

CALIFORNIA COASTAL COMMISSION
 NORTH COAST AREA
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 Staff: Bill Van Beckum-E
 Staff Report: December 1, 1995
 Hearing Date: December 13, 1995
 Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: **1-94-103**

APPLICANT: **CASINI ENTERPRISES, INC.**

AGENTS: Paul Schoch, Dwight Allen, David Cooper

PROJECT LOCATION: 22855 Moscow Road, Duncans Mills, Sonoma County, APN 97-130-15

PROJECT DESCRIPTION: Install 75 RV (recreational vehicle) full-service hook-up sites, expand existing septic sewage disposal system and construct a public restroom, construct a 5,000-sq.-ft. recreational building, construct driveway access improvements, remove 2 trees, and install landscaping.

Lot area: 105.06 acres
 Building coverage: 5,000 sq.ft.
 Ht abv fin grade: 27.5 ft. (recreational building)
 Zoning: RRD (Resources and Rural Development), B6 160 acre density, SR (Scenic Resources), BR (Biotic Resources), F1 (Primary Flood Plain), F2 (Secondary Flood Plain)
 Plan designation: Recreation

LOCAL APPROVALS RECEIVED: Sonoma County Use Permit (UP/CP 94-024), CEQA Negative Declaration

SUBSTANTIVE FILE DOCUMENTS: Sonoma County LCP

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval of the application with conditions, as the project will provide lower cost visitor and recreational facilities that are encouraged by Coastal Act Section 30213 and the project can be mitigated to

1-94-103

CASINI ENTERPRISES, INC.

Page 2

avoid impacts on coastal resources. The conditions are designed to: (1) minimize flood hazards by requiring minimum elevations and flood proofing for the project's two permanent structures; (2) minimize impacts on visual resources by requiring site landscaping; and (3) minimize impacts to archaeological resources by providing for the protection of any archaeological resources that may be discovered during project construction. Additionally, to help ensure that the lower cost visitor and recreational facilities provided by the project are not converted to a private or member only use in the future without the necessary Coastal Commission review, the project is conditioned to require a deed restriction that would notify future buyers of the site of the need for a permit for such activities.

This application was originally scheduled for Commission consideration at the June 14, 1995 and October 13, 1995 meetings. Prior to the meetings, however, the applicant requested a postponement of the hearing, to provide additional time to develop a response to recommended Special Condition No. 6, the proposed deed restriction requirement. The applicant has subsequently provided two letters, attached as Exhibit 5 and Exhibit 6, explaining the applicant's objections.

After reviewing the correspondence, staff sees no reason to change the June recommendation for approval of the project with conditions, including Special Condition No. 6. Staff has taken the applicant's objections into consideration in developing Finding I (Visitor Serving Facilities) of this recommendation for the Commission's December 1995 meeting.

STAFF NOTE

Although Sonoma County has assumed coastal permit jurisdiction over most of its coastal zone under a certified LCP, this project is located in an area where the Commission retains permit jurisdiction. The Coastal Act is thus the standard of review for the application before the Commission.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will be in conformity with the certified Sonoma County Local Coastal Program, is located between the sea (Russian River) and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

1-94-103
CASINI ENTERPRISES, INC.

Page 3

II. Standard Conditions. See attached.

III. Special Conditions:

1. Final Septic System Plans:

PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the applicant shall submit evidence of approval by the County Environmental Health Division of final septic system plans prepared in accordance with the requirements contained in the November 2, 1994 letter "RE: Proposed septic system for Casini Campground," from Theodore Walker, Sonoma County Environmental Health Division, to Mr. Paul Schoch.

2. Site Landscaping:

Installation of the project landscaping shall be installed, as depicted on the site landscaping plan dated March 1, 1995, prior to opening of the RV expansion area for use. The applicant shall notify Commission staff in writing when the landscaping has been installed, and shall permit Commission staff to conduct a site visit to confirm the landscaping's completion.

3. Final Restroom and Recreation Building Design:

PRIOR TO THE COMMENCEMENT OF CONSTRUCTION, the applicant shall submit for the review and approval of the Executive Director final plans for the restroom and recreation building prepared in accordance with the provisions of condition #11 of Sonoma County Use Permit 94-024, which require that the structures have "a minimum floor level of 35 feet above mean sea level ... unless flood proofing can be provided as required by Federal Flood Administration." Evidence of approval by the County Water agency shall accompany the submittal.

4. Archaeologic Discovery:

Should archaeological resources be discovered on the site during construction of the proposed development, all work that could damage or destroy these resources shall be suspended. The applicant shall then have a qualified archaeologist inspect the project site, determine the nature and significance of the archaeological materials, and if he or she deems it necessary, develop appropriate mitigation measures using standards of the State Historic Preservation Office.

Should the archaeologist determine that mitigation measures are necessary, the applicant shall apply to the Commission for an amendment of Permit No. 1-94-103, requesting that the permit be amended to include the mitigation plan proposed by the archaeologist. The plan shall provide for monitoring, evaluation and protection of the archaeological resources on site, and shall define specific mitigation measures. Should the archaeologist determine that no mitigation measures are necessary, work may be resumed.

5. State Lands Commission Review:

PRIOR TO COMMENCEMENT OF CONSTRUCTION, the applicant shall submit to the Executive Director a written determination from the State Lands Commission that:

- a. No State lands are involved in the development; or
- b. State lands are involved in the development and all permits required by the State Lands Commission have been obtained; or
- c. State lands may be involved in the development, but pending a final determination an agreement has been made with the State Lands Commission for the project to proceed without prejudice to that determination.

6. Conversion from Public Recreation Use:

PRIOR TO ISSUANCE OF THE PERMIT and subject to the review and approval of the Executive Director, the applicant shall execute and record, a deed restriction for the subject site which indicates that this coastal development permit only authorizes the development of a campground expansion for 75 additional RV hook-up sites as a visitor serving use exclusively available to the general public. Furthermore, the deed restriction shall specify that any development other than development described in 1-94-103, including conversion of any portion of the approved facilities to a private or member only use or the implementation of any program to allow extended or exclusive use or occupancy of the facilities by an individual or limited group or segment of the public, is specifically not authorized by this permit and would require an amendment to this permit or a new permit from the Commission or its successor agency.

The deed restriction shall be recorded free and clear of any prior liens and encumbrances that the Executive Director determines will affect the interest being conveyed, excepting tax liens, and shall run with the land binding the landowners, their heirs, assignees and successors in interest to the subject property.

