

CALIFORNIA COASTAL COMMISSION

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Staff: Jim Baskin
Staff Report: September 28, 2001
Hearing Date: October 11, 2001
Commission Action:

STAFF REPORT: REVOCATION REQUEST

APPLICATION NO.: A-1-MEN-97-046

APPLICANT (S): David and Kathryn Riley

AGENT (S): Ralph Matheson

PROJECT LOCATION: 38868 Sedalia Drive, Gualala, Mendocino County,
APN 145-181-01.

PROJECT DESCRIPTION: Construct a two-story, 2,814-square-foot, single-family residence with subterranean garage, driveway, sewer lift pump, drainage system, and grading.

INDIVIDUAL REQUESTING REVOCATION: Julie Verran

SUBSTANTIVE FILE DOCUMENTS:

- 1) Mendocino County CDP No. 17-01;
- 2) Mendocino County Local Coastal Program;
and
- 3) Coastal Development Permit No. A-1-MEN-97-046.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission deny the request to revoke Coastal Development Permit No. A-1-MEN-97-046 because the revocation request does not establish the grounds required by Section 13105 of the Commission's regulations.

The revocation request presents three specific contentions. One contention concerns the accuracy of testimony given regarding how the size of the proposed house differs as compared with that of a previously permitted residence that was approved by the County for the site but was never constructed. The second contention involves the accuracy of written correspondence and visual exhibits presented at the permit hearing regarding the location of the building site on the lot. The final contention questions the appropriateness of using dated survey information in developing the base map for the development site plans. Staff believes that the filed revocation request has not adequately established valid grounds for any of these contentions. Staff believes that each contention fails to satisfy at least two of the required grounds for revocation, including the ground that if the Commission had known of the alleged inaccurate, erroneous, or incomplete information it would have denied the permit or imposed different conditions.

Due to the time constraints associated with preparing the staff report in time for the Commission's October hearing and the unavailability of certain hearing exhibits retained by the applicants' agent, staff could not analyze whether those exhibits contained inaccurate, erroneous, or incomplete information as alleged in Contention No. 2, "Location of Building Site" (pp. 10-11, 13-14). The contention relates to whether inaccurate, erroneous, or incomplete information was provided to the Commission in the form of a photo exhibit presented at the permit hearing illustrating the location of the building site and project setting. Staff believes that, despite the lack of opportunity to review the subject visual exhibit, the contention nonetheless does not raise valid grounds for revocation because regardless of whether the exhibit was inaccurate, erroneous, or incomplete, the information would not have affected the approval of the permit or the choice of conditions imposed by the Commission. Section 13108(c) allows the Commission to postpone action on the revocation request to a subsequent meeting if the Commission wishes the Executive Director or the Attorney General to perform further investigation. If the Commission decides not to grant the request on the basis of the staff recommendation, it may require staff to undertake further research on the issues that have not been analyzed to-date, or raised prior to final action on the revocation request.

Other allegations regarding this permitted development are also contained within the materials submitted by Ms. Verran, the individual requesting revocation. These accusations involve: (a) compliance of the location of construction undertaken since issuance of the permit with approved building sites; (b) the work having been initiated only after the term of the permit had lapsed; (c) impacts to geologic stability, historical resources, visual resources that have resulted from the construction; and (4) procedural matters relating to actions taken by the Commission at past hearings. Staff has not

included within the scope of this report an investigation of these other allegations not directly related to grounds for permit revocations. Staff does note that several of these other allegations if found to be accurate, may involve violations of the permit's general and special conditions. As such, these allegations are being investigated by the Commission's Statewide Enforcement Unit. Staff also notes that the alleged violations are not relevant to the Commission's review of the revocation request. The criteria the Commission utilized to determine whether to grant or deny a revocation request is specified in Section 13105 of the Commission's regulations.

STAFF NOTES

1. Commission Review

The Commission has received two separate requests for revocation: The first request relates to Coastal Development Permit No. A-1-MEN-97-046, approved August 12, 1998. The second request regards Coastal Development Permit Extension No. A-1-MEN-97-046-E1, granted on December 15, 2000. The staff analyses relating to the request for revocation of the underlying permit is contained in this staff report. Although appearing on the agenda as a related agenda item, staff will not prepare a recommendation on the request for revocation of the permit extension. The Commission's regulations do not provide for revocation of a permit extension. The Commission may only revoke a permit, but not its extension.

If the Commission approves the revocation request, to complete the project, the applicants would be required to obtain a new coastal development permit. It should be noted that Coastal Development Permit No. A-1-MEN-97-046 was issued on August 6, 2001 and the developer has commenced construction of the development.

2. Procedural Note

The Commission's regulations pertaining to revocation as codified in Title 14, Chapter 5.5, Article 16 of the California Code of Regulations are included in their entirety in Exhibit No. 1. In pertinent part, they state the grounds for the revocation of a coastal development permit as follows:

Section 13105 of the Commission's administrative regulations states:

Grounds for revocation of a permit shall be:

(a) Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the commission finds that accurate and complete information would

have caused the commission to require additional or different conditions on a permit or deny an application;

(b) Failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the commission and could have caused the commission to require additional or different conditions on a permit or deny an application.

Section 13108 describes the procedures to be followed:

(a) At the next regularly scheduled meeting, and after notice to the permittee and any persons the executive director has reason to know would be interested in the permit or revocation, the executive director shall report the request for revocation to the commission with a preliminary recommendation on the merits of the request.

(b) The person requesting the revocation shall be afforded a reasonable time to present the request and the permittee shall be afforded a like time for rebuttal.

(c) The commission shall ordinarily vote on the request at the same meeting, but the vote may be postponed to a subsequent meeting if the commission wishes the executive director or the Attorney General to perform further investigation.

(d) A permit may be revoked by a majority vote of the members of the commission present if it finds that any of the grounds specified in section 13105 exist. If the commission finds that the request for revocation was not filed with due diligence, it shall deny the request.

3. Ramifications of Permit Revocation

A revocation of a permit removes a previously granted permit. If the Commission revokes the permit and the applicants wish to pursue the project, a new application is required.

Because of the potential impacts revocation can have on an applicant who may have acted in reliance on the permit, the grounds for revocation are necessarily narrow. The rules of the revocation, for instance, do not allow the Commission to make a second judgement on a previously issued permit based on information that comes into existence after the granting of the permit, no matter how compelling that information might be. The grounds for revocation are, of necessity, confined to the information in existence at the time of the Commission's action.

This revocation request is based on subsection (a) of Section 13105 of the Commission's regulations. The three elements of Section 13105(a) that must be proved before a permit can be revoked are:

- That the applicant provided inaccurate, erroneous or incomplete information;
- That if the Commission had known of the information, it would have denied the permit or imposed different conditions; and
- That inaccurate, erroneous or incomplete information was supplied intentionally.

4. Due Diligence

In addition to these three elements, Section 13108(d) establishes that the Commission must deny a revocation request that has not been filed with due diligence. As it may take some time to prepare a request, or for the particular incident upon which the revocation request is based to become evident and/or be discovered, the Commission has accepted requests submitted at various times after permit approval. In this case, the permit was approved on August 12, 1998.

On October 5, 1998, the Commission offices received from Ms. Verran, the person requesting revocation, her first letter, dated September 29-30, 1998, requesting revocation of the permit based on the grounds that inaccurate, erroneous, or incomplete information had been provided at the August 12 permit hearing. Within these submitted materials were statements indicating that more materials regarding the revocation request would be forthcoming. Commission staff subsequently wrote Ms. Verran on October 8, 1998, to request clarification as to when additional submittals would be forthcoming or whether her September 29-30, 1998 letter should be considered her complete request for revocation. Ms. Verran did not respond to staff's letter and no further action was taken on her September 29-30, 1998 revocation request. Ms. Verran subsequently stated that this lapse in follow-through was due to Commission staff having informed her that a revocation request could be acted upon by the Commission only after the coastal development permit had been formally issued, not simply approved. As discussed below, staff has no recollection of any such conversation.

On December 15, 2000, the Commission granted a one-year time extension to the term of the Riley permit. The permit extension extended the deadline for commencement of construction of the project to August 12, 2001. Following satisfactory completion of all prior-to-issuance permit conditions, including the approval of final site plan (see Exhibit No. 6), the coastal development permit was issued on August 6, 2001. Construction of the development commenced thereafter. This work included grading and site preparation work.

A second revocation request letter from Ms. Verran was subsequently received on September 10, 2001 alleging that additional incomplete information had been provided at the August 12, 1998 hearing. After receiving this revocation request, Commission staff requested that Ms. Verran provide a written response as to why she believes her revocation request was filed with due diligence. On September 26, 2001, Ms. Verran responded to the staff's request for substantiation of her due diligence in requesting the revocation (see Exhibit No. 7). It is apparent from her response that Ms. Verran misunderstood what the staff was requesting, as her letter provides a chronology of her participation throughout both the County's and the Commission's permit hearing processes rather than the discussing the diligence of her actions relative to requesting the revocation. However, with respect to the question of due diligence in requesting revocation, Ms. Verran does briefly address the discontinuance of her efforts between September 1998 and September 2001. Ms. Verran cites a conversation with Deputy Director Scholl in which Mr. Scholl is alleged to have informed her that the Commission could not take action on a revocation request until the final coastal development permit had been issued. If Mr. Scholl had indeed made this statement to Ms. Verran, it would be reasonable to assume that her hiatus in pursuing her request for revocation was justified and, upon her resumption of these efforts after issuance of the coastal development permit on August 6, 2001, she had shown due diligence.

Mr. Scholl has no recollection of having told Ms. Verran that Commission action on a revocation request could not occur until after coastal development permit issuance. Moreover, the Commission's regulations do not impose the time restrictions on the Commission's actions on revocation requests that Ms. Verran describes. Furthermore, as a matter of due diligence, a person requesting a permit revocation should consult all applicable procedural regulations first-hand.

As discussed further below, staff is recommending that the Commission deny the revocation request because it does not establish the grounds required by Section 13105 of the Commission's regulations. Consequently, staff has not provided findings relative to the question of due diligence. Should the Commission find that the revocation request is based on valid grounds, the Commission would need to then address the issue of whether Ms. Verran has exercised due diligence in requesting the permit revocation and adopt relevant findings accordingly.

5. Scope

This staff report addresses only the coastal resource and procedural issues related to the revocation request regarding the Commission's approval of the original Coastal Development Permit No. A-1-MEN-97-046 that are based on valid grounds as enumerated in Section 13105 of the Commission's administrative regulations. The individual requesting revocation of the permit has also alleged that violations of the permit have occurred with respect to the applicants allegedly commencing construction after the term of the granted time extension had expired, and the applicants allegedly

building the approved house in a somewhat different location than that authorized by the original permit. The alleged violations are separate matters from the revocation request and are being investigated by Commission staff. The Commission will not consider the alleged violations during its review of the revocation requests. The Commission will only consider the conformance of the revocation requests with the criteria for revoking permits specified in Section 13105 of the Commission's regulations.

I. MOTION, STAFF RECOMMENDATION, AND RESOLUTION

The staff recommends that the Commission adopt the following resolution:

Motion:

I move that the Commission grant revocation of Coastal Development Permit No. A-1-97-46.

STAFF RECOMMENDATION OF DENIAL

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

Resolution to Deny Revocation:

The Commission hereby denies the request for revocation of the Commission's decision on Coastal Development Permit No. A-1-97-046 on the grounds that there is no intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application.

II. FINDINGS AND DECLARATIONS.

A. Site Description.

The 1.2-acre subject site is located west of Highway One in Gualala, at the terminus of a private road extending from Sedalia Drive. The property, which is situated just northwest of the mouth of the Gualala River near the edge of a steep coastal bluff, consists of a very narrow coastal terrace and part of the adjoining hillside. An abandoned logging railroad roadbed is located within the property, near the northeasterly property boundary, part way

up the hillside. Groves of pine trees are located at the southeast and northwest ends of the property. There is no sensitive habitat on the subject parcel.

B. Project Description.

The proposed development consists of construction of a two-story, 28-foot-high, 2,814-square-foot single-family residence with an attached, subterranean garage/basement, driveway, sewer lift pump system to accommodate public sewer service, and drainage system that includes freshwater leach lines (see Exhibit No. 5). The house would be built partly on the terrace and partly on the lower part of the hillside.

C. Project History.

In 1994 the County of Mendocino approved a coastal development permit (CDP 06-94) for residential development on the subject site. In 1996 the applicant applied to the County for a renewal/modification of the project that proposed a redesign of the house in the same location, including reducing square footage and lowering the height to approximately 28 feet. On February 27, 1997, Mendocino County's Coastal Permit Administrator approved with conditions (CDP 06-94 (R/MOD)). This approval was appealed to the Mendocino County Board of Supervisors, who denied the appeal and approved the project on May 23, 1997. The County then issued a Notice of Final Action on the Coastal Development Permit, which was received by Commission staff on June 27, 1997.

The Commission subsequently received an appeal of the County of Mendocino's decision to approve the project from Julie Verran. The appellant filed the appeal in a timely manner on July 9, 1997, within 10 working days of receipt by the Commission of the Notice of Final Local Action.

At the Commission meeting of August 14, 1997, the Commission opened the hearing and determined that a substantial issue existed with respect to the grounds on which the appeal had been filed. The Commission continued the public hearing to a later date and took no action on the *de novo* portion of the appeal that day, requesting additional geologic information from the applicant.

Additional geologic information was submitted, and staff prepared another staff recommendation with regard to the merits of the permit application. The Commission heard the project *de novo* at the meeting of March 11, 1998, but again continued the hearing to a later date, directing staff to request additional information from the applicants on sea caves and on the applicants' economic interest in the property. The latter information would be important for considering whether a denial of the project would constitute an unconstitutional taking of private property. The applicants provided the Commission with additional information regarding sea caves, but declined to provide

the Commission with information regarding the applicants' economic interest in the property.

On August 12, 1998, the Commission heard more testimony and then approved with conditions Coastal Development Permit No. A-1-MEN-97-046. The permit included several prior-to-issuance conditions requiring recordation of a deed restriction prohibiting future construction of shoreline protective structures, and approval of final site, foundation, drainage, and landscaping plans. Revised findings were subsequently adopted by the Commission on October 16, 1998.

The applicants subsequently requested a one-year time extension of Coastal Development Permit A-1-MEN-97-046. The extension request was received in a timely manner on August 2, 2000, prior to when the permit would have expired had the request not been received. The Executive Director published the Notice of Extension Request for Coastal Development pursuant to Section 13169 of the Commission regulations. Within the 10 working day period for filing an objection as set forth in Section 13169 of the Commission regulations, the Commission received ten letters of objection to the permit extension application. Three additional letters of objection were later received raising the same issues as those raised in other letters received within the 10 working day period.

