

## CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

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Tuba



Filed:	November 26, 1997
49th Day:	WAIVED
Staff:	Jo Ginsberg
Staff Report:	December 29, 1997
Hearing Date:	January 13, 1998
Commission Action:	

STAFF REPORT: APPEAL

LOCAL GOVERNMENT: Mendocino County

DECISION: Approval with Conditions

APPEAL NO.: A-1-MEN-97-79

APPLICANT: ROBERT AND LUANNE SMILEY

AGENT: Stephen Heckerroth

PROJECT LOCATION: 10927 South Highway One, approximately five miles south of Elk, Mendocino County, APNs 131-060-14, 131-060-15, and 131-090-01.

PROJECT DESCRIPTION: Construction of a two-story, 4,710-square-foot single-family residence and attached garage, two-story, 640-square-foot guest cottage, windmill, two septic systems, and driveway.

APPELLANTS: (1) Mendocino Coastwatch/Roanne Withers  
(2) Darwin and Lorene Christiansen

SUBSTANTIVE FILE DOCUMENTS: Mendocino County LCP; Mendocino County CDP #45-97 (Smiley) and #19-92 (Raabe/Collins); Coastal Permit No. 1-91-171 (Waidhofer).

SUMMARY OF STAFF RECOMMENDATION:1. SUMMARY OF STAFF RECOMMENDATION: SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeals have been filed, and that the Commission hold a de novo hearing, because the appellants have raised a substantial issue with the local government's action and its consistency with the certified LCP.

Mendocino County approved with conditions a coastal permit for construction of a two-story, 4,710 square-foot residence and garage, two-story, 640 square-foot guest cottage, windmill, two septic systems, and a driveway. The first appellant (Mendocino Coastwatch) contends that the project is not consistent with the visual and scenic resource policies of the County's LCP. The second appellants (Christiansens) raise the issue of visual resources, and additionally raise the issue of a deeded water right on the subject property and contamination of their private water supply.

Commission staff analysis indicates that there are significant questions regarding whether the residence, as approved by the County, would be sited and designed to protect coastal views in the manner required by the policies of the certified LCP. Commission staff has concluded that the project, as approved by the County, raises a substantial issue with regard to conformance with the visual and scenic resource policies of the County's LCP.

The Motion to adopt the Staff Recommendation of Substantial Issue is found on Page 3.

2. SUMMARY OF STAFF RECOMMENDATION ON THE COASTAL PERMIT APPLICATION: DENIAL

The staff recommends that the Commission deny the coastal development permit for the proposed project on the basis that it is inconsistent with the visual and scenic resource policies of the County's certified LCP. In addition, staff concludes that to be consistent with the policies of the LCP, the project would have to be relocated and redesigned such that further environmental review would be necessary. Thus, the existing project cannot now be conditioned to achieve consistency with the LCP and the applicants should reapply to the County for a relocated, redesigned project. Staff emphasizes, however, that it is feasible to relocate and redesign the house to a location consistent with the certified LCP while still employing at least a partially solar, energy-efficient design.

The Motion to adopt the Staff Recommendation of Denial is found on Page 14.

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STAFF NOTES:

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is

raised. Unless it is determined that there is no substantial issue, the Commission will continue with a full public hearing on the merits of the project. If the Commission were to conduct a de novo hearing on the appeal, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program.

The only persons qualified to testify before the Commission on the substantial issue question are the applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing.

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PART ONE - SUBSTANTIAL ISSUE

I. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

Pursuant to Section 30603(b) of the Coastal Act and as discussed in the findings below, the staff recommends that the Commission determine that substantial issue exists with respect to the grounds on which the appeals have been filed. The proper motion is:

MOTION:

I move that the Commission determine that Appeal No. A-1-MEN-97-79 raises NO substantial issue.

Staff recommends a NO vote. This will result in the de novo consideration by the Commission of the appeal and in the adoption of the following resolution and findings. To pass the motion, a majority vote of Commissioners present is required.

RESOLUTION:

The Commission hereby finds that Appeal No. A-1-MEN-97-79 presents a substantial issue with respect to consistency with the County of Mendocino certified Local Coastal Program.

II. Findings and Declarations.

The Commission hereby finds and declares:

A. APPELLANTS' CONTENTIONS

The Commission received from Mendocino Coastwatch (as represented by Roanne Withers) and from Darwin and Lorene Christiansen appeals of the County of Mendocino's decision to approve the project. The project as approved by the County consists of the construction of a two-story, 4,710 square-foot single-family residence and garage, a two-story, 640 square-foot guest cottage, windmill, two septic systems, and driveway.

The appellants' contentions are summarized below, and the full text of the contentions are also included as Exhibit Nos. 9, 10, and 11.

Both sets of appellants raise the issue of consistency with the County's LCP policies regarding visual and scenic resources. The second appellants also raise the issue of water rights and contamination of private water supply. These contentions are described below.

1. Visual Resources.

The first appellant asserts that the subject development, which is sited on the crest of a coastal ridge line within a designated highly scenic area, is inconsistent with Mendocino County LUP Policies 3.5-1, 3.5-3, 3.5-4, and 3.5-6 and Highly Scenic Area regulation Zoning Code Sections 20.504.015(B)(1), (C)(3), and (C)(8). These policies and regulations require, among other things, that new development provide for the protection of coastal views from public areas and be subordinate to the natural setting, and that development on a parcel located partly within the highly scenic areas be located on the portion outside the viewshed if possible.

The second appellants (Christiansens) contend that the proposed development would affect pristine coastal views in an agricultural, pastoral area.

2. Water Resources.

The second appellants contend that they have a deeded 80-acre water right on the subject property covering a steep hillside which is very sensitive to any use of the ground. They further contend that the proposed project may result in contamination of their drinking water by building above their water supply.

B. LOCAL GOVERNMENT ACTION

On November 3, 1997, Mendocino County's Coastal Permit Administrator approved with conditions Coastal Development Permit #45-97 (Smiley). The County then issued a Notice of Final Action on the Coastal Development Permit, which was received by Commission staff on November 25, 1997 (see Exhibit No. 8).

The coastal development permit approved by the County is for construction of a two-story, 4,710 square-foot single-family residence and garage, a two-story, 640 square-foot guest cottage, a windmill, two septic systems, and a driveway. The approval includes five special conditions. Special Condition No. 1 requires that the applicant submit a revised plan for the guest cottage which eliminates the wet bar. Special Condition No. 2 concerns the unpermitted travel trailer currently occupying the subject property. Special Condition No. 3 requires that an amendment to the coastal permit be obtained prior to erection of any additional structures or placement of exterior lighting on any portion of the site within view of Highway One. Special Condition No. 4 states that approval of the coastal permit does not authorize power poles, phone poles, etc. to the proposed structures which, due to the solar design of the project, are not necessary and were not requested by the applicant. Special Condition No. 5 requires that the existing tree mass located north of the proposed residence shall be maintained, that no trees within 200 feet of the dwelling shall be removed except to maintain or enhance the health of the stand of trees, and that the applicant shall submit a plan identifying which trees are to be removed to accommodate the guest cabin and travel trailer.

C. VALIDITY OF APPEAL

1. Appeal Process.

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603.)

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea or within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff, or those located in a sensitive coastal resource area. Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally,

developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access and public recreation policies set forth in the Coastal Act.

The subject development is appealable to the Commission because the proposed house is located in a sensitive coastal resource area. Section 20.308.110(6) of the Mendocino County Zoning Code and Section 30116 of the Coastal Act define sensitive coastal resource areas, as "those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity," including, among other categories, "highly scenic areas." Much of the subject development, including the single-family residence, would be located on the crest of a ridgeline within an area designated in the LCP on the certified land use map as a "highly scenic area," and, as such, is appealable to the Commission.

## 2. Filing of Appeal.

Consistent with section 13573 of the Commission's regulations and Zoning Code Section 20.544.020(E)(4) of the County's LCP, the appellants for the project, Mendocino Coastwatch and the Christiansens, appealed the project directly to the Commission because the County charges an appeal fee to process appeals to the Board of Supervisors.

The first appellant (Mendocino Coastwatch) submitted an appeal to the Commission office on November 13, 1997, although no appeal period for the project had yet been opened because the County's Notice of Final Action had not yet been received. The Notice of Final Action was received in the Commission office on November 25, 1997. Accordingly, the 10-working day appeal period was established from the date of receipt of the notice on November 25, 1997, consistent with section 13110 of the Commission's regulations. The Mendocino Coastwatch appeal was thus deemed filed on November 26, 1997, the first day of the 10-working day appeal period (see Exhibit No. 9). To ensure that its appeal was timely received, Mendocino Coastwatch submitted another appeal, virtually identical to the first appeal, on December 11, 1997 before expiration of the Commission's 10-working day appeal period (see Exhibit No. 10). Mendocino Coastwatch had also previously submitted its objections to the project in writing at the local hearing (see Exhibit 16). As such, Mendocino Coastwatch is an aggrieved person for purposes of appeal to the Commission consistent with section 30801 of the Coastal Act.

The second appellants (Christiansens) filed an appeal on December 9, 1977, also within the 10-working day appeal period. The Christiansens did not previously inform the County of the nature of their concerns on appeal. However, the Christiansens were unable to previously inform the County of the nature of their concerns on appeal because they did not receive notice of the local government action on the project even though they are adjacent neighbors (see Exhibit 11). Since the Christiansens were not able to previously inform the County of the nature of their concerns for good cause, they are also aggrieved persons for purposes of appeal to the Commission consistent with section 30801 of the Coastal Act.

D. PROJECT SETTING AND DESCRIPTION

The subject site is located east of Highway One, about five miles south of Elk on the top of a south-facing ridge overlooking Bridgeport Ranch. The project consists of construction of a two-story, 4,710 square-foot single-family residence and attached garage with a septic system, and a two-story, 25 foot-high, 640 square-foot guest cottage with a storage area, a deck, and a septic system; installation of a 21 foot-high windmill; and improvement of a dirt driveway. At its highest elevation from natural grade, seen from the south, the house would be approximately 31 feet in height. Seen from the north (not a public viewing area), the house would be approximately 21 feet above grade. A well and water storage tower are already present on the property. Access to the site is provided by an existing private access road which serves several properties on the ridge. The subject parcel is 182 acres in size.

The residence would be sited on the south-facing edge of an east-west trending ridgeline near the western end of the ridge. The residence would be clad with stucco and coated metal roofing. The southern elevation of the residence would be comprised primarily of windows and metal roofing. The septic system would be located west of the residence. A 21 foot-high windmill would be erected northeast of the residence. The guest cottage would be located approximately 800 feet east of the residence, with a second septic system installed to serve the guest cottage. The existing driveway would be extended and improved with a rocked surface to be a total of approximately 1,000 feet long.

The residence is designed to incorporate both passive and active solar energy components. The south/southwesterly orientation of the residence provides maximum solar exposure. The location on the southerly crest of a grassy ridge precludes any shading by vegetation and accommodates the two-story design. The lap pool on the lower level provides mass to capture passive solar energy, while most of the living quarters are on the upper level (see Exhibit No. 5).

The southerly facades of the house are clad with glass to maximize solar gain. A portion of the metal roof would be laminated with photovoltaic cells to generate electricity for the residence. A windmill would be installed to generate electricity for the pump and water system. The applicant does not propose to utilize electricity from off-site sources (i.e., no power lines are proposed).

E. SUBSTANTIAL ISSUE ANALYSIS

1. Appellants' Contentions That Are Related to LCP Policies And Raise Substantial Issue.

Public Resources Code section 30625(b) states that the Commission shall hear an appeal unless it determines:

"With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603."

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Cal.Code Regs., tit. 14, section 13115(b).) Even where the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development as approved by the County presents a substantial issue.



a. Visual Resources.

The first appellant asserts that the subject development, which is a two-story residence sited on the crest of a coastal ridge line within a designated highly scenic area, is inconsistent with Mendocino County LUP Policies 3.5-1, 3.5-3, 3.5-4, and 3.5-6 and Highly Scenic Area regulation Zoning Code Sections 20.504.015(B)(1), (C)(3), and (C)(8).

The first appellant further asserts that since the subject parcel is 182 acres in size, the residence could be resited to another location, reduced in height, redesigned to reduce the impacts on the public's viewshed, or could utilize other alternative energy methods. The appellant believes that in approving the project, the Coastal Permit Administrator placed too much weight on the "owner's desire to maximize solar exposure" for the two-story home sited on the crest of the ridge line, in stating that "there are no feasible building sites outside the view shed from Highway One."

The second appellants contend that the proposed development would adversely affect magnificent, pristine coastal views in an agricultural area, and will destroy the "peace and pastoral ambiance which has been carefully preserved, unobtrusively, over time."

b. Summary of LCP provisions.

LUP Policy 3.5-1 and Zoning Code Section 20.504.015(C)(3) state that the scenic and visual qualities of Mendocino County coastal areas shall be considered and protected as a resource of public importance, and that 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. New development in highly scenic areas shall be subordinate to the character of its setting. [Emphasis added.]

LUP Policy 3.5-3 and Zoning Code Section 20.504.015(C)(1) state that any development permitted in designated Highly Scenic Areas shall be subordinate to the character of its setting, and shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes. [Emphasis added.]

LUP Policy 3.5-4 and Section 20.504.015(C)(5) and (8) state that buildings that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists. Visual impacts of development on ridges should be minimized by (a) prohibiting development that projects above the ridgeline; (b) if no alternative site is available below the ridgeline, development shall be sited and designed to reduce visual impacts by utilizing existing vegetation, structural orientation, landscaping, and shall be limited to a single story above the natural elevation; and (c) by prohibiting removal of tree masses which destroy the ridgeline silhouette. [Emphasis added.]

LUP Policy 3.5-6 and Zoning Code Section 20.504.015(B)(1) state that development on a parcel located partly within the highly scenic areas delineated on the Land Use Maps shall be located on the portion outside the viewshed if feasible. [Emphasis added.]

Section 20.504.015(C)(3) states that new development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings.

Section 20.356.040 states that the building height limit for AG Districts shall be 28 feet above natural grade for Highly Scenic Areas east of Highway One. Section 20.364.040 states that building height limit for TP Districts shall be 28 feet above natural grade for Highly Scenic Areas east of Highway One.

c. Discussion.

The subject development approved by the County would be located on the top of a south-facing ridge east of Highway One, south of Elk, within a portion of the coast that is very sparsely developed, with grazing and row crops occurring on the narrow coastal shelf. The steep ridges provide a dramatic backdrop to the coastline, rising to elevations of about 1,600 feet. The ridges have dense stands of timber in the gulches and on the upper slopes, but are otherwise covered with grasses that are green in the spring and winter and a golden color in the summer and fall.

All portions of the 182-acre parcel that are visible from Highway One are within the designated Highly Scenic Area. The parcel comprises a northwest-trending ridge at an elevation of 1,300 feet, with approximately 130

acres sloping down to about 600 feet in elevation to the south and west, and approximately 50 acres sloping to the north. Much of the property is located within the Highway One viewshed, with one of the most prominent locations being the ridgeline upon which the development would be located.

In its current planned location on top of and spilling down the side of the ridge, and given its large size and two-story height, the development would be exceptionally visible to vehicles traveling north on Highway One. For nearly ten miles the views of the house would contrast greatly with existing views of the otherwise pastoral, rural viewshed. For northbound travelers on the highway, the ridge and house site first become visible at the Garcia River floodplain (south of Manchester) and, with the exception of a few curves and dips in the highway, the house site remains visible until about .5 mile north of Bridgeport, a total distance of approximately 9.5 miles. The building site is particularly prominent when viewed from the segment of Highway One between Irish Beach and Bridgeport.

The Commission finds that the project as approved by the County raises a substantial issue with regard to consistency with a number of LCP policies regarding protection of visual and scenic resources. A substantial issue is raised as to whether the development as approved by the County would be visually compatible with the character of the surrounding area and subordinate to the character of its setting as required by LUP Policies 3.5-1 and 3.5-3, and Zoning Code Section 20.504.015(C)(1). As noted above, the approved project would impose a large house within a designated highly scenic area on an undeveloped grassy ridge that forms a dramatic and scenic backdrop to the coast and is visible for miles. As approved, the house would be prominent within this setting.

A substantial issue is also raised regarding whether the development as approved by the County would be sited and designed to protect views to and along scenic coastal areas from public areas including highways, as required by LUP Policies 3.5-1 and 3.5-3. Instead of siting the house out of the viewshed screened behind the numerous existing trees on the property, the house would be sited on one of the most prominent parts of the property as viewed from Highway One using a solar design that depends on maximum exposure.

The project also raises a substantial issue with regard to conformity with LUP Policy 3.5-4 and Zoning Code Section 20.504.015(C)(5) and (8), as it would not be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area, and would not avoid development in the middle of a large open area. Instead, the house would be located along the crest and descending down the face of an open grassy ridge, approximately 90 feet away from any wooded areas of the property. (Exhibit 4.)

In addition, the approved project raises substantial issue of conformity with Policy 3.5-4 and Section 20.504.015(C)(5) and (8) as the development would not minimize visual impacts on ridges by prohibiting development that projects above the ridgeline. At the house's upper end, the portion that would rest on top of the ridge, the house would rise approximately 21 feet above the ridgeline.

The approved project raises further substantial issues of conformity with Policy 3.5-4 and Section 20.504.015(C)(5) and (8) as the development would not be sited and designed to reduce visual impacts by utilizing existing vegetation, structural orientation, landscaping, and is not limited to a single story above the natural elevation. The proposed house would be located away from the extensive wooded areas of the property on the grassy crest of a ridge, oriented in a manner that would face motorists for many miles as they travel northbound on Highway One. No landscaping that would screen the house from view is proposed as the applicants seek to maximize the southwest exposure to the sun to optimize solar energy collection. Portions of the house would be two-story, including a portion of the side of the house that would be visible from Highway One. (Although the County of Mendocino stated that the house would be "one story (21 feet) above natural elevation," the building plans show living spaces on two levels, one above the other, and thus the Commission considers the projects to be a two-story house.)

Further, the approved project raises a substantial issue with regard to conformity with Zoning Code Section 20.356.040, as the proposed two-story residence is 31 feet high from natural grade at its highest elevation, three feet higher than the 28 foot limit specified in Section 20.356.040. Finally, the approved project raises a substantial issue with regard to conformity with LUP Policy 3.5-6 and Zoning Code Section 20.504.015(B)(1), as its site is not located on the portion of the property outside the highly scenic viewshed but rather is in a prominent location within the designated Highly Scenic Area.

Thus the Commission finds that the project as approved by the County raises a substantial issue with respect to conformance of the approved project with the LCP policies regarding visual and scenic resources.

## 2. Appellants' Contentions That Do Not Raise Substantial Issue.

One of the contentions raised by the second appellants does not raise substantial issue because it does not demonstrate that the development is inconsistent with the County's certified LCP or with the public access policies of the Coastal Act. This contention is discussed below.

a. Water Resources.

The second appellants (Christiansens) contend that they have a deeded 80-acre water right on the subject property covering a steep hillside which is very sensitive to any use of the ground. They further contend that the proposed project may result in contamination of their drinking water by building above their water supply.

- b. Discussion: The certified LCP contains no specific policy language addressing protection of private water rights or contamination of private water supply. In fact, the project has been reviewed and approved by the Mendocino County Department of Environmental Health, who found no health hazard posed by the proposed development. Thus, the Commission finds that the appellants' above-referenced contention does not raise a substantial issue.

3. Conclusion.

The Commission finds that, as discussed above, the appeal raises a substantial issue with respect to conformance of the approved project with the visual and scenic resource policies of the Mendocino County certified LCP.

PART TWO - DE NOVO ACTION ON APPEAL

Notes

1. Procedure.

If the Commission finds that a locally approved coastal development permit raises a Substantial Issue with respect to the policies of the certified LCP or the public access and public recreation policies of the Coastal Act, the local government's approval no longer governs, and the Commission must consider the merits of the project with the LCP de novo. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application.

2. Incorporation of Substantial Issue Findings.

The Commission hereby incorporates by reference the Substantial Issue Findings above.

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STAFF RECOMMENDATION OF DENIAL DE NOVO:

The staff recommends that the Commission adopt the following resolution:

MOTION:

I move approval of Application No. A-1-MEN-97-79.

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a "No" vote, resulting in adoption of the following resolution and findings. To pass the motion requires an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT:

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform with the policies of the County of Mendocino certified Local Coastal Program. Granting of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. Findings and Declarations.

The Commission hereby finds and declares as follows:

1. Project and Site Description.

As noted in the Project and Site Description section of the Substantial Issue portion of this report (which is hereby incorporated by reference), the subject site is located east of Highway One, about five miles south of Elk on the top of a south-facing ridge overlooking Bridgeport Ranch. The project consists of construction of a two-story, 31 foot-high, 4,710 square-foot single-family residence and other improvements, as described above.

The subject property is designated in the County's LUP as AG (Agriculture) and is split-zoned Agriculture/Timberland Production (AG/TP). The AG zoning allows one residential unit per sixty acres, while the TP zoning allows one unit per 160 acres. Both AG and TP zones allow a 28 foot-high building height limit from natural grade. The subject parcel is approximately 182 acres in

size, and thus is a legal, conforming lot. A single-family residence and accessory structures, including a windmill and a guest cottage, are allowable as principally permitted structures within the AG district.

The Northwest Information Center of the Historical Resources Information System found that the project area has the possibility of containing unrecorded archaeological sites and recommended further study. The Mendocino County Archaeological Commission determined that no survey was necessary, but noted that future development activity on other portions of the property may require a survey.

2. Visual Resources.

a. LCP Policies.

The following LCP provisions which address scenic and visual resources, must be addressed in relationship to the proposed project:

<u>Land Use Plan</u>	<u>Zoning Code</u>
Policy 3.5-1	Sec. 20.504.015 (c) (3)
Policy 3.5-3	Sec. 20.504.015(c)(1)
Policy 3.5-4	Sec. 20.504.015(c)(5)and (8)
Policy 3.5-6	Sec. 20.504.015(B)(1)
	Sec. 20.504.015(C)(3)
	Sec. 20.356.040

These Policies are summarized on page 8 above (E. Substantial Issue Analysis, (b)Summary of LCP Provisions), and that discussion is incorporated here by reference.

b. Inconsistency of Proposed Project With Visual Resource Policies.

As noted in the Substantial Issue portion above, the subject development approved by the County would be located on the top of a south-facing ridge east of Highway One, south of Elk. This portion of the coast is very sparsely developed, with grazing and row crops occurring on the narrow coastal shelf. The steep ridges provide a dramatic backdrop to the coastline, rising to elevations of about 1,600 feet. The ridges have dense stands of timber in the gulches and on the upper slopes, but are otherwise covered with grasses that are green in the winter and spring and a golden color in the summer.

The subject parcel comprises a northwest-trending ridge at an elevation of 1,300 feet, with approximately 130 acres sloping down to about 600 feet in elevation to the south and west, and approximately 50 acres sloping to the north. All portions of the 182-acre parcel that are visible from Highway One, including the proposed house site, are within the designated Highly Scenic Area. Much of the property is located within the Highway One viewshed, with one of the most prominent locations being the ridgeline upon which the proposed development would be located.

In its current planned location on top of the ridge and spilling down the side of the ridge, and given its large size and two-story height, the proposed development would be exceptionally visible to vehicles traveling north on Highway One. For nearly ten miles, the views of the home would contrast greatly with an existing views of the otherwise pastoral, rural viewshed. For northbound travelers on the highway, the ridge and house site first become visible at the Garcia River floodplain (south of Manchester) and, with the exception of a few curves and dips in the highway, the house site remains visible until about .5 mile north of Bridgeport, a total distance of approximately 9.5 miles. The proposed building site is particularly prominent when viewed from the segment of Highway One between Irish Beach and Bridgeport.

The surrounding area is agricultural in character and very sparsely developed. Almost all existing development is located on the narrow coastal terrace, with the exception of two residences on the easterly ridges. Those two residences offer lessons regarding visual resource protection and development on ridgelines.

One of these residences (Waidhofer) is located south of the project site at about the same elevation as the proposed project, but is situated in a wooded area and is screened by tall trees (see Exhibit No. 3). As a result, the house is barely visible from Highway One. The Commission approved the Waidhofer house in 1991 (Coastal Permit No. 1-91-171). The other residence (Raabe/Collins) is also south of the subject site and is located on a knoll at an elevation of about 500 feet. Although the house is set back from the edge of the slope, is one-story in height, and uses earth-tone materials, it is quite visible from the Highway and is discordant with the surrounding area. The house is silhouetted on the ridgeline and dominates the landscape in the area.

Commission staff wrote a letter to the County (see Exhibit No.12) prior to approval of the Raabe/Collins project indicating concerns with the impacts of the development on visual and scenic resources. Staff recommended mitigation measures to reduce the impacts, and make the project more consistent with the policies of the LCP, such as reducing the size of the residence, requiring



landscape screening, relocating the house to a less prominent position, and requiring design restrictions. The Raabe/Collins house was approved by the County in 1993 (County CDP# 19-92 in a manner that did not incorporate Commission staff's recommendations. The proposed development now before the Commission would be even more visible than the Raabe/Collins project, as it would be located on the crest of the ridge and stepped into the face of the hillside, and would be a two-story house, reaching a height of 31 feet above grade.

Inconsistency With LUP Policy 3.5-6 and Zoning Code Section 20.504.015(B)(1):  
Development in Highly Scenic Areas When Alternatives Exist.

The proposed development is inconsistent with LUP Policy 3.5-6 and Zoning Code Section 20.504.015(B)(1), which state that development on a parcel located partly within the highly scenic areas delineated on the Land Use Maps shall be located on the portion outside the viewshed if feasible.

The proposed development site is in a prominent location within the highly scenic area. As noted previously, the highly scenic area east of Highway One in the vicinity of the site is limited to areas that are visible from Highway One. The subject property (which is 182 acres in size) also contains a large amount of acreage that is not visible from the highway because it is screened by trees and/or located behind ridgelines or set back sufficiently from ridge crests. As the subject property is partly within and partly outside the highly scenic area, LUP Policy 3.5-6 and Zoning Code Section 20.504.015(B)(1) are applicable to the project. These policies mandate that development shall be located on the portion of the property outside the viewshed, if feasible.

The steep topography of most of the property makes most of the parcel unsuitable for building. While the property is 182 acres, much of the parcel contains slopes of over 35% that present significant development constraints. However, the Commission finds that even though much of the property is too steep to build on, there are still feasible locations outside the viewshed on the property to construct the amount of development proposed by the applicants including a 4,710 square-foot single-family residence and garage, a 640 square-foot guest cottage, a windmill, two septic systems, and a driveway.

The principal area to locate the proposed development outside the highly scenic area is the relatively flat area near the ridgetop within the wooded area east of the applicants' proposed building site. One specific site within this area is the site where the applicants propose to locate the guest cottage (see Exhibit No. 4), where the unpermitted trailer is now sited. In this location, out of the highly scenic area, the development would be screened by trees and would be virtually invisible from Highway One, as is the nearby Waidhofer house.

