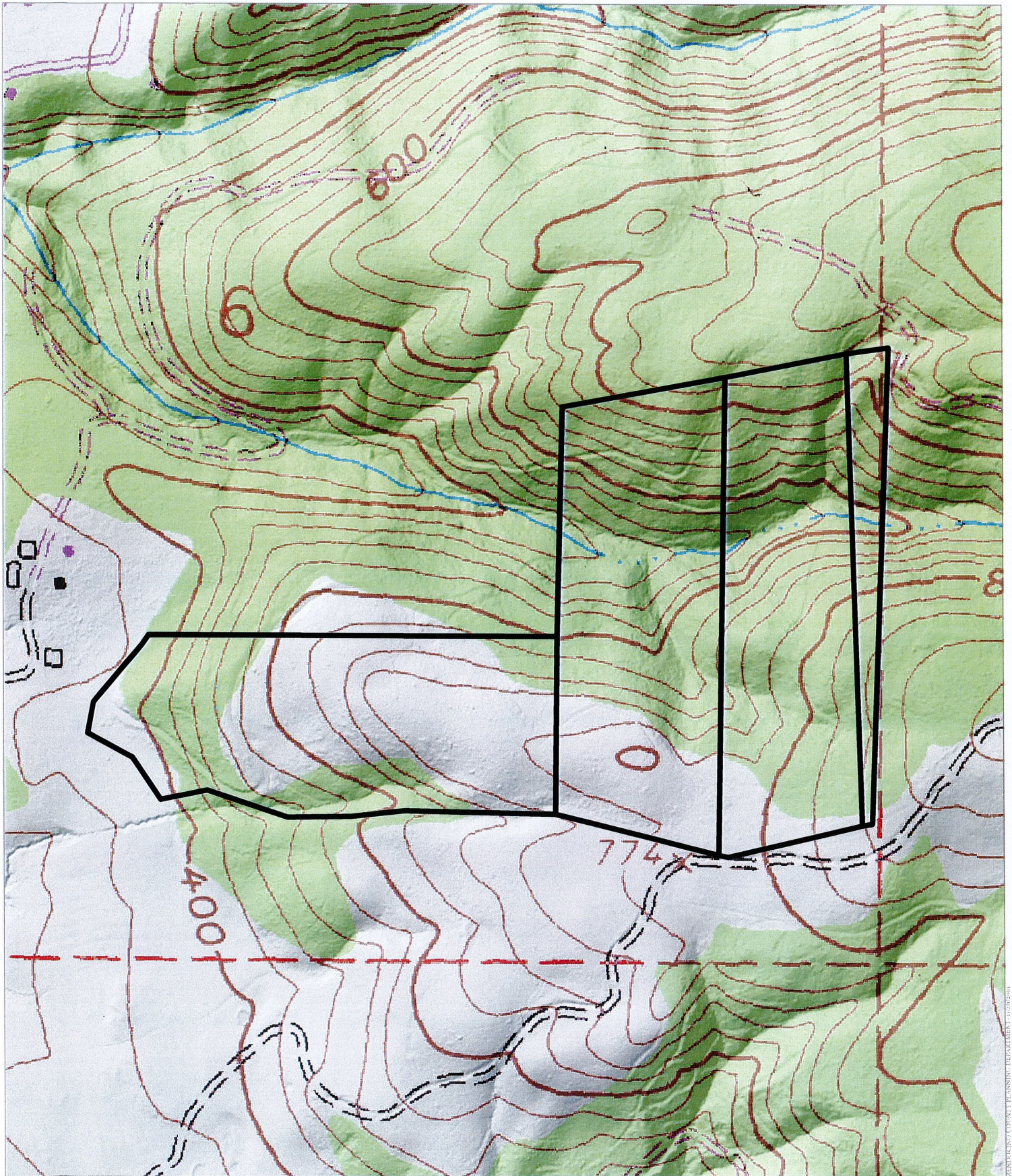




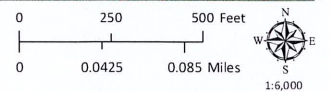
CASE: B 2019-0054  
 OWNER: MOORES, Bill & Tona  
 APN: 132-210-37, 38, 40  
 APLCT: William & Tona Moores  
 AGENT:  
 ADDRESS: None Assigned, Manchester

-  Named Rivers
-  Driveways/Unnamed Roads
-  Public Roads
-  Private Roads



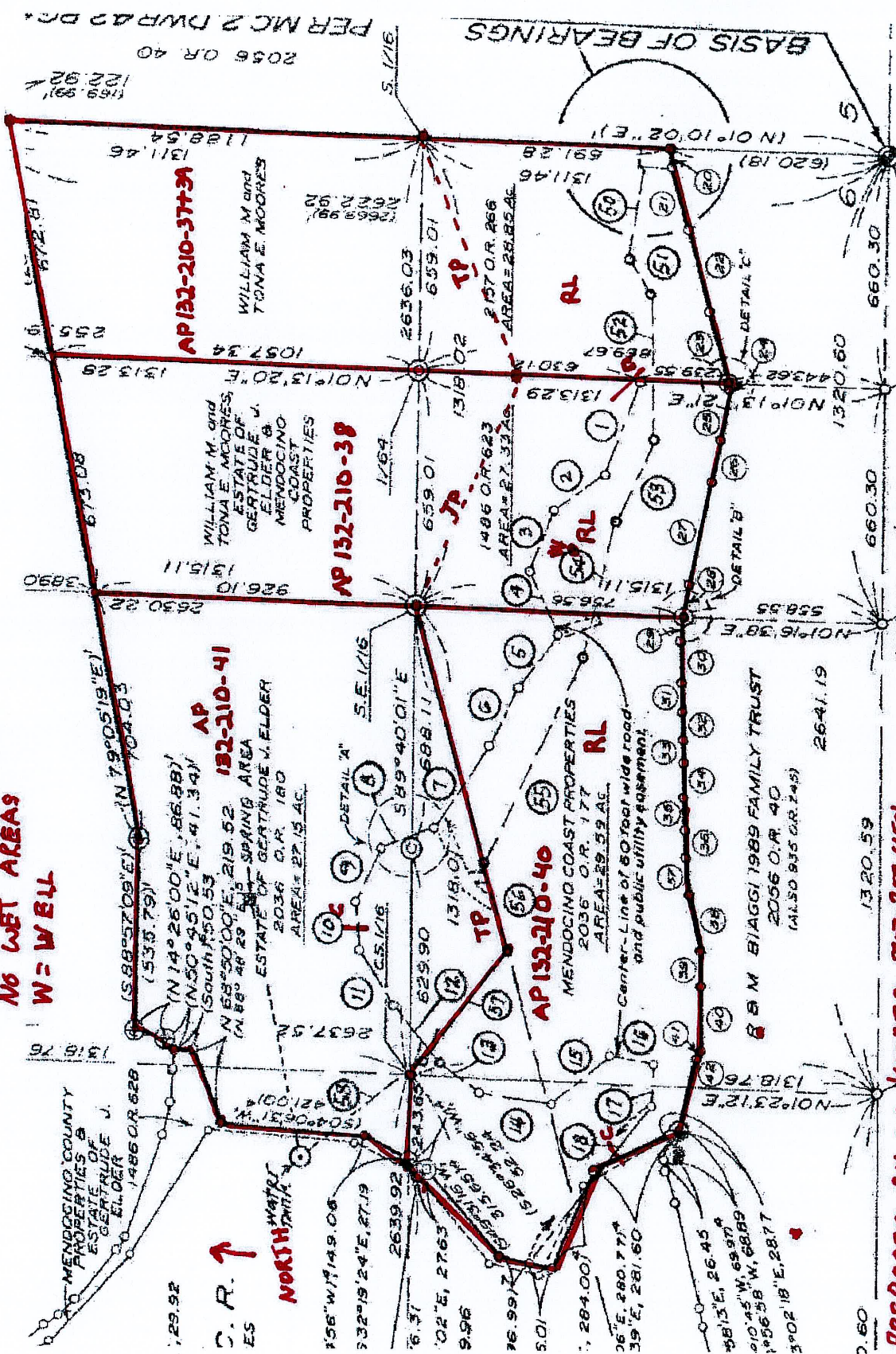


CASE: B 2019-0054  
OWNER: MOORES, Bill & Tona  
APN: 132-210-37, 38, 40  
APLCT: William & Tona Moores  
AGENT:  
ADDRESS: None Assigned, Manchester



TOPOGRAPHIC MAP  
CONTOUR INTERVAL IS 40 FEET  
ATTACHMENT D

**C = COLVERTS 354M**  
**M = WET AREAS**  
**W = WELL**



**SCALE 1" = 330'**

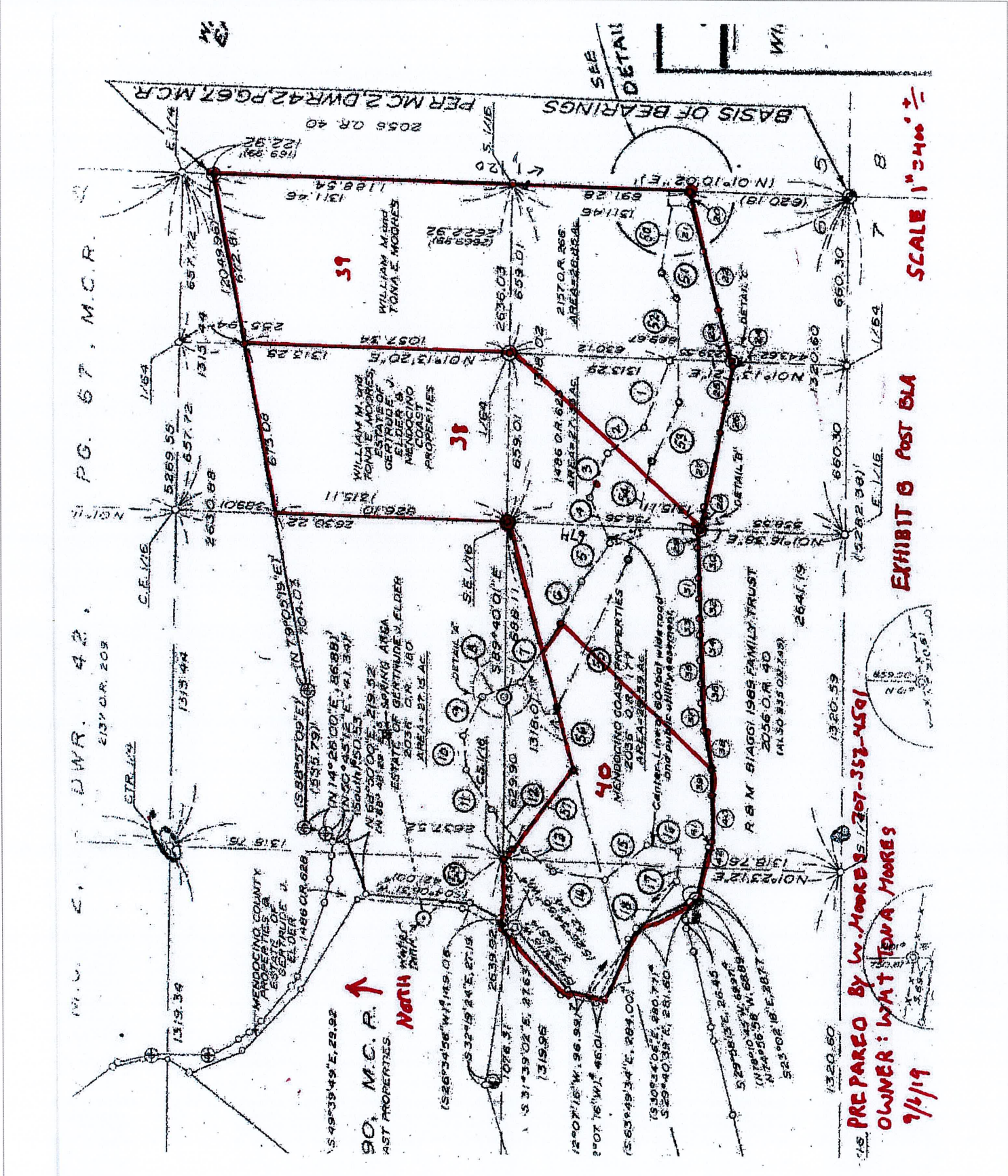
**EXHIBIT A EXISTING**

**PREPARED BY W. MOORES 207-257-4501**  
**OWNER: W.M + TONA MOORES**  
**9/6/19**

CASE: B 2019-0054  
 OWNER: MOORES, Bill & Tona  
 APN: 132-210-37, 38, 40  
 APLCT: William & Tona Moores  
 AGENT:  
 ADDRESS: None Assigned, Manchester

NO SCALE

EXISTING LOTS  
 ATTACHMENT E.1



PG. 67, M.C.R.

D.W.R. 42, 217 O.R. 209

SCALE 1" = 240'

EXHIBIT 6 Post 61A

PREPARED BY W. MOORES 1207-352-4591

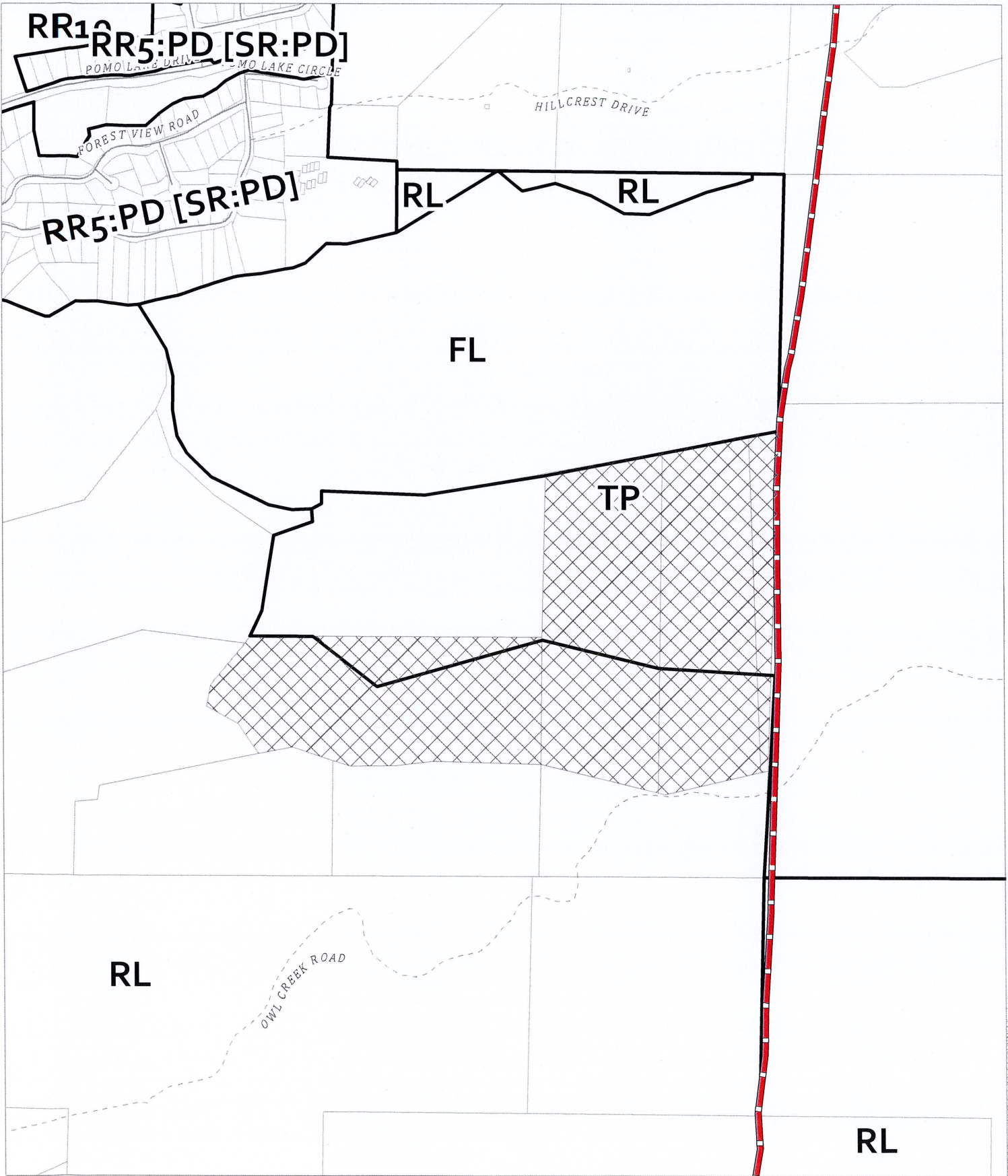
OWNER: WAT TONA MOORES

7/4/19




CASE: B 2019-0054  
 OWNER: MOORES, Bill & Tona  
 APN: 132-210-37, 38, 40  
 APLCT: William & Tona Moores  
 AGENT:  
 ADDRESS: None Assigned, Manchester

