

CALIFORNIA COASTAL COMMISSION

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W15a

MEMORANDUM

Date: November 3, 2008

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, November 4, 2009
North Coast District Item W15a, Appeal No. A-1-MEN-07-028 (Jackson-Grube Family, Inc.)**

This addendum presents certain revisions and additions to the staff recommendation for approval of the project with conditions mailed on October 22, 2009, including: (I) modifications to Special Condition No. 6 to simplify the requirements of the condition and clarify that the APNs immediately north of the inn site and the APN where the inn is proposed shall be acknowledged to be part of one legal parcel which cannot be separately divided or conveyed from each other or from the parcel which they are a part; (II) revisions and additions to the findings that respond to comments received on the staff recommendation and present findings that staff was unable to complete prior to mailing of the staff report; and (III) the addition of three new exhibits including Exhibit No. ____, which is a copy of a letter from the applicant's representative referred to in Finding __ but not included in the staff recommendation, Exhibit No. __, which is a depiction of the entirety of the subject parcel, and Exhibit No. ____, which presents additional letters of correspondence and ex parte communications received since publication of the staff report. Staff continues to recommend approval of the permit with conditions as recommended in the October 22, 2009 staff report.

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

I. **Modifications to Special Condition No. 6 of the Staff Recommendation.**

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Special Condition No. 6 on pages 16-18 of the staff recommendation shall be modified as follows:

- 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 ~~both~~ the applicant/landowner ~~and the County of Mendocino~~ acknowledges, agrees to, and ~~has~~ **has** implemented the requirements of ~~either~~ subsection A1, A2 and A3. ~~OR subsections B1, B2, B3, and B4.~~

- A1. By acceptance of this permit, the applicant agrees, on behalf of itself and all successors and assigns with respect to the subject property, that all portions of the property identified as APN 015-380-003, APN 015-380-004, and APN 015-380-005 and generally depicted on Exhibit 27: (a) comprise a part of ~~the~~ one single legal parcel described in Exhibit 2 and generally depicted in Exhibit 30; (b) shall henceforth be considered and treated as part of one single parcel for all purposes including but not limited to sale, conveyance, development, taxation or encumbrance; and (c) shall not be divided or alienated from each other or from the single legal parcel of which they are a part, and
- A2. **PRIOR TO ISSUANCE OF THE NOTICE OF INTENT TO ISSUE COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-07-028 (NOI)**, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of (a) the property identified by the three APNs affected by this condition as generally described above and as generally depicted on Exhibit 27 as well as (b) the entirety of the single legal parcel containing the property identified as APN 015-380-003, APN 015-380-004, and APN 015-380-005, as **generally** described **above in Exhibit 20** and as generally depicted on Exhibit ~~27~~ **30**.
- A3. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-07-028**, the applicant shall execute and record a deed restriction against the single legal parcel containing the property identified as APN 015-380-003, APN 015-380-004, and APN 015-380-005, in a form acceptable to the Executive Director, reflecting the restrictions set forth above. The deed restriction shall include a legal description and graphic depiction of (a) the property identified as APN 015-380-003, APN 015-380-004, and APN 015-380-005 and generally depicted on Exhibit 27 as well as (b) the entirety of the single legal parcel containing the property identified as APN 015-380-003, APN 015-380-004, and APN 015-380-005 ~~on Exhibit 27~~ as described in Exhibit 20 and as generally

depicted on Exhibit 30. 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.

OR

- ~~B1. By acceptance of this permit, the applicant agrees, on behalf of itself and all successors and assigns with respect to the subject property, that (1) all portions of the three parcels, APN 015-380-003, APN 015-380-004, and APN 015-380-005 on Exhibit 27 shall be formally and irrevocably recombined and unified for purposes of the Subdivision Map Act and the Coastal Act, and shall henceforth be considered and treated as a single parcel of land for all purposes with respect to the lands included therein, including but not limited to sale, conveyance, development, taxation or encumbrance, and (2) the single parcel created thereby shall not be divided, and none of the parcels existing at the time of this permit approval shall be alienated from each other or from any portion of the combined and unified parcel hereby created, and~~
- ~~B2. 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 the three APNs being recombined and unified as generally described above and generally depicted on Exhibit No. 27 attached to this staff report, and~~
- ~~B3. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-07-028, the applicant shall execute and record a deed restriction against each parcel described above, 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 the 3 parcels being recombined and unified. 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, and~~
- ~~B4. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-07-028, but after the deed restriction described in the prior paragraph is recorded, the applicant shall provide evidence to the Executive Director that the applicant has provided a copy of the deed restriction to the county assessor’s office and requested that the assessor’s office (1) revise its records and maps to reflect the combination of the parcels, including~~

~~assigning a new, single APN for the unified parcel, and (2) send the Commission notice when it has done so, indicating the new single APN.~~

REASON FOR CHANGES: As discussed in the staff recommendation, to ensure that the proposed development will protect highly scenic views and not result in significant adverse cumulative visual impacts, 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, staff is recommending that the Commission impose Special Conditions 5 and 6. These conditions would ensure that the large open space area owned by the applicant west of Highway One and north of the development site on APN 015-380-003 and APN 015-380-004 (approximately 75 acres) would be protected. Special Condition No. 5 prohibits all development except for certain accessory agricultural development and certain other minor development that would not affect the open space character of the area or significantly affect views. 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 alienated from each other or from the single legal parcel of which they are a part, thereby ensuring that the affected property is never placed into divided ownership and APN 015-380-005, APN 015-380-003, and APN 015-380-004 are always considered a part of a single economic unit for purposes of determining whether a taking has occurred. As initially recommended in the staff report, subsections A1 through A3 of Special Condition No. 6 would require the applicant to acknowledge and agree that APNs 015-380-003, 015-380-004, and 015-380-005 comprise a part of one legal parcel and will be treated as part of a single legal parcel of land for all purposes. Because the applicant initially maintained that the three APNs represented three separate legal parcels, Special Condition No.6 also gave the applicant the option under subsections B1 through B4 of the condition to merge the three APNS into one legal parcel if in fact the County agreed with the applicant that the APNs constituted separate legal parcels. After publication of the staff report, staff re-examined the evidence in the record regarding the status of the APNs and believes that the evidence conclusively establishes that the three APNs are part of the same legal parcel and that the County of Mendocino has consistently treated the three APNs as part of the same legal parcel. Therefore, staff is revising recommended Special Condition No. 6 to delete the option provided by subsections B1 through B4 of merging the three APNs into one legal parcel as the three APNs are already part of the same legal parcel. The applicant's representative has indicated to staff that the applicant does not object to this modification of the special condition.

II. Revisions and Additions to Findings

- **Supplemental Findings on Consistency With Use and Size Limitations of *1C Designation**

Add the following to Finding E, “Consistency With Use and Size Limitations of *1C Designation.” The new finding language should replace the text under the “Discussion” sub-heading on Page 43 of the staff recommendation after the listing of LCP policies relating to the finding topic.

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 five 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 a 9,809-square-foot inn building containing a 2,989-square-foot main unit that can be used as three separate units, an 1,112-square-foot upstairs unit, an 823-square-foot downstairs unit, a 1,547-square-foot “ell” unit, and 3,338 square feet of accessory common and service areas; (3) constructing a 2,437-square-foot rental cottage and massage room; (4) constructing a 1,737-square-foot ranch manager’s unit; (5) constructing a 1,145-square-foot ranch equipment barn; (6) installing a 240-square-foot generator/.pump shed; (7) constructing a 1,479-square-foot garage for inn guests; (8) installing a new septic system; (9) improving

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and rerouting a portion of the existing 14,810-square-foot driveway; and (10) burying existing overhead utility lines. The total area of development is approximately 1.63 acres, including a 1.29-acre building envelope and a 0.34-acre driveway.

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

As noted above, the approximately 400-acre parcel extends over large areas both west and east of Highway One. The *1C designation and combining zone symbol was affixed to the certified Land Use Plan and Zoning maps at the general location on the subject property west of Highway One where the applicants propose to develop the project. The appellants have suggested that the *1C symbol is not meant to limit development of a complying inn or bed and breakfast facility to that specific location on the property, rather that the *1C symbol simply means that the applicable visitor serving facility can be built anywhere on the parcel to which it is applied. This interpretation would allow consideration of an alternative location for the proposed inn east of Highway One, and the applicants note that development of the inn east of the highway would reduce or eliminate the development's impacts on views to and along the coast from Highway One.

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

First, as noted previously, the Remote Residential RMR-20:PD *1C LUP designation and zoning district was only applied on a portion of the parcel that lies west of Highway One.

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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

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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

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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 five unit inn that can be used as a seven unit inn; the 2,989-square-foot main unit can be converted into three separate units, depending on the needs of the guests renting the main unit. In total, the 5-7 units proposed would have a total of 9 bedrooms. The cottage building would also contain a loft.

