

## CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

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## RECORD PACKET COPY

Filed: January 6, 1999  
Staff: Steve Scholl  
Staff Report: June 1, 2001  
Hearing Date: June 14, 2001  
Commission Action:

### STAFF REPORT: APPEAL

LOCAL GOVERNMENT: Mendocino County

DECISION: Approval with Conditions

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

APPLICANT: ROBERT AND LUANNE SMILEY

AGENT: Stephen Heckeroth

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

PROJECT DESCRIPTION: 1) Single-family residence with two levels (2,562-square foot living level and 2,476-square foot basement level with lap pool, storage, and water cisterns), septic tank, leachfields, landscaping, and minor driveway improvement;  
2) Guest cabin (638 square feet) with septic tank, leachfields, driveway, and tree removal;  
3) Miscellaneous development including a diesel generator, wind-powered generator, water tanks above and below ground, propane tank, fuel tank, well and wellhouse, shed, wooden platforms, and garden area.  
4) Temporary use (not to exceed two years, unless extended by the Commission) of a recreational vehicle as a residence during construction of the main residence or the guest cabin.

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

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

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SUMMARY OF STAFF RECOMMENDATION: Approval with conditions

The staff recommends that the Commission approve the coastal development permit for the proposed project on the ground that the project, as redesigned by the applicant and as conditioned by the Commission, is consistent with the visual and scenic resource policies of the County's certified LCP.

Mendocino County approved with conditions a coastal permit for construction of a two-story, 3,050-square-foot residence with an attached 420-square-foot garage, greenhouse, lap pool, and driveway, plus installation of a septic system, propane tank, generator shed, and a temporary travel trailer. The appellants contend that the project is not consistent with the visual and scenic resource policies of the County's LCP. The Commission twice denied permit applications for the project on the ground that the project was inconsistent with the County's LCP. Following litigation concerning the Commission's denial of the first two applications for the project, the Smileys' project is being reconsidered pursuant to a stipulation between the Commission and the Smileys. The staff recommends that the Commission find that the project as now proposed is in compliance with the County's LCP.

The Motion to adopt the Staff Recommendation is found on Page 4.

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STAFF NOTES

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

On March 12, 1998 the Smileys filed a legal action to challenge the Commission's decision. The Smileys alleged six causes of action. The trial court dismissed five of the Smileys' six causes of action, leaving unresolved only the Smileys' petition for administrative mandamus that challenged the validity of the Commission's decision.

While this litigation was pending, the Smileys refiled their permit application with Mendocino County, making certain modifications in the siting and design of the structures. The County's Coastal Permit Administrator denied the project. The Smileys appealed this decision to the Board of Supervisors, which approved their permit application for the revised project with conditions. Project opponents again appealed the Board's decision to the Coastal Commission. The Commission accepted the appeal and conducted a de novo review of the Smileys' application.

The Commission denied the permit, finding on a variety of grounds that the revised project as proposed violated the visual resource policies in the County's local coastal program. Following the Commission's action on the revised permit application, the Smileys filed an amendment to their original complaint and petition challenging the Commission's denial of the second permit application. After a hearing, the Mendocino trial court found that the Commission's decision denied the Smileys a fair hearing and was not supported by substantial evidence, and remanded for further proceedings. The trial court later awarded the Smileys costs and attorney fees under the private attorney general statute, Code of Civil Procedure section 1021.5. The Commission filed a timely notice of appeal and a return to the writ indicating that the Commission had exercised its right of appeal. The Smileys filed a notice of appeal from the dismissal of their third, fourth and sixth causes of action.

The matter is currently on appeal. The parties have stipulated that if the Commission issues the permit after a public hearing, it will resolve all outstanding claims between the parties. Nothing in the stipulation limits the Commission's discretion in its review of the applicants' application.

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#### PART ONE-COMMISSION'S APPELLATE AUTHORITY

##### A. VALIDITY OF APPEAL

##### 1. Appeal Process.

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

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea or within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff, or those located in a sensitive coastal resource area. Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access and public recreation policies set forth in the Coastal Act.

The subject development is appealable to the Commission because the proposed house is located in a sensitive coastal resource area. Section 20.308.110(6) of the Mendocino County Zoning Code

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

2. Filing of Appeal.

The appellants (Mendocino Coastwatch and the Sierra Club Mendocino/Lake Group) submitted an appeal to the Commission office on December 28, 1998, although no appeal period for the project had yet been opened because the County's Notice of Final Action had not yet been received. The Notice of Final Action was received in the Commission office on January 5, 1999. Accordingly, the 10-working-day appeal period was established from the date of receipt of the notice on January 5, 1999, consistent with section 13110 of the Commission's regulations. The appeal was thus deemed filed on January 6, 1999, the first day of the 10-working-day appeal period.

In 1999, the Commission found that the appeal presented a substantial issue preliminary to its review of the second application submitted by the applicants. The applicants did not challenge the Commission's determination that the project presented a substantial issue. Therefore, this appeal is properly before the Commission.

PART TWO - DE NOVO ACTION ON APPEAL

1. Procedure.

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

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

A. MOTION:

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

B. STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a "Yes" vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

C. RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the certified County of Mendocino Local Coastal Program. Approval of the permit complies with the California Environmental Quality Act because feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse impacts of the development on the environment, and there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### Special Conditions

1. This permit authorizes the applicants to engage in only that development approved by this coastal development permit, in the manner described in the Commission's findings for approval of the project.
2. An amendment to this coastal permit shall be obtained prior to the placement of exterior lighting visible from Highway One with the naked eye or the erection of any additional structures on any portion of the site.
3. This permit does not authorize power poles, phone poles, etc. in the highly scenic area. However, this Special Condition does not preclude the applicants from applying to amend their permit to add poles to provide such service to the proposed structures in the event that such service becomes available outside the highly scenic area, e.g., along the common roadway which serves all properties in the subdivision in which the applicants' property is located. The intent of this provision is to allow the applicants to connect to the grid for purposes of feeding generated power back to the grid for other users. Any poles which would be placed on the property would be located outside the highly scenic area.

### III. Findings and Declarations.

The Commission hereby finds and declares as follows:

#### 1. Area and Site Description.

The site of the proposed development is located mid-way between Irish Beach and Elk above the area known as Bridgeport, in a very sparsely developed area of the coast. Existing land uses nearby include grazing and row crops on the narrow coastal shelf, and a few scattered dwellings. The steep ridges provide a dramatic backdrop to the coastline, rising to elevations of about 1,600 feet. The ridges have dense stands of timber in the gulches and on the upper slopes, but are otherwise covered with grasses that are green in the winter and spring and a golden color in the summer. It is one of the most spectacular, scenic coastal areas in Mendocino County.

The subject parcel, measuring 182 acres in size, comprises a ridge that runs generally from east to west, with a maximum elevation of about 1,400 feet. Approximately 130 acres of the subject parcel is located on the south side of the ridge, sloping from the crest down to about 500 feet in elevation, whereas the remaining approximately 50 acres are located on the north side of the ridge. The Mendocino County Local Coastal Program designates all portions of the parcel that are visible from Highway One as being within the Highly Scenic Area, where special design restrictions apply. Because of the orientation of the ridgeline crossing the subject property, most or all of the 130 acres located generally on the south slopes of the ridge, including the proposed

house site near the top of the ridge, are located within the viewshed of Highway One and within the Highly Scenic area.

The subject property is designated in the County's LUP as AG (Agriculture) and is split-zoned Agriculture/Timberland Production (AG/TP). The AG zoning allows one residential unit per sixty acres, while the TP zoning allows one unit per 160 acres. Both AG and TP zones allow a 28-foot-high building height limit from natural grade. (LCP requirements other than the 28-foot limit contained in the base zoning district that are applicable to the height of the structure are described below.) The subject parcel is approximately 182 acres in size, and thus is a legal, conforming lot. A single-family residence is allowable as a principally permitted structure within both the AG and TP districts.

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

## 2. Project Description.

The applicants propose to construct a single-family dwelling designed to generate electricity through use of solar panels integrated into the roof of the dwelling. The proposed placement of the dwelling on the site is determined by the solar design, in order to take advantage of maximum exposure to sun and to avoid shading by the forest canopy that exists on parts of the subject property. The project also includes construction of a guesthouse, which would not include solar collectors, temporary use of a recreational vehicle (RV) for living space while the main house and/or guesthouse are under construction, and accessory structures and facilities.

The applicants have amended the project description to modify the proposed project, in comparison with the projects previously considered by the Commission for the subject site. As currently proposed, the project includes the following elements:

- a. Main residence with two levels (see Exhibits 3, 5-8):
  - ◆ 2,562-square foot main level with living areas, including two bedrooms and garage;
  - ◆ 2,476-square foot basement level, partially below grade level, with lap pool, storage, and possible water cisterns.

The proposed house is designed to take advantage of solar energy. Because of that goal, the house design incorporates a steep roof facing south and southwest, to support solar

collectors (see schematic cross section, not to scale, of the house on Exhibit 10). Furthermore, the footprint of the house is linear, running generally east and west. The applicant states that the house will be 21 feet above grade at the highest point (Exhibit 7). Because of the sloping site, the maximum height of the structure will appear to be approximately 25-26 feet when viewed from the south or west. The applicant states that the roof height is based on the selected roof pitch, and the pitch of the roof is based on the need to achieve acceptable solar access. In fact, the applicants state that an even greater roof pitch, which would result in a higher roofline, would be preferable at the latitude of the project, in order to maximize solar energy.

