

3 FILED
O'Clock P.M.
JUL 28 2004
JEANETTE HILTONS, Clerk
BY: Marguerite Kirk

1 FAVOUR, MOORE & WILHELMSSEN, P.A.
2 Post Office Box 1391
3 Prescott, AZ 86302-1391
4 928/445-2444
5 David K. Wilhelmsen, #007112
6 Marguerite Kirk, #018054

7 Attorneys for Plaintiffs

8 **IN THE SUPERIOR COURT OF ARIZONA**
9 **COUNTY OF YAVAPAI**

10 **JOHN B. CUNDIFF and BARBARA C.)**
11 **CUNDIFF, husband and wife; ELIZABETH)**
12 **NASH, a married woman dealing with her)**
13 **separate property; KENNETH PAGE and)**
14 **KATHRYN PAGE, as Trustee of the)**
15 **Kenneth Page and Catherine Page Trust,)**

16 Plaintiffs,

17 vs.

18 **DONALD COX and CATHERINE COX,)**
19 **husband and wife,)**
20 **Defendants.)**

Case No. CV 2003-0399 D101-

Division 1

**Plaintiffs' Separate Statement
of Facts in Support of
Motion for Summary Judgment**

21 Plaintiffs, by and through undersigned counsel, in accordance with Rule 56(c)(2) hereby
22 provide their separate statement of facts, with attached exhibits incorporated herein, in support of their
23 motion for summary judgment on Defendants' affirmative defense of waiver of the prohibition against
24 business and commercial enterprises contained in the Declaration of Restrictions governing Coyote
25 Springs Ranch.

26 RESPECTFULLY SUBMITTED this 28th day of July, 2004.

FAVOUR, MOORE & WILHELMSSEN, P.A.

By Marguerite Kirk
David K. Wilhelmsen
Marguerite Kirk
Attorneys for Plaintiffs

1 transcript attached hereto and by this reference incorporated herein as *Exhibit 4.*)

2 9. Since approximately August 2001, Defendants Cox's improvements and development of
3 the subject land included drilling a well, obtaining electricity, construction of a driveway, placement
4 of a mobile home, erection of a perimeter fence, grading of the property, and installation of irrigation
5 lines that cover nine (9) acres of their land. *Deposition of Catherine Cox, June 22, 2004 at Exhibit 4;*
6 *at p. 51, lines 14-18* (a true and correct copy of referenced deposition transcript attached hereto and
7 by this reference incorporated herein as *Exhibit 5*); *at p.63, lines 2-18* (a true and correct copy of
8 referenced deposition transcript attached hereto and by this reference incorporated herein as *Exhibit*
9 *6*); and, *at p. 64, line 2 through p.65, line 16* (a true and correct copy of referenced deposition
10 transcript attached hereto and by this reference incorporated herein as *Exhibit 7.*)

11 10. Since January 2002, Defendants Cox utilize their Coyote Springs Ranch real property for
12 the production of trees, shrubs, and the like for their nursery business. *Deposition of Catherine Cox,*
13 *June 22, 2004 at p.63, line 19 through p.64, line 1* (a true and correct copy of referenced deposition
14 transcript attached hereto and by this reference incorporated herein as *Exhibit 8.*)

15 11. Since January 2002, Defendants Cox have had one-full time employee, who has been and
16 continues to be assisted by two to three other employees, that work exclusively at their Coyote Springs
17 Ranch property who is responsible for maintaining all trees produced on their property. *Deposition*
18 *of Catherine Cox, June 22, 2004 at p.66, line 14 through p.67, line 12* (a true and correct copy of
19 referenced deposition transcript attached hereto and by this reference incorporated herein as *Exhibit*
20 *9.*)

21 12. On May 15, 2003, Plaintiffs filed their complaint and request for injunctive relief against
22 Defendants on the grounds that Defendants' nursery enterprise located in the subdivision, violated the
23 recorded Declaration of Restrictions prohibiting business or commercial activity. *Cundiff, et al. v. Cox,*
24 *CV 2003-0399, Complaint for Injunctive Relief, May 15, 2003.*

25 13. Defendants filed their verified answer to the amended complaint on May 21, 2004,
26 specifically raising the affirmative defenses of laches, waiver and estoppel. *Cundiff v. Cox, CV 82003-*

1 0399, Answer to First Amended Complaint, May 21, 2004.