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

The LCP does not contain a definition of a “unit.” In addition, the above-cited LCP definition of the *1C designation does not specifically limit the number of bedrooms a unit can contain. To the contrary, the definition indicates that a unit could be either a “guest room” or “suite.” A suite is defined in part in Webster’s Dictionary as “a group of rooms occupied as a unit.” Thus, the LCP does not specifically limit the number of bedrooms per unit. In addition, the LCP definition of the *1C designation does not specify a square-foot area size limitation for a unit. Thus, the fact that one or more of the guest accommodation is more than 2,500 square feet does not disqualify the accommodation as a unit allowed by the *1C designation.

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 1.29-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 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, the proposed visitor serving facility is *1C visitor serving facility as defined in Section 20.332.015 of the Coastal Zoning Code.

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

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

- **Revisions to Finding on “Adequacy of Available Water.”**

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Add the following to Finding F, “Adequacy of Available Services,” within the subsection entitled “Adequacy of Available Water,” on Page 50 of the staff recommendation between the first two full paragraphs.

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 five unit inn that can be operated as a seven unit inn, depending on the needs of the visitors to the inn. The inn will have a maximum of 9 bedrooms plus a loft. 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 applicants 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 form 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.

- **Supplemental Findings on Highway One Capacity**

Add the following to Finding F, “Adequacy of Available Services,” The new finding language should replace the text under the subsection entitled “Highway One Capacity,” on Page 50 of the staff recommendation.

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]

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(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 Caltrans'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 the 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.

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

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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 currently being considered by the County have not been adequately considered. The public access trail project involves an application of 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 the public access trail project is not currently before the Commission and has not been granted final approvals by the County. 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 significantly affect 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.

- **Supplemental Findings on Protection of Environmentally Sensitive Habitat**

Add the following to Finding I, "Protection of Environmentally Sensitive Habitat." The new finding language should replace the text under the "Discussion" sub-heading on Page 81 of the staff recommendation after the listing of LCP policies relating to the finding topic.

Discussion:

- **Supplemental Findings on Archaeological Resources**

Add the following to Finding J, "Archeological Resources." The new finding language should replace the text under the "Discussion" sub-heading on Page 81 of the staff recommendation after the listing of LCP policies relating to the finding topic.

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 Bueren 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

Addendum - Item W15a

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

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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 commentators 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 the Section 30244 of the Coastal Act which specifically refer 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 have 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.

BLOCK & BLOCK

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ALAN ROBERT BLOCK
JUSTIN MICHAEL BLOCK

SENDER'S E-MAIL
alan@blocklaw.net

July 9, 2009

RECEIVED

JUL 13 2009

CALIFORNIA
COASTAL COMMISSION

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

EXHIBIT NO. 30

APPLICATION NO.

A-1-MEN-07-028

JACKSON-GRUBE FAMILY, INC

APPLICANT

CORRESPONDENCE ON LOT
LEGALITY (1 of 2)

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

Dear Bob:

Pursuant to your previous request please find enclosed hereto copies of fourteen (14) patents deeds, with location maps, which were the basis for Mendocino County's approval of the previously forwarded Certificates of Compliance.

The enclosed documents evidence separate and distinct underlying patents for both Assessor Parcel Number ("APN") 15-380-05 (the 34 acre parcel on which the Inn is proposed to be located) and the two immediate parcels to the north, APN's 15-380-03 (7.2 acres) and 15-380-04 (69.87 acres), APN 15-380-05 was granted pursuant to the attached 3 P 50 on or about January 20, 1875 and APNs 15-380-03 and 15-380-04 were granted separately pursuant to 2 P 507.

Title 17 of the Mendocino County Municipal Code, Article XV at Section 17-101 provides that for the sole purpose of determining compliance with the Chapter, County zoning ordinances and the Map Act, any lot meeting the requirements set forth in this section shall be deemed legally conforming lot for which development permits may be issued. Section 17-102 further provides in relevant part that "[U]pon proof satisfactory to the Subdivision Committee, that any lot or lots fully comply with the foregoing requirements, a certificate of compliance shall be issued for such lot or lots. . ."

In the case at hand, the underlying 14 patents have been approved as part of the approved Certificates of Compliance. There is no question but that APN 15-380-05 has never been merged with APN 15-380-03 and 04.

I'll try to give yo a call on Tuesday to review the status of the application. I look forward to speaking with you in order to resolve any outstanding issues. I don't think the applicant will be back in town until the end of next week. Since I'll be out of the office next Wednesday through Friday maybe we can arrange a conference call with Will the beginning of the following week.

Mr. Bob Merrill

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

July 9, 2009

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Thank you for your continued courtesy and cooperation.

Very truly yours,

BLOCK & BLOCK
A Professional Corporation

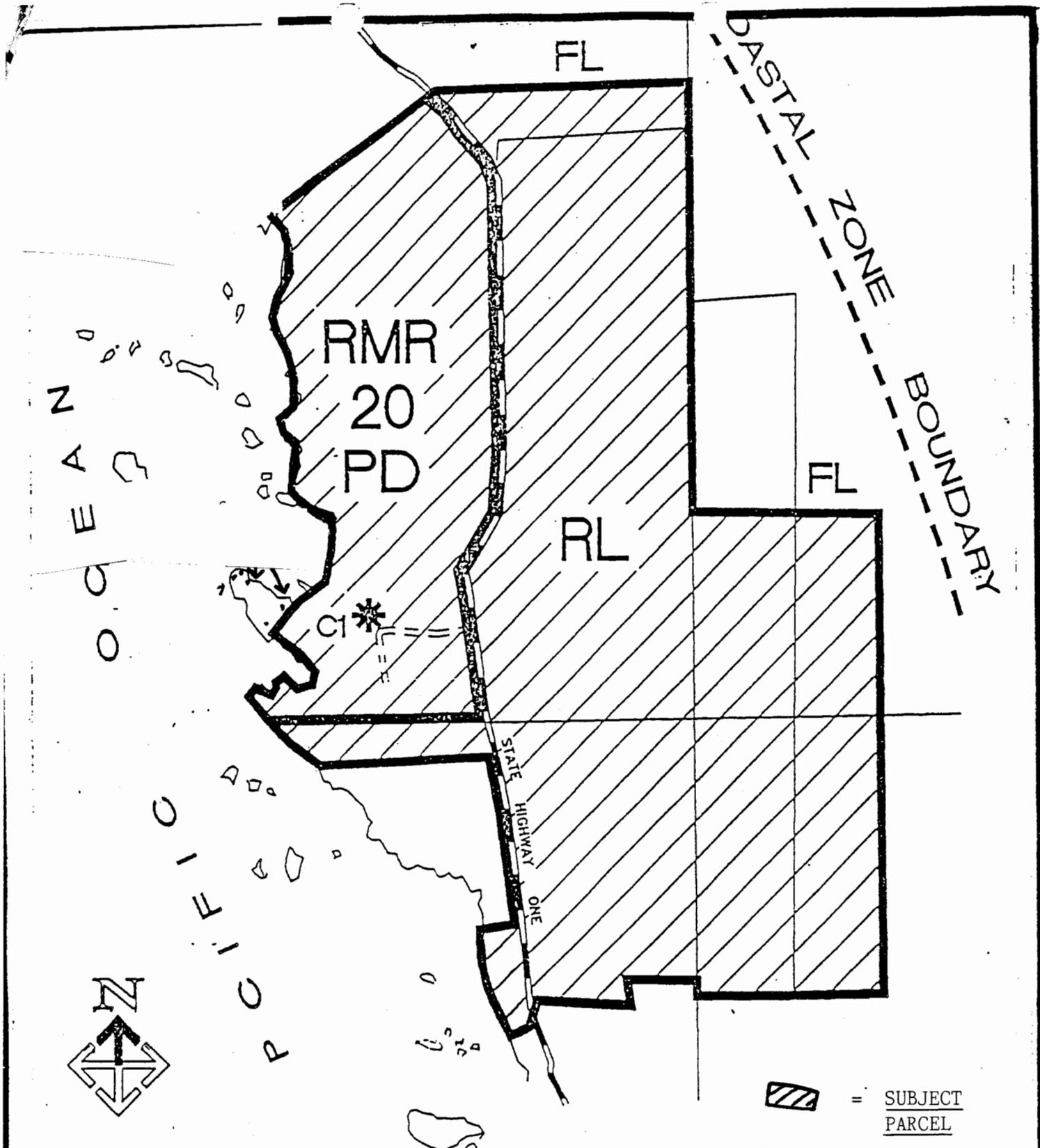


ALAN ROBERT BLOCK

ARB: ctw
enclosures

cc: Will Jackson
Mike Thomas

2 of 2



PARCEL MAP

EXHIBIT NO. 31
APPLICATION NO. A-1-MEN-07-028
JACKSON-GRUBE FAMILY, INC
SUBJECT PARCEL

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October 27, 2009

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

EXHIBIT NO. 32

APPLICATION NO.