The applicants propose to construct the house using materials that would be dark gray or brown earthtones with stone accents. The roof color would be forest green or dark brown.

The applicants state that at this time they do not intend to install powerlines to the property, either above or below ground. They state, however, that should a powerline be installed on or near the property by others in such a way that it becomes economically feasible for them to connect their dwelling to it, they may seek an amendment to this permit to do so. The purpose of doing so, they have stated, would be not to take advantage of PG&E's power supply, but rather the reverse: to sell power generated on the roof of their proposed house to PG&E whenever the amount they could generate would exceed their on-site needs.

- b. Development associated with the main residence, including septic tank, leachfield and replacement leachfield. Landscaping intended to partially screen the residence includes 13 Monterey Cypress trees (already planted; see Exhibit 3)), eight of which are greater than 10 feet in height. The applicants propose to trim the trees to form a hedge no more than 10 feet in height and to replace at the same location any trees that die or fall in a storm with additional cypress trees of 3-5 feet in height. The steep slope of the existing driveway will be adjusted by placement of a small amount of material excavated from the site of the main residence.
- c. Guest cabin with 638 square feet of space, plus development associated with the guest cabin, including, septic tank, leachfield and replacement leachfield, driveway, and removal of approximately 100 trees to protect the guesthouse against possible treefall (see Exhibit 4). The guest cabin would not incorporate solar collectors.
- d. Miscellaneous development, including a generator housed in a shed and used to pump water for irrigation of the landscaping described above, a wind-powered generator, water tanks above and below ground, propane tank, fuel tank, well and wellhouse, shed, wooden



platforms (one 16 by 16 feet, used for wood storage, and a second 12 by 20 feet, to be used as a deck at the RV parking site), and garden area.

- e. Temporary use of a recreational vehicle as a residence during construction of the main residence and/or the guest cabin.

Certain elements of the project have already been constructed. These include two 2500-gallon above-ground water tanks, propane tank, fuel tank, well and wellhouse, generator and shed, platform near RV parking area, and garden area, all of which are located outside the highly scenic area. Located within the highly scenic area are the existing driveway and platform used for wood storage. Information is not available regarding when these elements of the project were constructed. Consideration of this coastal permit application by the Commission is based solely upon the policies of the Mendocino Local Coastal Program. Action on this permit request does not constitute a waiver of any legal action with regard to unpermitted development nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit.

### 3. Visual Resource Policies of the Local Coastal Program.

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

<u>Land Use Plan</u>	<u>Zoning Code</u>
Policy 3.5-1	Sec. 20.504.010
Policy 3.5-3	Sec. 20.504.015(C)(1) and (3)
Policy 3.5-4	Sec. 20.504.015(C)(5) and (8)
Policy 3.5-6	Sec. 20.504.015(B)(1) Sec. 20.504.015(C)(3) Sec. 20.504.105(C)10)

#### Summary of LCP provisions.

LUP Policy 3.5-1 and Zoning Code Section 20.504.010 state that *“the scenic and visual qualities of Mendocino County coastal areas shall be considered and protected as a resource of public importance, and that permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas shall be subordinate to the*

*character of its setting.”*

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

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

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

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

Section 20.504.015(C)(10) states that *“Tree planting to screen buildings shall be encouraged, however, new development shall not allow trees to interfere with coastal/ocean views from public areas.”*

Section 20.356.040, Building Height Limit for AG Districts, allows *“Twenty-eight feet above natural grade for non-Highly Scenic Areas and for Highly Scenic Areas east of Highway One.”*

Land Use policies 3.5-3 provides for designation of “highly scenic” areas within the Mendocino County coastal zone. Many of the highly scenic areas designated by the land use maps lie between

the coast and Highway One, but certain areas east of Highway One (including portions of the subject property) are also designated as highly scenic. In the area of the subject parcel, the highly scenic designation applies to land within the coastal zone that is visible from public viewing places, including Highway One. Much of the southern slope of the ridge on the subject property lies within view of Highway One and therefore lies within the highly scenic area.

Within areas designated as highly scenic, Policy 3.5-1 of the Plan provides generally that new development shall be subordinate to the character of its setting. Policy 3.5-3 provides further that any development permitted in highly scenic areas shall provide for the protection of ocean and coastal views from public areas. Policy 3.5-6 provides that development on a parcel located partly within the highly scenic area shall be located on the portion outside the viewshed if feasible. Policy 3.5-4 provides, with respect to buildings that must be sited within the highly scenic area, that they be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Policy 3.5-4 also provides, with respect to development on ridges, that (1) development that projects above the ridgeline shall be prohibited; (2) if no alternative site is available below the ridgeline, development shall be sited and designed to reduce visual impacts by utilizing existing vegetation, structural orientation, landscaping, and shall be limited to a single story above the natural elevation; and (3) removal of tree masses which destroy the ridgeline silhouette shall be prohibited.

(a) Proposed location of the single-family dwelling in the highly scenic area.

Within the highly scenic area, the project includes a single-family dwelling, landscaping, a driveway, septic tank, leachfields, and underground water tanks serving the main dwelling. Because of the location of the proposed dwelling at an elevation of approximately 1300 feet above sea level, with Highway One located approximately 1,000 feet below that elevation, the driveway and underground facilities would not be visible from the highway and thus do not raise a question of consistency with the visual resource policies of the Local Coastal Program. Similarly, the components of the project that are proposed to be located within the existing forested area on the property do not raise a question of consistency with the Local Coastal Program visual resource policies. These components include the proposed guesthouse and its accessory developments. to be located outside the highly scenic area. Because these elements of the project are proposed to be located within the existing forest canopy, they would not be visible from Highway One or other public places, and thus by definition they would be located outside the highly scenic area.

The major element of the project, then, that must be reviewed for its consistency with the visual resource policies cited above is the main dwelling itself. With respect to the siting of the main dwelling, the applicants assert that the building site they propose to use is the only location on the property that provides the necessary solar access, topographic relief, lack of shading, and vehicular access to accommodate the proposed house design. Because the main dwelling is proposed to incorporate solar panels into the roof of the structure itself, the applicants state that the dwelling

must be sited where it has good solar access, in order for the solar collectors to function as designed.

(b) Constraints on development of the site

Although the property measures approximately 180 acres in size, feasible locations for a single-family dwelling are very limited, due to very steep topography. The steep slopes on much of the property makes most of it unsuitable for building. For instance, much of the parcel contains slopes of over 35% that present significant development constraints.

Only two relatively level areas are available for possible construction of a dwelling, and thus there are only two feasible locations for the proposed residence. Both locations are located at or near the top of the ridge that runs through the property. One of the sites, which might be termed Site A, is treeless and therefore visible from Highway One. Thus this site falls within the highly scenic area, which by definition includes areas east of Highway One that are visible from the road. This is the applicants' proposed site for the main dwelling.

Another relatively level site, which might be termed Site B, is located approximately 800 feet east of Site A. Site B lies within the existing forest cover and thus is not within the highly scenic area. This is the applicants' proposed site for the guesthouse and outbuildings.

Aside from physical constraints that affect possible sites for construction of a dwelling, the property is constrained by distance from existing PG&E power lines to the two potential building sites on the ridge. Because the access road leading up the north side of the ridge is relatively long, extending power lines along the access road to the building sites would cost \$528,000, according to the applicant. In relation to the cost of constructing a single-family dwelling, this is a large amount, and the applicants state that it is simply not feasible for them. Consequently, the applicants explain their proposed use of solar power because of the high cost of extending PG&E service to the top of the ridge.

(c) Alternative means of supplying electrical power to the house.

Another way of extending power lines to potential house sites, in theory, would be to route the lines across neighboring property in a more direct route, rather than following the winding access road. Such routing could significantly shorten the length of the necessary power lines, thus reducing the cost, but this alternative is not feasible because it would depend on the willingness of neighbors to sell easement(s) to the applicants. There is no way to know at this time if such a sale could be arranged.

An alternative means of supplying the proposed dwelling with power would be a diesel generator, thus dispensing with power lines entirely. The Waidhofers, neighbors of the applicants, whose

property is also constrained by distance from existing PG&E power lines, has utilized two such generators in the past to provide power to their home. However, according to the applicants, the neighbors have discontinued reliance on the generators, due to their unreliability. Furthermore, diesel generators have noise and air pollution impacts that make them undesirable. In sum, the Commission finds that there is no feasible alternative to solar power to provide electricity to the proposed dwelling.

One way of capturing solar power would be to employ freestanding solar panels located on parts of the property with good southwest exposure while locating the house at Site B, outside the highly scenic area. The applicants' architect has indicated to Commission staff that such a design is possible, but the design is less efficient than locating the panels directly on the structure and would require expensive wiring. Consequently, the Commission concludes that this option is not feasible.

Having concluded that solar power integrated into the design of the house is necessary for a proposed dwelling on the site, the Commission turns to the question of whether both sites A and B on the ridge are feasible locations. Site A, the house site proposed by the applicant, is an open grassy setting with exposure to the south and southwest unblocked by trees or topography. It is the only location on the property possessing the combination of unimpeded solar access and relatively level ground. This site is clearly feasible for construction of a dwelling dependent on solar power.

