

Written Testimony of Mike Foster (Deposition) (Exhibit Allegra-5)

We offer the deposition testimony of Mike Foster. Mike Foster is an Associate Civil Engineer in the Placer County Department of Land Development Engineering and Surveying, now called Placer County Resource Agency, formerly Department of Public Works. Foster is directly responsible for drainage and water issues relating to development projects in Placer County and reports directly to County Planners. See Foster Depo, pp. 5:18-25; 8:3-5; 10:25-11-3; and 12:16-19. OPE, Tab G.

A "meandering drainage easement" (MDE) is unique to Placer County; its sole purpose is to recognize existing swales and other natural storm drainage conditions that exist on property prior to development. *Id.* at pp. 15:13-18; 17:6-22; 19:1-13.

MDEs are not intended for "man-made" conditions. *Id.* at 19:3-13.

The MDEs indicated in Hidden Lakes Estates exist solely for the flow of natural drainage waters through the natural swales that pre-dated the development. *Id.* at 28:5-20.

Natural drainage means drainage dictated by the natural topography of the site; natural drainage does not include man-made structures such as a lake. *Id.* at 36:12-23.

MDEs are basically natural, meaning there are not man-made improvements tied to them. *Id.* at 37:8-16.

MDEs do not apply to subsurface water. *Id.* at 35:3-18. "[I]t [the MDE] relates to surface runoff related to a storm. . . ." It does not include "unnatural drainage" such as "a lake" and "there's no man-made improvements tied to that." (Foster Depo., pp. 35:3-18, 36:12-22; 37:8-16)

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 2 IN AND FOR THE COUNTY OF PLACER
 3 TONY and DONNA WOOD and TED and
 4 CHERI ALLEGRA,
 5 Plaintiffs,
 6 vs. Case No. SCV 16896
 7 HIDDEN LAKES ESTATES HOMEOWNERS
 8 ASSOCIATION, et. al.,
 9 Defendants.
 10 _____/
 11 DONNA WOOD and CHERI ALLEGRA,
 12 Plaintiffs,
 13 vs. Case No. SCV 14042
 14 HIDDEN LAKES ESTATES HOMEOWNERS
 15 ASSOCIATION, et. al.,
 16 Defendants.
 17 _____/
 18
 19 Deposition of
 20 MIKE FOSTER
 21 Thursday, August 11, 2005, 10:05 a.m.
 22
 23 Reported by:
 24 TOBIE STERLING
 25 CSR No. 4019

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 2
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 9 Defendants.
 10 _____/
 11
 12 ---oOo---
 13
 14 BE IT REMEMBERED that on Thursday, the 11th day
 15 of August 2005, commencing at the hour of 10:05 a.m., at
 16 the offices of Sterling & Associates, 101 Orange Street,
 17 Suite A, Auburn, California, before me, Tobie Sterling, a
 18 Certified Shorthand Reporter in and for the State of
 19 California, personally appeared
 20 MIKE FOSTER
 21 called as a witness by the Plaintiff, pursuant to the Code
 22 of Civil Procedure of the State of California, and who,
 23 being by the Certified Shorthand Reporter first duly and
 24 regularly sworn to tell the truth, was thereupon examined
 25 and testified as hereinafter set forth.
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*** Notes ***

1 (Exhibits 1, 2 & 3 were marked.)
 2 THE REPORTER: You solemnly swear the testimony
 3 you give in the cause now pending will be the truth, the
 4 whole truth, and nothing but the truth, so help you God?
 5 THE WITNESS: I do.
 6 EXAMINATION BY MR. PETERSON
 7 Q. Good morning, Mr. Foster. My name's Glenn
 8 Peterson, and I represent the plaintiffs in the action that
 9 brings you here today. And speaking of the action that
 10 brings you here today, let me show you what we've premarked
 11 as Exhibit 1 to your deposition transcript.
 12 Do you recognize this as the subpoena that you
 13 received from my office?
 14 A. Yes.
 15 MR. PETERSON: Okay. Yeah, so for your notes,
 16 Exhibit 1 is the depo subpoena and the proof of service.
 17 Exhibit 2 is the notice of deposition.
 18 Q. BY MR. PETERSON: Okay. So I have your business
 19 card, and my understanding of your official title is that
 20 you are Associate Civil Engineer in the Land Development
 21 Engineering and Surveying Department of Placer County.
 22 What is the new title of the --
 23 A. The new title is -- it's actually the Resource
 24 Agency.
 25 Q. Right.

1 A. And I'm now part of the Land Development
 2 Engineering Services Department of the Resource Agency.
 3 Q. And how long have you been an engineer, a
 4 licensed engineer?
 5 A. Since 1975.
 6 Q. Okay. Have you, have you sat for deposition
 7 before?
 8 A. Yes.
 9 Q. How many times, approximately?
 10 A. Twelve to 15.
 11 Q. Okay. So you've got some experience with the
 12 procedures, then?
 13 A. Yes.
 14 Q. Okay. Do you feel like you want me to run over
 15 any ground rules, or do you feel comfortable you know what
 16 we're doing here?
 17 A. If you want to run over the guidelines that's
 18 fine. Doesn't --
 19 Q. The essential ones are that even though we're in
 20 a rather relaxed informal setting here, the testimony that
 21 you're giving today is under penalty of perjury, under oath
 22 if you will. It has the same legal weight as if you were
 23 giving it in a court of law in front of a judge or a jury.
 24 You with me so far?
 25 A. Yes.

