

Joseph F. Pitta
Monterey County Recorder
Recorded at the request of
Chicago Title

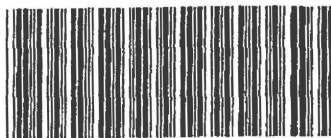
CRRROBERTA
12/26/2001
14:24:50

Recording requested by and
when recorded return to:

Monterey County Parks Department
Attn: Rich Brandau
P.O. Box 5249
Salinas, CA 93915

DOCUMENT: **2001108510**

Titles: 1/ Pages: 15



2001108510

Fees....
Taxes...
Other...
AMT PAID

IRREVOCABLE OFFER TO DEDICATE A TRAIL AND DECLARATION OF RESTRICTIONS

This Irrevocable Offer to Dedicate a Trail and Declaration of Restrictions ("Offer") is made by and between **MONTERRA RANCH PROPERTIES, LLC**, a California limited liability company ("Monterra"), and **CANADA WOODS, LLC**, a Delaware limited liability company ("Cañada Woods") collectively referred to as "Developer", and the **COUNTY OF MONTEREY**, a political subdivision of the State of California referred to as "County", and their respective successors and assigns

WHEREAS, Monterra is the legal owner of a fee interest of certain real property located in the County of Monterey, State of California, commonly referred to as Monterra Ranch, more particularly described in Exhibit "A", attached hereto, and Canada Woods is the legal owner of a fee interest of certain real property located in the County of Monterey, State of California, commonly known as Cañada Woods North, more particularly described in Exhibit "B", attached hereto, which properties are collectively referred to as the "Property"; and,

WHEREAS, the County is the owner of certain real property known as Jacks Peak Park, which is adjacent to the Property; and

WHEREAS, on October 14, 1987, the County approved a tentative subdivision map for Monterra Ranch, subject to Condition Nos. 61, 62, and 63 stated in Board of Supervisors Resolution No. 87-527 and subsequently modified those conditions in a Board Order dated June 19, 1990; and

WHEREAS, on September 29, 1992, pursuant to Condition Nos. 61, 62, and 63 contained in Board of Supervisors Resolution No. 87-527 as subsequently amended, County caused to be filed for record an Irrevocable Offer to Dedicate Non-Exclusive Trail Easements and Declaration of Restriction ("Original Agreement") at Reel 2851, Page 713, Official Records, in the Office of the Recorder for the County of Monterey, California, which provide for access to Jacks Peak Park; and

100.009.D-Irrevocable Offer to Dedicate.Phase Two.01 1

**THIS AGREEMENT WAS NEGOTIATED BY THE PARTIES
AND PREPARED BY LOMBARDO & GILLES, PLC**

WHEREAS, on December 17, 1996, the County approved a tentative subdivision map for Cañada Woods North, subject to Conditions numbered 68, 69, and 70 stated in Board of Supervisors Resolution No. 96-518, which conditions also provide for access to Jacks Peak Park and dedication of trails; and

WHEREAS, Condition Nos. 68, 69, and 70 of Resolution 96-518 provide as follows:

A. Condition No. 68.

Prior to the recordation of the Final Map, the applicant and the County shall enter into an agreement which sets forth the terms and conditions for the construction of the public recreation trail within an easement of up to 20' and all matters relating to the trail dedication and subsequent use of the trail by the public. (Parks Department).

B. Condition No. 69.

When the County accepts the fully constructed public recreational trail, the maintenance, operation, patrol and liability shall be assumed by the County Parks Department or its designated representative. (Parks Dept.)

C. Condition No. 70.

The entire re-aligned recreational trail shall not be opened to the public for trail purposes until such time as the County accepts the dedication of the public recreational trail from the applicant and assumes responsibility for the trail. (Parks Dept.)