To accomplish siting the main house and proposed accessory structures in this location, some tree removal would be necessary; in its findings for approval of the project, the County found that as much as two or three acres of trees may need to be removed. In addition to making room for the main house, tree clearing would be necessary to accommodate a larger or second septic system (See the letter of October 9, 1997 from the applicants' Registered Environmental Health Specialist attached as Exhibit 15). However, the Commission finds that even if a certain amount of tree removal is necessary, the tree removal would be consistent with the LCP because (a) the conifer and other trees in the area are not part of any Environmentally Sensitive Habitat Area (ESHA) and thus need not be afforded special protection; and (b) the area is zoned in a manner which allows logging as a principally permitted use. The entire property is split-zoned Agriculture/Timberland Production, with this alternative site in the vicinity of the proposed guest house being zoned Timberland Production, which allows logging as a principally permitted use. Furthermore, if the applicants wanted to reduce the amount of tree clearing necessary to accommodate the project, the applicants could also choose to consolidate the development and combine the guest house with the main house or simply reduce the size of the large main house that is proposed.

The principal objection the applicants have to this alternative site is that the site is not as optimal for solar energy use as the proposed building site with its open grassy setting and southwest exposure. The applicants assert that because of the cost of extending PG&E service to the house site (\$528,000), solar power is the only alternative, and the house must be sited at the optimal location for use of solar energy. The applicants state that the alternative site would not provide sufficient solar access in the winter. The applicants prepared a composite of contour intervals, slope, shading, road access, and exposure to the sun in support of their position that there are only two possible building sites, both located in the Highly Scenic Area. (See Exhibit No. 15.) However, the composite is based on the assumption that a site that did not meet any one of the criteria would be unacceptable. Two of the criteria chosen by the applicants are shading and exposure to sun, and are based on the existing forested nature the property. If one or both of the criteria of shading and exposure to sun were eliminated from the composite, the composite would show many more possible alternative sites for development, including the guest cottage site identified above.

The Commission finds that to the extent that solar energy cannot be relied upon at the alternative site to supply all of the energy needs of the development, there is another way to power the home that does not require expensive extensions of PG&E service. The use of an electrical generator is a feasible, low-cost alternative power source that has been used successfully by

the applicants' neighbors, the Waidhofers, who built a nearby home outside the Highly Scenic Area that is screened by trees from Highway One.

Furthermore, the use of solar energy would not be precluded at the alternative site. Though not the optimal site for solar access in comparison with the building site proposed by the applicants, some solar energy use augmented by generators and wind power when necessary (such as in the winter) would be feasible at the alternative site. In fact, the applicants' architect has indicated to Commission staff that the guest cottage that the applicants have proposed in this alternative site is designed to be partially served by solar energy, demonstrating that this site could support a structure employing some solar energy features. If tree removal would be necessary within the wooded area to provide better solar access while still leaving a strip of trees to screen the development from Highway One, such tree removal would be allowable under the certified LCP as noted above.

The applicants could also employ the use of free standing solar panels located on parts of the property with better southwest exposure and connected to the house via wires. The applicants' architect has indicated to Commission staff that such a design is possible, although the design is less efficient than locating the panels directly on the structure and would require expensive wiring. Solar panels set against a backdrop of evergreen trees would be much less visible from Highway One and public areas than the house proposed by the applicants because the solar panels would be much smaller than the house itself. Therefore, the Commission finds that the proposed residence could be redesigned and relocated and still utilize solar energy, albeit not as optimally as at the exposed building site proposed by the applicants.

Another possible way to provide energy to the site might be to obtain easements from neighbors for the installation of power lines so that the lines would not need to run up the entire length of the access road, but could take a shorter, less expensive route. Such a routing could potentially reduce the total length of the extension by several miles, significantly reducing the cost of providing service. The Raabe/Collins house to the south is served in this manner by PG&E power lines that extend via easement over a neighbor's property. The Commission acknowledges, however, that this alternative is not feasible at this time, as it would require the agreement of a willing neighbor to sell an easement, and there is no way of knowing at this time if such a sale could be arranged. Nonetheless, the idea could be pursued by the applicants if they choose not to follow the feasible alternative described above of building in the site of the proposed guest cottage using an electrical generator, or solar energy augmented when necessary by the use of a generator.

As there are feasible alternatives available to locate the proposed development outside of the viewshed of the highly scenic area, the Commission finds that the proposed development is inconsistent with LUP Policy 3.5-6 and Zoning Code Section 20.504.015(B)(1).

Inconsistency With LUP Policy 3.5-4 and Zoning Code Section 20.504.015(C)(5) and (8): Minimizing Visual Impacts of Development in Highly Scenic Areas and on Ridges.

The project is also inconsistent with LUP Policy 3.5-4 and Zoning Code Sections 20.504.015(C)(5) and (8), which state that buildings that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area, and that except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists. These sections also require that visual impacts of development on ridges should be minimized by siting and designing development to reduce visual impacts by utilizing existing vegetation, structural orientation, landscaping, and should be limited to a single story above the natural elevation.

The proposed house would be located on the crest and down the face of an open grassy ridge within the highly scenic area. This proposed siting of the house would be inconsistent with the the provisions of the policy listed above which calls for locating development within highly scenic areas near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area.

The subject property does not extend down to the toe of the ridge and the slopes of the ridge are generally too steep for development. Thus, it is not possible for the applicants to site the proposed development at the toe of the slope or below the ridge. However, as discussed in the previous section, there is a feasible alternative development site within a wooded area to the east of the applicants' proposed building site.

The proposed development is also inconsistent with the requirements of the above listed sections that the visual impacts of development on ridges should be minimized by siting and designing development to reduce visual impacts by utilizing existing vegetation, structural orientation, and landscaping. To maximize solar access, the applicants have chosen to locate the house away from existing vegetation, orient the house to provide maximum exposure to the southwest in a manner that also maximizes the visibility of the house from Highway One, and to not screen the house from view of Highway One by planting landscaping. As discussed previously, there is a feasible alternative location for the proposed house where existing vegetation could be utilized to

reduce visual impacts. Furthermore, even in the proposed location, vegetative screening could be utilized to reduce the visual impacts and still allow for the use of solar energy, even if not the most optimal use of solar energy. Because the applicants chose to solely optimize solar energy rather than site and design the residence where solar energy and visual resources could both be accommodated, the applicants have neither located the house near existing vegetation, oriented the house in a manner to avoid visibility from Highway One, nor proposed landscaping to screen the house.

Furthermore, the proposed development is inconsistent with the provision of the above listed provision that states that "if no alternative site is available below the ridgeline, development shall be...limited to a single story above the natural elevation..." The applicants assert that only one-story of the proposed house projects above grade (21 feet) as the lower story is dug into the hillside, implying that the house should be found consistent with the policy.

Contrary to this assertion, two-stories of the house do in fact project above grade on the southwest side of the house, the portion of the house that creates the greatest visual impact (see Exhibit No. 6). The lower story is only partially dug into the hillside. In effect, the applicants propose to cut a step into the hillside and place the lower portion of the house on the step, resulting in the northern side of the lower portion of the house abutting the excavated hillside and the southern and southwestern sides of the house (the sides visible from Highway One) being fully exposed to public view. The southern and southwestern sides of the house will reach a maximum height of 31 feet above grade. Thus, the proposed house will be inconsistent with the LUP Policy 3.5-4 and Zoning Code Section 20.504.015(C)(8) as the house will not be limited to a single story above the natural elevation (there will be two-stories), and will exceed height limitations above natural grade, thereby failing to minimize visual impacts.

As the proposed development does not conform with the requirements of LUP Policy 3.5-4 and Zoning Code Section 20.504.015(C)(8) that it be located in or near the edge of a wooded area, that it minimize visual impacts by utilizing existing vegetation and landscaping, and that it be limited to one-story, the Commission finds that the proposed development is inconsistent with these provisions.

Inconsistency With LUP Policies 3.5-1 and 3.5-3 and Zoning Code Sections 20.504.015(C)(1) and (3): Project Not Designed to Protect Views and be Subordinate to the Character of the Area.

The proposed development is inconsistent with LUP Policy 3.5-3 and Zoning Code Section 20.504.015(C)(1) because in its prominent location at the top of a ridge in a virtually undeveloped scenic area, the proposed development would not be sited and designed to protect views to and along the ocean and scenic coastal areas, would not be visually compatible with the character of surrounding areas, and, in particular, would not be subordinate to the character of its setting, inconsistent with LUP Policy 3.5-1.

Due to its location within the Highly Scenic Area, according to these policies, the project must be "subordinate" to its natural setting. While the trees behind it would provide some backdrop, to be truly "subordinate" the house would need to be behind the trees, and therefore screened by the trees, rather than sited in front of them. Furthermore, much of the house would not have trees as a backdrop but, as the lower portion of the house spills down the hillside, would have the grassy meadow as its backdrop.

The applicant has asserted that the background stand of redwood trees at the proposed building site will significantly soften the visual impact of the proposed home, if built as proposed. However, softening the visual impact does not mean the appearance will be subordinate to the character of the area as the policies require. Further, whatever softening effect the trees provide would only apply to the top of the house, while the lower parts of the house will have a backdrop of grassland, since the lower portion of the house is stepped into the hillside. Because the grass turns from green in the spring to gold or yellow in the summer, one cannot paint the surfaces of the house a single color that would blend in with the grassland year-round. Thus, the lower portions of the house will not be "softened," but will stand out against the hillside at least for some portion of the year, even if they were painted a color that matched perfectly the green shade of the grassland in the spring or the gold color of the grassland in the summer.

The applicants further assert that the proposed house will not create any reflections visible from Highway One or from any public access area due to the angles of reflectivity in relation to the highway. Assuming their reflectivity analysis is correct, there may not be reflective glare visible from Highway One or any public access area. However, whether or not there is actual glare from the house, the house would still not be "subordinate" to the character of the landscape, as the proposed two-story, 4,700 square-foot structure sited on the top of the ridge and spilling down the side of the hill would still be visually prominent in the proposed location and would dominate its surroundings.

As the proposed development will not be sited and designed to protect views to and along the ocean and scenic coastal areas, will not be visually compatible with the character of surrounding areas, and, in particular, will not be subordinate to the character of its setting, the Commission finds that the proposed development is inconsistent with LUP Policy 3.5-1, 3.5-3, and Zoning Code Section 20.504.015(C)(1) and (3).

Inconsistency With Zoning Code Section 20.356.040: Not Conforming to Height Limit.

In addition, the project is inconsistent with Zoning Code Section 20.356.040, which requires a 28-foot building height limit from natural grade for Highly Scenic Areas east of Highway One in AG and TP Districts. Although the residence would be only 21 feet high when viewed from the north or northeast, it would be approximately 31 feet high at its highest elevation, three feet higher than allowable in the LCP.

3. Solar Energy.

Both the applicant and the County's Coastal Permit Administrator make the argument that there are no feasible building sites outside the viewshed from Highway One that would allow a maximally efficient solar design. The applicants cite LUP Policy 3.11-12, which states that the County shall encourage the development and use of alternative sources of energy, such as wind, solar, wave, and biomass and cogeneration to meet the coast's energy needs. However, encouraging the development and use of alternative sources of energy does not mean that the County must approve only that development alternative that optimizes solar energy use. As explained previously, it is feasible to use solar energy at the alternative site identified above for the project, albeit less optimally. Approving a project that utilizes solar energy at an alternative site would still comply with the policy as it would encourage the use of solar energy. Furthermore, even if the use of solar power were not feasible in the only available alternative site, the cited policy does not mandate that the County must approve any project that includes a solar energy component.

The applicant also references a goal included in the Land Use Element of the Mendocino County General Plan which states that the County "shall make energy efficiency a major consideration in its land use...decisions." This goal of the General Plan is not part of the certified LCP. The Commission has thus not reviewed the consistency of this goal with the Coastal Act and its relation to the protection of coastal resources. Thus, this General Plan goal is not a standard of review for this application. Rather, it is the LCP which is the standard of review in the coastal zone, and wherein specific policies have been certified that protect coastal resources.

The applicant also refers to the California Solar Rights Act, which is referenced in the Mendocino County General Plan, Land Use Element. The General Plan states that "the County has additional authority to guarantee a solar system owner's right to sunlight through two state laws enacted in 1978: the Solar Rights Act and the Solar Shade Act." The Solar Rights Act requires that local ordinances should not have the effect of:

"prohibiting or unreasonably restricting the use of solar energy systems;...This section shall not apply to ordinances which impose reasonable restrictions on solar energy systems. However...reasonable restrictions on solar energy system are those restrictions which do not significantly increase the cost of the system or significantly decrease its efficiency, or which allow for an alternative system of comparable cost and efficiency."

The applicants assert that the California Solar Rights Act indicates that the County cannot unreasonably restrict the use of solar energy systems, implying that denying this project would violate the Solar Rights Act. However, the Commission finds that the above-referenced restriction on local governments in no way governs the Commission's exercise of state law authority. The Solar Rights Act applies to the adoption of local ordinances, not to the approval or denial of coastal development permit applications. Moreover, the Commission also finds that denial of this particular house project does not unreasonably ban or restrict the use of solar power on the property. The Solar Rights Act does not require that local governments or the Commission grant a permit for development that utilizes solar power despite whatever other impacts the development might have on the environment. A house proposed at an alternative site (described above) could still utilize solar power, even though the alternative site may not be as optimal for solar energy usage as the applicants' currently proposed site.

While the County's LCP encourages the use of alternative energy sources, it does not require them. New development in highly scenic areas, however, must satisfy prescribed standards to minimize visual impacts. The proposed development does not meet these criteria and is not consistent with the visual and scenic resource policies of the LCP.

#### 4. Denial of Development.

The applicants contend that to deny their proposed house would be contrary to the portion of LUP Policy 3.5-4 that states that "Nothing in this policy shall preclude the development of a legally existing parcel." The denial of this particular house project does not mean that no house could be approved on the



property. The Commission has identified a feasible alternative site that would allow for development of the parcel with a home consistent with the LCP, and the applicants are free to submit a new application to the County for approval of a house in this alternative site.

5. 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. In this case, the Commission finds that there is a feasible alternative not proposed by the applicant which would substantially lessen the significant adverse impacts on visual and scenic resources. The Commission thus finds that the proposed project can not be found to be consistent with the requirements of the Coastal Act and does not conform to the requirements of CEQA.

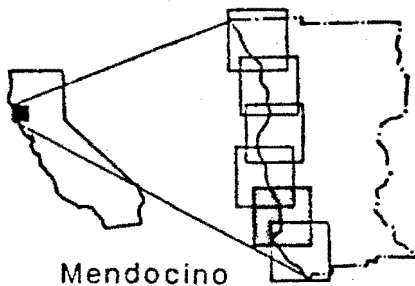


EXHIBIT NO. 1

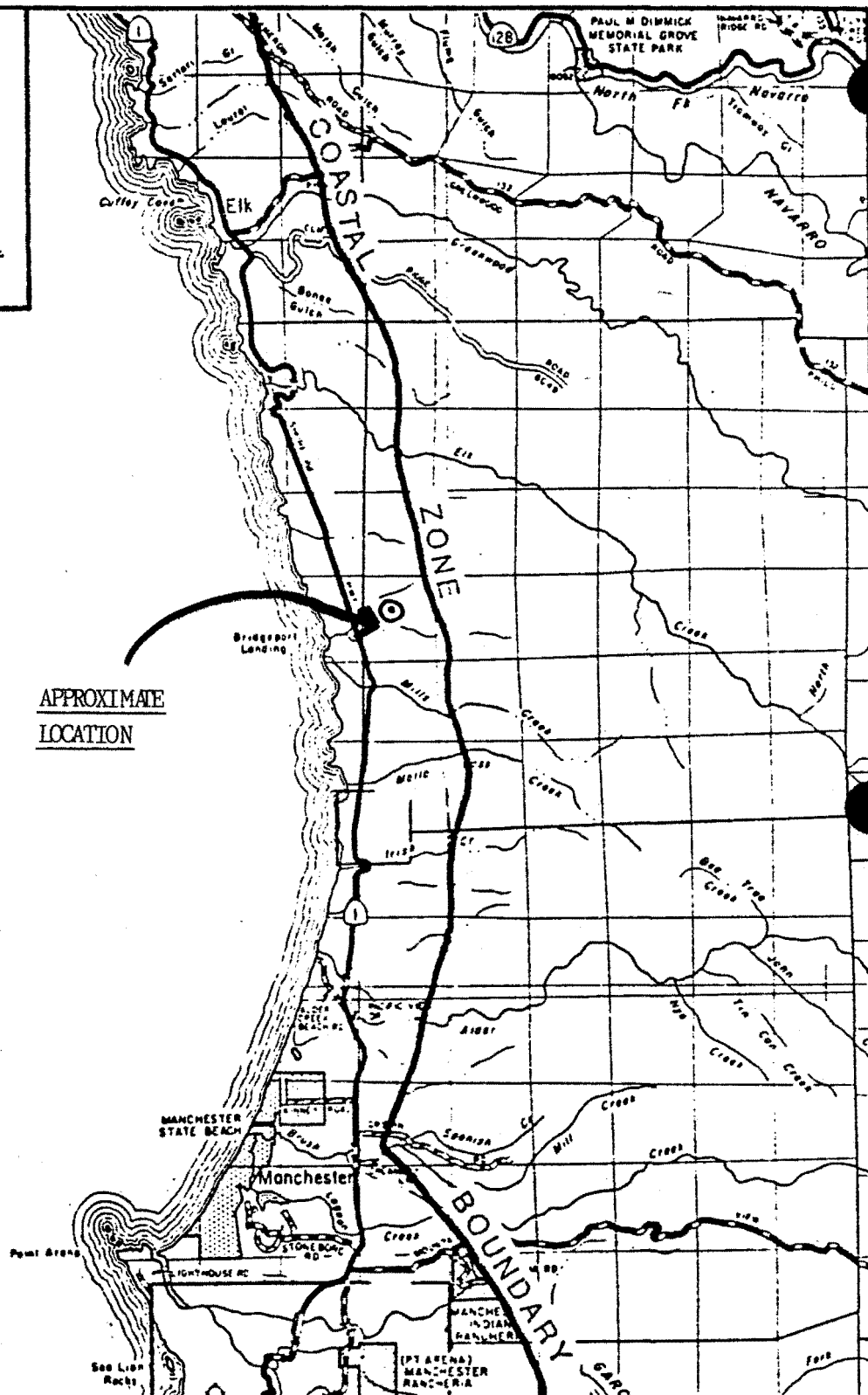
APPLICATION NO.

A-1-MEN-97-79 (SMILEY)

LOCATION MAP



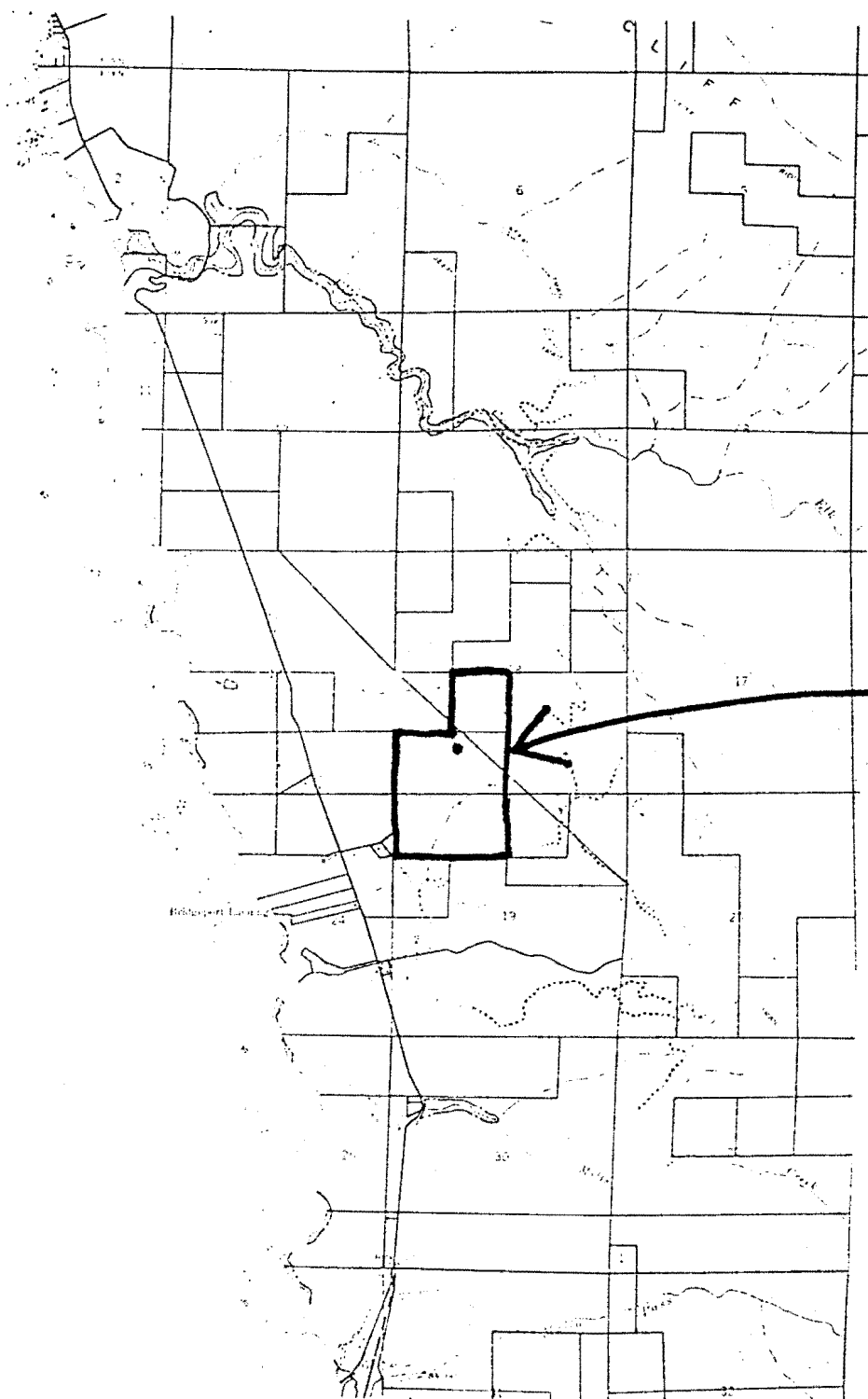
California Coastal Commission



California Coastal Commission

LOCATION MAP





PROJECT  
LOCATION

EXHIBIT NO. 2

APPLICATION NO.  
A-1-MEN-97-79

SMILEY

Vicinity Map

LOCATION MAP

High  
Locations  
A-E

Proposed Smiley Residence (CDP 45-97)

Existing Waidhofer residence (CC 1-91-171)  
(screened by trees)

Existing Runkle residence (CDP 19-92)

