

CALIFORNIA COASTAL COMMISSION

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W8a

MEMORANDUM

Date: August 5, 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, August 11, 2010
 North Coast District Item W8a, 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 July 22, 2010 presents: (I) a correction to an error contained in both the staff summary and the Staff Note No. 2, “Background;” (II) changes to the special conditions including revisions to Special Condition Nos.5, 15, and 20; (III) revisions to the findings to correct an error and add more discussion about limits on special events; (IV) an insert for Exhibit No. 5, “Project Description,” that corrects minor discrepancies in the project description; and (V) new correspondence received since publication of the July 22, 2010 staff report.

Staff continues to recommend approval of the permit with conditions as recommended in the July 22, 2010 staff report, as modified by this addendum.

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

I. Corrections to Summary of Staff Recommendation and Staff Note No. 2

A. On Page 4, in the Summary of the Staff Recommendation, correct the first sentence of the fourth paragraph as follows:

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%~~**28%**, (3) providing various public access

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improvements and (4) agreeing to recordation of a deed restriction prohibiting further development on Jackson-Grube Family, Inc. property west of Highway 1 (APNs 015-380-002, 015-380-03, 015-380-004, 15-3808-06 and 015-330-013).

B. On page 13, in Staff Note No. 2, “Background,” correct the first sentence of the third paragraph as follows:

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%~~28%, (3) providing various public access improvements and (4) agreeing 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).

REASON FOR CHANGES: The percentage identified for the reduction in square footage of the proposed inn and ranch buildings made by the applicant in the revised project description submitted to the Commission since the November, 2009 de novo hearing is incorrect. The correct percentage is 28%.
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II. Changes to Special Conditions

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

5. Open Space Restriction

A. No development, as defined in Section 30106 of the Coastal Act, shall occur anywhere on APN 015-380-02, APN 015-380-03, APN 015-380-04, APN 015-380-06, and APN 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:
 - a.** agricultural fences, corrals, and other accessory agricultural development **but** not including any residences, barns, or other significant new above-ground structures **except for other than the barn identified in subsection b. below:**
 - b.** replacement of a barn that formerly straddled APN 015-330-13 and APN 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 is located in the general vicinity of the previous barn;

- c. installation of utilities;
- d. removal of non-native, invasive vegetation and planting of native plants;
- e. removal of vegetation for compliance with Cal-Fire defensible space requirements; and
- f. improvements for public access purposes.

2. Improvement of the offered public access easements dedicated pursuant to Special Condition Nos. 17 and 20 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: To clarify the language regarding the possible future replacement of a barn formerly located near the boundary between APNs 015-330-13 and APN 015-380-05 to more clearly state that any proposed barn would require authorization through a coastal development permit amendment. The open space deed restriction would not preclude development of a barn, but the barn can only be developed if the Commission in its review of a permit amendment request finds that the proposed development of the barn is consistent with the certified Mendocino County Local Coastal Program.

- B. **Replace Special Condition No. 15 with the following:**

15. **Temporary Special Events**

Special events are gatherings of multiple persons using the approved inn and ranch complex and other parts of the subject property for purposes other than, or in addition to, overnight accommodations in the approved guest units for which the managers of the inn or their employees or agents either (a) charge a fee for the use or services to accommodate the use, or (b) exclude the general public. Examples of special events include weddings, organizational retreats, lectures, classes, business

meetings or meetings of other organizations for which the managers of the inn or their employees or agents either (a) charge a fee for the use or services to accommodate the use, or (b) exclude the general public. Special events shall be subject to the following restrictions:

- A. Special events at the facility shall be limited to a maximum of 99 persons **and to a maximum of 12 events per year**. Gatherings of 100 or more persons **or requests for more than 12 special events per year** shall require an amendment to this coastal development permit.
- B During temporary events and at all other times, the number of vehicles parked at the site shall be limited so that all of the vehicles of visitors, guests, 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 project site as shown in Exhibit No. 28, including, but not limited to areas along the driveway or in the fields adjoining the inn complex.
- C 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.
- D. Special events shall have a duration of no more than three days.**
- E. Special events shall be non-consecutive and any tents or other temporary structures and facilities installed to accommodate a temporary event shall be taken down within 48 hours of each special event.**
- D.E**A coastal development permit amendment for a temporary event of 100 or more persons **or for a special event that is the 13th or greater event held at the site in the last year** shall be obtained prior to holding the event.

REASON FOR CHANGES: Special Condition No. 15 imposes limits on special events to be held at the proposed inn. The changes to the condition (a) provide a definition of what is meant by a special event to clarify what activities would be limited by the condition, and (b) add limits to the total number and duration of special events to ensure the development will be used in a manner consistent with the land use plan designation and zoning for the site. As discussed in Finding E of the staff report, the development site is designated and zoned 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 *1C designation allows for the construction of up to a 10-unit inn with a coastal development use permit. 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 site is not designated or zoned as a conference or event center. Staff is recommending limits on the number and duration of special events to be held at the proposed facility to ensure that the use of the facility for special events is clearly incidental to the remote residential and transient guest occupancy uses allowed by the LUP designation and zoning applied to the site.

B. Replace Special Condition No. 20 with the following:

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

A. Dedication of Lateral Public Access Easement Adjacent to Highway One

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 entirety of the legal parcel(s) containing APNs 015-330-13, 015-380-05, and 015-380-04 either an outright dedication to the Mendocino Land Trust, or an irrevocable offer to dedicate to a public or non-profit entity acceptable to the Executive Director a public access easement(s) 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 an approximately 6,000-foot-long, 15-foot-wide lateral public access easement adjacent to the Highway One Right-of-way extending from the southern boundary of APN 015-330-13 to northern boundary of APN 015-380-04. Any future development that is proposed to be located either in whole or in part within the area described in the recorded dedication or offer of dedication shall require a Commission amendment, approved pursuant to the provisions of 14 CCR §13166, to this Permit. This requirement shall be reflected in the provisions of the recorded offer.

B. Reservation of APN 015-330-05 For Public Access Purposes

- 1. The approximately one-acre area between Highway One and the ocean bearing APN 015-330-05 which: (a) was transferred to the County after issuance of the COC attached as Exhibit 20; and (b) is generally depicted on Exhibit 24 shall be reserved for public access and/or open space use in substantial compliance with the terms of the Project Description as proposed by the applicant in Exhibit No. 5.**
- 2. 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 property owner has executed and recorded against the entirety of the legal parcel containing APN 015-330-05, 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 generally depicted on Exhibit 24 consistent with the requirements of Mendocino County Coastal Development Permit Modification No. CDUM 9-95/2000. The documentation recorded against the entirety of the legal parcel containing APN 015-330-05 which was transferred to the county after issuance of the COC, shall expressly evidence that the above-referenced conveyances has been accepted, shall be used for public access purposes, is irrevocable and is provided as a condition of A-1-MEN-07-028.
- 3. 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 County or successor landowner of APN 015-330-05 acknowledges and agrees that APN 015-330-05 is irrevocably reserved for public access and/or open space use in substantial compliance with the terms of the Project Description as proposed by the applicant in Exhibit No. 5 and this special condition.**

REASON FOR CHANGES: 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 certain public access areas previously granted to the County, including an approximately one-acre parking and viewing area south of the inn site on APN 015-330-05 and a 6,000-foot-long section of lateral access trail. These dedications are being proposed by the applicant as part of the project description to ensure that the dedication of these public access areas is provided in consideration for, and as a condition of, this coastal development permit and cannot be revoked. Special Condition No. 20(B) requires in part, that the applicant provide evidence for the review and approval of the Executive Director

that the applicant has executed and recorded a document demonstrating that 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 previously required by Mendocino County Coastal Development Permit Modification No. CDUM 9-95/2000, has been accepted, is for public access and open space purposes, is now provided as a condition of this coastal development permit and is irrevocable.

The changes that staff is now recommending to the special condition would address the fact that the applicant no longer owns APN 015-330-05 and cannot unilaterally affect how the site is used in the future. Section 30601.5 of the Coastal Act requires applicants to demonstrate that they have the necessary property rights to carry out their proposed project as conditioned. The addition of Section (B)(3) to the special condition will require the applicant to submit evidence prior to issuance of the permit that the County acknowledges and agrees that APN 015-330-05 is irrevocably reserved for public access and/or open space use as proposed by the applicant and required by the special condition.

III. Revisions to Findings

A. On Page 34, within Finding B, “Project History,” Section 2, “Current Permit Application,” correct the fourth line of the first full paragraph as follows:

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%~~28%, (3) providing various public access improvements and (4) agreeing 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).

REASON FOR CHANGES: The percentage identified for the reduction in square footage of the proposed inn and ranch buildings made by the applicant in the revised project description submitted to the Commission since the November, 2009 de novo hearing is incorrect. The correct percentage is 28%.

B. On Page 55, within Finding E, “Consistency with Use and Size Limitations of *1C Designation,” add the following after the first full paragraph:

The applicant indicates that the approved inn facility may be used for special events such as weddings, corporate retreats, lectures, and business or organizational meetings.

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Neither the Remote Residential base zoning district nor the *1C visitor serving facility overlay zone include meeting hall, event center, or similar uses as either principal permitted or conditional uses, although the certified LCP does allow for temporary events to be held and such temporary events are not restricted to particular zones. With appropriate limits, incidental special events can be accommodated at the site without significant adverse impacts on coastal resources. Parking and temporary structures can be confined to locations that will not create significant adverse impacts and will not adversely affect sensitive habitat. As discussed in the findings below, the well that will serve the development has approximately three times the capacity needed to serve the development, and the project site is located along a stretch of Highway One that has ample capacity available to serve the development. The Commission finds that so long as temporary events or special events are clearly incidental to the inn and agricultural uses proposed as part of the approved development, the use of the approved facility for certain special events would be consistent with the zoning for the site and would not have significant adverse impacts on coastal resources.