WHEREAS, the County has placed the foregoing conditions on the approval of the tentative subdivision map for Cañada Woods North, intending to modify and supercede the terms of the Original Agreement as to Cañada Woods North and Monterra Ranch; and

WHEREAS, the County has placed the foregoing conditions on the approval of the tentative subdivision map for the Cañada Woods North Subdivision because a finding must be made under the law that the proposed subdivision is in conformity with the provisions of the County's General Plan and the Greater Monterey Peninsula Area Plan and that in the absence of the protections provided by the aforesaid conditions said finding could not be made.

WHEREAS, Developer has elected to comply with the conditions recited above and executes this Offer for a strip of land ("Trail"), the location of which is generally

illustrated in Exhibit "C", attached hereto, so as to enable Developer to undertake the subdivision of the Property; and

WHEREAS, Developer has agreed to the imposition of the foregoing conditions and is ready, willing, and able to comply therewith; and

WHEREAS, it is intended that this Offer shall thereby qualify as enforceable restrictions within the meaning of Article XIII, Section 8 of the California Constitution, and under the provisions of the California Revenue and Taxation Code Section 402.1;

NOW, THEREFORE, in consideration of the above, the mutual benefits and conditions set forth herein and the substantial public benefits to be derived from the Offer, County and Developer and their successors and assigns hereby agree as follows:

I. Developer hereby irrevocably offers to dedicate to the County fee title to the Trail, which Trail shall be held in perpetuity for recreational hiking and equestrian purposes, generally following the alignment illustrated in Exhibit "C", reserving therefrom to Grantor a non-exclusive easement for installation, maintenance and repair of drainage improvements and utilities and access for maintenance of Grantor's property and improvements located thereon adjacent to said Trail. The Trail shall be up to twenty (20) feet in width and the specific Trail alignment shall be subject to approval by the Director of County's Department of Planning and Building Inspection with the concurrence of the County's Director of Parks.

II. The following declaration of restrictions subjects the Trail illustrated in Exhibit "C" to the following terms, conditions, and restrictions which shall be effective from the time of recordation of this instrument:

(a.) **CONSTRUCTION AND USE OF TRAIL.**

(1) The specific alignment and use of the Trail shall be consistent with any and all of the proposed residential or subdivision uses of the property and shall follow the alignment generally illustrated in Exhibit "C". Use of the Trail shall be consistent with the uses allowed within the Jacks Peak Park and consistent with any future County trail management plan. Except as set forth in paragraph II(a)(5), below, motorized vehicles shall be prohibited.

(2) In the event that the Trail is accepted by the County, development, including, but not limited to, the removal of trees and other major vegetation, grading, paving, or installation of structures, shall not occur or be allowed on the Trail with the exception of the following, subject to applicable governmental regulatory requirements:

(i) the removal of hazardous substances or conditions, or non-native and diseased plants or trees;

(ii) the removal of any vegetation which constitutes or contributes to a fire hazard to residential use of neighboring properties;

(iii) the installation, maintenance, and repair of underground utility lines;

(iv) the installation of flood control, drainage, or access improvements subject to prior review and approval of County's Director of Planning and Building Inspection;

(v) the installation of appurtenant structures, improvements and facilities to the trail system, including fences, subject to the review and approval of the Director of Planning and Building Inspection and the Parks Department.

(vi) the removal of trees and other vegetation as required to construct the trail.

(3) Prior to the County's acceptance of this Offer, County or its agent may enter onto the Trail at times reasonably acceptable to Developer, to ascertain whether the use restrictions set forth above are being observed, but the interest offered herein shall not confer any right of entry or use of the property except as set forth herein. Upon the County's acceptance of this Offer of the Trail, the County and its agent shall have a restricted right to enter onto said Trail; and, upon County's acceptance of the Trail and the Improvements constructed thereon pursuant to ¶II(a)(4)(i), below, the public shall have an unrestricted right to use the Trail for hiking and equestrian uses during the hours of daylight over the Trail alignment.

(4) Except for costs incurred by County and County's monitoring of compliance with the terms of this Offer, Developer shall have the sole responsibility for the Trail until acceptance of the Offer. However, in the event that Developer constructs the Improvements upon the Trail as set forth in ¶II(a)(4)(i) below, Developer's responsibility for said Trail shall continue until such time as the Improvements are complete and accepted by County pursuant to ¶II(a)(4)(i), below.