At the September 13, 2000 Commission meeting, the Executive Director reported his determination that there are no changed circumstances and reported the letters of objection that had been received. At that meeting, more than three Commissioners requested that a hearing be held on the permit extension request.

On December 15, 2000, the Commission held the hearing on the permit extension request and approved the permit extension request for a one-year period to a new expiration date of August 12, 2001, finding that no changed circumstances had occurred.

On August 6, 2001, after having determined that all prior-to-issuance conditions had been met, the Executive Director issued Coastal Development Permit A-1-MEN-96-046. Construction commenced thereafter.

D. Chronology of Revocation Request.

On September 29, 1998, approximately seven weeks following conditional approval of the coastal development permit, the Commission offices received a written revocation request from Julie Verran (see Exhibit No. 2). The request alleged that inaccurate, erroneous or incomplete information had been included in the presentation of oral testimony, audio-visual exhibits, and application materials at the Commission's August 12, 1998 hearing by the applicants' agent and attorney relating to the subject permit. The materials submitted by Ms. Verran included a statement that the submittal was only a portion of a more comprehensive revocation request. The September 29, 1998 letter from Ms. Verran closed by stating, "enclosed is the first part relating to blueprints, of my

analysis supporting a request for revocation of the Commission's August 12 action on my appeal." [emphasis added] The analysis submitted with the letter also stated in closing, "More sections to follow." On October 8, 1998, Commission staff responded to Ms. Verran's submittal seeking clarification as to whether additional materials relating to the revocation were forthcoming as had been stated or whether the materials submitted up to that date constituted her whole revocation request (see Exhibit No.3). Ms. Verran did not submit additional revocation request materials until September 10, 2001.

On September 10, 2001, the Commission offices received additional revocation request materials, dated September 5, 2001, from Ms. Verran (see Exhibit No. 4). Among other things, the September 5, 2001 letter from Ms. Verran includes a new revocation request seeking revocation of Coastal Development Permit Time Extension No. A-1-MEN-97-046-E1. The letter raised numerous other issues including matters related to her separate request that the Commission revoke the original permit, allegations of violations of the permit, and criticisms of how the Commission processed the time extension request and dealt with concerns raised by Ms. Verran at the time. The only bases for revocation of the permit specified in the revocation request concerns issues regarding information within written correspondence, visual displays, and testimony presented at the permit hearing that allegedly misrepresents where the house was to be constructed in relation to the location approved by the Commission, and the size of the house compared to that approved in a previous permit issued by the County.

E. Summary of Revocation Request's Contentions.

As stated above, the grounds for revocation are very narrow. The three elements that must be established before a permit can be revoked under the grounds asserted in this instance are:

- That the applicant provided inaccurate, erroneous, or incomplete information; and
- That if the Commission had known of the information, it would have denied the permit or imposed different conditions; and
- That inaccurate, erroneous, or incomplete information was supplied intentionally.

The revocation request alleges these grounds are met for each of the following three contentions:

Relative Size of Project Contention: The revocation request contends that in oral testimony before the Commission at the August 12, 1998 permit hearing, Frank Bacik, the applicants' attorney, had repeatedly stated that the size of the proposed development was smaller than that of a development previously approved by the County of Mendocino

for the same site in 1994 under Coastal Development Permit No. CDP 06-94. Ms. Verran asserts that, based upon a comparison of the site plans for the two projects, the current project is significantly larger than the 1994 project by a difference of 1,695 square feet. The revocation request provides no motive for Mr. Bacik to purposefully misrepresent the relative size of the houses. However, based on the general tenor of the revocation request, it appears that Ms. Verran believes that the alleged provision of inaccurate information was provided in an attempt to persuade the Commission to approve the project because a net decrease in effects on coastal resources would result from approving the current project design compared with that previously approved for the site by the County of Mendocino in 1994.

Location of Building Site Contention: The revocation request further argues that in written correspondence and in the presentation of audio-visual materials before the Commission at the August 12, 1998 hearing, Ralph Matheson, the applicants' agent, misrepresented the location of the proposed house as being sited further seaward than that described within other permit application materials. A statement within a letter to the Commission from Mr. Matheson is cited regarding the building site not being on a cliff over the ocean, but rather on a terrace away from wave runup exposure. The revocation request contends that this statement mischaracterized the intended location of the site improvements. With respect to exhibits presented at the hearing, Ms Verran states that the agent displayed a drawing of an oblique view of the Robinson Point area showing the building site shifted westward away from the actual site proposed in the site plan. From statements within the revocation request regarding wave runup at the Robinson Point vicinity and her analysis of the height-above-grade of the proposed house compared with the location of other nearby residential structures and public parklands, the revocation request is apparently contending that these incidents of alleged inaccurate information were perpetrated by the agent in an attempt to downplay the significance of the project's impacts to geologic stability and visual resources in its more landward location such that the Commission would be persuaded to grant the coastal development permit.

Inaccuracies in Site Plan's Base Map Contention: The revocation request also states that the site plan submitted with the permit application was based upon a survey map dating to 1990 that did not reflect current conditions at the site with respect to recent blufftop erosion. The revocation request contends that the inclusion of this allegedly inaccurate information was purposefully done with the intent of de-emphasizing the severity of coastal erosion at the site to gain more favorable consideration of the permit application by the Commission.

F. Analysis of Contentions.

1. Relative Size of Project.

Test No. 1: Did the applicant include inaccurate, erroneous, or incomplete information?

Contention:

In her revocation request of September 29-30, 1998, Ms. Verran states:

On August 12, 1998, at the hearing on my appeal in Huntington Beach, attorney Frank Bacik, acting for the Rileys, repeatedly stated that the 1997 design was **smaller** than the 1994 design. [emphasis in original]

After stating the results of a comparison of the two sets of plans for the projects, The revocation request goes on to conclude, "(t)herefore applicants and their agents knowingly submitted false information to the Commission."

Analysis:

In 1994, the Coastal Permit Administrator for the County of Mendocino administratively approved Coastal Development Permit No. CDP 06-94. The project was described in the County's staff report, in applicable part as, "a proposal to construct a three story approximately 3800 square foot four bedroom single family dwelling along with a driveway to the site and decking along three sides of the dwelling." On page A1.2 of the site plans for the approved permit (Hart Design Group, Inc.), the development was further detailed as consisting of 2,230 square feet of building coverage and 2,257 square feet of paving, for a total of 4,487 square feet.

On August 12, 1998, the Commission approved Coastal Development Permit No. A-1-MEN-97-046. The project was described in the Commission's staff report as, "construct a two-story, 2,814-square-foot, single-family residence with a subterranean garage, driveway, sewer lift pump, drainage system, and grading." On page A1.1 of the site plans for the approved project (Matheson Design), the development was further detailed as consisting of 2,982 square feet of building, 2,700 square feet of paved area (drive), and 500 square feet of walks, patio, etc., for a total of 6,182 square feet.

During his testimony before the Commission at the August 12, 1998 permit hearing, Frank Bacik, attorney-of-record for the applicants, made statements with respect to the relative size of the proposed house compared with that which was approved for the site by the County in 1994. The following statements attributed to Mr. Bacik were transcribed by Commission staff from audio tapes of the August 12, 1998 hearing:

To deny the project at this time would deny my clients of the use, the economic use, of their property, which has already been the subject of an approved use permit by the Commission, an LCP, in '94, allowing a bigger house. You may recall from the staff report that that was a log house design. They applied for a new permit in '96 to provide a smaller house, with a smaller footprint, made of materials and in a design more in keeping with the other houses in the neighborhood. [emphases added]

Mr. Bacik's testimony contained statements, underlined above, that do have the potential to be interpreted as being inaccurate, erroneous, or incomplete. He specifically stated that the County's 1994 permit allowed a bigger house. In addition, he stated that in the revised permit application made before the County in 1996, and the subject of the Commission's August 12, 1998 *de novo* permit hearing, the applicants were requesting a smaller house with a smaller footprint. The revocation request asserts that based upon analysis of the two sets of site plans, the site plans reveal a net increase of 1,695 square feet in the 1998 design compared with that for the 1994 version. As such, inaccurate, erroneous, or incomplete statements were provided to the Commission. An independent review of the information contained on the subject site plan drawings performed by Commission staff verified the revocation request's analysis.

Therefore, the Commission finds that Mr. Bacik's statements that "...their property, which has already been the subject of an approved use permit by the Commission... in '94, allowing a bigger house" and "they applied for a new permit in '96 to provide a smaller house, with a smaller footprint" are inaccurate and present incomplete information. However, as discussed below, the revocation request does not establish that this information was intentionally provided by the applicants or that it would have affected the Commission's decision.

Test No. 2: Would accurate and complete information have affected the conditions or approval of the permit?

Contention:

The revocation request made no specific contention or provided information relative to this point. However, from the general tenor of the revocation request, it can be inferred that the revocation request is asserting that had the Commission known of the relative increase in size of the proposed house compared with that approved by the County of Mendocino on the same site in 1994, the Commission would have concluded that the proposed development was in some way incompatible with the site. For example, the Commission might have found that: (a) no building site of adequate size existed on the property to accommodate the larger house proposal; and/or (b) the development would be too large to be found compatible with the character of the surrounding area. In such an instance the Commission would have likely either denied the permit or included other conditions limiting the size of the site improvements.

Analysis:

The Commission must determine if accurate and complete information would have affected the conditions or the approval of the permit. The revocation request may contend that had Mr. Bacik accurately portrayed the increase in size of the subject residential development proposal compared with that previously approved by the County of Mendocino on the same site in 1994 the Commission would have attached different or

additional permit conditions, or disallowed the development based on an inconsistency of the proposed project with LCP and Coastal Act policies and standards.

The underlying assumption of this ground for revocation is that the increase in size of the subject development proposal compared to that previously permitted but not constructed is a determining factor in the Commission's review of development projects. Clearly, the presence of previously permitted and built-out developments are routinely considered by the Commission in assessing whether new development would be compatible with neighborhood character, interfere with public access, or exceed limited capacities of public services such as water, sewage disposal, or roads.

However, the Commission's findings for approval of a new single-family residential development, with respect to its consistency with the visual and geologic policies of the LCP, do not in any way rely on the size of the house being proposed relative to the size of the earlier approved house for the site. Rather, the particular size and design of the house being proposed is evaluated for its consistency with the LCP policies in place at the time the Commission acts. The Commission may impose conditions or require modifications to the proposed project to make that project consistent with the LCP, not in terms of how it may or may not relate to an earlier permitted project. For the Riley permit, the Commission attached special conditions requiring such modifications, including: (1) a plan review condition to ensure that final plans for the house proposed at that time would incorporate specific recommendations of the geologic report for that house into the project design; (2) a condition requiring landscaping to screen the proposed house from view from Gualala Point Park; and (3) building material specifications to ensure the exterior appearance of the house or its lighting would not impact the character of its surrounds.

In addition, it should be noted that even though the County numbered the Riley's application for the current residence in such a way as to imply the project was reviewed as an amendment or modification to the previously issued permit, the original 1994 permit had expired. Consequently, whether or not the 1998 approval had been granted, the project authorized by the 1994 approval could never be built because the permit had expired. Thus, the Commission on appeal was not influenced by the notion that if they didn't approve the proposed project before them at that time, the 1994 project would be built. Rather, the Commission was evaluating the 1998 project solely for its own conformance with the LCP and the public access policies of the Coastal Act.

Thus, the increase in size of the current house design size compared to that authorized by Mendocino County in 1994 was not a determining factor in the Commission's review of the project. The Commission assessed the proposed project based on its unique effects on coastal resources, individually and cumulatively together with those of other existing and planned development. The standard of review was the project's consistency with applicable LCP and Coastal Act policies, not whether the house was bigger or smaller than the house previously approved for the site by the County. Accordingly, comparing

the effects of the project with those of another past-permitted and unbuilt development is not a determinative factor in the Commission's decision making process.

The Commission therefore finds that this contention does not provide grounds for revocation under Section 13105(a) because it does not show adequate or complete information would have affected the conditions or the approval of the permit.

Test No. 3: Was the erroneous or incomplete information supplied intentionally?

Contention:

The revocation request contends that the statements of Mr. Bacik dismissing the relative size of the proposed house compared with the size of the house authorized in a permit previously issued in 1994 but never constructed were intentionally made to presumably defraud the Commission into concluding that an overall decrease in impacts to coastal resources would result in the approval of the current Riley permit application. The revocation request provided no further evidence to substantiate this claim.

Analysis:

In this last criterion of the grounds for revocation, the revocation request asserts that Mr. Bacik knowingly defrauded the Commission of accurate information to obtain the permit requested by the applicants. The revocation request, however, does not provide any direct evidence that the applicants' attorney had purposefully provided inaccurate information to deceive the Commission through misstating the increase in size of the current proposed house compared with that approved previously by Mendocino County in 1994.

For the Commission to find grounds for revocation of the permit on this point, the Commission would have to conclude that the applicants' attorney **intentionally** supplied inaccurate or erroneous information by misstating that no increase in the size of the proposed house compared with that previously approved would result. The revocation request has not established that inaccurate, erroneous, or incomplete information was intentionally supplied. Therefore, the revocation request must be denied on this basis alone. In addition, the Commission finds that, whether or not the applicants' attorney intentionally supplied inaccurate or erroneous information, this contention does not provide grounds for revocation because as demonstrated above, the information would not have affected the approval of the permit or the setting of conditions thereto.

2. Location of Building Site.

Test No. 1: Did the applicant include inaccurate, erroneous, or incomplete information?

Contention:

The revocation request contends that, in his presentation before the Commission at the August 12, 1998 hearing and in correspondence previously submitted, Ralph Matheson, the applicants' agent, provided inaccurate information regarding the location of the building site relative to topographic features at the project parcel.

The inaccurate information allegedly included both hearing exhibits and correspondence submitted by the agent on behalf of the applicants. With respect to hearing exhibits, the revocation request dated September 29-30, 1998 states, in pertinent part:

The blueprints for the Matheson design show the house with a slab elevation of 62' above sea level, next floor at 71', top floor at 80', and the roof elevation at 93.6'. Yet, at the August 12, 1998 hearing, Mr. Matheson displayed for about 10 minutes a large drawing which showed the proposed house located far below the Verran house and out on a terrace above the sea. In fact the house would cut into the slope below the Verran and Stout/Sheridan houses, compromising their lateral support, and the roofline would reach approximately the first floor level of those up-slope homes, appearing three stories high from the public beach and park. Therefore, applicants' agent knowingly provided false information to the Commission in the form of a drawing.

Further, the revocation request letter, dated September 5, 2001, states, in pertinent part:

At the August 1998, Commission hearing, applicants' agent Ralph Matheson presented a drawing of an oblique aerial view of the neighborhood houses and the proposed Riley house that was inaccurate and misleading... He also showed a large, simplified drawing of the same false size relationship while speaking to the Commission... Matheson's drawing represented the upslope homes as being far above the proposed Riley house, with a concave slope between them and the Riley lot. It left out important features at each end of the Riley lot, the access/drainage easement road and Robinson Gulch. The Riley house lot appeared small in comparison with the existing homes, most of which are pre-Commission.