IV. Findings and Declarations.

The Commission hereby finds and declares as follows:

A. Site and Project Description

The subject property is located on a floodplain adjacent to the Russian River's south bank approximately 1/2 mile east of the Town of Duncans Mills. (Exhibit 1.) The west half of the 105-acre property is used for livestock grazing. The east half is developed as the Casini Ranch Family Campground, which contains the approximate 4.3-acre site of the proposed development. Site vegetation consists of grasses, introduced trees (natives and exotics)

1-94-103

CASINI ENTERPRISES, INC.

Page 5

planted either as windbreaks or as landscape elements to help define and shelter campsites, and a band of willows that runs more or less parallel to the river. In some cases the willows are adjacent to the river, but for most of the property's riverfront the willows are at some distance from the river's edge, separated from it by a broad sandy beach. Except for the riparian vegetation, no rare or endangered plants or other environmentally sensitive habitat (ESHA) have been identified on the property. No new development is proposed closer than 200 feet from the willow habitat (several RV campsites already are located between the development site and the willows).

This privately owned and operated recreational facility is used as a full-year campground facility containing 220 campsites (for tent camping and RV occupancy) and 5 staff residences; see Exhibit 2 (the map provided to campground guests). The campsites are one of three types: 71 "dry" sites (no water hook-up) ; 115 "partial hook-up" sites (water and electricity); and 34 "full service hook-up" sites (water, electricity, and sewer, i.e., septic).

The proposed RV campsites are depicted near the center of the site plan (Exhibit 3), as 5 parallel "islands" (5 strips of RV campsites accessed by 4 vehicle circulation aisles within a loop road) The dark line that crosses the site plan from east to west just north of these aisles represents the coastal zone boundary. All proposed development is within the coastal zone and subject to coastal development permit requirements.

The area proposed for development for RV camping is nearly level and contains only grasses. Part of the area is currently used for informal baseball games. The development site is bounded on the north and west by a narrow road that provides access to other campsites on the property, and that also will provide direct access to the new RV parking aisles/hook-up sites. The road is bordered on its north and west sides by tall hedgerows.

The south edge of the development site merges into pasture lands that extend south and west to the river. As proposed, this edge will be defined by a new gravel road that will run west to east from the south end of the existing road. Landscaping is proposed throughout the development site, i.e., both within the area defined by the loop road, and along the south edge of the site, the only site edge not now planted with some form of hedgerow.

An existing hedgerow separates the RV project site from the campground's general store and Old Moscow Barn Recreation Hall. A second recreation hall is proposed just north of the existing recreation hall. Two 20" diameter Monterey pines will be removed from the site of the new hall.

The other permanent structure proposed is a restroom facility, with showers, located in the center of the new RV lot. The site's existing septic sewage disposal system will be expanded to provide the additional capacity needed to accommodate the 75 new RV hook-ups and the restroom and recreation building facilities. The system components include a new leach field, 10,000-gallon septic tank, 5,000-gallon pump chamber, sanitary sewer lift station, and a 900-foot-long pressure line linking the lift station with the system's septic tank.

Vehicular access to the Casini Ranch Family Campground is provided by two driveway entrances located approximately 90 feet from each other on Moscow Road, a 2-lane County road. The application as approved by the County proposes to replace these two driveways with a single, wider (30 feet) driveway. Moscow Road is proposed to be widened along 480 feet of its north side, by up to 10 feet, to provide a left turn lane into the site for vehicles approaching from the west. The widening will necessitate the expansion of an existing storm drain system underneath and along Moscow Road.

The project involves 6,000 cu.yds. of grading (balanced on-site cut and fill), for road widening, site leveling, and drainage improvements.

B. New Development

Section 30250(a) of the Coastal Act states that new development shall be located in or near existing developed areas able to accommodate it and where it will not have significant adverse effects on coastal resources. The intent of this policy is to channel development toward areas where services are provided and potential impacts to resources are minimized.

The proposed rural project is located within an existing commercial recreation development that is not connected to any public water delivery or sewage treatment facility. Water for the existing campsites that provide water hook-ups, and for the five staff residences, is pumped from two on-site wells and an on-site spring. The State Department of Health Services, in a letter dated March 8, 1995 and on file at the Commission's office, has notified the applicant that these same sources produce sufficient quantities, and, as augmented by a new hypochlorination system for the spring source, sufficient quality "able to provide a safe, potable water supply" for the additional water service requirements generated by the proposed project components (75 additional RV hook-up sites, the free-standing public restroom structure's toilets and showers, and the new recreation building's restrooms and kitchen). The project's water supply provisions therefore are consistent with Coastal Act Section 30250(a) policies regarding locating and planning new development.

Sewer service for the existing campsites, restrooms, and staff residences is provided by an on-site septic system. The current system is not able to handle the increased treatment needs of the proposed developments. The application therefore proposes an expansion of the site's existing septic sewage disposal system that includes a new leach field, 10,000-gallon septic tank, 5,000-gallon pump chamber, and sanitary sewer lift station.

The Sonoma County Environmental Health Division has reviewed preliminary plans for the leach field location and design, and has determined that given the positive results of the extensive soils and system component locational studies that have been conducted on-site, the proposed system will be adequate to service the new development. However, the applicant has not yet submitted final septic system plans for County approval. The Commission therefore

attaches Special Condition No. 1 requiring the submittal of evidence of approval by the Environmental Health Division of final septic system plans prepared in conformance with the County's septic system requirements set forth in Exhibit 4, to ensure project consistency with Coastal Act Section 30250(a) provisions requiring the availability of services.

C. Public Access and Recreational Facilities

Coastal Act Section 30213 provides in part that, "Lower cost visitor and recreational facilities shall be protected.... Developments providing public recreational opportunities are preferred." Section 30222 states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30212 requires that access from the nearest public roadway to the shoreline be provided in new development projects except where it is inconsistent with public safety, military security, or protection of fragile coastal resources, or adequate access exists nearby. Section 30211 requires that development not interfere with the public's right to access gained by use or legislative authorization. In applying Sections 30211 and 30212, the Commission is also limited by the need to show that any denial of a permit application based on these sections, or any decision to grant a permit subject to special conditions requiring public access, is necessary to avoid or offset a project's adverse impact on existing or potential access.

The project is located between the first public road, Moscow Road, and the Russian River, considered to be an arm of the sea. The project is an expansion of a visitor-serving recreational facility that provides river access as one of its attractions. Exhibit 2 illustrates the campground's road circulation system that directs visitors to the beach in five locations. The unpaved roads are also suitable for pedestrian beach access. Additionally, several well-maintained paths, not shown on Exhibit 2, meander through the site to eventually arrive at the river's edge.