The same cannot be said of Site B. Although Site B contains relatively flat areas suitable for construction of a house, this site lies within the existing mixed conifer forest that covers the northern portion of the site, including the north-facing slopes. Because of its location within a forest, where tree heights reach 100 feet, solar access to a house located there would be poor. Solar access to a house sited in the forest could be improved by removing trees, but a large number of trees would have to be removed in order to gain the level of sun exposure that exists at Site A. Furthermore, removal of trees from Site B could expose a house located there to public view from the south. In other words, tree removal to improve solar access could have the effect of placing the house site within the highly scenic area, thus making the alternative site equivalent to the applicant's proposed site in terms of consistency with the visual resource policies of the LCP (i.e., either site would be discouraged, if a feasible alternative exists).

The applicants prepared a composite of contour intervals, slope, shading, road access, and exposure to the sun in support of their position that alternative locations outside the highly scenic area are not feasible (see Exhibit 9). The Commission concludes on the basis of this and other information cited above that Site B is not feasible for construction of a solar-powered house. Site B is a feasible location, however, for non-solar-powered developments, and consistent with that fact the applicants propose to site in that location the other components of their project including a guest cabin, temporary RV parking, and other facilities. With respect to Policy 3.5-6 of the LCP and corresponding Zoning Ordinance Section 20.504.015(B)(1), the Commission finds, in

conclusion, that the proposed site of the main dwelling is consistent with the policy even though the proposed house would be located in the highly scenic area, because alternative locations outside the highly scenic area are not feasible.

(d) Measures to minimize the impact of the proposed house on visual resources

Having concluded that the main dwelling must be located in the highly scenic area because alternative sites are not feasible, the Commission turns to the requirements of other LCP policies that seek to minimize the visual impact that proposed development would have on public places, including Highway One. The Commission first addresses the general requirement of Policy 3.5-1 and Zoning Ordinance Section 20.504.010 that the development must be subordinate to the character of its setting. The structure in question, a single-family dwelling, is a typical use of land. The proposed main dwelling would contain two bedrooms and two and one-half bathrooms, and a total living area of 1,973 square feet. The total size of the proposed dwelling, including the basement would be 5,038 square feet, but over 3,000 square feet of that space would be devoted to garage, lap pool and greenhouse structure, storage, and water cisterns for domestic use and/or fire protection. In sum, a dwelling of the proposed size is not particularly large, in comparison with other dwellings proposed for scenic coastal areas.

The applicants propose to construct the main dwelling of concrete, to which natural stone facing may be added. Whether stone is added or not, the color of the dwelling will be a dark gray or brown. The roof of the dwelling is proposed to be a dark forest green or brown. The color of the roof and walls are proposed in order to blend with the existing tree mass that rises behind Site A, when viewed from Highway One to the south.

The surrounding area is agricultural in character and very sparsely developed. Almost all existing development is located on the narrow coastal terrace, with the exception of two residences on the easterly ridges. One of these residences (Waidhofer) is located south of the project site at about the same elevation as the proposed project, but is situated in a wooded area and is screened by tall trees (see Exhibit No. 11). As a result, the house is barely visible from Highway One. The Commission approved the Waidhofer house in 1991 (Coastal Permit No. 1-91-171). The other residence (Raabe/Collins) is also south of the subject site and is located on a knoll at an elevation of about 500 feet. Although the house is set back from the edge of the slope, is one-story in height, and uses earth-tone materials, it is visible from the Highway where it appears silhouetted on the ridgeline.

Given that other dwellings are visible from Highway One in the area and given the nature of the proposed dwelling itself, the house would be subordinate to the character of its setting. The proposed color and relatively modest size of the house would tend to make it blend into its surroundings. Further contributing to this result would be the scale of the development, in relation to the scale of natural features around it. The house is proposed to be located on top of a ridge that

is 1300-1400 feet high, rising 1,000 or more feet above Highway One. Although the proposed house would be visible for some distance to northbound travelers on the highway, this view changes with distance. At a distance of several miles, for instance, such as from Highway One north of Irish Beach, the size of the proposed dwelling would appear to be relatively small, simply because of the distance. As the viewer draws nearer, the angle of view increases sharply because of the steep ridge on which the house would be located, and the viewer's field of vision would tend to be dominated by mass of the ridge itself and other large components of the view. Because the proposed dwelling would be sited significantly above viewers on the highway, would be backed by dark colored trees, similar to the colors of the house itself, and would be fronted by a hedge of Monterey Cypress, the proposed dwelling would be subordinate to the character of its setting.

The Commission cannot draw the same conclusion with respect to other structures that might be proposed for construction on the property in the future. Because outbuildings might be otherwise exempt from the requirement for a coastal permit but could have adverse impacts on visual resources, the Commission attaches Special Conditions #2 and 3 that state that an amendment to this permit would be necessary prior to placement of exterior lighting, power poles, or additional structures.

LCP Policy 3.5-4 provides that buildings such as this one that must be sited within the highly scenic area shall be sited (1) near the toe of a slope, (2) below rather than on a ridge, or (3) in or near the edge of a wooded area. The corresponding Zoning Ordinance Sec. 20.504.015(C)(5) contains parallel wording, with the potentially significant difference that the word "and" is substituted for "or". Application of this policy requirement including the word "and" might create an impossibility in some settings, however, because it might be unlikely that a structure could simultaneously be located at the toe of a slope, somewhere below a ridge, and also within a wooded area. Because of this potential difficulty in application and because the policy contained in the Land Use Plan Policy 3.5-4 uses the word "or", it seems clear that the policy guidance contained in this policy is intended to allow selection of one or more choices from a list of options, rather than simultaneous application of all three requirements.

With that background in mind, the Commission addresses the question of whether the options provided in Policy 3.5-4 can be implemented. Because of the steep topography, a building site near the toe of a slope is not feasible on the subject property. At the southwest corner of the property, near the base of the ridge, average slopes range above 45%, thus making it infeasible for the applicants to site their house at the toe of the slope on their parcel. As for a site below the ridge, the topography of the property does not make such a site feasible. For instance, a location for the dwelling somewhere midway along the slope would place it in a very steep area, requiring extensive grading for driveway construction and only increasing the visual impact of development when seen from Highway One below.

Because of its solar design, the proposed dwelling could not feasibly be located within a wooded area, as provided by Policy 3.5-4. However, the proposed site would be located near a wooded area, consistent with the third phrase of Policy 3.5-4. As proposed, the main dwelling would be located within 50-75 feet of the existing forest that extends from the very top of the ridge down the slope to the north. This mixed conifer forest includes redwood trees that are up to 100 feet in height, thus forming a backdrop for the proposed development. In sum, the proposed development would be consistent with Policy 3.5-4 because even though the main dwelling would be located on a ridge, it would be located near the edge of a wooded area.

A further policy requirement of LCP Policy 3.5-4 and corresponding Zoning Ordinance Section 20.504.015(C)(8) is that development on ridges shall not project above the ridge. From the proposed house site, the land falls in three directions (north, west, and south), and rises only to the east. Therefore, the house is proposed to be located right at the top of the ridge. Despite this location, the house would be consistent with Policy 3.5-4 because it would not project above the ridgeline if the ridgeline is interpreted to include the forest located at the top of it and behind the house site, as viewed from Highway One. In other words, the proposed house with a height of approximately 25 feet would not project above the tops of 100-foot tall trees, as seen from the highway below. Instead, the apparent ridgeline as seen by viewers on Highway One below would be the top of the forest rising behind the dwelling site. Given the size and density of the forest that is located on this property and its relative distance from the highway, the Commission interprets the ridgeline in this instance to include both the mass of the hill itself and the redwood forest at the top of the ridge.

Furthermore, other factors combine to reduce the visual impacts of the project, consistent with Policy 3.5-4 and Zoning Ordinance Section 20.504.015(C)(10). The project includes the placement of 13 Monterey Cypress trees just to the south of the main dwelling site, where the trees would screen the base of the house when seen from Highway One. To maintain solar access to the roof, the applicants propose to trim the trees so that they do not exceed a height of 10 feet. Thus the trees will never screen the house entirely from view from Highway One. The trees will nevertheless have a mitigating effect on the visual impact of the house. This is particularly true because of the angle of view from Highway One; from the highway, the apparent height of trees located in front of the house would be higher than if the trees were viewed on level ground.

Policy 3.5-4 and Zoning Ordinance Section 20.504.015(C)(8) also require that development that must be sited on a ridgeline, because no alternative is available, shall be limited to a single story above the natural elevation. The proposed house would have two levels, but one of the levels would be partially below the existing grade. The lower level would be constructed by grading the existing slope, so that the greenhouse roof covering the lap pool would approximately mimic the natural slope (see Exhibit 10). The living level of the house, containing the living room, kitchen, and bedrooms, would be located above the basement, approximately at the level of the natural grade. As described by the applicant, the proposed house is a one-story dwelling with basement.



Because there is only one level proposed at the level of the natural grade, with a basement proposed to be excavated into the natural slope, the Commission concludes that the proposed house is indeed a one-story house. Consequently, the proposed house would be consistent with the one-story requirement of Policy 3.5-4 and corresponding zoning requirement.

