

CALIFORNIA COASTAL COMMISSION

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Filed: January 6, 1999
 49th Day: WAIVED
 Staff: Jo Ginsberg
 Staff Report: February 25, 1999
 Hearing Date: March 11, 1999
 Commission Action:

STAFF REPORT: APPEALSUBSTANTIAL ISSUE

LOCAL GOVERNMENT: Mendocino County

DECISION: Approval with Conditions

APPEAL NO.: A-1-MEN-99-001

APPLICANT: ROBERT AND LUANNE SMILEY

AGENT: Stephen Heckerth

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, 3,050-square-foot single-family residence with attached 420-square-foot garage, greenhouse, lap pool, and driveway; plus installation of a septic system, propane tank, generator shed, and temporary travel trailer.**

APPELLANTS: (1) Mendocino Coastwatch (Roanne Withers)
 (2) Sierra Club Mendocino/Lake Group (Ron Guenther)

SUBSTANTIVE FILE DOCUMENTS Mendocino County LCP; Mendocino County CDP #05-98 (Smiley), #45-97 (Smiley), and #19-92 (Raabe/Collins); Coastal Permit 1-91-171 (Waidhofer) and A-1-MEN-97-79 (Smiley).

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 appeal has 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, 3,050-square-foot residence with an attached 420-square-foot garage, greenhouse, lap pool, and driveway, plus installation of a septic system, propane tank, generator shed; and a temporary travel trailer. The appellants contend that the project is not consistent with the visual and scenic resource policies of the County's LCP.

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 Pages 3-4.

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.

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.

Staff notes that the Commission reviewed an appeal on a very similar project proposed by the same applicants in 1997 (Appeal No. A-1-MEN-97-79). The Commission found that the appeal raised a substantial issue regarding conformance with the LCP, and subsequently denied the project on January 13, 1998, finding that the proposed project was not consistent with the visual and scenic policies of the County's certified LCP.

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-99-001 raises NO substantial issue as to conformity with the certified Local Coastal Program with respect to

the grounds on which an appeal has been filed pursuant to Section 30603 of the Coastal Act.

Staff recommends a NO vote. A No vote would result in the de novo consideration by the Commission of the appeal and in the adoption of the following resolution and findings. Approval of the motion would mean that the County permit is final. To pass the motion, a majority vote of Commissioners present is required.

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 Sierra Club Mendocino/Lake Group (as represented by Ron Guenther) an appeal 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, 3,050-square-foot residence with an attached 420-square-foot garage, greenhouse, lap pool, and driveway, plus installation of a septic system, propane tank, generator shed; and temporary travel trailer. The appellants contend that the project is not consistent with the visual and scenic resource policies of the County's LCP, and with the provisions of CEQA.

The appellants' contentions are summarized below, and the full text of the contentions is also included as Exhibit No. 9.

1. Visual Resources.

The appellants assert that the subject development, which is sited on the crest of a coastal ridgeline 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) and (C) (1), (3), (5), and (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, that new development in Highly Scenic Areas not project above the ridgeline and be sited near the toe of the slope, below rather than on a ridge, be limited to a single story above the natural elevation, and that development on a parcel located partly within the Highly Scenic Areas be located on the portion outside the viewshed if feasible.

The appellants also contend that the proposed project may be inconsistent with the height limit provisions of Zoning Code Section 20.356.040: Non-compliance to Height Limit, as there is some question about the 28-foot height limit. The appellants assert that the Mendocino County staff report for the project states that the south elevation is 28' but also notes that "the east elevation, as submitted, does not appear to include the basement/greenhouse/lap pool and the west elevation indicates a grade change that does not correspond with the contours of the site plan."

2. Consistency with CEQA.

The appellants assert that the proposed project is inconsistent with California Environmental Quality Act Section 21080.5(d)(2)(i), which prohibits development from being approved if there are feasible alternatives available which would substantially lessen any significant adverse impact on the environment.

B. LOCAL GOVERNMENT ACTION

On November 3, 1997, Mendocino County's Coastal Permit Administrator approved with conditions Coastal Development Permit #45-97 (Smiley), an application for a project very similar to the subject project. This approval was appealed to the Coastal Commission (Appeal No. A-1-MEN-97-79), who found substantial issue on the appeal, and denied the project de novo in January of 1998, based on inconsistency with the visual and scenic policies of the LCP.

The applicants resubmitted to the County a permit application for a slightly modified project, CDP #5-98. The application was denied by the County's Coastal Permit Administrator in October 1998 based on its inconsistency with LCP Policy 3.5-4, which requires new development on ridges to be limited to one-story in height. The applicants appealed to the Board of Supervisors, who approved the project in December of 1998.

The coastal development permit approved by the County is for construction of a two-story, 3,050-square-foot single-family residence with an attached 420-square-foot garage, greenhouse, lap pool, and driveway, plus installation of a septic system, propane tank, generator shed; and a temporary "construction trailer." The approval includes six special conditions. Special Condition No. 1 places restrictions on the temporary travel trailer. Special Condition No. 2 requires that an amendment to the coastal permit be obtained prior to erection of any additional structures or placement or exterior lighting on any portion of the site within view of Highway One. Special Condition No. 3 requires that the applicant submit color samples for all exterior building surfaces, and that colors shall be selected to blend in hue and brightness with the surroundings. Special Condition No. 4 states that power poles, phone poles, etc. are not authorized for the project

because the approval of the project was based in large part on the fact that the project is of solar design and does not require outside power sources. Special Condition No. 5 requires that the existing tree mass north of the proposed house shall be maintained, that no trees within 200 feet of the house shall be removed, and that if it becomes necessary to remove any trees, a tree removal and replanting plan must be submitted for review and approval by County staff. Special Condition No. 6 requires submittal of a landscaping plan to provide for screening of the residence.

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 proposed 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.

The appellants (Mendocino Coastwatch and the Sierra Club Mendocino/Lake Group) submitted an appeal to the Commission office on December 28, 1998, 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 January 5, 1999. Accordingly, the 10-working-day appeal period was established from the date of receipt of the notice on January 5, 1999, consistent with section 13110 of the Commission's regulations. The appeal was thus deemed filed on January 6, 1999, the first day of the 10-working-day appeal period (see Exhibit No. 9).

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 County characterizes the project as consisting of construction of a 3,050-square-foot, two-story, single-family residence with an attached 420-square-foot garage, greenhouse, lap pool, and driveway, plus installation of a septic system, propane tank, generator shed; and a temporary travel trailer to be used during construction. The Commission notes that the proposed greenhouse, lap pool, and spa located in the lower level of the residence comprise an additional 1,050 square feet of floor space not computed in the 3,050 square feet of living space, resulting in a gross square footage of 4,520 square feet of development. At its highest elevation from natural grade, the house would be approximately 26 feet in height, on the south elevation; the north elevation is approximately 20.5'. 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 atop a south-facing ridge near the westerly end of an east-west trending ridgeline. 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 and the propane tank and generator shed would be located on the north side of the residence. The existing driveway would be extended and improved with a rocked surface to be a total of approximately 1,000 feet long.

In 1998, the County approved an application for a similar project (CDP #45-97), which was denied by the Commission on appeal (A-1-MEN-97-79). The major differences in the new project are that (1) the residence is relocated approximately 20 feet to the north; (2) the residence does not step down the hillside; (3) the guest house and its septic system have been eliminated; (4) the windmill has been eliminated and a propane tank and generator are proposed instead; (5) the height of the residence has reduced from 31 feet at the highest point to 26 feet; and (6) the footprint of the building has been slightly reduced by about 100 square feet.

E. SUBSTANTIAL ISSUE ANALYSIS

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.

One of the two contentions raised in the appeal present potentially valid grounds for appeal in that they allege the projects' inconsistency with policies of the certified LCP.

1. Appellants' Contentions That Are Related to LCP Policies (Valid Grounds for Appeal).

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.

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).) In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretation of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

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 appellants assert that the subject development, which is a two-story residence sited on the crest of a coastal ridgeline 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) and (C)(1), (3), (5), and (8).

b. Summary of LCP provisions.

LUP Policy 3.5-1 and Zoning Code Section 20.504.010 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, Building Height Limit for AG Districts, allows "*Twenty-eight feet above natural grade for non-Highly Scenic Areas and 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 the south-facing 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 applicants assert that the visual impacts of the proposed residence will be minimal due to the fact that the house site is east of and 1,100 feet above Highway One. However, due to its

prominent location within the viewshed (top of ridge) and orientation (south-facing), the site will be directly facing travelers proceeding north along Highway One for a distance of nearly 10 miles. The metal roof and glass-lined facade of the residence would be quite visible, as would any interior illumination of the residence at night. The residence would contrast greatly with the setting, as virtually no screening is proposed, the only mitigating factor being the backdrop of trees against which the residence would be set. The revised project has been moved 20 feet to the north from where it was originally proposed and subsequently denied by the Commission, and is no longer stepped into and cascading down the hillside. However, the development is still located in a prominent site on the ridgetop within the highly scenic portion of the 182-acre parcel, where it will project above the ridgeline and be quite visible for many miles.

The Commission thus 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.

Further, 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. The approved project raises a substantial issue because there are locations outside the designated Highly Scenic Area where the proposed residence could be sited, while still employing at least a partially solar, energy-efficient design. Specifically, the proposed development could be relocated to a relatively flat area near the ridgetop within the wooded area east of the applicants' proposed building site. There is one site approximately 800 feet east of the currently proposed site, where a guest cottage was previously proposed in the project heard before the Commission in 1998, where the unpermitted trailer is now sited. This area is out of the Highly Scenic Area, and any development sited here would be screened by existing trees.

Even if the house could not feasibly be sited outside the Highly Scenic Area, the Commission finds that the project 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). A substantial issue is raised because the house would not be sited near the toe of a slope, below rather than on a ridge, and would not avoid development in the middle of a large open area. Rather than being located within the existing wooded area, the house would be located at the top of the ridge (See Exhibit 4).

In addition, the approved project raises a substantial issue of conformity with Policy 3.5-4 and Section 20.504.015(C)(5) and (8) as the house would be sited within a Highly Scenic Area but would not minimize visual impacts on ridges by prohibiting development that projects above the ridgeline. While there will be a backdrop of trees some distance behind the house, the proposed house itself is sited at the top of the ridge, and will project above the ridgeline.

The approved project raises further a substantial issue 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.

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' Contention That Does Not Raise Valid Grounds for Appeal.

One of the contentions raised by the appellants is not a valid grounds for appeal because it is not supported by an allegation that the development is not consistent with the County's certified LCP or with the public access policies of the Coastal Act. This contention is discussed below.

a. Consistency with CEQA.

The appellants contend that the proposed project is inconsistent with the California Environmental Quality Act Section 21080.5(d)(2)(i), which prohibits a proposed development from being approved if there are feasible alternatives available which would substantially lessen any significant adverse impact on the environment.

b. Discussion:

The contention is not a valid ground for appeal. The Commission's appellate jurisdiction is limited to the types of development described in Public Resources Code Section 30603(a) and the grounds described in Section 30603(b). Consequently, on appeal, the Commission considers only whether the appeal raises issues of consistency with the certified Local Coastal Program or the public access policies of the Coastal Act. These are not the grounds asserted by the applicant. Instead, the appellant cites an alleged inconsistency with the California Environmental Quality Act. Therefore, because the appellants fail to raise issue with either an LCP policy or a public access policy of the Coastal Act, the Commission finds that the appellants' above-referenced contention does not constitute a substantial issue or a valid basis for appeal of the project.

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.

I. MOTION, STAFF RECOMMENDATION OF DENIAL DE NOVO, AND RESOLUTION:

1. MOTION:

I move that the Commission approve Coastal Development Permit Application No. A-1-MEN-99-01.

2. 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.

3. 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, 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 is allowable as a principally permitted structure within both the AG and TP districts.

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. 20.504.010
Policy 3.5-3	Sec. 20.504.015(C)(1) and (3)
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)

These policies are summarized above, beginning on page 9 (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, mid-way between Irish Beach and Elk above the area known as Bridgeport. 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. It is one of the most spectacular, scenic coastal areas in Mendocino County.

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 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 a half-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. 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 still 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. The proposed development now before the Commission would be even more visible than the Raabe/Collins project, as it would be located on the top of the ridge, and would be a two-story house, reaching a height of approximately 26 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 applicants assert that the proposed building site is the only location on the property that provides the necessary solar access, topographic relief, lack of shading, and vehicular access to accommodate the proposed house design. It is true that 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 3,050-square-foot single-family residence and attached 420-square-foot garage, with an attached 1,050-square-foot greenhouse, lap pool, and spa, a septic system, driveway, propane tank, and generator shed.

The principal area where the proposed development could be located 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 a site approximately 800 feet east of the currently proposed site, where a guest cottage was previously proposed in the project heard before the Commission in 1998 (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 residence in this location, some tree removal would be necessary, possibly as much as two or three acres of trees. 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 unpermitted travel trailer 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 reduce the size of the residence that is proposed.

This alternative site was suggested in the findings adopted by the Commission when it denied the previous project in 1998 (A-1-MEN-97-79). The principal objection then raised by the applicants to this alternative site was 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 asserted 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 stated 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. 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 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, the proposed electrical generator should be able to supplement solar energy without requiring 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 had previously proposed in this alternative site was 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 freestanding 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. However, 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 so chose.

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), and must therefore be denied.

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.

LUP Policy 3.5-4 and Zoning Code Sections 20.504.015(C)(5) and (8) address development that must be sited within the Highly Scenic Area. As stated above, the Commission finds that it is feasible to locate the house outside the Highly Scenic Area. However, even if the house could not

feasibly be sited outside the Highly Scenic Area, the Commission finds that the project is also inconsistent with LUP Policy 3.5-4 and Zoning Code Sections 20.504.015(C)(5) and (8). These policies 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 prohibiting development that projects above the ridgeline, and 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 at the crest of an open grassy ridge within the Highly Scenic 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, if the house had to be located in the Highly Scenic Area, the proposed development could not be located at the toe of the slope or below the ridge. Furthermore, the house is proposed near a wooded area. However, the proposed development is inconsistent with the other 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 out of the wooded area, to 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. 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. Therefore, contrary to LUP Policy 3.5-4 and Zoning Code Sections 20.504.015(C)(5) and (8), the applicants have neither 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 regulation 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 contend that the house is only one story, because the lap pool and greenhouse on the lower level are not "habitable living space." However, whether the structure is only one-story is only relevant if no alternative site is available below the ridge and the development must be sited within the Highly Scenic Area. As discussed throughout this report, the development can be sited outside the Highly Scenic Area, where an alternative site is available below the ridge. Thus, the proposed development is inconsistent with the LCP regardless if the proposed development is considered one or two stories.

In addition, the building plans approved by the County Board of Supervisors show a guest bedroom, office space, family room, and spa on the lower level (see Page 19 of Exhibit No. 8), thus constituting living spaces on two levels, one above the other. These two stories of the house

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 applicants further refer to a definition of "story" taken from the Uniform Building Code. However, this definition is not contained within the County's certified LCP. In this case, because there are two floors of living space visible to the public, the Commission considers the proposed development to be a two-story house. Thus, even if the proposed project could not be located outside the Highly Scenic Area where an alternative site is available below the ridge, the proposed development is inconsistent with the LUP Policy 3.5-4 and Zoning Code Section 20.504.015(C)(8) as the house would not be limited to a single story above the natural elevation (there would be two-stories), 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 minimize visual impacts by utilizing existing vegetation and landscaping, and that it be limited to one-story, the Commission finds that the proposed development must be denied.

Inconsistency With LUP Policies 3.5-1 and 3.5-3 and Zoning Code Sections 20.504.010 and 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 Sections 20.504.010 and 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. In addition, the building materials, including siding and roof materials, were not selected to blend in hue and brightness with their surroundings, pursuant to Zoning Code Section 20.504.015(C)(3).

The ridge upon which the house would be constructed is exceptionally visible from Highway One. Due to its location within the Highly Scenic Area, according to these policies, the project must be "subordinate" to its natural setting. The Commission finds that the site of the proposed residence on the crest of a prominent ridgeline, where it is visible from more than nine miles of Highway One, is not "subordinate to the character of its 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.

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. 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 house will not be "softened," but will stand out against the hillside at least for some portion of the year, even if it 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 structure with a gross square footage of more than 4,000 square feet, sited on the top of the ridge, would still be visually prominent in the proposed location and would dominate its surroundings.

The south and southwesterly facades of the proposed residence would be clad with extensive glazing and a metal roof. The architect has indicated that "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 gray or tan color. 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, particularly when the sun is low in the sky in winter and in the early morning and late afternoon hours. The building colors would contrast with both the dark trees in the background and the grassy fields in the foreground. Even if building colors were 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 would result in a highly visible house which is not subordinate to its natural setting or in character with the surrounding area.

As 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, 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). Therefore, the Commission finds that the proposed development must be denied.

3. Solar Energy.

During the appeal of the previous similar application (A-1-MEN-97-79), the applicant made 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 cited 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 referenced 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 implementation 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 referred 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 asserted 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 is the applicants' currently proposed site. Finally, in litigation involving the Commission's denial of the applicants' original project, the trial court upheld the Commission's argument that the "Solar Rights Act" did not apply to the Commission's decisions (Smiley v. California Coastal Commission, Mendocino Superior Court, No. 78270).

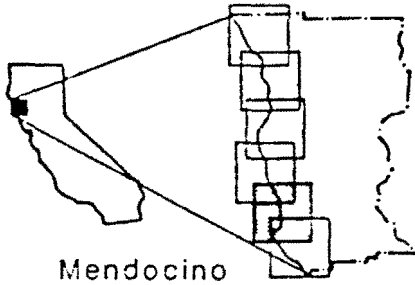
While the County's LCP encourages the use of alternative energy sources, it does not require them. New development in Highly Scenic Areas, however, must satisfy prescribed standards to minimize visual impacts. The proposed development does not meet these criteria and is not consistent with the visual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

4. Denial of Development.

During the appeal for the previous, similar project, the applicants contended 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)(A) 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 effect which the activity may have on the environment. In this case, the Commission finds that there is a feasible alternative site 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 cannot be found to be consistent with the requirements of the Coastal Act and does not conform to the requirements of CEQA.

