

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
710 E STREET • SUITE 200
EUREKA, CA 95501-1865
VOICE (707) 445-7833
FACSIMILE (707) 445-7877

MAILING ADDRESS:
P. O. BOX 4908
EUREKA, CA 95502-4908

**RECORD PACKET COPY****W 25a**

Request Filed: January 14, 2002
Staff: Tiffany S. Tauber
Staff Report: February 15, 2002
Hearing Date: March 6, 2002

STAFF REPORT: REQUEST FOR RECONSIDERATION

APPLICATION NO.:

1-01-052-R

APPLICANT:

**THE ELEUTHERIAN
PAN-COMMUNION OF ADIDAM**

PROJECT LOCATION:

1512 Stagecoach Road, north of Trinidad,
Humboldt County, (APN 517-011-05)

PROJECT DESCRIPTION:

Request for the reconsideration of the after-the-fact authorization of a six-foot-high, wooden perimeter fence, gate, and landscaping with conditions requiring that final plans be submitted for the review and approval of the Executive Director that would provide for lowering the portion of the fence along Stagecoach Road to four-feet-high and providing for more extensive landscaping to screen the fence.

COMMISSION ACTION:

Proposed project approved with conditions on December 14, 2001, by a vote of 9 to 0.

SUBSTANTIVE FILE DOCUMENTS:

CDP File No. 1-83-96 (Knight)

1.0 EXECUTIVE SUMMARY

1.1 Procedural Note

Consistent with Section 30627 of the Coastal Act, the Commission's regulations provide that at any time within thirty (30) days following a final vote upon an application for a coastal development permit, the applicant of record may request that the Commission grant a reconsideration of the denial of an application, or of any term or condition of a coastal development permit which has been granted (California Code of Regulations, Title 14, Section 13109.1 et.seq.).

The regulations provide that the grounds for reconsideration of a permit action shall be as stated in Coastal Act Section 30627:

"The basis of the request for reconsideration shall be either that there is relevant new information which, in the exercise of due diligence could not have been presented at the hearing on the matter or that an error in fact or law occurred which has the potential of altering the initial decision."

Section 30627(b)(4) of the Coastal Act also states that the Commission "shall have the discretion to grant or deny requests for reconsideration." Section 30627(c) provides that a decision to grant a reconsideration request is not subject to appeal.

On January 14, 2002, The Eleutherian Pan-Communion of Adidam submitted a request for reconsideration of the Commission's decision to approve its proposed development with conditions. This request was timely made within 30 days following the Commission's vote on the application on December 14, 2001. As summarized below, the applicant contends that the Commission made three errors of fact or law that have the potential to alter the Commission's decision. If a majority of the Commission votes to grant reconsideration, the permit application will be scheduled for a subsequent meeting at which the Commission will consider it as a new application (CCR Title 14, Section 13109.5(d)). If the Commission does not grant reconsideration, the December 14, 2001 decision to approve the project with conditions will stand.

1.2 Summary of Applicant's Contentions

The request for reconsideration is based on the assertion that the Commission's decision is based upon an error of fact or law which has the potential of altering the Commission's initial decision in that: (1) the condition requiring the portion of the fence extending along the eastern property boundary and the driveway gate to be lowered from six-feet-high to a maximum of four-feet-high is not legally relevant or necessary to determine consistency with Coastal Act Section 30251; (2) the Commission's action to require the portion of the fence extending along the eastern property boundary and the driveway gate to be lowered

from six-feet-high to a maximum of four-feet-high constitutes a substantial change to the staff recommendation and the applicant has not received a revised staff report with proposed revised findings as required by Section 13096 of the Commission's Administrative Regulations; and (3) the applicant's legal rights under the terms of the Religious Land Use and Institutionalized Persons Act of 2000 have been infringed upon and the special condition requiring the portion of the fence extending along the eastern property boundary and the driveway gate to be lowered from six-feet-high to a maximum of four-feet-high places a substantial burden on the applicant's religious use of the property as a "spiritual retreat hermitage."

1.3 Staff Note on Revised Findings

The Commission will consider Revised Findings on CDP 1-01-052 at the same March, 2002 meeting and may decide to have a joint hearing on both the Reconsideration Request and the Revised Findings, with two separate votes.

1.4 Summary of Staff Recommendation

Staff recommends that the Commission deny the request for reconsideration because although the applicant's claims may, in part, constitute valid grounds for reconsideration as provided by Coastal Act Section 30627(b)(3), no error of fact or law has been identified that has the potential to alter the Commission's decision.

2.0 STAFF RECOMMENDATION

2.1 Motion

I move that the Commission grant reconsideration of Coastal Development Permit No. 1-01-052.

2.2 Staff Recommendation

Staff recommends a **NO** vote on the motion. Failure to adopt the motion will result in denial of the request for reconsideration and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

2.3 Resolution to Deny Reconsideration

The Commission hereby denies the request for reconsideration of the Commission's decision on Coastal Development Permit No. 1-01-052 on the grounds that there is no relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing, nor has an error of fact or law occurred which has the potential of altering the initial decision.

3.0 FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

3.1 Permit Approval and Background

The project site is a bluff top lot located on the west side of Stagecoach Road approximately ¼ mile south of the northern intersection with Patricks Point Drive and approximately 2.2 miles north of Trinidad. The site is located in an area of low-density, rural residential development along a densely vegetated, narrow road corridor. The bluff top lot is at an elevation of approximately 200 feet above sea level and is developed with a single-family residence built pursuant to a coastal development permit approved by the Commission in 1983 (CDP No. 1-83-96, Knight). The site and surrounding area is vegetated with a spruce forest community containing spruce, alder, wax myrtle, ferns, huckleberry, salal, and related undergrowth species.

Sometime in 1999, without benefit of a coastal development permit, the applicant constructed a six-foot-high wooden fence around the perimeter of the property.

The applicant applied to the Commission for a permit in September of 2001, seeking after-the-fact authorization for the six-foot-high, solid wood perimeter fence, gate, and landscaping. The fence is constructed of 1'x 6' vertical redwood slats, 2'x 8' horizontal redwood slats across the top, 6"x 6" vertical posts spaced every ten feet, and a similarly designed gate across the driveway. The fence extends along the north, east, and south property boundaries for approximately 124, 186, and 127 linear feet respectively. The applicant indicates that the purpose of the fence is to provide security and privacy, as the residence is used from time to time as a retreat for the applicant's spiritual leader. The project does not involve a change of use, as the property and existing residence are not used for church assembly.

On December 14, 2001, the Commission approved the permit with conditions to mitigate impacts related to visual resources. The staff report dated November 21, 2001 recommended three special conditions. Special Condition No. 1 of the staff report would have required the applicant to submit a landscaping plan that would provide for extensive native landscaping to screen the fence. Special Condition No. 2 of the staff report would have required the applicant to submit revised fence plans that would provide for a more open-style gate across the driveway. Special Condition No. 3 of the staff report would have required the applicant to satisfy all prior to issuance conditions within 60 days of Commission action on the coastal development permit. At the hearing, staff deleted Special Condition No. 2 requiring an open-style gate from the staff recommendation. In addition, at the hearing, the Commission added a special condition (a new Special Condition No. 2) requiring the applicant to submit revised plans that would provide for lowering the portion of the fence extending along the eastern property boundary (along Stagecoach Road) and the driveway gate from approximately six-feet-high to a maximum of four-feet-high. No changes were made to recommended Special Conditions No. 1 and

3. The Commission approved the permit with conditions as modified by staff and amended by the Commission.

On January 14, 2002 the Commission received a timely request for reconsideration of the Commission's action on the coastal development permit. The applicant's request for reconsideration asserts that errors of fact and law have occurred which would have altered the Commission's decision to include Special Condition No. 2, requiring the fence extending along the eastern property boundary and the driveway gate to be lowered from six-feet-high to a maximum of four-feet-high as part of CDP No. 1-01-052.

3.2 Grounds for Reconsideration

Pursuant to Section 30627(b)(4) of the Coastal Act, the Commission has the discretion to grant or deny requests for reconsideration. Section 30627(a)(1) states that the Commission shall decide whether to grant reconsideration of any decision to deny an application for a coastal development permit or any term or condition of a coastal development permit which has been granted. The applicant requests that the Commission's conditional approval of the permit be reconsidered (Exhibit No. 1).

Section 30627(b)(3) states in relevant part that the basis for a request for reconsideration shall be either that an error in fact or law occurred which has the potential of altering the initial decision or that new information has come to light that could not have been produced at the hearing. If the Commission votes to grant reconsideration, it will consider the permit application as a new application at a subsequent hearing.

3.3 Issues raised by the Applicant

The applicant's request for reconsideration asserts that the Commission's decision is based upon an error of fact or law in that: (1) the condition requiring the portion of the fence extending along the eastern property boundary and the driveway gate to be lowered from six-feet-high to a maximum of four-feet-high is not legally relevant or necessary to determine the project's consistency with Coastal Act Section 30251; (2) the Commission's action to require the portion of the fence extending along the eastern property boundary and the driveway gate to be lowered from six-feet-high to a maximum of four-feet-high constitutes a substantial change to the staff recommendation and the applicant has not received a revised staff report with proposed revised findings as required by Section 13096 of the Commission's Administrative Regulations; and (3) the applicant's legal rights under the terms of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) have been infringed upon and the special condition requiring the portion of the fence extending along the eastern property boundary and the driveway gate to be lowered from six-feet-high to a maximum of four-feet-high places a substantial burden on the applicant's religious use of the property as a "spiritual retreat hermitage."

3.3.1 Applicant's First Contention

3.3.1.1 Contention

"The condition that Applicant's fence at 1512 Stagecoach Road, Trinidad, be lowered from six feet to four feet along the eastern boundary of the property is not legally relevant when seeking consistency with visual resource protection standards of California Coastal Act Section 30251..."

3.3.1.2 Analysis

The applicant objects to the Commission's imposition of Special Condition No. 2 which requires the portion of the fence extending along the eastern property boundary and the driveway gate to be lowered from six-feet-high to a maximum of four-feet-high because the applicant claims that it is not legally relevant in finding the project consistent with the visual resource protection standards set forth in Section 30251 of the Coastal Act. Coastal Act Section 30251 requires, in applicable part, that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas and be visually compatible with the character of surrounding areas. The applicant contends that the proposed fence at six-feet-high is as attractive or more attractive than most of the fences along Stagecoach Road. Additionally, the applicant contends that there are other fences that are as high or higher than the proposed six-foot-high fence and thus, "the height in itself is not any different than the character of the rest of the road." The applicant further asserts that because a condition of the permit also requires the applicant to plant vegetation along the fence (Special Condition No. 1), the fence would be screened with the same species of vegetation that comprises the character of the area and thus, the project would be compatible with the character of the area as required by Section 30251 without having to reduce the height of the fence. Furthermore, the applicant contends that there is no ocean view along the eastern fence line of the property and only a minimal view down the driveway. The applicant notes that there are no other ocean views along Stagecoach Road and that there are an abundance of ocean views a few miles from the subject site that are available to the public. Therefore, the applicant contends that Special Condition No. 2 is not necessary to protect views to and along the ocean and scenic coastal areas.