2 14. Defendants additionally claimed as an affirmative defense that the complaint was "barred
3 because of Plaintiffs' own negligence, acts, omissions, carelessness and/or inattention." *Id.*
4 Defendants further requested an award of their attorney's fees and costs under A.R.S. §12-341.01. *Id.*

5 DATED this 28th day of July, 2004.

6 FAVOUR, MOORE & WILHELMSSEN, P.A.

7
8
9 By Marguerite Kirk
10 David K. Wilhelmsen
11 Marguerite Kirk
12 Post Office Box 1391
13 Prescott, AZ 86302-1391
14 Attorneys for Plaintiffs

13 ORIGINAL of the foregoing
14 filed this 28th day of July, 2004 to:

15 Clerk, Superior Court of Arizona
16 Yavapai County
17 Prescott, Arizona

18 A copy hand-delivered this 28th day
19 of July, 2004 to:

20 Honorable David L. Mackey
21 Division One
22 Superior Court of Arizona
23 Yavapai County
24 Prescott, Arizona

25 and, a copy hand-delivered this
26 28th day of July, 2004 to:

Jeffrey Adams
MUSGROVE, DRUTZ & KACK, P.C.
1135 Iron Springs Road
Prescott, Arizona 86302

By: Marguerite Kirk
Marguerite Kirk

Recording Requested By:
FIRST AMERICAN TITLE

When Recorded Mail To:

JOHN AND BARBARA CUNDIFF
COYOTE SPRINGS RD.
PRESCOTT VALLEY, AZ 86314

	INSTRUMENT # 9216095
	OFFICIAL RECORDS OF YAVAPAI COUNTY PATSY C. JENNEY REQUEST OF: FIRST AMERICAN TITLE INS CO DATE: 04/21/92 TIME: 16:20 FEE: 7.00 SC: 4.00 PT: 1.00 BOOK 2475 PAGE 174 PAGES: 001

BK	FEE
MAP	\$4
PCL	\$5
	\$1

Escrow No. 253-100-0066222 **JOINT TENANCY DEED**

For the consideration of TEN AND NO/100 DOLLARS, and other valuable considerations, I or we,

PAULINE H. ANDERSON, a married woman who acquired title as
Pauline H. Schleif

the GRANTOR

do hereby convey to

JOHN B. CUNDIFF AND BARBARA C. CUNDIFF, husband and wife

the GRANTEE

not as tenants in common and not as a community property estate, but as joint tenants with right of survivorship, the following described real property situate in Yavapai County, Arizona:

Lot 8834, PRESCOTT VALLEY UNIT NINETEEN, according to the plat of record in the office of the County Recorder of Yavapai County, Arizona, recorded in Book 15 of Maps, pages 45-48.

EXCEPTING THEREFROM all the gas, oil, minerals and petroleum as reserved in various instruments of record.

SUBJECT TO: Existing taxes, assessments, liens, encumbrances, covenants, conditions restrictions, rights of way and easements of record.

And the GRANTOR does warrant the title against all persons whomsoever, subject to the matters above set forth.

The GRANTEE by signing the acceptance below evidence their intention to acquire said premises as joint tenants with the right of survivorship, and not as community property or as tenants in common.

Dated: April 2, 1992

ACCEPTED AND APPROVED:

John B. Cundiff
JOHN B. CUNDIFF

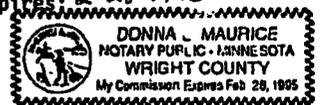
Pauline H. Anderson
PAULINE H. ANDERSON

Barbara C. Cundiff
BARBARA C. CUNDIFF

STATE OF }
County of } ss.

This instrument was acknowledged and executed before me this 2nd day of April 19 92 by PAULINE H. ANDERSON

My Commission Expires: 2-28-1995



Donna L. Maurice
Notary Public

STATE OF ARIZONA }
County of Yavapai } ss.