With respect to alleged misrepresentation of the house location in written materials, the revocation request letter, dated September 5, 2001, referring to Mr. Matheson's letter of April 29, 1998 (see Exhibit No. 4), states in applicable part:

In the accompanying letter, Matheson makes many false assertions which I can refute. This is but one example: On page 1 Matheson states 'This property is **not** situated on a cliff over the ocean but on a terrace with the ocean waves hitting on the sandstone rocks which are downward and some distance from the building site.' The two enlarged photos show that this

contention is false. Matheson designed both my house and the Van de Water house. The enclosed large photo from Robinson Point, and the last photo on the last page are shot from the Van de Water property with their permission. Thus Matheson knew the topography including the undercut northwest face of the Riley lot; therefore that statement was knowingly false. [emphasis in original]

Analysis:

At the time of the writing of this staff report, the exhibits presented at the August 12, 1998 hearing were not available for review. Consequently, the veracity of the revocation request's claim that these exhibits contained inaccurate or erroneous information could not be analyzed.

With regard to the alleged inaccuracies in written correspondence, the revocation request accurately quotes Mr. Matheson's statements in her September 5, 2001 revocation request letter regarding the location of the house relative to the blufftop cliff. In addition, the revocation request provides a series of photographs that were intended to demonstrate that the exposure of the building site to oceanfront hazards, such as wave runup, had been inaccurately portrayed in Mr. Matheson's letter.

In order for the Commission to find grounds for revocation of the permit on this point, the Commission would have to conclude that **inaccurate or erroneous** information had been provided to the Commission. The Commission does not find it necessary to reach a conclusion on this point. The Commission finds that, whether or not the presentation and/or correspondence presented on behalf of the applicants contained inaccurate or erroneous information, this contention does not provide grounds for revocation because as demonstrated below, the information would not have affected the approval of the permit or the conditions thereto, and because the revocation request does not establish that the information was presented to the Commission by the applicants intentionally.

Test No. 2: Would accurate and complete information have affected the conditions or approval of the permit?

Contention:

The revocation request made no specific contention or provided information relative to this point. However, from its general tenor, it appears that the revocation request is asserting that had the alleged major deviation in the location of the proposed house as depicted in Mr. Matheson's letter and presentation visuals compared to that described in other application materials been identified, the Commission would presumably have further questioned the intended location for the house. If a substantially different location than that as shown on other application materials had been confirmed by the agent, the Commission would have concluded that the application had been substantially amended at the hearing. The Commission could then have taken other actions relative to the

approval of the project or its conditioning, such as continuing its decision on the project until further geologic and visual resource impact analyses had been conducted.

Analysis:

The Commission must determine if accurate and complete information would have affected the conditions or the approval of the permit. The revocation request contends that had Mr. Matheson accurately portrayed the true location of the residential development in his letter and visual displays presented at the permit hearing the Commission would have attached different or additional permit conditions, or denied the permit.

In making this determination, the Commission makes notes of the role written correspondence and display exhibits play in the Commission's consideration of the merits of a given development project. Correspondence and other exhibits containing information of a general nature, such as those in which the revocation request alleges contains inaccurate information, carry relatively less significance compared with other, more detailed application materials. For example, a written statement comparing the location of a proposed house to that of topographic features on a parcel or an artist's rendering on the orientation of site improvements relative to nearby structures serves to help describe the general project setting. For a more precise understanding of where site improvements are located in relation to landscape features or other structures, the Commission generally relies on plan- and elevation-view site maps, geologic reports, or other information as contained within other technical reports.

Within the staff report for the Riley *de novo* hearing, the Commission was provided with a copy of the applicants' to-scale site plans that depicted the location for the proposed house relative to the site's topography and nearby property boundaries. The map also included the location of the lot lines of adjoining parcels to the east. The geologic investigation prepared for the project and the report peer review report also contained aerial photographs of the site, detailed information on the features at the site, and supplementary information regarding building setbacks from coastal erosion-prone areas.

These exhibits clearly show the house site to be constructed cut into the embankment below the railroad grade at the eastern end of the coastal terrace. Moreover, at several places within the adopted findings of approval for the project, the location of the house in this area and its ramifications for consistency with the LCP were acknowledged:

With regard to the location of the proposed on the lot:

The house would be partly built on the terrace, and partly built on the lower part of the hillside. ["Geologic Hazards," p. 6]

As regards the avoidance of heavily sloped areas in siting the house:

In contrast, the proposed Riley residence is not proposed to be located on a hillside like the Coral Court site, but, rather, on a coastal terrace with one side abutting the railroad grade. ["Bluff Retreat," p. 11]

With respect to the potential instability of placing the house site next to the railroad grade, the geologic investigation peer review report was cited:

Rogers/Pacific states that situating the back of the proposed residence against the west-facing slope of the west embankment should serve to isolate the house from both upslope drainage and landslide hazards, provided the structure is designed and built as a fully-drained retaining wall or series of walls. ["Effects of Stability on Adjoining Property," p.15]

In addition, with respect to exposure to sea wave runup at the proposed building site referenced by The revocation request in its analysis of Mr. Matheson's letter, the benefits of locating the house to the most landward feasible location was specifically addressed within the Rogers/Pacific geotechnical investigation peer review report, attached as an exhibit to the adopted findings:

That (the recommended 35-foot blufftop setback) would be a minimum value, and any structure situated that close to these headlands is going to get physically splashed, during extreme storm events, and may even experience overt damage. Additional setback for quality of life might be considered, as should be the weathering effects of consistent seasonal salt spray on wood framing elements. Based upon the physical evidence for storm splash at this site, pulling the house back as far as possible would seem to be a prudent precaution.

Accordingly, regardless of whatever inaccuracies may have been contained within written correspondence and visual displays presented by the applicants' agent at the permit hearing, these items were largely illustrative of the general project setting and played a relatively minor role in the Commission's consideration of the project. The exhibits and findings in the Commission's adopted findings demonstrate that the Commission understood that the house would be constructed cut into the embankment below the old railroad grade at the eastern end of the terrace. The Commission therefore finds that this contention does not provide grounds for revocation under Section 13105(a) because it does not show accurate and complete information would have affected the conditions or the approval of the project.

Test No. 3: Was the erroneous or incomplete information supplied intentionally?

Contention:

The revocation request contends that the statements of Mr. Matheson regarding the relative location of the proposed house compared with that shown in other application

materials were intentionally made to presumably mislead the Commission by downplaying the adversity of impacts the project would have on coastal resources, particularly geologic stability, exposure to oceanfront hazards, and views to and along the coast from public recreational lands. The revocation request provided no further evidence to substantiate this claim.

Analysis:

In this last criterion of the grounds for revocation, The revocation request asserts that Matheson Design knowingly misled the Commission with inaccurate information in order to obtain the permit. The revocation request, however, does not provide any direct evidence that the applicants' agent had purposefully provided inaccurate information to deceive the Commission through statements within correspondence and in presentation before the Commission regarding the location of the proposed house relative to the ocean and other, more inland parcels and their improvements.

For the Commission to find grounds for revocation of the permit on this point, the Commission would have to conclude that the applicants' agent **intentionally** supplied inaccurate or erroneous information by drafting the site plans using dated information. The revocation request has not established that incomplete, erroneous, or incomplete information was intentionally provided to the Commission by the applicants. Therefore, the revocation request must be denied on this basis alone. In addition, the Commission finds that, whether or not the applicants' agent intentionally supplied inaccurate or erroneous information, this contention does not provide grounds for revocation because as demonstrated above, the information would not have affected the approval of the permit or the setting of conditions thereto.

3. Inaccuracies in Site Plan's Base Map.

Test No. 1: Did the applicant include inaccurate, erroneous, or incomplete information?

Contention:

The revocation request, dated September 29-30, 1998, contends that the site plans submitted with the application for the proposed residential development contained inaccurate information. The revocation request notes that the house designer used as a base map for the site plans a topographic survey map prepared in 1990 that does not accurately represent the current blufftop configuration at the project site. The revocation request asserts that this map was submitted to the Commission "lacking the crucial edge from which a setback must be taken."

Analysis:

Among the notations on the site map for the Riley development developed by the applicants' agent (Matheson Design, 9/20/96) is an acknowledgement regarding the

origin of the data for the map, stating: "Site Plan based on topographic survey prepared by D.N. McAdam RCE 8090 dated 5-2-90." Accordingly, the revocation request's contention is correct as to the source and date of the information from which the site was created.

With respect to whether this information is "false or incomplete" as the revocation request contends, the relative importance of the site map accuracy must be considered in terms of the role it plays in the Commission's overall coastal development permit review process. For a few small-scale, relatively straightforward coastal development permit applications, a site map may serve as the sole application attachment. As such, the site plan serves as a compilation of all pertinent project information necessary to enable the Commission to conduct a comprehensive review of the proposal's conformance with all applicable LCP and/or Coastal Act policies and standards. However, in most instances, the site map is supplemented by narrative descriptions, environmental assessments, and other technical reports containing more detailed information, and represents only one element of the information packet assembled for the development application. In such situations, acceptable site maps are typically general in nature, often based on less precise mapping, such as enlarged USGS topographic quadrangle or assessors parcel maps. They are intended to serve as a general reference illustration to be used in conjunction with more precise information contained elsewhere in the application. This is the case in the Riley permit application.

Moreover, as conditioned by the Commission, the site plan is not intended to be used in verifying compliance of subsequent construction of the site improvements with required building setbacks. Special Condition No. 2 of the subject permit requires that the applicants prepare and submit for the approval of the Executive Director final site plans for the development. The condition states in applicable part that:

Except as concerns the relocated and redesigned driveway, these plans shall be consistent with all recommendations made in the Geotechnical Investigation Report prepared by BACE Geotechnical, Inc. dated June 30, 1992, which was submitted with the application, with the four addendum letters submitted in 1997, and with the recommendations made by Rogers/Pacific in their review dated November 28, 1997.

Furthermore, the condition continues to require that:

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. Proposed changes to the approved final plans shall not occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required because the change is not substantive in nature.

Once the final site plans are approved by the Executive Director, the County's Planning and Building Services Department in issuing its building permit for the project would check the consistency of the drawings submitted as part of a building permit application with the final site plans approved by the Coastal Commission staff. Accordingly, the site map does not play a crucial role in ensuring construction compliance with the recommended blufftop setback. Thus, the precision of the final site plans approved through the condition compliance process after approval of the permit by the Commission is critical for the development of the project. The site maps submitted with the application and used in the staff report exhibits need not be as precise. In this case, the bluff top surveyed on the site map was accurate as of 1990. The person requesting revocation does not challenge the accuracy of the site map in showing the bluff edge in 1990, just that it was several years old. Therefore, as: (1) the intended purpose of the exhibits was to provide a general depiction of the proposed project and not to serve as final plans; and (2) the drawing was based on a site survey of the site, the Commission finds that the site plans do not constitute inaccurate, erroneous, or incomplete information having been provided to the Commission in connection with the CDP application.

Test No. 2: Would accurate and complete information have affected the conditions or approval of the permit?

Contention:

The revocation request made no specific contention or provided information relative to this point. However, from the general tenor of the revocation request, it can be inferred that the assertion is being made that had a more recent depiction of the blufftop edge been presented, the Commission would have concluded that no stable building site could be set sufficiently back from the bluff edge to protect the structure from bluff retreat over the life of the structure existed on the parcel. Presumably, the Commission would have then denied the permit outright, or applied different conditions (e.g., reducing the size of the proposed house and site improvements) to make the development as conditionally approved consistent with the policies and standards of the certified local coastal program and/or the access policies of Chapter 3 of the Coastal Act.

Analysis:

As discussed in Test No. 1, above, the precision of the location of the blufftop edge as depicted on the application site plans does not play a crucial role in ensuring that the development is constructed outside of areas susceptible to coastal erosion during the economic lifespan of the structures. In both the staff report for the *de novo* hearing and in testimony given therein, the Commission was apprised of the tentative nature of the building locations as shown on the preliminary site plan with respect to the setback recommendations within the BACE geologic investigation and the peer review report prepared by Rogers/Pacific. This was one of the bases for the Commission attaching Special Condition No. 2 to require approval of finalized site, drainage, and landscaping

plans. In fact, when final plans were submitted in August 2001, they depicted a bluff edge delineated from a new survey conducted in 1999, and not the bluff edge line derived from the 1990 survey. Accordingly, the lack of precision on the site plans in depicting dated blufftop conditions did not affect the approval of the project or the conditions attached thereto.

Test No. 3: Was the erroneous or incomplete information supplied intentionally?

Contention:

The revocation request contends that the use of dated topographic information in developing the site plans submitted with the application was intentionally done to defraud the Commission. By illustrating the location of the blufftop as existed in 1990 rather than at the time of permit application, the revocation request suggests that the Commission was misled regarding whether adequate area existed on the property such that the proposed residential development could be located outside of geologically unstable areas. The revocation request provides no further evidence to substantiate this claim.

Analysis:

In this last criterion of the grounds for revocation, the revocation request asserts that Matheson Design knowingly defrauded the Commission of accurate information in order to obtain the permit. The revocation request, however, does not provide any direct evidence that the applicants' agent had purposefully provided inaccurate information to deceive the Commission by using a 1990 topographic survey as the basis for the site plans rather than more contemporary data.

For the Commission to find grounds for revocation of the permit on this point, the Commission would have to conclude that the applicants' agent **intentionally** supplied inaccurate or erroneous information by drafting the site plans using dated information. The revocation request does not establish that inaccurate, erroneous, or incomplete information was intentionally provided to the Commission by the applicants. Therefore, the revocation request must be denied on this basis alone. In addition, the Commission finds that, whether or not the applicants' agent intentionally supplied inaccurate or erroneous information, this contention does not provide grounds for revocation because as demonstrated above, the information was neither inaccurate, erroneous, or incomplete, and would not have affected the approval of the permit or the setting of conditions thereto.

G. Overall Conclusion.

The Commission denies the revocation request for Coastal Development Permit No. A-1-MEN-97-046, the construction of the Riley single-family residence, attached subterranean garage, and site improvements, because the revocation request does not establish all three grounds identified in Section 13105(a) of the Commission's administrative regulations for any of its contentions.