(i) General. In the event that County accepts this Offer prior to or within two (2) years from the date of filing the final map for the last phase of either Monterra Ranch or Cañada Woods North, whichever last occurs, Developer shall be obligated to construct a trail in the location generally illustrated in Exhibit "C" herein, subject to the provisions of paragraphs II(a)(4)(ii) and (iii), below, within three (3) years from County's acceptance of this Offer. Said trail shall consist of a 6- to 8-foot wide path of native materials as available and appropriate or as required for erosion control per engineered plans or County specifications ("Improvements"), as approved by the Parks Department, which approval shall not be unreasonably withheld. County shall inspect the

Improvements upon Developers' completion of it to ensure that the Improvements were constructed pursuant to the approved plans. Upon determining that the Improvements are substantially consistent with the plans, County shall accept the Improvements by an action of the Board of Supervisors. Thereafter, when the Improvements are complete and open to public use, the County, through the Parks Department, shall assume the cost of ongoing maintenance and for all liability for the use of the Trail and the Improvements thereon. Should the County fail to accept this Offer within two (2) years from the date of filing the final map for the last phase of either Monterra Ranch or Cañada Woods North, whichever last occurs ("Filing"), Developer shall be relieved of its obligation to construct said Improvements. Developer shall provide County with written notice of Filing which shall act to commence the two (2) year time period for County's acceptance of this Offer.

(ii) Segment 1. Upon acceptance of this Offer by the County, Developer shall be obligated to construct that portion of the trail identified as "Segment 1" on Exhibit "D" herein, subject to the terms and provisions of paragraph II(a)(4)(i).

(iii) Segment 2. In the event that the County has not acquired a connecting trail easement upon the real property situated to the east of the Property prior to expiration of the two (2) year period referenced in paragraph II(a)(4)(i), above, Developer shall be relieved of its obligation to construct that portion of the trail identified as "Segment 2" on Exhibit "D" herein. Notwithstanding the foregoing, Developer shall remain obligated to convey Segment 2 to the County pursuant to paragraphs I and II(a)(4)(i), herein, independent of the acceptance or construction of Segment 1.

(5) Developer or Developer's successors in interest may install a fence and gates limiting the use of the Trail to daylight hours consistent with the times and uses allowed within Jacks Peak Park, subject to consistency with any future County trail management plan and the approval of the County's Director of Parks, which approval shall not be unreasonably withheld. Motorized vehicle use of the Trail shall be limited to such access as is necessary for the construction and maintenance of the trail, fences and adjacent property.

(b) **BENEFIT AND BURDEN.**

The Offer to Dedicate shall run with and burden the property, and all obligations, terms, conditions, and restrictions hereby imposed shall be deemed to be covenants and restrictions running with the land and shall be effective limitations on the use of the property from the date of recordation of this document and shall bind the Developer, the County and all successors and assigns.

(c) **TAXES AND ASSESSMENTS.**

The Developer agrees to pay or cause to be paid all real property taxes and assessments levied or assessed against the Trail until such time as the Trail is conveyed by deed to the County. Upon conveyance by deed to County, County shall be responsible for all real property taxes and assessments, if any, assessed against the Trail.

(d) **CONSTRUCTION OF VALIDITY.**

If any provision of these restrictions is held to be invalid or for any reason becomes unenforceable, no other provision shall thereby be affected or impaired.

(e) **ENFORCEMENT.**

Any act or any conveyance, contract, or authorization whether written or oral by Developer or County which uses, would cause to be used or would permit the use of the protected land contrary to the terms of this Offer will be deemed a breach thereof. Either party may bring any action in court necessary to enforce this Offer, including but not limited to, an injunction to terminate a breaching activity and to force the restoration of all damage done by such activity, or an action to enforce the terms and provisions hereof by specific performance. It is understood and agreed that both parties may pursue any appropriate legal and equitable remedies. The complaining party shall have the sole discretion to determine under what circumstances an action to enforce the terms and conditions of this Offer shall be brought in law or in equity. Any forbearance on the part of either party to enforce the terms and provisions hereof in the event of a breach shall not be deemed a waiver of that party's rights regarding any subsequent breach.