EXHIBIT NO.	3
APPLICATION NO.	A-1-MEN-97-79
SMILEY	
Adjacent Development	

EXHIBIT NO. 4

APPLICATION NO.  
A-1-MEN-97-79

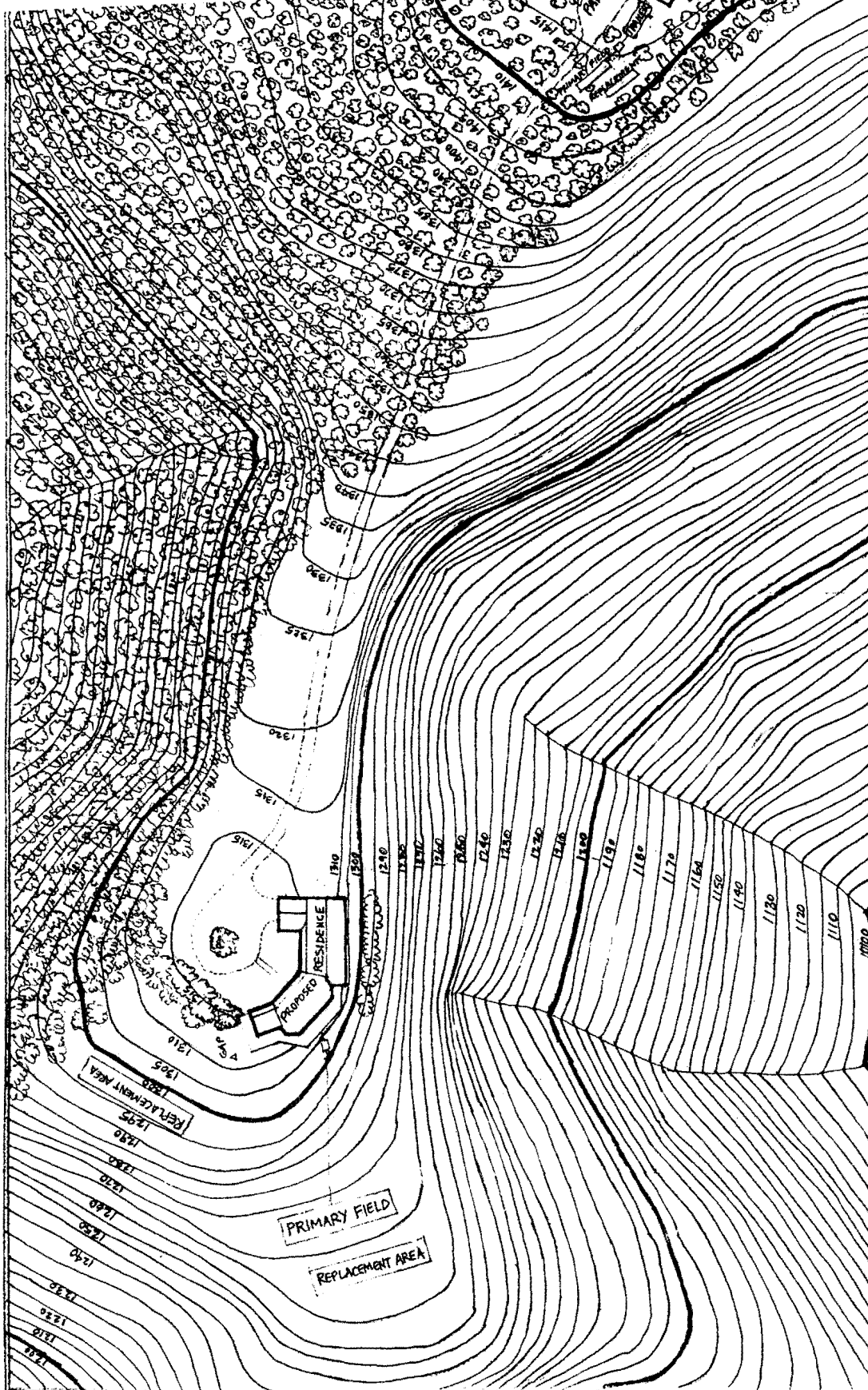
SMILEY

Site Plan



RESIDENCE & GUEST CABIN FOR: ROBERT & JUANNE SMILEY  
9105 HIGHWAY 1, ELK, CALIFORNIA 95432

SITE PLAN



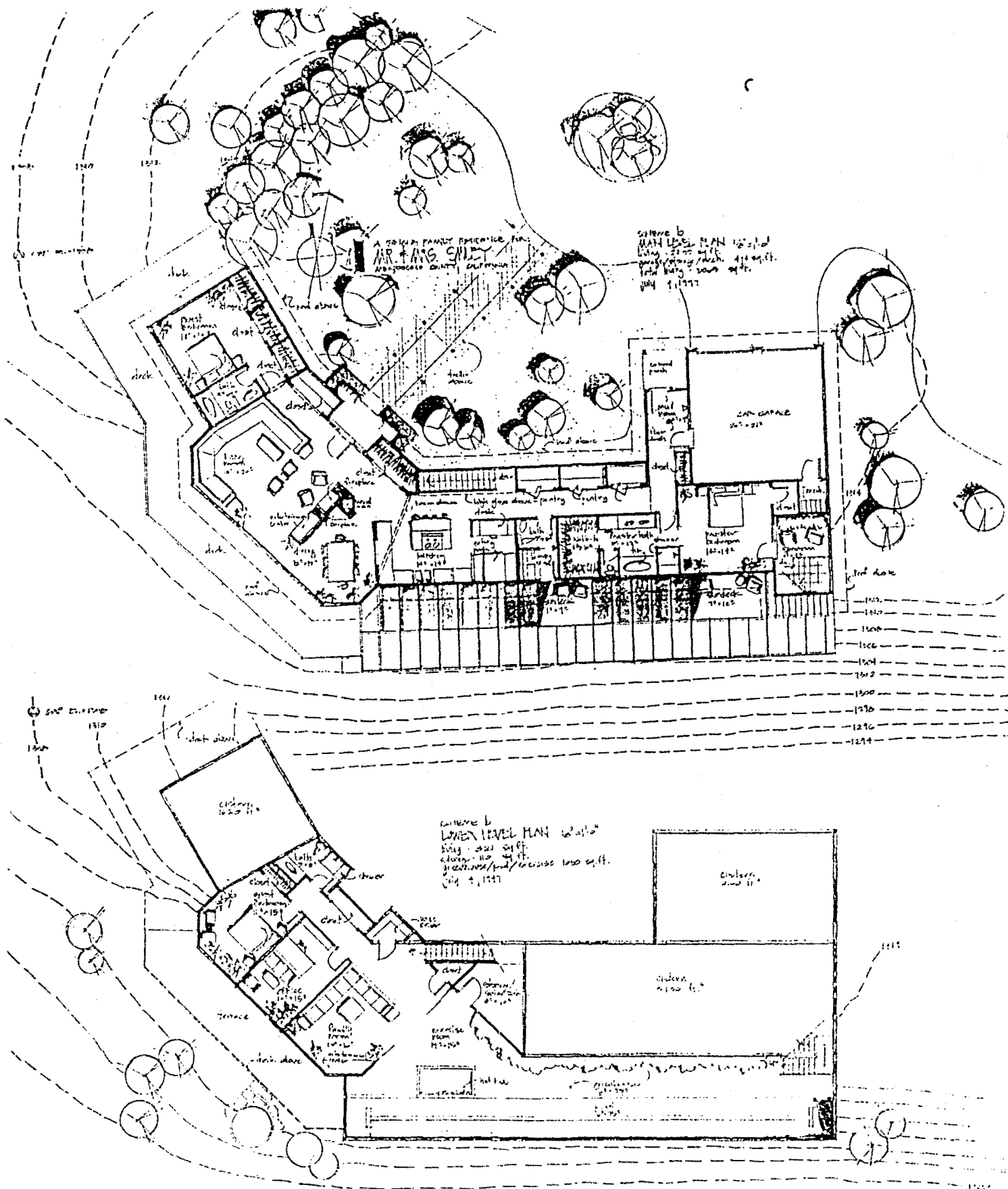
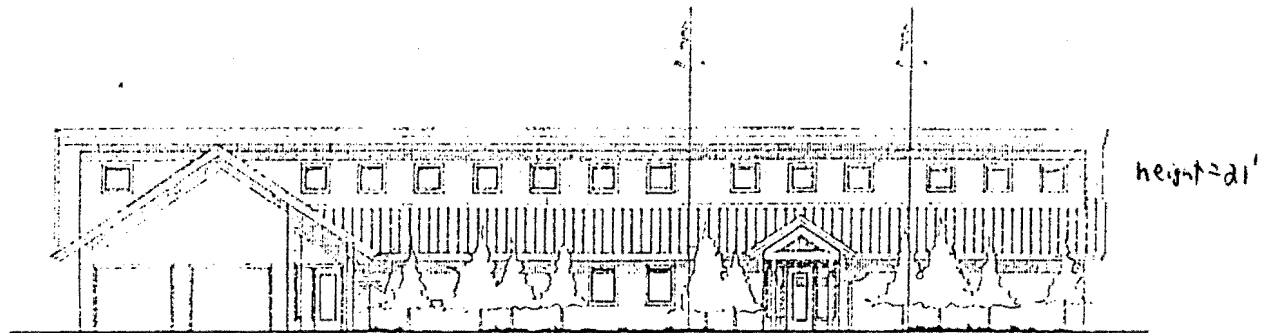


EXHIBIT NO.	5
APPLICATION NO.	A-1-MEN-97-79
SMILEY	
Floor Plans: Residence	

FLOOR PLANS: RESIDENCE

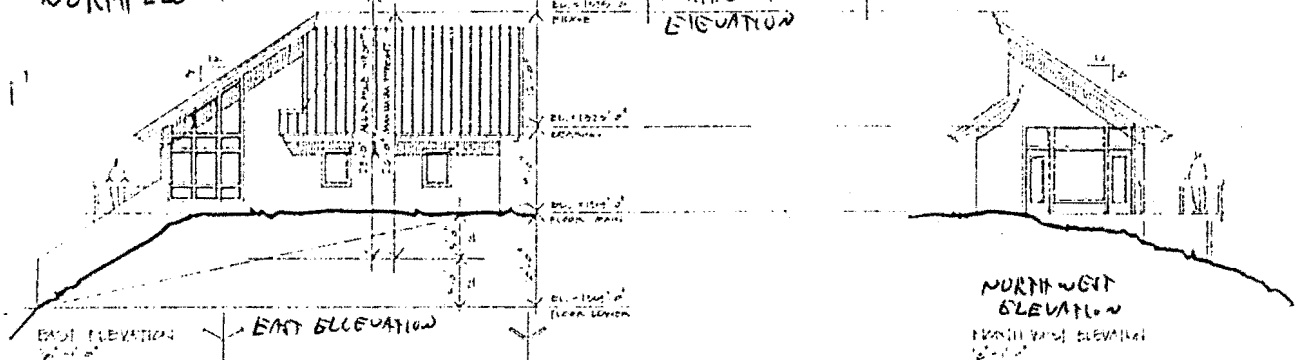


NORTH ELEVATION

NORTH EAST ELEVATION  
NORTH EAST  
ELEVATION

NORTH EAST ELEVATION  
NORTH EAST ELEVATION

height = 31'



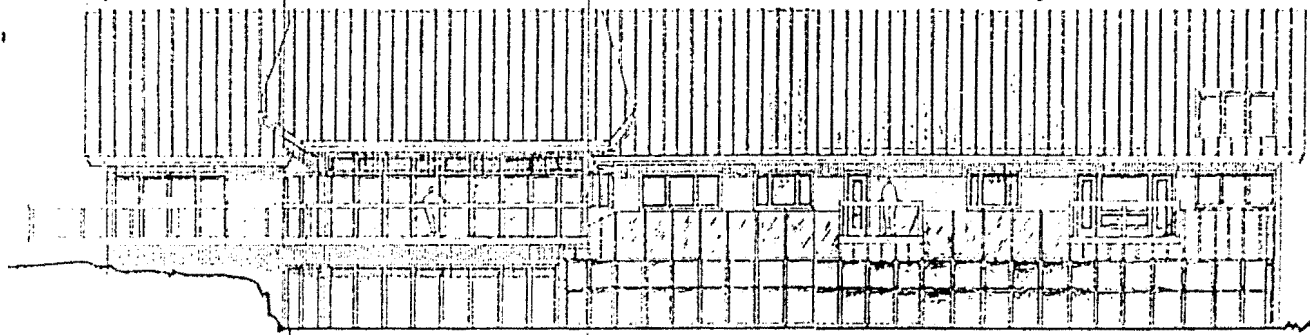
EAST ELEVATION

EAST ELEVATION

NORTH WEST  
ELEVATION

NORTH WEST ELEVATION

height = 31'



SOUTH WEST  
ELEVATION

SOUTH WEST  
ELEVATION

SOUTH ELEVATION

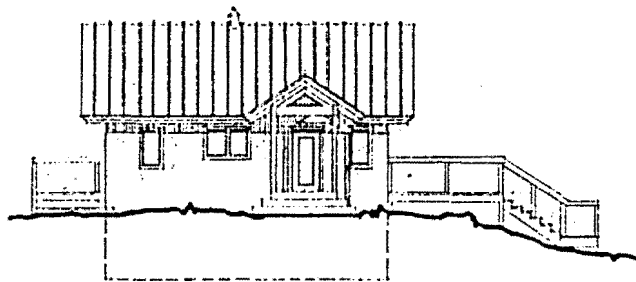
EXHIBIT NO. 6

APPLICATION NO.  
A-1-MEN-97-79

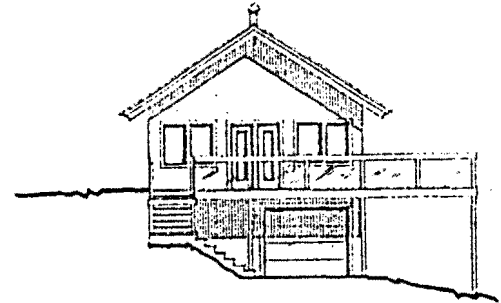
SMILEY

Elevations:  
Residence

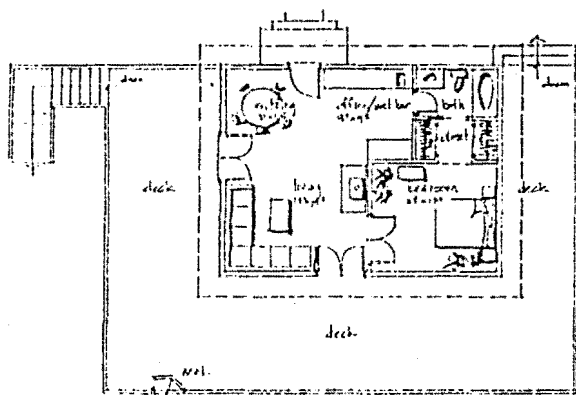
ELEVATIONS: RESIDENCE



NORTH ELEVATION  
12' x 12'

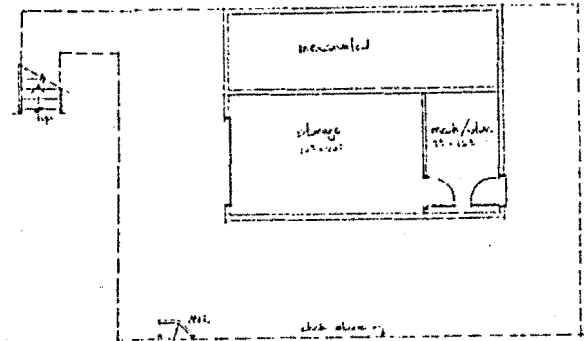


WEST ELEVATION  
12' x 12'



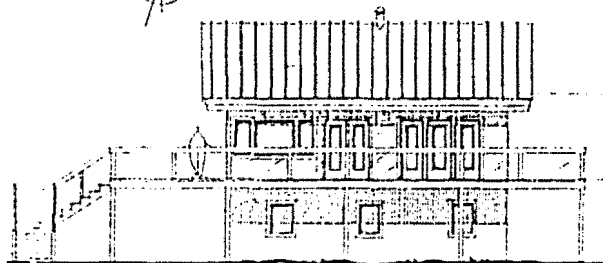
MAIN LEVEL PLAN  
12' x 12'

living - 6' x 12' x 11'



LOWER LEVEL PLAN  
12' x 12'

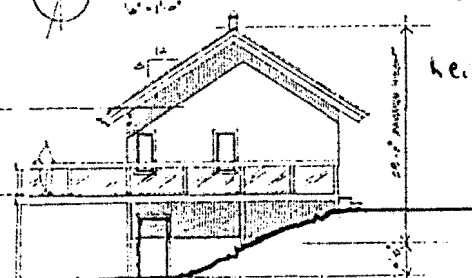
mech./storage - 8' x 12' x 11'



11' 11" x 12' x 11'

11' 11" x 12' x 11'

11' 11" x 12' x 11'



EAST ELEVATION  
12' x 12'

height = 25'

EXHIBIT NO. 7

APPLICATION NO.  
A-1-MEN-97-79

SMILEY

Guest House

FLOOR PLANS/ELEVATIONS: GUEST COTTAGE





RAYMOND HALL  
DIRECTOR

TELEPHONE  
(707) 964-5379

COUNTY OF MENDOCINO  
DEPARTMENT OF PLANNING AND BUILDING SERVICES

MAILING ADDRESS:  
790 SO. FRANKLIN  
FORT BRAGG, CA 95437

DEC 01 1997

NOTICE OF FINAL ACTION

CALIFORNIA  
COASTAL COMMISSION

Date Sent: November 26, 1997

Action has been completed by the County of Mendocino on the below described project located within the Coastal Zone.

CASE#: CDP #45-97  
DATE FILED: 7/15/97  
APPLICANT: Robert & Luanne Smiley  
AGENT: Stephen Heckeroth  
REQUEST: Construction of a 4,710+- square foot residence and garage; 640+- square foot guest cottage, windmill, septic system and driveway.  
LOCATION: Approximately five miles S of Elk and .5 miles E of Highway One at 10927 S. Highway One (APN's 131-060-14; 131-060-15; 131-090-01).  
PROJECT COORDINATOR: Linda Ruffing

HEARING DATE: October 30, 1997

APPROVING AUTHORITY: Coastal Permit Administrator

ACTION:

  X   APPROVED WITH CONDITIONS

See staff report for the findings and conditions in support of this decision.

The project was not appealed at the local level.

The project is:

  X   Appealable to the Coastal Commission pursuant to Public Resources Code, Section 30603. An aggrieved person may appeal this decision to the Coastal Commission within 10 working days following Coastal Commission receipt of this notice. Appeals must be in writing to the appropriate Coastal Commission district office.

EXHIBIT NO.	8
APPLICATION NO.	A-1-MEN-97-79
SMILEY	
Notice of Final Action	

COASTAL PERMIT ADMINISTRATOR ACTION SHEET

Case Number: CDP 45-97

Hearing Date: October 30, 1997

OWNER: Smiley

October 31, 1997  
November 3, 1997

ENVIRONMENTAL CONSIDERATIONS:

☒ Categorically Exempt

☐ Negative Declaration

☐ EIR

FINDINGS:

☐ Per staff report

☒ Modifications and or additions –

See Attached.

ACTION:

☒ Approved

☐ Denied

☐ Continued \_\_\_\_\_

CONDITIONS:

☐ Per staff report

☒ Modifications and/or additions –

See Attached.

Note: CDP 45-97 was continued from October 30, 1997 to Friday, October 31, 1997. On October 31, 1997, the case was continued to November 3, 1997 to prepare written findings.

EXHIBIT NO. 8

APPLICATION NO.  
A-I-MEN-97-79

SMILEY

Notice of Final  
Action

Signed

Lagman  
Coastal Permit Administrator

## FINDINGS AND ACTION FOR #CDP 45-97 - SMILEY

The following factors have been considered by the Coastal Permit Administrator in reviewing CDP 45-97:

1. Based upon a site view, it was determined that all potential alternative building sites would be considered to be within the designated "Highly Scenic Area." Policy 3.5-6 of the Coastal Element states, in part, that; "Development on a parcel located partly within the highly scenic areas delineated on the Land Use Maps shall be located on the portion outside the view shed if feasible." When considering building area and slope, with the owner's desire to maximize solar exposure, there are no feasible building sites outside the view shed from Highway 1.
2. Policy 3.5-4 states that; "Building and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. ...development in the middle of large open areas shall be avoided if an alternative site exists."

As stated above, the alternative building sites are located in the Highly Scenic Area. To locate the proposed dwelling in the area of the proposed guest house would require the removal of 2+ acres of mature trees to accommodate the structure, sewage disposal system and optimize solar access.

Contrary to the Coastal Zoning Ordinance, the Coastal Element requires that buildings be consistent with at least one of the three criteria. In this instance, the proposed single family dwelling is located 90+- feet south of a row/stand of trees which are up to 100 feet in height. These trees, while not blocking or screening the proposed dwelling from view from Highway 1, will serve to "soften" the image of the structure by providing background to the view. A condition is to be added which prohibits the removal of this stand of trees.

Policy 3.5-4 further states; "Minimize visual impact of development on hillsides by (1) requiring grading or construction to follow natural contours; (2) resiting or prohibiting new development that requires grading, cutting and filling that would significantly and permanently alter or destroy the appearance of natural land forms; (3) designing structures to fit hillsides rather than altering land forms to accommodate buildings designed for level sites; (4) concentrate development near existing vegetation and (5) promote roof angles and exterior finish which blend with hillside."

The single family dwelling as proposed satisfies and is in compliance with this portion of Policy 3.5-4 as follows:

- The structure extends down the hill side rather than the entire height being above the ridgeline.
- The structure is located 90+- feet from a stand/row of trees to the north (see above).
- According to the staff report "non-reflective" glass would be utilized, the roof would be coated with polymer finish in an earth-toned color and exterior walls would be painted a light gray or tan color.

Other portions of Policy 3.5-4 state that; "Minimize visual impact of development on ridges by (1) prohibiting development that projects above the ridgeline; (2) if no alternative site is available below the ridgeline, development shall be sited and designed to reduce visual impacts

EXHIBIT NO. 8

APPLICATION NO.  
A-1-MEN-97-79

SMILEY

by utilizing existing vegetation, structural orientation, landscaping and shall be limited to one story above the natural elevation; (3) prohibiting tree masses which destroy the ridgeline silhouette."

- Topography (i.e., steep slopes) significantly limits alternative building sites on this property. Because of this alternative, sites are also located on ridge lines.
- As stated above, the project (single family residence) utilizes the existing stand/row of trees to the north to reduce visual impact.
- Based upon the plans submitted, the proposed single family dwelling is one story (21 feet) above natural elevation.
- A condition is to be added which prohibits the removal of the tree mass to the north of the proposed single family dwelling.

3. Policies 3.5-1 and 3.5-3 state, in part: "The scenic and visual qualities of Mendocino County 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... New development in highly scenic areas... shall be subordinate to the character of its setting."

"...new development shall be subordinate to the character of its setting. Any development permitted in these areas shall provide for the protection of ocean and coastal views from public areas... New development should be subordinate to natural setting and minimize reflective surfaces."

- In addition to the findings discussed above:

- A. The project does not include any new road construction nor does it include any provisions for power or telephone poles.
- B. At no public area would the entirety of the proposed single family residence be visible. Because it is wrapped around the hillside, it is expected that no more than 90 linear feet of the structure would be visible from any location.
- C. The project is located 1,000+- feet above Highway 1 and is approximately  $\frac{3}{4}$  to one mile from Highway 1 at its closest visible point. The distance above and to Highway 1 will reduce the visual impact from public areas. Additionally, because of the significant difference in elevation between Highway 1 and the project site and the angle or pitch (8/12 roof line) of the solar collectors to maximize the sun's energy, potential reflection as seen from public areas will be minimized.

When all factors are considered, the project design, nearby natural vegetation, distance to Highway 1, exclusion of new roads or power poles), the project is subordinate to its natural setting.

4. Policy 3.5-8 states in part, that: "Power transmission lines shall be located along established corridors. Elsewhere transmission lines shall be located to minimize visual prominence..."

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- The application does not request and this permit, through special conditions, shall specifically exclude the construction or placement of transmission lines.
5. Policy 3.5-9 states that; "The location of all new access roads and driveways in rural areas shall be reviewed prior to any grading work to ensure safe location and minimum visual disturbance. Direct access to Highway 1 shall not be permitted where it is feasible to connect to an existing public road or to combine access points for two or more parcels."
- The project, as submitted, does not include any new road construction and does not include direct access to Highway 1. Access is to be achieved utilizing an existing road shared by several other parcels.
6. Policy 3.11-12 states, in part, that; "The County shall encourage the development and use of alternative sources of energy such as wind, solar, ... to meet the coast's energy needs."

The Land Use Element of the County's General Plan on Page I-25 states that "The County shall make energy efficiency a major consideration in its land use... decisions."

While County Energy policies (Policy 3.11-12 and Land Use Element) were considered, the overriding policies are contained within Chapter 3.5 of the Coastal Element. However, based upon the factors discussed within these findings, it is concluded that the project, as designed, is consistent with the Coastal Element. Therefore, the following findings are adopted.

1. The proposed development is in conformity with the certified local coastal program; and
2. The proposed development will be provided with adequate utilities (i.e., solar), access roads, drainage and other necessary facilities; and
3. The proposed development is consistent with the purpose and intent of the applicable zoning district, as well as all other provisions of Division II, and preserves the integrity of the zoning district; and
4. The proposed development, if constructed in compliance with the conditions of approval, will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act; and
5. The proposed development will not have any adverse impacts on any known archaeological or paleontological resource; and
6. Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development; and
7. The proposed use is compatible with the long-term protection of resource lands.

The project is approved with Standard Conditions identified on Pages CPA-6 and CPA-7 and Special Conditions Number 2 and 3 on Pages CPA 7 and CPA-8. Special condition Number 1 is revised from the staff report to read:

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1. Prior to the issuance of the coastal permit, the applicant shall submit, for the review and approval of the Coastal Permit Administrator, a revised plan for the guest cottage which eliminates the wet bar.

Special Conditions Number 4 and 5 are added to read:

4. Approval of CDP 45-97 does not authorize power poles, phone poles, etc., to the proposed structures. CDP 45-97 approved, in great part, upon the applicant's statement and submittal that, because of the solar design of the single family dwelling, power from energy companies and therefore power poles were not a part of the project.
- 5A. The existing tree mass located north of the proposed single family dwelling shall be maintained. No trees within 200 feet of the single family dwelling shall be removed except to maintain or enhance the health of the stand of trees. If it becomes necessary to remove any trees within 200 feet of the single family dwelling, the applicant shall submit for review and approval by the Coastal Permit Administrator a plan identifying which trees (size and location in relation to trees to remain) are proposed for removal.
- 5B. The applicant shall submit, for review and approval by the Coastal Permit Administrator, a plan identifying which trees (size and location in relation to trees to remain) are to be removed to accommodate (construction site, parking area and sewage disposal system) the guest cabin and travel trailer, etc.

The intent of Condition Number 5 is to minimize tree removal.

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STAFF REPORT FOR COASTAL DEVELOPMENT  
STANDARD PERMIT

CDP #45-9/  
October 30, 1997  
CPA-1

OWNER: Robert and Luanne Smiley  
P.O. Box 207  
Elk, CA 95432

AGENT: Stephen Heckerorth  
30151 Navarro Ridge  
Albion, CA 95410

REQUEST: Construction of 4,710+- sq.ft.  
residence and garage; 640+- sq.ft.  
guest cottage, windmill, two septic  
systems and driveway.

LOCATION: Approximately five miles south of Elk  
and .5 miles east of Highway 1 at  
10927 South Highway 1 (APNs 131-C60-  
14; 131-060-15; 131-090-01)

APPEALABLE AREA: No

PERMIT TYPE: Standard

TOTAL ACREAGE: 182+- acres

ZONING: Agriculture/Timber Production

ADJACENT ZONING: North: TP  
East: TP  
South: RL  
West: RL

GENERAL PLAN: Agriculture/Forestland

EXISTING USES: Undeveloped

SURROUNDING LAND USES: Forestland/Rangeland

SUPERVISORIAL DISTRICT: 5

GOVT CODE 65950 DATE: March 11, 1998

ENVIRONMENTAL DETERMINATION: Categorical Exemption, Class 3

OTHER RELATED APPLICATIONS: CDP #32-96 (guest cottage/withdrawn)  
8711-F (septic)  
8622-F (septic)

PROJECT DESCRIPTION: The project site is located about five miles south of Elk on the top of a south-facing ridge overlooking Bridgeport Ranch on the east side of Highway 1 (Exhibit A). The applicants propose to construct a single family residence with a septic system and a guest cottage with a septic system, install a windmill, and improve a dirt driveway. A well and water storage tank are already present on the property (Exhibit B). Access to the site is provided by an existing private access road which serves several properties on the ridge.

The proposed residence would be located on the edge of an east-west trending ridgeline. The residence is 4,710 sq.ft. in size (including garage) and two stories in height (Exhibit C). The maximum height of the structure is 26' above average grade. The residence would be clad with stucco and coated metal roofing. The southern elevation of the residence would be comprised primarily of windows and metal roofing (Exhibit D). No exterior lighting is proposed. The septic system would be located west of the residence. A 21-foot high windmill would be erected northeast of the residence. The proposed guest cottage would be located approximately 800' east of the residence. The guest cottage would be contained on the upper level and is comprised of approximately 700+- sq.ft. of gross floor area with a deck (Exhibit E). Approximately 380 sq.ft. of storage and mechanical space would be developed on the lower level of the guest cottage. A second septic system would be

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installed to serve the guest cottage. The existing driveway would be extended and improved with a rocked surface. The driveway is approximately 1,000 feet in length.

**STAFF NOTES:** The proposed residence is designed to maximize energy efficiency. The south/southeasterly orientation of the residence provides maximum solar exposure. The location on the southerly crest of a grassy ridge precludes any shading by vegetation and accommodates the two-story design. The reverse floor plan incorporates a lap pool on the lower level which provides solar mass, while most of the living quarters are on the upper level. The southerly facades of the house are clad with glass to maximize solar gain. A portion of the metal roof would be laminated with photovoltaic cells to generate electricity for the residence. A windmill would be installed to generate electricity for the pump and water system.

Chapter 3.11 of the Coastal Element addresses Energy Development in the coastal zone. Although most of the chapter addresses offshore and onshore oil and gas development, Policy 3.11-12 states:

**Policy:** The County shall encourage the development and use of alternative sources of energy, such as wind, solar, wave, and biomass and cogeneration to meet the coast's energy needs. Alternative energy facilities for onsite use shall be permitted as a conditional use in all land use categories.

While this policy provides general support for energy-efficient development such as the proposed residence, the proposed siting and design of the residence conflicts with several visual resource policies in the Coastal Element. Chapter 1.1 of the Coastal Element establishes clear criteria for resolving conflicts between Coastal Element policies:

- (a) Where policies within the Land Use Plan overlap, the policy which on balance is the most protective of coastal resources shall take precedence.
- (b) Where there are conflicts between the policies set forth in the Land Use Plan and those set forth in any element of the County's General Plan, existing ordinances, or other County regional plans, the policies of this Land Use Plan shall take precedence in the Coastal Zone.

In this instance, staff believes that Coastal Element policies for the protection of Visual Resources in designated Highly Scenic Areas take precedence over the energy-efficient design considerations. Staff also maintains that there are alternative locations and/or architectural designs which could achieve compliance with Visual Resource policies while meeting the energy-efficient design objectives of the applicants.

**LOCAL COASTAL PROGRAM CONSISTENCY RECOMMENDATION:** The proposed project is consistent with the applicable goals and policies of the Local Coastal Program as described below. The project is not consistent with the Visual Resources goals and policies of the Local Coastal Program.

**Land Use:** The project site is designated Agriculture (AG) by the LUP and is in the Agriculture (AG) zoning district. The LCP allows one dwelling unit for each existing parcel within the AG land use classification (LCP Policy 3.2-1). Single family residences and accessory structures are considered principal permitted uses in the AG zoning district (Zoning Code Section 20.356.010). The proposed residence and accessory structures are compatible with the long-term protection of the resource lands on the site.