III. EXHIBITS:

1. Excerpt, Commission's Administrative Regulations (14 CCR §§13104-13108)
2. Revocation Request from Julie Verran for CDP A-1-MEN-97-046, dated September 29-30, 1998
3. Response Letter from Jo Ginsberg to Julia Verran, dated October 8, 1998
4. Revocation Request from Julie Verran for CDP A-1-MEN-97-046, dated September 5, 2001
5. Portion, Site Plan, conditionally approved by Commission on August 12, 1998
6. Portion, Final Site Plan, approved by Executive Director on August 6, 2001
7. General Correspondence

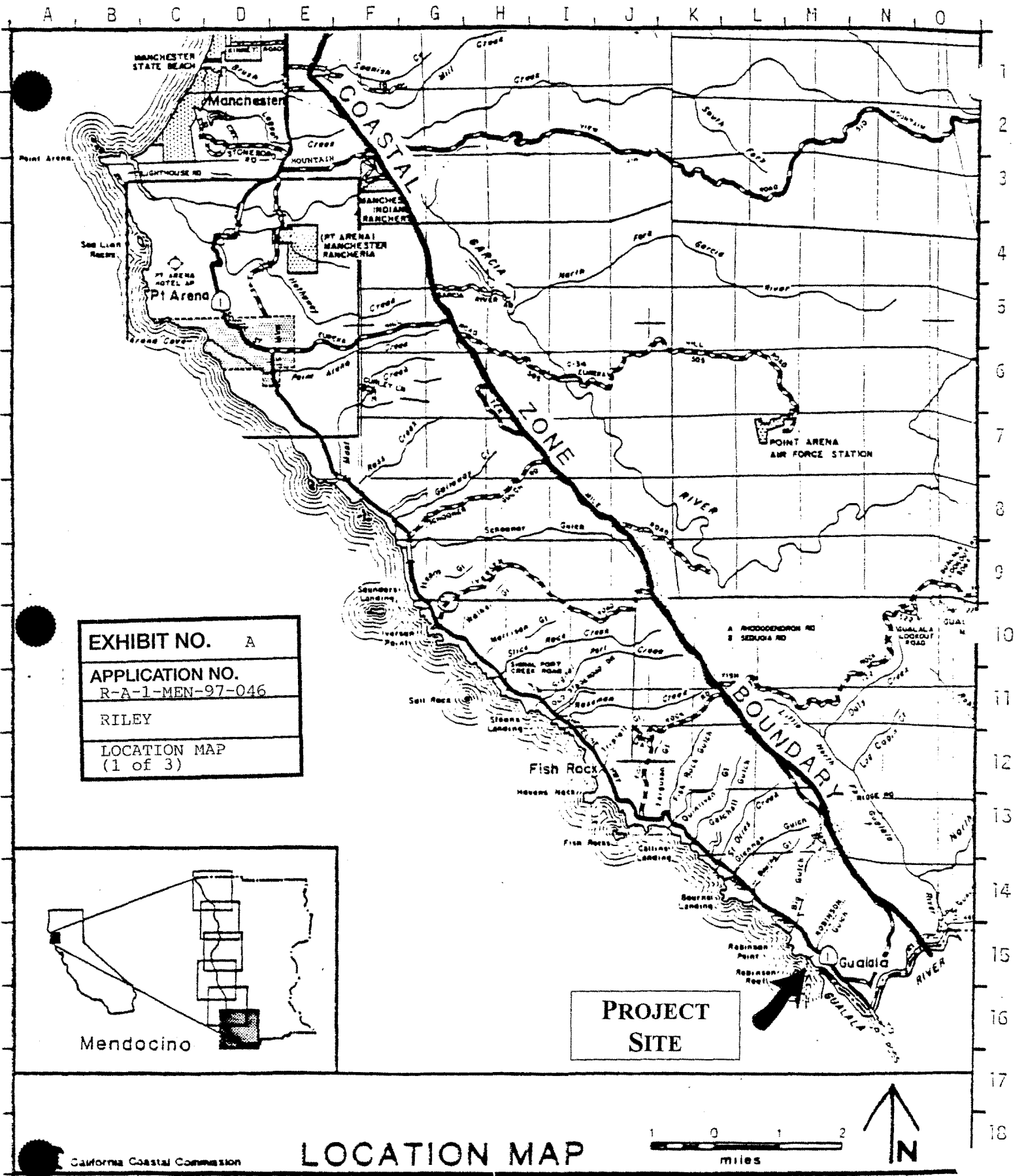


EXHIBIT NO. A

APPLICATION NO.
R-A-1-MEN-97-046

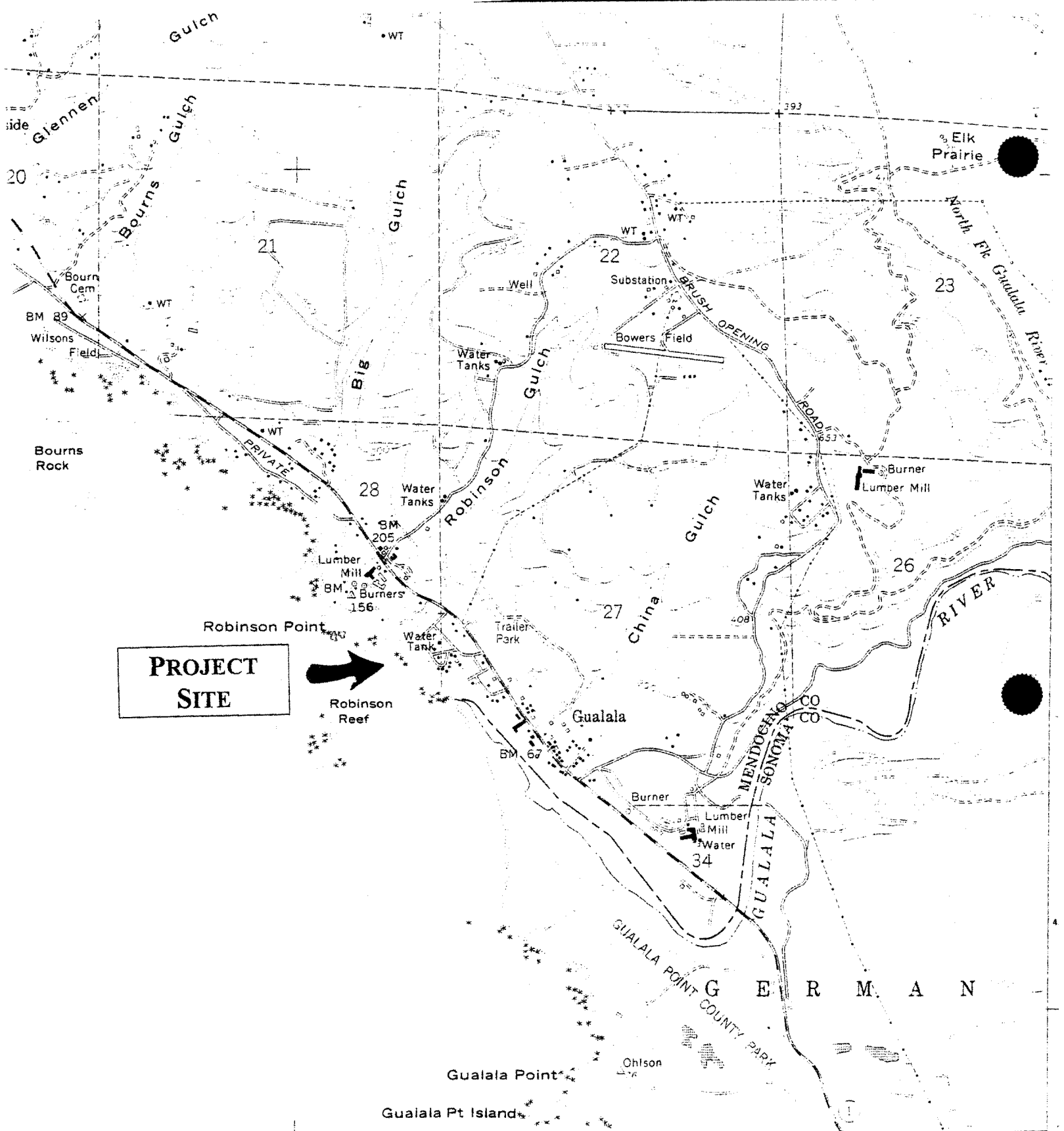
RILEY

LOCATION MAP
(1 of 3)

PROJECT
SITE

LOCATION MAP





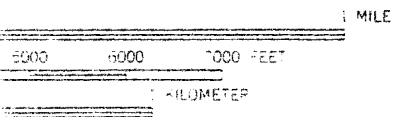
452

32'30"

454

INTERIOR-GEOLOGICAL SURVEY, RESTON, VIRGINIA-1978
STEWARTS POINT 3.7 MI.
FORT ROSS 15 MI.

123°3'



OF 1929
MEAN LOWER LOW WATER
MEAN HIGH WATER
FEET



QUADRANGLE LOCATION

ROAD CLASSIFICATION

Medium-duty ——— Light-duty ———

Unimproved dirt ———

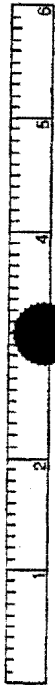
State Route ———

243

GUALALA, CALIF.

SE. 4 POINT - RENA 15' QUADRANGLE
13845 - M10000

1-800-345-7334
1-800-REDI

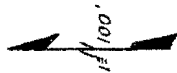


SCALE 1/10 OF AN INCH

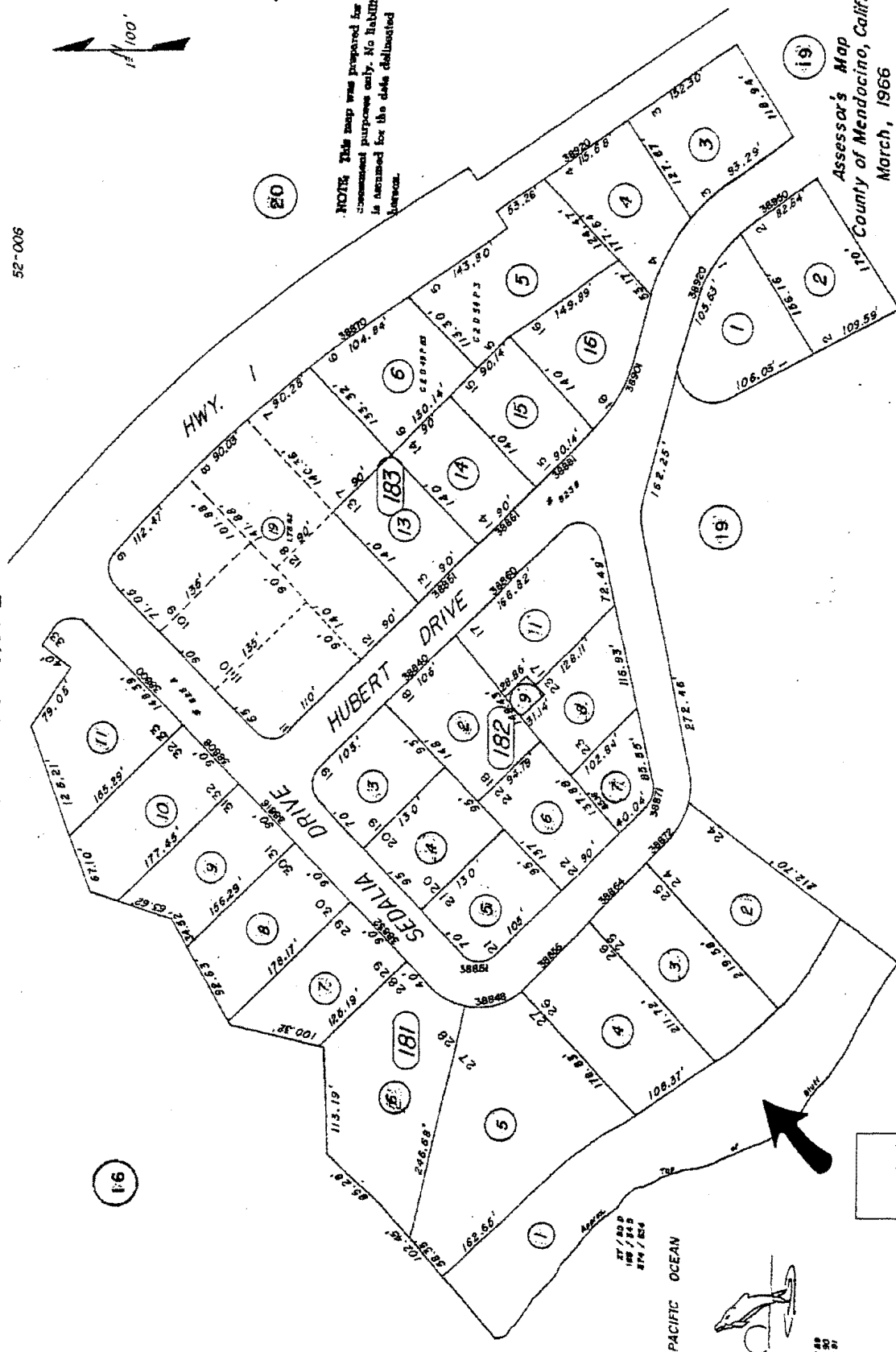
145-18

52-005

North Gualala Subdivision No. 2

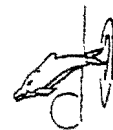


NOTE: This map was prepared for
assessment purposes only. No liability
is assumed for the data delineated
thereon.



Assessor's Map
County of Mendocino, Calif.
March, 1966

PROJECT
SITE



1-11-88
1-30-90
1-3-91

343

EXHIBIT NO.	1
APPLICATION NO.	R-A-1-MEN-97-046
RILEY EXCERPT, COMM.'S	
ADMIN. REGS. (14 CCR §§ 13104-13108)	

calendar, the public hearing on the item shall be continued until it can be permit calendar.

Article 16. Revocation of Permits

§ 13104. Scope of Article.

The provisions of this article shall govern proceedings for revocation of a coastal development permit previously granted by a regional commission or the commission.

§ 13105. Grounds for Revocation.

Grounds for revocation of a permit shall be:

(a) Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the commission finds that accurate and complete information would have caused the commission to require additional or different conditions on a permit or deny an application;

(b) Failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the commission and could have caused the commission to require additional or different conditions on a permit or deny an application.

§ 13106. Initiation of Proceedings.

Any person who did not have an opportunity to fully participate in the original permit proceeding by reason of the permit applicant's intentional inclusion of inaccurate information or failure to provide adequate public notice as specified in Section 13105 may request revocation of a permit by application to the executive director of the commission specifying, with particularity, the grounds for revocation. The executive director shall review the stated grounds for revocation and, unless the request is patently frivolous and without merit, shall initiate revocation proceedings. The executive director may initiate revocation proceedings on his or her own motion when the grounds for revocation have been established pursuant to the provisions of Section 13105.

§ 13107. Suspension of Permit.

Where the executive director determines in accord with Section 13106, that grounds exist for revocation of a permit, the operation of the permit shall be automatically suspended until the commission votes to deny the request for revocation. The executive director shall notify the permittee by mailing a copy of the request for revocation and a summary of the procedures set forth in this article, to the address shown in the permit application. The executive director shall also advise the applicant in writing that any development undertaken during suspension of the permit may be in violation of the California Coastal Act of 1976 and subject to the penalties set forth in Public

1 of 2

Resources Code, Sections 30820 through 30823.