The applicant's claim does allege that an error in fact or law occurred that has the potential of altering the Commission's decision on the permit application and is therefore a valid ground for a request for reconsideration. However, the Commission finds that it did not err in applying the standards of Section 30251 to the proposed development and thus, finds its action on CDP No. 1-01-052 does not warrant reconsideration based on the applicant's contention.

Pursuant to Section 30604 of the Coastal Act, the Commission reviews any application for a coastal development permit on a case-by-case basis by applying the applicable Coastal Act and/or LCP policies that form the standard of review for the particular development before it. In this case, the Commission found that the visual resource protection policies set forth by Section

30251 of the Coastal Act apply to the subject development. As noted above, Coastal Act Section 30251 requires, in applicable part, that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas and be visually compatible with the character of surrounding areas. The project site is located in a scenic area between the sea and the first public road where visual impacts are often likely to occur. Stagecoach Road is a scenic public road that provides public access to several coastal recreation areas including Trinidad State Beach to the south and Patricks Point State Park to the north and to several visitor-serving facilities. Therefore, the Commission had a reasonable basis for applying the development standards of Section 30251 to the proposed project.

The Commission notes that while the six-foot-high fence may be attractive to the applicant, to others, the fence may not necessarily be attractive or compatible relative to the character of the greater surrounding area. The character of the Stagecoach Road area is largely defined by the dense, native spruce forest and coastal scrub vegetation along the east and west sides of the road corridor. As a result of the densely vegetated character of the area, very little development is actually visible from the public road with the exception of occasional rooftops and scattered property fences. While there are some other fences along the road that are of a solid design and similar height as the proposed fence, they are scattered along the length of the road and are not present on most properties. Therefore, the scattered fences themselves do not define the character of the area. Therefore, the applicant's assertion that the proposed six-foot-high fence is not significantly different than other fences along Stagecoach Road is not sufficient to find the project consistent with the character compatibility requirement of Section 30251.

As indicated by the applicant's contention, the vegetation required to be planted along the fence will screen the fence from view and, in part, increase the compatibility of the fence with the densely vegetated character of the surrounding area. However, planting vegetation alone is not sufficient to find consistency with the character compatibility requirement of Section 30251, as the mass of the fence itself is out of character with the surrounding area. There are no other significantly visible fences on either side of the subject property, which results in the proposed fence being even more visually prominent. The vegetation will help reduce the visual prominence of the fence, but it is likely that the vegetation would not screen the entire fence at all times. Thus, portions of the fence adjacent to the road would be visible and at six-feet-high would be of a mass that is not compatible with the character of the area. Many fences along the road are of an open-style design that alone provides greater compatibility with the character of the area in that they are simply less visually prominent. Many of these open-style fences are also covered with vegetation common to the area that furthers their compatibility. Thus, as the proposed fence is both tall and solid in its design, the Commission found it necessary to require vegetation to screen the fence as well as to require a reduction in the height of the fence to find consistency with the character compatibility requirement of Section 30251.

The applicant further asserts that there are no ocean views and thus, the height of the fence is irrelevant with regard to the requirement of Section 30251 to protect views to and along the ocean. However, the condition requiring the height of the fence to be lowered from six-feet-high to four-feet-high was imposed to find the project compatible with the character of the area, not to

protect ocean views. The Commission considered but did not impose a condition requiring an open-style gate based on the recognition that the ocean view across the property is minimal. The Commission found that protecting this minimal view was not necessary to finding the project consistent with Section 30251 of the Coastal Act.

Although the applicant does not specifically contend that there is new information that was not otherwise available at the time the Commission made its initial decision on the permit, the reconsideration request submitted by the applicant included photos and an appendix outlining the height of all other fences and similar structures along the west side of Stagecoach Road. The Commission notes that similar photos were presented by the staff and the applicant at the time the Commission made its initial decision on the permit when it decided to impose the condition requiring the height of the fence to be lowered from six-feet-high to a maximum of four-feet-high. Thus, the Commission had this information before it to form a reasonable basis for imposing the condition when it made its decision on the permit.

In order for the Commission to approve the permit, the development must be found to be consistent with Coastal Act Section 30251. Under these visual resource protection policies, the Commission must find that the fence would not result in adverse impacts to visual resources. Given the proposed height and solid design of the fence, the overall mass is such that it raises a compatibility issue with the character of the surrounding area. Requiring the height of the fence to be lowered from six-feet-high to four-feet-high, in addition to planting vegetation for screening purposes, is the manner in which the Commission chose to address the visual impacts of the proposed fence. Alternatively, the Commission could have denied the applicant's application or required the fence to be of an entirely open-style design, such as post and wire. Requiring Special Condition No. 2 to reduce the height of the fence is not an error of fact or law, but quite the contrary, was the minimum necessary to find the project consistent with the visual resource protection policies of the Coastal Act.

Therefore, for all of the above reasons, the Commission finds that the reconsideration request must be denied.

3.3.2 Applicant's Second Contention

3.3.2.1 Contention

"The Commission's requirement that Applicant lower its front fence from 6 feet to 4 feet all along the front perimeter of the property causes Applicant to suffer a great loss to Applicant's right of privacy and a real diminishment of Applicant's security. This is a substantially different action than that recommended in the staff report which, at the time the Commissioners voted, imposed the sole condition of requiring Applicant to landscape along the fence perimeter. At the time of this request for reconsideration Applicant has no idea of the legal basis for the prevailing Commissioner's requirement that Applicant lower the eastern portion of its fence to four feet and Applicant has not received a revised staff report with proposed revised findings that reflect the action of the Commission pursuant

to Regulation 13096 and which include all the elements identified in regulation 13057(c). Nor has Applicant received notice of a public hearing pursuant to this section."

3.3.2.2 Analysis

The applicant's contention does not assert that there was an error of fact or law that has the potential of altering the initial decision as required by Coastal Act Section 30627 and thus, is not a valid ground for reconsideration. An example of an error of fact or law that constitutes a basis for which to grant reconsideration would be if the Commission committed an error of fact or law in its application of the policies of the Coastal Act to the proposed project. The applicant's contention was not that the Commission made an error of fact or law in its application of the Coastal Act to the proposed project, but rather that the Commission committed a procedural error by acting on the project without a written staff report that reflected the action it was about to take.

The Commission finds that the applicant's contention does not allege or demonstrate that an error of fact or law occurred that has the potential of altering the Commission's decision on the permit application. However, even if the applicant's claim was a valid ground for reconsideration, the Commission did not err in its required procedures and there is no basis to alter the Commission's decision. The Commission notes that revised findings are prepared and scheduled for public hearing *after* the Commission makes its decision if the Commission's action is different than that recommended in the original staff report. However, there is no legal requirement in the Coastal Act or its implementing regulations that requires a written staff report be prepared before the Commission acts which reflects the action the Commission is about to take. And, even though the applicant had not received a copy of the written staff report which reflected the action the Commission would take, this in no way could have altered the Commission's decision, as revised findings are prepared *following* the Commission's decision to reflect the basis for the Commission's action and such action did not deprive the applicant of his or her ability to testify before the Commission acted and provide the Commission with his or her point of view.

Furthermore, Section 13096 of the Commission's Regulations does not have a timing requirement for the preparation of and action on revised findings. Therefore, the fact that the applicant had not yet received revised findings at the time the reconsideration request was submitted does not constitute an error in Commission procedures or the application of any Coastal Act policy. The Commission agrees that its action to include the special condition requiring the height of the fence to be lowered from six-feet-high to four-feet-high constitutes a change to the original staff recommendation. However, the Commission is always free to act in a manner that is different from its staff recommendation and the applicant is free to provide the Commission with his or her point of view at any time before the Commission vote.

Therefore, because the applicant did not allege an error of fact or law that has the potential of altering the Commission's decision, the Commission finds that the reconsideration request must be denied.

3.3.3 Applicant's Third Contention

3.3.3.1 Contention

"Applicant feels that its legal rights under the terms of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) have been infringed by the Commission's condition to permit..." [requiring the fence to be lowered from six-feet-high to a maximum of four-feet-high].

3.3.3.2 Analysis

The applicant's claim does allege that an error in fact or law occurred that has the potential of altering the Commission's decision on the permit amendment application and is therefore a valid ground for a request for reconsideration. However, the Commission finds that it did not err in finding that its action was not in violation of the Religious Land Use and Institutionalized Persons Act and thus, finds its action on CDP No. 1-01-052 does not warrant reconsideration based on the applicant's contention. The Commission notes that the issue of the applicability of the RLUIPA to the proposed project was specifically discussed in the findings of the staff report dated November 21, 2001. Therefore, the Commission had this information before it when it made its initial decision on the project.

As discussed in the staff report dated November 21, 2001, the Commission notes that its action on the proposed development is not based upon any animus toward the religious affiliation of the applicant. The Commission finds that the RLUIPA does not apply because the Commission's action does not involve the implementation of a "land use regulation" as defined by RLUIPA.

During its action on the permit, the Commission considered the provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA), which prohibit certain actions even if *not* based upon animus, to ensure that its actions were not in violation of federal law in any other way. Section 2 of RLUIPA ("Protection of Land Use as Religious Exercise"), 42 U.S.C. § 2000cc, contains four separate prohibitions on government action.¹

Pursuant to that section, the Commission may not "implement a land use regulation . . ."

- "in a manner that imposes a substantial burden on the religious exercise of a[n] . . . institution, unless the imposition of the burden . . . (A) [further] . . . a compelling governmental interest; and (B) is the least restrictive means of furthering that compelling governmental interest" (RLUIPA Section 2(a));
- "in a manner that treats a religious assembly or institution on less than equal terms with a non-religious assembly or institution" (RLUIPA Section 2(b)(1));
- "that discriminates against any assembly or institution on the basis of religion or religious denomination" (RLUIPA Section 2(b)(2)); or

¹ These prohibitions apply to all state agencies, including the Commission. 42 U.S.C. § 2000cc-5(4).