The project includes construction of two accessory structures: a windmill and a guest cottage. Windmills are considered an accessory use per Section 20.456.015(C) of the Code. Guest cottages are considered "accessory living units" and are defined as:

...a detached building (not exceeding 640 square feet of gross floor area), of permanent construction, without kitchen, clearly subordinate and incidental to the primary dwelling on the same lot, and intended for

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use without compensation by guests of the occupants of the primary dwelling. [Zoning Code Section 20.308.050(1)]

The floor plans for the guest cottage indicate a 22'x32' floor area, providing a total floor area of 704 sq.ft. The plans also include a wet bar with approximately 13 feet of counter space. Because wet bars can readily be converted to kitchens, particularly with the use of a portable cooking unit, the Planning Division routinely prohibits their installation in guest cottages. Special Condition #1 is recommended to ensure that the guest cottage complies with LCP regulations.

The applicants presently have a trailer on the property for temporary camping. Section 20.460.030 of the Zoning Code limits temporary camping to a maximum of 60 days in any six month period and requires a coastal development permit. Temporary camping for 14 days or less in any six month period is exempt from the coastal permit requirement. Recreation vehicles used for camping may not be blocked up or connected to any utility (such as water, gas, electricity or septic).

The septic permit for the guest cottage (8711-F) indicates that it is for temporary use of the trailer and the future guest cottage. Section 20.460.035 of the Code allows temporary use of a trailer for occupancy while constructing a dwelling upon issuance of an administrative permit. Such administrative permit may be issued for the period required to complete construction of the residence, but may not exceed two years unless renewed. Although the coastal permit application does not specify any intended use of the trailer, Special Condition #2 clarifies the restrictions on use of the trailer during the construction period.

Hazards: The fire hazard classification for the project site is Very High. The California Department of Forestry issued a preliminary clearance (CDF#254-97) requiring compliance with their standards for addressing, gate entrances and defensible space.

There are no faults, landslides or other geologic hazards mapped on the project site. The proposed residence would be constructed on the top and over the edge of a steep hillside. A geotechnical report has been prepared and structural and slope stability issues will be addressed during the Building Division's plan check for the building permits.

Visual Resources: The project site is located atop a south-facing ridge on the east side of Highway 1 mid-way between Irish Beach and Elk. This area of the coast is very sparsely developed, with grazing and row crops occurring on the narrow coastal shelf. The easterly ridges provide a dramatic backdrop to the coastline, rising to elevations of about 1600' with dense stands of timber in the gulches and on the upper slopes.

All of the lands within view of Highway 1 in this area, including the subject house site, are designated "Highly Scenic Areas" by the LCP. Chapter 3.5 of the Coastal Element and Chapter 20.504 of the Zoning Code provide policies and regulations for new development in Highly Scenic Areas.

Staff recommends denial of the proposed project based on inconsistency and non-compliance with Coastal Element Visual Resource policies and Highly Scenic Area regulations, as follows:

Policy: Development on a parcel located partly within a Highly Scenic Area shall be located on the portion outside the viewshed if feasible. [LCP Policy 3.5-6 and Zoning Code Section 20.504.015(B)(1)]

The project is located on a 182+ acre parcel. The property is comprised of a northwest trending ridge (elevation 1,300') with approximately 130 acres sloping down to about 600' in elevation to the south and west, and approximately 50 acres sloping to the north. Much of the property is located within the Highway 1 viewshed, though few locations are as prominent as the ridgeline upon which the house is proposed. The applicants maintain that the proposed house site is the only location on the property that provides the necessary solar access, topographic relief, and vehicular access to accommodate the proposed house design.

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Staff notes that many areas along the 1000+-foot long driveway are screened by existing vegetation and are not within the Highly Scenic Area. While alternative locations may not offer as optimal solar access as the proposed house site, modifications to the house design and/or limited tree removal could address these concerns.

Policy: 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. New development in highly scenic areas shall be subordinate to the character of its setting. [LCP Policy 3.5-1 and Zoning Code Section 20.504.010 and 20.504.015(C) (3)]

The ridge upon which the house would be constructed is exceptionally visible from Highway 1. For northbound travellers on the Highway, the ridge and house site are first visible at the Garcia River floodplain (south of Manchester) and, with the exception of a few curves and dips in the Highway, the house site remains visible until about .5 miles north of Bridgeport, a total distance of approximately 9.5 miles. The proposed building site is especially prominent when viewed from the segment of Highway 1 between Irish Beach and Bridgeport.

The surrounding area is agricultural in character and very sparsely developed. Almost all development is located on the narrow coastal terrace, with the exception of two residences on the easterly ridges. These residences clearly illustrate what works and what does not work in terms of visual resource protection and development on ridgelines. One residence is located south of the project site at about the same elevation as the proposed project. It is situated in a wooded area and is screened by tall trees. Although the trees have been limbed, the residence is barely visible from the Highway and complies with Coastal Element policies. The other residence is also south of the subject site and is located on a knoll at an elevation of about 500'. Although the house is setback from the edge of the slope, is one story in height, and uses earth-toned materials, it is highly visible from the Highway and is discordant with the surrounding area. The house is silhouetted on the ridgeline and dominates the landscape in the area.

Staff does not believe that the siting of the proposed residence on the crest of a prominent ridgeline, where it is visible from more than nine miles of Highway 1, is "subordinate to the character of its setting."

Policy: Minimize visual impact of development on ridges by (1) prohibiting development that projects above the ridgeline; (2) if no alternative site is available below the ridgeline, development shall be sited and designed to reduce visual impacts by utilizing existing vegetation, structural orientation, landscaping, and shall be limited to a single story above the natural elevation. [LCP Policy 3.5-4 and Zoning Code Section 20.504.015(C) (8)]

The proposed residence would project above the grassy ridgeline. It would be located on the crest of the ridge, and would extend down the hillside. The south/southwestern facade is 130' in length and would be highly visible from Highway 1. There is no intervening landscaping to provide screening, nor is it likely that new landscaping would offer much mitigation due to the steep topography of the site. The residence is two-stories in height. The siting, orientation and design of the proposed residence conflict with the above policy.

Policy: New development should be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials, including siding and roof materials, shall be selected to blend in hue and brightness with their surroundings. [LCP Policy 3.5-3, Zoning Code Section 20.504.015(C) (3)]

The south and southwesterly facades of the proposed residence would be clad with extensive glazing and a metal roof. The architect has indicated that

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"non-reflective" glass would be used. The roof would be coated with a polymer finish in an earth-toned color. Exterior walls would be painted a light grey or tan color.

Staff believes that both the metal roof and the glass would be reflective. While the polymer coating on the roof and the use of non-reflective glass would reduce reflectivity, these materials will still reflect light and glare, especially given the southerly orientation of the structure. Almost the entire facade of the residence, as viewed from Highway 1, would be comprised of reflective materials, in conflict with the above policy.

In conclusion, even if building colors are selected to blend with the surroundings, the siting of the residence on top of a prominent ridgeline with no vegetative screening, a two-story design, and a facade composed primarily of glass windows and metal roofing will result in a highly visible house which is not subordinate to its natural setting or in character with the surrounding area.

Staff does not believe the impacts of the proposed residence can be mitigated through attaching special conditions of approval. The siting, orientation, architectural design and building materials are all inconsistent with Coastal Element Visual Resource policies. Therefore, staff recommends denial of the application.

On properties located east of the Highway, accessory structures normally associated with a single-family residence (but not including guest houses) are exempted from the requirement to obtain a coastal permit. If this application is approved, Special Condition #3 is recommended to ensure that visual resource issues are addressed prior to the erection of any accessory structures within the Highway 1 viewshed. Special Condition #3 also requires a coastal permit amendment prior to the installation of any exterior lighting within the Highway 1 viewshed.

Natural Resources: The proposed project is not located near any environmentally sensitive habitat areas. There are no known occurrences of rare and endangered species on the subject property or in the vicinity. The project would have no adverse effects on natural resources.

Archaeological/Cultural Resources: This project was referred to the Northwest Information Center of the Historical Resources Information System. They found that the project area has the possibility of containing unrecorded archaeological site(s) and recommended further study. The Mendocino County Archaeological Commission determined that no survey was necessary, but noted that future development activity on other portions of the property may require a survey.

Standard Condition #8 advises the applicant of the County's "discovery clause" which establishes procedures to follow in the event that archaeological or cultural resources are uncovered during site preparation and construction activities.

Groundwater Resources: The site is located within an area mapped as Critical Water Resources, Bedrock (CWR Br) by the Coastal Groundwater Study. Domestic water supply would be provided by an existing well on the site. Water storage would be provided by an 8' diameter water tank.

Transportation/Circulation: The project would add incrementally to traffic volumes on Highway 1 and local roads in the project vicinity. These impacts were considered when the AG land use classification was assigned to the parcel by the LUP.

Zoning Requirements: The project complies with the zoning requirements for the Agriculture District set forth in Sec 20.356.005 et.seq., and with all other zoning requirements of Title 20, Division II of the Mendocino County Code.

**PROJECT RECOMMENDATION:** Pursuant to the provisions of Chapter 20.532 and 20.536 of the Mendocino County Code, staff recommends that the Coastal Permit Administrator deny the proposed project, based on the following findings:

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- (1) The proposed siting of the residence on the portion of the site designated a Highly Scenic Area does not comply with LCP Policy 3.5-6 as it is feasible for a residence to be located on a portion of the 182-acre site which lies outside of the Highly Scenic Area.
- (2) The siting of the residence on the crest of a ridge is not subordinate to the character of the setting as required by LCP Policy 3.5-1.
- (3) The orientation of the structure and the two-story design do not comply with LCP Policy 3.5-4.
- (4) The extensive use of reflective building materials does not comply with LCP Policy 3.5-3.
- (5) The project cannot be mitigated to achieve compliance with Coastal Element Visual Resource protection policies without re-siting the residence and/or substantial re-design of the structure.

ALTERNATIVE MOTION: If the Coastal Permit Administrator approves this application, the following findings and conditions should be adopted:

FINDINGS:

- (1) The proposed development is in conformity with the certified Local Coastal Program; and
- (2) The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and
- (3) The proposed development is consistent with the purpose and intent of the applicable zoning district, as well as all other provisions of Division II, and preserves the integrity of the zoning district; and
- (4) The proposed development, if constructed in compliance with the conditions of approval, will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act; and
- (5) The proposed development will not have any adverse impacts on any known archaeological or paleontological resource; and
- (6) Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development; and
- (7) The proposed use is compatible with the long-term protection of resource lands.

STANDARD CONDITIONS:

1. This action shall become final on the 11th day following the decision unless an appeal is filed pursuant to Section 20.544.015 of the Mendocino County Code. The permit shall expire and become null and void at the expiration of two years after the effective date except where construction and or use of the property in reliance on such permit has been initiated prior to its expiration.

To remain valid, progress towards completion of the project must be continuous. The applicant has sole responsibility for renewing this application before the expiration date. The County will not provide a notice prior to the expiration date.

2. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Title 20, Division II of the Mendocino County Code.

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3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and compliance therewith is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
4. This permit shall be subject to the securing of all necessary permits for the proposed development from County, State and Federal agencies having jurisdiction.
5. The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division.
6. This permit shall be subject to revocation or modification upon a finding of any one (1) or more of the following:
  - a. That such permit was obtained or extended by fraud.
  - b. That one or more of the conditions upon which such permit was granted have been violated.
  - c. That the use for which the permit was granted is so conducted as to be detrimental to the public health, welfare or safety or as to be a nuisance.
  - d. A final judgment of a court of competent jurisdiction has declared one (1) or more condition to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one (1) or more such conditions.
7. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.
8. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred (100) feet of the discovery, and make notification of the discovery to the Director of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.

**SPECIAL CONDITIONS:**

1. Prior to issuance of the coastal permit, the applicant shall submit, for the review and approval of the Coastal Permit Administrator, revised plans for the guest cottage which comply with the 640 square feet size restriction and which eliminate the wet bar.
2. Prior to issuance of the coastal permit, the applicant shall submit a written statement indicating the intended use of the travel trailer on the property. If the trailer will be used for temporary camping per Zoning Code Section 20.040.030, it shall comply with the time limits prescribed by Sec. 20.040.030(B) and shall not be connected to any utilities.

It the applicants want to occupy the travel trailer as a residence while constructing the primary residence, an administrative permit is hereby granted, subject to the following conditions of approval:

- (a) The term of this administrative permit is valid for the period required to complete construction of the primary dwelling, but shall not exceed two years unless renewed. The administrative permit shall be effective on the effective date of CDP #45-97 and shall expire two years henceforth.

<b>EXHIBIT NO.</b> 8
<b>APPLICATION NO.</b> A-1-MEN-97-79
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STANDARD PERMIT

CDP #45-97  
October 30, 1997  
CPA-8

- (b) A valid building permit for a permanent dwelling on the premises must be in effect.
  - (c) Building and Health permits must be obtained prior to the set up and occupancy of the travel trailer.
  - (b) All utility connections to the travel trailer shall be disconnected and the trailer shall be removed from the property or placed in storage per Section 20.456.015(J) of the Code prior to the final building inspection or occupancy of the permanent dwelling, whichever occurs first.
3. An amendment to this coastal permit shall be obtained prior to erection of any additional structures or placement of exterior lighting on any portion of the site within view of Highway 1.

Staff Report Prepared By:

Date: 10-20-97

Linda Ruffing  
Coastal Planner

Attachments: Exhibit A: Location Map  
Exhibit B: Site Plan  
Exhibit C: Floor Plans: Residence  
Exhibit D: Elevations: Residence  
Exhibit E: Floor Plans/Elevations: Guest Cottage

Appeal Period: 10 days  
Appeal Fee: \$635

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## CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA  
 REMONT, SUITE 2000  
 SAN FRANCISCO, CA 94105-2219  
 (415) 904-5260



APPEAL FROM COASTAL PERMIT  
 DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

MENDOCINO COASTWATCH  
ROANNE WILKINS 428 N. HARRISON ST.  
FORT BRAGG, CA 95437 (707) 961-1953  
 Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: COUNTY OF MENDOCINO
2. Brief description of development being appealed: CONSTRUCTION OF A 4,710 2-STORY HOME + GARAGE, QUEST COTTAGE, WINDMILL, SEPTIC SYSTEMS, AND DRIVEWAY  
CDP # 45-97 (SMILEY)
3. Development's location (street address, assessor's parcel no., cross street, etc.): APNs 131-060-14, 131-060-15, 131-090-01  
9105 HWY 1, ELK, CA
4. Description of decision being appealed:
  - a. Approval; no special conditions: \_\_\_\_\_
  - b. Approval with special conditions: COASTAL DEVELOPMENT ADMINIST. DECISION
  - c. Denial: \_\_\_\_\_

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-1-MEN-97-079

DATE FILED: 11/26/97

DISTRICT: North Coast

H5: 4/88

EXHIBIT NO. 9
APPLICATION NO. A-1-MEN-97-79
SMILEY
Coastwatch Appeal

RECEIVED

NOV 13 1997

CALIFORNIA  
 COASTAL COMMISSION

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a. ☒ Planning Director/Zoning Administrator      c. ☐ Planning Commission  
b. ☐ City Council/Board of Supervisors      d. ☐ Other \_\_\_\_\_

6. Date of local government's decision: 11-3-97

7. Local government's file number (if any): CDP #45-97

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Robert + Luanne Smiley  
P.O. Box 207  
ELK, CA 95432

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Stephen Heckeroth (Agent)  
30151 NAVARRO RIDGE  
ALBION, CA 95410

(2) Ron Guenther  
29900 Hwy 20  
FORT BRAGG, CA 95437

(3) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(4) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

EXHIBIT NO. 9

APPLICATION NO.  
A-1-MEN-97-79

SMILEY



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

SEE ATTACHMENT

NON CONFORMANCE WITH MENARDINO COUNTY LCP

USUAL RESOURCE POLICIES 3.5-1-3-4-6 + ZONING CODE

SECTIONS: 20.5D4.015 (B)(1), (C)(3), + (C)(8)

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Rianne Widens  
Signature of Appellant(s) or  
Authorized Agent

Date 11-13-97

NOTE: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize \_\_\_\_\_ to act as my/our representative and to bind me/us in all matters concerning this appeal.

EXHIBIT NO.	9
APPLICATION NO.	A-1-MEN-97-79
SMILEY	
Coastwatch Appeal	

\_\_\_\_\_  
Signature of Appellant(s)

Date \_\_\_\_\_

Attachment to Appeal Section IV.

<b>EXHIBIT NO.</b>	9
<b>APPLICATION NO.</b>	A-1-MEN-97-79
<b>SMILEY</b>	
<b>Coastwatch Appeal</b>	

Mendocino CoastWatch  
Roanne Withers  
428 N. Harrison Street  
Fort Bragg, CA 95437  
(707) 961-1953

November 13, 1997

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

By Fax on November 13, 1997: (415) 904-5400  
Hard copy by mail: November 13, 1997

Attention: Jo Ginsberg

**RE: APPEAL FROM MENDOCINO COUNTY COASTAL DEVELOPMENT PERMIT  
ADMINISTRATOR'S DECISION ON CDP# 45-97 / SMILEY**

Members of the Commission,

We have met all the conditions for appeal to the Commission as stated below.

**TIME FRAME:**

This appeal is timely per written findings dated November 3, 1997

**JURISDICTION:**

This appeal is within the Commission's jurisdiction because the subject property and the surrounding property are located in a "Highly Scenic Area" per Mendocino County LCP designation. Per Public Resources Code Section 30116 (c) such designated highly scenic areas are specifically declared "sensitive coastal resources". Public Resources Code Section 30603 (a) (3) allows for the Commission to hear an appeal of a local government decision in areas located in a sensitive coastal resource area.

We further request that the Coastal Commission hear our appeal because we are financially barred from exhausting the local appeal process due to the extraordinary high \$ 635 Board of Supervisors appeal fee from a Coastal Development Permit Administrator's decision. We cannot afford this fee. We base this portion of our appeal on the California Coastal Commission Administrative Regulation Section 13573 (a) (4).

We further base this portion of our appeal request on Public Resources Code Section 30006, which states, "The Legislature further finds and declares that the public has a right to fully participate in decisions affecting coastal planning, conservation and development; that achievement of sound coastal conservation and development is dependent upon public understanding and support; and that the continuing planning and implementation of programs for coastal conservation and development should include the widest opportunity for public participation." The public cannot participate due to the \$635 local appeal fee which has no provable nexus in actual cost of the appeal.

**GROUND FOR APPEAL:**

The Mendocino County Coastal Development Permit Administrator approval of the project is inconsistent and in non-compliance with Mendocino County LCP Visual Resource Policies 3.5-1, 3.5-3, 3.5-4, and 3.5-6 and Highly Scenic Area regulation Zoning Code Sections 20.504.015(B)(1), (C)(3), and (C) (8).

**SUBJECT OF APPEAL:**

Mendocino County Coastal Development Permit for a 2-story single family home located on the crest of a coastal ridge line in a designated highly scenic area.

**APPELLANT NOTIFICATION OF APPEAL:**

All interested parties were sent copies of this appeal, including the County of Mendocino Coastal Development Permit Administrator and County Planner Linda Ruffing, author of the staff report, by mail on November 13, 1997.

**STANDING FOR APPEAL:**

Mendocino CoastWatch submitted comments in writing to the Coastal Development Permit Administrator at the project's October 3, 1997 hearing.

**Substantive Issues**

We include with the hard copy of this appeal, the county planning staff report which recommends denial of this project as the detailed support for our assertion that approval of the project is inconsistent and in non-compliance with the LCP Visual Resource Policies 3.5-1, 3.5-3, 3.5-4, and 3.5-6 and Highly Scenic Area regulation Zoning Code Sections 20.504.015(B)(1), (C)(3), and (C) (8).

Staff's recommendation was overturned by the CDP Administrator based on the "owner's desire to maximize solar exposure" for the two-story home sited on the crest of the ridge line, and therefore "there are no feasible building sites outside the view shed from Highway 1." We are familiar with the subject area and fail to see why another site on the 182+ parcel, and/or a reduction in height, use of different materials, or other alternative energy methods could not be used to reduce the impacts on the public's protected visual resource.

We note here that the Agent for the project, a solar design architect, is a county planning commissioner. It is not clear by the project findings that the home will stay solar energy operated in the future. Certainly the project was not conditioned with such a requirement. Therefore, overriding the visual protection policies of the LCP with what could be just temporary energy efficiency (should the home be sold or under other circumstances) ensures that the public has lost its visual resource with nothing in return.

In conclusion, we fail to see the overriding public benefit of one private solar home. In fact, we see a dangerous precedent being set whereby this "solar" home with its size, height, and reflective materials will set the standard for all other development on this now pristine unbroken coastal ridge line, and in other highly scenic areas. The precedent that is being set here by the county is simply, "if it's solar, you can build what you want, where you want." Nothing in the Coastal Act or in the county's certified LCP allows a highly scenic designation to be so ignored for ostensible solar enhancement.

We thank you for your time and consideration in this matter.

*Roanne Withers*  
Roanne Withers, Executive Director

EXHIBIT NO.	9
APPLICATION NO.	A-1-MEN-97-79
SMILEY	

## CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

\* FREMONT, SUITE 2000

SAN FRANCISCO, CA 94103-2219

(415) -5260

APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENTDEC 11 1997  
CALIFORNIA  
COASTAL COMMISSION

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

MENDOCINO COASTWATCH  
ROANNE WILKINS 428 N. HARRISON ST  
FORT BRAGG, CA 95437 (707) 961-1953  
 Zip Area Code Phone No.

SECTION II. Decision Being Appealed1. Name of local/port government: COUNTY OF MENDOCINO2. Brief description of development being appealed: CONSTRUCTION OF A 4,710 2-STORY HOME + GARAGE, QUEST COTTAGE, WINDMILL, SEPTIC SYSTEMS, AND DRIVEWAY  
CDP # 45-97 (SMILEY)3. Development's location (street address, assessor's parcel no., cross street, etc.): APNs 131-060-14, 131-060-15, 131-090-01  
9105 Hwy 1, Elk, CA

4. Description of decision being appealed:

- a. Approval; no special conditions: \_\_\_\_\_
- b. Approval with special conditions: COASTAL DEVELOPMENT ADMINIST. DECISION
- c. Denial: \_\_\_\_\_

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: \_\_\_\_\_

DATE FILED: \_\_\_\_\_

DISTRICT: \_\_\_\_\_

H5: 4/88

EXHIBIT NO.	10
APPLICATION NO.	A-1-MEN-97-79
SMILEY	
Coastwatch Appeal	

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

SEE ATTACHMENT

NON CONFORMANCE WITH MENARDINO COUNTY LCD

VISUAL RESOURCE POLICIES 3.5-1-3-4-6 + ZONING CODE

SECTIONS: 20.504.015 (B)(1), (C)(3), + (C)(8)

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Rianne Waters  
Signature of Appellant(s) or  
Authorized Agent

Date 12-11-97

NOTE: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize \_\_\_\_\_ to act as my/our representative and to bind me/us in all matters concerning this appeal.

EXHIBIT NO.	10
APPLICATION NO.	A-1-MEN-97-79
SMILEY	
Coastwatch Appeal	

\_\_\_\_\_  
Signature of Appellant(s)  
Date \_\_\_\_\_

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a. ☒ Planning Director/Zoning Administrator      c. ☐ Planning Commission  
b. ☐ City Council/Board of Supervisors      d. ☐ Other \_\_\_\_\_

6. Date of local government's decision: 11-25-97

7. Local government's file number (if any): CDP #45-97

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Robert + Luanne Smiley  
P.O. Box 207  
ELK, CA 95432

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Stephen Heckeroth (Agent)  
30151 NAVARRO Ridge  
ALBION, CA 95410

(2) Ron Guenther  
29900 Hwy 20  
FORT BRAGG, CA 95437

(3) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(4) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

EXHIBIT NO. 10

APPLICATION NO.  
A-1-MEN-97-79

SMILEY

Attachment to Appeal Section IV.

EXHIBIT NO.	10
APPLICATION NO.	A-1-MEN-97-79
SMILEY	
Coastwatch Appeal	

Mendocino CoastWatch  
Roanne Withers  
428 N. Harrison Street  
Fort Bragg, CA 95437  
(707) 961-1953

December 11, 1997

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

By Fax on December 11, 1997: (415) 904-5400  
Hard copy by mail: December 11, 1997

Attention: Jo Ginsberg

**RE: APPEAL FROM MENDOCINO COUNTY COASTAL DEVELOPMENT PERMIT  
ADMINISTRATOR'S DECISION ON CDP# 45-97 / SMILEY**

Members of the Commission,

We have met all the conditions for appeal to the Commission as stated below.

**TIME FRAME:**

This appeal is timely per written findings dated November 3, 1997, and Appeal filed November 13, 1997. Additionally, the Appeal was refiled on December 11, 1997 in accordance with the Notice of Final Determination from the County of Mendocino.

**JURISDICTION:**

This appeal is within the Commission's jurisdiction because the subject property and the surrounding property are located in a "Highly Scenic Area" per Mendocino County LCP designation. Per Public Resources Code Section 30116 (c) such designated highly scenic areas are specifically declared "sensitive coastal resources". Public Resources Code Section 30603 (a) (3) allows for the Commission to hear an appeal of a local government decision in areas located in a sensitive coastal resource area.

We further request that the Coastal Commission hear our appeal because we are financially barred from exhausting the local appeal process due to the extraordinary high \$ 635 Board of Supervisors appeal fee from a Coastal Development Permit Administrator's decision. We cannot afford this fee. We base this portion of our appeal on the California Coastal Commission Administrative Regulation Section 13573 (a) (4).

We further base this portion of our appeal request on Public Resources Code Section 30006, which states, "The Legislature further finds and declares that the public has a right to fully participate in decisions affecting coastal planning, conservation and development; that achievement of sound coastal conservation and development is dependent upon public understanding and support; and that the continuing planning and implementation of programs for coastal conservation and development should include the widest opportunity for public participation." The public cannot participate due to the \$635 local appeal fee which has no provable nexus in actual cost of the appeal.

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3.5-4, and 3.5-6 and Highly Scenic Area regulation Zoning Code Sections 20.504.015(B)(1), (C)(3), and (C) (8).

**SUBJECT OF APPEAL:**

Mendocino County Coastal Development Permit for a 2-story single family home located on the crest of a coastal ridge line in a designated highly scenic area.

**APPELLANT NOTIFICATION OF APPEAL:**

All interested parties were sent copies of this appeal, including the County of Mendocino Coastal Development Permit Administrator and County Planner Linda Ruffing, author of the staff report, by mail on November 13, 1997 and on December 11, 1997.

**STANDING FOR APPEAL:**

Mendocino CoastWatch submitted comments in writing to the Coastal Development Permit Administrator at the project's October 3, 1997 hearing.

**Substantive Issues**

We include with the hard copy of this appeal, the county planning staff report which recommends denial of this project as the detailed support for our assertion that approval of the project is inconsistent and in non-compliance with the LCP Visual Resource Policies 3.5-1, 3.5-3, 3.5-4, and 3.5-6 and Highly Scenic Area regulation Zoning Code Sections 20.504.015(B)(1), (C)(3), and (C) (8).