(f) **LIABILITY AND INDEMNIFICATION.**

Except as otherwise provided herein, this Offer is made upon the express condition that until acceptance of this Offer by the County, the County, its agencies, departments, officers, agents, and employees are to be free from all liability and claims for damage by reason of any injury to any person or property of any kind, from any cause, except in matters arising out of the negligence of the County, while in, upon, or in any way connected with the trail easement. Developer hereby covenants and agrees to indemnify, defend, and hold the County, its agencies, departments, officers, agents, and employees harmless from all liability, loss, cost, and obligation on account of or arising out of such injuries or losses. County shall have no right of control over, nor duties and responsibilities with respect to the Trail by virtue of the fact that the right of the County to enter the land subject to the offer is strictly limited to preventing uses inconsistent with the interest granted and does not include the right to enter the land for the purposes of correcting any dangerous condition as defined by California Government Code section 830. Developer's obligation to indemnify the County shall be construed as a covenant

running with the land to terminate upon the County's acceptance of the offer to dedicate. In such event that the County accepts this Offer within two (2) years of Filing the final phase of development and Developer is obligated to construct the Improvements, the indemnification provided by this paragraph shall be extended until the Improvements have been accepted by County pursuant to ¶II(a)(4)(i) above.

(g) **SUCCESSORS AND ASSIGNS.**

Subject to the terms set forth in paragraph II(h), below, the terms, covenants, conditions, exceptions, obligations, and reservations contained in this Offer shall be binding upon and inure to the benefit of the successors and assigns of both the Developer and the County, whether voluntary or involuntary.

(h) **TERM.**

The Irrevocable Offer to Dedicate herein shall be binding upon the Developer and the heirs, assigns, or successors in interest to the property until February 10, 2020. Upon recordation and acceptance of this Offer by the County in the form attached hereto as Exhibit "E", this Offer and its terms, conditions, and restrictions shall have the effect of a grant of the Trail in perpetuity and the terms, conditions or restrictions herein shall run with the land and be binding on the party's heirs, assigns, and successors. Acceptance of the Offer is subject to a covenant which runs with the land, providing that any offeree of the Offer may not abandon it within the term but must instead offer the Trail to other public agencies or private associations mutually acceptable to the County Board of Supervisors and Developer and their successors in interest for the duration of the term of the original Offer.

(i) **SATISFACTION OF CONDITIONS.**

This Agreement shall supercede that certain Offer to Dedicate Non-Exclusive Trail Easements and Declaration of Restriction document filed for record on September 29, 1992 at Reel 2851, Page 713, Official Records, in the Office of Recorder for the County of Monterey, California, insofar as said Offer to Dedicate affects the Real Property described in Exhibit "B", and shall satisfy Condition Nos. 68, 69, and 70 of Board of Supervisors Resolution No. 96-518, as those conditions apply to the Cañada Woods North Phase Two Subdivision.

(j) **ACCEPTANCE.**

Acceptance of this Offer shall be deemed to have occurred upon County's execution and recordation of the form attached hereto as Exhibit "E", at which time Developer shall convey by deed fee title of the Trail to the County.

(k) **NOTICE.**

Any written notice required by this Offer shall be provided by U.S.
Mail or facsimile to

County:
Monterey County Parks Department
Attn: Director of Parks
P.P. Box 5249
Salinas, CA 93905


Developer:
Lombardo & Gilles, PLC
Attn: Derinda L. Messenger, Esq.
P.O. Box 2119
Salinas, CA 93902-2119

The parties have executed this Agreement on the date set forth beside their
respective signatures.