§ 13108. Hearing on Revocation.

(a) At the next regularly scheduled meeting, and after notice to the permittee and any persons the executive director has reason to know would be interested in the permit or revocation, the executive director shall report the request for revocation to the commission with a preliminary recommendation on the merits of the request.

(b) The person requesting the revocation shall be afforded a reasonable time to present the request and the permittee shall be afforded a like time for rebuttal.

(c) The commission shall ordinarily vote on the request at the same meeting, but the vote may be postponed to a subsequent meeting if the commission wishes the executive director or the Attorney General to perform further investigation.

(d) A permit may be revoked by a majority vote of the members of the commission present if it finds that any of the grounds specified in section 13105 exist. If the commission finds that the request for revocation was not filed with due diligence, it shall deny the request.

§ 13108.5. Finality of Regional Commission Decision.

Repealed

Article 17. Reserved

§ 13109. Reapplication.

Repealed.

Article 18. Reconsideration

§ 13109.1. Scope of Article.

The provisions of this article shall govern proceedings for reconsideration of terms or conditions of a coastal development permit granted or of a denial of a coastal development permit by the commission.

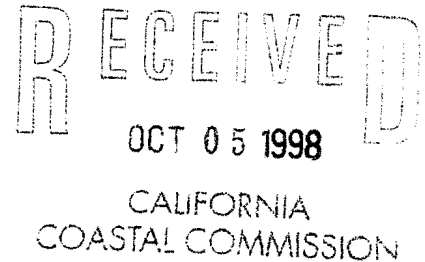
§ 13109.2. Initiation of Proceedings.

(a) Any time within thirty (30) days following a final vote upon an application for a coastal development permit, the applicant of record may request the commission to grant reconsideration of the denial of an application for a coastal development permit or of any term or condition of a coastal

2 of 2

J. Verran, P.O. Box 382
Gualala, CA 95445-0382
September 29, 1998

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



Re: A-1-97-46 MEN

Dear Deputy Director Scholl,

To follow up on our earlier phone conversation, I still wish to pursue a revocation of the Commission's action on my appeal. You advised me to get a copy of the relevant administrative code sections from the Commission's Web Site, but this did not work. Can you please have your staff mail me a copy? Also, please ask them to send me a copy of the official tape of the August 12 hearing on my appeal in Huntington Beach, plus a tape of the public comment period on August 13, in case Mr. Matheson or Mr. Heckert commented on that day. Enclosed is a check for \$20 which should cover multiple tapes. I did tape the hearing myself (but not the closed session); the quality was not good and your voice did not come through well.

Enclosed is a list of the slides which you kept August 12. I had intended to get duplicates made and send them in with a list. I hope you also retained the cardboard drawing which Mr. Matheson showed, since it is an example of false facts presented by applicants which may have influenced the Commission.

Also enclosed is a copy of a letter from applicants to their former architect, dismissing him in November, 1994. It is CC'd to your staff. I wrote to Ms. Ginsberg prior to the August hearing and requested a copy of the file to which this letter pertained, but she did not send it. The questions are: Did applicants or their architect make enquiries to your staff, or was there a prior appeal or prior complaints to the staff about this project?

Finally, enclosed is the first part, relating to blueprints, of my analysis supporting a request for revocation of the Commission's August 12 action on my appeal.

Sincerely,


Julie Verran

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EXHIBIT NO.	2
APPLICATION NO.	R-A-1-MEN-97-046
REVOCATION REQUEST	FROM J. VERRAN FOR
CDP A-1-MEN-97-046,	DATED 9/29-30/98

Re: A-1-97-46 MEN

Request for Revocation of California Coastal Commission action on my appeal August 12, 1998
Submitted by Julie Verran, September 30, 1998.

I. Examination of Blueprints.

On September 25, 1998, I examined blueprints for the two Riley proposed houses, one a log home planned in 1994, the other the current design planned in 1997. The Rileys and the owners of the contiguous parcel to the south which is reached by the same steep access road both obtained Coastal Development Permits from Mendocino County in 1994, but did not build. The CDPs expired. Rileys were granted a CDP for a new design in 1997, which I appealed.

On August 12, 1998, at the hearing on my appeal in Huntington Beach, attorney Frank Bacik, acting for the Rileys, repeatedly stated that the 1997 design was **smaller** than the 1994 design.

County staff said they could not photocopy parts of the blueprints because they might be copyrighted; the blueprints are available for public viewing in their respective 1994 and 1997 folders at the Mendocino County Planning and Building Department office on South Franklin Street in Fort Bragg.

The same base map is used for both blueprints. The legal description of the property is APN 145-181-01. The map is, "Site plan based on topographic survey prepared by D.N. McAdam RCE 8090 dated 5-2-90." The map was thus seven years old at the time it was used for the Matheson design. It did not, and does not show the current blufftop vegetated edge. I have submitted to Commission and staff vertical aerial photos showing that there has been blufftop retreat since 1990, but applicants have not updated their base map. Therefore, they knowingly submitted false or incomplete information to the Commission, lacking the crucial edge from which a setback must be taken.

The 1994 plan, for the Hart Engineering Group design, states on sheet A1.2 that Coverage is building = 2,230 sf and paved area = 2,257 sf, Total = 4,487 sf.

The 1997 plan, for the Ralph Matheson design, states on sheet A1.1 that Coverage is building = 2,982 sf, paved area (drive) = 2,700 sf, walks, patio, etc = 500 sf, Total = 6,182 sf.

The new plan at 6,182 sf coverage is substantially **larger** than the 1994 plan at 4,487 sf coverage.

Therefore, applicants and their agents knowingly submitted false information to the Commission. Since their designer, Mr. Matheson, prepared the new blueprints, he was surely aware of the true dimensions and could have informed Mr. Bacik.

The blueprints for the Matheson design show the house with a slab elevation of 62' above sea level, next floor at 71', top floor at 80', and roof ridge elevation 93.6'. Yet, at the August 12, 1998 hearing, Mr. Matheson displayed for about 10 minutes a large drawing which showed the proposed house located far below the Verran house and out on a terrace above the sea. In fact the house would cut into the slope below the Verran and Stout/Sheridan houses, compromising their lateral support, and the roofline would reach to approximately the first floor level of those up-slope homes, appearing three stories high from the public beach and park. Therefore, applicants' agent knowing provided false information to the Commission in the form of that drawing.

More sections to follow.

CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

45 FREMONT, SUITE 2000

SAN FRANCISCO, CA 94105-2219

(415) 904-5260

EXHIBIT NO. 3

APPLICATION NO.

R-A-1-MEN-97-046

RESPONSE LETTER FROM
JO GINSBERG TO J.VERRAN, DATED
10/9/98

8 October 1998

Julie Verran
P.O. Box 382
Gualala, CA 95445-0382

RE: Coastal Permit No. A-1-MEN-97-46 (Riley)

Dear Ms. Verran:

I am responding to your letter to Steve Scholl dated 29 September 1998. I will try to address all your concerns in my response below.

Per your request, I am sending you copies of the relevant pages from the administrative regulations regarding revocation. If you wish a copy of the entire regulations, please send us a check in the amount of \$7.00 made payable to the California Coastal Commission.

Concerning your request for tapes, although you indicate in your letter that you have enclosed \$20, there was no check in the envelope. If you wish us to send you copies of the tapes for the Riley appeal heard on August 12, 1998 (two tapes) and for the public comment period on August 13, 1998 (one tape), please send us a check in the amount of \$15 for the three tapes.

I do not fully understand your questions regarding the letter sent to the applicants' former architect, nor does it seem relevant to your revocation request. We have one file in our office for the Riley appeal, and that file contains a number of folders. In these folders are all the materials associated with the appeal, including all correspondence sent to this office. It is not clear what portion of this file you wish to obtain. If you want to make an appointment to come in and review the entire contents of these folders, please call me to arrange such an appointment. As far as I am aware, prior to your appeal of the Riley project, no one other than you had made any inquiries to our office regarding the project nor was there any other appeal or complaint.

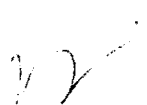
1 of 2

JULIE VERRAN

Page 2

Finally, concerning your desire to file a revocation request, it is not clear from your letter whether you consider the materials you have submitted thus far which accompany your letter of 29 September 1998 to constitute your whole revocation request, or if you intend to submit additional materials that you want to be considered as part of the request. The last line of your letter simply states "More sections to follow." Please let us know if we should expect additional materials concerning your revocation request.

Sincerely,



JO GINSBERG
Coastal Planner

Enclosure

2 of 2

EXHIBIT NO.	4
APPLICATION NO.	R-A-1-MEN-97-046
REVOCATION REQUEST	FROM J. VERRAN FOR
CDP A-1-MEN-97-046,	DATED 9/5/01

September 5, 2001

Reference: A-1-MEN-97-046

Robert Merrill, North Coast Manager
California Coastal Commission
P.O. Box 4908
Eureka, CA 95502-4908

CALIFORNIA
COASTAL COMMISSION

Dear Mr. Merrill, (to the attention of Commissioners)

The project now being graded on the Riley property is not the one approved by the Commission on August 12, 1998. The site of the house is about 30 feet southeast of the approved position, bringing it farther up the slope and closer to the town, park and Highway 1. This change will cause the project to have a more negative effect on the broad public viewshed than the Commissioners anticipated in 1998. The grading is more extensive than was done in any of the seven house projects west of Highway 1 in Gualala in the past few years. It amounts to a substantial alteration of a coastal landform.

The change in house position also brings it closer to the upslope houses and has led to removal of more of the slope that provides their lateral support. Potential liability for damage to these homes is in the range of one to five million dollars. Experts disagree on how a house may be built safely on this site; ordinary people agree that the site is inappropriate and may be unbuildable. The grading shows that my original contention that the project would be a dangerous nuisance to the upslope houses was correct. This site was extensively used by the public for generations. It is situated on a headland adjacent to a public park. It is underlain by sea caves and impacted by waves that cascade upward. The lot was created by certificate of compliance that does not guarantee buildability.

Revocation. As the original appellant I sent in a letter citing one ground for revocation of the Riley permit in October, 1998. You have this letter in the Riley file in Eureka. It is still valid, and deals with the lack of solid information available to the Commission in August, 1998, on the size, shape and position of the property and the proposed house. Here is further information and a renewed request for a revocation based on false and misleading information knowingly presented to the Commission by applicants' agent.

I also request a revocation of the extension granted by the Commission on December 15, 2000, on the basis that it was granted by fraud, that is, the effective denial by applicants' attorney that the stakes placed ca. 20 September, 2000, represented the footprint of the house applicants intend to build. I photographed those stakes on September 23, 2000, hand carried the photos to Eureka, and showed them to you and Sue Sniado in the presence of Jim Baskin, and I showed you and Sue using site plans in the 1998 file how I believed the footprint was moved to the southeast, on September 27 or 28, 2000. I demonstrated all due diligence in informing you of the apparent change.

Under the California Environmental Quality Act, you had an agency obligation to look into that. Staff knew or should have known that the house site was moved and should have included the actual change in the staff report for the December 15, 2000, extension hearing.

After I submitted the 1998 letter, Steve Scholl told me that I could not proceed with a revocation request until after the permit was issued. On August 6, 2001, the permit to build the Riley house that was approved in August, 1998, was issued by the Coastal Commission. On August 11, I received a copy of the permit, postmarked in Eureka August 8. On August 17, Ralph Matheson and several other men including a surveyor, resurveyed the site and re-set the stakes within a few inches of the September, 2000, stakes.

I told you about this on September 21, 2001. You said some grading at the foot of the access road may have been done before August 12, 2001. I believe the actual effective start of work was in September, 2000, when the stakes were first placed for the project they are now grading.

After talking to you, I called the Rileys' engineer David Paoli. He said he placed the rough stakes in September, 2000, and that a surveyor from Sonoma County did the final placement "last week," that is, on August 17. He said he was hired about a year and a half ago to update the topo map of the site done in 1991 by the late Don McAdam, and he was given the house plans but did not know the 1998 site. He did say that over the life of the project, since 1994, "buildings have been twisted and turned."

1213

The most likely reason for changing the house site is one of the changed circumstances I listed in August, 2000, during the permit extension process, increased bluff failure and associated bluff retreat. I believe that when Paoli re-did the topo map, he found more bluff retreat than expected on the northwest side of the proposed house.

On September 4, 2001, I checked the Riley file at the Mendocino County Planning and Building office in Fort Bragg. The new blueprint shows a new Paoli bluff top line based on his 2000 work. The greatest bluff retreat is the area shown in my photo submission for the 12/15/00 extension hearing. Those were also photos from the full series I showed to you in Eureka in September, 2000. A new feature on the Paoli blueprint is labeled a well into the top of a sea cave. This may be for stormwater drainage.

The Commission should have granted a de novo hearing on the extension of the approval on December, 15, 2000. I submitted a list of changed circumstances in the short time frame allowed; there were enough letters to hold the 12/00 hearing. Among other changed circumstances I listed loss of trees which will make any house here more visible from public places and make the Riley house difficult or impossible to screen. This was valid, there is pitch pine canker disease here, and the tree loss has proceeded apace, now amounting to more than 100 pines lost from more than a dozen lots. Another changed circumstance I cited was rockfall from the 'cusp' that their driveway has to pass. This was new last year; it has also continued and increased.

Under CEQA there is an obligation on the lead agency, especially in a functional equivalency program such as the Coastal Commission's, to have substantial evidence. Further, there is an obligation on the public agency to go out and look for substantial evidence.

This comes from Sundstrom case, which was brought by one of my neighbors on Sedalia Drive. The public can be the source of information on visuals, or personal experience. Because I made a claim of dangerous nuisance to my property from the Riley project, and cited 30 years of personal observation of the Riley lot, the Commission should have been really careful in analysis, and stepped up the quality of investigation.

The original language in the Sundstrom decision, Sundstrom v. County of Mendocino, AO38922, Sup. Ct. No. 52913, filed June 28, 1988, is: "While a fair argument of environmental impact must be based on substantial evidence, mechanical application of this rule would defeat the purpose of CEQA where the local agency has failed to undertake an adequate initial study. The agency should not be allowed to hide behind its own failure to gather relevant data. [...] CEQA places the burden of environmental investigation on government rather than the public. If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences."

Examples cited include the appellant's assertion that year-round irrigation with treated effluent will cause conifers on the site to die, 'We of course have no means of assessing the correctness of this contention, which, however, is unmet in the record.' This is similar to my assertions that there has been tree loss in the Sedalia Drive neighborhood, which you did not examine. Indeed, the current tree loss also affects Mr. Sundstrom's property.

Moving the Riley house site also moved it entirely below my property. Previously, the house site was below two upslope properties; the new site is most damaging to the appellant. For the Commission to allow increased damage from a project to the one person who claimed dangerous nuisance from that project, while refusing a de novo review of the changes (12/15/00), appears incorrect, even retaliatory. Add to that the fact that I am a news reporter covering environmental issues including the Commission.

