

## CALIFORNIA COASTAL COMMISSION

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# W10a

## MEMORANDUM

Date: July 6, 2010

To: Commissioners and Interested Parties

From: Peter Douglas, Executive Director  
 Robert S. Merrill, District Manager – North Coast District

Subject: **Addendum to Commission Meeting for Wednesday, July 7, 2010  
 North Coast District Item W10a, Appeal No. A-1-MEN-07-028 (Jackson-Grube Family, Inc.)**

This addendum to the staff report for Appeal No. A-1-MEN-07-028 mailed on June 24, 2010 presents: (I) corrections to certain text of the report that precedes the special conditions and findings; (II) changes to the special conditions including revisions to Special Condition Nos. 5, 6, 15, 17, 18, and 19, and the addition of new special conditions 20 and 21; (III) new findings, including findings regarding public access and indemnity not included in the original staff report; and (IV) revised and new exhibits.

Staff continues to recommend approval of the permit with conditions as recommended in the June 24, 2010 staff report.

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Text to be deleted is shown in ~~bold strikethrough~~, text to be added appears in **bold double-underline**

**I. Revisions to Text of Report Preceding Special Conditions and Findings**

**A. Replace the “Project Location” Bullet on Page 1 with the following:**

PROJECT LOCATION: Approximately four miles south of Westport, on the west side of Highway One, at 31502 North Highway One (**on the APNs that comprise Certificate of Compliance 39-90-D, including APNs** 015-380-03; 015-380-04; 015-380-05; 015-

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330-05; 015-330-13; 015-330-19X; 015-330-26;  
015-070-45; 015-070-49X; 015-070-51X 015-070-  
47X; and 015-070-52X., as well as on APNs 015-  
380-02 and 015-380-06.

REASON FOR CHANGES: The listed APNs are meant to encompass the entire project site which is a subset of the applicant's holdings in the area. The project site includes the area covered by Certificate of Compliance 39-90-D as well as two additional APNs that are intended to be restricted to open space pursuant to the applicant's revised project description. APN 015-380-02 is also an APN where additional public access is proposed. The revisions clarify (1) which APNs are part of the Certificate of Compliance 39-90-D; and (2) which APNs have been added to the project area.

**B. Replace the first full paragraph on Page 5 of the report within the Summary of the staff recommendation with the following:**

The project will include agreement to recordation of a deed restriction prohibiting further development on Jackson-Grube Family, Inc. property west of Highway 1 (APNs ~~015-038-002~~ 015-380-002, ~~015-038-03~~ 015-380-03, ~~015-038-004~~ 015-380-04, ~~15-038-06~~ 15-380-06 and ~~015-033-013~~ 015-330-13 ). The deed restriction shall not prohibit Jackson-Grube Family, Inc. from seeking a CDP to replace a previous barn that formerly straddled AP 15-330-13 and AP 15-380-05. Any proposed replacement barn shall be a one-story agricultural building, may not be taller than 18 feet, shall conform to all applicable local coastal program and Coastal Act requirements, and shall be located in the general vicinity of the previous barn.

REASON FOR CHANGES: The APNs in the original paragraph were listed incorrectly. The corrected versions reflect the proper numbering of the APNs. As a general note, the APNs should be listed in the same format anywhere in the report where they appear.

**II. Changes to Special Conditions**

**A. Replace Special Condition No. 5 with the following:**

**5. Open Space Restriction**

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A. No development, as defined in Section 30106 of the Coastal Act, shall occur anywhere on APN ~~015-380-002~~ 015-380-02, APN ~~015-380-003~~ 015-380-03, APN ~~015-380-004~~ 015-380-04, APN ~~15-038-006~~ 015-380-06, and ~~APN 015-033-013~~ 015-330-13, **all located** west of Highway One as shown on Exhibit No. 23 and as described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for:

1. The following development, if approved by the Coastal Commission as an amendment to this coastal development permit: agricultural fences, corrals, and other accessory agricultural development not including any residences, barns, or other significant new above-ground structures except for replacement of a barn that formerly straddled APN ~~15-330-013~~ 015-330-13 and APN ~~15-380-005~~ 015-380-05 with a new barn that is one-story, not taller than 18 feet, conforms to all applicable local coastal program and Coastal Act requirements, and located in the general vicinity of the previous barn; installation of utilities; removal of non-native, invasive vegetation and planting of native plants; removal of vegetation for compliance with Cal-Fire defensible space requirements; and improvements and use for public access purposes.

2. **Improvement of the offered public access easements dedicated pursuant to Special Condition Nos. 17 and 21 if approved as a new coastal development permit by Mendocino County or by the Coastal Commission as an amendment to this coastal development permit.**

B. **PRIOR TO ISSUANCE OF THE “NOTICE OF INTENT TO ISSUE COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-07-028” (NOI)** and consistent with the applicant’s implementation of Special Condition No. 6, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition, as generally described above and shown on Exhibit No. 23 attached to this staff report.

**REASON FOR CHANGES:** The changes to the special condition that restrict certain areas to open space (a) correct the listing of the APNs to reflect the proper numbering and (b) make it clear that future improvement of the offered public access easement dedications with trails, viewing areas, etc. are an allowable use within the open space area provided additional coastal development permit authorization is obtained for such improvements first.

**B. Replace Special Condition No. 6 with the following:**

**6. Limitations on APN 015-380-005, APN 015-380-003, and APN 015-380-004 and Parcel Containing APN 015-380-003, APN 015-380-004, and APN 015-380-005.**

**PRIOR TO ISSUANCE OF CDP NO. A-1-MEN-07-028**, the applicant shall submit written evidence, for the review and approval of the Executive Director, that the applicant/landowner acknowledges, agrees to, and has implemented the requirements of subsection A1, A2 and A3.

A1. By acceptance of this permit, the applicant agrees, on behalf of itself and all successors and assigns with respect to the subject property, that all portions of the property identified as APN ~~015-380-003~~ 015-380-03, APN ~~015-380-004~~ 015-380-04, and APN ~~015-380-005~~ 015-380-05 and generally depicted on Exhibit 27: (a) comprise a part of one single legal parcel described in Exhibit ~~220~~ and generally depicted in Exhibit ~~2721~~ as CC 39-90-D, except for APN 015-330-05 which was transferred after issuance of the certificate of compliance; (b) shall henceforth be considered and treated as part of one single parcel for all purposes including but not limited to sale, conveyance, development, taxation or encumbrance; and (c) shall not be divided or alienated from each other or from the single legal parcel of which they are a part, and

A2. **PRIOR TO ISSUANCE OF THE NOTICE OF INTENT TO ISSUE COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-07-028 (NOI)**, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of (a) the property identified by the three APNs affected by this condition as generally described above and as generally depicted on Exhibit 27 as well as (b) the entirety of the single legal parcel containing the property identified as APN ~~015-380-003~~ 015-380-03, APN ~~015-380-004~~ 015-380-04, and APN ~~015-380-005~~ 015-380-05, as described in Exhibit 20 and as generally depicted on Exhibit ~~2721~~ as CC 39-90-D, except for APN 015-330-05 which was transferred after issuance of the certificate of compliance.

A3. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-07-028**, the applicant shall execute and record a deed restriction against the single legal parcel containing the property identified as APN ~~015-380-003~~ 015-380-03, APN ~~015-380-004~~ 015-380-04, and APN ~~015-380-005~~ 015-380-05, in a form acceptable to the Executive Director, reflecting the restrictions set forth above. The deed restriction shall include a legal description and graphic depiction of (a) the property identified as APN ~~015-380-003~~ 015-380-03, APN ~~015-380-004~~

015-380-04, and APN ~~015-380-005~~ 015-380-05 and generally depicted on Exhibit 27 as well as (b) the entirety of the single legal parcel containing the property identified as APN ~~015-380-003~~ 015-380-03, APN ~~015-380-004~~ 015-380-04, and APN ~~015-380-005~~ 015-380-05 as described in Exhibit 20 and as generally depicted on Exhibit ~~2721~~ as CC 39-90-D, except for APN 015-330-05 which was transferred after issuance of the certificate of compliance. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens, including tax liens, that the Executive Director determines may affect the enforceability of the restriction.

REASON FOR CHANGES: The changes to the special condition that require certain portions of Certificate of Compliance No. COC 39-90-D to be treated as one contiguous parcel (a) correct the listing of the APNs to reflect the proper numbering and (b) clarify that one APN that was part of the area affected by the certificate of compliance was transferred to the County after issuance of the COC.
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**C. Replace Special Condition No. 15 with the following:**

**15. Temporary Events**

- A. The number of guests participating in temporary events held at the project site shall be limited so that all of the vehicles of all of the participating guests and workers and others staying at or working at the inn and ranch can be accommodated in the 10 space primary parking lot, within the 5-space guest garage structure, and the 24 space overflow parking area. No parking is allowed elsewhere on the property including along the driveway, in the fields adjoining the inn complex, or elsewhere on APN ~~014-038-005~~ 015-380-05.
- B. Any tents installed to accommodate temporary events shall be located within the confines of the perimeter fence to be installed around the inn and ranch complex
- A. Any necessary coastal development permit for a temporary event shall be obtained prior to holding the event. Coastal Development Permit No. A-1-MEN-07-028 does not authorize any temporary event.

REASON FOR CHANGES: The changes to the special condition regarding temporary events correct the listing of the APN to reflect the proper numbering
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D. Replace Special Condition No. 17 with the following:

17. Offer to Dedicate ~~Vertical Access Over Lateral Public Access Easement Along Highway One, Vertical Trail Public Access Easement to Bluff, Public Access Viewing Area Easement, and Public Access Parking Area Easement~~

**PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT**, and in order to implement the applicant's proposal, the applicant shall submit for the discretionary review and approval of the Executive Director, evidence that the applicant has executed and recorded an irrevocable offer to dedicate ~~an~~ a public access easement(s) to a public or non-profit entity acceptable to the Executive Director against APN 015-380-02 for public vertical access that includes a viewing area near the bluff edge and a five-space parking area off of Highway One in substantial compliance with the terms of the Project Description as proposed by the applicant in Exhibit No. 5 and as generally shown in Exhibit No. 24 except as otherwise modified by these Special Conditions and comprised of the following components:

A. An approximately 1,000-foot-long A 15-foot-wide lateral public access easement adjacent to the Highway One Right-of-way extending from the southern boundary of the parcel to northern boundary;

B. An approximately 1,200-foot-long 10-foot-wide vertical public access easement extending across APN 015-380-02 parallel to and 50 feet south of the riparian area extending along the northern boundary of the parcel from the lateral public access easement referred to in Part A above to the bluff;

C. An easement for a public access parking area sufficient for five automobiles that includes a 60-foot-long by 40-foot-wide parking area located seaward of the offered lateral public access easement referred to in Part A above with a driveway connection to Highway One and located approximately 375 feet south of the northern property line of APN 015-380-02; and

D. A 25-foot-wide by 25-foot long easement for a public viewing area and platform located at the seaward end of the vertical public access easement.

Any future development that is proposed to be located either in whole or in part within the areas described in the recorded offer(s) of dedication shall require a ~~further~~ Commission amendment, approved pursuant to the provisions of 14 CCR

§13166, to this Permit **Amendment**. This requirement shall be reflected in the provisions of the recorded offer(s).

REASON FOR CHANGES: The changes to the special condition (a) more clearly distinguish between the four components of the new public access easements proposed for dedication by the applicant within APN 015-380-02 at the north end of the project site, and (b) eliminate incorrect references to the permit as a permit amendment.

**E. Replace Special Condition Nos. 18 and 19 with the following:**

**18. Public Rights**

The Coastal Commission's approval of this permit **amendment** shall not constitute a waiver of any public rights that may exist on the property. The permittee shall not use this permit **amendment** as evidence of a waiver of any public rights that may exist on the property. In addition, by acceptance of this permit **amendment**, the applicant acknowledges that the voluntary offers to dedicate public access do not abrogate the County's or the Commission's abilities under the certified LCP and/or the Coastal Act to consider the effects of future development of the property on public access and the possible need to require additional public access on the property in the future.

**19. Public Access Easement Improvements**

**PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a written agreement acknowledging the ability of the entity accepting the offer(s) to dedicate a public access easement(s) to develop public access improvements within the easement area(s).

REASON FOR CHANGES: The changes to the special conditions eliminate incorrect references to the permit as a permit amendment.

**F. Add Special Condition No. 20 as follows:**

**20. Recorded Evidence that Granted or Offered Public Access Areas are Irrevocable and Are Provided As a Condition of This Permit**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the discretionary review and approval of the Executive Director, evidence that the applicant has executed and recorded against the single legal parcel described in Exhibit 20 and generally depicted in Exhibit 21 as CC-39-90-D, except for APN 015-330-05 which was transferred to the County after issuance of the COC, documentation in substantial compliance with the terms of the Project Description as proposed by the applicant in Exhibit No. 5 of (a) the conveyance of fee title to the County of an approximately one-acre area between Highway One and the ocean bearing APN 015-330-05 and (b) recordation of an offer to dedicate an easement for public access a 15-foot-wide lateral easement along the westerly edge of the Caltrans Highway One right-of-way extending from the southern boundary of APN 015-330-13 to the northern boundary of APN 015-380-04 across APN 015-330-13, APN 015-380-05, and APN and 015-380-04 as originally required by Mendocino County Coastal Development Permit Modification No. CDUM 9-95/2000. The documentation recorded against the single legal parcel described in Exhibit 20 and generally depicted in Exhibit 21 as CC-39-90-D, except for APN 015-330-05 which was transferred to the county after issuance of the COC, shall expressly evidence that the above-referenced conveyances are irrevocable and are provided as a condition of A-1-MEN-07-028.**

REASON FOR CHANGES: The new special condition requires recordation of documentation that (a) the conveyance of fee title to the County of the approximately one-acre area between Highway One and the ocean bearing APN 015-330-05; and (b) the dedication of the 15-foot-wide lateral easement along the westerly edge of the Caltrans Highway One right-of-way extending from the southern boundary of APN 015-330-13 to the northern boundary of APN 015-380-04 across APN 015-330-13, APN 015-380-05, and APN and 015-380-04, both previously required by Mendocino County Coastal Development Permit Modification No. CDUM 9-95/2000. These dedications are now provided as a condition of this coastal development permit and are irrevocable.

- F. Add Special Condition No. 21 as follows and renumber existing Special Condition No. 21 as Special Condition No. 22.:

**21. Liability for Costs and Attorneys Fees**



**The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees (including but not limited to such costs/fees that are: (1) charged by the Office of the Attorney General; and (2) required by a court) that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit, the interpretation and/or enforcement of permit conditions, or any other matter related to this permit. The Permittee shall reimburse the Coastal Commission within 60 days of being informed by the Executive Director of the amount of such costs/fees. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.**

REASON FOR CHANGES: Coastal Act Section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application in the event that the Commission's action is challenged by a party other than the Applicant. Therefore, consistent with Section 30620(c), Special Condition No. 21 requires reimbursement for any costs and attorneys fees that the Commission incurs in connection with the defense of any action brought by a party other than the Applicant challenging the approval or issuance of this permit, the interpretation and/or enforcement of permit conditions, or any other matter related to this permit.

**I. Additions to Findings**

- A. Add the following supplemental section to the end of Finding B, "Project History," on Page 29 of the staff report.**

**3. The Commission's de novo review of the project on remand**

**As stated above, in November 2009, the Commission denied an application by the applicant for a CDP to develop an inn on a portion of the applicant's property located adjacent to and west of Highway 1 between Mendocino and Westport. The applicant subsequently sought reconsideration of the Commission's decision and the**

Commission denied that request. Persons who had appealed the local approval to the Commission appeared at the Commission's November 2009 permit hearing and presented testimony in opposition to issuance of a CDP that would allow development of an inn on the applicant's property.

In December of 2009, the applicant filed an action challenging the Commission's permit denial decision. Since the filing of this action, the parties have engaged in settlement discussions. The product of these discussions is a settlement agreement between the applicant and Commission staff (Exhibit 30). The settlement agreement does not obligate the Commission to grant the applicant a new CDP and explicitly states that the Commission retains full discretion to deny the applicant's revised project after a full public hearing on the revised project. If that occurs, the litigation will not be settled, and the applicant will continue to seek an order from the Court to set aside the Commission's original decision to deny the development application.

Contrary to statements made by persons who had appealed the local approval to the Commission, the Commission has not been ordered by a Court to approve settlement of pending litigation, nor has the Commission been ordered to approve a new coastal development permit for the Jackson-Grube Family project. Instead, on June 17<sup>th</sup>, the Mendocino Superior Court remanded the subject matter to the Commission for a public hearing on the applicant's settlement offer and on whether the Commission should issue a modified CDP for the project. The Commission has provided notice of its new public hearing and the public will have an opportunity to be heard by the Commission before it takes any further action on Petitioners' project. The Court's remand order does not deprive the project appellants or anyone else of due process.

Persons who had appealed the local approval to the Commission also argue that the remand order should be set aside because it improperly provides the Commission with jurisdiction it would not otherwise have to consider a revised project. However, the Court's remand order does not impermissibly expand the Commission's jurisdiction over this project. Although the Commission's de novo appellate review of this and other projects does not include the right to approve something entirely different than was approved by the local permitting authority, the Commission can and frequently does require modifications to a project when it asserts its appellate jurisdiction. In this case, the proposed modifications consist of making the proposed inn smaller than the inn approved by the County, and requiring additional public access conditions for the project. This is not an entirely different project that requires new local review. The project appellant's argument that the Commission cannot consider project changes such as ones proposed here that are responsive to Coastal Act concerns that the Commission raised during its appellate review of the project is incompatible with the Coastal Act's requirement that the Commission review appeals de novo. (Pub. Resources Code § 30621, subd.(a).) Under the theory of persons who appealed the local approval of the

**project to the Commission, on appeal the Commission could do no more than either approve or deny projects as approved by a local government. This interpretation is incompatible with the concept of de novo review.**

REASON FOR CHANGES: The supplemental finding provides clarifying information regarding the Settlement agreement entered into between the applicant and the Commission (Exhibit 30) and responds to questions raised by others about the settlement agreement.

**B. Add the following public access finding as Finding K on page 97 of the report and renumber succeeding findings.**

(As this entire finding is new, the finding is presented in plain type rather than with bold strikethroughs and double underlining to make it easier to read.)

**K. Public Access**

1. Summary of Coastal Act and LCP Provisions

a. Coastal Act Access Policies

Section 30210 states:

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30211 states:

*Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Section 30212 states, in applicable part:

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- (a) *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:*
- (1) *It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,*
  - (2) *Adequate access exists nearby, or,*
  - (3) *Agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

Section 30214 states:

- (a) *The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:*
- (1) *Topographic and geologic site characteristics.*
  - (2) *The capacity of the site to sustain use and at what level of intensity.*
  - (3) *The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.*
  - (4) *The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.*
- (b) *It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a*

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*limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.*

- (c) *In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.*

b. LCP Provisions

LUP Policy 3.6-6 of states, in applicable part:

*Shoreline access points shall be at frequent rather than infrequent intervals for the convenience of both residents and visitors and to minimize impacts on marine resources at any one point. Wherever appropriate and feasible, public access facilities, including parking areas, shall be distributed throughout the coastal area so as to mitigate against the impacts, social or otherwise, of overcrowding or overuse by the public of any single area.*

LUP Policy 3.6-11 states:

*Visitor accommodations and services on parcels adjoining the shoreline as identified on the public access maps shall provide public access to the blufftop and/or the shoreline. The access, to be required as a condition of permit approval or other methods as described in policy 3.6-5, shall be available to the public at large as well as to guests. In the event that the use is changed to a use other than visitor accommodations or services, an irrevocable offer to dedicate an easement for public access shall be made available to a public entity for acceptance and management. If the accessway is reopened, it shall remain available to the public free of entrance charge.*

LUP Policy 3.6-13 states:

*The County may seek agencies to accept accessways as prescribed in this section under "Managing and Maintaining Accessways". Dedicated accessways shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

LUP Policy 3.6-18 states:

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*Along sections of the highway where development intensity will result in pedestrian use, or where this is the siting of the County designated coastal trail, a 15-foot accessway measured from the right-of-way of Highway 1 shall be offered for dedication as a condition of permit approval if the topography is deemed suitable for pathway development. Coastal trail includes trails identified in Table 3.6-1 and portions of Highway 1 and Usal Road that are necessary to connect these trail segments. All such access offers that have been recorded shall be offered to Caltrans for acceptance. Prevailing acquisition methods for acquiring public right-of-way by Caltrans shall apply to this section.*

LUP Policy 3.6-25 reiterates Coastal Act Section 30214 cited above.

**Discussion:**

Projects located between the first public road and the sea within the coastal development permit jurisdiction of a local government are subject to the coastal access policies of both the Coastal Act and the LCP. To approve the proposed project, the Commission must find the project to be consistent with the public access policies outlined in Section 30210, 30211, 30212, and 30214 of the Coastal Act and the LCP policies listed above. The project's consistency with these policies is described below. In its application of the above policies, the Commission is limited by the need to show that any denial of a permit application based on this section, or any decision to grant a permit subject to special conditions requiring public access is necessary to avoid or offset a project's adverse impact on existing or potential access.

1. Proposed Public Access

In order to implement a settlement agreement of a lawsuit over a previous permit for development at the site approved by Mendocino County, the applicant has dedicated certain public access easements on the applicant's property and has provided money for planning implementation of public access improvements within these easements. As discussed in Finding 1, in 1996, four years after certification of the LCP, the County Planning Commission approved Coastal Development Permit No. CDU 9-95, allowing for a 10-unit inn involving the remodeling of the existing large ranch house into two guest units and manager's quarters and the construction of eight new individual guest cottages. The Planning Commission approval was subsequently appealed to the Board of Supervisors and approved by the Board on May 13, 1996. The County's approval included conditions requiring recordation of an offer to dedicate coastal access. The Board's approval in turn, was later appealed to the Coastal Commission (Appeal No. A-1-MEN-96-028). On July 10, 1996, the Coastal Commission determined that the appeal raised no substantial issue, allowing the County's approval of CDU 9-95 to stand.

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The applicants sued the County, challenging the condition requiring coastal access on the grounds that a nexus did not exist between the impacts of the project on public access and the exaction of property for public access purposes. Eventually a settlement of the law suit was reached between the applicants and the County that provide for the County to drop the condition requiring the offer of dedication of public access in exchange for the applicants (1) conveying fee title to the County of a one-acre portion of the applicant's property approximately 1/8<sup>th</sup> of a mile south of the inn site and located between Highway One and the ocean bearing APN 015-330-05, (2) paying the County \$25,000 toward the development of coastal access in the area, and (3) dedicating an easement for public access through property along a 15-foot strip along the west side of the Highway One right-of-way along most of the applicants' property extending approximately 6,000 feet from the southern boundary of APN 015-330-13 to the northern boundary of APN 015-380-04 across APN 015-330-13, APN 015-380-05, and APN and 015-380-04. The one-acre area south of the inn site was to be used for public access parking and viewing and it is envisioned that the lateral access along the highway would eventually be designated as part of the California Coastal Trail.

On August 3, 2000, the County then approved Coastal Development Use Permit Modification #CDUM 9-95/2000 as a means of implementing the terms of the settlement agreement. The County accepted the grant of fee title to APN 015-330-05, the public access easement along Highway One, and the \$25,000 for developing coastal access and subsequently transferred the easement and funds to the Mendocino Land Trust to plan and construct a trail within the 15-foot strip along the west side of the Highway One right-of-way. On April 13, 2010, the Mendocino County Board of Supervisors approved County Coastal Development Permit No. CDP 67-2008 for development of the trail. The coastal development permit was not appealed to the Commission. Neither the lateral trail nor the one-acre public access site on APN 015-330-05 have been improved yet for public access.

The applicant includes as part of the revised project description submitted for the Commission's review of the denovo portion of Appeal No. A-1-MEN-07-028 these public access areas and funds previously granted to the County (See Exhibit No. 5). Inclusion of both the one-acre parking and viewing area south of the inn site and the 6,000-foot-long section of lateral access trail in the revised project description for this coastal development permit will ensure that the grant of these areas to the County is provided in consideration for, and as a condition of, this coastal development permit and cannot be revoked. In addition, the applicant has included as part of the revised project description additional public access on: (1) APN 015-380-02, an APN owned by the applicant located west of the highway and north of the inn site; and (2) the northern end of the 15-foot-wide lateral public access easement along the highway previously offered by the applicant described above.

The additional public access includes offers to dedicate public access easements for the following:

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1. An approximately 1,000-foot-long extension of the 15-foot-wide lateral public access easement adjacent to the Highway One Right-of-way previously offered to the County and eventually accepted by the Mendocino Land Trust that extends from the southern boundary of the parcel to northern boundary;
2. An approximately 1,200-foot-long 10-foot-wide vertical public access easement extending across APN 015-380-02 parallel to and 50 feet south of the riparian area extending along the northern boundary of the parcel from the lateral public access easement referred to in Part 1 above to the bluff;
3. An easement for a public access parking area sufficient for five automobiles that includes a 60-foot-long by 40-foot-wide parking area located seaward of the offered lateral public access easement along the highway with a driveway connection to Highway One and located approximately 375 feet south of the northern property line of APN 015-380-02; and
4. A 25-foot-wide by 25-foot long easement for a public viewing area and platform located at the seaward end of the vertical public access easement.

The applicant's proposal expressly proves that the offer to dedicate the new public access easements on APN 015-380-02 would be submitted for the discretionary review and approval of the Executive Director prior to recordation and prior to issuance of the coastal development permit.

The additional public access proposed is in the form of offers to dedicate public access easements. The offered public access easements would not be opened for public access use until an appropriate public or non-profit entity approved by the Commission has accepted the easements and developed a management plan approved by the County and the Commission. Physical development of public access improvements including the parking lot, trails, public access signage, etc. would be the responsibility of the accepting entities and would require additional coastal development permit authorization.

2. Consistency with Coastal Act Public Access and Recreation Policies

Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions. Section 30210 states that maximum access and recreational opportunities shall be provided consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. Section 30211 states that development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. Section 30212 states that public access from the nearest



public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, adequate access exists nearby, or agriculture would be adversely affected. Section 30214 requires, in applicable part, that public access be provided in a manner that takes into account the fragility of the natural resources in the area.

a. Provision and Protection of Public Access

The public access proposed as part of the project would provide significant public access opportunities to the public. The one-acre public access parking and viewing area 1/8<sup>th</sup> of a mile south of the proposed inn and ranch building complex that was previously granted in fee title to the County offers the traveling public the opportunity to pull off the highway and enjoy coastal views in a location where the highway comes close to the bluff edge. The 15-foot-wide lateral public access easement previously granted to the County and later transferred to the Mendocino Land Trust along the west side of the Highway One right-of-way along approximately 6,000 feet of the applicants' property south of APN 015-380-02 will become a significant portion of the Coastal Trail offering sweeping coastal views across the applicant's lands that will be deed restricted for open space pursuant to Special Condition No. 5 of this permit. Inclusion of both the one-acre parking and viewing area south of the inn site and the 6,000-foot-long section of lateral access trail in the revised project description for this coastal development permit will ensure that the grant of these areas to the County is provided in consideration for, and as a condition of, this coastal development permit and cannot be revoked.

The new public access that the applicant is offering for dedication on APN 015-380-02 as part of the revised project description would provide significant new public access opportunities to the public. The extension of the lateral public access easement along the highway would provide an additional approximately 1,000-foot-long segment of the California Coastal Trail. The new approximately 1,200-foot-long vertical easement connecting the lateral easement along the highway to the bluff would lead to an area of the bluff with dramatic tide pool and open ocean views as well as views looking many miles north and south along the coast. The vertical easement would provide public access to the bluff along an approximately 1-3/4-mile stretch of coastline that currently has no bluff or shoreline access between a Caltrans coastal viewing area located approximately half a mile to the north and the one-acre public access area the applicant granted to the County described previously. Access is not proposed down to the tidal areas because of the steepness of portions of the bluff and dangerous conditions. The offered 25-foot wide by 25-foot-long public viewing area easement at the seaward end of the vertical trail would enable a viewing platform to be built to facilitate public viewing and provide a destination point for the vertical trail. The 5-car public access parking area would provide useful parking serving both users of the lateral easement along the highway as well as the vertical easement and viewing area.

Other than at the one-acre public access parking and viewing area 1/8-mile south of the inn and ranch building complex, there is currently no public access to the shoreline on the subject property due to the very steep bluff. In addition, no evidence of public use of the property to gain access to the shoreline has been presented. Thus, the proposed development will not interfere with any existing public access use on the subject property. The development will, however, draw more people to this coastal area in the form of guests staying at the inn and people coming to the inn for occasional temporary events such as weddings. The applicant indicates that the guests to the proposed inn would have access to the blufftop on the applicant's property. It is reasonable to assume, however, that having traveled long distances to the inn site, guests will be interested in visiting other shoreline locations along this part of the coast besides in the immediate vicinity of the inn. Thus, the development will create additional demand for public access in the area. The public access being provided as part of the revised project description will accommodate this demand by providing continuous lateral access along the coast for approximately 1-1/4 miles along the entire length of the applicant's holdings west of the highway and by providing blufftop viewing areas at the northern and southern end of these lands that will include parking for visitors and a vertical trail to the bluff. Therefore, the Commission finds that the proposed development, as conditioned, will not have any significant adverse impact on any existing public access and will provide maximum public access consistent with the requirements of Coastal Act Sections 30210, 30211, and 30212 and the public access policies of the certified LCP.

b. Protection of Natural Resources

As cited above, Coastal Act Section 30210 requires that public access and recreational opportunities be provided in a manner that protects natural resource areas, such as ESHA, from overuse. Similarly, Coastal Act Sections 30212 and 30214 require that public access be provided in a manner that takes into account the fragility of the natural resources in the area.

As discussed above, Mendocino County recently granted Coastal Development Permit No. 67-2008 to the Mendocino Land Trust to develop a trail within the 15-foot-wide lateral public access dedication along the highway. The County considered the effects of the development on wetlands and environmentally sensitive habitat and issued a mitigated negative declaration, indicating that no significant environmental impacts would occur that cannot be adequately mitigated. A botanical survey indicated that no rare, endangered, or unique plant species were found in the trail area. The trail will cross several small drainage channels, but will utilize existing rock placed by Caltrans as revetment material to create rock ford over the channels. A small segment of trail was approved as a boardwalk over a separate wetland area. The 225 square feet of fill is for a nature study use consistent with the wetland fill policies of the LCP. The trail project was determined not to have significant impacts on riparian vegetation, other than minor

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pruning. The coastal development permit was approved on April 13, 2010 by the County Board of Supervisors and was not appealed to the Commission.

As part of the revised project description for the Appeal No. A-1-MEN-07-028, the applicant submitted a supplemental biological report June 15, 2010 evaluating the impacts of the proposed new public access dedications on APN 015-380-02. The supplemental biological report indicates that the study area is dominated by non-native grassland with a riparian corridor along a small stream that coincides with the northern boundary of APN 015-380-02. The riparian habitat is dominated by coastal willow (*Salix hookeriana*) which are patchy and appear to be regularly damaged or eaten by cows. The stream and adjoining riparian vegetation is an environmentally sensitive riparian habitat. Native dominated habitats are found along the coastal bluff slopes and terrace closest to the bluff edge. These areas include a mix of typical Coastal Terrace Prairie (CTP) and Northern Coastal Bluff Scrub habitats. Both of these natural communities are considered to be environmentally sensitive habitat. In addition, 20 individuals of Mendocino coast Indian paintbrush (*Castilleja mendocinensis*) were found in two separate locations along the bluff edges in the study area.

None of the areas on APN 015-380-02 offered for dedication would encroach into ESHA areas, including the vertical public access easement, the public viewing area at the end of the vertical easement, the extension of the 15-foot-wide lateral public access easement along the highway north through APN 015-380-02, and the 5-car parking lot adjoining the lateral easement. The vertical easement and viewing area would be positioned parallel to the riparian corridor in a location that is a minimum of 50 feet away from the riparian corridor and a minimum of 100 feet away from all of the ESHA plant communities and species located along the bluff edges.

The supplemental biological report evaluated whether a 50-foot buffer would be sufficient to protect the riparian corridor and other ESHA using the buffer width criteria in the Commission's Interpretive Guidelines that are also incorporated into Section 20.496.020 of the County's Coastal Zoning Code. The biological study concludes that if certain mitigation measures are included when trails and public access improvements are developed in the future by the entity that accepts the offered public access dedications, a 50-foot buffer would be sufficient to protect the riparian corridor. The study does recommend that a 100-foot buffer be applied to the portion of trail and viewing areas that would be located adjacent to the bluff where the Northern Coastal Bluff Scrub and westward end of the riparian vegetation exists. The analysis indicates the areas near the bluff require the larger buffer as these ESHAs are more sensitive to disturbance given the fragility of the bluff face. The recommended mitigation measures include constructing fencing at or outside of the boundary of the 50-foot buffer to protect the ESHAs from foot traffic and also allow for recuperation of damaged riparian and stream habitat currently impacted by cattle. Other suggested mitigation measures include (a) conducting detailed and current botanical studies at the time permits are applied for to develop the facilities to ensure that ESHA plant habitat has not moved into the easements or needed

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buffer areas, (b) restricting construction activities that would disturb the ESHA or buffer areas when the public access facilities are built such as the storage of materials and the disposal of debris (c) limiting construction windows to the summer months to minimize potential erosion and sedimentation, (d) delineating ESHA buffer boundaries during construction to minimize the encroachment of construction activities into these areas, (e) cleaning the undercarriage and tires of construction equipment with pressure washing equipment prior to use on the site to avoid the spread of invasive species, and (f) prohibiting landscaping within the ESHAs or ESHA buffers to minimize the spread of exotics.

The biological study demonstrates that future development of public access facilities by an entity that accepts the offered dedications of public access easements on APN 015-380-02 can be conducted in a manner that provides for requisite ESHA buffers and will not result in significant adverse impacts on the adjacent ESHA habitat if conditioned to require the mitigation measures recommended in the report.

In a letter dated June 28, 2010 submitted by Greg Risse representing the Risse Family Trust, a concern is raised that poachers (mainly for abalone) trespass in the location of the proposed vertical public access trail and that the public access dedication will exacerbate this problem. The Commission notes that poaching in violation of California Department of Fish & Game fishing laws occurs up and down the coast and is not limited to this one area. Enforcement is a continuing challenge for the Department, but no evidence has been submitted that the situation is having greater impact on fish resources in this location as compared to other locations such that public access should not be provided.

Therefore, the Commission finds that for all of the above reasons, the proposed project, as conditioned, is consistent with Sections 30210, 30211, 30212, and 30214 of the Coastal Act, as the proposed project would (1) enhance and permanently protect public access to and along the coast, (2) protect natural resource areas from overuse, and (3) be sited and designed to account for the fragility of the natural resources in the area.

c. Traffic Impacts.

Coastal Act Sections 30214 states in applicable part that *public access...shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to ... (2) the capacity of the site to sustain use and at what level of intensity.* A factor in the capacity of the site to sustain the public access use is the accessibility of the site for people traveling to the proposed public access areas.

The public access dedications included in the project description will all be accessed via Highway One. Some of the public access users will include bicyclists and coast walkers

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traveling to the site without vehicles, but the majority of the use of the site will be by people traveling to the site by car. As discussed in the Highway One Capacity Section of Finding F of this report, the applicant commissioned a traffic study to evaluate the impacts of the development on Highway One capacity. The study concluded that there is more than sufficient traffic capacity on Highway One to absorb the extra traffic generated by the development. The report notes that currently, Highway One in the vicinity of the project site carries approximately 2,360 vehicles per day, including 420 trips in the weekday p.m. peak hour. Based on Caltrans' District 1 growth factors for State Highways in the district, this volume is projected to rise to approximately 2,600 daily trips and 470 weekday p.m. peak hour trips by the year 2027. According to the applicant's traffic study, these volumes are far below the "ideal capacity" of a two lane highway as described in Caltran's Highway Capacity manual, Transportation Research Board, 2000. This document notes that the ideal capacity of a two-lane highway is 3,200 passenger cars per hour. As traffic along Highway One in this vicinity is only projected to rise to 470 weak day p.m. peak hour trips in both directions by the year 2027, the capacity available is approximately six times (3,200/470) the peak hour volume of traffic that is projected to occur.

The applicant's traffic study estimates that the development would generate an average of 70 daily trips, including four trips during both the morning and evening peak hours on weekdays. Adding these additional four trips per hour to the projected traffic volumes in 2027 would still leave the available capacity at many times the peak hour volume of traffic that is projected to occur.

A submittal received by the Commission on September 30, 2009 from Jared G. Carter on behalf of Deborah Cahn, Trustee of the Margery S. Cahn Living Trust, and Judith Whiting, Trustee of the Whiting Family Revocable Trust and additional submittals dated June 28, 2010 and July 2, 2010 from this party contend that the cumulative impacts of the development with impacts of the public access dedications have not been adequately considered. Specific vehicle trip generation rates for the public access facilities that could ultimately be built within the areas included as public access dedications in the revised project description are not available. However, given that (1) the available capacity of Highway One in the vicinity of the project is many times the projected volume of traffic that Caltrans projects will use the Highway in 2027, and (2) the volume of additional traffic generated directly by the inn project will only be four trips per peak hour, the additional traffic volume on Highway One that future trail development within the access dedications included as part of the project description would generate in combination with the applicant's development would not result in significant adverse cumulative impacts on traffic capacity.

The proposed project also includes dedication of an area for the future installation of a 5-car parking lot near the north end of the 15-foot-wide lateral easement. This parking area is positioned where it will be able to serve both users of the vertical trail easement to the bluff as well as the lateral trail easement along the highway. In addition, the one-acre coastal viewing and parking area located 1/8<sup>th</sup> of a mile south of the inn site that the

applicant previously conveyed to the County and has included in its revised project description will provide for more public access parking, both for users of that coastal viewing area and for people who wish to access the lateral access easement along the highway. Although this parking area is approximately 1/8<sup>th</sup> of a mile south of the end of the lateral access easement, the public is not precluded from walking along the highway right-of-way from the parking area to the beginning of the lateral easement.

Therefore, the Commission finds that the public access that will be facilitated by the dedications and conveyances of public access easements and fee-title as part of the revised project description will be implemented in a manner that takes into account the sufficiency of parking and transportation facilities to serve the public access consistent with Section 30214 of the Coastal Act.

2. Consistency with LCP Public Access and Recreation Policies

a. Provision of Shoreline Access

The proposed project is consistent with the provisions of LUP Policy 3.6-6 that require shoreline access points at frequent intervals for the convenience of residents and visitors and to avoid overcrowding of the access area at any one time. The proposed project would provide a significant public access location in the northern portion of Mendocino County where public access opportunities are more limited than in the central portions of the County. As discussed above, the new public access that the applicant is offering for dedication on APN 015-380-02 as part of the revised project description would provide significant new public access opportunities to the public. The extension of the lateral public access easement along the highway would provide an additional approximately 1,000-foot-long segment of the California Coastal Trail. The new approximately 1,200-foot-long vertical easement connecting the lateral easement along the highway to the bluff would lead to an area of the bluff with dramatic tide pool and open ocean views as well as views looking many miles north and south along the coast. The proposed vertical easement would break up an approximately 1-3/4-mile expanse of coastline where no public access to the bluff currently exists between a Caltrans coastal viewing area located approximately half a mile to the north and the one-acre public access area approximately 1-1/4 miles to the south the applicant granted to the County. Therefore, the Commission finds that as the development would increase the frequency of access to the shoreline in the subject area, the development, as conditioned, is consistent with LUP Policy 3.6-6.

b. Provision of Coastal Access With Visitor Serving Facilities.

LUP Policy 3.6-11 states that visitor accommodations and services on parcels adjoining the shoreline shall provide public access to the blufftop and/or the shoreline. As discussed

above, the revised project description for the development conveys a one-acre bluff top lot located 1/8<sup>th</sup> of a mile south of the inn site to the County for viewing and parking. In addition, the development offers to dedicate a 1,200-foot-long vertical public access easement to the coastal bluff with an associated viewing area that will be connected to a separately offered lateral access along the highway and a parking area. Therefore, as the development provides public access to the blufftop in two locations, the Commission finds that the development, as conditioned, is consistent with LUP Policy 3.6-11.

c. Provision of Lateral Access Along Highway One.

LUP Policy 3.6-18 states that along sections of the highway where development intensity will result in pedestrian use, or where this is the siting of the County designated coastal trail, a 15-foot accessway measured from the right-of-way of Highway 1 shall be offered for dedication as a condition of permit approval if the topography is deemed suitable for pathway development. As discussed above, the development will generate additional demand for public access that could result in increased pedestrian use. In addition, although the Mendocino County LCP does not currently designate the coastal trail through the subject area, a lateral trail along the highway in this location is likely to be designated as the coastal trail in the future. As proposed, the project provides a 15-foot accessway along the seaward side of the Highway One along the entire approximately 7,000-foot-long stretch of property owned by the applicant in this location west of the highway. The project includes the previous dedication to the County of an approximately 6,000-foot-long portion of the accessway extending from the southern end of APN 015-330-13 to the northern end of APN 015-380-04, as well as a new dedication through the length of APN 015-380-02. Therefore, the Commission finds that the development, as conditioned, is consistent with LUP Policy 3.6-18.

E. Conclusion

To ensure that the project as amended will accommodate the demand for public access generated by the proposed inn and ranch complex development and provide maximum public access consistent with Coastal Act and LCP public access policies, the Commission attaches Special Condition Nos. 17-21.

Special Condition No. 17 requires the applicant to provide evidence for the review and approval of the executive Director that their offer to dedicate easements for public access over APN 015-380-02 including the extension of the 15-foot-wide lateral easement along the seaward side of the Highway One right-of-way, the 10-foot-wide vertical easement extending from Highway One to the bluff, the 25-foot-long by 25-foot-wide viewing area at the seaward end of the vertical access easement, and the easement for the 5-car parking area adjacent to the lateral access easement along the highway have been properly recorded prior to issuance of the coastal development permit amendment.

Special Condition No. 20 requires the applicant to provide evidence for the review and approval of the Executive Director that the applicant has executed and recorded a document demonstrating that (a) the conveyance of fee title to the County of the approximately one-acre area between Highway One and the ocean bearing APN 015-330-05; and (b) the dedication of the 15-foot-wide lateral easement along the westerly edge of the Caltrans Highway One right-of-way extending from the southern boundary of APN 015-330-13 to the northern boundary of APN 015-380-04 across APN 015-330-13, APN 015-380-05, and APN and 015-380-04, both previously required by Mendocino County Coastal Development Permit Modification No. CDUM 9-95/2000, are now provided as a condition of this coastal development permit and are irrevocable.

Special Condition No. 18 protects the public's rights of access over the property since public prescriptive rights have not been adjudicated by a court of law at this time. Special Condition No. 10 states that by acceptance of the permit amendment, the applicant agrees that the issuance of the permit amendment and the completion of the development does not prejudice any subsequent assertion of any public rights of access to the shoreline (prescriptive rights), and that approval by the Commission of this permit shall not be used or construed, prior to the settlement of any claims of public rights, to interfere with the rights of public access to the shoreline acquired through use which may exist on the property.

Finally, Special Condition No. 19 requires the applicant to submit a written agreement acknowledging the ability of the entity accepting the offer~~(s)~~ to dedicate a public access easement~~(s)~~ to develop public access improvements within the easement area~~(s)~~.

In conclusion, the Commission finds for the reasons discussed above, that the development as conditioned is consistent with the public access policies of the Coastal Act and the certified LCP.

**C. Add the following indemnity finding as Finding L on page 97 of the report and renumber succeeding findings.**

(As this entire finding is new, the finding is presented in plain type rather than with bold strikethroughs and double underlining to make it easier to read.)

**L. Indemnity**

Coastal Act Section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. Thus, the Commission is authorized to require reimbursement for expenses incurred in



defending its action on the pending CDP application in the event that the Commission's action is challenged by a party other than the Applicant. Therefore, consistent with Section 30620(c), the Commission imposes Special Condition No. 21 requiring reimbursement for any costs and attorneys fees that the Commission incurs in connection with the defense of any action brought by a party other than the Applicant challenging the approval or issuance of this permit, the interpretation and/or enforcement of permit conditions, or any other matter related to this permit.

#### **IV. Revised and New Exhibits**

Attached Exhibits 5, 23, and 24 replace the corresponding exhibits of the same number in the staff report.

**Exhibit No. 5, "Revised Project Description,"** has been replaced with an exhibit showing the most recent revisions to the project description. On July 6, 2010, the applicant revised the project description to renumber the APNs in the correct format, to more clearly describe the component parts of the offered new public access easements on APN 015-380-02, and to clarify that the dedications will be in the form of offers to dedicate easements rather than as grants of actual easements.

**Exhibit No. 23, "Open Space Restriction Areas,"** has been replaced with a revised exhibit of that is intended to show more clearly the area of the site that will be affected by the open space restrictions of Special Condition No. 5.

**Exhibit No. 24, "Proposed Public Access OTDs,"** has been replaced with a revised exhibit that is intended to label more clearly the component parts of the offered new public access easements on APN 015-380-02.

Attached Exhibits 27, 28, 29, and 30 are entirely new exhibits added to the staff report.

**Exhibit No. 27, "Area Affected by Special Condition No. 6,"** is included to show the area affected by the requirements of Special Condition No. 6.

**Exhibit No. 28, "Extent of Project Site,"** is included to show the portion of the applicant's more extensive landholdings that are included as part of the project site.

**Exhibit No. 29, "Additional Correspondence Received Since 6/24/10 Staff Report,"** includes the correspondence received by the Commission since the staff report was published. The correspondence include letters from the applicant's representative, some of the appellants of the original appeal, and other interested parties.

**Exhibit No. 30, "Settlement Agreement,"** is a copy of the settlement agreement entered into between the Commission and the applicant.

# A BLOCK & BLOCK

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July 4, 2010

L AND FAX (707) 445-7833

Mr. Bob Merrill  
VIA EMAIL ONLY

Mr. Bob Merrill  
California Coastal Commission  
710 E Street, Suite 200  
Eureka, California 95501

<b>EXHIBIT NO. 5</b>
<b>APPEAL NO.</b> A-1-MEN-07-028
JACKSON-GRUBE FAMILY, INC.
REVISED PROPERTY DESCRIPTION (1 of 5)

**RECEIVED**

JUL 06 2010

CALIFORNIA  
COASTAL COMMISSION

Re: Appeal No. A-1-MEN-07-028 (Jackson-Grube Family, Inc.)  
Revised Project Description

Dear Bob:

Pursuant to our telephone conversation yesterday afternoon the project description is being revised as requested to include the additional access and deed restriction.

Please understand that the applicant is only agreeing to provide an offer to dedicate the additional access to the Commission, not develop the same and/or waive the requirements of Public Resources Code Section 30212(a)(3), which provide that "[Dedicated] accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway."

Revised Project Description: Build a 6 unit Inn. The Inn operations shall include (1) the main building renovation of the former Orca Inn into three rental units of 412 sq. ft., 249 sq. ft., and 240 sq. ft., and accessory common & service areas of 3,236 sq. ft. and (2) a cottage with three rental units of 915 sq. ft., 837 sq. ft., and 526 sq. ft. Ranch and service operations to include (1) a ranch manager's unit of 1,737 sq. ft.; (2) an equipment barn of 1,121 sq. ft.; (3) a generator/pump shed of 240 sq. ft.; and (4) a guest garage of 1,508 sq. ft.. The existing tank of 189 sq. ft., its adjacent pump house of 134 sq. ft. and the two existing wells and the majority of the existing driveway are to remain. The proposal includes reuse of the existing septic system, improvement of existing driveway, and burying of existing overhead utilities. No portion of the proposed development, with the exception of the

renovation of the main building that already exceeds 18 ft. will exceed 18 ft. The total area of development is approximately 1.56 acres, including the building envelope of 1.22 acres and the driveway of 0.34 acres. The existing farm house, which comprises a portion of the main building, is to be renovated; a minimum of

Mr. Bob Merrill

Re: Appeal No. A-1-MEN-07-028 (Jackson-Grube Family, Inc.)

July 3, 2010

Page 2

50% of the existing walls and roof will remain. Public access improvements previously provided to the County of Mendocino as part of the approval of CDP CDU 9-95 are also included in this project, including 1) conveyance of fee title to the County of a one (1) acre portion of the property; 2) \$25,000 paid to the County toward the development of coastal access in the area; and 3) dedication of an easement for public access along a 15 foot strip of the property on the west side of Highway One right-of-way. The applicant further will agree to provide an offer to dedicate to the Commission 1) an approximate 1,000 foot long, 15 foot wide lateral access easement adjacent to Highway One extending from the southern boundary of APN 015-380-02 to it's northern boundary; 2) an approximate 1,200 foot long

10-foot-wide vertical public access easement extending across APN 015-380-02 parallel to and 50 feet south of the riparian area extending along the northern boundary of said parcel from the lateral public access easement referred to in #1 above towards the bluff; 3) an easement for a public parking area sufficient for 5

five automobiles that includes a 60 foot long by 40 foot wide parking area located

Seaward of the offered lateral public easement referred to in #1 above with a driveway connection to Highway One and located approximately 500 feet south of the northern property line of APN 015-380-02; and 4) a 25 foot wide by 25 foot wide easement for a public viewing area and platform located at the seaward end of the vertical public access easement. Lastly the applicant will agree to an additional open space deed restriction to prohibiting further development on the ocean side of Highway One on APNs 015-380-02, 015-380-03, and 015-033-13. The applicant's agreement to the additional open space deed restriction being conditioned on the applicant being able to replace a barn that previously existed south of the proposed Inn site.

Thank you for your continued courtesy and cooperation.