However, use of the site for special events in a manner that is more than incidental to the use of the facility for the approved inn and agricultural uses of the development would not be consistent with the allowable uses enumerated in the coastal zoning code for the remote residential base zone and the *1C visitor serving facility overlay zone. If special events were a predominant use of the site, such use would generally change the use of the area intended by the certified LCP. The Commission did not certify the LUP and zoning designations for the site for an event center or similar uses. Sufficient infrastructure and services to accommodate numerous large scale special events may not be available and larger scale special events could have significant impacts on coastal resources. Therefore, to ensure the special event use of the site is truly incidental to the use of the site for the approved visitor serving accommodation and agricultural uses and will not cause significant adverse impacts on coastal resources, the Commission attaches Special Condition No. 15. The special condition defines special events as gatherings of multiple persons using the approved inn and ranch complex and other parts of the subject property for purposes other than, or in addition to, overnight accommodations in the approved guest units for which the managers of the inn or their employees or agents either (a) charge a fee for the use or services to accommodate the use, or (b) exclude the general public. Such events must be limited to 99 persons and may only occur 12 times per year unless the applicant obtains a coastal development permit amendment to allow more events and/or more participants in the events. In addition, the special condition requires that each event be no longer than 3 days in duration and that the events not be consecutive. Furthermore, any facilities installed for special events must be taken down within 48 hours of each event. As conditioned, the Commission finds that the use of the development site for special events will be incidental to the visitor accommodation and agricultural uses of the approved development and consistent with the Remote Residential RMR-20:PD *1C LUP designation and zoning district applicable to the site.

REASON FOR CHANGES: The additional findings support the basis for the changes to Special Condition 15 to further limit special events at the site.
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V. Revised Exhibit No. 5, “Project Description.”

Since publication of the staff report, staff noticed a couple of minor discrepancies in the text of the applicant’s project description contained in Exhibit No. 5. These discrepancies involve (a) the distance the proposed public access parking lot to be dedicated on APN 015 -380-02 is located from the northern boundary of the APN, and (b) the APNs that would be affected by the open space deed restriction proposed by the applicant and required by Special Condition No. 5. After discussing the discrepancies, the applicant’s agent has submitted a letter that supplements the project description to correct these minor discrepancies. This letter shall be added at the end of Exhibit No. 5.

VI. Additional Correspondence.

Since publication of the staff report, the Commission has received additional correspondence from the agent for the appellants as well as a response from the applicant’s agent. These letters are attached as Attachments 2 and 3.

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July 30, 2010

VIA EMAIL ONLY

Mr. Bob Merrill
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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 this morning I am clarifying the revised project description as follows:

- 1) The location of the proposed offer to dedicate easement for the proposed 5 car public parking area is approximately 375 feet, not 500 feet, south of the northern property line of APN 015-380-02; and
- 2) The applicant is agreeing to an open space deed restriction prohibiting future development on the ocean side of Highway 1 on APNs 015-380-02, 015-380-06, 015-033-13, 015-380-03 and 015-380-04.

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

ATTACHMENT 1

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July 23, 2010

VIA U.S. MAIL

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RECEIVED

JUL 26 2010

CALIFORNIA
COASTAL COMMISSION

Re: Appeal #A-1-MEN-07-028 (Jackson-Grube Family, Inc.)

Dear Members of the Commission:

We represent Deborah Cahn and Judith Whiting, Trustees of Family Trusts that own residential parcels contiguous to and immediately south of the Jackson-Grube property upon which the project that is the subject of the above-numbered appeal is located. Ms. Cahn and Ms. Whiting opposed this project during the 2 ½ year long process leading to its denial by the Commission on November 4, 2009; and they opposed the granting of the petition for re-hearing, which petition was denied unanimously on January 15, 2010. We previously attempted, on behalf of Ms. Cahn, to intervene in a lawsuit brought by Jackson-Grube Family, Inc. against this Commission (Mendocino County Superior Court Case No. SCUk CVG 09-5536); and we have communicated on behalf of Ms. Cahn by letters dated June 28, 2010 and July 2, 2010, with this Commission regarding this present hearing, or re-hearing of this substantially amended project.

This opposition letter, on behalf of Ms. Cahn and Ms. Whiting, continues to oppose this project for all of the reasons that underlay their earlier opposition. Without limitation, their primary concerns have been as follows: this project will exacerbate an already inadequate water supply at their respective residences; this project, in conjunction with the project to install a public walkway on the west side of Highway 1 and on the eastern boundary of the Jackson-Grube property, will cause significant adverse cumulative environmental impacts that have never even been considered, much less analyzed and subjected to public comment and mitigation as required by CEQA; and that this project, as designed and proposed, is inconsistent with the *1C zoning of this parcel under the local Coastal Plan.

ATTACHMENT 2

Ms. Cahn and Ms. Whiting also believe that the present project, which is very different from the one approved by the County in 2007, has never been completely and accurately described and subjected to statutory mandated public and agency review procedures because, at least, (i) the additional parcels now made part of the project and the new "vertical" access trail, parking area, and viewing platform on one of the new parcels that have been added to the project, and their impacts – including cumulative impacts – have not been described, assessed, or reviewed by the public and other agencies and mitigated to the extent feasible; (ii) the projected "barn" on parcel 13, and its use, are not described nor is there any suggestion as to why this barn – if indeed it is to be used for cattle – should not be on the east side of Highway 1; and (iii) the type and scope of "special events" that can be held on this property have not been determined, described, reviewed and mitigated (i.e. for parking and water use) as required by law. "An accurate stable and finite project description is the *sine qua non* of an informative and legally sufficient..." environmental review process document required by CEQA. (County of Inyo v. City of Los Angeles (1977) 71 Cal.App.3d 185, 193). The project as presently constituted has not been subjected to the required review process. Moreover, the attempt to put off the necessary review of key elements of the project violates the "no salami-slicing," or "anti-piece-mealing," rule of CEQA first articulated in No Oil, Inc. v. City of Los Angeles (1979) 13 Cal.3d 68. Obviously, the number and size of special events, and the future possible use of a barn will affect at least water use and parking impacts. And, equally obviously, the new vertical and lateral accesses will add to the cumulative impacts upon wetlands and sensitive habitats. The refusal to consider these impacts now, and the attempt to consider these issues later, violate CEQA.

Ms. Cahn and Ms. Whiting recognize that their arguments have been swept aside and ignored in this most recent collaborative effort by the Jackson-Grube applicant, the State's Attorney General's office, and the Coastal Commission Staff in an effort to obtain approval of this project. Ms. Cahn and Ms. Whiting also recognize that the Commission appears inclined to approve this project because a majority, at least, apparently think the additions, reductions, and modifications that have been agreed to by the Jackson-Grube representatives, the Coastal Staff, and the Attorney General's office make this a desirable and much improved project, and, that approval will facilitate construction of the "pacific trail."

Ms. Cahn and Ms. Whiting reserve the right to raise all of the points they have previously raised in any necessary subsequent judicial action, and they incorporate their prior filings for that purpose. For legal points previously made they specifically refer to their "brief in opposition" stamped "received" by the Commission on September 30,

2009 (herein "Opposition Brief"). But, this communication will concentrate on essential "procedural" issues that they believe preclude this Commission from now approving this modified project and that they believe the Commission should be concerned about because of the possible precedential impacts of a decision approving this project under the circumstances of this case.

Ms. Cahn and Ms. Whiting's "interest" in opposing not only the project but the procedural path that has been followed to bring the greatly modified version of the project to this Commission for the third time since an earlier version of the project was approved by the County in June of 2007, extends far beyond any economic interest they have. Consistently they have demonstrated concern about the environmental impacts of this project. They are offended by the "back room" tactics that have been pursued by Jackson-Grube's attorney, Mr. Block, the Attorney General's office and the Commission Staff by stipulating to the court order dated June 17, 2010, purporting to give this Commission authority to approve this project even though the Commission denied the project some eight months ago on November 4, 2009 and denied a rehearing unanimously six months ago on January 15, 2010. Section 30627(d) of the Coastal Act says clearly that "a request for reconsideration shall be made only once for any one development"

Ms. Cahn and Ms. Whiting believe it is important to expose and oppose such collusive tactics that have the effect of excluding the public, and to insist that projects be reviewed in the manner required by law, because they recognize that it will not always be the case that there is a majority of commissioners who are assiduous in their efforts to preserve the coastal qualities that they, most Californians and the Commission cherish. There will be a day when the majority of the Commission is motivated by other economic and political interests. One of Ms. Cahn's and Ms. Whiting's primary concerns is to avoid the establishment of a precedent that approves back door tactics to resurrect and obtain later approval of projects that have already been carefully considered and rejected after public review and comment.

If Ms. Cahn and Ms. Whiting are successful in their efforts to defeat approval of this newly designed project, they will seek attorney's fees for their efforts. They believe it is not in the public interest that the Commission go along with procedures that have the direct and practical effect of excluding the public and other agencies from meaningfully participating in the review of coastal projects such as this. They reject the notion that by obtaining an indemnity agreement from a very wealthy applicant who is willing to pay any price to obtain approval of his/her cherished project, the Commission can, or should, obtain greater latitude to ignore the obvious procedural requirements of

the Coastal Act and CEQA. This indemnity arrangement, in conjunction with the other abnormalities in this hearing procedure have the effect of denying their appellants the "fair hearing" guaranteed them by CCP §1094.5 and Horn v. Ventura (1979) 24 Cal.3d 605. Such an arrangement whereby an applicant can't get a permit unless he insures the agency issuing the permit against any monetary damage seems, on its face, to violate the age old prohibition against any person having an official role in a decision making process in which he has a pecuniary interest. See Bayside Timber Company v. Board of Supervisors, 20 C.A.3d 1, 14.

There are several "procedural" reasons why this Commission cannot legally approve this project:

1. Under Section 30603(a)(1) of the Coastal Act, the Commission has no authority to approve this revised project because the project is substantially and materially different than the project "approved" by the County of Mendocino; and the Commission's only jurisdiction in these circumstances is to review projects approved by a local agency. The Coastal Act does not empower the Commission to consider and approve a substantially different project without the local agency first considering and approving that project.

The Attorney General and the Commission staff argue that in the exercise of their "*de novo*" jurisdiction under Sections 30603(a)(1) and 30621 of the Coastal Act, the Commission often makes modifications of a project before denying an appeal from the local agency's "approval." "*De novo*" refers to the standard of review applied in this quasi-judicial proceeding, not to the scope of the Commission's authority. That is, once the Commission decides a "substantial" issue is presented by an appeal, it is not bound by the local agency's findings of fact. It is not limited to determining whether the local agency's decision was supported by substantial evidence and arrived at in a manner required by law; it takes evidence and makes its own decisions on factual as well as legal issues presented by the appeal. Undoubtedly minor mitigations can be added to or subtracted from a project approved by a local agency in the exercise of the Commission's "*de novo*" review. However, that does not mean the Commission can approve a substantially revised project – covering more land (2 or 3 new parcels, this is somewhat confusing) and new uses (vertical and lateral walkways and/or projected new barn) – without this substantially revised project first being subjected to local agency and public review.