**MONTERRA RANCH PROPERTIES, LLC,
A California Limited Liability Company**

THE ROGER E. MILLS LIVING TRUST
dated February 12, 1987

DATED: 12-18-01


Roger E. Mills, Trustee


**CANADA WOODS, LLC
a Delaware limited liability company**

DATED: 12-19-01


By: _____
Howard M. Bernstein, Manager

COUNTY OF MONTEREY

DATED: 12/18/01


Chair, Board of Supervisors

ATTEST:

DATED: 12/21/01

By: Cynthia J. Reed, Deputy for
Sally R. Reed, Chief Administrative Officer

APPROVED AS TO FORM
[Signature]
DEPUTY COUNTY COUNSEL
COUNTY OF MONTEREY

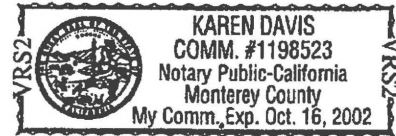
STATE OF CALIFORNIA)
) SS.
COUNTY OF MONTEREY)

On 12-18-01, before me, KAREN DAVIS, Notary Public,
personally appeared ROGER MILLS, personally
known to me (or proved to me on the basis of satisfactory evidence) to be the person(s)
whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that
~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by
~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which
the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Karen Davis



(Seal)

STATE OF CALIFORNIA)
) SS.
COUNTY OF LOS ANGELES)

On 12-19-01, before me, Cristina Currenti, Notary Public,
personally appeared Howard Bernstein, personally
known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s)
whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that
~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by
~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which
the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Cristina Currenti



(Seal)

EXHIBIT "A"

(Monterra Ranch)

Parcel 2 as shown on that certain map filed for record in the Office of the Recorder for Monterey County, California, on January 6, 1983, in Volume 15, Page 123, Parcel Maps.

EXCEPTING THEREFROM certain real property situate in the Rancho Saucito, in the County of Monterey, for school site purposes, and described in a deed recorded in Reel 422 of Official Records of Monterey County at Page 621.

ALSO EXCEPTING THEREFROM all that portion thereof described in the deed to California-American Water Company, a California corporation, recorded June 16, 1977 in Reel 1155 of Official Records of Monterey County at Page 307.

ALSO EXCEPTING THEREFROM all that portion lying within Olmsted Road as described in the deed to County of Monterey recorded September 8, 1976 in Reel 1081 of Official Records of Monterey County at Page 708.

ALSO EXCEPTING THEREFROM all that certain piece or parcel of land conveyed to the Monterey County, recorded February 7, 1997 in Reel 3478, Page 1288 of Official Records of Monterey County.

ALSO EXCEPTING THEREFROM that portion designated as "Park Site" as conveyed to the County of Monterey, recorded September 29, 1992 in Reel 2851, Page 763, of Official Records of Monterey County.

ALSO EXCEPTING THEREFROM all that portion as designated "Remainder Parcel 83.95 AC." as shown on "Tract No. 1177 Monterra Ranch Phase I" filed for record September 29, 1992 in Volume 18 of Cities and Towns, at Page 1, Monterey County Records.

ALSO EXCEPTING THEREFROM Lots 1 through 42, inclusive, and Parcels "P" and "X" as shown on that map filed for record in Volume 19, Cities and Towns, Page 34, in the Office of the Recorder for Monterey County, California.

ALSO EXCEPTING THEREFROM Lots 68 through 73 and 75 through 86, inclusive, as shown on "Tract No. 1177 Monterra Ranch Phase I" filed for record September 29, 1992 in Volume 18 of Cities and Towns, Page 34, in the Office of the Recorder for Monterey County, California.