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1 Q. Okay. If you need a break, feel free to ask me.
 2 I don't anticipate your examination is going to take that
 3 long today. You'll probably be able to make a late lunch.
 4 Okay. I'm going to ask you, you know, a series
 5 of questions that I, I believe are germane to my case. And
 6 if I ask a question that you have any doubt about whether
 7 you understand it correctly, feel free to ask me for a
 8 clarification or to rephrase it. Because if you answer,
 9 I'm going to assume you answered the question that I asked.
 10 And if I ask questions that call for quantitative
 11 information, like for example how many times have you been
 12 deposed, you can give me your best estimate, if you have a
 13 factual basis for the estimate. We don't want you to
 14 speculate or guess here. Okay. You got that?
 15 A. Yes.
 16 Q. All right. That, that -- those are the
 17 big-ticket guidelines. And like I said, if you -- even
 18 though this is a kind of a court proceeding, we consider
 19 you a guest here, so if you need a break for the restroom
 20 or to make a phone call or cigarette, whatever, we'll
 21 accommodate you in any reasonable way. Okay?
 22 A. Okay.
 23 Q. All right. So that said, how long have you been
 24 with Placer County in whatever department?
 25 A. Since June of 1997, in the same --

1 Q. And now --
 2 A. -- Department.
 3 Q. -- it's called Resource Agency. What was it
 4 called before?
 5 A. Department of Public Works.
 6 Q. Okay. And where were you employed before June of
 7 1997?
 8 A. I had my own engineering consulting firm for
 9 approximately three and a half years prior to that.
 10 Q. And what was the name of the firm?
 11 A. O -- OPA Engineering.
 12 Q. OOPA?
 13 A. OPA.
 14 Q. Okay. And what did OPA stand for?
 15 A. Oslund Pasini (ph) Associates. I don't know how
 16 to spell Pasini.
 17 Q. So that takes us back to roughly 1993. How were
 18 you employed prior to starting your own firm?
 19 A. Prior to that I was the City Engineer, Public
 20 Works Director for the City of Placerville for since
 21 January of 1977.
 22 Q. And prior to being the City Engineer for the City
 23 of Placerville, did you have another engineering job prior
 24 to that?
 25 A. Yes.

*** Notes ***

1 Q. What was that?
 2 A. I was a Civil Engineering Associate for the City
 3 of Pico Rivera in Southern California.
 4 Q. And what were your -- what were the years of
 5 service in that job?
 6 A. From December of 1972 through December of 1976.
 7 Q. And did you say you started as the City Engineer
 8 for City of Placerville in January of '77 or '97?
 9 A. '77.
 10 Q. '77. Okay. All right. Okay. Just give me an
 11 overview of your educational background. Let's start with
 12 where you graduated from high school.
 13 A. La Mirada, Los Angeles County, in June of 1962.
 14 Q. And college?
 15 A. I have a Bachelors and a Masters degree in civil
 16 engineering from Long Beach State, now California State
 17 University, Long Beach.
 18 Q. Any other formal education?
 19 A. Other than seminars, occasional classes, training
 20 and so forth.
 21 Q. What we call continuing education?
 22 A. Yes.
 23 Q. Okay. And presently in your, in your current job
 24 description, do you supervise any, any staff members?
 25 A. One.

1 Q. And what, what's the job description of that
 2 staff member you supervise?
 3 A. He's an Engineering Technician Two.
 4 Q. Okay. Now, in your current position with Placer
 5 County, can you give me a, an overview of your
 6 responsibilities?
 7 A. Okay. I'm the flood plain manager for Placer
 8 County, and basically in that capacity I administer the
 9 FEMA's national flood insurance program.
 10 Let's see. I'm the, the SMRA representative for
 11 the County, in other words, insofar as, quote, Public
 12 Works, meaning now Resource Agency or whatever. Basically
 13 Surface Mining Reclamation Act.
 14 And I'm also part of the -- how do you say, the
 15 division that re -- does environmental reviews and
 16 conditions at various projects. And I've done quite a few
 17 projects over the years, in other words, related to
 18 development within Placer County.
 19 Q. Are you the author of, of, of, say, staff reports
 20 related to environmental review on, on building projects?
 21 A. As they relate to our niche of the situation,
 22 whether it be Public Works, engineering aspects of it, yes.
 23 Q. And could you give me a description or a feel for
 24 what your niche includes in that regard?
 25 A. For the most part, it relates to drainage, water

*** Notes ***

1 quality issues, grading to a certain extent or utilities as
 2 they relate to development, not necessarily specific as to
 3 whatever the provider may be.
 4 A little bit extends to traffic, although we do
 5 have our own transportation planning division, which
 6 basically supplies us with the details, in other words, as
 7 far as the developments relating to the majority of the
 8 traffic issues.
 9 Q. So do your reports then go to the Planning
 10 Commission or the, or the Board of Supervisors?
 11 A. In the scheme of things, they become part of
 12 that.
 13 Q. Okay.
 14 A. Insofar as the Planning Commission is concerned,
 15 typically the Planning Department acts as the lead agency.
 16 In other words, we're part of that submittal, if you would
 17 like. But they for the most part prepare the staff report
 18 and typically a Planning Department representative,
 19 somebody from Public Works, could be myself or someone, and
 20 sit in on the Planning Commission meetings when, say, a
 21 project is up for approval.
 22 Q. Okay. And that's presumably to answer questions
 23 that come up in the review process?
 24 A. Yes.
 25 Q. So on the environmental issues within your