To add some perspective to this point, Ms. Cahn and Ms. Whiting believe that it is beyond question that neither the Attorney General's office nor the Commission staff

would argue that a future Commission, composed of more development-minded members, would have authority to add 20,000 or 40,000 sq. ft. of visitors accommodation space to this project, or to add a new large barn for unspecified uses on acreage made subject to the project for the first time during the appeal process. Nor would this Commission agree that under similar circumstances a new Commission could decide that such a new barn could be utilized for "special" events, or to provide an equestrian experience for guests at the approved "Inn," on the theory they were furthering the Coastal Act's objective of providing for maximum public coastal enjoyment opportunities. If the Coastal Commission can't enlarge a project to accomplish some Coastal Act objectives, what rules and standards allow it to comprehensively modify a project to accomplish other Coastal Act objectives?

The Staff and the Attorney General's office apparently think this project, as greatly amended, has been made "better." But "better" is in the eyes of the beholder, and the Coastal Act assigns to the local agency the authority to make such judgments, at least in the first instance once its local plan has been approved. This is a very different project than what the County considered: Two or three parcels, not previously subject to this application, have been drawn within its purview. Approximately 1000 feet of lateral access along the west side of Highway 1 has been added to the project; a caveat against "no further" development is sought for a future barn implicitly anticipated on parcel 13 with no credible explanation of its future utility; a vertical access of over 1000 feet and a "viewing stand" have been added to the project; And, public parking to accommodate the lateral and vertical public access improvements have been added. There is a clear recognition that the vertical access is adjacent to a blue line stream and environmentally sensitive habitat areas. The footprint of the project has also been modified in the ways shown in the graph of limited scope on page 4 of Mr. Block's letter of January 28, 2010.

The Attorney General's office and the Commission Staff may be correct in their assumption that the local agency would approve these modifications; and they may be correct in their apparent assumption that these modification make the project "better." The point is, when the Commission is considering a project that is substantially and materially different from the one "approved" by the local agency, the Commission has no separate authority to approve the new and different project; and it can't be granted such authority – a Legislative Act – by an order from the Superior Court, particularly when that order, on its face, is inconsistent with the mandate of section 30627(d) that "a request for reconsideration shall be made only once...." If the Commission has authority to consider this revised project, it can't exercise that authority without meeting CEQA's procedural and substantive requirements, as made clear on pages 2-3 of our

Opposition Brief earlier filed with the Commission on September 30, 2009.

2. Approval of the revised project by the Commission would violate the Coastal Act and due process.

Three years delay in deciding an appeal from the local agency's approval of this project violates the Coastal Act and the due process rights of appellants Cahn and Whiting whose rights to notice and hearing are constitutionally protected. (See Horn v. Ventura (1979) 24 Cal.3d 605, 615-616; Scott v. Indian Wells (1972) 6 Cal.3d 541, 548-549; Opposition Brief, pp 1-6.) The Coastal Act's basic appeals sections relevant to this case, PRC §§ 30603, 30621, and 30622, impose very demanding time schedules upon appeals; and, these requirements have not been met. Even though section 30625 gives the "applicant" the right to "waive" these time requirements, no provision purports to subject appellants who have a constitutional right to notice and hearing to the delays that have been experienced in this case. Ms. Cahn and Ms. Whiting have objected to these delays at every appropriate stage in these proceedings. In any event, the delays involved here are too long and are inconsistent with the "reconsideration" provisions in the Coastal Act (PRC §§30626, 30627, particularly 30627(d)).

3. The Court's order of June 17, 2010 upon which Commission Staff and the Attorney General's office purport to rely, did not authorize this Commission to consider this project at any meeting other than its meeting of July 7-9; and, accordingly, even that unlawfully obtained court order cannot be relied upon to grant this Commission authority to approve this newly modified project.

Ms. Cahn attempted to intervene in the Jackson-Grube v. Coastal Commission lawsuit but the trial court wrongfully denied that intervention. Ms. Cahn has filed a notice of appeal and believes that any actions taken on the basis of that court order are vulnerable to whatever results the Court of Appeal might find appropriate.

Moreover, even if the Court's order were valid and even if this Commission's reconsideration of the project on July 7 were valid, the court order does not grant authority to the Commission to extend its hearing date or otherwise modify its procedures to accommodate approval of this project at a later date. The court's order can't overcome the statutory mandate of §30627(d) that a "request for reconsideration shall be made only once for any one development application ..." As a matter of interpretation, the order does not say that it grants authority to the Commission to extend its hearing date to allow new information – i.e. a new record – to be developed, etc. As a matter of common sense, it defies rationality to think that such a simple court

order could allow this Commission to now order a new year and a half, or two year's, worth of environmental studies and counter studies, etc., as it did when the appeal was first considered. To make a serious effort to comply with CEQA, a significant delay, and an expanded record, will be required.

As both CEQA and the Coastal Act recognize, other people – members of the public other than Jackson-Grube, the Commission Staff, the Attorney General's office, and members of this Commission – have interests in what kind of projects are approved on the coast and under what terms and conditions they are approved. To now approve this amended project upon the basis of this stipulated court order would be counter to those interests. But to recognize these interests and extend this matter out for months in order to comply with CEQA would also not be appropriate. No articulated, written standard applies to determine how long the hearing might be extended, or under what circumstances unless the time limits in §§30621 and 30622 apply. No statute gives the Commission the authority to act in a way that it may unilaterally consider to be "reasonable." The Legislature has established the procedures, including time requirements, for considering the appeal from local agency approval of projects such as this. The courts and this Commission cannot amend those "Legislative" decisions.

In short, it is obvious that this court order was not intended to give this Commission authority to consider over an extended time period, a greatly modified project. If that was its intent, it is clearly invalid.

4. The Procedural Requirements of CEQA are designed to ensure that the public and State and Federal Agencies whose obligations include protection of environmental resources, are provided the opportunity of informed comment upon the proposed project and its proposed mitigation measures. These requirements would be violated by the Commission's approval of this project on the basis of the record compiled in this Case.

The Coastal Act prescribes that once an LUP has been adopted by a local agency and approved by the Commission that local agency will be the first to consider a development project requiring discretionary approval. Those local decisions are subject to CEQA, at least in Mendocino County, because the County has not had its Coastal Development Permit procedures exempted pursuant to Section 21080.5 of CEQA. Therefore, the procedural requirements of CEQA must be complied with.

Though this Commission's appeal process has been exempted from CEQA's EIR requirements pursuant to Section 21080.5 of the Public Resources Code, the

CEQA guidelines provide clearly that CEQA's procedural requirements are not exempted by a 21080.5 certification. (See also Environmental Protection Information Center v. Johnson (1985) 170 Cal.App.3d 604, and Sierra Club v. State Board of Forestry (1994) 7 Cal.4th 1215; Opposition Brief pp. 1-6) Moreover, the EPIC and Sierra Club cases recognize that the exempt program must assure that the cumulative impacts created by the proposed project and any past, present or reasonably foreseeable projects in the same area are described and subjected to public review and mitigation. These requirements have not been met and they can't be met by simply continuing the hearing and putting the burden on concerned members of the public or other agencies to exercise the initiative to somehow learn what is being proposed and meaningfully comment thereon.

CEQA requires, even in a "certified" program such as the Commission's, that significant modifications such as those involved here first be studied by the "lead agency" and that such study be circulated with proposed mitigations so the public can comment on whether the study and the proposed mitigations are adequate. The modifications to this project exacerbate the deficiencies in the study of cumulative impacts upon wetlands and environmentally sensitive habitat that will be caused not only the walkway parallel to Highway 1, but that walkway's extension, construction of the Inn and its outbuildings, and now the vertical access pathway, it's accompanying parking area and the bluff edge viewing stand. An EIR is clearly required before local approval can be obtained because the record in this proceeding and the record before the County in the "walkway" application, clearly indicate that both projects will create significant environmental impacts, and the cumulative impacts of those projects have not been studied or mitigated. (See Exhibit A hereto, which this Commission is requested to take notice of.)

The Staff Report for the "walkway" between the Jackson-Grube property and Highway 1 reveal that, after submitting the project to the Department of Fish and Game, a DFG representative required several significant mitigation measures to avoid negative impacts upon various streams, wetlands, and habitat areas that would be impacted. In regards to the project currently before the Commission, Jackson-Grube has extended this "walkway," inserted vertical coastal access from this extension, added a parking lot adjacent to this extension, and a bluff edge viewing platform. Jackson-Grube has sited this vertical access a mere 50 feet from an ESHA (and a neighboring property owner), rather than providing the standard 100 foot buffer, and has failed to request input from the DFG regarding these material changes. Instead, Jackson-Grube asserts that such environmental protection is not necessary because the location for the vertical access is not set in stone, that it's placement 50 feet into an ESHA buffer zone is merely a

possible location, it's ultimate placement, presumably, to be determined by the local government after yet another public hearing on just that aspect. This attempt to piecemeal approval of the project is impermissible and a reason why, when material changes are made, the entire project should be remanded to the local government so that effective and accurate, cumulative environmental studies can be performed, reviewed, and meaningfully commented on. This piece-mealing allows Jackson-Grube to profess the benefits of coastal access that this project will provide, but at the same time, assure the Commission, and the public, not to fret about the sub-par environmental studies, the questionable location of the additions, or even the potentially serious environmental impacts such access will create, because these impacts will be examined at some unknown later date when permission to actually locate these additions is applied for in a possibly different location provided the appropriate entity takes on the challenge and costs of actually performing the needed environmental studies and obtaining the actual approvals.

In addition to the above, the inadequacy of the environmental analysis here is further demonstrated by the following failings:

(i) the requirement that the applicant come back later with a set of regulations for the vertical access route to be approved by the executive director in the exercise of his discretion is clearly contrary to the requirements of Sundstrom v. Mendocino County (1988) 202 Cal.App.3d 296, because no set of legally adopted extant standards are designated to control that exercise of discretion.