Very truly yours,

LAW OFFICES

2 of 5

BLOCK & BLOCK  
A Professional Corporation

ARB/cw

cc: Willard Jackson

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ALAN ROBERT BLOCK

395

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July 4, 2010

VIA EMAIL ONLY

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**RECEIVED**

JUL 06 2010

CALIFORNIA  
COASTAL COMMISSION

**Re: Appeal No. A-1-MEN-07-028 (Jackson-Grube Family, Inc.)**

Dear Mr. Merrill:

This letter is forwarded to you at your request in order to revise the procedural steps necessary for the recordation of the offer to dedicate the additional public access at the north end of the ranch as delineated in the revised project description as referenced in our earlier correspondence dated July 4, 2010. The approximate location of the additional areas was delineated in a map forwarded to you as prepared by Matt Richmond and attached to our correspondence dated June 17, 2010. . A more precise map based on an earlier survey of the property will be revised and forwarded to you from the project's architect, Sellers & Company.

It is understood and agreed to by the Commission that the applicant is only agreeing to provide an offer to dedicate sufficient area on his property for the additional public access and will not be improving the property for the development of the same. The applicant does not waive the requirements of Public Resources Code Section 30212(a)(3) which provides that the dedicated "accessway shall not be opened for public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway".

The procedural steps to be followed concerning this offer of dedication are as follows:

- a. The applicant shall submit the proposed offer to dedicate an easement for the discretionary review and approval of the executive director prior to recordation and prior to issuance of the Coastal Development Permit;

4 of 5

Mr. Robert S. Merrill

*Re: Appeal No. A-1-MEN-07-028 (Jackson-Grube Family, Inc.)*

July 4, 2010

Page 2

b. The offer of easement to be approved by the Executive Director shall require that any future development that is proposed to be located either in whole or in part within the area described in the recorded easement shall require a Commission amendment to the subject Coastal Development Permit (if approved);

c. The form of the offer of easement to be approved by the Executive Director shall include legal descriptions of the entire property as well as the area of dedication;

d. The offer of easement to be approved by the Executive Director shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed;

e. The offer of easement to be approved by the Executive Director shall be recorded after approval but prior to issuance of subject Coastal Development Permit (if approved).

Naturally, our office stands ready to assist. Should you have any questions, please contact me at your earliest convenience.

Very truly yours,

**LAW OFFICES OF  
BLOCK & BLOCK**  
A Professional Corporation

ARB:cw

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ALAN ROBERT BLOCK

5 of 5



**REQUIRED OPEN SPACE  
RESTRICTION AREAS**

**EXHIBIT NO. 23**

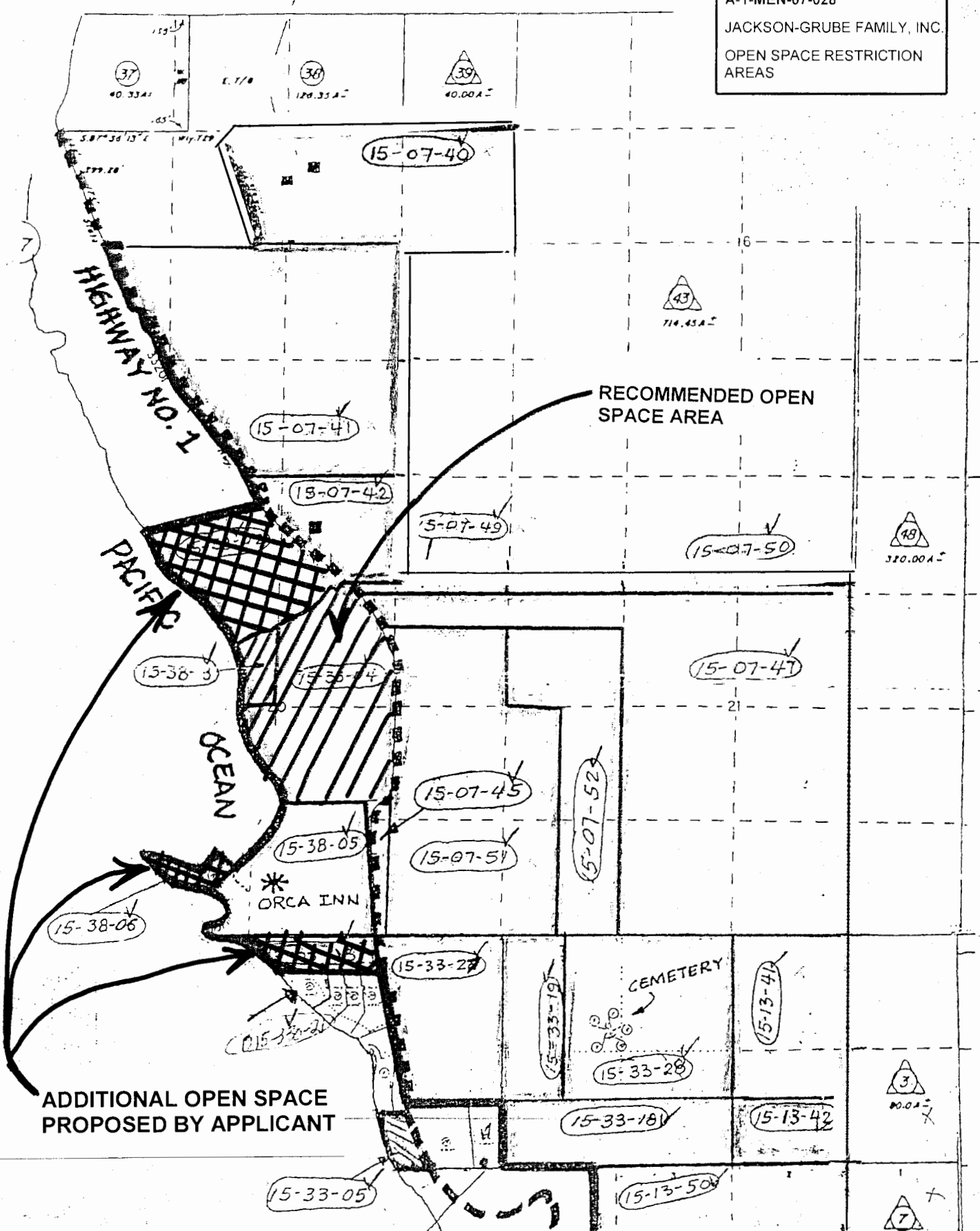
**APPEAL NO.**

A-1-MEN-07-028

JACKSON-GRUBE FAMILY, INC.

OPEN SPACE RESTRICTION  
AREAS

(01)



37  
40.33 A<sup>±</sup>

30  
129.35 A<sup>±</sup>

39  
40.00 A<sup>±</sup>

43  
74.45 A<sup>±</sup>

48  
320.00 A<sup>±</sup>

3  
80.0 A<sup>±</sup>

7

15-07-40

15-07-41

15-07-42

15-07-49

15-07-50

15-38-3

15-38-4

15-07-47

15-07-45

15-07-52

15-38-05

15-07-51

15-38-06

15-33-27

15-33-19

15-13-41

15-33-28

15-33-18

15-13-42

15-33-05

15-13-50

**ADDITIONAL OPEN SPACE  
PROPOSED BY APPLICANT**

**RECOMMENDED OPEN  
SPACE AREA**

**HIGHWAY NO. 1**

**PACIFIC  
OCEAN**

**ORCA INN**

**CEMETERY**

PROPOSED 10'-WIDE VERTICAL EASEMENT

DEMPSEY

(29.0 acres on Assessor's Map)

AP # 15-07-42

PROPOSED PARKING AREA EASEMENT

PROPOSED 15'-WIDE LATERAL EASEMENT ALONG HIGHWAY

JACKSON

AP # 15-38-002

PROPOSED 25' X 25' VIEWING AREA EASEMENT

122 ACRES (Total) INCLUDING RISSE

± 1,100 FT. ±

± 32.61 AC

22.59 AC. RISSE

3/4" Rebar MC 2 Dwg. Pp. 37

PROPERTY LINE (STREET CL.)

ESHA 100' BUFFER

ESHA 100' BUFFER

ENCROACHMENT IN ACCORDANCE WITH CALTRANS SPECIFICATIONS

← SHOULDER

← HWY. #1

← SHOULDER

← R.O.W.

← 15' CONCRETE TRAIL ENCROACHMENT

← 42'-0"

← ± 375' TO PROPERTY LINE

← FIVE 10' X 20' PARKING SPACES

← 10' X 20' LOADING AREA FOR ACCESSIBLE PARKING SPACE #5.

← 11' X 15' X 15'

EXHIBIT NO. 24

APPEAL NO.

A-1-MEN-07-028

JACKSON-GRUBE FAMILY, INC.

PROPOSED PUBLIC ACCESS OTDs

PROPOSED EASEMENT & ENCROACHMENT @ PARKING

A

20

20

MOON HIGH TIDE LINE

PACIFIC OCEAN

Westport

Fort Bragg





PORTION OF COC 39-90-D AFFECTED BY SPECIAL CONDITION 6

EXHIBIT NO. 27

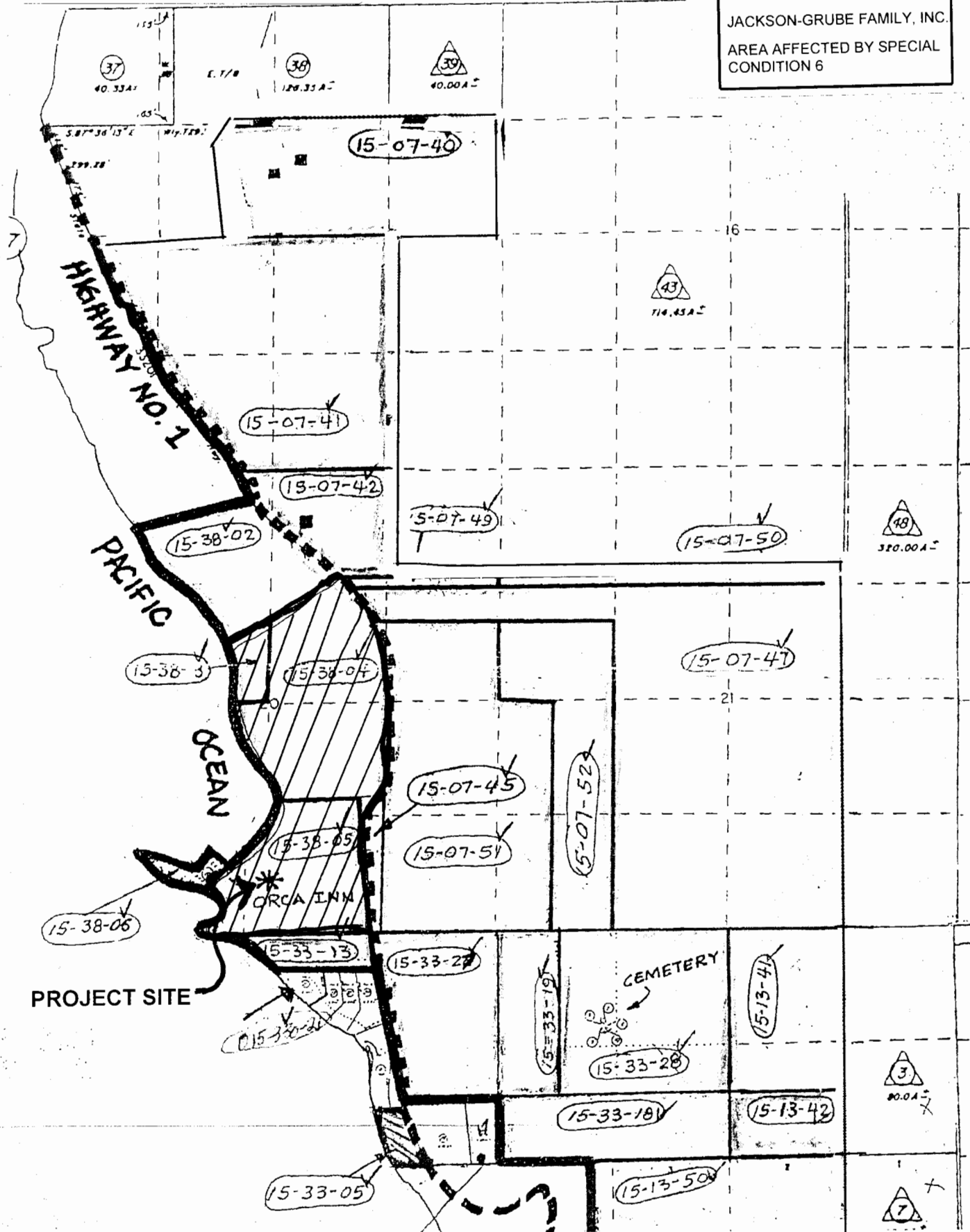
APPEAL NO.

A-1-MEN-07-028

JACKSON-GRUBE FAMILY, INC.

AREA AFFECTED BY SPECIAL CONDITION 6

(01)



PROJECT SITE

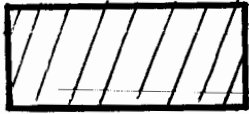
HIGHWAY NO. 1

PACIFIC OCEAN

OCEAN

ORCA INN

CEMETERY



EXTENT OF PROJECT SITE

EXHIBIT NO. 28

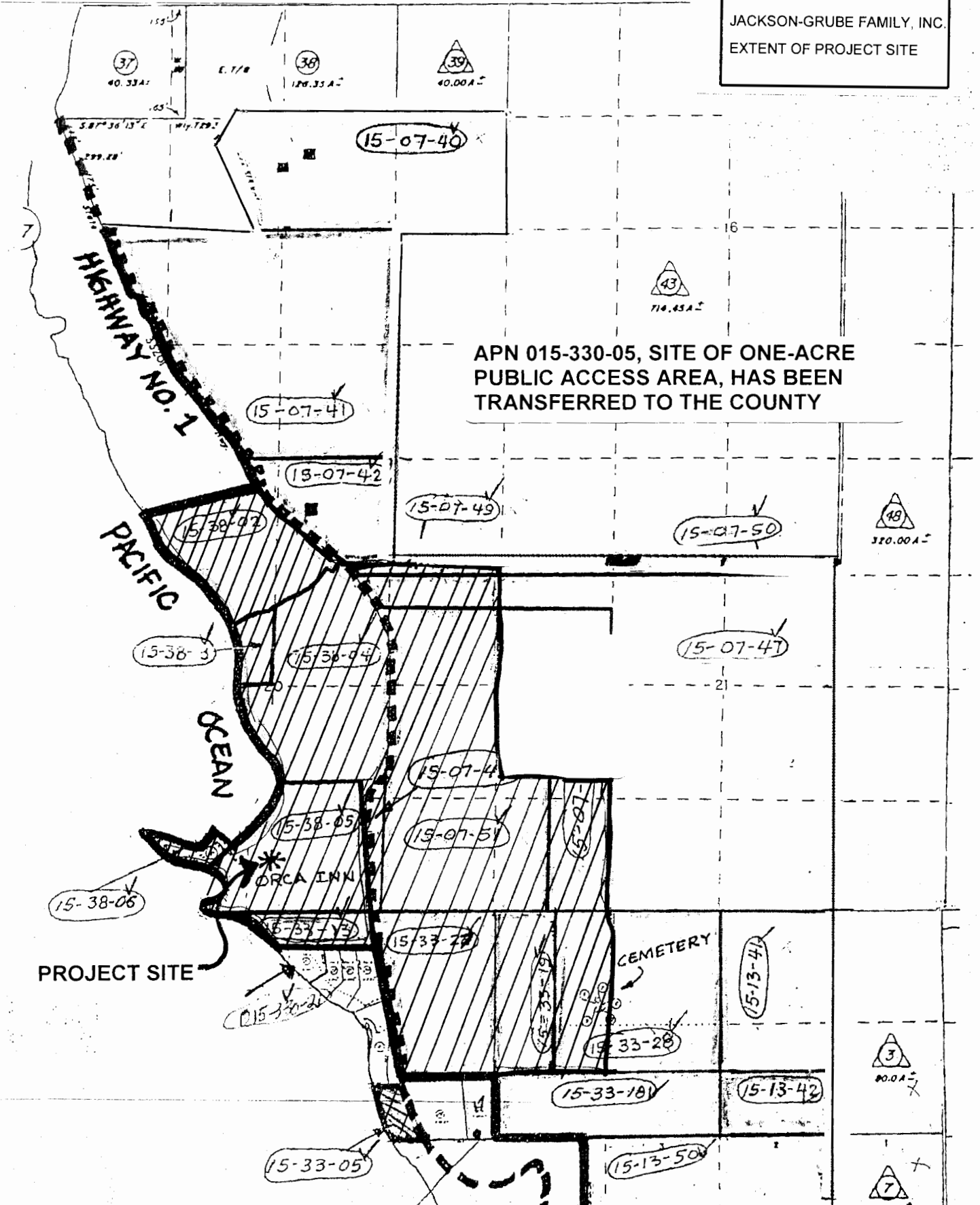
APPEAL NO.

A-1-MEN-07-028

JACKSON-GRUBE FAMILY, INC.

EXTENT OF PROJECT SITE

(01)



PROJECT SITE

HIGHWAY NO. 1

PACIFIC OCEAN

OCEAN

ORCA INN

CEMETERY

APN 015-330-05, SITE OF ONE-ACRE PUBLIC ACCESS AREA, HAS BEEN TRANSFERRED TO THE COUNTY

# BLOCK & BLOCK

A PROFESSIONAL CORPORATION

1880 CENTURY PARK EAST, SUITE 415  
LOS ANGELES, CALIFORNIA 90067-1604  
TELEPHONE (310) 552-3336  
TELEFAX (310) 552-1850

ALAN ROBERT BLOCK  
JUSTIN MICHAEL BLOCK

EXHIBIT NO. 29

APPEAL NO.

A-1-MEN-07-028

JACKSON-GRUBE FAMILY, INC.

ADDITIONAL CORRESPONDENCE RECEIVED SINCE

6/24/10 STAFF REPORT (1 of 49)

June 28, 2010

RECEIVED

JUN 30 2010

California Coastal Commission  
710 E Street, Suite 200  
Eureka, California 95501

CALIFORNIA  
COASTAL COMMISSION

Re: Appeal No. A-1-MEN-07-028 (Jackson-Grube Family, Inc.)

Revised Project Description: Build a 6 unit Inn. The Inn operations shall include (1) the main building renovation of the former Orca Inn into three rental units of 412 sq. ft., 249 sq. ft., and 240 sq. ft., and accessory common & service areas of 3,236 sq. ft. and (2) a cottage with three rental units of 915 sq. ft., 837 sq. ft., and 526 sq. ft. Ranch and service operations to include (1) a ranch manager's unit of 1,737 sq. ft.; (2) an equipment barn of 1,121 sq. ft.; (3) a generator/pump shed of 240 sq. ft.; and (4) a guest garage of 1,508 sq. ft. No portion of the proposed development, with the exception of the renovation of the main building that already exceeds 18 ft. will exceed 18 ft. The total area of development is approximately 1.56 acres, including the building envelope of 1.22 acres and the driveway of 0.34 acres. The existing farm house, which comprises a portion of the main building, is to be renovated; a minimum of 50% of the existing walls and roof will remain. The project will reuse the existing septic system, improve the existing driveway, bury existing overhead utilities, and provide for dedications of public access.

Scheduled: July 7, 2010  
Agenda Item: 10(a)

Dear Commissioners:

This office represents the applicant, Jackson-Grube Family, Inc. ("Jackson-Grube") with regard to the pending coastal development use permit ("CDP") to construct a 6 unit inn on their large 1,650 acre parcel. In January 2010 Jackson-Grube filed litigation challenging the Commission's denial of Appeal No. A-1-MEN-07-028, and a subsequent reconsideration request, in *Jackson-Grube v. California Coastal Commission, Mendocino County Superior Court Case No. SCDFCVG-0955369*, and in May 2010 the Commission agreed in a noticed closed session to consider a revised proposal in proposed settlement of the pending lawsuit. On June 17, 2010, the court remanded the matter to the Commission to be heard during its July 2010 agenda. If the revised application is approved the lawsuit will be dismissed with prejudice.

California Coastal Commission

Re: Appeal No. A-1-MEN-07-028 (Jackson-Grube Family, Inc.)

June 28, 2010

Page 2

The revised project is consistent with both the intent and black letter law of the Coastal Act, Mendocino Local Coastal Plan ("LCP"), and all other applicable law, and deserves your approval.

The applicant has had an opportunity to review the Staff Report recommending approval of the project, dated June 24, 2010, and agrees with all of staff's numerous recommended special conditions for approval. Said recommendation special conditions include 1) conformance to the design and construction plans to the Geotechnical Investigation Report dated January 10, 2008 prepared by BACE Geotechnical; 2) no future bluff or shoreline protective devices; 3) recordation of a an Assumption of Risk, Waiver of Liability and Indemnification Agreement; 4) recordation of a deed restriction imposing the special conditions of approval as covenants, conditions, and restrictions pm the use of the entire parcel or parcels; 5) recordation of an open space deed restriction that no development will occur anywhere on APNs 015-380-002, 015-380-003, 015-380-004, 015-038-006, 015-033-013 with the exception of agricultural fences, corrals, and other accessory agricultural development not including any residences, barns, or other significant new above-ground structures except for replacement of a barn that formerly straddled APN 15-330-013 and APN 15-380-005 with a new barn that is one-story, not taller than 18 feet; 6) acknowledgment that APN 015-038-005, APN 015-038-004, and APN 015-038-003 have been merged and will be used as a single parcel; 7) future development restrictions; 8) protection of archaeology resources; 9) submittal of a landscaping plan; 10) native vegetation landscaping restriction; 11) submittal of and adherence to an erosion control plan; 12) design restrictions; 13) obtaining a Caltrans Encroachment Permit; 14) ESHA protection; 15) restrictions regarding temporary events; 16) final plans for the remodeling of the existing ranch house; 17) an offer to dedicate vertical access near the ocean bluff for a viewing area, and public access for a five space parking area; 18) an acknowledgment that approval of the CDP will not waive any public rights which may exist, if any; 19) an acknowledgment that the applicant will not prohibit access to the entity accepting the offer to dedicate a public access easement to develop the accepted public access improvements within the easement area; and 20) all previous conditions imposed by the local government.

### ***Background Information***

The inn is proposed to be built on a 34 acre parcel which straddles Highway One approximately 4 miles south of the town of Westport, one mile north of Abalobadiah Creek, along the Mendocino coast. The subject property is one of several adjacent parcels owned by the applicant which total approximately 1,650 acres and extends along the ocean and inland side of Highway One for approximately 1.25 miles. The applicant has operated a working ranch on the property for over 20 years and over 100 head of cattle

California Coastal Commission

Re: Appeal No. A-1-MEN-07-028 (Jackson-Grube Family, Inc.)

June 28, 2010

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graze on the property. The subject property contains County various zoning designations including, Remote Residential - 20 acre minimum: Planned Unit Development Combining District (RMR 20:PD\*1C); Remote Residential - 20 acre minimum: Planned Unit Development Combining District: Limited Commercial (RMR 20: PD:\*1C); Range Lands - 160 acre minimum(RL 160); Forest Land - 160minimum (FL 160); and Timber Reserves - 160 acres minimum (TP 160). Over 1,339 acres of the applicant's property on the inland side of Highway One were placed in an agricultural preserve with the County in 2005.

The specific area of the property where development is proposed in the pending application contains a \*1C designation in both the existing zone and LCP maps which would allow accommodations for the development of a 10 unit visitor serving Inn on this portion of the parcel. County Planning has advised the applicant that the \*1C designation is site specific and that an Inn can only be built in the location proposed without an amendment to the LCP.

The proposed development will be located within an approximate 1.22 acre portion of the subject property on the ocean side of Highway One ("building envelope"). The lot coverage of both the proposed inn and the ranch related buildings will total only 12,023 square feet. The vast majority of the parcel, as well as all of the 1,650 acres, will remain vacant and designated as agricultural and timber reserves. Special Condition No. 4 specifically prohibits development on the 75 acres north of the Inn parcel, west of Highway One, on APNs 015-380-002; 015-380-003; 015-380-004, as well as west on Highway One on adjacent APNs 015-038-006; 015-033-013, with the exception of accessory agricultural related development, and the replacement of a barn previously existing on the property.

The presently existing ranch house building, which is to be renovated in the proposal before you, was the former site of the four (4) unit visitor serving Orca Inn. The proposed building area is relatively flat, trending slightly downslope toward the edge of the bluff located high above the ocean. No portion of the proposed development will be closer than 150 feet from the ocean fronting bluff top.

### ***Surrounding Area***

Within two miles south of the southern property line of the property, towards 10 Mile River, there are approximately 50 homes existing on the ocean side of the highway. Many of these homes are two story. Within one-half mile north of the property there are no less than three existing houses on the ocean side of the highway, plus a two- story winery. Homes also exist on the inland side of Highway One to both the south and north of the subject property. The State of California owns approximately 80% of the ocean front property along Highway One from Fort Bragg north for almost twenty-five miles.

***The Originally Proposed, Denied and Revised Projects***

As approved by the County of Mendocino in 2007, and at the time of the Commission's substantial issue hearing, the project proposed the reconstruction of the existing ranch house and ranch accessory structures into a new 7-unit inn and facility for weddings or other events for up to 99 attendees. Whereas the original project provided for the demolition and reconstruction of the existing two-story, 26-foot, 5-inch high ranch house, the revised project provides for only the renovation of the same. Whereas portions of the roof line of the originally proposed new development exceeded 18 feet in height, no portion of the new additions or buildings now proposed will exceed an 18 foot height limit.

A comparison of the project as approved by the County and considered by the Commission during the substantial issue hearing, as denied by the Commission in November 2009, and as recently revised, is as follows:

Project Data	Project Considered By Commission On Substantial Issue	Revised Project Denied By Commission in November 2009	Project As Proposed In Settlement of Lawsuit
Building Envelope:	1.71 acres	1.29 acres	1.22 acres
# of Buildings	9	6	7 (including existing pump house)
Rental Units	10	5-7	6
# of Bedrooms	14, plus 2 lofts	11 (9 for rental)	10 (8 for rental)
Lot Coverage	17,186 sq. ft.	14,990 sq. ft.	12,023 sq. ft.
Total Area/Sq. Ft.	17,784 sq. ft.	16,098 sq. ft.	13,820 sq. ft.

The vast majority of the property will retain its unobstructed ocean views and the difference in appearance of the property from that existing today and with new structures as proposed will be minimal. A copy of a revised Visual Impact Study as prepared by Seller & Company Architects, dated April 2, 2010, is attached hereto as **Exhibit 1** and hereby incorporated by reference.

California Coastal Commission

Re: Appeal No. A-1-MEN-07-028 (Jackson-Grube Family, Inc.)

June 28, 2010

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### *The Previous Commission Approvals*

Coastal Development Permits for an Inn were previously approved by the Coastal Commission for the subject property on two earlier occasions. In 1984, prior to County certification of the Mendocino LCP, the Commission approved CDP No. 1-83-278 for the conversion of the existing ranch house (former Orca Inn) into a four-unit bed and breakfast inn. The applicant decided not to construct the approved project and allowed the CDP to expire.

In 1996, four years after the certification of the Mendocino LCP, the County Planning Commission approved CDP CDU 9-95, allowing for the construction of a 10-unit inn also involving the renovation of the existing ranch house into 2 guest units, a manager's quarters the construction of 8 new individual guest cottages, and 5 new ranch buildings. The project at that time proposed a larger development envelope, and more new structures than proposed in the pending project. The previously approved project was located substantially closer to the ocean facing bluff than the pending project.

The Planning Commission approval was appealed to the Board of Supervisors and approved on May 13, 1996. The Board's approval was in turn appealed to the Coastal Commission in Appeal No. A-1-MEN-96-028. On July 10, 1996, the Commission determined that the appeal raised no substantial issue, allowing the County approval to stand.

The project appellant at that time thereafter sought judicial review of the County's approval of the project contending, among other arguments, that the County should have required an Environmental Impact Report ("EIR") for the project rather than a Negative Declaration, because the inn would be growth inducing, have substantial traffic impacts, and negative visual impacts inconsistent with the certified LCP.

The Superior Court on July 30, 1997, in a nine page Minute Order held that the project was consistent with all applicable law, that it was appropriate for the County to have considered the pre-existing development on the site when reviewing and acting on the project.

As part of the previous County approval the applicant 1) conveyed fee title to the County of a one (1) acre portion of the property; 2) paid the County \$25,000 toward the development of coastal access in the area; and 3) dedicated an easement for public access along a 15 foot strip of the property on the west side of Highway One right-of-way. Although the previously project never went forward and the applicant could have sought to extinguish the previously granted access, said provisions for access have been included as part of the project description for the currently revised project.

California Coastal Commission

Re: Appeal No. A-1-MEN-07-028 (Jackson-Grube Family, Inc.)

June 28, 2010

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Prior to the start of construction of the previously approved project the applicant proposed revisions to the site layout and interior design of the project which the County found substantial, and the approval expired. The applicant thereafter submitted a new application for the originally designed project which was approved by the County and appealed to the Commission. As stated above, in September 2007 the Commission found "substantial issue".

### *Coastal Act and LCP Issues*

When the Commission found substantial issue on the originally proposed project it specifically requested that the applicant submit 1) a current biological and wetland survey; 2) a demonstration of proof of water supply; 3) a demonstration of adequate sewage disposal; 4) an updated geological analysis; 5) a traffic analysis; and 6) evidence of valid certificates of compliance. All of the above have been submitted to staff and found sufficient for staff to make a recommendation of approval.

Other issues considered by the Commission during the substantial issue hearing included (7) the project's conformance with the LCP, including the project being subordinate to the character of its setting, its consistency with the height limits in highly scenic areas; view protection, and the project's conformance with the \*1C land use designation; (8) consistency with CEQA; (9) traffic impacts associated with the proposed development; and (10) archaeological resources.

### *Visitor-Serving Uses Are a Favored Utilization of Coastal Resources*

One of the basic goals of the Coastal Act is to "[m]aximize public access to and along the coast and maximize public recreational opportunities in the coastal zone. . ." [Public Resources Code §30001.5©]. Maximization of public access and recreational opportunities is also found in Public Resources Code §30210. In Public Resources Code §30213, the Legislature found that "[l]ower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred." Public Resources Code §30222 provides that "[t]he use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development. . ."

The largest portion of the project will be an Inn for guests and a facility for weddings and other events for up to 99 attendees. The structures proposed, as well as their size, take into account both of these intended uses. The Inn will provide for 6 rental units ranging from 240 sq. ft. to 915 sq. ft. The higher density use, i.e., a wedding/event facility, will provide



low cost visitor serving recreational opportunities. The highly scenic coastal resources observable from the building area can be enjoyed and appreciated by overnight guests and short-term wedding/event guests alike. Weddings are typically restrained, formal events, lasting a matter of hours, mostly on weekends, and are not likely to create significant adverse impacts where adequate facilities are provided. Other types of events envisioned for the subject property include meetings, seminars, banquets, retreats and similar restrained gatherings.

The project, as both approved and revised herein, provides sufficient facilities so that the beautiful Mendocino coastline can be enjoyed at moderate prices for wedding and event guests. The use proposed herein is consistent with and encouraged by the policies underlying the Coastal Act and certified LCP.

***Multi-Bedroom Guest Suites Conform to the Standards of the LCP***

The unsupported claims by some members of the public that the approved project does not conform to the subject property's \*IC zone designation under the LCP are mistaken. This zone designation provides for a low-intensity, visitor-serving "Inn." Mendocino County Coastal Zoning Code Sec. 20.332.015 specifically describes the authorized use as follows:

Any building or portion thereof or group of buildings containing five (5) but no more than ten (10) guest rooms or suites each used, designed or intended to be used, let or hired out for occupancy by transient guests for compensation or profit, and where regular meals may be provided for compensation or profit to guests occupying the overnight accommodations. Provision of regular meals to other than transient occupants of the facility shall require a coastal development use permit."

The revised project now provides for 6 guest units with a total of 8 bedrooms. Only two of the units will encompass more than one bedroom. The larger 2,000 and 3,000 square foot units proposed in the previous configuration of the project considered by the Commission in November 2009 have been deleted as has the previously proposed spa. The LCP does not limit the number of bedrooms or baths that a single unit can have. The Mendocino County Coastal Zoning Code does not define a "guest suite," and its legislative history is unknown. The Coastal Element of the Mendocino County General Plan provides little guidance. It provides only that "[t]he maximum intensity of visitor serving use shall be as follows: \*1 Inn or Bed and Breakfast Inn. Maximum unit size: Inn, 10 units; Bed and Breakfast Inn, 4 units." A "unit" is probably less descriptive than "guest rooms or suites." It is fair to say, however, that a guest room is a single room and that a guest suite is more

than one room. Beyond this, the plain meaning of the words provide no guidance. The term "guest suite" does not include a specific set of amenities, such as the bedroom/sitting room. The fact is, the term is a versatile one, applying to numerous combinations of amenities that do not exclude multiple sleeping rooms, bathrooms or kitchen facilities. The fact that Mendocino County allows an inn to have either guest rooms or suites suggests that some degree of versatility was, in fact, intended, and that what constitutes an appropriate "guest suite" is dependent upon the circumstances of a particular application, such as the location of the inn, the nature of surrounding coastal resources, the nature of surrounding development, the foreseeable uses of the inn and the availability of similar visitor-serving facilities in the vicinity.

***The Project Will Be Subordinate To The Character Of Its Setting***

Chapter 3.5 of the LCP provides several policies regarding the importance of highly scenic visual resources, the need for development to be sited to avoid degradation of visual resources and for development to be subordinate to the character of its setting. The applicant submits that the project, as herein revised, satisfies the obligations of the LCP and will provide increased opportunities for the enjoyment of the highly scenic character of the surroundings for the project.

Clearly, the existing buildings already provide some blockage of the ocean view, but also provide a sense of character of the area as an old farming community. The approved structures will convey that same character. The main ranch house structure is now proposed to be renovated rather than demolished and re-built, and no new development will exceed 18 feet in height. At least 50% of the existing exterior walls and roof will be maintained. There will be a total of 7 buildings (including the existing pump house), down from 9 as originally proposed in the subject application, and from 14 as approved in 1996. All new development will be one-story with the cottage and ranch manager's unit including minimal lofts occupying a portion of their roof volumes. Some of the buildings proposed are proposed to be located behind one another in order to minimize the interference of any public views from Highway One.

The development will provide visitor-serving opportunities to appreciate the highly scenic character of the area with only minimal obstruction to the view of high-speed motorists traveling on Highway One. The revised project has clustered all proposed development and the lot coverage has been reduced from that of the original project.

The topography of the subject property is also an important consideration in determining whether the project conforms to the visual resource provisions of the LCP. The ocean side of the subject property is a relatively flat, sparsely landscaped bluff. Significant landform alteration would be required to create building pads at a lower elevation or development would have to be sited much closer to the edge of the bluff. LCP 3.5-4 states, "[e]xcept for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists." In the present case there is no alternate site on the ocean side of the subject property. The Inn is proposed on the site in the precise location where the \*1C designation (which allows an Inn) appears on the land use maps, and in the exact location of the previously existing Orca Inn. The ranch house building, which is the former Orca Inn, still exists on this site. Coastal Element Policies 3.7-1 through 3.7-7, which discuss Recreational and Visitor Serving Facilities, provide that "[t]he land use plan designates the existing visitor serving facilities and reserves appropriate sites for future or potential visitor serving facilities". Policy 3.7-2 further provides in relevant part, that "... proposed sites . . . are designed on the land use maps . . .". In addition Policy 3.7-4 states, in part, that "[n]o development more intense than a single family residence shall be allowed on such a site, and then only if it is sited in such a location and manner that a visitor serving facility may still be placed on the site". These policies of the LCP imply, if not explicitly require, that the proposed visitor serving facility be sited as indicated on the land use maps.

The portion of the subject property located on the inland side of Highway One is presently an agricultural preserve. County Coastal Element Policy 3.2, quoting Coastal Act §30242, expressly provides that "[A]ll . . . lands suitable for agricultural use shall not be converted to non-agricultural use unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with §30250". Neither of these exceptions is applicable in the present case.

### ***The Ranch Buildings Do Not Establish a Violation of any Mendocino LCP Standards***

The subject property currently has existing ranch related buildings which are in a state of disrepair. The project proposes to provide the on-site caretaker with a ranch manager's unit, an equipment barn, a generator/pump shed, and a guest garage, to better operate the existing cattle ranch. Alleged concerns about the lack of an on-site Inn manager in addition to the caretaker are unfounded. This is more a problem of semantics than of proper stewardship. It was the intention of the applicant to have an off-site Inn manager to handle room and banquet facility reservations and payment for those accommodations. Likewise, it was the applicant's intention to have the caretaker retain responsibility for the physical property and ranch related operations. There has been no showing that this arrangement is

inadequate either to protect the property or users thereof. Further, if an on-site manager is deemed necessary to manage the Inn one of the rentable units will be assigned for his use. Neither the continued ranch operations of the property or the lack of an on-site manager is inconsistent with the standards and/or requirements of the LCP and any arguments to that effect are patently unreasonable.

***Adequate Water Resources Are Available to Accommodate the Project and the Neighbors' Water Needs***

LCP 3.8-1, 3.9-1, and CZC §20.532.095 require that the approving authority consider whether an adequate on-site water source to serve proposed development is available before approving a CDP. The County made this determination as part of its 1996 approval by relying on a hydrological study prepared by Clark Engineering & Hydrology ("Clark") in October 1994. At the substantial issue hearing, the project's opponents raised an issue that the Hydrology Study relied on by the County as part of its approval was outdated and did not reflect the current site conditions or evaluate the water demands of the currently proposed project. However, no contrary study was submitted, nor was any factual or expert opinion evidenced, by the project's opponents in their attempt to undermine the applicant's hydrology study.

Nevertheless, as requested by the Commission, the applicant commissioned Questa Engineering Corporation ("Questa") to prepare a new hydrology study. Questa performed a well pumping test and hydrology study on the property, dated January 10, 2008, which found the water supply on the property adequate for the proposed development. Specifically, the water pumping test demonstrated a stabilized yield of 6.26 gpm which corresponds to a daily pumping volume of 9,014 gallons per day. The well is planned to supply a 10-unit inn and caretaker residence, which will have a maximum water demand of 3,800 gpd. The long term or average water demand would be less than this amount, due to fluctuations of occupancy. The testing demonstrates that the well has more than ample capacity to meet the water demands for the project.

Furthermore, the report concludes that the well will not have an undue adverse effect on the water supplies serving neighboring properties. When a well test is required the property owner must offer to test a neighbor's wells, at his expense, only when the neighbors wells are within 300 feet of the owner/applicants well that is being tested. Neighbors with wells on their properties in excess of 300 feet may request that their wells be tested by the owner/applicant at the same time as the owner/applicant wells are being tested at the neighbor's expense. In this instance all of the wells on adjacent properties are well in excess of 300 feet and said neighboring property owners were invited to participate by in the

owner/applicant's well test by Questa Engineering in writing. The Questa report specifically states that "the nearest neighboring wells are more than one-quarter mile south of the wells being tested on the subject property, far beyond the expected zone of influence of the test well". Furthermore, the report provides that "no neighbors reported any apparent effects on their wells at the time of the pumping test".

***Botanical Resources In and Around the Building Area Were Adequately Considered***

The initial study for the proposed project addressed the impact of the proposed development on botanical resources and found that the project would not have a significant impact on said resources. The County echoed this sentiment after reviewing a botanical survey dated June 8, 1991, as well as a supplemental study prepared in September 1992 by stating that "overall impacts resulting from the development are not expected to be significant." Moreover, the County conditioned their approval to ensure that the overall impacts would not be significant.

At the hearing on substantial issue, the project's opponents contended that the County's approval relied on an outdated botanical study which failed to adequately protect environmentally sensitive habitat area pursuant to the LCP. As such, the Commission requested the applicant submit a current botanical survey consistent with §20.532.060 of the Coastal Zoning Ordinance that delineated the presence and extent of all potential rare plant, wildlife, and wetland habitat at and adjacent to the project site.

Thereafter, the applicant engaged Redwood Coast Associates ("Redwood") to perform an ESHA delineation and environmental impact assessment of the property. Said assessment, dated August 2008, includes (1) a map of all ESHA, (2) an evaluation of the potential impacts and disturbance to the ESHA as a result of the proposed development, and (3) a discussion of any recommended mitigation measures to ensure that the development would be sited in a manner that would prevent impacts that would significantly degrade the area and provide for the continuance of the ESHA.

As a result of the study, the originally proposed driveway has been re-located in order to protect sensitive habitat consistent with the ESHA protection policies of the LCP as contained in the CZC §20.946.010. The relocation of the driveway is also in conjunction with the fact that the project has been further reduced in size, scope and proximity to the ocean bluff. Thus, the footprint of the revised project before you is substantially smaller than that in the previously approved 1996 project. The proposed development and all associated structures and construction impacts will be located a minimum of 50 feet from the nearest ESHAs, namely the north wetland pursuant to the consultation and agreement with the

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California Department of Fish and Game. A minimum 100 foot buffer from new development and associated construction impacts will protect all other streams, wetlands, and special plant communities.

Furthermore, in response to the project's opponents' concerns regarding vehicles associated with special events at the facility, event guests will only be permitted to park vehicles in the designated parking areas as delineated in the submitted plans. The project's opponents' assertion that the Inn will allow overflow parking in fields containing ESHA is baseless and untrue. Initially, the proposed project had 34 parking spaces; 10 spaces located in the middle of the proposed project, as well as the 24 parking spaces located east of the ranch managers unit. Since the substantial issue hearing the applicant has revised the project to address concerns regarding inadequate parking, as well as the over intensification of use. As such, the applicant eliminated the two unit bunkhouse and is proposes to utilize that area as a 1,508 sq. foot guest garage with 5 shielded parking spaces for Inn guests. These 5 additional parking spaces are in addition to the originally proposed 10 spaces located in the middle of the proposed project, as well as the 24 parking spaces located east of the ranch managers unit all of which are located outside the 100 foot ESHA buffer. The applicant has also made a minor aesthetic revision to the areas containing the 34 original parking spaces of proposing to construct a low landscaping berm so that the 34 parking spaces would be partially, if not totally, shielded from the highway. Moreover, in addition to the 39 parking spaces located on-site, the applicant has also undertaken other measures to address concerns regarding special event parking. On days that the Inn is hosting special events, the Inn will operate a shuttle service, similar to an airport hotel shuttle service, that will pick up event guests staying at downtown Fort Bragg hotels so that they don't have to utilize the limited number of parking spaces on-site.

In the report, Redwood concludes that no direct impacts to ESHAs are proposed, and that construction and permanent exclusionary fencing will limit intrusion and impacts to sensitive habitats near the proposed development. The mitigation measures included were developed based upon review of the proposed project and should minimize impacts both during and following construction. Special Condition No. 14 requires the protections of environmentally sensitive habitat.

### *Traffic Impacts*

At the time of the substantial issue hearing the project opponents contended that the impacts of the development on vehicular and bicycle use of Highway One were not adequately evaluated consistent with the LCP policies designed to avoid significant impacts to Highway One. As a result the applicant performed a traffic study which evidences that the

proposed development will not tax the public roadway capacity and that the existing roads are appropriate to serve the proposed development. The report, prepared by W-trans, dated January 14, 2008, provides that the ideal capacity of a two lane highway such as SR 1 is 3,200 passenger cars per hour. The subject segment of SR 1 near the current projects carries approximately 2,360 vehicle trips per day and is operating acceptably based on a review of both volumes and collision history. Further the originally proposed project which was larger than the recently revised project, was only expected to generate 4 new trips per day during the a.m. and p.m. peak hours on weekdays. As such, the report concludes that the project is feasible from a traffic standpoint.

### ***Engineering Geological Reconnaissance***

In satisfaction of the Commission's request for a updated geological analysis the applicant retained BACE Geotechnical to perform an engineering geologic reconnaissance of the site. Based on the findings of the reconnaissance, BACE concluded that the site is geologically suitable for the proposed development and that all proposed development has been set back an appropriate distance to withstand the economic 75 year life of the project. Proposed development has been set back an additional 20 feet from the Commission's previous 1996 approval of the former project wherein the previously approved project was found to have a sufficient setback distance from the bluff for the economic life of the proposed development. Special Condition No. 14 requires compliance with the design and construction plan recommendations of BACE.

### ***Fire Protection and Emergency Response***

Fire Protection and Emergency Response are issues that were considered by the local government prior to approval. Moreover, the California Department of Forestry and Fire Prevention ("Cal-Fire") reviewed the project and approved the same subject to recommendation that the applicant provide a specified driveway width, grade and emergency vehicle turnout area: fire hydrant, development setback requirements from all property lines, and the applicant providing a 12,000 gallon water storage tank for Fire Department use only. The applicant agreed to all recommendations of approval. The fact is the proposed project exceeds all of Cal-Fire's required conditions of approval. Specifically, Mr. Larry Grafft, Cal Fire Battalion Chief, in his April 14, 2009, letter of approval notes that "[T]he changes you proposed for . . . the project meet and or exceed the State Fire Safe Standards of Approval . . . . The voluntary upgrade to a "Road Standard" will be a great asset to the emergency ingress and egress for emergency vehicles and patrons". The County Planning Commission in its Condition #B-8 made the Cal-Fire recommendations actual conditions of the County Planning Commission approval. Further, the County Planning Commission in its Condition

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#B-12 additionally conditioned its approval on the applicant entering into a contract with the Westport Volunteer Fire Department for services to the proposed project.

***Alleged Archaeological and Historical Resources Impacts***

Mendocino LCP Policy 3.5-10 provides that “[T]he County shall review all development permits to ensure that proposed projects will not adversely affect existing archaeological and paleontological resources.” Furthermore, LUP Policy 3.5-10 requires certain procedures be followed prior to any proposed development within an area of known and/or probable archeological or paleontological significance. These procedures include (1) a field survey by a qualified professional to determine the extent of the resource; (2) the results of said field survey be transmitted to the State Historical Preservation Officer and Cultural Resource Facility at Sonoma State University for comment, and (3) that proposed projects incorporate reasonable mitigation measures so the development will not adversely affect existing archaeological/paleontological resources.

Additionally, the County’s Coastal Zoning Code (“CZC”) §20.532.095(A)(5) sets forth findings required for all coastal development permits and includes, in part, that the proposed development will not have any adverse impacts on any known archaeological or paleontological resource.

A Preliminary Cultural Resources Reconnaissance of the site was prepared by Archaeological Services, Inc., in January 1991, which concluded that “[N]o archaeological resources were discovered within the project boundaries”. Although the report goes on to state that the “remains of the Newport Chute were noted just outside the project boundary” and that the “historic town of Newport may have been located within the project boundaries”, no evidence of the town “was noted on the surface”.

When the issue of alleged archaeological impacts was raised at the time of the substantial issue hearing the project’s appellants contended that the archaeological survey prepared in 1990 for the subject site was flawed and that the archaeological study did not address the approximately 900 acres under the applicant’s ownership that extend beyond the 34 acres that are the subject of the proposed development.

At the time of the substantial issue hearing the Commission considered the archaeological issue and found that there was a high degree of factual support for the County to find that the approved project, as conditioned, is consistent with the LUP Policy 3.5-10 and that archaeology did not present a substantial issue. The Commission, following the staff recommendation, concluded in finding no substantial issue that 1) the applicant submitted



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a 1990 archaeological survey which was accepted by the County Archaeological Commission for the subject development; 2) the survey did not discover any archaeological resources within the project boundaries; and 3) that the County included a mitigation measure to ensure protection of any archaeological resources that may be encountered by including a special condition requiring that, should resources be discovered, all work must halt until County requirements regarding archaeological discoveries have been satisfied. Furthermore, staff addressed the appellant's assertion that the archaeological study did not address the approximately 900 acres under the applicant's ownership that extend beyond the 34 acres that are subject of the proposed development by stating that the County had no basis to require that the approximately 900 acres under the applicant's ownership adjacent to the project site be surveyed for the proposed project because the project approved by the County did not involve ground disturbances or any other form of development outside the 34 acres addressed by the 1990 archaeological survey. The Commission's finding of no substantial issue on the archaeology in 2007 was furthermore consistent with its finding of no substantial issue regarding archaeology when it considered the earlier project in 1996 wherein the project boundaries were larger than they are today. Nevertheless, recommended Special Condition No. 8 requires the protection of archaeological resources which the applicant has agreed to.

### *Conclusion*

Based upon the facts contained herein the revised project should be found to be consistent with the Coastal Act, and Mendocino LCP, as well as all other applicable laws.

The applicant respectfully requests approval pursuant to staff's vigorous review and strong recommendation for approval.

I will be present at the hearing on July 7<sup>th</sup> to answer any of your questions and concerns.

Thank you for your patience in reading this long and detailed correspondence, as well as your anticipated courtesy, cooperation, and support.

Very truly yours,

LAW OFFICES  
BLOCK & BLOCK  
A Professional Corporation

  
ALAN ROBERT BLOCK

ARB/cw

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cc: Will Jackson  
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June 28, 2010

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CALIFORNIA  
COASTAL COMMISSION

California Coastal Commission  
North Coast District Office  
710 E Street, Suite 200  
Eureka, CA 95501-1865

**Re: Appeal No. A-1-MEN-07-028  
Jackson-Grube Family, Inc.: Appeal De Novo Hearing, July 7, 2010**

Dear Members of the Commission:

We represent Deborah Cahn, Trustee of the Margery S. Cahn Living Trust (“Cahn”) and oppose the hearing of this Appeal on July 7, 2010, or on any other date, and advocate that if an appeal is heard, that the project be denied. We have represented Cahn for the last several years, and have opposed this project before the Commission on November 4, 2009 when it was denied at its Long Beach hearing. We further opposed an Application for Rehearing filed by the Applicant and denied by this Commission unanimously on January 15, 2010. We incorporate herein the substantive arguments we made against this project in their earliest proceedings.

The bases for our opposition to the current “Appeal De Novo Hearing” are essentially the following:

A. This Commission has no jurisdiction to hear this appeal. The Commission has already denied rehearing, and its rules and regulations do not authorize it to rehear the application again. The rehearing is purportedly being held pursuant to a court order signed June 17, 2010, by Judge Behnke of the Mendocino County Superior Court. However, the application for that order was materially deficient in several key respects, as pointed out in the Memoranda of Points and Authorities we have filed with the court to intervene in that proceeding and to set aside the order, both of which are incorporated herein and attached for your easy reference.