1 purview, are you the last word on the -- at the staff level
 2 to the environmental impacts?
 3 A. I don't know if I would necessarily be the last
 4 level or -- I don't exactly how I would answer that one.
 5 Q. It's not a very precise question. Let me try it
 6 from another angle.
 7 Are you making recommendations related to the
 8 environmental impacts in reports to the county planners
 9 directly; in other words, you're the author of certain
 10 portions of --
 11 A. Yes.
 12 Q. -- these reports?
 13 A. And we do write memos, in other words, directed
 14 to the Planning Department and the, the planner that's been
 15 assigned, say, to the project.
 16 Q. Okay. And so as part of that, then, do you give
 17 opinions and recommendations to the county planners
 18 relative to the environmental impacts that you perceive?
 19 A. Yes. And a lot of times, though, we ask for
 20 additional information that maybe an outside consultant
 21 would provide, such as drainage reports, B & P plans, to
 22 answer any environmental issues, shall we say.
 23 Q. Okay. All right. So I take it you're familiar,
 24 then, with the Placer County Land Development Manual?
 25 A. Yes.

*** Notes ***

1 Q. Okay. And specifically the Land Development
 2 Manual is part of the Placer County Storm Water Management
 3 Manual; is that correct?
 4 A. I wouldn't say so.
 5 Q. Okay. All right. We've premarked as Exhibit 3 a
 6 document that looks to be Section Five of the Placer County
 7 Land Development Manual, the October 29, 1996 revision,
 8 apparently.
 9 Does this look familiar to you?
 10 A. Yes.
 11 Q. Do you know how current this is? In other words,
 12 has this been superseded by more recent revisions?
 13 A. To my knowledge, I think it has.
 14 Q. Are you familiar generally with the more recent
 15 revisions?
 16 A. Yes. I have a copy of it, in other words, in my
 17 office. In other words, it is at hand. I can certainly
 18 refer to it as needed, shall we say.
 19 Q. And when you say you have a copy of it, are you
 20 talking about the Development Manual or another --
 21 A. The Placer County Land Development Manual.
 22 Q. Okay. The reason I was asking about whether it's
 23 part of the Storm Water Management Manual is because of the
 24 first paragraph here on the first page, where it says, This
 25 section is intended to supplement the current edition of

1 the Placer County Storm Water Management Manual.
 2 A. I guess my question would be the Land Development
 3 Manual is actually a number of different items. In other
 4 words, one would be, yes, the County Storm Water Management
 5 Manual, but then we have street requirements, standard
 6 specs and drawings, in other words, and it's all related,
 7 and they all make up, shall we say, the Land Development
 8 Manual itself.
 9 Q. Okay. And the Land Development Manual that you
 10 referred to that you have in your office, is that all of
 11 the components of the manual, or is it just the components
 12 related to drainage and storm water and environmental
 13 issues?
 14 A. It's the entire.
 15 Q. And is this a collection of materials in, like, a
 16 binder?
 17 A. Yes.
 18 Q. And is that manual available to the public, as
 19 far as you know?
 20 A. I believe it's on line.
 21 Q. Okay. Now, I take it you're familiar with what
 22 is called a meandering drainage easement; is that correct?
 23 A. Yes.
 24 Q. And is it okay if I refer to that as an MDE?
 25 A. Yes.

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1 Q. And is -- that's kind of customary, is it not,
 2 how it's -- the easement is referred to on plans and
 3 drawings as an MDE?
 4 A. Yes.
 5 Q. All right. So is an MDE, as far as you know,
 6 something unique to Placer County?
 7 A. Actually, it may be. In my other agencies I've
 8 worked for, we for the most part did not use MDEs.
 9 Q. And an MDE is a Placer County designation related
 10 to retention of natural water flow; is that correct?
 11 A. I don't think I classify it as retention.
 12 Q. Okay. I, I see the issue.
 13 Well, let me ask you this: What to the
 14 uninitiated is an MDE, to your understanding?
 15 A. To my understanding, an MDE recognizes existing
 16 swales, ditches, in which historical waters run off a
 17 particular property or site, in other words, and
 18 acknowledges those that exist on the, the property.
 19 Q. Okay. And I noticed in the second par -- excuse
 20 me, third paragraph of the first page of Exhibit 3, it
 21 states:
 22 Improvements shall be protected from inundation,
 23 flood hazard, street overflow, ponding of local
 24 storm water, springs and surface waters.
 25 And it goes on to state in the last sentence of

1 that paragraph:
 2 Natural drainage ways and water courses shall be
 3 retained and used to convey surface water through
 4 the improvement unless otherwise approved by the
 5 engineer.
 6 Is that consistent with your understanding of
 7 what an MDE is intended to do?
 8 MR. JONES: Objection is that there's no
 9 foundation that relates to this paragraph and basic
 10 objective to MDE.
 11 Q. BY MR. PETERSON: You can answer the question.
 12 A. Well, I may need a little clarification on the
 13 question. I'm not exactly sure what you mean by MDEs in,
 14 in relation to -- in other words, you cover other drainage
 15 courses, such as -- well, in the county, miners are in the
 16 creek, dry creek, in other words, which are certainly
 17 natural drainage ways that are retained, you know, not
 18 necessarily shown as meandering drainage easements on maps
 19 and so forth.
 20 So I, I guess the way I would describe it is this
 21 is kind of a bigger picture compared to, you know, in other
 22 words, a meandering easement on a specific piece of
 23 property.
 24 Q. Okay. Well, is it the purpose of the MDE to make
 25 sure that the development project does not interfere with