Requiring additional public access is not warranted, as the project will not adversely affect any existing public access. The proposed development will not physically block existing access nor decrease the availability of access. The proposed campsite expansion project will enhance public recreation by providing additional sites for additional overnight guests. The Casini Ranch Family Campground has long-provided lower cost overnight visitor and recreational facilities, as well as day-use access and recreation opportunities at a nominal charge. These opportunities will continue to be provided by the applicant. The applicant has described, in November 21, 1994 correspondence to staff, the existing situation as follows:

Under our current policy we provide river access to all our overnight guests at no extra charge. We also provide river access and boat launching for guests interested in day use. We charge \$2 per person for day use which ends at 7 p.m. We provide a very large beach parking area and provide walking access to nearly 1-1/2 miles of beach. We also offer flush-type toilets and hot showers.

As public access from the nearest public roadway to the shoreline will continue to be provided, and low cost recreational facilities will be protected and enhanced, the Commission finds that the project as proposed conforms with the public access and public recreation policies of the Coastal Act.

D. Visual Resources

Section 30251 of the Coastal Act provides in applicable part that 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, and shall be visually compatible with the character of surrounding areas.

Moscow Road is the primary through road on the south side of the Russian River in the project vicinity. The first 1/2 mile of Moscow Road beyond the bridge at Duncans Mills borders the applicant's property. The project site is visible to the eastbound traveller along an approximately 1,000-foot length of the road. This view of the site, looks to the north-northwest, across the property's pasture lands, with site distances ranging from about 900 to 1,800 feet. The backdrop to the project site is 3-tiered: the hedgerows along the roads that form the north and west edges of the project site; willows between the hedgerows and the river; and, across the river, conifer-covered hills. (The river itself is not a part of this scene, since it is obscured by the band of willows along its south edge.) The project site is not visible from elsewhere along Moscow Road, either east or west of the campground's entrance driveways, because of intervening vegetation or a few campground facilities that are situated between the project site and the road. Thus, the proposed project will not block views to and along scenic coastal areas. However, a prolonged view of recreational vehicles parked in the expanded RV campground facility may not be a view that is visually compatible with the character of the surrounding scenic open space.

The applicant has submitted a landscaping plan (dated March 1, 1995) that provides for landscaping throughout the project site. The proposed landscaping includes decorative and shade-providing elements for the RV campground "islands" that are bounded by the new loop road, and, along the outside edge of the loop road's south side, an informal hedgerow to provide wind protection and site definition (some visual separation from the adjacent pastureland). This hedgerow screen will also filter views of the project site from Moscow Road. The landscaping plan specifically proposes that the windscreen "will be a mixture of Coastal Redwood, Willow and other native

trees to give the appearance of natural river vegetation ... We will be raising most of the plants here on the ranch. Any plants purchased will be 5 gallon container size." The landscaping plan's proposal for the actual RV campground development site that comprises the area within the loop road is to plant low-growing hedges and Fruitless Mulberrys as shade trees between each RV space, and lawns at the ends and centers of each of the 5 RV "islands."

The proposed landscaping plan includes only landscaping materials that are identical to existing vegetation types present on the property, a mixture of native and introduced species. Because the landscaping materials will not be out of character with the project's setting, and because the project itself will be subordinated to the setting by design features which include shade trees throughout and a vegetative screen that will filter views of the project site from Moscow Road, the scenic and visual qualities of this outer edge of the coastal zone will be protected if the landscaping is installed as proposed. To ensure that the landscaping plan is implemented, the Commission attaches Special Condition No. 2 requiring that the proposed landscaping be completed prior to the opening of the RV campground expansion area. As conditioned, the project is consistent with Section 30251.

E. Geologic Hazards

Coastal Act Section 30253 requires in applicable part that new development minimize risks to life and property in areas of high flood hazard.

Two permanent structures are proposed, including the recreation building and the restroom facility. Both structures are sited at locations with elevations below the Russian River's 100-year flood elevation, estimated to be, on the subject property, at 34 feet above mean sea level. The current elevation of the restroom site is approximately 27 feet, and the current elevation of the recreation building site is approximately 32 feet. The County's Use Permit for the project therefore requires (condition #11) that the structures have "a minimum floor level of 35 feet above mean sea level ... unless flood proofing can be provided as required by Federal Flood Administration," and that, "prior to instituting the use, the (County) Water Agency shall issue a memo to Planning indicating that all conditions have been met."

The applicant has indicated that, "The restroom facility will have a finished floor level of 30.00 ft. and will be flood proofed up to 35.00 ft.," and that the recreation building's floor level will be at the 35-ft. level. However, the applicant has not yet submitted final plans demonstrating compliance with County requirements. The Commission therefore attaches Special Condition No. 3, requiring the submittal of final plans for the restroom and recreation building that have been prepared in conformance with the County's flood protection requirements set forth in Use Permit condition #11. This condition will ensure project consistency with Coastal Act Section 30253 provisions requiring that new development minimize risks to life and property in flood hazard areas.

F. Archaeologic Resources

Coastal Act Section #0244 states that:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required

A cultural resources study was conducted for the project site in April 1994 (Tom Origer & Associates, Consulting Archaeologists), after the County Planning Department determined that such a study was necessary because the proposed project included archaeologically sensitive land not subjected to prior archaeological study. The cultural resources study resulted in the discovery of no archaeological resources, and concluded that:

The potential for discovery of subsurface resources is considered to be low in the area where recreational vehicle site expansion is planned or where the leach field is proposed.... If archaeological site indicators ... are discovered during development, then work should be halted at their place of discovery until a qualified archaeologist completes an evaluation of their significance.

Therefore, the Commission attaches Special Condition No. 4 to this permit, which requires that all construction shall cease should any archaeological resources be discovered during construction, and that an archaeologist be consulted and mitigation measures instituted, if the archaeologist deems it necessary. The Commission finds that, as conditioned, the project is consistent with Section 30244 of the Coastal Act, as any archaeological resources that may be discovered on the site will be protected.

G. Environmentally Sensitive Habitat.

Section 30240 of the Coastal Act states that environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values and that development near such sensitive habitat areas shall be sited and designed to prevent significant adverse impacts to these areas. Section 30231 requires protection of coastal waters by maintaining natural vegetation buffer areas to protect riparian habitats.

The subject property is located on a floodplain adjacent to the Russian River. Site vegetation consists of grasses, introduced trees (natives and exotics) planted either as windbreaks or as landscape elements to help define and shelter campsites, and a band of willows that runs more or less parallel to the river. In some cases the willows are adjacent to the river, but for most of the property's riverfront the willows are at some distance from the river's edge, separated from it by a broad sandy beach. Except for the riparian vegetation, no rare or endangered plants or other environmentally sensitive habitat (ESHA) have been identified on the property. No new

development is proposed closer than 200 feet from the willow habitat (several RV campsites already are located between the development site and the willows).