B. A further reason the Commission lacks jurisdiction for the appeal is that this project is not the project “approved by” Mendocino County, as required by California Public Resources Code (“PRC”) § 30603(a)(1) (see also *McAllister v. County of Monterey* (2007) 147 Cal.App.4th 253, 286). The project is now very different from the project that was considered by the County. It is even different from the project that was considered by, and rejected by, the Commission on November 4 in Long Beach. Not only have the buildings’ configuration and size changed, but two parcels are now added to the project which have never previously been discussed.

1. Parcel No. 015-038-02 and Parcel 015-038-06 (see Exhibit No. 2 to the latest Staff Report) were not part of the original project. Moreover, the northern most parcel is, according to the map, not even owned by Jackson-Grube. The map indicates it is owned by “Dempsey.” We don’t know when Jackson-Grube acquired the parcel or whether newly emerged “adjacent” property owners have been properly notified of proposed development adjacent to their property.

2. On Page 7 of the staff report, about eight or ten lines down in the first full paragraph, there is a reference to “all development” being precluded on two Assessor’s parcels, whereas in the hearing at Long Beach and in the application for rehearing, there was discussion about additional development being precluded on some four, five, or six parcels, or those parcels being combined, etc.

C. The Appeal De Novo Hearing also violates numerous aspects of the California Environmental Quality Act (“CEQA”). There has been no cumulative impact study done looking at this project in conjunction with the trail on the west side of Highway 1. In addition, this revised project includes new parcels, parking and vertical access to the coast. If not prior to this revision, certainly as a result of it, a full environmental review must be performed even under this Commission’s certified program. Because CEQA applies at the local level and CEQA requires said agencies to give it maximum consideration, this revised project should be sent back to the local government so that the local agency can prepare the necessary environmental report and determine whether it even wants this revised project. In addition, the notice requirements of CEQA have not been satisfied. The staff report was not made or obtained by Cahn, or other concerned parties, within the time required by law. The report was not obtained by Cahn until Saturday, the 26<sup>th</sup> of June.

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For all these reasons, this Commission should not hold the so-called "Appeal De Novo hearing," and if it does, it should deny the project on the basis of its earlier denial of a rehearing and its lack of jurisdiction to consider a totally new project greatly different from anything that has been considered, much less "approved," by the local agency.

Respectfully submitted,

Signature on File

JARED G. CARTER

JGC:kp

Encls.

ccc-jackson-grube2.ltr.

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6 Attorneys for Intervenor

7 SUPERIOR COURT OF CALIFORNIA, COUNTY OF MENDOCINO  
8 UKIAH BRANCH  
9

10 JACKSON-GRUBE FAMILY, INC., ) Unlimited Civil  
11 )  
11 Petitioners, ) Case No. SCUK CVG 09-55369  
12 )  
12 v. ) EX PARTE MOTION FOR  
13 ) RECONSIDERATION OF THIS COURTS  
13 CALIFORNIA COASTAL COMMISSION, ) ORDER OF JUNE 17, 2010, OR IN  
14 ) THE ALTERNATIVE, TO STAY ITS  
14 Respondent. ) ENFORCEMENT  
15 )  
15 DEBORAH CAHN, Trustee of the ) Date: June 29, 2010 (Approved)  
Margery S. Cahn Living Trust, ) Time: 1:30 p.m.  
16 ) Dept: E  
16 Intervenor. )  
17 ) Honorable John A. Behnke  
18 )

19 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD: PLEASE TAKE NOTICE  
20 THAT on June 29, 2010, at 1:30 p.m., or as soon thereafter as the matter may be heard, in  
21 Department E of the above titled court, located at 100 North State Street, in Ukiah, California, before  
22 the Honorable John Behnke, Intervenor Deborah Cahn, Trustee of the Margery S. Cahn Living Trust  
23 (“Intervenor”), will, and hereby does, apply ex parte for a motion for reconsideration of this court’s  
24 order of June 17, 2010, or in the alternative, to stay the enforcement of that order. The motion will  
25 be made pursuant to California Code of Civil Procedure (“CCP”) §1008 on the ground that there are  
26 new circumstances and facts sufficient to warrant a revocation of the order, or in the alternative, that  
27 enforcement of the order be stayed pursuant to CCP §918.

28 The motion will be based on this notice, the memorandum of points and authorities in

1 support thereof, the declarations of Deborah Cahn and Daniela Pavone, the first amended petition  
2 for writ of mandate on file herein, and on such oral and documentary evidence as may be presented  
3 at the hearing.  
4  
5

6 Dated: June 25, 2010

CARTER & MOMSEN, LLP

7  
8 BY: Signature on File Daniela Pavone  
9 For JARED G. CARTER, Attorneys for  
Intervenor DEBORAH CAHN, Trustee of the  
Margery S. Cahn Living Trust  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **1. INTRODUCTION AND FACTS.** This case arises out of the Coastal Commission's  
3 denial on November 4, 2009, of Coastal Development Permit Application Number A-1-MEN-07-  
4 028 ("Application" or "Project") by respondent California Coastal Commission ("Respondent"). The  
5 County of Mendocino had approved the Project on June 21, 2007. Intervenor Deborah Cahn, Trustee  
6 of the Margery S. Cahn Living Trust ("Cahn"), appealed to the California Coastal Commission  
7 ("Respondent" or "Commission"). In response to the Commission's denial, petitioner Jackson-Grube  
8 Family, Inc., ("Petitioner") filed a request for reconsideration with Respondent, which was  
9 unanimously denied on January 15, 2010, over the Commission Staff's recommendation that  
10 reconsideration be granted. Petitioner then filed a Petition for Writ of Mandate asking this court to  
11 compel Respondent to approve the Application ("Petition"). Cahn was not included as a real party  
12 in interest in the suit or notified by either party at any time that the lawsuit was filed.

13 The most immediate issue that brings Cahn before this court is that this court, on June 17,  
14 2010, signed an order requested by Petitioner, without any notice to Cahn, which, in effect, resolved  
15 in Petitioner's favor a dispute of many years, which the Commission had heretofore resolved in  
16 Cahn's favor. Cahn seeks to persuade this court that the order was wrongfully sought, wrongfully  
17 granted, and should be vacated.

18 The Petition makes boilerplate allegations – i.e. it alleges that Respondent failed to proceed  
19 in the manner required by law and that, in denying the Application, Petitioner was deprived of a fair  
20 trial and due process of law. Specifically, Petitioner alleges that the evidence presented to  
21 Respondent at the hearing demonstrated that the Application complied with the Mendocino County  
22 LCP, the Coastal Act, and the California Environmental Quality Act, that the decision reached by  
23 the Respondent is not supported by the findings, that the findings are not supported by substantial  
24 evidence, that at the hearing Petitioner was not given an opportunity to be heard equal to that  
25 provided to appellants (which would include Cahn), and that Respondent misstated facts and relied  
26 upon those misstatements to Jackson's detriment.

27 At some point between January 29, 2010, when the Petition was filed and May 17, 2010,  
28 when a stipulation was signed by Respondent, Petitioner and Coastal Commission Staff reached a



1 potential settlement, pursuant to which, Petitioner and Respondent have negotiated to revise the  
2 Application yet again and Respondent has been directed to hold another public hearing, this time to  
3 approve the Application pursuant to the terms of the settlement offer. There is no indication that the  
4 Commission, as opposed to its Staff, ever agreed to this settlement. Indeed, it could not legally have  
5 done so without affording Cahn notice and a fair hearing.

6 On June 17, 2010, this court signed an order remanding the Application to Respondent "for  
7 a public hearing on petitioner's settlement offer during it's [sic] scheduled meeting of July 7-9, 2010,  
8 and the approval of a CDP on the terms of the settlement offer." The order goes on to say that the  
9 status conference currently on calendar will be rescheduled to a later date "at which time the parties  
10 will update the court on the status of the settlement and approval of the CDP."

11 Cahn learned of this agreement when she was informed by her lawyer on about June 21,  
12 2010, that the Application was on Respondent's July meeting agenda, and investigated further.

13 **3. RECONSIDERATION OF AN ORDER.** CCP §1008 controls a request for  
14 reconsideration and states, in relevant part: "(a) When an application for an order has been made .  
15 . . . and . . . granted, . . . any party affected by the order may, within 10 days after service upon the  
16 party of written notice of entry of the order and based upon new or different facts, circumstances,  
17 or law, make application to the same judge or court that made the order, to reconsider the matter and  
18 modify, amend, or revoke the prior order."

19 Cahn has filed a motion to intervene and seeks to have this Motion to Reconsider heard and  
20 granted after the intervention motion is approved.

21 **4. THE ORDER IMPERMISSIBLY DEPRIVES CAHN OF HER RIGHT TO**  
22 **MEANINGFUL NOTICE AND A HEARING.** The Order makes clear that Petitioner has worked  
23 with Respondent behind the scenes to draft an amended project that this court has ordered be  
24 approved after Respondents hold a public hearing to discuss it.

25 As an adjoining property owner to the real property at issue in the Application, who has a  
26 material interest in whether or not the Application is approved, Cahn has a constitutionally protected  
27 right to meaningful notice and opportunity to be heard. Horn v. Ventura (1979) 24 Cal.3d 605, 612;  
28 Scott v. City of Indian Wells (1972) 6 Cal.3d 541. A noticed hearing that has no purpose but to meet

1 the statutory requirements that a hearing be held, does not provide a *meaningful* hearing when what  
2 is being discussed is the product of back room negotiations between Petitioner and Respondent  
3 drafted under the shadow of pending litigation and has already been ordered by this court to be  
4 passed.

5 At every opportunity over several years Cahn has submitted letters, or had them submitted  
6 on her behalf, in which she has expressed her concern that the Application does not comport with  
7 the law and that it materially negatively impacts her and her property such that it should be denied.  
8 Petitioner and Respondent have now used this court to circumvent Cahn and her procedural due  
9 process rights by obtaining an order from this court that a revised version of the Application will be  
10 discussed at the July meeting of Respondent and that such Application be approved. What the court's  
11 Order does in effect is tell the Commission not only that it must reconsider its denial of the  
12 application, which it earlier unanimously refused to do, the Order also directs the Commission how  
13 to decide the reconsideration – i.e. approve the project, which this court clearly has no power to  
14 direct. State of California v. Superior Court (1974) 12 Cal.3d 237, 247-248; Buena Vista Gardens  
15 Apartments Association v. City of San Diego Planning Department (1985) 175 Cal.App.3d 289, 297-  
16 298; Yost v Thomas (1984) 36 Cal.3d 561, 572-573.

17 Because Cahn has not been afforded meaningful notice and an opportunity to be heard  
18 regarding consideration by Respondent of the revised Application, the order issued by this court  
19 should be reconsidered and revoked.

20 **5. THE CIRCUMSTANCES HAVE CHANGED IN THAT CAHN HAS**  
21 **INTERVENED IN THE LAWSUIT AND HAS SHOWN THE COURT THAT HER RIGHT**  
22 **TO DUE PROCESS OF LAW HAS BEEN TRAMPLED.** Since the order was signed on June 17,  
23 2010, and Cahn has since intervened, the circumstances surrounding this lawsuit have changed such  
24 that Cahn's interests must now be accounted for. Cahn was not involved in any of the settlement  
25 negotiations, or communications between Petitioner and Respondent regarding this lawsuit or that  
26 have led to yet another revision of the Application. Indeed, there is no evidence establishing that the  
27 Commission, rather than simply its Staff, supports this settlement. Therefore, because Cahn was not

28 //

1 a party to the action and strenuously opposes the terms of the settlement agreement, the Order  
2 enforcing those terms should be reconsidered by this court.

3 **6. THE ORDER PROVIDES RESPONDENT WITH JURISDICTION THAT IT DOES**  
4 **NOT OTHERWISE HAVE.** The Order compels Respondent to approve a revised version of the  
5 Application after a hearing. Petitioner, and the Commission's Staff, presumably want the Application  
6 approved at nearly any cost, they have crafted a settlement and order indicating the Commission  
7 itself will agree in order to have the lawsuit against it dismissed. Therefore, ignoring the legal reality  
8 that the Commission, even if it wanted to, cannot affect Cahn's interests in this manner without  
9 affording her a hearing, it appears that Respondent has agreed to not only consider a revised  
10 Application, but to ultimately approve it as well. By signing the Order this court purports to give  
11 Respondent the authority to do both.

12 This entire approach is contrary to law. The Coastal Act provides that:

13 "After certification of its local coastal program, an action taken by a  
14 local government on a coastal development permit application may  
15 be appealed to the commission for . . . [¶] . . . [d]evelopments  
16 approved by the local government between the sea and the first public  
road paralleling the sea . . . [Emphasis added.]" California Public  
Resources Code ("PRC") §30603(a)(1).

17 The courts have indicated the Commission can't wholly redesign a project without having  
18 the local agency first approve it. "The Coastal Act thus incorporates a chain of responsibility for  
19 considering coastal developments. . . For such projects, the County makes the initial decision on the  
20 CDP, and the Coastal Commission hears any appeal." McAllister v. County of Monterey (2007) 147  
21 Cal.App.4th 253, 286.

22 The County has made no initial decision regarding the revised version of the Application that  
23 Respondent intends to hear in a matter of weeks. Therefore, any review of this revised Application  
24 by Respondent is beyond the Commission's jurisdiction because such has not yet been "approved  
25 by units of local government." By ordering Respondent to hear the revised Application (ignoring for  
26 now the inappropriateness of ordering its approval), this court has provided Respondent with  
27 jurisdiction that it would not otherwise have. Because the only two parties to the suit at the time the  
28 Order was presented have an interest in having Respondents jurisdiction expanded, the merits of this  
argument have not been presented and argued to the court. As an interested party whose ultimate

1 goal is not to appease Petitioner, Cahn is in a position to better question the improprieties of the  
2 otherwise prohibited actions the Order permits Respondent to take.

3 In addition to giving Respondent the jurisdiction to hear a project that has not yet been  
4 approved by the local government, the Order also gives Respondent the jurisdiction to reconsider  
5 an otherwise final decision. Even if it is assumed that the changes to the Application made as a result  
6 of settlement discussions are not material and therefore can be heard by Respondent without first  
7 being heard by local government, Respondent is then rehearing an application that it already finally  
8 decided, and unanimously decided not to reconsider. This can only be done pursuant to a rule that  
9 expressly permits reconsideration or if ordered to do so by the court. Olive Proration Program  
10 Committee For Olive Proration Zone 1 v. Agricultural Prorate Commission (1941) 17 Cal.2d 204,  
11 209-210. By framing the request for such additional jurisdiction as an order in a potential settlement  
12 agreement, Petitioner and Respondent have wrung additional powers out of this court "under the  
13 radar."

14 Therefore, Cahn requests that enforcement of the Order be stayed until its true scope can be  
15 more fully explored by this court.

16 **7. PUBLIC POLICY MANDATES THAT THE ORDER BE RECONSIDERED AND**  
17 **REVOKED.** As a result of Petitioner's filing the Petition, this court has signed an order compelling  
18 Respondent to pass a different version of the Application at its very next meeting, ignoring not only  
19 Cahn's rights to due process of law, as explained above, but also the more procedural requirements  
20 that if a project is revised it must first be sent back to the local government and that Respondent  
21 lacks the jurisdiction to rehear a project for which a final decision has already been rendered, or even  
22 the more mundane courtesy of determining whether the four persons or entities whose appeal of the  
23 Application led to it being considered by Respondents, could even attend the ordered rehearing.

24 Importantly, the Order has made clear that anyone that is upset over a government agency's  
25 denial of an application can get what he or she wants by filing a lawsuit. Petitioner has used our court  
26 system to obtain an order directing Respondent do certain things that it would not otherwise have  
27 been permitted to do, all without the objection of ignored interested parties. By suing Respondent,  
28 Petitioner was able to, out of the prying eyes of the public, under the pretext of private settlement

1 discussions, sit down with the Commission Staff and get the necessary assurances that, if the court  
2 were to give Respondent additional powers, Respondent would grant a new version of the  
3 Application. In return, Respondent can avoid having to prepare a costly administrative record and  
4 the lawsuit currently pending against it would be dismissed. Petitioner did all of this so quickly that  
5 the persons and/or entities that appealed the project to Respondent were never even told what was  
6 happening.

7         Allowing this order to stand will start rejected property owners down a path filled with  
8 lawsuits against local planning agencies and the coastal commission, closed door negotiations  
9 between the applicant and the agency and requests that this court grant the agency powers under the  
10 guise of settlement that it did not otherwise have. Petitioner tactics must not be condoned by this  
11 court. The various ways in which the authority of this court has been misappropriated and  
12 Respondent bullied, must not be allowed to stand. Cahn therefore requests that, as a matter of public  
13 policy, the Order be reconsidered and vacated. Or, in the alternative, that it's enforcement be stayed  
14 so that all parties can have more time to participate in the court's decision to reconsider.

15         **8. IN THE ALTERNATIVE, THE ORDER SHOULD BE STAYED.** Pursuant to CCP  
16 §918(a), "the trial court may stay the enforcement of any judgment or order." Cahn learned of the  
17 entry of the Order a mere one week ago. As a result, she has hurriedly tried to take the necessary  
18 steps to join this lawsuit and show the court why the Order, as written, cannot be permitted to stand.  
19 The Order specifically notes that the revised Application is to be reheard and approved at the July  
20 7-9 meeting of Respondent. Due to this small window of time, all parties may not have sufficient  
21 opportunity to argue Cahn's claims, possibly leaving this court without all the information necessary  
22 to make the right decision. Cahn therefore requests that, if the court is not prepared at this time to  
23 rule on her motion to reconsider, that enforcement of the Order be stayed until such can be  
24 accomplished.

25         **9. CONCLUSION.** Cahn was not a party to this action when settlement negotiations  
26 occurred between Petitioner and Respondent, possibly because, knowing her consistent and  
27 strenuous opposition to the Application, she may have thwarted Petitioner's backroom negotiations  
28 with Respondent that have led to assurances that the Application will be approved. When Cahn is

1 able to express her concerns that the Application will materially negatively impact her property rights  
2 and that the Order gives Respondent a great deal more jurisdiction that it could otherwise have, it  
3 is clear that the Order should be reconsidered and revoked. Alternatively, the execution of the Order  
4 must at least be stayed so that all parties will have more time to fully brief, and the court more time  
5 to more fully consider, the arguments raised herein.

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Dated: June 25, 2010

CARTER & MOMSEN, LLP

Signature on File Daniela Pavone

BY  
for JARED G. CARTER, Attorneys for  
Intervener DEBORAH CAHN, Trustee of the  
Margery S. Cahn Living Trust

1 JARED G. CARTER, ESQ. SBN 36310  
DANIELA PAVONE, ESQ. SBN 252913  
2 CARTER & MOMSEN, LLP  
444 NORTH STATE STREET  
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4 Telephone: 707) 462-6694  
Facsimile: (707) 462-7839  
5

6 Attorneys for Intervenor

7 SUPERIOR COURT OF CALIFORNIA, COUNTY OF MENDOCINO

8 UKIAH BRANCH  
9

10 JACKSON-GRUBE FAMILY, INC., ) Unlimited Civil  
11 )  
11 Petitioners, ) Case No. SCUk CVG 09-55369  
12 )  
12 v. ) EX PARTE APPLICATION FOR LEAVE  
12 ) OF COURT TO INTERVENE  
13 CALIFORNIA COASTAL COMMISSION, )  
14 )  
14 Respondent. )  
15 ) Date: June 29, 2010 (Approved)  
15 DEBORAH CAHN, Trustee of the ) Time: 1:30 p.m.  
15 Margery S. Cahn Living Trust, ) Dept: E  
16 )  
16 Intervenor. ) Honorable John A. Behnke  
17 )

18 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD: PLEASE TAKE  
19 NOTICE THAT on June 29, 2010, at 1:30 p.m., or as soon thereafter  
20 as the matter may be heard, in Department E of the above titled  
21 court, located at 100 North State Street, in Ukiah, California,  
22 before the Honorable John Behnke, Intervenor Deborah Cahn, Trustee  
23 of the Margery S. Cahn Living Trust ("Intervenor"), will, and  
24 hereby does, apply ex parte for leave of court to intervene by the  
25 Motion For Reconsideration Of This Courts Order Of June 17, 2010,  
26 Or In The Alternative, To Stay Its Enforcement, attached hereto at  
27 Exhibit A. The application will be made pursuant to California Code  
28 of Civil Procedure ("CCP") §387 on the ground that the Intervenor

1 has an interest in whether a writ of mandate issues to compel  
2 respondent California Coastal Commission ("Respondent") to approve  
3 the coastal development permit at issue, and has an interest in the  
4 order signed by this court on June 17, 2010, directing Respondent  
5 to approve an amended version of the permit at issue at its next  
6 regular meeting.

7 The application will be based on this notice, the memorandum  
8 of points and authorities in support thereof, the intervention by  
9 motion to reconsider this courts order of June 17, 2010, the  
10 declarations of Deborah Cahn and Daniela Pavone, the first amended  
11 petition for writ of mandate on file herein, and on such oral and  
12 documentary evidence as may be presented at the hearing on this  
13 application.

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Dated: June 25, 2010

CARTER & MOMSEN, LLP

Signature on File Daniela Pavone

BY  
for Jared G. Carter  
Attorneys for Intervenor  
DEBORAH CAHN, Trustee of the  
Margery S. Cahn Living Trust



1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **1. INTRODUCTION AND FACTS.** This case arises out of the Coastal  
3 Commission's denial on November 4, 2009, of Coastal Development  
4 Permit Application Number A-1-MEN-07-028 ("Application" or  
5 "Project"). The County of Mendocino had approved the Project on  
6 June 21, 2007. Intervenor Deborah Cahn, Trustee of the Margery S.  
7 Cahn Living Trust ("Cahn"), appealed to the California Coastal  
8 Commission ("Respondent" or "Commission"). In response to the  
9 Commission's denial, petitioner Jackson-Grube Family, Inc.,  
10 ("Petitioner") filed a request for reconsideration with Respondent,  
11 which was unanimously denied on January 15, 2010, over the  
12 Commission Staff's recommendation that reconsideration be granted.  
13 Petitioner then filed a Petition for Writ of Mandate asking this  
14 court to compel Respondent to approve the Application ("Petition").  
15 Cahn was not included as a real party in interest in the Petition  
16 or notified at any time that the lawsuit had even been filed, even  
17 though Petitioner and Respondent have at all times known that Cahn  
18 owns property adjacent to the project and opposes it because it  
19 will negatively affect her property. Cahn was given no notice of  
20 the application for this court's June 17, 2010, order.

21 The Petition alleges that Respondent failed to proceed in the  
22 manner required by law and that, in denying the Application,  
23 Petitioner was deprived of a fair trial and due process of law.  
24 Specifically, Petitioner alleges that the evidence presented to  
25 Respondent at the relevant hearing demonstrated that the  
26 Application complied with the Mendocino County LCP, the Coastal  
27 Act, and the California Environmental Quality Act, that the  
28 decision to deny the Application was not supported by the findings,

1 that the findings were not supported by substantial evidence, that  
2 Petitioner was not given an opportunity to be heard equal to that  
3 provided the appellants (which would include Cahn), and that  
4 Respondent misstated facts and relied upon those misstatements to  
5 Petitioner's detriment. These points were made to Respondent in  
6 Petitioner's request for reconsideration. Even though Staff  
7 recommended the reconsideration be granted, these points were  
8 rejected by Respondent and the reconsideration unanimously denied.  
9 Interestingly, the alleged misstatements involved Respondents  
10 belief that Petitioner threatened to sue Respondent on an issue  
11 related to the Application.

12 At some point between January 29, 2010, when the Petition was  
13 filed and May 17, 2010, when a stipulation was signed by  
14 Respondent, Petitioner and the Coastal Commission Staff reached a  
15 potential settlement, pursuant to which, Petitioner and Respondent  
16 have negotiated to revise the Application yet again and Respondent  
17 has been directed to hold another public hearing, this time to  
18 approve the Application pursuant to the terms of the settlement  
19 offer. No formal action to approve the settlement has been taken by  
20 the Commission to Cahn's knowledge, not can it be without giving  
21 her notice and a hearing. See Horn v. Ventura (1979) 24 Cal.3d  
22 605, 612.

23 On June 17, 2010, this court signed an order ("Order")  
24 remanding the Application to Respondent, "for a public hearing on  
25 petitioner's settlement offer during it's [sic] scheduled meeting  
26 of July 7-9, 2010, and the approval of a CDP on the terms of the  
27 settlement offer." The Order goes on to say that the status  
28 conference currently on calendar will be rescheduled to a later

1 date, "at which time the parties will update the court on the  
2 status of the settlement and approval of the CDP."

3       **2. CAHN HAS A CONSTITUTIONALLY PROTECTED PROPERTY INTEREST IN**  
4 **THE OUTCOME OF THE ACTION THAT IS NOT CONSISTENT WITH THE POSITIONS**  
5 **BEING PURSUED BY THE PETITIONER OR RESPONDENT.** As an adjoining  
6 land owner and appellant of the Application, Cahn has a  
7 constitutionally protected property interest that can not be  
8 adequately represented by the applicant or by the deciding  
9 government body. Horn v. Ventura (1979) 24 Cal.3d 605, 612; Scott  
10 v. City of Indian Wells (1972) 6 Cal.3d 541. Cahn is a neighbor to  
11 the real party at issue in the Application and has made clear at  
12 every opportunity that she has a material interest in whether the  
13 Application is approved, as is clearly shown by the accompanying  
14 Declaration of Deborah Cahn in Support of Motion For To Intervene  
15 And Reconsideration, Or In The Alternative, Stay Enforcement Of The  
16 Order. Cahn wrote letters and appeared at the local government  
17 level where she made her interest in the outcome clearly known. At  
18 each appearance Cahn asserted, not only that the Application does  
19 not comport with local and State law, but also that her due process  
20 rights have been violated because, as a neighboring property owner  
21 her property interests will be harmed and she has a constitutional  
22 right to effective notice and a hearing that Respondent's two year  
23 delay in hearing the appeal, violated. Horn, supra, 24 Cal.3d at  
24 612; Scott, supra, 6 Cal.3d 541. Cahn also expressed concern at the  
25 local level and to Respondent regarding the Application's impact to  
26 her property, her access to water, increased vehicle traffic and  
27 dangerous pedestrian traffic. As a neighbor with a constitutional  
28 right to be heard regarding the Application, Cahn should have been

1 added as a real party in interest in this case and therefore seeks  
2 to intervene as such.

3 "Every action must be prosecuted in the name of the real party  
4 in interest, except as otherwise provided by statute." CCP §367. "A  
5 real party in interest ordinarily is defined as the person  
6 possessing the right sued upon by reason of the substantive law."

7 Personnel Commission of the Barstow Unified School District v.  
8 Barstow Unified School District (1996) 43 Cal.App.4th 871, 877.

9 "Any person who is a real party in interest may intervene in any  
10 type of action or proceeding." Cohn v. County Board of Supervisors  
11 (1955) 135 Cal.App.2d 180, 184.

12 **3. PETITIONER HAS COMMITTED FRAUD UPON THE COURT AND CAHN.**

13 Petitioner's failure to name Cahn and/or provide notice of these  
14 proceedings is a multifaceted fraud. By not notifying the Court of  
15 Cahn's interests in this matter, Petitioner's attorney disregards  
16 some basic duties to the profession and the Court.<sup>1</sup> Petitioner  
17 unquestionably knew of Cahn's opposition to the project at issue  
18 and, by not disclosing same to the Court, has given the false  
19 impression that this matter is simply between Petitioner and  
20 Respondent. This case cannot be resolved upon such a false premise.

21 Petitioner not only violated its duties to the Court, but  
22 perpetrated a fraud upon Cahn by not providing her notice of this  
23

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24  
25 <sup>1</sup> An attorney has a duty "never to seek to mislead the judge or any judicial officer by an  
26 artifice or false statement of fact or law." Cal. Bus. & Prof. Code §6068. In addition, in  
27 presenting matters to the Court, an attorney:  
28 "(A) Shall employ, for the purpose of maintaining the causes confided to the member such means  
only as are consistent with truth;  
(B) Shall not seek to mislead the judge, judicial officer, or jury by an artifice or false statement  
of fact or law;" Cal. State Bar Rule of Prof. Conduct 5-200.

1 proceeding. "[I]t is difficult to see how fraud could be practiced  
2 more directly upon one entitled to present his rights to a court  
3 than by keeping him in ignorance of the proceedings." Purinton v.  
4 Dyson (1937) 8 Cal.2d 322, 326. Any judgment rendered without  
5 Cahn's participation and direct protection of her interests could  
6 be set aside at any time as a "fraud upon the Court". Westphal v.  
7 Westphal (1942) 20 Cal.2d 393, 397 (when a party "has been  
8 prevented from fully participating therein [citation], there has  
9 been no true adversary proceeding, and the judgment is open to  
10 attack at any time.")

11 **4. IF CAHN IS NOT PERMITTED TO INTERVENE, THE PENDING**  
12 **DISPOSITION OF THE APPLICATION WILL IMPEDE HER ABILITY TO PROTECT**  
13 **HER INTERESTS.** The Commission Staff and Petitioner are obviously  
14 continuing their efforts to get this project approved, despite  
15 Respondent's disapproval. They have modified the project - twice -  
16 from that approved by the County, even though Respondent's  
17 appellate jurisdiction extends only to projects approved by the  
18 local agency (California Public Resources Code §30603(a)(1);  
19 McAllister v. County of Monterey (2007) 147 Cal.App.4th 253, 286)  
20 and they have gotten this court to sign an order that on its face  
21 gives Respondent authority, and the obligation, to grant  
22 reconsideration they previously denied, and even to approve this  
23 modified project, all without providing Cahn an opportunity to  
24 voice her objections.

25 The Order states that Petitioner's Application is remanded to  
26 Respondent for a public hearing on Petitioner's settlement offer  
27 and approval of the Application. Order ¶1, pg. 2:9-12. There is  
28 also language that states that "[f]inal approval of the offer and

1 issuance of a CDP, requires respondent to hold a new public hearing  
2 on the modified project." Order ¶2, pg. 1:23-24. Therefore, this is  
3 what Respondent must do - hold a hearing and approve the  
4 Application. "[A] court order cannot be overturned or modified  
5 except by a subsequent court order." City of Half Moon Bay v.  
6 Superior Court of San Mateo County (2003) 106 Cal.App.4th 795, 807.  
7 "[T]he [coastal] commission could not make a decision reversing or  
8 superseding a binding superior court order." Id. at 805.

9 As a resident of the County of Mendocino, a neighbor to the  
10 real property at issue in the Application, and one of the several  
11 persons that appealed the local approval of the Application to  
12 Respondent, Cahn has a due process right to be given meaningful  
13 notice and a hearing regarding any possible approval of this  
14 Application. In addition, because of the numerous letters Cahn has  
15 sent to both Petitioner and Respondent regarding Respondent's  
16 consideration of the Application and the clear fact that Cahn has  
17 professed the significant property interest that would be adversely  
18 impacted if the Application is approved, the parties failure to  
19 include her in this lawsuit is perplexing and inexcusable.

20 "Due process principles require reasonable notice and  
21 opportunity to be heard before governmental deprivation of a  
22 significant property interest." Horn v. Ventura (1979) 24 Cal.3d  
23 605, 612.

24 "[A]s we emphasized in Scott v. City of Indian  
25 Wells (1972) 6 Cal.3d 541, land use decisions  
26 which 'substantially affect' the property  
27 rights of owners of adjacent parcels may  
28 constitute 'deprivations' of property within  
the context of procedural due process. (P.  
548-549.) Plaintiff herein alleges that the  
subdivision plan [here a development plan] as  
currently constituted will substantially  
interfere with his use of the only access from

1 his parcel to the public streets, and will  
2 increase both traffic congestion and air  
3 pollution. From a pleading standpoint,  
4 plaintiff has thus adequately described a  
deprivation sufficiently 'substantial' to  
require procedural due process protection."  
Horn, supra, 24 Cal.3d at 615.

5 By failing to include Cahn as a party in the suit, her  
6 concerns regarding how she will be materially harmed by approval of  
7 the Application were not taken into account in settlement  
8 discussions. Instead, under the shadow of a pending lawsuit and the  
9 costs and time associated with preparing the administrative record,  
10 Petitioner and Commission Staff negotiated to recraft the  
11 Application into a project that Respondent has agreed to, and has  
12 in fact been ordered by this court to, approve. This, despite what  
13 Cahn, or any other member of the public might say. Cahn's interest  
14 as a resident of Mendocino County and as a neighbor with a  
15 significant property interest that could be impacted, has been  
16 impermissibly knowingly and completely ignored.

17 **5. AN INTERESTED PARTY CAN INTERVENE WITH A PLEADING OTHER**  
18 **THAN A COMPLAINT.** CCP §387 states that intervention is sought by  
19 complaint, either filing his or her own, or joining one already on  
20 file. However, case law has made clear that an individual not a  
21 party to a suit, but impacted by an order or decision therein, can  
22 intervene to challenge that decision and the denial of that  
23 challenge can be appealed by the interested party.

24 "The appellants were not parties to the  
25 proceedings resulting in the original orders,  
26 and for that reason could not appeal  
27 therefrom, which is a circumstance authorizing  
28 an appeal from an order refusing to vacate or  
set aside, in cases where an appeal is  
otherwise permissible. For the purpose of an  
appeal they have followed the procedure  
allowed by our practice to one whose rights or  
interests are injuriously affected by any

1           appealable order made in an action to which he  
2           is not a party, through the process of making  
3           themselves parties by moving to set those  
4           orders aside. Their motions being denied,  
5           they may, on this appeal, have the proceedings  
6           of which they complain reviewed. Such  
7           proceedings can scarcely be said to make them  
8           parties to the action, but it does make them  
9           parties to the record, and as such entitled to  
10          appeal." Luckenbach v. Laer (1923) 190  
11          Cal.395, 398.

12          Here, Cahn is directly impacted by the Order in that it  
13          directs Respondent to approve a revised version of the Application  
14          that she has a direct and material interest in and that, based at  
15          least in part on evidence presented by Cahn, Respondent has already  
16          denied.

17          **6. CONCLUSION.** Cahn is a neighbor to the real property at  
18          issue in the Application who has clearly and repeatedly expressed  
19          a significant property interest in whether or not the Application  
20          is approved. As such she has a due process right to notice and a  
21          hearing regarding the above entitled lawsuit and any proposed  
22          settlement therein. These have not been provided. Therefore, Cahn  
23          requests that this court permit her to intervene in this action,  
24          order her Motion For Reconsideration Of This Court's Order Of June  
25          17, 2010, Or In The Alternative, To Stay Its Enforcement, attached  
26          hereto at Exhibit A filed, and immediately hear and rule upon that  
27          as well.

28          Dated: June 25, 2010

CARTER & MOMSEN, LLP

Signature on File

Daniela Pavone

B:

For

JARED G. CARTER

Attorneys for Intervenor

DEBORAH CAHN, Trustee of the

Margery S. Cahn Living Trust



PROOF OF SERVICE BY FEDERAL EXPRESS

I declare that:

I am a resident of the County of Mendocino, State of California. I am over the age of 18 years and not a party to the within action. My business address is 444 North State Street, Ukiah, California 95482.

On June 25, 2010, I caused the attached:

**Ex Parte Application for Leave of Court to Intervene;  
Ex Parte Motion for Reconsideration of this Courts Order of June 17, 2010, or in the Alternative, to Stay its Enforcement;  
Declaration of Daniela M. Pavone in Support of Ex Parte Motions;  
Declaration of Deborah Cahn in Support of Motion for Leave of Court to Intervene and Motion for Reconsideration or in the Alternative, a Stay of Enforcement**

to be served on all parties as follows:

On the date written below, at Ukiah, California, I placed true copies of the above-described documents in sealed envelopes for priority overnight delivery by Federal Express, that said envelopes were deposited for collection with Federal Express in the ordinary course of business on said date, and that said envelopes were addressed as follows:

**Christiana Tiedemann  
Deputy Attorney General  
1515 Clay St., 20<sup>th</sup> Floor  
Oakland, CA 94612-1413  
(Fed Ex Tracking#872653222799)**

**Alan Robert Block, Esq.  
Block & Block  
1880 Century Park East, Suite 415  
Los Angeles, CA 90067-1604  
(Fed Ex Tracking #872653222803)**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 25, 2010, at Ukiah, Mendocino County, California.

Signature on File

MICHAELYN P. WIPF

**CARTER & MOMSEN, LLP**

444 NORTH STATE STREET  
POST OFFICE BOX 1709  
UKIAH, CALIFORNIA 95482

JARED G. CARTER  
BRIAN C. CARTER  
BRIAN S. MOMSEN  
DANIELA M. PAVONE  
MATISSE M. KNIGHT

PHONE: (707) 462-6694  
FAX: (707) 462-7839  
E-MAIL: dpavone@pacific.net

July 2, 2010

**VIA FAX AND OVERNIGHT MAIL**

California Coastal Commission  
North Coast District Office  
710 E Street, Suite 200  
Eureka, CA 95501-1865

Re: Appeal No. A-1-MEN-07-028; Appeal De Novo Hearing July 7, 2010

Dear Members of the Coastal Commission:

We represent Deborah Cahn, Trustee of the Margery S. Cahn Living Trust ("Cahn") and believe that the hearing of this project by the Commission is premature. However, if this project is considered, we request that it be denied. We have already written one letter in opposition to this project but wish to expand upon why consideration and possibly approval of this project at this time violates numerous procedural requirements of the California Environmental Quality Act ("CEQA") and therefore should instead be remanded to the local agency or denied. Importantly, the procedural requirements of CEQA must be obeyed, even where other rules may permit an abbreviated environmental review. *Environmental Protection Center, Inc., v. Johnson* (1985) 170 Cal.App.3d 604, 620.

**A. The Commission Lacks Jurisdiction To Hear And Decide This Project At This Time.**

The County of Mendocino has made no initial decision regarding the revised version of the project currently before the Commission, despite the requirement of California Public Resources Code §30603(a)(1) that such prior approval exist. Though the Commission could presume that the County would be in favor of the additions of vertical coastal access and an additional parking lot to accompany that access, the location of such amenities are exactly the types of decisions that should be made at the local level. By considering the project in its current revised state the Commission is putting itself in a position to decide a project with material additions that have not yet even been reviewed at the local level, much less approved.

**B. Adequate Notice Regarding Material Changes To The Project And The Existence Of A Settlement Agreement Between The Commission And The Applicant Has Not Been Provided.**

The revised project includes, among other changes, two additional parcels, vertical access to the coast, and an additional parking lot. These changes impact areas that were never

previously even considered. The first notice of these material changes was contained in the Staff Report, received by our client on July 26, 2010. This is clearly insufficient notice of these material changes since Cahn was provided substantially less than the 30 days required by PRC §21091. See also, *Ultramar, Inc. v. South Coast Air Quality Mgmt. Dist.* (1992) 17 Cal.App.4th 689, 698-700.

This failure to provide sufficient notice has also deprived our client from having the ability to meaningfully comment, since those interested have not been given sufficient time to fully review the new environmental analyses and, if necessary, conduct their own.

In addition, insufficient notice was provided that a settlement agreement between the Commission and the project's applicant, Jackson-Grube Family, Inc. ("Jackson-Grube") is to be discussed pursuant to the Stipulation and Order Remanding Petitioner's Application For A Coastal Development Permit Back To Respondent For A New De Novo Public Hearing ("Order"), filed in the matter of *Jackson-Grube Family, Inc., v. California Coastal Commission*, a civil case filed in the Mendocino County Superior Court, case no. SCUKCVG 09-55369 ("Suit"). Pursuant to the Order the Commission is to hold a public hearing on (1) Jackson-Grube's offer to settle the Suit, and (2) the revised project itself. There is no discussion in the Staff Report regarding the settlement agreement or the subject of the Suit, and the agreement itself is not provided. The only reference made to the Suit in the Staff Report is that, if the revised project is approved, the Suit will be dismissed. By informing the public only that the Commission will be embroiled in a lawsuit if it denies the project, Commission Staff has failed to provide adequate notice of what such a suit would entail and why such hangs in the balance of the project being decided.

### C. Though Required, A Cumulative Impact Analysis Has Not Been Performed.

Since the last time the Commission has seen this project, and certainly since the local government has reviewed it, Jackson-Grube has obtained approval to put a trail on the west side of Highway 1. Despite this material addition there has been no cumulative impact study done regarding the addition of the trail.

"CEQA mandates that environmental considerations do not become submerged by chopping a large project into many little ones – each with a minimal potential impact on the environment – which cumulatively may have disastrous consequences.' [Citations omitted.] [ . . . ] Where the lead agency could describe the project as either the adoption of a particular regulation or as a development proposal which will be subject to several governmental approvals the lead agency shall describe the project as the development proposal for the purpose of environmental analysis. [Citations omitted]" *Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 165.

Here, the required cumulative analysis of the revised project and the trail has not been performed. To fully understand, and be able to meaningfully comment upon, the full environmental impact of this "project" the entire project must be looked at. In this instance, that means including the approved trail as part of the environmental review.

It should also be noted that Jackson-Grube has offered to put a deed restriction on the real property at issue in the project, limiting the ability of itself, and future owners, to erect any structures beyond what is contained in the revised project currently before this Commission, with the notable exception of an agricultural barn that Jackson-Grube may wish to construct at some later date. Therefore, though Jackson-Grube makes much of the fact that the total square footage and envelope of the current rendition of the project has shrunk from its original incarnation, Jackson-Grube has retained the right to later ask to erect an additional structure that, if permitted, would cause the square footage and envelope of the entire project to greatly exceed that which was originally proposed.

D. Conclusion.

For all of the reasons outlined above, as well as those contained in our letter of June 28, 2010, this Commission should not even hear the "Appeal De Novo Hearing" but if it does, it should deny the project on the basis of its earlier denial of the project and its lack of jurisdiction to consider a new project that is greatly different from anything previously considered, much less approved, by the local agency.

Respectfully submitted,

Signature on File

DANIELA M. PAVONE

June 28, 2010

To: California Coastal Commission

Attn: Bob Merrill

Re: Appeal No A-1-MEN-07-028

We are in strong opposition to the proposed public access trail located at the north boundary of the Jackson Grube Family property and just south of the Risse Trust south boundary line and as described in Exhibit No.5 of the appeal. We haven't received any kind of notice to this proposal by any governing agency. We found out about it through a local property owner. As an adjacent property owner we believe we should have been notified of any proposal bearing the magnitude of potential negativity this access possesses.

Please do not allow this proposal to be back doored. Neighboring property owners have the right to enjoy their privacy and security. We have been working with Dan Powers at Calif. Department of Fish and Game to stop poachers from trespassing (mainly abalone divers) at the exact location of this proposed trail. A Public Access Trail will only perpetuate this problem. The Jackson Grube property encompasses 100's of acres and many other locations for such a trail other than one adjacent to our land.

Sincerely,

Greg Risse  
Rep. Risse Family Trust  
P.O. Box 10  
Rio Linda, CA 95673  
916-991-2700

RECEIVED

JUN 29 2010

CALIFORNIA  
COASTAL COMMISSION

Mr. Bob Merrill  
California Coastal North Coast Office  
710 E St., Suite 200  
Eureka, CA. 95501

**BY FAX to: 707-445-7877**

Re: Appeal # A-1-MEN - 07 - 28 JACKSON-GRUBE Family Inc.

July 1, 2010

Dear Mr. Merrill;

On June 28<sup>th</sup> when I was sent an Email from Westport indicating this item was on the Coastal Commission's agenda for its July 8<sup>th</sup> meeting. I had received no prior notice that this was being considered AGAIN. I called your office June 30<sup>th</sup> in the morning - leaving 2 messages - received a call back at 5:15PM. While I appreciate your time, by phone, trying to bring me up to speed on the changes now proposed, I feel my time to respond have been severely limited and compromised. Although you and your Staff have been privy to this information for a considerable length of time, notices were just mailed out on June 24<sup>th</sup> - mine sent to my old address, then forwarded to me. (I received that yesterday - June 30<sup>th</sup> - with only a single sheet of paper briefly stating the project was to be reheard, thus giving me very little time to review the vast material and maps available **only** on-line. This left many questions unanswered or still left to the imagination. It was difficult to assess the orientation of the buildings as no N/S indicators appear on the drawings.

In reviewing the plan submitted, this revised project still remains a very large expanse of buildings/roofs to be **constructed in a highly scenic area.**

1. **Why is a huge "covered garage building" for transient visitor parking necessary in this plan? (This is NOT downtown LA!)**
2. **Why the need of the very long and large expanse of covered porch off the main house behind the Cypress tree? 1,694 sq. ft. of additional roofing.**
3. **The "Cottage" contains 2278 Sq. ft. of interior living space plus an additional 609 Sq. ft. of added porch/roofed space - TOTAL 2887 sq. ft. and thus larger than most individual homes along our coastline.**
4. **Will any headlights from Hwy. 1 reflect off the vast expanse of any windows in structures proposed? \*\***

I ask this last question as a nearby neighbor was prohibited from placing **any** windows on the West side of his home with the reasoning given that this possibly could occur. (In his case - reflection of lights would only be possible if made by an approaching aircraft. His home is on the **EAST** side of the road and considerably well above Hwy. 1. Unless

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CALIFORNIA  
COASTAL COMMISSION  
Judy Whiting

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a vehicle was catapulted several hundred feet into the air, any reflection from its headlights would be impossible, yet he was forced to omit any windows on the entire West side of his home facing the ocean prior to permit approval.) It is hardly fair that a commercial project should be immune to these same restrictions.

I am still concerned by the term "UNITS" when referring to the large suites each with multiple bedrooms, bathrooms, kitchens included. Again, these UNITS are not clearly indicated on floor plans available, nor could I find a legible count of the bedrooms, bathrooms, kitchens. **The very size of these UNITS with the multiple rooms in each suite certainly does not fall into the "affordable housing" range for most transient visitors.** Again, this operation resembles a resort, hotel, a family compound, or a club-house for a "SEA RANCH" type development at a later date if the additional acreage on the East side of Hwy. 1, also owned by the Jackson family, should ever be converted from the tax shelter of its current Ag. Preserve status. **A specific definition of the term "UNIT" needs to be clarified. The Webster dictionary definition is NOT specific in that regard. Size? Number of bedrooms? Number of occupants permitted?**

Regarding the proposed "barn" or Agricultural building requested in the future to replace the structure which straddled the property line of the main development parcel and parcel 015-033-013 - **This barn has been gone for many years** - It was a dilapidated structure, never occupied by livestock nor equipment over the 20 years prior to its total collapse/destruction, not used in any manner related to the operation of the "ranch" during those 20 years. As the cattle do not belong to the Jackson Family, and the grazing rights are leased annually to an outside person. I suggest that any request by the Jackson/Grube family to re-build this structure is solely for utilizing it as an entertainment facility as part of this resort, not for true agricultural use. The "Equipment Barn/Maintenance Shed" within their new plan currently submitted is of adequate size to accommodate their needs. Any new Barn should be constructed on the EAST side of Hwy. 1 if proven necessary for future ranching operation.

I strongly urge the Commission to preserve the scenic value of the Mendocino Coast and to deny this commercial project or **substantially reduce its size and magnitude.**

Yours Truly,

Judith G. Whiting

Ms. Carolyn Tett  
6335 Mtn View Ranch Rd  
Healdsburg, CA 95448

July 6, 2010

California Coastal Commission  
PO Box 4908  
Eureka, CA 95502-4908  
Fax 707-445-7877

Appeal #A-1-MEN-07-28

Oppose the Appeal:  
**In FAVOR of Jackson-Grube Family project**

In reference to: Appeal #A-1-MEN-07-28 (Jackson-Grube Family, Inc.; filed July 23, 2007)

31502 N. Highway 1, Four miles south of Westport

To whom it may concern:

I am in favor of The Inn at Newport Ranch project.

Willard Jackson is an excellent steward of his land and shares his property with the public by allowing nature loving-horse back riders to ride old logging roads and fire roads throughout his property.

Will and Carolyn could log their lands, put in a camp ground, or sell off the various parcels separately to numbers of other families. These and other options would create much more damaging or even dangerous traffic on our Highway 1, and change our local environment to a much greater degree.

My hope is that this family is able to complete their ecologically sound project without any further delays, so that their many hundreds of acres of lands remain unspoiled for years to come.

Signature on File

Carolyn Tett

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JUL 06 2010

CALIFORNIA  
COASTAL COMMISSION



Forrest Tancer  
Cynthia Ariosta  
PO Box 2  
Elk, CA 95432

July 4, 2010

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JUL 06 2010

California Coastal Commission  
PO Box 4908  
Eureka, CA 95502-4908

Appeal #A-1-MEN-07-28  
Forrest Tancer and Cynthia Ariosta  
Oppose the Appeal:  
**Are In FAVOR of Jackson-Grube Family project**

CALIFORNIA  
COASTAL COMMISSION

Fax 707-445-7877

In reference to: Appeal #A-1-MEN-07-28 (Jackson-Grube Family, Inc.; filed July 23, 2007)  
31502 N. Highway 1, Four miles south of Westport

To whom it may concern:

As stated in letters of support we have previously sent to the California Coastal Commission, we are totally in favor of The Inn at Newport Ranch project. Willard Jackson has always been a good neighbor, and allows us and many other nature loving horse back riders to ride along old logging roads and fire roads throughout his property. He is an excellent steward of the land.