Staff's recommendation was overturned by the CDP Administrator based on the "owner's desire to maximize solar exposure" for the two-story home sited on the crest of the ridge line, and therefore "there are no feasible building sites outside the view shed from Highway 1." We are familiar with the subject area and fail to see why another site on the 182+ parcel, and/or a reduction in height, use of different materials, or other alternative energy methods could not be used to reduce the impacts on the public's protected visual resource.

We note here that the Agent for the project, a solar design architect, is a county planning commissioner. It is not clear by the project findings that the home will stay solar energy operated in the future. Certainly the project was not conditioned with such a requirement. Therefore, overriding the visual protection policies of the LCP with what could be just temporary energy efficiency (should the home be sold or under other circumstances) ensures that the public has lost its visual resource with nothing in return.

In conclusion, we fail to see the overriding public benefit of one private solar home. In fact, we see a dangerous precedent being set whereby this "solar" home with its size, height, and reflective materials will set the standard for all other development on this now pristine unbroken coastal ridge line, and in other highly scenic areas. The precedent that is being set here by the county is simply, "if it's solar, you can build what you want, where you want." Nothing in the Coastal Act or in the county's certified LCP allows a highly scenic designation to be so ignored for ostensible solar enhancement.

We thank you for your time and consideration in this matter.

*Roanne Withers*  
Roanne Withers, Executive Director

EXHIBIT NO.	10
APPLICATION NO.	A-1-MEN-97-79
SMILEY	
Coastwatch Appeal	



DEC 09 1997

## CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

15 FREMONT, SUITE 2000

SAN FRANCISCO, CA 94105-2219

(415) 904-5260

CALIFORNIA  
COASTAL COMMISSIONAPPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

DARWIN AND LORENE CHRISTIANSEN  
12000 SOUTH HIGHWAY 1  
ELK, CA. 95432 (707) 877-3281  
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: CDP #45-97 Application NO 1-MEN-97-267
2. Brief description of development being appealed: CONSTRUCTION OF A 4,710 +/- SQ FT RESIDENCE, 640 +/- SQ FT GUEST COTTAGE, WINDMILL, 2 SEPTIC SYSTEMS AND DRIVEWAY.
3. Development's location (street address, assessor's parcel no., cross street, etc.): 9105 HWY 1, ELK (MENDOCINO COUNTY)  
APN(s) 131-060-14, 131-060-15, 131-090-01
4. Description of decision being appealed:
  - a. Approval; no special conditions: \_\_\_\_\_
  - b. Approval with special conditions: \_\_\_\_\_
  - c. Denial: \_\_\_\_\_

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:APPEAL NO: A-1-MEN-97-079DATE FILED: 12/10/97DISTRICT: North Coast

H5: 4/88

EXHIBIT NO.	11
APPLICATION NO.	A-1-MEN-97-79
SMILEY	
Christiansen Appeal	

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

LETTER ENCLOSED

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

*Don Christensen*  
Donna Christensen

Signature of Appellant(s) or  
Authorized Agent

Date 12-8-97

NOTE: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize \_\_\_\_\_ to act as my/our representative and to bind me/us in all matters concerning this appeal.

EXHIBIT NO. 11

APPLICATION NO.  
A-1-MEN-97-79

SMILEY

Christiansen Appeal

\_\_\_\_\_  
Signature of Appellant(s)

Date \_\_\_\_\_

CALIFORNIA COASTAL COMMISSION  
45 FREMONT ST.  
SUITE 2000  
SAN FRANCISCO, CAL. 94105

EXHIBIT NO.	11
APPLICATION NO.	A-1-MEN-97-79
SMILEY	
Christiansen Appeal	

ATTN: JO GINSBERG;

RE: C.D.P. # 45-97/SMILEY. FOR THE PUBLIC RECORD.

BEING A RESIDENT AT 12000 HIGHWAY 1, ELK, Cal., we  
WILL BE NEIGHBORS OF THE ABOVE APPLICANTS. WE HAVE  
NEVER RECEIVED NOTICE OF A PERMIT APPLICATION CONCERNING  
THE "SMILEY'S" ON THE PROPERTY ABOVE US.

WE HAVE A REAL CONCERN ABOUT ANY CONSTRUCTION OR  
USE OF THIS PROPERTY AS WE HAVE A "DEEDED" 80 ACRE  
WATER RIGHT ON THE "SMILEY" PROPERTY AND ADJOINING  
PROPERTIES. THIS DEED HAS BEEN IN EFFECT SINCE 1904.  
BOOK OF DEEDS, PAGE 601 - OFFICIAL RECORDS. MUCH OF THIS  
DEED COVERS STEEP HILL SIDE ACREAGE, WHICH IS VERY  
SENSITIVE TO ANY USE OF THE GROUND. WE ARE ALSO CONCERNED  
ABOUT CONTAMINATION OF OUR DRINKING WATER BY BUILDING  
ABOVE AND ON OUR WATER SUPPLY, WHICH IS OUR ONLY  
SOURCE OF WATER.

OUR FAMILY HAS LIVED ON THIS PROPERTY SINCE 1917.  
WE ARE AN AGRICULTURE FAMILY, AND ARE CONCERNED ABOUT THIS  
AREA, SOUTH OF ELK, TO POINT ARENA, BEING IMPORTANT AS THE  
ONLY AGRICULTURE AREA IN USE ON THE MENDOCINO COAST.  
THE BEAUTY OF OUR COAST LINE IS DUE TO THE LIMITED  
NUMBER OF BUILDING THAT WOULD BLOCK THE MAGNIFICENT  
VIEW OF THE OCEAN, AND FORESTED MOUNTAINS ON EACH SIDE OF  
HIGHWAY 1.

VISITORS TO OUR AREA ARE IMPRESSED BY THE PRISTINE BEAUTY, WHICH IS DUE TO OUR CAREFUL PRESERVATION, BY ENHANCING THE ORIGINAL NATIVE CHARACTER OF OUR MAGNIFICENT COASTLINE. WE SINCERELY WISH THAT THESE VISITORS, POTENTIAL NEIGHBORS, WILL FEEL THE CALMNESS AND RIGHTNESS, OF OUR PRECIOUS AREA.

PEOPLE WHO MOVE TO OUR AREA ARE ATTRACKED BY THE PEACE AND PASTORAL AMBIANCE WHICH HAS BEEN CAREFULLY PRESERVED, UNOBTUSIVELY OVER TIME. WE HOPE TO MAINTAIN THE TEMPO OF OUR PRESENT CHARACTER OF LIFE. WE WELCOME POTENTIAL NEIGHBORS AND FRIENDS TO HELP US TO MAINTAIN THE PEACE AND SPIRIT, OF OUR BELOVED HOMELAND.

THANK YOU FOR TAKING TIME TO READ THIS LETTER.

SINCERELY

DARWIN & LORENE CHRISTIANSEN  
*Darwin* *Lorene*

12000 HIGHWAY 1  
EIK, CAL. 95432

EXHIBIT NO. 11
APPLICATION NO. A-I-MEN-97-79
SMILEY
Christiansen Appeal

## CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

FREMONT, SUITE 2000

SAN FRANCISCO, CA 94105-2219

(415) 904-5260



6 January 1992

Mary Stinson  
County of Mendocino  
Department of Planning &  
Building Services  
143 West Spruce Street  
Fort Bragg, CA 95437

RE: CDP #19-92 (Raabe/Collins)

Dear Mary:

I have reviewed the above-referenced coastal permit application for construction of a single-family residence and garage and improvement of an existing road. I have several concerns, as outlined below:

1. The LUP designates everything within view easterly of Highway One in this area as highly scenic. Without having done a site visit, it is difficult for me to know what visual impacts the proposed residence will have, but I am concerned that the house not be prominently visible from Highway One. It appears from the maps included with the application that the proposed residence may be visible from the highway. If the proposed residence is indeed visible from the highway, several LUP policies would apply, including Policies 3.5-1, 3.5-3, 3.5-4, and 3.5-5.

Policy 3.5-1 states that 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, and to be visually compatible with the character of surrounding areas. New development in highly scenic areas shall be subordinate to the character of its setting. If the new house is visually prominent, it would not be visually compatible with the character of surrounding areas, or subordinate to the character of its setting, especially given its unusually large size (5,444 square feet).

To make the proposed residence consistent with the relevant LUP policies, a variety of measures should be considered including reducing the size of the residence, requiring landscape screening, relocating the house to a less prominent position, and requiring that all exterior siding and the roof of the structure be of natural-appearing materials of dark earthtone colors only. In addition, all exterior materials, including the roof and the windows, should be non-reflective to minimize glare. Finally, all exterior lights, including any lights attached to the outside of the house, should be low-wattage, non-reflective, and have a directional cast downward.

EXHIBIT NO. 12

APPLICATION NO.

A-1-MEN-97-79

SMILEY

CCC Staff Letter

EXHIBIT NO.	12
APPLICATION NO.	A-1-MEN-97-79
SMILEY	
CCC Staff Letter	

Policy 3.5-4 states that buildings that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists. The policy directs that visual impacts of development on ridges should be minimized by, among other things, prohibiting development that projects above the ridgeline.

From the maps included with the application, it appears that the proposed residence may be located such that it will project above the ridgeline. If this is the case, I suggest that it be either resited, or that the permit be conditioned to require significant landscaping to screen it from view, pursuant to Policy 3.5-5, which states that tree planting to screen buildings shall be encouraged.

2. As noted by the botanist who surveyed a portion of the property, a small unnamed watercourse that supports a moderately well developed riparian forest flows from east to west along the western 250± yards of the existing unimproved road. The proposed project includes upgrading the road. According to the botanist, the portion of the road in question lies within the 50-foot buffer area prescribed by Policy 3.1-7 of the LUP, which states that a buffer area shall be established adjacent to all environmentally sensitive habitat areas, and that the buffer area shall not be less than 50 feet in width. In fact, this policy states that the width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The policy further states that structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.

Policy 3.1-10 states that areas where riparian vegetation exists are environmentally sensitive habitat areas and development within such areas shall be limited to only those uses which are dependent on the riparian resources.

The botanist suggests that a variance be issued to allow upgrading the existing road, rather than requiring a completely new road to be constructed on steeper adjacent land available on the site. Commission staff does not agree. It has not been adequately demonstrated that an alternative road could not safely be constructed elsewhere on the subject property. Furthermore, the alternative of relocating the house site should be explored. And, finally, Commission staff does not find that granting a variance is appropriate in this case. Section 20.540.005 of the County's Zoning Code states that a variance may be granted when, because of special circumstances applicable to the property, including

Mary Stinson  
Page Three

size, shape, topography, location, or surroundings, the strict application of the zoning ordinance deprives the property of privileges enjoyed by other property in the vicinity and under identical zoning classification. This does not appear to be the case for this project, where the size of the parcel (185 acres) would suggest an alternative siting of the road and/or house is feasible. Commission staff urges the applicant to explore other alternatives for construction that would not result in inconsistency with LUP policies regarding sensitive habitat.

Thank you for the opportunity to comment.

Sincerely,

*Robert S. Meppell*

*Robert S. Meppell PER*

JO GINSBERG  
Coastal Planner

4376p

EXHIBIT NO.	12
APPLICATION NO.	A-1-MEN-97-79
SMILEY	
CCC Staff Letter	

Jeffery & Kathleen Roy  
12001 South Highway One  
Elk, CA 95432-9004  
(707) 877-3558

EXHIBIT NO.	13
APPLICATION NO.	A-1-MEN-97-79
SMILEY	
Correspondence	

November 21, 1997

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

RECEIVED  
NOV 25 1997  
CALIFORNIA  
COASTAL COMMISSION

Attention: Jo Ginsberg

RE: Appeal from Mendocino County Coastal Development Permit Administrator's Decision  
on CDP# 45-97 (Smiley)

Members of the Commission:

We would like to state our opposition to the presently planned development located on the ridge directly above our house. We are full time residents and property owners at the above mentioned address and were surprised to learn of this development at this late date during the appeal process. We were never informed of the existence of this development either by written or verbal methods. Mr. Smiley discussed his development with several of our neighbors but apparently deliberately did not discuss it with us, his closest neighbor on the coastal plain below his development. Only by a chance discussion with one of our neighbors did we learn of the development.

We have researched this development on our own initiative and feel that the location of the Smiley residence greatly diminishes the ridge scenery above us. The location, in stark contrast to existing residences on the ridge, is located on a treeless meadow extending far from the tree line above our home and would be visible for many miles along the coastline. The large size of the structure and large amount of glass used will surely make it clearly visible. Other structures located on the ridge are thoughtfully placed amongst trees allowing an ocean view for the residents but obscuring them from easy view on the coastal highway.

We have a decade of experience with solar issues having worked as an Engineer at a major solar energy company along with extensive knowledge of the reflective properties of glass, coated glass, metal, and coated metal products. Our experience is that only nonspecular products such as natural wood will reduce the reflective properties of the house, its windows, and its roof. We feel that this house, as situated, will be highly visible and will cast a direct sun reflection down on other residences and motorists.

We have read the Staff Report on the permit, a letter written by Mendocino Coast Watch, and the appeal put forth by Mendocino Coast Watch. We agree with the principles put forth in the appeal and believe that the Smiley residence should be placed further back on the property and partially concealed by trees. We believe that this section of the coast has special visual appeal not found on other areas of the Mendocino coast and that this planned residence will stick out like a sore thumb to the other residents and visitors to the area.

We are surprised that the staff's recommendation of denial was ignored based on the "solar nature" of the project. Many homes along the coast use solar energy for heat during the daylight hours allowing reduced use of wood, electricity or propane during the evening hours. The Smiley home appears to only use window solar heating and not photovoltaics



or solar-thermal hot water making it no different than many coastal homes. The windmill described in the staff report surely can only provide minimal energy or perhaps water flow. This implies that the home will be using a hydrocarbon burning generator for electricity and perhaps propane for heating. This home does not appear to qualify for a special "solar" category.

While we are in favor of visually discreet development on the ridge above us, we are not in favor of the Smiley development as presently planned. We are especially disturbed that a development of this size so near to us could be approved without our knowledge. We are in favor of the appeal being granted and the plans for the structure redesigned.

We thank you for your time and consideration in this matter.

  
  
Jeffery and Kathleen Roy

EXHIBIT NO.	13
APPLICATION NO.	A-1-MEN-97-79
SMILEY	
Correspondence	

CALIFORNIA COASTAL COMMISSION  
45 FREMONT STREET  
SAN FRANCISCO CALIFORNIA  
ATTN: JO GINSBERG

RECEIVED  
NOV 26 1997

CALIFORNIA  
COASTAL COMMISSION

Dear Ms. Ginsberg,

The purpose of my letter is to encourage the Commission to hear the Appeal of the permit for the Smiley Project south of the town of Elk. My husband and I lived on the adjacent property for 14 years and sold our home January, 1997. Jeff and Kathy Roy who bought our home at 12001 South Highway One, Elk did not receive notice of the pending permit and their concerns should be given a hearing.

During the last three years, we have seen the erosion of the viewshed in this highly scenic area along the eastern slope from Irish Beach to Elk and trusted that the restrictions imposed by the Coastal Zone would not allow such buildings to occur. Recently we have learned about the certificates of Compliance which were granted to Mr. Galletti and the Boundary Line Adjustments which made it possible to form 181 parcels along the ridge north and south of the Smiley project. We believe if this project is given the green light a precedent will be set that will make it impossible to keep other homes being built along this beautiful ridge of rolling hills which face the ocean. Mr Smiley needs to tuck his house back on his property (there is space on his property to do this) so it won't be seen for 10 miles south along highway one. Anyone who cares for the fragile beauty of this agricultural area would not allow for such a travesty to occur. Certainly the example of the Waidhofer home should set the precedent not such a blatant disregard for the Coastal area which the Smiley home is setting. I am enclosing a map of area with the recent Boundary Line adjustments so that the members of the Commission will see what is at stake should this residence be allowed to be built.

We beg you not to allow this ridge to become like the Navarro Ridge to the north. These are all 160 acre parcels with plenty of room to hide these monstrous homes.

Sincerely,

*Walter Green*  
*Polly Green*

EXHIBIT NO.	14
APPLICATION NO.	A-1-MEN-97-79
SMILEY	
Correspondence	

EXHIBIT NO. 14

APPLICATION NO.  
A-1-MEN-97-79

SMILEY

Correspondence

NICELY NICELY FARMS

PARCEL #1 = 201+/- ACRES  
@ \$670,000

PARCEL #3 = 170+/- ACRES  
@ \$560,000

PARCEL #7 = 302+/- ACRES  
@ \$1,220,000

PARCEL #11 = 160 +/- ACRES  
@ \$460,000

ADJOINING LANDS FOR SALE

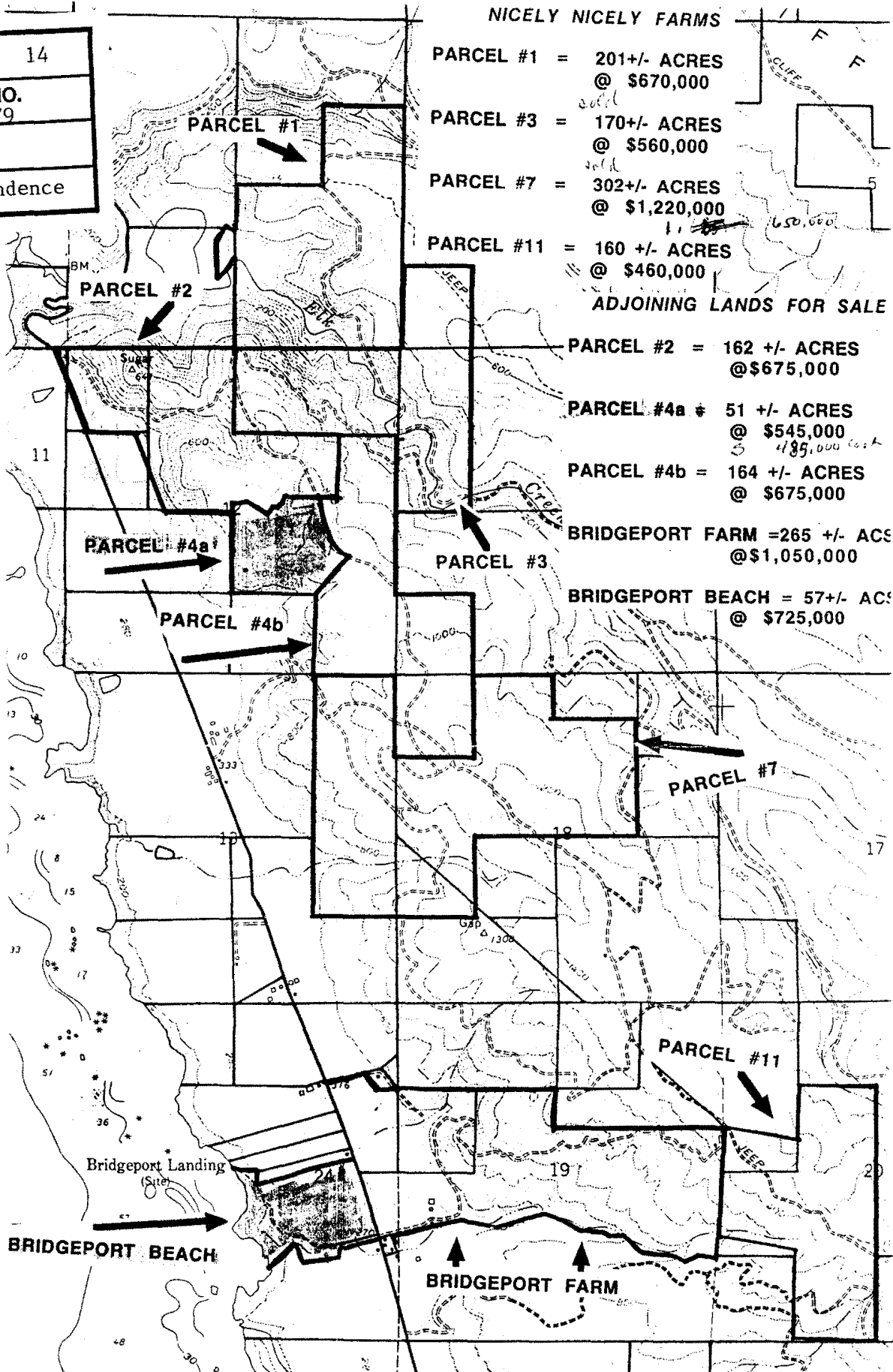
PARCEL #2 = 162 +/- ACRES  
@\$675,000

PARCEL #4a = 51 +/- ACRES  
@ \$545,000

PARCEL #4b = 164 +/- ACRES  
@ \$675,000

BRIDGEPORT FARM = 265 +/- ACS  
@\$1,050,000

BRIDGEPORT BEACH = 57+/- ACS  
@ \$725,000



THIS MAP IS PROVIDED TO SHOW THE GENERAL LOCATION OF  
PROPERTY ALL BOUNDARIES SHOWN ARE APPROXIMATE  
NO EXPRESS OR IMPLIED WARRANTY IS GIVEN BY THE

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SMILEY	
Correspondence	

Robert & Luanne Smiley

PO Box 207

Elk, CA 95432

(707) 489-6909

December 12, 1997

California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105-2219

Regarding Appeal # A-1-MEN-97-079

Dear Commissioner,

We are the owners of the subject property and, after a hearing before and a site visit by Coastal Permit Administrator Ray Hall, we were granted a Coastal Permit with conditions, to build a single family residence. Subsequently an appeal was filed, and is scheduled to be heard in January, 1998. We believe the attached materials will clearly show that there is no substantial coastal issue here.

The appeal was filed by an organization calling itself "Mendocino Coast Watch". However, as the attached report from GKL Corporate/Search, Inc. indicates, there is no legal person in California bearing the name "Mendocino Coast Watch", or any variation thereof. Your regulations require that an appeal be filed by an "aggrieved person". Though the legal definition of "aggrieved" have been modified by the legislature to include any person who appears at the local hearing and protests, or files a document in protest, nonetheless such a person must still be a legally recognized person. Since this is not the case with respect to "Mendocino Coast Watch", this appeal is invalid and should be dismissed. While this may seem to be a technicality, it is followed in the court system, thus preventing deliberate misrepresentation. For this appeal process, many other technicalities are strictly adhered to, such as legal limit of time for filing an appeal, legal limit of notice time, timeliness of hearing appeals, etc. We trust you will give this matter your consideration.

Sincerely,

Robert Smiley

Luanne Smiley  
Luanne Smiley

**gkl**

CORPORATE / SEARCH, INC.

Established 1977

## Search Report

December 3, 1997

REPORT PREPARED FOR: Richard J. Henderson  
Henderson & Mayo

SEARCH REQUESTED ON: Mendocino CoastWatch  
Mendocino Coast Watch  
Mendocino Coastwatch

A search has been conducted in the following jurisdiction,  
verifying status of the above referenced entity (and all  
variations):

JURISDICTION: California Secretary of State  
Corporations Division  
Limited Partnership Division  
Limited Liability Company Division

THRU DATE: thru 12/3/97

\*\*\* NONE OF RECORD \*\*\*

EXHIBIT NO. 15

APPLICATION NO.  
A-1-MEN-97-79

SMILEY

Correspondence

liability for verification of the files and determination of the information therein lies with the  
Filing officer; we accept NO LIABILITY for errors and omissions.

111e 320 Sacramento, CA 95814 800/446-5455 Fax 916/442 1707

## **Response to Appeal of Coastal Permit CDP # 45-97**

( Applicants Robert and Luanne Smiley)

Approval of the project, located one-half mile east of Hwy 1 and five miles south of Elk, was based on facts presented at the hour-long hearing before Coastal Permit Administrator Ray Hall on October 30, 1997. This hearing was not attended by the appellant, nor anyone from her organization. The approval was justified in all respects by the presentation, which also underscored numerous errors and omissions in the staff report.

FACTS PRESENTED AT THE HEARING OF OCTOBER 30, 1997:

### **A. Cost of PG&E Service to the Property**

The parcel is not now served by PG & E, and since it does not extend to Highway 1, such service could be obtained only by running poles, or by trenching up the access road which serves the property, and which constitutes the only existing utility easement to the property. (See Figure 1). Running wires on poles is neither practicable nor legally possible as it would be necessary to clear a wide swath of trees on neighboring properties in order to meet PG&E requirements. Also the amount of windfall each winter is such as to dictate that wires be buried. A recent estimate by the only licensed PG&E subcontractor in the county equipped to accomplish this work, is a cost of \$25 per linear foot. As the house site is nearly four miles from the PG & E access at Highway 1, the cost, at approximately \$528,000 is obviously prohibitive. Solar power is thus the only reliable and reasonable alternative.

### **B. All Possible Building Sites are in the Highly Scenic Area; the Selected Site Best Adheres to the Criteria of the Coastal Plan**

Figures 2a - g show the topography of the property, with ten foot contour intervals, slope, shading, road access, and exposure to the sun. The composite of these indicates there are only two possible building sites; both are in the highly scenic area. The westernmost site is isolated and more visible as it lacks foliage. It also will require additional roadwork as it currently has no access. The background stand of redwood trees at the easternmost site will significantly soften the visual impact of a house built on that site. A site in the vicinity of the proposed guest house (which is to be powered by electricity from solar panels on the principal residence) would require clearing two to three acres of trees on the ridgeline and would not provide sufficient solar access in the winter, when the sun is as low as 23 degrees above the horizon, since the land to the south slopes upward. Figures 3a and b show the relevant solar data at the winter and summer solstices for the latitude of the property. An additional consideration for siting the house is the topography of the property which rises 1000 feet in 2700 feet of length. This makes for an average grade of 30 to 35 degrees on most of the property, unsuitable for building.

**EXHIBIT NO. 15**

**APPLICATION NO.**  
A-1-MEN-97-79

SMILEY

### **C. No Reflectivity to Public Areas**

Neither the non-reflective roof, nor the windows will create any reflections visible from Highway 1 or any public areas. Figure 4a shows that the orientation of Highway 1 to the property is almost due south. True south is at 163 degrees magnetic, due to the local declination of 17 degrees. The magnetic compass range of visibility of Highway 1 from the house site extends from 160 degrees to 195 degrees. The roof angle of the proposed roof is  $33 + 1/3$  degrees. Figures 4b - e demonstrate that neither at the highest nor at the lowest point of the elevation of the sun (between 23 and 74 degrees above the horizon), can any reflection occur in any public areas. Highway 1 lies one mile from and 14 degrees below the horizon of the building site at the closest visible point; at the distance of 9.5 miles referred to by the staff report, the angle is 11 degrees below the building site horizon. Applying the principle that the angle of reflection from a flat surface is equal to the angle of incidence, it is clear that even if the windows and roof were of a highly reflective nature (which they are not), no reflective sunlight could ever reach any portion of Highway 1 from any surface of the proposed residence.

### **D. The Regulations and the Law**

The Mendocino County General Plan (Coastal Element) in section 3.5 - 4 states in pertinent part: "Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge or in or near the edge of a wooded area." ... "Minimize visual impact of development on ridges by (1) prohibiting development that projects above the ridgeline; (2) if no alternative site is available below the ridgeline, development shall be sited and designed to reduce visual impacts by utilizing existing vegetation, structural orientation, landscaping, and shall be limited to a single story above the natural elevation; prohibiting removal of tree masses which destroy the ridgeline silhouette. Nothing in this policy shall preclude the development of a legally existing parcel."