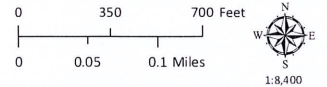
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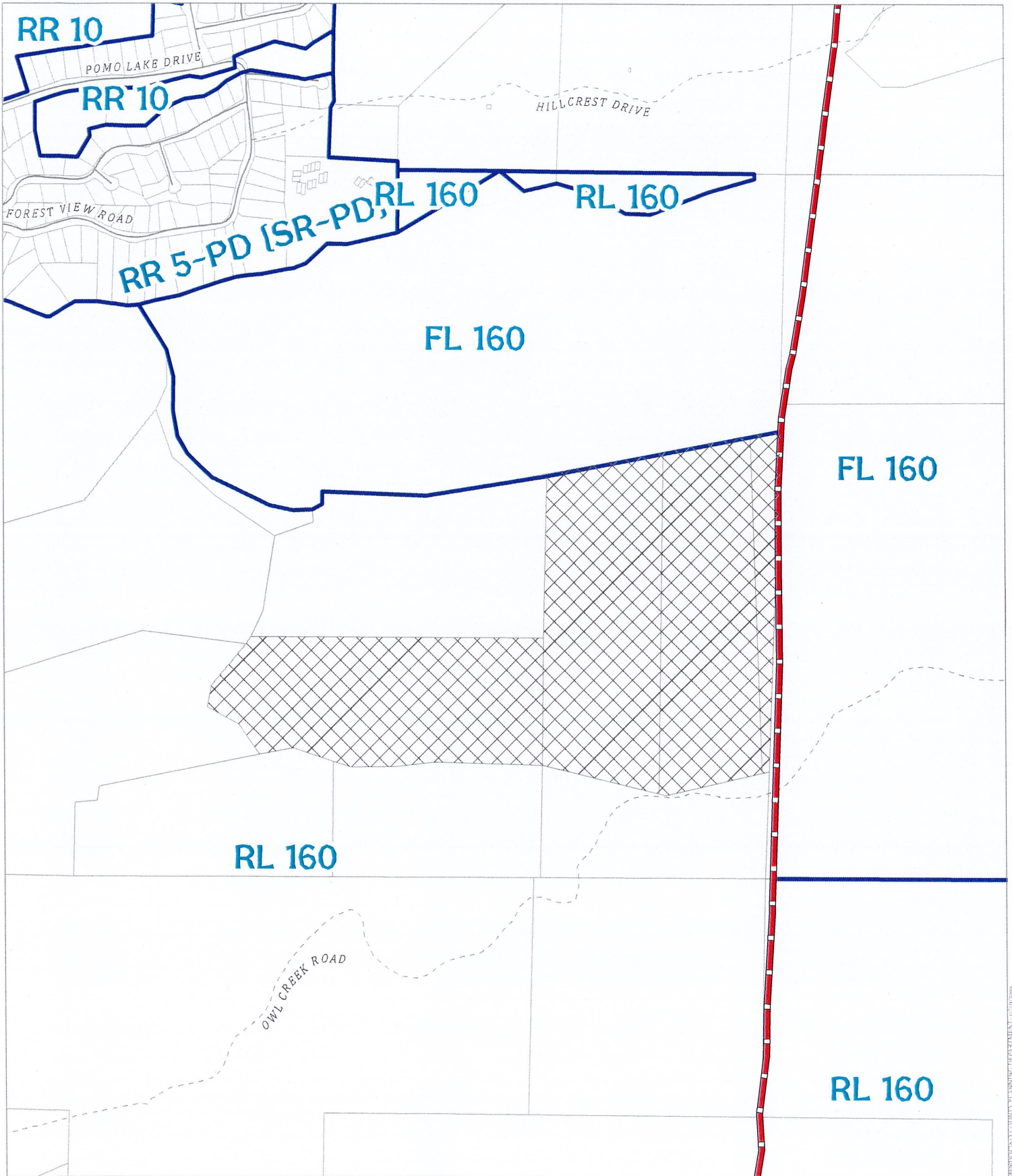
PROPOSED LOTS  
 ATTACHMENT E.2






CASE: B 2019-0054  
 OWNER: MOORES, Bill & Tona  
 APN: 132-210-37, 38, 40  
 APLCT: William & Tona Moores  
 AGENT:  
 ADDRESS: None Assigned, Manchester

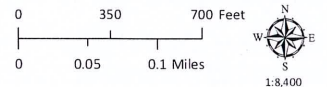
-  Coastal Zone Boundary
-  Zoning Districts
-  Public Roads

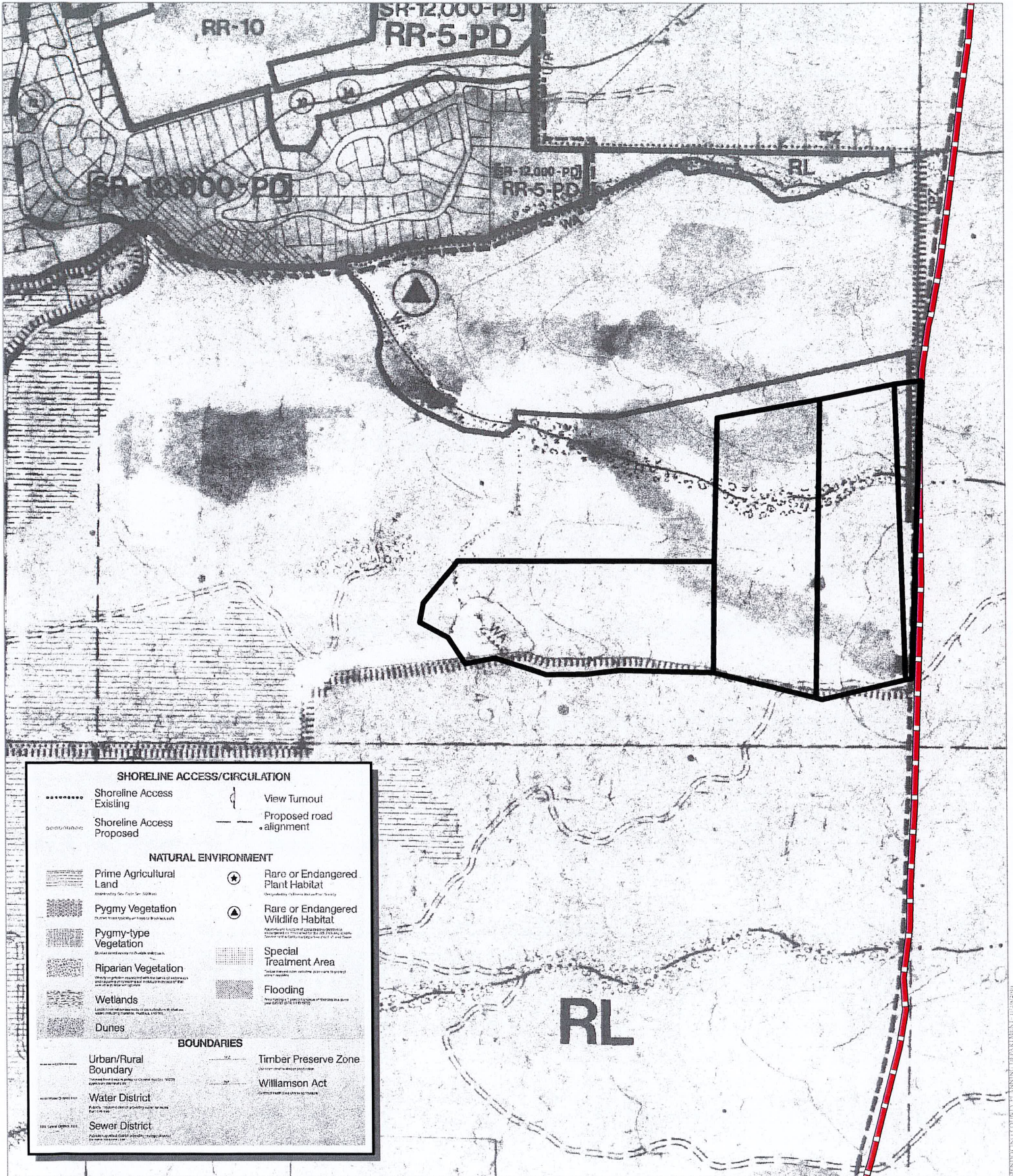




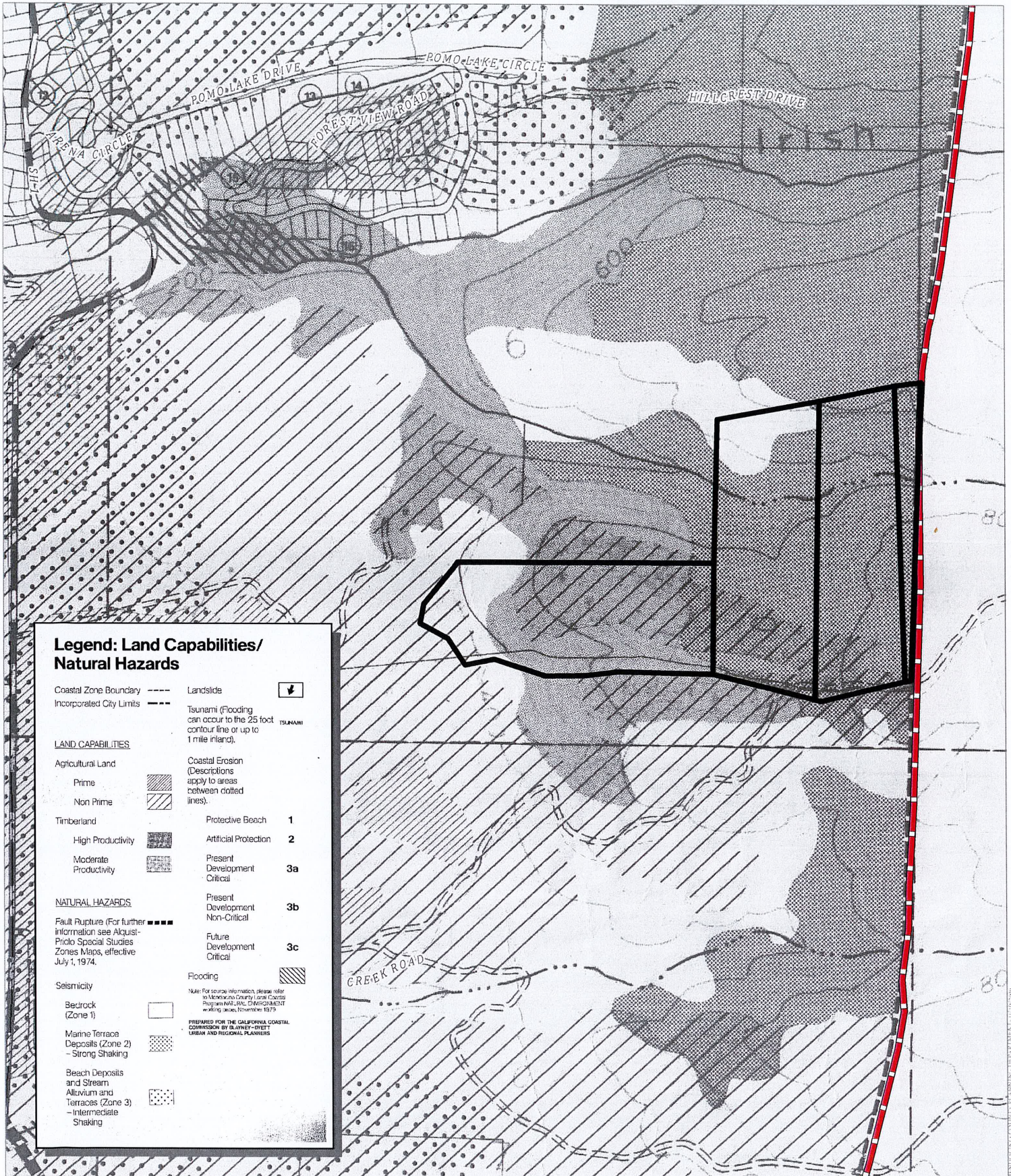
CASE: B 2019-0054  
 OWNER: MOORES, Bill & Tona  
 APN: 132-210-37, 38, 40  
 APLCT: William & Tona Moores  
 AGENT:  
 ADDRESS: None Assigned, Manchester

-  Coastal Zone Boundary
-  General Plan Classes
-  Public Roads





CASE: B 2019-0054  
 OWNER: MOORES, Bill & Tona  
 APN: 132-210-37, 38, 40  
 APLCT: William & Tona Moores  
 AGENT:  
 ADDRESS: None Assigned, Manchester



**Legend: Land Capabilities/  
Natural Hazards**

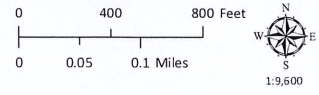
- Coastal Zone Boundary
- Incorporated City Limits
- LAND CAPABILITIES**
- Agricultural Land
  - Prime
  - Non Prime
- Timberland
  - High Productivity
  - Moderate Productivity
- NATURAL HAZARDS**
- Fault Rupture (For further information see Alquist-Priolo Special Studies Zones Maps, effective July 1, 1974)
- Seismicity
  - Bedrock (Zone 1)
  - Marine Terrace Deposits (Zone 2) - Strong Shaking
  - Beach Deposits and Stream Alluvium and Terraces (Zone 3) - Intermediate Shaking
- Landslide
- Tsunami (Flooding can occur to the 25 foot contour line or up to 1 mile inland)
- Coastal Erosion (Descriptions apply to areas between dotted lines)
  - Protective Beach 1
  - Artificial Protection 2
  - Present Development Critical 3a
  - Present Development Non-Critical 3b
  - Future Development Critical 3c
- Flooding

Note: For source information, please refer to Mendocino County Local Coastal Program NATURAL CAPABILITY MAP, November 1979.