This instrument was acknowledged and executed before me this 15 day of April 19 92 by JOHN B. CUNDIFF AND BARBARA C. CUNDIFF

My Commission Expires:
SCOTT L WEBB, NOTARY PUBLIC
YAVAPAI COUNTY, ARIZONA
MY COMMISSION EXPIRES 5/4/94

Scott L Webb
Notary Public

3286905 BK 3778 PG 627
Yavapai County
Patsy Jenney-Colon, Recorder
09/05/2000 D3:06P PAGE 1 OF 3
SANTERRE & VANDEL KROL LTD
RECORDING FEE 7.00
SURCHARGE 4.00
POSTAGE 1.00

When recorded, return to:

Nancy Tomczak, Legal Assistant
SANTERRE & VANDEL KROL, LTD.
7333 E. Doubletree Ranch Rd., #200
Scottsdale, Arizona 85258

WARRANTY DEED

FOR VALUE RECEIVED,

KENNETH A. PAGE and KATHERYN J. PAGE, husband and wife, as Grantors,

HEREBY CONVEY TO:

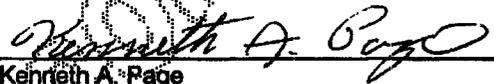
BECKY J. NASH, wife of Thomas Nash, as her sole and separate property, as Grantee,

ALL RIGHT, TITLE AND INTEREST of Grantors, together with all rights and privileges appurtenant to or becoming appurtenant to, the following described property, to wit:

Approximately ten (10) acres located on Coyote Springs Road, Coyote Springs, Arizona, as more specifically described on Exhibit "A" attached hereto

Subject to current taxes and other assessments, reservations in patents and all easements, rights-of-way, encumbrances, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record, the Grantors warrant the title against all persons whomsoever.

IN WITNESS WHEREOF, the Grantors have hereunto set their hands and seals this 21 day of August, 2000.



Kenneth A. Page


Katheryn J. Page

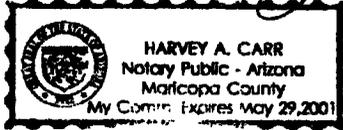


STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 21 day of August, 2000, before me, a Notary Public, personally appeared Kenneth A. Page and Kathryn J. Page, to me known or satisfactorily proven to be the persons whose names are subscribed to this instrument, and they acknowledged to me that they executed the same.

Harvey A Carr
Notary Public

My commission expires:



UNOFFICIAL
COPY

DESCRIPTION OF PROPERTY CONVEYED

All that portion of the Northeast quarter of the Northeast quarter of Section 25, Township 15 North, Range 1 West of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, described as follows:

COMMENCING at the Northeast corner of said Section 25, being a found G.L.O. brass monument; thence South 89 degrees 56 minutes 00 seconds West, along the North line of said Section 25, 660.66 feet to the TRUE POINT OF BEGINNING;

THENCE South 00 degrees 06 minutes 53 seconds East, 660.42 feet to a found rebar, L.S. 12005; thence South 89 degrees 54 minutes 50 seconds West, 660.54 feet; thence North 00 degrees 07 minutes 28 seconds West, 660.65 feet to a point on the North line of said Section 25; thence North 89 degrees 56 minutes 00 seconds East, along said North line, 660.65 feet to the TRUE POINT OF BEGINNING (containing 10.02 acres more or less).

UNOFFICIAL
COPY

in recorded, return

Robert D. Conlin
2233 North 7th Street

STATE OF ARIZONA, County of Yavapai

I do hereby certify that the within instrument was filed and recorded at the request of Tom Lynch
on July 13 A.D. 1974 at 1:30 o'clock P.M. Book 966 Official Records
Page 680-681-682 Records of Yavapai County, Arizona.

WITNESS my hand and official seal the day and year first above written.

Mary C. Jenney County Recorder
Deputy

CUYOTE SPRINGS RANCH

DECLARATION OF RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

That Robert D. Conlin and Margaret Dell Conlin, his wife, and David A. Conlin, Jr., husband of Anne Conlin, dealing with his sole and separate property, being the owners of all the following described premises, situated in the County of Yavapai, State of Arizona, to-wit:

GOVERNMENT LOTS One (1) and Two (1) and the South half of the Northeast quarter and the Southeast quarter of Section One (1); all of Section Twelve (12); the East half and the East half of the East half of the Southwest quarter and the East half of the East half of the Northwest quarter and the Northwest quarter of the Northeast quarter of the Northwest quarter of Section Thirteen (13); the East half of Section Twenty-four (24); the East half of Section Twenty-five (25), all in Township Fifteen (15) North, Range One (1) West of the Gila and Salt River Base and Meridian; and

All of Section Six (6); all of Section Seven (7); GOVERNMENT LOTS One (1), Two (2), Three (3), and Four (4), and the Southeast quarter of the Southwest quarter and the South half of the Northeast quarter of the Southwest quarter of Section Nineteen (19), all in Township Fifteen (15) North, Range One (1) East of the Gila and Salt River Base and Meridian.