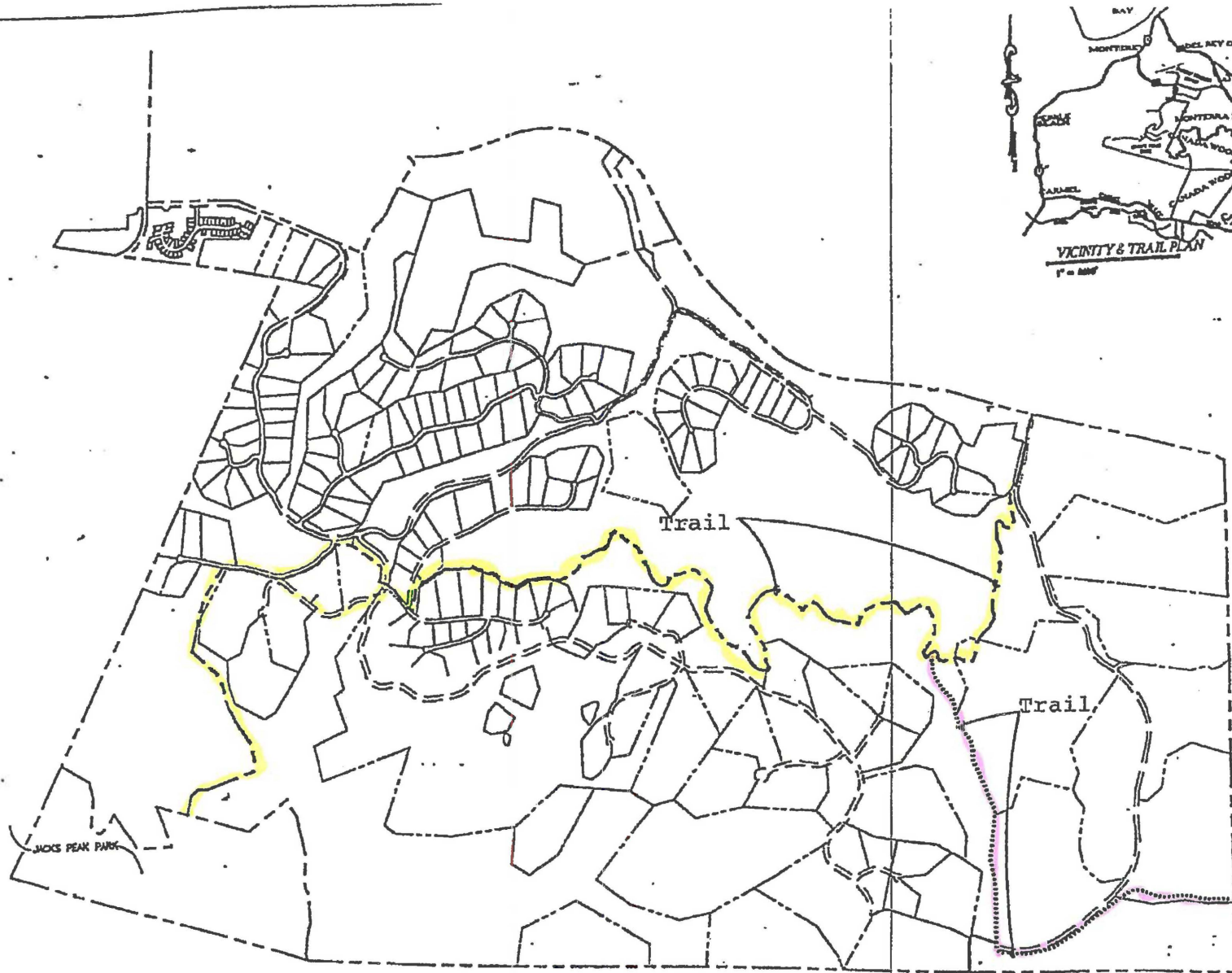
ALSO EXCEPTING THEREFROM Adjusted Lot 74 as shown on that Record of Survey filed for record on February 19, 1999 at Volume 22 of Surveys at Page 46 in the office of the Recorder for the County of Monterey, State of California.