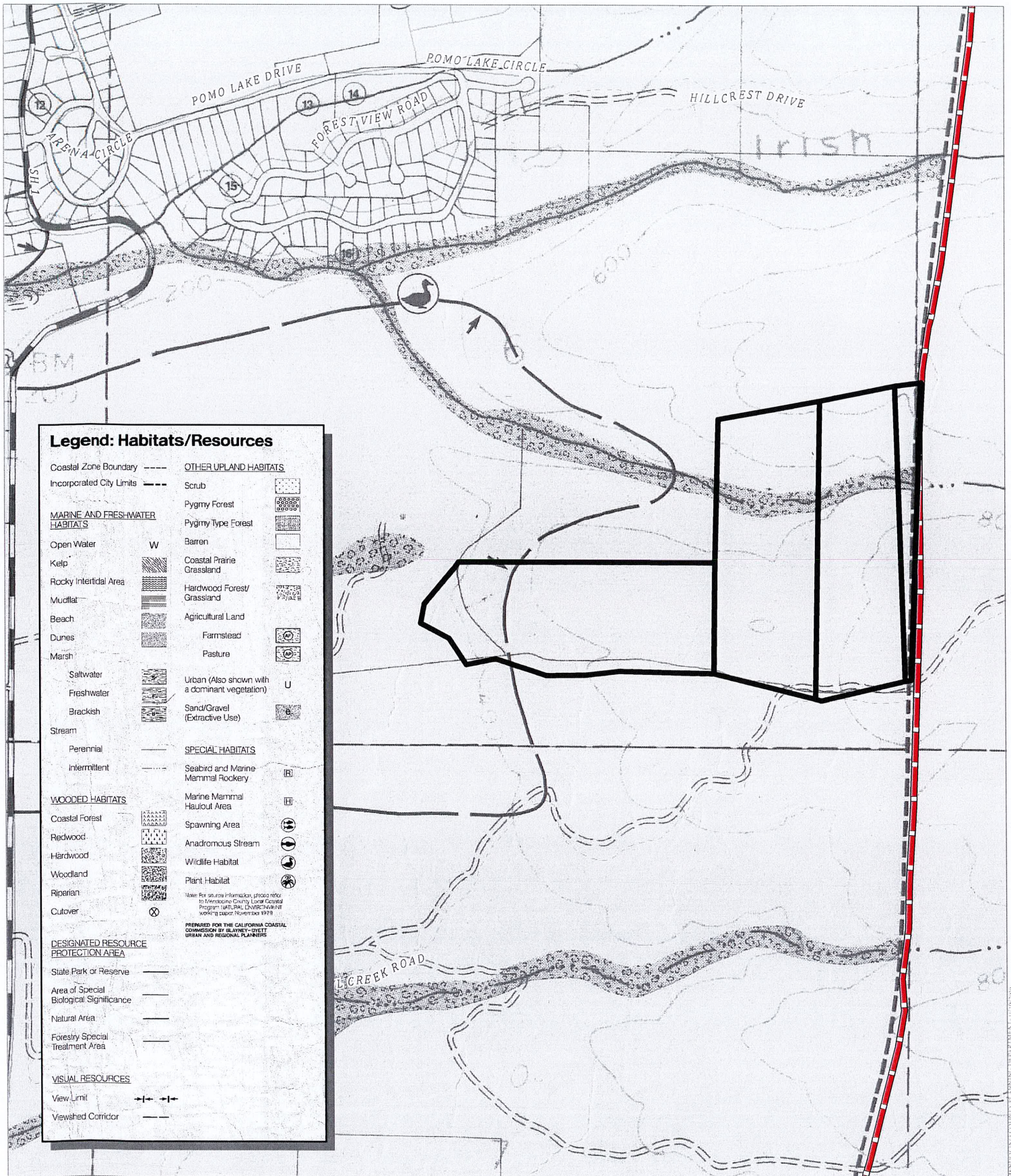
PREPARED FOR THE CALIFORNIA COASTAL COMMISSION BY BLANEY-BRYET URBAN AND REGIONAL PLANNERS

CASE: B 2019-0054  
 OWNER: MOORES, Bill & Tona  
 APN: 132-210-37, 38, 40  
 APLCT: William & Tona Moores  
 AGENT:  
 ADDRESS: None Assigned, Manchester



Coastal Zone Boundary  
 Public Roads

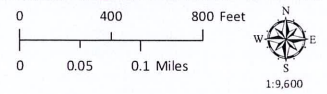


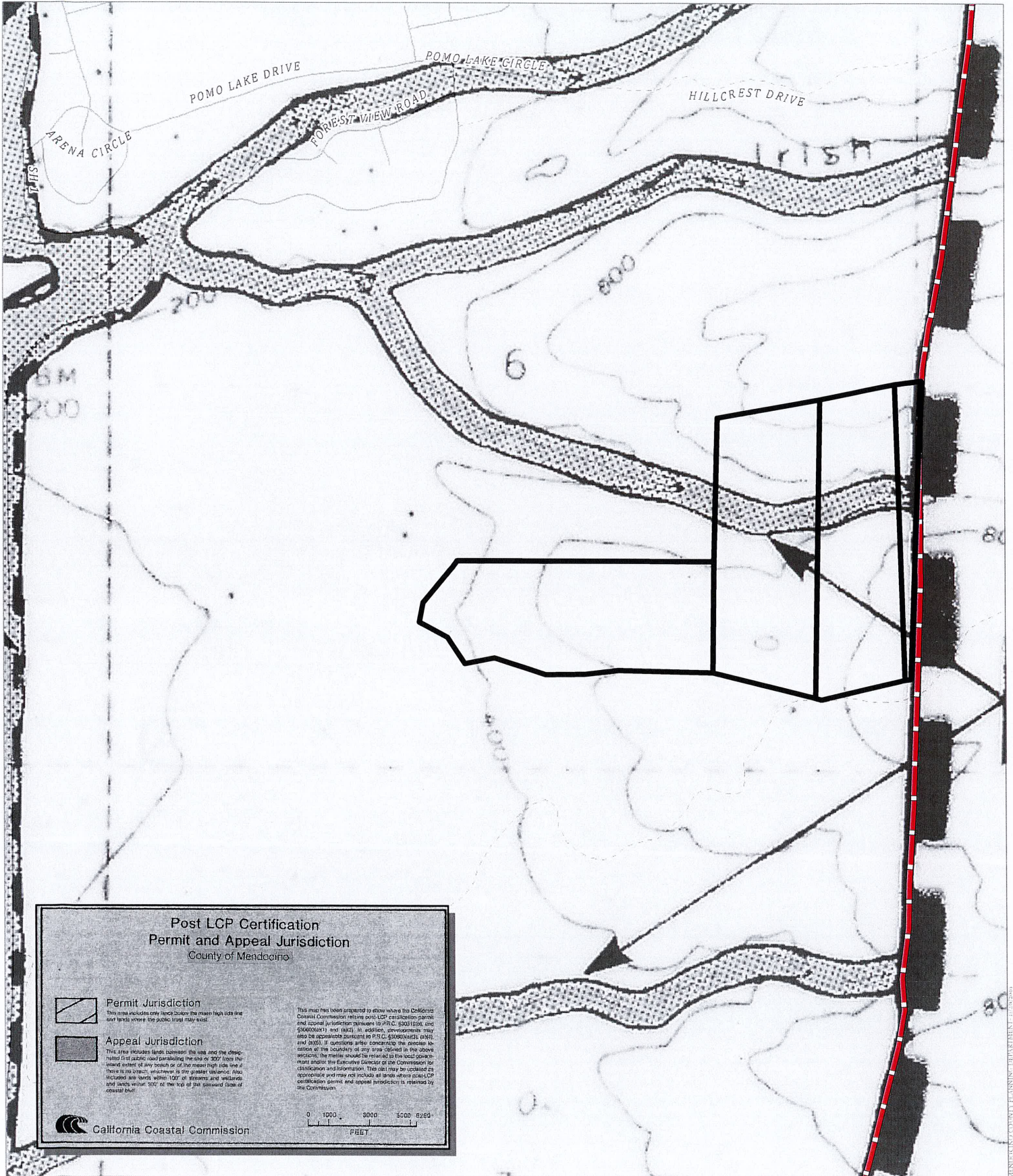






CASE: B 2019-0054  
 OWNER: MOORES, Bill & Tona  
 APN: 132-210-37, 38, 40  
 APLCT: William & Tona Moores  
 AGENT:  
 ADDRESS: None Assigned, Manchester

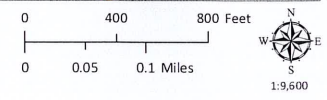
 Coastal Zone Boundary  
 Public Roads



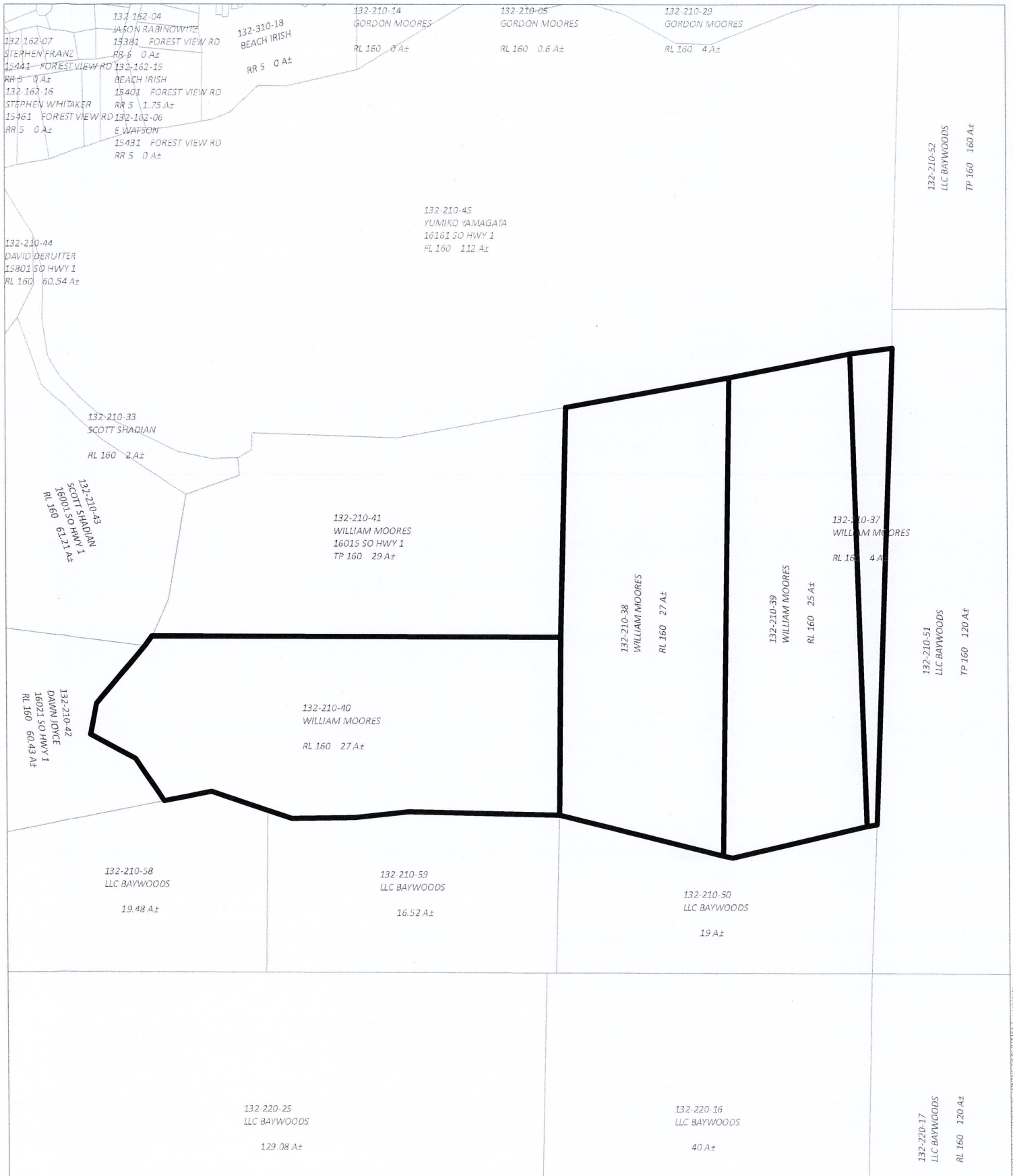


CASE: B 2019-0054  
 OWNER: MOORES, Bill & Tona  
 APN: 132-210-37, 38, 40  
 APLCT: William & Tona Moores  
 AGENT:  
 ADDRESS: None Assigned, Manchester

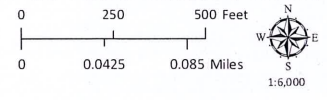
 Coastal Zone Boundary  
 Public Roads



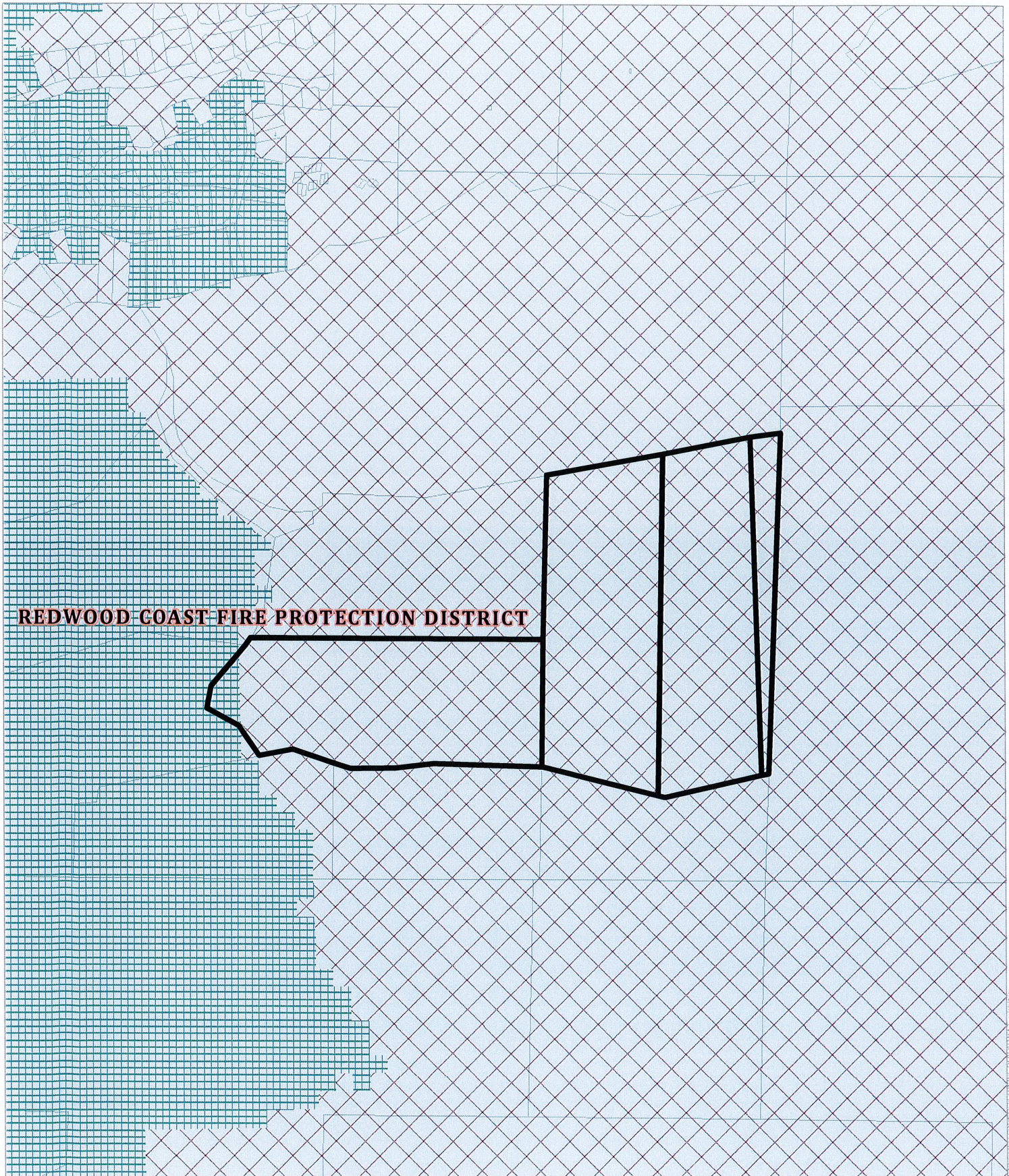
APPEALABLE AREAS  
 ATTACHMENT K



CASE: B 2019-0054  
 OWNER: MOORES, Bill & Tona  
 APN: 132-210-37, 38, 40  
 APLCT: William & Tona Moores  
 AGENT:  
 ADDRESS: None Assigned, Manchester