The project is an expansion of a visitor-serving recreational facility that provides river access as one of its attractions. Exhibit 2 illustrates the campground's road circulation system that directs visitors to the beach in five locations. The unpaved roads are also suitable for pedestrian beach access. Additionally, several well-maintained paths, not shown on Exhibit 2, meander through the site to eventually arrive at the river's edge. This extensive network of signed accessways through the willows to the river is capable of accommodating the additional site visitation generated by the project. As such, the site's riparian habitat values will not be adversely impacted by the increased numbers of visitors, and existing setbacks from willow habitat will not be disrupted. Therefore, the Commission finds that the project as proposed is consistent with Sections 30231 and 30240.

H. Public Trust

The project site, adjacent to the Russian River, could include lands that are subject to the public trust. Special Condition No. 5 requires that, prior to commencement of the project, the applicant consult with the State Lands Commission and obtain a final written determination as to whether or not the development will involve state lands, and whether a permit is needed.

I. Visitor Serving Facilities.

Coastal Act Section 30213 requires the Commission to ensure that, "lower cost visitor and recreational facilities shall be protected, encouraged, and where feasible, provided. Developments providing public recreational opportunities are preferred." The project will add 75 RV full-service hook-up sites to a privately operated campground, whose overnight and day-use facilities are available to the public for a small fee. Therefore, the proposed project will provide, consistent with Section 30213, an increase in the availability of lower cost recreational opportunities along the Russian River.

However, should the approved RV sites ever be converted to private or member only use, the availability to the public of lower cost visitor and recreational facilities serving the Russian River area could be reduced. Any change of the new RV sites to exclusive private use would constitute "development," as defined in Section 30106 to include any change in the intensity of use of land or water, "or of access thereto." Therefore, pursuant to Section 30600 requirements that a coastal permit is needed for any development, any such conversion of these 75 new campsites would require a coastal permit, with approval findings that demonstrate privatization consistency with Section 30213.

However, the requirement for a coastal development permit for the privatization of the campsites may not be obvious to someone interested in purchasing the site in the future, especially if the privatization does not involve any physical changes to the site. It is essential that any potential

future buyers be aware of the need for a permit for privatization, to avoid purchase with expectations that the site can be converted to private use with no regard to Coastal Act public recreation concerns. Therefore, to provide clear communication to future owners of the need for Commission authorization of any future changes of use of the facilities, the Commission attaches a future development deed restriction as Special Condition No. 6. The special condition requires recordation of a future development deed restriction stating that conversion of any portion of the approved facilities to a private or member only use would require prior Commission review and approval of the conversion as an amendment to the permit or a new permit. The deed restriction will serve to notify current and future owners of existing coastal development permit requirements. In this way, any future development will be regulated to ensure that no development inconsistent with Chapter 3 policies could occur without prior Commission review.

The Commission notes that the fact that such a change requires a coastal development permit under the Coastal Act does not necessarily mean the Commission would not approve some privatization of the campsites. The Commission would need to consider the significance of the impact of the privatization on the availability of lower cost visitor and recreational facilities in the area. For example, if the number of campsites to be privatized were very small, or if sufficient lower cost facilities exist nearby, or if equivalent new lower cost facilities are provided by the applicant, the Commission might find that privatization of the campsites is consistent with 30231.

The applicant's representative has submitted two letters (see Exhibits 5 and 6) objecting to the future development deed restriction as unnecessary and unsupported in law or equity. The applicant argues that the deed restriction unreasonably burdens his property and cites Scroggins v. Kovatch (1976) 64 Cal.App.3d 54 in support of his position that the deed restriction is unnecessary. The applicant also argues that the proposed deed restriction cannot be an enforceable covenant running with the land because it does not fall within the two circumstances outlined in Civil Code section 1468 i.e. it is not between the grantor and grantee of property or between two adjoining property owners.

In Scroggins v. Kovatch, the California First District Court of Appeal held that a subdivision map requirement was enforceable against landowners even though the requirement, recorded on the final map, had not been inserted in the deed. Although Commission staff agrees with the applicant that a permit requirement need not be reflected in a deed to be enforceable, it does not follow that placing the restriction in the deed is unnecessary or unreasonable.

As stated above, placing future property owners on notice of restrictions affecting their land serves an important Coastal Act function. Indeed, the subject deed restriction serves to avoid precisely the situation that gave rise to the Scroggins v. Kovatch litigation: an innocent purchaser claiming he bought property without knowledge of a particular restriction.

Regarding the applicant's contention that the proposed deed restriction cannot be an enforceable covenant because it does not fall within the circumstances outlined in Civil Code Section 1468, Civil Code Section 1468 by its terms only applies where there is a transfer of ownership. As demonstrated by Scroggins v. Kovatch, Civil Code Section 1468 does not set forth the exclusive means by which to establish covenants running with the land. Section 30607 of the Coastal Act authorizes the Commission to place reasonable terms and conditions on any permit to ensure conformance with all Coastal Act provisions. By imposing a future development deed restriction stating that conversion of the facilities to a private use, even without physical development, requires a coastal development permit, future owners will be placed on notice of existing obligations and potential disputes will be avoided from the outset.

The Commission finds therefore that the project, only as conditioned, is consistent with Coastal Act Section 30213.

J. California Environmental Quality Act (CEQA).

Section 13096 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

As discussed above, the project has been mitigated to minimize risks to life and property in an area of flood hazard, to avoid significant impacts to the visual resources of the coast, and to protect any archaeological resources that may be present on the site. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act and to conform to CEQA.

For purposes of CEQA, the lead agency for the project is the County of Sonoma. The County adopted a negative declaration for the project on July 14, 1994.

K. Sonoma County LCP.

As the application before the Commission is for development within the Commission's retained jurisdictional area, the standard of review that the Commission is applying in its consideration of the application is the Coastal Act and not Sonoma County's certified LCP. The LCP policies are considered advisory and are not binding in this case.

1-94-103

CASINI ENTERPRISES, INC.

Page 14

Nevertheless, the proposed project does not conflict with any of the policies of the LCP. The subject property is designated Recreation in the certified Land Use Plan. The proposed development is consistent with this designation and with the allowable uses in the site's zoning designations. In addition, in its action to grant a Use Permit for the project, the County found that the project is consistent with the Lower River Specific Plan, General Plan, and Coastal Plan.

The Commission therefore finds that proposed amendment is consistent with the Sonoma County LCP.