The applicants have complied with this policy. Although a possible alternate site exists below the ridgeline, it is even more visible from Highway 1, would require disfiguring roadwork, and does not possess the advantage of the background of ridgeline trees into which the roof will blend (roof color is to be approved by the coastal permit administrator). Only one story projects above grade (twenty-one feet; the code allows twenty-eight feet). The lower story is dug into the hillside and will be of a color (again to be approved by the coastal permit administrator) which will blend with the hillside. Tree masses which form the background to the roof, will not be removed, according to Special condition #5 imposed by Administrator Ray Hall. Since the applicant has fully complied with the Mendocino County General Plan, to find otherwise would run afoul of the admonition that "nothing in this policy shall preclude the development of a legally existing parcel".

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APPLICATION NO.	A-1-MEN-97-79
SMILEY	

The "California Solar Rights Act" (attached) was enacted in 1978. This legislation, found in both the Government and Health & Safety sections of the California Code, is also referenced in the Mendocino County General Plan, Land Use Element, Section #4. E (Energy) "The County has additional authority to guarantee a solar system owner's right to sunlight through two state laws enacted in 1978: the Solar Rights Act and the Solar Shade Act. The Solar Rights Act requires that local planning and building ordinances should not have the effect of prohibiting or unreasonably restricting the use of solar energy systems;"... "This section shall not apply to ordinances which impose reasonable restrictions on solar energy systems. However... reasonable restrictions on a solar energy system are those restrictions which do not significantly increase the cost of the system or significantly decrease its efficiency, or which allow for an alternative system of comparable cost and efficiency." This is consistent with, and amplifies the interpretation of the Mendocino County General Plan, Coastal Element, Section 3.11-12, which states in part, "The County shall encourage the development and use of alternative sources of energy, such as wind, solar, wave, and biomass ... to meet the coast's energy needs." The Land Use Element of the Mendocino County General Plan states in Goal Number 2: "The County shall make energy efficiency a major consideration in its land use .... decisions."

#### **E. Substantive Issues do not Exist**

The appellant states "We are familiar with the subject area and fail to see why another site on the 182+ acre parcel and /or a reduction in height, use of different materials, or other alternative energy methods could not be used to reduce the impacts on the public's protected visual resource." Perhaps if the appellant had attended the hearing and had the benefit of the "other side of the story", she would be better able to comprehend the administrator's ruling. After a site visit Mr. Hall found, as a matter of fact, that there is no other appropriate site on the property on which an integral solar powered home can be built. "Reduction of height" is an irrelevant issue, as the proposed height is seven feet less than the current code allows. Similarly, the "reflective" issue is also irrelevant as the house incorporates non-reflective materials, and even if it were reflective, the reflections would never be seen from Highway 1 or any public areas. As to the "alternative energy methods" which the appellant proposes, it remains to be seen what such alternative source of energy might be. PG&E is clearly not an economically viable alternative. If not solar, then what does the appellant propose? A constantly running diesel generator is not something that should be imposed on the landowners, their neighbors, or the environment. Windpower, while useful for limited operations such as future water pumping on the site, is not a sufficiently constant source of energy in this area to adequately power a house.

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SMILEY	
Correspondence	



EXHIBIT NO. 15

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SMILEY

Correspondence

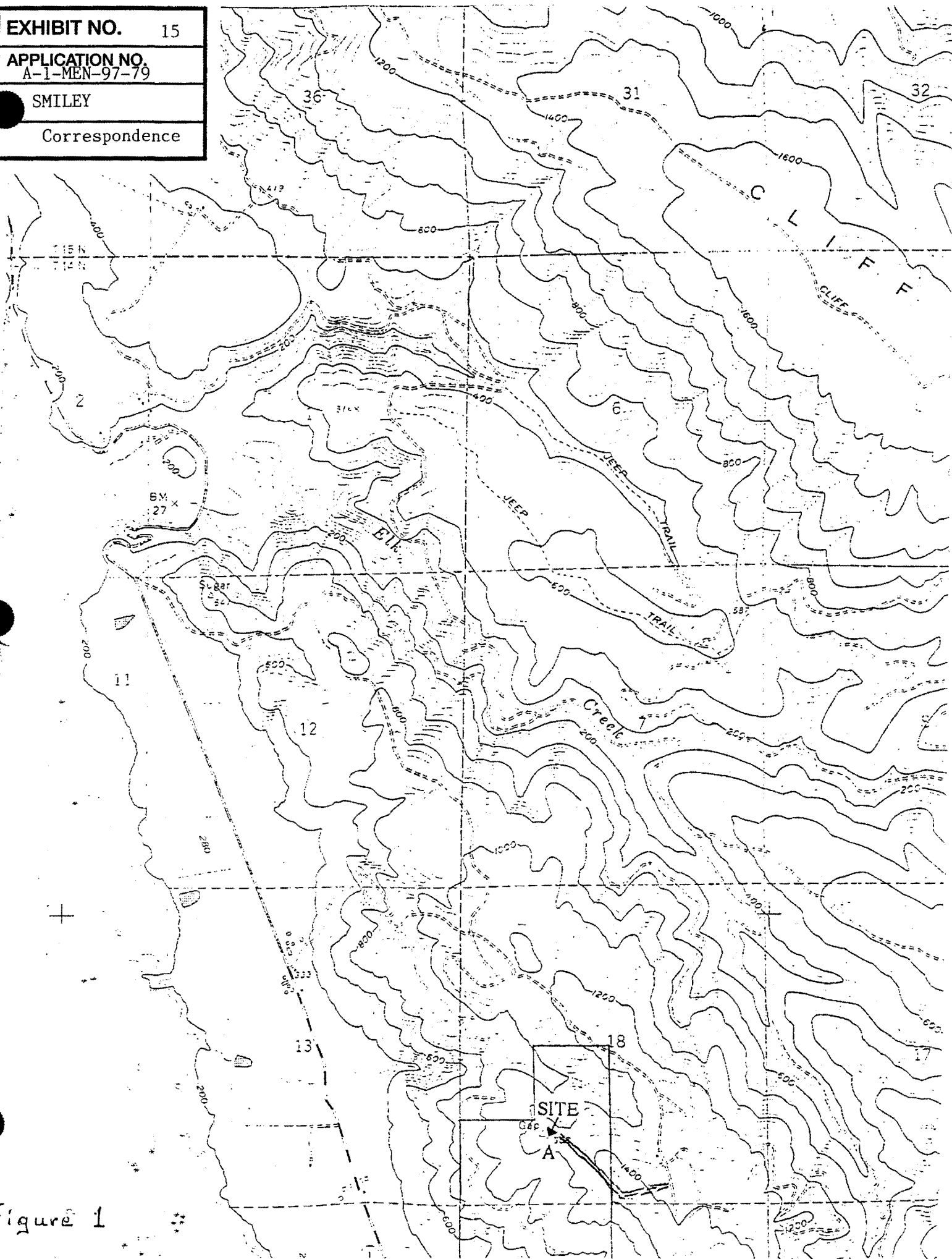


Figure 1

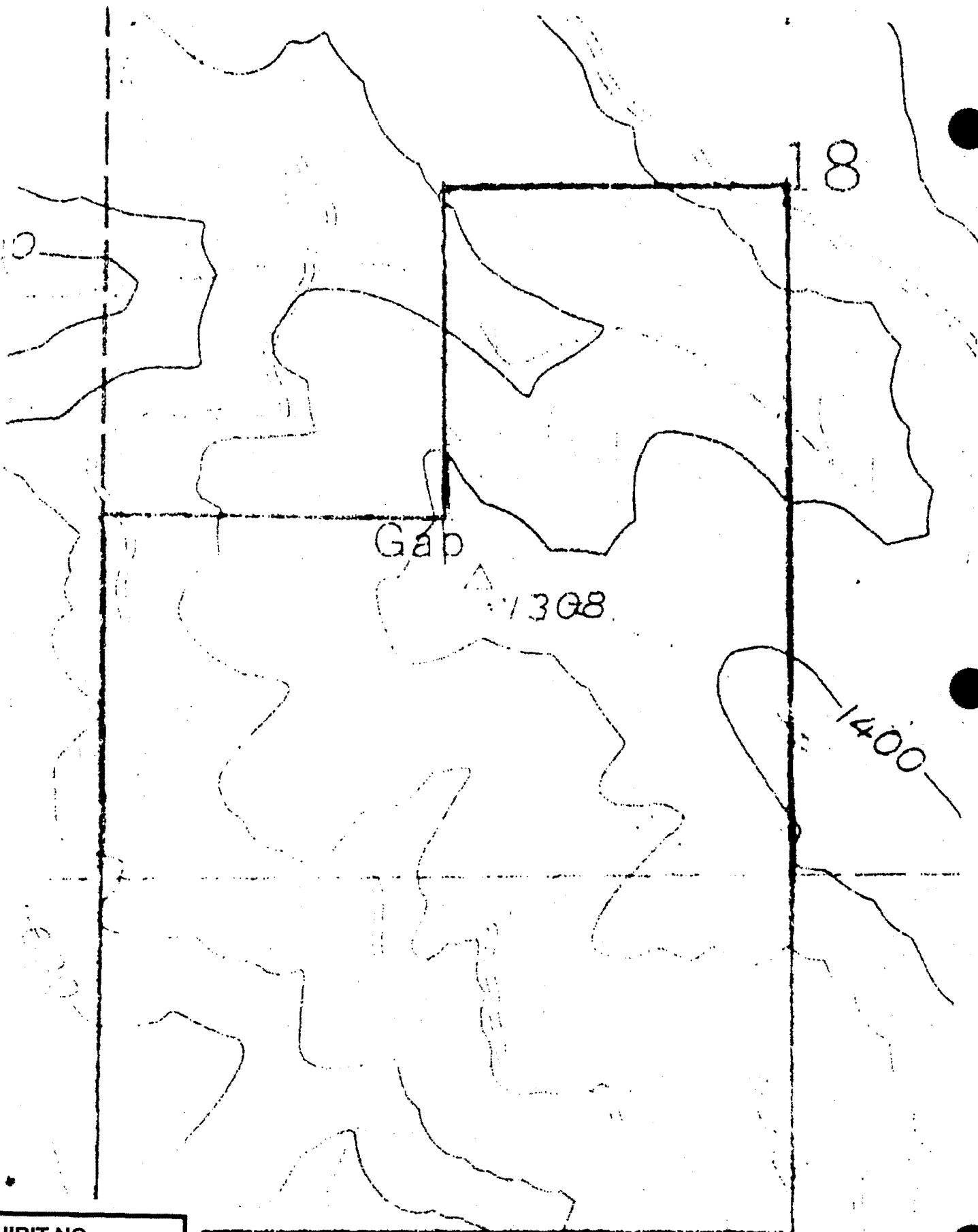
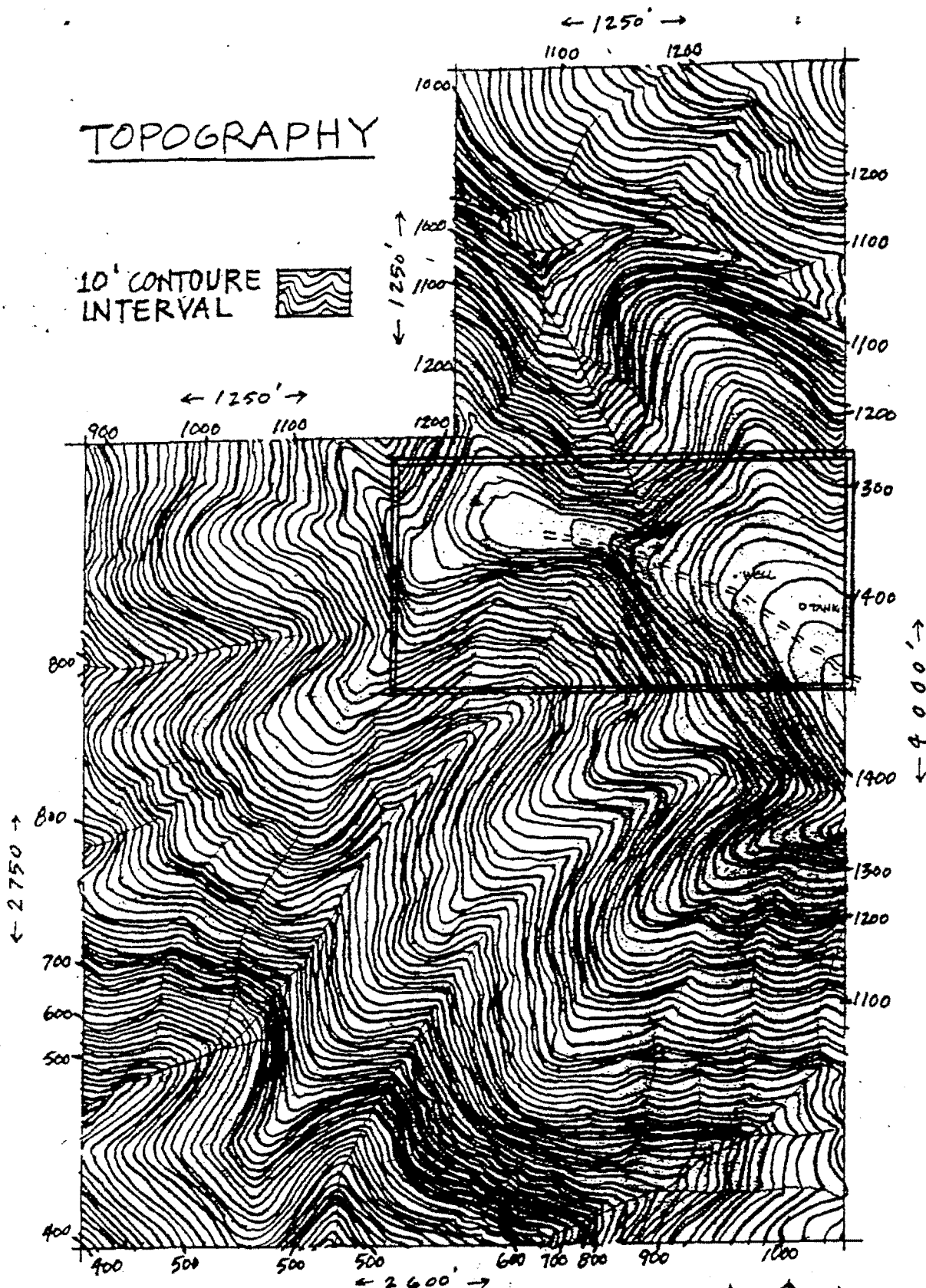


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SMILEY	
Correspondence	

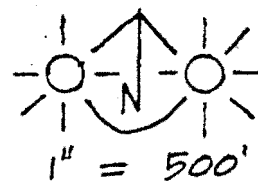
Figure 2a

# TOPOGRAPHY

10' CONTOUR  
INTERVAL



LANDS OF ROBERT & LUANNE SMILEY  
05 HWY 1 ELK, CA 95432



31

Figure 2b

EXHIBIT NO.	15
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SMILEY	
Correspondence	