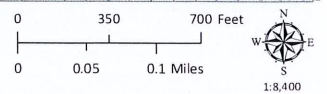
ADJACENT PARCELS  
 ATTACHMENT L



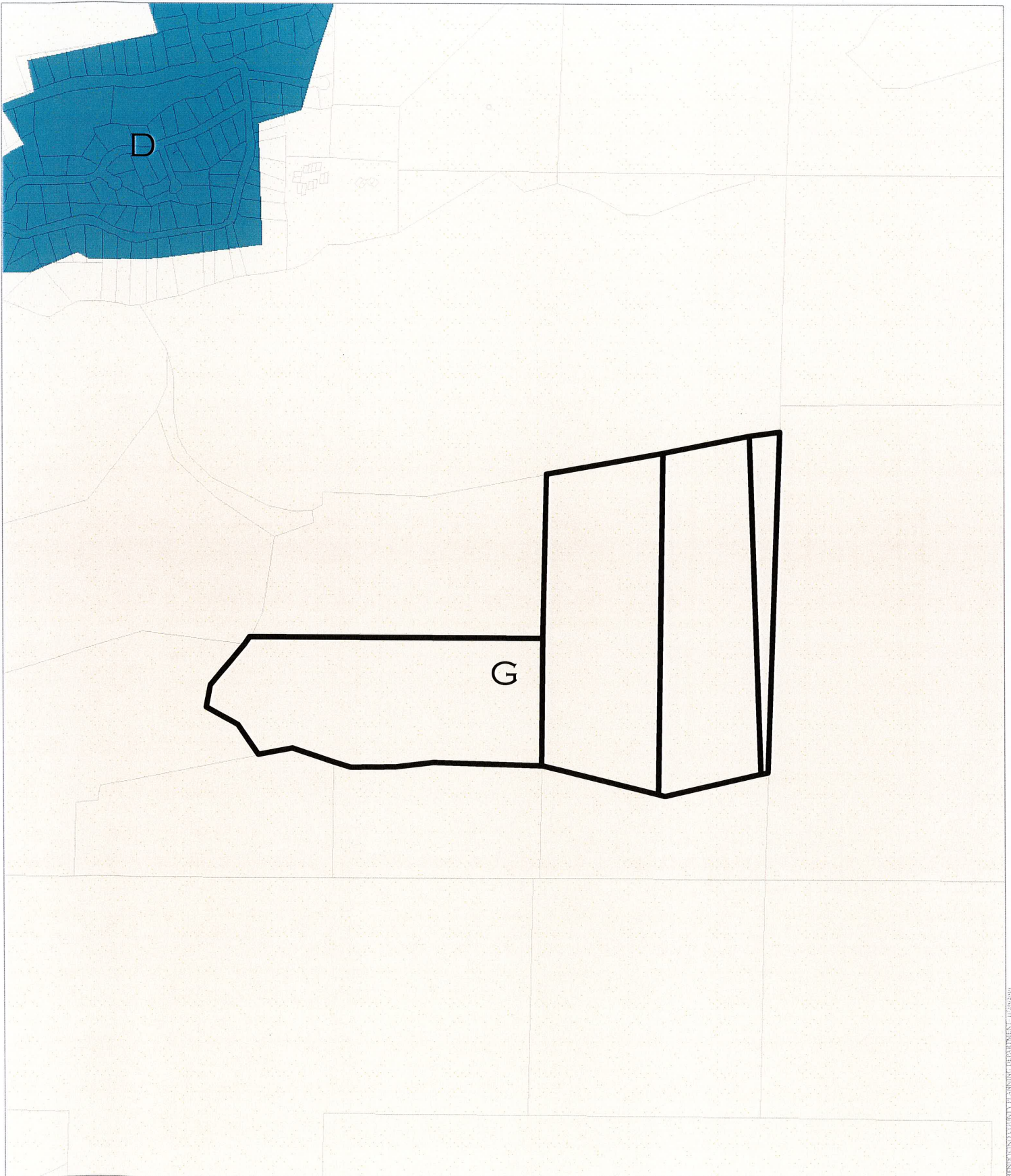
**REDWOOD COAST FIRE PROTECTION DISTRICT**

CASE: B 2019-0054  
 OWNER: MOORES, Bill & Tona  
 APN: 132-210-37, 38, 40  
 APLCT: William & Tona Moores  
 AGENT:  
 ADDRESS: None Assigned, Manchester

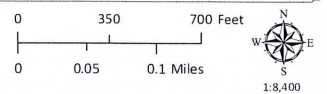
-  High Fire Hazard
-  Moderate Fire Hazard
-  County Fire Districts

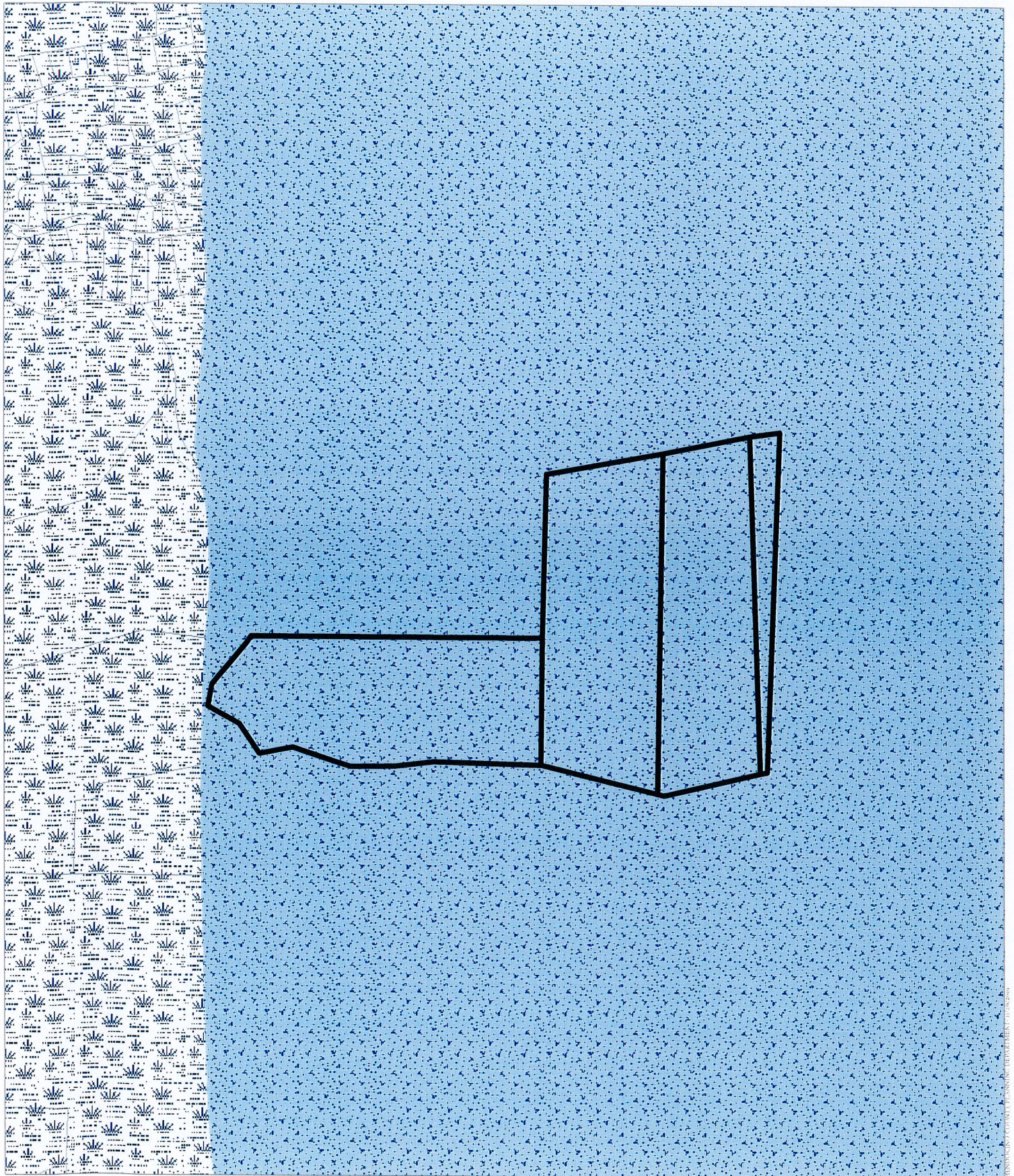


FIRE HAZARD ZONES & RESPONSIBILITY AREAS  
 STATE RESPONSIBILITY AREA





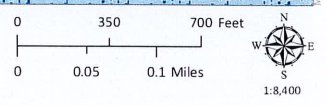
CASE: B 2019-0054  
OWNER: MOORES, Bill & Tona  
APN: 132-210-37, 38, 40  
APLCT: William & Tona Moores  
AGENT:  
ADDRESS: None Assigned, Manchester





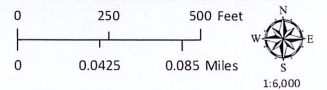
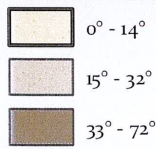
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 APLCT: William & Tona Moores  
 AGENT:  
 ADDRESS: None Assigned, Manchester

 Marginal Water Resources  
 Critical Water Resources Bedrock



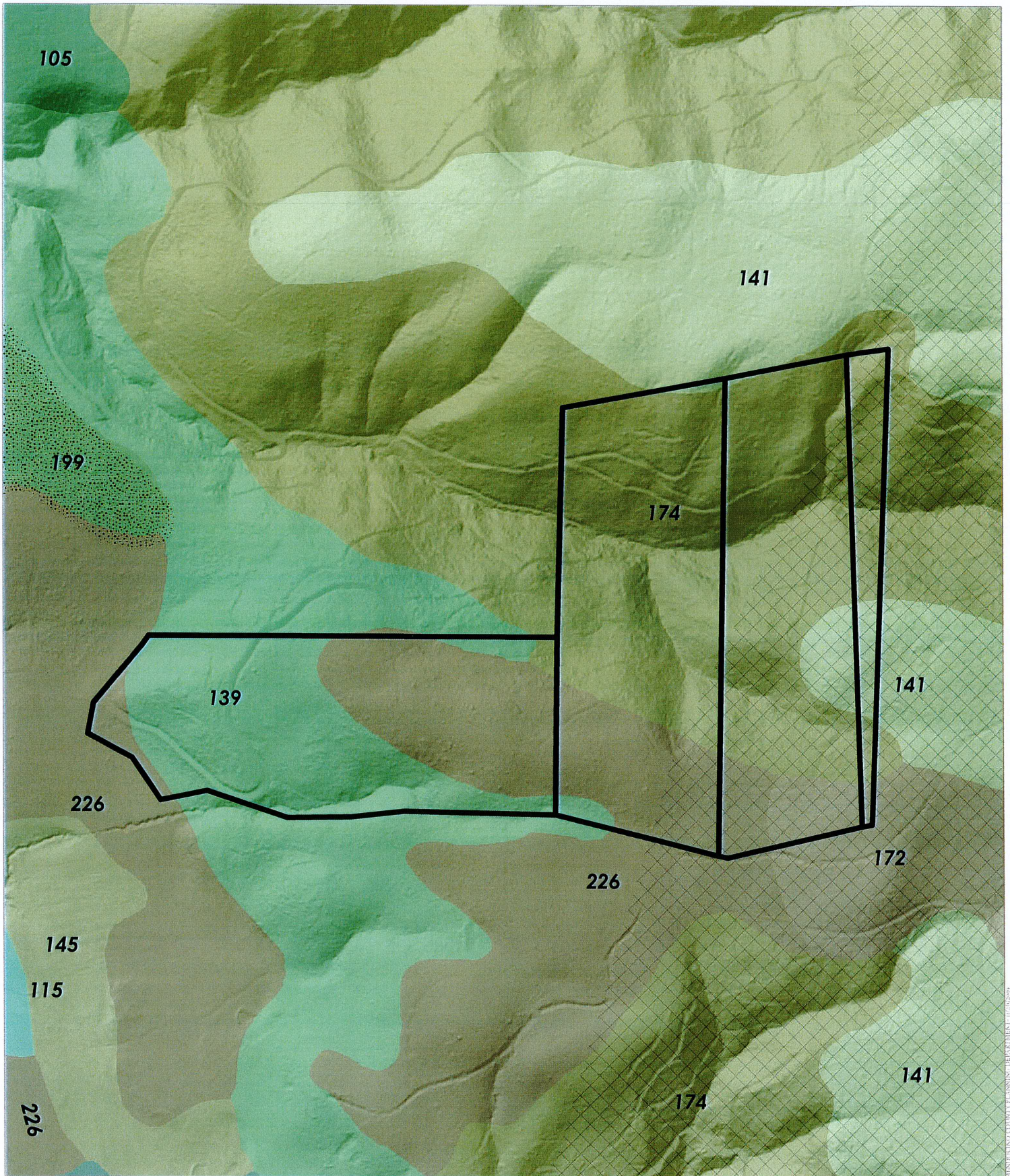


CASE: B 2019-0054  
 OWNER: MOORES, Bill & Tona  
 APN: 132-210-37, 38, 40  
 APLCT: William & Tona Moores  
 AGENT:  
 ADDRESS: None Assigned, Manchester





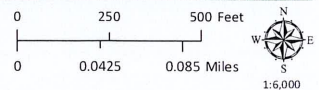
ESTIMATED SLOPE  
 ATTACHMENT P

MANCHESTER PLANNING DEPARTMENT 1/15/2019



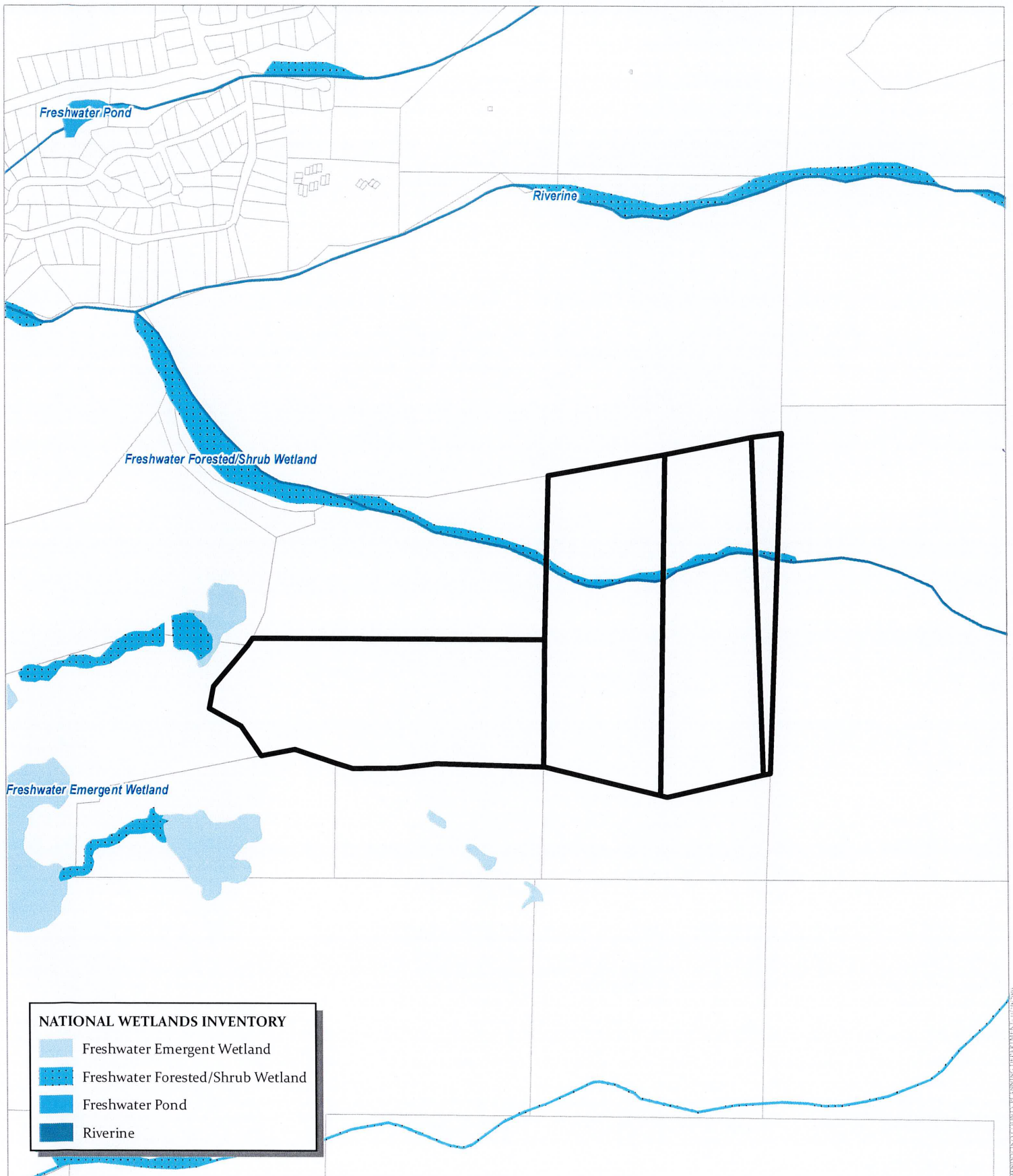
CASE: B 2019-0054  
 OWNER: MOORES, Bill & Tona  
 APN: 132-210-37, 38, 40  
 APLCT: William & Tona Moores  
 AGENT:  
 ADDRESS: None Assigned, Manchester