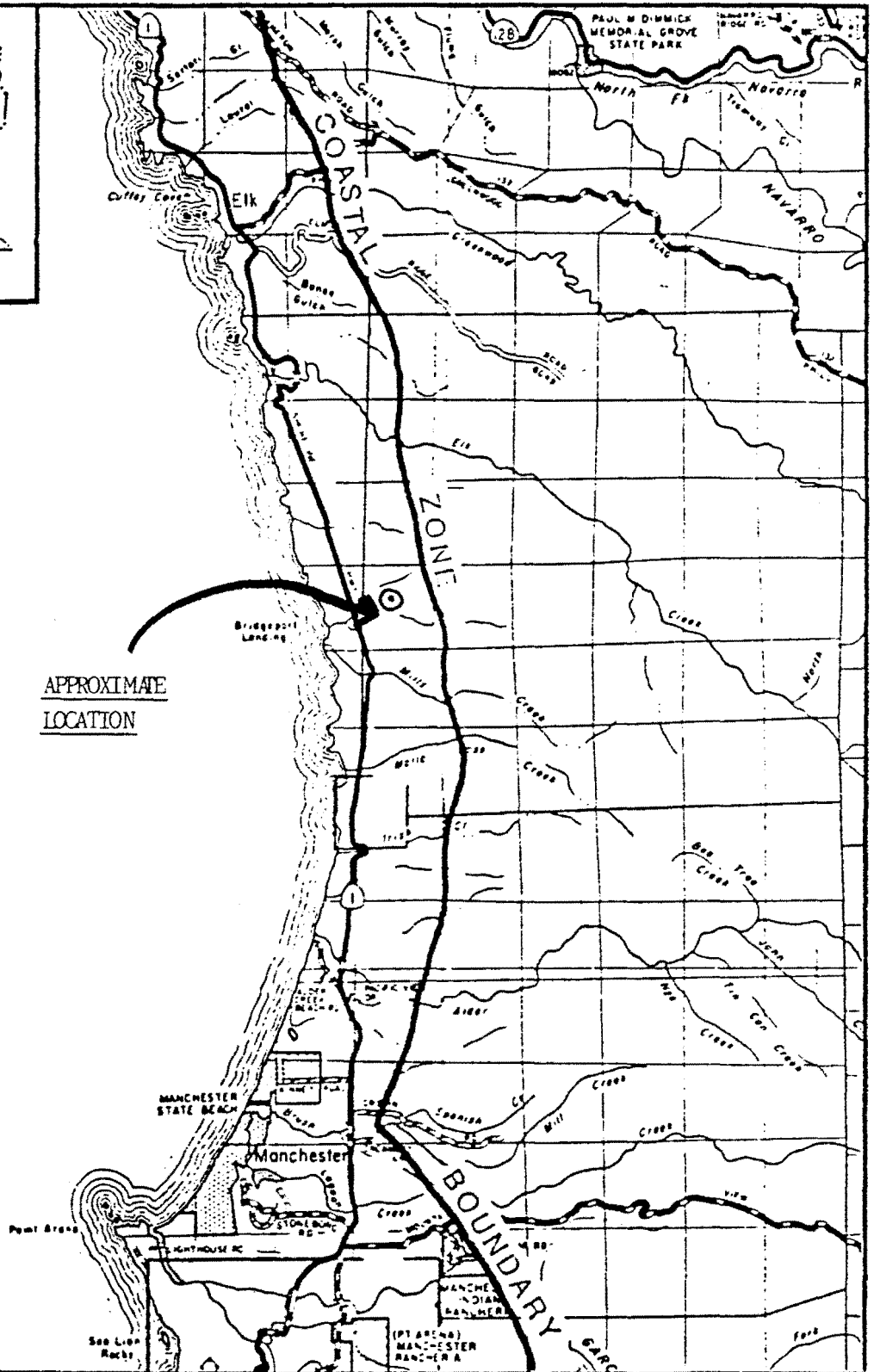


Mendocino

EXHIBIT NO. 1

APPLICATION NO.
A-1-MEN-99-01
SMILEY

LOCATION MAP



APPROXIMATE
LOCATION



LOCATION MAP



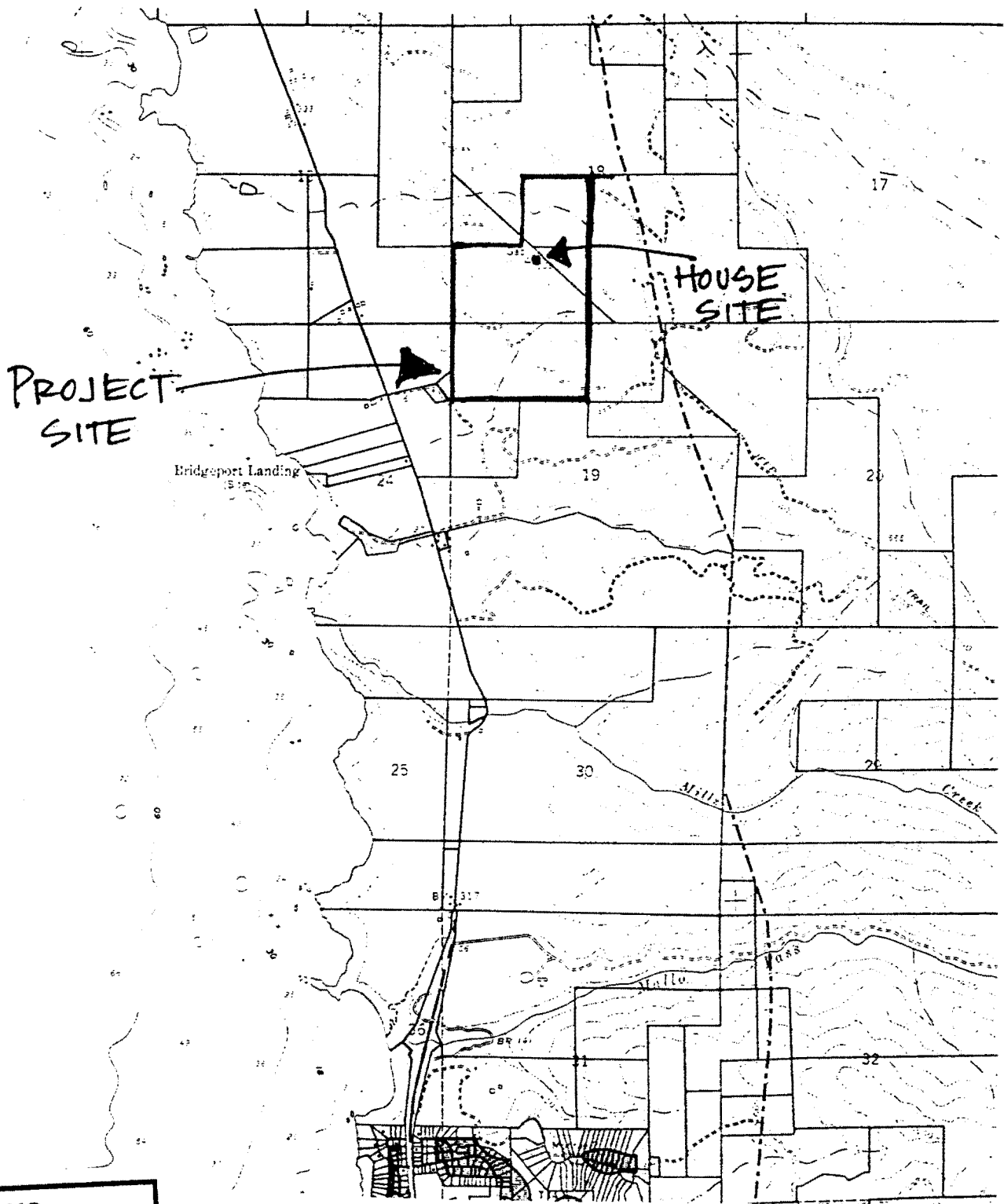


EXHIBIT NO. 2
APPLICATION NO. A-1-MEN-99-01
Vicinity Map

LOCATION MAP

Proposed Smiley Residence (CDP 5-98)

Existing Waidhofer Residence (CCC 1-91-171)

Screened by trees

Existing Raabe Residence (CDP 19-92)

*High locations
A - C*

EXHIBIT NO.	3
APPLICATION NO.	A-1-MEN-99-01
SMILEY	
Adjacent Development	

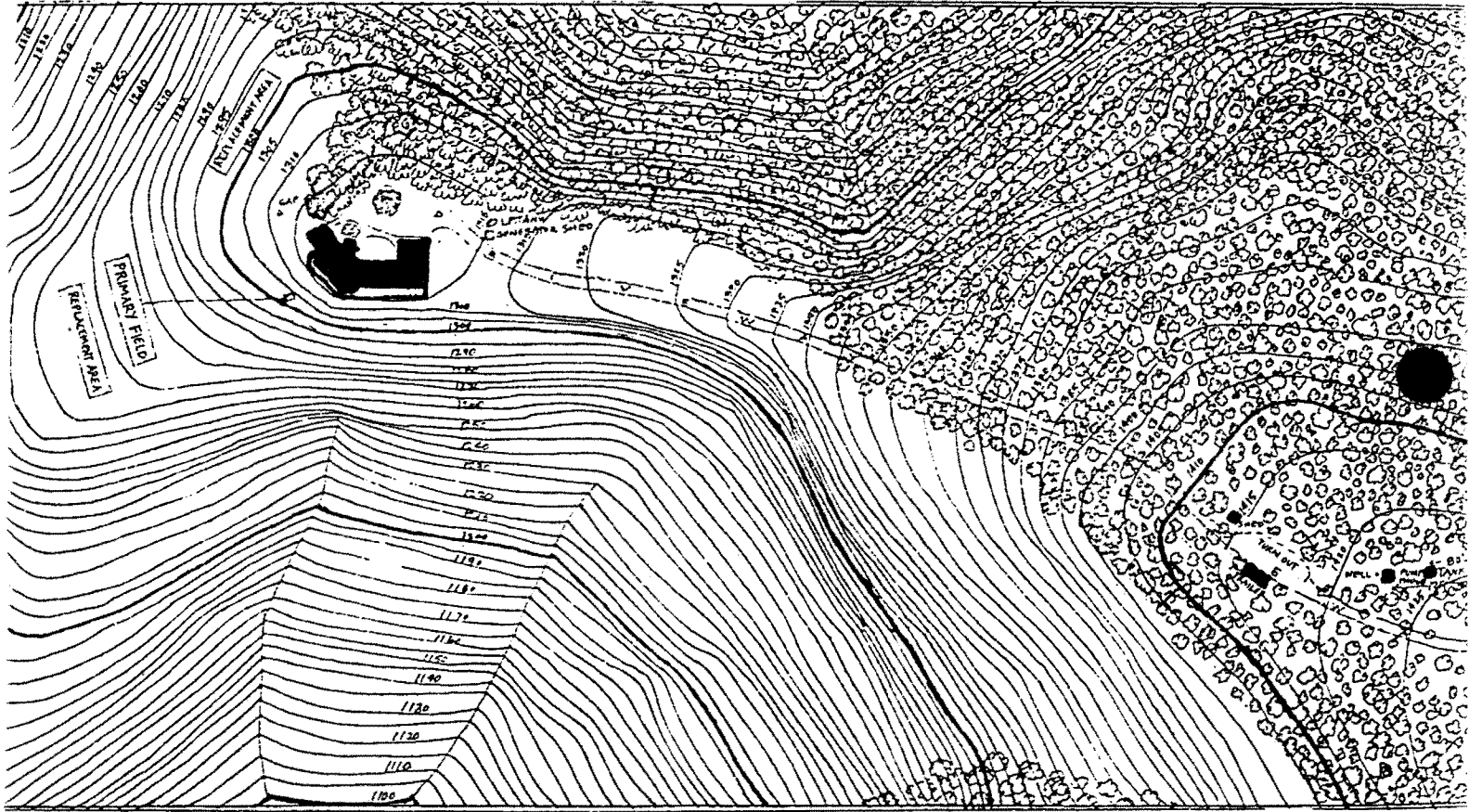


EXHIBIT NO.	4
APPLICATION NO.	A-1-MEN-99-01
	Smiley
	Site Plan

SITE PLAN

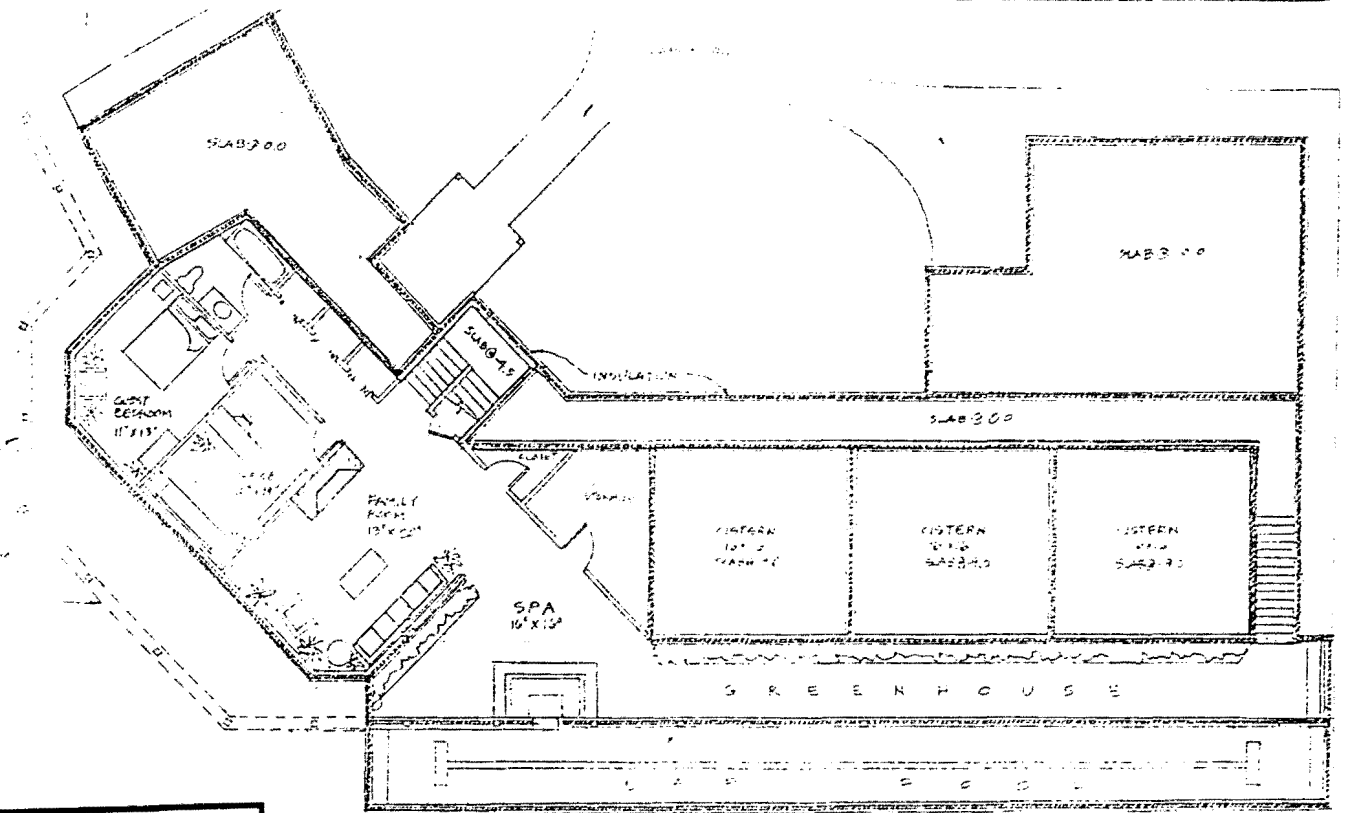
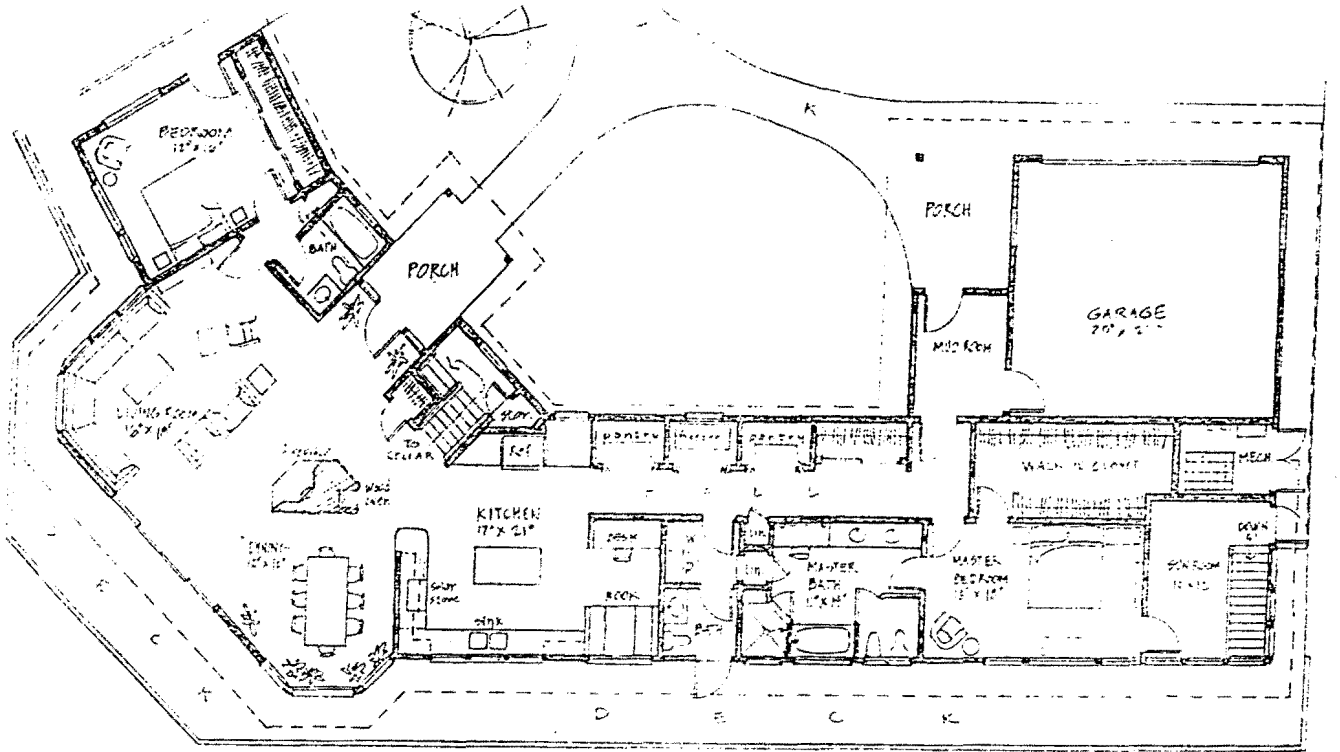
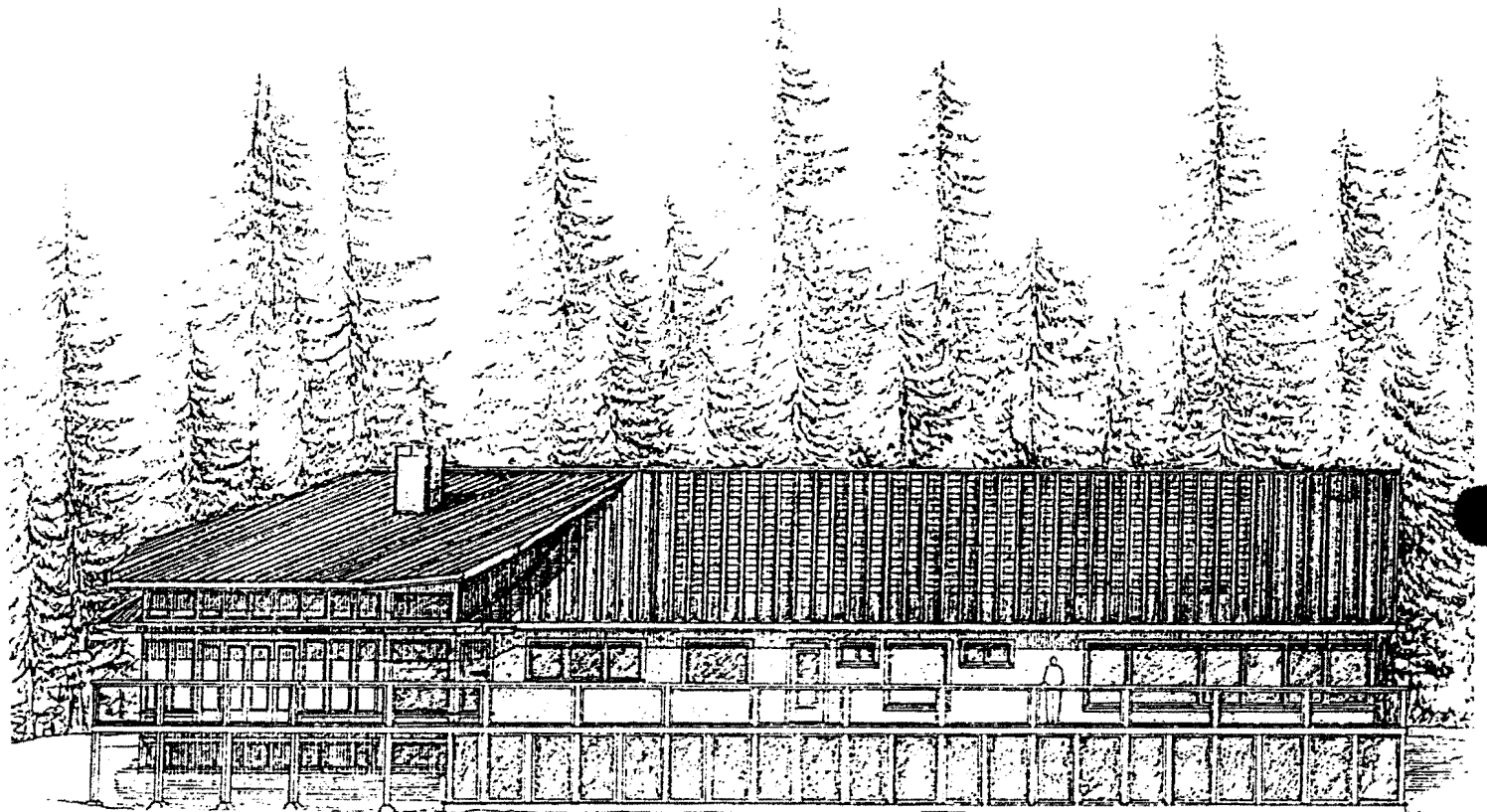