# SLOPE

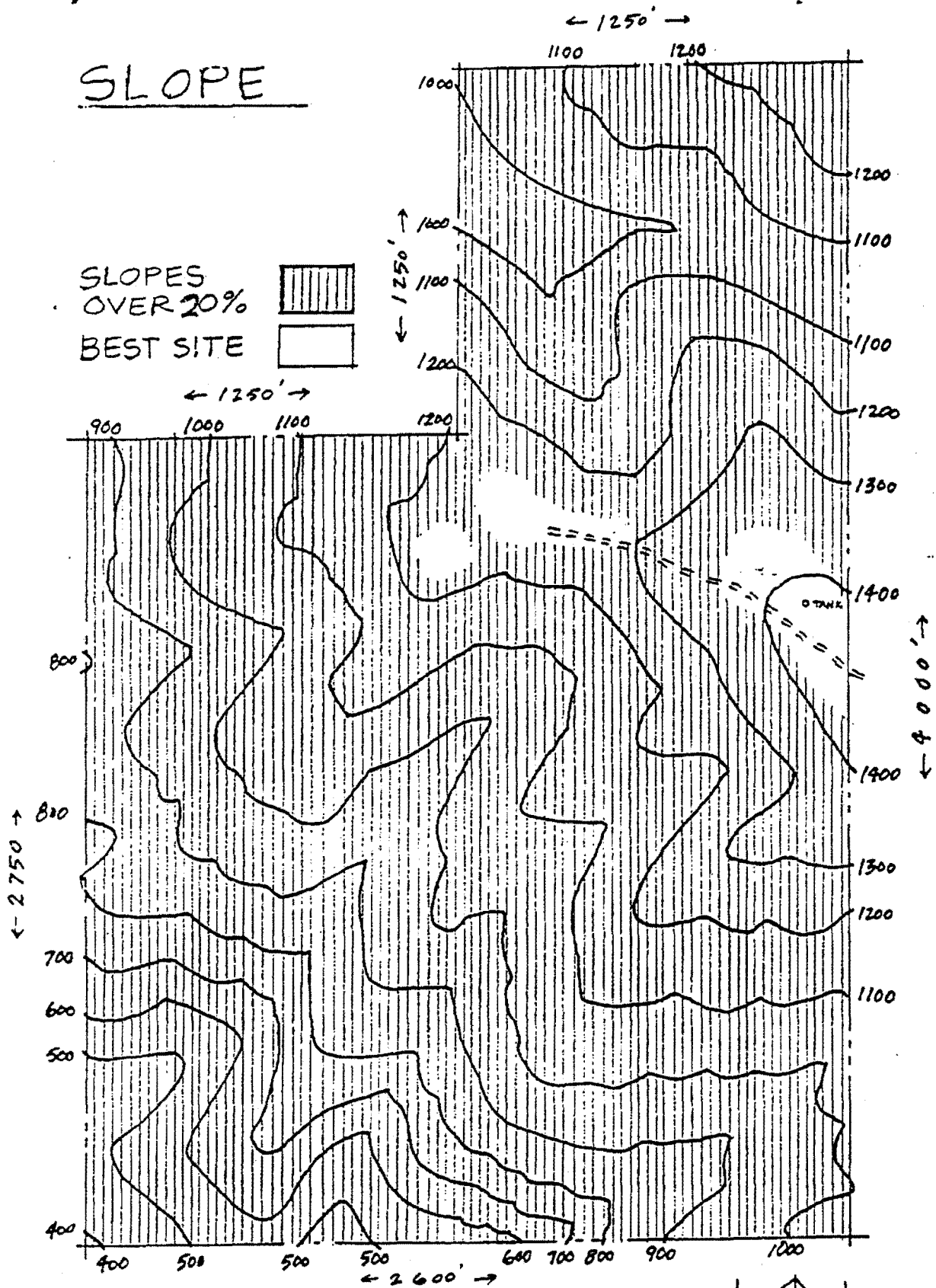


EXHIBIT NO. 15

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A-1-MEN-97-79

SMILEY

Correspondence

IDS OF ROBERT & LUANNE SMILEY  
5 HWY 1 ELK, CA 95432

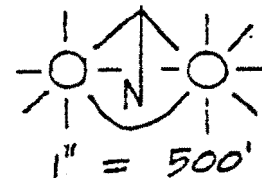


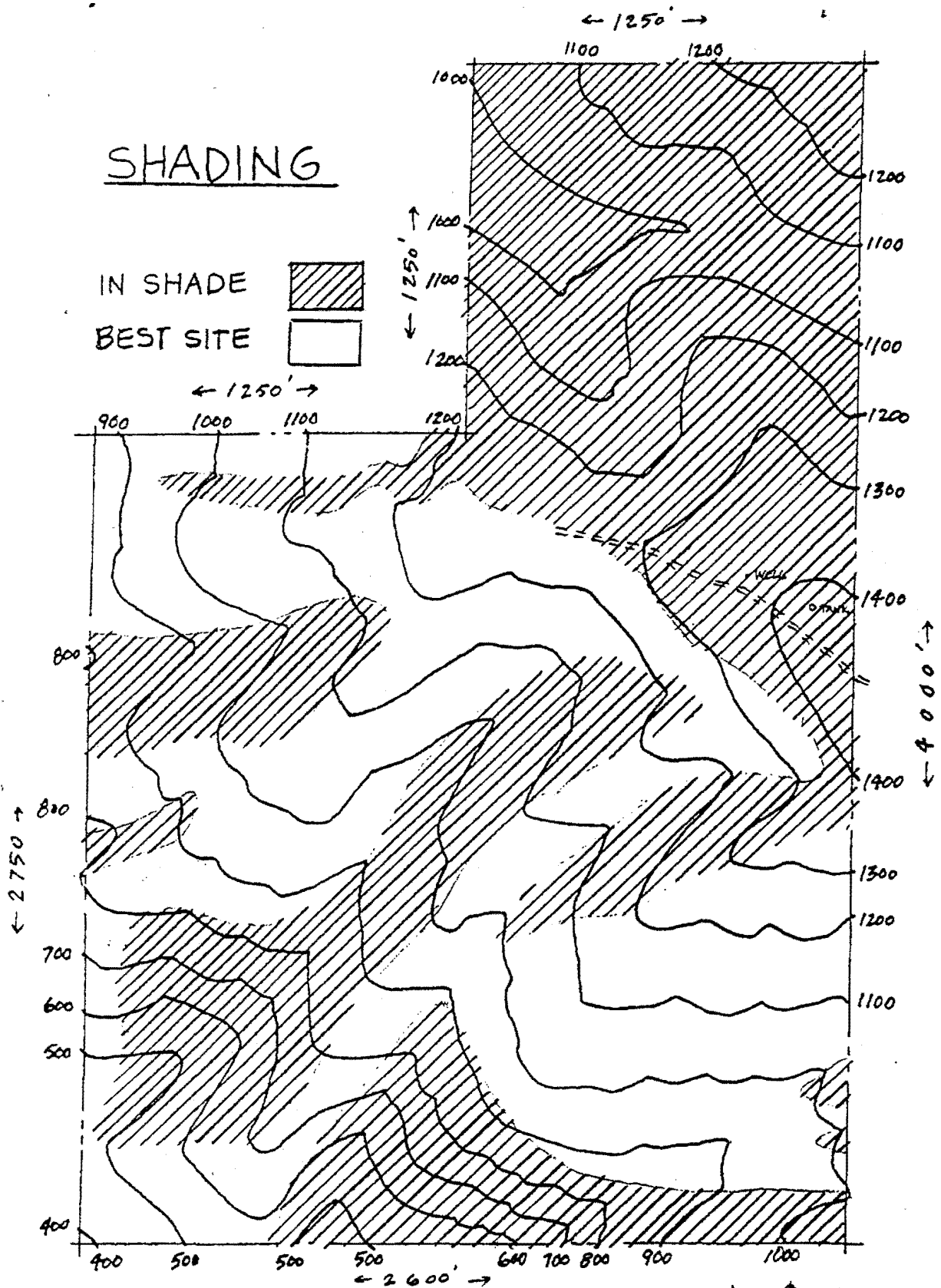
Figure 2c

# SHADING

IN SHADE



BEST SITE



DS OF ROBERT & LUANNE SMILEY  
5 HWY 1 ELK, CA 95432

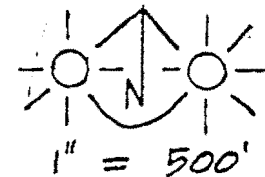


EXHIBIT NO. 15

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A-1-MEN-97-79

SMILEY

Correspondence

Figure 2d

EXHIBIT NO. 15
APPLICATION NO. A-1-MEN-97-79
SMILEY
Correspondence

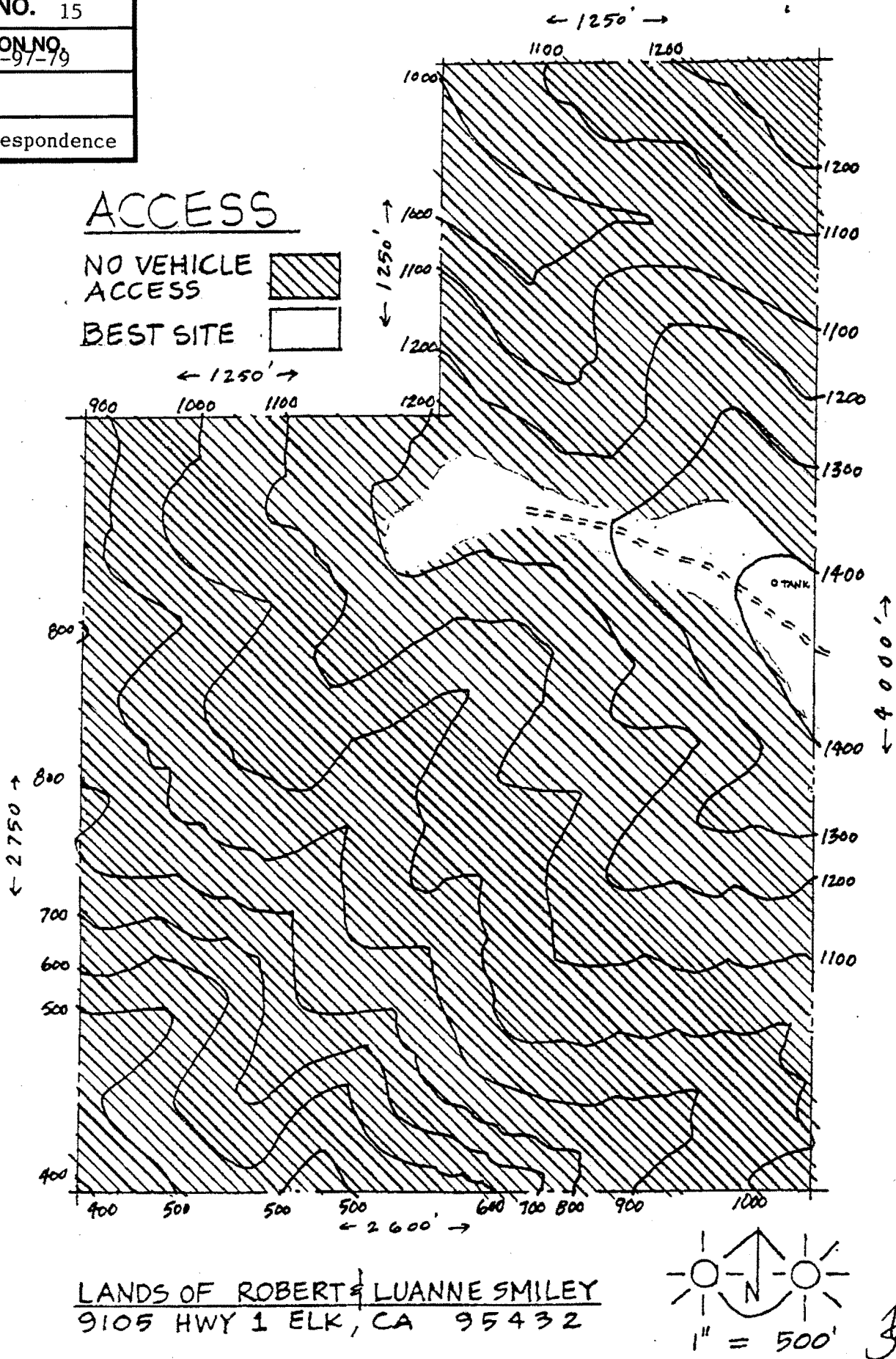


Figure 2e

# COMPOSITE

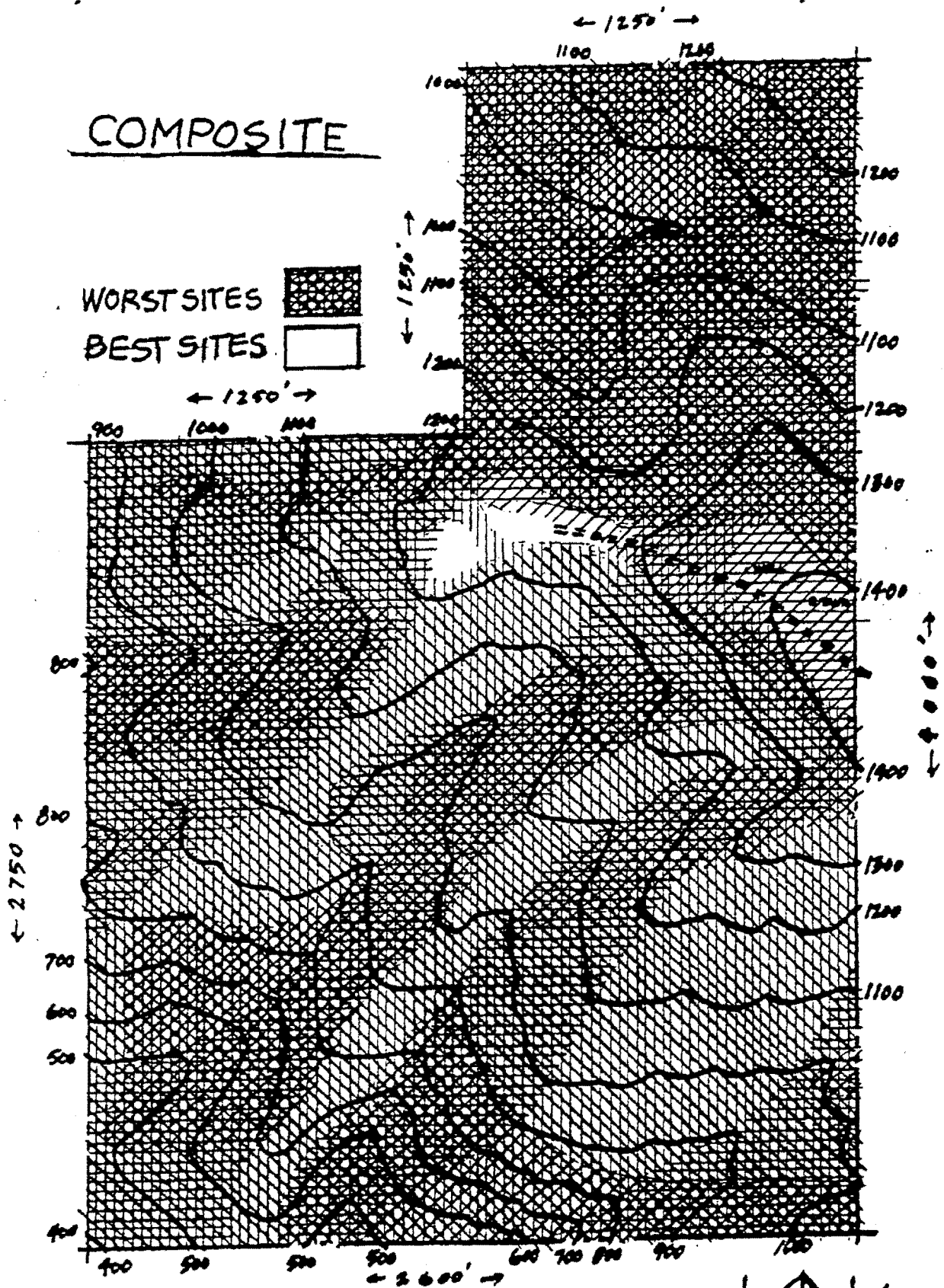


EXHIBIT NO. 15

APPLICATION NO.  
A-1-MEN-97-79

SMILEY

Correspondence

DS OF ROBERT & LUANNE SMILEY  
5 HWY 1 ELK, CA 95432

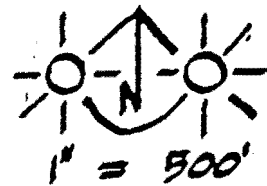


Figure 2g

# Smiley building site\*, California

Latitude 39° 04' N  
Longitude 123° 43' W  
Magnetic Declination 17° E



Time Zone: 8 Pacific  
Standard Time  
(DST is from 4/6/97 to 10/26/97)

*Azimuth Bearings are given for MAGNETIC NORTH. DO NOT make a correction with your compass.  
The Magnetic Declination has been used in the calculations.*

Date	Dawn	SUNRISE Azimuth	Day Length	SUNSET Azimuth	Dusk
Sun 12/21/97	07:09	07:30 103°	09:25	16:56 223°	17:17

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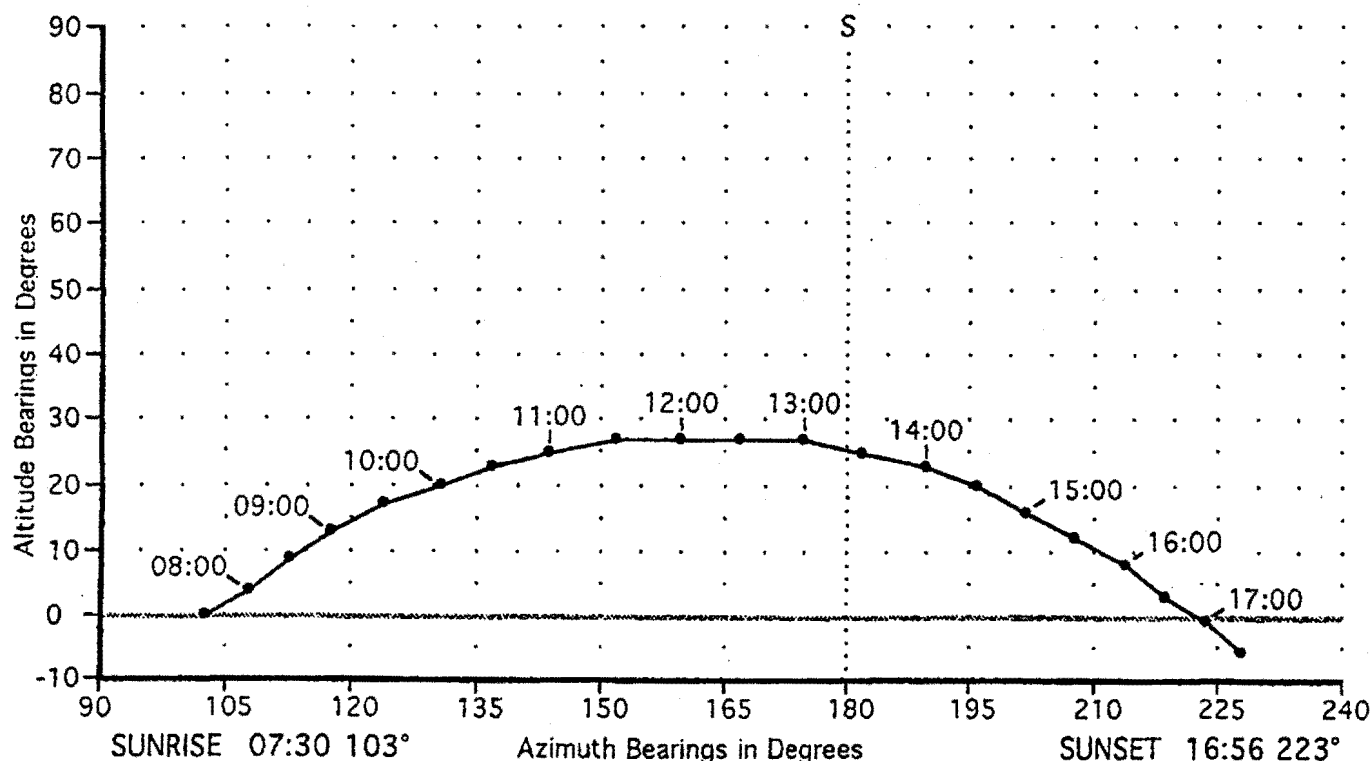
Sunday, December 21, 1997

30 minute intervals

AZ°- Azimuth ALT°- Altitude


<u>AZ°</u>	<u>ALT°</u>	<u>Sf°</u>	<u>AZ°</u>	<u>ALT°</u>	<u>Sf°</u>	<u>AZ°</u>	<u>ALT°</u>	<u>Sf°</u>
103	0	---	11:00 144	25	2.14	196	20	2.75
08:00 108	4	14.3	152	27	1.96	15:00 202	16	3.49
113	9	6.31	12:00 160	27	1.96	208	12	4.70
09:00 118	13	4.33	167	27	1.96	16:00 214	8	7.12
124	17	3.27	13:00 175	27	1.96	219	3	19.1
10:00 131	20	2.75	182	25	2.14	17:00 224	-1	---
137	23	2.36	14:00 190	23	2.36	228	-6	---


\* Shadow Length = Object Height x Shadow Factor (Sf)




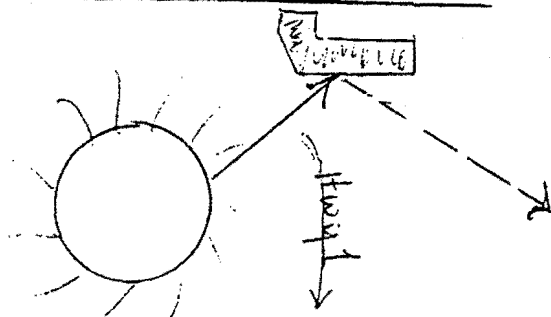


# Potential Reflectivity is to the South

 = Proposed house

 = Closest visible point (Hwy 1)

 = Proposed house site  
House faces south  
where potentially  
visible from  
public areas



When sun is not due south,  
reflectivity is either east  
or west of public areas  
as Hwy 1 runs north-south

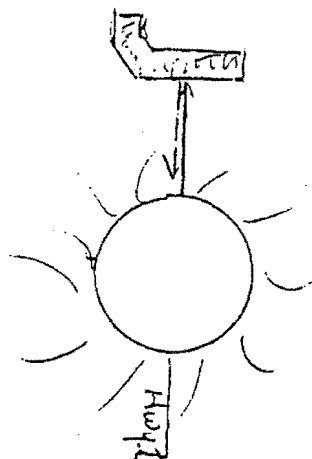
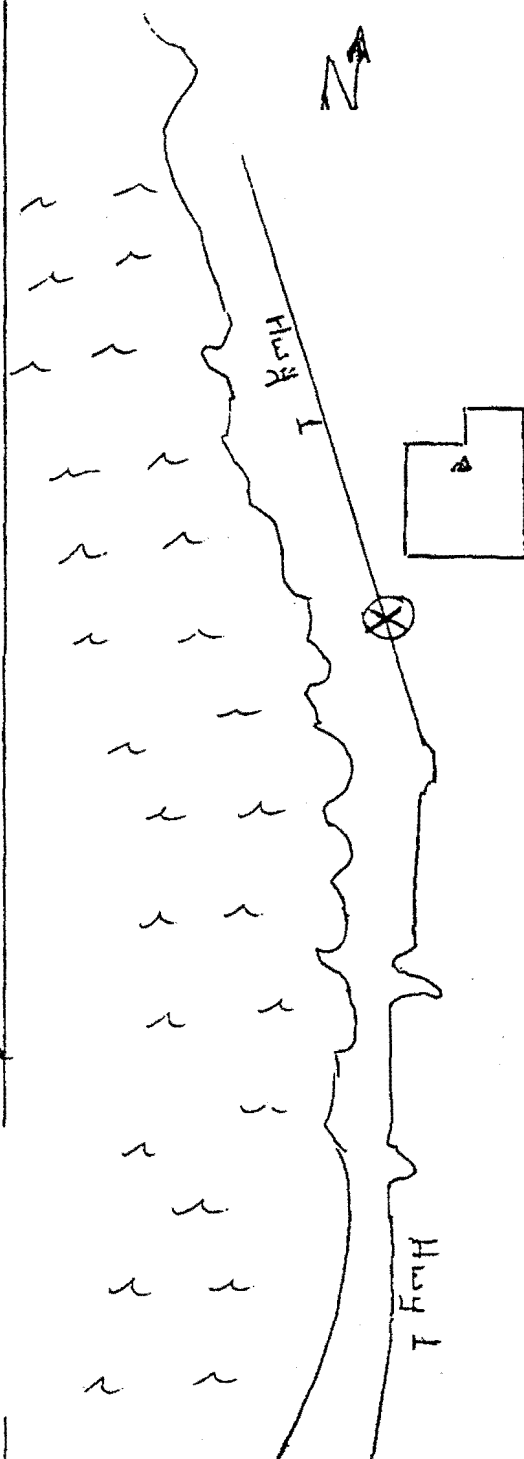


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Correspondence	

The only sun position  
where potential public area  
reflectivity could  
occur is when  
the sun is due south  
and Hwy 1 runs north-south



Sketched from US  
Geological Survey Map  
Navarro Quadrangle  
15 minute series  
Scale 1:24,000

# Reflectivity

EXHIBIT NO.	15
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SMILEY	
Correspondence	

Principle :

Angle of incidence = Angle of reflectivity

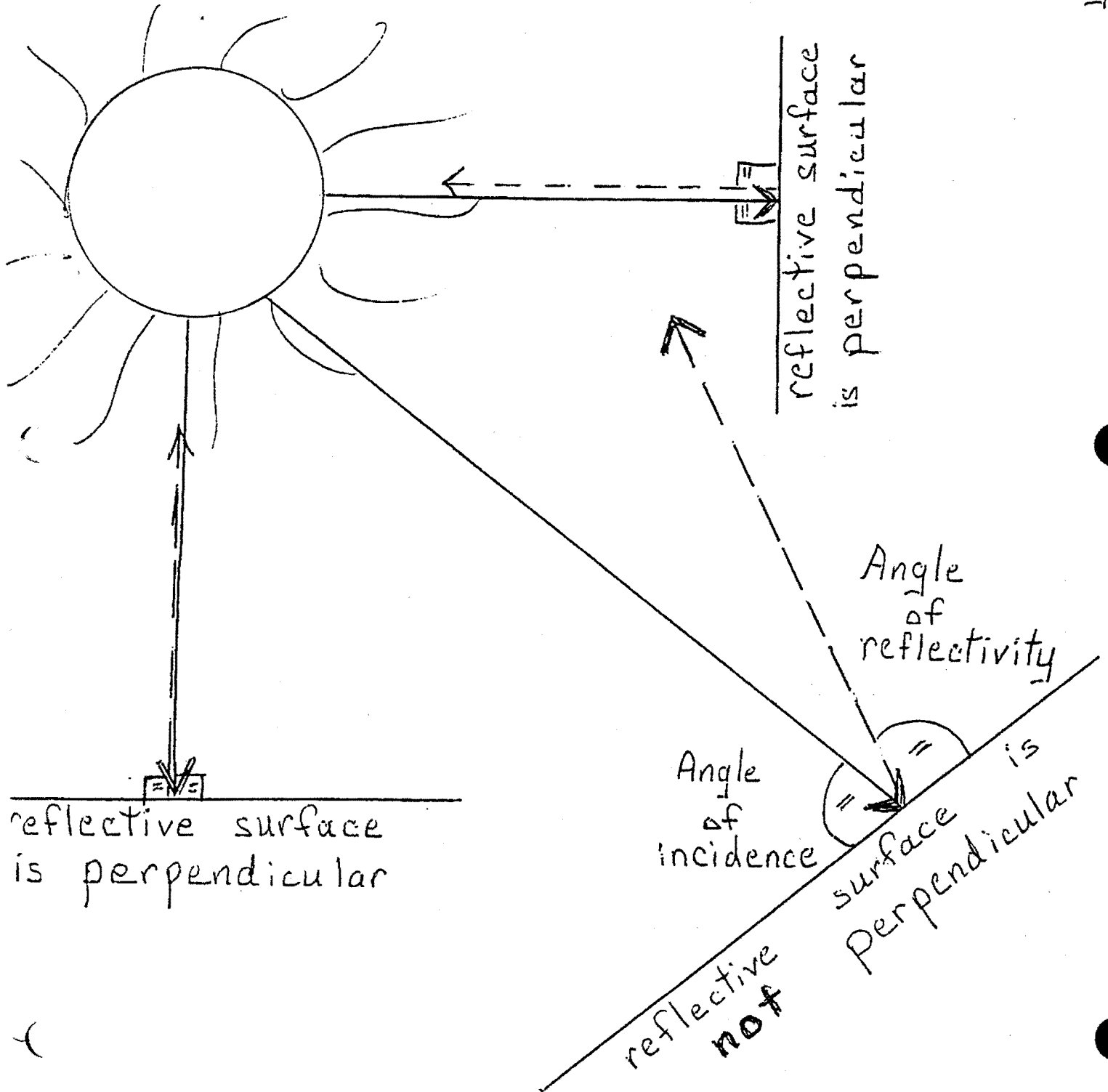
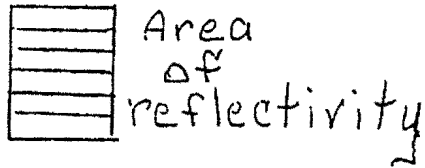


Figure 4b

# angles of reflectivity as app to Locations of Public Areas

EXHIBIT NO.	15
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SMILEY	
Correspondence	



74° = maximum sun elevation = 74°  
(on 6-21)

27° = maximum sun elevation = 27°  
(on 12-21)

20° = lowest possible = 20°  
sun elevation  
on 12-21  
at  
magnetic 27°  
compass  
heading 20°  
of 195° -  
(westernmost  
point of visibility  
of Highway 1  
from  
proposed  
building site)

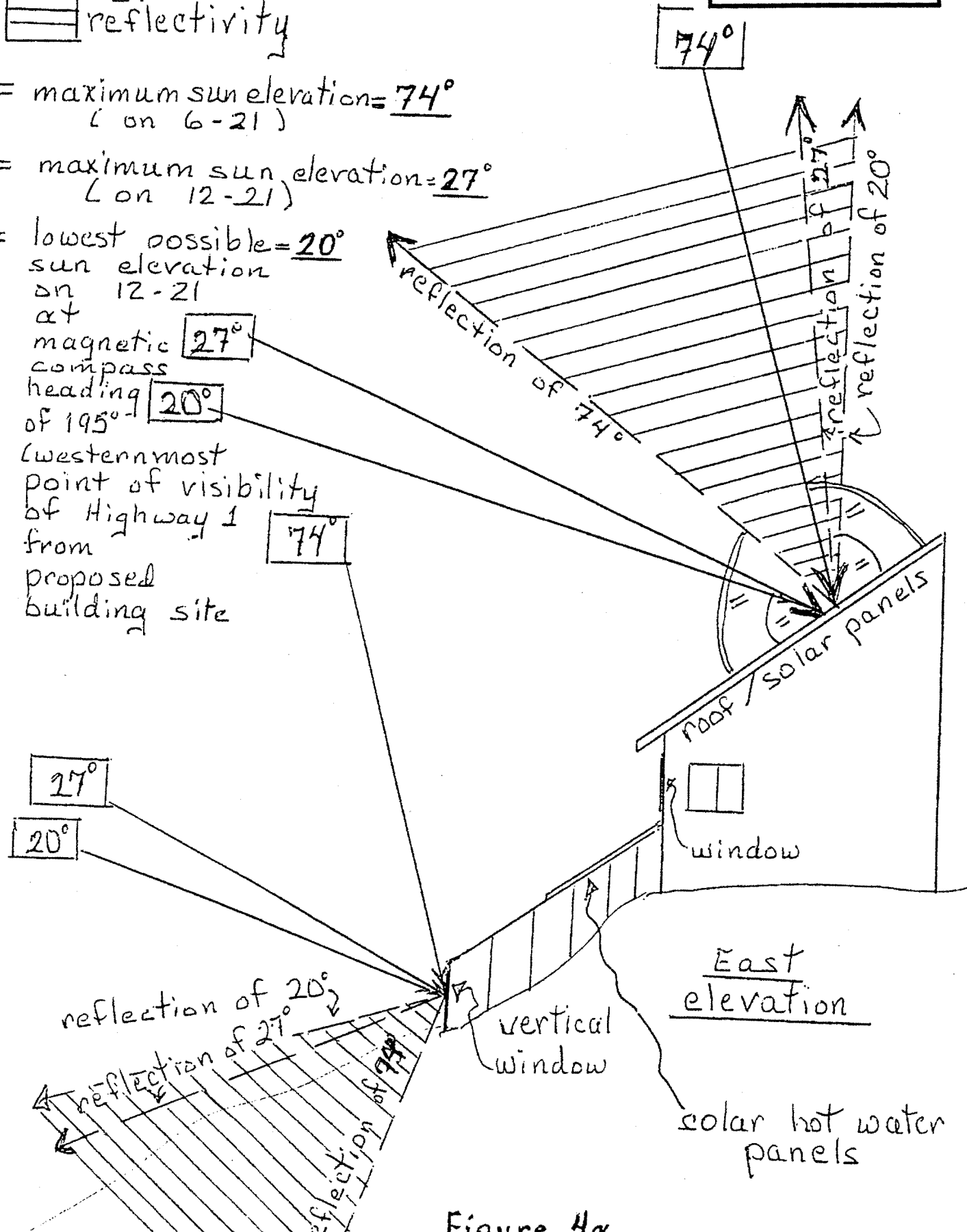


Figure 4a

# NO REFLECTIVITY TO PUBLIC AREAS



Area of reflectivity



Area from which public might possibly see house and potential reflective surfaces

EXHIBIT NO.	15
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Correspondence	

-11° = At a distance of 9.5 miles south on Hwy 1, the public area is 11° below the horizon of the proposed house. The highest possible angle of reflection at this point is 27° below the horizon of the house. (Reflection is downward into the hills.)

-14° = At the closest visible point of 1 mile, the public area is 14° below the horizon of the proposed house. The highest possible angle of reflection is 20° below the horizon of the proposed house. (Reflection is downward into the hills.)

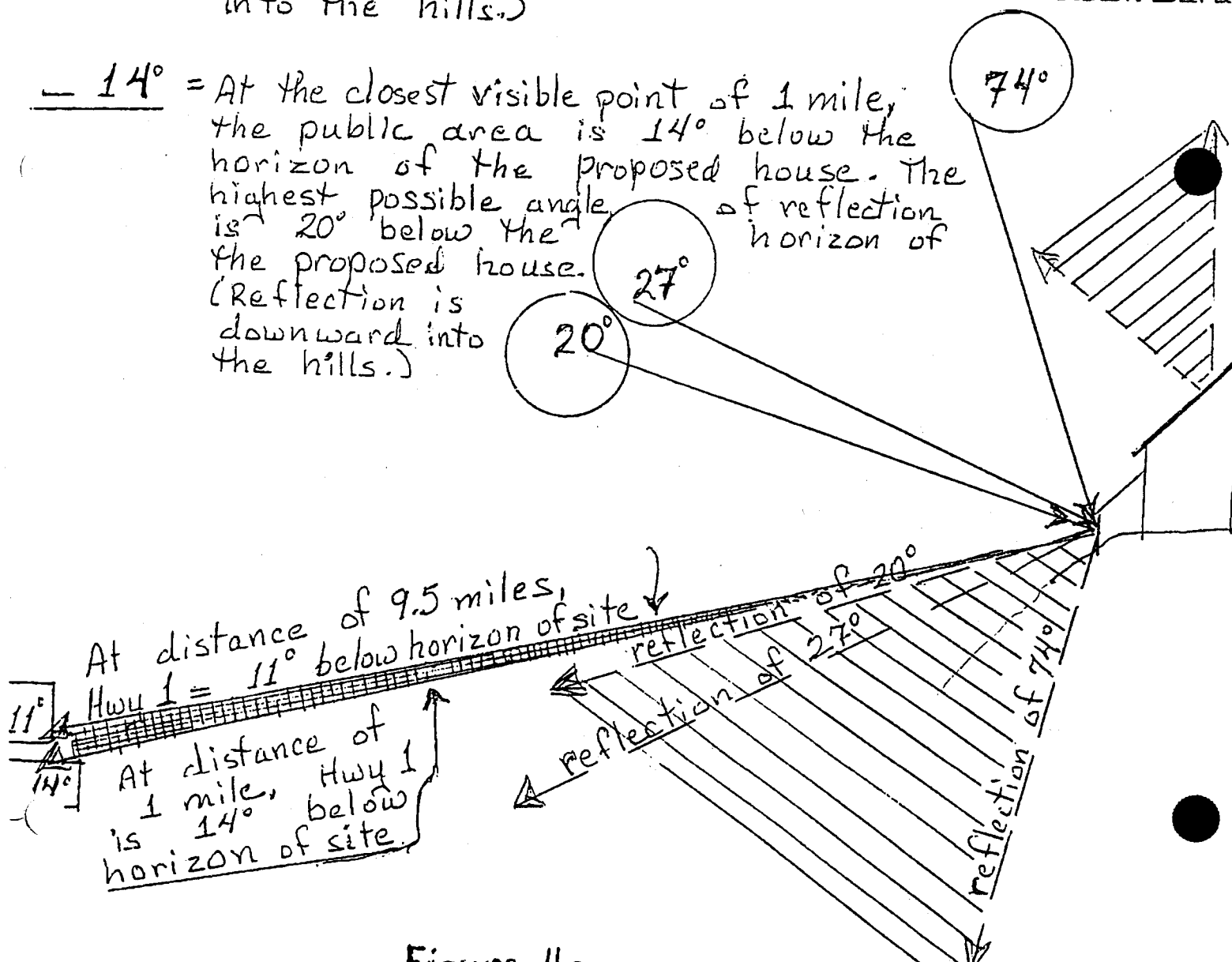


Figure 4a

EXHIBIT NO. 15
APPLICATION NO. A-1-MEN-97-79
SMILEY
Correspondence



Photo 1: Taken with a 55mm lens, looking North from Hwy 1 at Bridgeport Landing. The site below the arrow is 4,500 feet away and 1100 feet above the highway. Driving North on Hwy 1, this is the last place the proposed house will be seen before being totally obscured by the trees and ridge in the foreground. The house will not require any utility pole and wire or road extentions.