 Shinglemill-Gibney Complex  
 Bishop Pine

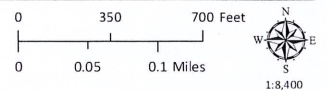


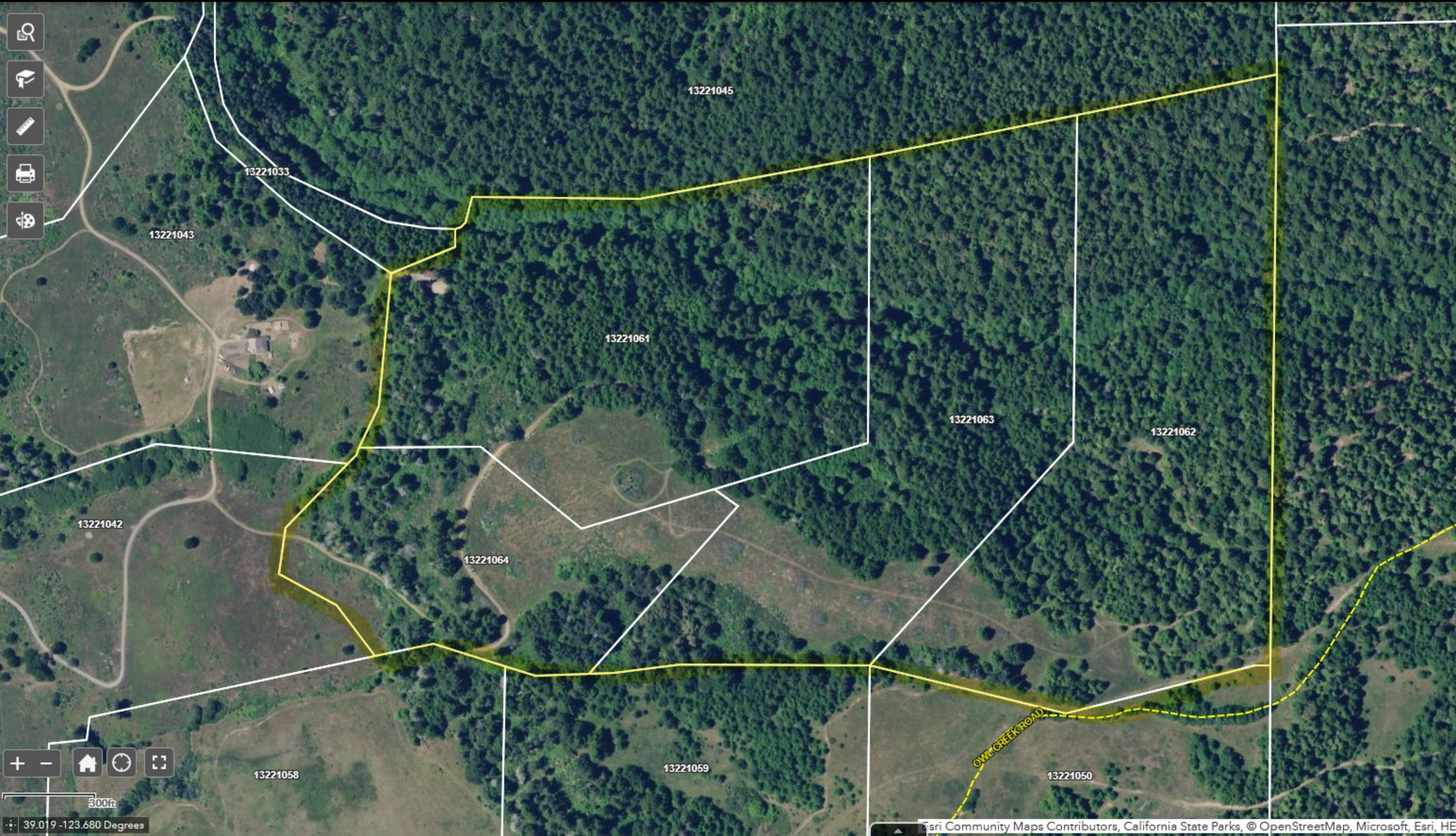
WESTERN SOIL CLASSIFICATIONS  
 ATTACHMENT Q





CASE: B 2019-0054  
 OWNER: MOORES, Bill & Tona  
 APN: 132-210-37, 38, 40  
 APLCT: William & Tona Moores  
 AGENT:  
 ADDRESS: None Assigned, Manchester





300ft

39.019 -123.680 Degrees



MENDOCINO COUNTY BOARD OF SUPERVISORS  
AGENDA SUMMARY – PLANNING MATTERS

BOARD AGENDA # 10d3

Agenda Summaries must be submitted no later than noon Wednesday, 13 days prior to the meeting date

TO: Board of Supervisors DATE: February 13, 2002

FROM: Planning and Building Services AGENDA DATE: February 26, 2002

DEPARTMENT RESOURCE: Frank Lynch PHONE: 463-4281 PRESENT:  ON CALL:

Consent  Regular Agenda  Est. Time for Item: one hour Urgent  Routine  *Y*

■ AGENDA TITLE: Discussion and possible action regarding Administrative Appeal #AA 2-2001 - Moores

■ SUMMARY: Appeal of Planning Commission's denial of Administrative Appeal #AA 2-2001. This is an appeal of the determination of both the Department of Planning and Building Services and County Counsel that the appellants property is subject to merger, and the County can not issue four separate Certificates of Compliance. The appellant believes that the County did not follow proper procedures in implementing State merger laws, and that his property, is therefore, exempt from merger.

■ PREVIOUS ACTION: On December 6, 2001 the Planning Commission unanimously voted (5-0) to deny the appeal finding that the subject property was subject to merger.

■ STAFF RECOMMENDATION: Staff recommends that the Board of Supervisors uphold the Planning Commissions decision and deny Administrative Appeal #AA 2-2001

■ RECOMMENDED ACTION/MOTION: That the Board of Supervisors upholds the action of the Planning Commission and denies the appeal #AA 2-2001, further finding that County Counsel and the Department of Planning and Building Services are correct in determining that Mr. Moores' property meets the criteria to be subject to merger.

■ ALTERNATIVE ACTION/MOTION: None proposed.



BOARD ACTION

- 1)  Approved \_\_\_\_\_
- 2)  Referred to \_\_\_\_\_

- Date of Action 2/26/02
- 3)  Denied \_\_\_\_\_
  - 4)  Other \_\_\_\_\_

**BOARD OF SUPERVISORS  
DRAFT MINUTES  
FEBRUARY 26, 2002**

**3) Discussion and Possible Action Regarding an Administrative Appeal:**

AA 2-2001 – William Moores (Owners/Appellants), Steven Butler (Agent)

**REQUEST:** Appeal of an administrative determination by the Department of Planning and Building Services and County Counsel that the appellant's property is subject to merger and the County can not issue four separate Certificates of Compliance as requested.

**LOCATION:** 4± miles north of Manchester, lying east of Highway One, adjacent to the south side of the Irish Beach Subdivision, on the south side of Irish Gulch.

Mr. Frank Zotter, Chief Deputy County Counsel, provided a brief overview of the item, referencing applicable laws regarding the matter.

Mr. Frank Lynch, Senior Planner, noted that the issue is an appeal of the Planning Commission's denial of Administrative Appeal No. AA 2-2001. Specifically, an appeal of the determination of both the Department of Planning and Building Services and County Counsel, that the appellant's property is subject to merger, and that the County can not issue four separate Certificates of Compliance. Mr. Lynch noted that the appellant is of the opinion that the County did not follow proper procedures in implementing State merger laws, and that his property is, therefore, exempt from merger. Mr. Lynch noted that staff recommends that the Board of Supervisors uphold the Planning Commission's decision and deny Administrative Appeal No. AA 2-2001

Mr. Hall provided clarification regarding mandated merger provisions and associated public noticing requirements.

Mr. William Moores, applicant/appellant, provided an overview of the appeal, and reviewed an informational packet presented to the Board, which included an overview of historical merger processes and associated Certificates of Compliance pertaining to the properties in question. Mr. Moores referenced County Ordinance No. 3370 providing for the merge of parcels and various statutes governing merger of contiguous parcels of land. Mr. Moores expressed his position regarding the appeal and commented regarding County Counsel's opinion addressing the issue. Mr. Moores further referenced staff and counsel statements presented at the Planning Commission hearing held on December 6, 2001.

Mr. Hall provided additional information relative to the matter, which resulted in a question and answer period pertaining to the timelines of the regulatory statutes.

Responding to Board member inquiry, Mr. Hall and Mr. Lynch provided further clarification regarding the legality of the separation of the referenced parcels (depicted on the maps presented by the applicant/appellant).

Mr. Hall further noted the relevance of previous action of the Board (1988), regarding a request for Certificates of Compliance pertaining to the project properties, as well as associated properties, and indicated that the discussions at that time debated the parcels in question.

Chief Deputy Counsel Zotter further referenced additional merger legislation, which defines noticing procedures.

Upon motion by Supervisor Shoemaker, seconded by Supervisor Campbell, and carried (4, with Supervisor Delbar dissenting); IT IS ORDERED that the Board of Supervisors upholds the action of the Planning Commission and denies appeal No. AA 2-2001, further finding that County Counsel and the Department of Planning and Building Services are correct in determining that Mr. Moores' property meets the criteria to be subject to merger.

MENDOCINO COUNTY PLANNING COMMISSION  
DRAFT MINUTES  
DECEMBER 6, 2001

6A. AA 2-2001 – MOORES – North of Manchester

Request: Appeal of a determination by the Department of Planning and Building Services and County Counsel that the appellant's property is subject to merger and the County can not issue four separate Certificates of Compliance as requested.

Mr. Lynch gave a quick overview of the project.

Mr. Frank Zotter reviewed the history of the merger of parcels.

Mr. Moores handed out copies of merger law with portions highlighted.

A lengthy discussion ensued between primarily Mr. Moores, Chief Deputy County Counsel Frank Zotter, Chairman McCowen, and Commission Lipmanson regarding interpretations of both state and local regulations related to merger and unmerger laws.

The public hearing was declared open.

Two people from the public felt that this issue would not to resolved and felt that the Commission should move on to the 3-acre timber conversion discussion.

The public hearing was declared closed.

Commissioner Berry recused himself due to possible benefit for his family.

Upon motion by Commissioner Lipmanson, seconded by Commissioner Nelson and carried by the following roll call vote, IT IS ORDERED that the Planning Commission concludes that the Moore's property meets the criteria subject to merger, therefore, upholds Mr. Zotter's opinion and denies the appeal.

AYES: Barth, Little, Nelson, Lipmanson, McCowen

NOES: None

ABSTAIN: Berry

ABSENT: Calvert

RECESS: 12:00 – 1:30 p.m.

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## MENDOCINO COUNTY MEMORANDUM

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TO: MENDOCINO COUNTY PLANNING COMMISSION  
FROM: ~~W~~ PLANNING AND BUILDING SERVICES  
SUBJECT: ADMINISTRATIVE APPEAL #AA 2-2001 MOORES  
DATE: OCTOBER 4, 2001

Mr. William Moores owns Assessor's Parcels Number 132-210-37,38,39,40 and 41 (formerly AP# 132-210-34), which are within Agricultural Preserve/Williamson Act and are located south of Irish Gulch and the Irish Beach Subdivision. Mr. Moores and his legal counsel, Stephen K. Butler, are appealing a Mendocino County Counsel Opinion that Mr. Moores' parcels are subject to the County's merger regulations. Attached is a copy of Mr. Frank Zotter's legal opinion regarding this issue. Also attached are copies of correspondence from Mr. Moores and Mr. Butler.

In August of 1975, an application signed by Mr. Moores on behalf of Moores Associates, requested to rezone the eastern 220-acre portion of a 416-acre parcel to Forest Conservation (FC) and place the property into Agricultural Preserve. An ordinance approving the rezoning and the Agricultural Preserve was approved by the Board of Supervisors effective February, 1977. A subsequent boundary line adjustment #B 6-81 resulted in the 220 acre easterly portion being separated from the 196 westerly portion of the property which had not been placed in FC-Preserve zoning. The current Assessor's Parcels identified above range in size from 4 to 29 acres and were created from the easterly 220-acres outside the County Division of Land process. Staff does not know the basis for the Assessor establishing separate parcel numbers for these parcels.

Over the last few years there have been several meetings and discussions regarding the County's position with regard to the effect of the County's merger laws on Mr. Moores property. It should be noted that no actual Certificate of Compliance application has been submitted by Mr. Moores, therefore Planning and Building Staff has not completed a detailed research of the Moores' property in light of current merger regulations. Without specific research on the chain of title for this property, Staff can not actually make a determination as to the actual number of underlying parcels that could be recognized if merger were not an issue. Normally, an appeal would occur after a dissatisfied applicant has filed an application for Certificates of Compliance and received a PBS determination as to the number of certificates to be recognized. In this case, no application for CC's has been filed on the subject property. The applicant is appealing County Counsel's interpretation of the merger laws that would be applied if such an application were filed.

The history of merger regulations is quite complicated due to a number of changes in the law since the 1970's. Prior to 1977, the various laws generally caused parcels to merge when they were contiguous and came under common ownership. In 1977 State legislation provided that undersized parcels would merge automatically unless a county provided otherwise. In 1978 the "automatic merger" was replaced by regulations that resulted in parcels merging only when a local agency adopted an ordinance compelling such merger. In 1983, the State Legislature established what are presently the merger regulations in effect today. These regulations caused parcels to "un-merge" unless a local agency recorded notices of merger within two years. Legislation sponsored by Assemblyman Cortese on behalf of Mendocino County extended the timeframes for merger and provided that "resource lands" could still be merged without a notice of merger if the following criteria were met:

- Parcels had to be contiguous.
- Parcels had to be in common ownership.
- Parcels had to be undersized for the zoning (i.e., not meet minimum parcel size required by zoning).
- The County had sent a notice of merger to affected owners of "resource lands" by January 1, 1987.

**Staff Recommendation:** Staff has concluded that the Moores' property meets the above criteria, therefore, is subject to merger, therefore recommends that the Planning Commission uphold Mr. Zotter's opinion and deny Mr. Moores appeal.

Attachments



LAW OFFICES OF  
CLEMENT, FITZPATRICK & KENWORTHY  
INCORPORATED  
3333 MENDOCINO AVENUE  
POST OFFICE BOX 1494  
SANTA ROSA, CALIFORNIA 95402  
FAX: 707 546-1360  
TELEPHONE: (707) 523-1181

AA 2-01  
7-12-01  
NEL 40193  
\$680.00  
y

STEPHEN K. BUTLER

June 21, 2001

Mendocino County Planning Commission  
c/o Mendocino County Planning Department  
501 Low Gap Road, Room 1440  
Ukiah, CA 95482

RECEIVED  
JUN 22 2001  
BY  
PLANNING & BUILDING SERVICES  
UKIAH, CA 95482

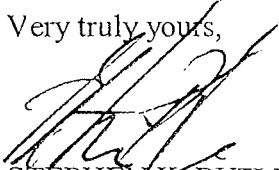
Re: Appeal of Denial / Certificates of Compliance / APN # 132-210-37-41

To whom it may concern:

I represent William Moores, the heir of the estate of Gertrude J. Elder. Please be advised that we are appealing the decision of Mendocino County in the form of a letter from Frank Zotter, denying the issuance of certificates of compliance for the reasons set forth in his correspondence to me of June 12, 2001, a copy of which is enclosed. Also enclosed are copies of my correspondence to Mr. Zotter and Mr. Moores' correspondence to Mr. Zotter in relation to this matter. That correspondence sets forth the reasons and basis for this appeal.

I have attached a check in the amount of \$680 to cover the appeal fee, if one is required. Please call me at (707) 523-1181 if you need additional information from me.

Very truly yours,



STEPHEN K. BUTLER

SKB:cj  
Enclosures  
c: William Moores

LAW OFFICES OF  
CLEMENT, FITZPATRICK & KENWORTHY  
INCORPORATED  
3333 MENDOCINO AVENUE  
POST OFFICE BOX 1494  
SANTA ROSA, CALIFORNIA 95402  
FAX: 707 546-1360

TELEPHONE: (707) 523-1181

STEPHEN K. BUTLER

June 30, 2000

Frank Zotter, Jr.  
Chief Deputy  
Mendocino County Counsel  
Administration Center  
501 Low Gap Road, Room 1030  
Ukiah, CA 95482

Re: William Moores/Gertrude Elder Estate/Certificate of Compliance Issues

Dear Frank:

I have had an opportunity to review your letter of January 31, 2000, and the variety of issues addressed therein. Thank you for the invitation to further respond to your concerns prior to your office rendering a final opinion in connection with this matter. In response to your analysis, I have four basic points to urge. They are as follows:

1. The Parcels Were Not Validly Merged under Ordinance Number 3370.

Without intending to beat a dead horse, it appears that the most critical issue is whether the parcels in question were validly merged under the statutory scheme adopted by Mendocino County in 1982 (Mendocino County Code Sections 17-106 and 17-108). It seems inescapable to us that the two pertinent code sections must be read together and that, to the extent that those sections imposed mandatory obligations upon the County, such obligations had to be discharged in order for a valid merger to have taken place. Since we are in agreement that no notice of merger was ever recorded, the pivotal point in the whole discussion is whether, pursuant to Section 17-108, a notice of merger should have been recorded in order to perfect a valid merger under Ordinance Number 3370.

On pages 8 and 9 of your letter, you provide evidence with respect to the fact that the County had no intention, through the adoption of Section 17-108, of imposing an obligation on itself to conduct title searches going back to the 1800s. You conclude that "[t]herefore, the most logical way to interpret Section 17-108 is to conclude that the 'knowledge' referred to in that ordinance was intended to apply to a situation when a County employee recognized that a specific instance of merger had occurred. Upon this discovery, the notice provisions of Section 17-108 would have been triggered."