EXHIBIT NO. 5
APPLICATION NO.
 A-1-MEN-99-01
 Smiley
 Floor Plans

FLOOR PLANS

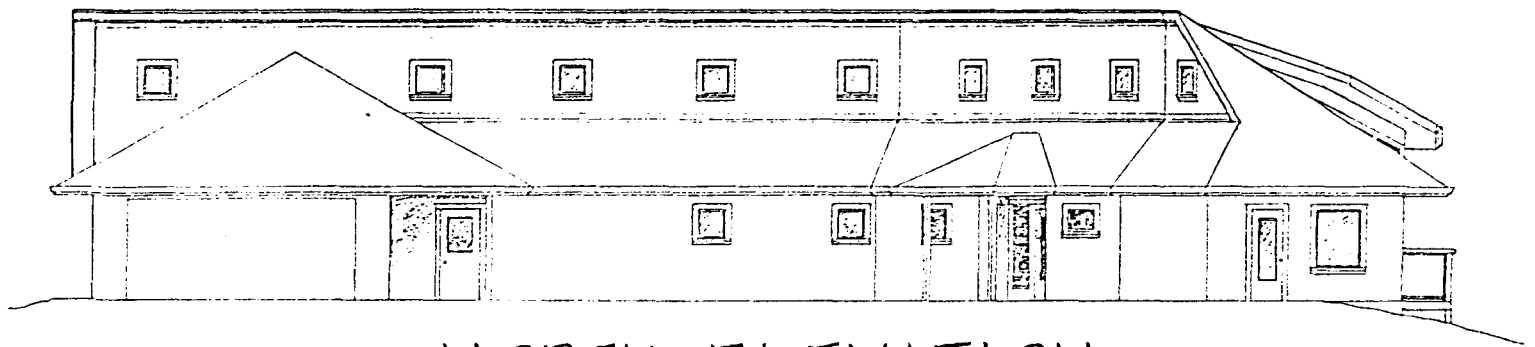


SOUTH ELEVATION

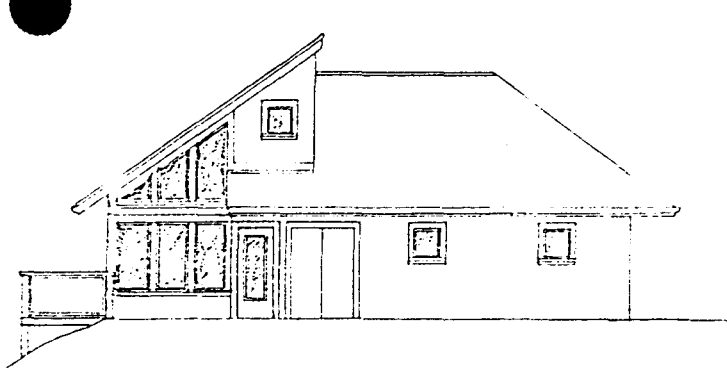
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EXHIBIT NO. 6
APPLICATION NO. A-I-MEN-99-01
Smiley
Elevation Plans

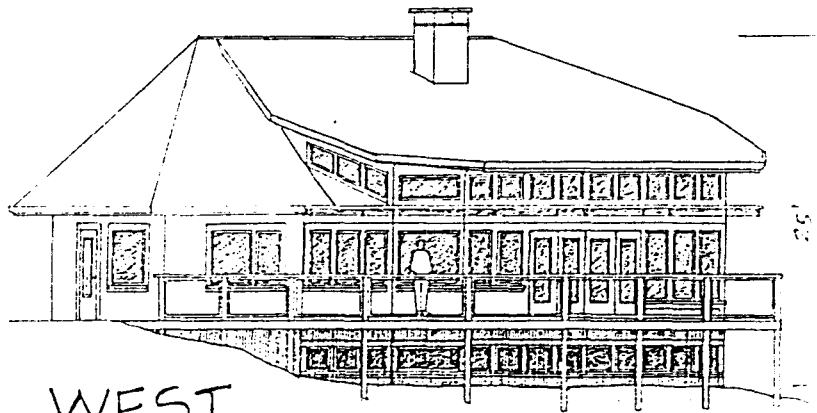
ELEVATIONS



NORTH ELEVATION



EAST



WEST

EXHIBIT NO. 7
APPLICATION NO. A-1-MEN-99-01
Smiley
Elevation Plans

ELEVATIONS



RECEIVED
DEC 22 1998

RAYMOND HALL
DIRECTOR

COUNTY OF MENDOCINO

CALIFORNIA
COASTAL COMMISSION

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DEPARTMENT OF PLANNING AND BUILDING SERVICES

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

1-MEN-98-446

December 17, 1998

NOTICE OF FINAL ACTION

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

CASE#: CDP #5-98
OWNER: Robert & Luanne Smiley
AGENT: Stephen Heckeroth
REQUEST: Construction of a 3,050+- square foot residence with attached garage, greenhouse and lap pool; septic system, driveway, propane tank and generator shed. Installation of a temporary "construction trailer".
LOCATION: Approximately five miles S of Elk and 1/2 mile E of Highway 1 at 10927 S. Highway 1 (APN's 131-060-14; 131-060-15; 131-090-01).
PROJECT COORDINATOR: Linda Ruffing

HEARING DATE: December 14, 1998

APPROVING AUTHORITY: Board of Supervisors

ACTION: Approved with Conditions as per pages CPA-10 through CPA-12 of the staff report and Special Conditions 4, 5, and 6 as per page BOS-3 of the Action Agenda Summary.

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

The project was appealed at the local level.

The project is 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-99-01
Notice of Final Action	
Page 1 of 21	

may be argued under the UBC definitions of what constitutes a "story" that the lower level is not a "story" but a "basement."

A "story" is defined within the UBC as, "that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused under-floor space is more the 6 feet above grade as defined herein for more than 50 percent of the total perimeter or more than 12 feet above grade as defined herein at any point, such usable or unused under-floor space shall be considered as a story."

A "basement" is defined by the UBC as, "any floor level below the first story in a building, except that a floor level in a building having only one floor level shall be classified as a basement unless such floor level qualifies as a first story as defined herein."

The Coastal Element does not define a "story." The CPA's position was that the Coastal Element discussion of highly scenic development criteria was not based on the technicalities of the UBC, (which establishes such criteria based on exiting and other safety criteria), but is based on more visually based perceptive issues. As the view open to public (primarily from Highway 1) is the southern facade, which is two stories in height, the CDP was denied for being inconsistent with the LUP.

STAFF RECOMMENDATION: Staff recommends denial of the appeal of CDP #5-98 and denial of the proposed project based on inconsistency and non-compliance with the Visual Resources policies and Highly Scenic Area regulations of Mendocino County's certified Local Coastal Program, as summarized below:

- LCP Policy 3.5-6 and Zoning Code Section 20.504.015(B)(1) require development on a parcel located partly within a Highly Scenic Area to be located on the portion outside of the viewshed, if feasible.
- LCP Policy 3.5-1 and Zoning Code Sections 20.504.010 and 20.504.015(C)(3) require development to be sited and designed to protect views to and along the ocean and scenic coastal areas and to be visually compatible with the character of surrounding areas. New development in highly scenic areas is required to be subordinate to the character of its setting.
- LCP Policy 3.5-4 and Zoning Code Section 20.504.015(C)(8) require that the visual impact of development on ridges be minimized 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 3.5-3 and Zoning Code Section 20.504.015(C)(3) require new development to 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.

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. The siting, orientation, architectural design and building materials are all inconsistent with LCP Visual Resource protection policies.

EXHIBIT NO.	8
APPLICATION NO.	A-1-MEN-99-01
Notice of Final Action	
Page 3 of 21	

RECOMMENDED MOTION:

Option A (per staff report): The Board of Supervisors denies the appeal and upholds the denial of CDP# 5-98 making the findings recommended by staff on pages CPA 9 and 10 of the staff report.

Option B (per the CPA): The Board of Supervisors denies the appeal and upholds the action of the CPA denying CDP# 5-98, finding that the project conflicts with Policy 3.5-4 in that it is a two story structure when viewed in light of the highly scenic development criteria.

ALTERNATIVE MOTION: The Board of Supervisors upholds the appeal, and overturns the action of the CPA, making the Required Findings For Approval listed on page CPA-10 of the staff report, and approves CDP # 5-98, subject to the conditions listed on pages CPA-10 through 12. Staff would suggest consideration of the following additional Special Conditions:

- 4. Approval of CDP # 5-98 does not authorize power poles, phone poles, etc., to the proposed structure. CDP # 5-98 is approved, in great part, upon the applicants statement and submittal that, because of the solar design of the single family dwelling, power from energy companies and therefore power poles were not part of the project.
- 5. 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, or any trees are removed by act of nature, 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 to remain, as well as a plan for replanting to maintain the stand. Replanted trees shall be placed at ratio of three trees for every one removed. New trees shall be native to the area.
- 6. Prior to the issuance of the coastal permit, the applicant shall submit for review and approval by the Coastal Permit Administrator, a detailed landscaping plan for the areas south and west of the single family dwelling. The landscaping shall be native to the area, and may include a pruning schedule to insure the continued viability of the solar design of the dwelling. Landscaping is intended to primarily screen the residence, and blend it with the backdrop of trees. The plan shall include a schedule for installation of all required landscaping and a plan for its long-term maintenance and replacement.

RESOURCE PERSON: Lynch/Ruffing TO BE PRESENT ON CALL PHONE EXT: 4281

BOARD ACTION _____ DATE OF ACTION _____

- 1) Approved Approved as Revised
- 2) Denied
- 3) Referred to _____ Committee: Calendared for Board Agenda _____
- 4) Referred to Dept. for additional info. CAO to clarify by memo _____
- 5) Other _____

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STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 05-98
October 22, 1998
CPA-1

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

AGENT: Stephen Heckerth
30151 Navarro Ridge Road
Albion, CA 95410

REQUEST: Construction of a 3,050± sq.ft. residence with attached garage, greenhouse and lap pool; septic system, driveway, propane tank and generator shed. Installation of a temporary "construction trailer."

LOCATION: Approximately five miles south of Elk and ½ mile east of Highway 1 at 10927 So. Highway 1 (APNs 131-060-14; 131-060-15; 131-090-01).

APPEALABLE AREA: Yes

PERMIT TYPE: Standard

TOTAL ACREAGE: 182± acres

ZONING: Agriculture/Timber Production

ADJACENT ZONING: North: Timber Production
East: Timber Production
South: Range Lands
West: Range Lands

GENERAL PLAN: Agriculture/Forest Lands

EXISTING USES: Undeveloped

SURROUNDING LAND USES: Forestland/Rangeland

SUPERVISORIAL DISTRICT: 5

GOV'T CODE 65950 DATE: January 20, 1999

ENVIRONMENTAL DETERMINATION: Categorical Exemption, Class 3

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OTHER RELATED APPLICATIONS:

CDP #32-96 (guest cottage) withdrawn; 8711-F (septic) on hold pending CDP; 8622-F (septic) on hold pending CDP; CDP #45-97 (residence, garage, guest cottage, windmill, septic systems, driveway) denied by California Coastal Commission on January 13, 1998.

BACKGROUND: In July of 1997, the applicants applied for a coastal permit (CDP #45-97) for a residence, guest cottage, windmill, two septic systems and driveway on the subject parcel. The residence design was nearly identical to that which is currently proposed and it was to be located approximately 20 feet to the south of the presently proposed location, on the edge of the ridge.

Planning Division staff recommended denial of CDP #45-97, citing inconsistency with LCP Visual Resource protection policies. On November 3, 1997, the Coastal Permit Administrator approved the project making 3½ pages of findings in support of the decision. The approval of CDP #45-97 was appealed directly to the California Coastal Commission by two parties: (1) Mendocino Coastwatch/Roanne Withers and (2) Darwin and Lorene Christiansen.

Coastal Commission staff recommended denial of CDP #45-97 on the basis that it was inconsistent with the visual and scenic resource policies of the County's certified LCP. They found that, to be consistent with the LCP, the project would need to be relocated and redesigned, and this could not be accomplished without further environmental review. They emphasized 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.

On January 13, 1998, casting a 9-0 vote, the California Coastal Commission denied CDP #45-97. The basis of the Commission's denial of CDP #45-97 was inconsistency with LCP Visual Resource protection policies, but the Commissioners also discussed their dissatisfaction with the process whereby a local appeal to the Board of Supervisors can be bypassed and an appeal can be made directly to the Coastal Commission when a local jurisdiction assesses an appeal fee.

On February 18, 1998, the applicants' agent submitted a coastal permit application (CDP #5-98) for a residence which was similarly situated and designed as that which was previously denied, stating that:

"...comments made by the majority of the Coastal Commission at the appeal hearing did not suggest denial of the project, but rather that the appeal should have been heard at the county level by the Board of Supervisors. In effect the Coastal Commission was sending the original project back to be heard at the county level."

Staff notes that the hearing transcripts indicate that Commissioners agreed that the project, as proposed, violated LCP policies for the protection of Highly Scenic Areas and that was the basis for denial of CDP #45-97. As stated by Commissioner Reilly who made the motion for denial:

"...there is no way for us to approve this project as proposed, in a highly scenic viewshed, without a clear violation of the LCP. And, I understand that there is a tension between that, and the solar design, but I just

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think that these folks are going to have to go back to the drawing board, and find a way to accommodate the scenic viewshed properties of this land, as well as work out something that works for them, in terms of solar."

Upon review of the application for CDP #5-98 by the Planning Director, it was determined that the project applied for in CDP #5-98 was essentially the same project as that which was denied in CDP #45-97. The applicants were required to wait six months from the date of the Coastal Commission's denial of CDP #45-97 to reapply for the project. The subject application, CDP #5-98, is basically a reapplication, with the following differences from the project which was denied in CDP #45-97:

- The residence is relocated approximately 20 feet to the north and does not step down the hillside.
- The guest house and its septic system have been eliminated.
- The windmill has been eliminated and a propane tank and generator are proposed instead.

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. The applicants propose to construct a single family residence with a septic system, to install a generator shed and a propane tank, and to use a travel trailer during construction. A well and water storage tank 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. An unimproved driveway presently extends along the ridgetop on which the house is proposed.

The proposed residence would be located at the top of and near the westerly end of an east-west trending ridgeline. The residence is approximately 3,050 sq.ft. in size, with an attached garage, lap pool and greenhouse. The residence has two levels and is 28' in height on the south elevation and 20.5' in height on the north elevation. 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. No exterior lighting is proposed. The septic system would be located west of the residence and the propane tank and generator shed would be located on the north side of the residence. The existing driveway would be extended and improved with a rocked surface.

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) and Forest Lands (FL) by the LUP and is in the Agriculture (AG) and Timber Production (TPZ) zoning districts. 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). In its present location, the residence is located on the portion of the property designated AG. The portion of the site designated FL/TPZ is located north and east/southeast of

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the proposed site. The proposed residence and accessory structures are compatible with the long-term protection of the resource lands on the site.

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 coastal permit application requests authorization for placement of a "construction trailer" on the site. Use of a travel trailer as a temporary residence while constructing a primary residence is permitted in accordance with Zoning Code Section 20.460.035(C). Special Condition #1 clarifies the restrictions on temporary use of a travel trailer while constructing a dwelling.

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 above the area known as Bridgeport. This portion of the Mendocino 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 1,600' with dense stands of timber in the gulches and on the upper slopes. It is one of the most spectacular reaches of coastline in the County.

All of the lands within view of Highway 1 in the Bridgeport 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 the Visual Resources policies and Highly Scenic Area regulations of Mendocino County's certified Local Coastal Program, 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 assert that the proposed house site is the only location on the property that provides the necessary solar access, topographic relief, lack of shading, and vehicular access to accommodate the proposed house design.

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 or as expansive coastal views as the proposed house site, modifications to the house design and possibly some tree removal could address these concerns.

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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 travelers 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 one-half of a mile north of Bridgeport, a total distance of approximately 9½ miles. The proposed building site is especially prominent when viewed from the segment of Highway 1 between Irish Beach and Bridgeport. While the applicants assert that the house would be barely visible because of the distance between it and the Highway, staff continues to maintain that the metal roof and glass-lined facade of the residence would be quite visible, as would interior illumination of the residence at night. The residence would contrast greatly with the setting. Virtually no screening is proposed, the only mitigating measure being the backdrop of trees against which the residence would be set.