- “that (A) totally excludes religious assemblies from a jurisdiction; or (B) unreasonably limit religious assemblies, institutions, or structures within a jurisdiction” (RLUIPA Section 2(b)(3)).

These sections are inapplicable, initially, because the Commission’s action does not involve the implementation of a “land use regulation” as RLUIPA defines that phrase. RLUIPA specifically defines “land use regulation” to mean “a zoning or landmarking law . . . that limits or restricts a claimant’s use or development of land . . . if the claimant has an ownership, leasehold, easement, servitude, or other property interest . . . or a contract or option to acquire such an interest,” RLUIPA Section 8(5); 42 U.S.C. § 2000cc-5(5). The Coastal Act provisions implemented by the Commission’s decision are neither zoning nor landmarking laws that limit or restrict the applicant’s use or development of the subject property.

Furthermore, even if the Commission’s action were to constitute implementation of a “land use regulation” for purposes of RLUIPA, it meets none of the four criteria listed above. Regarding the first prohibition, in RLUIPA Section 2(a), the Commission notes that the subject site is not used for church assembly and therefore, the Commission’s action imposes no substantial burden on the applicant’s religious exercise. The proposed development is not designed to facilitate the exercise of religion (much less is it central to such exercise). Thus, the imposition of the condition requiring the height of the fence to be lowered from six-feet-high to four-feet-high did not burden the applicant’s exercise of religion, much less substantially burden it.

Secondly, with respect to RLUIPA Section 2(b)(1), the Commission’s action treated the applicant on terms that are identical to those it would apply to any non-religious entity applying for the same development. It is the nature of the proposed development, and the fact that it involves coastal resource impacts, rather than the nature of the applicant, that was critical to the Commission’s decision.

Finally, the Commission’s action did not discriminate against the applicant on the basis of religion or religious denomination, and it does not exclude or unreasonably limit religious assemblies or institutions from any jurisdiction. Consequently, the Commission concludes that its action was not in violation of the Religious Land Use and Institutionalized Persons Act of 2000 and no error of fact or law occurred that had the potential of altering the Commission’s initial decision on the permit.

Therefore, the Commission finds that the reconsideration request must be denied.

3.4 Summary

Although two of the three contentions presented by the applicant are considered valid grounds for reconsideration, as discussed above, the issues presented in the applicant’s request for reconsideration do not compromise errors of fact or law that have the potential of altering the Commission’s initial decision as set forth in Coastal Act Section 30627. In addition, the

applicant did not assert that new evidence had arisen. Therefore, neither of the requirements for reconsideration have been met and the reconsideration request must be denied.

EXHIBITS:

1. Applicant's Request for Reconsideration (January 13, 2002)
2. Regional Location
3. Vicinity Map
4. Site Plan
5. Landscaping Plan
6. Fence Typical



THE ELEUTHERIAN PAN-COMMUNION

12180 RIDGE ROAD, MIDDLETOWN, CALIFORNIA 95461 • TELEPHONE (707) 928-487

EXHIBIT NO. 1
APPLICATION NO. 1-01-052-R
ELEUTHERIAN PAN-COMMUNION
RECONSIDERATION REQUEST (1 of 22)

January 13, 2002

RECEIVED

JAN 14 2002

California Coastal Commission
c/o North Coast District Office
710 E. Street, Suite 200
Eureka, CA 95501-1865
(Mailing Address: P.O. Box 4908
Eureka, CA 95502-4908)

CALIFORNIA
COASTAL COMMISSION
NORTH COAST AREA

BY HAND DELIVERY

RE: Request for Reconsideration of condition of Coastal
Development Permit Pursuant to Section 30627 of the Public
Resources Code, Division 20 of the California Coastal Act for:

APPLICATION NO. 1-01-052

APPLICANT: The Eleutherian Pan-Communion of Adidam

PROJECT LOCATION: 1512 Stagecoach Rd., Trinidad, California

PROJECT DESCRIPTION: After-the-fact authorization of a six-
foot-high, wooden perimeter fence, gate.

ITEM NO: F 6c

California Coastal Commission Meeting-Friday December 14, 2001

Dear Commission:

Pursuant to Section 30627 of the Public Resources Code, Division 20 of the California Coastal Act (Coastal Act), the above-named Applicant, The Eleutherian Pan-Communion of Adidam, hereby requests that the Commission reconsider a "prior to issuance" special condition placed upon the coastal development permit which was granted to the Applicant by the Commission on December 14, 2001.

The condition which the Applicant is seeking reconsideration on is the Commission's requirement that the fence which extends along the eastern boundary of Applicant's property (along Stagecoach Road in Trinidad), and the Applicant's driveway gate be lowered from approximately six-feet-high to a maximum of four-feet-high.

Section 30627(3) of the Coastal Act sets forth the basis for a request for reconsideration as follows:

"The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the initial decision".

California Coastal Commission
Request for Reconsideration
January 13, 2002
Page two

As follows, Applicant's request for reconsideration is based on the fact that the Applicant believes that an error of fact or law has occurred which has the potential of altering the initial decision of the Commission as relates to the above-referenced condition.

A. CALIFORNIA COASTAL ACT SECTION 30251

The condition that Applicant's fence at 1512 Stagecoach Road, Trinidad, be lowered from six feet to four feet along the eastern boundary of the property is not legally relevant when seeking consistency with the visual resource protection standards of California Coastal Act Section 30251, the applicable section from Chapter 3 policies of the Coastal Act which is the legal standard of review that the Commission must apply to this permit application (as stated in the staff report dated November 21, 2001 of the Northern Area Office of the Executive Director of the California Coastal Commission).

The applicable portion of Section 30251 of the Coastal Act reads as follows:

"The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas..."

Requiring Applicant to lower its fence along the property's eastern perimeter is not necessary when enforcing Applicant's fulfillment of the above-referenced requirements of Section 30251 of the Coastal Act for the following reasons:

1. "The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance.":

In this case, the fence is as attractive, or more attractive, than most of the fences, or fence substitutes, along Stagecoach Road. Please see the enclosed twenty-five photographs of the west (ocean) side of Stagecoach Road which depict most of the residence entrances along the ocean side of the road. There are also other fences or fence substitutes along the west side of Stagecoach Road which are as high or higher than Applicant's six foot fence (please see Appendix I for exact heights), so the height is not in itself any different than the character of the rest of the road, and

2922

again, its a lot more attractive and visually pleasing than a lot of the other fences and fence substitutes along the road.

The second condition to granting the permit which the Commission is requiring of Applicant, is to plant vegetation along the fence so that it will be covered with the same species of vegetation that comprises the character of the area. This requirement, which Applicant is happy to comply with and is not seeking Commission reconsideration of, will satisfy the Coastal Act requirement as set forth above to protect, as a resource of public importance, the scenic and visual quality of this coastal area. The Commission's requirement to lower the eastern line of the fence by two feet does not appear to Applicant to do anything to address this prong of Section 30251 of the Coastal Act.

2. "Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas...":

There is no ocean view along the eastern fence line of the property. There is just a view onto the property itself, including the house, which is a single family residence. The other property owners along Stagecoach Road enjoy privacy and security in their homes as viewed from Stagecoach Road, and as shown in the photographs enclosed with this letter of reconsideration. While it is really not relevant to this permit application process (because most, if not all homeowners of any type desire privacy and security in their homes), Applicant is a California non-profit religious corporation, and this property is used as a secluded retreat hermitage by the Applicant church. Privacy and security are very important aspects of Applicant's use of this property. Both privacy and security are substantially diminished by the Commission's imposition of a condition to lower the fence along the front (eastern) perimeter of the property by two feet, without legal justification for imposing this condition on Applicant.

There is a de-minimus ocean view down the driveway of the Applicant's property. When Applicant acquired the property, this view was almost entirely destroyed by the previous owner's placement of a shed and tank at the end of the driveway next to the bluff. Please see photograph #9 for area with clear view to ocean prior to Applicant's relocation of the structures placed on the bluff's edge by the previous owner. A letter written to the Commission dated November 24, 2001 by long time residents of Stagecoach Road, indicates that the ocean view was lost when "the previous owners built the house..." The staff report initially contained a requirement that Applicant make the gate see-through in some fashion. After viewing slides, looking at photographs submitted by Applicant, and hearing Applicant's statements to the

California Coastal Commission
Request for Reconsideration
January 13, 2002
Page four

Coastal Commission at the hearing on December 14th, the Coastal Commission Executive Director withdrew his request for the permit condition requiring the gate to be made see-through. Stagecoach Road has no other ocean views, and there are an abundance of spectacular ocean views a few miles up and down the coast in either direction for the public to enjoy. Stagecoach Road is a very quiet road, used primarily by the residents. When Applicant first moved to the property, several of the neighbors informed Applicant of this fact, and asked Applicant to eliminate what the neighbors considered to be an increase in vehicular traffic that disturbed the extreme quiet of the road and of and neighborhood. Applicant has complied with the neighbors' requests, and Stagecoach Road remains extremely quiet and used by very few cars. Applicant's compliance with the Commission's requirement to grow vegetation on its fence will bring it into full compliance with the rest of the neighborhood scenically.

3. "To minimize the alteration of natural land forms...":

Applicant did not grade to build the fence, and so the alteration of natural lands forms was minimized, as required by Section 30251.

4. "to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...":

Please see #2 above for Applicant's discussion pertaining to the fact that landscaping the fence will make it fully visually compatible with the character of the rest of Stagecoach Road. Stagecoach Road is not a visually degraded area, and Applicant's fence was well, and aesthetically built.

B. CALIFORNIA COASTAL COMMISSION REGULATIONS §13096:

California Coastal Commission Regulations §13096 states as follows:

Commission Findings.

"(a) All decisions of the commission relating to the permit applications shall be accompanied by written conclusions about the consistency of the application with Public Resources Code Section 30604 and Public Resources Code section 21000 and following, and findings of fact and reasoning supporting the decision. The findings shall include all elements identified in section 13057(c).

4 of 22

(b) Unless otherwise specified at the time of the vote, an action taken consistent with the staff recommendation shall be deemed to have been taken on the basis of, and to have adopted, the reasons, findings and conclusions set forth in the staff report as modified by staff at the hearing. If the commission action is substantially different than that recommended in the staff report, the prevailing commissioners shall state the basis for their action in sufficient detail to allow staff to prepare a revised staff report with proposed revised findings that reflect the action of the commission. Such report shall contain the names of commissioners entitled to vote pursuant to Public Resources Code section 30315.1.

(c) The commission vote taken on proposed revised findings pursuant to Public Resources Code section 30315.1 shall occur after a public hearing. Notice of such hearing shall be distributed to the persons and in the manner provided for in section 13063. The public hearing shall solely address whether the proposed revised findings reflect the action of the commission.

