

**MEMORANDUM OF UNDERSTANDING BETWEEN THE
BOLINAS COMMUNITY PUBLIC UTILITY DISTRICT &
CHRISTOPHER AND LARA DEAM**

This Memorandum of Understanding (“MOU”) is entered into by and between the Bolinas Community Public Utility District (“BCPUD”), on the one hand, and Christopher and Lara Deam (together, the “Deams”), on the other hand. The BCPUD and the Deams shall be referred to collectively herein as “the Parties.”

WHEREAS, the Deams propose to remove a portion of an existing chain link fence running in an east-west direction and separating their property at 52 Crescente Avenue, Bolinas (APN 193-092-19) from the BCPUD’s immediately adjacent parcel to the south (APN 193-092-08) which, together with APN 193-092-09, is the site of two water storage tanks owned by the BCPUD (“BCPUD Water Tank Property”), and replace it with a hand-split cedar fence;

WHEREAS, the Deams further propose to relocate the western-facing section of the chain link fence on the BCPUD Water Tank Property approximately 17.5 feet to the east, replace it with a hand-split cedar fence, and install coastal native plants on the BCPUD Water Tank Property to the west of the new hand-split cedar fence;

WHEREAS, the Deams are willing to bear all costs related to removing, relocating and rebuilding the above-described fencing and installing the native coastal plants.

WHEREAS, the BCPUD is willing to grant permission to the Deams to remove, relocate and replace said sections of the chain link fencing with hand-split cedar fencing and to install native coastal plants at the BCPUD Water Tank Property, subject to certain terms and conditions as set forth below;

NOW, THEREFORE, in consideration of the mutual promises set forth herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Subject to the terms and conditions of this Agreement, the BCPUD hereby grants permission to the Deams to remove the sections of chain link fencing on the north and west borders of the BCPUD Water Tank Property, install hand-split cedar fencing as depicted in the drawing attached hereto as Exhibit A, and install native coastal plants on the BCPUD Water Tank Property to the west of the new hand-split cedar fence (the “Fence Project”).
2. For avoidance of doubt: the Parties understand and agree that the sections of existing chain link fencing to be removed are the sections on the north and west borders of the BCPUD Water Tank Property and these sections will be replaced with hand-split cedar fencing as depicted via a blue line on the drawing attached hereto as Exhibit A, and the coastal native plants will be installed on the property to the west of the new western-facing fence line. As depicted in this drawing, the Parties understand and agree that a minimum separation of 8-feet 9-inches shall be maintained at all times between the new hand-split cedar fencing and the BCPUD’s water storage tanks.
3. The Parties further understand and agree that the new hand-split cedar fencing will be built substantially in conformance with the renditions included in the photographs attached hereto as Exhibit B. The height of the new hand-split cedar fencing shall not exceed 6-feet and the posts for said fencing shall be installed a maximum of 6-feet apart.
4. The Deams hereby acknowledge and agree that they shall be solely responsible for all costs and expenses relating to the Fence Project including, but not necessarily limited to:

(a) all costs of removing and properly disposing of the pertinent sections of the existing chain link fencing on the north and west sides of the BCPUD Water Tank Property;

(b) all costs of procuring and installing the replacement hand-split cedar fencing as depicted in Exhibits A and B; and

(c) all costs of installing and maintaining the coastal native plants; and

(d) all costs of any permits required for the Fence Project.

5. The Deams acknowledge and agree that the removal, relocation and/or rebuilding of the fencing as contemplated in this MOU may be subject to the coastal, building and/or use permit requirements of the County of Marin and/or other regulatory agencies. The Deams warrant and represent that they will comply with all such requirements at their sole cost and expense and, upon the reasonable request of the BCPUD, will provide documented evidence of such compliance.

6. The Deams acknowledge and agree that they shall promptly make, at their sole expense, any and all necessary repairs to the hand-split cedar fencing and shall maintain said fencing in a good and safe condition.

7. The Deams further acknowledge and agree that no substantial alteration of or improvement to the fencing surrounding the BCPUD Water Tank Property, other than as described in this MOU, shall be made without the prior written consent of the BCPUD in the form of written approval by the BCPUD Board of Directors following a duly noticed public meeting. The BCPUD Board reserves the right in its sole discretion to refuse to consent to any proposed alteration or improvement to this fencing.

8. The Parties acknowledge and agree that, notwithstanding any other provision of this MOU, BCPUD shall be entitled to terminate this MOU and the permission granted under Section 1, above, upon thirty (30) days written notice to the Deams in the event: (1) BCPUD is required or advised to do so by any federal, state or other public agency with due authority over the operations of the district or by its insurance authority, ACWA/JPIA and/or (2) BCPUD determines in good faith that the hand-split cedar fencing and/or its location has or will create unacceptable operational difficulties for the BCPUD and/or (3) the Deams fail to comply with any of the material terms of this MOU or any of their material obligations hereunder. Any notification of termination of this MOU by the BCPUD may be protested by the Deams for a final determination to the BCPUD Board of Directors. In the event the MOU is terminated by the BCPUD under this Section 8, the Deams acknowledge and agree that they are obligated to and, if reasonably requested to do so by the BCPUD, shall promptly remove the hand-split cedar fencing and procure and install replacement chain link fencing (equivalent to the chain link fencing they remove per this MOU and at its original location) as reasonably specified by the BCPUD, at their sole cost and expense.