We accept your conclusion that the County was under no mandatory obligation to conduct title searches on each parcel of property in the County in order to perfect a merger under

Frank Zotter, Jr.  
June 30, 2000  
Page 2

Ordinance Number 3370. We also concur that the "knowledge" giving rise to a mandatory obligation to record a notice of merger pursuant to Section 17-108 arose in a situation where County employees or officers recognized that a specific instance of merger may have occurred. We assert, as will be discussed later in this section, that such actual "knowledge" did exist and that the mandatory obligation referred to in Section 17-108 arose. We also assert that having failed to discharge its mandatory obligation to record a notice of merger pursuant to Section 17-108, no valid merger occurred under Ordinance 3370.

Even if, as you argue, the parcels are properly classified as resource lands for purposes of Section 66451.301 and 66451.302, the County was still under a mandatory obligation pursuant to Section 17-108 to record a notice of merger by January 1, 1988, if the County had actual "knowledge" of the merger. The County had such actual knowledge at that time. Western Title submitted and the County reviewed information showing the parcels and patents on the entire area in question.

In December of 1985, Jared G. Carter filed an application for certificates of compliance on the Nichols Ranch then owned by Mickey Elder ("Nichols Ranch property"). The Nichols Ranch property was adjacent to the parcels subject to the present dispute ("Moore's property"). Copies of documents relating to that application are enclosed for your review. As you will note, the application related to Assessor's Parcel Numbers 132-210-31 and 32. The adjacent Moore's property was then designated Assessor's Parcel Number 132-210-34.

Mr. Carter's request for certificates was denied in December of 1996 and an appeal ensued. During the course of Mendocino County's review of the merits of Mr. Carter's application for certificates on the Nichols property, planning staff became aware, although it was not included as part of Mr. Carter's application, that there were four parcels underlying the Moore's property. The basis of the December 30, 1986, administrative determination to deny Mr. Carter's requested certificates was noted in a memorandum from Ray Hall to the Board of Supervisors dated August 31, 1988, in which he stated that "The conclusion was that to issue three certificates of compliance on Assessor's Parcel Numbers 132-210-31 and 132-210-32 would result in nine parcels south of Irish Gulch." Four of the nine parcels referred to in Mr. Hall's memorandum are the parcels underlying the Moore's property.

Although the potential for merger of the parcels underlying the Moore's property was discussed at the time, the County never issued a single certificate of compliance on the Moore's property as part of the resolution of Mr. Carter's appeal. Perhaps this was in recognition of the fact that Assessor's Parcel Number 132-210-34 was under separate ownership and that the Board did not have appropriate jurisdiction over the parcel in the context of Mr. Carter's appeal.

In any event, the fact remains that, in December of 1986, County staff clearly knew both of the multiple parcels underlying the Moore's property and also that such parcels could have

Frank Zotter, Jr.  
June 30, 2000  
Page 3

qualified for merger pursuant to the County's contention that such parcels were resource lands for purposes of Sections 66451.301 and 66451-302. Despite such actual knowledge and in contravention of its own merger ordinance, no notice of merger was recorded prior to January 1, 1988.

In light of the above, with respect to the Moores property, the County need not have conducted any title research. Under your interpretation of Section 17-108, County employees had "knowledge" of the potential for merger and failed to discharge the County's self imposed mandatory obligation. Having failed to comply with its own mandatory merger requirements, we contend that the parcels were not validly merged under Ordinance Number 3370. To the extent that the County contends that some automatic merger took place under Section 17-106, notwithstanding the failure to comply with Section 17-108, any merger under Section 17-106 is, in our opinion, either void or, at the very least, voidable by way of an action for declaratory relief under Section 66451.19(e) of the Subdivision Map Act.

2. Continued Merger Did Not Take Place Under Map Act Sections 66451.301 and 66451.302.

Even if the parcels underlying the Moores property are properly classified as resource lands, no continued merger under Section 66451.301 and 66451.302 took place because, as explained in Section 1 above, the parcels were not validly merged under the mandatory requirements of Ordinance Number 3370. Although we are not abandoning our claim that the County did not give proper notice of continued merger pursuant to Section 66451.302, the adequacy of the County's notice becomes moot if the parcels were never validly merged in the first place pursuant to Ordinance Number 3370.

3. Resource Lands Issue.

Since the primary points raised above stand independently of the characterization of the property as resource or non-resource lands, I am not going to go into this issue in any detail in this letter. However, suffice it to say, that the record shows that the only reason that the parcels were placed under a Williamson Act Contract was for recreational purposes in partial fulfillment of conditions for an overall planned development on adjacent lands. As you know, the adjacent development zoning was unilaterally changed by the County in 1987. Mr. Moores has detailed information with respect to the non-suitability of the property for timber and range land purposes. He can document the fact that the property will not meet minimum County requirements for timber land or range land designations. If you wish to consider this additional information, we would be most happy to provide it.

4. Equitable Issues.

Frank Zotter, Jr.  
June 30, 2000  
Page 4

Last, for the record, I would like to note that the failure of the County to record a notice of merger within the 1986 to 1988 time period continues to result in prejudice to my client. The County Assessor continues to appraise the property as if it were composed of separate legal parcels. Mr. Moores informs me that Margaret Ballou, the Executor of the Estate of Gertrude Elder, was required under the will to distribute to all siblings in equal value amounts. Mr. Moores also informs me that the California state inheritance tax appraiser appraised the Moores property, as did the Assessor, as separate legal parcels based on the title of record. That title, of course, includes no notice of merger. The result of all of this is that the siblings taking an interest in the Moores property under the estate will have received, to their prejudice, grossly over valued land if the County refuses to issue certificates recognizing the validity of the underlying parcels.

To conclude, your prior letter indicates that you were unaware that, in this case, more than one employee of the Planning Department did "have knowledge". Since no notice of merger has ever been recorded and since you have previously indicated that, with actual knowledge, recordation of a notice was required by the County's merger ordinance, we hope that you will agree that the four certificates of compliance should be issued. My client hopes to avoid acrimony and litigation. However, he will not surrender his rights without an unequivocal demonstration that his claims are meritless.

Thank you again for your time and attention to this matter. If you should have any questions regarding this letter or would like to discuss its contents prior to issuing a formal response, please do not hesitate to call. We remain willing to address your points and hope you agree that it is less costly for both parties to exchange arguments in this context rather than in court. We await your reply.

Very truly yours,

**STEPHEN K. BUTLER**

STEPHEN K. BUTLER

SKB:cj  
Enclosures  
c: Bill Moores

S me r this

NEWELL RAWLES (1909-1976)  
DONALD G. HINKLE  
JARED G. CARTER  
THOMAS S. BRIGHAM  
C. SCOTT BAUSTAD  
JOHN A. BEHNKE  
MYRNA L. OGLESBY

LAW OFFICES OF  
RAWLES, HINKLE, CARTER, BRIGHAM,  
GAUSTAD & BEHNKE  
A PROFESSIONAL CORPORATION  
169 MARION ST., SUITE 300  
POST OFFICE BOX 720  
UKIAH, CALIFORNIA 95482

TELEPHONES  
(707) 462-6664  
(707) 462-6666

December 31, 1985

RECEIVED  
JAN 3 1986

Ray Hall  
Planning Department  
Courthouse  
Ukiah, CA 95482

BY  
PLANNING & BUILDING SERVICES  
Ukiah, CA 95482

Dear Ray:

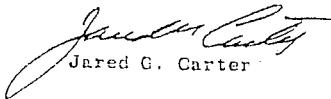
This is an application for certificates of compliance on the Nichols Ranch owned by Mickey Elder. We are seeking three certificates of compliance for portions of original patents: 3 patent 257, 3 patent 255, 3 patent 254.

A plant guarantee from Western Title Insurance Company, and various deeds and maps are attached as is an application including the road information request (all that says is that all three parcels border State Highway 1), and our check for \$80.00 as the filing fee.

As you know, this piece of property has an elaborate history, as it was recently zoned PD and planned for rather intense development; but, in conjunction with the County's approval of the local coastal plan, it was most recently rezoned to 160 acre minimum as pasture land. An application to amend that plan and redesignate this property for development has been filed and should be processed. Neither that application, nor this application should be viewed as waiving any rights that the owners of this property may have against the County or any other agency or person resulting from the designation of this property as pasture land 160 acre minimum. This application should be viewed, rather, as an effort to minimize the damage caused by the recent redesignation as 160 acre minimum in the event that the general plan amendment applied for is denied.

Please process this application as soon as possible. If any additional information is required, please let me know.

Sincerely,

  
Jared G. Carter

JGC:lm  
Enclosure  
cc: Mickey Elder  
William Moores  
Gordon Moores

STAFF

Application for  
CERTIFICATE OF COMPLIANCE

MENDOCINO COUNTY PLANNING & BUILDING SERVICES  
Courthouse, Ukiah, CA 95482  
Telephone: (707) 463-4281

Case No. CC 2-86  
Date Filed 1-13-86  
Fee \$ 80-  
Receipt No. 14435  
Received by [Signature]

Owner's Name: Gertrude J. Elder (previously Gertrude J. Moores)  
Address: P.O. Box 781, Ukiah, California, 95482

Phone No: (707) 462-1098

Assessor's Parcel No.: 132-210-<sup>32</sup>~~30~~ and 31

No. of lots assumed: 3

Street address Hwy. 1, immediately South of Irish Beach

IMPROVEMENTS

No Existing Improvements

- |   |  |
|---|--|
| <input type="checkbox"/> Single family dwelling | <input type="checkbox"/> Public Water supply         |
| <input type="checkbox"/> Mobile Home            | <input type="checkbox"/> On-site water supply source |
| <input type="checkbox"/> Other _____            | <input type="checkbox"/> Other _____                 |
| Comments: _____                                 | <input type="checkbox"/> Public Sewer                |
| _____   | <input type="checkbox"/> On-site sewage system       |
| _____   | <input type="checkbox"/> Other _____                 |

This application must be signed by either the owner or an authorized agent. The agent shall submit to the owner has granted authorization of Compliance.

*cc of this pchls you just w/ of pubse & pite*

Gertrude J. Elder  
OWNER  
GERTRUDE J. ELDER

[Signature]  
AGENT  
JARED G. CARTER

Address: 169 Mason Street  
Suite 300, Ukiah, CA 95482  
Phone No. (707) 462-6694

NEWELL RAWLES (1909-1976)  
DONALD G. HINKLE  
JARED G. CARTER  
THOMAS S. BRIGHAM  
G. SCOTT GAUSTAD  
JOHN A. BEHNKE  
MYRNA L. OGLESBY  
SANDRA L. APPLGATE

LAW OFFICES OF  
RAWLES, HINKLE, CARTER, BRIGHAM,  
GAUSTAD & BEHNKE  
A PROFESSIONAL CORPORATION  
169 MASON ST., SUITE 300  
POST OFFICE BOX 720  
UKIAH, CALIFORNIA 95482

TELEPHONES  
(707) 462-6694  
(707) 462-6666

January 17, 1986

Kathleen A. Johnson  
Planning Tech. I  
Department of Planning  
and Building Services  
Courthouse  
Ukiah, California 95482

Re: Certificate of Compliance 2-86 (Moores)

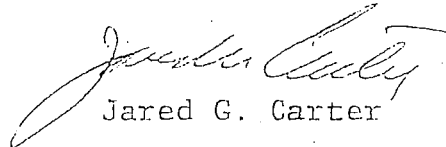
Dear Ms. Johnson:

We are in receipt of your letter dated January 14, stating an error in our application for certificates of compliance on the above-referenced matter.

After reviewing the application, we find that you are correct and the A.P. numbers should be 132-210-31 and 32. Please make the change on the application.

We apologize for any inconvenience this may have caused.

Sincerely,

  
Jared G. Carter

JGC:lm  
Enclosure  
cc: Gertrude Elder

RECEIVED  
JAN 17 1986  
BY  
PLANNING & BUILDING SERVICES  
UKIAH, CA 95482



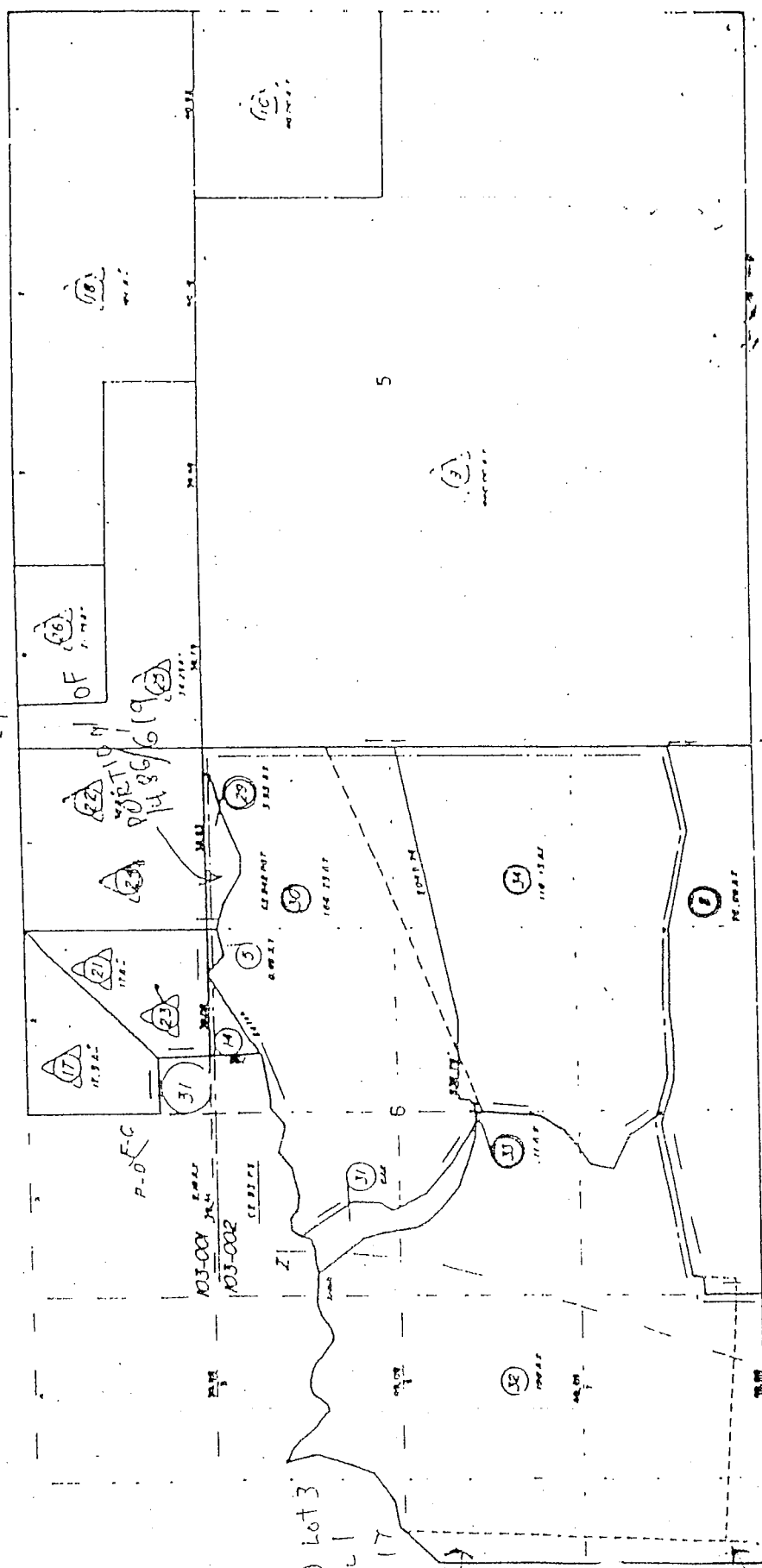
# MAP b - Plant Gatee

Sec. 586 T.13N. R.16W M.D.B.M.

103-001  
103-002

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P-D  
TRZ

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NOTE: This map was prepared for assessment purposes only. The liability is assumed for the data obtained hereon.