Exhibits:

1. Location Map
2. Campground Layout
3. Site Plan
4. County Septic System Requirements
5. Correspondence from Applicant
6. Correspondence from Applicant

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ATTACHMENT A

Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

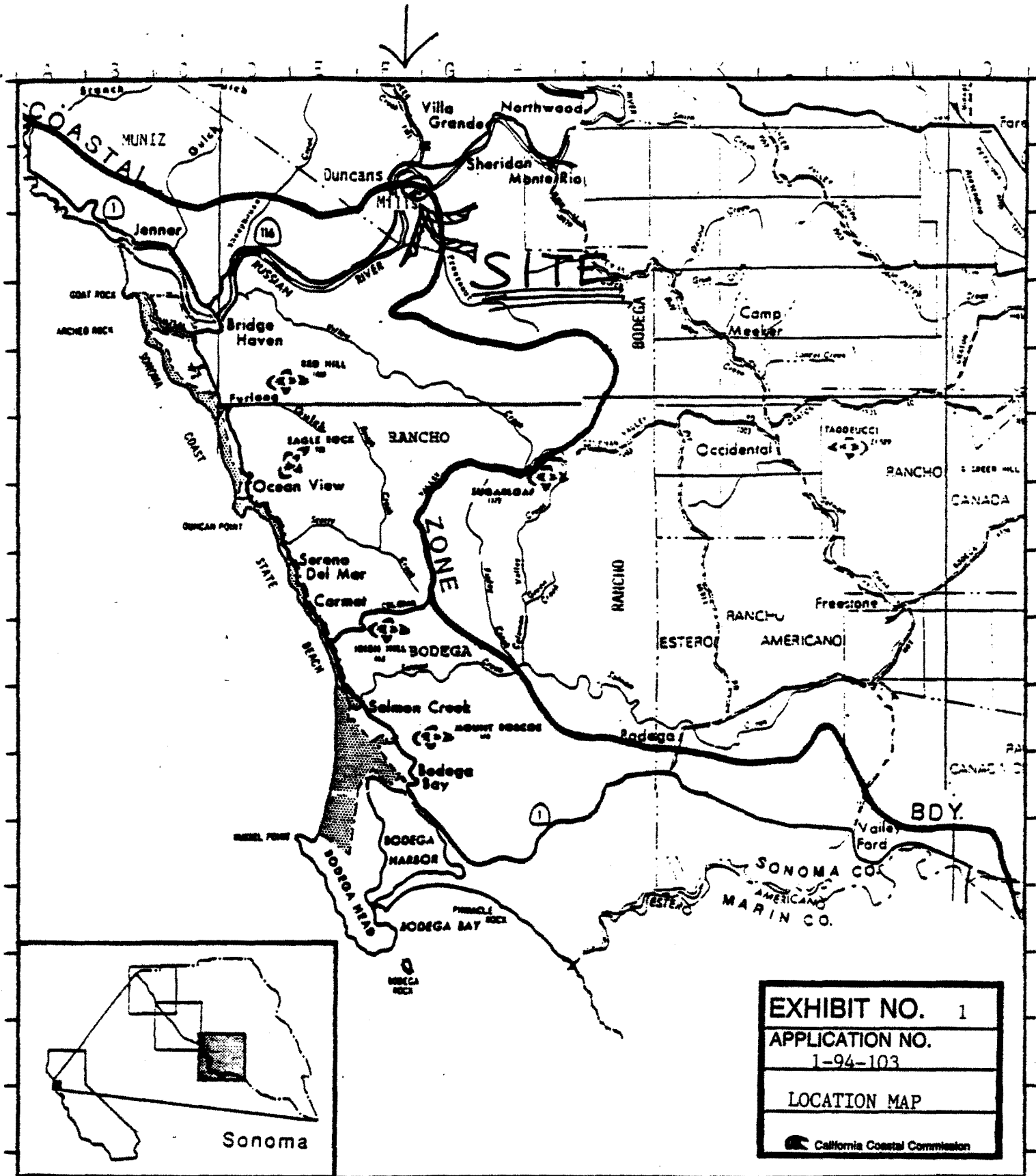



EXHIBIT NO.	1
APPLICATION NO.	1-94-103
LOCATION MAP	
 California Coastal Commission	

LOCATION MAP



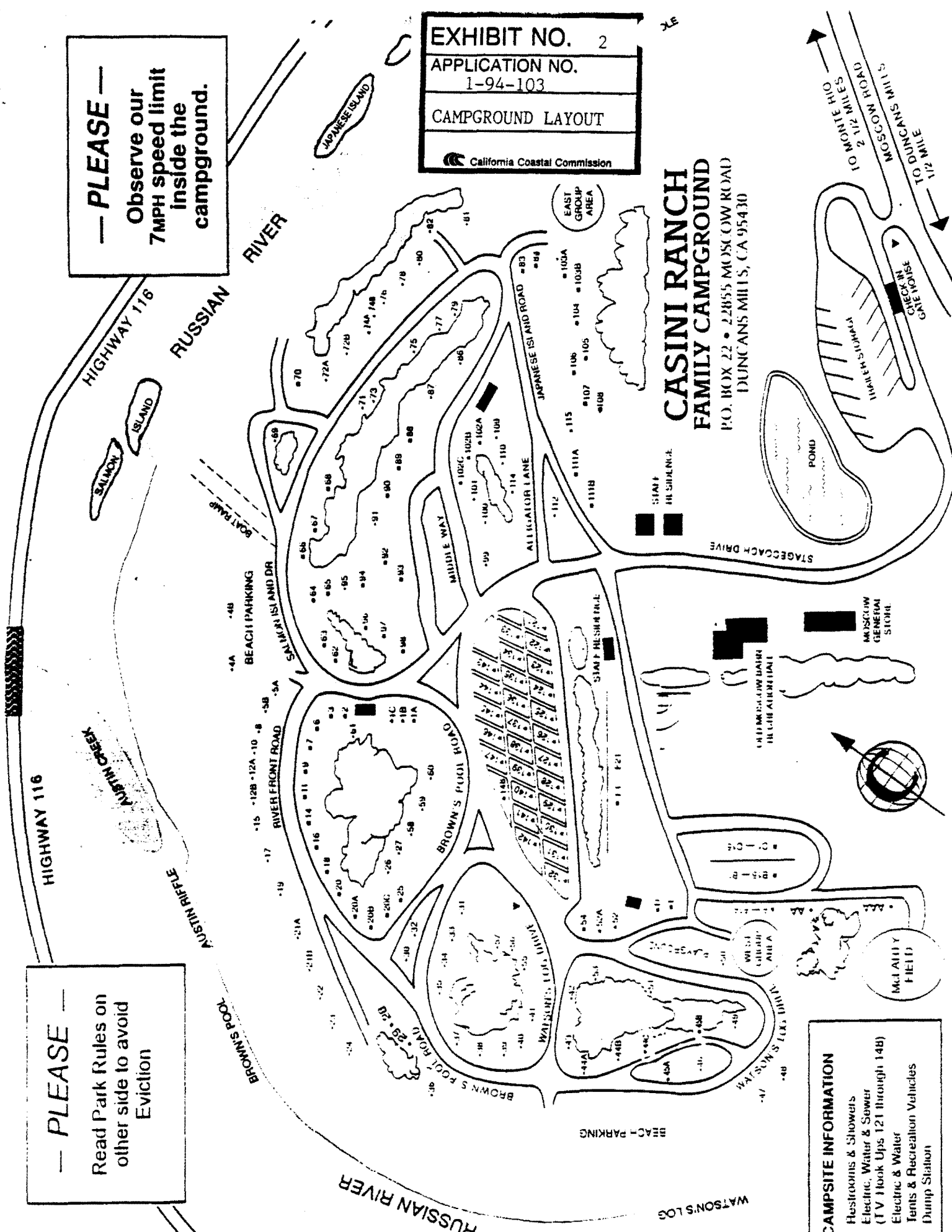
— PLEASE —
Observe our
7MPH speed limit
inside the
campground.