As relates to the condition imposed on Applicant by the Commission that is the subject of this request for reconsideration, Applicant believes that pursuant to Section 13096(b) above, the "commission action is substantially different than that recommended in the staff report". Pursuant to Coastal Regulation §13066 (Order of Proceeding), prior to the Commission's vote the Executive Director changed the staff recommendation by deleting one of the conditions required in the staff report (that the gate be made see-through). The Commission's requirement that Applicant lower its front fence from 6 feet to 4 feet all along the front perimeter of the property causes Applicant to suffer a great loss to Applicant's right of privacy and a real diminishment of Applicant's security. This is a substantially different action than that recommended in the staff report which, at the time the Commissioners voted, imposed the sole condition of requiring Applicant to landscape along the fence perimeter. At the time of this request for reconsideration Applicant has no idea of the legal basis for the prevailing Commissioners' requirement that Applicant lower the eastern portion of its fence to four feet and Applicant has not received a revised staff report with proposed revised findings that reflect the action of the Commission pursuant to Regulation §13096 and which include all the elements identified in regulation §13057(c). Nor has Applicant received notice of a public hearing pursuant to this section.

The Commission's requirement that Applicant lower the eastern portion of its fence line from 6 feet to 4 feet as a condition of granting Applicant a permit is an action "substantially different

California Coastal Commission
Request for Reconsideration
January 13, 2002
Page six

than that recommended in the staff report". In accordance with the terms of above-referenced Section 13096, Applicant requests that the Commission inform Applicant as to "findings of fact and reasoning supporting the decision" including "all elements identified in section 13057(c)".

C. RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT OF 2000

Applicant feels that its legal rights under the terms of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) have been infringed by the Commission's condition to permit which is the subject of this letter requesting reconsideration.

Applicant feels RLUIPA is applicable in this case. While on its face the statute applies to "land use regulation" which it defines as "zoning or landmarking laws", there is nothing in the plain language of the statute which indicates it is not applicable to a wide spectrum of matters that include building and development, including the subject matter of this letter of reconsideration.

The statute provides that it "shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this Act and the Constitution". The statute protects "the religious exercise of a person, including a religious assembly or institution". In this case, Applicant's use of its property on Stagecoach road is as a church private retreat hermitage where privacy and security are imperative to the church's use of the property for its intended purpose.

Section 2 of RLUIPA ("Protection of Land Use as Religious Exercise"), 42 U.S.C. §2000cc, contains several prohibitions on governmental action. The prohibitions which Applicant feels are pertinent to this matter are those which indicate that land use regulation may not be implemented in a manner that impose a substantial burden on the religious exercise of an institution unless it furthers a compelling governmental interest; that the religious institution may not be treated in a manner that is less than equal terms with others and that the religious institution may not be discriminated against on the basis of religion or religious denomination.

Because the Applicant's intended use of the subject property will be entirely prevented by requiring Applicant to relinquish the privacy and security afforded Applicant by having a six foot fence and gate along Stagecoach Road, there is a very substantial burden being placed on Applicant's religious exercise in its use of this

6 of 22

California Coastal Commission
Request for Reconsideration
January 13, 2002
Page seven

property, which is as a Spiritual Retreat Hermitage. No compelling governmental interest applies in this case as there are very little scenic and visual resources of public importance affected by Applicant having a six foot, instead of a four foot, fence along Stagecoach Road. Please refer back to the earlier portions of this letter, and the accompanying pictures of the west side of Stagecoach Road for further explanation of this assertion by Applicant. The rest of the residents on the west side of Stagecoach Road have fences, and some are as high or higher than Applicant's fence (please see Appendix I), so Applicant is definitely being treated in a manner that is less than equal terms with others, in this case Applicant's neighbors.

Based on all the law and facts set forth in this letter, and based on the truly disrespectful and derogatory statements (and tone) contained in some of the letters sent to the Commission by Applicant's neighbors on Stagecoach Road (admittedly among other letters that were, whether in support or in opposition of Applicant's request for a fence permit, objective and straightforward), it appears clear that Applicant is being discriminated against on the basis of its religious denomination. This is utterly unjust, and not tolerable to Applicant. It is also against the law of the United States of America, which is just one of the many great things about this Country.

In conclusion, if this reconsideration is granted by the Commission, Applicant requests that this matter be continued (or not scheduled) until the Coastal Commission meeting in March, 2002.

Respectfully submitted,

Julia Knox
The Eleutherian Pan-Communion of Adidam
By: Julia Knox, Applicant's Representative

cc: Michael J. Wood
James Calladine

7422

STAGECOACH ROAD

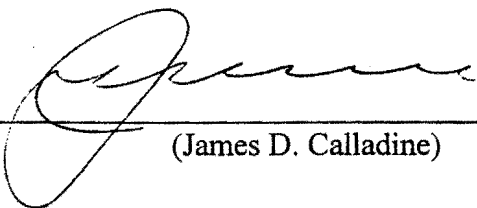
Sample FENCES and PRIVACY BARRIERS:

APPENDIX I:

<u>STREET #:</u>	<u>TYPE:</u>	<u>HEIGHT(min)</u>	<u>HEIGHT(max)</u>	<u>NOTES:</u>
1724	Fence	5' 5"	5' 5"	Solid side fence approx 600' in length, largest fence on street. Almost entirely visible from street.
1337	Fence	4' 0"	5' 6"	Solid front fence, scalloped design
1200	Fence	5' 6"	5' 11"	
1080	Earthen berm	8' 0"	8' 0"	Approximate height, too tall to measure exactly. Also with 6' 1" maximum solid wooden gate
812	Fence	5' 8"	6' 9"	Solid side fence, scalloped design
763	Fence	5' 11"	5' 11"	Solid front fence with lattice

CERTIFICATION:

I, James D. Calladine of 636 Patrick's Point Drive, Trinidad, CA do swear, under penalty of perjury, that I did on January 14 2001 personally measure the above-named fences and privacy barriers and the information given is a fair and accurate presentation of my findings.



(James D. Calladine)

8 of 22

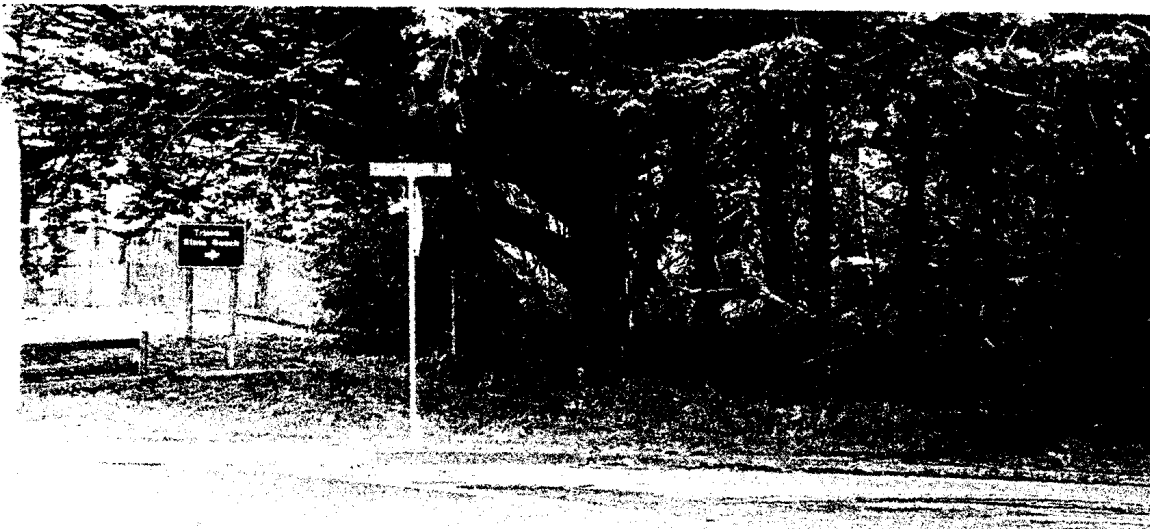
STAGECOACH ROAD, TRINIDAD

(West Side Only)

PICTURE #: DESCRIPTION:

- 1 Stagecoach entry from midtown Trinidad--sign to Trinidad State Beach
- 2 Trinidad Directory at Seawood Exit, no destinations reached by Stagecoach
- 3 Entrance to Stagecoach from Patrick's Point Drive
- 4 Entrance #1724--private, and no sea view
- 5 Fence of # 1724
- 6 Vicinity of # 1724
- 7 Entrance # 1636, private and no sea view
- 8 Gate of #1512
- 9 Open gate of # 1512; area to right of vehicle is view before structure removal
- 10 Fence of #1512, north section
- 11 Fence of # 1512, south section
- 12 Entrance of # 1480, private and no sea view
- 13 Street view of # 1480, private by virtue of vegetation
- 14 Entrance # 1364, relatively private, minor sea view
- 15 Entrance, vicinity # 1228, private and no sea view
- 16 Entrance, vicinity # 1228, private and no sea view
- 17 Vicinity # 1200, private and no sea view
- 18 Vicinity # 1178, 2 fence styles, private and no sea view
- 19 Gate of # 1090, approximately 6 foot high, private and no sea view
- 20 Earth berm of # 1090, approximately 8 foot high, private, no sea view
- 21 Near # 849, private and no sea view
- 22 Near # 812, six foot fence and entrance, private and no sea view
- 24 Near # 774, no sea view
- 25 Near # 760, private and no sea view