and desiring to establish the nature of the use and enjoyment of the premises hereinabove described, sometimes hereinafter referred to as property or premises, does hereby declare said premises subject to the following express covenants and stipulations as to the use and enjoyment thereof, all of which are to be construed as restrictive covenants running with the title to said premises and each and every part and parcel thereof and with each and every conveyance thereof hereafter made to-wit:

1. Each and every parcel of the above-described premises shall be known and described as residential parcels; that is to say, mobile, modular or permanent dwellings may be erected and maintained upon said premises, subject to limitations with respect thereto as hereinbelow set forth.
2. No trade, business, profession or any other type of commercial or industrial activity shall be initiated or maintained within said property or any portion thereof.
3. Said property or any portions thereof shall not be conveyed or subdivided into lots, parcels or tracts containing less than nine (9) gross acres, nor shall improvements be erected or maintained in or upon any lot, parcel or tract containing less than such nine (9) gross acres.
4. No structure or improvement of any kind or nature whatsoever shall be erected, permitted or maintained upon, over or across the easements or reservations for utilities or drainage, if any.
5. Residence buildings must be completed within twelve (12) months from commencement of construction. No garage, carport or other building shall be commenced or erected upon any portion of said property until the main dwelling building complying with this Declaration is under construction or has been moved onto the premises. Commencement of construction, for the purposes of this Declaration, shall be deemed to be the date material, raw or otherwise, shall have been placed or stored upon the premises.
6. All residence buildings to be erected, constructed, maintained or moved upon the premises or any portion thereof, as the case may be, shall be of new construction. Residence buildings shall have concrete foundations and hardwood or concrete flooring.

7. (a) All single family residences other than mobile homes shall require 1,000 square feet of ground floor area including storage but exclusive of any portion thereof used for open porches, pergolas, patios, carports or garages, whether or not they are attached to, or adjacent to said residence.

(b) Mobile homes shall (1) contain not less than 720 square feet of ground floor area devoted to living purposes; (2) be not less than 12 feet in width; (3) be placed so that the floor thereof is not more than 8 inches above the ground level;

(c) Travel Trailers or campers may occupy homesites during vacation periods, not to exceed three (3) weeks in any one season, or during the period of residence construction.

(d) No prefabricated or pre-erected dwelling having less than the above applicable square foot requirements, exclusive of open porches, pergolas or attached garage, if any, shall be erected, permitted or maintained on any portion of said property.

(e) No structure whatever other than one single family dwelling or mobile home, as herein provided, together with a private garage for not more than three (3) cars, a guest house, service quarters and necessary out buildings shall be erected, placed or permitted to remain on any portion of said property.

8. No 'Real Estate' or 'For Sale' sign or signs exceeding 24" by 24" may be erected or maintained on said premises. No general advertising signs, billboards, unsightly objects or public or private nuisances shall be erected, placed or permitted to remain on any portion of said premises.

9. No abandoned auto or auto parts or used machinery or other salvage or junk shall be placed or permitted to remain on any portion of said premises.

10. No swine shall be raised, bred or kept upon said premises. Said premises shall not be used in any way or for any purpose that may emit foul or noxious odors.

11. No mobile home shall be used or permitted to remain upon any lot unless such mobile home shall have two hundred (200) square feet of permanent roof, exclusive of mobile home roofing, and two hundred (200) square feet of concrete flooring, including cabanas, porches, storage, carports and garages, but exclusive of any portion thereof used as flooring or base for said mobile home.

12. All structures on said lots shall be of new construction, not exceeding 35 feet in height, and no buildings shall be moved from any other location onto any of said lots with the exception of prefabricated or pre-erected dwellings where the use thereof is permitted.

13. No temporary building may be moved onto or constructed on said premises, with the exception of temporary shop or office structures erected by contractors, or buildings during the actual bonafide construction or a permitted structure upon the premises, provided the contractor or builder agrees to remove such temporary shop or office structure within five (5) days after the actual final completion date of his construction activities of the premises.

14. No construction shed, basement, garage, tent, shack or other temporary structure shall at any time be used as a residence either temporarily or permanently.