A-1-MEN-07-028

JACKSON-GRUBE FAMILY, INC

ADDITIONAL
CORRESPONDENCE AND EX
PARTE DISCLOSURE (1 of 42)

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

Revised Project Description: Build a 5-7 unit Inn with a total of 9 bedrooms and facility for weddings or other events for up to 99 attendees. The Inn operations to include (1) the main building, including renovation of the former Orca Inn into a main unit of 2,989 sq. ft., an upstairs unit of 827 sq. ft., a downstairs unit of 823 sq. ft.; an ell unit of 1,547 sq. ft. and accessory common and service areas of 3,338 sq. ft; and (2) a rental cottage and massage room of 2,443 sq. ft. The applicant to reserve the right to use the main unit as three separate units. The existing farm house, which comprises a portion of the proposed main building, is to be renovated; a minimum of 50% of the existing exterior walls and roof to be retained. Ranch and service operations to include (1) a ranch manager's unit of 1,737 sq. ft.; (2) an equipment barn of 1,145 sq. ft.; (3) a generator/pump shed of 240 sq. ft.; and (4) a guest garage of 1,479 sq. ft.. The two existing wells and the majority of the existing driveway are to remain; the application includes a new septic system, improvement to existing driveway, and the burying of existing overhead utilities. No portion of the proposed development, with the exception of the renovation of the main building that already exceeds 18 ft., will exceed 18 ft. The total area of development is approximately 1.63 acres, which includes the building envelope of 1.29 acres and the driveway of 0.34 acres.

Scheduled: November 4, 2009

Agenda Item: 15(a)

Dear Commissioners:

This office represents the applicant, Jackson-Grube Family, Inc. ("Jackson-

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Grube,") with regard to the pending coastal development use permit ("CDP") to construct a 5- 7 unit inn on their large 1,650 acre ranch, with ranch related improvements. In September 2007, this Commission found the appeals filed challenging the approval of the project by the Mendocino Planning Commission to raise a substantial issue. In the interim period since your finding of substantial issue, the applicant and staff have worked together to revise the project in such a manner that it should now be found to meet all Commission concerns. The revised project is consistent with Coastal Act, Mendocino Local Coastal Plan ("LCP"), and all other applicable law, and deserves your approval.

The applicant has had an opportunity to review the Staff Report recommending approval of the project, dated October 22, 2009, and agrees with all of staff's numerous recommended special conditions for approval. Said recommended special conditions include 1) conformance to the design and construction plans to the Geotechnical Investigation Report dated January 10, 2008 prepared by BACE Geotechnical; 2) no future bluff or shoreline protective device; 3) recordation of an Assumption of Risk, Waiver of Liability and Indemnification Agreement; 4) recordation of an open space deed restriction; 5) agreement that no development will occur anywhere on APN 015-038-003 and APN 015-038-004; 6) merger of APN 015-038-005, APN 015-038-003 and APN 015-038-004; 7) future development restriction; 8) protection of archaeological resources; 9) submittal of a landscaping plan; 10) native vegetation landscaping restriction; 11) submittal and adherence to an erosion and runoff control plan; 12) design restrictions; 13) obtaining a Caltrans Encroachment Permit; 14) ESHA protection; 15) restrictions regarding temporary events; 16) submittal of revised plans; and 17) all previous conditions Imposed by the local government.

Background Information

The Inn is proposed to be built on a 34 acre parcel which straddles Highway One approximately 4 miles south of the town of Westport, one mile north of Abalobadiah Creek, along the Mendocino coast. The subject parcel is one of several adjacent parcels owned by the applicant which total approximately 1,650 acres and extends along the ocean and inland side of Highway One for approximately 1.25 miles. The applicant has operated a working ranch on the property for over 20 years and over 100 head of cattle graze on the property. The subject parcel contains the County zoning designation of Remote Residential - 20 acre minimum: Planned Unit Development Combining District (RMR 20:PD*1C). Adjacent parcels are zoned Remote Residential - 20 acre minimum: Planned Unit Development Combining District: Limited Commercial (RMR 20:PD); Range Lands - 160 acre minimum(RL 160); Forest Land - 160 minimum (FL 160); and

California Coastal Commission

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

October 27, 2009

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Timber Reserves - 160 acres minimum (TP 160). Over 1,339 acres of the applicants property on the inland side of Highway One were placed in an agricultural preserve with the County in 2005. A copy of the Agricultural Preserve Contract with Mendocino County is attached hereto as **Exhibit 1** and hereby incorporated by reference.

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

The proposed development will be located within an approximate 1.29 acre portion of the subject parcel on the ocean side of Highway One ("building area"). The lot coverage of both the proposed inn and the ranch related buildings total only 15,594 square feet. The vast majority of this parcel, as well as all of the 1,650 acres, will remain vacant and designated as agricultural and timber reserves. Special Condition No. 5 specifically prohibits development on the 75 acres north of the Inn parcel, west of Highway One, on APN 015-038-003 and 015-038-004, with the exception of accessory agricultural related development.

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

Surrounding Area

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

The Originally Proposed and Revised Project

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

A comparison of the project as approved by the County and considered by the Commission during the substantial issue hearing, and the project as recently revised with staff input is as follows:

Project Data	Project Considered By Commission On Substantial Issue	Current Revised Project
Building Envelope:	1.71 acres	1.29 acres
# of Buildings	9	6
Rental Units	10	5-7
# of Bedrooms	14, plus 2 lofts	11 (9 for rental)
# of Bathrooms	14, plus 3 one-half baths	13, plus 4 one-half baths (11, plus 3 one-half baths for rental)
Lot Coverage	17,186 sq. ft.	15,594 sq. ft.
Total Area/Sq. Ft.	17,784 sq. ft.	16,537 sq. ft.

The vast majority of the property will retain its unobstructed ocean views and the difference in appearance of the property from that existing today and with new structures as proposed will be minimal. A copy of a Visual Impact Study as prepared by Sellers &

Company Architects, dated May 27, 2009 is attached hereto as Exhibit 2 and hereby incorporated by reference.

The Previous Commission Approvals

Coastal Development Permits for an Inn in the proposed location were previously approved by the Coastal Commission for the subject parcel on two earlier occasions. In 1984, prior to County certification of the Mendocino LCP, the Commission approved CDP No. 1-83-278 for the conversion of the existing ranch house (former Orca Inn) into a four-unit bed and breakfast inn. The CDP expired prior to the permit ever being issued.

In 1996, four years after the certification of the Mendocino LCP, the County Planning Commission approved CDP CDU 9-95, allowing for the construction of a 10-unit inn also involving the renovation of the existing ranch house into two guest units, a manager's quarters, the construction of eight (8) new individual guest cottages, as well as five (5) new ranch buildings. The previously approved project proposed a larger development footprint, more new structures, and was located substantially closer to the ocean bluff than the project proposed herein. The Planning Commission approval for the previous project was appealed to the County Board of Supervisors and approved on May 13, 1996. The Board's approval was in turn appealed to the Coastal Commission in Appeal No. A-1-MEN-96-028. On July 10, 1996, this Commission determined that the appeal raised no substantial issue, allowing the County approval to stand.

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

The Superior Court on July 30, 1997, in a nine page Minute Order held that the project was consistent with all applicable law. Specifically the court held that the project "was not inconsistent" with either the Mendocino County general plan or coastal element of the general plan" and that it was appropriate for the County to have considered the pre-existing development on the site when reviewing and acting on the project.

As part of the previous County approval the applicant 1) conveyed fee title to the County of a one (1) acre portion of the property; 2) paid the County \$25,000 toward the development of coastal access in the area; and 3) dedicated an easement for public access along a 15 foot strip of the property on the west side of Highway One right-of-way.

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

Coastal Act and LCP Issues

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

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

Visitor-Serving Uses Are a Favored Utilization of Coastal Resources

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

The largest portion of the project will be an Inn for guests and a facility for weddings and other events for up to 99 attendees. The structures proposed, as well as

their size, take into account both of these intended uses. The Inn provides for 5-7 rental units, depending on whether the main unit of 2,989 square foot is used as 1, 2, or 3 units. The use of the main unit as a single large unit will provide a "residential type" unit which could be rented out to numerous family member guests at a lower per person overnight cost than renting out numerous units. The additional four units will comprise between 823 to 1,547 square feet and contain one or two bedroom and baths. The higher density use, i.e., a wedding/event facility, will provide low cost visitor serving recreational opportunities. The highly scenic coastal resources observable from the building area can be enjoyed and appreciated by overnight guests and short-term wedding/event guests alike. Weddings are typically restrained, formal events, lasting a matter of hours, mostly on weekends, and are not likely to create significant adverse impacts where adequate facilities are provided. Other types of events envisioned for the subject property include meetings, seminars, banquets, retreats and similar restrained gatherings. The project, as both approved and revised herein, provides sufficient facilities so that the beautiful Mendocino coastline can be enjoyed at moderate prices for wedding and event guests. The use proposed herein is consistent with and encouraged by the policies underlying the Coastal Act and certified LCP.