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 (Waidhofer) 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 (Raabe) is also south of the subject site and is located on a knoll at an elevation of about 500'. Although the house is set back 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 site 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." Staff maintains that there are alternative sites available on the 182± acre parcel which are less prominently situated and offer some vegetative screening for the residence. The most demonstrable alternative site is approximately 800' east of the proposed house location, where the guest cottage was previously proposed. This site includes a relatively level pad, can accommodate a septic system, is close to the existing well, is accessible by the existing driveway and offers lovely coastal views. The alternative site is forested, but is designated Forest Lands by the LUP and is in Timber Production zoning, so tree removal to provide more solar exposure would be acceptable. Some retention of trees on the southerly slopes of the ridge may be necessary to help screen the residence from Highway 1.

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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 be located at the crest of the grassy ridgeline. It has been moved approximately 20' to the north from its previously proposed location, but otherwise has not been redesigned. The residence would project above the ridgeline, but would not project above the trees behind it. The south- and southwesterly-facing facades are a total of approximately 150' in length, though due to its orientation, the maximum length of the facade visible at any one time would be roughly 100'. 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 (28' at the south elevation). While the floor plans show a "basement" and a main floor, the southerly facades of the basement would be above the natural ground elevation. Staff notes that the east elevation, as submitted, does not appear to include the basement/greenhouse/lap pool and the west elevation indicates a grade change that does not correspond with the contours on the site plan. The siting, orientation and two-story 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 "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 gray or tan color. 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, particularly when the sun is low in the sky in winter and in the early morning and late afternoon hours. The building colors would contrast with both the dark trees in the background and the grassy fields in the foreground.

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 LCP 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 #2 is recommended to ensure that visual resource

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issues are addressed prior to the erection of any accessory structures within the Highway 1 viewshed. Special Condition #2 also requires a coastal permit amendment prior to the installation of any exterior lighting within the Highway 1 viewshed. Special Condition #3 requires submittal of color samples for all exterior building surfaces for the review and approval of the Coastal Permit Administrator. Such samples shall be selected to blend in hue and brightness with the surroundings.

Energy. The proposed residence is designed to maximize energy efficiency. The south/southeasterly orientation of the residence provides maximum solar exposure. The location on the crest of a grassy ridge precludes any shading by vegetation. 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 generator and propane tank would also be installed to provide electricity. The applicants have chosen not to connect to PG&E's electric utilities due, in part, to the expense of extending the lines several miles up the access road from Highway 1 to the project site.

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:

"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 offers 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 LCP, as discussed above. 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 architectural designs which could achieve compliance with Visual Resource policies while meeting the solar design objectives of the applicants.

The applicants have asserted that the California Solar Rights Act limits the County's ability to deny applications for residences using alternative energy sources. The legislation states that:

"The legislative body of any city or county shall not enact an ordinance which has the effect of prohibiting or of unreasonably restricting the use of solar energy systems other than for the preservation or protection of the public health or safety... [I]t is the policy of the state to promote and encourage the use of solar

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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." (Cal. Gov't Code, Section 65850.5)

As noted by Coastal Commission staff during the hearing for the appeal of CDP #45-97, the Solar Rights Act applies only to the adoption of local ordinances, not the approval or denial of a coastal development permit. Furthermore, there are other alternative locations on the 182± acre property where a solar home could be developed without compromising the scenic resources of the area.

The comments of Coastal Commission Executive Director Peter Douglas at the January 13, 1998 Coastal Commission appeal hearing address the key issue involved in the coastal permit application—that of the trade-off between protecting scenic resources and optimizing solar design:

"We want to emphasize that one of the primary purposes of the Coastal Act is to protect the sense of place, and wildness, and openness of the coast as a vital resource of general public concern. This is a spectacular stretch of landscape on the coast, and it is precisely the kind of scenic resource that the Coastal Act was intended to protect. Our concern here is with the siting of this particular house in this location and, because the applicant has a parcel large enough that allows alternative siting, we think that the option that is being recommended by staff, to deny the structure in this particular location and look for an alternative site, is reasonable and feasible." (Transcript of Proceedings for Appeal No. A-1-97-79, p. 43)

"Also, we strongly support solar energy. There is no question about that. But, the question of whether or not you can then use solar energy use, when you located in a very remote location like this, to override or to compromise the policies to protect the scenic resources and scenic values of the coast, we think that that is not an appropriate tradeoff, and that does set a precedent that we think is not one that we want to start on." (Transcript of Proceedings for Appeal No. A-1-97-79, p. 44)

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

There are no faults, landslides or other geologic hazards mapped on the project site. 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 permit.

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. The 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.

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

Groundwater Resources. The site is located within an area mapped as Critical Water Resource 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. While the project would contribute incrementally to traffic volumes on local and regional roadways, such incremental increases were considered when the LCP land use designations were assigned to the site.

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

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

FINDINGS FOR DENIAL:

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. Specifically, there are several locations to the east of the proposed building site which are relatively level and would be screened from view of Highway 1 by trees. While tree removal would be required to create a suitable building site and provide solar access, such tree removal could be accomplished without adversely impacting scenic views from Highway 1.
2. Siting the residence on the crest of a ridge, where it is visible from locations along a 9½± mile stretch of Highway 1, 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.

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5. The project cannot be mitigated to achieve compliance with LCP 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:

REQUIRED FINDINGS FOR APPROVAL:

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.
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 become effective after the ten (10) working day appeal period to the Coastal Commission has expired and no appeal has been filed with the Coastal Commission. The permit shall expire and become null and void at the expiration of two years after the effective date except where construction and use of the property in reliance on such permit has been initiated prior to its expiration.

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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 Division II of Title 20 of the Mendocino County Code.
3. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Coastal Permit Administrator.
4. That this permit 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 of the Department of Planning and Building Services.
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 conditions 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

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of the discovery to the Director of the Department 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. An administrative permit is hereby granted for temporary occupancy of the travel trailer while constructing the single family residence, 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) 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.
 - (d) 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 comes first.
2. 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.
3. Prior to issuance of the coastal permit, the applicant shall submit color samples for all exterior building surfaces for the review and approval of the Coastal Permit Administrator. Colors shall be selected to blend in hue and brightness with the surroundings.

Staff Report Prepared By:

10.15.98

Date

Linda Ruffing

Linda Ruffing
Supervising Planner

Attachments: Exhibit A- Location Map
Exhibit B- Site Plan
Exhibit C- Floor Plans
Exhibit D- Elevations

Appeal Period: 10 days

Appeal Fee: \$555

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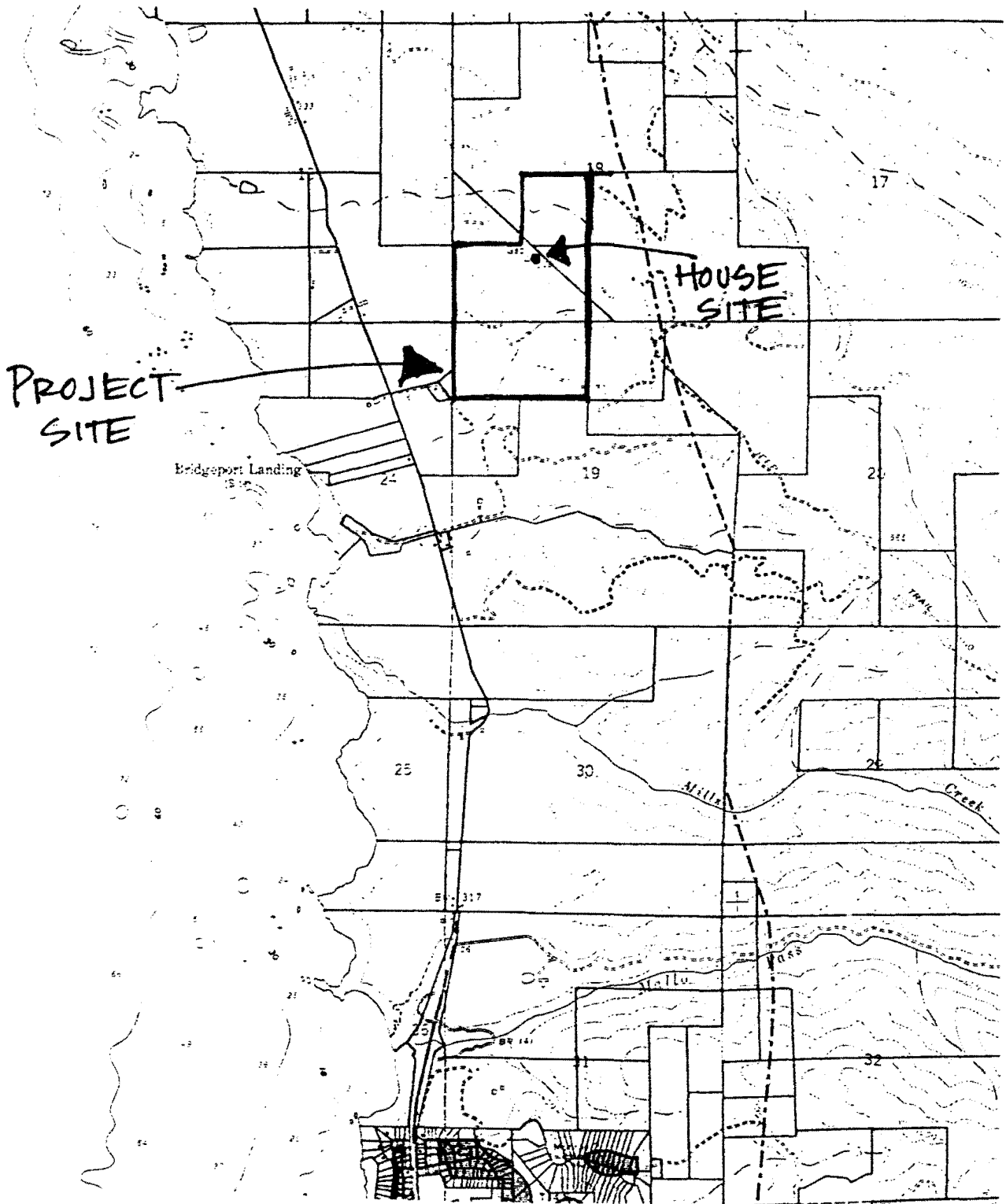


EXHIBIT A

LOCATION MAP

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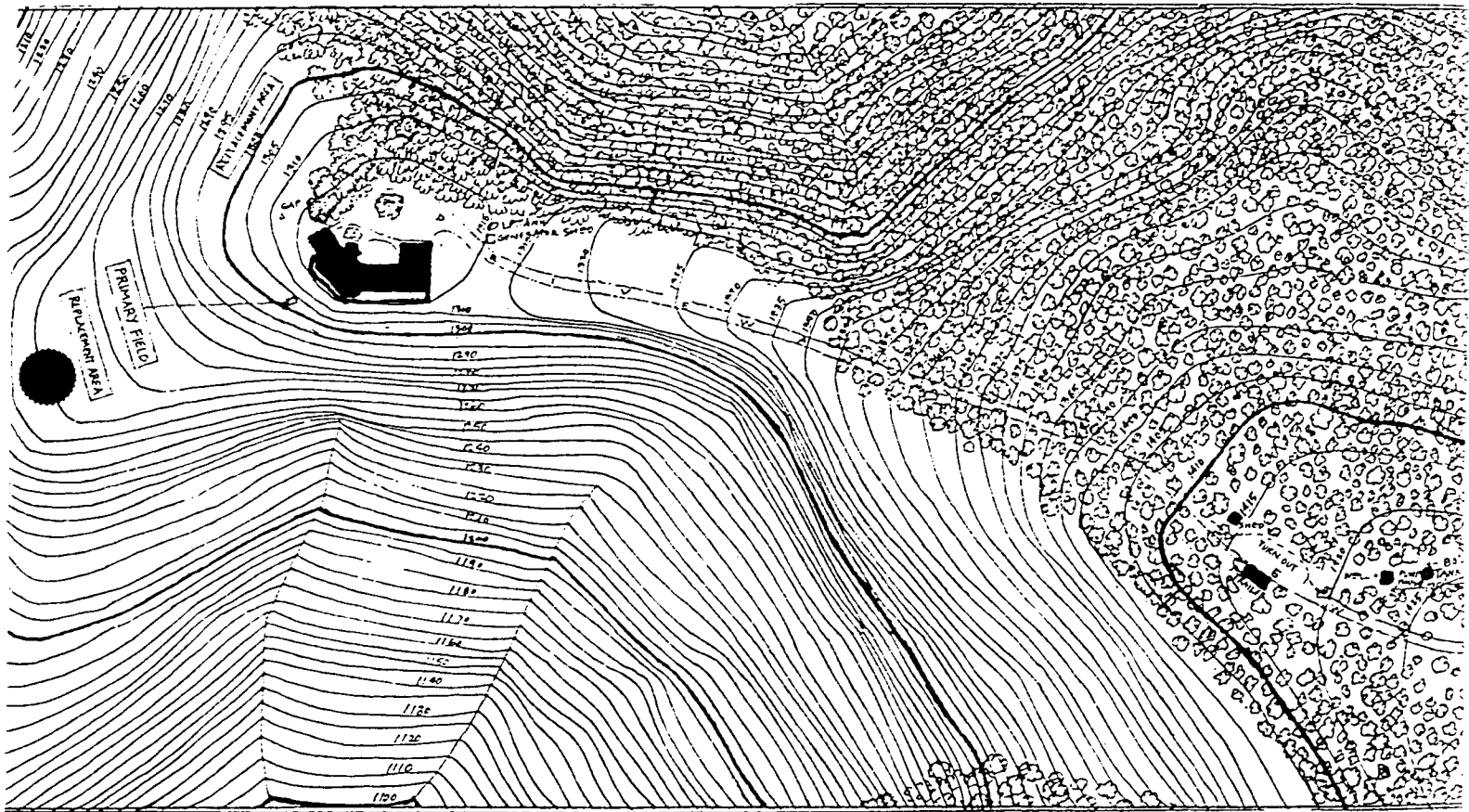