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1 or restrict the natural storm watershed?
 2 MR. JONES: Objection. Calls for a legal
 3 conclusion based on the creators of this document.
 4 Q. BY MR. PETERSON: You can answer the question.
 5 A. I don't know if I'd be answering the question.
 6 In other words, the MDD -- MDES recognize the natural
 7 drainage swales within a particular piece of property. How
 8 that relates to -- maybe I should have you ask me the
 9 question again to make sure I'm not rambling here.
 10 Q. Yeah. Is it your understanding of the objective
 11 of an MDE that it's to ensure that the development's
 12 project doesn't interfere with or restrict the natural
 13 drainage condition of the property as it exists?
 14 A. I would say yes, other than the fact that
 15 depending on the particular project and any other approvals
 16 that allow or require retention, detention, or that would
 17 allow it to be, shall we say, realigned to a certain
 18 location, keeping the -- where it enters the property and
 19 where it exits the property in the same location, with the
 20 idea that within that particular property you could, say,
 21 realign it; in other words, take advantage of maybe a
 22 better building site or whatever the case may be.
 23 Q. Right. And it's characteristic of an MDE, is it
 24 not, that it can be moved?
 25 A. Yes. And I'll explain that a little bit, and I

1 kind of alluded to that earlier. In other words,
 2 historically the County's policy is that you have a, quote,
 3 MDE on a particular piece of property. Historically you
 4 have to allow it to enter that property at the site it
 5 enters the property. Within, within the confines of that
 6 property, you could realign it, put it in a pipe, culvert
 7 and allow it to exit the property where historically it has
 8 exited the property.
 9 Q. Okay. So to your understanding, how does an MDE
 10 come into being?
 11 A. When there's a development proposal, shall we
 12 say, before the County. In other words, typically at the
 13 final map stage. In other words, we've gone through the
 14 environmental reviews; we acknowledge there's certain
 15 natural drainage swales on those properties, for the most
 16 part, those related to the individual lots, shall we say,
 17 within a subdivision. In other words, that relate to what
 18 are the natural swales within now the newly or about to be
 19 created, newly created parcels within that subdivision. I
 20 think they acknowledge that in terms of trying to, shall we
 21 say, preserve in a manner, in other words, that they've
 22 existed, you know, prior to the development.
 23 Q. Okay. And what drives the determination of, of
 24 what existed prior to the development is largely the
 25 topography of the land in question; is that correct?

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1 A. Yeah. And the existing swales that existed on
 2 that particular piece of property.
 3 Q. And you've made a reference to existing swales
 4 and natural drainage swales. And, again, for the
 5 uninitiated, what does that mean?
 6 A. What exists on the site. In other words, that
 7 are, in other words, that have not been man-made, not
 8 created. In other words, that are there because of what's
 9 there, I guess. That's what I call existing, in other
 10 words.
 11 Q. And when you say what's there, you're referring
 12 to what's there topographically speaking mostly, right?
 13 A. Yes.
 14 Q. Okay. So you've got a, a development project
 15 being proposed, in this case it's a subdivision of
 16 single-family homes. At what point -- well, strike that.
 17 Is it your understanding that the developer or
 18 the project engineer proposes where MDES would be located,
 19 or is the County more involved in determining that?
 20 A. Well, I don't know if necessarily we determine it
 21 in terms of we get topo maps of the site, in other words,
 22 may be overlaid with the proposed parcel boundaries, in
 23 other words. We look at that when we go through our
 24 preliminary drainage reports and so forth. And typically
 25 we see we can -- excuse me -- determine the swales, in

1 other words, that exist on a particular piece of property.
 2 And they're not formalized until that final map is prepared
 3 and recorded.
 4 Q. Okay. Now, the drainage reports are submitted
 5 earlier, much earlier, right, before the, the, the final
 6 map is recorded?
 7 A. Yes, they're -- when we go through environmental
 8 review, typically we will have a preliminary drainage
 9 report.
 10 Q. And are you involved in reviewing these drainage
 11 reports?
 12 A. As they -- as a result of the projects that I am
 13 reviewing personally, yes.
 14 Q. And you mentioned drainage maps. Are those
 15 submitted typically with the drainage report, or are those
 16 an independent reference tool?
 17 A. Well, you could have two things. In other words,
 18 you could have a drainage report that relates to the, the
 19 development proposed. But in addition to that, you may
 20 have an area, in other words, outside that development
 21 that, shall we say, drains through the proposed
 22 development. We will have watershed maps, in other words,
 23 so it looks at the total picture.
 24 Q. Okay. And the drainage reports that are
 25 submitted in conjunction with, say, a subdivision project,