(ii) the request that the approval process contain a reservation from the mitigation measure requiring no further development on the applicant's parcel 13 west of Highway 1, in order to allow some future development of a barn that has been entirely non-existent for at least 20 years, makes the mitigation measure very uncertain. This, together with the fact that the entire issue of special public events has been left completely in the air, precludes the public from getting a fair and objective view of what this project is and what it's impacts are likely to be. If any barn is ever likely to be required for applicant's cattle raising efforts – a highly doubtful proposition – obviously it should be built on the east side of Highway 1, and such future construction on parcel 13 should be expressly excluded.

(iii) the "walkway" that runs along the western boundary of Highway 1 was first proposed to run along the western boundary of Jackson-Grube's properties but at the hearing at the local level it was determined that such a location raised safety and trespassing concerns. This project, with its vertical coastal access and viewing platform

on the bluffs will raise some of the same concerns, neither of which are addressed in the Staff Report or the Addendum thereto.

(iv) a neighbor's unrefuted testimony is that the vertical walkway will exacerbate abalone poaching in the area, and that he has been working with DFG on this issue, has been ignored. The attached article of July 5, 2010, (Exhibit B hereto) from the San Francisco Chronicle supports the view that abalone poaching is a significant environmental problem. The Staff's suggestion that since abalone poaching is already a problem all along the coast the Commission can ignore it in this instance is inconsistent with the Commission's obligations under CEQA and the State and Federal Endangered Species Acts.

In summary, CEQA's requirements haven't been, and can't be, met in this case. "It is the adequacy of the EIR (or other environmental disclosure document) with which we are concerned, not the propriety of the subsequent decision to approve the Project. The ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR (or other document) that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA. [Citation omitted.]" Communities For a Better Environment v. City of Richmond (2010) 184 Cal.App.4th 70, 88. The environmental review for this project is unquestionably lacking.

Conclusion

This project has been greatly altered since it was considered by the County in 2007. The Coastal Act and CEQA require that the amended project be first considered by the County and that the public and other resource agencies be allowed to comment on it before a decision to approve it or disapprove it is made.

A decision by this Commission to approve the project in its presently proposed configuration, on the record before the Commission, will be legally vulnerable; and an adverse decision could force the Commission to greatly change its procedures for modifying projects that are approved upon appeals from local approvals .

Too much time has passed and too many changes have been made in this project for the Commission's approval of this project to survive judicial review. The

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method of getting a second rehearing before this Commission violates the Coastal Act Provision governing rehearings.

The project should be denied and the applicant told to take his newly designed project to the County.

Respectfully submitted,



Jared G. Carter

JGC:gtv
Enclosures

private lands, installation of two foot bridges at drainage crossings, install signs, and constructing boardwalks in wet areas. Fencing: A peeler pole and t-stake wire fence will be installed along the boundary of the easement, 15-feet west of the eastern property boundary. Six inch diameter treated peeler poles will be placed 20-feet apart with t-stakes every 10-feet with wire fencing to keep cattle out of the easement. Approximately 7000 feet of fencing will be installed. Boardwalks: Segments of boardwalk will be installed in wet areas (approximately 365 feet in total). These segments will be constructed on 4"x8" stringers with Trex overlaid. Boardwalks will be 48" wide. Signs: Two management signs and four directional signs will be installed on 8'x6" posts. Private property signs will be placed along the west side of the easement. Bridges: An 18 foot long fiberglass bridge will be placed on an unnamed creek (Area 8) to cross an entrenched channel. Both bridges will span from bank to bank with abutments outside the stream channel. Bridges will be assembled on site.

ENVIRONMENTAL REVIEW: In addition to protections afforded by the California Environmental Quality Act (CEQA), California's coastal resources are protected by Coastal Act requirements. The County is responsible for assuring that developments are carried out in compliance with Coastal Act requirements through implementation of the policies found within the Local Coastal Plan (LCP). The following analysis addresses both CEQA and Coastal Act requirements.

Earth (Item 1):

Disruptions, displacements, compaction, or over covering of the soil: The project will require soil disturbance for installation of approximately 350 peeler poles and 350 t-stakes for fencing, footings for boardwalks, installation of six signs, and footings for two foot-bridges. Soil will be removed by hand operated equipment such as a post-hole digger, and will be packed back in place around founded materials. The applicant does not propose compaction of soils within the constructed trail areas. Impacts resulting from disruptions, displacements, compaction, or over covering of the soil, would not be significant.

Any increase in wind or water erosion of soils, either on or off the site: At PM 72.47, erosional headcutting is present just beyond the existing box culvert. This may be an indication of an accumulation of sediment due to inadequate functioning of the box culvert. The applicant currently proposes to leave the box culvert as is, and allow pedestrian access to pass over the box culvert. Pedestrian impacts to the box culvert over time may result in a cave-in, which would contribute to the existing erosion problem at this location. Staff includes Recommended Condition Number 1 to require revisions to the proposed crossing which would assure the pedestrian trail would not result in increased erosion at this location.

Changes in deposition or erosion of beach sands, or changes in siltation, deposition, or erosion that may modify the channel of a river, stream, inlet, or bay: At PM 72.53, the applicant currently proposes to reconfigure the existing rip rap, or add more rip rap to the stream channel to accommodate pedestrian crossing. This crossing location is currently utilized by cattle, and is highly degraded. Pedestrian crossing accommodated by the addition or reconfiguration of rip rap may increase sedimentation of the stream in this location. Recommended Condition Number 1 would require revised crossing plans in this location, designed to assure that no increase in sedimentation would occur.

Exposure of people or property to geologic hazards such as earthquakes, ground failure, or other hazards: The project area is not located in a 100-year flood zone or tsunami zone. The site is not located in a Seismic Study (SS) combining district, and is not proximal to any known fault lines. With the exception of the two larger proposed foot bridge locations, the trail would be constructed in a relatively flat area. The project would not be subject to landslides or other ground failures.

The applicant has provided a geotechnical investigation report for the two larger proposed foot bridges. The report, *Geotechnical Investigation Pedestrian Bridges, Jackson-Grube Crossings, Kibesillah, California*, by SHN Consulting Engineers & Geologists, Inc. (SHN), dated May 2009, includes specific recommendations for the design and installation of the foot bridges. SHN indicates that design and construction of the proposed structures should be overseen by SHN to assure the recommendations in the report are properly interpreted and implemented during design. Recommended Condition Number 2 is included to assure the project is properly overseen by a qualified engineer during design and construction phases for bridges.

Water (Item 3):

Changes in currents, or the course of water movements, in either fresh or marine waters: The trail would cross six drainages, at Post Miles (PM) 72.22, 72.32, 72.47, 72.53, 73.02, and 73.11. Improvements to allow for pedestrian crossing of drainages includes:

- PM 72.22 Construct a boardwalk across the channel and associated wetlands.
- PM 72.32: Construct a boardwalk or a 5'x3' foot bridge.
- PM 72.47: Leave the existing box culvert as is or construct a bridge over the box culvert.
- PM 72.53: Reconfigure existing rip rap or add more rip rap to cross the drainage.
- PM 73.02: Install a 24 foot fiberglass bridge with abutments from bank to bank. Will require excavation of 1.5 feet of the right bank.
- PM 73.11: Install an 18 foot fiberglass bridge at a 1% grade with abutments from bank to bank.

Additionally, the project would cross wetlands at PM 72.15, 72.22, 72.32, 72.53, and 72.60. Boardwalk would be constructed across wetland areas.

The project was viewed and considered by the California Department of Fish and Game (DFG). Rick Macedo of DFG responded with the following comments:

1. To minimize impacts to wetland, riparian, and stream habitats, trail sections that intercept these sensitive habitats shall incorporate design features that allow for continued function including water ponding and ground saturation, sediment transport, riparian cover and natural stream channel formation. When crossing wetlands and stream channels, span-design crossings shall be used instead of installing rock, dirt, or other fill on top of wetland and stream channels. Culvert-based crossings may be appropriate for smaller channel crossings provided that the design minimizes fill and allows for maintenance of natural stream channel function. Full span design will be required for more significant stream channels and wetland areas. Damaged and other substandard crossings that currently exist within the project areas shall be upgraded to meet the above stated standards.
2. Work involving trail construction in streams or riparian areas may require a lake or streambed alteration agreement (LSAA) from the Department of Fish and Game (DFG). Fish and Game Code §1602 requires notification to DFG for an LSAA prior to any activity that substantially modifies the bed, bank, or channel or diverts or obstructs the natural flow of any river, stream, or lake. Information for LSAs may be found at <http://www.dfg.ca.gov/habcon/1600/index.html> .

To assure compliance with DFG recommendations, the applicant will need to submit revised plans for stream crossings at PM 72.47 and PM 72.53, where proposed crossings may result in increased sedimentation or other damage to the stream. Recommended Condition Number 1 is proposed to require revised plans for these crossings, to the satisfaction of the Coastal Permit Administrator, in conformance with DFG recommendations outlined in #1 above, prior to issuance of the Coastal Development permit. Recommended Condition Number 5 is included to assure compliance with DFG recommendations outlined in #2 above.

The project was also referred to the North Coast Regional Water Quality Control Board (NCRWQCB). The NCRWQCB responded that bridges and other activities may require a 401 Water Quality Certification from their agency. Any dredge or fill within waters of the state, including those designated by the Coastal Commission, would probably be under jurisdiction also. Standard Condition Number 5 is included to assure compliance with NCRWQCB requirements.

Exposure of people or property to water related hazards such as flooding or tsunamis: The project area is not located in the flood zone, not subject to flooding, and is not located in a tsunami hazard zone. The project would not result in exposure to people or property to water related hazards such as flooding or tsunamis.

Plant Life (Item 4):

Change in the diversity of species, or number of any species of plants including trees, shrubs, grass, crops, and aquatic plants: The project will result in permanent impacts to approximately 14,000 sq. feet of area which will be cleared of vegetation to construct the two foot wide native earth trail. Additional impacts include vegetation displaced by poles installed for fencing and signs, and impacts of shading to wetland vegetation from boardwalks and bridges.

The majority of impacts would occur to invasive grasslands currently used for grazing cattle. The property is not zoned for agricultural use but is being used agriculturally. Approximately 105,000 sq. feet of the 147 acre property, or 1.6% of the property would be taken out of agricultural use to accommodate the public access trail.