EXHIBIT B

SITE PLAN

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STAFF REPORT FOR
STANDARD COASTAL DEVELOPMENT PERMIT

CDP# 05-98
October 22, 1998
CPA-15

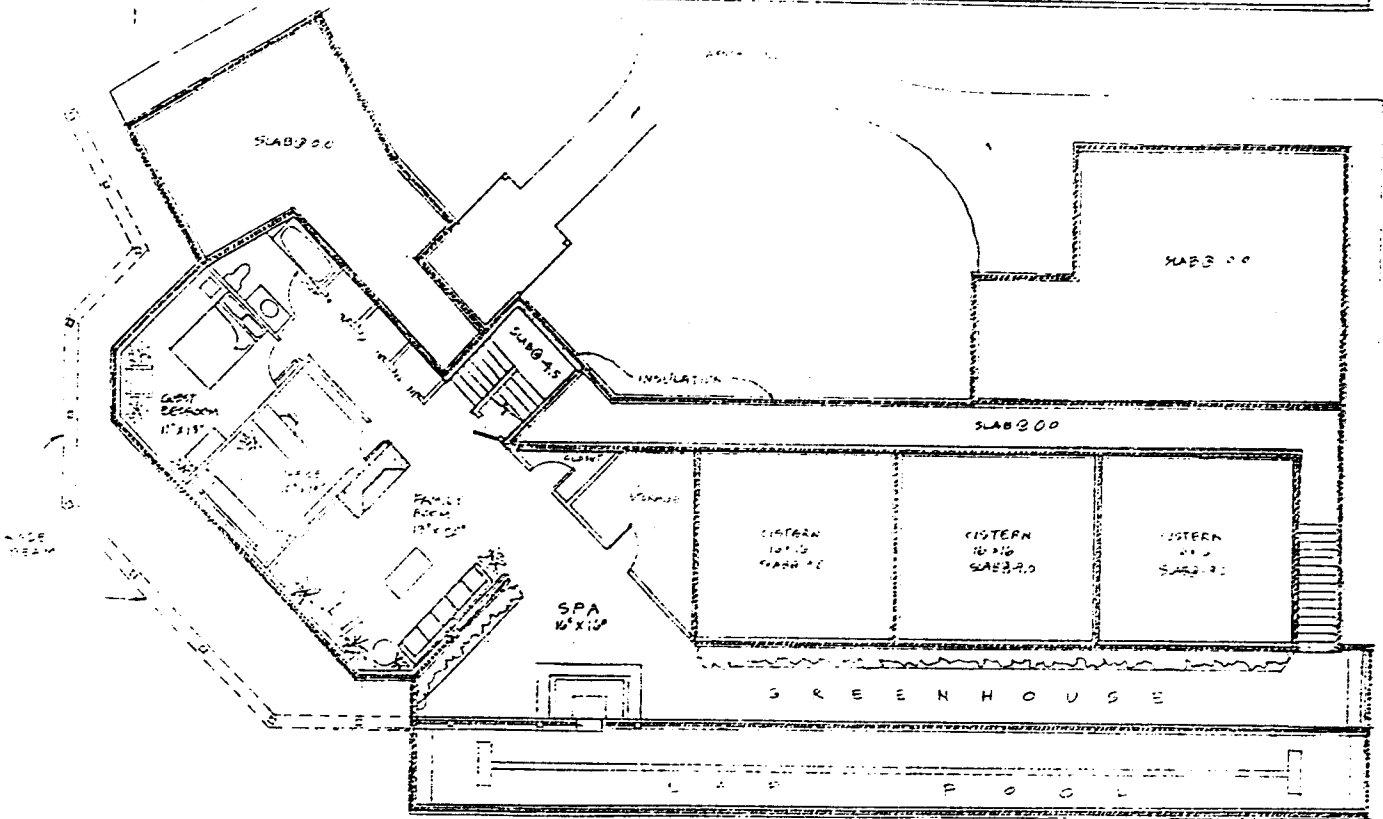
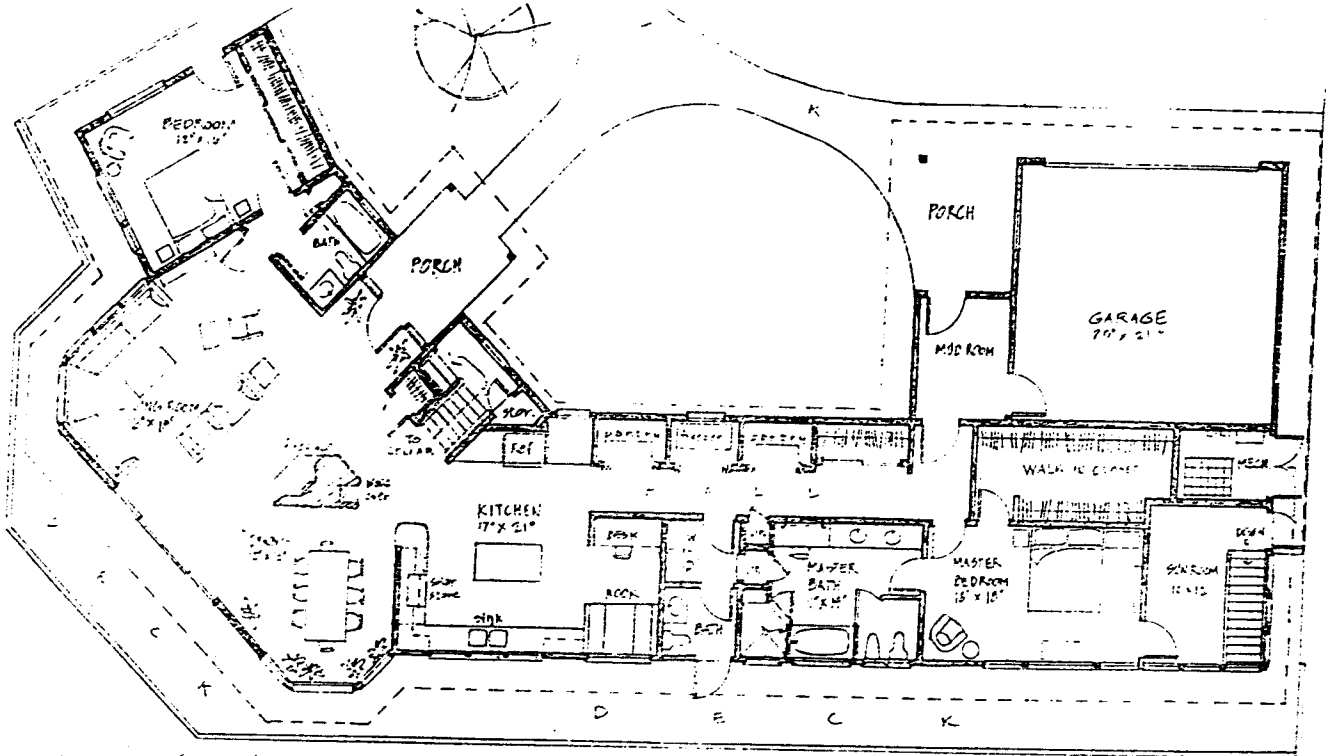
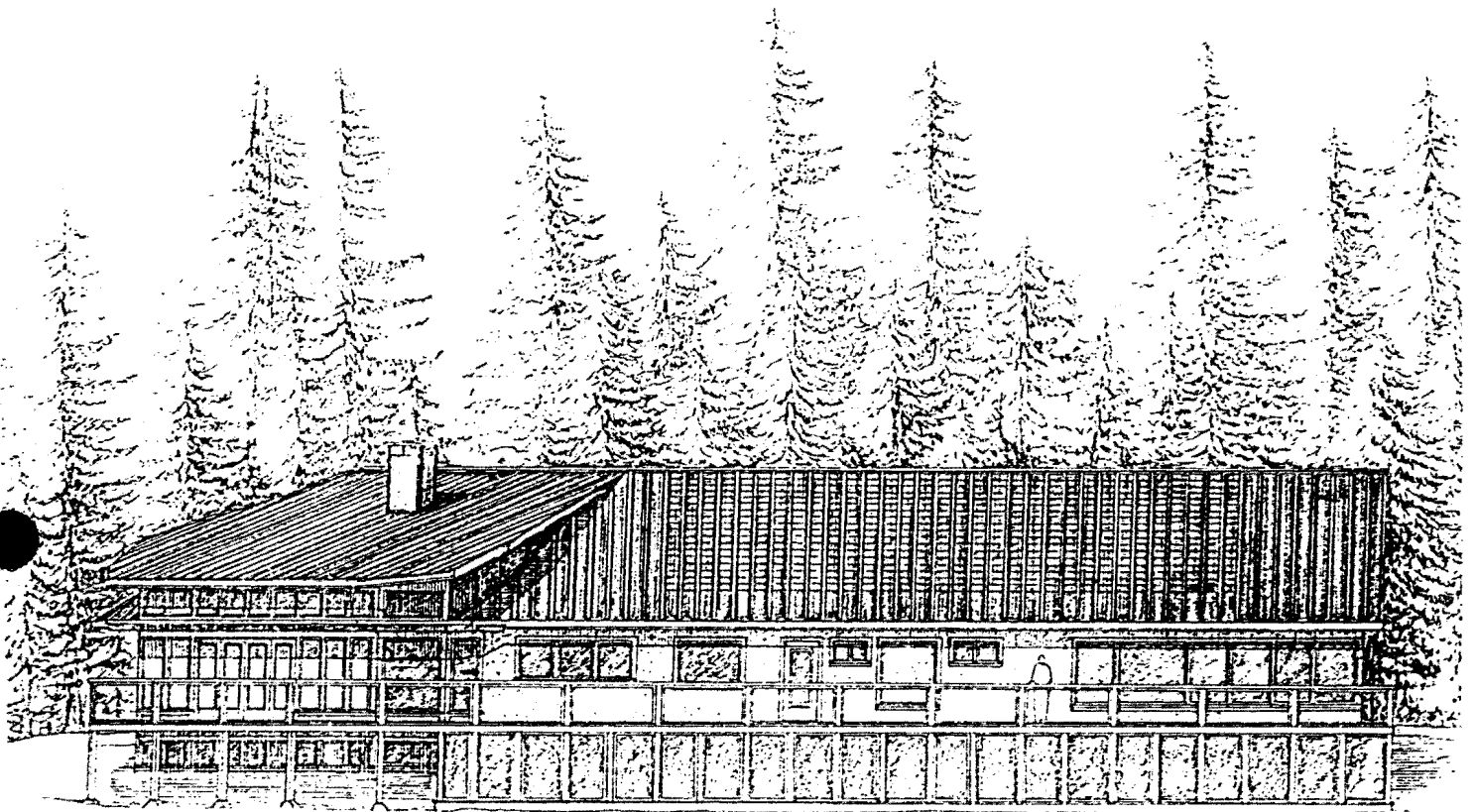


EXHIBIT C

FLOOR PLANS

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SOUTH ELEVATION

W. Schmitt
2/1/98

EXHIBIT D

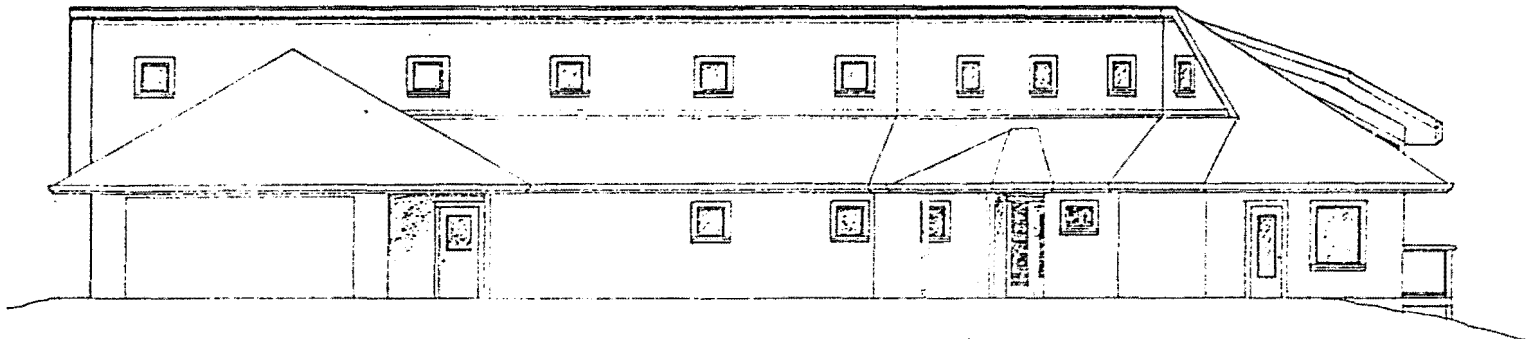
EXHIBIT NO. 8

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ELEVATIONS



NORTH ELEVATION



EAST

WEST

EXHIBIT E

ELEVATIONS

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CALIFORNIA COASTAL COMMISSION
NORTH COAST AREA
EMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
(415) 904-5260

CALIFORNIA
COASTAL COMMISSION



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 COAST WATCH REANNE WITHERS P.O. 198, FORT BRAGG, CA 95437
SIERRA CLUB MENDOCINO/LAKE GROUP - PENQUENTHER, 29900 HWY 20 FORT BRAGG, CA
(707) 961-1953 95437
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: CDP 5-98 (SMILEY-OWNERS / HECKEROTH-AGENT) (CONSTRUCTION OF A 3,000-sq ft 2-STORY RESIDENCE w/ GARAGE, GREENHOUSE, LAP POOL, SEPTIC SYSTEM, DRIVEWAY, PROPANE TANK, AND GENERATOR SHED.

3. Development's location (street address, assessor's parcel no., cross street, etc.): Approx 5mi S of ELK AT 10927 Hwy 1.
ADN'S 131-060-4 + 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-99-001

DATE FILED: 1/6/99

DISTRICT: North Coast

H5: 4/88

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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 ATTACHED (1 page)

FILED BY FAX CN 12/28/98. HARD COPY BY MAIL TO follow

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.

Ryan Wilkins,


Signature of Appellant(s) or Authorized Agent

Date 12/28/98

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.

Signature of Appellant(s)

Date _____

EXHIBIT NO.	9
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Attachment to Section IV. Reasons Supporting This Appeal

The subject project (CDP 5-98) is basically a reapplication for the same project denied by the California Coastal Commission on January 13, 1997 (CCC Appeal A-1-MEN-97-79). There have been some modifications in the current project but these modifications do not address the project's lack of consistency with the Visual Resources Goals and Policies of the certified Mendocino County Local Coastal Program.

Specifically:

- (1) The proposed project is inconsistent with LUP Policy 3.5-6 and Zoning Code Section 20.504.015 (B) (1): Development in Highly Scenic Areas when Alternatives exist.
- (2) The proposed project is inconsistent 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. Also the development is not limited to a single story above the natural elevation.
- (3) The proposed project may be inconsistent with Zoning Code Section 20.356.040: Non-conformance to Height Limit. The Mendocino County staff report for the project states the south elevation is 28' but also notes "that the east elevation, as submitted does not appear to include the basement/greenhouse/lap pool and the west elevation indicates a grade change that does not correspond with the contours of the site plan."
- (4) The proposed project is inconsistent 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.
- (5) The proposed project is inconsistent with the California Environmental Quality Act Section 21080.5(d)(2)(i) which prohibits a proposed development from being approved if there are feasible alternatives available which would substantially lessen any significant adverse impact on the environment.

Based on all of the above, Mendocino CoastWatch and Sierra Club Mendocino/Lake Group respectfully request the California Coastal Commission hear our appeal on the project's lack of conformance with the certified Local Coastal Program of Mendocino County.

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Appeal	
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CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA
 45 FREMONT, SUITE 2000
 SAN FRANCISCO, CA 94105-2219
 (415) 904-3260



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.

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Smiley	
CCC Staff Letter	

Mary Stinson
Page Two

EXHIBIT NO.	10
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	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. MERRILL FOR

JO GINSBERG
Coastal Planner

4376p

EXHIBIT NO.	10
APPLICATION NO.	A-1-MEN-99-01
	Smiley
	CCC Staff Letter

Homestead Enterprises — Solar Design & Renewable Energy Products

Stephen Heckerth
30151 Navarro Ridge Road
Albion, CA 95410
Phone/FAX 707-937-0338
e-mail: steve@renewables.com

Monday, February 8, 1999

EXHIBIT NO.	11
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Submittal from Applicant	
Page 1 of 14	

California Coastal Commission
Re.: Commission Appeal No. A-1-MEN-99-001
To be included in each commissioner's packet

Dear Commissioner,

My clients Luanne and Robert Smiley are attempting to build an energy efficient home on their 180 acres of agricultural and timber land on the Mendocino Coast. The Smileys intend to maintain the productivity of their timber land and establish an organic fruit and vegetable farm on the small portion of their property that is suited to intensive farming. They are also trying to comply fully with the intent of the Coastal Act but the project's approval has been appealed at every step and now you are hearing it for the second time. On behalf of the Smileys who have suffered almost two years of anxiety and disappointment, I ask for your attention to the following material.

The Local Coastal Plan (LCP) seeks to protect all "coastal resources," but the Coastal Commission (CC) staff has concentrated this broad regulatory mandate on "visual resources." Unfortunately, the highly subjective nature of the language to be found in the regulations governing coastal development lends itself to that, or almost any other interpretation, and resulting CC decisions are often in conflict with other State agencies that have equally limited but more tangible mandates, such as protecting air, water, or soil quality; or encouraging the use of renewable non-polluting technologies.

The Smileys did not purchase their property unaware of the LCP policies or the fact that the property was zoned for one primary residence per 160 acres. Indeed, they initially sought guidance from the local (Fort Bragg) branch of the Mendocino County Planning Department, only to be told that advisory opinions could not be given. Accordingly, in their efforts to accomplish "due diligence" before purchasing, they drove up and down the highway in the vicinity of Elk, noting the type and size (both one and two story houses up to 6,000 sq. feet in size) of several recently constructed residences, all much closer to the highway and much more visibly prominent than the residence they asked me to design for them.

I have been designing and building environmentally sensitive homes on the Mendocino Coast for over 25 years. As a member of a Citizens Advisory Committee in 1979, I wrote an Energy Element for the Mendocino County General Plan. As a member of the Offshore Oil Task Force in 1982, I wrote the No Project Option for Lease Sale 53 that paved the way for Ocean Sanctuary. As a County planning Commissioner, I pushed for an interdisciplinary approach that uses a Geographic Information System (GIS) to store and present all the determinants necessary for objective decision making. My designs that rely on the sun for both heat and electricity have been featured in print and on television in the US, Canada, Europe and Japan.

Two years ago, I first met with the Smileys on their 180 acre property. After a study that determined the best building site I designed a home that would be heated and powered entirely by solar energy. The first design was approved by the County Coastal Permit Administrator and we hoped to start construction in the fall of '97. Subsequently we were notified that the project had been appealed directly to the CC.

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APPLICATION NO.
A-1-MEN-99-01

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Last January the Smileys, five of their neighbors and I made the seven hour drive to San Luis Obispo to support the approval of their project. After the staff made a lengthy presentation which included slides taken with high power telephoto lenses to show how visible the site was we were told we had three minutes each to state our case. The majority of the commissioners stated the position that the project should go back to be reviewed by the County Board of Supervisors (BOS). There is no mechanism for going back directly to the BOS. Simply upholding the appeal, assured that the project would be returned to the local county level. After the required waiting period, we reapplied with a scaled down project that was recently approved by the BOS. The project has again been appealed by the same applicant, so we come back to you. But this time with the approval of the local board.

The appellants are a couple who live in Fort Bragg over 30 miles north of the project. They did not attend the hearing of their first appeal or the hearing where the BOS approved the Smiley project. By their own admission, the appellants have never seen the site. Yet, the entire appeal is based on the visual impact of the project. The facts are that the house site is 1 1/4 miles from the ocean, is east of and 1,100 feet above Highway One and can only be seen from over one mile to the south. The appellants have made this a precedent setting case by asserting that the use of renewable non-polluting solar energy is unacceptable within sight of the driving public, notwithstanding numerous other recently approved and constructed residences both east and west of the highway in the immediate vicinity of the Smiley's proposed project.

State law now allows anyone to make an appeal directly to the CC bypassing the local BOS if the County charges an appeal fee. This process puts the CC in the untenable position of passing judgment without input from the local board. Further, there is no mechanism for the CC to get input from the local board without denying the project which sends it back through the County process. Then there is a waiting period of one year at the County level before a project can be resubmitted. This process is a bureaucratic Catch-22 that I hope you will address.

The proposed location of the house is the result of a careful study where the main determinants for site selection were slope, vehicular access and solar exposure. What I found was that because of very steep slopes (averaging over 35%) and limited vehicular access, a very small portion of the 180 acre site is buildable. And because any shading of solar electric panels severely limits their performance, the siting options were further limited to less than one acre of land. Both sanitation and geotechnical reports confirmed the location of the site selected. (A composite overlay clearly shows the best sites and the site plan shows the proposed location of the house. The study and composite site plan are on Pages 4 and 5 of this packet.)

The first house design approved by the County Coastal Permit Administrator stepped down the south slope to give maximum solar exposure. The local planning department staff, and subsequently the CC staff reports suggested that the height and location of the house were unacceptable. When the project was resubmitted, the house was moved 20 feet to the north close to a grove of trees that are behind the house when viewed from the south; we included a landscape plan that was rejected by the BOS as unenforceable; and the overall height was lowered five feet. According to the definition found in the Uniform Building Code, the house is one story above grade but the local planning department staff has developed a perceptual definition of height above grade when viewed from some fictitious location. If perceptual height is used then it should be based on a view from an actual location. As shown in the attached Section A:A the view height is less than 20 feet. The view from Highway One 1 mile away and 1,100 feet below the site is shown on Page 6 of the packet along with Section A:A . A dozen redwood trees and two dozen shrubs have been planted on the slopes below the house site. This vegetation will eventually obscure the view of the house but will not block the sun.

In making their recommendations the local planning department staff, and subsequently the CC

staff reports paraphrases portions of the Local Coastal Plan to prove their point but reading of the full policy shows that the house is in complete compliance with the Coastal Act. I am including the text of the applicable policies so that you can make a fully informed determination. (Page 7 and 8).

CC staff also suggested that free standing solar panels on the optimum solar site would be more acceptable than the house on that site. There is an attached comparison of the 5 kW free standing solar array at the Albion Elementary School compared with the 5 kW roof integrated photovoltaic array on the proposed home. In my opinion, the free standing array is much more obtrusive and doubles the footprint of human presence on the land. (Page 9).

The CC staff had also recommended the previous project be denied unless it is moved to a north sloping wooded area where it cannot be seen from the highway. They further recommended that a gas generator be installed to provide electricity and that trees should be cut to provide the solar access necessary for heating the home. The house site suggested by the staff is delineated on Page 10 along with the 5 acre clearcut necessary for solar access which extends onto the neighboring property, whose owners are appropriately concerned about clearcutting the slope below and abutting their property, and absolutely will not allow any clearing on their own property to provide solar access for the Smileys. We believe the CC staff will again make this same recommendation for moving the house to the "alternate location" they have chosen. But because the staff report is not yet available at this writing, it is only speculation that they would again recommend an alternative site without adequate drainage that would needlessly require the cutting of hundreds of trees and the burning of more than a thousand gallons of fuel per year in a generator with no required emission controls

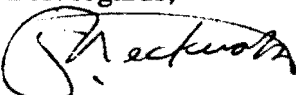
I find it hard to justify unnecessary resource depletion and pollution especially when reduced environmental quality is in direct conflict with the goals and policies of other State agencies, like the California Air Resources Board (CARB) and the California Energy Commission (CEC). Page 11 is a letter from the CEC suggesting that it is the policy of the State of California to encourage the use of solar energy and that the type of photovoltaic roofing which I intend to use on the house "will absolutely eliminate any possible reflection or glare concerns." Page 12 is a copy of the California Solar Rights Act (Government Code, Section 65850.5) which prevents local agencies from restricting the use of solar energy systems. Page 13 is a copy of the Health and Safety Code, Section 17959 which encourages local agencies to require proper orientation for solar heating and cooling, natural lighting, and ventilation. It seems to me that if the California Legislature thinks that the use of solar energy should be encouraged by local government agencies, then it should also be encouraged by State government agencies, like the one on which you sit.