9 of 22



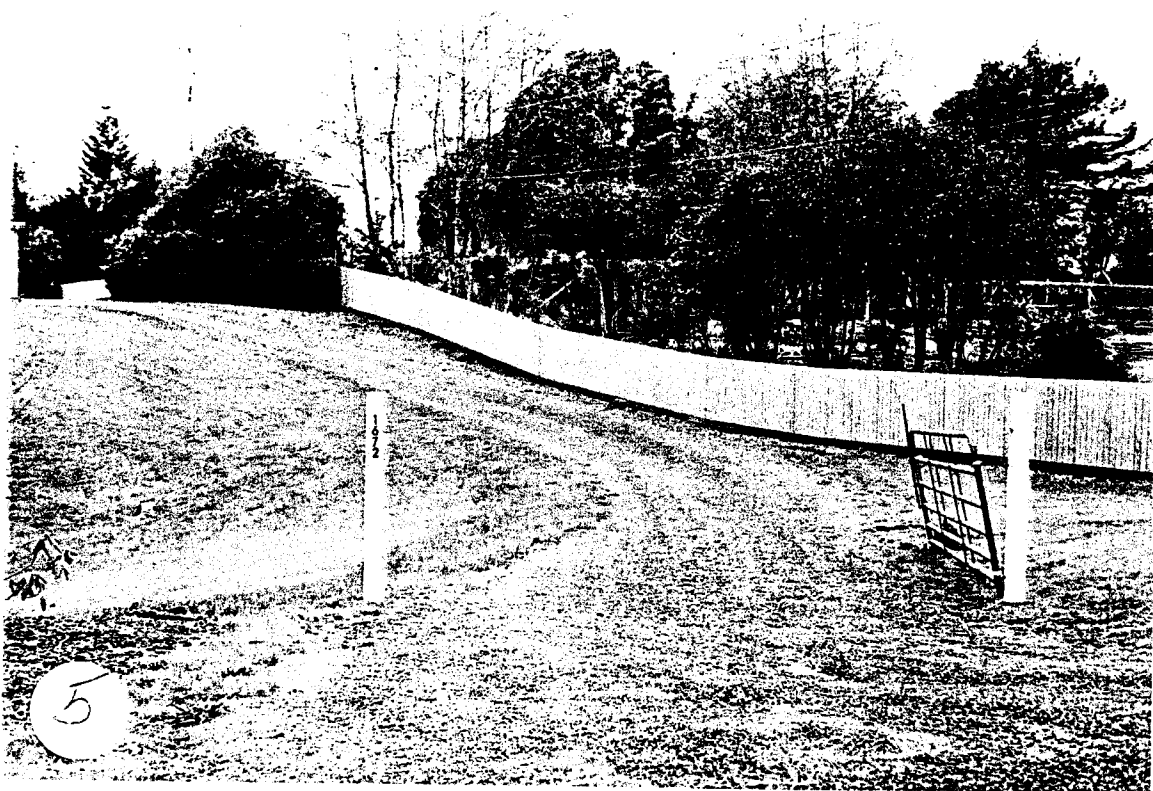
LOCAL BUS STOPS		RESTAURANTS		SHOPS	
TRINIDAD INN	< 2.4	OCEAN GROVE REST.	< 2.2	SEA AROUND US - GIFTS	< 2.4
OCEAN GROVE LODGE	< 2.2	HENRIETTA'S DINING	< 5.5	TRINIDAD REALTY	< 2.4
MIDWAY - RV PARK	< 2.1	THE EASTERN GALLERY	< 2.7	SANDCASTLE HALL GALLERY	< 2.4
EMERALD FOREST <small>CABINS & RV TENT SITES</small>	< 1.8	THIS IS LOZ	< 2.4	SALTY'S SURF 'N TACKLE	< 2.4
TRINIDAD INN	< 1.3			JIMMY JACK CHARTERS	< 3.7
BISHOP PINE LODGE	< 0.6	LARROPIN CAFE	< 8.6	KATY'S SMOKEHOUSE	< 3.1
SEATCLIFFE MOTEL	< 0.3			TRINIDAD TRADING CO.	< 2.4
HIDDEN CREEK RV PK.	< 2.5			24 HR. ATM - TRIN. MK'T	< 2.4
TRIN. TRAILER COURT	< 2.4			MURPHY'S GROC. DELI. ATM	< 2.4
				101 TRUE VALUE	< 2.3
				EMERALD FOREST MIN. MART	< 2.4
				CHEVRON - FOOD SHOP	< 2.4
				OCEAN WAVE QUILTS	< 2.6
SOUNDS OF THE SEA					
RV'S & CABINS 1.8					

10 of 22

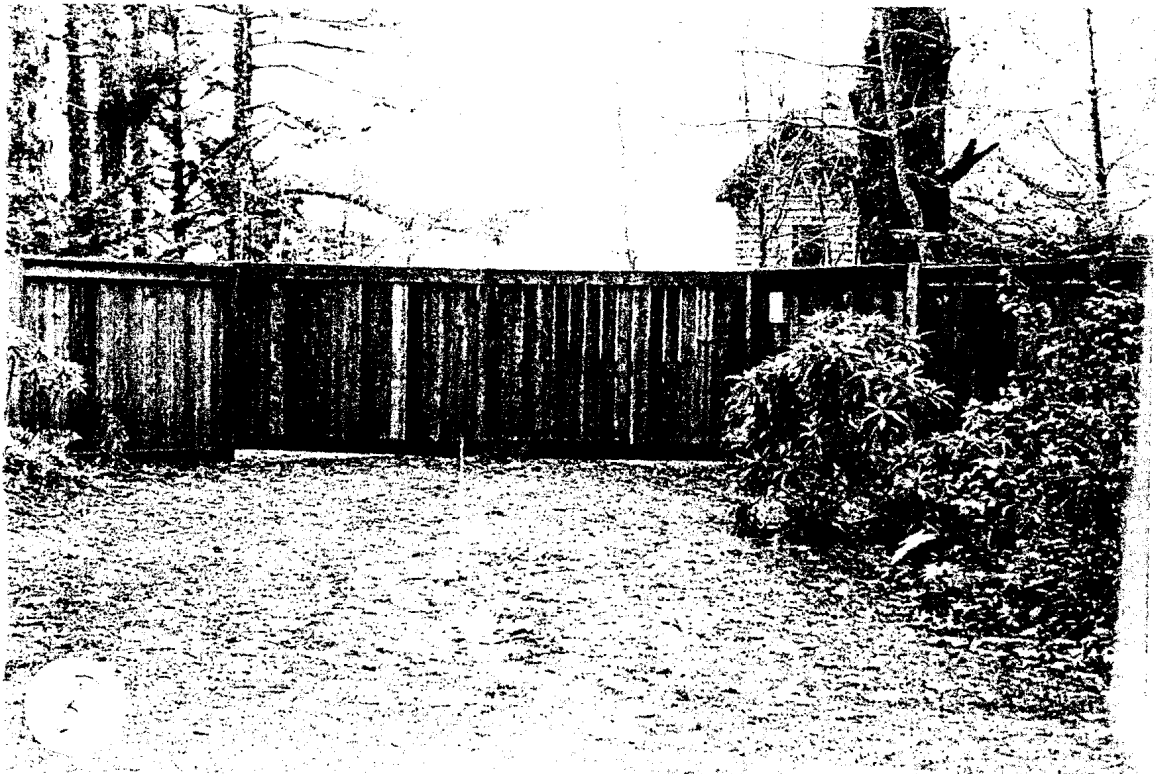


3

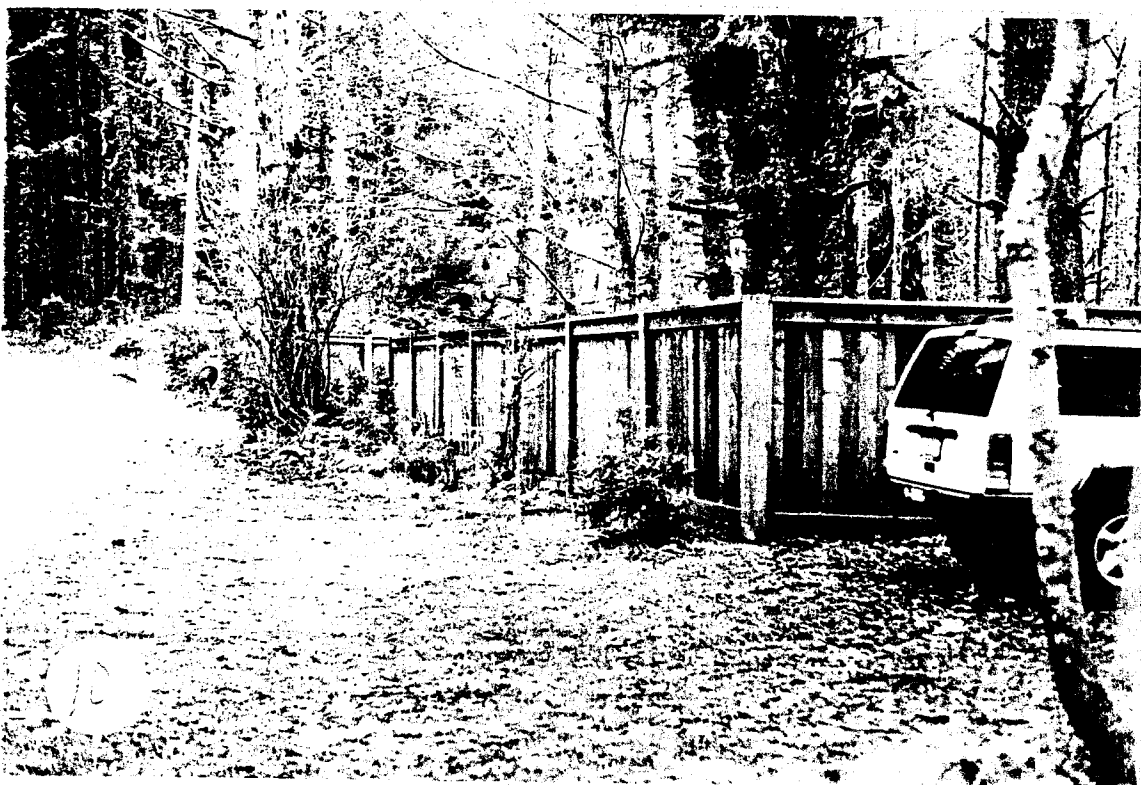
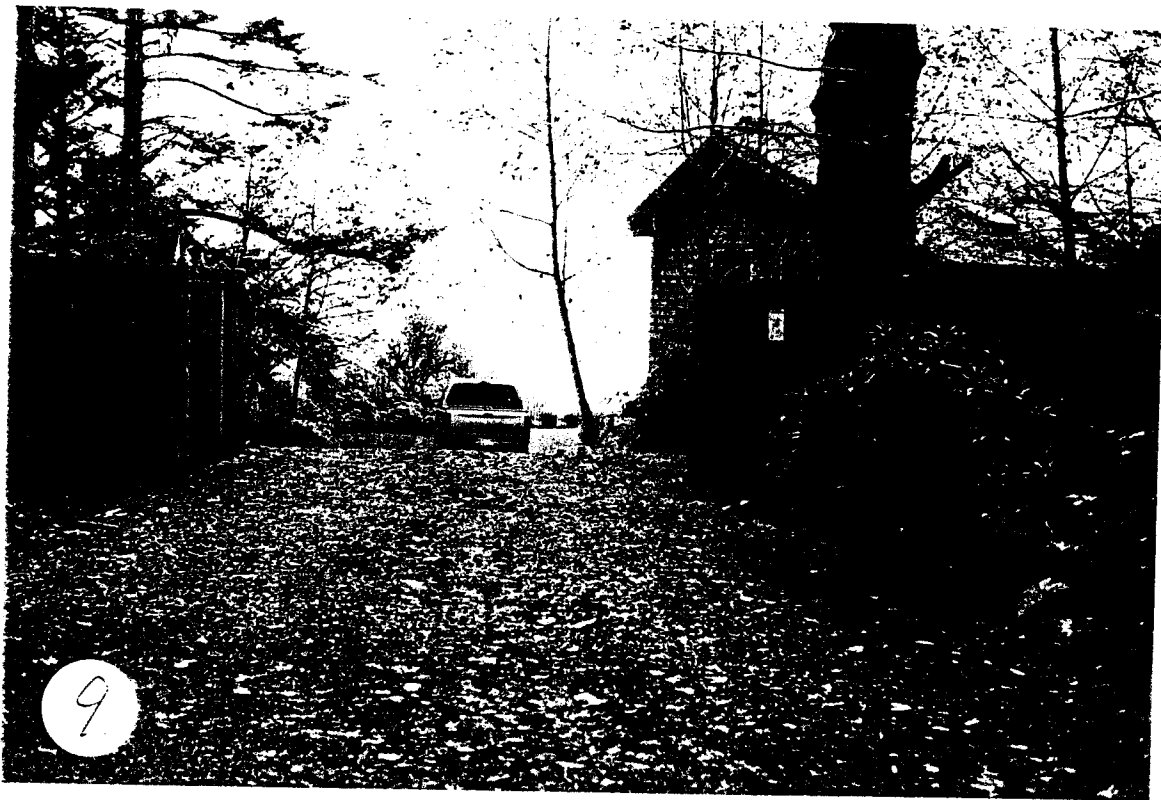