The area of impact includes wetlands, riparian areas, and stream crossings. Wetlands and riparian areas are protected under the Coastal Act by Local Coastal Plan (LCP) designation as Environmentally Sensitive Habitat Areas. Streams are protected by the Department of Fish and Game (DFG), and alterations to a stream bed, bank or channel require permission from DFG in the form of a 1602 agreement.

ESHA impacts were analyzed by Matt Richmond of Redwood Coast Associates and are outlined in his report, *Botanically Based ESHA Delineation and Impact Assessment Subject to the Coastal Act and the Mendocino County LCP*, dated November 2007. According to his report, the project would impact wetlands, streams and riparian areas as follows:

Development within a wetland: The installation of a board walk and peeler poles (PP) will require that a total of 225 square feet (218 of boardwalk stringer) + (10 of peeler poles) of fill and an additional 1090 sq. feet (or 1308 of total impact by boardwalks) of shade cover over the four wetland areas in WET 1, WET 2, and WET 5.

Development within 50 feet of an ESHA (wetland): Impacts to the buffers, the north and south of the wetlands, include clearing a section of vegetation two feet wide for the purpose of establishing the trail and the installation of fencing. Two peeler poles will create approximately one square foot of structural fill, per wetland (3).

Development within a stream: within the CCC/LCP streams the MLT propose to utilize existing rip rap (rocks) placed by Caltrans, to create a rock ford over the small channels comprising the stream ESHAs. The rip-rap will be arranged in order to create an extension of the land trail across the channel. The end result will be no net fill. These impacts are considered insignificant therefore no mitigation is recommended.

Development within 50 feet of an ESHA (stream): Impacts to the buffers, to north and south of the stream, include clearing a section of vegetation two feet wide for the purpose of establishing the trail and the installation of fencing. Two peeler poles will create approximately one square foot of structural fill, per stream (4).

Development within a Riparian area: No direct impacts to riparian vegetation, other than insignificant impact in the form of minor pruning, are proposed.

Development within 50 feet of an ESHA (riparian): Impacts to the buffers, to north and south of the stream, include clearing a section of vegetation two feet wide for the purpose of establishing the trail and the installation of fencing. Two peeler poles will create approximately one square foot of structural fill, per riparian area (2) (Richmond 2007).

Matt Richmond submitted an addendum dated March 19, 2009, adding Area 12 to the project description. This added area of wetland would require an addition of 35 feet of boardwalk, 48 inches wide in 10 to 12 foot segments, using Trex decking on 12" x 6" stringers.

The Mendocino County Coastal Zoning Code outlines developments allowed in wetlands and riparian areas including as follows (pertinent part, emphasis added):

Sec. 20.496.025 **Wetlands and Estuaries.**

(A) **Development or activities within wetland and estuary areas shall be limited to the following:**

(7) *Incidental public service purposes which temporarily impact the resource including but not limited to burying cables and pipes, or inspection of piers, and maintenance of existing intake and outfall lines.*

(10) Nature study purposes and salmon restoration projects.

(B) Requirements for permitted development in wetlands and estuaries.

(1) Any proposed development that is a permitted development in wetlands and estuaries must meet the following statutory requirements, and supplemental findings pursuant to Section 20.532.100:

(a) There is no feasible, less environmentally damaging alternative;

(b) Where there is no feasible, less environmentally damaging alternative, mitigation measures have been provided to minimize adverse environmental effects.

Sec. 20.496.035 Riparian Corridors and other Riparian Resource Areas.

(A) No development or activity which could degrade the riparian area or diminish its value as a natural resource shall be permitted in the riparian corridor or in any area of riparian vegetation except for the following:

(2) Pipelines, utility lines and road and trail crossings when no less environmentally damaging alternative route is feasible;

(B) Requirements for development in riparian habitat areas are as follows:

(1) The development shall not significantly disrupt the habitat area and shall minimize potential development impacts or changes to natural stream flow such as increased runoff, sedimentation, biochemical degradation, increased stream temperatures and loss of shade created by development;

(2) No other feasible, less environmentally sensitive alternative exists;

(3) Mitigation measures have been incorporated into the project to minimize adverse impacts upon the habitat;

(4) Where development activities caused the disruption or removal of riparian vegetation, replanting with appropriate native plants shall be required at a minimum ratio of one to one (1:1) and replaced if the survival rate is less than seventy-five (75) percent. (Ord. No. 3785 (part), adopted 1991)

Matt Richmond discusses alternatives to the proposed trail development, noting that the location of the trail is restricted to the recorded easement, and the proposed design is the least impacting design, and noting that the no-project alternative would not allow for coastal access. Mitigation measures and recommendations are outlined in Matt Richmond's report on pages 22-25, including replanting at a ratio of 1:1 for vegetation lost as a result of the project, restricting development to the dry season, planting of native plants, and removal of invasive plants. The mitigation measures and recommendations outlined in Matt Richmond's report are included as Appendix B of this report.

The Mendocino County Coastal Zoning Code additionally outlines developments allowed within buffer areas to ESHAs, and guidance for determining the appropriate width of a buffer are in Section 20.496.020. This section is thereby utilized by the biologist and referred to as a "Reduced Buffer Analysis." The Reduced Buffer Analysis has been conducted by Matt Richmond and is included in his report. As consistent with this section of code, development within the buffer area is generally the same as development within the resource areas. The Reduced Buffer Analysis is included as Appendix A of this report.

Rick Macedo of the Department of Fish and Game visited the site with planning staff on July 9, 2009. Mr. Macedo offers additional mitigation measures as follows:

1. To minimize impacts to wetland, riparian and stream habitats, trail sections that intercept these sensitive habitats shall incorporate design features that allow for continued function including water ponding and ground saturation, sediment transport, riparian cover and natural stream channel formation. When crossing wetlands and stream channels, span-design crossings shall be

used instead of installing rock, dirt or other fill on top of wetland and stream channels. Culvert-based crossings may be appropriate for smaller channel crossings provided that the design minimized fill and allows for maintenance of natural stream channel function. Full span design will be required for more significant stream channels and wetlands areas. Damaged and other substandard crossings that currently existing within the project areas shall be upgraded to meet the above stated standards.

2. Work involving trail construction in streams or riparian areas may require a lake or streambed alteration agreement (LSAA) from the Department of Fish and Game (DFG). Fish and Game Code §1602 requires notification to DFG for an LSAA prior to any activity that substantially modifies the bed, bank or channel or diverts or obstructs the natural flow of any river, stream, or lake. Information regarding LSAA's may be found at <http://www.dfg.ca.gov/habcon/1600/index.html>.

Recommended Condition Number 3 is included to ensure compliance with recommendations and mitigations set forth by Matt Richmond, the project botanist, and Rick Macedo of the Department of Fish and Game, as a condition of approval. As mitigated, the project would not result in significant impacts to natural resources, including wetland and riparian areas.

Reduction of the numbers of any unique, rare, or endangered species of plants: As outlined in the *Botanically Based ESHA Delineation and Impact Assessment Subject to the Coastal Act and the Mendocino County LCP*, by Matt Richmond of Redwood Coast Associates, dated November 2007, and summarized on page 16, no rare, endangered or unique species of plants were found in the project area.

Introduction of new species of plants into an area, or in a barrier to the normal replenishment of existing species: As outlined in the *Botanically Based ESHA Delineation and Impact Assessment Subject to the Coastal Act and the Mendocino County LCP*, by Matt Richmond of Redwood Coast Associates, dated November 2007, on-site wetlands are to be enhanced by removal of invasive plant species and replanted with native wetland plants. The proposed introduction of new plant species would have a net beneficial impact to on-site resource areas. Recommended Condition Number 3 is included to ensure compliance with Matt Richmond's recommendations and mitigations as a condition of approval (page 25).

Animal Life (Item 5):

Deterioration of existing fish or wildlife habitat: The project area is currently used by cattle for grazing, and by common wildlife species. There are no known special status animal species within the project area, and streams within the project area are not known to support anadromous fish. The trail and associated structures would be constructed with hand tools during the dry season. Measures recommended by Rick Macedo of the Department of Fish and Game and Matt Richmond, the botanist, will assure the sensitive areas, including streams, wetlands, and riparian areas utilized by common wildlife species are adequately protected during development activities.

Noise (Item 6):

Increases in existing noise levels: The only noteworthy increase in noise generated by the project will be that of construction activity, which will be of limited duration. Noise impacts will not be significant.

Land Use (Item 8):

Substantial alteration of the present or planned use of a given area:

The project is located in an area under the advisement of the Westport Municipal Advisory Council (WMAC). At their regularly scheduled meeting held March 25, 2009, WMAC unanimously supported the approval of the project, noting that the surface of the trail was not described and they would prefer the trail not be paved. As proposed, the trail would not be paved.

The parcels are classified on the Coastal Plan Map and zoned as Remote Residential (RMR), 20 acre minimum lot size, with a Planned Development (PD) Combining Zoning District. Parcel 015-380-05 is additionally designated with a *1C, indicating that visitor accommodations (conditionally approved Bed and Breakfast/Inn) are to be considered the primary permitted use, and that visitor serving use is to be the priority for the site (page 104

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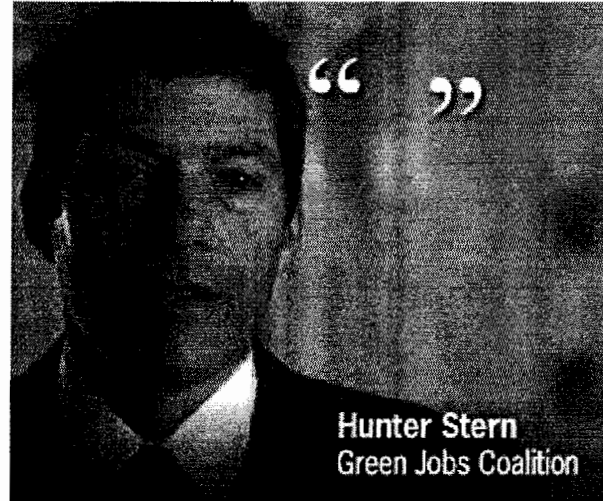
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Surge in abalone hunting puts species at risk

Peter Fimrite, Chronicle Staff Writer

Monday, July 5, 2010



A rash of abalone poaching along the Northern California coast combined with a huge increase in legally harvested mollusks has left so few of the delicacies clinging to the rocks that the population could be in jeopardy, state game wardens say.