#### 4. Solar energy

Land Use Plan Policy 3.11-12 states:

*The County shall encourage the development and use of alternative sources of energy, such as wind, solar, wave, and biomass and cogeneration to meet the coast's energy needs. Alternative energy facilities for onsite use shall be permitted as a conditional use in all land use categories. For off-site use, alternative energy facilities shall be considered as a conditional use in the Agriculture, Forest Lands, Industrial Land and Range Land categories.*

Because the proposed dwelling would not be tied into the statewide energy grid and instead would incorporate solar energy production facilities into the roof of the structure, thus allowing use of energy generated on-site for the applicants' needs, the project as proposed would assist in meeting the coast's energy needs. This policy provides policy support for alternative energy as a general matter, although it does not require that the County or Commission must approve every development that incorporates alternative energy sources. To the extent that this project can be found consistent with other policies of the LCP, Policy 3.11-12 lends additional support to the project.

#### 5. Protection of environmentally sensitive habitats

Land Use Plan policies 3.1-1 through 3.1-33 address the protection of environmentally sensitive habitat areas in the Mendocino County coastal zone. These policies reflect the requirements of Chapter 3 of the Coastal Act to protect such habitat areas, to allow only uses within habitat areas that are dependent upon such resources, to strictly limit allowable uses within wetland areas including streams and riparian areas, among others.

The subject site is a relatively large one and it contains a variety of forest and grassland areas. Nearly all of the property is too steep for development, and consequently biological surveys have not been done of the areas that could not feasibly be developed in any event. Only two sites, labeled here as Site A and B, are level enough to support the type of residential development proposed by the applicants.

Site A is an open grassy area at the top of the ridge. No sensitive habitat has been identified at this site. The issues raised by construction of the proposed house at this site are primarily visual, as described above, and thus do not raise issues with respect to protection of sensitive habitats.

Site B is a forested area, but it does not contain any identified sensitive habitat. The forest is a mixed conifer forest typical of the Mendocino coastal zone. Furthermore the property is zoned in a way that allows timber removal as a principally permitted use. Thus tree removal to accommodate the proposed guest cabin and other facilities within the wooded area would be consistent with the property's zoning.

The access road that would serve both the main house and the guest cabin is in existence already, including the lower portions of the road that cross other owners' property and the portion of the road on top of the ridge where the applicants propose development. Minor improvement to this road is proposed by the applicants in the form of placement of a small amount of fill material to moderate a steep grade between the site of the guest cabin and the main house. Because no sensitive habitats have been identified on top of the ridge, placement of fill material within the existing road would not raise an issue of consistency with LCP policies.

#### 6. Geological stability

Land Use Plan Policy 3.4-1 provides, in part:

*The County shall review all applications for Coastal Development permits to determine threats from and impacts on geologic hazards arising from seismic events, tsunami runup, landslides, beach erosion, expansive soils and subsidence and shall require appropriate mitigation measures to minimize such threats...*

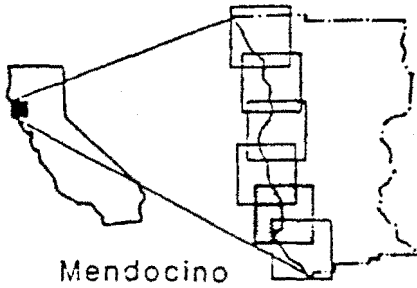
Although the subject property contains many areas that are characterized by slopes in excess of 35%, the two areas proposed for construction near the top of the ridge are relatively level. No evidence has been submitted indicating that such sites are subject to landslide potential or other geologic hazards. The access road serving the top of the ridge crosses steep areas on the way up the hill, but the road is already in existence and is not proposed to be constructed as part of this application. Therefore, the proposed project is consistent with the policies of the LCP regarding geologic stability.

#### 7. California Environmental Quality Act (CEQA).

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

APPEAL NO.: A-1-MEN-99-001  
ROBERT AND LUANNE SMILEY  
Page 19

no feasible alternative site for construction of the proposed house and other facilities. The Commission thus finds that the proposed project is consistent with the requirements of the Coastal Act and conforms to the requirements of CEQA.