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

The unsupported claims of some member of the public that the project does not conform to the subject property's *1C zone designation under the LCP are mistaken. This zone designation provides for a low-intensity, visitor-serving "Inn." Mendocino County Coastal Zoning Code Sec. 20.332.015 specifically describes the authorized use as follows:

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

The revised project now provides for 5-7 guest units, depending on whether the main ranch building will be used as one three bedroom and three bath single unit, as originally proposed, or three separate units. Either way the use is consistent with the LCP. The LCP does not limit the number of bedrooms or baths an single unit can have.

The Mendocino County Coastal Zoning Code does not define a “guest suite,” and its legislative history is unknown. The Coastal Element of the Mendocino County General Plan provides little guidance. It provides only that “[t]he maximum intensity of visitor serving use shall be as follows: *1 Inn or Bed and Breakfast Inn. Maximum unit size: Inn, 10 units . . .” 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 that some degree of versatility was, in fact, intended.

The Project Will Be Subordinate To The Character Of It's Setting

Chapter 3.5 of the LCP provides several policies regarding the importance of highly scenic visual resources, the need for development to be sited to avoid degradation of visual resources and for development to be subordinate to the character of its setting. The applicant submits that the project, both as originally approved, and particularly now, as revised, satisfies the obligations of the LCP and will provide increased opportunities for the enjoyment of the highly scenic character of the surroundings for the project. Particularly in light of proposed Special Condition Nos 4, 5, and 6 which provide for the recordation of an open space deed restriction, no development on the two parcels north of the Inn parcel totaling 75 acres on the ocean side of Highway One; and the merger of the three parcels.

Clearly, the existing buildings already provide some blockage of the ocean view, but also provide a sense of character of the area as an old farming community. The approved structures will convey that same character. The main ranch house structure is now proposed to be renovated rather than demolished and re-built, and no new development will exceed 18 feet in height. At least fifty percent (50%) of the existing exterior walls and roof will be maintained. There will be a total of six buildings in the revised project, down from nine buildings as originally proposed, and from fourteen buildings as previously approved in 1996. Some of the buildings proposed are actually located behind one another as to minimize the interference of any public views from Highway One. See Exhibit 2.

The development will provide visitor-serving opportunities to appreciate the highly scenic character of the area with only minimal obstruction to the view of high-speed motorists traveling on Highway One. The revised project has clustered all proposed development and the lot coverage has been reduced from that of the original project, which was in itself reduced from the lot coverage approved in the 1996 project.

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

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

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

The subject property currently has existing ranch related buildings which are in a state of disrepair. The project proposes to provide the on-site caretaker with a ranch manager’s unit, an equipment barn, a generator/pump shed, and a guest garage, to better operate the existing cattle ranch. Alleged concerns about the lack of an on-site manager in addition to the caretaker are unfounded. This is more a problem of semantics than of proper stewardship. It was the intention of the applicant to have an off-site manager

handle room and banquet facility reservations and payment for those accommodations. Likewise, it was the applicant's intention to have the caretaker retain responsibility for the physical property and ranch related operations. There has been no showing that this arrangement is inadequate either to protect the property or users thereof. Further, if an on-site manager is deemed necessary to manage the Inn one of the rentable units will be assigned for his use. Neither the continued ranch operation of the property or the lack of an on-site manager is inconsistent with the standards and/or requirements of the LCP and any arguments to that effect are patently unreasonable.

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

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

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

Furthermore, the report concludes that the well will not have an undue adverse effect on the water supplies serving neighboring properties. Pursuant to code, when a well test is required the property owner must offer to test a neighbor's wells, at his

expense, only when the neighbors wells are located within 300 feet of the owner/applicant's well that is being tested. Neighbor's with wells on their properties in excess of 300 feet may request that their wells be tested by the owner/applicant at the same time as their wells are being tested at the neighbor's expense. In this instance all of the wells on adjacent properties were well in excess of 300 feet and said neighboring property owners were invited to participate in writing to the applicant's well test by Questa. 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". Moreover, the report provides that "no neighbors reported any apparent effects on their wells at the time of the pumping test."

Botanical Resources In and Around the Building Area Were Adequately Considered as The Revised Project Protects Environmentally Sensitive Habitat

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

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

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

As a result of the study, the originally proposed driveway has been re-located in order to protect sensitive habitat consistent with the ESHA protection policies of the LCP as contained in the CZC §20.946.010. The relocation of the driveway is also in conjunction with the fact that the project has been further reduced in size, scope and proximity to the ocean bluff. Thus, the footprint of the revised project before you, is substantially smaller than that in the previously approved 1996 project. The proposed development and all associated structures and construction impacts will be located a minimum of 50 feet from the nearest ESHAs, namely the north wetland and southeast wetland pursuant to consultation and agreement with the California Department of Fish and Game. A minimum 100 foot buffer from new development and associated construction impacts will protect all other streams, wetlands, and special plant communities.

Furthermore, in response to the project's opponents concerns regarding vehicles associated with special events at the facility, event guests will only be permitted to park vehicles in the designated parking areas as delineated in the submitted plans. The project's opponents assertion that the Inn will allow overflow parking in fields containing ESHA is baseless and untrue. Initially, the proposed project had 34 parking spaces, 10 spaces located in the middle of the proposed project, as well as the 24 parking spaces located east of the ranch managers unit. Since the substantial issue hearing the applicant has revised the project to address concerns regarding inadequate parking, as well as the over intensification of use. As such, the applicant eliminated the two unit bunk house and is proposing to utilize that area as a 1,479 sq. foot guest garage with 5 shielded parking spaces for Inn guests. These 5 additional parking spaces are in addition to the originally proposed 10 spaces located in the middle of the proposed project, as well as the 24 parking spaces located east of the ranch managers unit all of which are located outside the 100 foot ESHA buffer. The applicant has also made a minor aesthetic revision to the areas containing the 34 original parking spaces by proposing to construct a low landscaping berm so that the 34 parking spaces would be partially, if not totally, shielded from the highway. Moreover, in addition to the 39 parking spaces located on-site, the applicant has also undertaken other measures to address concerns regarding special event parking. On days that the Inn is hosting special events, the Inn will operate a shuttle service, similar to an airport hotel shuttle service, that will pick up event guests staying at downtown Fort Bragg hotels, so that they don't have to utilize the limited number of parking spaces on-site.

In the report, Redwood concludes that no direct impacts to ESHAs are proposed, and construction and permanent exclusionary fencing will limit intrusion and impacts to

sensitive habitats near the proposed development. The mitigation measures included were developed based upon review of the proposed project, and should minimize impacts both during and following construction. Special Condition No. 14 requires the protection of environmentally sensitive habitat

Traffic Impacts

At the time of the substantial issue hearing the project opponents contended that the impacts of the development on vehicular and bicycle use of Highway One were not adequately evaluated consistent with the LCP policies designed to avoid significant impacts to Highway One. As a result the applicant performed a traffic study which evidences that the proposed development will not tax the public roadway capacity and that the existing roads are consistent to serve the proposed development. The report, prepared by W-Trans, dated January 14, 2008, provides that the ideal capacity of a two lane highway such as SR 1 is 3,200 passenger cars per hour. The subject segment of SR 1 near the current projects carries approximately 2,360 vehicle trips per day and is operating acceptably based on a review of both volumes and collision history. Further the originally proposed project, larger than the recently revised project, was only expected to generate 4 new trips per day during the a.m. and p.m. peak hours on weekdays. As such, the report concludes that the project is feasible from a traffic standpoint.

Engineering Geological Reconnaissance

In satisfaction of the Commission's request for an updated geological analysis the applicant retained BACE Geotechnical to perform an engineering geologic reconnaissance of the site. Based on the findings of the reconnaissance, BACE concluded that the site is geologically suitable for the proposed development and that all proposed development has been set back an appropriate distance to withstand the economic 75 year life of the project. Proposed development has been set back an additional 20 feet from the Commission's previous 1996 approval of the former project wherein the previously approved project was found to have a sufficient setback distance from the bluff for the economic life of the proposed development. Special Condition No. 1 requires compliance with the design and construction plan recommendations of BACE.