Will and Carolyn could log their lands, put in a camp ground, or sell off the various parcels separately to numbers of other families. These and other options would create much more damaging or even dangerous traffic on our Highway 1, and change our local environment to a much greater degree. Our hope is that this family is able to complete their ecologically sound project without any further delays, so that their many hundreds of acres of lands remain unspoiled for years to come.

c:

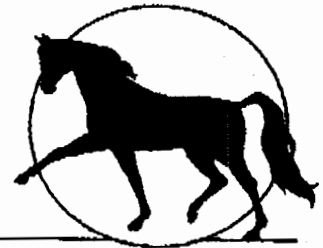
Signature on File

Signature on File

Forrest Tancer and Cynthia Ariosta

Cynthia Ariosta has lived, owned property and businesses in Mendocino since 2001, and is director of the Fort Bragg Promotion Committee. Forrest Tancer is Mendocino County property owner and resident active in many local organizations, and manager of the Mendocino Magic 50 Mile Endurance Races,

**Lari Shea**  
**RICOCHET RIDGE RANCH**  
 24201 North Highway One  
 Fort Bragg, CA 95437  
 Ph 707 964-7669 707 964-9669 Fax



<http://www.horse-vacation.com> [larishea@horse-vacation.com](mailto:larishea@horse-vacation.com)

**RECEIVED**

July 4, 2010

JUL 06 2010

California Coastal Commission  
 PO Box 4908  
 Eureka, CA 95502-4908

Appeal #A-1-MEN-07-28  
 Lari Shea and Harvey Hoechstetter  
 Oppose the Appeal:

CALIFORNIA  
 COASTAL COMMISSION

**In FAVOR of Jackson-Grube Family project**

Fax 707-445-7877

In reference to: Appeal #A-1-MEN-07-28 (Jackson-Grube Family, Inc.; filed July 23, 2007)  
 31502 N. Highway 1, Four miles south of Westport

To whom it may concern:

As much as we respect the opinions and admire the hard work of those who struggle to keep our coast unspoiled, we strongly disagree with those who oppose Willard Jackson's proposed Inn at the site of the old town of Newport. We think that The Inn at Newport Ranch project should go forward. Willard Jackson bought this land nearly 25 years ago. Although he certainly could have, he has not logged it at all, but has created a park-like condition throughout the property. Other individuals and companies over the years have attempted to buy all or part of it from him, to log and/or to develop in various ways. Will leases grazing rights to a neighboring rancher whose family has been in the cattle business for generations. He keeps the fire roads open, protecting neighboring land owners.

In short, our good neighbor, Will Jackson, has actively protected those 1600 hundred acres from development, logging, and subdivision. His purpose and goal in building a small Inn on 4 of his acres is to create just enough income to pay the taxes and upkeep for the entire acreage, so that his heirs will not feel pressured to log the redwood forests or sell off the lands to developers. He wants to preserve this land as a whole for the future.

In 1986, Will telephoned, inviting me to share the natural beauty of his lands with guests on horseback. He himself rode my old stallion, Natures Ballet, to inspect the ridge tops forests and creek-head portions of his property which were inaccessible by vehicle. For the past quarter century, I have seen huge sections of Wills forest revert back towards big trees. During the same 23 year period, I've seen vast portions of Jackson State Forest, the old Hardell Ranch in Albion, and both the Ten Mile and Campbell Creek watersheds be heavily logged, even clear cut.

Will could have chosen to do the same. Instead, he hasn't logged at all. He wants to put in a small lodge.

The reason that he's designed multi-roomed units is that he wants to create a family-friendly place for folks to share the joys and beauty of these unspoiled lands he's protecting for all of us to enjoy seeing in



perpetuity. Even though the County planners originally approved unlimited events with up to 99 people, Will and his wife Carolyn never had that intent, and have reapplied for a much more limited project in number and size. Its primarily for smaller family groups such as reunions. No rock and roll concerts!

The 1 mile of road frontage on both sides of Hwy 1 will be kept undeveloped as cattle grazing lands, with views over the Pacific unblocked except for the area which traditionally has had many more buildings than exist there today. As a matter of fact, the building envelope is only 335 feet wide north to south, out of the almost 7000 feet of water overviews. Landscaping will not be manicured, with only approximately 60 x 40 feet of irrigated lawn, and mowed trails through the natural fields. The town of Newport once housed thousands of people. Gradually everything burned or rotted, except the four buildings left. The footprint of the Inn at Newport Ranch will occupy just a minuscule part of the old settlement. This is a practical way to prevent this beautiful section of highway from Abalobadia Gulch to the rental properties just south of Pacific Star Winery from ever being further developed. By the way, the nearby rental houses and winery do constitute other low impact, environmentally sensitive "commercial" uses of land between Inglenook and Westport.

If you'd like an idea of the owners aesthetics of design, you should look at their own home, which is due south of the old Orca Inn homestead. I'll bet you never noticed it and might not even be able to find it if you look! It's built to be practically invisible, uses re-cycled and natural local materials, and literally melts into the landscape. We've seen the designs for his cozy Inn at Newport Ranch, and think it will also fit in nicely.

In local rumor, we've heard Wills integrity and honesty challenged. Harvey and I whole heartedly vouch for this sensitive and intelligent nature-loving neighbor.

In truth, if Will and Carolyn were to log their lands, put in a camp ground, or sell off the various parcels separately to numbers of other families, these and other options would create much more damaging or even dangerous traffic on our Highway 1, and change our local environment to a much greater degree. Our hope is that this family is able to complete their ecologically sound project without any further delays, so that their many hundreds of acres of lands remain unspoiled for years to come.

Sincerely,

Signature on File

Signature on File

Lari Shea & Harvey Hoechstetter

Lari Shea has lived in Mendocino since 1967, and is a member of Friends of Ten Mile. Harvey Hoechstetter is a Westport resident since 1994 and a member of Friends of Ten Mile

## SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by Jackson-Grube Family, Inc. ("Jackson-Grube"), a California corporation, and the California Coastal Commission ("Commission") in the case of *Jackson-Grube Family, Inc. v. California Coastal Commission*, Mendocino County Superior Court Case No. SCDKCVG-0955369. The parties desire to attempt to resolve this case by entering into this Agreement.

### RECITALS

A. Jackson-Grube has filed a petition for a writ of mandate in the Mendocino County Superior Court seeking to set aside the Commission's denial of Jackson-Grube's Coastal Development Permit (CDP) application to develop an inn on Jackson-Grube property west of Highway 1 between Mendocino and Westport, California.

B. The Commission disagrees with each and all of Jackson-Grube's legal claims in the petition for writ of mandate. However, in an effort to settle the litigation, the parties have stipulated to a remand to the Commission for the Commission to conduct a new public hearing on a modified CDP application for development of an inn on the Jackson-Grube property.

### AGREEMENT

In consideration of the mutual promises and covenants made in this agreement, the parties agree as follows:

1. **Incorporation of Recitals.** Recitals A and B above are incorporated here by this reference.
2. **Dismissal of the Action.** If the Commission acts to approve a CDP for the Revised Project described in Attachment A to this Agreement and does not impose permit conditions that alter the Revised Project, Jackson-Grube shall file a dismissal with prejudice of Mendocino County Superior Court Action No. SCDKCVG-0955369.
3. **Commission's Discretion.** The Commission retains full discretion as allowed by law to grant, condition, or deny the Revised Project after full public hearing.
4. **Release.** The parties agree that if the Commission acts to approve a CDP for the Revised Project described in Attachment A and does not impose permit conditions that alter the Revised Project, the Commission and its agents, officers, and employees shall be released from all claims that Jackson-Grube has raised or could have raised in Mendocino County Superior Court Action No. SCDKCVG-0955369 with respect to the Commission's 2009 denial of Jackson-Grube's CDP application to develop an inn on its property west of Highway 1.
5. **Fees and Costs.** The parties shall assume and pay for their respective attorneys' fees and legal costs and expenses to the date of this agreement related to the actions and the released matters.

<b>EXHIBIT NO. 30</b>
<b>APPEAL NO.</b> A-1-MEN-07-028
JACKSON-GRUBE FAMILY, INC. SETTLEMENT AGREEMENT (1 of 6)

6. Counsel. The parties represent that they have consulted or have had the opportunity to consult legal counsel prior to the execution of this Agreement and have executed this Agreement with full knowledge of its meaning and effect.

7. Binding. The parties agree that the terms, conditions and provisions of this Agreement are binding upon, and shall inure to the benefit of, all assigns and successors-in-interest of each of the parties.

8. Entire Agreement. Except as otherwise provided for herein, this Agreement constitutes the entire and only agreement between the parties with reference to the subject matter hereof and supersedes any prior representation or agreement, oral or written, with respect thereto. The parties further agree that no representation, warranty, agreement or covenant has been made with regard to this Agreement, except as expressly recited herein and that in entering into this Agreement, no party is relying upon any representation, warranty, agreement or covenant not expressly set forth herein.

9. No Admissions. Each Party agrees that this settlement is made in compromise of disputed claims and that by entering into and performing the obligations of this Agreement, no party concedes or admits the truth of any claim or any fact and the execution and performance of this Agreement shall not be construed as an admission by any party.

10. Governing Law. This Agreement shall be construed, enforced and governed by the laws of the State of California, and shall constitute a binding settlement by the parties which may be enforced under the provisions of the California Code of Civil Procedure.

11. Mutual Drafting. The parties agree that this Agreement shall not be construed in favor of, or against, any party by reason of the extent to which any party or his counsel participated in the drafting of this Agreement.

12. Amendment. This Agreement can be amended only by a writing signed by each of the parties.

13. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same Agreement. Facsimile or PDF signatures will have the same force and effect as original signatures.

14. Authority. The parties represent and warrant that they have full and complete authority to execute this Agreement and that they have not assigned or transferred (voluntarily, involuntarily or by operation of law), to any person or entity, any right, title or interest in any claim released and discharged herein.

Dated: 6/16/10

*Willard Jackson*

Willard Jackson for  
Petitioner Jackson-Grube Family, Inc.

Dated:

Peter Douglas, Executive Director  
California Coastal Commission

Approved as to form::

Dated:

CHRISTIANA TIEDEMANN  
Supervising Deputy Attorney General  
Attorney for Respondent  
California Coastal Commission

Dated:

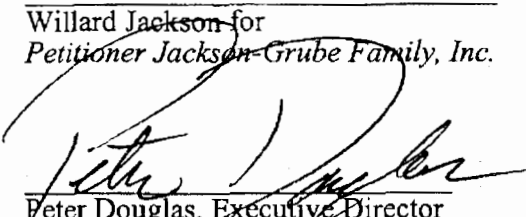
ALAN ROBERT BLOCK  
BLOCK & BLOCK  
Attorney for Petitioner Jackson-Grube  
Family, Inc.

Dated:

\_\_\_\_\_  
Willard Jackson for  
*Petitioner Jackson-Grube Family, Inc.*

Dated:

*July 6, 2010*

  
\_\_\_\_\_  
Peter Douglas, Executive Director  
*California Coastal Commission*

Approved as to form::

Dated:

\_\_\_\_\_  
CHRISTIANA TIEDEMANN  
Supervising Deputy Attorney General  
*Attorney for Respondent*  
*California Coastal Commission*

Dated:

\_\_\_\_\_  
ALAN ROBERT BLOCK  
BLOCK & BLOCK  
*Attorney for Petitioner Jackson-Grube*  
*Family, Inc.*

Dated:

Willard Jackson for  
Petitioner Jackson-Grube Family, Inc

Dated:

Peter Douglas, Executive Director  
California Coastal Commission

Approved as to form::

Dated: 7/1/2010

Christiana Tiedemann

CHRISTIANA TIEDEMANN  
Supervising Deputy Attorney General  
Attorney for Respondent  
California Coastal Commission

Dated:

Alan Robert Block

ALAN ROBERT BLOCK  
BLOCK & BLOCK  
Attorney for Petitioner Jackson-Grube  
Family, Inc.



**ATTACHMENT A**  
**REVISED PROJECT DESCRIPTION**

Development of a six unit inn on Jackson-Grube Family Inc.'s property located west of Highway 1 between Mendocino and Westport, California. The inn to include: (1) A main building, including renovation of the former Orca Inn into three rental units of 412 square feet, 249 square feet and 240 square feet and accessory common and service areas of 3,236 square feet; and (2) a cottage with three rental units of 915 square feet, 837 square feet and 526 square feet.

Ranch and service operations to include: (1) a ranch manager's unit of 1,737 square feet; (2) an equipment barn of 1,121 square feet; (3) a generator/pump shed of 240 square feet; and (4) a garage of 1,508 square feet. The existing water tank of approximately 189 square feet, its adjacent pump house of approximately 134 square feet and two existing wells and majority of existing driveway are to remain. The project will reuse the existing septic system, improve the existing driveway, and bury existing overhead utilities.

The total area of development is approximately 1.56 acres, which includes the building envelope of approximately 1.22 acres and the driveway of approximately .34 acres. The existing farmhouse, which comprises a portion of the proposed main building, is to be renovated, with retention of a minimum of 50 percent of the existing exterior walls and roof.

The standard and special conditions recommended in the Commission staff report for CDP No. A-1-MEN-07-028 dated October 22, 2009, as modified in the addendum dated November 3, 2008 [*sic*], are included in the project.

Public access improvements previously provided to the County of Mendocino as part of the approval of CDP CDU 9-95 are included in the project, including: (1) conveyance of fee title to the County of a one acre portion of the property; (2) \$25,000 paid to the County toward development of coastal access in the area; and (3) dedication of an easement for public access to the coast along a 15 foot strip of the property.

The project will also include recordation of an offer to dedicate a 10-foot wide vertical pedestrian access from Highway 1 to the coastal bluff, and parking for at least five vehicles at or near Highway 1, at the north end of the Jackson-Grube Family, Inc. property west of Highway 1, as generally depicted on Exhibit 1 to this Attachment.

The project will include agreement to recordation of a deed restriction prohibiting further development on Jackson-Grube Family, Inc. property west of Highway 1 (APNs 015-038-002, 015-038-03, 015-038-004, 15-038-06 and 015-033-013). The deed restriction shall not prohibit Jackson-Grube Family, Inc. from seeking a CDP to replace a previous barn that formerly straddled AP 15-330-13 and AP 15-380-05. Any proposed replacement barn shall be a one-story agricultural building, may not be taller than 18 feet, shall conform to all applicable local coastal program and Coastal Act requirements, and shall be located in the general vicinity of the previous barn.

## CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE  
710 E STREET • SUITE 200  
EUREKA, CA 95501-1865  
VOICE (707) 445-7833  
FACSIMILE (707) 445-7877



# W10a

Filed: July 23, 2007  
49<sup>th</sup> Day: September 10, 2007  
Hearing Opened: September 7, 2007  
Staff: Robert S. Merrill  
Staff Report: June 24, 2010  
Hearing Date: July 7, 2010

**REVISED STAFF REPORT: APPEAL**  
**DE NOVO HEARING**

APPEAL NO.: **A-1-MEN-07-028**

APPLICANTS: **Jackson-Grube Family, Inc.**

LOCAL GOVERNMENT: County of Mendocino

DECISION: Approval with Conditions

PROJECT LOCATION: Approximately four miles south of Westport, on the west side of Highway One, at 31502 North Highway One (APNs 015-380-03; 015-380-04; 015-380-05; 015-330-05; 015-330-13; 015-330-19X; 015-330-26; 015-070-45; 015-070-49X; 015-070-51X 015-070-47X; and 015-070-52X.).

PROJECT DESCRIPTION  
(as approved by the County): Build a 10-unit inn in 2 phases. Phase I to consist of (1) the demolition and reconstruction of the former Orca Inn into a main unit of 2,961 sq. ft., an upstairs unit of 1,089 sq. ft. and a downstairs unit of 833 sq. ft., (2) a 1,276 sq. ft. two floor manager's unit, (3) 1,269 sq. ft. equipment barn, 648 sq. ft. maintenance shop, and (4) a 240 sq. ft. generator/pump shed. Phase II would consist of (1) 7 units with 3 added to the main building in two storied units of 954 sq. ft., 951 sq. ft., and 820 sq. ft., (2) 2 units within a detached bunkhouse of 531

sq. ft. and 757 sq. ft., and (3) 2 separate cottages of 835 sq. ft. and 915 sq. ft., respectively. A 778 sq. ft. spa, wells, septic system, roads and underground utilities are also proposed within the approximate 3.7-acre area of development.

**PROJECT DESCRIPTION**

(as currently amended *de novo*):

Redevelop an existing complex of ranch buildings and develop a six unit inn (that can be used as a seven unit inn) by: (1) demolishing five existing ranch buildings; (2) renovating and expanding the approximately 2,049-square-foot existing main building (former Orca Inn) into an inn containing three rental units of 412 square feet, 249 square feet and 240 square feet and accessory common and service areas of 3,236 square feet; (3) constructing a cottage with three rental units of 915 square feet, 837 square feet and 526 square feet; (4) constructing a ranch manager's unit of 1,737 square feet; (2) constructing an equipment barn of 1,121 square feet; (3) installing a generator/pump shed of 240 square feet; and (4) constructing a garage of 1,508 square feet. The project will reuse the existing septic system, improve the existing driveway, bury existing overhead utilities and provide for dedications of public access.

**APPELLANTS:**

- (1) Molly Warner & Britt Bailey
- (2) Commissioners Pat Kruer and Sara Wan;
- (3) Mendocino Group Sierra Club, Attn: Rixanne Wehren & Friends of the Ten Mile, Attn: Judith Vidaver;
- (4) Margery S. Cahn Trust & Whiting Family Revocable Trust

**SUBSTANTIVE FILE  
DOCUMENTS:**

- 1) Mendocino County CDU No. 6-2006
- 2) Mendocino County Local Coastal Program
- 3) Coastal Development Permit No. 1-83-278
- 4) Appeal No. A-1-MEN-96-28
- 5) Mendocino County CDU No. 9-95
- 6) Mendocino County CDUM No. 9-95/00

**SUMMARY OF STAFF RECOMMENDATION DE NOVO:**  
**APPROVAL WITH CONDITIONS**

Staff recommends that the Commission approve with conditions the coastal development permit for the proposed project. Staff believes that as conditioned, the development, as amended for purposes of the Commission's *de novo* hearing, is consistent with the Mendocino County LCP and the public access policies of the Coastal Act

The Commission first considered the application *de novo* on November 4, 2009 and denied the proposed development. The applicant later submitted a reconsideration request (Reconsideration Request No. A-1-MEN-07-028-R) which the Commission heard at its meeting of January 15, 2010. At that meeting, the Commission held a public hearing and denied the reconsideration request.

After the Commission's denial of the reconsideration request, the applicant filed suit against the Commission challenging the Commission's denial of the permit and denial of the reconsideration request (*Jackson-Grube Family, Inc. v. California Coastal Commission*, Mendocino County Superior Court Case No. SCDKCVG-0955369). The applicant and the Commission have subsequently entered into an agreement to settle the litigation. The settlement agreement provides that if the Commission acts to approve a modified project description for the development that includes certain changes to the project that the Commission considered at the initial *de novo* hearing in November, 2009, the lawsuit would be dismissed.

The principal changes to the project include (1) reducing the maximum number of units of the proposed inn from 7 to 6, (2) reducing the size of the proposed main inn building and overall reducing the square footage of the proposed inn and ranch building compound by approximately 15%, (3) providing various public access improvements and (4) agreement to recordation of a deed restriction prohibiting further development on Jackson-Grube Family, Inc. property west of Highway 1 (APNs 015-038-002, 015-038-03, 015-038-004, 15-038-06 and 015-033-013). The proposed public access improvements include providing public access improvements previously provided to the County of Mendocino as part of the approval of an earlier inn project for the site including (a) conveyance of fee title to the County of a one acre portion of the property, (b) \$25,000 paid to the County toward development of coastal access in the area; and (c) dedication of an easement for public access to the coast along a 15 foot strip of the property. The proposed public access improvements also including an offer to dedicate a 10-foot wide vertical pedestrian access from Highway 1 to the coastal bluff at the northern end of the property which would include a public viewing area at the end of the trail and parking for at least five vehicles in a parking area off of Highway 1.

Under the settlement agreement, the Commission retains full discretion as allowed by law to grant, condition, or deny the Revised Project after full public hearing. The Superior

Court has remanded the permit application to the Commission for a public hearing on the revised project during the July 7-9, 2010 Commission meeting.

The proposed project description as revised for the Commission's *de novo* review involves redeveloping an existing complex of ranch buildings and developing a six unit inn by demolishing five existing ranch buildings and developing a new inn and ranch compound of buildings in the general location of the existing buildings to be demolished.

The new inn would include: (1) a main building, including renovation of the former Orca Inn into three rental units of 412 square feet, 249 square feet and 240 square feet and accessory common and service areas of 3,236 square feet; and (2) a cottage with three rental units of 915 square feet, 837 square feet and 526 square feet.

Ranch and service operations would include: (1) a ranch manager's unit of 1,737 square feet; (2) an equipment barn of 1,121 square feet; (3) a generator/pump shed of 240 square feet; and (4) a garage of 1,508 square feet. The existing water tank of approximately 189 square feet, its adjacent pump house of approximately 134 square feet and two existing wells and majority of existing driveway are to remain. The project will reuse the existing septic system, improve the existing driveway, and bury existing overhead utilities.

The total area of development is approximately 1.56 acres, which includes the building envelope of approximately 1.22 acres and the driveway of approximately .34 acres. The existing farmhouse, which comprises a portion of the proposed main building, is to be renovated, with retention of a minimum of 50 percent of the existing exterior walls and roof.

The standard and special conditions recommended in the Commission staff report for CDP No. A-1-MEN-07-028 dated October 22, 2009, as modified in the addendum dated November 3, 2008 [*sic*], are included in the project.

Public access improvements previously provided to the County of Mendocino as part of the approval of CDP CDU 9-95 are included in the project, including: (1) conveyance of fee title to the County of a one acre portion of the property; (2) \$25,000 paid to the County toward development of coastal access in the area; and (3) dedication of an easement for public access to the coast along a 15 foot strip of the property.

The project will also include recordation of an offer to dedicate a 10-foot wide vertical pedestrian access from Highway 1 to the coastal bluff, and parking for at least five vehicles at or near Highway 1, at the north end of the Jackson-Grube Family, Inc. property west of Highway 1 that will connect the existing lateral pedestrian access easement held by the Mendocino Land Trust to the new vertical pedestrian access.

The project will include agreement to recordation of a deed restriction prohibiting further development on Jackson-Grube Family, Inc. property west of Highway 1 (APNs 015-

038-002, 015-038-03, 015-038-004, 15-038-06 and 015-033-013). The deed restriction shall not prohibit Jackson-Grube Family, Inc. from seeking a CDP to replace a previous barn that formerly straddled AP 15-330-13 and AP 15-380-05. Any proposed replacement barn shall be a one-story agricultural building, may not be taller than 18 feet, shall conform to all applicable local coastal program and Coastal Act requirements, and shall be located in the general vicinity of the previous barn.

The principal issues raised by the application concerns the visual impacts of the development, whether sufficient well water is available to serve the proposed development, and whether the development provides maximum public access.

With regard to the visual issue, the project site is located within a highly scenic area on a gently-sloping open coastal terrace that extends approximately one-quarter mile from the coastal hills east of Highway One to the ocean bluff edge west of Highway Ones. The terrace and hillsides are predominately vegetated with low-growing grasses and are largely used for agricultural grazing which contributes to the rural agricultural character of the area. Due to the flat terrain of the terrace, and lack of tall vegetation or varied topography, the development site is highly visible from Highway One in both directions. The lack of trees and the very limited and widely scattered development in the immediate vicinity of the development site gives the landscape a very open appearance. The views to and along the coast from narrow two-lane Highway One in this area are sweeping and vast (See Exhibit 2). There is very little development located on either side of the highway in the immediate vicinity of the development site with the exception of a few scattered residences on the east side of the highway, three houses and a winery scattered along the west side of the highway beginning approximately a mile north of the applicant's ranch, and several homes west of the highway on parcels within a half mile south of the proposed development site. A larger concentration of approximately 30 homes exists along the west side of the highway approximately two miles south of the proposed development south of Abalobadiah Creek. This concentration of houses two miles south of the development site is largely screened from view from Highway One in the vicinity of the development site by intervening vegetation and a topographical break in the terrace formed by the Abalobadiah Creek drainage.

LCP policies state that the scenic and visual qualities of Mendocino County coastal areas must be considered and protected by requiring that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas. Additionally, development in highly scenic areas must be subordinate to the character of its setting. Furthermore, the LCP policies require that the visual impacts of development on terraces be minimized by (a) avoiding development, other than farm buildings, in large open areas if alternative site exists, and (b) minimizing the number of structures and cluster them near existing vegetation, natural landforms or artificial berms.

For the purposes of *de novo* review by the Commission, the applicants submitted a revised project description and revised plans that make changes to the development originally approved by the County. These changes include: (1) reducing the overall size of the development both in terms of floor area and footprint of the building complex, (2) consolidating the proposed visitor serving units into fewer dispersed buildings, reducing the number of structures containing visitor serving accommodations, and (3) remodeling and expanding the existing ranch house building rather than demolishing and replacing the ranch house with an entirely new building to retain the historic character of the building as part of the visual character of the area.

To help the Commission assess the visual impacts of the development and the consistency of the proposed development with the visual policies of the certified LCP, the applicant provided for purposes of the Commission's *de novo* review a visual impact study, attached as Exhibit 22. The study includes a compendium of aerial and landward views of the site comparing existing views with views from the same locations showing superimposed simulations of the proposed development as revised for purposes of the Commission's *de novo* review. The photos show how the development will establish a more compact and consolidate compound of buildings on the site than the compound of existing buildings, reducing the spread of the development on the site to better preserve views. The before and after comparison photos on pages 6-15 of Exhibit 22 illustrate how the proposed development as viewed from Highway One will appear bulkier and taller than the existing compound of buildings. In addition, some additional blue water view available now from Highway One over and through the existing compound will be blocked by the taller structures. However, the comparison photos also demonstrate that when taking into account the large expanse of open space owned by the applicant that surrounds the development site, particularly the large open space area that extends north from the development site west of the highway, the individual visual impacts of the proposed development itself are not significant. The large expanse of uninterrupted view counter-balances the blockage of additional view and the greater massing of development that results from the project proposal. The fact that the new development will be located in the same part of the viewscape as the existing compound of buildings will also help retain the character of the existing views, which is comprised of a complex of building in this location set against vast open space area west of the highway. In this context, the development as proposed for the Commission's *de novo* review does not significantly affect views to and along the ocean and the development is subordinate to the character of its setting.

This determination that the visual impacts would not be significant and the development would be subordinate to the character of its setting is dependent on retaining the agricultural and open space use around the site without significant new structures, particularly the open space west of the highway and north of the development site. If this rural residential-zoned area were developed with new homes and accessory structures and driveways, the cumulative impact of the proposed inn development together with this additional residential development would be significant. The cumulative impacts of

such development would block proportionately more of the ocean views and prominently break up the large expanse of open space, thereby eliminating the current open space's value in counter-balancing the blockage of additional view and the greater massing of development that results from the project proposal.

Therefore, to ensure that: (1) the proposed development will protect highly scenic views and not result in significant adverse cumulative visual impacts; (2) the development will be subordinate to the character of its setting; and (3) the impacts of development on the coastal terrace will be minimized by avoiding development in large open areas and minimizing the number of structures as required by the LCP policies, staff recommends that the Commission limit development on the large open space area owned by the applicant west of Highway One, both surrounding and north of the development site. Therefore, staff is recommending Special Condition Nos. 5 and 6. Special Condition No. 5 would prohibit all development, as defined in Section 30106 of the Coastal Act, anywhere on two Assessor's Parcel Numbers owned by the applicant that are west of Highway One except for: (a) accessory agricultural development without significant new above-ground structures except to replace a previously existing barn just south of the inn site; (b) installation of utilities; (c) removal of non-native, invasive vegetation; (d) planting of native plants; (e) removal of vegetation for compliance with Cal-Fire defensible space requirements; and (f) public access use and improvements, only if approved by the Coastal Commission as an amendment to this coastal development permit. Special Condition No. 6 would ensure that the APN containing the subject development and the two APNs surrounding the development area are neither divided nor conveyed separately. Other special conditions of the staff recommendation would require submittal of a landscaping plans to help screen the development, undergrounding of utilities and would restrict the colors and materials to be used, lighting, special event parking and tent locations to further minimize the visual impacts of the development. Staff believes that as conditioned, the development is consistent with the visual resource policies of the LCP.

With regard to the sufficiency of water issue, the development would be served by an existing well on the subject property located approximately 500 feet east of Highway One. This existing 60-foot deep test well was drilled in 1994. The proposed project includes the installation of a pipeline to convey the water approximately one-third of a mile to the southwest from the well to the proposed inn site. The project site lies within an area containing "Critical Water Resources" as designated by the 1982 Mendocino County Coastal Ground Water Study.

In its findings for approval of the project, the County indicated that a hydrological report was prepared in 1994 for the previous inn project approved for the site, and that the 1994 study estimated that "well yield in the area to be more than 8,000 gpd, significantly exceeding the proposed water demand for the inn." The County did not require a new hydrological study for the current project based on the results of the 1994 study. Three of the four sets of appellants raised contentions about the adequacy of water to serve the



development, and challenged the continuing validity of the old 1994 report. In finding substantial issue on the appeal, the Commission requested the applicant to provide a current hydrological study demonstrating that the quantity and quality of water yielded by the proposed well(s) (or some other source available to the applicant) meets the standards of the County Health Department in order to evaluate whether adequate water will be available to serve the proposed development. The requested hydrological study was to evaluate (1) the adequacy of the on-site water source(s) to serve the proposed development, (2) potential impacts to surface and groundwater supplies at and surrounding the project site, and (3) potential impacts to coastal resources from surface and/or groundwater extraction (i.e., impacts to surrounding wetlands or watercourses, geologic stability, etc.).

Pursuant to this request, the applicant hired Questa Engineering Corporation to perform a hydrological study of the site. Questa Engineering Corporation conducted the investigation and prepared a report dated January 10, 2008. (Excerpts of the report are included as Exhibit 16). The hydrological study first determined the average daily water demand for the project, establishing this demand based on the size of the inn, County policies for water and wastewater flow estimation, assumptions regarding extra water use for incidental water uses that do not result in wastewater flow, and assumptions regarding occupancy rates at the inn. The investigation then examined existing information about the hydrologic setting for the project and the well, before conducting a 72-hour pumping test during the dry season between October 9-12, 2007 to determine the sustained yield and drawdown characteristics of the well and the local aquifer. The study did not perform direct measurements of drawdown of the wells of neighbors as the nearest neighboring wells are located more than ¼-mile away. According to the study, a well located ¼-mile away is well beyond the expected zone of influence of the test well. Water table drawdown effects were, however, calculated for the observation well and for a point 400 feet away which corresponds with the westerly property line of the well parcel. In addition, the study analyzed the effects of the proposed groundwater extraction on the local groundwater aquifer. Finally, the hydrologic study sampled the water quality of the well water to determine whether the extracted groundwater would be suitable for the proposed uses.

The study determined that the maximum daily water use of a 10 unit inn and the caretaker's residence would be 3,800 gallons per day (gpd). This volume is equivalent to a continuous pumping rate of about 2.64 gallons per minute. As noted above, the project as revised for purposes of the Commission's de novo review involves the installation of a seven unit inn rather than a 10 unit inn so the average daily water demand estimate will be a corresponding lesser amount. The pumping test demonstrated a stabilized yield of 6.26 gallons per minute over a sustained 72-hour pumping period which occurred at the end of a below average rainfall year. This rate corresponds to a daily pumping volume of 9,014 gallons per day. As discussed above, the maximum daily water use demand for a 10-unit inn with a caretaker's residence at the proposed site is estimated to be 3,800 gallons per day and the average daily water demand estimate of approximately 3,000

gallons per day. Therefore, the report concludes that the well has more than ample capacity to serve the proposed development. As the pumping test results indicate that the well will yield a volume of 9,014 gallons per day, the development will only use approximately 30% of the capacity of the well.

Dr. Johnsson also concurs with the overall conclusion of the hydrological study that the effects of the proposed extraction of groundwater to serve the proposed development on neighboring wells and the local groundwater aquifer would be negligible.

Therefore, staff recommends that the Commission finds that an adequate water supply is available to serve the proposed development that will not adversely affect ground water resources for the area consistent with the LCP.

With regard to public access, the application now includes a number of public access benefits that previously were not part of the project. The project reviewed by the Commission in November included no public access. In addition to committing to provide access previously provided for an earlier inn project approved by the County which included a lateral access way extending through the property on the west side of Highway One and , a one-acre bluff top access area between Highway One and the bluff approximately 1/8<sup>th</sup> of a mile south of the inn site, the applicant is now proposing to provide new public access benefits including an offer to dedicate a vertical public access easement with a bluff top viewing area extending from Highway One to the bluff along the north end of the applicant's property. The offered easement would also include an area for a 5-space public access parking lot and would connect to the previously granted lateral access way along the highway. The vertical easement would lead to an area of the bluff with dramatic tidepool and open ocean views as well as views looking many miles north and south along the coast. The trail and viewing area would be a significant public access amenity and staff believes the public access improvements would adequately accommodate any increased demand for public access facilities generated by the proposed inn project. Special conditions of the staff recommendation would require that the offers to dedicate the public access easement be implemented by the applicant as proposed. Therefore, staff recommends that the Commission find that with the proposed public access as conditioned, the development is consistent with the public access policies of Chapter 3 of the Coastal Act.

Staff is recommending a number of other special conditoins to minimize other potential impacts of the development, including conditions requiring submittal of an erosion and sedimentation control plan, limitations on future use of the buildings to be approved, requirements to exclude construction activites from wetland other ESHA on the site, and limiting plantings to the use of native vegetation. As conditioned, staff recommends that the Commission find that the development as conditioned is consistent with the certified Mendocino County LCP and the public access policies of the Coastal Act.

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**The motion to adopt the staff recommendation of approval with conditions is on pages 14 and 15.**

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**STAFF NOTES:**

**1. Background**

The Commission has previously considered Appeal No. A-1-MEN-07-028 on three separate occasions. On September 7, 2007, the Commission determined that the appeal of the County of Mendocino's approval of a local coastal development permit for a 10-unit inn raised a substantial issue with respect to the grounds on which the appeal had been filed, pursuant to Section 13115 of the Title 14 of the California Code of Regulations. On November 4, 2009, the Commission first considered the application de novo and denied the proposed development by a final vote of 4-6. The applicant later submitted a reconsideration request (Reconsideration Request No. A-1-MEN-07-028-R) which the Commission heard at its meeting of January 15, 2010. At that meeting, the Commission held a public hearing and denied the reconsideration request.

After the Commission's denial of the reconsideration request, the applicant filed suit against the Commission challenging the Commission's denial of the permit and denial of the reconsideration request (*Jackson-Grube Family, Inc. v. California Coastal Commission*, Mendocino County Superior Court Case No. SCDKCVG-0955369). The applicant and the Commission have subsequently entered into an agreement to settle the litigation. The settlement agreement provides that if the Commission acts to approve a modified project description for the development that includes certain changes to the project that the Commission considered at the initial de novo hearing in November, 2009, the lawsuit would be dismissed.

The principal changes to the project include (1) reducing the maximum number of units of the proposed inn from 7 to 6, (2) reducing the size of the proposed main inn building and overall reducing the square footage of the proposed inn and ranch building compound by approximately 15%, (3) providing various public access improvements and (4) agreement to recordation of a deed restriction prohibiting further development on Jackson-Grube Family, Inc. property west of Highway 1 (APNs 015-038-002, 015-038-03, 015-038-004, 15-038-06 and 015-033-013). The proposed public access improvements include providing public access improvements previously provided to the County of Mendocino as part of the approval of an earlier inn project for the site including (a) conveyance of fee title to the County of a one acre portion of the property, (b) \$25,000 paid to the County toward development of coastal access in the area; and (c) dedication of an easement for public access to the coast along a 15 foot strip of the property. The proposed public access improvements also including an offer to dedicate a 10-foot wide vertical pedestrian access from Highway 1 to the coastal bluff at the

northern end of the property which would include a public viewing area at the end of the trail and parking for at least five vehicles in a parking area off of Highway 1.

Under the settlement agreement, the Commission retains full discretion as allowed by law to grant, condition, or deny the Revised Project after full public hearing. The Superior Court has remanded the permit application to the Commission for a public hearing on the revised project during the July 7-9, 2010 Commission meeting.

**2. Procedure**

On September 7, 2007, the Commission determined that the appeal of the County of Mendocino's approval of a local coastal development permit for a 10-unit inn raised a substantial issue with respect to the grounds on which the appeal had been filed, pursuant to Section 13115 of the Title 14 of the California Code of Regulations. As a result, the County's approval is no longer effective, and the Commission must consider the application *de novo*. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application. Since the proposed project is within an area for which the Commission has certified a Local Coastal Program (LCP) and is located between the first public road and the sea, the applicable standard of review for the Commission to consider is whether the development is consistent with the Mendocino County certified LCP and the public access policies of the Coastal Act. Testimony may be taken from all interested persons at the *de novo* hearing.

**3. Amended Project Description and Supplemental Information Submitted by Applicant for *de novo* Review**

For the purposes of the Commission's January 7, 2010 *de novo* review, the applicants have submitted a revised project description and revised plans (See Exhibit Nos. 5-8) that make changes to the development originally approved by the County.

In addition, the applicant has presented new information addresses both contentions raised specifically in the appeals as well as other issues of conformance with the policies of the certified LCP that were not raised in the appeals but which also affect the consistency of the proposed project with the certified LCP.

**A. Revised Project Description**

The proposed project description as revised for the Commission's *de novo* review involves redeveloping an existing complex of ranch buildings and developing a six unit inn by demolishing five existing ranch buildings and developing a new inn and ranch compound of buildings in the general location of the existing buildings to be demolished.

The new inn would include: (1) a main building, including renovation of the former Orca Inn into three rental units of 412 square feet, 249 square feet and 240 square feet and accessory common and service areas of 3,236 square feet; and (2) a cottage with three rental units of 915 square feet, 837 square feet and 526 square feet.

Ranch and service operations would include: (1) a ranch manager's unit of 1,737 square feet; (2) an equipment barn of 1,121 square feet; (3) a generator/pump shed of 240 square feet; and (4) a garage of 1,508 square feet. The existing water tank of approximately 189 square feet, its adjacent pump house of approximately 134 square feet and two existing wells and majority of existing driveway are to remain. The project will reuse the existing septic system, improve the existing driveway, and bury existing overhead utilities.

The total area of development is approximately 1.56 acres, which includes the building envelope of approximately 1.22 acres and the driveway of approximately .34 acres. The existing farmhouse, which comprises a portion of the proposed main building, is to be renovated, with retention of a minimum of 50 percent of the existing exterior walls and roof.

The standard and special conditions recommended in the Commission staff report for CDP No. A-1-MEN-07-028 dated October 22, 2009, as modified in the addendum dated November 3, 2008 [*sic*], are included in the project.

Public access improvements previously provided to the County of Mendocino as part of the approval of CDP CDU 9-95 are included in the project, including: (1) conveyance of fee title to the County of a one acre portion of the property; (2) \$25,000 paid to the County toward development of coastal access in the area; and (3) dedication of an easement for public access to the coast along a 15 foot strip of the property.

The project also includes recordation of an offer to dedicate a 10-foot wide vertical pedestrian access from Highway 1 to the coastal bluff, and parking for at least five vehicles at or near Highway 1, at the north end of the Jackson-Grube Family, Inc. property west of Highway 1. The new offer to dedicate will connect the existing lateral pedestrian access easement held by the Mendocino Land Trust to the new vertical pedestrian access.

The project includes agreement to recordation of a deed restriction prohibiting further development on Jackson-Grube Family, Inc. property west of Highway 1 (APNs 015-038-002, 015-038-03, 015-038-004, 15-038-06 and 015-033-013). The deed restriction shall not prohibit Jackson-Grube Family, Inc. from seeking a CDP to replace a previous barn that formerly straddled AP 15-330-13 and AP 15-380-05. Any proposed replacement barn shall be a one-story agricultural building, may not be taller than 18 feet, shall conform to all applicable local coastal program and Coastal Act requirements, and shall be located in the general vicinity of the previous barn.

B. Supplemental Information

The supplemental information submitted addresses certain issues of conformance of the currently proposed project with the LCP. Some of the new information addresses contentions raised specifically in the appeals and determined by the Commission to raise substantial issues of conformance with the certified LCP. The new information also addresses other issues of conformance with the policies of the certified LCP not raised in the appeals but which must be addressed to approve the project de novo. The supplemental information submitted consists of the following:

- (i.) Engineering Geologic Reconnaissance Report . The report, prepared by BACE Geotechnical and dated January 10, 2008 (Exhibit No. 15), evaluates geologic hazards to demonstrate that the development would be safe from bluff retreat concerns;
- (ii.) Hydrological Study Report. The hydrological report presents the results of a well pumping test and hydrological study to evaluate the adequacy of groundwater to serve the development to demonstrate that the proposed withdrawal of groundwater will not have a significant adverse effect on water supplies serving neighboring properties, prepared by Questa Engineering Corporation dated January 10, 2008 (Exhibit No. 16);
- (iii) Traffic Analysis. The traffic analysis, prepared by Whitlock & Weinberger Transportation, Inc. and dated January 14, 2008, evaluates the effects of the development on motor vehicle and bicycle use of Highway One to demonstrate that the development would not reduce service levels on the highway (Exhibit No. 18); and
- (iv) ESHA and Wetland Delineation. The updated survey of environmentally sensitive habitat areas and wetland delineation, prepared by Redwood Coast Associates dated August, 2008, surveys rare plant and wetlands on the site and provides recommendations for establishing buffers adequate to protect these resources and achieve consistency with the ESHA buffer policies of the LCP. A separate ESHA assessment related to the proposed new vertical public access area proposed at the north end of the property was submitted on June 15, 2010. Both of these documents are included as Exhibit No. 17.
- (v) Supplemental Parcel Information. The applicant has submitted various documents concerning the legality and existing configuration of the contiguous parcels at or adjoining the project site owned by the applicant. This information is submitted to establish the legal development potential of the subject property. These documents include (1) copies of County approved Certificates of Compliance (COCs) for the property owned by the applicant, (2) several property maps depicting the property owned by the applicant, the zoning designations for the different APNs, the patent deed areas, and the COC boundaries, and (3) copies of the chain of title for each parcel owned by the applicant (See Exhibits 19-21).

- (vi) Evidence of County Department of Environmental Health Approval of Septic System. The applicant submitted a copy of the first page of the sewage disposal system site evaluation report prepared for the project stamped “Approved” by the County of Mendocino Environmental Health Department. The Approval is dated October 31, 2007. The stamped document was submitted to demonstrate that the project site has the necessary sewage disposal septic capacity to serve the proposed development.
- (vii) Williamson Act Contract Information. The applicant has submitted a copy of an Agricultural Preserve Contract entered into between the applicant and Mendocino County and the supporting County staff report recommending approval of the contract by the County Planning Commission and Board of Supervisors. The contract placed approximately 1,339.31 acres of the ranch into a Type II Agricultural Preserve and includes mainly the portions of the ranch east of Highway One and an 8-acre APN west of the highway that is immediately south of the APN where the inn development is proposed. The agricultural preserve information was submitted to demonstrate that the Williamson Act contract would preclude developing the inn on the portions of the ranch east of the highway.
- (viii) Visual Impact Study. The study, prepared by Sellers & Company Architects, dated May 27, 2009, includes a compendium of aerial and landward views of the site comparing existing views with views from the same locations showing superimposed simulations of the proposed development as revised for purposes of the Commission’s de novo review. The visual study was submitted to demonstrate that the development would not have significant adverse visual impacts and would be subordinate to the character of its setting (See Exhibit 22).

The amended project description and supporting information address issues raised by the appeal, where applicable, and provide additional information concerning the amended project proposal that was not a part of the record when the County originally acted to approve the coastal development permit.

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**I. MOTION, STAFF RECOMMENDATION *DE NOVO*, & RESOLUTION:**

**Motion:**

*I move that the Commission approve Coastal Development Permit No. A-1-MEN-07-028 subject to conditions.*

**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.

**Resolution to Approve 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 Mendocino County LCP. Approval of the permit complies with the California Environmental Quality Act because either: 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment; or 2) 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: See Appendix A.**

**III. SPECIAL CONDITIONS:**

**1. Conformance of the Design and Construction Plans to the Geotechnical Investigation Report**

- A. All final design and construction plans, including bluff setback, foundations, grading, and drainage plans, shall be consistent with the recommendations contained in the Geotechnical Investigation report dated January 10, 2008 prepared by BACE Geotechnical. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-07-028**, the applicant shall submit, for the Executive Director's review and approval, evidence that a licensed professional (Certified Engineering Geologist or Geotechnical Engineer) has reviewed and approved all final design, construction, foundation, grading and drainage plans and has certified that each of those plans is consistent with all of the recommendations specified in the above-referenced geotechnical report approved by the California Coastal Commission for the project site.
- B. 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. No changes to the approved final plans shall occur without a



Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**2. No Future Bluff or Shoreline Protective Device**

- A. By acceptance of this permit, the applicant agrees, on behalf of himself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the new main inn building, rental cottage and massage room, ranch manager's unit, ranch equipment barn, generator/.pump shed, garage for inn guests, septic system, rerouted driveway, and utility lines authorized pursuant to Coastal Development Permit No. A-1-MEN-07-028, in the event that the main inn building, rental cottage and massage room, ranch manager's unit, ranch equipment barn, generator/.pump shed, garage for inn guests, septic system, rerouted driveway, and utility lines are threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, ground subsidence, or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices to protect the main inn building, rental cottage and massage room, ranch manager's unit, ranch equipment barn, generator/.pump shed, garage for inn guests, septic system, rerouted driveway, and utility lines that may exist under Public Resources Code Section 30235 or under Mendocino County Land Use Plan Policy No. 3.4-12, and Mendocino County Coastal Zoning Code Section 20.500.020(E)(1).
- B. By acceptance of this Permit, the applicant further agrees, on behalf of himself and all successors and assigns, that the landowner shall remove the main inn building, rental cottage and massage room, ranch manager's unit, ranch equipment barn, generator/.pump shed, garage for inn guests, septic system, rerouted driveway, and utility lines authorized by this permit if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the main inn building, rental cottage and massage room, ranch manager's unit, ranch equipment barn, generator/.pump shed, garage for inn guests, septic system, rerouted driveway, and utility lines fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.
- C. In the event the edge of the bluff recedes to within 10 feet of the main inn building, rental cottage and massage room, ranch manager's unit, ranch equipment barn, generator/.pump shed, garage for inn guests, septic system, rerouted driveway, and utility lines but no government agency has ordered that the structures not be occupied, a geotechnical investigation shall be prepared by a licensed geologist or civil engineer with coastal experience retained by the applicant, that addresses whether any portions of the structures are threatened by

waves, erosion, storm conditions, or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the main inn building, rental cottage and massage room, ranch manager's unit, ranch equipment barn, generator/.pump shed, garage for inn guests, septic system, rerouted driveway, and utility lines without shore or bluff protection, including but not limited to, removal or relocation of portions of the main inn building, rental cottage and massage room, ranch manager's unit, ranch equipment barn, generator/.pump shed, garage for inn guests, septic system, rerouted driveway, and utility lines. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the main inn building, rental cottage and massage room, ranch manager's unit, ranch equipment barn, generator/.pump shed, garage for inn guests, septic system, rerouted driveway, and utility lines is unsafe for use, the permittee shall, within 90 days of submitting the report, apply for a coastal development permit amendment to remedy the hazard which shall include removal of the threatened portion of the main inn building, rental cottage and massage room, ranch manager's unit, ranch equipment barn, generator/.pump shed, garage for inn guests, septic system, rerouted driveway, and utility lines.

**3. Assumption of Risk, Waiver of Liability and Indemnity**

By acceptance of this permit, the applicant acknowledges and agrees: (i) that the site may be subject to hazards from landslide, bluff retreat, erosion, subsidence, and earth movement; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

**4. Deed Restriction**

**PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-07-028** and consistent with the applicant's implementation of Special Condition No. 6, the applicant shall submit for the review and approval of the Executive Director, documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the

Special Conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

**5. Open Space Restriction**

A. No development, as defined in Section 30106 of the Coastal Act, shall occur anywhere on APN 015-380-002, APN 015-380-003, APN 015-380-004, APN 15-038-006 and 015-033-013 west of Highway One as shown on Exhibit No. 23 and as described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for:

1. The following development, if approved by the Coastal Commission as an amendment to this coastal development permit: agricultural fences, corrals, and other accessory agricultural development not including any residences, barns, or other significant new above-ground structures except for replacement of a barn that formerly straddled APN 15-330-013 and APN 15-380-005 with a new barn that is one-story, not taller than 18 feet, conforms to all applicable local coastal program and Coastal Act requirements, and located in the general vicinity of the previous barn; installation of utilities; removal of non-native, invasive vegetation and planting of native plants; removal of vegetation for compliance with Cal-Fire defensible space requirements; and improvement and use for public access purposes.

B. **PRIOR TO ISSUANCE OF THE “NOTICE OF INTENT TO ISSUE COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-07-028” (NOI)** and consistent with the applicant’s implementation of Special Condition No. 6, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition, as generally described above and shown on Exhibit No. 23 attached to this staff report.

6. **Limitations on APN 015-380-005, APN 015-380-003, and APN 015-380-004 and Parcel Containing APN 015-380-003, APN 015-380-004, and APN 015-380-005.**

**PRIOR TO ISSUANCE OF CDP NO. A-1-MEN-07-028**, the applicant shall submit written evidence, for the review and approval of the Executive Director, that the applicant/landowner acknowledges, agrees to, and has implemented the requirements of subsection A1, A2 and A3.

A1. By acceptance of this permit, the applicant agrees, on behalf of itself and all successors and assigns with respect to the subject property, that all portions of the property identified as APN 015-380-003, APN 015-380-004, and APN 015-380-005 and generally depicted on Exhibit 27: (a) comprise a part of one single legal parcel described in Exhibit 2 and generally depicted in Exhibit 27; (b) shall henceforth be considered and treated as part of one single parcel for all purposes including but not limited to sale, conveyance, development, taxation or encumbrance; and (c) shall not be divided or alienated from each other or from the single legal parcel of which they are a part, and

A2. **PRIOR TO ISSUANCE OF THE NOTICE OF INTENT TO ISSUE COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-07-028 (NOI)**, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of (a) the property identified by the three APNs affected by this condition as generally described above and as generally depicted on Exhibit 27 as well as (b) the entirety of the single legal parcel containing the property identified as APN 015-380-003, APN 015-380-004, and APN 015-380-005, as described in Exhibit 20 and as generally depicted on Exhibit 27.