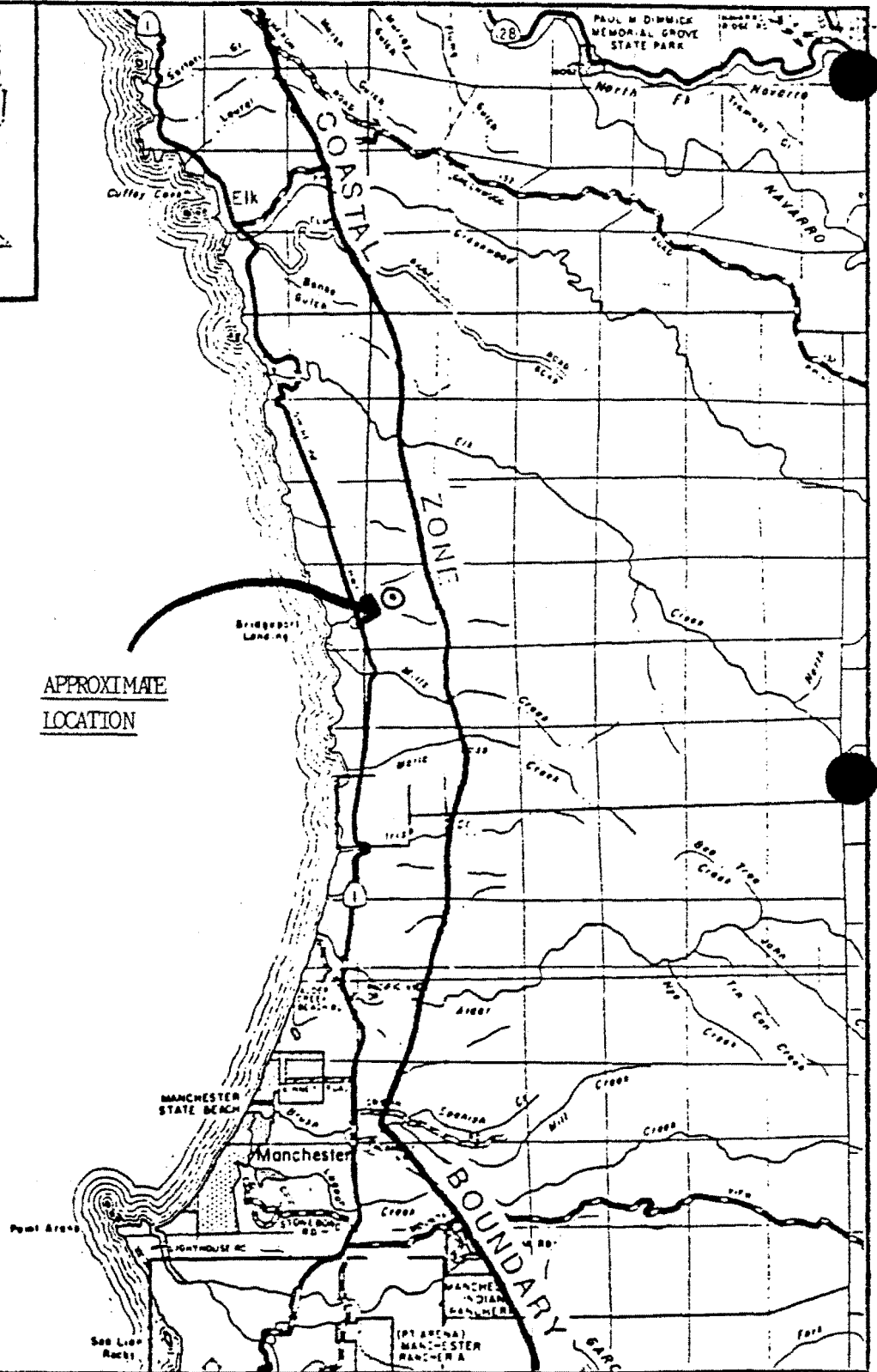


Mendocino

EXHIBIT NO. 1

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

LOCATION MAP



APPROXIMATE  
LOCATION

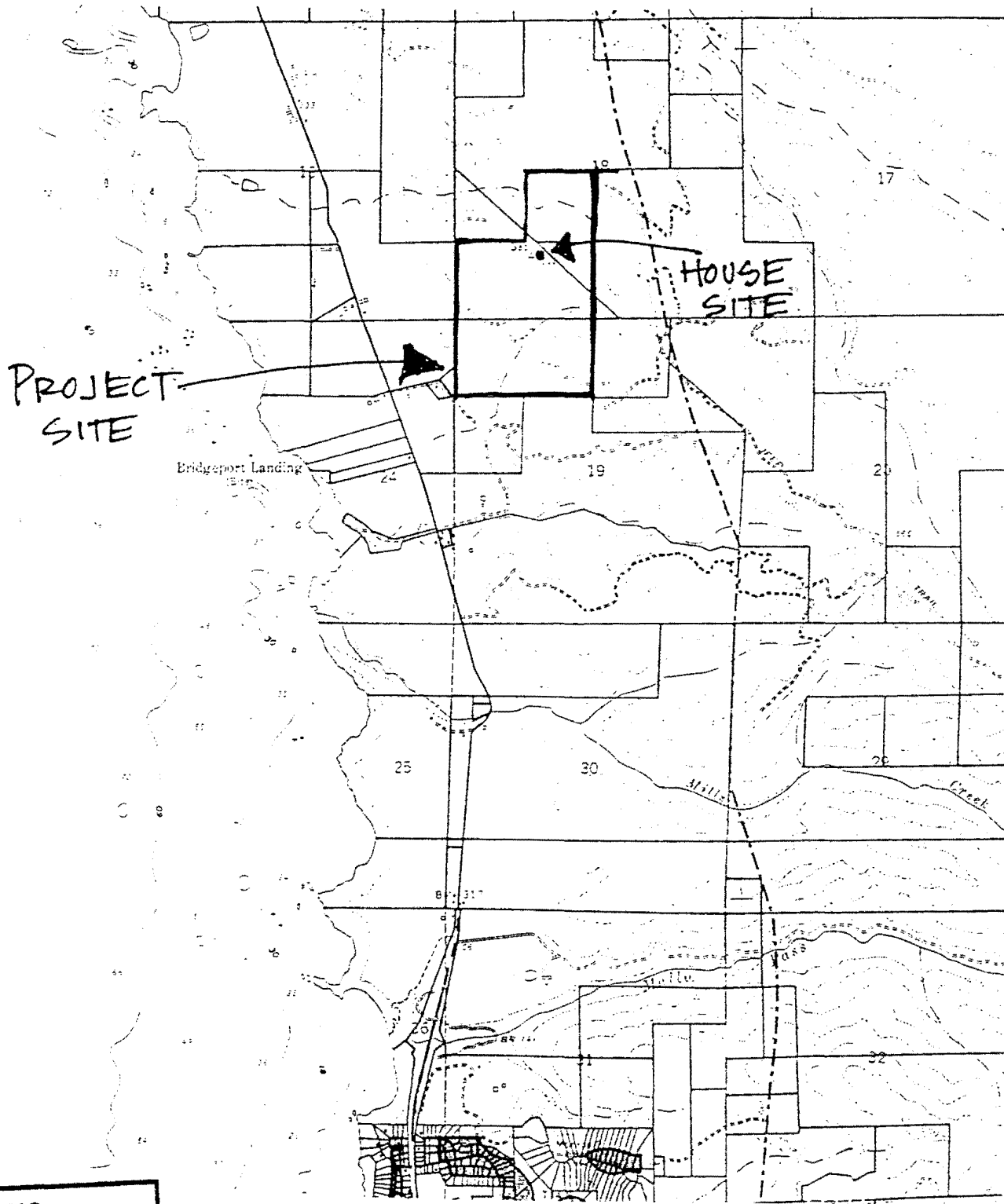
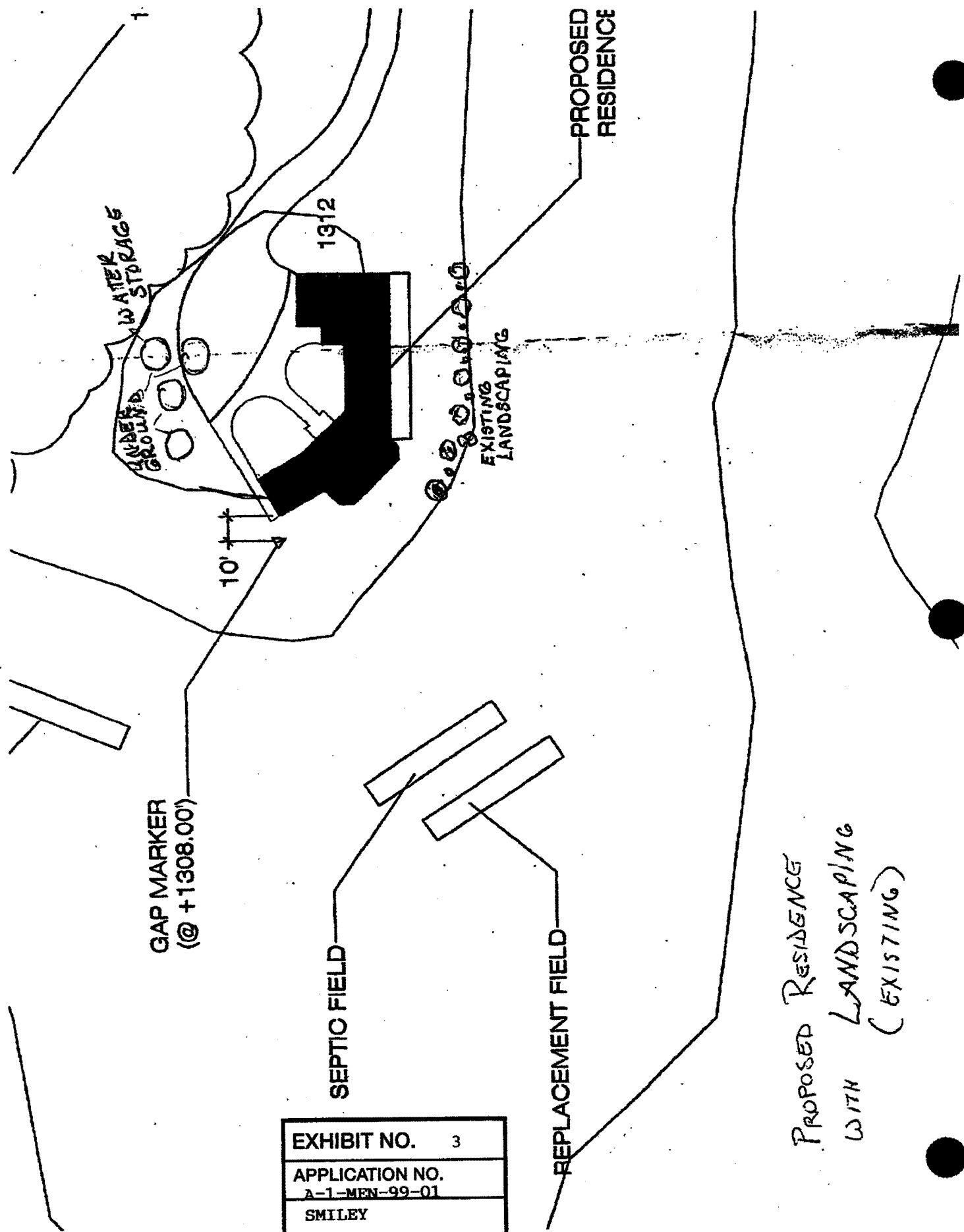


EXHIBIT NO. 2

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

Vicinity Map

LOCATION MAP



GAP MARKER  
(@ +1308.00')

10'

SEPTIC FIELD

REPLACEMENT FIELD

PROPOSED  
RESIDENCE

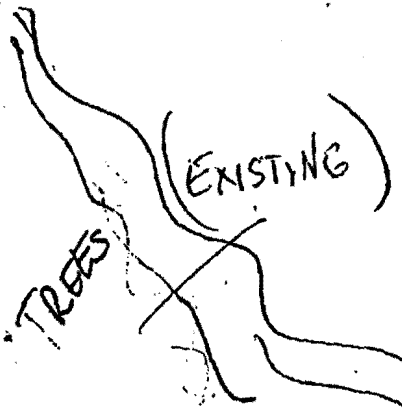
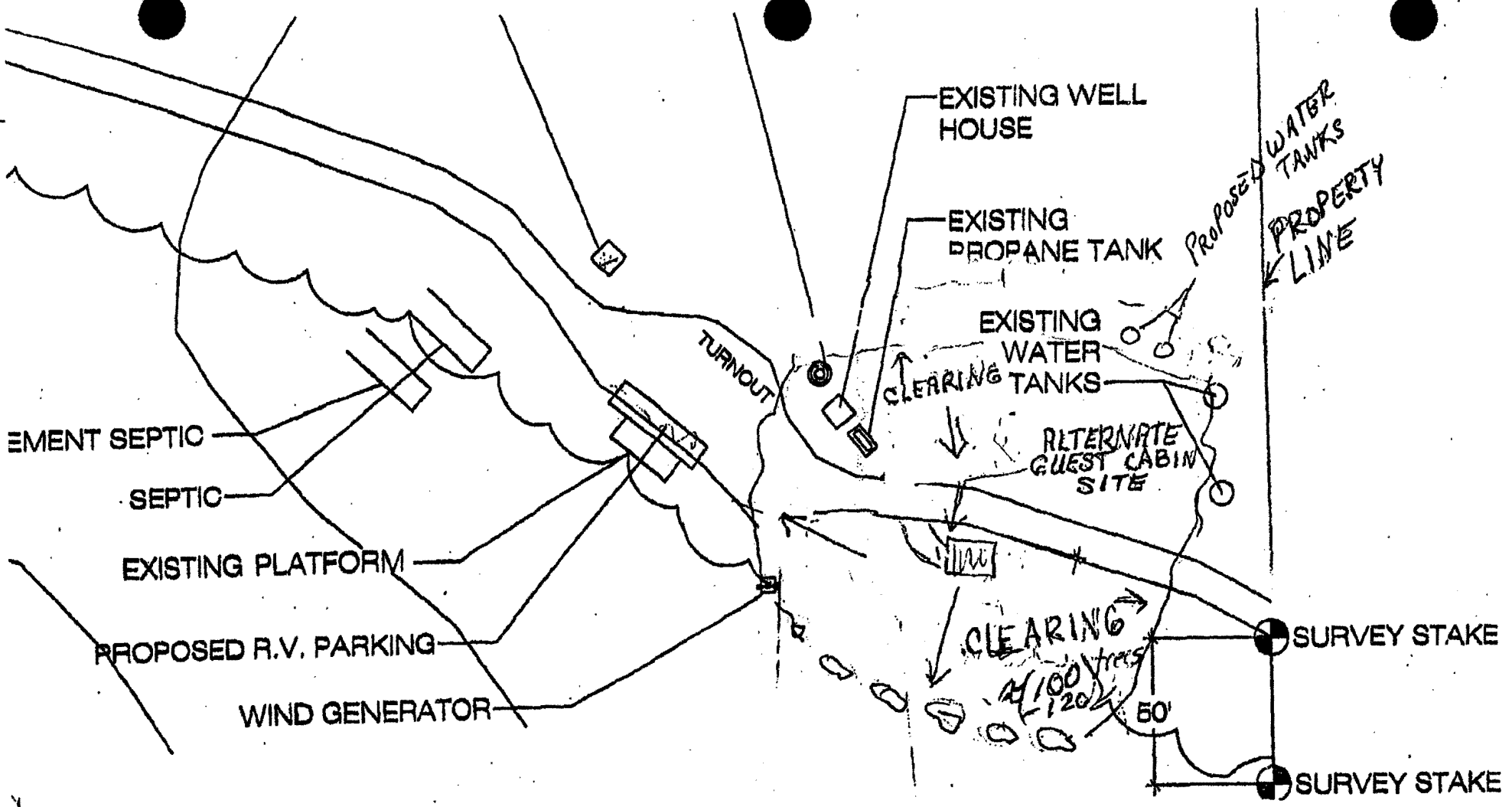
EXISTING  
LANDSCAPING