Fire Protection and Emergency Response:

Fire Protection and Emergency Response are issues which were considered by the local government prior to approval. Moreover, the California Department of Forestry and

Fire Prevention (“Cal-Fire”) reviewed the project and approved the same subject to recommendation that the applicant provide a specified driveway width, grade, and emergency vehicle turnabout area; fire hydrant; development setback requirements from all property lines; and the applicant providing a 12,000 gallon water storage tank for Fire Department use only. The applicant agreeing to all recommendations of approval. The County Planning Commission in its Condition #B-8 made the Cal-Fire recommendations actual conditions of the County Planning Commission approval. Further, the County Planning Commission, in Condition #B-12, additionally conditioned it’s approval on the applicant entering into a contract with the Westport Volunteer Fire Department for services to the proposed project.

Alleged Archaeological and Historical Resources Impacts

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

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

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

When the issue of alleged archaeological impacts was raised at the time of the

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

At the time of the substantial issue hearing the Commission considered the archaeological issue and found that there was a high degree of factual support for the County to find that the approved project, as conditioned, is consistent with LUP Policy 3.5-10 and that archaeology did not present a substantial issue. The Commission, following the staff recommendation, concluded in finding no substantial issue that 1) the applicant submitted a 1990 archaeological survey which was accepted by the County Archaeological Commission for the subject development; 2) the survey did not discover any archaeological resources within the project boundaries; and 3) that the County included a mitigation measure to ensure protection of any archaeological resources that may be encountered by including Special Condition No. 11 requiring that should resources be discovered, all work must halt until County requirements regarding archaeological discoveries have been satisfied. Furthermore, staff addressed the appellants assertion that the archaeological study did not address the approximately 900 acres under the applicant's ownership that extend beyond the 34 acres that are subject of the proposed development by stating that the County had no basis to require that the approximately 900 acres under the applicant's ownership adjacent to the project site be surveyed for the proposed project because the project approved by the County did not involve ground disturbances or any other form of development outside of the 34 acres addressed by the 1990 archaeological survey. The Commission's finding no substantial issue on the archaeology in 2007 was furthermore consistent with its finding of no substantial issue regarding archaeology when it considered the earlier project in 1996 wherein the project boundaries were larger than they are today. Nevertheless, recommended Special Condition No. 8 requires the protection of archaeological resources which the applicant has agreed to.

Conclusion

Based upon the facts contained herein the revised project should be found to be consistent with the Coastal Act, Mendocino LCP, as well as all other applicable law. The applicant respectfully requests approval pursuant to staffs vigorous review and recommendation.

California Coastal Commission

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

October 27, 2009

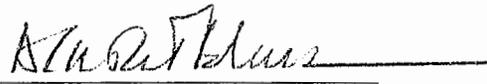
Page 16

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

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

Very truly yours,

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


ALAN ROBERT BLOCK

ARB:cw
enclosures

cc: Commissioners
Bob Merrill
Willard Jackson
David Sellers
Scott Baker

RECORDING REQUESTED BY
AND MAILED TO:

Clerk of the Board
County of Mendocino
501 Low Gap Road, Room 1090
Ukiah, California 95482

CONFORMED COPY
Copy of Document Recorded
on 12/22/2005 as 2005-27674
Mendocino County Clerk-Recorder

Owner(s) WILLARD JACKSON, JACKSON-GRUBE FAMILY, INC

Preserve Type II Zone R-L 160; F-L 160; TPZ-160

Type of Land:	Prime	_____	acres;
	Timberland	<u>493.04</u>	acres;
	Rangeland	<u>846.27</u>	acres.

Agricultural Preserve No. 967
(If amending, include previous recording date, book and page numbers)

MENDOCINO COUNTY

AGRICULTURAL PRESERVE CONTRACT

THIS CONTRACT is made and entered into this 14th day of December, 2005, by and between WILLARD JACKSON, JACKSON-GRUBE FAMILY, INC, being individually and collectively referred to hereinafter as "OWNER", and the COUNTY OF MENDOCINO, a political subdivision of the State of California, hereinafter referred to as "COUNTY", who hereby contract and agree as follows:

1. Ownership. OWNER represents that they are the owner of certain real property located in the County of Mendocino, which property is devoted to agricultural use and is located within an area designated by Resolution No. 05-204 of the Board of Supervisors of Mendocino County, hereinafter referred to as "BOARD" as an agricultural preserve, said resolution being incorporated herein by reference.
2. Property Description. Said property which is the land and the property constituting the subject of this contract, is described by legal description and parcel number in Exhibit "A", which is attached hereto and incorporated herein by reference. A map showing the location of the above-described property is filed in the Recorder's Office Instrument No. 2005-P0238 Drawer 73, Page 1, on this 22nd day of December, 2005.
3. Purpose of Contract. Both OWNER and COUNTY enter into this contract for their mutual benefit and for the purpose of limiting the use of agricultural land so as to preserve such land pursuant and subject to the conditions set forth in this contract and the California Land Conservation Act of 1965, as amended, commencing with Section 51200 of the Government Code. Both OWNER and COUNTY agree with the findings made by the state legislature in Section 51220 of the Government Code and by the BOARD in Section 22.08.010 of the Mendocino County Code. Both OWNER and COUNTY desire to limit the use of OWNER's above-described property to agricultural and compatible uses in order to discourage the premature and unnecessary conversion of said property from agricultural

land to urban uses, recognizing that said property has substantial public value as open space and that the preservation in agricultural production of said property constitutes an important physical, social esthetic, and economic asset to the COUNTY and to urban developments.

4. Highest and Best Use. Both OWNER and COUNTY intend and hereby determine that the highest and best use of OWNER's above-described property during the stated term of this contract and any renewal thereof is agricultural use.
5. Enforceable Restriction. Both OWNER and COUNTY intend and hereby determine that this contract shall be an enforceable restriction within the meaning and for the purposes of Section 8 of Article XIII of the State Constitution and Sections 422, et seq., as amended to date, of the Revenue and Taxation Code.
6. California Land Conservation Act. This contract is made and entered into pursuant to the California Land Conservation Act of 1965, also known as the Williamson Act (Chapter 7 of Part 1 of Division 1 of Title 5 of the California Government Code, commencing with Section 51200, as amended to date) and is subject to all the provisions thereof and such other provisions as are specifically made applicable to this contract.
7. Recording of Contract. No later than twenty (20) days after execution, COUNTY shall, pursuant to Section 51248 of the Government Code, record with the Recorder of the County of Mendocino a copy of this contract together with a reference to the map showing the location of the agricultural preserve in which the above-described property lies.
8. Restriction on Use. For the duration of this contract and any renewals thereof, the above-described property shall not be used for any purpose other than the agricultural uses and compatible uses listed in Chapter 22.08 of the Mendocino County Code, which is incorporated herein by reference. No structures shall be erected upon the above described property except as follows: Such structures as may be directly related to and compatible with authorized agricultural uses of the land and residence buildings for such individuals as may be engaged in the management of said land and their families.
9. Designation of Additional Compatible Uses. The BOARD may, from time to time, during the term of this contract or any renewals thereof, by ordinance, after public hearing, add further compatible uses to those uses set forth as compatible uses in Chapter 22.08 of the Mendocino County Code; provided, however, that the BOARD shall not eliminate, without the written consent of OWNER, a compatible use during the term of this contract or any renewals thereof.
10. Required Land Use. For the duration of this contract and any renewals thereof, the owner shall carry out and maintain those uses of the above-described property as were necessary to meet the minimum eligibility qualifications for agricultural preserve status applicable at the time of the execution of this contract for the type of land involved. If such uses are not carried out and maintained, the owner shall be deemed to be in material breach of this contract.
11. Term of Contract. This contract shall be effective on the date first above written and shall remain in effect for a period of ten (10) years from the first day of the ensuing January and during all renewals and extensions of this contract. The first day of January shall be deemed the anniversary date of this contract. This contract shall be automatically renewed for an additional period of one (1) year on the first day of January of each succeeding year during the term hereof unless notice of nonrenewal is given as provided by Section 51245 of the California Government Code and Chapter 22.08 of the Mendocino County Code.

Upon request by OWNER, the BOARD may authorize OWNER to serve a written notice of nonrenewal, referred to herein as a notice of partial nonrenewal, on a portion of the above-described property, in which case the contract shall automatically be renewed as herein set forth as to the balance of said property. Each one-year extension shall be added to the term of this contract so as to commence immediately following the above stated termination date for this contract or the termination date of the most recently added one-year extension, whichever is later in time, to the end that at all times during the continuation of this contract as renewed there shall be the minimum of a ten (10) year term of restriction unless notice of nonrenewal has been given. Under no circumstances shall a notice of renewal be required of either party to effectuate the automatic renewal provision of this paragraph.