9. To the fullest extent permitted by law the Deams shall indemnify, defend and hold harmless BCPUD, its directors, officers, employees and/or authorized volunteers, and each of them, from and against:

A. Any and all claims, demands, causes of action, damages, costs, expenses (including attorneys' fees), penalties, losses or liabilities, in law or in equity, of every kind or nature whatsoever including, but not limited to, injury to or death of any person, including the BCPUD, or the Deams (or either of them), or any directors, officers, employees or authorized volunteers of the BCPUD or the Deams (or either of them), and damages to or destruction of property of any person, including but not limited to, the BCPUD or the Deams (or either of them), or any directors, officers, employees, or authorized volunteers of the BCPUD or the Deams (or either of them), arising out of or in any manner directly or indirectly connected with the Fence Project and the work to be performed pursuant to this MOU, however caused, regardless of any negligence of the BCPUD or

its directors, officers, employees or authorized volunteers, except the sole negligence or willful misconduct of BCPUD or its directors, officers, employees or authorized volunteers; and

- B. Any and all actions, proceedings, damages, costs, expenses, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of the Deams, or either of them;
- C. The Deams shall immediately defend, at their own cost, expense and risk, any and all such aforesaid suits, actions, or other legal proceedings of every kind that may be brought or instituted against the BCPUD or its directors, officers, employees, or authorized volunteers. The Deams' obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the BCPUD or its directors, officers, employees or authorized volunteers. The Deams shall pay and satisfy any judgment, award or decree that may be rendered against the BCPUD or its directors, officers, employees, or authorized volunteers, in any and all such suits, actions, or other legal proceedings.

10. In the event of a dispute arising under this Agreement, the Parties agree that all such disputes that the Parties are unable to resolve through negotiation shall be resolved by binding arbitration under the applicable rules of the American Arbitration Association. The prevailing party in any dispute arising under this Agreement shall be entitled to recover its reasonable attorneys' fees and costs (including but not limited to expert witness fees, arbitrator fees, and arbitration costs). Any decision of the arbitrator or arbitration panel shall be enforceable in any court of competent jurisdiction.

11. This MOU constitutes the entire agreement between the Parties with respect to the subject matter hereof, superseding any prior agreement, understanding or representation, whether oral, electronic or written. This Agreement may not be modified or amended, except in a writing signed by duly authorized representatives of all Parties (or their permitted assignee(s)). In the event any provision of this Agreement or the application of any such provision to any of the Parties is determined to be invalid or contrary to law, it shall not affect the enforceability of the remaining provisions of this Agreement, which will remain enforceable to the full extent permitted by law. This Agreement shall extend to and inure to the benefit of and be binding upon the Parties and their respective heirs, executors, administrators, successors and permitted assigns. This Agreement shall be governed by the laws of the State of California. No waiver of any breach or provision of this Agreement will be binding unless it is in a writing signed by a duly authorized representative of the waiving Party. The waiver, or failure to enforce, any right resulting from any breach or provision of this Agreement will not be deemed a waiver of any right relating to a subsequent breach, any other provision, or any other right hereunder.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives effective September __, 2023.

BOLINAS COMMUNITY PUBLIC UTILITY DISTRICT

By: _____
Jack Siedman
President
BCPUD Board of Directors

LAURA DEAM and CHRISTOPHER DEAM

By: _____
Lara Deam
52 Crescente Avenue, Bolinas

By: _____
Christopher Deam
52 Crescente Avenue, Bolinas

EXHIBIT A

Depiction of Existing Chain Link Fence to be Removed and
New Hand-Split Cedar Fence to be Installed

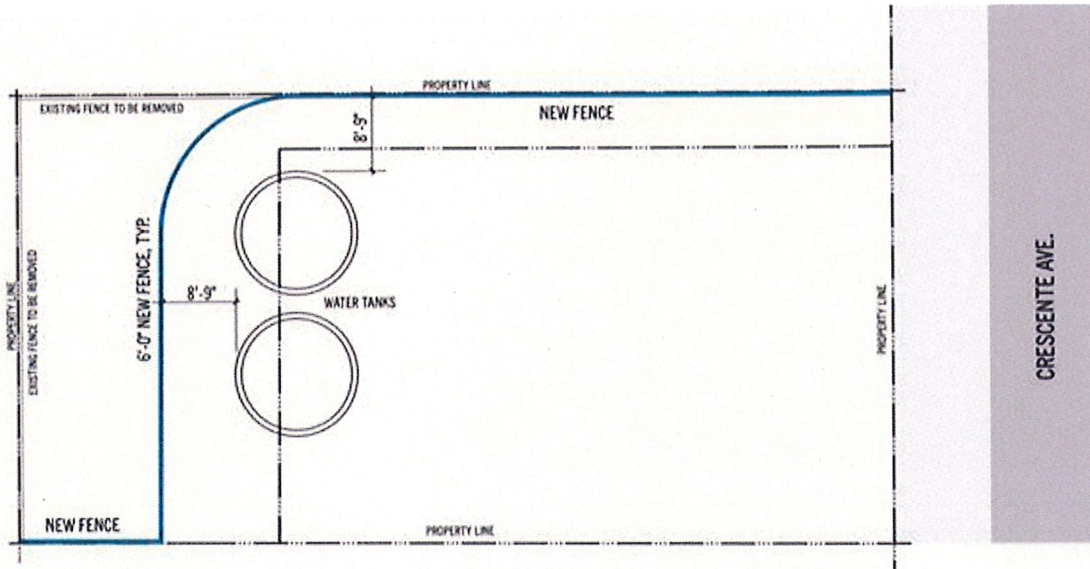


Exhibit B

Rendition of New Hand-Split Cedar Fencing

52 Crescente side of fence



BCPUD side of fence