15. No residence or dwelling shall be occupied or used prior to installations therein of water flush toilets and sanitary conveniences or facilities and shall be maintained in a sanitary manner and in conformity with all applicable local, county or state laws, as the case may be. No outside toilet or other sanitary conveniences or facilities shall be erected or maintained upon said premises.

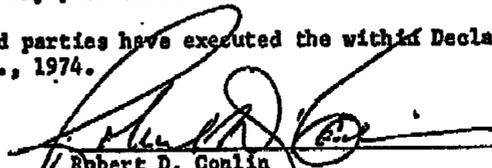
16. All garbage or trash containers, oil tanks, bottled gas tanks and other such facilities must be underground or placed in an enclosed area so as to not be visible from the adjoining properties.

17. The foregoing restrictions and covenants run with the land and shall be binding upon all parties and all persons claiming through them until June 1, 1994, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, or so long thereafter as may be now or hereafter permitted by law.

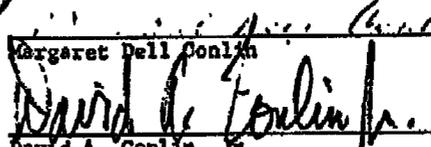
18. Invalidation of any of the restrictions, covenants or conditions above by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

19. If there shall be a violation or threatened or attempted violation of any of said covenants, conditions, stipulations or restrictions, it shall be lawful for any person or persons owning said premises or any portion thereof to prosecute proceedings at law or in equity against all persons violating or attempting to, or threatening to violate any such covenants, restrictions, conditions or stipulations, and either prevent them or him from so doing or to recover damages or other dues for such violations. No failure of any other person or party to enforce any of the restrictions, rights, reservations, limitations, covenants and conditions contained herein shall, in any event, be construed or held to be a waiver thereof or consent to any further or succeeding breach or violation thereof. The violation of these restrictive covenants, conditions or stipulations or any one or more of them shall not affect the lien of any mortgage now of record, or which hereafter may be placed of record, upon said premises or any part thereof.

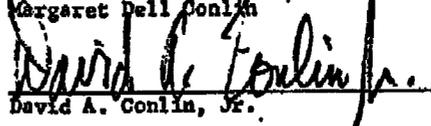
IN WITNESS WHEREOF, the above named parties have executed the within Declaration of Restrictions this 12th day of June, A.D., 1974.



Robert D. Conlin

Margaret Dell Conlin


Margaret Dell Conlin

David A. Conlin, Jr.


David A. Conlin, Jr.

STATE OF ARIZONA)
County of Maricopa)ss.

On this, the 12th day of June, 1974, personally appeared Robert D. Conlin and Margaret Dell Conlin, his wife.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My commission expires: 2-2-77

Notary Public

STATE OF ARIZONA)
County of Maricopa)ss.

On this, the 12th day of June, 1974, personally appeared David A. Conlin, Jr.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My commission expires: 2-2-77

Notary Public

SUPERIOR COURT

YAVAPAI COUNTY, ARIZONA

DEPOSITION OF:

CATHERINE COX

JOHN B CUNDIFF and BARBARA C.)
CUNDIFF, husband and wife;)
ELIZABETH NASH, a married woman)
dealing with her separate)
property; KENNETH PAGE and)
KATHRYN PAGE, as Trustee of the)
Kenneth Page and Kathryn Page)
Trust,)

Plaintiffs,)

vs.)

Case No. CV 2003-0399

DONALD COX and CATHERINE COX)
husband and wife,)

Defendants,)

PURSUANT TO NOTICE, the deposition of CATHERINE COX, called for examination by Counsel for the Plaintiffs, was taken at the offices of FAVOUR, MOORE & WILHELMSSEN, 1580 Plaza West Drive, Prescott, Arizona, beginning at the approximate hour of 9:58 a.m., on Tuesday, June 22, 2004, before Ashlee Mangum, Certified Court Reporter #50612, a Registered Professional Reporter, within and for the State of Arizona.

LOTT REPORTING, INC.

316 North Alarcon Street

Prescott, Arizona 86301

928.776.1169

1 Q. Did you keep all of those documents as they were
2 received by you at time of closing?

3 A. Yes, I did.

4 Q. Where is that file located, ma'am?

5 A. In my house.

6 Q. The one here locally?

7 A. In Coyote Springs.

8 Q. Do you recall receiving a Declaration of
9 Restrictions?

10 A. I did not receive that.

11 Q. How do you know, ma'am?

12 A. Because I have been asked about that since then
13 and I have looked through those papers and have not
14 found any evidence of that.