The Smileys have chosen to use solar energy because they are concerned about environmental quality and resource depletion and because they cannot afford the cost of bringing in utility power (\$400,000). Now they have become victims of a subjective process that has allowed large and even 2-story homes west of the highway in the ocean view in the same stretch of highway, yet has so far denied them a home which is designed to blend with the trees behind it, is located east of the highway and is so far away that it will only be seen with binoculars.

Please consider all the "coastal resources" now and in the future as the Smileys and I have done in sustainably designing this project.

Thank you for your consideration.

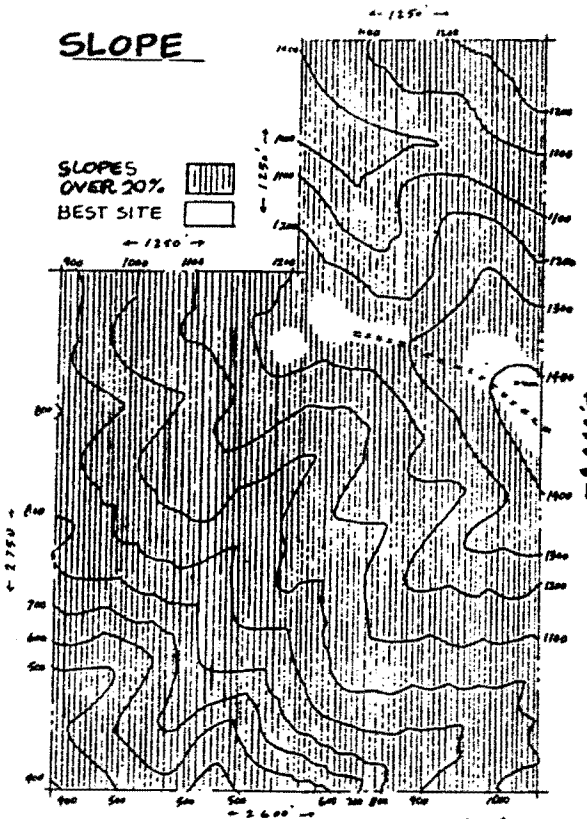
Best regards,



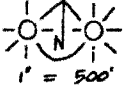
Steve Heckerroth

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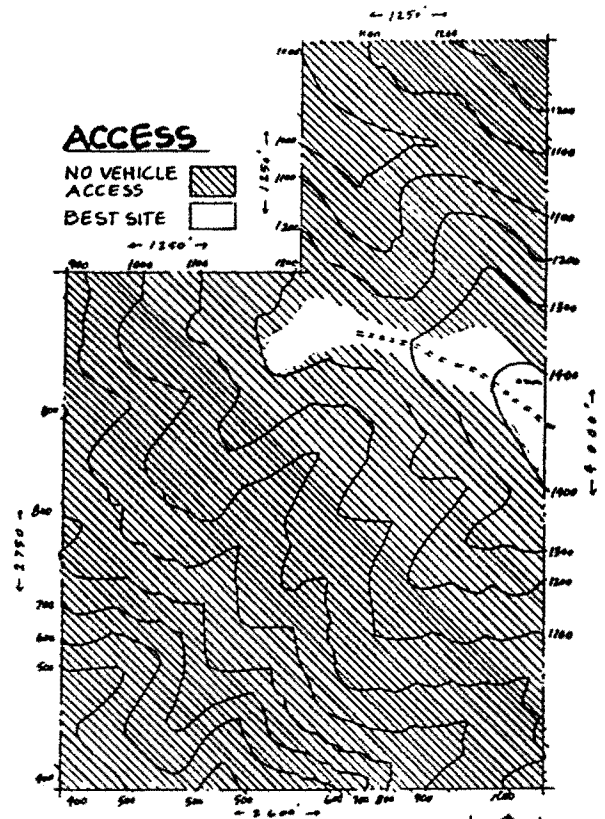
SLOPE



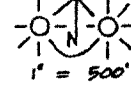
LANDS OF ROBERT & LUANNE SMILEY
9105 HWY 1 ELK, CA 95432



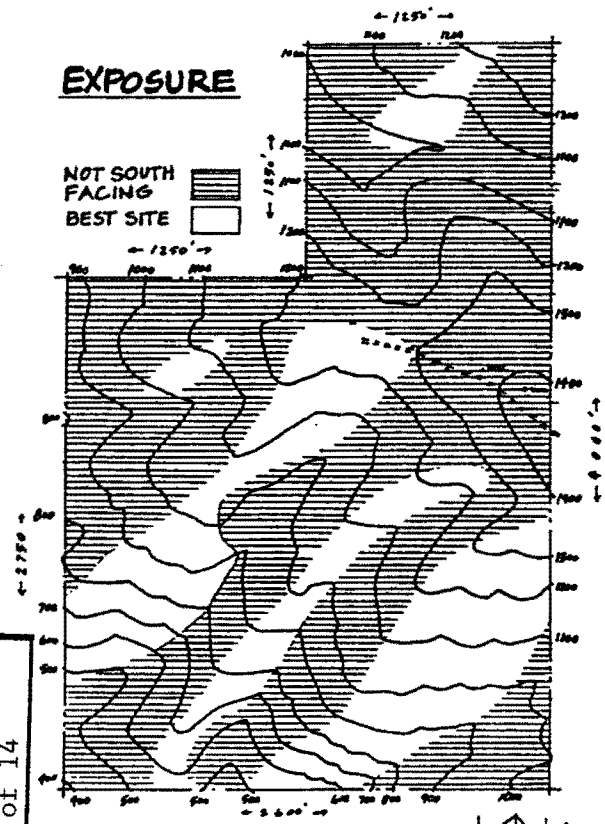
ACCESS



LANDS OF ROBERT & LUANNE SMILEY
9105 HWY 1 ELK, CA 95432



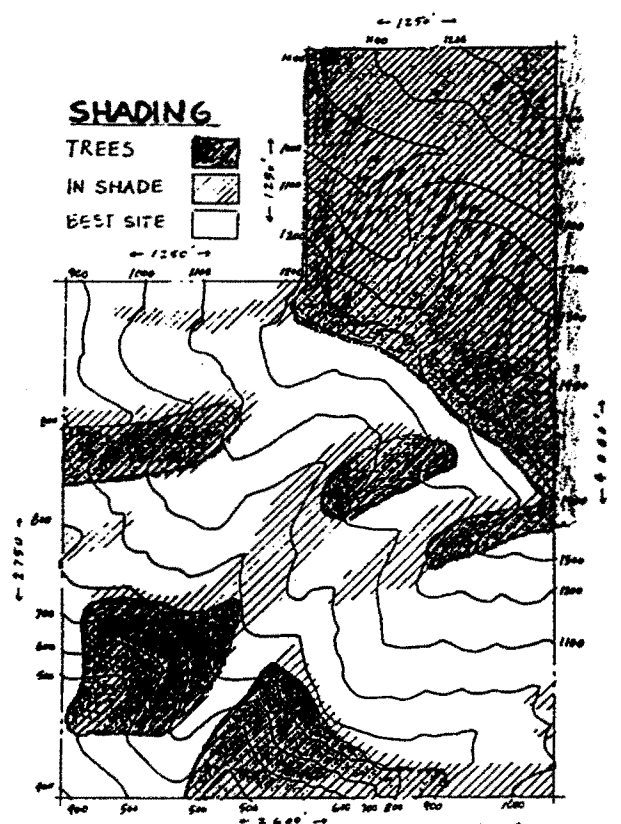
EXPOSURE



LANDS OF ROBERT & LUANNE SMILEY
9105 HWY 1 ELK, CA 95432



SHADING



LANDS OF ROBERT & LUANNE SMILEY
9105 HWY 1 ELK, CA 95432

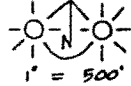


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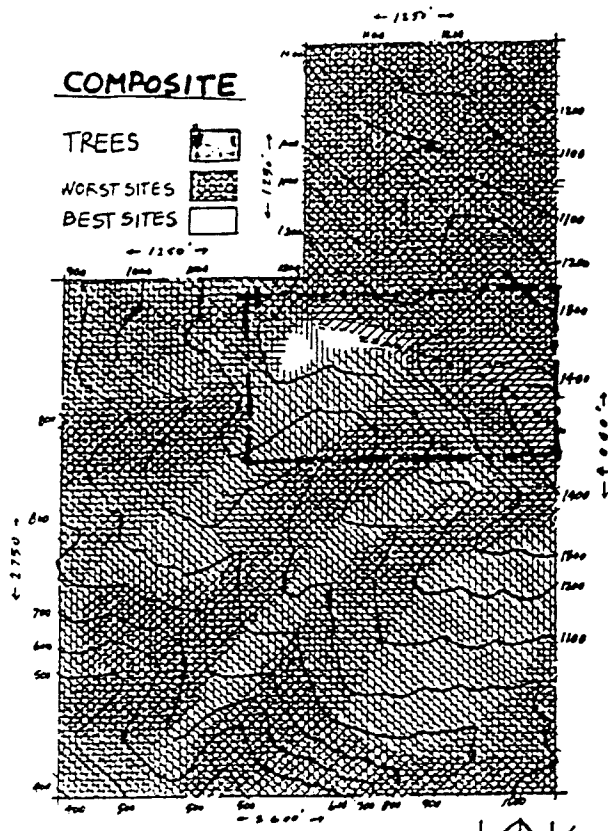
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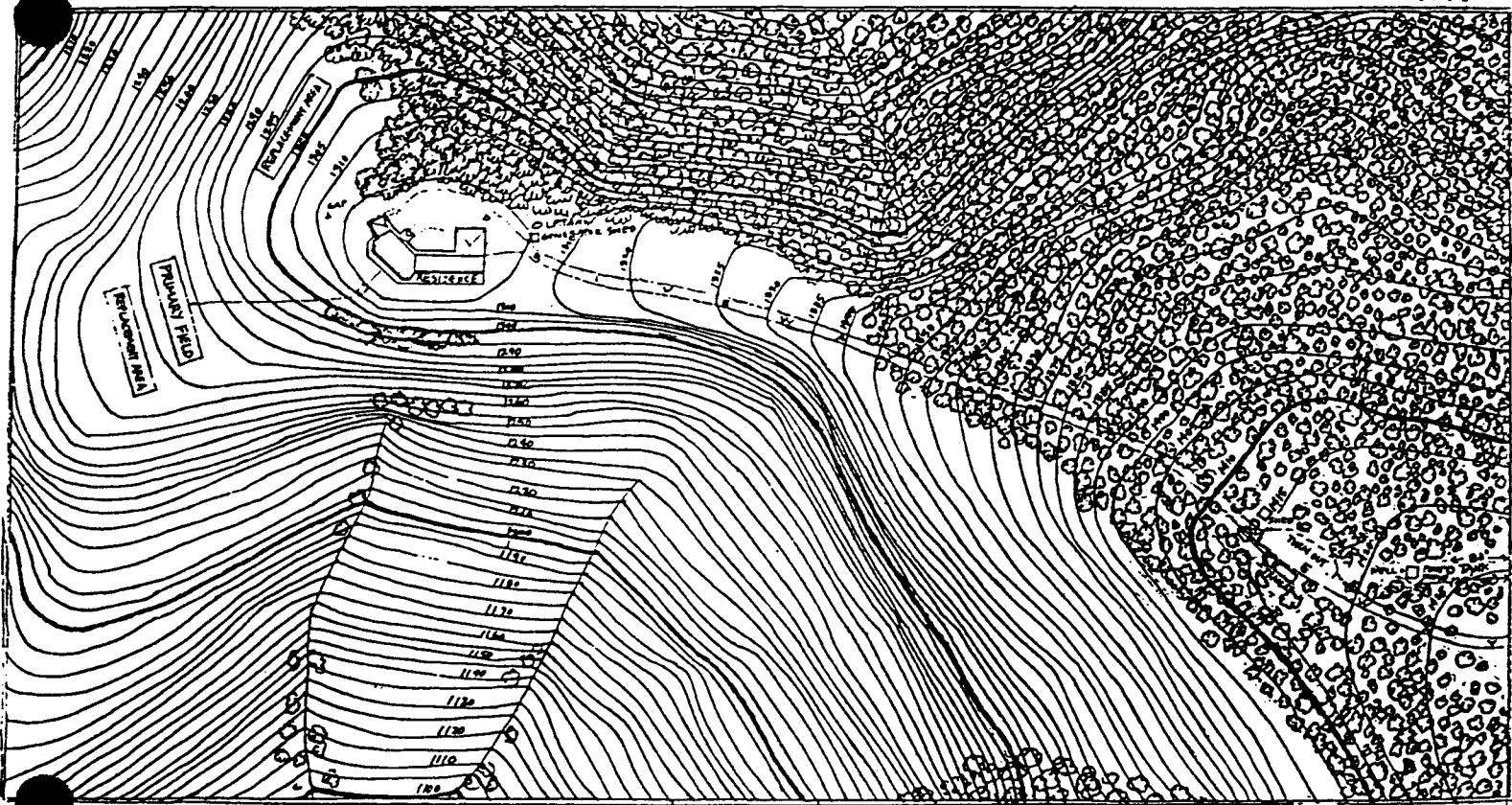
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COMPOSITE

TREES 
WORST SITES 
BEST SITES 



LANDS OF ROBERT & LUANNE SMILEY
9105 HWY 1 ELK, CA 95432



SITE PLAN

RESIDENCE FOR ROBERT AND LUANNE SMILEY
9105 HIGHWAY 1, ELK, CALIFORNIA 95432

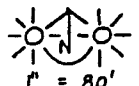


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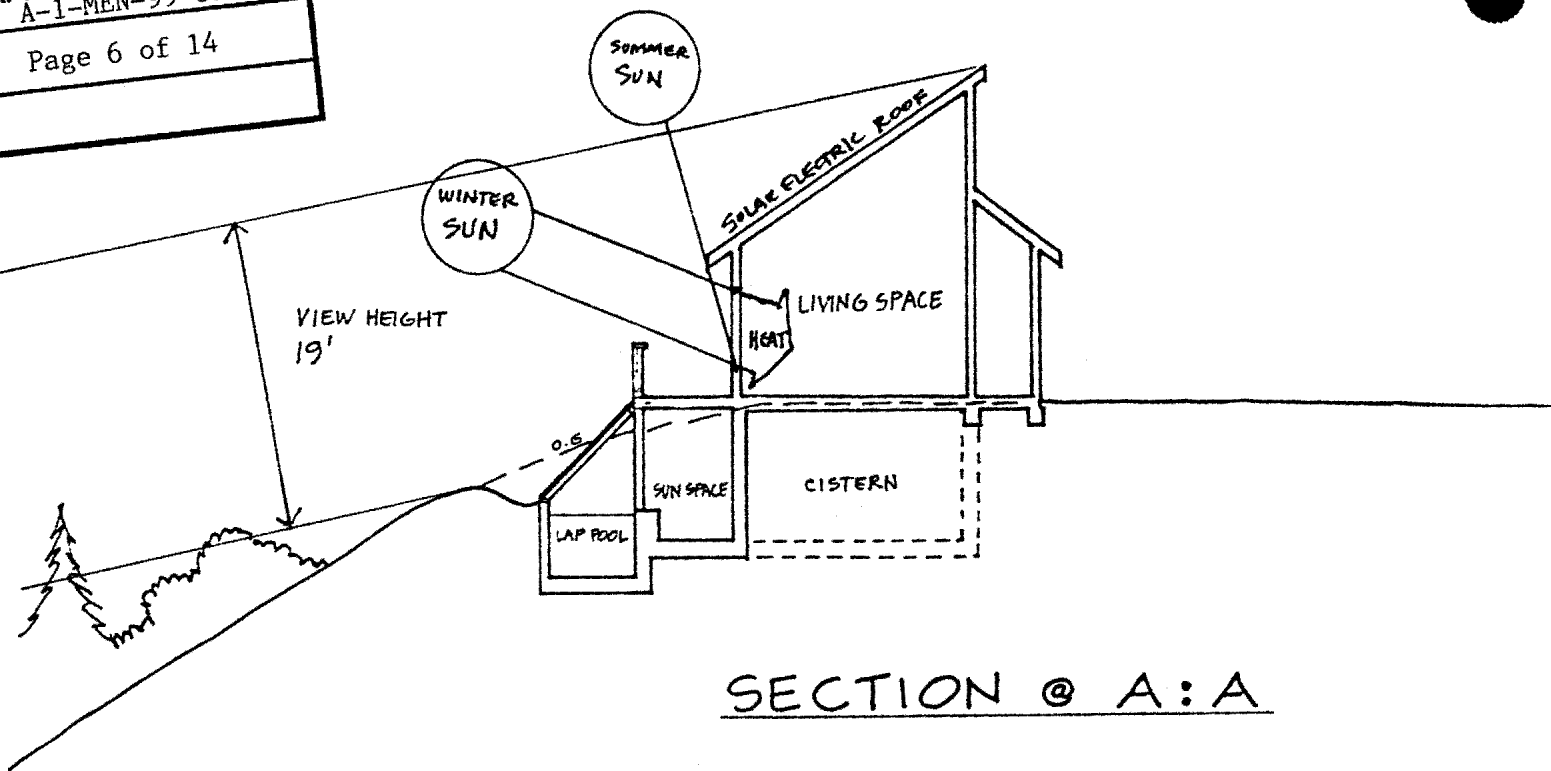


Photo 1. Taken with a 55mm lens, looking North from Hwy 1 at Bridgeport Landing. The site below the arrow is 5,500 feet away and 1100 feet above the highway. Driving North on Hwy 1, this is the last place the proposed house will be seen before being totally obscured by the trees and ridge in the foreground. The house will not require any utility pole and wire or road extensions, AND IS OVER ONE MILE FROM THE OCEAN.

3.5-3

The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as "highly scenic areas," within which 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 including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.

- Portions of the coastal zone within the Highly Scenic Area west of Highway 1 between the Navarro River and the north boundary of the City of Point Arena as mapped with noted exceptions and inclusions of certain areas east of Highway 1.

In addition to other visual policy requirements, new development west of Highway One in designated "highly scenic areas" is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Variances from this standard may be allowed for planned unit development that provides clustering and other forms of meaningful visual mitigation. New development should be subordinate to natural setting and minimize reflective surfaces. All proposed divisions of land and boundary line adjustments within "highly scenic areas" will be analyzed for consistency of potential future development with visual resource policies and shall not be allowed if development of resulting parcel(s) could not be consistent with visual policies.

3.5-4

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. Except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists.

Minimize visual impact of development on hillsides by (1) requiring grading or construction to follow the 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 landforms; (3) designing structures to fit hillside sites rather than altering landform to accommodate buildings designed for level sites; (4) concentrate development near existing major vegetation, and (5) promote roof angles and exterior finish which blend with hillside. Minimize visual impacts of development on terraces by (1) avoiding development in large open areas if alternative site exists; (2) minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms; (3) provide bluff setbacks for development adjacent to or near public areas along the shoreline; (4) design development to be in scale with rural character of the 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; (3) prohibiting removal of tree masses which destroy the ridgeline silhouette. Nothing in this policy shall preclude the development of a legally existing parcel.

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3.5-6 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. Highly scenic areas delineation is approximate and shall be subject to review and correction if necessary at the time of a land development proposal or application.