Dozens of citations have been issued and a number of arrests made along the Marin, Sonoma and Mendocino county coastlines over the past three months during a poaching crackdown by the California Department of Fish and Game and other law enforcement agencies.

The illegal gluttony is particularly troubling when one considers that the number of legally harvested abalone has doubled in both Sonoma and Mendocino counties over the past two years, officials said. The shoreline scramble for the big sea snails is so voracious, fish and game wardens said, that it could lead to the species' demise.

"Despite our cooperative efforts, the abalone resource is struggling," said Nancy Foley, fish and game's chief of law enforcement. "Abalone are being harvested from the two counties - via both legal and illegal means - at an unsustainable rate."

More than 700 vehicles were stopped at checkpoints near abalone hotspots in Sonoma and Mendocino counties in May and June. Authorities issued 57 citations and seized 84 abalones in Sonoma County. In Mendocino County, they gave out 41 citations and confiscated 85 abalones.

Two weekends ago, National Park Service rangers busted six people who illegally collected 17 abalones at Tomales Point during low tide.

The commercial harvest of wild abalone has been banned in California since 1997. There are size requirements and limits on the number of abalones recreational divers and collectors may take. The use of scuba gear is also prohibited.

EXHIBIT B

The fine for a first offense is usually in the \$1,000 range, but repeat offenders can be convicted of felonies and sentenced to jail. The problem, wardens say, is that a single abalone can fetch \$100 on the black market, and because of this the poachers keep coming back for more.

On May 21, Randy Appleyard, 26, of Waterford was convicted of a felony for poaching abalone for commercial sale while on probation for the same offense. He was sentenced in Mendocino County Superior Court to three years in state prison and fined \$20,000. His co-conspirators, Christopher Kern, 27, of Orangevale and Philip Horch, 27, of Fair Oaks were given 270 and 180 days in jail and fined \$20,000 each. All of them were banned from fishing for the rest of their lives.

"It is a big deal," said Spencer Brady, the chief deputy district attorney for Sonoma County. "People are aware of" the seriousness of abalone poaching. "Juries don't like it."

Red abalone can be legally harvested in California for personal consumption as long as the harvester tags and documents that each abalone is the appropriate size using a special punch card.

About 50,000 red abalones were legally taken off Fort Ross in Sonoma County in 2009, and 60,000 were taken at Fort Ross Reef, said Patrick Foy, a California game warden. Those numbers, he said, are double the amount harvested in the same areas in 2007.

During the same period, some 14,000 of the creatures were pried off the rocks at Moat Creek, and 16,000 were taken in the waters off Van Damme State Park in Mendocino County. That's approximately twice the number of red abalones that were legally harvested three years ago, Foy said.

Foy said periodic checkpoints screening the harvests of licensed abalone divers have, on average, found that about 10 percent of the abalones that were supposedly legal violated some aspect of state law, including size requirements and limits on the number taken by an individual.

"The percentage of the actual number of violations we catch is impossible to document, but it is pretty low," Foy said. "We are stretched very, very thin, and there is no relief in sight."

There are about 100 fewer state fish and game wardens than there were in 2001. The 230 or so California wardens cover 1,100 miles of coastline and protect wildlife as far as 200 miles out to sea. California has the lowest per capita number of wardens in the United States, Foy said.

With California facing a \$19 billion budget deficit, the situation is not expected to improve.

And abalones are not the only animal that poachers target. Foy said profiteers have illegally taken vast quantities of freshwater clams, salmon, turtles, snakes and amphibians and put them up for sale in food markets, including in San Francisco's Chinatown, or sold them to collectors. The illegal sale of California wildlife and wildlife parts generates an estimated \$100 million a year, according to department officials.

Still, abalone poaching has been a major problem for a long time. In 2009, 11 people were arrested and 120 citations were issued in Sonoma and Mendocino counties after an elaborate ring of abalone poachers with headquarters in a hotel room was discovered. That same year, two people were arrested in Monterey County after they were caught with 51 rare black abalones, a federally listed endangered species.

"We're very concerned about the long-term sustainability of the abalone resource," Foy said.

"One of the defendants in our latest sweep was on probation for the same offense, so whatever he was fined and whatever jail time he got the first time wasn't enough for him to stop poaching. At this rate, the abalone may not be able to replace themselves fast enough to keep up with the harvest."

Red abalone

About the *Haliotis rufescens*:

Population: Exact numbers are difficult to estimate, but they are the most common of the seven species of abalone in California.

Habitat: Rocky intertidal areas with kelp in cold Northern California waters up to 100 feet deep.

Diet: They primarily feed on kelp and algae.

Shell length: The dome-shaped shells can reach a foot long, making red abalone the largest species of abalone in the world.

Life span: They can live 30 to 50 years. It takes at least 10 years for them to reach the legal harvest size of 7 inches.

Reporting poachers: Contact the California Department of Fish and Game CalTip line at (888) 334-2258.

Source: California Department of Fish and Game and the University of California

E-mail Peter Fimrite at pfimrite@sfgate.com.

<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2010/07/05/MNUM1E7B57.DTL>

This article appeared on page **A - 1** of the San Francisco Chronicle

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July 30, 2010

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

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

Scheduled: August 11, 2010
Agenda Item: W8(a)

RECEIVED
JUL 30 2010
CALIFORNIA
COASTAL COMMISSION

Dear Commissioners:

This office represents the applicant Jackson-Grube Family, Inc (Jackson-Grube) with regard to the above captioned pending CDP. This letter is written in response to the correspondence from Carter & Momsen, attorneys for the applicants neighbors, appellants Deborah Cahn and Judith Whiting ("Appellants"), dated July 23, 2010, in opposition to the proposed project ("Carter letter"). Although most of the arguments alleged in the Carter letter appear in earlier correspondence from the appellants attorneys and have been rebutted by Commission staff in the current Staff Report dated July 22, 2010, the applicant would nevertheless appreciate the opportunity to respond.

The case and statutory law cited by Carter is totally inapplicable to the pending application. There is absolutely no evidence in the administrative record, much less the required substantial evidence, to support the untenable and meritless arguments set forth by the appellants whose primary concern is their continued attempt to keep the public off the applicant's adjacent property. The appellants arguments and the applicants response are as follows:

Alleged Concern: The project will exacerbate an already inadequate water supply.

Response: Pursuant to LCP 3 8-1, 3.9-1, and CZC §20.532.095 the County made the determination that an adequate on-site water source was available to serve the proposed development when it approved the earlier, larger proposed project prior to approving its CDP. At the hearing Commission's substantial issue hearing these same appellants raised an issue that the hydrology study relied on by the County was outdated. The Commission thereafter required a new report. 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. The updated report concludes that the well will not have an undue influence on the water supplies serving the neighboring properties. Existing law requires that when a well test is required the property owner must offer to test a neighbor's wells, at his

ATTACHMENT 3

California Coastal Commission

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

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expense, when the neighbors wells are within 300 feet of the owners 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 at the same time as the owners 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 all neighboring property owners, including appellants, were invited to participate by in the applicant's well test by Questa 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". The Questa report concludes that the available water supply is over three times the amount necessary for the originally proposed 10 unit project. Interestingly, although appellants have made these same argument for the last three years, they have never commissioned their own study.

Alleged Concern: The project proposes to install a public walkway on the west side of Highway 1 on the eastern boundary of the Jackson-Grube property, and will cause significant adverse cumulative environmental impacts that have never even been considered, much less analyzed and subjected to public comments required by CEQA.

Response: As part of the revised project description the applicant has agreed to offer to dedicate an approximate 1,000 foot long, 15 foot wide lateral access easement adjacent to Highway 1 extending from the southern boundary of APN 015-380-02 to its northern boundary. This dedicated trail easement will tie into the identical trail, previously dedicated, on the applicants ocean front parcels south of APR 015-380-02. Contrary to the implications contained in the Carter letter, the applicant has not agreed to construct or open a public walkway. Public Resources Code §30212(3) specifically provides that "[d]edicated 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". If and when this dedicated easement is accepted by a public agency or private association said accepting body will be required to undergo all environmental review and obtain all entitlement as required by law to construct and open the trail. The appellants are well aware of this fact as they have recently opposed the County approval of the applicants previously dedicated 15 foot wide trail south of APN 015-380-02.

Alleged Concern: The project as designed and proposed, is inconsistent with the *1C zoning of the parcel under the local Coastal Plan.

Response: The specific area of the applicant's property where development is proposed 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. There is no alternate site on the ocean side of the subject property for an Inn. The Inn is proposed in the

precise location where the *1C designation 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 “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”. These policies of the LCP require that the proposed visitor serving facility be sited as indicated on the land use maps. 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 “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.” The LCP does not limit the number of bedrooms or baths a single unit can have and the Mendocino County Coastal Zoning Code does not define a “guest suite”. The Coastal Element of the Mendocino County General Plan merely provides “[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 . . .” 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. The fact that Mendocino County allows an inn to have either guest rooms or suites suggests some degree of versatility. The revised project seeks a total of 6 units for rental with a total of 8 bedrooms, 7.5 baths, and 4 kitchens. The unsupported claim that the project does not conform to the subject property’s *1C zone designation under the LCP is patently erroneous.

Alleged Concern: The project is very different from the project proposed by the County and has never been completely and accurately described and subjected to statutory public review procedures because (i) the additional parcels now made part of the project and the new vertical access trail, parking area, and viewing platform on one of the new parcels that have been added to the project, and their impacts, have not been described, assessed, or reviewed by the public and other agencies and mitigated to the extent feasible; (ii) the projected barn on parcel 13, and its use, are not described nor is there any suggestion as to why this barn should not be on the east side of Highway 1; and (iii) the type and scope of “special events” that can be held on this property have not been determined, described, reviewed or mitigated as required by law.

Response: The revised project is in substantial conformance with the original project approved by the County - only smaller - with the addition of an offer to dedicate public access, and additional open space. The revised project has a smaller foot footprint, less units, less square footage, and smaller units than the project approved by the County with all development proposed.