15 Q. After you purchased the Coyote Springs property,
16 what did you do with it?

17 A. We started making payments on it.

18 Q. Okay. In terms of developing the property for
19 use, what did you do first?

20 A. In the beginning, it was about -- It was not
21 until August of 2000 that we drilled our water well.

22 Q. Was that the first thing that you did?

23 A. Yes, it is. I believe electricity was put in
24 about the same time.

25 Q. Between the time of purchase of the property in

1 April of 1998 until August of 2000, you made no
2 improvements or changes to the land?

3 A. That's correct.

4 Q. Was there a road on the land?

5 A. You might call it that.

6 Q. Describe it for me. What would you call it?

7 A. It was an obstacle course.

8 Q. Did you view the land prior to purchase?

9 A. Yes, we did.

10 Q. Did you physically go on the land?

11 A. Yes, we did.

12 Q. How did you get there?

13 A. Over the Coyote Springs Road.

14 Q. Okay. Did you go over this road onto another
15 road onto the property?

16 A. No. You can go right from Coyote Springs Road
17 onto our property.

18 Q. Did you do anything to change the road as
19 originally on the land or at the time that you received
20 it in '98 or the time you purchased it in '98 to
21 present?

22 A. No. We did nothing to the road.

23 Q. So the road is essentially in the same condition
24 now as it was then?

25 A. No. The road has been paved and I have here a

1 letter from --

2 Q. Just for clarity sake, ma'am, the road that I'm
3 referring to is any road actually on the property you
4 purchased. Not any access road to the property.

5 A. There was no road --

6 MR. ADAMS: Actually, I object to the
7 question on the basis I prefer you refer to it as a
8 driveway or a road.

9 Q. (Continued by MS. KIRK:) That's fine. We can
10 use the word driveway. Okay. At the time that you
11 purchased the property at Coyote Springs, was there a
12 driveway on the land?

13 A. No.

14 Q. Did you ever construct a driveway on the land?

15 A. We did.

16 Q. Do you recall when?

17 A. Sometime in the year 2000, because we set our
18 mobile home on the property in August of 2000.

19 Q. Ma'am, I note that in responding to my questions
20 concerning your improvements to the land you are
21 referring to a piece of paper that has a list on it,
22 typed list of some nature; is that correct?

23 A. No. I was looking for a letter from the road
24 department as to when they put in -- when they paved the
25 road. Because knowing when they paved the road, I can

1 A. That's correct.

2 Q. Going down this list you note that a fence was
3 installed May of 2001. What is the purpose of that
4 fence, ma'am? Is that a perimeter fence?

5 A. It is a perimeter fence.

6 Q. What type of fence is it? Is it wood?

7 A. Wire. It is a wire fence.

8 Q. Wire fence. Okay. You indicated here that the
9 property was graded September through November of 2001.
10 What was the property graded for?

11 A. Property was graded because it slopes from the
12 east end to the west end twenty feet. And before that
13 was graded, any rain water would stand in the road and
14 cause tremendous potholes. We graded the property
15 simply to get it flat and that would allow us to keep
16 our trees in containers on a flat piece of land.

17 Q. How many acres were graded? Do you know?

18 A. Ten acres were graded.

19 Q. You next note on your list, first production of
20 trees January of 2002?

21 A. Yes.

22 Q. What are you referring to, ma'am?

23 A. Those are bare root trees.

24 Q. So first production of trees, why did you use the
25 term production?

1 A. Because we are producing those trees.

2 Q. Then you also have in here, February of 2002
3 start of irrigation lines. What do you mean by that?

4 A. Bare root trees are potted up and not watered for
5 months. They just sit in their containers without being
6 watered. At some point in time, that is usually when
7 they start to leaf out. The first sign of leaving out
8 means that they will need water. So irrigation lines
9 were put in the ground in preparation for the trees
10 needing water.

11 Q. The irrigation lines that you put in the ground
12 in February of 2002, how many trees could they sustain
13 or be irrigated from that?

14 A. I really can't say, because we put those lines in
15 periodically during the year.

16 Q. Throughout 2002?

17 A. No. Yes. There was just like a section at a
18 time where you would irrigate or prepare to irrigate a
19 section at a time.

20 Q. How many times have you installed or otherwise
21 increased the amount of irrigation lines that you have
22 had since February of 2002?