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1 Q. Okay. And is there a requirement that MDEs be
 2 dedicated as, as public easements?
 3 MR. JONES: Objection. Calls for a legal
 4 conclusion.
 5 THE WITNESS: Did you guys want me to go on or
 6 how do I --
 7 Q. BY MR. PETERSON: Let me, let me refer you back
 8 to Exhibit 3 for a minute, the manual, page 5-12. In the
 9 first paragraph of Section 5.11, it indicates that, in the
 10 last sentence:
 11 A dedicated and recorded meandering drainage
 12 easement shall be provided for all existing
 13 natural drainage swales.
 14 And I guess my question is does that, I guess,
 15 refresh your recollection that there's a dedication
 16 requirement for MDEs?
 17 A. In so far as what it's, you know, laid out here.
 18 To be honest with you, in the county's policies, we're
 19 trying to, shall we say, get away from, from meandering
 20 drainage easements, in other words, that we're --
 21 Q. And why is that?
 22 A. I think typically it becomes a, a maintenance
 23 problem in the sense that the county does not accept those
 24 for maintenance, in other words, and typically it revolves
 25 around the, the property owner himself or potentially a

1 homeowners association and so forth, depending on the
 2 individual development. And typically they want to do
 3 something with that in terms of additional landscaping or
 4 whatever within their particular property. And to a
 5 certain extent, they perhaps start to fill that in or
 6 actually block it or do something that would trigger a
 7 problem, shall we say, so --
 8 Q. And that's a problem for the county, I take it,
 9 because the county probably lacks the, the ability to
 10 enforce the maintenance obligation; is that correct?
 11 A. Again, typically the maintenance obligation is
 12 probably per the CC&Rs for the homeowners association.
 13 Where we get involved is, shall we say, squabbles between
 14 neighbors or some such thing that has been blocked by
 15 drainage and so forth and along these lines, in other
 16 words, or where they may encroach into, you know, riparian
 17 areas and so forth.
 18 Q. Okay. Is there any other reason why the county
 19 is, in your words, getting -- wanting to get away from
 20 MDEs?
 21 A. I think to a certain extent we're, we're
 22 recognizing the fact that maybe those should be formalized
 23 in terms of either conservation easements, additional
 24 setback requirements, in other words, rather than just the
 25 natural swale, in other words, because we -- to a certain

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1 extent, a lot of times these are, again, riparian areas,
 2 and it relates, I think, to a certain extent to the
 3 maintenance issues, who is responsible for this.
 4 Q. When you say a riparian area what are you
 5 referring to?
 6 A. Well, again, that's the Planning Department's
 7 call as far as wetlands or riparian areas have specific
 8 properties, in other words, and obviously they rely upon
 9 biological standards, in other words, from recognized
 10 experts to note those.
 11 Q. Okay. So kind of circling back to my question
 12 about dedication, is it consistent with your understanding
 13 of MDEs, at least in the past, that there's been a
 14 dedication requirement?
 15 A. Yes.
 16 Q. Okay. And the dedication requirement, what to
 17 your understanding did that entail?
 18 A. For the most part, it just would be recognized
 19 and drawn in on the final maps. Now, what you will see in
 20 a lot of the cases is the fact that you have a, a setback
 21 for the meandering drainage easement where it enters the
 22 property, say, from a property owner, and the same thing
 23 where it would exit, which better defines the meandering
 24 drainage easement.
 25 Q. Okay. Going back to the map that I showed you a

1 moment ago, on the first page -- and I think I will make
 2 this an exhibit so it's clear what we're talking to. Let's
 3 mark it 4.
 4 (Exhibit 4 was marked.)
 5 Q. Okay. On the first page of Exhibit 4,
 6 Mr. Foster, in the owner's certificate, the third item I've
 7 highlighted there --
 8 A. Um-hmm.
 9 Q. -- it states that a meandering drainage easement,
 10 MDE, for the flow of drainage waters through the natural
 11 swales as shown on this map.
 12 And so it -- to your understanding, is that
 13 basically a legend's definition of the MDE shown on the
 14 map?
 15 A. Yes.
 16 Q. So this tells me what the MDE is for, right?
 17 MR. JONES: Objection. Calls for speculation.
 18 Q. BY MR. PETERSON: Is that correct, as you
 19 understand it?
 20 A. Yes.
 21 Q. Then on the next page of this same exhibit, in
 22 the certification section here, there's a certification by
 23 the Board of Supervisors. Would you read that, please?
 24 A. Board of Supervisors of the County of Placer on
 25 the 5th day of July, no year, did approve this

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1 map of Hidden Lakes Unit Number 2 and has
 2 accepted on behalf of the public the roads,
 3 right-of-way and easements offered for dedication
 4 for public use in conformity with the terms of
 5 the dedication. The exceptions are listed as
 6 follows: Meandering drainage easements are
 7 accepted for public use; the county does not
 8 accept drainage easements for maintenance
 9 purposes.
 10 Q. Okay. And is that dedication for public use what
 11 you were referring to in my earlier questions about
 12 dedication? I mean, in other words, dedicating the MDE is
 13 the, is -- means dedicating it for public use; is that
 14 correct?
 15 A. I guess it relates to what you determine public
 16 use, as far as the terminology.
 17 Q. Well, let, let me rephrase it, then.
 18 As you understand the dedication aspect of an MDE
 19 in general and as indicated on the second page of
 20 Exhibit 4, what, what does dedicating the easement really
 21 mean?
 22 MR. JONES: Objection. Calls for a legal
 23 conclusion, but as you understand it.
 24 THE WITNESS: As I understand it, they recognize
 25 the swales, you know, within the subdivision, in other