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July 30, 2010

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for the same immediate area. The ell off the main building, which previously contained 3 units, has been eliminated shortening the length of the main building by approximately 50 feet, and the previously proposed conference room and massage room have been eliminated. The applicant is not proposing to construct the additional public access but merely offering to dedicate land sufficient for the same. As referenced above, any public agency or private association which chooses to accept the offer to dedicate will have to adhere to all environmental review and entitlement processes as required by law which will permit public participation. Further, as discussed in the current Staff Report the applicant shall only have the right to apply for a barn on its property in the area where a barn previously existed - not construct the same - and must comply with all requirements of law. Lastly both the County and Commission have considered the issue of special events in open public hearings wherein the appellants have participated and both the County and Commission have recommended conditions dealing with the issue.

Alleged Concern: "Back room" tactics that have been pursued by the Jackson-Grube attorney, the Attorney General, and the Commission Staff which resulted in the court order of June 17, 2010 remanding the project back to the Commission.

Response: There were no back door tactics. The Commission in a notice closed executive session considered the Jackson-Grube proposal to settle the pending litigation and agreed to a remand of the matter for a hearing on a revised project which it considered to be in substantial compliance with the original project. The appellants through Mr. Carter's office have unsuccessfully attempted to void or stay the court order remanding the project back to the Commission, as well as, have unsuccessfully attempted to intervene into the pending lawsuit. The Commission has schedule new public hearings to consider the revised project and the appellants are participating in the process.

Alleged Concern: There have been abnormalities in the hearing procedure, including the requirement of an indemnity agreement, as well as long delays, which have had the effect of denying the appellants a "fair hearing" as required by law.

Response: There have been no abnormalities in the hearing procedure. The Commission has every right to settle a lawsuit in which it has been named a party. The remand to the Commission does not demand an approval of the revised project but only a new public hearing. The public, including the appellants, have every right to express their concerns at the hearing and have not been denied due process. The fact that a hearing on the merits of the project was not heard for approximately two years after the substantial issue hearing was not a result of any unreasonable delay or wrongdoing by the applicant, but rather a shortage of Commission staff to work on the project, and the Commissions continuance of the hearing on the project in July, was in part, to accommodate the appellants argument that they did not have sufficient time to review or comment on the Addendum that had only been distributed that day.

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Alleged Concern: Two or three parcels not previously part of the project have been added to the project.

Response: The additional parcels have merely been deed restricted to open space or offered for dedication for future public access. No public access will be opened without compliance with applicable law involving environmental review and issuance of permits which will provide the public with an opportunity to review and comment.

Alleged Concern: There is clear recognition that the vertical access is adjacent to a blue line stream and ESHA.

Response: As part of the revised project the applicant commissioned a supplemental biological report, dated June 10, 2010, evaluating the impacts of the proposed new public access dedications. The supplemental report concluded that none of the areas on APN 015-380-02 offered for dedication would encroach into an ESHA area, including the proposed vertical public access easement. The vertical easement and viewing areas will 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 study demonstrated that future development of public access facilities by an entity that accepts the offered dedications will not result in significant adverse impacts.

Alleged Concern: The court order of June 17, 2010, if valid, only allowed the Commission authority to hear the revised project during its July 2010 agenda, not afterwards.

Response: Even if the appellants are correct, and they are not, logic and reason would conclude that only the applicant should have standing to contest the delay. Further, the appellants were represented by counsel at the July hearing and specifically requested the Commission not take action during said hearing because the Addendum had only been distributed to the public that day. The appellants therefore should be legally estopped to contest the continuance to August or be deemed to have invited Commission error.

In conclusion, the Commission has not, as the appellants contend, permitted two hearings on a request for reconsideration. The Commission has merely agreed to enter into settlement negotiations of a pending lawsuit, with the approval of the court, which any party litigant has the right to do. The Commission has not promised any specific result to the new hearing and has provided the public with a full opportunity to participate in the administrative process. There has been no denial of due process. The revised project is in substantial compliance with the project original considered and approved by Mendocino County and on which the Commission found substantial issue. Because of the downsizing of the revised project its environmental impacts, if any, will be less than previously considered in the original larger project.

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The appellants unsupported allegations that they oppose the project because of public concerns is ridiculous. The appellants real concerns are obvious. They have continually opposed the project because they do not want a visitor serving use on the applicants adjacent property. They do not want the public near their property. Purporting to base their opposition on alleged "back-door" dealings, lack of public notice, and patently unfounded Coastal Act or CEQA violations is absurd.

There is no question but that the revised project has substantially less possible environmental effects than the project originally approved by the County. The revised project, although in substantial compliance with the original project has a smaller foot footprint, less units, less square footage, smaller individual units, and greater setbacks from ESHA.

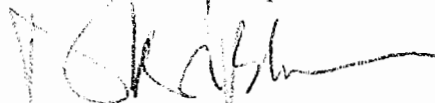
The revised project is consistent with both the Coastal Act and LUP and deserves your support and approval.

I will be present at the hearing on August 11th to answer any of your questions and concerns.

I thank you for your anticipated courtesy, cooperation, and support.

Very truly yours,

**LAW OFFICES OF
ALAN ROBERT BLOCK**
A Professional Corporation



ALAN ROBERT BLOCK

ARB:cw
enclosures

cc: Commissioners
Bob Merrill
Willard Jackson
Peter Grube
Dave Sellers

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
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W8a

Hearing	Filed: July 23, 2007
	49 th Day: September 10, 2007
	Opened: September 7, 2007
Staff	Staff: Robert S. Merrill
Hearing	Report: July 22, 2010
	Date: August 11, 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 (on the APNs that comprise Certificate of Compliance 39-90-D, including 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; as well as on APNs 015-380-02 and 015-380-06.)

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: 2)

- 3)
- 4)
- 5)

- 1) Mendocino County CDU No. 6-2006
Mendocino County Local Coastal Program
Coastal Development Permit No. 1-83-278
Appeal No. A-1-MEN-96-28
Mendocino County CDU No. 9-95

6)

Mendocino County CDUM No. 9-95/00

STAFF NOTE 1: REVISED STAFF REPORT

The Commission opened the hearing on the remanded permit application on July 7, 2010 and continued the hearing to the August 11-13, 2010 Commission meeting.

In voting to continue the hearing to the August meeting, the Commission asked the staff to incorporate specified changes to the staff recommendation to address issues discussed at the hearing, including (a) additional limitations on use of the proposed inn for special or temporary event to reduce visual impacts, and (b) additional limitations on the length of stay of inn guests to better ensure that the inn units are not used as residences.

The special conditions and findings of the staff report have been revised in several ways from the report dated June 24, 2010 that was published prior to the July 7, 2010 public hearing.

First, the report incorporates the changes and additions contained in the Addendum to the June 24, 2010 report that was presented by staff at the July 7, 2010 meeting and mailed to interested parties that same day.

Second, the report includes revisions to Special Condition Nos. 15 (Temporary Events) and adds associated finding language at the end of the visual resource finding (end of Finding H, page 91) that limit the number of persons involved with special or temporary events at the proposed inn facility to 99 unless a coastal development permit amendment is obtained for larger events. The changes match temporary use limitations imposed by the County use permit for the development and will ensure that the Commission will be able to review how proposals for larger events would prevent significant adverse visual impacts in the highly scenic setting of the development.

Third, Special Condition No. 20 (Evidence that Previously Granted or Offered Public Access Areas are Irrevocable and Are Provided As a Condition of this Permit) has been revised and associated finding language added at the end of the public access finding (end of Finding K, page 117) to state more clearly that a new offer to dedicate a public access easement over the approximately 6,000-foot-long, 15-foot-wide lateral accessway along Highway One be recorded over the same easement area previously required by Mendocino County Coastal Development Permit Modification No. CDUM 9-95/2000. The special condition will ensure that the easement is provided as a condition of Coastal Development Permit No. A-1-MEN-07-028 and is irrevocable.

Fourth, a new Special Condition No. 22 (Length of Stay Provisions) has been added and associated finding language added to Finding E on page 55 to limit the length of stay of inn guests to no more than 30 consecutive days and no more than 60 days per year to help ensure that the inn units are not used for residential purposes and to ensure that the use of the units is consistent with LCP stay limitations on transient guest occupancy of visitor serving facilities.

Finally, minor corrections have been made on various pages throughout the report.

SUMMARY OF STAFF RECOMMENDATION DE NOVO:
APPROVAL WITH CONDITIONS

Staff continues to recommend 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 015-380-002, 015-380-03, 015-380-004, 15-3808-06 and 015-330-013). 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 015-380-002, 015-380-03, 015-380-04, 15-380-06 and 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.

The principal issues raised by the application concerns the visual impacts of the development, whether the proposed inn units will be used as residences rather than as visitor serving units, 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 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 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 five 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.

Use of the site for weddings, corporate retreats, lectures, and other special events would adversely affect visual resources if not limited in some manner to restrict the number and location of vehicles and tents or other temporary structures. Vehicles and temporary

structures associated with special events located in the fields surrounding the inn and ranch complex would be visually prominent from public vantage points such as Highway One as they would contrast greatly in appearance to the natural setting. The addition of an unlimited number of these temporary features to the landscape for an unlimited number of persons would not be subordinate to the character of the open coastal terrace setting as required by LUP Policy 3.5-1 and 3.5-3 and Coastal Zoning Ordinance Section 20.504.015(C)(3).

The project as proposed includes an overflow parking area for special events adjacent to and along the southeast corner of the inn and ranch complex that can accommodate 24 vehicles. As proposed and conditioned by Special Condition No. 9, a landscaped berm planted with native trees and shrubs will be planted along the perimeter of the overflow parking area to partially screen vehicles parked in the overflow lot. The 24 spaces provided in the overflow lot, together with the 15 spaces serving the inn within the ranch and inn complex itself would be sufficient to accommodate most temporary events such as weddings that are limited to less than 100 people, especially as most people traveling to such events along this remote coastal area will likely be traveling together. Therefore, staff recommends Special Condition No. 15 which restricts vehicle parking to the proposed parking areas indicated above and limits the number of persons involved in a temporary event to 99, unless the applicant obtains a coastal development permit amendment to allow an event with a larger number of persons. With the requirement that a permit amendment be obtained for larger groups, the Commission will have the ability to review alternative off-site parking and transportation plans submitted with a permit amendment application to ensure that any proposed large event will not result in vehicles parking on the project site in areas outside of the prescribed parking areas and that the temporary event will be consistent with the visual resource protection policies of the certified LCP. Staff notes that the requirement that events be limited to 99 persons unless the applicant obtains a coastal development permit is consistent with the requirements of the County approved use permit for the development.