1312

WATER STORAGE  
UNDER  
GROUND

PROPOSED RESIDENCE  
WITH  
LANDSCAPING  
(EXISTING)

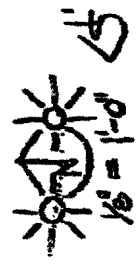
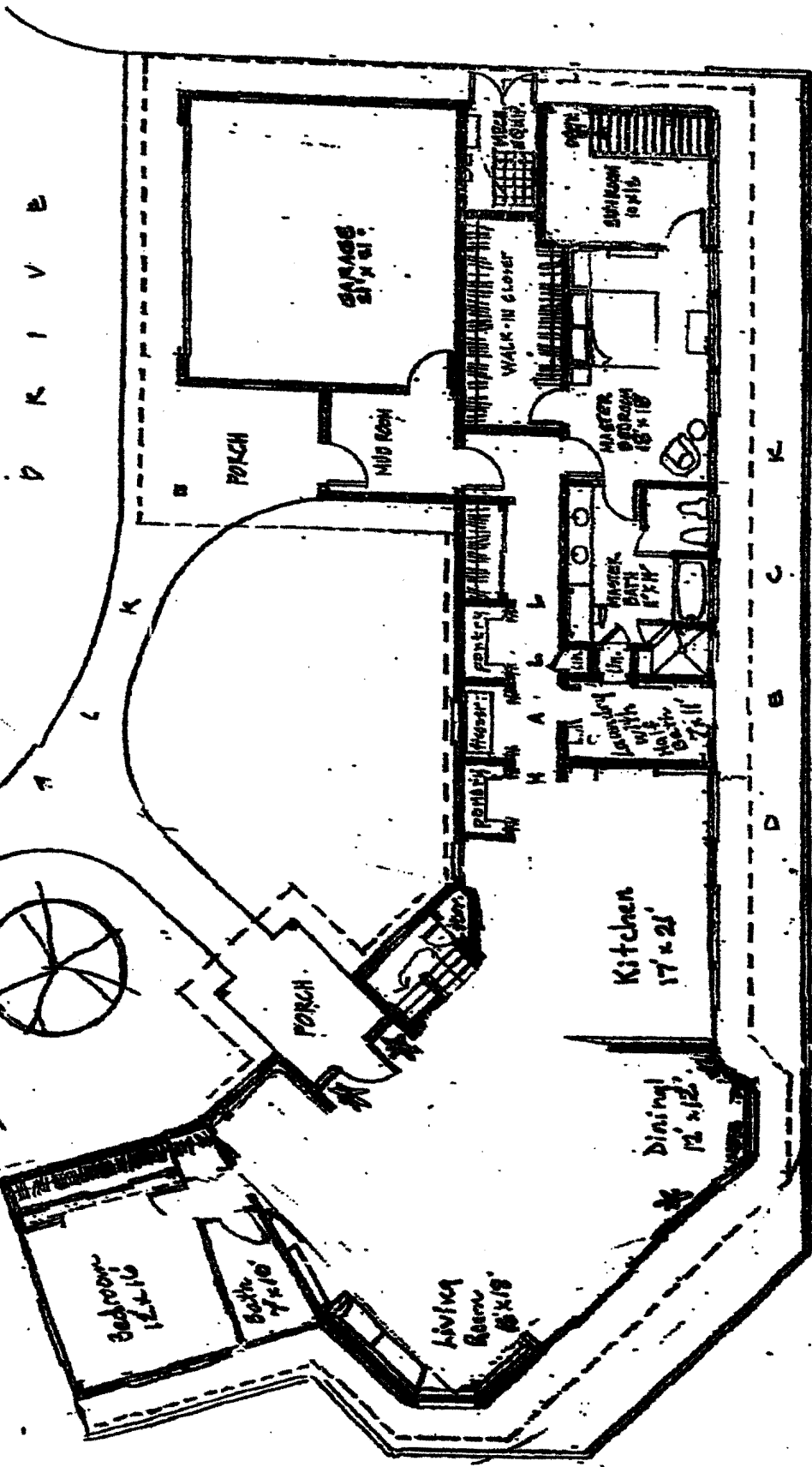
EXHIBIT NO.	3
APPLICATION NO.	A-1-MEN-99-01
	SMILEY



☐ Alternate cabin site  
Option "C"