12. Notice of Nonrenewal. If either the OWNER or COUNTY desires in any year not to renew this contract, that party shall serve written notice of nonrenewal of the contract upon the other party in advance of the annual renewal date of this contract which is the first day of January. The OWNER may make a written protest of the notice of nonrenewal pursuant to Mendocino County Code Section 22.08.110(F). Unless such written notice is served by the OWNER at least ninety (90) days prior to said renewal date, or by the COUNTY at least sixty (60) days prior to said renewal date, this contract shall be considered renewed as set forth above.
13. Term Following Notice of Nonrenewal. If COUNTY or OWNER serves notice of intent in any year not to renew this contract, this contract shall remain in effect for the balance of the period remaining since the original execution or the last renewal of this contract, as the case may be.
14. Removal of Land Equivalent to Notice of Nonrenewal. The effect of removal of any real property under this contract from an agricultural preserve shall be the equivalent of a notice of nonrenewal by the COUNTY, and the COUNTY shall, at least sixty (60) days prior to the next renewal date following the removal, serve a notice of nonrenewal as provided in California Government Code, Section 51245, and record with the Recorder of Mendocino County the notice or nonrenewal.
15. Consideration. OWNER shall not receive any payment from COUNTY in consideration of the obligations imposed hereunder, it being recognized and agreed that the consideration for the execution of this contract is the substantial public benefit to be derived there from and the advantage which will accrue to OWNER as a result of the effect on the method of determining the assessed value of the real property described herein and due to the imposition of the limitations on its use contained herein.
16. Contract Runs With the Land. This contract shall run with the land described above and shall be binding upon, and inure to the benefit of, all successors in interest to the OWNER.
17. Division of Land:
 - (a) No land subject to an agricultural preserve contract shall be subdivided unless the COUNTY committee, commission, or board, having the authority to grant final approval of the type of subdivision involved has made the express finding that each of the parcels resulting from such subdivision meets the minimum eligibility qualifications for agricultural preserve status as were applicable at the time the agricultural preserve was established. If any of the parcels resulting from such subdivision does not meet the minimum eligibility qualifications for agricultural preserve status in effect at the time of the filing of the tentative map for such subdivision, the County shall, deny the subdivision.

- (b) No land subject to an agricultural preserve contract shall be issued certificates of compliance unless the County committee, commission, or board, having the authority to grant certificates of compliance has made the express finding that each of the parcels resulting from the issuance of certificates of compliance meets the minimum eligibility qualifications for agricultural preserve status as were applicable at the time the agricultural preserve was established. If any of the parcels resulting from the granting of such certificates of compliance does not meet the minimum eligibility qualifications for agricultural preserve status in effect at the time the agricultural preserve was established, the County committee, commission, or board shall impose as a condition of granting the requested certificate of compliance, that the subject parcel or parcels not be used for anything other than agricultural use or a compatible use as set forth in the California Land Conservation Act of 1965, also known as the Williamson Act, and the subject agricultural preserve contract.
 - (c) The owner of any parcel may exercise, independent of any other owner of a portion of the subdivided land, any of the rights of the owner in the original contract, including the right to give notice of nonrenewal and to petition for cancellation; the effect of any such action by the owner of a parcel created by the subdivision of land under contract shall not be imputed to the owners of the remaining parcels and shall have no effect on the contract as it applies to the remaining parcels of subdivided land.
18. Eminent Domain. When any action in eminent domain for the condemnation of the fee title of the entire parcel of land subject to this contract is filed, or when such land is acquired in lieu of eminent domain for a public improvement by a public agency or person, or whenever there is any such action or acquisition by the federal government or any person instrumentality or agency acting under authority or power of the federal government, this contract shall be deemed null and void as to the land actually being condemned or so acquired as of the date the action is filed, and for the purposes of establishing the value of such land, this contract shall be deemed never to have existed.
- (a) Upon the termination of such a proceeding, this contract shall be null and void for all land actually taken or acquired.
 - (b) When such an action to condemn or acquire less than all of a parcel of land subject to this contract is commenced, this contract shall be deemed null and void as to the land actually condemned or acquired and shall be disregarded in the valuation process only as to the land actually being taken unless the remaining land subject to contract will be adversely affected by the condemnation in which case the value of that damage shall be computed without regard to the contract.
 - (c) When such an action to condemn or acquire an interest which is less than the fee title of an entire parcel or any portion thereof of land subject to this contract is commenced, this contract shall be deemed null and void as to such interest and, for the purposes of establishing the value of such interest only, shall be deemed never to have existed, unless the remaining interests in any of the land subject to this contract will be adversely affected, in which case the value of that damage shall be computed without regard to the contract.
 - (d) The land actually taken shall be removed from this contract. Under no circumstances shall land be removed that is not actually taken except that, when only a portion of the land or less than a fee interest in the land is taken or acquired, this contract may be cancelled with respect to the remaining portion or interest upon petition of either party and pursuant to the provisions of Sections 51280, et seq., of the California Government Code.

19. City Annexation. On the annexation by a city of any land under this contract, said city shall succeed to all rights, duties, and powers of COUNTY under this contract unless the land being annexed was within one (1) mile of such city at the time that this contract was initially executed; said city has filed, and the Mendocino County Local Agency Formation Commission has approved, a protest to this contract pursuant to Section 51243.5 of the Government Code; and said city states its intent not to succeed in its resolution of intention to annex. If said city does exercise the foregoing option not to succeed, this contract becomes null and void as to the land actually being annexed on the date of annexation; in the event that only part of the land under this contract is within one (1) mile of the city, said option of the city shall extend only to such part.

20. Cancellation. This contract may not be cancelled except by mutual agreement between OWNER and COUNTY and only if all the following conditions are met:

- (a) The owner requests cancellation in the form and manner approved by the Mendocino County Assessor.
- (b) A public hearing is held before the BOARD (or, in the case of a city succeeding to the rights, duties, and powers of COUNTY under this contract, then the hearing shall be held before its council).
- (c) Notice of hearing is published pursuant to Section 6061 of the Government Code and is given by mail to each and every owner of land under this contract and any portion of which is situated within one (1) mile of the exterior boundary of the land upon which this contract is proposed to be cancelled.
- (d) The BOARD makes the following findings:
 - (1) That the cancellation is consistent with the purposes of the California Land Conservation Act of 1965 also known as the Williamson Act; or
 - (2) That cancellation is in the public interest.

For purposes of paragraph (1) of subdivision (d), cancellation of a contract shall be consistent with the purposes of the California Land Conservation Act of 1965 also known as the Williamson Act, only if the Board makes all of the following findings:

- (1) That the cancellation is for land on which a notice of nonrenewal has been served pursuant to Government Code Section 51245;
- (2) That cancellation is not likely to result in the removal of adjacent lands from agricultural use.
- (3) That cancellation is for an alternative use which is consistent with the applicable provisions of the County General Plan.
- (4) That cancellation will not result in discontinuous patterns of urban development.
- ✓ (5) That there is no proximate non-contracted land which is both available and suitable for the use to which it is proposed the contracted land be put, or, that development of the contracted land would provide more contiguous patterns of urban development than development of proximate non-contracted land.

For the purposes of paragraph (2) of subdivision (d), cancellation of a contract shall be in the public interest only if the BOARD makes the following findings:

- (1) That other public concerns substantially outweigh the objectives of the California Land Conservation Act of 1965 also known as the Williamson Act; and
 - (2) That there is no proximate non-contracted land which is both available and suitable for the use to which it is proposed the contracted land be put, or that development of the contracted land would provide more contiguous patterns of urban development than development of proximate non-contracted land.
- (e) The landowner's petition shall be accompanied by a proposal for a specific alternative use of the land. The proposal for the alternative use shall list those governmental agencies known by the landowner to have permit authority related to the proposed alternative use. The level of specificity required in a proposal for a specified alternative use shall be determined by the BOARD as that necessary to permit them to make the findings required.
 - (f) A cancellation fee is paid to the Mendocino County Treasurer-Tax Collector in accordance with the formula hereinafter set forth.
 - (g) The actual recordation in the office of the Mendocino County Recorder of a Notice of Cancellation in accordance with the provisions of Section 51283.3 of the California Government Code.
21. Cancellation Fee. Prior to any action by the BOARD giving tentative approval to the cancellation of this contract, the Mendocino County Assessor shall determine the full cash value of the land as though it were free of the contractual restriction. The Assessor shall multiply such value by the most recent County ratio announced pursuant to Section 401 of the Revenue and Taxation Code and shall certify the product to the BOARD as the cancellation valuation of the land for the purpose of determining the cancellation fee. Prior to giving tentative approval to the cancellation of this contract, the BOARD shall determine and certify to the Mendocino County Auditor the amount of the cancellation fee which the owner must pay the Mendocino County Treasurer as deferred taxes upon cancellation. That fee shall be an amount equal to at least twelve and one-half percent (12.5%) of the cancellation valuation of the property.
 22. Liquidated Damages. In case of OWNER's breach of this contract, OWNER shall pay to COUNTY a sum equivalent to twenty-five percent (25%) of the full cash value as defined by Revenue and Taxation Code Section 110 of the land when relieved of the restriction as found by the assessor, which sum shall be deemed to be liquidated damages and which sum shall be presumed to be the amount of damage sustained by COUNTY by OWNER's breach. OWNER and COUNTY agree that it is necessary to fix the foregoing sum as liquidated damages by virtue of the fact that it would be impractical and extremely difficult to fix the actual damage sustained by COUNTY and the parties agree said liquidated damages are reasonable under the existing circumstances. This remedy shall in no way impair the enforcement of this contract by injunction or specific performance.
 23. Enforcement. COUNTY may bring any action in court necessary to enforce this contract including, but not limited to, an action to enforce the contract by specific performance and injunction. Any conveyance, contract, or authorization, whether oral or written, by OWNER or his successors in interest which would permit use of the above-described property contrary to the terms of this contract, or contrary to the provisions of Chapter 22.08 of the