Assessor's Map  
County of Alameda, Calif  
REVISED 3-14-65

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NEWELL RAWLES 11909  
DONALD G. HINKLE  
JARED G. CARTER  
THOMAS E. BRIGHAM  
G. SCOTT GAUSTAD  
JOHN A. BEHNKE

LAW OFFICES OF  
RAWLES, HINKLE, CARTER, BRIGHAM,

GAUSTAD & BEHNKE

A PROFESSIONAL CORPORATION

300 WEST STANBLY STREET

POST OFFICE BOX 720

UKIAH, CALIFORNIA 95482

April 18, 1986

TELEPHONES  
(707) 462-0604  
(707) 462-6665

RECEIVED

APR 23 1986

BY  
PLANNING & BUILDING SERVICES  
UKIAH, CA 95482

Frank Lynch  
Planning Department  
Courthouse  
Ukiah, California 95482

Re: CC No. 2-86

Dear Mr. Lynch:

On March 19, 1986, my secretary called to see if you had received the above mentioned application and, at that time, you stated that it was being processed. Please give me an update on the status of this application.

Sincerely,

*Jared G. Carter*  
Jared G. Carter

JGC:lm  
cc: William Moores

H. PETER KLEIN  
COUNTY COUNSEL

FRANK ZOTTER, JR.  
CHIEF DEPUTY

DEPUTY COUNTY COUNSELS

SANDRA L. APPLIGATE  
IRVEN L. GRANT  
JULIE S. WERBEL  
GALEN GENTRY



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ADMINISTRATION CENTER  
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(707) 463-4592

CYNTHIA T. MONTESONI  
OFFICE MANAGER

June 12, 2001

Stephen K. Butler, Esq.  
Clement, Fitzpatrick & Kenworthy  
P. O. Box 1494  
Santa Rosa, CA 95402

BY FAX AND FIRST CLASS MAIL

Re: William Moores/Gertrude Elder Certificate of Compliance Issues

Dear Steve:

This is in response to your letter of June 30, 2000, regarding the above topic. Please accept my apologies for the length of time that it has taken me to respond. One of the difficulties (which I am sure that you have also encountered in dealing with these issues) is that the law and the facts here are both so complicated that it takes a while simply to become reacquainted oneself with these concepts each time the file is opened. That requires quite a bit of uninterrupted time, which unfortunately is not a luxury I often have today.

In reviewing the correspondence that has gotten us to this point, I believe that the sequence was as follows. You initially wrote to my office regarding property that Mr. Moores inherited from his mother, Gertrude Elder, on which he believes there are multiple underlying parcels created by patents. You contended that these parcels were not validly merged by the County's 1981 ordinance—or that, if they ever were merged, they later "unmerged" by virtue of changes in state law after 1983. Accordingly, Mr. Moores believes he is entitled to multiple certificates of compliance.

I wrote back and stated that the County disagreed, relying on Government Code §§ 66451.301 and 66451.302 ("§ .301" and "§ .302"). I contended that there were seven discreet "elements" that the County had to show, including mailing of the notice that was required by § .302, but that all seven elements could be established in Mr. Moores' case. I also contended that the notice was properly mailed to Gordon Moores, Mr. Moores' brother, because that was the only name on the last equalized assessment roll. Finally, I pointed out that the notice permitted by § .302, although a requirement for the property to "remain merged" under the "resource lands merger" scheme, simply directed the landowner to contact the County for further information. It did not itself require any action by a landowner that might have prevented merger if Mr. Moores had "acted in time."

Your letter to me in response then raised four points, which I will address in

sequence:

1. Whether the parcels were validly merged under Ordinance 3370.

Your discussion focuses first on the language of Mendocino County Code § 17-108 (1982 amendment, Ordinance No. 3370) which required the County to record a document, with notice to the landowner, whenever the County "had knowledge" of an automatic merger under the earlier-adopted Mendocino County Code §§ 17-106. You contend that the County "had knowledge" because in December, 1985, Jared Carter filed an application for certificates of compliance on the Nichols Ranch which was adjacent to the Moores property in question here. You cited language in an August 31, 1988 memorandum from Planning Director Raymond Hall to the Board of Supervisors, in which he refers to "nine parcels south of Irish Gulch." You interpret the "nine parcels" referred to in that memorandum as including four parcels underlying the Moores property.

The County did not issue any certificates of compliance at that time because, as you noted, only the Nichols property, not the Moores property, was before the County. You contend, however, that the Hall memorandum indicates there "was knowledge" on the part of the County in 1986, and the County therefore had a duty to record a notice of merger in order for the parcels to "have been merged under a valid local ordinance." As part of your argument, you contend that "the County was still under a mandatory obligation pursuant to Section 17-108 to record a notice of merger by January 1, 1988 if the County had actual 'knowledge' of the merger."

I respectfully disagree, for three reasons. First, I am not certain that the evidence that the County "had knowledge" of these mergers is as definitive as you suggest based on the 1986 memorandum from Ray Hall to the County Board. There is nothing the passage that you quote from the Hall memorandum to indicate that it refers to the four parcels you contend underlie the Moores property. Rather, that is a conclusion that you and your client have reached, which you state separately (i.e., not as a quotation from the Hall memorandum) in your letter.

Second, the County was not required, even by § 17-108, to record notices of merger in order to *accomplish* merger. Section 17-108 was wholly concerned with giving notice of *the fact of* merger, not with making it take place. That section is silent on the consequences of the failure to record a notice. Moreover, as I said in my previous letter, by contrast the language of § 17-106 is quite specific: "Merger of lots, parcels and units of land . . . shall occur when at least two contiguous lots, parcels, or units of land are held by the same owner, one of which does not conform to standards for minimum lot parcel size . . ."

Nothing in § 17-108 itself provides, for example, that failure to record the notice causes parcels to "unmerge." Merger clearly took place automatically under § 17-106; and § 17-108 is not a "retroactive condition precedent" for merger to have occurred in the first place—especially when the County might not have obtained

"knowledge" of a given merger until years later.

I submit that the failure to comply with § 17-108 during the brief time that it was in effect did not "unmerge" property. It might instead have been an defense if the County tried to prevent someone from selling land otherwise subject to merger if no notice was recorded (and if it could be shown that the County "had knowledge"). Such a landowner could have argued that the County was estopped to claim that the parcels were merged if it had knowledge but failed to record the notice required by § 17-108.

All of this is academic, however, because of my third reason: by 1986 merger was controlled by state law, not local ordinance. By the time Mr. Hall's memorandum was written, the legislation which added §§ .301 and .302 had been in effect since September, 1985. There was no longer any reason for the County to rely on its own ordinance, including § 17-108, because the Legislature had changed state law to allow "resource lands merger" under those two statutes.

I therefore also disagree with your comment that I quoted above—that the County was under a duty to continue to use its own merger ordinance, either in general or for resource lands merger, until January 1, 1988. Neither § 17-108 nor § .301 *mandates* that counties continue to use local-agency-initiated merger (including recordation of notices) until January 1, 1988. Section 17-108 itself is silent about the effect of a failure to record a notice. Likewise, § .301 states only that, if a notice of merger "had not been recorded" by that date, then the parcels "shall be deemed not to have merged" unless all "seven elements" under §§ .301 and .302 could be shown.

This, of course, is really the crux of my disagreement with the position articulated in your letter: § .301 and § 17-108 are mutually exclusive. As to a given parcel, a county cannot simultaneously have complied with § 17-108 and also qualify for resource lands merger under § .301; the two simply cannot co-exist. This is because one of the conditions precedent for § .301 even to apply is that a notice of merger *not* have been recorded.

As shown by Assemblyman Cortese's comments in that attorney general's opinion I cited last time, Mendocino County was well aware that there was a "no recordation" provision in the legislation because this County itself was had lobbied for the bill. The County did not record notice of merger under § 17-108 because state law had already pre-empted the recordation requirement. For those parcels which qualified as "resource lands," therefore, including the Moores property, state law—allowing merger with a mailed notice instead of a recorded one—controls.

2. Whether the Parcels "Continued to be Merged" for Purposes of §§ .301 and .302.

I believe that this issue is answered in the discussion above, especially, my third point. Quite simply, to hold that recordation of a notice of merger was a

condition precedent to valid merger under § 17-108 so that a parcel "continued to be merged" under §§ .301 and .302 is to engage in self-contradiction. Only those parcels for which a notice of merger was *not* recorded are even eligible for coverage (and, hence, "continue to be merged" under §§ .301 and .302). It is a simple preemption issue: the County sought the legislation precisely so it would *not* have to record notices. The legislation covers all "resource lands" parcels, whether they fell under § 17-108 or otherwise. To the extent that that ordinance is inconsistent with state law, state law controls.

### 3. Resource Lands Issue.

You next argued that the property in question were not really "resource lands," but were only placed in an agricultural preserve to fulfill a condition for a planned development on adjacent property. While I will take your word that this is true, for purposes of §§ .301 and .302, it doesn't matter what the character of the property was or what the landowner's intent was in putting the land under a Williamson Act contract. Furthermore, even apart from §§ .301 and .302, not all land subject to a Williamson Act contract has to be "resource land."

As to the first point, .301 of course does not actually refer to "resource lands." It actually requires only that "one or more of the merged parcels or units of land is within one of the categories specified in paragraphs (1) to (5), inclusive, of subdivision (b) of Section 66451.30." Likewise, § .302 requires that notice identify the land as having been identified by the County as falling within one of several contracts imposing restrictions which qualify for favorable tax treatment under Revenue and Tax Code § 421. Neither statute requires that the County, in deciding to whom to send out the notice, actually determine to what "resource use" the land was being put.

Government Code § 66451.30, subdivision (b), to which § .301 refers, is verbatim with the language in § .302 about what lands qualify. It also just requires that the land fall within one of the categories listed for a Williamson Act contract, or that it have been zoned TPZ. Moreover, Mendocino County sought the definition that appears in both statutes precisely because it already had a database of lands subject to Williamson Act contracts or in the TPZ classification. This is also borne out in Assemblyman Cortese's comments.

Of equal significance, of course, is that there is no general requirement that land subject to a Williamson Act contract actually be "resource land" in the sense that the land be "agricultural" or "resource producing." Government Code § 51201, part of the Williamson Act, defines "agricultural preserve" as follows (emphasis added):

"Agricultural preserve" means an area devoted to either agricultural use, as defined in subdivision (b), *recreational use as defined in subdivision (n)*, or open-space use as defined in subdivision (o), or any

Stephen K. Butler, Esq.  
June 12, 2001  
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combination of those uses and which is established in accordance with the provisions of this chapter.

Thus, while all agricultural preserve contracts fall under the Williamson Act, not all contracts that fall under the Williamson Act are actually agricultural preserves. Some of them—including the Moores property—are devoted to recreational or open-space uses, not "agriculture." We therefore disagree with your contentions on this issue.

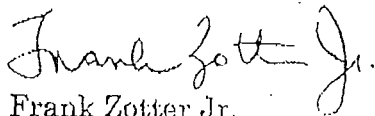
4. **Equitable Issues.**

The fourth issue that you raised is what you deem to be an equitable issue, based in part on the County Assessor having continued to appraise the property as if it were separate parcels, and on the state inheritance tax appraiser treating it likewise. I'm not sure how this applies to the land use issues here. Many properties in the County have more APNs assigned to them than there are separate legal parcels. The reasons for this can vary from the APN representing the division of different tax code areas to a citizen simply having applied for, and been granted, more than one APN for a single parcel.

Mr. Moores has remedies with respect to each of those other officials. He can argue—on the basis of prior correspondence from this office if nothing else—that, for purposes of sale, lease, or financing, the County deems this property to be a single parcel of land.

In sum, therefore, even if the Hall memorandum of August, 1986 is evidence of "knowledge," the County still maintains that those parcels were merged by § 17-106 of the original County merger ordinance, and that § 17-108 did not undo that. By virtue of Government Code §§ 66451.301 and 66451.302, we also believe that those parcels are merged today.

Sincerely,



Frank Zotter Jr.  
Chief Deputy County Counsel

FZ/sz

cc: Alan Falleri, Chief Planner

LAW OFFICES OF  
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March 31, 1999

STEPHEN K. BUTLER

VIA FACSIMILE ONLY  
(707) 463-4592

Peter Klein, County Counsel  
Frank Zotter, Deputy County Counsel  
Mendocino County Counsel's Office  
Administration Center  
501 Low Gap Road, Room 1030  
Ukiah, CA 95482

Re: Gertrude Elder/Certificate of Compliance Issues

Dear Peter and Frank:

I represent the heirs of the estate of Gertrude J. Elder in the matter of whether certificates of compliance should issue for the Mendocino County property in which the heirs have an interest ("property"). I am addressing this letter to both of you because of Peter's knowledge of the historical treatment of these parcels and Frank's current land use responsibilities. I have reviewed the facts underlying the County of Mendocino's ("County") treatment of the four parcels underlying the property. After completing my examination of the material relating to the parcels, I am of the opinion that multiple certificates of compliance should issue to recognize the historic parcels. My analysis follows:

1. FACTS.

a. The Williamson Act Contract Entered into Was to Further Recreational Goals Related to Development on Adjacent Lands.

The property was originally zoned FC as an undeveloped recreational area adjacent to land that the County had zoned PD (planned development). As part of the implementation of the overall adopted area plan, the County and property owners agreed, in 1977, to place the property under a type II Williamson Act Contract which was recorded at Book 1077, Page 609, Official Records of Mendocino County. Around 1986, in order to induce the Coastal Commission to approve the County's local coastal plan, the County unilaterally changed the area plan by re-zoning the property range land 160 acre density and removing the planned development zone from the adjacent lands owned by the Elder estate.



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The Williamson Act Contract which was executed between the County and the owners of the property reflected the property's multiple ownership, including ownership interests of Gertrude J. Elder and Mendocino Coast Properties. At the time of the execution of the contract, Mendocino County regulations allowed recreational lands to be placed under contract without the necessity of income related to agriculture or timber. No one has disputed the owner's claim that prior to 1988 they did not use the land to produce an income from the sale of agricultural or timber products.

b. The County Merger Ordinance Requires Recordation of a Notice of Merger When the County Has Knowledge of Merger Potential.

On January 1, 1981, any prior merger of the property by operation of law was vitiated by virtue of the adoption of what was then Government Code Section 66424.2 which was added by Chapter 1217, statutes of 1980. Thereafter, on January 12, 1982, the County of Mendocino adopted Ordinance No. 3370, an Ordinance Providing for the Merger of Parcels. Section 17-108 of Ordinance No. 3370 required the County to provide notice and record a Statement of Merger "whenever the Mendocino County Planning Department has knowledge that real property has merged pursuant to Section 17-106 of the Mendocino County Code." Based on the January 21, 1999, Memorandum from William Moores to your office, it appears that the planning department had knowledge that the parcels were ostensibly merged pursuant to the provisions of Ordinance No. 3370.

c. The State Subdivision Map Act Sets Forth Requirements for Continued Parcel Merger.

After the adoption of Ordinance No. 3370, there then ensued a variety of amendments to the Subdivision Map Act relating to the subject of parcel merger. This flurry of legislative activity culminated in the adoption of Chapter 796, Statutes of 1985, setting forth detailed and precise procedures relating to the merger of historic parcels. These provisions generally provide for unmerger of parcels absent the recordation of a Notice of Merger prior to January 1, 1988. In connection with certain resource lands, the detailed statutory procedure provided for the continuing merger of resource parcels meeting the criteria of Government Sections 66451.30(b)(1)-(5), absent recordation of a Notice of Merger by January 1, 1998, on the condition that the County must have sent notices to "all owners" of any such resource land prior to January 1, 1987.

In late 1986, the County of Mendocino sent out hundreds of notices to property owners in an effort to beat the January 1, 1987, deadline set forth in Government Code Section 66451.302. The County Assessor's records were used to determine where and to whom the required notices would be sent. The assessor's records existing in December of 1986 clearly indicated multiple owners of the property. Notwithstanding this fact, the County, at best, sent

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notice to only one of the three property owners and admittedly failed to send a notice to "all owners" as required by Section 66451.302.

The property is currently held in multiple separate ownerships. Deeds were executed in 1988 conveying separate parcels to Mr. Moores, to Gertrude Elder and Mendocino Coast Properties. To date, the County has not undertaken any procedures pursuant to Government Code Section 66452.11 in an effort to merge the four historic parcels.

2. Analysis.

In Morehart v. County of Santa Barbara (1994) 7 Cal. 4<sup>th</sup> 725, the California Supreme Court found that the Map Act Procedures dealing with merger were preemptive in connection with the regulation of the sale, lease and financing of individual parcels. (Morehart at page 764) The Supreme Court referred to the system of State regulation as providing "land owners with elaborate procedural safeguards of notice and opportunity to be heard before their lots can be individually merged." (Morehart at page 752) The Attorney General has referred to the detailed State merger provisions as "stringent requirements" (69 AG 209, 210) and specifically noted that Section 66451.302 "requires" the City or County to have sent notices by January 1, 1987, to landowners of property subject to Section 66451.301, advising them of the provisions of the new law. (69 AG 209, 211) The legislative history of the 1985 amendments to the Subdivision Map Act noted that the legislation "would give them [cities and counties] a grace period for notifying owners of merged parcels and would make the notification process simpler."