To further limit the visual impact of temporary events, Special Condition No. 15 also restricts the installation of tents installed to accommodate temporary events to the confines of the perimeter fence of the 1.5-acre inn and ranch complex. This limitation will ensure that tents will not be installed in the open fields surrounding the inn and ranch complex and will be limited to the area of the complex itself where views of the water from public vantage points are already affected by the structures of the approved development.

The LCP designation for the site allows for the development of an inn for transient guest occupancy, but does not allow for multi-family residential use of the site. Section 20.308.115(F) of the Coastal Zoning Code defines “transient guest” in a manner that limits occupancy for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. Given the size of some of the proposed inn units, concerns have been raised that the inn units over time could be converted from visitor serving

accommodations to residential units. Staff recommends the attachment of two special conditions to prevent unauthorized conversions of the units to residential or other uses. To ensure that the inn units are used by transient guests and that the use of the units is consistent with LCP designation for the site, staff recommends Special Condition No. 22. The special condition requires that rooms not be rented to any individual, family, or group for more than 30 consecutive calendar days counting portions of calendar days as full days. To ensure that the intent of these limitations to reserve use of inn units to transient guests rather than to residents is not defeated by allowing users of the units to nominally check out of their units for a day or other short period of time and then reoccupy the unit over and over again, the condition contains the further limitation that no individual, family, or group may occupy a unit for more than 60 total days per year. Staff further recommends that the Commission attach Special Condition No. 7, which would impose 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.

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 1/8th 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 conditions 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 activities 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.

The motion to adopt the staff recommendation of approval with conditions is on pages 17 and 18.

ADDITIONAL STAFF NOTES:

2. Background

The Commission has previously considered Appeal No. A-1-MEN-07-028 on four 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 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, 015-038-003, 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 remanded the permit application to the Commission for a public hearing on the revised project during the July 7-9, 2010 Commission meeting. The Commission opened the hearing on the remanded permit application on July 7 and continued the hearing to the August 11-13, 2010 Commission meeting.

3. 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.

4. 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 Westland 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.

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 015-380-02, APN 015-380-03, APN 015-380-04, APN 015-380-06, and APN 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 015-330-13 and APN 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 for public access purposes.
2. Improvement of the offered public access easements dedicated pursuant to Special Condition Nos. 17 and 20 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.

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 015-380-03, APN 015-380-04, and APN 015-380-05

and generally depicted on Exhibit 27: (a) comprise a part of one 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 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 015-380-03, APN 015-380-04, and APN 015-380-05, as described in Exhibit 20 and as generally depicted on Exhibit 21 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 015-380-03, APN 015-380-04, and APN 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 015-380-03, APN 015-380-04, and APN 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 015-380-03, APN 015-380-04, and APN 015-380-05 as described in Exhibit 20 and as generally depicted on Exhibit 21 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.
- 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 1st 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 PERMIT**, 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. Special events at the facility shall be limited to a maximum of 99 persons. Gatherings of 100 or more persons shall require an amendment to this coastal development permit.
- B. During temporary events and at all other times, the number of vehicles parked at the site shall be limited so that all of the vehicles of visitors, guests, 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 project site as shown in Exhibit No. 28, including, but not limited to areas along the driveway or in the fields adjoining the inn complex.
- C. 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
- D. A coastal development permit amendment for a temporary event of 100 or more persons shall be obtained prior to holding the 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 Lateral Public Access Easement Along Highway One, Vertical Public Access Easement to Bluff, Public Access Viewing Area Easement, and Public Access Parking Area Easement

PRIOR TO ISSUANCE OF THE 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 against the entirety of the legal parcel containing APN 015-380-02 an irrevocable offer to dedicate a public access easement(s) to a public or non-profit entity acceptable to the Executive Director 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 Commission amendment, approved pursuant to the provisions of 14 CCR §13166, to this Permit. This requirement shall be reflected in the provisions of the recorded offer(s).

18. Public Rights

The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property. In addition, by acceptance of this permit, 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 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).

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

- A. 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 entirety of the legal parcel(s) containing APNs 015-330-13, 015-380-05, and 015-380-04 either an outright dedication to the Mendocino Land Trust, or an irrevocable offer to dedicate to a public or non-profit entity acceptable to the Executive Director a public access easement(s) 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 an approximately 6,000-foot-long, 15-foot-wide lateral public access easement adjacent to the Highway One Right-of-way extending from the southern boundary of APN 015-330-13 to northern boundary of APN 015-380-04. Any future development that is proposed to be located either in whole or in part within the area described in the recorded dedication or offer of dedication shall require a Commission amendment, approved pursuant to the provisions of 14 CCR §13166, to this Permit. This requirement shall be reflected in the provisions of the recorded offer.
- B. 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 property owner has executed and recorded against the entirety of the legal parcel containing APN 015-330-05, 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 generally depicted on Exhibit 24 consistent with the requirements of Mendocino County Coastal Development Permit Modification No. CDUM 9-95/2000. The documentation recorded against the entirety of the legal parcel containing APN 015-330-05 which was transferred to the county after issuance of the COC, shall expressly evidence that the above-referenced conveyances has been accepted, shall be used for public access purposes, is irrevocable and is provided as a condition of A-1-MEN-07-028.

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.

22. Length of Stay Provisions

All six inn units shall be open and available to the general public. Rooms may not be rented to any individual, family, or group for: (1) more than 30 consecutive calendar days counting portions of calendar days as full days; or (2) no more than 60 days per year.

23. 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 are 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.

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 17th, 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.

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)*

Section 20.308.115(F) defines “Transient Guest” as follows:

“Transient Guest” means any person who exercises occupancy or is entitled to occupancy by reasons of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

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 of 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 provided 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.

Section 20.308.115(F) defines “transient guest” in a manner that limits occupancy for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. To ensure that the inn units are used by transient guests as defined in the coastal zoning code and that the use of the units is consistent with *1C visitor serving facility designation as defined in CZC Section 20.332.015, the Commission attaches Special Condition No. 22. The special condition requires that rooms not be rented to any individual, family, or group for more than 30 consecutive calendar days counting portions of calendar days as full days. To ensure that the intent of these limitations to reserve use of inn units to transient guests rather than to residents is not defeated by allowing users of the units to nominally check out of their units for a day or other short period of time and then reoccupy the unit over and over again, the condition contains the further limitation that no individual, family, or group may occupy a unit for more than 60 total days per year.

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 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 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 015-380-004 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, 015-380-004, 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.

Use of the site for weddings, corporate retreats, lectures, and other special events would adversely affect visual resources if not limited in some manner to restrict the number and location of vehicles and tents or other temporary structures. Vehicles and temporary structures associated with special events located in the fields surrounding the inn and ranch complex would be visually prominent from public vantage points such as Highway One as they would contrast greatly in appearance to the natural setting. The addition of an unlimited number of these temporary features to the landscape for an unlimited number of persons would not be subordinate to the character of the open coastal terrace setting as required by LUP Policy 3.5-1 and 3.5-3 and Coastal Zoning Ordinance Section 20.504.015(C)(3).

The project as proposed includes an overflow parking area for special events adjacent to and along the southeast corner of the inn and ranch complex that can accommodate 24 vehicles. As proposed and conditioned by Special Condition No. 9, a landscaped berm planted with native trees and shrubs will be planted along the perimeter of the overflow parking area to partially screen vehicles parked in the overflow lot. The 24 spaces provided in the overflow lot, together with the 15 spaces serving the inn within the ranch and inn complex itself would be sufficient to accommodate most temporary events such as weddings that are limited to less than 100 people, especially as most people traveling to such events along this remote coastal area will likely be traveling together. Therefore, the Commission attaches Special Condition No. 15 which restricts vehicle parking to the proposed parking areas indicated above and limits the number of persons involved in a temporary event to 99, unless the applicant obtains a coastal development permit amendment to allow an event with a larger number of persons. With the requirement that a permit amendment be obtained for larger groups, the Commission will have the ability to review alternative off-site parking and transportation plans submitted with a permit amendment application to ensure that any proposed large event will not result in vehicles parking on the project site in areas outside of the prescribed parking areas and that the temporary event will be consistent with the visual resource protection policies of the certified LCP. The Commission notes that the requirement that events be limited to 99 persons unless the applicant obtains a coastal development permit is consistent with the requirements of the County approved use permit for the development.

To further limit the visual impact of temporary events, Special Condition No. 15 also restricts the installation of tents installed to accommodate temporary events to the confines of the perimeter fence of the 1.5-acre inn and ranch complex. This limitation will ensure that tents will not be installed in the open fields surrounding the inn and ranch complex and will be limited to the area of the complex itself where views of the water

from public vantage points are already affected by the structures of the approved development.

As conditioned, the Commission finds that the proposed development is consistent with the visual resource protection polices of the certified LCP.

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 with 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. 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:

- (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 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:

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.

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 1/8th 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:

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;
1. 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;
2. 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
3. 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 1/8th 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 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 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 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 1/8th 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 1/8th 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 1/8th 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.

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 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 previously required by Mendocino County Coastal Development Permit Modification No. CDUM 9-95/2000, has been accepted, is for public access purposes, is now provided as a condition of this coastal development permit and is irrevocable. In addition, Special Condition No. 20 requires the applicant to provide evidence for the review and approval of the executive Director that either an outright dedication to the Mendocino Land Trust or a new offer to dedicate 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, has been properly executed and recorded prior to issuance of the coastal permit. A similar easement over this same area was previously required by Mendocino County Coastal Development Permit Modification No. CDUM 9-95/2000. Recordation of the new easement required by Special Condition No. 20(B) will ensure that the easement is provided as a condition of Coastal Development Permit No. A-1-MEN-07-028 and is irrevocable. In addition, in its review of the previously recorded easement for the lateral accessway along the highway, Commission staff has noted certain errors in the recordation process including, but not limited to the fact that an acceptance of the easement by the Mendocino Land Trust was not properly recorded. Recordation of a new easement as a condition of Coastal Development Permit No. A-1-MEN-07-028 will help ensure that the public access easement is provided in perpetuity.

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.

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.

M. 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 Krueger 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 Public Access OTDs
25. Correspondence
26. Ex Parte Communication Disclosures
27. Area Affected by Special Condition No. 6
28. Extent of Project Site
29. Settlement Agreement
30. Remand Order for New De Novo Hearing

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.