1 words, that handle or will eventually, shall we say, the
 2 natural runoff from one property to another.
 3 Q. BY MR. PETERSON: Okay. And, well, that's what
 4 an MDE does, right?
 5 A. Yes.
 6 Q. And then the aspect of, of dedicating MDE, what
 7 does that mean in your -- to your knowledge?
 8 A. Again, it probably is putting it on paper in
 9 terms of so it would be in a document, in other words, so
 10 it would carry forward, in other words.
 11 Q. Okay. Well, let me ask you this: To your
 12 understanding, who owns the easement -- the MDE, rather?
 13 MR. JONES: Objection. Calls for a legal
 14 conclusion.
 15 THE WITNESS: In my opinion?
 16 Q. BY MR. PETERSON: Yeah.
 17 A. It would be the -- this is interesting. The
 18 public as a whole.
 19 Q. Right. Okay. So when you talked to whoever it
 20 was you talked to a few months ago, you indicated that you
 21 looked at maps like the one I've shown you here in
 22 Exhibit 4. And I think I asked you if you looked at
 23 anything else, and do you remember doing that, looking at
 24 any other documents or, or files?
 25 A. I don't remember looking at anything other than

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1 the, the map in question.
 2 Q. Okay. Do you remember the map that you looked
 3 at, where it came from? In other words, did it come from
 4 the project file for this project or somewhere else?
 5 A. Somewhere else.
 6 Q. Okay. And where was that?
 7 A. We have all of the parcel maps and subdivision
 8 maps that have been recorded within the County, and they
 9 are readily available there at our office.
 10 Q. Okay. All right. So are you aware of -- are you
 11 aware of any assignment made by Placer County of the MDES
 12 shown in Exhibit 4?
 13 MR. JONES: Objection, ambiguous.
 14 THE WITNESS: I, I, I don't quite understand your
 15 question, I guess, is my --
 16 Q. BY MR. PETERSON: Are you aware of any document
 17 indicating a transfer of the easement rights to anyone else
 18 other than Placer County?
 19 MR. JONES: Objection. No foundation the witness
 20 could understand such a document.
 21 Q. BY MR. PETERSON: Do you understand the question,
 22 or do you need me to rephrase it?
 23 A. I would like you to rephrase it.
 24 Q. Are you aware of any document showing that --
 25 let's see. I'll do it this way. Let me withdraw that,

1 please.
 2 Let me refer you back to the second page of
 3 Exhibit 4, the portion we looked at earlier, the Board of
 4 Supervisor's certification. Are you aware of any documents
 5 that modify or alter that dedication?
 6 A. I am not aware of any.
 7 Q. Are you aware of any documents that purport to,
 8 to assign from Placer County or the general public any
 9 rights to the easement to Hidden Lakes Estates
 10 Homeowners --
 11 MR. JONES: Objection. Asked and answered.
 12 Q. BY MR. PETERSON: -- Homeowners Association?
 13 A. No. I am not aware of that.
 14 Q. Where would I go to look for that information? I
 15 mean, it may not exist, but where would I look to verify
 16 whether it exists or not?
 17 A. Again, I would -- you know, I don't know. And I
 18 can offer an opinion, I guess. That opinion would be that
 19 I would certainly check out any recorded documents related
 20 to the subdivision in question.
 21 Q. Let me ask it a different way. Maybe this will
 22 address your, your hesitation on the opinion issue.
 23 If you wanted to ascertain whether there was any
 24 documentation modifying or transferring the MDE as it's
 25 described in Exhibit 4, where would you look among the

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1 records available at your office?
 2 A. Again, we would probably have to start with the
 3 subdivision itself to see if there's any modifications to
 4 the map itself that have been recorded.
 5 Q. And you indicated earlier that the county
 6 maintains project files; is that correct?
 7 A. Yes.
 8 Q. And is that what they're called within your
 9 office are project files?
 10 A. Yes.
 11 Q. So if I wanted to get my hands on the project
 12 file documents associated with Hidden Lakes Unit Number 2,
 13 where would I -- where would I go within the records in
 14 your office to get that?
 15 MR. JONES: Objection. Suggests knowledge that
 16 those records exist, and I don't believe there is such
 17 knowledge.
 18 THE WITNESS: In other words, if you're asking a,
 19 quote, general question related to where an individual
 20 could get some information on a particular subdivision or
 21 project, I can answer that question.
 22 Q. BY MR. PETERSON: Okay.
 23 A. We do have what we call our PM -- PMI file, which
 24 lists projects by an alpha, in other words, alphabetically
 25 and also by project number. And typically what happens is,

1 depending on the year the project was approved, it would
 2 have been put in a binder for that particular year, and
 3 then the number of projects within that year are numbered
 4 consecutively. So for 1999, you'd have projects 1 through
 5 25 or whatever the case may be. Looking that up, then you
 6 could probably go to our archive section, depending on the
 7 age of the project, and find it in that manner.
 8 Q. So can you tell from looking at Exhibit 4 what
 9 alpha-numeric reference would be consulted in relation to
 10 Hidden Lakes Unit Number 2?
 11 MR. JONES: Objection. Calls for speculation of
 12 something that occurred 20 some odd years ago.
 13 THE WITNESS: No, I can't.
 14 Q. BY MR. PETERSON: Where would the alpha-numeric
 15 information be contained, in your experience?
 16 A. Typically you would have to look it up, again, in
 17 that PMI file that would relate to either the project
 18 number and/or, you know, the name of the project, in other
 19 words.
 20 Q. All right. I'm looking at some other drawings
 21 that indicate project number 30390 for Hidden Lakes Unit
 22 Number 2. Is that the, the project number that would be
 23 used in your archives?
 24 A. To be honest with you, I don't know. Currently
 25 we use PN numbers with a PN, with a four-digit number, so