Where representatives of the County Planning Department, the California Coastal Commission, or the applicant are uncertain about the boundaries of the viewshed on any parcel such disagreements shall be investigated by an on-site inspection by the landowner and/or agents, County Planning Department staff member, and a representative of the California Coastal Commission.

The on-site inspection shall be coordinated by the County Planning Department and will take place within 3 weeks, weather and site conditions permitting, of the receipt of a written request from the landowner/agent for clarification of viewshed boundaries.

If all of the members of this group agree that the boundaries of the scenic resource in question should be adjusted following the site inspection, such development should be approved only upon specific findings that the scenic resource as identified will not be significantly degraded by the proposed development. If such findings cannot be made, the development shall be denied.

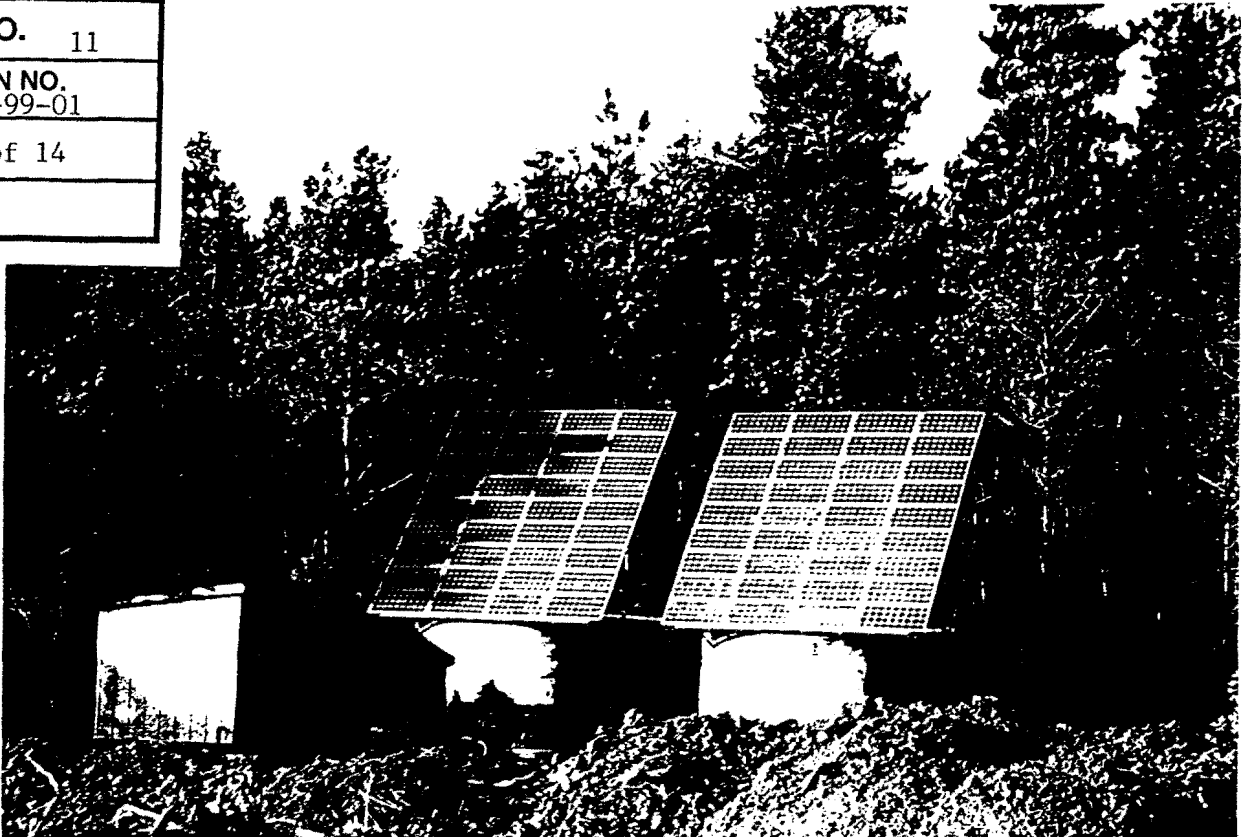
If it appears that the highly scenic area delineation should be substantially extended or reduced to include or exclude areas adjacent to those presently designated "highly scenic" to protect the scenic resource, this shall be accomplished through the plan amendment process.

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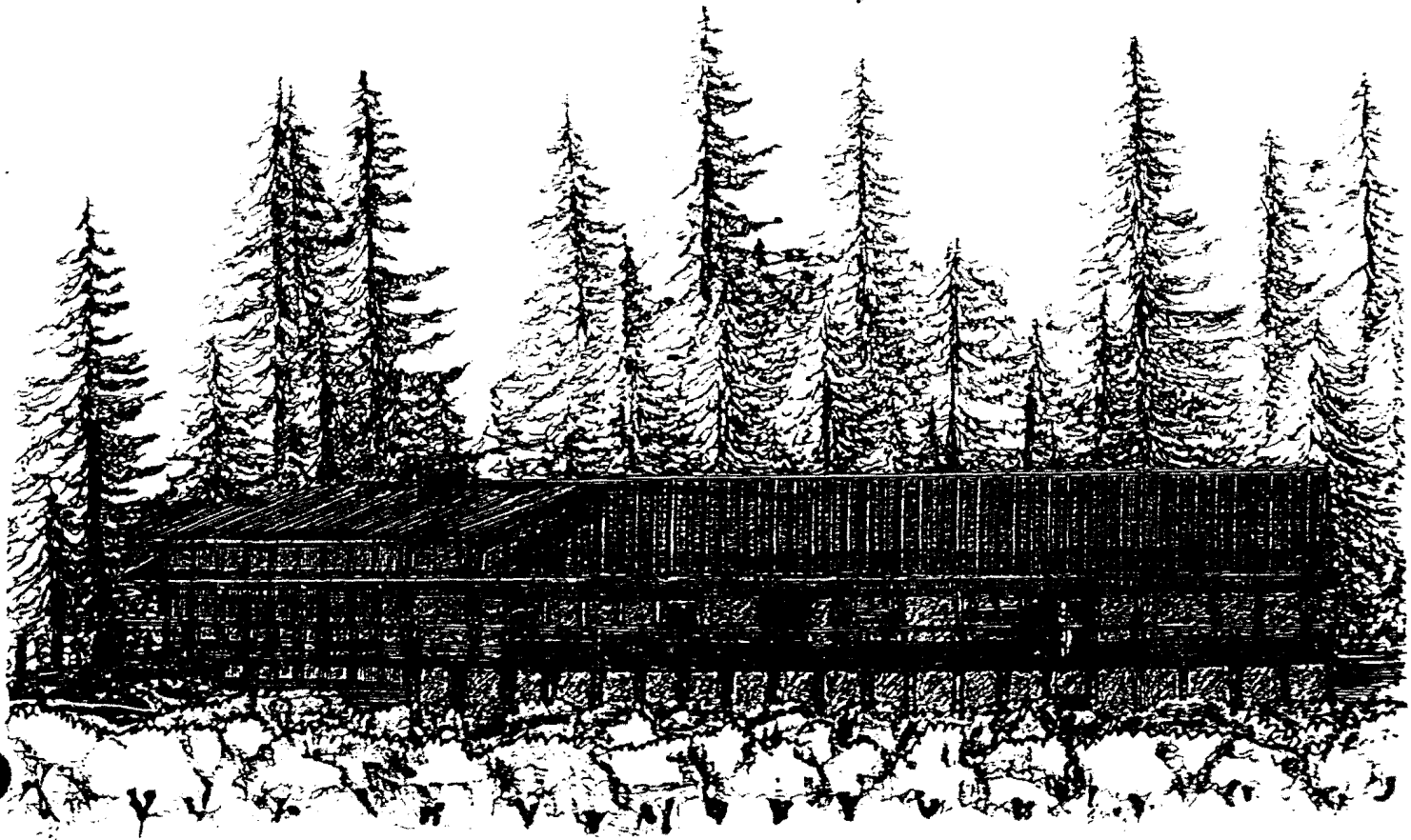
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ALBION SCHOOL FREE STANDING
PHOTOVOLTAIC (PV) ARRAY



SOUTH ELEVATION



SMILEY 5 KIP 201 105

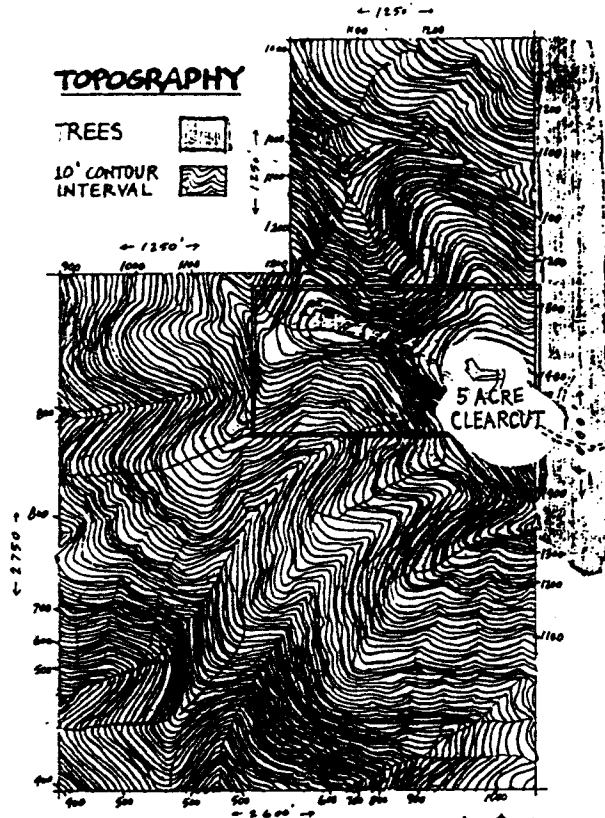
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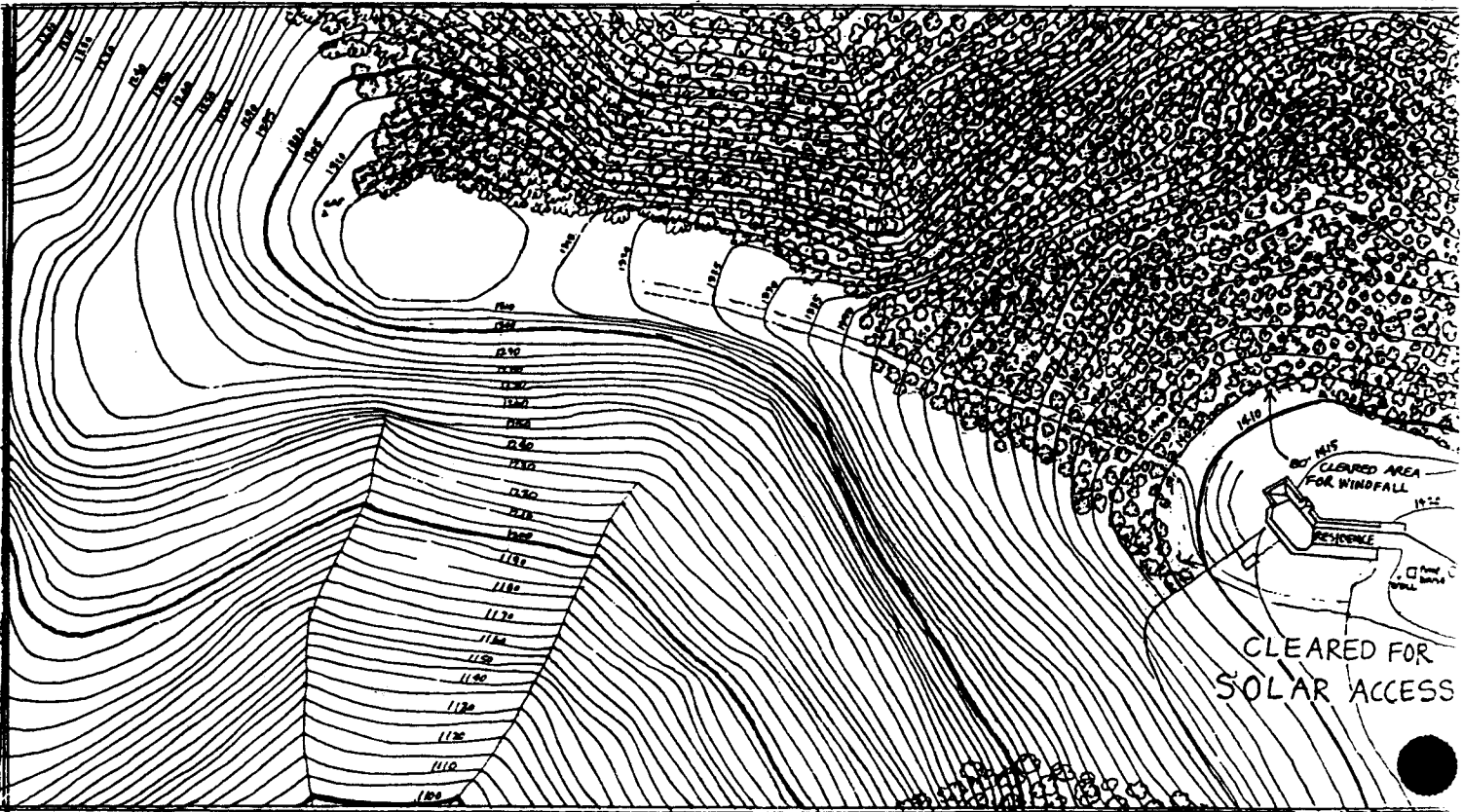
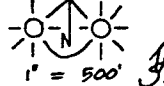
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TOPOGRAPHY

TREES 
10' CONTOUR INTERVAL 

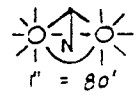


LANDS OF ROBERT & LUANNE SMILEY
9105 HWY 1 ELK, CA 95432



SITE PLAN

RESIDENCE FOR ROBERT AND LUANNE SMILEY
9105 HIGHWAY 1, ELK, CALIFORNIA 95432



CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512



October 6, 1998

To Whom It May Concern:

It has come to my attention that Mr. and Mrs. Smiley are interested in building a home, at least part of whose electricity would be supplied by a photovoltaic (solar cell) generating system. I understand that the home is to be sited on a ridge over one mile from the coast, a mile from the nearest highway and at a much higher elevation. The specific type of photovoltaics to be used on the home are those manufactured by United Solar Systems Corp. (UNI-SOLAR) and which are bonded to standard metal roofing panels, and I understand that concerns have been raised as to whether such a photovoltaic system would make the Smiley's home more visible to the public.

As the lead staff person here at the California Energy Commission for the commercialization of photovoltaics, I am intimately familiar with the various photovoltaic products available today, and in particular the UNI-SOLAR products. While I do not believe that any type of photovoltaic system would pose a visibility or reflectivity concern in the instance of the Smiley's home, given the elevation and distances involved, the choice of UNI-SOLAR's product will absolutely eliminate any possible reflection or glare concerns.

This is because UNI-SOLAR's photovoltaic products are encapsulated and coated in a non-reflective plastic material, rather than the plate glass commonly used by other manufacturers to encapsulate photovoltaic cells. As a consequence of using a plastic top coating to their products, rather than glass, UNI-SOLAR roofing integrated photovoltaic products have no glare or reflectance. In fact the UNI-SOLAR photovoltaics are hardly even noticeable when bonded to traditional metal roofing panels. I have personally toured a photovoltaic powered restroom facility at South Cardiff Beach State Park in Cardiff-by-the-Sea, California and you can stand 10 feet from the building and not even know that there is a photovoltaic system on the roof. As this facility is in the coastal zone, perhaps an inspection of this facility might put to rest any concern you might have.

The State of California encourages homeowners and all classes of utility customers to install photovoltaic generating systems on their buildings in order to increase the reliability of the electrical grid, to permit these customers to offset their need to purchase electricity from others and to provide an alternative source of electricity to these customers in time of grid outage. To this end the State Energy Commission operates the Emerging Renewables Buydown Program to provide financial incentives to purchasers of such systems. Should you need more information about photovoltaic generating systems or their features and characteristics, or if I can supply you with photos of UNI-SOLAR installations, please call me at (916) 653-1063.

Vincent Schwent
Vincent Schwent
Energy Specialist

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11

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

§ 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 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:

Within 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.

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HEALTH AND SAFETY
CODE
Annotated

OF THE STATE OF CALIFORNIA

§ 13801 to § 19999

§ 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.

§ 17959.3. (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.

Guidelines for Sustainable Buildings

between 30 - 50 degrees latitude

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Guiding Principles

- Maintain air, water and soil quality.
- Complete natural cycles.
- Use resources equitably and efficiently.

Site selection and Planning

- Pick a location close to employment, schools and other services. (Walking, bicycling or working at home has a more positive impact than efficient building design).
- Pick a site with good solar access. It is especially important that a building's south facing walls and roof are not shaded from the low winter sun.
- Minimize building coverage and soil compaction. Consider sod roofs and green pavers.

Building Design

- Build small and efficiently. (Every square foot of building has an environmental cost.)
- Minimize exterior surface area for both energy efficiency and economy.
- Maximize south facing solar collection area. South facing glass should be 7% to 10% of the floor area. It should be fully shaded from the summer sun and fully exposed to the winter sun. Provide 10 to 40 square feet of solar collector area per person for domestic hot water. Allow 10% of the floor area for south facing solar thermal collectors for radiant space heating. Provide room for 1000 Watts of photovoltaic panels per person.
- Minimize north facing glazing to reduce heat loss.
- Minimize west facing glazing to prevent afternoon overheating.
- Allow 4% to 6% of the floor area to be east facing glazing for morning warm up.
- Insulation should be as seamless as possible and have equal or higher value than the code suggests, and should extend below grade in cold climates.
- Provide 20 to 30 cubic yards of thermal mass for every 1,000 square feet to passively moderate temperature. Including structural mass inside the insulating envelope is the best way to provide thermal mass.
- Control ventilation with tight fitting openings placed to take advantage of the prevailing wind.
- Incorporate daylighting to reduce the need for electric lighting.
- Use energy efficient lights and appliances. (A front loading washing machine uses half the electricity and 1/4 of the water of a top loader.)

Building Materials and Construction

- Use materials with low embodied energy. (Use local materials to reduce energy spent in transportation and use materials that require minimal energy in their manufacture.)
- Use non-toxic materials.
- Use recycled or sustainably harvested materials.
- Use durable materials.

Water and Waste

- Conserve water. (Install low flush or compost toilets and low-flow shower heads.)
- Catch roof runoff to augment water supply and reduce erosion.
- Create wetlands for waste water treatment.
- Recycle and compost.

Permaculture

- Plant an edible landscape that can thrive with minimal care and watering.
- Encourage non-invasive diversity of flora and fauna.