The dangerous nuisance potential increased on August 31, 2001, when the Rileys' backhoe operator fully breached the ca. 1862 railroad berm and cut to within 15 feet of the toe of the 1997 landslide that affects the Stillman and Riley lots, as well as within 15 feet of the upslope property line. The effect of the grading on the site is a significant alteration of the coastal landform, a slope already disturbed by a 19th-Century railroad cut. They are removing the natural slope and spreading it out over the bluff top. The construction foreman told me on September 4 that they plan to build a retaining wall. Would this not be a shoreline protective structure beyond what is allowed by the Coastal Act?

Current case law, as I understand it, requires a permit to be granted when an applicant has come back with five successively smaller projects. The Rileys were never required to reduce the size or the

3.

impact of their project. The public will not buy the Commission's 974 square foot "subterranean garage/workshop." They will see it as the ground floor of a three-story house because that is what they will see from the beach, the park, Highway 1, the Gualala Blufftop Trail and the businesses downtown.

The Commission should revoke the permit and require the applicant to come back with a plan that reduces the height by at least one story.

This neighborhood is listed in the Mendocino County LCP as a Neighborhood of Special Concern, with protections similar to those for a Highly Scenic Area. By allowing the Riley project at its current scale in 1998, the Commission created a precedent most damaging to the Special Neighborhoods designations in the LCP. The Commission weakened the LCP's Highly Scenic Area provisions by granting the Smiley permit in 2001. **The Commission should not weaken local protections such as these which carry out the intent of the Coastal Act.**

When my family bought land on Sedalia Drive in 1969, neighbors asked them to conform to local standards and keep their house inconspicuous; this was pre-Commission, pre-LCP. Some of the families have old photos showing public use and conditions on Robinson Landing, and can remember the same things I have contended in submissions to the County and the Coastal Commission. They remember, as I do, walking to the beach, walking to town along the bluff, and going down to the fishing ledge, all of which are no longer easy, or even possible, to do. Some traditional public use could be restored. A restored trail from Robinson Landing to the river bar beach may be the best way for the California Coastal Trail to cross the Gualala River.

Many neighbors, including several whose land is contiguous with the Riley lot, sent letters of opposition to the Riley project which, like most of my submissions, were missing from the Riley file when I checked it in Eureka last September. Some of these letters were thoughtfully written by people with 40 years of observing the Riley lot. Yet, letters from the Rileys and their agents were there in threes because if they sent them to senior staff as well as the staff person on the case, all the copies go to the same file.

My submissions went in following all the rules to get them in the public record. Some permits come up now before the Commission that date from as long ago as 1982. The Commission cannot know now what may happen in the future that could lead to litigation or other trouble with permits, on difficult, multi-hazard blufftop sites. The applicant may come back asking for additional protective devices. Everything substantive should remain in the file.

My dad wrote a memoir and guidebook about Gualala and the building of this house that is 20 years out of print, but I still get requests for copies every month. I worked on the original Gualala book, plus on an unpublished update in the late 1980s. My submissions are accurate.

What if the Rileys or their successors sued the Commission years hence. Would the hazard conditions protect the Commission? Have they been tested in court? My submissions with detailed discussions of possible problems could protect the Commission - this was my intent, because if the Commission had, say, required them to do a one story house instead of a three-story one, the Rileys might have sued. With my submissions in the record, the Commission could show they had aired the possibilities publicly. Without those submissions, the state is in a worse position.

Yet, I am in a far worse position, because if damage to my house occurs from future slides caused by cutting away the old RR grade to build the Riley house, there is now nothing in the file to show that I had raised this possibility of nuisance and provided information which I intended as evidence. It cost me about \$20,000 to establish this public record to protect my home and my family. The stress to my family is particularly great because the ashes of my parents are scattered on the slope that is being cut away from below by the current Riley grading. We would not have mentioned such a private matter had attorney Alan Block not brought up a similar situation last month in Redondo Beach relating to the Bonham family.

The Commission should restore the public record in the Riley file or give me written instructions on how to resubmit the materials, most of which were detailed responses to staff reports. Restoring materials is better, because they will show the original date stamps, and because letters from neighbors opposed to the Riley project are also missing. Perhaps some Commissioners can help restore the record if they have date-stamped copies in their own files.

Discussion of enclosures: The photo enclosures speak for themselves for the most part. The site maps included in the 1997-98 staff reports were small, lacked readable numbers to enable Commissioners

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to assess the size of the house, and showed the Matheson house plan overlaid on the Hart Engineering Group design. The clearest site plan from the 1998 staff report is enclosed, with the Matheson house design (minus deck) filled in with blue. The approximate 2001 site of that house plan is shown in green.

At the August, 1998, Commission hearing, applicants' agent Ralph Matheson presented a drawing of an oblique aerial view of the neighborhood houses and the proposed Riley house that was inaccurate and misleading; he presented it with a letter included in the staff report [enclosed]. He also showed a large, simplified drawing of the same false size relationship while speaking to the Commission. Since Matheson is a building designer familiar with the neighborhood, he had the ability to do an accurate drawing, so this was false information knowingly presented by applicants' agent.

Matheson's drawing represented the upslope homes as being far above the proposed Riley house, with a concave slope between them and the Riley lot. It left out important features at each end of the Riley lot, the access/drainage easement road and Robinson Gulch. The Riley house appeared small in comparison with the existing homes, most of which are pre-Commission.

The enclosed oblique aerial photo, one of a series which I could submit, shows the true relationship of the properties, with an overlay showing the approximate positions of the house; the position approved by the Commission in 1998 in blue and the approximate current position in green. The slope is convex, the upper houses are smaller than the proposed Riley house, which blueprints on file in the Fort Bragg office of Planning and Building show will be about 70 feet long, 44 feet deep, about 35 feet high from the ocean side. That will bring it above the main floor level of the upslope houses.

In the accompanying letter, Matheson makes many false assertions which I can refute. This is but one example: On page 1 Matheson states "This property is **not** situated on a cliff over the ocean but on a terrace with the ocean waves hitting on sandstone rocks which are downward and some distance from the building site" The two large enclosed photos show that this contention is false. Matheson designed both my house and the Van de Water house. The enclosed large photo from Robinson Point, and the last photo on the last page are shot from the Van de Water property with their permission. Thus Matheson knew the topography including the undercut northwest face of the Riley lot; therefore that statement was knowingly false. The ocean waves wash clear up to the vegetated edge of the Riley lot when they exceed 10 feet at the Point Arena buoy; I have submitted numerous photos showing that phenomenon and can submit many more. The photo on the last page looking northwest along the public beach also shows the cliff over the ocean with the Riley grading visible through the pink overlay of the house position.

The enclosed views of the house site looking southeast from Robinson Point also show that the house will intrude on the viewshed of the popular Gualala Point Regional Park, and be visible from the inns along the riverbank and Highway 1. The view from the park near Highway 1, looking down the river to Robinson Landing and the series of headlands beyond, is the classic view of Gualala seen in every local art show. Other houses are present, but they are not out on a headland as is the Riley house site.

Two pages show the new house position stakes, one page of photos taken on September 23, 2000 and first submitted to the Commission on December 15, 2000, and one of photos of the stakes placed on August 17, 2001. These are rough stakes and final stakes for the same project. They also show that the building corner will be visible from the most popular part of Gualala Point Regional Park, visible on the horizon, the trail to the beach and Whale Watch Point where memorial benches are placed.


Last page of photos enclosed shows site disturbance as well as distant views. Moving the house footprint to the southeast, as was done in 2000, brings it more into the public view. It will be visible from the entire length of the public beach, all of which is in Sonoma County. On Sunday, September 2, 2001, I observed these public uses of the beach: boating to it on the lagoon in kayaks and inflatables, sailing past it on the ocean, fishing in the ocean and the lagoon, playing ball games, jogging, building driftwood structures, picnicking, photography, videography, wading, walking along the beach toward Robinson Landing, walking dogs, bird watching and kite skimming. Six to eight people, some with dogs, walked on Robinson Landing during a one-hour period, in spite of recently-placed no trespassing signs.

Sincerely,



Julie Verran

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 P.O. BOX 527 URBANA, ILLINOIS
 (708) 298-3712

A-1-99-046 MEN RILEY House Site

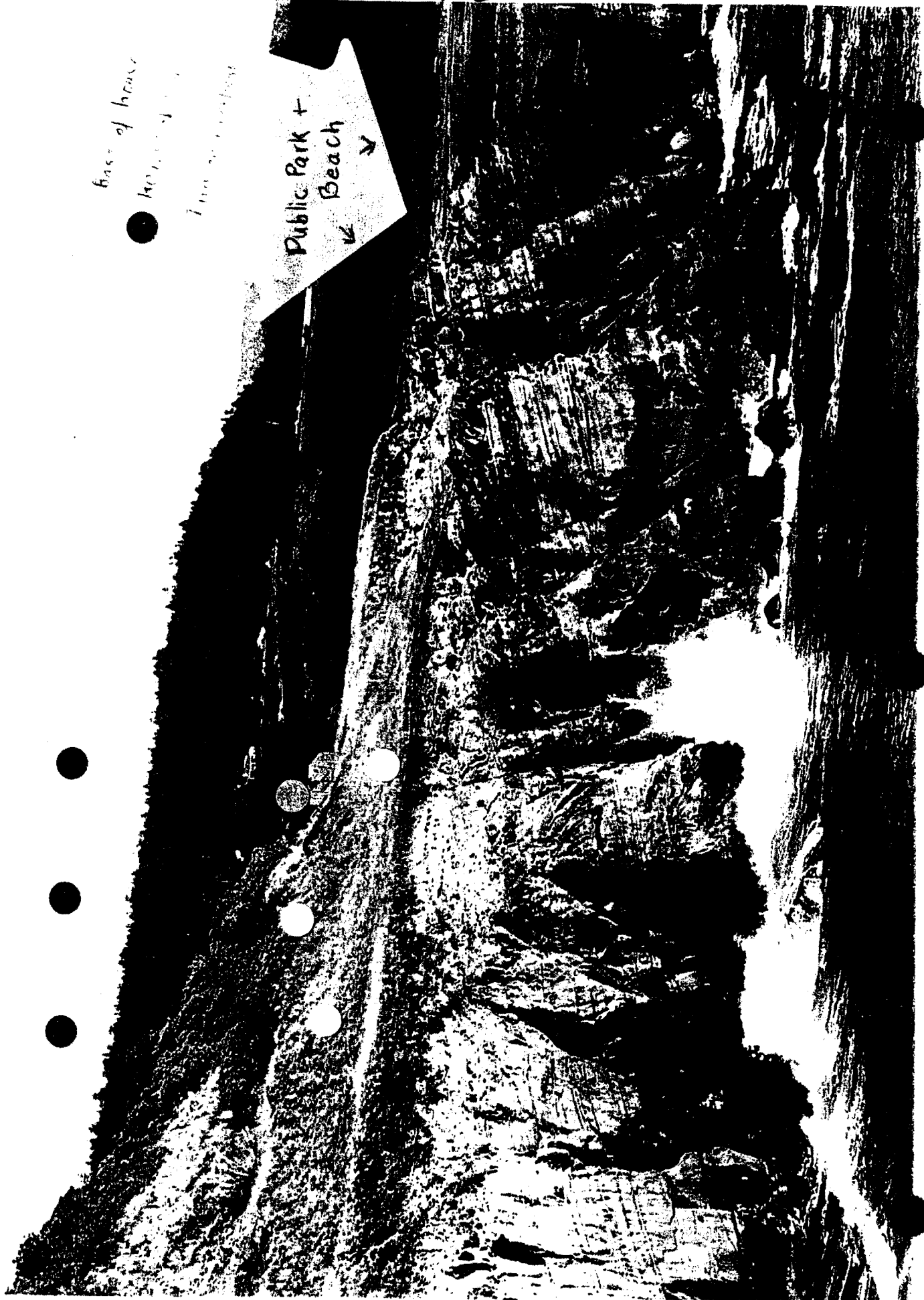


Photo by J. Veran-4101
Submitted with color-8101

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A-1-97-046-MEN Riley House site

Photo by J. Verran 9/60
Submitted with added notes 3/71



VERRAN HL E

Sub by J. Verran
12/15/00, A-1-MEN-97-01

STILLMAN HOUSE

Photos 9/23/00, JV

Survey stake: "BLIND
CORNER" at Top of
historic RIL bank



Beach + Trees are
in most used part

Gualala Pt. Park
House would be
largely visible from
main park trail.
Park is in Sonoma Co.



View of Robinson
Landing from
Gualala Blufftop
Trail, funded by
Coastal Conservancy.
Riley House would
be visible to L of trees
This is the ONLY
public coastal access
in Southern S.M. of



8/13

A-1-97-46 MEN

Submitted by J. Verran, August 29, 2001

Right. Afternoon August 17, 2001, Ralph Matheson, L, and crew set stakes for Riley house.

Center. Photo 8/18/01. Stakes set 8/17/01. Grading for drive at R. Compare with photos submitted for 12/15/00 hearing showing stake marked 'Bldg corner' set by engineer David Paoli in 9/00. New stake is in same position, showing that Paoli stakes were set for this project. At R, 9/00 stake lies next to 8/01 stake. Public park and beach in viewshed, upper R.