A3. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-07-028**, the applicant shall execute and record a deed restriction against the single legal parcel containing the property identified as APN 015-380-003, APN 015-380-004, and APN 015-380-005, in a form acceptable to the Executive Director, reflecting the restrictions set forth above. The deed restriction shall include a legal description and graphic depiction of (a) the property identified as APN 015-380-003, APN 015-380-004, and APN 015-380-005 and generally depicted on Exhibit 27 as well as (b) the entirety of the single legal parcel containing the property identified as APN 015-380-003, APN 015-380-004, and APN 015-380-005 as described in Exhibit 20 and as generally depicted on Exhibit 27. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens, including tax liens, that the Executive Director determines may affect the enforceability of the restriction.

**7. Future Development Restrictions**

A. This permit is only for the development described in Coastal Development Permit No. A-1-MEN-07-028. Any future improvements to the authorized structures and

other approved development and any changes in use of the structures will require a permit amendment or a new coastal development permit.

- B. The approved inn units are intended to be used for commercial transient occupancy purposes only. When and if any of the inn units cease to be used for commercial transient occupancy purposes, a coastal development permit amendment or new coastal development permit application shall be obtained to either remove the unit or convert the unit to a use consistent with the certified Mendocino County LCP.

**8. Protection of Archaeological Resources**

- A. If an area of archaeological resources or human remains are discovered during the course of the project, all construction shall cease and shall not recommence except as provided in subsection (C) hereof, and a qualified cultural resource specialist shall analyze the significance of the find.
- C. A permittee seeking to recommence construction following discovery of the archaeological resources shall submit an archaeological plan for the review and approval of the Executive Director.
- 1) If the Executive Director approves the Archaeological Plan and determines that the Archaeological Plan's recommended changes to the proposed development or mitigation measures are *de minimis* in nature and scope, construction may recommence after this determination is made by the Executive Director.
  - 2) If the Executive Director approves the Archaeological Plan but determines that the changes therein are not *de minimis*, construction may not recommence until after an amendment to this permit is approved by the Commission.

**9. Landscaping Plan**

A. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-07-028**, the applicant shall submit to the Executive Director, for review and written approval, a final landscaping plan that provides for the following:

- i. Native trees that will grow to a height of at least 15-20 feet shall be planted along the eastern perimeter fence of the inn complex at a spacing of approximately 10-foot centers to partially screen the development from Highway One;
- ii. A landscaped berm at least three feet high and planted with native trees and shrubs shall be planted along the perimeter of the overflow parking

area. The density and mature heights of plantings shall be sufficient to screen vehicles using the parking area from view from Highway One;

- iii. Unless required to abate a nuisance consistent with Coastal Act Section 30005(b), no limbing or pruning of the visually screening trees and shrubs planted pursuant to the approved landscaping plan shall occur unless a permit amendment is obtained and issued prior to the commencement of limbing and pruning;
  - iv. All plantings shall be maintained in good condition throughout the life of the project to ensure continued compliance with the approved final landscape plan. If any of the plants to be planted according to the plan die, become decadent, rotten, or weakened by decay or disease, or are removed for any reason, they shall be replaced no later than May 1<sup>st</sup> of the next spring season in-kind or with another native species common to the coastal Mendocino County area that will grow to a similar or greater height;
  - v. All proposed plantings shall be obtained from local genetic stocks within Mendocino County. If documentation is provided to the Executive Director that demonstrates that native vegetation from local genetic stock is not available, native vegetation obtained from genetic stock outside the local area, but from within the adjacent region of the floristic province, may be used. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or by the State of California shall be planted or allowed to naturalize or persist on the parcel. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property;
  - vi. Rodenticides containing any anticoagulant compounds, including but not limited to, Bromadiolone, Brodifacoum, or Diphacinone, shall not be used;
  - vii. A final landscape site plan showing the species, size, and location of all plant materials that will be planted on the developed site, the size and location of the required landscaped berm, any irrigation system, delineation of the approved development, and all other landscape features such as, but not limited to, site topography, horticultural plantings, decorative rock features, pathways, and berms and/or raised beds.
- B. The permittees shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without

a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**10. Landscaping Restrictions**

Plantings throughout the project site shall be limited to native vegetation. Only those plants that are native to northern coastal scrub or coastal prairie habitats of Mendocino County may be planted beyond the perimeter of the approved inn and ranch complex;

- A. All proposed plantings shall be obtained from local genetic stocks within Mendocino County. If documentation is provided to the Executive Director that demonstrates that native vegetation from local genetic stock is not available, native vegetation obtained from genetic stock outside the local area, but from within the adjacent region of the floristic province, may be used. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California, shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the governments of the State of California or the United States shall be utilized within the property that is the subject of CDP No. A-1-MEN-07-028.
- B. No rodenticides of any kind shall be utilized within the property that is the subject of CDP No. A-1-MEN-07-028.

**11. Erosion and Runoff Control Plan**

- A. **PRIOR TO ISSUANCE OF THE PEMRIT**, the applicant shall submit to the Executive Director, for review and written approval, an erosion and runoff control plan demonstrating the following:
  - (1) Straw bales and/or silt fencing shall be installed to contain runoff from construction areas;
  - (2) Native on-site vegetation shall be maintained to the maximum extent feasible during construction;
  - (3) Any disturbed areas shall be replanted or seeded with native vegetation of local genetic stock following project completion;
  - (4) All on-site stockpiles of construction debris shall be covered and contained to prevent polluted water runoff; and
  - (5) Runoff from the roofs and other impervious surfaces of the development shall be collected and directed away from bluffs and the wetland environmentally sensitive habitat areas (ESHA) and ESHA buffer area as shown on Exhibit

No. 4 in a non-erosive manner into pervious areas of the site (i.e. undeveloped areas, landscaped areas) to achieve infiltration to the maximum extent practicable.

(6) All grading and excavation work shall only occur during the summer months from April 15 through October 31

B. 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. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**12. Design Restrictions**

A. All exterior siding and roofing of the proposed structures shall be composed of the colors proposed in the application or darker earth tone colors only. The current owner or any future owner shall not repaint, resurface, or stain the inn buildings or other approved structures with products that will lighten the colors of the approved structures without an amendment to this permit. In addition, all exterior materials, including roofs, windows, and solar panels shall be non-reflective to minimize glare;

B. All exterior lights, including any lights attached to the outside of the buildings, shall be the minimum necessary for the safe ingress, egress, and use of the structures, and shall be low-wattage, non-reflective, shielded, and have a directional cast downward such that no light will be directed to shine beyond the boundaries of the subject parcel.

C. All utilities serving the proposed project shall be placed underground.

**13. Caltrans Encroachment Permit**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director a copy of the final, approved Encroachment Permit issued by Caltrans for construction of the proposed new driveway connection to Highway One and for installation of the proposed water line under the highway, or evidence that no permit is required. The applicant shall inform the Executive Director of any changes to the project required by Caltrans. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

**14. Protection of Environmentally Sensitive Habitat**



The permittee shall comply with the following requirements to protect sensitive plant habitat:

- A. Comply with the erosion and runoff control measures specified in the Erosion and Runoff Control Plan approved pursuant to Special Condition No. 11 and the landscaping restrictions required by Special Condition No. 10.
- B. Combination silt fencing and construction fencing shall be installed around all environmentally habitat areas and their buffers as shown in Exhibit 4 that are located downslope of any construction area. The fencing shall be inspected regularly and maintained during the entire construction period.
- C. Pre-construction breeding bird surveys shall be conducted by a qualified biologist for any development proposed between February 1 and August 31 of each year a maximum of two weeks prior to the commencement of the development. If a nest is discovered, a temporary buffer from construction activities at least 100 feet shall be established with silt fencing and construction fencing and no development may occur within the buffer area until a qualified biologist has determined that all young have fledged, or left the nest.

**15. Temporary Events**

- A. The number of guests participating in temporary events held at the project site shall be limited so that all of the vehicles of all of the participating guests and workers and others staying at or working at the inn and ranch can be accommodated in the 10 space primary parking lot, within the 5-space guest garage structure, and the 24 space overflow parking area. No parking is allowed elsewhere on the property including along the driveway, in the fields adjoining the inn complex, or elsewhere on APN 014-038-005.
- B. Any tents installed to accommodate temporary events shall be located within the confines of the perimeter fence to be installed around the inn and ranch complex
- A. Any necessary coastal development permit for a temporary event shall be obtained prior to holding the event. Coastal Development Permit No. A-1-MEN-07-028 does not authorize any temporary event.

**16. Final Plans for Remodeling Existing Ranch House**

- A. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. 1-08-011**, the applicant shall submit, for review and approval of the Executive Director, a

final construction plans for remodeling and expansion of the existing ranch house building and converting the structure into the main inn building.

- 1) The final construction plans shall demonstrate the following:
  - a. Fifty percent of the existing walls of the existing structure will be retained.
  - b. The structure will be built consistent with the revised project description and plans submitted for purposes of the Commission's de novo review.
  
- 2) The plan shall include, at a minimum, the following components:
  - a. Final construction plans for the structure including final framing, roofing, and floor plans, building elevations. The plans shall clearly distinguish the portions of the walls and other elements of the existing building that have been retained from the portion of the proposed remodeled structure that will be new.

B. 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. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**17. Offer to Dedicate Vertical Access Over Trail to Bluff, Viewing Area, and Public Access Parking Area**

**PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT**, and in order to implement the applicant's proposal, the applicant shall submit for the discretionary review and approval of the Executive Director, evidence that the applicant has executed and recorded an irrevocable offer to dedicate an easement for public vertical access that includes a viewing area near the bluff edge and a five-space parking area off of Highway One in substantial compliance with the terms of the Project Description as proposed by the applicant in Exhibit No. 5 and as generally shown in Exhibit No. 24 except as otherwise modified by these Special Conditions.

Any future development that is proposed to be located either in whole or in part within the area described in the recorded offer of dedication shall require a further Commission amendment, approved pursuant to the provisions of 14 CCR §13166, to this Permit Amendment. This requirement shall be reflected in the provisions of the recorded offer.

**18. Public Rights**

The Coastal Commission's approval of this permit amendment shall not constitute a waiver of any public rights that may exist on the property. The permittee shall not use this permit amendment as evidence of a waiver of any public rights that may exist on the property. In addition, by acceptance of this permit amendment, the applicant acknowledges that the voluntary offers to dedicate public access do not abrogate the County's or the Commission's abilities under the certified LCP and/or the Coastal Act to consider the effects of future development of the property on public access and the possible need to require additional public access on the property in the future.

**19. Public Access Easement Improvements**

**PRIOR TO ISSUANCE OF THE AMENDED COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a written agreement acknowledging the ability of the entity accepting the offer to dedicate a public access easement to develop public access improvements within the easement area.

**20. Conditions Imposed By Local Government**

This action has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act.

**IV. FINDINGS & DECLARATIONS**

The Commission hereby finds and declares as follows:

**A. Incorporation of Substantial Issue Findings**

The Commission hereby incorporates by reference the Substantial Issue Findings contained in the Commission staff report dated August 21, 2007.

**B. Project History**

**1. Previous Inn Development Approvals**

Coastal development permits were approved for development of an inn facility at the subject property twice previously. In September 1984, prior to certification of the Mendocino LCP, the Coastal Commission granted Coastal Development Permit No. 1-83-278 for conversion of an existing residence into a four-unit bed and breakfast inn, subject to conditions, including conditions requiring recordation of an offer to dedicate

coastal access. The prior to issuance conditions of this permit were never met, the approval expired, and the permit was never issued.

In 1996, four years after certification of the LCP, the County Planning Commission approved Coastal Development Permit No. CDU 9-95, allowing for a 10-unit inn involving the remodeling of the existing large ranch house into two guest units and manager's quarters and the construction of eight new individual guest cottages. The Planning Commission approval was subsequently appealed to the Board of Supervisors and approved by the Board on May 13, 1996. The County's approval included conditions requiring recordation of an offer to dedicate coastal access. The Board's approval in turn, was later appealed to the Coastal Commission (Appeal No. A-1-MEN-96-028). On July 10, 1996, the Coastal Commission determined that the appeal raised no substantial issue, allowing the County's approval of CDU 9-95 to stand.

The applicants sued the County, challenging the condition requiring coastal access on the grounds that a nexus did not exist between the impacts of the project on public access and the exaction of property for public access purposes. Eventually a settlement of the law suit was reached between the applicants and the County that provide for the County to drop the condition requiring the offer of dedication of public access in exchange for the applicants (1) conveying fee title to the County of a one-acre portion of the approximately 400-acre subject property, (2) paying the County \$25,000 toward the development of coastal access in the area, and (3) dedicating an easement for public access through property along a 15-foot strip on the west side of the Highway One right-of-way. On August 3, 2000, the County then approved Coastal Development Use Permit Modification #CDUM 9-95/2000 as a means of implementing the terms of the settlement agreement.

Prior to the start of construction of the inn project approved under Coastal Development Use Permit CDUM 9-95/2000, the applicant proposed significant alterations to the site layout and interior design of the project. According to County staff, the County determined that because the project changes were so substantial, an entirely new application would be required for the project. The applicants submitted the application for the current project that was approved by the County and appealed to the Coastal Commission.

## **2. Current Permit Application**

On June 21, 2007, the Mendocino County Planning Commission conditionally approved the coastal development permit for the project (CDU #6-2006) (Exhibit No. 10). As discussed above, the development, as approved by the County, consisted of the establishment of a 7-unit inn with an additional manager's unit in two phases on a portion of a 400-acre parcel located in the rural and sparsely developed northern Mendocino

coast approximately four miles south of Westport, on the west side of Highway One, at 31502 North Highway One.

The approved permit imposed 36 special conditions. A number of these special conditions pertain to the appeal's contentions. These include several conditions that address the protection of visual resources including: (1) submittal of a parking plan that minimizes impacts on visual resources by limiting the size of overflow parking areas and requires existing vegetation to be retained, (2) submittal of a revised lighting plan to remove upcast lighting, (3) deletion of units 4-6 from the development, (4) undergrounding of utility lines, and (5) use of exterior building materials of earth tone colors, and (6) submittal of a landscaping plan. Other conditions pertinent to the contentions of the appeals include (7) encouragement to the applicant to enter into a water sharing agreement to the immediate neighbors to ensure long term availability of water; (8) demonstration of continuous use of the property as a visitor serving facility; (9) halting development if archaeological resources are encountered and not resuming development until the archaeological discover is evaluated; and (10) limitations on special events to less than 100 persons unless new coastal development permit authorization is obtained first.

The decision of the Planning Commission was not appealed at the local level to the County Board of Supervisors. The County then issued a Notice of Final Action, which was received by Commission staff on July 13, 2007 (Exhibit No. 11). Section 13573 of the Commission's regulations allows for appeals of local approvals to be made directly to the Commission without first having exhausted all local appeals when, as here, the local jurisdiction charges an appeal fee for the filing and processing of local appeals.

Between July 23-26, 2007, the Commission received four separate appeals of the County of Mendocino's decision to approve the development, including appeals from: (1) Molly Warner & Britt Bailey (Exhibit No. 10); (2) Commissioners Pat Kruer and Sara Wan (Exhibit No. 11); (3) Mendocino Group Sierra Club, signed by Rixanne Wehren & Friends of the Ten Mile, signed by Judith Vidaver (Exhibit No. 12); and (4) the Margery S. Cahn Trust, Deborah Cahn, Trustee & the Whiting Family Revocable Trust, Judith Whiting, Trustee (Exhibit No. 13). On September 7, 2007, the Commission opened the hearing on the appeal and found that a Substantial Issue had been raised with regard to the consistency of the project as approved and the applicable policies of the LCP with respect to eight different contentions.

The Commission has previously considered Appeal No. A-1-MEN-07-028 on three separate occasions. On September 7, 2007, the Commission determined that the appeal of the County of Mendocino's approval of a local coastal development permit for a 10-unit inn raised a substantial issue with respect to the grounds on which the appeal had been filed, pursuant to Section 13115 of the Title 14 of the California Code of Regulations. On November 4, 2009, the Commission first considered the application de novo and denied the proposed development by a final vote of 4-6. The applicant later submitted a reconsideration request (Reconsideration Request No. A-1-MEN-07-028-R)

which the Commission heard at its meeting of January 15, 2010. At that meeting, the Commission held a public hearing and denied the reconsideration request.

After the Commission's denial of the reconsideration request, the applicant filed suit against the Commission challenging the Commission's denial of the permit and denial of the reconsideration request (*Jackson-Grube Family, Inc. v. California Coastal Commission*, Mendocino County Superior Court Case No. SCDKCVG-0955369). The applicant and the Commission have subsequently entered into an agreement to settle the litigation. The settlement agreement provides that if the Commission acts to approve a modified project description for the development that includes certain changes to the project that the Commission considered at the initial de novo hearing in November, 2009, the lawsuit would be dismissed.

The principal changes to the project include (1) reducing the maximum number of units of the proposed inn from 7 to 6, (2) reducing the size of the proposed main inn building and overall reducing the square footage of the proposed inn and ranch building compound by approximately 15%, (3) providing various public access improvements and (4) agreement to recordation of a deed restriction prohibiting further development on Jackson-Grube Family, Inc. property west of Highway 1 (APNs 015-038-002, 015-038-03, 015-038-004, 15-038-06 and 015-033-013). The proposed public access improvements include providing public access improvements previously provided to the County of Mendocino as part of the approval of an earlier inn project for the site including (a) conveyance of fee title to the County of a one acre portion of the property, (b) \$25,000 paid to the County toward development of coastal access in the area; and (c) dedication of an easement for public access to the coast along a 15 foot strip of the property. The proposed public access improvements also including an offer to dedicate a 10-foot wide vertical pedestrian access from Highway 1 to the coastal bluff at the northern end of the property which would include a public viewing area at the end of the trail and parking for at least five vehicles in a parking area off of Highway 1.

Under the settlement agreement, the Commission retains full discretion as allowed by law to grant, condition, or deny the Revised Project after full public hearing. The Superior Court has remanded the permit application to the Commission for a public hearing on the revised project during the July 7-9, 2010 Commission meeting.

**C. Site Description**

The subject property is located in the rural and sparsely developed northern Mendocino coast approximately four miles south of Westport and approximately 12 miles north of Fort Bragg, on the west side of Highway One, at 31502 North Highway One.

The surrounding area consists largely of a gently-sloping open coastal terrace that extends approximately ¼-mile from the coastal hills east of Highway One to the ocean bluff edge west of Highway Ones. The terrace and hillsides are predominately vegetated with low-growing grasses and are largely used for agricultural grazing which contributes to the

rural agricultural character of the area. Due to the flat terrain of the terrace, and lack of tall vegetation or varied topography, the project site is highly visible from Highway One in both directions. The lack of trees and the very limited and widely scattered development in the immediate vicinity of the development site gives the landscape a very open appearance. The views to and along the coast from narrow two-lane Highway One in this area are sweeping and vast (See Exhibit 2) and the area is designated in the certified Mendocino LCP as a highly scenic area.

There is very little development located on either side of the highway in the immediate vicinity of the development site with the exception of a few scattered residences on the east side of the highway, three houses and a winery scattered along the west side of the highway beginning approximately one mile north of the applicant's ranch, and several homes west of the highway on parcels within a half mile south of the proposed development site. A larger concentration of approximately 30 homes exists along the west side of the highway approximately two miles south of the proposed development south of Abalobadiah Creek. This concentration of houses two miles south of the development site is largely screened from view from Highway One in the vicinity of the development site by intervening vegetation and a topographical break in the terrace formed by the Abalobadiah Creek drainage.

The proposed inn and ranch complex is located on APN 015-380-05, which is located west of Highway One (See Exhibits Nos. 1-2). APN 015-380-05 is contained within a larger area that was recognized as a legal parcel by Certificate of Compliance #CC 39-90 granted by the County in April 1995 (See Exhibit No. 20). The irregularly-shaped COC area extends across a coastal terrace from the ocean approximately 800 feet eastward to Highway One and beyond the highway as much as 1,600 feet farther east. The COC area extends approximately one half mile along Highway One. CC 39-90 includes a statement that the COC area exists as one legal parcel. The applicant also owns extensive adjoining area north, south, and east of the CC 39-90 area that is contained within 11 different COCs. (See Exhibit No. 21) and extends approximately 1.25 miles along Highway One. The applicant also owns APN 015-380-06, a separate legal parcel that covers most of the point that extends west of the development site, as well as APN 015-380-02 to the north of the area covered by CC 39-90 where a public access easement and parking area are proposed, and APN 015-380-013 immediately to the south.

The bluff-top property is located on a gently sloping marine terrace. The property slopes gently westward across the coastal terrace at an approximately 3-5% grade. The irregular and steep ocean bluffs are approximately 80 to 120 feet high and form a series of coves and small points of land including a dominant northeast-trending peninsula located roughly in the center of the shoreline of the COC area. The bluffs contain several sea caves and are very steep with only small pockets of boulder beaches.

According to the biological report (see Exhibit No. 17) prepared for and submitted by the applicant for the de novo portion of the Commission's review the subject property

contains four basic vegetation types, including California annual grassland, introduced perennial grassland, Northern coastal bluff scrub, and several mesic areas including an ephemeral stream channel and several freshwater marsh areas.

Botanical surveys conducted in 1991 and 1992 and relied upon by the County in its approval of the project indicated that the only environmentally sensitive habitat (ESHA) on the property consisted of a rare plant population of Mendocino paintbrush located along the bluffs. The updated biological report submitted for the Commission's de novo review of the project indicates that the subject property contains four types of ESHAs, including habitats for two special status plant species, one special status plant community, four wetlands, and one ephemeral stream. An additional biological report was submitted that assesses the area in the vicinity of the proposed public access easement and parking area that indicates the easement area and parking lot would not be located within ESHA, although it would be within 50 feet of riparian and rare plant ESHA.

Mendocino coast Indian paintbrush (*castilleja mendocinensis*) has been identified in the coastal bluff scrub along the western and northern portion of the prominent northwest trending peninsula (see Exhibit No. 17). In the spring of 2008, approximately 160 individual plants were detected growing along the bluff face and bluff edge in this area. The hemiparasitic perennial herb has no federal or state listing status as threatened or endangered but is listed as a class 1B species in the Department of Fish & Game's California Natural Diversity Database.

Short-leaved evax (*Hesperavax sparsiflora* var. *brevifolia*) has been identified in the coastal bluff scrub near the western end of the peninsula. In February of 2008, the applicant's biologists observed approximately 250 individual plants of the species in two separate locations at the western end of the peninsula. The annual herb also has no federal or state listing status as threatened or endangered but is listed as a class 1B species in the California Natural Diversity Database.

Northern Coastal Bluff Scrub has been identified along portions of the bluff face and along the bluff top within ten feet of the bluff edge. The woody and herbaceous plant community is listed as a class G2, S2.2 plant community in the California Natural Diversity Database.

The biological report also identified an ephemeral stream and four freshwater wetland areas on the subject property, including a northwest wetland, a northeast wetland, and two southern wetlands (See Exhibit No. 4). The northwest wetland is approximately 0.67-acres in size and extends from just inside the northwest corner of the existing fenced compound to an area to the northwest close to the bluff. The northeast wetland extends east west across a portion of the property approximately 125 feet north of the proposed new driveway connection to Highway 1. The northerly extent of the wetland has not been mapped as only the southern edge borders the project site. The ephemeral stream identified by the botanical report also extends east west across the property more than



100 feet south of the development site from a culvert under Highway One just south of the current connection of the driveway to the highway to a cove along the bluff edge. The stream ranges in width from bank to bank from 3-20 feet and in depth from the bottom of the channel to the top of the bank from 2-10 feet. The channel supports some wetland vegetation, but the stream is not surrounded by riparian vegetation. The two southern wetlands connect to this stream south of the existing driveway and east of the development site.

APN 015-380-05 is currently developed with a 2,049-square-foot ranch house, a 496-square-foot cottage, and several agricultural and accessory structures including a 1,080-square-foot barn, a 460-square-foot service building, a 448-square-foot shop building, a 168-square-foot pump house. The existing buildings cover a total lot area of 3,765 square feet and are located within a compound located in the approximately center of the parcel several hundred feet west of Highway One and approximately 150 feet east of the predominant bluff edge. Most of the agricultural structures are in disrepair and five other agricultural accessory structures have collapsed and been removed in recent years, including a garage, a two-story barn, a separate storage barn, an outhouse, and another accessory structure along the bluff edge. Portions of the old bluff edge structures appear to have fallen down the bluff edge. The compound of buildings is accessed by a long gravel driveway that extends west from the highway. The compound is surrounded by a white wooden rail fence.

APN 015-380-05 and the surrounding area once supported the logging town of Newport, which has since disappeared. During the 1870s, a portion of the bluff edge on the project site was used as a staging area to load cut timber onto boats at anchor using cables and a chute to transport the wood down from the cliffs. For many years the property has been used in part for agricultural grazing.

APN 015-380-05 is zoned as Remote Residential with a 20-acre minimum parcel size and a Planned Unit Development Combining District. The base zoning district is also overlain by a \*1C designation, which allows for the development of an inn of up to 10 units. The zoning on surrounding lands includes additional Remote Residential as well as Range Land and Forest Land.

APN 015-070-51, which is approximately 148-acres in size and located on the east side of Highway One (See Exhibit No. 19), contains an existing developed spring which has served historically as the source of supply for the former Orca Inn complex as well as an existing test well that is intended to serve as the source of domestic water supply for the proposed ranch and inn development on bluff-top parcel west of the Highway. The proposed pipeline that would deliver water from the well to the inn would run through a separate intervening 9.5-acre APN, (APN 015-070-45) located on the east side of Highway One, also owned by the applicant. These two APNs located east of the highway are largely undeveloped rangeland used for agricultural grazing.

**D. Project Description**

The development as originally proposed and approved by the County consists of the establishment of a 7-unit inn with an additional manager's unit in two phases. The inn complex would be constructed within an area of approximately 277-feet wide by 335-foot-long, approximately 150 feet from the bluff edge at its closest point. The inn complex would be surrounded by new fencing on the three sides and a sunken wall "ha-ha" on the westernmost (as well as a portion of the southern boundary). The "ha-ha" is a sunken wall and hedge arrangement that would serve as a barrier to the livestock that is raised on the property without impairing views from the inn complex to the ocean.

For the purposes of *de novo* review by the Commission, the applicants have submitted a revised project description and revised plans (See Exhibit Nos. 5-8) that make changes to the development originally approved by the County.

The proposed project description as revised for the Commission's *de novo* review involves redeveloping an existing complex of ranch buildings and developing a six unit inn by demolishing five existing ranch buildings and developing a new inn and ranch compound of buildings in the general location of the existing buildings to be demolished.

The new inn would include: (1) a main building, including renovation of the former Orca Inn into three rental units of 412 square feet, 249 square feet and 240 square feet and accessory common and service areas of 3,236 square feet; and (2) a cottage with three rental units of 915 square feet, 837 square feet and 526 square feet.

Ranch and service operations would include: (1) a ranch manager's unit of 1,737 square feet; (2) an equipment barn of 1,121 square feet; (3) a generator/pump shed of 240 square feet; and (4) a garage of 1,508 square feet. The existing water tank of approximately 189 square feet, its adjacent pump house of approximately 134 square feet and two existing wells and majority of existing driveway are to remain. The project will reuse the existing septic system, improve the existing driveway, and bury existing overhead utilities.

The total area of development is approximately 1.56 acres, which includes the building envelope of approximately 1.22 acres and the driveway of approximately .34 acres. The existing farmhouse, which comprises a portion of the proposed main building, is to be renovated, with retention of a minimum of 50 percent of the existing exterior walls and roof.

The standard and special conditions recommended in the Commission staff report for CDP No. A-1-MEN-07-028 dated October 22, 2009, as modified in the addendum dated November 3, 2008 [*sic*], are included in the project.

Public access improvements previously provided to the County of Mendocino as part of the approval of CDP CDU 9-95 are included in the project, including: (1) conveyance of

fee title to the County of a one acre portion of the property; (2) \$25,000 paid to the County toward development of coastal access in the area; and (3) dedication of an easement for public access to the coast along a 15 foot strip of the property.

The project will also include recordation of an offer to dedicate a 10-foot wide vertical pedestrian access from Highway 1 to the coastal bluff, and parking for at least five vehicles at or near Highway 1, at the north end of the Jackson-Grube Family, Inc. property west of Highway 1. The new offer to dedicate will connect the existing lateral pedestrian access easement held by the Mendocino Land Trust to the new vertical pedestrian access.

The project will include agreement to recordation of a deed restriction prohibiting further development on Jackson-Grube Family, Inc. property west of Highway 1 (APNs 015-038-002, 015-038-03, 015-038-004, 15-038-06 and 015-033-013). The deed restriction shall not prohibit Jackson-Grube Family, Inc. from seeking a CDP to replace a previous barn that formerly straddled AP 15-330-13 and AP 15-380-05. Any proposed replacement barn shall be a one-story agricultural building, may not be taller than 18 feet, shall conform to all applicable local coastal program and Coastal Act requirements, and shall be located in the general vicinity of the previous barn.

**E. Consistency With Use and Size Limitations of \*1C Designation.**

LCP Policies and Standards:

*LUP Policy 3.7-1 states:*

*The land use plan designates the existing visitor serving facilities and reserves appropriate sites for future or potential visitor serving facilities.*

*LUP Policy 3.7-2 states:*

*Because unrestricted development of visitor facilities would destroy those qualities that attract both residents and tourists, limitations on visitor facilities by type and location shall be as set by Policy 3.7-1 and illustrated by Table 3.7-2 which reflects a tabulation based on land use maps (see footnotes) to avoid highway congestion, degradation of special communities, and disruption of enjoyment of the coast.*

*LUP Policy 3.7-3 states:*

*Visitor serving facilities and proposed sites where the Coastal Commission has approved the issuance of permits are designated on the land use maps, and are reserved for those visitor accommodations as defined in Chapter 2. Provision has also been made for the*

*following visitor services: boat launching or rental, visitor-oriented and handicraft shops. Precise intensity of visitor accommodations and development standards shall be specified by zoning regulations so the developments will be compatible with the natural setting and surrounding development. Visitor serving facilities which might occur in commercially designated areas have not been specifically designated, except for the Mendocino Town Plan. (See Appendix 10 for listing of privately operated visitor serving facilities.)*

*LUP Policy 3.7-4 states:*

*Proposed sites or areas for additional visitor serving facilities are designated and reserved by a number indicating a category of VSF described in this section subject to the granting of a conditional use permit (\*C). Precise intensity of the proposed visitor accommodations and development standards shall be specified in the Zoning Regulations and regulated so that the use will be compatible with existing uses, public services and environmental resources. Any visitor serving facility not shown on the LUP Maps shall require an LUP amendment except in Rural Village (RV) and Commercial (C) Land Uses.*

*No development more intense than a single family residence shall be allowed on such a site, and then only if it is sited in such a location and manner that a visitor serving facility may still be placed on the site.*

*Policy 3.7-4.1 states:*

*Transference from one location to another of a visitor serving facility designation shown on the Land Use Plan maps shall require a Land Use Plan amendment. If an existing facility is being relocated, operation of the existing facility shall not continue beyond commencement of operations at the new site.*

*LUP Chapter 4.2 designates the subject parcel with an #1C overlay, indicating a 10-unit inn could be allowed if granted a conditional use permit.*

*Sec. 20.332.005 General Description of Visitor Serving Use Types.*

*Visitor Accommodations and Services use types include services oriented to serve primarily visitor-related needs and which serve as attractors and attractions to the Mendocino County Coastal Area. (Ord. No. 3785 (part), adopted 1991)*

*Sec. 20.332.010 Bed and Breakfast Accommodation - \*1.*

*Any building or portion thereof or group of buildings containing two (2) but no more than four (4) guest rooms or suites each used, designed or intended to be used, let or hired out for occupancy by transient guests for compensation or profit wherein breakfast may be provided to said guests for compensation or profit. (Ord. No. 3785 (part), adopted 1991)*

*Sec. 20.332.015 Inn - \*1.*

*Any building or portion thereof or group of buildings containing five (5) but no more than ten (10) guest rooms or suites each used, designed or intended to be used, let or hired out for occupancy by transient guests for compensation or profit, and where regular meals may be provided for compensation or profit to guests occupying the overnight accommodations. Provision of regular meals to other than transient occupants of the facility shall require a coastal development use permit. (Ord. No. 3785 (part), adopted 1991)*

*Sec. 20.332.020 Hotel - \*2.*

*Any building or portion thereof containing five (5) but no more than twenty (20) guest rooms or suites each used, designed or intended to be used, let or hired out for occupancy by transient guests for compensation or profit wherein meals may be provided for compensation or profit to guests occupying the overnight accommodations. Provision of regular meals to other than transient occupants of the facility shall require a coastal development use permit. (Ord. No. 3785 (part), adopted 1991)*

*Sec. 20.332.025 Inn - \*2.*

*Any building or portion thereof or group of buildings containing five (5) but no more than twenty (20) guest rooms or suites each used, designed or intended to be used, let or hired out for occupancy by transient guests for compensation or profit, and where regular meals may be provided for compensation or profit to guests occupying the overnight accommodations. Provision of regular meals to other than transient occupants of the facility shall require a coastal development use permit. (Ord. No. 3785 (part), adopted 1991)*

*Sec. 20.332.030 Motel - \*2.*

*Any building or portion thereof or group of buildings containing five (5) but no more than twenty (20) guest rooms or suites where such rooms or suites are directly accessible from an outdoor parking area and where each is used, designed or intended to be used, let or hired out for occupancy by transient guests for compensation or profit. (Ord. No. 3785 (part), adopted 1991)*

*Sec. 20.332.035 Campground - \*3.*

*An area or a tract of land where camping in tents, cabins or out of doors occurs. (Ord. No. 3785 (part), adopted 1991)*

*Sec. 20.332.040 Hostel - \*3.*

*Any building or portion thereof or group of buildings containing five (5) or more guest rooms or suites, or providing dormitory sleeping accommodations for five (5) or more transient guests for the purpose of providing low cost public travel accommodations to recreational travelers. The hostel shall contain a kitchen and sanitary facilities for use by the transient guests. (Ord. No. 3785 (part), adopted 1991)*

*Sec. 20.332.045 Organized Camp - \*3.*

*Group camping on a site with program and facilities established for the primary purpose of providing an outdoor group living experience with social, spiritual, educational, or recreational objectives for five (5) days or more during one (1) or more seasons of the year may be permitted in compliance with the following conditions.*

*(A) Camp is located on a permanent site.*

*(B) Camp has a well defined program of organized supervised activity in which campers are required to participate.*

*(C) There is present at the camp a qualified program director and a staff adequate to carry out the program.*

*(D) A major portion of daily program activities are out-of-doors.*

*(E) Establishments which rent or lease facilities on an individual, family, or group basis for the principal purpose of sporting or other unorganized recreational activities should be considered an organized camp.*

*(F) Camps operated by organizations such as the Y.M.C.A., Y.W.C.A., Girl Scouts of America, Boy Scouts of America, Camp Fire Girls, Salvation Army, etc., are true prototypes of organized camps. Membership in one (1) of the following organizations is indicative of status as an organized camp:*

*(1) The American Camping Association;*

*(2) The Christian Camp and Conference Association;*

*(3) The California Association of Private Camps;*

*(4) The Association for Outdoor Education Inc.; or*

*(5) Other similar camping associations. (Ord. No. 3785 (part), adopted 1991)*

*CZC Sec. 20.332.050 Recreational Vehicle Campground - \*3.*

*An area or a tract of land where overnight camping in recreational vehicle(s) or tents occurs. (Ord. No. 3785 (part), adopted 1991)*

*CZC Sec. 20.332.055 Visitor-Oriented Eating and Drinking Establishments - \*4.*

*Establishments or places of business primarily engaged in the retail sale of prepared food and beverage for on-premises consumption by the touring public. These establishments may cater to on-site lodging establishments, and may be allowed as an accessory use with \*1, \*2, \*3 or \*5 uses with the granting of a coastal development use permit. (Ord. No. 3785 (part), adopted 1991)*

*CZC Sec. 20.332.060 Visitor-Oriented Retail Sales - \*4.*

*Sale or rental of goods and merchandise primarily oriented to the touring public. Typical uses include: photography services; handcrafted items; souvenir shops; notions; bicycle and rollerskate rentals; sporting equipment and apparel. These uses may be allowed as an accessory use with \*1, \*2, \*3 or \*5 uses with the granting of a coastal development use permit. (Ord. No. 3785 (part), adopted 1991)*

*CZC Sec. 20.332.065 Resort - \*5.*

*Resort sites located within the Coastal Zone encompass a dispersed type of Visitor Accommodations and Services such as: dude ranches, dispersed overnight cabin accommodations, health spas and other similar uses. New Visitor Accommodations and Services in the "Resort" category shall not be allowed on resource lands in Agricultural, Forest Lands or Range Land classifications. (Ord. No. 3785 (part), adopted 1991)*

*CZC Sec. 20.436.005 Intent.*

*The VAS Combining District is intended to allow visitor accommodations and services to be developed on selected sites designated by the asterisk (\*) symbol on the land use plan maps of the Coastal Element of the General Plan and Coastal Zoning Maps. Additional sites for visitor accommodations outside of Commercial and Rural Village land use designations shall be the subject of a Local Coastal Program amendment. A single family residence may be developed in conjunction with or prior to the establishment of visitor accommodations and services if the site/parcel is not preempted for VAS facilities by*

*such action. Preemption analysis will be performed prior to approval of a development permit pursuant to Chapter 20.532. (Ord. No. 3785 (part), adopted 1991)*

*CZC Sec. 20.436.010 Principal Permitted Uses for VAS Combining Districts.*

*The following visitor accommodations and services use types are permitted where the corresponding symbol (\*1, \*2, \*3, \*4, \*5) is found on the Land Use Plan maps and Coastal Zoning Maps (See Chapter 20.332)....*

*(B) Visitor Accommodations and Services Use Types.*

*Bed and Breakfast Accommodation - \*1;  
Inn - \*1;  
Hotel - \*2;  
Inn - \*2;  
Motel - \*2;  
Campground - \*3;  
Hostel - \*3;  
Organized Camp - \*3;  
Recreational Vehicle Campground - \*3;  
Visitor-Oriented Eating and Drinking Establishments - \*4;  
Visitor-Oriented Retail Sales - \*4;  
Resort - \*5. (Ord. No. 3785 (part), adopted 1991)*

*CZC Sec. 20.436.015 Conditional Uses for VAS Combining Districts.*

*The following use types may be permitted in the Visitor Accommodations and Services Combining District with a coastal development use permit:*

*(A) Coastal Residential Use Types.*

*Employee Caretaker Housing.*

*(B) Visitor Accommodations and Services Use Types.*

*(1) The following Visitor Accommodations and Services Use Types may be permitted where the corresponding symbol (\*1C, \*2C, \*3C, \*4C, \*5C) is found on the Land Use Plan Maps and Coastal Zoning Maps:*

*Bed and Breakfast Accommodation - \*1C;  
Inn - \*1C;  
Hotel - \*2C;  
Inn - \*2C;  
Motel - \*2C;*



*Campground - \*3C;*  
*Hostel - \*3C;*  
*Organized Camp - \*3C;*  
*Recreational Vehicle Campground - \*3C;*  
*Visitor-Oriented Eating and Drinking Establishments - \*4C;*  
*Visitor-Oriented Retail Sales - \*4C;*  
*Resort - \*5C.*

*(2) The following Visitor Accommodations and Services Use Types may be permitted as an accessory use with \*1, \*2, \*3 or \*5 uses:*

*Visitor-Oriented Eating and Drinking Establishments - \*4;*  
*Visitor-Oriented Retail Sales - \*4.*

*(3) The following Coastal Commercial Use Types may be permitted as an accessory use with \*5 uses:*

*Commercial Recreation: Outdoor Sports and Recreation. (Ord. No. 3785 (part), adopted 1991)*

*CZC Sec. 20.436.020 Site Development Regulations for VAS Combining Districts.*

*Within the VAS Combining District, site development regulations of the base zone shall apply. (Ord. No. 3785 (part), adopted 1991)*

*CZC Sec. 20.436.025 Additional Requirements for the VAS Combining District.*

*(A) No development more intense than a single-family residence shall be allowed on a parcel within the VAS Combining District prior to the parcel being developed with a Coastal Visitor Accommodations and Services Use Type. A residence will be allowed only if it is sited in such a location and manner that a Coastal Visitor Accommodations and Services Use Type may still be placed upon the site.*

*(B) Approval of visitor accommodation and service facilities shall be based upon the suitability of the site to accommodate the use(s) proposed, including water availability, septic disposal capability, environmental constraints, the number of visitor serving uses existing or approved in the immediate vicinity and in the planning area, and consistency with all other regulations of this Division.*

*(C) Approval of new visitor accommodation and service facilities or expansion of existing visitor accommodation and service facilities shall minimize encroachment on resource lands. The development of new visitor facilities in the Resort category shall not be allowed on resource lands in the AG, FL, TP, or RL Districts.*

*(D) Employee housing, other than Employee Caretaker Housing, may be allowed only with a Resort - \*5 designation, consistent with all other regulations of this Division including density/intensity of the base zoning district.*

*(E) Visitor accommodations and services on parcels adjoining the shoreline as identified on the public access maps shall provide public access to the blufftop and/or the shoreline. The access, to be required as a condition of permit approval or other methods as described in Chapter 20.528, shall be available to the public at large as well as to guests. In the event that the use is changed to a use other than visitor accommodations or services, an irrevocable offer to dedicate an easement for public access shall be made available to a public entity for acceptance and management. If the accessway is reopened, it shall remain available to the public free of entrance charge.*

*(F) Where a site contains a single-family residence and a visitor accommodation and service facility, the conversion of a single-family residence to a vacation home rental shall be considered an addition or expansion of unit(s) to the visitor accommodation and service facility. The conversion may be allowed with a coastal development permit, provided that the conversion meets the allowable density of the visitor accommodation and service facility and all other provisions of this Division.*

*(G) If a resort is proposed to be developed on more than one (1) legal lot, it shall be developed on contiguous lots held under one (1) ownership and will be considered one (1) lot for all purposes under the Coastal Element and this Division. Property developed with a resort shall not be allowed to be divided and/or sold from the remainder of the property unless all resort uses on the property are discontinued or a Local Coastal Program amendment and/or new use permits are processed and approved for the continuation of any visitor serving uses.*

*(1) For the purposes of this section, the term "contiguous" includes properties separated only by road easement(s), rights-of-way or public land provided such separation does not exceed three hundred (300) feet.*

*(H) Expansion and development of visitor serving facilities, including restaurants, shall be compatible with the character of their surroundings. A site plan, grading plan, landscaping plan, and outdoor lighting plan shall be submitted and shall illustrate the following.*

*(1) Building materials shall be natural, such as wood or stone, and shall utilize primarily earth-tone colors.*

*(2) Proposed tree removal and grading shall be shown on the site development plans but shall be minimized to that which is necessary for accommodation of the main and accessory structures. Where there are alternatives to development which minimize tree*

*removal and/or grading, the development proposal shall be modified as necessary such as in location, siting, size, design, and bulk, in order to incorporate the alternative.*

*(3) The design and scale of individual proposed structures shall be subordinate to surrounding landforms. (Ord. No. 3785 (part), adopted 1991)*

*CZC Sec. 20.436.030 Maximum Density for VAS Combining Districts.*

*One dwelling unit per parcel until a visitor use is established. Thereafter, as provided in the base zone. Densities for the following categories shall be based upon environmental constraints and conformance with all regulations of this Division with density not to exceed those limits listed below:*

*(A) Maximum visitor unit density per category as noted below:*

*(1) Inns.*

*(a) Inn - \*1 or \*1C: 10 guest rooms or suites. Note: A bed and breakfast accommodation is limited to four (4) guest rooms or suites. Dining facilities for guests shall not exceed three (3) chairs per guest room or suite.*

*(b) Inn - \*2 or \*2C: 20 guest rooms or suites. Dining facilities for guests shall not exceed three (3) chairs per guest room or suite.*

*(2) Hotel - \*2 or \*2C: 20 guest rooms or suites. Dining facilities for guests shall not exceed three (3) chairs per guest room or suite.*

*(3) Motel - \*2 or \*2C: 20 guest rooms or suites.*

*(4) Campground - \*3 or \*3C: Ten (10) campsites per acre.*

*(5) Hostel - \*3 or \*3C: Thirty (30) guests.*

*(6) Recreational Vehicle Campground - \*3 or \*3C: Ten (10) spaces per acre.*

*(7) Visitor-Oriented Eating and Drinking Establishment - \*4 or \*4C: When developed as an accessory use to visitor accommodation services to provide regular meals to members of the public other than transient occupants of the facility, the total seating capacity shall not exceed three (3) chairs per guest room or suite pursuant to subsection (A)(1) and subsection (A)(2), above, plus one (1) additional chair for every two (2) guest rooms or suites.*

*(8) Visitor-Oriented Retail Sales - \*4 or \*4C: When developed as an accessory use to visitor accommodation services, the gross floor area shall not exceed twenty (20) percent*

*of the gross floor area of the visitor accommodation on the site but in no case shall exceed six-hundred forty (640) square feet maximum.*

*(9) Resort - \*5 or \*5C: The maximum visitor unit density for a Resort \*5 or \*5C shall be based on environmental constraints (i.e., site specific conditions such as traffic, water, sewerage) and conformance with all regulations of this Division with the density not to exceed three (3) guest rooms or suites per acre up to twenty (20) acres; two (2) guest rooms or suites per acre for each additional acre up to fifteen (15) acres. Total not to exceed ninety (90) guest rooms or suites.*

*(B) Densities for the following categories shall be based upon environmental constraints and conformance with all regulations of this Division, including the regulations for the base zoning district:*

*(1) Organized Camp - \*3 or \*3C: Maximum of ten (10) campsites per acre.*

*(2) Visitor-Oriented Eating and Drinking Establishments - \*4 or \*4C: When developed as the only use on the site and not accessory to any visitor accommodation or service facility.*

*(3) Visitor-Oriented Retail Sales - \*4 or \*4C: When developed as the only use on the site and not accessory to any visitor accommodation or service facility. (Ord. No. 3785 (part), adopted 1991)*

Discussion:

The portion of the property on which the development is proposed is both designated in the County's certified LUP and zoned in the County's certified Implementation Plan as Remote Residential RMR-20:PD \*1C. Section 20.380.005 of the Coastal Zoning Code indicates that the Remote Residential District is intended to be applied to lands within the coastal zone which have constraints for commercial agriculture, timber production, or grazing, but which are well suited for small scale farming, light agriculture and low density residential uses, or where the land has already been divided and substantial development has occurred. The "20" attached to the designation and zoning indicates that the minimum parcel size for land division purposes is one parcel for every 20 acres. The Planned Unit Development regulations require that new development be subject to review of a site plan to ensure maximum preservation of open space, protection of views from public roads, and resource protection while allowing development provided for by the Coastal Plan. The \*1C designation is a land use and zoning overlay over the base remote residential land use classification and zoning district that allows for the construction of up to a 10-unit inn or 4-unit Bed and Breakfast facility with a coastal development use permit. The overlay is one of several visitor accommodation and services (VAS) defined in the LUP that can be applied to a property covering a variety of visitor use types ranging from campgrounds to resorts. The portion of the 400-acre

parcel that is east of Highway One, as well as a small portion of the parcel on the west side of Highway One, is designated in the LUP and zoned in the IP as Rangeland (RL).

As discussed above, the project description revised for purposes of the Commission's de novo review of the project involves redeveloping an existing complex of ranch buildings and developing a six unit inn by demolishing five existing ranch buildings and developing a new inn and ranch compound of buildings in the general location of the existing buildings to be demolished. The new inn would include: (1) a main building, including renovation of the former Orca Inn into three rental units of 412 square feet, 249 square feet and 240 square feet and accessory common and service areas of 3,236 square feet; and (2) a cottage with three rental units of 915 square feet, 837 square feet and 526 square feet. Ranch and service operations would include: (1) a ranch manager's unit of 1,737 square feet; (2) an equipment barn of 1,121 square feet; (3) a generator/pump shed of 240 square feet; and (4) a garage of 1,508 square feet. The existing water tank of approximately 189 square feet, its adjacent pump house of approximately 134 square feet and two existing wells and majority of existing driveway are to remain. The project will reuse the existing septic system, improve the existing driveway, and bury existing overhead utilities. The total area of development is approximately 1.56 acres, which includes the building envelope of approximately 1.22 acres and the driveway of approximately .34 acres. The existing farmhouse, which comprises a portion of the proposed main building, is to be renovated, with retention of a minimum of 50 percent of the existing exterior walls and roof.

The combination of ranching and visitor serving uses is consistent with the Remote Residential RMR-20:PD \*1C LUP designation and zoning for the site. The proposed five unit inn (that can be used as a seven unit inn) is within the five to ten unit range allowed by the \*1C designation applicable to the site. The proposed ranch facilities are a form of "Light Agriculture" which is a principal permitted use within the RMR zoning district. Light Agriculture is defined in Section 20.336.030 of the Coastal Zoning Code and includes the grazing of cattle, horses, sheep, goats, hogs or other farm stock or animals including the supplementary feeding thereof, provided not more than one (1) such animal per forty thousand square feet shall be kept or maintained. Section 20.456 of the Coastal Zoning Code allows uses accessory to the allowed use types including barns, garages, and other uses which are necessarily and customarily associated with, and are appropriate, incidental, and subordinate to a principal permitted use. The proposed ranch barn, generator/pump shed, driveway, and utilities are all forms of such allowable uses accessory to the Light Agriculture use of the site. The proposed ranch manager's unit is a residential use that is consistent with the principal permitted uses of the RMR district which includes a single-family residential use.