EXHIBIT "B"

(Cafiada Woods North)

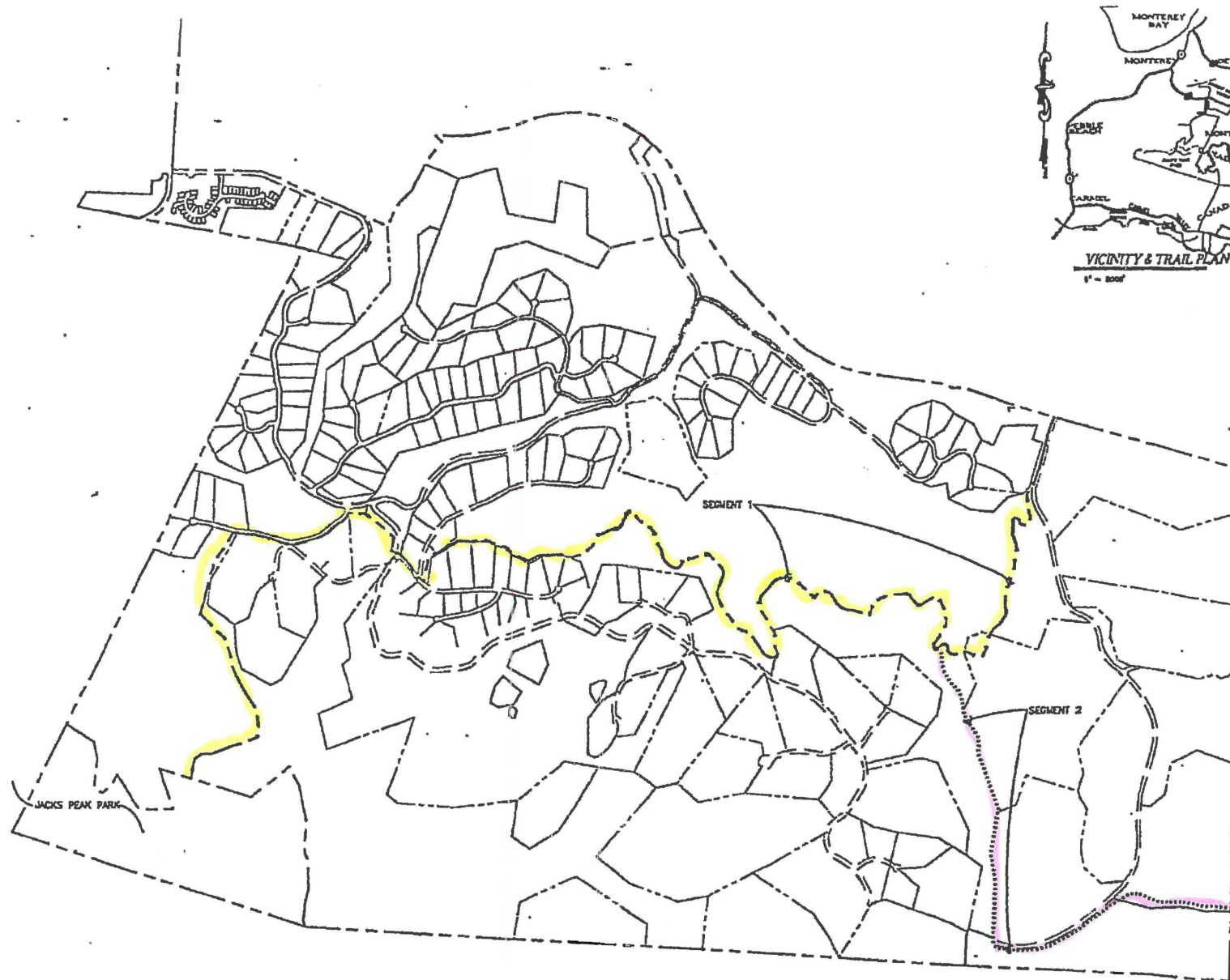
All that real property shown on that map filed for record on 12-26-01
in Volume 22 Cities and Towns, Page 8, in the office of the Recorder for the County
of Monterey, State of California.