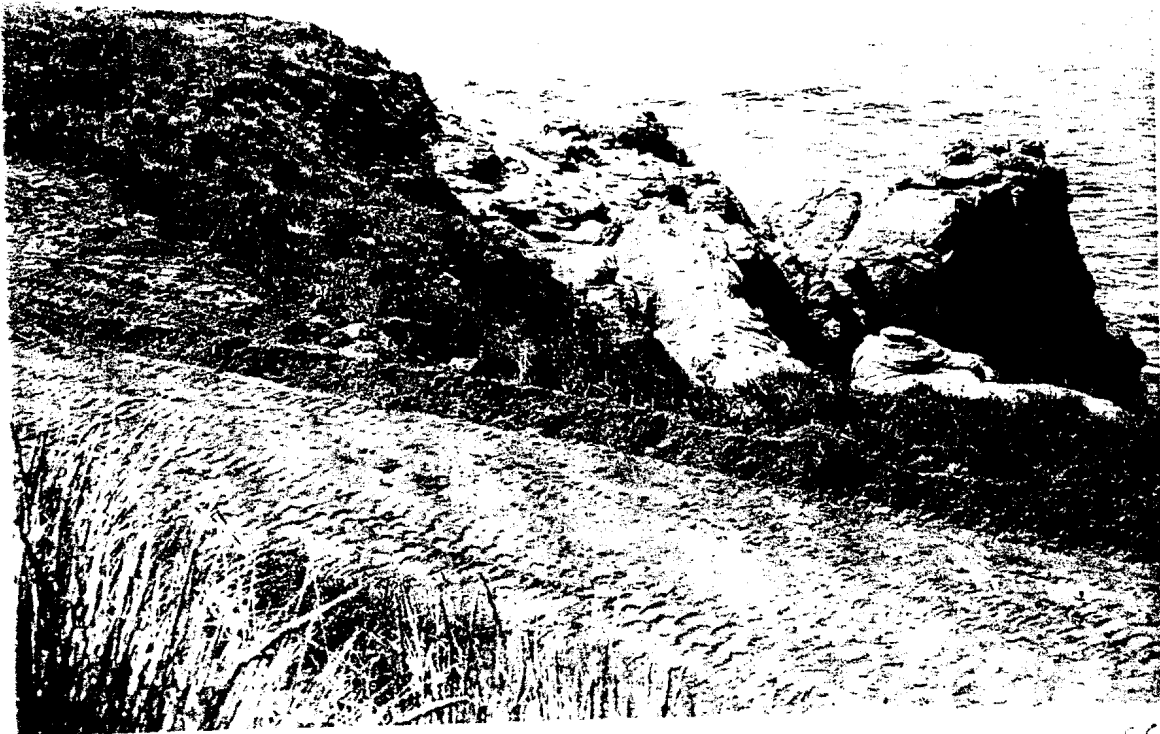


Lower. 8/18/01. Shows more stakes set on 8/17/01. Paoli 9/00 stakes lying next to new stakes, showing this is the same project. Typical public use, a family looks at traditional ledge fishing access.



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Photos taken 9-01-01, show site grading



Access road is only 5' or 6' from drop-off



A-1-97-46 MEN,

otos by J. Verran sh. w site grading



7-01-01, Shows
about 1/3 of
length of site
disturbance

9-03-01 shows
size of house
layered over
graded site,
view from Park



9-03-01 site at
L. town C. Park
and Highway 1
at R + Beach



EXHIBIT NO.	39
APPLICATION NO.	A-1-MEN-97-46
Letter From	Agent
Page 1 of 4	
California Coastal Commission	

Post Office Box 321
Gualala, CA 95445
Phone/Fax 707 884-3712
matheson@mcn.org

April 29, 1998

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

RECEIVED
MAY 01 1998

RE: David & Kathryn Riley, Gualala, CA
Mendocino County Appeal No. A-1-MEN-97-46

CALIFORNIA
COASTAL COMMISSION

Dear Ms Ginsberg, Staff and Commissioners:

After having worked with the Commission various times since 1972 I am not totally unfamiliar with how it works and I am shocked that this project, first brought before the Commission in August of last year -- almost a year ago -- has not be approved in a timely manner. These needless delays have caused a great deal of expense and emotions for my clients and I feel compelled to state why **this project should be approved without further delay.**

- The Staff has consistently recommended approval.
- This project will not have an adverse affect on the Coastal Resources, The Coastal Act, or Federal Coast Management Act of 1972.
- It complies with the intentions of building a single family dwelling on this site which is residential, single-family zoned.
- This property has been studied by five state licensed Geologists and Geological Engineers and one state licensed Structural Engineer -- all of whom find the site to be sound and buildable and see no problems with the proposed home.
- The subject terrace has a total of 5 residential lots -- and 3 of those lots have existing homes. And, the Riley home is smaller than some of them.
- This property is not situated on a cliff over the ocean, but on a terrace with the ocean waves hitting on sandstone rocks which are downward and some distance from the actual building site.
- This site is **not** listed as in a highly scenic area according to the County of Mendocino Planning.
- This parcel is **not** highly visible from any public land as only a small portion of the house will be seen and no precedent will be set upon its approval.
- The "sea caves" are not directly under the building site, but in the sandstone cliffs that ramble up to the terrace level. And, some of the "sea caves" seen in photos are not, in fact, sea caves but fractures from the wave action over hundreds or thousands of years according a state-licensed geologist.
- Geologist, Erik Olsberg has stated repeatedly that in his professional, experienced opinion that he sees no problem with the present location of the driveway. He has also stated that it would be far less impact to leave the driveway approach as designed rather than create further disturbance in that area.

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with a design that meets the all criteria in an approved, developed residential area for the county of Mendocino and the State of California.

My clients have been absolutely direct and honest, as have geologist Mr. Olsborg, engineer Mr. Menning, and as designer, myself, with all our dealings with the Staff and Commission. Each of us have dealt with facts and professional opinions based on years of experience, not unfounded statements, half-truths and personal opinions. It is important to the viability of the Commission that they not be misled by the appellant's desire to not see any change in her neighborhood and to keep the "free front yard" which she seems to feel is her property.

To date, the actions of the Commission regarding this project is exactly what the people who opposed Proposition 20 were afraid of -- that one neighbor, for personal reasons, could keep another from building their home. Don't let that happen!!!


As I understand it, the Staff exists to do all the legwork, research and to make an experienced, knowledgeable recommendation to the Commission based on the facts. The Staff has consistently recommended approval of this project after thorough study of all matters relating to the project.

Sincerely Yours,



Ralph J. Matheson

cc: David & Kathryn Riley
Olsborg
Menning
Heckert
State Assemblyman
State Senators

EXHIBIT NO.	39
APPLICATION NO.	A-1-MEN-97-46
Letter From Agent	
Page 3 of 4	
 California Coastal Commission	

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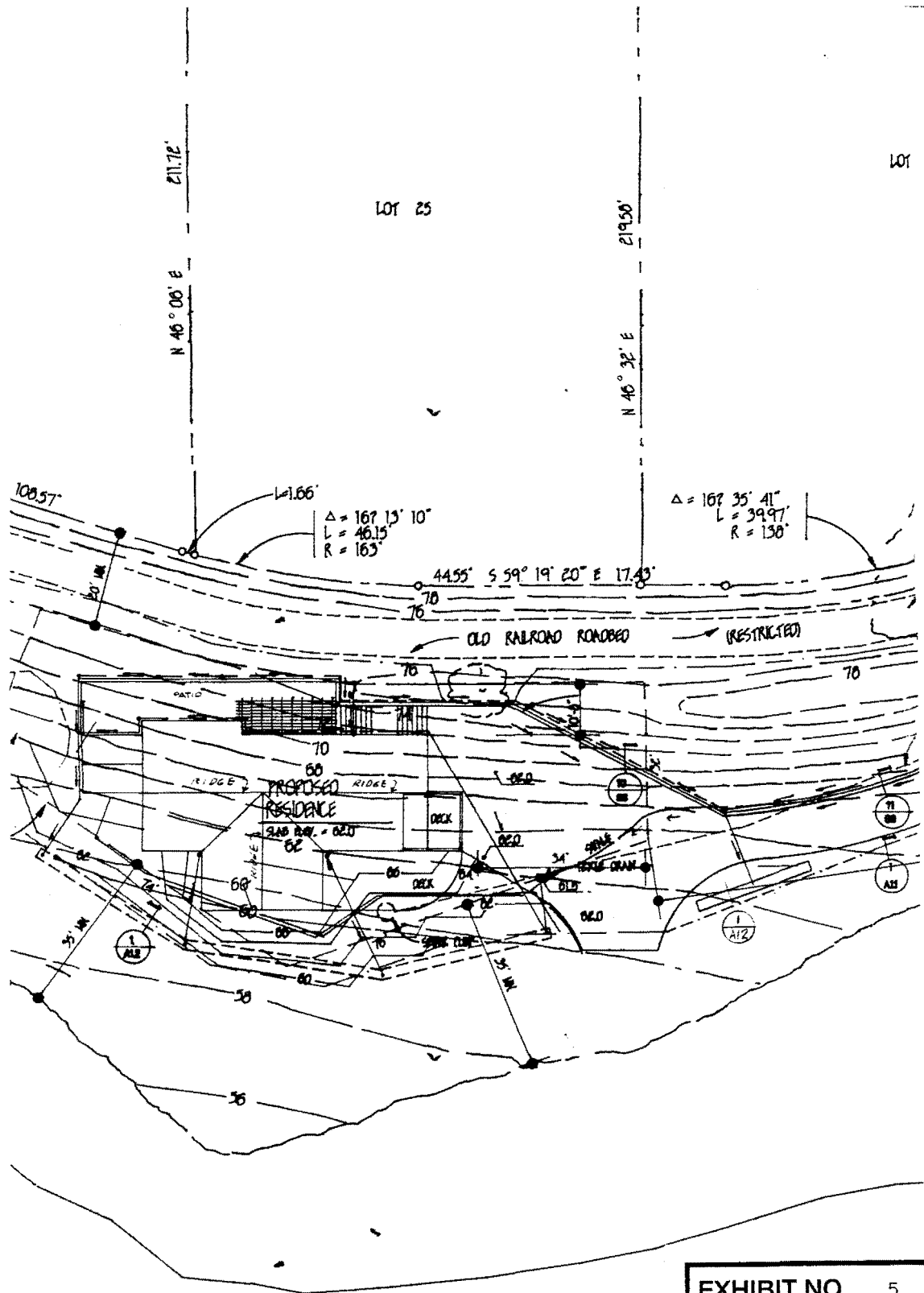


EXHIBIT NO.	5
APPLICATION NO.	R-A-1-MEN-97-046
PORTION, SITE PLAN,	CONDITIONALLY
APPROVED BY COMM.	ON 8/12/98

C E A N



NORTH

EXHIBIT NO. 7

APPLICATION NO.
R-A-1-MEN-97-046

(8 pages)

GENERAL
CORRESPONDENCE

Re: A-1-97-46-MEN Due diligence

J. Verran
38864 Sedalia Drive
P.O. Box 382
Gualala, CA 95445
September 23, 2001

Mr. Robert Merrill
California Coastal Commission, North Coast
P.O. Box 4908, Eureka, CA 95502-4908

Dear Mr. Merrill,

This is the letter you requested by phone on 9/21/01, regarding my due diligence in appeals of construction on Robinson Landing, Gualala, primarily the Riley project, A-1-97-46 MEN. This is a condensed list. I believe I have acted with due diligence in this matter over the past ten years, within the limits imposed by employment, financial and health considerations. My submissions and testimony also advanced the discourse at each administrative level. I have plenty of backup material, such as phone bills, receipts and photographs which could be used to fine tune this account. At your request, I listed my submissions that I found were missing from the Commission's Riley file in a separate letter, enclosed.

Discussion: A willing seller, the old Empire Redwood Co., was unable to sell to a public agency a property which has high value as a wildlife corridor and historic site, as well as recreational, scenic and strategic importance: the headland at the north side of the mouth of the Gualala River historically known as Robinson Landing. The headland fell into private hands around 1990. The view down the Gualala River towards Robinson Landing is often used in business promotions and by artists as a signature for this area, which depends economically on visitors.

The Rileys want to build a very large house on a narrow, fragile bluff top lot. Rather than scale down their project in response to increasing site constraints caused by erosion, they chose in September, 2001, to tear down a ca. 1862 railroad embankment and pull out the rails, substantially alter a coastal land form, and create a major intrusion into a classic viewshed to and along the coast. The state should not allow that. The ideal outcome would be public acquisition of both the Heckert and Riley lots and restoration of the trail link to Gualala Point Regional Park. The next best would be a project of one story with dedicated public access along the bluff edge.

Background: My parents, Roger and Shirley Verran, bought this lot in 1969 at a price that was more than four times the going price for lots of ca. 12,000 square feet located on the inland side of Highway 1, because the Empire Redwood Railroad Easement which formed the seaward boundary was slated to become part of a park and our lot was considered ocean-front with beach access. They built this house in 1972-73, pre-Commission, but following local community standards by blending with its natural surroundings. The two-story Verran house is about 1,900 square feet and has a 400-sf detached garage.

My father wrote a book about building the house and retiring to Gualala. I helped with the

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research for the guidebook section and photography. The book was published in 1978, and though it is out of print, people still ask me for copies about twice a month.

Early in 1996, my father died. Family members scattered his ashes near those of my mother on the seaward slope below the house, which I inherited.

Due diligence: In 199 , an access road was built from Sedalia Drive to Robinson Landing down a county drainage easement, and continued NW below the RR bank. I complained to the real estate agent involved, Jerry Tinkess. I wrote a letter to the County of Mendocino objecting to the road as likely to speed up drainage to the fragile bluff top and increase bluff top erosion. The opening of the road did change the vegetation leaving fewer native bushes and more introduced weeds. I believe it also increased the bluff retreat near the base of the access road.

I was familiar with such problems from my volunteer work since 1979 toward expanding Sinkyone Wilderness State Park. In 1991 I was serving on the planning committee which later led to the creation of the Sinkyone Intertribal Wilderness Park. The Coastal Conservancy, which convened that committee, set up many meetings and field trips with experts who discussed issues such as coastal erosion and siting of the Lost Coast Trail. I also served on the Sierra Club California State Park Committee at that time, and over the years held a number of Sierra Club offices and had served on the boards of Californians Organized to Acquire State Tidelands (COAAST) and the Environmental Protection Information Center (EPIC). I had also volunteered with other groups including Friends of the Coast and Friends of Schooner Gulch. Thus I had more than the usual level of knowledge of coastal planning matters and coastal erosion.

The parcel now owned by the Rileys was created by certificate of compliance filed by Dorothy Bolton in 1990. In 1994, the Rileys applied for a county permit for a large log home designed by Hart Engineering Group based in Truckee. I objected to the project at the Coastal Development Permit hearing in Fort Bragg. Other neighbors wrote letters objecting. The permit was approved, and on the same day CDPs were approved for the contiguous Schmitt parcel on Robinson Landing and the Hathcoat lot which the access road to Robinson Landing crosses by easement.

During the summer of 1994 I met on separate occasions with both the Rileys and their architect on the property and expressed my concerns. Neither the Rileys nor the Schmitts built, for reasons unrelated to my objections. The Hathcoats did build their house and a detached garage in 1994. Their house is located on the upper terrace in a row of pre-Commission houses including mine.

In 1994 I started working for the weekly Gualala newspaper, the Independent Coast Observer, as a reporter and photographer covering planning, environment and other government matters. This also gave me an opportunity to develop more than ordinary knowledge of such issues. In 1995 I helped cover the Coral Court landslide which occurred just three parcels up the coast from the Riley lot. This dramatic slide made the front pages of the Santa Rosa Press Democrat and the San Francisco Chronicle. It took a garage with a large motor home inside onto the beach, where they broke up and washed away. This event had a strong effect on my thinking about coastal erosion. The community talks of it still. The county found that 14 properties were damaged.

2 of 8

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In late 1996, the Rileys sought a renewal of the 1994 county permit, but with a new house design by Ralph Matheson, who designed the Verran house. Again I went to Fort Bragg to object. I was present during the Feb., 1997, CDP hearing, but was not recognized to speak, so Ray Hall read my letter of opposition into the record before the end of the meeting.