As noted above, the approximately 400-acre parcel extends over large areas both west and east of Highway One. The \*1C designation and combining zone symbol was affixed to the certified Land Use Plan and Zoning maps at the general location on the subject property west of Highway One where the applicants propose to develop the project. The

appellants have suggested that the \*1C symbol is not meant to limit development of a complying inn or bed and breakfast facility to that specific location on the property, rather that the \*1C symbol simply means that the applicable visitor serving facility can be built anywhere on the parcel to which it is applied. This interpretation would allow consideration of an alternative location for the proposed inn east of Highway One, and the applicants note that development of the inn east of the highway would reduce or eliminate the development's impacts on views to and along the coast from Highway One.

The \*1C and the other (VAS) overlays are included as part of the particular LUP designation and zoning applied to a property, but the certified LCP does not provide specific guidance whether the overlays are always meant to limit development to the specific location on the LUP and zoning maps where the overlay is affixed or anywhere within the LUP designation and zoning district applied to the parcel. In this instance, the evidence indicates that the \*1C overlay was applied west of Highway One with the specific intent that development of an inn or bed and breakfast facility complying with the overlay would be built west of the highway for several reasons.

First, as noted previously, the Remote Residential RMR-20:PD \*1C LUP designation and zoning district was only applied on a portion of the parcel that lies west of Highway One. The approximately 400-acre parcel is split zoned, with the portion of the 400-acre parcel that is east of Highway One, as well as a small portion of the parcel on the west side of Highway One south of the proposed inn site designated in the LUP and zoned in the IP as Rangeland (RL) without an \*1C overlay. As no \*1C overlay or any other visitor serving facility overlay is included as part of the LUP designation and zoning district applied to the area east of Highway One, the certified LCP clearly intended that the inn or bed and breakfast facility that would be allowed by the \*1C overlay would be built west of the Highway.

Second, the text of Chapter 4.2 of the LUP states that provision has been made for a proposed inn at Newport on the Hemenway Ranch. The statement refers to the attachment of the \*1C overlay to the subject property in the vicinity of the existing compound of buildings on the site. The historic town of Newport was one of a number of former logging towns along the Mendocino Coast established in the mid to late 1800s along the coast where logs would be loaded on to ocean going vessels for shipment to San Francisco and other locations. The historic town of Newport no longer exists, but according to an archaeological survey of the project site conducted in December 1990, by Archaeological Services, Inc., the remains of the "Newport Chute," the facility used to transfer logs to ships, were discovered along the bluffs just outside the project boundary and that the historic town may have existed with the project boundaries. Although the exact location of the town of Newport is uncertain, the area west of the Highway in the vicinity of the ranch buildings that exist on the subject site are commonly referred to as Newport. Therefore, by indicating that provision for a proposed inn has been made at Newport, Chapter 4.2 of the LUP suggests that the inn was intended to be located west of

the highway in the location where the town has been thought to exist and which is commonly referred to as “Newport.”

Third, LUP Policy 3.7-3 states in part that “visitor serving facilities and proposed sites where the Coastal Commission has approved the issuance of permits are designated on the land use maps, and are reserved for those visitor accommodations as defined in Chapter 2.” In September 1984, one year prior to certification of the Mendocino LUP, the Coastal Commission granted Coastal Development Permit No. 1-83-278 for conversion of the existing residence on the site into a four-unit bed and breakfast inn. This residence is the same residence on APN 15-380-05 proposed to be converted to an inn under the current permit application. As the prior to issuance conditions of CDP No. 1-83-278 this permit were never met, the approval later expired, and the permit was never issued. Nonetheless, as the Commission had approved a visitor serving facility at this exact location prior to certification of the LUP one year later in 1985, Policy 3.7-3 indicates that the LCP intends that the \*1C overlay apply to the specific location where the current development is proposed.

Fourth, the fact that the area east of the highway is designated as Rangeland in the LCP, also supports a determination that the \*1C overlay is meant to apply to a location west of the highway. LUP Policy 3.2-5 quotes Coastal Act Section 30242 and expressly provides that all “...lands suitable for agricultural use shall not be converted to non-agricultural use unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250”..of the Coastal Act. The rangeland east of Highway One is currently within an agricultural preserve under Williamson Act contract with the County. Although the land west of the highway is also used for grazing, as discussed above the area is designated and zoned as Remote Residential, a land use designation and zoning district intended to be applied to lands within the coastal zone which have constraints for commercial agriculture. Applying a visitor serving accommodation overlay to the area west of the highway rather than inland of the highway is more consistent with LUP Policy 3.2 and Coastal Act Section 30242 as the land east of the highway best suited for agricultural use would not be converted or affected by development of an inn.

Finally, the fact that the overlay was applied to an existing compound of buildings also supports a determination that the \*1C overlay is meant to apply where it was affixed to a location west of the highway. As described previously, the subject property and surrounding lands are very sparsely developed and consist mostly of a coastal terrace covered with grasslands affording sweeping views unobstructed by development and trees. The LCP designates the area as “highly scenic.” LUP Policy 3.5-1 requires that in highly scenic areas, new development must be subordinate to the character of its setting. In addition, LUP Policy 3.5-4 and Zoning Code Section 20.504.015(C)(8) require that the visual impacts of development on terraces be minimized by (a) avoiding development, other than farm buildings, in large open areas if alternative site exists, and (b) minimizing the number of structures and cluster them near existing vegetation, natural landforms or

artificial berms. Applying the \*1C overlay to one of the few areas where structures exist and form part of the visual character of the area rather than to the open grasslands would help ensure that future development of an inn would be compatible and subordinate to the character of its setting and cluster and minimize structures on terraces consistent with these visual resource protection policies.

Therefore, for all of the above stated reasons, the Commission finds that the \*1C overlay was applied west of Highway One with the specific intent that development of an inn or bed and breakfast facility complying with the overlay would be built west of the highway and that development on the proposed inn inland or east of Highway One would be inconsistent with the certified LUP designation and zoning applied to that area.

Appellants 1, 3, and 4 contended in their appeals to the Commission that the development as approved by the County is not consistent with the \*1C designation applied to the property in the certified LCP because the appellants believe the approved use is of a much greater intensity than development that is allowed. In addition, a submittal received by the Commission on September 30, 2009 from Jared G. Carter on behalf of Deborah Cahn, Trustee of the Margery S. Cahn Living Trust, and Judith Whiting, Trustee of the Whiting Family Revocable Trust also contends that the development is not consistent with the \*1C designation (See Exhibit No. 28, "Correspondence."). The units proposed by the applicant are relatively large, some including multiple bedrooms, bathrooms, a kitchen, dining room, and sitting room. The submittal asserts that a "unit" as used in the LCP definition, means one bedroom not multiple bedrooms.

The proposed visitor-serving facility is proposed as a six unit inn. As noted above, the \*1C designation allows for the construction of up to a 10-unit inn with a coastal development use permit. The overlay is one of several visitor accommodation and services (VAS) defined in the LCP that can be applied to a property covering a variety of visitor use types ranging from campgrounds to resorts. The \*1C designation is defined in Section 20.332.015 of the Coastal Zoning Code as "any building or portion thereof or group of buildings containing five but no more than 10 guest rooms or suites each used, designed or intended to be used, let or hired out for occupancy by transient guests for compensation of profit, and where regular meals may be provide for compensation or profit." The VAS type defined in the LCP that is next most closely similar to the proposed visitor serving facility is a resort. A resort is defined in Section 20.332.065 of the Coastal Zoning Code as follows: "Resort sites located within the Coastal Zone encompass a dispersed type of Visitor Accommodations and Services such as: dude ranches, dispersed overnight cabin accommodations, health spas and other similar uses."

The LCP does not contain a definition of a "unit." In addition, the above-cited LCP definition of the \*1C designation does not specifically limit the number of bedrooms a unit can contain. To the contrary, the definition indicates that a unit could be either a "guest room" or "suite." A suite is defined in part in Webster's Dictionary as "a group of rooms occupied as a unit." Thus, the LCP does not specifically limit the number of



bedrooms per unit. In addition, the LCP definition of the \*1C designation does not specify a square-foot area size limitation for a unit.

The proposed visitor serving facility would not be consistent with the VAS overlay applied to the site if the proposed facility more closely matched the definition of a separate VAS designation in the LCP. The VAS type defined in the LCP that is next most closely similar to the proposed visitor serving facility is a resort. A resort is defined in Section 20.332.065 of the Coastal Zoning Code as follows: “Resort sites located within the Coastal Zone encompass a dispersed type of Visitor Accommodations and Services such as: dude ranches, dispersed overnight cabin accommodations, health spas and other similar uses.” The development as approved by the County more closely matched this definition. As approved by the County, the seven-unit visitor serving facility included nine separate buildings with visitor accommodations contained within four separate detached buildings including a main inn building, a “bunk house,” an 835-square-foot cottage, and a 915-square-foot cottage. The nine approved buildings were also dispersed within a 1.71-acre building envelope. The County approved development also included the construction of a 778-square-foot spa. The facts that the overnight accommodations were dispersed among four buildings and the development included a spa raised a substantial issue as to whether the development was a resort rather than an inn. For purposes of the Commission’s de novo review, the applicant revised the project description. The revisions were designed in part, to conform the development to the definition of an inn by (1) reducing the overall size of the development both in terms of floor area and footprint of the building complex, (2) consolidating the proposed visitor serving units into fewer dispersed buildings, and (3) eliminating the previously proposed separate spa structure. The buildings deleted and consolidated in the revised project description are shown in Exhibit No. 7. As revised, the proposed development includes six separate buildings, only two of which would contain inn units. The six buildings would be contained within an approximately 1.22 acre building envelope. In addition, the development would not include a spa. As the proposed development as revised would contain all of the inn units within just two buildings within a relatively confined building envelope rather than in multiple dispersed buildings in a larger building envelope, and as the development would not contain a spa, the Commission finds that the proposed visitor serving facility more closely matches the LCP definition of an inn rather than the LCP definition of a resort. Furthermore, as the development includes six guest rooms or suites each used, designed or intended to be used, let or hired out for occupancy by transient guests for compensation of profit, the proposed visitor serving facility is \*1C visitor serving facility as defined in Section 20.332.015 of the Coastal Zoning Code.

To ensure that the development is not converted to other uses that are not consistent with the Remote Residential RMR-20:PD \*1C LUP designation and zoning district applicable to the site, the Commission attaches Special Condition No. 7. The special condition imposes a restriction on the site stating the permit is only for the development described in the permit and that the approved inn units are intended to be used for commercial transient occupancy only. The special condition states that any changes in use would

require a permit amendment or new coastal development permit. As the Commission would have the opportunity to review any changes in use, the Commission can ensure that the development will be used consistent with the certified LUP and zoning designation applicable to the site.

As conditioned, the Commission finds that the approved development is consistent with the - Remote Residential RMR-20:PD \*1C LUP designation and zoning district applicable to the site,

**F. Adequacy of Available Services**

1. Adequacy of Available Water

LCP Policies and Standards:

LUP Policy 3.8-1 states in applicable part:

*Highway 1 capacity, availability of water and sewage disposal system and other known planning factors shall be considered when considering applications for development permits.* [emphasis added]

LUP Policy 3.8-9 states in applicable part:

Commercial developments and other potential major water users that could adversely affect existing surface or groundwater supplies shall be required to show proof of an adequate water supply, and evidence that the proposed use shall not adversely affect contiguous or surrounding water sources/supplies. Such required proof shall be demonstrated prior to approval of the proposed use.

Coastal Zoning Coastal Zoning Code Section 20.532.095 states:

Section 20.532.095 Required Findings for all Coastal Development Permits.

*(A) The granting or modification of any coastal development permit by the approving authority shall be supported by findings which establish that:*

*(1) The proposed development is in conformity with the certified local coastal program; and*

*(2) The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and*

*(3) The proposed development is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of this Division and preserves the integrity of the zoning district; and*

*(4) The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.*

*(5) The proposed development will not have any adverse impacts on any known archaeological or paleontological resource. [emphasis added]*

*(6) Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development. [emphasis added]*

*(B) If the proposed development is located between the first public road and the sea or the shoreline of any body of water, the following additional finding must be made:*

*(1) The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and the Coastal Element of the General Plan. (Ord. No. 3785 (part), adopted 1991)*

Project Consistency with Applicable LCP Provisions:

The proposed development would rely on the use of groundwater to serve its water needs. The development would be served by an existing well on the subject property located approximately 500 feet east of Highway One. This existing 60-foot deep test well was drilled in 1994. The proposed project includes the installation of a pipeline to convey the water approximately one-third of a mile to the southwest from the well to the proposed inn site.

As cited above, LUP Policy 3.8-1 requires the County to consider the availability of water when considering coastal development permit applications. Coastal Zoning Code Section 20.532.095 states that the granting of any coastal development permit by the approving authority shall be supported by findings which establish that the proposed development will be provided with adequate utilities. LUP Policy 3.8-9 specifically requires that commercial developments and other potential major water users that could adversely affect existing surface or groundwater supplies shall be required to show proof of an adequate water supply, and evidence that the proposed use will not adversely affect contiguous or surrounding water sources/supplies.

Furthermore, the policy requires that such required proof shall be demonstrated prior to approval of the proposed use.

The project site lies within an area containing “Critical Water Resources” as designated by the 1982 Mendocino County Coastal Ground Water Study, which when combined with Coastal Groundwater Development Guidelines adopted by the County in 1989, requires a hydrological study for commercial projects proposing 1,500 gallons per day (gpd) or more. The County staff report for the project as approved by the County indicates that the approved project would have an estimated maximum demand of approximately 2,600 gpd.

In its findings for approval of the project, the County indicated that a hydrological report was prepared in 1994 for the previous inn project approved for the site, and that the 1994 study estimated that “well yield in the area to be more than 8,000 gpd, significantly exceeding the proposed water demand for the inn.” The County did not require a new hydrological study for the current project based on the results of the 1994 study. The County’s findings indicated that the County Water Agency concurred with the planning staff’s determination not to require a new hydrological study and that the CWA noted that “in many areas of the County, the results from a 12-year-old Hydrological Study would be obsolete; However, [CWA staff was] not aware of any significant change in groundwater use in the area,” and felt that the 1994 study would be valid for purposes of the current project.

Three of the four sets of appellants raised contentions that the project as approved by the County was inconsistent with LCP policies calling for locating development within areas able to accommodate the development in that there is no assurance that there is adequate ground water to serve the approved development. The appellants claimed that the 13-year old hydrological study relied upon by the County did not reflect current groundwater conditions and the light rainfall of recent years. The study was prepared for the original inn project approved by the County in 1996 which was a smaller project with less water demand. In addition, the appellants claimed that the old hydrological study could not have taken into account low rainfall years that have occurred since and which would not have recharged groundwater levels as much as groundwater would have been recharged in more normal rainfall years.

The Commission determined that the appeals raised a substantial issue of conformance with the LCP polices regarding the provision of adequate groundwater to serve new development in that the County findings did not demonstrate that sufficient ground water exists to both serve the anticipated demand for water at the development and avoid depleting groundwater reserves to an extent that would adversely affect wetlands fed by the groundwater or the water supply of neighboring residents. In addition, the Commission determined that an updated hydrological study would be necessary to review the project de novo for consistency with the LCP polices regarding the provision of adequate groundwater to serve new development. The Commission requested the

applicant to provide a current hydrological study demonstrating that the quantity and quality of water yielded by the proposed well(s) (or some other source available to the applicant) meets the standards of the County Health Department in order to evaluate whether adequate water will be available to serve the proposed development. The requested hydrological study was to evaluate (1) the adequacy of the on-site water source(s) to serve the proposed development, (2) potential impacts to surface and groundwater supplies at and surrounding the project site, and (3) potential impacts to coastal resources from surface and/or groundwater extraction (i.e., impacts to surrounding wetlands or watercourses, geologic stability, etc.).

Pursuant to this request, the applicant hired Questa Engineering Corporation to perform a hydrological study of the site. Questa Engineering Corporation conducted the investigation and prepared a report dated January 10, 2008. (Excerpts of the report are included as Exhibit 16). The hydrological study first determined the average daily water demand for the project, establishing this demand based on the size of the inn, County policies for water and wastewater flow estimation, assumptions regarding extra water use for incidental water uses that do not result in wastewater flow, and assumptions regarding occupancy rates at the inn. The investigation then examined existing information about the hydrologic setting for the project and the well, before conducting a 72-hour pumping test during the dry season between October 9-12, 2007 to determine the sustained yield and drawdown characteristics of the well and the local aquifer. The pumping test involved installing a pump within the well with a discharge line containing a valve to allow adjustment of the flow rate and discharging the flow from the well approximately 200 feet downslope of the well outside of the immediate well recharge area. Flow metering was done manually with a bucket and stop watch at periodic intervals. Drawdown measurements were taken at both the well and a second observation well that exists 190 feet away from the primary well. Water levels were measured using a water level probe referenced to the wellhead. The well was tested at a constant pumping rate of approximately 6.3 gallons per minute (gpm) for the full duration of the 72-hour test. At the conclusion of the pumping test, water levels in the wells were monitored for another 28 hours to determine how fast water levels recovered to pre-test levels. The study did not perform direct measurements of drawdown of the wells of neighbors as the nearest neighboring wells are located more than ¼ mile away. According to the study, a well located ¼-mile away is well beyond the expected zone of influence of the test well. Water table drawdown effects were, however, calculated for the observation well and for a point 400 feet away which corresponds with the westerly property line of the well parcel. In addition, the study analyzed the effects of the proposed groundwater extraction on the local groundwater aquifer. Finally, the hydrologic study sampled the water quality of the well water to determine whether the extracted groundwater would be suitable for the proposed uses. The results of the study are summarized below.

Project Water Demand.

The water demand was determined based on a project description that entailed development of a 10-unit inn and a caretaker's unit. Since the study was conducted, the applicant has revised the project description to reduce the maximum number of inn units to six. The hydrologic study took into account that most of the inn units are suites with multiple bathrooms and containing kitchen facilities and that the number of bedrooms is larger than the number of units. Water demand was projected on the basis that there would be 16 total bedrooms.

The report indicates that maximum daily water demand is estimated to be very similar to the daily wastewater flow. The onsite septic sewage system is designed to accommodate a flow of 3,425 gallons of wastewater per day based on County standards for wastewater flow estimation and assuming full occupancy of a 10-unit inn and the caretaker's residence. The report notes that water supply for landscape irrigation would be supplied from the existing spring source and not the well. However, other incidental water uses that do not contribute to sewage flow such as window washing would be served by the well. Taking into account a 10% to 20% additional water use allowance for such incidental water uses that do not contribute to sewage flow, the hydrologic report estimates that the maximum daily water use of a 10 unit inn and the caretaker's residence would be 3,800 gallons per day (gpd). This volume is equivalent to a continuous pumping rate of about 2.64 gallons per minute. Water usage would be less over the long term than the maximum daily water demand as the inn will not always be running at full occupancy. The hydrologic report assumes a year-round occupancy rate of 80 percent, which translates to an average daily water demand estimate of approximately 3,000 gpd requiring a continuous pumping rate of about 2.64 gallons per minute for a 10 unit inn and the caretaker's residence. As noted above, the project as revised for purposes of the Commission's de novo review involves the installation of a six unit inn rather than a 10 unit inn so the average daily water demand estimate will be a corresponding lesser amount.

#### Hydrogeologic Setting

The hydrologic study notes that the project site lies within a Critical Water Resources area as designated in the Department of Water Resources Mendocino County Coastal Groundwater Study (DWR). Well water in the area is primarily drawn from the marine terrace deposits which average about 30 feet in depth and produce a greater yield than bedrock aquifers in the area. Thus, most wells in the area are relatively shallow and the report indicates that yields from these wells vary from about 1.5 to 36 gallons per minute. The proposed supply well for the project is a 60-foot-deep composite well that draws from both the terrace deposits and the sandstone bedrock.

#### Study Results

The results of the pumping test performed for the hydrologic study are shown in Table 2 of the report (See Exhibit No. 16). As discussed in the report, the pumping test

demonstrated a stabilized yield of 6.26 gallons per minute over a sustained 72-hour pumping period which occurred at the end of a below average rainfall year. This rate corresponds to a daily pumping volume of 9,014 gallons per day. As discussed above, the maximum daily water use demand for a 10-unit inn with a caretaker's residence at the proposed site is estimated to be 3,800 gallons per day and the average daily water demand estimate of approximately 3,000 gallons per day. Therefore, the report concludes that the well has more than ample capacity to serve the proposed development.

The results of the drawdown analysis are shown in Table 3 of the report. As discussed in the report, the drawdown analysis indicates that drawdown at points 190 and 400 feet away from the supply well range from 2.5 to 6.7 percent of the available drawdown. This amount of projected drawdown impact falls within the 10% drawdown criterion contained in the Mendocino County Coastal Groundwater Development Guidelines. The report notes that drawdown effects decrease exponentially as the distance from the pumping well increases, which indicates that drawdown of the water table at the nearest neighboring wells which are more than ¼-mile from the proposed supply well would be negligible.

The hydrologic report indicates that the estimated average rate of groundwater extraction to supply the development is estimated to be about 9.1 percent of the annual replenishment of the aquifer from on-site rainfall percolation within the portion of the property tributary to the supply well. The report indicates that the principal source of groundwater recharge is on-site percolation of rainwater plus some amount of lateral groundwater inflow from the watershed area to the east. The report estimates that the annual natural replenishment solely from on-site percolation of rainwater is estimated to be 12,055,665 gallons per year and the annual extraction of groundwater for the proposed development is 1,095,000 gallons per year. The report concludes that this amount of groundwater extraction is safely within the average annual amount of on-site recharge to groundwater within the portion of the property tributary to the supply well and the effects of the proposed extraction of groundwater to serve the proposed development on the local groundwater aquifer would be negligible.

With regard to water quality testing, the hydrologic report indicates that a water sample from the proposed supply well was tested with respect to water quality concerns. The results indicate that the sample meets all primary and secondary drinking water standards except for iron, manganese, and hardness, which were found at levels above the recommended consumer acceptance concentrations. The report recommends that a treatment system for iron and manganese be incorporated into the project to reduce the staining effects normally caused by these constituents at higher concentrations.

The Commission's geologist, Dr. Mark Johnsson, has reviewed the hydrological report and concurs with the overall conclusion that the proposed water supply well will provide sufficient water to serve the needs of a 10-unit inn and caretaker's residence development. As noted above, since the hydrological study was conducted, the applicant

has revised the project description to reduce the number of inn units to a maximum of six. Thus the maximum and average daily water use demands for the current development may be as much as 40% less than the 3,800-gallons-per-day maximum and 3,000-gallons-per-day average daily water demand calculated by the hydrological study for a 10-unit inn with a caretaker's residence at the proposed site. As the pumping test results indicate that the well will yield a volume of 9,014 gallons per day, the development will only use approximately 30% of the capacity of the well. Therefore, the Commission finds that an adequate water supply is available to serve the proposed development.

Dr. Johnsson also concurs with the overall conclusion of the hydrological study that the effects of the proposed extraction of groundwater to serve the proposed development on neighboring wells and the local groundwater aquifer would be negligible. Based on the hydrological study's drawdown analysis which indicates that drawdown at points 190 and 400 feet away from the supply well range from only 2.5 to 6.7 percent of the available drawdown, and as drawdown effects decrease exponentially as the distance from the pumping well increases, the hydrological study's conclusion that drawdown of the water table at the nearest neighboring wells which are more than ¼-mile from the proposed supply well would be negligible is reasonable. In addition, based on the estimates in the hydrological report that the annual natural replenishment solely from on-site percolation of rainwater is estimated to be 12,055,665 gallons per year and the annual extraction of groundwater for the proposed development is 1,095,000 gallons per year, it is reasonable to conclude that the effects of the proposed extraction of groundwater to serve the proposed development on the local groundwater aquifer would be negligible.

A submittal received by the Commission on September 30, 2009 from Jared G. Carter on behalf of Deborah Cahn, Trustee of the Margery S. Cahn Living Trust, and Judith Whiting, Trustee of the Whiting Family Revocable Trust contends that the hydrological study is inadequate and that use of groundwater for the development may deplete the aquifer and cause draw down of neighboring wells. The submittal contends (a) that the hydrological study underestimates the demand for water by the development because the 10-unit inn project it reviewed will have numerous bedrooms and other rooms not typically found in a 10-unit inn and will include a ranch manager's house, and (b) the hydrologic study did not adequately evaluate the impacts on neighboring wells because it did not include tests at the neighbors wells. With respect to the alleged underestimation of water demand, it should be noted that the hydrological study was performed prior to the applicant making final changes to the project when the inn was proposed as a 10-unit inn. As amended for purposes of the Commission's de novo review, the project has been reduced to a six unit inn. Thus, the water demand for the inn as revised will be less than the water demand for the size of inn originally contemplated and evaluated in the hydrological study. As noted above, the hydrological study determined that the previously proposed 10-unit inn development would use approximately 3,000 gallons per day on average while the pump test results indicate the well will yield a volume of 9,014 gallons per day. Thus, the development would use only approximately 30% of the available capacity. Given that approximately 70% of the capacity of the well would not



be utilized, minor changes in the number or inn units and bedrooms proposed would not affect the conclusion that sufficient well capacity exists to serve the development, especially as the applicant's changes to the project description for purposes of de novo review actually reduce the number of inn units and consequently the water demand of the project.

With respect to the fact that the hydrological study did not include direct tests of neighboring wells, the closest neighboring wells are approximately ¼ mile away from the well that will serve the development. As noted previously, the hydrological study did test drawdown of the aquifer at points 190 and 400 feet away from the supply well and determined that drawdown at these locations ranged from only 2.5-6.7 percent of the available drawdown. Drawdown effects decrease exponentially as the distance from the pumping well increases, indicating that the drawdown in the vicinity of the wells located at least 1320 feet away (1.4 mile) would be negligible.

Use of the well to serve the proposed development is dependent on the installation of a pipeline extending from the well to the development. The pipeline would need to cross under Highway One. To ensure that the applicant secures any necessary encroachment permit from the Department of Transportation for authorization to cross through the state right-of-way, the Commission attaches Special Condition No. 13. The special condition requires that the applicant submit to the Executive Director a copy of the final, approved Encroachment Permit issued by Caltrans for installation of the proposed water line under the highway, or evidence that no permit is required.

Therefore, the Commission finds that the hydrological report submitted by the applicants demonstrates that conversion and use of the existing test water well located 500 feet east of Highway One will provide an adequate water supply to serve the proposed commercial inn/ranch complex development consistent with the requirements of LUP Policies 3.8-1 and 3.8-9 and CZC Section 20.532.095. The Commission further finds that the submitted hydrological report demonstrates that use of the well to serve the development will not drawdown groundwater to an extent that would adversely affect contiguous or surrounding water sources and supplies consistent with the requirements of LUP Policy 3.8-9. As conditioned, the Commission finds that the proposed development is consistent with LCP policies regarding the provision of adequate water supply to serve new development and to protect against drawdown of groundwater that would adversely affect other water supply sources and aquifers.

#### Highway One Capacity

#### LCP Policies and Standards:

LUP Policy 3.8-1 states in applicable part:

Highway 1 capacity, availability of water and sewage disposal system and other known planning factors shall be considered when considering applications for development permits. [emphasis added]

Coastal Zoning Coastal Zoning Code Section 20.532.095 states:

Section 20.532.095 Required Findings for all Coastal Development Permits.

*(A) The granting or modification of any coastal development permit by the approving authority shall be supported by findings which establish that:*

*(1) The proposed development is in conformity with the certified local coastal program; and*

*(2) The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and*

*(3) The proposed development is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of this Division and preserves the integrity of the zoning district; and*

*(4) The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.*

*(5) The proposed development will not have any adverse impacts on any known archaeological or paleontological resource.* [emphasis added]

*(6) Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.* [emphasis added]

*(B) If the proposed development is located between the first public road and the sea or the shoreline of any body of water, the following additional finding must be made:*

*(1) The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and the Coastal Element of the General Plan. (Ord. No. 3785 (part), adopted 1991)*

Discussion:

As cited above, LUP Policy 3.8-1 requires that Highway One capacity be considered when reviewing applications for development permits. Additionally, CZC Section 20.532.095 sets forth required findings for all coastal development permits and requires,

in applicable part, that public services, including public roadway capacity, be considered and be found adequate to serve the proposed development.

After September 7, 2007, when the Commission found that the appeal raised a substantial issued of conformance of the project as approved by the County with the policies of the certified LCP, the applicant hired a consultant to prepare a traffic analysis of the impacts of the proposed development on Highway One. The traffic analysis, prepared by Whitlock & Weinberger Transportation, Inc. is dated January 14, 2008 and is included as Exhibit 18 of the staff report

The traffic study concludes that there is more than sufficient traffic capacity on Highway One to absorb the extra traffic generated by the development. The report notes that currently, Highway One in the vicinity of the project site carries approximately 2,360 vehicles per day, including 420 trips in the weekday p.m. peak hour. Based on Caltrans' District 1 growth factors for State Highways in the district, this volume is projected to rise to approximately 2,600 daily trips and 470 weekday p.m. peak hour trips by the year 2027. According to the applicant's traffic study, these volumes are far below the "ideal capacity" of a two lane highway as described in Caltran's Highway Capacity manual, Transportation Research Board, 2000. This document notes that the ideal capacity of a two-lane highway is 3,200 passenger cars per hour. As traffic along Highway One in this vicinity is only projected to rise to 470 weak day p.m. peak hour trips in both directions by the year 2027, the capacity available is approximately six times (3,200/470) the peak hour volume of traffic that is projected to occur.

The applicant's traffic study estimated trip generation from the proposed development using standard trip generation rates for hotels and resort hotels. The study estimates that the development would generate an average of 70 daily trips, including four trips during both the morning and evening peak hours on weekdays. Adding these additional four trips per hour to the projected traffic volumes in 2027 would still leave the available capacity at many times the peak hour volume of traffic that is projected to occur.

A submittal received by the Commission on September 30, 2009 from Jared G. Carter on behalf of Deborah Cahn, Trustee of the Margery S. Cahn Living Trust, and Judith Whiting, Trustee of the Whiting Family Revocable Trust also contends that the cumulative impacts of the development with impacts of a future public access trail project recently approved by the County have not been adequately considered. The public access trail project involves a permit granted to the Mendocino Land Trust for a coastal development permit to develop a trail within a lateral easement along Highway One through a portion of the applicant's property. The Commission notes that development of that specific public access trail project is not currently before the Commission. Specific vehicle trip generation rates for the trail project are not available. However, given that (1) the available capacity of Highway One in the vicinity of the project is many times the projected volume of traffic that Caltrans projects will use the Highway in 2027, and (2) the volume of additional traffic generated directly by the inn project will only be four trips per peak hour, the additional traffic volume on Highway One that the proposed trail

project would generate in combination with the applicant's development would not result in significant adverse cumulative impacts on traffic capacity.

Therefore, the Commission finds that the public road capacity of Highway One is adequate to serve the development consistent with LUP Policy 3.8-1 and Coastal Zoning Code Section 20.532.095.

### **G. Geologic Hazards**

#### Summary of Applicable LCP Provisions:

Mendocino County Land Use Plan (LUP) Policy 3.4-1 states the following (emphasis added):

*The County shall review all applications for Coastal Development permits to determine threats from and impacts on geologic hazards arising from seismic events, tsunami runoff, landslides, beach erosion, expansive soils and subsidence and shall require appropriate mitigation measures to minimize such threats. In areas of known or potential geologic hazards, such as shoreline and bluff top lots and areas delineated on the hazards maps the County shall require a geologic investigation and report, prior to development, to be prepared by a licensed engineering geologist or registered civil engineer with expertise in soils analysis to determine if mitigation measures could stabilize the site. Where mitigation measures are determined to be necessary, by the geologist, or registered civil engineer the County shall require that the foundation construction and earthwork be supervised and certified by a licensed engineering geologist, or a registered civil engineer with soil analysis expertise to ensure that the mitigation measures are properly incorporated into the development.*

LUP Policy 3.4-7 states, in applicable part, the following (emphasis added):

*The County shall require that new structures be set back a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (75 years). Setbacks shall be of sufficient distance to eliminate the need for shoreline protective works. Adequate setback distances will be determined from information derived from the required geologic investigation and from the following setback formula:*

$$\text{Setback (meters)} = \text{Structure life (years)} \times \text{Retreat rate (meters/year)}$$

*The retreat rate shall be determined from historical observation (e.g., aerial photographs) and/or from a complete geotechnical investigation.*

...

LUP Policy 3.4-8 states the following:

*Property owners should maintain drought-tolerant vegetation within the required blufftop setback. The County shall permit grading necessary to establish proper drainage or to install landscaping and minor improvements in the blufftop setback.*

LUP Policy 3.4-9 states the following:

*Any development landward of the blufftop setback shall be constructed so as to ensure that surface and subsurface drainage does not contribute to the erosion of the bluff face or to the instability of the bluff itself.*

LUP Policy 3.4-10 states the following (emphasis added):

*No development shall be permitted on the bluff face because of the fragility of this environment and the potential for resultant increase in bluff and beach erosion due to poorly-sited development. However, where they would substantially further the public welfare, developments such as staircase accessways to beaches or pipelines to serve coastal-dependent industry may be allowed as conditional uses, following a full environmental, geologic and engineering review and upon the determinations that no feasible less environmentally damaging alternative is available and that feasible mitigation measures have been provided to minimize all adverse environmental effects.*

LUP Policy 3.4-12 states the following (emphasis added):

*Seawalls, breakwaters, revetments, groins, harbor channels and other structures altering natural shoreline processes or retaining walls shall not be permitted unless judged necessary for the protection of existing development or public beaches or coastal dependent uses. Allowed developments shall be processed as conditional uses, following full environmental geologic and engineering review. This review shall include site-specific information pertaining to seasonal storms, tidal surges, tsunami runups, littoral drift, sand accretion and beach and bluff face erosion. In each case, a determination shall be made that no feasible less environmentally damaging alternative is available and that the structure has been designed to eliminate or mitigate adverse impacts upon local shoreline sand supply and to minimize other adverse environmental effects. The design and construction of allowed protective structures shall respect natural landforms, shall provide for lateral beach access, and shall minimize visual impacts through all available means.*

Mendocino County Coastal Zoning Code (CZC) Section 20.500.010 states the following (emphasis added):

*(A) The purpose of this section is to insure that development in Mendocino County's Coastal Zone shall:*

*(1) Minimize risk to life and property in areas of high geologic, flood and fire hazard;*

*(2) Assure structural integrity and stability; and*

*(3) Neither create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. (Ord. No. 3785 (part), adopted 1991)*

CZC Section 20.500.015 states the following:

*(A) Determination of Hazard Areas.*

*(1) Preliminary Investigation. The Coastal Permit Administrator shall review all applications for Coastal Development Permits to determine threats from and impacts on geologic hazards.*

*(2) Geologic Investigation and Report. In areas of known or potential geologic hazards such as shoreline and blufftop lots and areas delineated on the hazard maps, a geologic investigation and report, prior to development approval, shall be required. The report shall be prepared by a licensed engineering geologist or registered civil engineer pursuant to the site investigation requirements in Chapter 20.532.*

*(B) Mitigation Required. Where mitigation measures are determined to be necessary, the foundation, construction and earthwork shall be supervised and certified by a licensed engineering geologist or a registered civil engineer with soil analysis expertise who shall certify that the required mitigation measures are incorporated into the development. (Ord. No. 3785 (part), adopted 1991)*

CZC Section 20.500.020 states, in applicable part, the following (emphasis added):

...

*(B) Bluffs.*

*(1) New structures shall be setback a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (seventy-five (75) years). New development shall be setback from the edge of bluffs a distance determined from information derived from the required geologic investigation and the setback formula as follows:*

$$\text{Setback (meters)} = \text{structure life (75 years)} \times \text{retreat rate (meters/year)}$$

*Note: The retreat rate shall be determined from historical observation (aerial photos) and/or from a complete geotechnical investigation.*

*(2) Drought tolerant vegetation shall be required within the blufftop setback.*

*(3) Construction landward of the setback shall not contribute to erosion of the bluff face or to instability of the bluff.*

*(4) No new development shall be allowed on the bluff face except such developments that would substantially further the public welfare including staircase accessways to beaches and pipelines to serve coastal-dependent industry. These developments shall only be allowed as conditional uses, following a full environmental, geologic and engineering review and upon a finding that no feasible, less environmentally damaging alternative is available. Mitigation measures shall be required to minimize all adverse environmental effects.*

...

*(E) Erosion.*

*(1) Seawalls, breakwaters, revetments, groins, harbor channels and other structures altering natural shoreline processes or retaining walls shall not be permitted unless judged necessary for the protection of existing development, public beaches or coastal dependent uses. Environmental geologic and*

*engineering review shall include site-specific information pertaining to seasonal storms, tidal surges, tsunami runups, littoral drift, sand accretion and beach and bluff face erosion. In each case, a determination shall be made that no feasible less environmentally damaging alternative is available and that the structure has been designed to eliminate or mitigate adverse impacts upon local shoreline sand supply and to minimize other significant adverse environmental effects.*

Project Consistency with Applicable LCP Provisions:

The proposed development is located on a bluff top property that is subject to bluff retreat and other geologic hazards. As summarized above, CZC Section 20.500.015(A) requires all applications for coastal development permits in areas of known or potential geologic hazards such as shoreline and bluff-top lots be reviewed to ensure that new development will be safe from bluff erosion and cliff retreat. To this end, LUP Policy 3.4-7 and CZC Sections 20.500.010(A)(3) and 20.500.020(E) direct the approving authority to assure that new development is sited and designed to provide adequate setbacks from geologically hazardous areas, and that restrictions of land uses be applied as necessary to ensure that the construction of seawalls or other shoreline protective structures will not be needed “in any way” over the full 75-year economic lifespan of the development. A sole exception to this prohibition on the construction of shoreline protective devices is provided in CZC Section 20.500.020(E) for protecting existing development, public beaches, and coastal-dependent uses. LUP Policy 3.4-8 and CZC Section 20.500.020(B)(2) require property owners to maintain drought-tolerant vegetation within the required bluff top setback area to minimize the need for watering, which could accelerate bluff-top erosion. Similarly, LUP Policy 3.4-9 and CZC Section 20.500.020(B)(3) require development landward of the bluff-top setback to be constructed so as to ensure that surface and subsurface drainage does not contribute to the erosion of the bluff face or the instability of the bluff itself. Finally, CZC Section 20.500.010 requires that all development in the County coastal zone minimize risk to life and property in areas of high geologic hazard, assure structural integrity and stability, and neither create nor contribute significantly to erosion or engender the need for protective devices that would alter natural landforms along bluffs and cliffs.

As discussed above, the project description revised for purposes of the Commission’s de novo review of the project involves redeveloping an existing complex of ranch buildings and developing a six unit inn by demolishing five existing ranch buildings and developing a new inn and ranch compound of buildings in the general location of the existing buildings to be demolished. The new inn would include: (1) a main building, including renovation of the former Orca Inn into three rental units of 412 square feet, 249 square feet and 240 square feet and accessory common and service areas of 3,236 square feet; and (2) a cottage with three rental units of 915 square feet, 837 square feet and 526 square feet. Ranch and service operations would include: (1) a ranch manager’s unit of 1,737 square feet; (2) an equipment barn of 1,121 square feet; (3) a generator/pump shed of 240 square feet; and (4) a garage of 1,508 square feet. The existing water tank of approximately 189 square feet, its adjacent pump house of approximately 134 square feet

and two existing wells and majority of existing driveway are to remain. The project will reuse the existing septic system, improve the existing driveway, and bury existing overhead utilities. The total area of development is approximately 1.56 acres, which includes the building envelope of approximately 1.22 acres and the driveway of approximately .34 acres. The existing farmhouse, which comprises a portion of the proposed main building, is to be renovated, with retention of a minimum of 50 percent of the existing exterior walls and roof.

All of the proposed development on the site is located more than 100 feet from the bluff edge. The portion of the new development that comes closest to the bluff edge is the northwest corner of the main inn building which subsumes within it the existing 2,049-square-foot existing ranch house structure. This main inn building comes to within approximately 240 feet of the bluff edge. The revised site plan for the project submitted for the Commission's de novo review shows that the five other proposed buildings will be located further back from the bluff edge than the main inn building at locations that are setback from the bluff edge by minimum distances of approximately 400 to 600 feet. The proposed septic system and the proposed section of the driveway to be rerouted come no closer than several hundred feet of the bluff edge.

LUP Policy 3.4-7 and Coastal Zoning Code Section 20.500.020(B) require new development to be set back a sufficient distance from the edge of the bluff to ensure its safety from bluff erosion and cliff retreat during the economic life span of 75 years. Additionally, these provisions require that the setback be a sufficient distance so as to eliminate the need for shoreline protection devices. The Commission must consider the conformance of all parts of the proposed new development with these standards, including the approximately 2,049-square-foot existing ranch house that will be renovated because the ranch house will be subsumed into the new inn building with new development added that extends in several directions, including towards the bluff edge.

As discussed above, the subject bluff-top parcel is located on a gently sloping marine terrace. The property slopes gently westward across the coastal terrace at an approximately 3-5% grade. The irregular and steep ocean bluffs are approximately 80 to 120 feet high and form a series of coves and small points of land including a dominant northeast-trending peninsula located roughly in the center of the shoreline of the parcel. The bluffs contain several sea caves and are very steep with only small pockets of boulder beaches.

The County did not require the preparation of a geotechnical report for the current project. Instead, to make findings of consistency with the geologic hazard policies of the LCP, the County relied upon a letter prepared by the engineer for the 1992 Inn project which would have been set back a similar distance from the bluff edge. The engineer determined that the proposed bluff setbacks were "more than adequate." Because this existing geotechnical information prepared for the project site was out of date, was not comprehensive, and did not address the currently proposed project as sited and designed,



the Commission determined when it found that the appeals for the current project raised a substantial issue of conformance of the project as approved with the policies of the LCP and public access policies of the Coastal Act that an updated geotechnical report would be necessary to review the project de novo for consistency with the geologic hazard policies of the LCP. Pursuant to this request, the applicant hired Bace Geotechnical to perform a geotechnical investigation of the site. Bace Geotechnical conducted the investigation and prepared a report dated January 10, 2008.

The geotechnical report indicates that the materials exposed at the site consist of terrace deposits overlying sedimentary bedrock. The Pleistocene Epoch terrace deposits are composed of sand and silt, with some gravel and clay, which were deposited on the generally flat wave-cut bedrock terrace when the terrace was submerged by elevated sea levels. The thickness of the terrace deposits varies to a maximum of approximately 10 feet. The sedimentary bedrock of the terrace is part of the Tertiary-Cretaceous Period Coastal Belt Franciscan Complex and consists of well-consolidated sandstone, minor shale and conglomerate, and occasional greenstone.

The geotechnical report indicates that the bedding orientation appears to have a northwestern strike with a moderately steep dip, approximately 60 degrees from the horizontal, to the northeast.

The report notes that a number of landslide-related features can be observed along the bluff edges. The most prominent slide is located north of the northern peninsula at the point along the bluff edge that is closest to the proposed new development. The slide appears to be a deep-seated, translational or rotational slide block that penetrates into the upper, weathered bedrock. The slide mass is approximately 20 feet wide and tens of feet long. Further down the bluff face are the remains of a larger slide mass that slid sometime after the year 2000 and likely caused the demise of a former house that used to be perched on the edge of the bluff in this location. The report indicates that evidence of other slides can be found along most of the bluff faces of the subject property

The geotechnical investigation found no evidence of active faulting on the property. However, the active San Andreas Fault is located offshore approximately 10.3 miles southeast of the property. The active Maacama fault is located approximately 15.5 miles northeast of the property.

The overall conclusion of the geotechnical investigation is that “the site is geologically suitable for the proposed development” (See Exhibit No. 15, page 10 of 13). The report states that the main geotechnical considerations affecting the proposed development are bluff/erosion/retreat rate, slope stability, and strong seismic shaking from future earthquakes. The report offers the following conclusions regarding these geotechnical considerations:

Bluff Retreat and Slope Stability

In previous actions on coastal development permits and appeals, the Commission has interpreted Section 30253 of the Coastal Act, LUP Policy 3.4-7, and CZC Section 20.500.010(A) to require that coastal development be sited a sufficient distance landward of coastal bluffs that it will neither be endangered by erosion nor lead to the construction of protective coastal armoring during the assumed economic life of the development. LUP Policy 3.4-7 indicates the economic life of a structure to be 75 years. A setback adequate to protect development over the economic life of a development must account both for the expected bluff retreat during that time period and the existing slope stability. Long-term bluff retreat is measured by examining historic data including vertical aerial photographs and any surveys conducted that identified the bluff edge and estimating changes in this rate that may be associated with continuing or accelerating sea level rise. Slope stability is a measure of the resistance of a slope to landsliding, and can be assessed by a quantitative slope stability analysis.

The geotechnical investigation included an analysis of vertical aerial photographs dated June 28, 1964, June 24, 1981, and April 1, 2000, as well as oblique-angle aerial photographs from the California Coastal Records Project from 2002 and 2005. The geotechnical report contains the following conclusions with respect to the rate of bluff retreat and site stability:

Our analysis of aerial photographs indicates an average bluff edge retreat rate of approximately 3.7 inches per year along the bluff top nearest to the proposed development envelope (northwest of the northwest corner, currently shown at a proposed 150-foot setback for development envelope [currently 240 feet as project has been revised for the Commission's de novo review]). This erosion rate is the average for the 36-year period between 1964 and 2000, for an area clearly notched by erosion.

The worst-case retreat rate on the bluffs in the proposed development area is the landside on the northwest bluff. A former house and outbuilding were previously located in this area; only a dilapidated remnant of the house exists today. We assume that the house was built a few feet back of the bluff edge in the 1940's or 1950's. To be conservative, we estimate that the bluff has retreated in this area 45 feet (back to the present landslide scarp) in the last 50 years. This results in a local retreat rate of 0.9 feet per year... This can be considered a "worst-case scenario" retreat rate under present conditions.

In general, the erosion/bluff retreat rates due to "grain by grain" erosion along the northwest property bluffs are relatively low. The peninsulas are comprised of hard rock beds that are generally erosion-resistant. Most of the retreat occurring along the cliff edges appears to be due to intermittent, larger scale landslides and slumps, rather than ongoing shallow loss of the upper terrace deposits. It should be noted that the retreat rates given are considered averages over the period of

time covered by the aerial photos up to our 2007 study. Localized, larger scale slumps or slides could occur in the future anywhere along the bluff edge...

The large landslides we observed on the property appear to be due to saturation of the terrace deposits and upper, weathered bedrock. These conditions are occurring where concentrated surface runoff flows to the bluff edge. Because the terrace is nearly level in many areas adjacent to the bluff edge, conditions exist in which there is more time for water to seep through the bluff-edge soils and penetrate into the underlying rock. Where this has been allowed to occur over time, larger-scale slumping has been the result.

Shallow slumping of terrace deposits along the bluff edges is occurring in many places as shown on Plate 2. These smaller-scale slumps will continue to occur but should not affect the integrity of the development as it is currently sited...

Several sea caves were identified within the bluff toes along the property... We did not observe any sea caves trending towards the proposed development. Rather, the caves we observed are within the peninsulas. Therefore, no additional setbacks or recommendations regarding the sea caves are warranted at this time.

Using the worst-case scenario (the active landslide) with a retreat rate of (rounded up to) one foot per year, the bluff northwest of the proposed development (closest as currently sited) could erode back approximately 75 feet over a 75-year period (assumed by the California Coastal Commission to be the economic lifespan of a development). Since the erosion may not be uniform (some areas of erosion would be greater and some less) and considering the possible effects of sea level rise, a safety factor of 1.33 should be used in determining a minimum bluff setback of 100 feet. [emphasis added]

To reduce the contribution of the development to bluff retreat and site stability hazards, the geotechnical report makes certain recommendations with respect to drainage. The report recommends that concentrated surface flows and subsurface seepage should be intercepted and diverted away from the building foundations and the bluff edge. In addition, roof runoff water should be directed away from the structures and dispersed, as much as possible, across the property. Furthermore, drainage across the property should be by sheet-flow directed as much as practical, to the east and south of the buildings. Moreover, surface grades should maintain a recommended two percent gradient away from building foundations. Finally, irrigation near the bluff edge should be kept to an absolute minimum to avoid sloughing and accelerate bluff edge retreat.

### Seismic Shaking

The geotechnical report indicates that future, large magnitude earthquakes originating on the San Andreas, Maacama, or other nearby faults are expected to cause strong ground shaking at the site. The report suggests that extending building foundations into the

bedrock would reduce shaking concerns, stating: “Structures founded in bedrock or in firm, relatively shallow terrace soils over bedrock are more likely to experience short, jolting motions, rather than the prolonged, oscillatory shaking brought on by perpetuation of seismic waves in thickened, unconsolidated sediment deposits.” To reduce the contribution of the development to seismic shaking hazards, the report recommends that further subsurface investigation of the soils and bedrock underlying the site will be necessary to characterize the thickness and engineering properties of the terrace deposits and bedrock. Depending on the structure type, location, and site conditions, additional investigation will be required to provide specific foundation design parameters and, as appropriate, detailed recommendations for site grading, access road construction, and surface and or subsurface drainage.

The Commission’s geologist, Dr. Mark Johnsson, has reviewed the geotechnical report and has determined that the overall conclusion that the project site is geologically suitable for the proposed development and its more specific conclusions regarding bluff retreat, bluff stability, seismic shaking and its specific recommendations are reasonable.

As noted above, the geotechnical report recommends a bluff setback of 100 feet to protect against bluff retreat and bluff stability concerns. As revised for purposes of the Commission’s *de novo* review, the development will be located at least 240 feet from the bluff edge at its nearest point. Therefore, the Commission finds that if the development is designed in accordance with the design recommendations of the applicant’s geologist, the minimum 150-foot setbacks between the bluff edges and the new structures proposed by the applicant are sufficient to protect the new structures from bluff retreat for a 75-year design life consistent with LUP Policy 3.4-7 and CZC Section 20.500.020(B).