23 A. I honestly don't know.

24 Q. Currently, as of today, the irrigation lines that
25 you have in place on the property, how many trees can

1 that sustain?

2 A. I don't know. The lines cover about nine acres.

3 Q. And the lines, you have been building them since
4 2002 to present?

5 A. They were all installed by -- I would say that
6 they were all installed by the end of March because we
7 planted these perimeter trees and they had to be on drip
8 lines.

9 Q. So the irrigation lines that were on the property
10 as of March of 2002 are substantially the same as what
11 is on the property right now?

12 A. Yes, they are.

13 Q. Are these above ground irrigation lines?

14 A. No. They are in the ground, but then little
15 spaghetti lines come out of them and are placed in the
16 container.

17 Q. How many spaghetti lines are there?

18 A. As many as the trees that we have there.

19 Q. What is the most number of trees that you have
20 had on the property?

21 A. I honestly don't know. I've never counted them.

22 Q. Do you keep records of what excess inventory you
23 keep on the property?

24 A. Yes, we do.

25 Q. Where are those records?

1 A. That's correct.

2 Q. Going down this list you note that a fence was
3 installed May of 2001. What is the purpose of that
4 fence, ma'am? Is that a perimeter fence?

5 A. It is a perimeter fence.

6 Q. What type of fence is it? Is it wood?

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15 simply to get it flat and that would allow us to keep
16 our trees in containers on a flat piece of land.

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18 A. Ten acres were graded.

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20 trees January of 2002?

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23 A. Those are bare root trees.

24 Q. So first production of trees, why did you use the
25 term production?

1 A. Because we are producing those trees.

2 Q. Then you also have in here, February of 2002
3 start of irrigation lines. What do you mean by that?

4 A. Bare root trees are potted up and not watered for
5 months. They just sit in their containers without being
6 watered. At some point in time, that is usually when
7 they start to leaf out. The first sign of leaving out
8 means that they will need water. So irrigation lines
9 were put in the ground in preparation for the trees
10 needing water.

11 Q. The irrigation lines that you put in the ground
12 in February of 2002, how many trees could they sustain
13 or be irrigated from that?

14 A. I really can't say, because we put those lines in
15 periodically during the year.

16 Q. Throughout 2002?

17 A. No. Yes. There was just like a section at a
18 time where you would irrigate or prepare to irrigate a
19 section at a time.

20 Q. How many times have you installed or otherwise
21 increased the amount of irrigation lines that you have
22 had since February of 2002?

23 A. I honestly don't know.

24 Q. Currently, as of today, the irrigation lines that
25 you have in place on the property, how many trees can

1 A. In the office.

2 Q. Which office, ma'am?

3 A. The office on Viewpoint.

4 Q. Who maintains those records?

5 A. Normally the foreman of the yard.

6 Q. Do you ever maintain those?

7 A. No.

8 Q. Your husband?

9 A. No. I said it's the foreman of the yard. His
10 name is Dusty.

11 Q. What is Dusty's last name?

12 A. Eiker, E-I-K-E-R.

13 Q. How long has he worked for you?

14 A. Over two years. No. Let me see here. He
15 started -- Yes. He started in January of 2002. So he
16 has been with us almost two and a half years.

17 Q. Has he worked at the Coyote Springs property?

18 A. Yes.

19 Q. Throughout that time?

20 A. Yes.

21 Q. Is that a full-time position for him?

22 A. Yes.

23 Q. What does he do?

24 A. He was in charge of installing the water lines
25 and he is in charge of all the trees, taking care of

1 them.

2 Q. Does he have any help?

3 A. He has two helpers, maybe three.

4 Q. And those people assist him with maintaining the
5 trees?

6 A. Yes, they do.

7 Q. Are those full-time employees, those two or three
8 people?

9 A. Yes, they are.

10 Q. Do they always work at the Coyote Springs
11 property?

12 A. Yes, they do.

13 Q. Any other employees at the Coyote Springs
14 property?

15 A. No.

16 Q. The two or three additional helpers that Dusty
17 has, how long have they been working at the Coyote
18 Springs property?

19 A. I don't really know.

20 Q. Okay. Do you keep employment records?

21 A. Yes.

22 Q. For those individuals?

23 A. We do.

24 Q. Have you ever had part-time, seasonal help?

25 A. Occasionally we do.