Homestead Enterprises - Solar Design and Renewable Energy Products
Stephen Heckerth, 30151 Navarro Ridge Road, Albion, CA 95410, phone/fax: 707-937-0338;
e-mail: steve@renewables.com; website: <http://www.renewables.com>

© 11-98

VIA FAX:(415)-904-5400

Hillary Adams
1391 Cameron Road
Elk, California 95432

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Correspondence	
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February 17, 1999

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

Dear Commissioners:

I am writing to ask you to deny A-1-MEN-99-001 (Smiley) on the grounds that it violates both visual policies (LCP 3.5-1; 3.5.3-4) and zoning code sections (20.504. 010; 20.504. 015 (C) (1,3,5 8)) of the certified Local Coastal Program. I believe that granting a permit under such conditions would set an unacceptable precedent for the all future coastal development in highly scenic areas.

This proposal is very similar to the Smiley's earlier submission, CDP #45-97, which was denied by the Coastal Commission on appeal (A-1-MEN-97-79). The new proposal continues to present many of the same problems that forced the denial of A-1 MEN 97-79. To meet the requirements of the Local Coastal Program, it seems to me that the house either needs to be redesigned as a one story house, or placed on an alternative site back behind a screen of trees and out of the public viewshed. Such an alternative site does exist on this 182 acre property.

In the hearing before the Mendocino County Supervisors, the Smileys argued that trees behind the house site would be sufficient to meet the required criteria, ignoring the fact that an alternative site exists behind the trees. The Supervisors apparently accepted this argument. One of them pointed out, however, that she did not want to see development of the type that has occurred on Navarro Ridge, on the north side of the Navarro River, and that she thought the trees behind the proposed Smiley house would take care of such a problem. She had apparently forgotten that there are also trees behind almost every one of the houses that have been allowed in the past along that ridge (under pre-Coastal Commission rules?). This proves, as nothing else can, that the placement of houses up high along a ridgeline has an extraordinary visual impact. In the case of the Navarro Ridge houses, this impact is significant for more than a mile away along the highway. This is the very thing the supervisor wanted to avoid, yet she and several other supervisors voted for the Smiley project.

Landscaping proposals made for this project had not been presented to the public or to staff prior to the Supervisor's meeting although they had been "tried out" on e-mail. Any such plans should be completely reviewed by staff before presentation to the Coastal Commission.

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Visual Impact

This is a two-story house projecting above a ridgetop in one of the most sensitive highly scenic areas on the coast (LCP 3.5-1; 3.5-3-4; code sections 20.504.015 (5) and (8)). The 182 acre property was created from the break-up of the old Galetti ranch in Bridgeport, south of the village of Greenwood/Elk. Until now, the area has been virtually undeveloped. The knoll on which the house would sit can be seen like a theater backdrop for many miles along Highway #1. I have driven this route many times and find its beauty spectacular. It has some of the most magnificent scenery in the world. This is what tourists come to our area to experience, and is one of the greatest blessings for those of us who have the good fortune to live here year round.

I am appalled to think that the Smileys would submit a design that shows such blatant disregard for the protection of the public viewshed guaranteed by our certified Local Coastal Program. I wonder how both their licensed architect (J. Harrison) and their apparently unlicensed solar designer (S. Heckerth) can so obviously ignore the rules that protect our coastal viewsheds. Mr. Heckerth, who apparently also acts as the Smiley's agent, has served on the Mendocino County Planning Commission and surely ought to know the rules.

As I recall, Mr. Smiley stated at the meeting before the Supervisors that he was well aware of the regulations concerning the LCP before he submitted his plans, but that he considered the wording weak and an invitation to litigation. After looking around at the projects that had been approved, he said, he felt he could build whatever he wanted wherever he wanted.

If the Smileys were permitted to build their house where it is presently sited, I believe the house would unduly impact its surroundings because of its size, its materials and its placement high on the hill and projecting above the ridge (code section 20.504.015 (C) (5)). Like a castle on a hill, the Smiley house would have a strong visual impact on the public viewshed over a long distance, attracting the eye and disturbing the view. Its night lighting, even if subdued, would attract attention and could be disruptive.

Even a house that is designed in relation to its surroundings with appropriate shape, colors and building materials, has an increased visual impact when sited on a ridgetop. I was astonished at the impact of the Raabe house in the same area (CDP 19-92). It seems to me that it was a mistake to grant that permit, but at least the rounded design and the color of the house are compatible with the hill on which the house stands, and the landscaping plan is beginning to soften the effect.

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A-1-MEN-99-001/Smiley

The Waidhofer's two-story house (CC1-91-171; 3,115 sq. ft.) is sited on a property contiguous to the Smiley's proposal and at a similar height. It is somewhat screened from the public view by trees. However, the trees seem to have been trimmed so that the house now appears to be in conflict with the Executive Director's Determination (p. 3) that "No portion of the development will be visible from Highway One." When I last looked at this area, the Waidhofer's house could be clearly seen through the trees, and appeared to be very large when viewed from Highway #1. According to the Smiley presentation before the Board of Supervisors, the Waidhofers have since painted their house a darker color.

Permits should include language that prohibits the trimming, as well as the removal, of screening trees when such trees provide the basis for issuing the permit. Color, materials siting, landscape and night lighting are critical to protect the public viewshed in highly scenic areas. So, also, is the need for continual enforcement.

Materials

The Smiley house seems to be designed with materials (steel, glass and stucco) and colors that do not allow it to be subordinate to the character of its natural setting (LCP 3.5-1 and 3; code sections 20.504.015 (C) (3)). The Bridgeport area presents an almost unspoiled panorama of hillside, forest and agricultural land with evergreen forest above, grassy hills, and agricultural fields below. To be in conformity with LCP 3.5-4 and codes 20.504.015(C) (5) and (8) the house would have to be sited near the toe of a slope, below the ridge, or in or near the edge of a wooded area. At the hearing before the Board of Supervisors, the Smileys used the argument that the project would be near the edge of a wooded area, and some of the Supervisors agreed. I believe this argument would apply only if there is no better alternative site available. In this case there is a better alternative site. In their previous proposal, (A-1-MEN-97-79) the house was about 90' from the woods and would be strikingly visible from at least two directions. The present site has apparently been moved only 20' to the north, which I do not think will solve the problem (see page 1, paragraph 3 above). If the Smiley's want to use a two-story plan, then they need to site it back behind a solid screen of untrimmed trees.

Two-Story Plan

It is my understanding that a 28' height limit is allowed on the east side of Highway One when a house meets the criteria of being completely screened from the public view. Otherwise, the design must be a one-story house. The design and siting of the Smiley house do not meet that requirement. The applicants claimed

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A-1-MEN-99-001/Smiley

in the hearing before the Coastal Permit Administrator that theirs is a one-story house because: 1) the elevation is one story on the north and east sides (the least public views), and 2) they claimed that the lower level on the south and west sides (the most public exposure) is really a basement, because it is cut into the side of the hill.

In the present proposal, the house is apparently 28' high on the south side which is a very public view. Moreover, the exterior elevations on the south and west actually give the impression of a three-story house. The groundplan shows that the story the applicant is calling a "basement" has a lap swimming pool, a guest bedroom, a bath and a family room. This is clearly a two-story house on the sides exposed to the public view.

The Coastal Permit Administrator who heard this version of the Smiley project identified the present plan as that of a two-story house and denied the permit on that basis. However, he did not consider the impact the house would have on the public viewshed, stating that the visual impact is a "subjective" decision which he did not care to make. It seems to me that subjective decisions are part of the Coastal Permit Administrator's job. It is a significant disservice to the certified Local Coastal Plan and the protection of the public viewshed in highly scenic areas to refuse to consider the question of visual impact.

Precedent for Development of Other Properties

The issues stated above are compounded by the fact that the applicants have three buildable lots on the 182 acres at 10927 South Highway One (AP 131-060-14 and 15, and 131-098-01). They also own another property at 38678 Old Stage Road in Gualala (AP 145-021-0). They mentioned in a letter sent to Elk post office patrons that they had plans to develop a second property. If the Smileys plan to develop other properties, then they need to be treated as developers who will use this permit as a precedent for future development, rather than, as they apparently stated publicly, people who want to build their dream house in a place where they will be year-long residents.

Granting a permit to a plan which so blatantly disregards the provisions of our certified Local Coastal Program would also set a precedent for the future development in the very sensitive Bridgeport area, where there appear to be 18 additional buildable lots.

Video images

The applicant used video images with computerized montages during the hearing before the Coastal Permit Administrator and the Mendocino County Board

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A-1-MEN-99-001/Smiley

of Supervisors in an effort to prove that the house would have little or no visual impact on the highway viewshed. Photo images of this kind should be carefully evaluated. A lens that attempts to emulate the "human eye" makes objects in the far distance seem much smaller than they will appear in fact. For example, The Waidhofer house was very visible in that video, showing large and white through the trees from a number of miles away. Since that time, the Waidhofers have apparently painted their house a darker color. During the viewing at the Board of Supervisors, the footage that showed the white Waidhofer house was hurried past.

The image that seemed to me to best represent how the eye would see the property was a still slide presented by the planning staff and taken by a very highly regarded professional photographer who had no vested interest in the project.

Solar Design

The effort to incorporate solar into new house designs is admirable. However, I believe the arguments concerning the solar needs and capabilities of this particular house should be carefully analyzed by competent professionals who do not have a monetary conflict of interest. It seems unlikely that this will be a completely solar house. The presence of the large propane tank and generator would suggest that the solar design will not provide all of the energy needed in this foggy area which experiences long periods of winter overcast and rain. It is important to determine the energy needs of this large house and whether or not it really can function as a fully solar building. The idea that the house could so function seems to be the rationale for wanting the long glass panels on the lower story and the prominent ridgetop location. It would be difficult even for an expert to determine how much solar power this design will produce, however, since apparently no solar design specifications were submitted with the project. Has a solar site evaluation plan been done? Is Mr. Heckerth working with a licensed electrical contractor to insure that the photovoltaic system will be both adequate and safe?

The applicant claims that there are no other means of obtaining energy at a reasonable cost, and that electric lines would have to be brought miles up the access road. This is their rationale for needing a solar or partially solar house projecting above a bare ridgetop. However, their immediate neighbors, the Waidhofers, originally built their house without using solar. How did they manage? It is my understanding that the Waidhofers now have solar panels with about double the capacity of those used for the Smiley's design, yet they apparently do not manage to get their entire energy needs from that system. What is the cost of the solar design and installed system for this house?

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A-1-MEN-99-001/Smiley

Why is it that this project (A-1-MEN-99-001) no longer includes a windmill, as was part of the energy plan for the previous proposal (A-1-MEN-97-79)? Although the applicants decry the use of fossil fuels as part of their argument concerning solar, they have added a generator and a large propane tank for this version of their project. Were Mr. Heckeroth's energy calculations inadequate for the first design? Are they inadequate now? Will the solar design be able to provide all of the energy needs both during the summer and during the winter?

It is my understanding that the Smileys spend much of the winter in Central America. They apparently have a business there in which they take people on yachting excursions. They may not intend to use this house in winter, but what about its next owner? After all, the next family may really want to live here year round and expect that the solar design will be adequate for that purpose.

Conventional Electrical Power

In the hearing before the Coastal Permit Administrator, the Smileys contended that they must have this particular design sited on the bare ridgetop because bringing in conventional electric power along the access road would be prohibitively expensive. It is my understanding that PG&E will give a 50% discount to customers who bring a primary line into an area that will service other customers. Is this reflected in the Smiley's calculations of costs for electrical lines brought along the road versus the cost of this solar system?

Neighbors who own property below the knoll on which the Smileys wish to build are serviced by an electric pole. They are apparently willing to grant easements through their properties so that the Smileys could have electricity brought up from the bottom of the hill. One of the neighbors told me that this easement process was actually begun several years ago by the Smileys and then suddenly dropped. Why have the Smileys not mentioned this option, even at the previous hearing before the Coastal Commission (A-1-7-MEN-97-79) where the possibility of easements to obtain service from a pole was discussed?

The argument that there are no other sites within the 182 acres owned by the Smileys which can accommodate the house and provide adequate solar seem to me to be specious. The property is zoned Ag and TPZ. The trees are not protected. An adequate number could be removed (and milled as lumber) in order to provide an area large enough to accommodate the house as designed, give adequate solar exposure and still provide screening for the public view. Why are the applicants unwilling to do this? Why will they not work with the planning staff to find a solution to the problems as so many other applicants have done?

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Litigation

The arguments presented at the hearing before the Coastal Permit Administrator and the Board of Supervisors concerning solar seems to me suspect from yet another angle. The Smileys have taken a lawsuit against the California Coastal Commission (No. 78270, Superior Court, County of Mendocino) using the same attorneys (Zumbrun and Findley) that are being used by the Berlincourts in their litigation against Mendocino County (No. 74134). Apparently this firm works with The Pacific Legal Foundation which is part of the Wise Use Movement concerned with issues of private property rights. The two lawsuits are similar in many particulars. Both seem to be aimed at attacking the foundation of the Coastal Act and our local Certified Coastal Program. Why else would the Smileys include in their litigation an allegation of a Violation of Civil Rights (Fourth Cause), Inverse Condemnation (Fifth Cause) and Violation of Separation of Powers (Sixth Cause)? In the Sixth Cause the Smileys even went so far as to claim that the California Coastal Commission violates the California Constitution because the Commission exercises executive power!

Why else would the Smileys argue, as they did in their hearing before the Mendocino County Board of Supervisors, that their house and others on the coast should be considered only under the Unified Building Code?

This kind of approach seems to me to show a clear disregard of the public's rights. This application, then, is not simply about a "dream house" or "solar power." It is about the very foundation of the Coastal Act and the right of the public to continue to enjoy the shared beauty of our magnificent coastal.

Please protect our certified Local Coastal Program and our coastal viewshed by denying A-1-MEN-99-001 (Smiley).


Sincerely,

 Hillary Adams

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APPLICATION NO.	A-1-MEN-99-01
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No. 1000

P.O. Box 44
Elk, CA 95432
February 17, 1999

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

Re: Appeal No.: A-1-MEN-99-001 (Smiley)

Dear Commissioners,

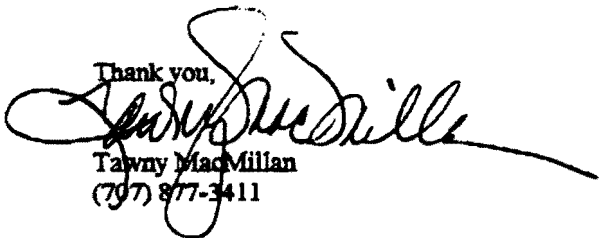
I am writing in support of the staff report on this appeal.

Violations identified in the Mendocino County staff report regarding non-compliance with the Visual Resources policies and the Highly Scenic Area regulations of the LCP include height, construction materials, color, landscape, and visibility. Controversy regarding solar energy versus protection of the viewshed is documented in Chapter 1.1 of the Coastal Element where policies within the Land Use Plan overlap, that which most protects coastal resources shall take precedence.

Both the Mendocino County staff and the Coastal Commission staff are doing their job by protecting one of the last stretches of rural and rugged coastline left in California. Please MAINTAIN COMPLIANCE with the Coastal Plan and permit NO EXEMPTIONS to the County or State policies now in place to protect our pristine Coast.

Please do the right thing. Preserve this spectacular part of the Coast and maintain control of development by enforcing the laws consistently. Adherence to the policies set in place is mandatory.

Thank you,



Tawny MacMillan
(707) 877-3411

EXHIBIT NO.	13
APPLICATION NO.	A-1-MEN-99-01
	Smiley
	Correspondence

P.O. Box 44
Elk, CA 95432
February 18, 1999

No Coast

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

Re: **Appeal No.: A-1-MEN-99-001 (Smiley)**

Dear Commissioners,

I am writing this letter to support the Staff Report on this project. The voters of California voted for coastal protection to preserve the natural beauty for all residents and visitors alike. The Smiley's have a right to build a home on their property provided they are not seeking exceptions to what is required by law.

I am asking that you support your Staff Report recommendations for this appeal. Thank you.

Sincerely,

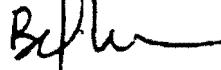

Benton Y. MacMillan

EXHIBIT NO.	14
APPLICATION NO.	A-1-MEN-99-01
	Smiley
	Correspondence

February 19, 1999

California Coastal Commission
c/o Jo Ginsberg
Fax#415-904-5400

Dear Commissioners,

I am writing to support the Coastal Commission Staff recommendation to deny the Smiley Permit in Elk.

This project would have a very large impact on this unique area which until now has had very little development. There are other sites on the property which would not have the impact this present plan has as well as the precedent it will set for the area if it should pass as currently designed. I urge you to deny this permit.

Sincerely,



Polly Green
P.O. Box 134
Elk Ca 95460

EXHIBIT NO.	15
APPLICATION NO.	A-1-MEN-99-01
	Smiley
	Correspondence



February 23, 1999

California Coastal Commission

RE: A-1-MEN-99-001

Ladies and Gentlemen:

As a resident and business owner in Elk, California I am writing in support of the subject development, and find no mitigating issues regarding the site. Its distance and elevation as it relates to Hwy 1 makes it nearly obscure from passing view.

In addition, two new developments are underway north of the project that are literally at the highway's edge and plainly in view.

Please vote for approval of this project.

Sincerely,

Sam Haynes
Proprietor
707.877.1624 Direct Line

EXHIBIT NO.	16
APPLICATION NO.	A-1-MEN-99-01
	Smiley
	Correspondence

The Harbor House Inn
5600 South Highway One, PO BOX 369
Elk, California 95432
707.877.3203

February 23, 1999

Karl and Marliiss Waidhofer
9105 South Highway 1
Elk, CA 95432

To:
All California Coastal Commissioners
c/o Jo Ginsberg
45 Fremont Street Suite #2000
San Francisco, CA 94105

Re: Appeal # A-1-MEN-99-001

Dear California Coastal Commissioners,

We are strongly in favor of the Smiley project and believe that the California Coastal Commissioners should allow this project to proceed for two reasons.

(1) The plan is in compliance with the LCP and requires no tree removal at the present site as proposed.

(2) Approximately one year ago the California Coastal Commission reviewed this almost identical plan. At that time the majority of the Commissioners said they would pass the plan if the locally elected Supervisors passed the project. Now the plan has essentially been passed two times by Mendocino County including the Supervisors and **it is now time for the Coastal Commissioners to pass this project as they promised a year ago.**

Sincerely,


Karl Waidhofer


Marliiss Waidhofer

EXHIBIT NO.	17
APPLICATION NO.	A-1-MEN-99-01
	Smiley
	Correspondence

P.O. Box 185
Elk, CA. 95432
February 23, 1999

California Coastal Commission
45 Fremont Street, Sweet 20000
San Francisco, California 94105
Attn: Joe Gingsberg

To whom it may concern:

We are writing this letter to offer our support for the Smiley's building request (PO A-1-MEN-99-01).

The area in which we live is startlingly beautiful and very rural. The proposed home-site is on a ridge east of the Shoreline Highway, which is already sparsely dotted with existing homes. The existing homes do not alter the beauty of the area, in fact most are only noticeable at night by means of lighted windows.

It is our opinion the proposed home-site would not take anything away from the aesthetics of this pristine coastline.

Thank you for your attention.

Sincerely,

Robert Matson
Susan Matson
Robert and Susan Matson

EXHIBIT NO.	18
APPLICATION NO.	A-1-MEN-99-01
	Smiley
	Correspondence

100