To ensure that the proposed project is developed consistent with the proposed 150-foot bluff setback and the design recommendations of the geotechnical report regarding site drainage and foundation designs to reduce the contributions of the development to bluff retreat, bluff instability, and seismic safety hazards, the Commission attaches Special Condition No. 1. This special condition requires that prior to permit issuance, a geotechnical engineer shall approve all final design, construction, foundation, grading and drainage plans as recommended by the geologic report. Moreover, the condition requires that all geologic setback, site grading, foundation, and site drainage recommendations included in the BACE Geotechnical report prepared for the site dated January 10, 2008 (Exhibit No. 16) have been incorporated into final plans. The Commission finds that only as conditioned to ensure that the mitigation measures are properly incorporated into the development can the project be found consistent with LUP Policies 3.4-1 and 3.4-7 and CZC Section 20.500.010(A).

Although the geotechnical report concludes that that “the site is geologically suitable for the proposed development”, the applicant is nonetheless proposing to construct a new inn and ranch complex on a high uplifted marine terrace bluff that is actively eroding. Thus, as the geotechnical report demonstrates, notwithstanding the relative degree of insulation of the proposed project in its proposed location from geologic hazards, the subject site is

nonetheless located in an area of high geologic hazard. New development can only be found consistent with the above-referenced LCP provisions if the risks to life and property from the geologic hazards are minimized and if a protective device will not be needed in the future. As stated above, the geotechnical report demonstrates that if the new development is set back at least 100 feet from the bluff, the development will be safe from erosion and will not require any devices to protect it during its useful economic life. As proposed, the development will be located a minimum of 240 feet from the bluff edge.

Although a comprehensive geotechnical evaluation is a necessary and useful tool that the Commission relies on to determine if proposed development is permissible at all on any given bluff top site, the Commission finds that a geotechnical evaluation alone is not a guarantee that a development will be safe from bluff retreat. It has been the experience of the Commission that in some instances, even when a thorough professional geotechnical analysis of a site has concluded that a proposed development will be safe from bluff retreat hazards, unexpected bluff retreat episodes that threaten development during the life of the structure sometimes still do occur. Examples of this situation include the following:

- The Kavich Home at 176 Roundhouse Creek Road in the Big Lagoon Area north of Trinidad (Humboldt County). In 1989, the Commission approved the construction of a new house on a vacant bluff top parcel (CDP No. 1-87-230). Based on the geotechnical report prepared for the project it was estimated that bluff retreat would jeopardize the approved structure in about 40 to 50 years. In 1999 the owners applied for a coastal development permit to move the approved house from the bluff-top parcel to a landward parcel, because the house was threatened by 40 to 60 feet of unexpected bluff retreat that occurred during a 1998 El Niño storm event. The Executive Director issued a CDP waiver (1-99-066-W) to authorize moving the house in September of 1999.
- The Denver/Canter home at 164/172 Neptune Avenue in Encinitas (San Diego County). In 1984, the Commission approved construction of a new house on a vacant bluff-top lot (CDP No. 6-84-461) based on a positive geotechnical report. In 1993, the owners applied for a seawall to protect the home (CDP Application No. 6-93-135). The Commission denied the request. In 1996 (CDP Application No. 6-96-138) and again in 1997 (CDP Application No. 6-97-90), the owners again applied for a seawall to protect the home. The Commission denied the requests. In 1998, the owners again requested a seawall (CDP Application No. 6-98-39) and submitted a geotechnical report that documented the extent of the threat to the home. The Commission approved the request on November 5, 1998.
- The Arnold project at 3820 Vista Blanca in San Clemente (Orange County). Coastal development permit (CDP No. 5-88-177) for a bluff-top project required protection from bluff-top erosion, despite geotechnical information submitted with the permit application that suggested no such protection would be required if the project conformed to 25-foot bluff top setback. An

emergency coastal development permit (CDP No. 5-93-254-G) later was issued to authorize bluff-top protective works.

The Commission emphasizes that the above examples are not intended to be absolute indicators of bluff erosion on the subject parcel, as coastal geology can vary significantly from location to location. However, these examples do illustrate that site-specific geotechnical evaluations cannot always accurately account for the spatial and temporal variability associated with coastal processes and therefore cannot always absolutely predict bluff erosion rates. Collectively, these examples have helped the Commission form its opinion on the vagaries of geotechnical evaluations with regard to predicting bluff erosion rates.

Although the project has been evaluated and designed in a manner to minimize the risk of geologic hazards, and although the Commission is requiring with Special Condition No. 1 that the applicant adhere to all recommended specifications to minimize potential geologic hazards (including recommendations on geologic setback, site grading, foundation support, and site drainage), some risk of geologic hazard still remains. This risk is reflected in the geotechnical report (Exhibit No. 16), which references various “limitations” of the analysis, such as:

“...Changes in the condition of a site can occur with the passage of time, whether they are due to natural events or to human activities on this, or adjacent sites. In addition, changes in applicable or appropriate codes and standards may occur, whether they result from legislation or the broadening of knowledge...” [p. 10]

This language in the report itself is indicative of the underlying uncertainties of this and any geotechnical evaluation and supports the notion that no guarantees can be made regarding the safety of the proposed development with respect to bluff retreat. Geologic hazards are episodic, and bluffs that may seem stable now may not be so in the future.

Therefore, the Commission finds that the subject property is an inherently hazardous piece of property, that the bluff face is clearly eroding in some areas, and that the proposed new development will be subject to geologic hazard and could potentially someday result in the applicant seeking a bluff or shoreline protective device, inconsistent with LUP Policy 3.4-7 and CZC Sections 20.500.010 and 20.500.020(B). The Commission thus finds that the proposed development could not be approved as being consistent with LUP Policy 3.4-7 and CZC Section 20.500.010 and 20.500.020(B) if projected bluff retreat would affect the proposed development and necessitate construction of a seawall to protect it.

The slope stability analysis prepared by the applicant’s geologist indicates that the risks of geologic hazard are minimized if the new development is set back at least 100 feet or more from the bluff edge. As proposed, the development will be set back a minimum of 240 feet from the bluff edge. However, given that the risk cannot be completely eliminated and the geologic report cannot assure that shoreline protection will never be sought to protect the development, the Commission finds that the proposed development

is consistent with the certified LCP only if it is conditioned to provide that shoreline protection will not be constructed. Thus, the Commission further finds that (1) due to the inherently hazardous nature of this lot, (2) the fact that no geology report can conclude with any degree of certainty that a geologic hazard does not exist, (3) the fact that the approved development and its maintenance may cause future problems that were not anticipated, and (4) because new development shall not engender the need for shoreline protective devices, it is necessary to attach Special Condition No. 2 to ensure that no future shoreline protective device will be constructed.

Special Condition No. 2 prohibits the construction of shoreline protective devices on the parcel, requires that the landowner provide a geotechnical investigation and remove the permitted main inn building, rental cottage and massage room, ranch manager's unit, ranch equipment barn, generator/.pump shed, garage for inn guests, septic system, rerouted driveway, and utility lines if bluff retreat reaches the point where the permitted development is threatened, and requires that the landowners accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion of the site. These requirements are necessary for compliance with CZC Section 20.500.010, which states that new development shall minimize risk to life and property in areas of high geologic hazard, assure structural integrity and stability, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The Commission finds that the proposed development could not be approved as being consistent with CZC Section 20.500.010 if projected bluff retreat would affect the proposed development and necessitate construction of a seawall to protect it.

Special Condition No. 3 requires the landowner to assume the risks of extraordinary erosion and geologic hazards of the property and waive any claim of liability on the part of the Commission. Given that the applicant has chosen to implement the project despite these risks, the applicant must assume the risks. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand hazards. In addition, as discussed below, the requirement of Special Condition No. 4 that a deed restriction be recorded, will ensure that future owners of the property will be informed of the risks, the Commission's immunity from liability, and the indemnity afforded the Commission.

In addition, as noted above, some risks of an unforeseen natural disaster, such as massive slope failure, erosion, etc., could result in destruction or partial destruction of the inn or other development approved by the Commission. Furthermore, the development itself and its maintenance may cause future problems that were not anticipated. When such an event takes place, public funds are often sought for the clean-up of structural debris that winds up on the beach or on an adjacent property. As a precaution, in case such an

unexpected event occurs on the subject property, Special Condition No. 2(B) requires the landowner to accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion on the site, and agree to remove the main inn building, rental cottage and massage room, ranch manager's unit, ranch equipment barn, generator/.pump shed, garage for inn guests, septic system, rerouted driveway, and utility lines and other permitted development should the bluff retreat reach the point where a government agency has ordered that the structures not be occupied.

The Commission finds that Special Condition No. 4 is required to provide notice of potential hazards of the property and help eliminate false expectations on the part of potential buyers of the property, lending institutions, and insurance agencies that the property is safe for an indefinite period of time and for further development indefinitely into the future, or that a protective device could be constructed to protect the approved development. The condition requires that the applicant record and execute a deed restriction approved by the Executive Director against the property that imposes the special conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property.

The Commission further notes that Sections 30610(a) and 30610(b) of the Coastal Act and Chapter 20.532 of the County's Coastal Zoning Code exempt certain additions to existing single family residential structures and additions to structures other than single-family residences from coastal development permit requirements. Pursuant to these exemptions, once a house or other building has been constructed, certain additions and accessory buildings that the applicant might propose in the future are normally exempt from the need for a permit or permit amendment. An exempt development cannot be reviewed by the County or the Commission for conformance with the geologic hazard policies of the LCP to ensure that the development would be sited and designed in a manner that would avoid contributing to geologic hazards.

However, in this case because the development is located in an area designated as highly scenic in the certified Mendocino County LCP, future improvements to any of the structures that are approved pursuant to this authorization will not be exempt from permit requirements pursuant to Sections 30610(a) and 30610(b) of the Coastal Act and Sections 13250 and 13253 of the Commission's regulations. Sections 30610(a) and 30610(b) require the Commission to specify by regulation those classes of development which involve a risk of adverse environmental effects and require that a permit be obtained for such improvements. Pursuant to Section 30610(a) and 30610(b) of the Coastal Act, the Commission adopted Sections 13250 and 13253 of Title 14 of the California Code of regulations, respectively. Sections 13250 and 13253 specifically authorize the Commission to require a permit for additions to existing single-family residences and structures other than single-family residences that could involve a risk of adverse environmental effect.



In addition, Sections 13250(b)(1) and 13253(b)(1) indicate that improvements to a single-family structure and structures other than single-family residences in an area designated as highly scenic in a certified LCP involve a risk of adverse environmental effect and therefore are not exempt. As discussed previously, the approved development is located in an area designated as highly scenic in the certified Mendocino County LCP. Therefore, pursuant to Sections 13250(b)(1) and 13253(b)(1) of the Commission's regulations, Special Condition No. 7 expressly requires all future improvements to the approved development to obtain a coastal development permit so the County and the Commission would have the ability to review all future development on the site to ensure that future improvements will not be sited or designed in a manner that would result in an adverse environmental impact. As discussed above, Special Condition No. 4 also requires that the applicant record and execute a deed restriction approved by the Executive Director against the property that imposes the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property. Special Condition No. 4 will also help assure that future owners are aware of these CDP requirements applicable to all future development.

The Commission thus finds that the proposed development, as conditioned, is consistent with the policies of the certified LCP regarding geologic hazards, including LUP Policies 3.4-1, 3.4-7, 3.4-12 and CZC Sections 20.500.010, 20.015.015, and 20.500.020, since the development as conditioned will not contribute significantly to the creation of any geologic hazards, will not have adverse impacts on the stability of the coastal bluff or on erosion, and will not require the construction of shoreline protective works. Only as conditioned is the proposed development consistent with these LCP policies on geologic hazards.

The Commission thus finds that the proposed development, as conditioned, is consistent with the policies of the LCP regarding geologic hazards since the development as conditioned (1) will not contribute significantly to the creation of any geologic hazards, (2) will not have adverse impacts on the stability of the coastal bluff or on erosion, and (3) will not require the construction of shoreline protective works. Only as conditioned is the proposed development consistent with the LCP.

## **H. Visual Resources**

### LCP Policies and Standards

LUP Policy 3.5-1 states in applicable part:

*The scenic and visual qualities of Mendocino County coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean*

*and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting.[emphasis added]*

LUP Policy 3.5-3 states:

*The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as "highly scenic areas," within which new development shall be subordinate to the character of its setting. Any development permitted in these areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes. ...*

- *The entire coastal zone from the Ten Mile River estuary (including its wooded slopes, wetlands, dunes and ocean vistas visible from Highway 1) north to the Hardy Creek Bridge, except Westport Beach Subdivision which is a recognized subdivision...*

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

LUP Policy 3.5-4 states:

*Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists.*

*Minimize visual impact of development on hillsides by (1) requiring grading or construction to follow the natural contours; (2) resiting or prohibiting new development that requires grading, cutting and filling that would significantly and permanently alter or destroy the appearance of natural landforms; (3) designing structures to fit hillside sites rather than altering landform to accommodate buildings designed for level sites; (4) concentrate development near existing major vegetation, and (5) promote roof angles and exterior finish which blend with hillside. Minimize visual impacts of development on terraces by (1) avoiding development in large open areas if alternative site exists; (2) minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms; (3) provide bluff setbacks for development adjacent to or near public areas along the shoreline; (4) design development to be in scale with rural character of the area. Minimize visual impact of development on ridges by (1) prohibiting development that projects above the ridgeline; (2) if no alternative site is available below the ridgeline, development shall be sited and designed to reduce visual impacts by utilizing existing vegetation, structural orientation, landscaping, and shall be limited to a single story above the natural elevation; (3) prohibiting removal of tree masses which destroy the ridgeline silhouette. Nothing in this policy shall preclude the development of a legally existing parcel.*  
.[emphasis added]

LUP Policy 3.5-5 states in applicable part:

*Providing that trees will not block coastal views from public areas such as roads, parks and trails, tree planting to screen buildings shall be encouraged. In specific areas, identified and adopted on the land use plan maps, trees currently blocking views to and along the coast shall be required to be removed or thinned as a condition of new development in those specific areas. New development shall not allow trees to block ocean views.*

Section 20.504.015, “Highly Scenic Areas”, of the Coastal Zoning Code states in applicable part:

***(C) Development Criteria.***

*(1) Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.*

*(2) In highly scenic areas west of Highway 1 as identified on the Coastal Element land use plan maps, new development shall be limited to eighteen (18) feet above natural grade, unless an increase in height would not*

*affect public views to the ocean or be out of character with surrounding structures.*

*(3) 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.*

*(5) 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.*

*...*

*(7) Minimize visual impacts of development on terraces by the following criteria:*

*(a) Avoiding development, other than farm buildings, in large open areas if alternative site exists;*

*(b) Minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms;*

*(c) Provide bluff setbacks for development adjacent to or near public areas along the shoreline;*

*(d) Design development to be in scale with rural character of the area.*

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

*(11) Power transmission lines shall be located along established corridors where possible and where the corridors are not visually intrusive.*

*(12) Power distribution lines shall be placed underground in designated "highly scenic areas" west of Highway 1 and in new subdivisions. East of*

*Highway 1, power lines shall be placed below ridgelines if technically feasible.*

*(13) Access roads and driveways shall be sited such that they cause minimum visual disturbance and shall not directly access Highway 1 where an alternate configuration is feasible. (Ord. No. 3785 (part), adopted 1991)*

Section 20.504.020 of the Coastal Zoning Code states in applicable part:

*(D) The scenic and visual qualities of Mendocino County Coastal Areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting. (Ord. No. 3785 (part), adopted 1991)*

**Discussion:**

The project site is located within a highly scenic area on a gently-sloping open coastal terrace that extends approximately one-quarter mile from the coastal hills east of Highway One to the ocean bluff edge west of Highway Ones. The terrace and hillsides are predominantly vegetated with low-growing grasses and are largely used for agricultural grazing which contributes to the rural agricultural character of the area. Due to the flat terrain of the terrace, and lack of tall vegetation or varied topography, the development site is highly visible from Highway One in both directions. The lack of trees and the very limited and widely scattered development in the immediate vicinity of the development site gives the landscape a very open appearance. The views to and along the coast from narrow two-lane Highway One in this area are sweeping and vast (See Exhibit Nos. 3 and 22) and the area is designated in the certified Mendocino LCP as a highly scenic area.

There is very little development located on either side of the highway in the immediate vicinity of the development site with the exception of a few scattered residences on the east side of the highway, three houses and a winery scattered along the west side of the highway beginning approximately one mile north of the applicant's ranch, and several homes west of the highway on parcels within a half mile south of the proposed development site. A larger concentration of approximately 30 homes exists along the west side of the highway approximately two miles south of the proposed development south of Abalobadiah Creek. This concentration of houses two miles south of the development site is largely screened from view from Highway One in the vicinity of the

development site by intervening vegetation and a topographical break in the terrace formed by the Abalobadiah Creek drainage.

The proposed development would be visible from an approximately one-mile- long stretch of Highway One, which is the primary public vantage point. Northbound travelers on the highway would first see the development several hundred feet to the south of the site. Southbound travelers would first see the development across the gently-sloping coastal terrace a location along the highway nearly a mile north of the site.

As cited above, the LCP sets forth numerous policies regarding the protection of visual resources, including several policies specific to development in designated highly scenic areas, and several policies specific to development on coastal terraces. LUP Policy 3.5-1 states that the scenic and visual qualities of Mendocino County coastal areas must be considered and protected by requiring that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas. Additionally, LUP Policy 3.5-1 requires that in highly scenic areas, new development must be subordinate to the character of its setting.

LUP Policy 3.5-3 similarly requires that new development located within areas designated highly scenic must be subordinate to the character of its natural setting and requires any development permitted in these areas to 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. Coastal Zoning Code (CZC) Section 20.504.015 reiterates these requirements. LUP Policy 3.5-4 and Zoning Code Section 20.504.015(C)(8) require that the visual impacts of development on terraces be minimized by (a) avoiding development, other than farm buildings, in large open areas if alternative site exists, and (b) minimizing the number of structures and cluster them near existing vegetation, natural landforms or artificial berms.

**1. Protection of Coastal Views, Ensuring Development is Subordinate to the Character of its Setting, and Minimizing Development on Terraces in Highly Scenic Areas.**

In its review of the substantial issue portion of the appeal, the Commission determined that the appeal raised a substantial issue as to whether the development approved by the County was consistent with the LCP requirements cited above that new development be subordinate to the character of its setting, and requiring the protection of views to the ocean and scenic coastal areas. Given (a) the large size of the development (approximately 16,000 square feet) in this sparsely developed area, (b) the appearance of the fenced inn compound, (c) the visual effect of planting a number of trees for screening purposes in the middle of a largely treeless terrace where the planted tree themselves

would appear out of character with the landscape around it, and (d) the visual prominence and glare from cars parked at the site, portable restrooms, signs, lighting, tents, and other temporary structures that would be associated with the unlimited number of weddings and other special events accommodating up to 99 people that the County approval would allow to occur on the grounds of the facility, the Commission determined that the approved project raised a substantial issue of whether the development would be subordinate to the character of its setting. The Commission also determined that the project as approved by the County, raised a substantial issue of conformance with LCP policies requiring the protection of views to the ocean and scenic coastal areas, noting that the development would obstruct some blue water view, not just by the approved 25-foot high structures, but also from the approved fence that would surround the 3.4-acre inn complex and the required landscaping that includes trees to screen the development. The Commission found that given the wide-open landscape of the site that is largely devoid of trees, the 277-foot by 335-foot inn complex would block a significant amount of view.

As discussed above, the project description revised for purposes of the Commission's de novo review of the project involves redeveloping an existing complex of ranch buildings and developing a six unit inn by demolishing five existing ranch buildings and developing a new inn and ranch compound of buildings in the general location of the existing buildings to be demolished. The new inn would include: (1) a main building, including renovation of the former Orca Inn into three rental units of 412 square feet, 249 square feet and 240 square feet and accessory common and service areas of 3,236 square feet; and (2) a cottage with three rental units of 915 square feet, 837 square feet and 526 square feet. Ranch and service operations would include: (1) a ranch manager's unit of 1,737 square feet; (2) an equipment barn of 1,121 square feet; (3) a generator/pump shed of 240 square feet; and (4) a garage of 1,508 square feet. The existing water tank of approximately 189 square feet, its adjacent pump house of approximately 134 square feet and two existing wells and majority of existing driveway are to remain. The project will reuse the existing septic system, improve the existing driveway, and bury existing overhead utilities. The total area of development is approximately 1.56 acres, which includes the building envelope of approximately 1.22 acres and the driveway of approximately .34 acres. The existing farmhouse, which comprises a portion of the proposed main building, is to be renovated, with retention of a minimum of 50 percent of the existing exterior walls and roof.

To address the substantial issue raised in the appeal as to whether the development would be subordinate to the character of its setting, the applicant has proposed various project changes to make the development more subordinate. These changes include: (1) reducing the overall size of the development both in terms of floor area and footprint of the building complex, (2) consolidating the proposed visitor serving units into fewer dispersed buildings, reducing the number of structures containing visitor serving accommodations, and (3) remodeling and expanding the existing ranch house building

rather than demolishing and replacing the ranch house with an entirely new building to retain the historic character of the building as part of the visual character of the area.

To help the Commission assess the visual impacts of the development and the consistency of the proposed development with the visual policies of the certified LCP, the applicant provided for purposes of the Commission's de novo review a visual impact study, attached as Exhibit 22. The study includes a compendium of aerial and landward views of the site comparing existing views with views from the same locations showing superimposed simulations of the proposed development as revised for purposes of the Commission's de novo review. Page 1 of Exhibit 22 shows an overview aerial of the project site that clearly shows the sparse development pattern and expansive open space in the vicinity of the project site, labeled "Newport Ranch." Pages 4 and 5 of Exhibit 22 provide a comparison of the existing compound of buildings at the site with the redeveloped compound. The existing ranch house along the inland side of the compound shown on Page 4 will be retained and remodeled. In the proposed photo, Page 5, the ranch house is located on the seaward side of the compound, as the compound boundary will be shifted approximately 90 feet inland as well as condensed. All other existing buildings will be removed and replaced with the buildings shown on Page 5.

The before and after comparison photos on pages 6-15 of Exhibit 22 illustrate how the proposed development as viewed from Highway One will appear bulkier and taller than the existing compound of buildings. In addition, some additional blue water view available now from Highway One over and through the existing compound will be blocked by the taller structures. However, the comparison photos also demonstrate that taking into account the large expanse of open space owned by the applicant that surrounds the development site, particularly the large open space area that extends north from the development site west of the highway, the individual visual impacts of the proposed development itself are not significant. The large expanse of uninterrupted view counter-balances the blockage of additional view and the greater massing of development that results from the project proposal. The fact that the new development will be located in the same part of the viewscape as the existing compound of buildings will also help retain the character of the existing views, which is comprised of a complex of building in this location set against vast open space area west of the highway. In this context, the development as proposed for the Commission's de novo review does not significantly affect views to and along the ocean and the development is subordinate to the character of its setting.

This determination that the visual impacts would not be significant and the development would be subordinate to the character of its setting is dependent on retaining the agricultural and open space use around the site without significant new structures, particularly the open space west of the highway and north of the development site. If this rural residential-zoned area were developed with new homes and accessory structures and driveways, the cumulative impact of the proposed inn development together with this additional residential development would be significant. The cumulative impacts of



such development would block proportionately more of the ocean views and prominently break up the large expanse of open space, thereby eliminating the current open space's value in counter-balancing the blockage of additional view and the greater massing of development that results from the project proposal. Unless individual and cumulative impacts are examined taking into account the totality of the project area, the Commission could not ensure that the approved development was subordinate to the character of its setting because every development would change the character of its setting. In order to find the proposed development consistent with the applicable LCP policies, the Commission must ensure that there is no proliferation of development surrounding the project site.

The certified LCP policies for development on coastal terraces in highly scenic area require the retention of open space and minimizing development on the terraces to protect views. As noted above, LUP Policies 3.5-1 and 3.5-3 and CZC Section 20.504.015 state that the scenic and visual qualities of Mendocino County coastal areas must be considered and protected by requiring that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas and requires that in highly scenic areas, new development must be subordinate to the character of its setting. In addition, LUP Policy 3.5-4 and Zoning Code Section 20.504.015(C)(8) specifically require that the visual impacts of development on terraces be minimized by (a) avoiding development, other than farm buildings, in large open areas if alternative site exists, and (b) minimizing the number of structures and cluster them near existing vegetation, natural landforms or artificial berms. To ensure that the cumulative visual impacts of the proposed development will be reduced to a level of insignificance, the development will be subordinate to the character of its setting, and impacts of development on the coastal terrace will be minimized by minimizing the number of structures in large open areas, the Commission finds that it is essential to limit development on the large open space area owned by the applicant west of Highway One, both surrounding and north of the development site. Therefore, the Commission attaches Special Condition Nos. 5 and 6. Special Condition No. 5 prohibits all development, as defined in Section 30106 of the Coastal Act, anywhere on APNs 015-038-002, 015-038-03, 015-038-004, 15-038-06 and 015-033-013 west of Highway One except for: (a) agricultural fences, corrals, and other accessory agricultural development not including any residences, barns, or other significant new above-ground structures except for the replacement of a barn that previously existed partially on APN 015-033-013; (b) installation of utilities; (c) removal of non-native, invasive vegetation, planting of native plants; (d) removal of vegetation for compliance with Cal-Fire defensible space requirements; and (e) improvement and use for public access purposes, if approved by the Coastal Commission as an amendment to this coastal development permit. The applicant has proposed such restrictions on the affected APNs in the revised project description. As discussed further below, Special Condition No. 6 ensures that the APN containing the subject ranch and inn compound and the two APNs surrounding the development area are neither divided nor conveyed separately.

The Commission finds that only as conditioned is the development consistent with the visual resource protection policies of the certified LCP regarding development on coastal terraces in highly scenic areas. Without the imposition of Special Conditions 5 and 6, this finding could not be made. As the expansive views to the ocean north of the development site will be protected by the requirements of Special Condition No. 5 that the use of certain lands north of the development site be restricted to agriculture and open space without significant structures that could block views, the development as conditioned will protect views to and along the ocean and a scenic coastal area from the cumulative impacts of the development consistent with the requirements of LUP Policies 3.5-1 and 3.5-3 and CZC Section 20.504.015. Similarly, as Special Condition No. 6 will continue to limit the perceived magnitude of the development by ensuring the development will always be located in a setting of significant open space and minimize the cumulative impacts of the development, the development will be subordinate to the character of its setting consistent with the requirements of LUP Policies 3.5-1 and 3.5-3 and CZC Section 20.504.015 that development in highly scenic areas be subordinate to the character of its setting. Finally, by restricting development of the northerly APNs, the development as conditioned will avoid development in large open areas and minimize the number of structures within a coastal terrace that is designated as highly scenic, the development as approved is consistent with the requirements of LUP Policy 3.5-4 and Zoning Code Section 20.504.015(C)(8).

Special Condition Nos. 5 and 6 would affect development on APNs adjoining APN 015-380-005 where the inn development is proposed. The conditions would preclude most development on APNs 015-038-002, 015-038-03, 015-038-004, 15-038-06 and 015-033-013. These APNs are shown in Exhibits 19 and 23. APN 015-380-003 and 015-380-004 as well as the APN where the proposed development is located, APN 015-380-005, are all contained within a much larger area that extends across the highway that was recognized as one legal parcel by Certificate of Compliance #CC 39-90 granted by the County in April 1995 (See Exhibit 20). Certificate of Compliance #CC 39-90 includes a statement that the COC area containing numerous APNs exists as one legal parcel.

The Commission finds that even if the three APNs are separate legal parcels, which they are not, the evidence supports that at least these three APNs can be aggregated as a single parcel for takings purposes for the following reasons. First, these three APNs are contiguous, owned by the applicant, and are subject to the same local land use designation (Mendocino Rural Residential, MRR). Second, all three APNs were acquired by the applicant at the same time pursuant to the same deed. (See Exhibit 19). Notably, this deed does not describe the three APNs separately, rather the property is described as a whole without reference to separate individual APNs. Third, all three APNs have followed similar conveyance patterns dating back through their chain of title to 1914, including to the applicant in 1986. Fourth, as discussed above, all three parcels are addressed by the same COC legalizing one parcel (See Exhibit 20). This COC addresses twelve separate APNs, all of which follow similar conveyance patterns dating back

through their chain of title to 1914. Fifth, all three APNs appearing as a single legal parcel on the County issued COC along with other APNs owned by the applicant have historically been managed together as a ranch. Finally, as discussed below, APNs 015-380-003, 015-380-004, and 015-380-005 have been treated as part of a single parcel by the applicant, the prior owner, the County, and the Coastal Commission in the submittal and the review of coastal development permit applications since at least 1984.

As noted above, in September 1984, prior to certification of the Mendocino LCP, the Coastal Commission granted Coastal Development Permit No. 1-83-278 for conversion of the existing residence on the site into a four-unit bed and breakfast inn. This residence is the same residence on APN 15-380-05 proposed to be converted to an inn under the current permit application. As the prior to issuance conditions of CDP No. 1-83-278 this permit were never met, the approval expired, and the permit was never issued. The property was owned at the time by James and Josephine Lindsey. The coastal development permit application submitted by the applicants for the project described the parcel as containing 832 acres and included exhibits showing the parcel boundaries (See Exhibit 24). The parcel exhibits indicate the subject parcel included (1) the area of APNs 015-380-003, 015-380-004, and 015-380-005, (2) all of the additional area covered by COC 39-90, and (3) additional lands inland of COC 39-90 approximately as large as the area covered by COC 39-90.

In 1996, four years after certification of the LCP, the County Planning Commission approved Coastal Development Permit No. CDU 9-95, allowing for a 10-unit inn involving the remodeling of the existing large ranch house into two guest units and manager's quarters and the construction of eight new individual guest cottages. The Planning Commission approval was subsequently appealed to the Board of Supervisors and approved by the Board on May 13, 1996. The permit application submitted for the project was submitted by the new owner, Jackson Grube Family, Inc. after the County issued COC 39-90 in 1995. Both the application submitted by Jackson Grube Family Inc. and the County staff report for CDU 9-95 described the parcel as being approximately 400 acres in size and included exhibits showing the parcel boundaries. These parcel boundaries shown in the exhibits coincide with the boundaries of the COC approved by the County.

The Board's approval of CDU 9-95 was later appealed to the Coastal Commission (Appeal No. A-1-MEN-96-028). One of appellants was the applicant, Jackson-Grube Family, Inc., who appealed the County's approval to challenge the County's imposition of a condition requiring the recordation of an offer to dedicate a lateral public access easement along the bluff edge and a vertical public access from Highway One to the lateral access easement. In the appeal, the applicant's representative indicates that the project site involved only 34 acres, but that the entire parcel was approximately 400 acres. The appeal states that "imposition of the access condition on the entire parcel, when less than ten percent (10%) of the entire parcel is actually committed to the development, is unreasonable, burdensome, and unnecessary to effectuate any applicable policies." [emphasis added]. Based on these statement in the applicant's appeal, the

applicant clearly considered APNs 015-380-003, 015-380-004, and 015-380-005 as well as other APNs to be part of a single parcel and treated these APNs as if they were part of just one parcel. On July 10, 1996, the Coastal Commission determined that the appeal raised no substantial issue, allowing the County's approval of CDU 9-95 to stand.

The applicants subsequently sued the County, challenging the condition requiring coastal access on the grounds that a nexus did not exist between the impacts of the project on public access and the exaction of property for public access purposes. Eventually a settlement of the law suit was reached between the applicants and the County that provide for the County to drop the condition requiring the offer of dedication of public access in exchange for the applicants (1) conveying fee title to the County of a one-acre portion of the approximately 400-acre subject property, (2) paying the County \$25,000 toward the development of coastal access in the area, and (3) dedicating an easement for public access through property along a 15-foot strip on the west side of the Highway One right-of-way. On August 3, 2000, the County then approved Coastal Development Use Permit Modification #CDUM 9-95/2000 as a means of implementing the terms of the settlement agreement. The application submitted by the applicant indicates that the subject property was approximately 400 acres. Exhibits in the County staff report for the project show the parcel boundary again coinciding with the boundaries of the County approved COC 39-90, which as discussed above, includes APNs 015-380-003, 015-380-004, and 015-380-005 as well as substantial additional property.

On June 21, 2007, the Mendocino County Planning Commission conditionally approved the coastal development permit for the project that is the subject of the current appeal (CDU #6-2006) (Exhibit No. 10). The exhibits in the application and the County staff report do not clearly distinguish the subject parcel from other adjoining property owned by the applicant (See pages PC-17 and PC-18 of Exhibit No. 14 of this Coastal Commission staff report). However, the County staff report consistently refers to the parcel where the development was approved as a 400-acre parcel, the same size as the approved COC and the same size used to describe the parcel by the County in CDU 9-95 and CDUM 9-95/2000 and by the Commission in Appeal No. A-1-MEN-96-28. Thus, APNs 015-380-003, 015-380-004, and 015-380-005 have been treated as part of a single parcel by the applicant, the prior owner, the County, and the Coastal Commission in the submittal of applications for and the review of coastal development permit applications since at least 1984.

Therefore, even if the three APNs are separate legal parcels which they are not, the evidence establishes that the Commission should treat APNs 015-380-003, 015-380-004, and 015-380-005 as a single parcel. Because APN 015-380-005 is currently developed and as approved by Coastal Development Permit A-1-MEN-07-028 will be redeveloped into a commercial inn and ranch complex, the combined parcel of APN 015-380-005, 015-380-003 and 0-15-380-004 has an economic use and restricting further development on the two northern APNs does not constitute a taking. The Commission also notes that

the APNs restricted by Special Conditions 5 and 6 would increase the value of the coastal inn and ranch by preserving both privacy and views.

To ensure that APNs 015-380-003, 015-380-004, and 015-380-005 are always considered a single economic unit for purposes of determining whether a taking has occurred, as well as ensure that the affected property is never placed into divided ownership with a future owner separately owning the agricultural and open space areas over which development has been restricted, the Commission attaches Special Condition No. 6. Special Condition No. 6 requires that the applicant to acknowledge and agree that APNs 015-380-003, 015-380-004, and 015-380-005 will be treated as part of a single legal parcel of land for all purposes. Special Condition No. 6 also requires that APNs 015-380-003, 015-038-004, and 015-380-005 never be divided or sold separately. As such, Special Condition No. 6 will ensure that (1) all portions of the three APNs, APNs 015-380-003, 015-380-004, and 015-380-005 will be considered and treated as part of a single legal parcel of land for all purposes, including but not limited to sale, conveyance, development, taxation or encumbrance, and (2) the single legal parcel will not be divided or otherwise alienated. The condition requires the applicant to execute and record a deed restriction, free and clear of prior liens, and including a legal description and graphic depiction, reflecting the restrictions set forth above. The imposition of this condition by the Commission is necessary to ensure both that the restricted property is never conveyed separately and that the areas restricted to agriculture and open space are never the subject of a takings challenge by the current or future owner.

## **I. Protection of Environmentally Sensitive Habitat**

### LCP Policies and Standards:

Environmentally Sensitive Habitat Areas (ESHA) are defined on page 38 of the Mendocino County LUP as:

*Any areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

Coastal Zoning Code Section 20.496.010 “Environmentally Sensitive Habitat and other Resource Areas—Purpose” states (emphasis added):

*...Environmentally Sensitive Habitat Areas (ESHA's) include: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation which contain species of rare or endangered plants and habitats of rare and endangered plants and animals.*

LUP Policy 3.1-7 states: (emphasis added)

*A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area and the adjacent upland transitional habitat function of the buffer from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the environmentally sensitive habitat areas and shall not be less than 50 feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent environmentally sensitive habitat area and must comply at a minimum with each of the following standards:*

- 1. It shall be sited and designed to prevent impacts which would significantly degrade such areas;*
- 2. It shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity; and*
- 3. Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.*

Coastal Zoning Code Section 20.496.020 “Environmentally Sensitive Habitat and other Resource Areas—Development Criteria” states (emphasis added):

*(A) **Buffer Areas.** A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from degradation resulting from future developments and shall be compatible with the continuance of such habitat areas.*

*(1) **Width.** The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred (100) feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent Environmentally Sensitive Habitat Area.*

Standards for determining the appropriate width of the buffer area are as follows:

**(a) Biological Significance of Adjacent Lands.** *Lands adjacent to a wetland, stream, or riparian habitat area vary in the degree to which they are functionally related to these habitat areas. Functional relationships may exist if species associated with such areas spend a significant portion of their life cycle on adjacent lands. The degree of significance depends upon the habitat requirements of the species in the habitat area (e.g., nesting, feeding, breeding, or resting).*

*Where a significant functional relationship exists, the land supporting this relationship shall also be considered to be part of the ESHA, and the buffer zone shall be measured from the edge of these lands and be sufficiently wide to protect these functional relationships. Where no significant functional relationships exist, the buffer shall be measured from the edge of the wetland, stream, or riparian habitat that is adjacent to the proposed development.*

**(b) Sensitivity of Species to Disturbance.** *The width of the buffer zone shall be based, in part, on the distance necessary to ensure that the most sensitive species of plants and animals will not be disturbed significantly by the permitted development. Such a determination shall be based on the following after consultation with the Department of Fish and Game or others with similar expertise:*

*(i) Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species;*

*(ii) An assessment of the short-term and long-term adaptability of various species to human disturbance;*

*(iii) An assessment of the impact and activity levels of the proposed development on the resource.*

**(c) Susceptibility of Parcel to Erosion.** *The width of the buffer zone shall be based, in part, on an assessment of the slope, soils, impervious surface coverage, runoff characteristics, and vegetative cover of the parcel and to what degree the development will change the potential for erosion. A sufficient buffer to allow for the interception of any additional material eroded as a result of the proposed development should be provided.*

**(d) Use of Natural Topographic Features to Locate Development.** *Hills and bluffs adjacent to ESHA's shall be used, where feasible, to buffer habitat areas. Where otherwise permitted, development should be located on the sides of hills away from ESHA's. Similarly, bluff faces should not be developed, but shall be included in the buffer zone.*

- (e) Use of Existing Cultural Features to Locate Buffer Zones.* Cultural features (e.g., roads and dikes) shall be used, where feasible, to buffer habitat areas. Where feasible, development shall be located on the side of roads, dikes, irrigation canals, flood control channels, etc., away from the ESHA.
- (f) Lot Configuration and Location of Existing Development.* Where an existing subdivision or other development is largely built-out and the buildings are a uniform distance from a habitat area, at least that same distance shall be required as a buffer zone for any new development permitted. However, if that distance is less than one hundred (100) feet, additional mitigation measures (e.g., planting of native vegetation) shall be provided to ensure additional protection. Where development is proposed in an area that is largely undeveloped, the widest and most protective buffer zone feasible shall be required.
- (g) Type and Scale of Development Proposed.* The type and scale of the proposed development will, to a large degree, determine the size of the buffer zone necessary to protect the ESHA. Such evaluations shall be made on a case-by-case basis depending upon the resources involved, the degree to which adjacent lands are already developed, and the type of development already existing in the area...
- (2) Configuration.** The buffer area shall be measured from the nearest outside edge of the ESHA (e.g., for a wetland from the landward edge of the wetland; for a stream from the landward edge of riparian vegetation or the top of the bluff).
- (3) Land Division.** New subdivisions or boundary line adjustments shall not be allowed which will create or provide for new parcels entirely within a buffer area.
- (4) Permitted Development.** Development permitted within the buffer area shall comply at a minimum with the following standards:
- (a) Development shall be compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity.*
- (b) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.*
- (c) Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least impact on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity*



*of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.*

*(d) Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity.*

*(e) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.*

*(f) Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms.*

*(g) Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area.*

*(h) Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment.*

*(i) Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.*

*(j) Priority for drainage conveyance from a development site shall be through the natural stream environment zones, if any exist, in the development area. In the drainage system design report or development plan, the capacity of natural stream environment zones to convey runoff from the completed development shall be evaluated and integrated with the drainage system wherever possible. No structure shall interrupt the flow of groundwater within a buffer strip. Foundations shall be situated with the long axis of interrupted impermeable vertical surfaces oriented parallel to the groundwater flow direction. Piers may be allowed on a case by case basis.*

*(k) If findings are made that the effects of developing an ESHA buffer area may result in significant adverse impacts to the ESHA, mitigation measures will be required as a condition of project approval. Noise barriers, buffer areas in permanent open space, land dedication for erosion control, and wetland restoration, including off-site drainage improvements, may be required as*

*mitigation measures for developments adjacent to environmentally sensitive habitats. (Ord. No. 3785 (part), adopted 1991)*

## **Discussion**

According to the biological reports (see Exhibit No. 17) prepared for and submitted by the applicant for the de novo portion of the Commission's review the subject parcel and the applicant's adjoining Parcel 015-380-06 contains four basic vegetation types, including California annual grassland, introduced perennial grassland, Northern coastal bluff scrub, and several mesic areas including an ephemeral stream channel and several freshwater marsh areas.

Botanical surveys conducted in 1991 and 1992 and relied upon by the County in its approval of the project indicated that the only environmentally sensitive habitat (ESHA) on the property consisted of a rare plant population of Mendocino paintbrush located along the bluffs. The updated biological reports submitted for the Commission's de novo review of the project indicates that the subject property contains five types of ESHAs, including habitats for two special status plant species, one special status plant community, four wetlands, a riparian corridor, ephemeral stream, and special status migratory bats and birds that could potentially nest on the subject property.

Mendocino coast Indian paintbrush (*castilleja mendocinensis*) has been identified in the coastal bluff scrub along the western and northern portion of the prominent northwest trending peninsula that is mostly part of APN 015-380-06 (see Exhibit No. 17) and also on APN 015-380-02. The hemiparasitic perennial herb has no federal or state listing status as threatened or endangered but is listed as a class 1B species in the Department of Fish & Game's California Natural Diversity Database.

Short-leaved evax (*Hesperavax sparsiflora* var. *brevifolia*) has been identified in the coastal bluff scrub near the western end of the peninsula. In February of 2008, the applicant's biologists observed approximately 250 individual plants of the species in two separate locations at the western end of the peninsula. The annual herb also has no federal or state listing status as threatened or endangered but is listed as a class 1B species in the California Natural Diversity Database.

Northern Coastal Bluff Scrub has been identified along portions of the bluff face and along the bluff top within ten feet of the bluff edge. The woody and herbaceous plant community is listed as a class G2, S2.2 plant community in the California Natural Diversity Database.

Development activities that occur between February and August could affect nesting special status bird species. Development activities performed in months other than September and October that occur in and around existing structures could potentially affect bat roosting habitat.

The biological report also identified an ephemeral stream and four freshwater wetland areas on the subject property, including a northwest wetland, a northeast wetland, and two southern wetlands (See Exhibit No. 4). The northwest wetland is approximately 0.67-acres in size and extends from just inside the northwest corner of the existing fenced compound to an area to the northwest close to the bluff. The northeast wetland extends east west across a portion of the property approximately 125 feet north of the proposed new driveway connection to Highway 1. The northerly extent of the wetland has not been mapped as only the southern edge borders the project site. The ephemeral stream identified by the botanical report also extends east west across the property more than 100 feet south of the development site from a culvert under Highway One just south of the current connection of the driveway to the highway to a cove along the bluff edge. The stream ranges in width from bank to bank from 3-20 feet and in depth from the bottom of the channel to the top of the bank from 2-10 feet. The channel supports some wetland vegetation, but the stream is not surrounded by riparian vegetation. The two southern wetlands connect to this stream south of the existing driveway and east of the development site.

The supplemental biological report submitted on June 15, 2000 also identifies a riparian corridor along the northern boundary of APN 015-380-02 as well as rare plant ESHA along the bluff edges (See Exhibit 17).

As cited above, Coastal Zoning Code Section 20.496.010 states that environmentally sensitive habitat areas (ESHA) include habitats of rare and endangered plants and animals. Therefore, as ESHA, the rare and endangered plant habitat on the subject property is subject to the ESHA buffer requirements of LUP Policy 3.1-7 and Coastal Zoning Code Section 20.496.020. According to these policies, a buffer area of a minimum of 100 feet shall be established adjacent to all ESHAs, unless an applicant can demonstrate, after consultations and agreement with the California Department of Fish and Game (DFG) that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The policies state that in that event, the buffer shall not be less than 50 feet in width. Coastal Zoning Code Section 20.496.020 states that the standards for determining the appropriate width of the buffer area are the seven standards of subsections (a) through (g) of subsection (A)(1) of that section, including (a) the biological significance of adjacent lands, (b) sensitivity of species to disturbance, (c) susceptibility of parcel to erosion, (d) use of natural topographic features to locate development, (e) use of existing cultural features to locate buffer zones, (f) lot configuration and location of existing development, and (g) the type and scale of the development proposed.

As proposed, the development will be a minimum of 50 feet from the nearest ESHAs and in most cases 100 feet away. A minimum 50-foot buffer would be established between the driveway improvements and the southeast wetland. In addition, a portion of the main inn building is located less than 100 feet away from the northwest wetland. Furthermore, the proposed vertical public access easement along the northern boundary of APN 015-

380-02 is located where a minimum 50-foot buffer could be established between any future trail improvements and the riparian and rare plant ESHA. All other streams, wetlands, and special status plant community ESHAs would be protected by a 100-foot buffer.

With regard to the wetland ESHA and their surrounding landscapes where the reduced buffers are proposed, the biological study states as follows:

The current value of the buffer area to be impacted (between 50 and 100 feet from the wetland edges) is minimal due to the current state of the ESHAs and the surrounding landscape which has been subject to a land use history which is long and varied and has resulted in disturbed upland soils, weedy vegetation and soil erosion impacts from decades of grazing. Nevertheless, an increase in activity, soil disturbance and erosion, and landscape maintenance changes could have direct impacts on nearby ESHAs.

The applicant proposes to include various mitigation measures to reduce these impacts to a less than significant level. To avoid impacts from grading and demolition activities such as the release of sediment and debris, accidental placement of filling or grading, trampling and compaction, the applicant proposes to (1) limit ground disturbance to only the summer to avoid erosion and sedimentation; (2) install flagging and construction fencing; (3) storing materials in an appropriate manner, and (4) educating construction workers about the sensitive resources. To avoid disturbance to sensitive bird and bat species, the applicant proposes to perform pre-construction surveys and establish temporary buffers around any nests until the young have fledged or left the nest. To minimize intrusion by inn guests and workers into the wetland within 100 feet of development and resulting disturbance of the vegetation, the applicant proposes to (1) install permanent exclusionary fencing along the upland edge of the buffer, (2) discourage disturbance of existing vegetation and require revegetation of areas that are disturbed. To avoid water quality impacts, the applicant proposes to (1) minimize grading, (2) construct the driveway extension only with permeable pavers, and (3) limit vehicles to existing roads.

The applicant's biologist prepared an analysis that substantiates that a 50-foot buffer is adequate to protect the ESHA from the impacts of the proposed development based on the seven standards contained within Coastal Zoning Code Section 20.496.020. The primary factors that support allowing a reduced buffer include: (1) the lands adjacent to the wetlands with a reduced buffer do not appear to be functionally related to the wetlands as they are heavily impacted by cattle and past land use activities, (2) the land is not particularly susceptible to erosion given that the site is on a flat coastal terrace with very little impervious surfaces, and (3) the development will only have a small encroachment into areas that would provide a 100-foot buffer.

The biological report demonstrates that the portion of the wetland ESHA where a buffer of less than 100 feet would be provided does not depend on the functional relationships of

adjacent lands that a larger buffer area is usually intended to protect such as breeding, nesting, feeding, or resting activities. Therefore, in this case, there is less need for a wide buffer to help sustain the ESHA. In addition, the fact that the development site is relatively flat indicates that erosion and sedimentation from construction, and from the completed development, are less likely to affect the ESHA than erosion and sedimentation would if the building site had a steeper slope with greater potential for erosion, particularly with implementation of the additional erosion and sedimentation controls required by Special Condition No. 11 described below. Additionally, the biological report establishes that there are measures that are more important and more effective for protecting the small portion of wetland ESHA from disturbance than wide spatial buffers including the use of exclusionary fencing during construction, best management practices for erosion control, and preserving the habitat from future development, restricting landscaping. The biological report demonstrates that with these mitigation measures, a 50-100 foot buffer would be adequate to protect the affected portion of the wetlands ESHA.

Therefore, the Commission finds that primarily based on the buffer width criteria of subsections (a) and (c) of Coastal Zoning Code Section 20.496.020 regarding the biological significance of adjacent lands and the susceptibility of the parcel to erosion, the proposed 50-foot buffer width in conjunction with implementation of Special Condition No. 10, requiring the submittal of an erosion and runoff control plan incorporating certain erosion and sedimentation controls, and Special Condition No. 14, requiring implementation of the protective measures recommended by the applicant's biologist is adequate to protect the portions of the environmentally sensitive wetland habitat that would have less than a 100-foot buffer at the project site from possible significant disruption caused by the proposed development.

Furthermore, the ESHA could be adversely affected by the development if non-native, invasive plant species were introduced from landscaping at the site. Introduced invasive exotic plant species could spread into the ESHA and displace native riparian and wetland vegetation, thereby disrupting the value and function of the adjacent ESHA. To ensure that the ESHA is not adversely impacted by any future landscaping of the site, Special Condition Nos 9 and 10 requires that only native and/or non-invasive plant species of native stock be planted at the site.

To help in the establishment of vegetation, rodenticides are sometimes used to prevent rats, moles, voles, and other similar small animals from eating the newly planted saplings. Certain rodenticides, particularly those utilizing blood anticoagulant compounds such as brodifacoum, bromadiolone and diphacinone, have been found to poses significant primary and secondary risks to non-target wildlife present in urban and urban/ wildland areas. As the target species are preyed upon by raptors or other environmentally sensitive predators and scavengers, these compounds can bio-accumulate in the animals that have consumed the rodents to concentrations toxic to the ingesting non-target species. Therefore, to minimize this potential significant adverse

cumulative impact to environmentally sensitive wildlife species, Special Condition No. 10 prohibits the use of specified rodenticides on the property governed by CDP No. A-1-MEN-07-028.

With the mitigation measures discussed above, which are designed to minimize any potential impacts to the adjacent environmentally sensitive habitat area, the project as conditioned will not significantly degrade adjacent ESHA and will be compatible with the continuance of the environmentally sensitive habitat areas.