Our position is fairly simple and straight forward.

a. No Notice of Merger Was Recorded Prior to January 1, 1988.

Mr. Moores has informed me that County staff has advised him that there is no requirement to record a Notice of Merger by January 1, 1988, because they consider the property as "land devoted to an agricultural use" for purposes of Government Code Section 66451.30(b)(2) by virtue of the existence of the Williamson Act Contract. In defining "land devoted to an agricultural use," Section 66451.30 cross-references Government Code Section 51201 which states: "'Agricultural use' means uses of land for purposes of producing an agricultural commodity for commercial purposes." It is undisputed that, notwithstanding the Williamson Act Contract on the property, the property has never been devoted to an agricultural use meeting the definition of Section 51201. In fact, consistent with Mendocino County Williamson Act regulations, the property was placed in an agricultural preserve contract for purposes not related to agriculture. Accordingly, we believe that reliance upon Section 66451.30(b)(2) as a basis for arguing continuing merger is misplaced. Unless the property is properly characterized as resource lands pursuant to Section 6645.30, the property would have become automatically unmerged on January 1, 1988.

b. The County Failed to Provide Notice to "All Owners" as Required by Section 66451.302 and Therefore There Was No Continuing Merger.

Assuming for purposes of argument that the property was properly characterized as "resource lands" for purposes of Section 66451.30(b), the property would have become unmerged by virtue of the County's failure to give the mandated statutory notice required by Government Code Section 66451.302 prior to January 1, 1987. In this case, the requisite statutory notice was not given because the County failed to send such notice to "all owners" notwithstanding the fact that the County was well aware of the multiple ownership of the property as evidenced not only by the previous Williamson Act Contract but also by the County's own assessment rolls existing in December of 1986. We believe that the failure to give this mandatory notice resulted in the unmerger of the four parcels on January 1, 1987, and that absent subsequent County procedures pursuant to Government Code Section 66451.11, such parcels remain unmerged today. We believe that this position is consistent with standard rules of statutory interpretation.

Statutes should be interpreted to avoid an absurd result (Granberry v. Islay Investments (1984) 161 Cal. App. 3d 382, 388). To interpret a failure to give adequate notice under Section 66451.302 as having no effect on the continued merger of resource parcels would achieve an absurd result. Additionally, the intent of the legislature should be divined and the statute should be given a reasonable and common sense interpretation consistent with its apparent purpose. (See e.g. DeYoung v. San Diego (1983) 147 Cal. App 3d 11, 17) We believe that common sense dictates that the failure to adhere precisely to the legislature's detailed due process requirements in connection with parcel merger can only be interpreted to provide for the unmerger of affected parcels.

c. The County Failed to Record a Notice of Merger as Required under Ordinance No. 3370 When it Had Knowledge of Prospective Merger.

Continued merger under Section 66451.301 occurred only where "land merged under a valid local merger ordinance which was in effect prior to January 1, 1984." It is our position that, in light of the fact that the County had knowledge of the eligibility of the parcels for merger, and failed to comply with the due process requirements incorporated into former Government Code Section 66424.2(c) and Section 17.108 of the Mendocino County Code, the parcels were not validly merged under Ordinance No. 3370. If the property had not been validly merged pursuant to Ordinance No. 3370, then it would not have met the criteria for continued merger pursuant to Section 66451.301. ←

3. Our Request.

My clients are mindful of the important policy considerations underlying the issue of parcel merger and the importance of these regulations to the County. My clients are also sensitive to, and do not wish to create a situation whereby, any action of the County in

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connection with our request for certificates is utilized as justification for wholesale issuance of certificates for other parcels in the County. In consideration of these issues, we offer the following in an effort to narrow the effect of a decision by the County to issue multiple certificates in connection with the property:

a. In scanning the pages of the assessment roll which I have been provided, I see only one instance [our's] where the assessment roll clearly refers to multiple ownership of the identified property.

b. This situation also presents a question of whether the County validly utilized its 1982 Ordinance to effect a merger of the four parcels in view of the fact that the County Planning Department had apparent notice of the opportunity for merger of the property and failed to follow its own notice and recordation requirements as set forth in Ordinance No. 3370.

c. We believe that it is highly doubtful that you will find another case in the County where a Williamson Act Contract was entered into for recreational purposes as partial implementation of an area plan that had development zoning on adjacent parcels owned by the same owner. This is a unique case wherein the contract was executed as partial implementation for development zoning given to the same owner on adjacent parcels. The contract was not for production of an agricultural commodity. Moreover, no agricultural commodity has been produced on the property from the date of the contract through 1988, the year in which the parcels were separately deeded out.

d. We believe that it is even more unlikely that another County property owner would have the planning activity background applicable to the property that would have led County planning staff to have specific knowledge of the availability of the property for merger in the mid 1980s.

e. We believe that the combination of the factors set forth above would narrow the fact pattern to such a degree that other property owners could not use this situation as precedent for the justification of certificates on other parcels in the County.

To summarize, we believe that the four factors set forth above can be used by the County in construction of a narrow fact pattern relating to this property to limit any precedential effect of a favorable County decision to issue multiple permits. If the County Counsel's office does not concur with the factual history recited above or wishes us to consider elements of argument which we have not discussed here, please feel free to give me a call to discuss further our positions as they relate to the property.

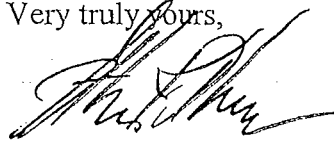
My clients' fundamental objective is to avoid a fight and to resolve arguments in an effort to avoid an adversarial application process. We appreciate the fact that Peter, in the past, has encouraged us to examine the legal arguments and factual history of this case prior to filing an

Frank Zotter  
March 31, 1999  
Page 6

application for certificates. If your office agrees with our opinion that certificates should issue, the property owners will proceed to file an application for the four certificates upon receiving your response. If your office disagrees with our position in this matter, we would very much like to know the basis for your opinion so that we may address it through further research, if required. However, my clients are adamant that an application will be pursued.

We appreciate your consideration of these materials and await your response. Thank you for your time and attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "S. K. Butler", written in a cursive style.

STEPHEN K. BUTLER

SKB:cg  
cc: clients

1/25/99 Memo from William Moores to Peter Klein and Frank Zotter

Re: Further input on the investigation into merger or not of AP#132-210-37 through 41

Dear Peter and Frank:

In more carefully reading section 66451.301 of the Map Act one is referred to Section 66451.30(b) paragraphs (1) to (5) for essential criteria definition for lands subject to the section. In reviewing 66451.30(b) (1) to (5) I don't find that any of the criteria in these 5 cases apply to this property. I presume that the county planning staff assumed that the property fit into paragraph (2). However, the land is not timberland as classified by the county and law since it clearly wasn't zoned TPZ in 1978 when timberlands were designated and zoned. To qualify for property under section 51201(b) {copy attached} the land would have had to have been in agricultural use in 1981 (or thereafter) as defined by 51201 (b)-which means according to 51201(b) producing an agricultural commodity "for commercial purposes". We have not used the land to produce any grazing products for commercial purposes in 1981. The land was simply put into preserve to fulfill a condition of zoning other land development (which other development designation was subsequently taken away). The land has been used primarily for recreation. On March 26,1991 the Board of Supervisors approved a notice of termination of the preserve because the land had not been used for any agricultural purposes in the prior 5 years as required by the criteria and we were supportive of that finding. I have enclosed a copy of the Board action on cancellation.

As an additional factor the county several years ago recalculated the values on the property and has assigned an appraisal figure for each of the four parcels reflecting legally separate parcel valuations. We have been paying taxes for years based on the valuations as four separate parcels. If you have any questions, please call to discuss.

Sincerely,

Bill Moores  
707-526-3759

1/21/99 Memo from William Moores to both Peter Klein and Frank Zotter

Re: Merger-unmerger issue related to cc's on AP# 132-210-37 through 41-4 parcels

Dear Peter and Frank:

1) During our discussion in your office on 1/19/99 about the 4 cc's that I hope to obtain from the county Frank and again confirmed that he was concerned about whether the county had met the legal requirements of Section 66451.302 that "the county shall send a notice to all owners of real property affected by the" alleged merger. At that discussion I presented Frank with a copy of the mailing list that planning informed me was used to send notices to all owners. I have again attached the copy of that mailing list as provided to me by planning. The properties affected by the alleged merger were owned by three completely separate owners: myself, Gertrude J. Elder and Mendocino Coast Properties, Inc.. The county admitted that it did not send a notice of the alleged merger of these parcels to Gertrude Elder or Mendocino Coast Properties but says that it did mail to myself since I am on the list. The mailing list clearly indicates that I am only a minority title interest owner. I have told you that I do not recall having received a notice from the county about any alleged merger of these parcels which are zoned rangeland. I did receive a notice about alleged merger of TPZ zoned parcels that I personally own north of Irish Gulch which parcels had previously been created by minor division and parcel map filings (ie. a notice I received simply because the parcels were zoned TPZ even though they weren't merged). Frank explained that there is a presumption in law that I was correctly mailed for the property south of Irish Gulch since I am on the list. Frank acknowledged that the fact that the other owners were not notified of the alleged merger of these parcels may be a critical defect. The language in the section we are dealing with clearly says "all owners" are to be notified. We had no idea that the county even alleged that these parcels were merged until we received the county letter in 1995-by which date the subject deeds separating the owners by prior patent and deeds boundaries had already been recorded.

I checked with an attorney today about cases that might give guidance on whether the county could successfully contend that all owners were notified under the above factual conditions. I was informed that unless the county can get a staff member to sign a sworn document that Mendocino Coast Properties and Gertrude J. Elder were sent notices required for these parcels by the date required, the notice requirement has not been met. Frank had conceded earlier that defective notice requirements would be a basis for an opinion that the cc's should be issued under section 66499.35(a).

2) During our meeting Frank Zotter had offered that our case would also be strengthened if we could show that the county had knowledge that these parcels were merged under the county's merger ordinance but did not record the notice of merger required under the ordinance. We know that planning had knowledge and did not record a notice by the time of their letter of 1995. Following our meeting I asked planning to search it's files for prior planning activity and two BLA's came up for which I faxed maps to Frank. I talked with Mr. Chaty about the BLA process and he acknowledged to me that the following is the case: (A) The mapping required by a BLA application is to show assessor's parcels, not legal parcels, and that planning

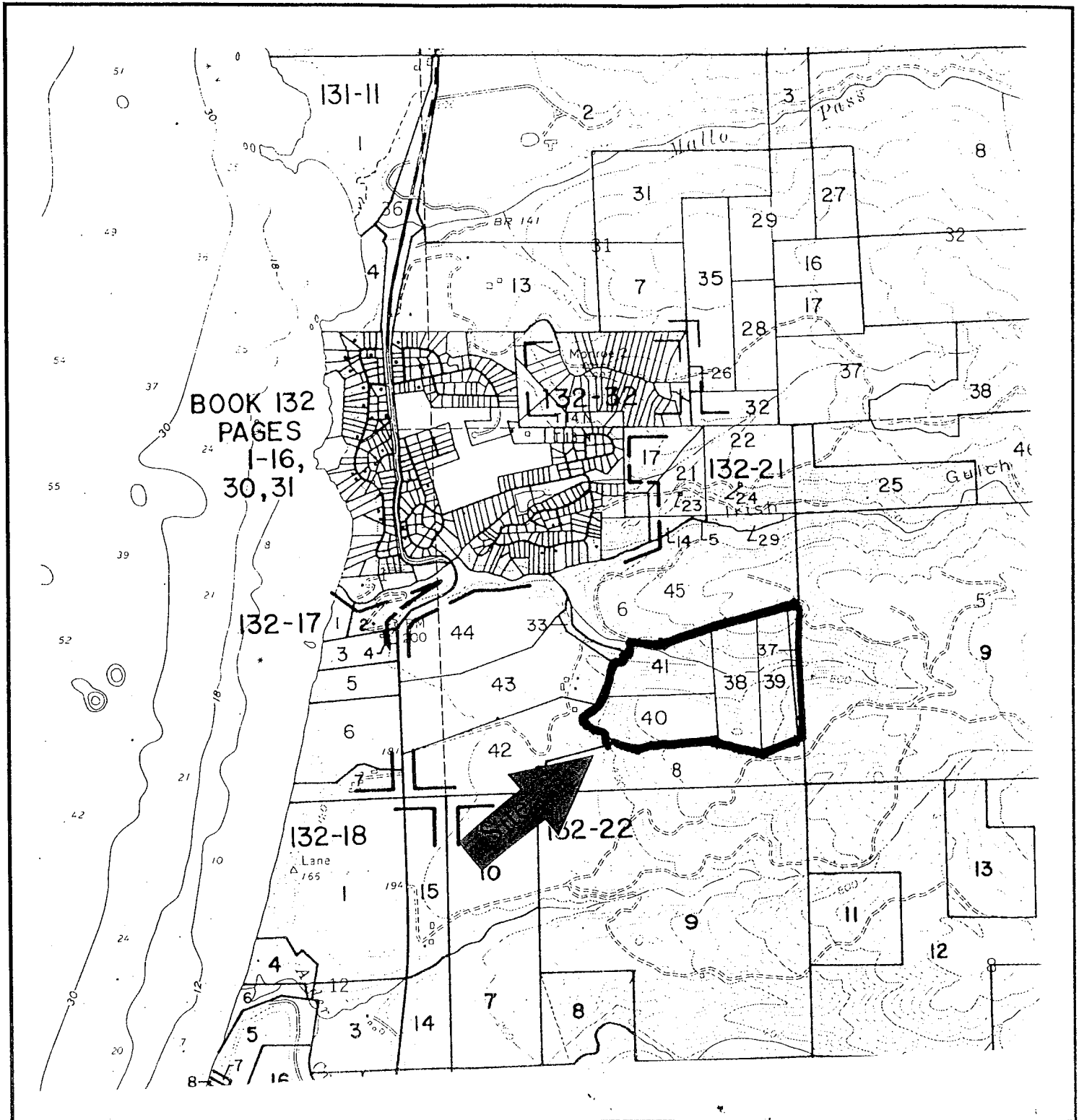
is aware that assessor's parcels often contain several legal parcels, (B) the county uses the assessor's maps which usually contain dashed lines (such as shown on the attached AP map for this area) which indicate the boundaries of prior deeds and patents. The patent lines and deed lines do reflect on the assessor's map used in the application, (C) at the time these BLA's were completed planning only required deed language to insure that there was only one assessor's parcel, not one legal parcel as is now required, (D) the resource zoning was reflected on the BLA maps, (E) the 1981 BLA was completed at the very time that the county had just adopted the merger ordinance affecting properties in this very zone category and ((F) the BLA applications focused the attention of the county on this very area. Given these circumstances I think there is a good basis for alleging that the county had knowledge at this time and did not record a notice as required.

3) The area that we are dealing with was zoned resource as a part of the county process of designating a planned unit development zoning for a large development on adjacent land that we own. I hope you can understand our feeling of betrayal when we allowed this area to be zoned resource in exchange for other lands being zoned for development and subsequently finding the county unilaterally removing the PD zoning as sacrificial offering to get it's coastal Plan adopted.

I am certainly sympathetic to your department needing to have a basis for advising planning that the cc's should be issued under section 66499.35(a) and that the 4 parcels have not been merged by the merger ordinance. I also realize that you do not want the basis for such advise to be of the nature that brings into question the merger of other lands throughout the county that were merged by the county's merger ordinance. Surely the issues of inadequate legal notice particular to the three owners in this case and the knowledge of the county that these parcels were alleged to have been merged but no notice was recorded as required by the merger ordinance itself and Section 66451.302 are deficiencies unique to this case that will not cause problems for other mergers in the county. If you would like me to obtain a legal opinion of the issue of the inadequate notice to all owners, I am willing to provide that for your file. As you know I have not had an attorney involved in this matter and I am looking for a resolution of this matter that avoids litigation but allows the heirs to my mother's estate to salvage something out of the carnage left by the county's treatment of us in the Coastal plan adoption process. Looking forward to hearing what next step you advise. Feel free to call to discuss as necessary.

William Moores





<b>CASE NUMBER:</b> # AA 2-01	<b>OWNER/APPLICANT:</b> Moores, William	<b>AGENT:</b> Stephen K. Butler
<b>APN:</b> 132-210-37,38, 39, 40, 41	Location Map	<b>NORTH</b> ↑ Not to Scale