EXHIBIT NO. 2
APPLICATION NO.
1-94-103
CAMPGROUND LAYOUT
California Coastal Commission

**CASINI RANCH
FAMILY CAMPGROUND**
P.O. BOX 22 • 22855 MOSCOW ROAD
DUNCANS MILLS, CA 95430

— PLEASE —
Read Park Rules on
other side to avoid
Eviction

CAMPSITE INFORMATION
 ■ Restrooms & Showers
 * Electric, Water & Sewer
 (TV Hook Ups 121 through 148)
 ■ Electric & Water
 • Tents & Recreation Vehicles
 ▼ Dump Station



TO DUNCANS MILLS
1 1/2 MILE
TO MOSCOW ROAD
2 1/2 MILE
TO MONTE HIO
1 MILE

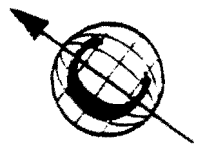
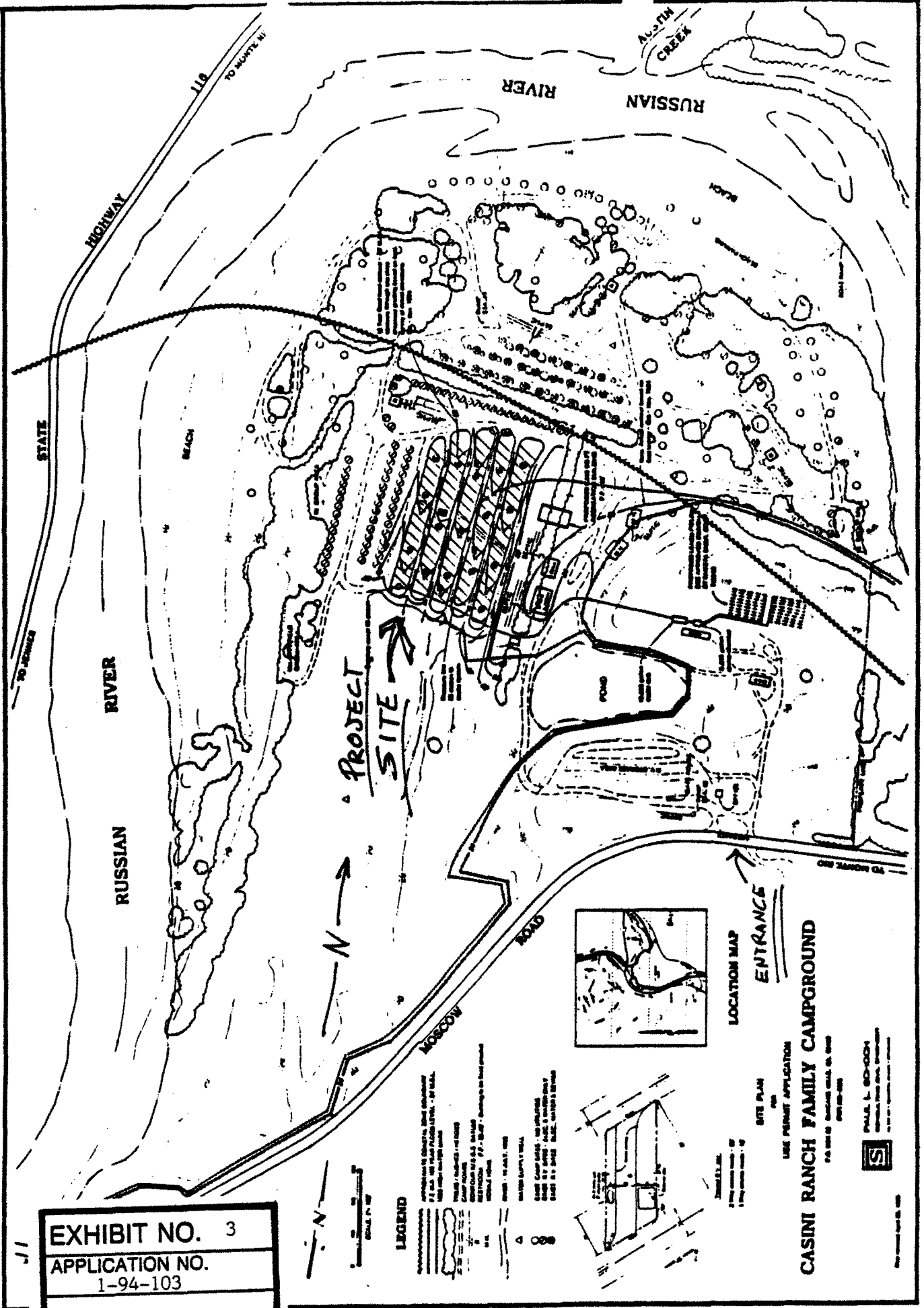


EXHIBIT NO. 3
 APPLICATION NO.
 1-94-103
 SITE PLAN

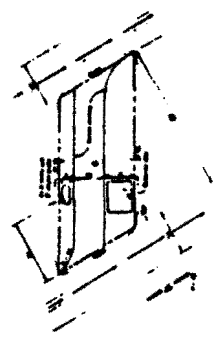


LEGEND

APPROXIMATE BOUNDARY, BOUNDARY OF STATE
 1/2 MILE AND NEAR APPROXIMATE 1/2 MILE
 1/4 MILE AND NEAR APPROXIMATE 1/4 MILE

TRAIL (indicated by red lines)
 CAMP ROUTE
 BOUNDARY TO U.S. NATIONAL
 FOREST (indicated by red lines)
 STATE ROAD