I was considering appealing the approval of the renewed CDP when my neighbor to the SE, Ben Stillman, called and asked me to check on a landslide seaward of his house. This was the first time I learned that at sometime in January, 1997, a slide occurred affecting the Stillman, Riley and Verran properties. It originated from slope failure along a 1960s fence line above the RR grade. The slide has not moved much since then, but it has not revegetated much either. I was alarmed because the new slide appeared to be separated only by the ca. 1862 RR cut bank from a "cusp" of erosion at the ocean bluff edge. The Riley driveway would have to cross that alignment. I appealed the Riley permit renewal to the Mendocino County Board of Supervisors.

The Stillmans hired Licensed Surveyor Richard Seale from Fort Bragg to survey their property so Ben Stillman, an engineer, could determine how large the slide was and do technical drawings of it. He decided not to do the drawings, but he said they lost about 24 feet of their lot to the slide. I hired Seale to survey my lot and accompanied him when he located the iron bars and wooden stakes, which he flagged with blue and white tape, some of which is still there. Seale also drew a signed map for me on a copy of the assessor's parcel map, showing the new slide and an old one that affected my property somewhat NW of the new one. The older slide is partly revegetated. I submitted that map to both BOS and Coastal Commission.

At that time I was volunteering on the board of the Redwood Coast Land Conservancy. Their major project was the Gualala Bluff Trail. The landowners who had made offers to dedicate were fighting RCLC's efforts to pick up the OTDs. The landowners said a trail was inappropriate because of bluff instability along the old RR grade. I resigned from the RCLC board to pursue the Riley appeals, because my argument was also based on bluff instability along the RR grade, and I felt this could embarrass RCLC. My opinion is that Robinson Landing is safe for trails but not for roads and houses.

While preparing for the BOS appeal hearing, I brought the Riley CDP before the Gualala Municipal Advisory Council as a non-agenda item. The GMAC did not then make written recommendations to the county on residential permits, only commercial ones. Then as now, they did review planning matters on an informal basis by request.

The advice from GMAC members has proved good over time. They said there were problems with the narrow bluff top access for the drive; with the drainage, since the house was proposed to be between two county drainage easements from Sedalia Drive; and with the size of the house on the long, narrow lot. Chair Jim Lotter used a defining image during a break in the BOS hearing (GMAC members were there about the Gualala Bluff Trail). Lotter said the house would be like a layer cake (devils food?) on a small, wet plate, and could "pop right off."

At the BOS hearing in March, 1997, three of the five Supervisors voted with me: Peterson, Shoemaker and Campbell. As a landscape architect, Shoemaker was particularly concerned about drainage. They were also concerned about screening the house from public viewsheds.

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They continued the hearing and asked the Rileys' agent, Ralph Matheson, to come back with drainage and landscaping plans.

I purchased a set of four aerial photos from different years showing the area at the mouth of the Gualala River. A local expert advised me how to use these to estimate bluff retreat. I presented these photos and my informal analysis to both the BOS and the Commission.

At the June, 1997, BOS hearing the Rileys pleaded for their "dream house." They refused to submit the drainage and landscape plans requested by the county. Attorney Jared Carter represented them. He argued that my parents profited from knowledge that a house would be built below theirs by getting their lot for a lower price. I argued that the Robinson Landing portion of the Empire Redwood EIR easement (which extended to the mean high tide line) was not subdivided when my parents bought their lot, but was proposed for park land and coastal access, and that the Riley lot was created ca. 1990 by certificate of compliance. Supervisors asked Ray Hall which was correct; he said he didn't know. By raising the certificate of compliance issue, on which I was briefed by my real estate expert, Karen Peterson Scott, I advanced the discourse.

Ralph Matheson also argued for the Rileys that there was no public viewshed question because the view of the Riley lot and proposed house from the Gualala Point Regional Park Visitor Center is a distant one. In fact, the view of the Riley lot from the trail that leads from the visitor center to the beach and to Whale Watch Point is much closer and clearer, and the view from the park ocean beach which is contiguous with Robinson Landing, is closer yet, as I have shown with several photos submitted to the Commission.

The BOS approved the Riley permit renewal 5-0, and I appealed the decision to the Coastal Commission. Then I consulted several people knowledgeable about environmental litigation. They advised me to hire a geologist and contact Mark Massara. Mark's first advice was to inspect the Coastal Commission's Riley file. Staffer Jo Ginsberg said that was not possible.

Late June is in the geological field season so I was lucky to be able to hire Dr. Eugene Kojan, who is licensed in both California and Oregon and is familiar with the erosive geology of the North Coast. After a site inspection Dr. Kojan ordered a series of aerial photographs that go back to 1942, longer than the set I already had. He found a flat rock on the seaward slope of my lot which is visible in all vertical aerial photos to use as a location point. He asked me to have a survey done of the bluff edge which Seale did. I became familiar with points, locations and lines of sight from attending both Seale surveys. I had learned beginning surveying as a student of archaeology.

Using the best focused area of the aerial photos Dr. Kojan's analysis extended only to the triangular point in front of my house, and south to the mouth of the river. None of the other geotechnical reports for Robinson Landing included a locatable point or a current survey of the bluff edge.

Dr. Kojan planned to speak at the Coastal Commission Substantial Issue hearing but it was set for August, 1997, when he could not be there. He wrote to the Commission and asked for a later hearing, which was denied. Because he does not type, Dr. Kojan hand wrote his report and faxed

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it to me to type and fax back for revisions, of which there were many.

At the hearing in Los Angeles I gained Substantial Issue on the basis of public viewshed and geological instability which makes the Riley project a threat to my home. Staff had recommended Substantial Issue on public viewshed only. I not only exercised due diligence but also advanced the discourse. The Commission asked the Rileys to hire a geologist who would be neutral and could elucidate the disagreements between Dr. Kojan and the Rileys' geologist, Eric Olsborg. Dr. J. David Rogers was selected with the agreement of Dr. Kojan, who could not be present at a site visit to both Robinson Landing lots on October 7, 1997.

I took off work to attend that meeting. Besides Dr. Rogers, Eric Olsborg and Ralph Matheson attended for the Rileys. Jim Glomb as the Stillmans' geologist, and a crew from the firm that did the geotechnical report for the Schmitt lot. That was purchased ca. 1997 by a profit-sharing trust set up by a Santa Rosa law firm and also known as the Heckert Trust. Gerald Heckert's real estate agent, Jerry Tinkess, was also present. The meeting was extremely interesting and educational and was videotaped by the Heckert crew. I observed and asked questions of the geologists.

The Rogers report came out in December, 1997. For the De Novo hearing I prepared a compare-and-contrast analysis of that report, Kojan's and Olsborg's. I suggested that the Commission should adopt as conditions those mitigations about which any two of the experts agreed. This submission went beyond due diligence and also advanced the discourse.

From studying these geotechnical reports, and visiting the site with several geologists, and from my own observations, I became more convinced that the Riley project threatened the upslope houses. I consulted a Ukiah attorney, Nancy Biggins, who was recommended by my real estate expert. Ms. Biggins went over my analysis of the three geotechnical reports and helped me draft a letter to the Commission in which I claimed dangerous nuisance from the Riley project and stated that they should not be allowed to remove the lateral support of my property.

The De Novo hearing was held in Monterey in March, 1998. There I made a slide presentation showing the site. Mark Massara spoke on behalf of the Sierra Club. The Commission continued the hearing to get more information from applicants.

A few weeks later a Gualala person to whom applicants and their agents bragged in a visitor serving facility told me that they were saying they were going to San Francisco to turn in a package of material that would not only defeat me, but destroy my reputation. Hearing that, I wrote to the Commission complaining about some of the attempted intimidation from Riley, Heckert and their agents. This April, 1998, letter was not in response to their April, 1998, letters, but to a warning about them; I did not see copies of the letters until the July, 1998, staff report came out.

During the intervals between hearings I was also researching the Gualala infrastructure and other issues related to the Riley project. I made a number of visits to county offices in search of relevant information. I went to Planning and Building, Public Works, the county map room, the Assessor's Office and the County Clerk-Recorder's office. I was also doing news reporting on

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related permit matters, and interviewing people with knowledge of planning and local history. Some of the documents I submitted to the Commission.

I researched the history of Robinson Landing and examined the historic photograph collections at the Mendocino County Historical Society in Ukiah and the Mendocino County Museum in Willits and located a number of photos showing Robinson Landing with its timber chutes, and the Gualala RR, which was said to be the only wide-gage timber RR in the U.S.A. Some I submitted to the Commission.

I submitted to the Commission information about two houses that were damaged by bluff retreat, one on Coral Court, and the other in McKinleyville but owned by a Gualala resident. In the second instance, hazard conditions placed by the Commission when it approved the original subdivision did not carry forward to the owner. Nancy Biggins studied the hazard conditions proposed for the Riley project and told me they would protect no-one. Those two instances of damage were only examples. Most people who live here could tell about other homes damaged by bluff retreat or landslides.

For the August 12, 1998, hearing in Huntington Beach, attorney Nancy Biggins advised me to prepare a detailed response to the staff report with exhibits. This was arduous but I was able to get it to staff at the Commission meeting the then-required 24 hours before the hearing. I also prepared a brief slide show, mostly made up of vertical aerial photos and maps. Mark Massara, for the Sierra Club, spoke eloquently about the dangerous nuisance posed by the Riley project. The Commission approved the permit with conditions which did not seem protective enough of either natural resources or upslope houses, so I wrote the Commission a letter after the hearing (and after other hearings, too.)

I was considering seeking a revocation of the permit, so I needed to look at the Commission's Riley file. Since several requests to view it were denied by coastal planning staff, I decided to do what works at the county level; view the file under supervision of clerical staff if a planner is not available. I also wanted to turn in to Ms. Ginsberg a batch of material gleaned from Mendocino County files about the effects of the Coral Court landslides, because she sent me a letter stating that the Commission had no record of them. I visited the Commission office in San Francisco on October 8, 1998. I asked to see the Riley file, and after about two hours, I was allowed to see it for about an hour and a half. This was due diligence.

I was looking for blueprints, because there were so many inconsistencies about the size and shape of the Riley lot and the proposed house in the staff reports. There were no blueprints of the Matheson design in the file, only a much reduced copy of one with the outline of the house drawn over in black marker so the dimensions were not visible. Since it was late afternoon when I started there was no time to look for my submissions, so I did not notice if any were missing.

Because I disagreed with the findings in the July, 1998, staff report, I attended the findings hearing in October, 1998, in Oceanside to seek revisions. I had recruited experts to testify at the findings hearing after Steve Scholl told me it would be in San Francisco in December, but because the findings were brought on in October in Oceanside, they could not attend.

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This time my response to the staff report was a short list of points, turned in 24 hours before the hearing. I showed the Commission a few slides of the narrow point at the bluff edge that the access road would have to pass. That road now exists and indeed the setback is less than six feet as I told the Commission then. Opinion: If taking leave without pay from my job and driving from Gualala nearly to San Diego to contest findings is not due diligence, what is?

At that point, I thought the Commission sent the findings back to staff for revision, and I kept watching the Agenda for the revised findings to come back. I did not learn until September, 2000, when you provided me with a copy of the Adopted Findings, that they were issued only a few days after the Oceanside hearing. Opinion: Commissioners should instruct staff to provide copies of final Adopted or Revised Findings to appellants as a routine matter.

I started working on revocation. Steve Scholl explained the criteria. I sent in the first part of a revocation request, the letter about dimensions based on my October 8 search of the file. Mr. Scholl phoned and told me that it was not appropriate to send in a revocation request until the permit was issued, and applicants first had to comply with the permit conditions. Therefore I sent no further revocation materials until after August 6, 2001, when the permit was issued.

Later in, 1998, I looked up the Matheson Riley house blueprint at the Fort Bragg county planning office and wrote down the house dimensions, then hired Karen Scott to check the lot dimensions with me. We used a 100-foot tape. Opinion: I have a 30-year personal prescriptive right to cross Robinson Landing, and I regard these measurements as a public safety issue. Ms. Scott wrote a letter to the Commission which I included with other material such as a color-coded zoning map in a mailing to all Commissioners.

While waiting for Riley hearings to come on after turning in documents, I found that there were many related matters before the Commission, such as sea caves in Solana Beach, and other agenda items that were newsworthy, such as LFAs. Few reporters cover the Coastal Commission, even when it meets in their own cities. I started writing Coastal Commission articles for the newspaper I work for and by now these amount to a substantial body of work of which I am proud. Opinion: these articles give a sympathetic portrayal of the Commission and its work. I also noted that North Coast appeals were rarely supported by live testimony, so I started doing that for the Sierra Club and Friends of Schooner Gulch or as an individual, as needed.

In 1999, the Hathcoat's sought a county permit for a second detached garage below their house near where the RR grade crosses Robinson Landing. I opposed this on grounds of slope instability, drainage changes which could lead to increased bluff retreat at the "cusp," and visibility from the beach. The county granted the permit without requiring a geotechnical report and without requiring the building to be painted a dark, non-reflective color to lessen its impact on the park viewshed. I appealed it to the Coastal Commission and was denied substantial issue. The garage was built; it is intrusively visible from much of the park and beach. The "cusp" started shedding rocks in a way I never saw before. That may follow the upslope construction without being caused by it.

In 2000, I opposed the extension of the Riley permit and asked for a de novo hearing. During the

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extension process I visited the Eureka office to show you photographs and look through the Riley file. I found most of my submissions missing. One set of photos showed rocks shed from the "cusp." You said there needed to be more context and scale and advised me to re-shoot, which I did, although to do so I had to go out on a pillar underlain by an arch which I feel is dangerously unstable. This is another example of due diligence. These photos of rock fall I submitted to the Commission at the December, 15, 2000, hearing. Another set of photos showed stakes placed on the Riley lot ca. September 20, 2000, one of which was marked "bldg. corner." I told you that these stakes did not match the house position approved by the Commission in 1998, and therefore it was a changed circumstance.

I asked for a staff site visit, which you and staff geologist Mark Johnsson did on October 20, 2000. I arranged for you to visit several sites, but we were limited to two because of rain and your schedule constraints. I cooperated with Johnsson's request to send him Dr. Kojan's large overlaid aerial photo and other materials so he could use them in his presentation to the Commission.

Although attorney Thomas Lippe argued on my behalf at the December 15, 2000, extension hearing that changing the position of the house was a sufficient changed circumstance to call for a de novo hearing, ~~but in December~~ the Commission approved the permit extension.

During 2001 I kept taking pictures of dead and dying trees, increased rockfall, and new blow-holes, which are hard to photograph because the sea behind them tends to be white with foam when they are blowing. These are all changed circumstances that affect the Riley permit. I checked the Riley file in Fort Bragg from time to time, expecting another extension ^{process} hearing, but instead, the permit was issued on August 6. For my due diligence after that date, see my September, 2001, letter and visuals.

Yours sincerely,

Julie Verran
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