Mendocino County Code, may be declared void by the BOARD; such declaration, as well as the terms and provisions of this contract, may be enforced by COUNTY by an action filed in the Superior Court for the purpose of compelling compliance or restraining breach thereof. It is understood that the enforcement proceedings provided in this contract are not exclusive, and both the OWNER and COUNTY may pursue their legal and equitable remedies.

24. Costs of Litigation. In the event COUNTY shall, without any fault on its part, be made a party to any litigation commenced by or against OWNER, OWNER shall pay all cost together with reasonable attorney's fees incurred by or imposed upon COUNTY by or in connection with such litigation. OWNER shall further pay all costs and reasonable attorney's fees which may be incurred or paid by COUNTY in enforcing the covenants and agreements of this contract.
25. Exculpatory Clause. OWNER shall hold COUNTY harmless from any demand, claim, cause of action, or action for damages involving OWNER's interest or rights in and to the above-described property. The person or persons signing this contract represent that they are the owners of the above-described property and are entitled to and possess the authority to enter into this contract and to bind said property in accordance with this contract.
26. Disclosure of Facts. OWNER shall provide COUNTY, all the information concerning OWNER's agricultural activities upon the above-described property, together with any other information required by COUNTY in order to enable it to determine the continuing eligibility of such land. Such information shall include, but not be limited to, a Reporting Statement, pursuant to Mendocino County Code Section 22.08.090, to be filed with the Mendocino County Agricultural Commissioner in the form and manner prescribed by him.
 - (a) The landowner shall file a reporting statement for any land included within an agricultural preserve whether Type I, Type II, or Type III. Such reporting statement shall be on a form approved by the County of Mendocino and maintained in the office of the Agricultural Commissioner. The information contained in the reporting statement shall be confidential to the extent provided by law. The landowner shall file said reporting statement on the earlier of the following events:
 - (1) Every two (2) years as prescribed by the Mendocino County Agricultural Commissioner, and every two (2) years thereafter;
 - (2) Upon a change of ownership, use or possession;
 - (3) Upon the issuance of certificates of compliance pursuant to Government Code Section 66499.35 or any successor statute.

The landowner shall immediately inform the County upon change of use, possession, or ownership and it shall be the duty of the new landowner to simultaneously complete a new reporting statement. The reporting statement shall be in a form approved by resolution of the Board of Supervisors and such reporting statement executed under penalty of perjury. The reporting period for such statement shall be the previous two (2) contract years or whatever portion of such period is included from the period of the last reporting statement until the change of use, possession, ownership, or the issuance of certificates of compliance.

27. Severability. It is understood and agreed by the OWNER and COUNTY that, if any of the provisions of this contract shall be invalid under any law, such invalidity shall not invalidate the whole contract, but, rather, this contract shall be construed as if not containing the particular provision held to be invalid, and the rights and obligations of OWNER and COUNTY hereto shall be construed and enforced accordingly.
28. Notice. Any notice given pursuant to this contract may, in addition to any other method authorized by law, be given by United States mail, postage prepaid. Notice to COUNTY shall be addressed as follows:

Clerk of the Board of Supervisors
 County of Mendocino
 501 Low Gap Road, Room 1090
 Ukiah, California 95482

Notice to OWNER shall be addressed as follows:

WILLARD JACKSON
JACKSON - GRUIRE FAMILY INC
P.O. BOX 430
MIDDLEBURY, VT. 05757
(802) 462-3445

29. Warranty of Title and Description. OWNER hereby warrants and represents as follows:
- (a) That paragraph 1, supra, sets forth the names of all persons and parties holding any record title interest in the land described in Exhibit "A";
 - (b) That Exhibit "A" describes only property located within the area designated by the BOARD as an agricultural preserve by the resolution referred to in paragraph 1, supra; and
 - (c) That all persons and parties holding any encumbrance in any portion of the property described in Exhibit "A", including beneficial interests under trust deeds, are set forth below (excluding liens for taxes and special assessments, easements, and rights of way which cannot ripen into a fee, and mineral rights which do not include a right of entry on the surface of the land):

<u>Name</u>	<u>Nature of Encumbrance</u>
<u>NONE</u>	

30. Punitive Damages for Collusion. OWNER hereby promises not to allow payments secured by any trust deed or other encumbrance on the aforesaid land to become delinquent for the purpose of avoiding the restrictions of this contract. OWNER further agrees not to engage in any other fraudulent or collusive attempt to avoid such restrictions. Violation of this paragraph shall be deemed fraud and shall subject OWNER to punitive and exemplary damages awarded against him.
31. Incorporation of Mendocino County Code. This contract hereby incorporates by reference as if fully set forth verbatim herein each and every provision of Chapter 22.08 of the Mendocino County Code, as said chapter has been or may hereafter be amended, to the extent such provisions are not inconsistent with any fully-set-forth provision of this contract. By executing this contract, OWNER acknowledges that he has read and understands each provision of Chapter 22.08 of the Mendocino County Code.

IN WITNESS WHEREOF, OWNER and COUNTY have executed this contract on the day first above written.

Willard Jackson, Pres.
JACKSON - GRUBE

WILLARD JACKSON
FAMILY, INC.

12/1/05

OWNER(S)

COUNTY OF MENDOCINO

By: _____
CHAIRMAN
Mendocino County Board of Supervisors

ATTEST: KRISTI FURMAN
Clerk of the Board

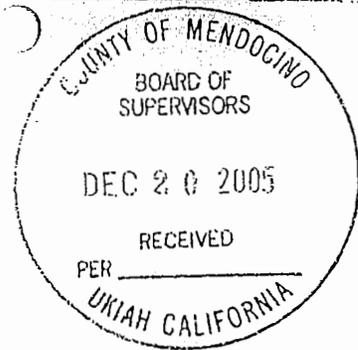


EXHIBIT "A"

The land referred hereto is described as follows:

All that certain real property situate, lying and being in the unincorporated area, County of Mendocino, State of California, more particularly described as follows:

Portions of Section 16, 17, 20, 21, 28, 29, and 33 Township 20 North, Range 17 West, Mount Diablo Base and Meridian; parcels as described in Book 1571, Pages 487-490, instrument number 12276; Book 1698, Pages 175-177, instrument number 11889; Book 1848, Pages 338-339, instrument number 15941; Book 1848, Pages 340-341, instrument number 15942; Book 1971, Pages 565-567; instrument number 4259; Book 1971, Pages 658-659, instrument number 4301; and Book 2022, Pages 355-357, instrument number 20315.

Also shown as Assessor Parcel numbers: 015-070-40,41,42,45,47,49,50,51, and 52. 015-130-41, 42, 50, 51; 015-330-13, 18,19, 27, and 28.