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1 whatever numbering system at that point in time, I don't
 2 know.
 3 Q. Now, to your knowledge, do MDES, do MDES deal
 4 with any subsurface drainage?
 5 MR. JONES: Objection. No foundation.
 6 THE WITNESS: Could you better define subsurface
 7 drainage?
 8 Q. BY MR. PETERSON: Well, let's back up and maybe
 9 get an understanding of storm water drainage. That really
 10 includes water generated by precipitation, right, on the
 11 surface of the ground?
 12 MR. JONES: Objection. No foundation has been
 13 laid on the witness' knowledge as a hydrologist.
 14 Q. BY MR. PETERSON: Do you understand the question?
 15 A. Yes.
 16 Q. Do you have an answer?
 17 A. Typically it is -- it relates to the surface
 18 runoff related to a, a storm, shall we say.
 19 Q. All right. And so does the MDE include, to your
 20 knowledge, anything other than that?
 21 A. I don't think I could answer that.
 22 Q. Okay. Why not?
 23 A. Because I don't know.
 24 Q. Okay. Does an MDE exist to accommodate any other
 25 source of water other than storm water runoff from precip?

1 MR. JONES: Objection. Requires the witness to
 2 speculate as to how the county has recorded the term MDE in
 3 their documents.
 4 Q. BY MR. PETERSON: You can answer.
 5 A. I guess in my opinion it would probably be
 6 related to any drainage, in other words, that would get to
 7 a particular location. In other words, obviously it -- you
 8 know, certain amount of drainage percolates through the
 9 soil and, in other words, and I think the, the natural
 10 drainage swales collect or recognize where, shall we say,
 11 the water is drawn to, in other words.
 12 Q. Okay. How is natural drainage distinguished from
 13 unnatural drainage?
 14 A. Natural drainage is -- relates to the -- relates
 15 to the topo of a site project, an area, in other words.
 16 Where unnatural would be -- how would I define unnatural.
 17 Again, I guess you could say it's water collected in an, in
 18 a formalized system, shall we say, with pipes, catch
 19 basins, et cetera, and directed out to an area and so
 20 forth.
 21 Q. Like a lake?
 22 A. A lake.
 23 Q. Okay. Or, or a pond?
 24 A. Don't ask me for a definition between a lake and
 25 a pond.

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1 Q. Now, in your experience, does an MDE run in any
 2 other form other than through a swale?
 3 MR. JONES: Objection, ambiguous. An MDE is an
 4 easement recorded on a map. I don't -- it's ambiguous
 5 what you mean by how it runs.
 6 THE WITNESS: Yeah. You may be able -- can you
 7 kind of rephrase that a little bit?
 8 Q. BY MR. PETERSON: As you've described the MDE to
 9 this point, I understand it to involve storm water
 10 traveling through the naturally-existing swales. And I
 11 guess what I'm trying to ask you is can water traveling
 12 through an MDE run in any other form through a pipe or a
 13 conduit or a canal or anything other than a natural swale?
 14 A. Again, I think in my opinion, meandering drainage
 15 easements are basically natural. In other words, there's
 16 no man-made improvements tied to that.
 17 Q. Okay. All right. I don't have any further
 18 questions.
 19 MR. JONES: Mr. Foster, my name is Ken Jones.
 20 I'm here today representing the Association, and I just
 21 have a couple of quick questions.
 22 EXAMINATION BY MR. JONES
 23 Q. You mentioned earlier, and I just wanted to
 24 clarify one point, that an MDE is a starting point for, for
 25 how a certain property needs to allow water to, to pass

1 over the property. If I understand correctly, you said
 2 there was a starting point and an ending point, and within,
 3 within the property, there was some room for movement.
 4 MR. PETERSON: Well, excuse me. Let me object.
 5 So far I haven't heard a question. Why don't you ask him a
 6 question.
 7 Q. BY MR. JONES: Okay. Is it, is it proper to
 8 place a conduit where a MDE was placed on a map across a
 9 property?
 10 MR. PETERSON: Objection. Incomplete
 11 hypothetical, lacks foundation, and the term "proper" is, I
 12 think, hopelessly ambiguous.
 13 Q. BY MR. JONES: Okay. Mr. Foster, let me draw
 14 your attention to Exhibit 3. Am I correct?
 15 MR. PETERSON: The manual?
 16 MR. JONES: The manual.
 17 MR. PETERSON: Yeah.
 18 Q. BY MR. JONES: On page 5-12, if I could draw your
 19 attention there.
 20 Mr. Foster, Section Two, there's a, there's a
 21 word that's in the section that's titled Easements; Section
 22 Two is Standards; Easements for closed conduits. Are these
 23 guidelines for how you would put a closed conduit within an
 24 MDE?
 25 A. Well, these are criteria for developing drainage