EXHIBIT NO.	4
APPLICATION NO.	A-1-MEN-99-01
SMITLEY	

TREES



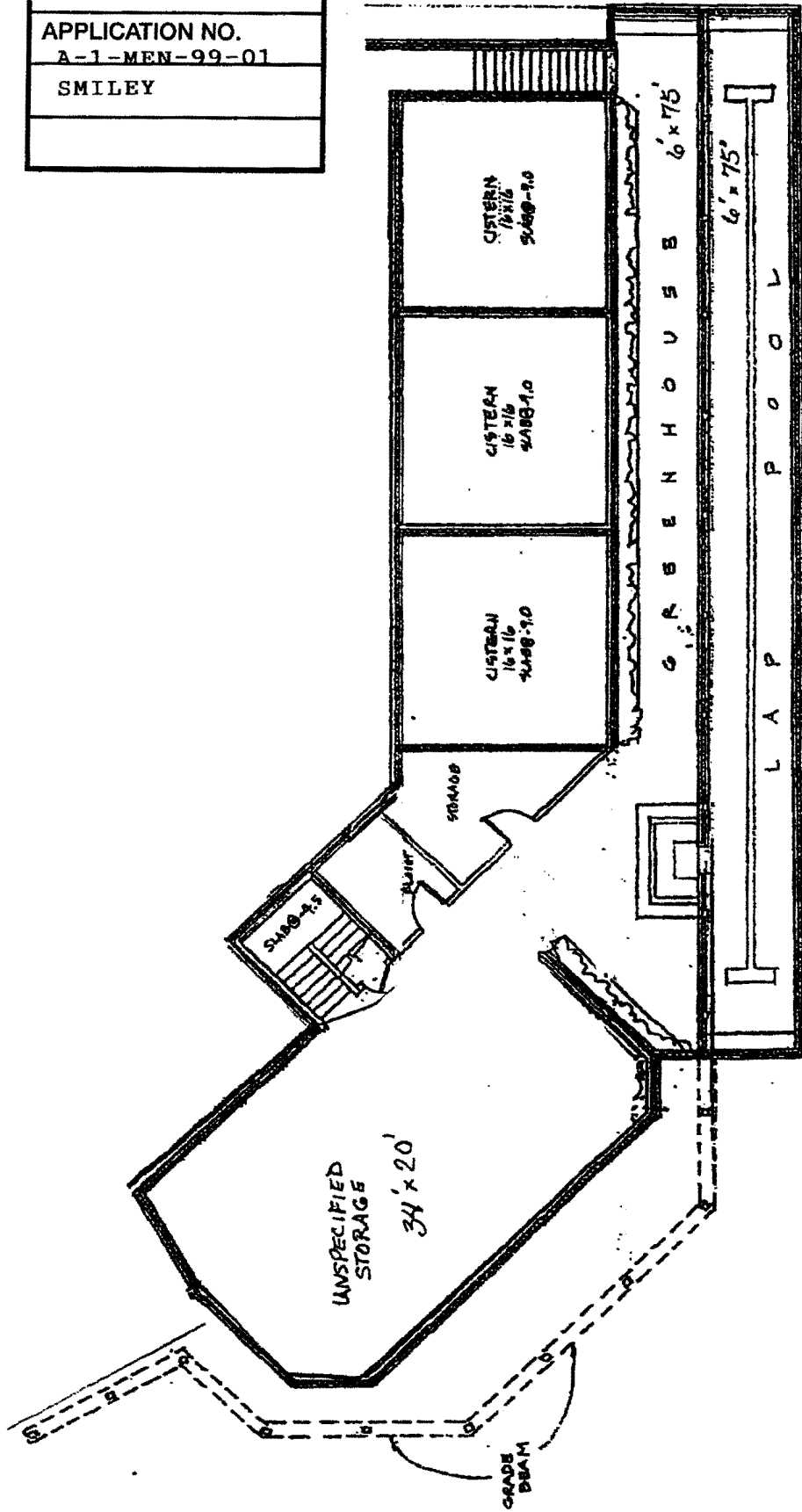
RESIDENCE FOR ROBERT AND LUANNE SMILEY  
10927 HIGHWAY 1, ELK, CALIFORNIA 97452

EXHIBIT NO.	5
APPLICATION NO.	A-1-MEN-99-01
SMILEY	

FLOOR PLAN



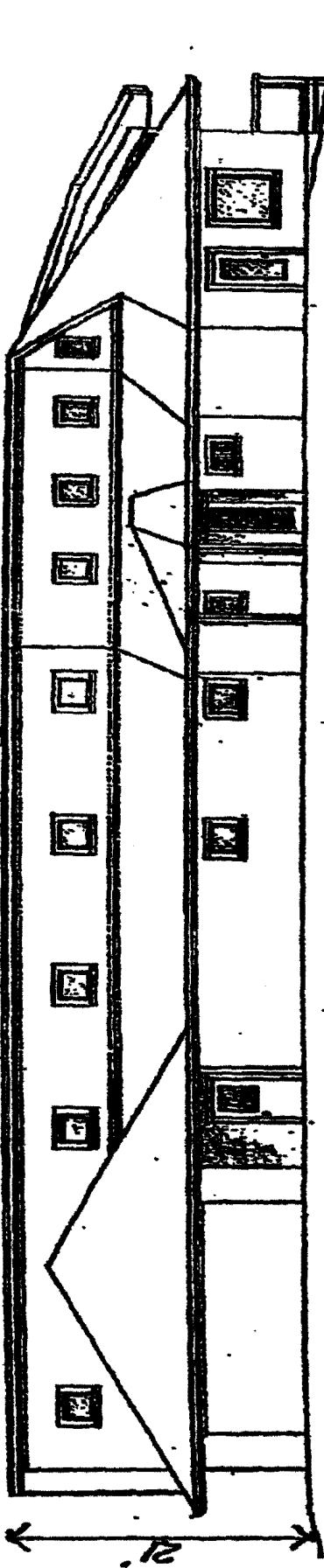
EXHIBIT NO.	6
APPLICATION NO.	A-1-MEN-99-01
SMILEY	



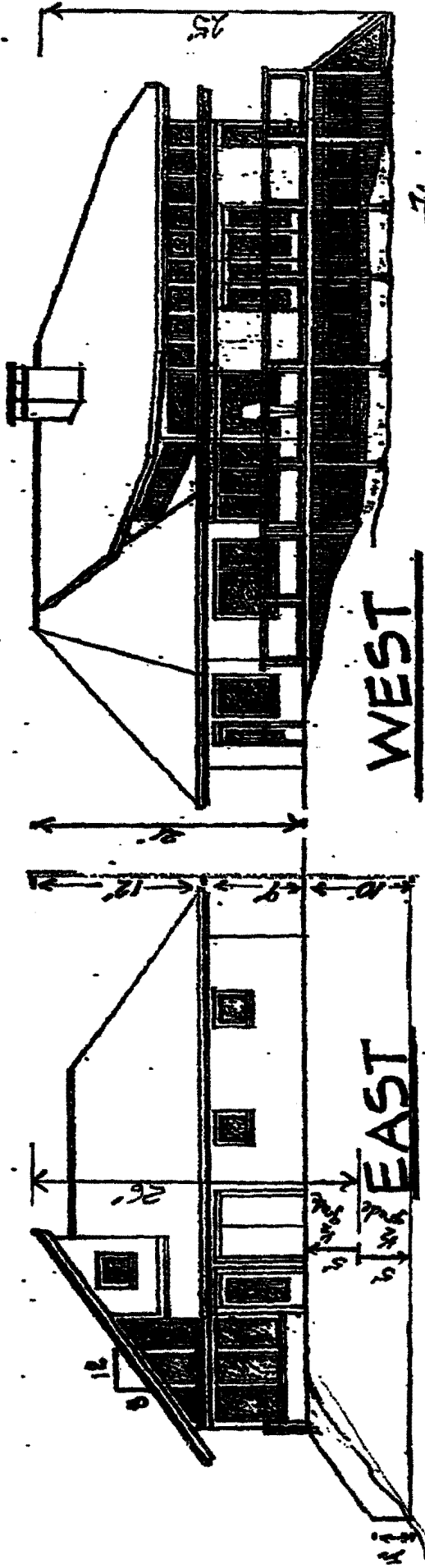
RESIDENCE FOR ROBERT AND LVANNE SMILEY  
 10927 HIGHWAY 1, ELK, CALIFORNIA 95432