Exhibit C



<p>Carroll Development Company E. Alan Villiers 2001 Monterey Monterey, CA 93940</p>	<p>WWD CORPORATION ENGINEERING - SURVEYING PLANNING - CONSULTANTS 2001 MONTEREY SALES NORTH, MONTEREY, CA</p>	<p>PROJECT TEAM</p> <table border="0"> <tr> <td>PLANNING AND ARCHITECTURE CONSULTANT</td> <td>CIVIL ENGINEER</td> </tr> <tr> <td>LANDSCAPE ARCHITECT</td> <td>GEOTECHNICAL ENGINEER</td> </tr> <tr> <td>ENVIRONMENTAL CONSULTANT</td> <td>TRAIL DESIGNER</td> </tr> </table>	PLANNING AND ARCHITECTURE CONSULTANT	CIVIL ENGINEER	LANDSCAPE ARCHITECT	GEOTECHNICAL ENGINEER	ENVIRONMENTAL CONSULTANT	TRAIL DESIGNER	<p>CANADA WOODS NORTH CLAYTON CAPTIVOS AND ASSOCIATES EASTWICK 10000 E. 10th Avenue Eastwicks, CO 80121</p>	<p>CANADA WOODS NORTH TRAIL EASEMENT MAP</p>	<p>WWD, INC. & ASS. 2001 2001 10/11</p>
PLANNING AND ARCHITECTURE CONSULTANT	CIVIL ENGINEER										
LANDSCAPE ARCHITECT	GEOTECHNICAL ENGINEER										
ENVIRONMENTAL CONSULTANT	TRAIL DESIGNER										

Exhibit D



E. Alan Villano
 1st Floor, Box 100
 2801 Monterey-Carmel Highway, Monterey, CA
 93940-1000

WWD CORPORATION
 ENGINEERING - SURVEYING
 PLANNING - CONSULTANTS
 2801 MONTEREY-CARMEL HIGHWAY, MONTEREY, CA

PROJECT TEAM
 PLANNING AND ARCHITECTURAL SERVICES
 E. Alan Villano, Principal
 David L. Villano, Principal
 David L. Villano, Principal
 David L. Villano, Principal

OWNER
 CANADA WOODS NORTH
 2801 MONTEREY-CARMEL HIGHWAY, MONTEREY, CA
 93940-1000

CANADA WOODS NORTH
 2801 MONTEREY-CARMEL HIGHWAY, MONTEREY, CA
 93940-1000

CANADA WOODS NORTH
 TRAIL EASEMENT MAP

DATE: 10/1/00
 SCALE: 1" = 500'



EXHIBIT "E"

Recording requested by and
when recorded return to:

Monterey County Parks Department
P.O. Box 5249
Salinas, CA 93915

ACCEPTANCE OF OFFER

WHEREAS, on December 17, 1996, the Board of Supervisors for the County of Monterey adopted Resolution No. 96-518 approving the Cañada Woods subdivision; and

WHEREAS, Condition Nos. 68, 69, and 70 of said Resolution required the Subdivider to irrevocably offer to dedicate certain public access and trail easements for the public benefit; and

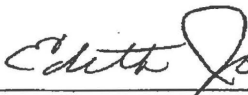
WHEREAS, on December 4, 2001, Developer tendered to the County of Monterey an Irrevocable Offer to Dedicate Trails and Public Access Easement and Declaration of Restrictions ("Offer"), which Offer was recorded as Document No. 2001109510 in the Office of the Recorder for the County of Monterey, State of California.

NOW, THEREFORE, in consideration of the above and the substantial public benefits to be derived from the public access and trail easements, the County of Monterey hereby accepts the terms, conditions and restrictions set forth in the Offer and accepts the following components of same:

- ☐ Segment 1 Trail Easement
- ☐ Segment 2 Trail Easement

COUNTY OF MONTEREY

DATED: 12/18/01


Chair, Board of Supervisors

ATTEST:

Date: 12/21/01

By: 
Sally R. Reed, Chief Administrative Officer

**THIS AGREEMENT WAS NEGOTIATED BY THE PARTIES
AND PREPARED BY LOMBARDO & GILLES, PLC**

END OF DOCUMENT