Therefore, the Commission finds that the proposed development, as conditioned, is consistent with the provisions of LUP Policies 3.1-7 and Coastal Zoning Ordinance Section 20.496.020 concerning establishment of buffers between development and existing ESHA because (1) the proposed project would establish an ESHA buffer width based on the standards set forth in Coastal Zoning Ordinance Section 20.496.020(A)(1)(a) through (g) for reducing the minimum buffer below 100 feet, and (3) all impacts of the development on the adjacent ESHA would be mitigated to levels of less than significance.

A submittal received by the Commission on September 30, 2009 from Jared G. Carter on behalf of Deborah Cahn, Trustee of the Margery S. Cahn Living Trust, and Judith Whiting, Trustee of the Whiting Family Revocable Trust contends that the evaluation of impacts to ESHA is inadequate, supported by a statement from Deborah Stern Cahn, an appellant, and a letter from Roger D. Harris, Certified Wildlife Biologist. Ms. Cahn states that she has observed several species of special concern on or near the project site, including Behren's silverspot butterflies, brown pelicans, an osprey, and a western burrowing owl and suggests that the protection of these species are not addressed in the biological evaluation and in the staff report. Mr. Harris raises concerns that Behren's silverspot butterfly and lotis blue butterfly may be present at the project site and raises numerous other technical concerns with the manner in which the biological evaluation was conducted.

The project as conditioned provides for protection of the bird species of special concern observed by the commenter. Special Condition No. 14 requires that pre-construction breeding bird surveys be conducted by a qualified biologist for any development proposed during the nesting season prior to the commencement of development. If a nest is discovered, the condition requires that a temporary buffer from construction activities of at least 100 feet be established and no development may occur within the buffer area until a qualified biologist has determined that all young have fledged, or left the nest. Therefore, to the extent sensitive bird species such as brown pelicans, ospreys, and owls breed on the site, the species nesting activities will be protected.

With regard to the possible presence of endangered butterfly species, the applicant's biological consultant, Matt Richmond, responds to this concern in a letter dated October 20, 2009 attached as Exhibit No. 33. Mr. Richmond notes that based on communications with the staff of the U.S. Fish & Wildlife Service, the subject property is outside the

range of both the Behren's silverspot butterfly and the lotis blue butterfly. In addition, Mr. Richmond notes that the larval food plant for these species has not been observed during rare plant surveys.

Mr. Richmond's letter of October 20, 2009 (Exhibit No. 33) also responds point by point to the other concerns raised by Mr. Harris. The Commission incorporates the responses of Mr. Richmond's letter of October 20, 2009 into these findings, including his responses to the concerns raised by Mr. Harris.

**J. Archaeological Resources**

LCP Policies and Standards:

LUP Policy 3.5-10 states as follows:

*The County shall review all development permits to ensure that proposed projects will not adversely affect existing archaeological and paleontological resources. Prior to approval of any proposed development within an area of known or probable archaeological or paleontological significance, a limited field survey by a qualified professional shall be required at the applicant's expense to determine the extent of the resource. Results of the field survey shall be transmitted to the State Historical Preservation Officer and Cultural Resource Facility at Sonoma State University for comment. The County shall review all coastal development permits to ensure that proposed projects incorporate reasonable mitigation measures so the development will not adversely affect existing archaeological/paleontological resources. Development in these areas are subject to any additional requirements of the Mendocino County Archaeological Ordinance.*[emphasis added]

Coastal Zoning Code Section 20.532.095(A)(5) states in applicable part:

Section 20.532.095 Required Findings for all Coastal Development Permits.

*(A) The granting or modification of any coastal development permit by the approving authority shall be supported by findings which establish that:*

- (1) The proposed development is in conformity with the certified local coastal program; and*
- (2) The proposed development will be provided with adequate utilities, access roads, drainage and other necessary facilities; and*

*(3) The proposed development is consistent with the purpose and intent of the zoning district applicable to the property, as well as the provisions of this Division and preserves the integrity of the zoning district; and*

*(4) The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.*

*(5) The proposed development will not have any adverse impacts on any known archaeological or paleontological resource. [emphasis added]*

*(6) Other public services, including but not limited to, solid waste and public roadway capacity have been considered and are adequate to serve the proposed development.*

*(B) If the proposed development is located between the first public road and the sea or the shoreline of any body of water, the following additional finding must be made:*

*(1) The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and the Coastal Element of the General Plan. (Ord. No. 3785 (part), adopted 1991)*

Discussion:

LUP Policy 3.5-10 requires the County to review all development permits to ensure that proposed projects will not adversely affect existing archaeological and paleontological resources. LUP Policy 3.5-10 further requires that (1) prior to approval of any proposed development within an area of known or probable archaeological or paleontological significance, a field survey must be prepared by a qualified professional to determine the extent of the resource, (2) results of the field survey be transmitted to the State Historical Preservation Officer and Cultural Resource Facility at Sonoma State University for comment, and (3) proposed projects incorporate reasonable mitigation measures so the development will not adversely affect existing archaeological/paleontological resources. Coastal Zoning Code Section 20.532.095 sets forth findings required for all coastal development permits and includes, in part, that the proposed development will not have any adverse impacts on any known archaeological or paleontological resource.

An archaeological survey of the site was prepared in 1990. No archaeological resources were discovered. However, the project site is along a part of the coast where archaeological resources have been discovered in the past. To ensure protection of any archaeological resources that may be discovered at the site during construction of the proposed project, the Commission attaches Special Condition No. 8. This condition requires that if an area of archaeological resources or human remains is discovered during the course of the project, all construction must cease, and a qualified cultural resource specialist must analyze the significance of the find. To recommence construction



following discovery of cultural deposits, the applicant is required to submit a supplementary archaeological plan for the review and approval of the Executive Director to determine whether the changes are *de minimis* in nature and scope, or whether an amendment to this permit is required.

The appellants have raised concerns that the 1990 archaeological survey submitted by the applicant for the project is flawed and inadequate to inform a decision about the potential impacts of the approved development on historic resources, particularly potential historic buildings and structures. The 1990 archaeological survey noted that the remains of the Newport Chute, a facility for loading logs onto seagoing vessels used during the late 1800s and early 1900s, were discovered nearby the project site. In addition, the survey noted that the historic Town of Newport may have been located within the project boundaries, although no evidence was noted.

The Newport Chute and the historic Town of Newport may be considered historic resources, but are not of an age or nature to be considered archaeological resources. The appellants and Mr. Thad Van Buren in letters submitted to the Commission contend that consideration of adverse impacts to historical resources is required by LUP Policy 3.5-10 and the LCP. Mr. Van Buren notes that the term historical resource refers to any object, building, structure, site, area place, record, or manuscript which is historically or archaeologically significant. Although archaeological resources may be historic resources under this definition, the reverse is not true. Not all historic resources are old enough or of a nature to be considered “archaeological resources.” Contrary to the commentator’s assertions, LUP Policy 3.5-10 does not refer to the protection of historic buildings or structures, rather to archaeological and paleontological resources. Thus, only historic resources that are archaeological resources are addressed by the policy. The Commission notes that the LCP Archaeological resource policies are similar to Section 30244 of the Coastal Act which specifically refers to the protection of archaeological and paleontological resources, not historic resources. The Mendocino County LCP includes historic preservation policies that pertain specifically to the Town of Mendocino, but the LCP is silent with regard to historic structures in the remainder of the County outside of the Town. As the standard of review for the project is consistency with the policies of the certified LCP and the public access policies of the Coastal Act, the Commission does not have a basis to require mitigation for potential impacts to historic resources that do not qualify as archaeological or paleontological resources.

No evidence of archaeological or paleontological resources has been found at the site. However, as conditioned, the project will require monitoring for archaeological resources during project construction and protective measures if such resources are discovered. Similar conditions are commonly applied by the Commission and the County to development projects where concerns about impacts to archaeological resources have been raised, yet no archaeological resources are presently known to exist at the site. Therefore, the Commission finds that the proposed project, as conditioned, is consistent

with LUP Policy 3.5-10 and Coastal Zoning Code Section 20.532.095 as the development will not adversely impact archaeological and paleontological resources.

**K. California Environmental Quality Act**

Mendocino County, as the lead agency, adopted a Negative Declaration for the Project on June 21, 2007.

Section 13096 of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirement 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 the proposed development may have on the environment.

The Commission incorporates its findings on conformity with Coastal Act policies at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed herein, in the findings addressing the consistency of the proposed project with the certified Mendocino County LCP, the proposed project has been conditioned to be found consistent with the certified Mendocino County LCP. All feasible mitigation measures, which will minimize all significant adverse environmental impacts have been required. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

**EXHIBITS:**

1. Regional Location Map
2. Parcel Map
3. Photos of Site
4. ESHA Locations
5. Revised Project Description
6. Current Project Plans
7. Changes to Proposed Project

8. Project Comparison Information
9. County Approved Project Plans
10. Appeal No. 1 (Warner & Bailey)
11. Appeal No. 2 (Commissioners Kruer and Wan)
12. Appeal No. 3 (Sierra Club and Friends of Ten Mile River)
13. Appeal No. 4 (Margery S. Cahn Trust & Whiting Family)
14. Notice of Final Local Action
15. Geologic Report
16. Hydrological Study
17. Biological Studies
18. Traffic Study
19. Property Deed
20. Certificate of Compliance
21. Boundaries of Applicant's COCs
22. Visual Impact Study
23. Open Space Deed Restriction Area Pursuant to Special Condition No. 5
24. Proposed New Public Access OTDs
25. Correspondence
26. Ex Parte Communication Disclosures

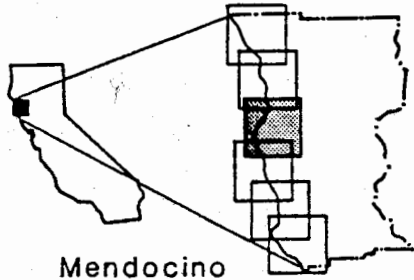
**APPENDIX A**

STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgement. 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 amount 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 of 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.

A B C D E F G H I J K L M N O

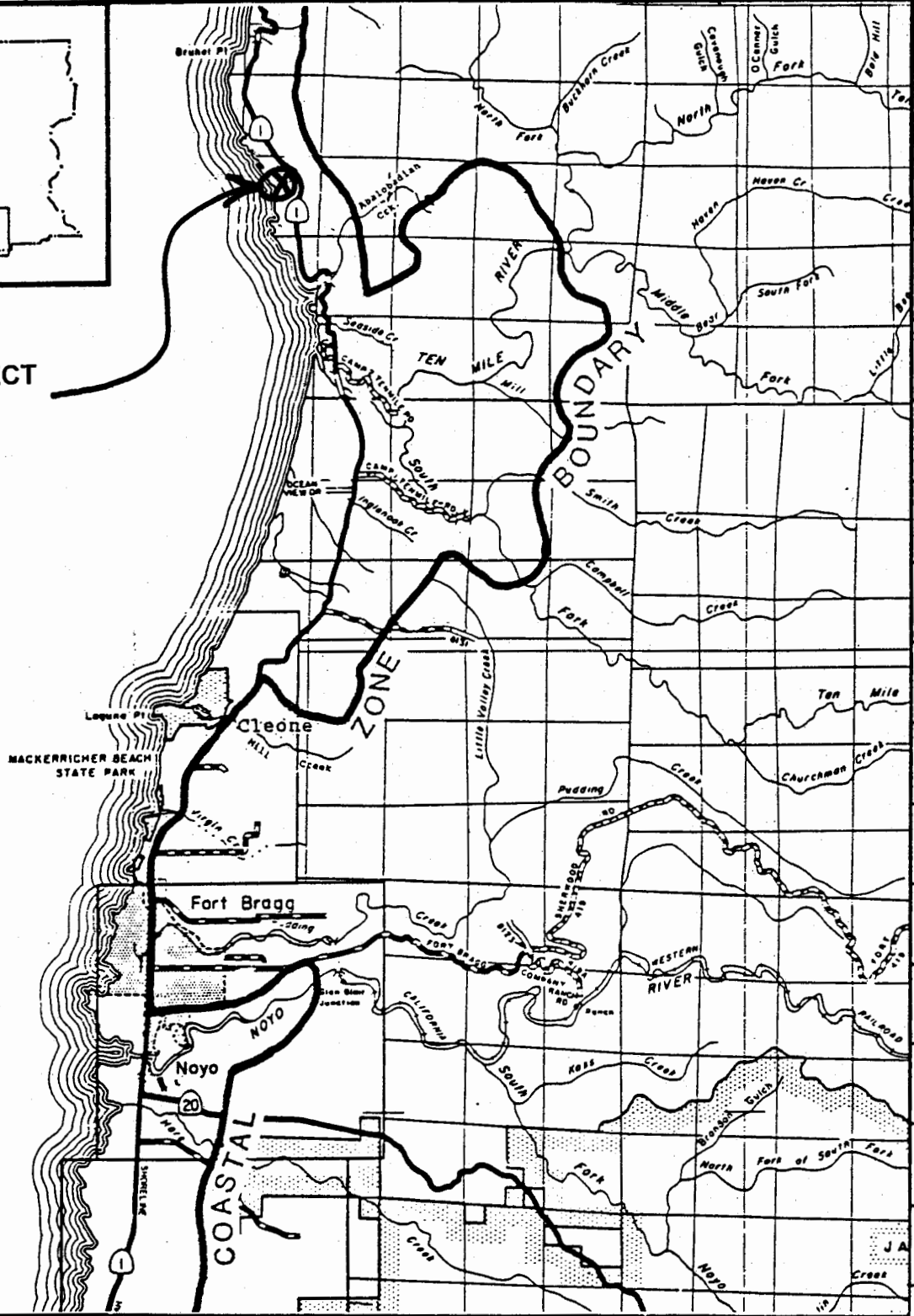
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Mendocino

PROJECT SITE

PACIFIC



LOCATION MAP



EXHIBIT NO. 1  
APPEAL NO.  
A-1-MEN-07-028  
JACKSON-GRUBE FAMILY, INC.  
REGIONAL LOCATION



County of Mendocino

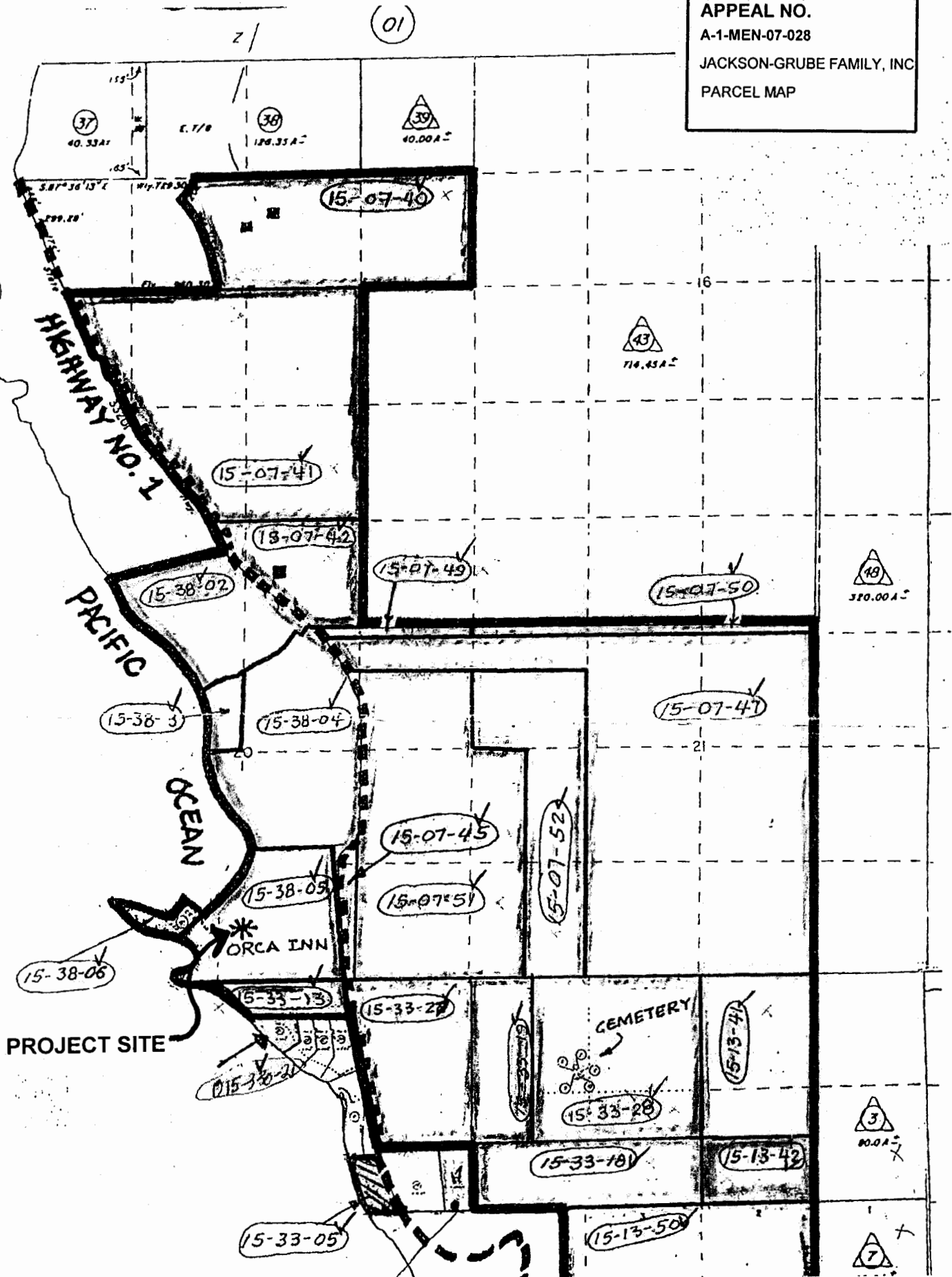
EXHIBIT NO. 2

APPEAL NO.

A-1-MEN-07-028

JACKSON-GRUBE FAMILY, INC

PARCEL MAP





NEWPORT RANCH

EXHIBIT NO. 3

APPEAL NO.

A-1-MEN-07-028

JACKSON-GRUBE FAMILY

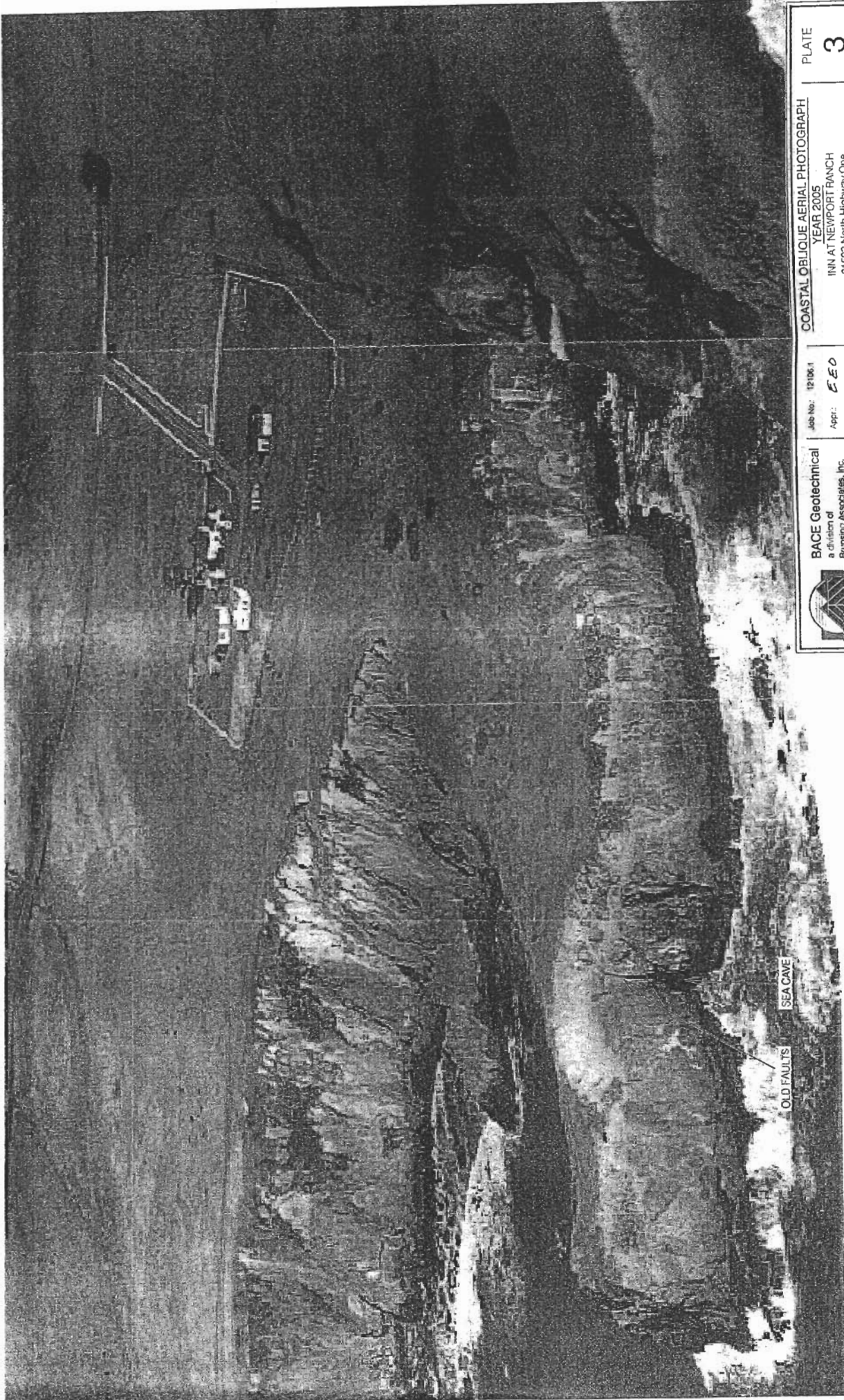
PHOTOS OF SITE (1 of 8)

PROJECT SITE



298





SEA CAVE  
OLD FAULTS

**BACE Geotechnical**  
a division of  
Bursing Associates, Inc.  
(707) 528-6108

Job No.: 12106.1  
Appr: *EEO*  
Date: 1/23/03

**COASTAL OBLIQUE AERIAL PHOTOGRAPH**  
YEAR 2005  
INN AT NEWPORT RANCH  
31502 North Highway One  
Westport, Mendocino County, California

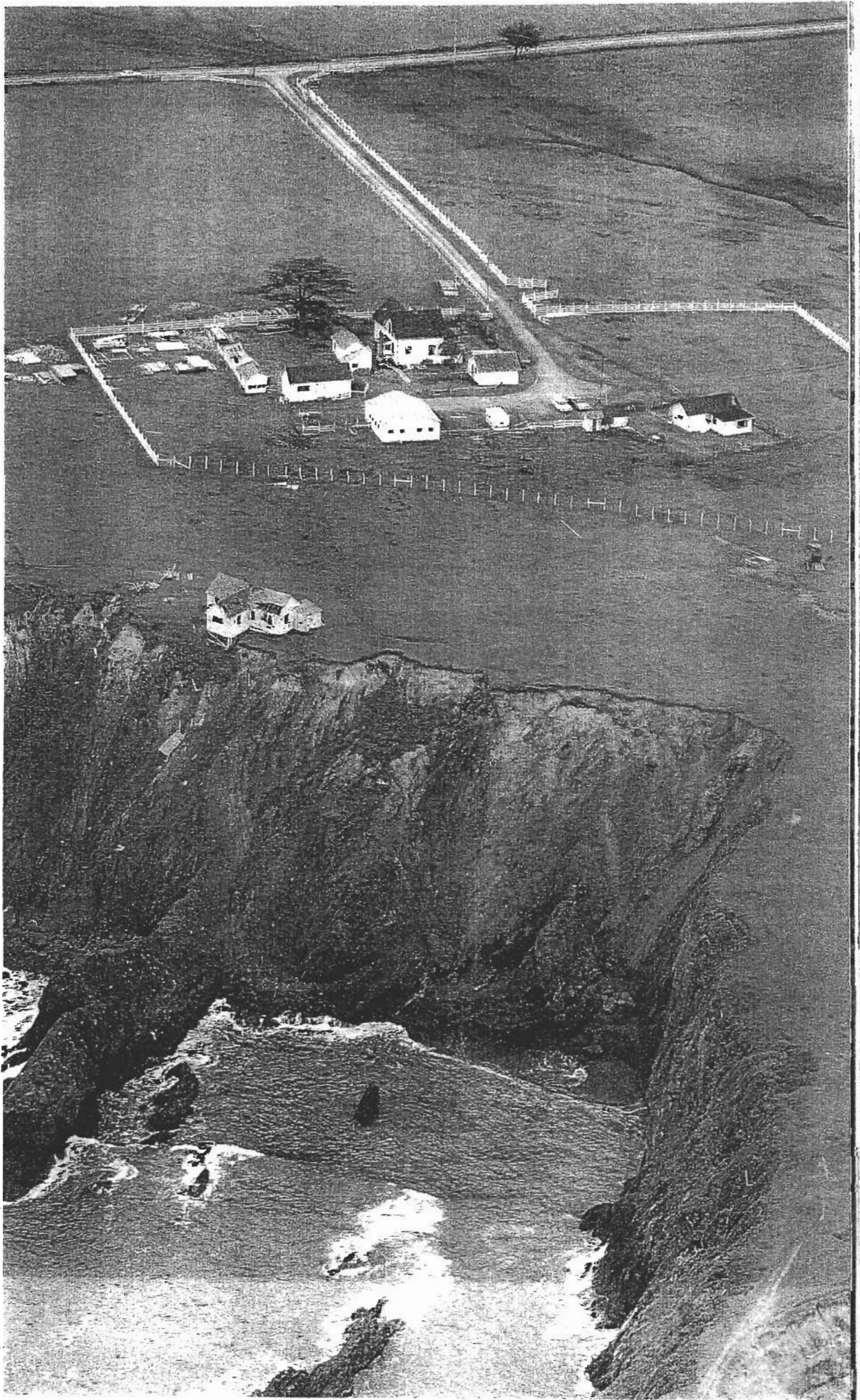
PLATE  
**3**

PHOTO REFERENCE: [www.californiaoastline.org](http://www.californiaoastline.org), by permission, composite of two photographs

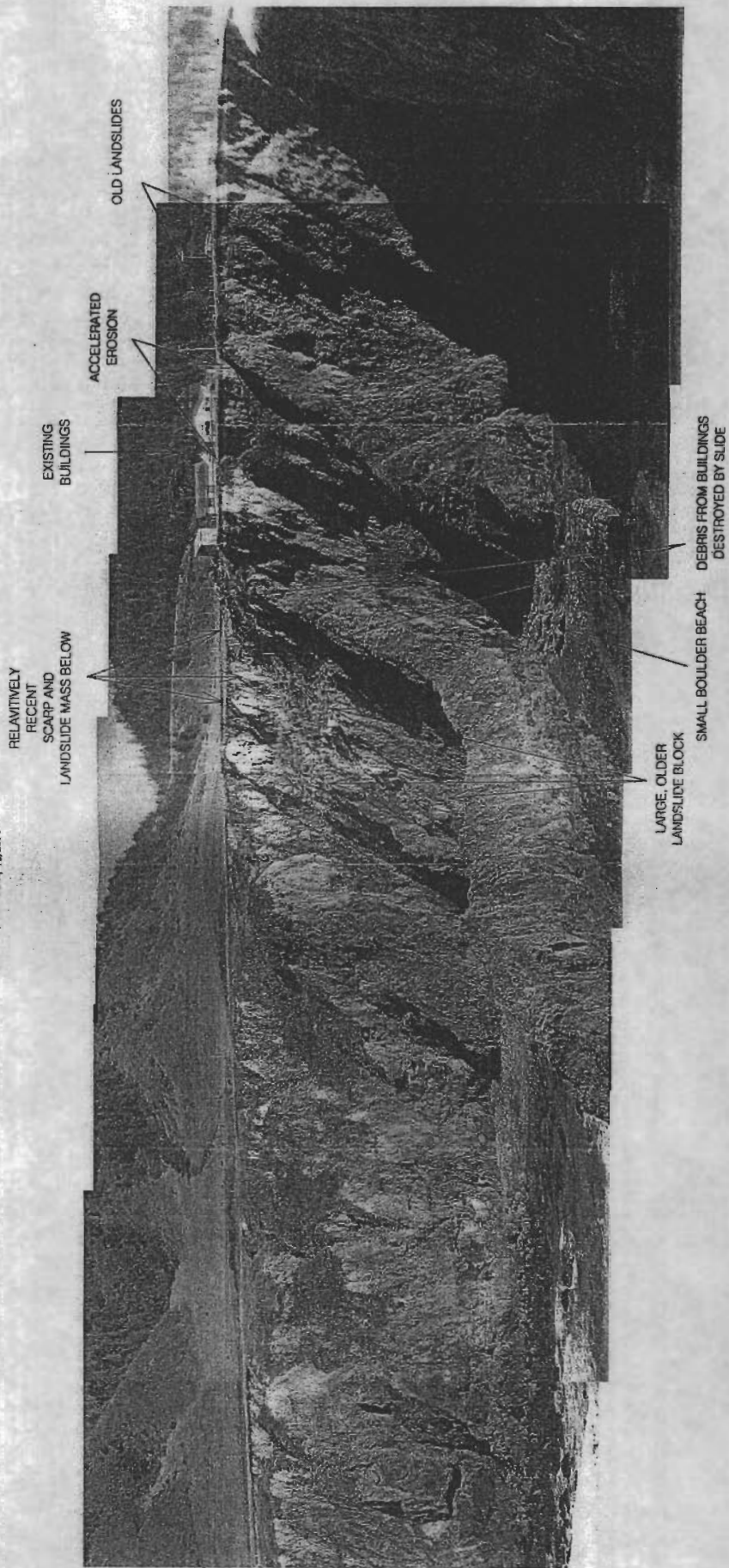
398



498



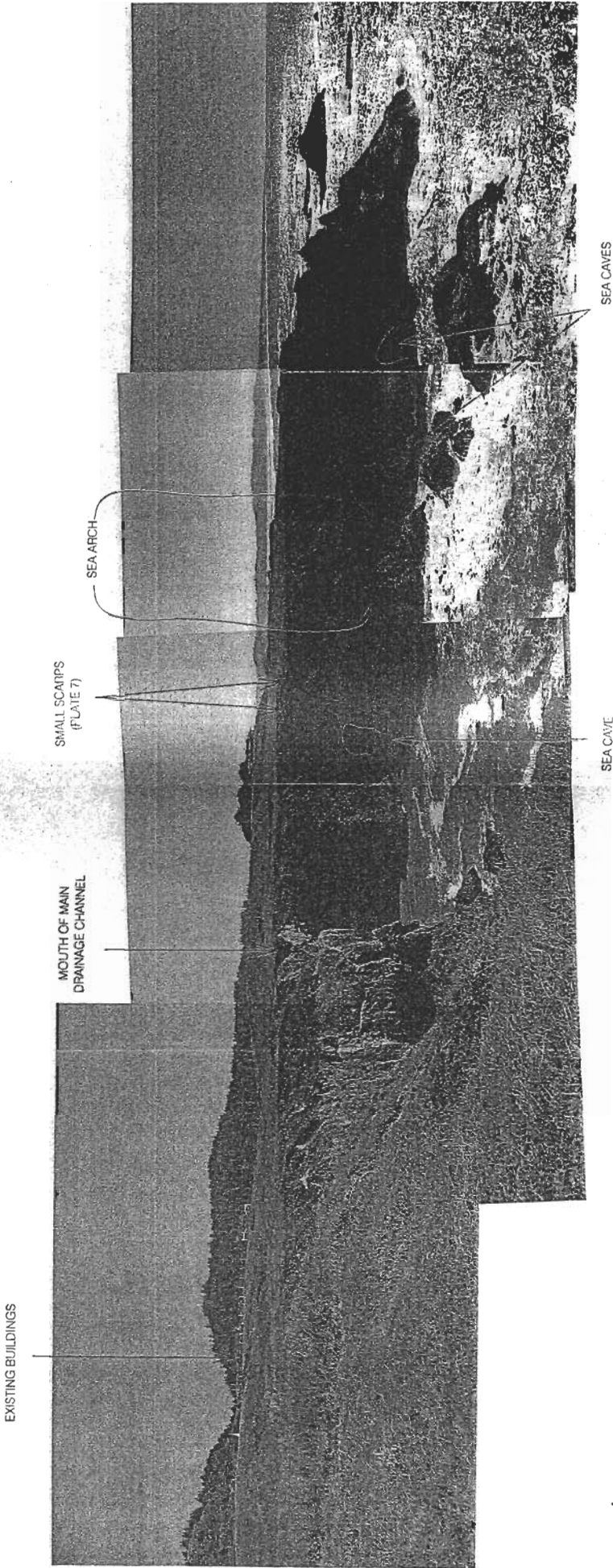
**SITE PHOTOGRAPH D**  
 Looking east from the end of the  
 northern peninsula, 10/22/07.



 <p><b>BACE Geotechnical</b>          a division of          Bruning Associates, Inc.          (707) 328-6108</p>	Job No: 12106.1 Appr: <b>EEO</b> Date: 1/23/08	<b>SITE PHOTOGRAPH D</b> INN AT NEWPORT RANCH 31502 North Highway One Westport, Mendocino County, California	PLATE <b>8</b>
--	--	---	-------------------

698

**SITE PHOTOGRAPH**  
 Looking south towards southern peninsula  
 from northern peninsula, 10/22/07.



SEA CAVES

SEA CAVE

7 of 8

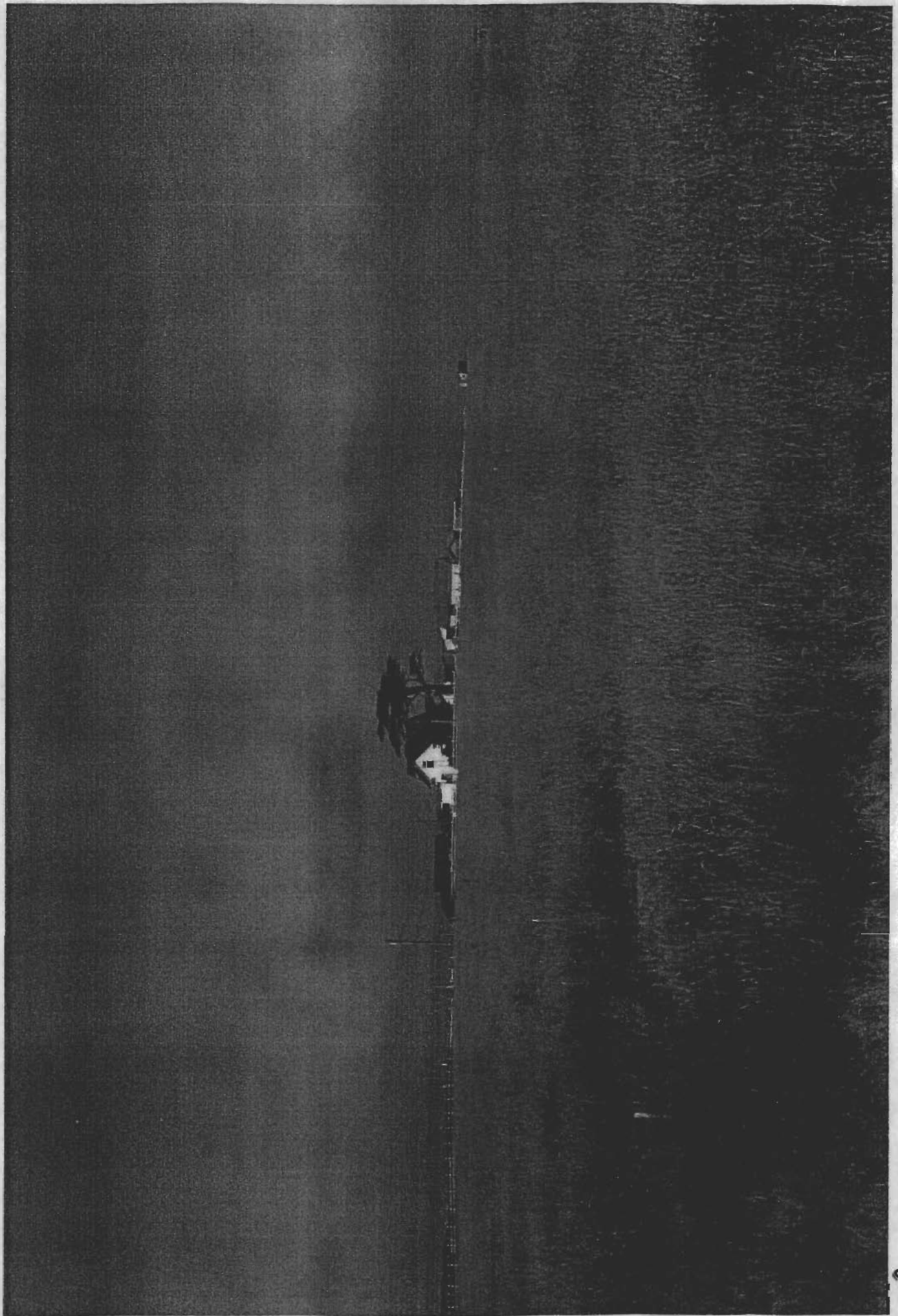
PLATE  
**9**

**SITE PHOTOGRAPH**  
 INN AT NEWPORT RANCH  
 31502 North Highway One  
 Westport, Mendocino County, California

Job No.: 12106.1  
 Appr: **EEO**  
 Date: 1/28/08

**BACE Geotechnical**  
 a division of  
 Banning Associates, Inc.  
 (707) 528-6108





894

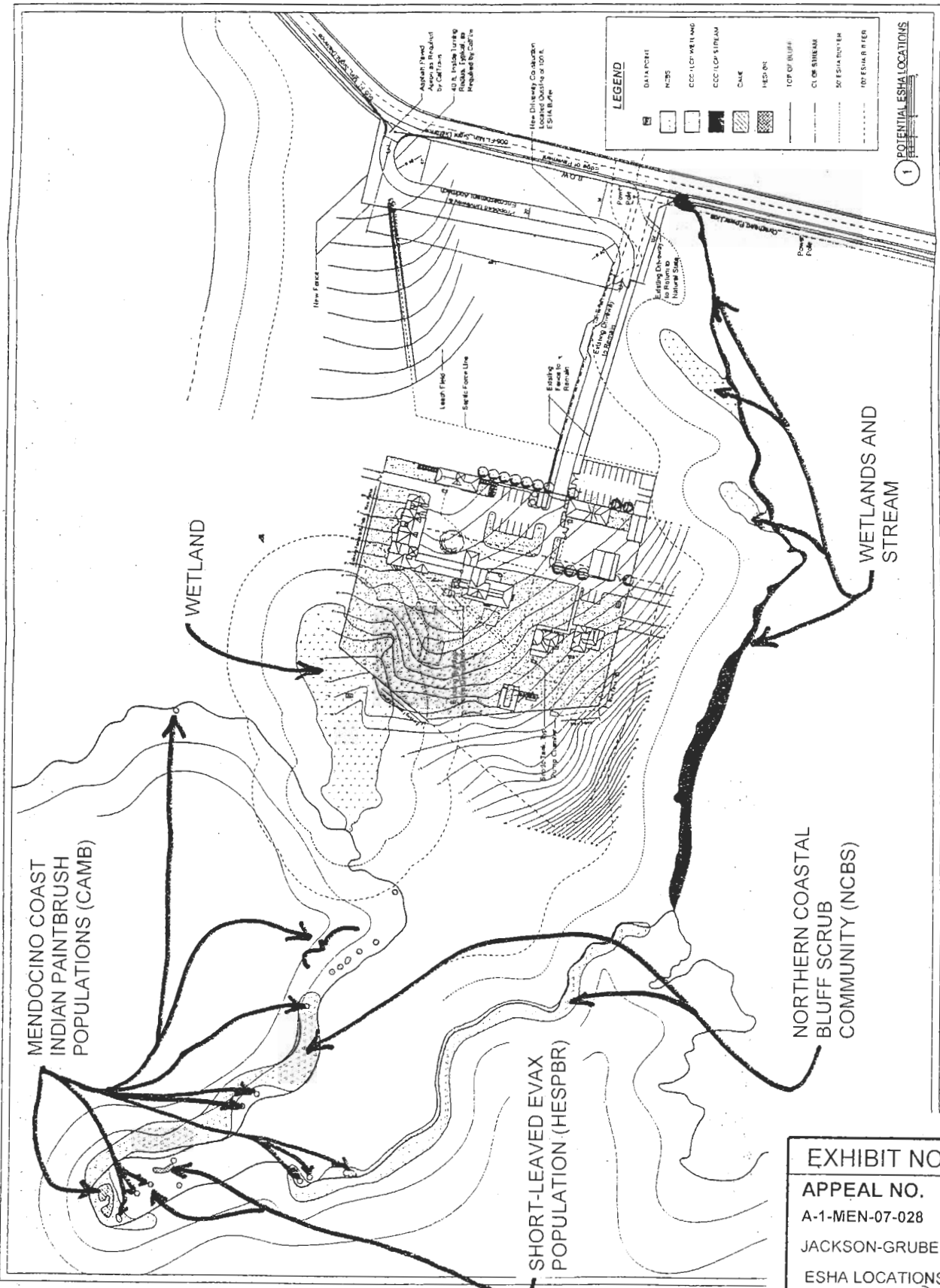
MENDOCINO COAST  
INDIAN PAINTBRUSH  
POPULATIONS (CAMB)

SHORT-LEAVED EVAX  
POPULATION (HESPBR)

NORTHERN COASTAL  
BLUFF SCRUB  
COMMUNITY (NCBS)

WETLAND

WETLANDS AND  
STREAM



**LEGEND**

[Symbol]	DATA POINT
[Symbol]	NCBS
[Symbol]	ECC-1 OF WETLAND
[Symbol]	ECC-1 OF STREAM
[Symbol]	CHALK
[Symbol]	MEDIUM
[Symbol]	TOP OF BLUFF
[Symbol]	CLOSE STREAM
[Symbol]	50' ESHA BUFFER
[Symbol]	100' ESHA BUFFER

1 POTENTIAL ESHA LOCATIONS

INN AT NEWPORT RANCH  
Fort Bragg, California  
SELENS & COMPANY ARCHITECTS  
SANFORD STRAUSS ARCHITECTS

DATE 08.20.08  
PROJECT



THE LOCATION OF  
POTENTIAL ESHAs

Fig-5

ESHA NEAR INN SITE

EXHIBIT NO. 4  
APPEAL NO.  
A-1-MEN-07-028  
JACKSON-GRUBE FAMILY  
ESHA LOCATIONS  
(1 of 2)



ENVIRONMENTAL CONSULTANTS  
 2169-G East Francisco Blvd.  
 San Rafael, CA 94901  
 (415) 454-8868 Phone  
 (415) 454-0129 Fax

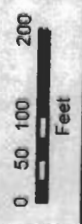
Westport

Mendocino County,  
 California

Figure 2.  
 Potential ESHAs for the  
 Jackson-Grube OTD

Legend

- Study Area
- Castilleja mendocinensis
- ESHA 50ft Buffer
- ESHA 100ft Buffer
- Riparian
- Northern Coastal Bluff Scrub
- Coastal Terrace Prairie
- Proposed Viewing Platform
- Proposed Trail
- Proposed Parking Lot



Map Date: June 2010  
 Map By: Swarth, Gillespie  
 Base Source: NADIP 2005  
 Filepath: L:\CA\201001\ESHA\ESHA.mxd  
 GIS/ArcMap/June 2010/Jackson ESHA.mxd



*2 of 2*



# BLOCK & BLOCK

A PROFESSIONAL CORPORATION

1880 CENTURY PARK EAST, SUITE 415  
LOS ANGELES, CALIFORNIA 90067-1604  
TELEPHONE (310) 552-3336  
TELEFAX (310) 552-1850

ALAN ROBERT BLOCK  
JUSTIN MICHAEL BLOCK

SENDER'S E-MAIL  
alan@blocklaw.net

June 9, 2010

**EXHIBIT NO. 5**

**APPEAL NO.**

**A-1-MEN-07-028**

**JACKSON-GRUBE FAMILY, INC.**

**REVISED PROJECT  
DESCRIPTION (1 of 4)**

Mr. Bob Merrill  
California Coastal Commission  
710 E Street, Suite 200  
Eureka, California 95501

Re: Appeal No. A-1-MEN-07-028 (Jackson-Grube Family, Inc.)  
Revised Project Description

Dear Bob:

Pursuant to our telephone conversation this morning I'm again revising the project description as requested to include the additional access and deed restriction.

Please understand that the applicant is only agreeing to provide an offer to dedicate the additional access to the Commission, not develop the same and/or waive the requirements of Public Resources Code Section 30212(a)(3), which provide that "[Dedicated] accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway."

Revised Project Description: Build a 6 unit Inn. The Inn operations shall include (1) the main building renovation of the former Orca Inn into three rental units of 412 sq. ft., 249 sq. ft., and 240 sq. ft., and accessory common & service areas of 3,236 sq. ft. and (2) a cottage with three rental units of 915 sq. ft., 837 sq. ft., and 526 sq. ft. Ranch and service operations to include (1) a ranch manager's unit of 1,737 sq. ft.; (2) an equipment barn of 1,121 sq. ft.; (3) a generator/pump shed of 240 sq. ft.; and (4) a guest garage of 1,508 sq. ft. The existing tank of 189 sq. ft., its adjacent pump house of 134 sq. ft. and the two existing wells and the majority of the existing driveway are to remain. The proposal includes reuse of the existing septic system, improvement of existing driveway, and burying of existing overhead utilities. No portion of the proposed development, with the exception of the renovation of the main building that already exceeds 18 ft. will exceed 18 ft. The total area of development is approximately 1.56 acres, including the building envelope of 1.22 acres and the driveway of 0.34 acres. The existing farm house,

Mr. Bob Merrill  
Re: Appeal No. A-1-MEN-07-028 (Jackson-Grube Family, Inc.)  
June 9, 2010

Page 2

which comprises a portion of the main building, is to be renovated; a minimum of 50% of the existing walls and roof will remain. Public access improvements previously provided to the County of Mendocino as part of the approval of CDP CDU 9-95 are also included in this project, including 1) conveyance of fee title to the County of a one (1) acre portion of the property; 2) \$25,000 paid to the County toward the development of coastal access in the area; and 3) dedication of an easement for public access along a 15 foot strip of the property on the west side of Highway One right-of-way. The applicant further will agree to provide an offer to dedicate to the Commission additional access at the north end of the applicant's property for pedestrian access and parking, as well as agree to an additional open space deed restriction to prohibiting further development on the ocean side of Highway One on APNs 015-038-002, 015-038-03, and 015-033-013. The applicant's agreement to the additional open space deed restriction being conditioned on the applicant being able to replace a barn that previously existed south of the proposed Inn site

Naturally, should you have any questions regarding the revised project description please notify me as soon as possible.

Thank you for your continued courtesy and cooperation.

Very truly yours,

LAW OFFICES  
BLOCK & BLOCK  
A Professional Corporation



ALAN ROBERT BLOCK

ARB/cw

cc: Willard Jackson  
Chris Tiedemann, Esq.

294

**BLOCK & BLOCK**

A PROFESSIONAL CORPORATION

ALAN ROBERT BLOCK  
JUSTIN MICHAEL BLOCK1880 Century Park East, SUITE 415  
LOS ANGELES, CALIFORNIA 90067-1604  
TELEPHONE (310) 552-3336  
TELEFAX (310) 552-1850SENDER'S E-MAIL  
justin@blocklaw.net

VIA FAX ONLY

June 17, 2010

Mr. Robert S. Merrill  
North Coast District Manager  
California Coastal Commission  
710 E Street  
Suite 200  
Eureka, CA 95501*Re: Appeal No. A-1-MEN-07-028 (Jackson-Grube Family, Inc.)*

Dear Mr. Merrill:

This letter is forwarded to you at your request in order to delineate the procedural steps necessary for the recordation of the offer to dedicate the additional public access at the north end of the ranch consisting of a ten (10) foot vertical accessway to a vicwing platform and a parking area adjacent to Highway One sufficient for five (5) automobiles. The approximate location of the additional areas was delineated in a map forwarded to you as prepared by Matt Richmond. A more precise map based on an earlier survey of the property was forwarded to you yesterday by Scott Baker from the office of the project's architect, Sellers & Company.

It is understood and agreed to by the Commission that the applicant is only agreeing to provide an offer to dedicate sufficient area on his property for the additional public access and will not be improving the property for the development of the same. The applicant does not waive the requirements of Public Resources Code Section 30212(a)(3) which provides that the dedicated "accessway shall not be opened for public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway".

The procedural steps to be followed concerning this offer of dedication are as follows:

- a. The applicant shall submit the proposed offer to dedicate an easement

3 of 4

Mr. Robert S. Merrill

Re: *Appeal No. A-I-MEN-07-028 (Jackson-Grube Family, Inc.)*

June 17, 2010

Page 2

for the discretionary review and approval of the executive director prior to recordation and prior to issuance of the Coastal Development permit;

b. The grant of easement to be approved by the Executive Director shall require that any future development that is proposed to be located either in whole or in part within the area described in the recorded easement shall require a Commission amendment to the subject Coastal Development Permit (if approved);

c. The form of the grant of easement to be approved by the Executive Director shall include legal descriptions of the entire property as well as the area of dedication;

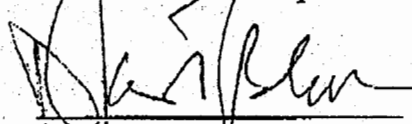
d. The grant of easement to be approved by the Executive Director shall be recorded free of prior liens and any other encumbrances which the Executive Director reasonably determines may affect the interest being conveyed;

e. The grant of easement to be approved by the Executive Director shall be recorded after approval but prior to issuance of subject Coastal Development Permit (if approved).

Naturally, our office stands ready to assist. Should you have any questions, please contact me at your earliest convenience.

Very truly yours,

**LAW OFFICES OF  
BLOCK & BLOCK**  
A Professional Corporation



ALAN ROBERT BLOCK

ARB:cw

4 of 4