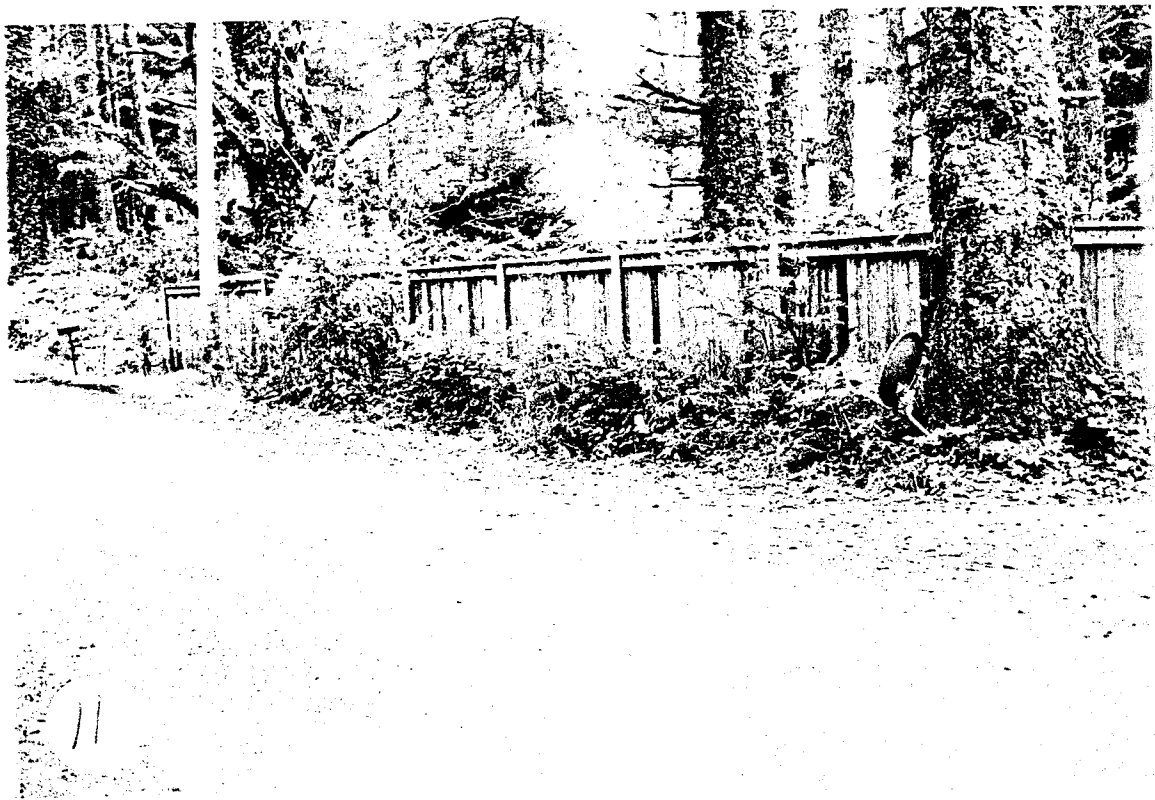
12422



13422



14 of 22



15 of 22



16 of 22



15



16

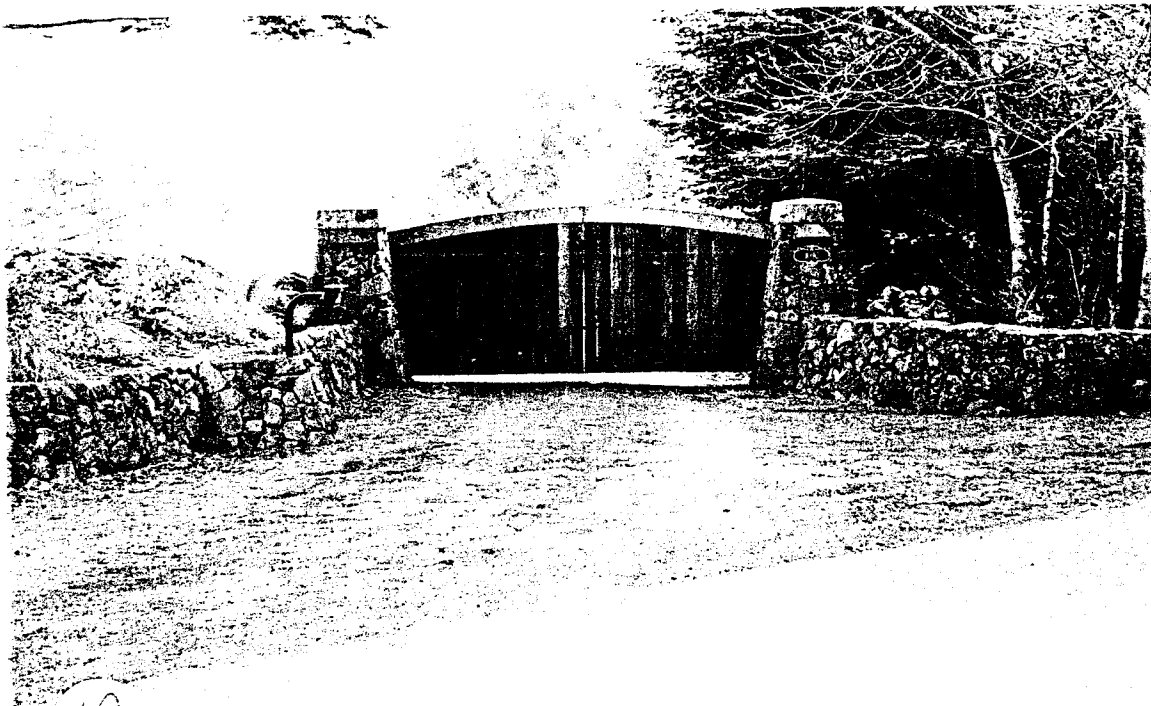
17922



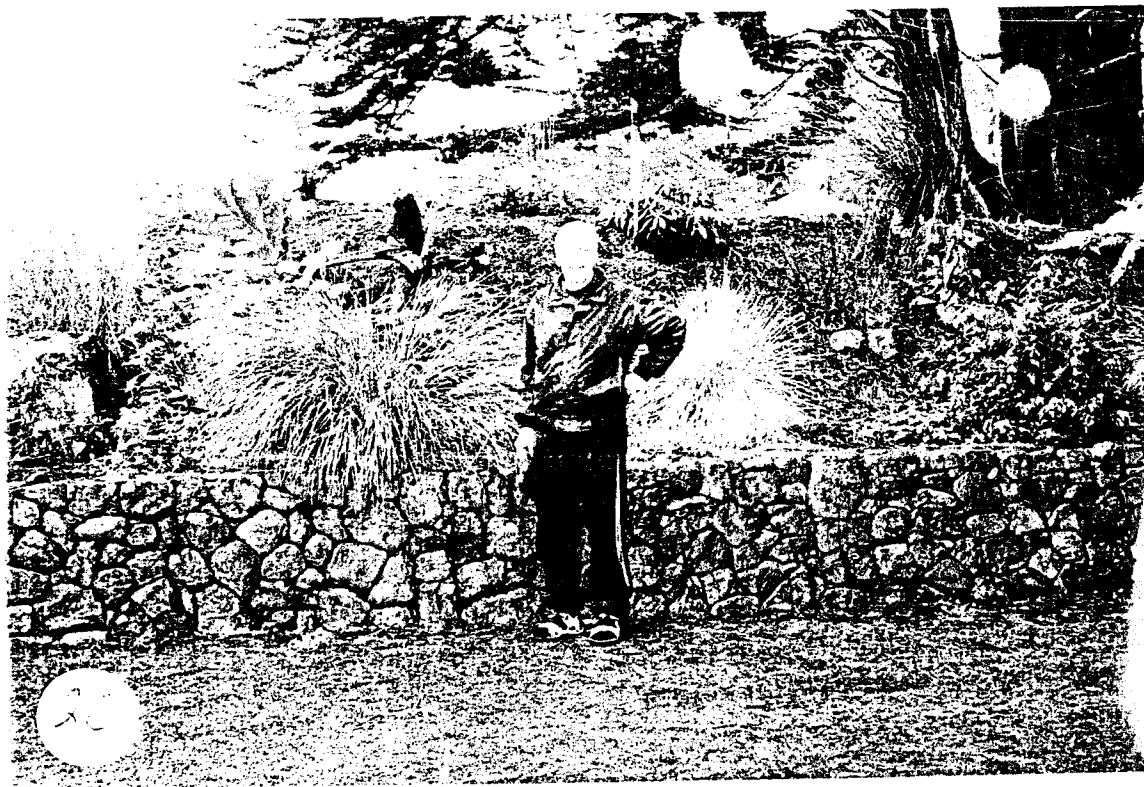
17



18 of 22



19

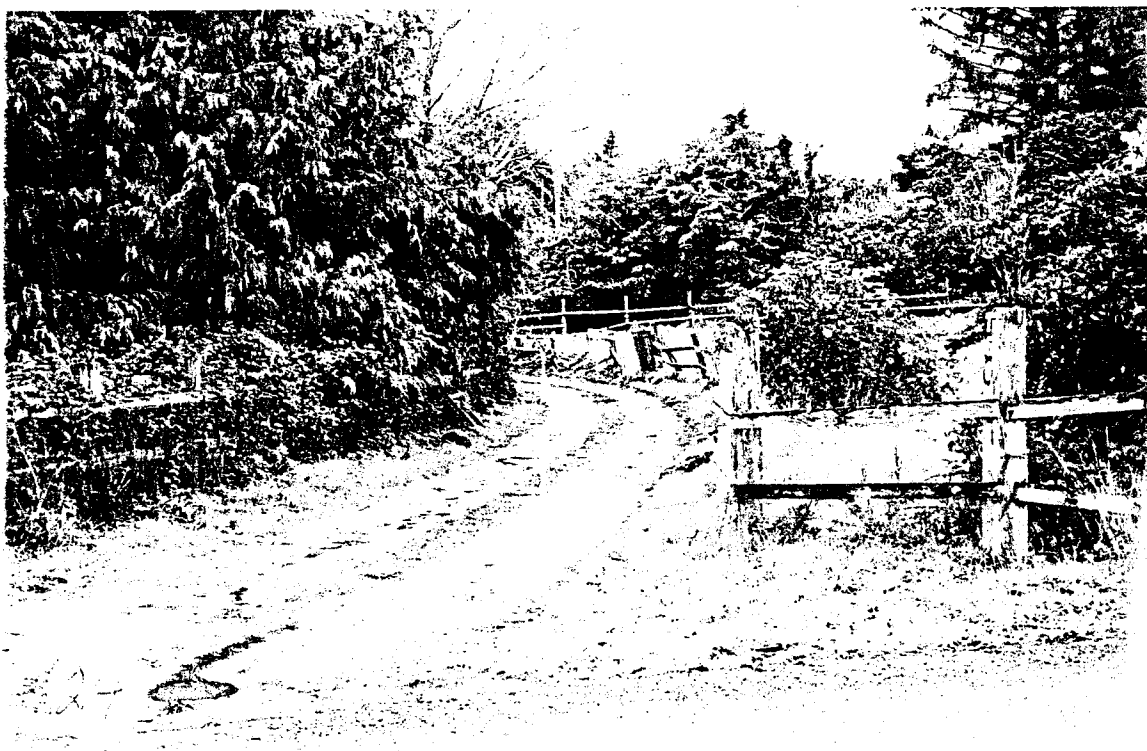
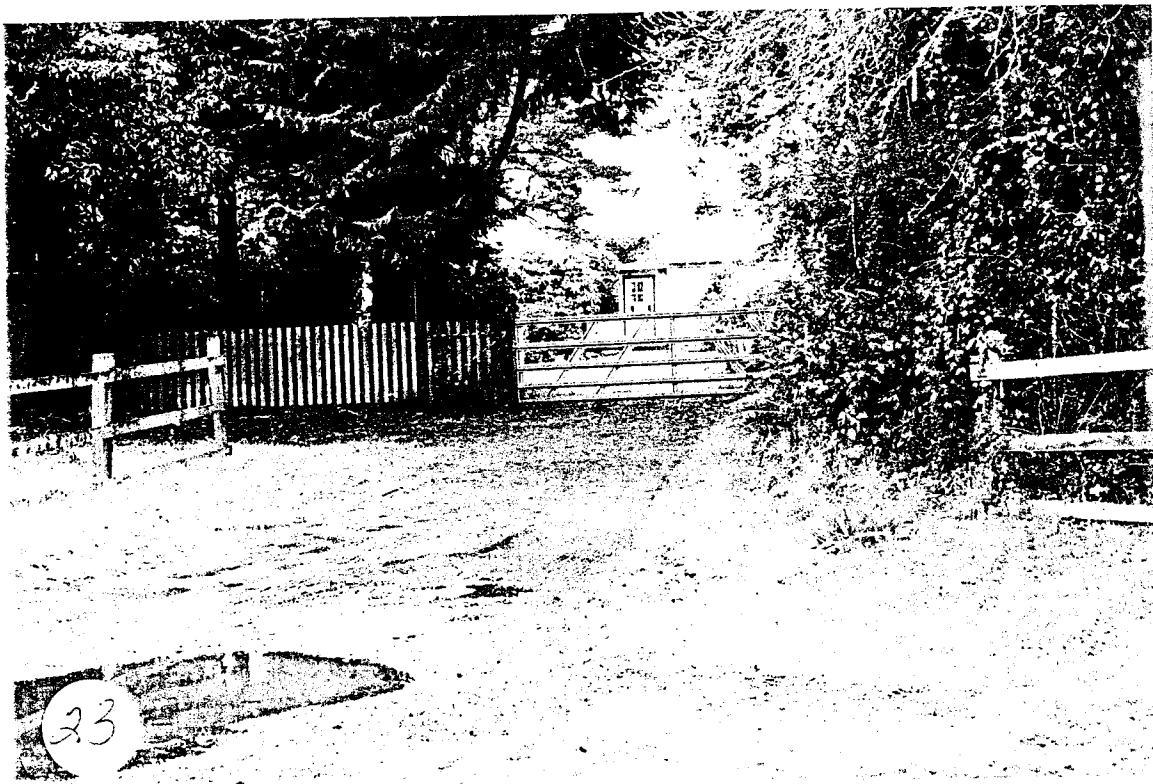


20

19 of 22



20 & 22

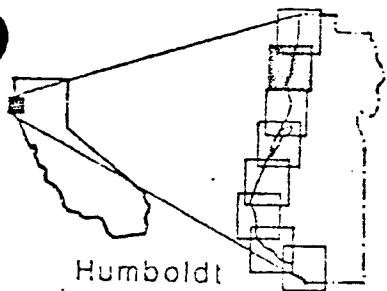


21 of 22



25

22 of 22



Humboldt

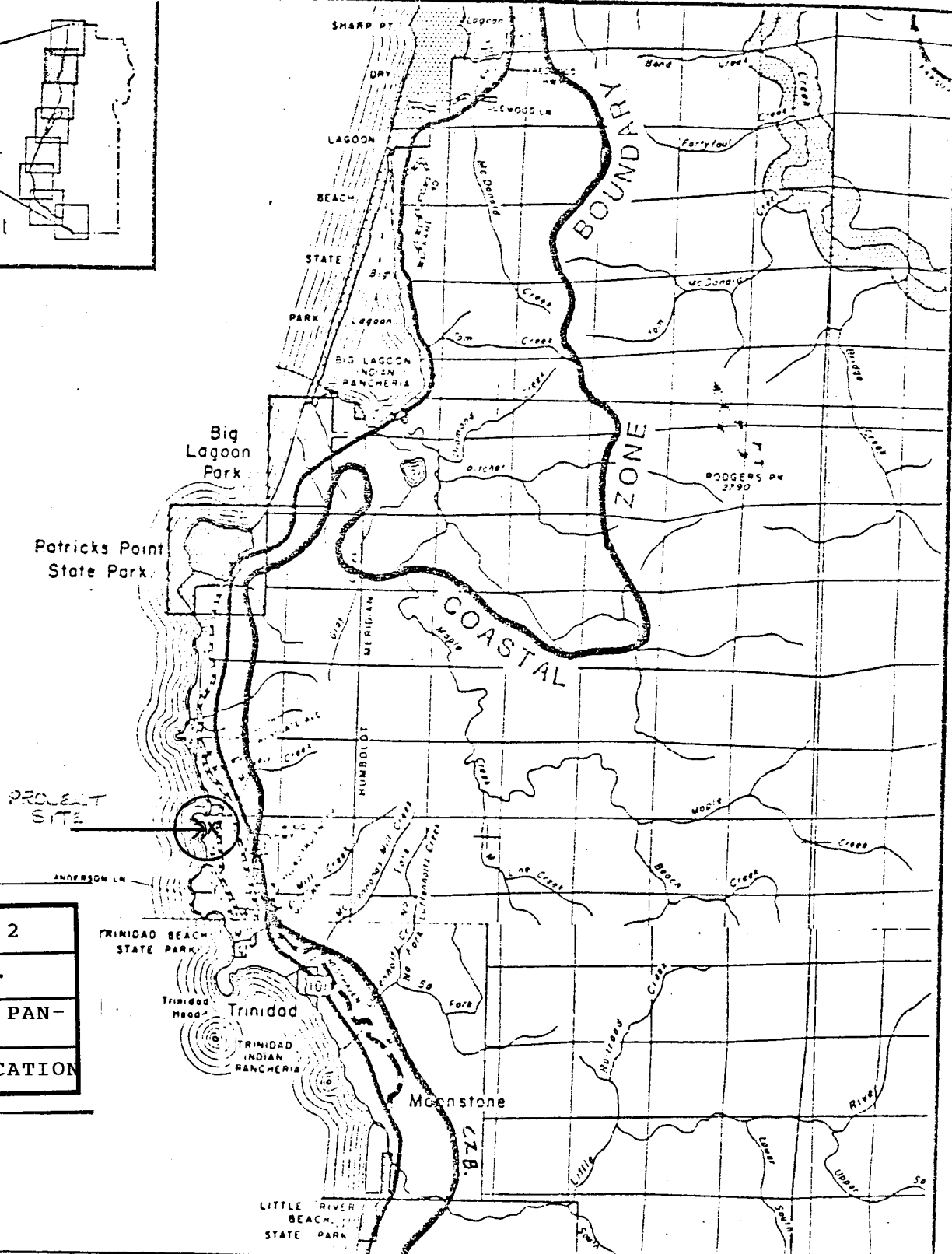


EXHIBIT NO. 2

APPLICATION NO.
1-01-052-R

ELEUTHERIAN PAN-
COMMUNION

REGIONAL LOCATION

California Coastal Commission

LOCATION MAP



EXHIBIT NO. 3

APPLICATION NO.
1-01-052-R

ELEUTHERIAN PAN-
COMMUNION

VICINITY MAP

SUBJECT SITE

PACIFIC

SCOTTY POINT

WHITE ROCK

GREEN ROCK

MEGWIL POINT

ELK HEAD

LEPOIL ROCK

OMENOKU POINT

PEWETOLE ISLAND

FLATIRON ROCK

BLANK ROCK

Trinidad Open Space

TRINIDAD HEAD

U.S. Coast Guard Reservation

- (A) Trinidad City Hall
- (B) Trinidad Fire Station
- (C) Trinidad Post Office
- (D) Saunders Shopping Center
- (E) HSU Marine Laboratory