WATER - TO EAST SIDE
 STATE HIGHWAY 118
 STATE CAMP SITES - 100 IMPROVED
 SITES BY STATE - 100 IMPROVED
 SITES BY STATE - 100 IMPROVED



LOCATION MAP
 ENTRANCE
 SITE PLAN
 USE PERMIT APPLICATION

CASINI RANCH FAMILY CAMPGROUND

PAUL L. SCHUCH
 ENGINEER



1994-103-103



COUNTY OF SONOMA
DEPARTMENT OF HEALTH SERVICES

Mailed 11-3-94

Mark A. Kostielney - Director

Environmental Health Division

Jonathan J. Krug - Director

RECEIVED
APR 07 1995
CALIFORNIA
COASTAL COMMISSION

EXHIBIT NO.	4
APPLICATION NO.	1-94-103
CO. SEPTIC SYSTEM REQUIREMENTS	
	1 of 2
California Coastal Commission	

November 2, 1994

Mr. Paul Schoch, P.E.
P.O. Box 1357
Sebastopol, CA 95472

RE: Proposed septic system for Cassini Campground, 22855 Moscow Road, Guerneville, CA

Dear Mr. Schoch:

As a followup to our recent meeting regarding the Cassini Campground Expansion Project; I have talked to North Coast Regional Water Quality Control Board regarding a waiver to install the septic tank and the sump within 100 feet of the 10 year flood level.

Water Quality Control Board Response

I concur with water quality that this item is "not waivable as per the Basic Plan". As such, you will need to submit revised engineering plans and specifications on a proposed sewage pump lift station. The sewage pump will have to be watertight, be equipped with easily accessible risers, as well as an Emergency Alarm Package and back up pump and electrical connection for every way power such as a generator.

Secondly, the Cassini Campground will fall into Sonoma County's Non-Standard System monitoring program. In this particular case, the following special conditions and monitoring is required.

- A) Easement Agreement: Cassini Campground will have to execute the standard easement agreement for non-standard systems (see attached item). Please fill out and return.
- B) Operational Permit Program: Cassini Campground will be monitored under the Operational Permit Program of the County. See Ordinance #4330. Fill out the Permit Application and submit.
- C) Review (with engineer) the form "Supplement to Application for Nonstandard Sewage Disposal System Permit". Upon agreement with the Special Monitoring Requirements, sign (before a Notary), and record on title of the property and submit to this office.
- D) One additional monitoring well will have to be installed by a licensed C-57 contractor. Please see me to discuss it's location, depth to be sealed, and construction requirements.

1-94-103

Mr. Paul Schoch, P.E.
November 2, 1994
Page 2

E) The owner/architect shall submit final drawings for the R.V. parking-camping area, plumbing (wastewater and water supply), locations of the sewage pump station, details on float/alarm leachline emergency backup power, grading plan, R.V. dump station, proposed meeting hall, restrooms, etc.

F) Revised engineering drawings for the proposed wastewater system, sewage pump lift station, septic tank location, updated drawings showing leachline being installed on contour, etc.

Note: the Orenco Splice or "J" Boxes located inside the sump does not meet electrical code. Revise drawings as needed. Such boxes must be NEMA-4X explosion proof boxes.

Engineer must submit head loss calculations, dose size g.p.m. desired, pump curves, etc. for sump/pump system.

Rock in the trench details shall be specified to be "washed clean drain rock". Specify brand type of filter fabric for the silt barrier in the trenches.

Revised plans, construction notes, details, etc. shall be R.C.E. or R.E.H.S. designed, reviewed and stamped with date of expiration of professional license shown on the plans.

Owner shall apply for permits and pay fees from this office. Please call me at 525-6505 between 7:30 and 9:00 a.m., Monday through Thursday if you have questions.

Yours truly,



THEODORE J. WALKER, R.E.H.S.
Senior Environmental Health Specialist
Liquid Waste Specialist

TJW/cb

Enclosure

cc: George Cassini
Sonoma County Building Department

EXHIBIT NO. 4
APPLICATION NO. 1-94-103
CO. SEPTIC SYSTEM REQUIREMENTS
2 of 2 California Coastal Commission

DWIGHT S. ALLEN*
DAVID S. COOPER
CAROLINE L. FOWLER


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*CERTIFIED SPECIALIST
PROBATE, ESTATE PLANNING
AND TRUST LAW
State Bar of California
Board of Legal Specialization

August 8, 1995

RECEIVED
AUG 13 1995
CALIFORNIA
COASTAL COMMISSION

Mr. Bill Van Beckum
CALIFORNIA COASTAL COMMISSION
North Coast Area
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

EXHIBIT NO. 5
APPLICATION NO. 1-94-103
APPLICANT'S CORRESPONDENCE
(1 of 4)  California Coastal Commission

Re: Casini Enterprises, Inc. Expansion of Campground
Objection to Required Deed Restriction

Dear Mr. Van Beckum:


We represent Casini Enterprises, Inc., the applicant under Application Number 1-94-103 which seeks a permit to install 75 recreational vehicle hookup sites, expand existing septic sewage disposal system and construct a public restroom, recreational building, driveway access improvements, remove two trees, and install landscaping at its private campground located at 22855 Moscow Road, Duncan Mills, Sonoma County, California.

As you know from our recent telephone conversation, the applicant objects to the staff recommendation that the permit be granted subject to a condition requiring a deed restriction to be recorded in the official records of Sonoma County, California permanently restricting and encumbering the lands of the applicant so that any conversion or cessation of the use of any portion of the approved facilities will require an amendment to the permit or a new permit from the California Coastal Commission and/or an amendment to the certified LCP in order to be effective. I understand that one permittee in southern California converted his approved project to a private facility for which the staff believes a new or amended permit is necessary.

From our conversation I understand that the position of the staff is that the foregoing requirement is not imposing a condition on the title to the applicant's lands, that it adds nothing to what staff interprets as existing law, and that it is being required as a notice so that any purchaser or lender or other successor in interest will know that a new or amended permit is required if the use changes.

LAW OFFICES OF
MAXWELL, ALLEN & COOPER

Mr. Bill Van Beckum
CALIFORNIA COASTAL COMMISSION
August 16, 1995
Page 2

EXHIBIT NO. 5
APPLICATION NO. 1-94-103
APPLICANT'S CORRESPONDENCE
(2 of 4)  California Coastal Commission

Our objections to the required deed restriction is that the reason given for it discloses that the restriction is unnecessary and the deed restriction will permanently adversely affect the title to and the marketability of the applicant's real property throughout the future in ways that are difficult to measure. The deed restriction will be permanently on the title of the real property and is binding on successor owners and affects any liens thereafter placed on the property. Thus, deed restrictions can impact sales of the real property, leases of the real property, the obtaining of loans secured by the real property, and in other ways affect the ownership and enjoyment of the real property.