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1 standards, in other words, for the particular development.
 2 I guess typically you would not necessarily have an MDE, in
 3 other words, if you put in a formalized system, culverts,
 4 pipes, in other words, catch basins, manholes, et cetera.
 5 I don't --
 6 Q. Mr. Foster, did you say earlier, though, that
 7 there was some flexibility in the, the MDE to allow for
 8 later development?
 9 A. Yes.
 10 Q. Could you explain that flexibility?
 11 A. Again, typically, if a property's parcel has been
 12 created, in other words, there's a designated MDE on it,
 13 under the current county policies, the developer would have
 14 to recognize, again, where it enters the property and where
 15 it exits the property. There is a little flexibility in
 16 that design, in other words, to allow potentially a
 17 relocation, realignment of that MDE.
 18 Q. Would it be possible that that relocation include
 19 the installation of some sort of a conduit to carry the
 20 water?
 21 A. It could.
 22 Q. It could, thank you.
 23 Mr. Foster, if I could draw your attention back
 24 to the, the map we've been looking at, Book L. And to your
 25 knowledge, was the planned lake here when the MDES were

1 placed on this property?
 2 A. I don't know.
 3 Q. And I just have one last question I would like to
 4 ask you. If I represented to you that the Placer County
 5 website in the Storm Water Management Manual defines a
 6 swale as:
 7 A shallow, gentle depression in the earth --
 8 earth's surface that tends to collect the waters
 9 to some extent and is considered in a sense as a
 10 drainage course, although waters in a swale are
 11 not considered stream waters.
 12 Does this definition of a swale concur with your
 13 understanding of what a swale is as you've testified today?
 14 A. Could I look at that, please?
 15 Q. You certainly can.
 16 A. I'm not, shall we say, familiar with this
 17 definition, in other words, as it comes out of a Stormwater
 18 Management Manual. I, I think I would agree.
 19 Q. I have no further questions. Thank you.
 20 MR. PETERSON: Let's take -- actually, let me ask
 21 a couple follow-up questions if I may, and then we'll take
 22 a break.
 23 MR. STYLES: Okay.
 24 FURTHER EXAMINATION BY MR. PETERSON
 25 Q. Is there anyone at, shall we say, I guess, the

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1 Resource Agency, who now employs you, that you would regard
 2 to be more knowledgeable than yourself about MDES?
 3 A. There are a number of engineers that are familiar
 4 with, I think, the term MDE.
 5 Q. Okay. Let me ask it this way. In terms of how
 6 the MDE is dealt with in practice, is there anyone in your
 7 office besides -- well, is, is there anyone in your office
 8 you would consider to be more knowledgeable than you about
 9 MDES?
 10 A. I think there's, there's people there and, again,
 11 fellow engineers that are certainly my equal, I guess I
 12 would call it.
 13 Q. Okay. Let's take a short break. I'm going to
 14 talk to my co-counsel, and we should have you out of here
 15 pretty quickly.
 16 (Off the record)
 17 MR. PETERSON: Okay. No further questions.
 18 (Off the record)
 19 MR. PETERSON: Okay. We've had an off-the-record
 20 discussion, Mr. Jones and I have, and because Exhibit 4 is
 21 over-sized, we're stipulating that Exhibit 4 to this
 22 deposition transcript is actually Exhibit C to the
 23 declaration of John Fritsch, dated June 30th, 2005.
 24 And what, do you just want to omit Exhibit 4 from
 25 the transcript on that basis?

1 MR. JONES: That's fine.
 2 MR. PETERSON: Okay. So stipulated.
 3 (Time noted: 11:25 a.m.)
 4
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1 REPORTER'S CERTIFICATE
 2
 3 I certify that the witness in the foregoing
 4 deposition,
 5 MIKE FOSTER
 6 was by me duly sworn to testify the truth, the whole truth,
 7 and nothing but the truth in the within-entitled cause;
 8 that said deposition was taken at the time and place
 9 therein named; that the testimony of said witness was
 10 reported by me, a duly certified shorthand reporter and a
 11 disinterested person, and was thereafter transcribed into
 12 typewriting, to the best of my ability.
 13 I further certify that I am not of counsel for
 14 attorney for either or any of the parties to said
 15 deposition, nor in any way interested in the outcome of the
 16 cause named in said caption.
 17 IN WITNESS WHEREOF, I have hereunto set my hand
 18 this 15th day of August 2005.
 19
 20
 21
 22
 23 _____
 24 Tobie Sterling, CSR No. 4019
 25 Certified Shorthand Reporter
 State of California

1 STERLING & ASSOCIATES
 2 101 Orange Street, Suite A
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 4 (530) 888-8822
 5
 6 August 15, 2005
 7
 8 Mike Foster
 9 Associate Civil Engineer
 10 County of Placer Resource Agency
 11 11444 B Avenue
 12 Auburn, CA 95603
 13
 14 Re: Wood v. Hidden Lakes Estates HOA
 15
 16 Dear Mr. Foster:
 17
 18 Your deposition, taken August 11, 2005, has been
 19 transcribed. You may wish to confer with your attorney
 20 whether he/she requires that it be read, corrected, if
 21 necessary, and signed before it is sealed.
 22
 23 It is our policy not to release the original transcript
 24 from our office. If you do wish to read the transcript,
 25 you may:
 1) Contact our office to make an appointment; or
 2) Read your attorney's copy and notify this
 office by mail of any changes. (There is a
 form at the back of the transcript you may use
 to indicate changes and sign.)
 If we do not hear from you within 30 days of today's date,
 your deposition will be sealed and forwarded to the
 noticing attorney, Glenn W. Peterson, Esq.
 Very truly yours,
 Tobie Sterling CSR #4019
 cc: Glenn W. Peterson, Esq.
 Kenneth Jones, Esq.

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