Trinidad State
Beach Park

Trinidad State
Beach Park

Trinidad Bay

N

0 1/2 1 MILE
0 1/2 1 KILOMETER

Trinidad Head

Trinidad Bay

Trinidad Bay

Trinidad Bay

1512 Stagecoach Road

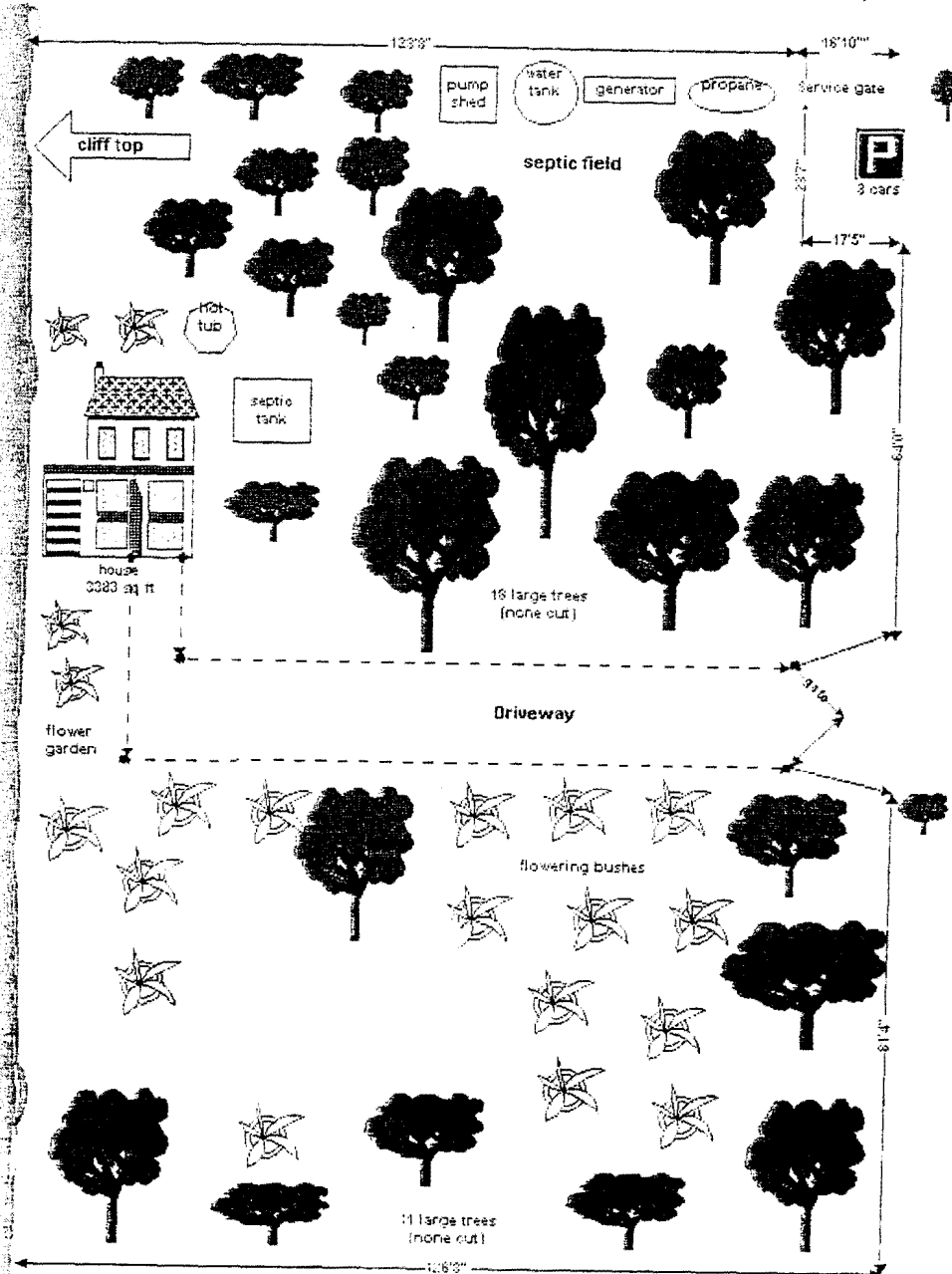


EXHIBIT NO. 4

APPLICATION NO.
1-01-052-R

ELEUTHERIAN PAN-
COMMUNION

SITE MAP

The Eleutherian Pan Communion of Adidam

EXHIBIT NO. 5

APPLICATION NO.

1-01-052-R

ELEUTHERIAN PAN
COMMUNION

LANDSCAPING PLAN
(1 of 2)

Reply to:

North Coast Office,
636 Patrick's Point Drive,
Trinidad, California,

Tiffany S. Tauber,
Coastal Planner,
California Coastal Commission,
710 E Street, Suite 200,
Eureka, CA 95501-1865

RECEIVED
NOV 06 2001

CALIFORNIA
COASTAL COMMISSION

Dear Ms. Tauber,

In conjunction with our development permit application relative to 1512 Stagecoach Road, here is the additional information you requested:

- 1) **LANDSCAPING:** Landscaping is proposed as part of the development. Information is contained in the section immediately below.
- 2) **LANDSCAPING PLAN:** At the time of initial construction, approximately \$600 was spent for nursery stock, for plantings across the front of the fence. These plantings have not done well due to:
 - a) lack of sunlight, particularly on the north section of the fence
 - b) lack of irrigation

There are three sections of the fence which run parallel to Stagecoach Road; from north to south, first there is a section of 28'7"; the second is 64'0"; the third is 81'4"

Each of these sections will receive plantings having as their intention to increase overall vegetation, and enhance the beauty of the area.

The first area will receive 6 Garrya bushes, placed about 4' apart; The second will receive 16 Garrya buses, about 4' apart; the third will also received 16 Garrya bushes averaging 5' apart. for the reason that there is significantly more vegetation in this area at present.

The bushes when planted will be approximately 40" tall on planting, and will be very thick and dense. They can be expected to equal or significantly exceed the height of the fence in about 2 years. They should also do well in the light conditions that exist.

In addition, along the entire front area of the fence we will plant approximately 22 Clematis vines, which will densely cover the face of the fence. while also offering attractive white flowers at certain times.

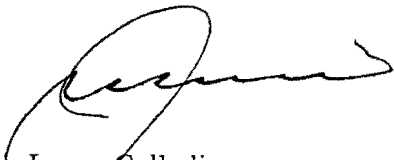
The Eleutherian Pan Communion of Adidam

We will also add irrigation to cover all of these plantings. We estimate the total cost of these improvements to be \$1750

- 3) FENCE PLAN: We enclose drawings of the fence construction. The post caps, however, have not been used.

I hope this gives you the information you need.

THE ELEUTHERIAN PAN COMMUNION OF ADIDAM



James Calladine
Regional Manager

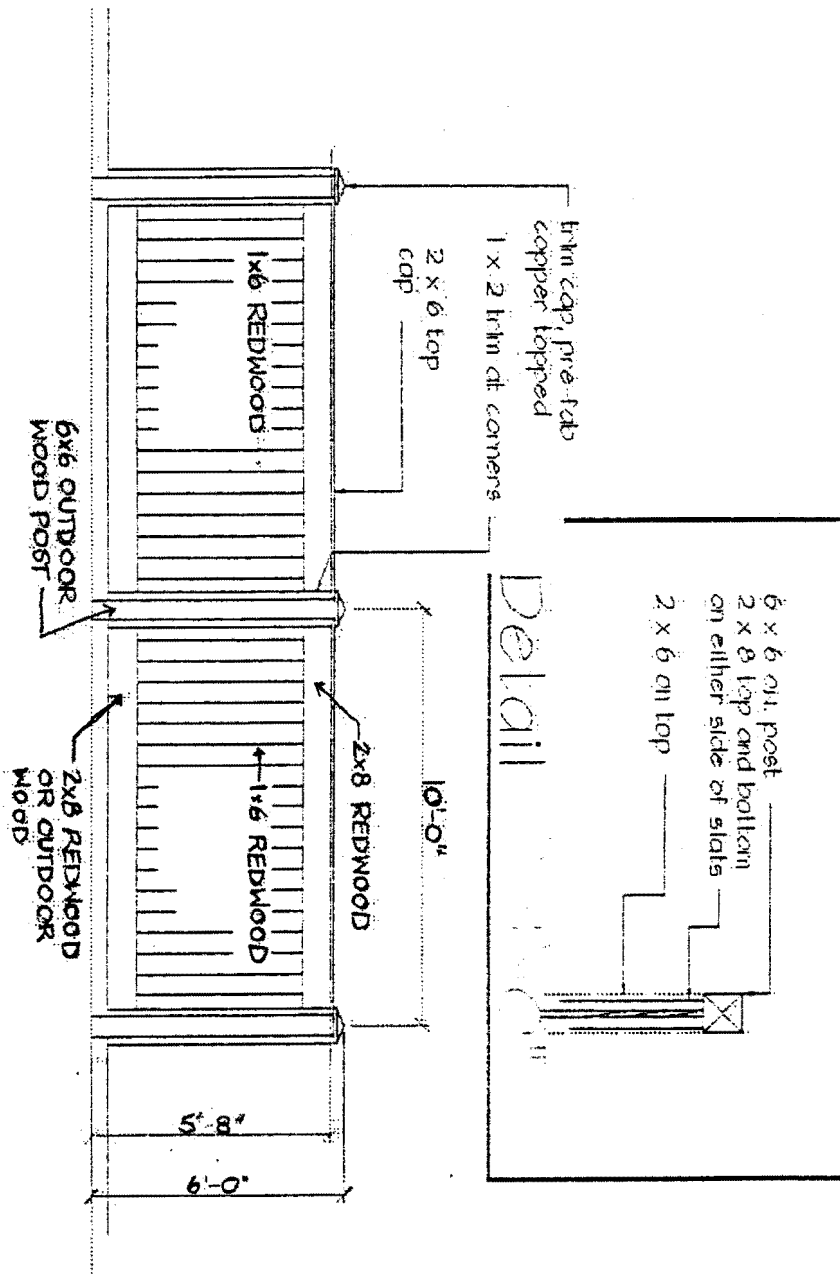


EXHIBIT NO. 6

APPLICATION NO.
1-01-052-R

ELEUTHERIAN PAN-
COMMUNION

FENCE TYPICAL