It is not necessary to permanently encumber the lands of the applicant to give notice. The Commission can adopt rules and regulations and give notices of its rules, regulations and interpretations. The deed restriction will cause damage to the applicant and its successors and will accomplish nothing for the Commission that it cannot do without causing the applicant damage. Thus, the requirement of the deed restriction is arbitrary and unreasonable.

The requirement of a permanent deed restriction for an announced purposed of giving notice of existing law is an arbitrary and capricious exercise of the Commission's powers. The applicant's property has been used as a privately owned campground for over 50 years. There is no change in use or in zoning, merely an increased number of campsites. There is no close relationship or nexus between the requirement of a deed restriction and any harm that would otherwise be caused by the proposed use.


Laws change from time to time, and interpretations change of laws that have not changed. The laws affecting coastal property can be changed by the legislature or by the electorate or by regulations of the commission. It is unreasonable for a state agency to exact a permanent deed restriction from a permit applicant to prevent application of future laws.

There is a vast difference between a deed restriction and a notice. A notice merely informs the recipient. A deed restriction affects the title and marketability of the property. The Coastal Commission can give notice to others by the Commission adopting a regulation and/or filing a notice. To force an applicant to sign a permanent deed restriction to accomplish something the Commission can easily do on its own is unreasonable.

We know of no other planning, zoning, or other state or local

LAW OFFICES OF
MAXWELL, ALLEN & COOPER

Mr. Bill Van Beckum
CALIFORNIA COASTAL COMMISSION
August 16, 1995
Page 3

EXHIBIT NO. 5
APPLICATION NO. 1-94-103
APPLICANT'S CORRESPONDENCE
(3 of 4)  California Coastal Commission

agency that attempts to exact such a deed restriction from an applicant.

One might initially think that an applicant should not object to the suggested deed restriction because it merely requires that future matters regarding the use of the property must forever be brought before the California Coastal Commission for approval or denial, and that one should assume that the California Coastal Commission will act reasonably regarding all such matters.

However, where the very imposition of the deed restriction is an arbitrary and capricious exercise of power, that very requirement destroys any confidence the applicant might have that the California Coastal Commission would act reasonably in the future regarding the applicant's property.

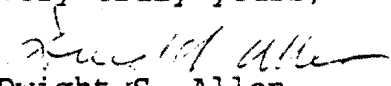
It is my understanding that both the applicant and the staff and most likely the Commission agree that the proposed project is a beneficial project in the Coastal Zone and that all of the recommended conditions have been or will be met. Our only difference is regarding the recommended condition requiring a deed restriction forever giving the Coastal Commission jurisdiction over the use of the property of the applicant.

The applicant respectfully objects to the suggested requirement of a deed restriction. Our point is simply that if, as staff states, the deed restriction does not impose a requirement different from the law, then the deed restriction accomplishes nothing for the Commission and unnecessarily and arbitrarily permanently impairs the title of the applicant. The Commission can impose the requirement in the permit that any change in use of the approved facilities will require an amended or new permit.

Please call me if you have any questions regarding the nature of this objection or this letter and so that we can discuss how the permit will be brought into effect and this issue determined.

Thank you for your courtesy in this matter.


Very truly yours,


Dwight S. Allen

P.S. I understand that this letter will be a part of the file and that if we are unable to agree regarding this matter that this

LAW OFFICES OF
MAXWELL, ALLEN & COOPER

Mr. Bill Van Beckum
CALIFORNIA COASTAL COMMISSION
August 16, 1995
Page 4

EXHIBIT NO. 5
APPLICATION NO. 1-94-103
APPLICANT'S CORRESPONDENCE
(4 of 4)  California Coastal Commission

letter will be given to each member of the Commission. If I am wrong in that regard, please let me know so that I can see that the specifics of our objection are brought to the attention of the members of the Coastal Commission.

DWIGHT S. ALLEN*
DAVID S. COOPER
CAROLINE L. FOWLER

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*CERTIFIED SPECIALIST
PROBATE, ESTATE PLANNING
AND TRUST LAW
State Bar of California
Board of Legal Specialization

October 4, 1995

RECEIVED
OCT 11 1995
CALIFORNIA
COASTAL COMMISSION

Mr. Bob Merrill
California Coastal Commission
North Coast Area
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

Re: Casini Enterprises, Inc. Expansion of Campground
Objection to Required Deed Restriction

Dear Mr. Merrill:

This is a follow-up to our telephone calls of Wednesday, October 4, 1995.

Thank you for confirming the staff will recommend that the October 13, 1995 hearing be continued on this matter. As we discussed, I will be happy to sign a waiver of the 180 day action period. As we also discussed, the matter may be set on the November calendar.

The matter of the deed restriction remains of concern to Mr. Casini. Dwight Allen of our office has detailed why the recordation of this deed restriction is of concern to Mr. Casini. This letter will provide further legal analysis for the deletion of that requirement.

In the first place, it appears that the requirement is unnecessary. Please consider, in this regard, the case of Scrogings vs. Kovatch (1976) 64 Cal. App. 3d 54. This case states the California law that the existence of an enforceable covenant is not a condition precedent to the enforcement of land use restrictions. It is therefore unnecessary to record the deed restriction.

The second point I would like to make is that the circumstances under which an enforceable covenant running with the land may be created are set forth in Civil Code Section 1468.

EXHIBIT NO. 6
APPLICATION NO. 1-94-103 CASINI
2nd Correspondence from applicant
(1 of 2)

October 4, 1995
Page 2

Those circumstances are (1) in an agreement between adjoining property owners, and (2) in an agreement between a grantor and grantee of property. Neither of those circumstances presents itself in this case; therefore, the proposed deed restriction cannot be an enforceable covenant running with the land.

Neither can it be an enforceable equitable servitude. To create an equitable servitude there must be a restriction in a deed between a grantor and a grantee. In the absence of such a restriction prevents the creation of an equitable servitude. Scrogings vs. Kovatch, supra, 64 Cal. App. 3d at 57.


Since the proposed restriction is unnecessary and not supported in law or equity, Mr. Casini renews his request that the condition requiring a recordation of the proposed deed restriction be stricken. Please ask you lawyers to give this issue some further consideration, as it continues to be of concern to Mr. Casini.

Very truly yours,



David S. Cooper

DSC:elm
cc: Mr. Casini

EXHIBIT NO. 6
APPLICATION NO. 1-94-103 CASINI
2nd Correspondence from applicant
(2 of 2)
 California Coastal Commission