EXHIBIT NO. 15

APPLICATION NO.  
A-1-MEN-97-79

SMILEY

Correspondence

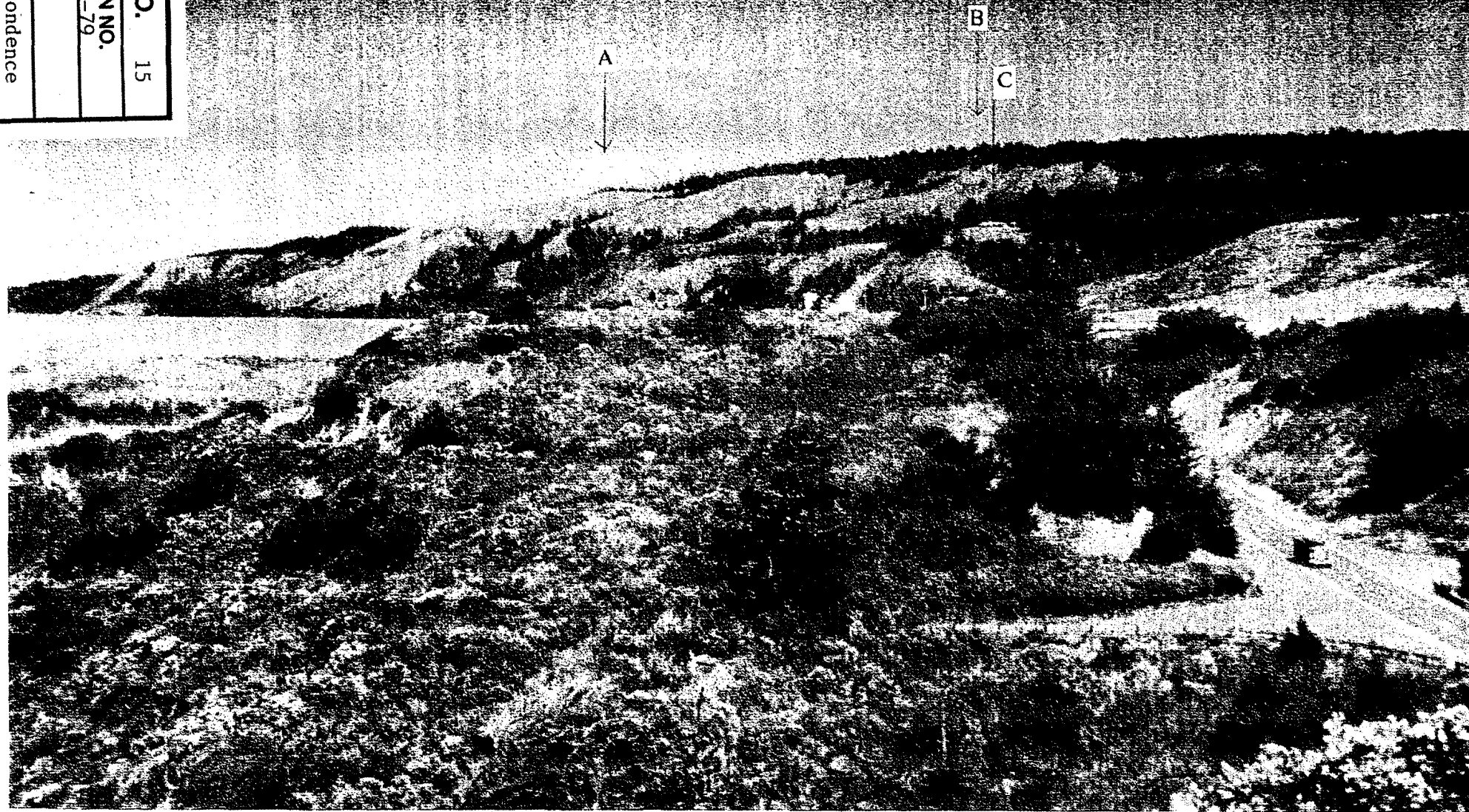


Photo 2: Taken with a 55mm lens, looking North from the turn out just South of Mallo Pass Creek. The site is three miles away, just in front of the tree line below the arrow. The house will be about 1/4 the height of the trees and about as long as the trees are tall. Arrow A points to the Smiley site, Arrow B to an existing two story (Waidhofer) home, and Arrow C to an existing 6000 square foot (Raabe) home.



EXHIBIT NO. 15

APPLICATION NO.

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SMILEY

Correspondence



Photo 3: Taken with a 55mm lens, South of Irish Beach, looking at three homes on a ridge 5,000 feet to the North. (A) is very light in color and stands out against the blue sky, (B) is dark in color and blends in with the trees behind it, and (C) is light and stands out against the trees. The utility poles are very obtrusive. The Smiley home will need no poles and will be dark gray-green to blend with the trees behind it.

1- Site from which  
photo 1 taken

2- Site from which  
photo 2 taken

3- Site from which  
photo 3 taken

EXHIBIT NO.	15
APPLICATION NO.	A-1-MEN-97-79
SMILEY	
Correspondence	



December 4, 1997

From:  
Karl M. Waidhofer  
PO Box 309  
Elk, CA 95432

To:  
Robert Smiley  
PO Box 207  
Elk, CA 95432

Dear Robert Smiley,

During a coastal administrative hearing October 30, 1997, I shared information about costs of furnishing solar power to my 3200 square foot house. The estimated costs ranged from a low figure of \$40,000 to a high figure of \$70,000. These estimates are for a house with normal appliances and normal electrical energy requirements. I also shared information about costs of getting electrical power from PG&E. My information was from Ernie Wipf, owner of Wipf construction an underground contracting firm in Ukiah CA. Ernie Wipf told me that a low figure for PG&E power would be \$25.00 a foot. My house is three and half miles from Highway 1 where the PG&E connection would originate. If you do the math the cost calculates to be \$462,000.00. Robert, your proposed house is about four miles from the connection point, so your costs would be even more.

Sincerely,

  
Karl Waidhofer

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Statement of David R. Miller, R.E.H.S.

10-9-97

My name is David R. Miller. I am a Registered Environmental Health Specialist (R.E.H.S.), license no. 3798, and have been retained by Robert and Luanne Smiley to evaluate septic system sites on their property, consisting of approximately 180 acres in the Galletti ranch subdivision located five miles south of Elk, specifically at 10927 S. Hwy. 1. At the outset, I was advised of the fact that the Smileys elected not to attempt to obtain electricity from PG & E, due to the excessive cost of bringing wires up to their property. That reduced the area suitable for building a solar powered house to the western two-thirds of their property, which slopes down rather steeply toward Hwy. 1 and the coast. The balance of their property is heavily wooded and quite steep, with only one reasonably level site, in the vicinity of their shed, well-house, and temporary trailer. I was able to identify a small septic field approximately one hundred feet from their well, which would be acceptable for the planned one bedroom guest cottage, or the temporary trailer, but not both. To enlarge this field would require felling numerous trees along that portion of the ridgeline, a solution which the Smileys do not favor. I did evaluate the area below their proposed residence site and found it satisfactory for the planned single family, three bedroom house. All other locations on the south facing slopes were too inaccessible, requiring extensive roadwork.



David R. Miller, R.E.H.S., lic. # 3798

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Correspondence	



ARCHITECT  
1837 Lindamoor Drive  
Annapolis, Maryland  
21401 410-268-0987

October 7, 1997

To Whom It May Concern,

I am an architect working with Steve Heckeroth on the residence of Robert and Luanne Smiley at 10927 South Highway 1 in Elk.

I helped perform an extensive site survey to help determine the best location for their house. Their site is large but challenging. Most of the site is very steep and much of it is inaccessible. The only existing access to the site is an old logging road. The remoteness of the site makes it impractical to run power lines all the way up the hill.

We have solved these design challenges with what we believe is a very ecological solution. To avoid disturbing a major portion of the site with new road construction, we will work with the existing logging roads. This brings us to the top of the hill. To avoid bringing up power lines, with their additional site disturbance, not to mention the ecological cost, we will power the house with photovoltaic panels. This will also be more aesthetically pleasing not to have any power lines visible. Luckily the site seems to be destined for a solar array, because there is a perfect south sloping site, just down from the ridge and accessible from the logging road, where the soils are suitable for a house.

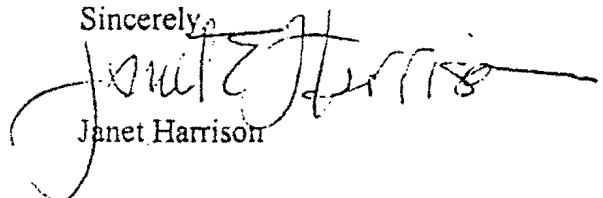
In keeping with our strategy of working with nature, not against it, we curved the house around the hill and tried to create as little disturbance to the land as possible. There are no trees that need to be cut to make room for the house, but there is a nice stand of trees behind the house so that the view from the road will not be a silhouette against the sky.

The roofing material we have chosen for the house is one I am excited about using. It is an integrated panel that includes a thin film solar array laminated to standing seam metal roofing. Therefore the appearance will not be the highly reflective, high tech look of solar panels, but will look like normal metal roofing.

I believe this house will have not only minimal visual impact on the site, but also minimal environmental impact.

Thank you for your consideration.

Sincerely,



Janet Harrison

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APPLICATION NO.	A-I-MEN-97-79
SMILEY	
Correspondence	



## Victorian Gardens

October 27, 1997

Mr. Gary Berrigan  
Mendocino County Planning and Building Services  
153 Spruce Street  
Fort Bragg, CA 95437

Dear Mr. Berrigan:

As you know, we own and operate Victorian Gardens, a Country Inn situated at 14409 South Highway One in Manchester, California 95459. Because of our Inn activity, we are very sensitive to any change in the beautiful views around our property that could affect our business. One such change could possibly result from Mr. and Mrs. Smiley's plan to build a house on top of one of the hills north of us. From our property, we can see the two poles on the Smiley's property: we understand that they demarcate the south facing portion of the house that Mr. and Mrs. Smiley plan to build. Furthermore, we can establish from our location that the roof line of their house will blend with the trees in the background. Because of the above, we feel that the house to be built will be inconspicuous and therefore, not objectionable to us.

Sincerely,

*Luciano Zamboni M.D. and Mrs. Zamboni*  
Dr. and Mrs. Luciano Zamboni

P.S. Incidentally, the Raabbi's house situated just south of the Smiley's is, in our opinion, much more obvious since its location does not allow it to blend into the surroundings.

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Correspondence

*B.T. Corwin & Tom Wolsky*  
11400 South Highway One, Elk California 95432

Mr. Gary Berrigan  
Mendocino County Planning and Building Services  
153 Spruce Street  
Ft. Bragg, CA 95437

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<b>APPLICATION NO.</b>	A-1-MEN-97-79
<b>SMILEY</b>	
<b>Correspondence</b>	

Dear Sir:

I am writing to comment on the proposed Smiley house five miles south of Elk. As the neighbor most impacted by the proposed house, I have been very interested in the design and siting of the house. I am unable to attend the hearing in person, but I am writing this letter to let you know I support their plan.

My husband and I have had the opportunity to look at the house plans and visit the site, and it is my opinion that the Smileys have done an outstanding job of minimizing the impact of the house on the surrounding area. They have chosen a solar design which eliminates the need to put up power poles and string lines. They have chosen a naturally open site, eliminating the need to remove many trees which would create an artificial and very visible barren area. They have also chosen to put their house in a small valley between two ridges, to set it back from the edge, and to have only one story above ground. While this has lessened their views, it makes their home virtually invisible as one travels down Highway One. Our home is almost directly opposite their proposed site, which looks down on ours, and even with binoculars we had an extremely difficult time making out the flags and poles they have put up. There is only one small portion of one wall that will be visible to us, and that is partially blocked by trees. We have driven as far south as Irish Beach and have not been able to see the flags and poles while driving northbound, even though we knew the exact location. A person traveling northward on Highway One would have to be at least a mile south of the proposed home for there to be any potential view of it, and at that distance it would be tiny. In actuality, no one while driving that curving section of Highway One is likely to stare that intently eastward along the ridge to try to pick it out among the trees and grasses. As you continue to travel northbound on Highway One, starting at about one mile south of the site the natural contours of the land will completely hide the house. There are several other much more prominently visible houses along the stretch of ridge between Irish Beach and the Smiley site, and I don't believe the Smiley house will be noticed at all. Traveling southbound on Highway One, you cannot see the home site at all.

The Smileys seem to have done everything possible to minimize or totally eliminate the impact their home will have on the surrounding area even at the expense of their own views and convenience. After careful consideration of all these factors, we urge you to approve their plans.

Sincerely yours,

B.T. Corwin  
Tom Wolsky

cc: Robert Smiley

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DEERING'S CALIFORNIA CODES

GOVERNMENT CODE

*Annotated*

OF THE STATE OF CALIFORNIA

*Approved April 13, 1943*  
with amendments through the 1986  
Session of the 1985-1986 Legislature

§§ 61000 to 66499

*Annotated and Indexed by*  
*The Publisher's Editorial Staff*

1987



BANCROFT-WHITNEY CO.  
301 Brannan Street  
San Francisco, California 94107

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## SECOND CAUSE OF ACTION

Plaintiff alleges for a second cause of action:

## I

Each and every allegation in paragraphs \_\_\_\_ through \_\_\_\_ of plaintiff's first cause of action set out above are hereby alleged and incorporated by reference.

## II

An actual controversy exists between plaintiff and defendant relating to the legal rights of the parties, in that plaintiff alleges § \_\_\_\_ of \_\_\_\_ [zoning ordinance] is unconstitutional as applied to plaintiff's property, above described, for the reasons therein, and defendant claims that § \_\_\_\_ of \_\_\_\_ [zoning ordinance] is valid and enforceable against plaintiff.

## III

Irreparable harm, damage, and injury will follow and be done to the plaintiff unless the acts and conduct of the defendants above complained of are enjoined, because \_\_\_\_ [reasons] as shown by \_\_\_\_ [refer to supporting paragraphs above].

## IV

Plaintiff has no adequate remedy at law, or otherwise, for the harm and damage threatened to be done by the defendants because \_\_\_\_ [reasons] as evidenced by the allegations in \_\_\_\_ paragraphs \_\_\_\_ through \_\_\_\_ above [or as the case may be] and further because \_\_\_\_.

## V

By reason of the facts herein alleged, plaintiff has suffered damages in the amount of \_\_\_\_ [where damages are sought in addition to declaratory relief].

WHEREFORE, plaintiff prays for judgment as follows:

1. That defendants and each of them, their officers, employees, agents, and representatives be perpetually enjoined from enforcing or attempting to enforce § \_\_\_\_ of \_\_\_\_ [zoning ordinance] or any provisions thereof against plaintiff, or against the lands in the city herein described and known by plaintiff at the time of the adoption of the ordinance;
2. That during the pendency of this action, a temporary injunction issue to enjoin and restrain the defendants and each of them from the acts and conduct aforesaid;
3. For a judgment decreeing that the ordinance of the City of \_\_\_\_ is void and of no effect, and a judgment that the ordinance is void and of no effect as to the lands in the city herein described and known by plaintiff at the time of the adoption of the ordinance;
4. For a judgment declaring § \_\_\_\_ of \_\_\_\_ [zoning regulation] unconstitutional and invalid as applied to plaintiff's property as described herein;
5. For damages in the sum of \_\_\_\_;
6. For costs; and
7. For such other and further relief as the Court may deem proper.

\_\_\_\_

[Signature]

[Verification]

### § 65850.5. Restrictions by local agency on use of solar energy systems

The legislative body of any city or county shall not enact an ordinance which has the effect of prohibiting or of unreasonably

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restricting the use of solar energy systems other than for the preservation or protection of the public health or safety. This prohibition shall be applicable to charter cities since the promotion of the use of nonfossil fuel sources of energy, such as solar energy and energy conservation measures, is a matter of statewide concern.

This section shall not apply to ordinances which impose reasonable restrictions on solar energy systems. However, it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions which do not significantly increase the cost of the system or significantly decrease its efficiency, or which allow for an alternative system of comparable cost and efficiency.

For the purposes of this section, "solar energy system" shall have the same meaning as set forth in Section 801.5 of the Civil Code.

Added Stats 1978 ch 1154 § 6.

**Cross References:**

Division of city, county, or portions thereof into zones: § 65851.

**Collateral References:**

Witkin Summary (8th ed) Constitutional Law § 464, Real Property § 342A.

Cal Jur 3d Zoning and Other Land Controls § 50.

**Law Review Articles:**

Review of Selected 1978 California Legislation. 10 Pacific LJ 478.

**§ 65851. Division of city, county, or portions thereof into zones**

For such purposes the legislative body may divide a county, a city, or portions thereof, into zones of the number, shape and area it deems best suited to carry out the purpose of this chapter.

Added Stats 1965 ch 1880 § 6.

**Prior Law:**

(a) Former § 65801, as added by Stats 1953 ch 1355 § 3.

(b) Former § 38692, as added by Stats 1949 ch 79 § 1.

(c) Stats 1917 ch 734 §§ 2, 3.

Former Section: Former § 65851, relating to local application of provisions of article as to powers and duties, was added by Stats 1953 ch 1355 § 3 and repealed by Stats 1965 ch 1880 § 9.

**Cross References:**

Zoning ordinance provision for airports or finding of no suitable site therefor: §§ 26027, 26028.

Airport approaches zoning law: §§ 50485 et seq.

Requirement that local agency comply with applicable building and zoning ordinances of county or city: § 53091.

Open-space zoning: §§ 65910 et seq.

Absence of prohibition against counties' passage of land use or zoning regulations affecting placing of advertising displays in accordance with this chapter: B & P C § 5227.

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DEERING'S CALIFORNIA CODES

HEALTH AND SAFETY  
CODE  
*Annotated*

OF THE STATE OF CALIFORNIA

*Adopted April 7, 1939*  
with amendments through the 1983 Session  
of the 1983-84 Legislature

§ 13801 to § 19999

*Annotated and Indexed by  
The Publisher's Editorial Staff*

1984



BANCROFT-WHITNEY CO.  
301 Brannan Street  
San Francisco, California 94107

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	SMILEY
	Correspondence

space to joint living and work quarters provides a new use for such buildings contributing to the revitalization of central city areas, (2) such conversion results in building improvements and rehabilitation, and (3) the cultural life of cities and of the state as a whole is enhanced by the residence in such cities of large numbers of persons regularly engaged in the arts.

(c) The Legislature further finds and declares that (1) persons regularly engaged in the arts require larger amounts of space for the pursuit of their artistic endeavors and for the storage of materials therefor, and of the products thereof, than are regularly found in dwellings, (2) the financial remunerations to be obtained from a career in the arts are generally small, (3) persons regularly engaged in the arts generally find it financially difficult to maintain quarters for their artistic endeavors separate and apart from their places of residence, (4) high property values and resulting rental costs make it particularly difficult for persons regularly engaged in the arts to obtain the use of the amount of space required for their work, and (5) the residential use of such space is accessory to the primary use of such space as a place of work.

It is the intent of the Legislature that local governments have discretion to define geographic areas which may be utilized for joint living and work quarters and to establish standards for such occupancy, consistent with the needs and conditions peculiar to the local environment. The Legislature recognizes that building code regulations applicable to residential housing may have to be relaxed to provide joint living and work quarters in buildings previously used for commercial or industrial purposes.

Added Stats 1979 ch 434 § 3.5.

#### § 17959. Ordinance or regulation permitting installation of solar heating or nocturnal cooling devices

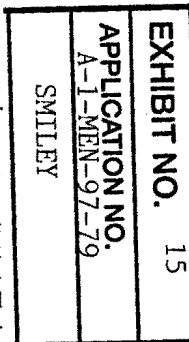
Any city or county may require, by ordinance or regulation, that new buildings be constructed in a manner permitting the installation of solar heating or nocturnal cooling devices, including but not limited to, roof pitch and directional alignment suitable for retrofitting with solar energy collecting devices or nocturnal cooling devices subsequent to initial occupancy. Such an ordinance or regulation shall specify a range of permissible roof pitches and alignments which will optimize efficiency for the collection of solar energy and for nocturnal cooling.

Added Stats 1976 ch 670 § 1.

##### Collateral References:

The Energy Supply and Environmental Coordination Act of 1974: 15 USCS §§ 791-798;

Solar Heating and Cooling Demonstration Act of 1974: 42 USCS §§ 5501 et seq.



#### § 17959.1. Prohibitions on local ordinances unreasonably restricting solar energy systems

No local ordinance enacted pursuant to this chapter shall have the effect of prohibiting or of unreasonably restricting the use of solar energy systems, other than for the preservation of the public health and safety. The provisions of this section shall apply to charter cities.

This section shall not apply to ordinances which impose reasonable restrictions on solar energy systems. However, it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions which do not significantly increase the cost of the system or significantly decrease its efficiency, or which allow for an alternative system of comparable cost and efficiency.

As used in this section, "solar energy system" shall be defined as set forth in Section 801.5 of the Civil Code.

Added Stats 1978 ch 1154 § 7.

##### Collateral References:

##### Law Review Articles:

Review of Selected 1978 California Legislation. 10 Pacific LJ 478.

#### § 17959.3. (Effective term contingent) Authority to adopt ordinances or regulations encouraging passive solar energy design

(a) It is the intent of the Legislature to encourage the use of passive solar energy design. The Legislature recognizes that building code regulations with regard to natural light and ventilation standards have to be modified to permit existing buildings to be retrofitted with passive solar energy.

(b) Notwithstanding Section 17922, any city or county may by ordinance or regulation permit windows required for light and ventilation of habitable rooms in dwellings to open into areas provided with natural light and ventilation which are designed and built to act as passive solar energy collectors.

(c) This section shall become inoperative on the date that the building code regulations, as modified to conform to subdivisions (a) and (b) and published in Title 24 (commencing with Section 18901) of the California Administrative Code, become effective, and as of the following January 1 this section is repealed, unless a later enacted statute which becomes effective on or before that date, deletes or extends the dates on which it becomes inoperative and is repealed.

Added Stats 1983 ch 873 § 1.

**COPY**

# Mendocino Coast Watch

P.O. Box 198, Fort Bragg, CA 95437 - (707) 961-1953 - [coastwatch@mcn.org](mailto:coastwatch@mcn.org)

October 30, 1997

Coastal Development Permit Administrator  
501 Low Gap Road  
Ukiah, CA 95482

**RE: CDP #45-97 / Smiley. For the public record.**

We support the staff recommendation for denial of this project because of its blatant inconsistency and non-compliance with the LCP visual resources policies and highly scenic area regulations.

The two-story house is designed and so sited to achieve maximum solar efficiency. While this is attractive from an overall environmental protection aspect it does not provide the applicant with a carte blanche to override the very clear visual resource protection policies and regulation of our Coastal Element. There simply is no "environmental protection" trade off like this supported by the LCP or Coastal Act. Therefore, the fact that this project is "solar" must be ignored and the project reviewed as any other improperly sited and sized proposal with highly reflective building materials.

Residential development on the Navarro head north-south ridge crest must not be the standard used for the subject pristine ridge-line. The ridge-line south of Elk is currently almost completely unbroken by development. We are concerned this project will set and entrench a "non-subordinate to the character of its setting" standard for future development and lead toward the standard now visually ruining the Navarro crest-line.

We would also like to emphasize that the Navarro crest is only visible from the segment of highway approaching it from the north going south for a mile or two. The South of Elk crest is visible for almost 10 miles. This visibility distance exponentially increases the volume of impact that must be considered.

Thank you for your consideration in this matter.



Roanne Withers, Executive Director  
Mendocino Coast Watch

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SMILEY	
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administrative record. Mr. Hall stated that he would read them into the record. As is our long courtesy custom, Ron gave a copy of our written comments on this project to the applicant, Mr. Smiley through his agent, Steve Heckerth. Subsequently, Mr. Smiley became obviously angry and physically confrontational with Ron. After handing our letter to Ray Hall for its inclusion in the public record of the hearing, Ron left. There is no law which compels us to tolerate such behavior in order to participate in the public process. In fact, the law provides a remedy for such attempts to chill the public's participation, ergo, participation in written form. Attached is a copy of this letter submitted to Mr. Hall, Mr. Smiley, and Mr. Heckerth on October 30, 1997. However, we are sure you would receive this in the record of proceedings from the County as well.

Summarizing the issues raised in all written comments submitted for the record during the hearing is the procedure used by Mr. Hall for all coastal development permit hearings to demonstrate he is considering the issues raised in such letters in making his final decision. Often these written comments are submitted several days before such hearings (by fax, mail, or physical delivery to staff) and the authors are not in attendance at these hearings. Oral testimony may (or may not) be given by anyone present with (or without) written comments. The entire written record of the proceedings is available for anyone to review at any time before, during, and after a hearing.

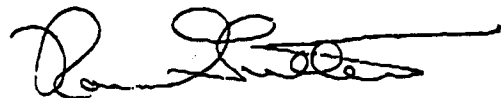
Neither the County of Mendocino nor the Coastal Commission has a requirement for the physical presence of any individual or group which submits written testimony into the record of a coastal development permit hearing in order for this written testimony to be considered part of the public record. Anyone (related or not related to the individual or group) can deliver such comments for any individual or group up until the close of the public hearing.

We hope this clarifies matters for you and the Coastal Commission. Please don't hesitate to call if you have any further questions.

Sincerely,

  
Roanne Withers

Ron Guenther



Attachment: Mendocino CoastWatch letter dated October 30, 1997

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SMILEY	
Correspondence	

# Mendocino Coast Watch

428 N. Harrison St. Fort Bragg, CA 95437 - (707)961-1953 - cwat

EXHIBIT NO. 16

APPLICATION NO.  
A-1-MEN-97-79

SMILEY

Correspondence

Jo Ginsberg

California Coastal Commission

45 Fremont, Suite 2000

San Francisco, CA

By Fax: (415) 904-5400

DEC 18 1997

CALIFORNIA  
COASTAL COMMISSION

RECEIVED December 18, 1997

Dear Ms. Ginsberg,

Per your request regarding Mr. Smiley's concerns about Mendocino CoastWatch and its representation at the County of Mendocino CDP 45-97/Smiley Coastal Development Permit hearing on October 30, 1997, we offer the following information.

Mendocino CoastWatch has operated for at least four years as an unincorporated group of individuals who actively participate in land-use issues in the Coastal Zone of Mendocino County. We (Ron Guenther and Roanne Withers) have acted as the sole representatives of this group during this time.

In early September of this year, our group— due to its significantly increasing public support— embarked upon incorporating Mendocino CoastWatch as a 501(c)(4) non-profit which engages in educational, legislative, lobbying, and juridical activities for protection, restoration, and enhancement of the Coastal Zone of Mendocino County and beyond. Ron Guenther has been designated the President and Roanne Withers has been designated the Executive Director of Mendocino CoastWatch for purposes of incorporation since this time. We have 18 months for our By-laws and Articles of Incorporation to be approved by the State of California and the Internal Revenue Service per non-profit incorporation laws.

Until such time as Mendocino CoastWatch completes the non-profit application process for recognition as a tax-exempt organization by the Internal Revenue Service (for income reporting) and the State of California (for corporate status), for legal purposes Mendocino CoastWatch is still considered an unincorporated group of individuals. However, for all other intents and purposes we are operating under the Internal Revenue Service guidelines for a 501(c)(4) in preparation for in toto tax-exempt designation starting in September.

The right of individuals to freely associate is a protected activity under the First Amendment of the Constitution of the United States and is further upheld by the Constitution of the State of California. We are not required by any law (federal or state) to reveal any information about Mendocino CoastWatch, other than who its representatives are, until such time as our non-profit status has been granted. However, we have offered all of the aforementioned information in the spirit of openness and respect for the California Coastal Commission and you as its representative.

On October 30, 1997, Ray Hall, the Mendocino County Coastal Development Permit Administrator conducted a public hearing on CDP 45-97/Smiley in the County Planning and Building office located in Fort Bragg. Ron Guenther, representing Mendocino CoastWatch, was present just previous to the opening of this public hearing. Ron submitted our comments on CDP 45-97/Smiley to Mr. Hall for the