**BASEMENT PLAN**

EXHIBIT NO.	7
APPLICATION NO.	A-1-MEN-99-01
SMILEY	

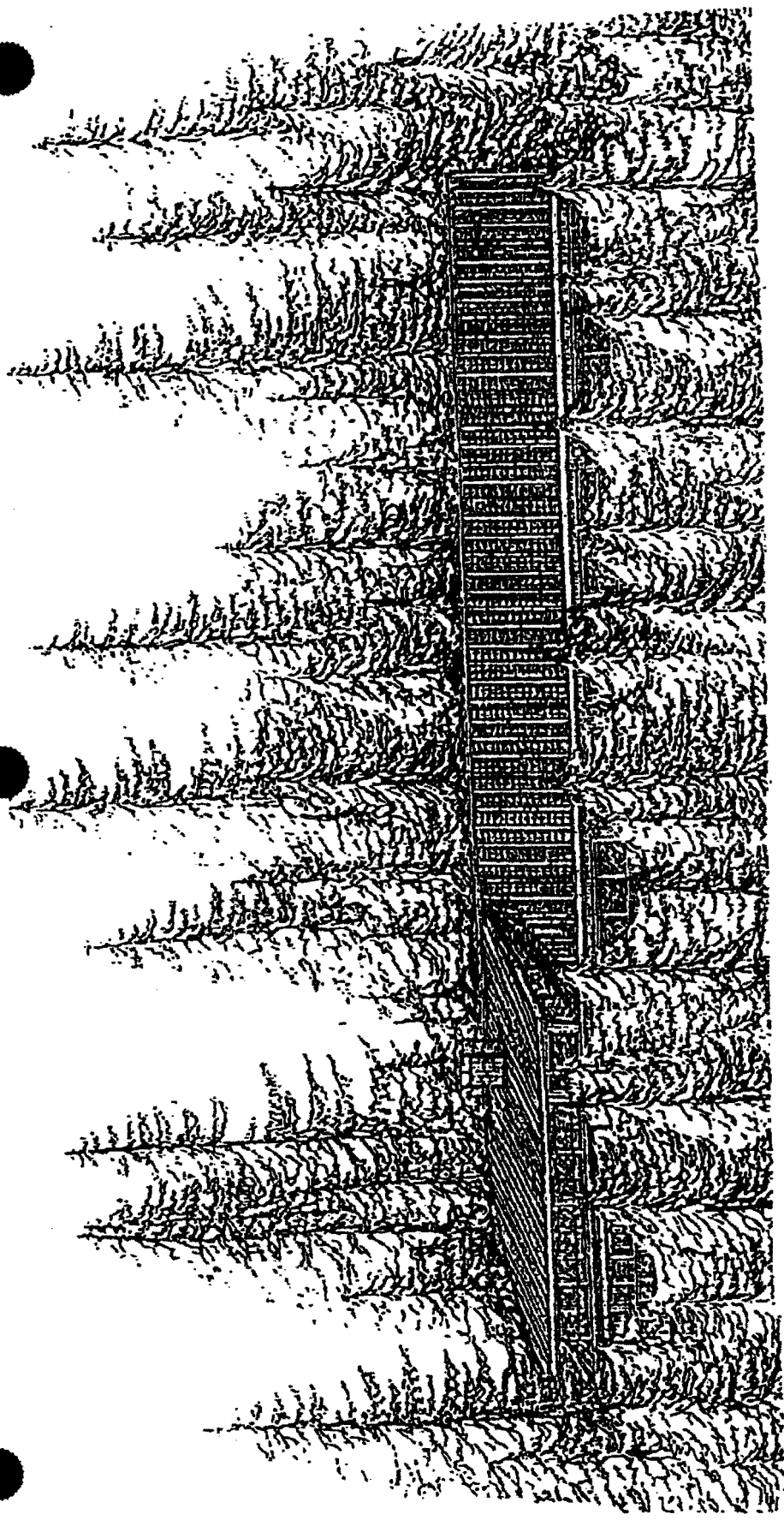


**NORTH ELEVATION**



**WEST**

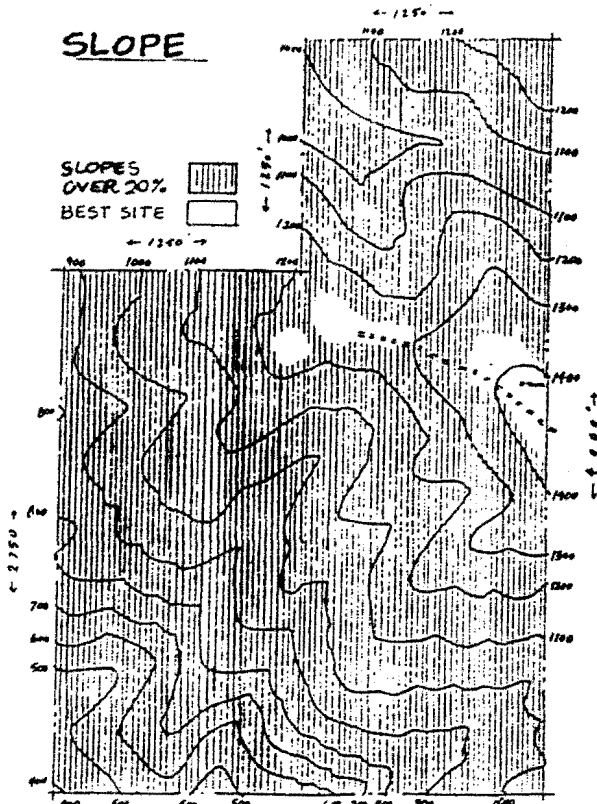
**EAST**



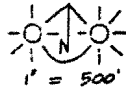
SOUTH ELEVATION

EXHIBIT NO.	8
APPLICATION NO.	A-1-MEN-99-01
	SMILEY

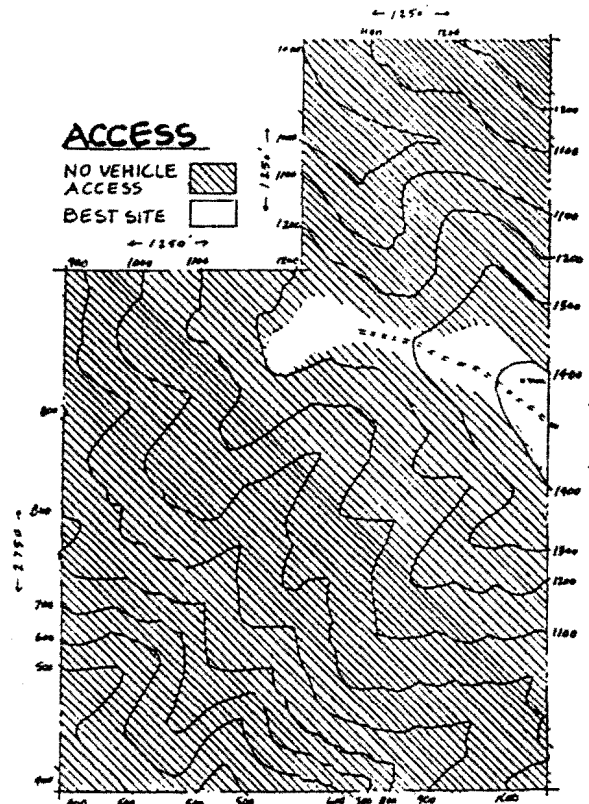
**SLOPE**



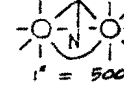
LANDS OF ROBERT & LUANNE SMILEY  
9105 HWY 1 ELK, CA 95432



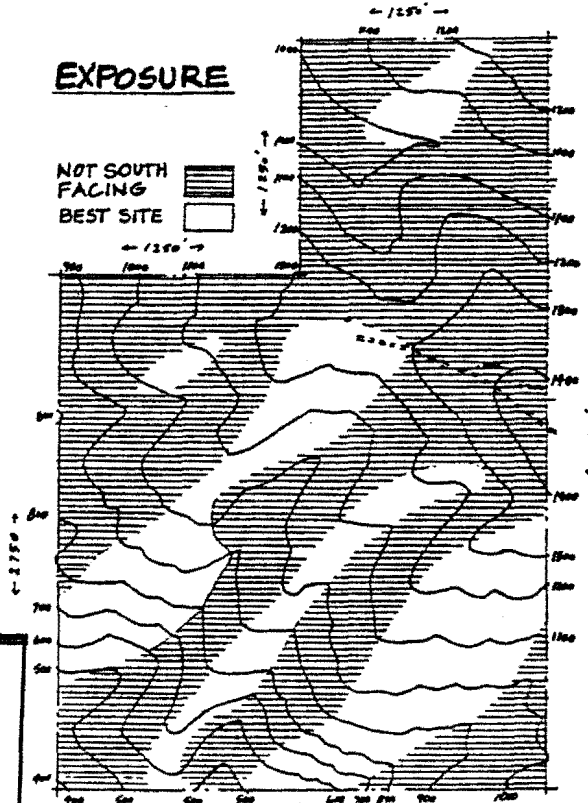
**ACCESS**



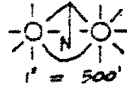
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9105 HWY 1 ELK, CA 95432



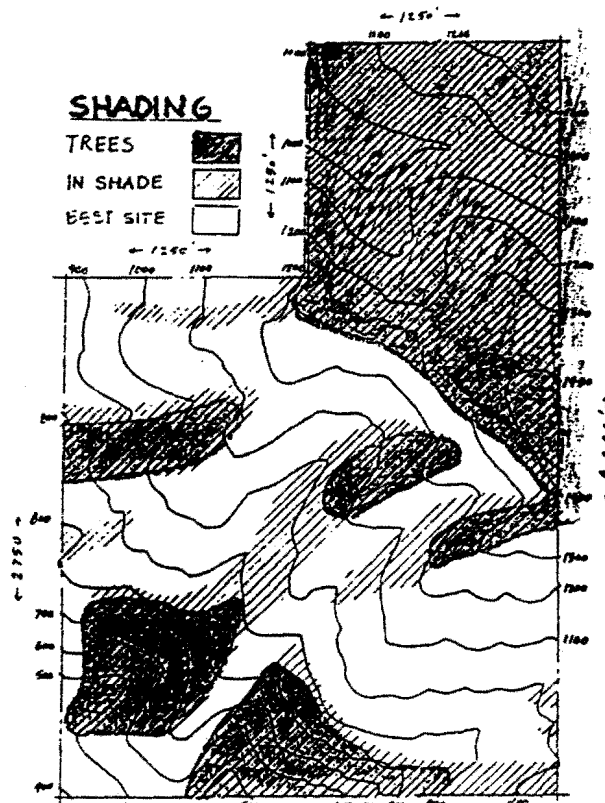
**EXPOSURE**



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



**SHADING**



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

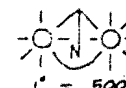
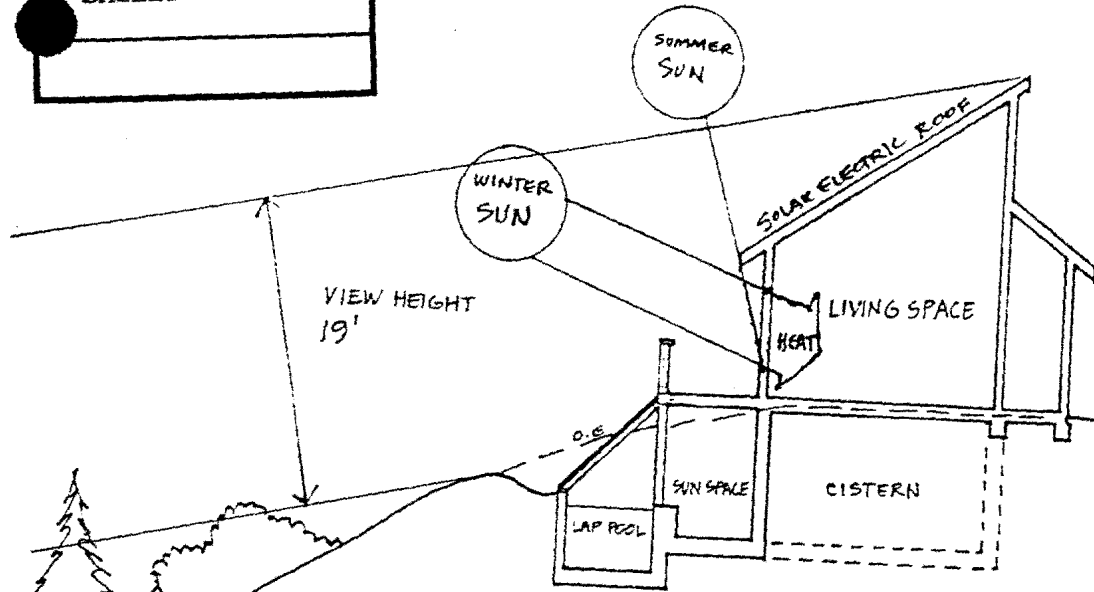


EXHIBIT NO. 9  
APPLICATION NO. A-1-MEN-99-01  
SMILEY

EXHIBIT NO.	10
APPLICATION NO.	A-1-MEN-99-01
SMILEY	



SECTION @ A:A



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

Proposed Smiley Residence (CDP 5-98)

Existing Waidhofer Residence (CCC 1-91-171)

*(screened by trees)*

Existing Raabe Residence (CDP 19-92)

Bratsberg Landing

25

30

25

32

33

Gulen

*High locations  
A-E*

EXHIBIT NO.	11
APPLICATION NO.	A-1-MEN-99-01
SMILEY	