Willard Jackson

Willard Jackson 12/17/05
Owner

RECORDING REQUESTED BY
AND MAILED TO:

Board of Supervisors
501 Low Gap Rd., Room 1090
Ukiah, CA 95482

CONFORMED COPY
Copy of Document Recorded
on 12/22/2005 as 2005-27673
Mendocino County Clerk-Recorder

RESOLUTION NO. 05-204

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF MENDOCINO, STATE OF CALIFORNIA, ESTABLISHING AGRICULTURAL PRESERVE NO. 967 – JACKSON/GRUBE FAMILY, INC. (OWNER)

WHEREAS, the Planning Commission of the County of Mendocino, on the 20th day of October, 2005, pursuant to proper notice and public hearing did hear and makes its recommendation to the Board of Supervisors of the application for creation of an agricultural preserve pursuant to the California Land Conservation Act of 1965 as amended, for that area described in Exhibit "A" attached hereto; and

WHEREAS, the Board of Supervisors upon receipt of the Planning Commission's report did hold a public hearing to consider the request for the formation of said agricultural preserve; and

WHEREAS, said public hearing was duly held on this 8th day of November, 2005, pursuant to proper notice and all evidence was received and the same fully considered;

NOW, THEREFORE, BE IT RESOLVED that Agricultural Preserve No. 967, Type II be established more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, and is further described by Assessor's parcel numbers on file in the office of the Planning Department and is further delineated upon the agricultural map filed in the Recorder's Office Instrument No. 2005-20238, Map Case _____, Drawer 73 Page 1 on this 22nd day of December, 2005.

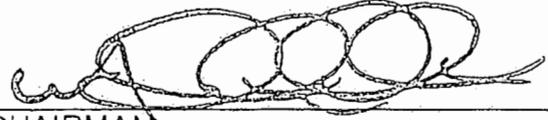
BE IT FURTHER RESOLVED that the applicants for the establishment of the preserve shall cause to be prepared a producible map and a written legal description in accordance with the established proceedings of the County Recorder's Office.

BE IT FURTHER RESOLVED that the Clerk of the Board of Supervisors shall record the map and legal description set forth herein, and shall transmit a certified copy of this resolution to the County Recorder of the County of Mendocino.

The above and foregoing resolution was introduced by Supervisor Wattenburger, seconded by Supervisor Wagenet, and passed and adopted this 8th day of November, 2005, by the following vote:

AYES: Supervisors Wattenburger, Wagenet and Delbar
NOES: None
ABSENT: Supervisors Smith and Colfax

WHEREUPON, the Chairman declared the resolution adopted AND SO ORDERED.

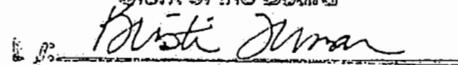


CHAIRMAN
Mendocino County Board of Supervisors

ATTEST: KRISTI FURMAN
Clerk of the Board

I hereby certify that according to the provisions of Government Code Sections 25103, delivery of this document has been made.



KRISTI FURMAN
Clerk of the Board


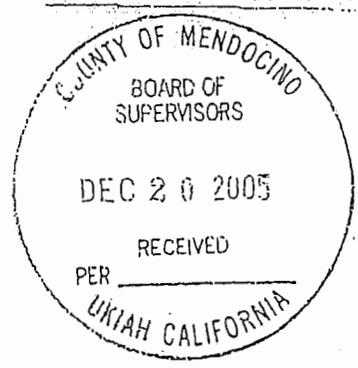


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Willard Jackson

Willard Jackson
Owner

12/17/05

FRIENDS OF THE TEN MILE
PO Box 1006
Fort Bragg, CA 95437

RECEIVED

NOV 02 2009

CALIFORNIA
COASTAL COMMISSION

W15a

OPPOSED

California Coastal Commission

710 E St.

Eureka, CA 95501

October 29, 2009

A-1-MEN-07-028 Jackson-Grube

Friends of the Ten Mile, a 501(c)3 organization working to protect the natural values of the Ten Mile to Westport area has been monitoring this project since its inception in the '90s. We are one of the appellants.

While the project is somewhat improved, none of the issues raised in our appeal have been satisfactorily resolved. These issues are discussed below.

One issue, however, has been resolved and therein lies the remedy for this long-troubling project.

For a long time it was unclear if the legal parcel extended across the highway. Now that Staff has determined it does, there is an "**alternative site**" and Coastal Act policies mandate the project be re-sited "to protect views to & along the ocean".

Until that occurs, the project will be in violation of several fundamental LCP policies protecting coastal visual resources. Specifically LCP 3.5-1..."development shall be sited & designed to protect views to & along the ocean & scenic coastal areas...New development in highly scenic areas (HSAs) shall be visually compatible with the character of surrounding areas and be subordinate to the character of its setting" and LCP 3.5-3 limiting new development to one-story.

To implement the above policies LCP 3.5 states: "**Except for farm buildings, development in the middle of large open areas shall be avoided if an alternate site exists...minimize visual impacts of development on terraces by avoiding development in large open areas if an alternate site exists...design development to be in scale with rural character of the area**"

The project site is located on a coastal terrace in the middle of a wide-open space on the west (ocean) side of Highway One, with little surrounding development and that modest and barely visible. **Entailing 15,368 sq ft of construction--more than the project originally approved by the County—and exceeding the 18 ft height limit and with 39 parking spaces for another 7,020 sq ft of development, sited, as proposed, it will significantly block protected views of the ocean from Highway One, is neither in scale nor subordinate to the rural character of its setting and is incompatible with the character of the surrounding area and its natural setting.**

There is a simple remedy: **Scale it down and move it.**

Staff has determined that the project parcel consists of the surrounding 400 acres extending for over a quarter of a mile across the highway. As referenced above, the LCP requires siting projects out of the viewshed if an alternative site exists.

In a telephone conversation with staff I asked why, even though this provision was referenced repeatedly in the staff report, re-siting wasn't considered as an option to

protect the visual resources in this designated HSA. Staff's reply was that he believed the *C designation was meant to be located in that exact spot.

This was also the contention of the developers of the Ten Mile Inn (located in the same HSA). Their contention was further supported by a verbal description describing the exact location of the asterisk on the map. In that instance, **the Commission decided project location is not determined by the location of the asterisk**—nor even by the expressed description of the site-- but is **parcel specific**, that is, it can be located anywhere on the parcel. The Commission then re-sited the project to a site with fewer impacts. The Commission approved the application with a condition requiring a deed restriction limiting further development of the parcel to the one existing residence. (Staff is to be commended for requiring a similar condition to protect the scenic qualities of this HSA.)

Later, in the same HSA, the Hunt project was re-sited from the location proposed by the developers in order to protect the ocean view for the public.

As we see, there is a long history of Commission protecting the scenic value of this highly scenic area. Consistency requires a similar action on the part of the Commission in reviewing this proposal.

The developers in their previous application have expressed their desire to demolish the existing buildings and construct all new structures, while reserving the right to exceed the 18 foot height limit west of the highway. In re-siting the project to the portion of the parcel on the east side of the highway, they could realize many benefits while bringing the project into closer compliance with the Coastal Act.

They would save money, as it's cheaper to build all new than try to remodel a deteriorating structure. They could exceed the 18 ft height restriction. They would be closer to sources of water and power. And they could possibly avoid further planning process difficulties. In demolishing the existing buildings—only after a thorough archeological survey—they would satisfy all those folks complaining about the visual blight presented by the current state of the property. Demolition would also restore the

visual resource of the area to its highly scenic nature—another policy encouraged by the Coastal Act.

However, re-siting does not solve all the issues.

The biological survey has been challenged as inadequate and it appears the staff report lacks a cumulative effects analysis for the impacts on sensitive areas by guests of the inn combined with impacts from events—which the developers have in the past said they intend and have provided parking for—and combined with impacts from users of the planned coastal trail through the subject property. Additionally, the review of the proposed project is incomplete in that **it lacks a thorough archeological survey**—in this obviously historic area—this alone is grounds for denial.

Nor does this new proposal settle the issue of what actually constitutes a “unit”.

Finally, The project is still too large.

Regarding the size, the Commission is not required to approve a project just because it seems more like what the zoning allows as proposed in the staff report. It is required to approve projects that are consistent with the zoning. If the project description does not clearly delineate its compliance with the LCP, the Commission should deny the proposal. However, the Commission can set parameters for acceptable development.

Staff ‘s assertions that the visual impacts have been reduced to a level of insignificance are dependent not on the project itself, but on the condition of restricting further development of the parcel.

We, the public and the appellants, cannot agree with that assertion also in part because **the staff report is inadequate in presentation of its visual analysis**. Of course, levels of visual impacts are somewhat subjective. In this case they are difficult to assess, given that the visuals provided in the staff report are completely illegible being poorly copied and of a scale so small they are meaningless. The staff report contains no dimensions of the facades or any other parts of the construction.

Nor were storey poles were ever erected. Storey poles were erected for the last incarnation of the project and were very valuable in assessing the actual amount of ocean

view being blocked as well as the scale of the over-all project. The only thing we really have to go on is the square footage of development and the retention of the building height in excess of the allowable 18 feet.

What we do have is a development consisting of a total of 22,388 square feet of construction on 1.63 acres. While the reduction in footprint may seem an improvement, it can also present a visual impact of overwhelming proportions compared to the surroundings.

Most of the building elements seem excessive and could be scaled down.

Both the 1,547 sq ft “ell” unit and the main 2,989 sq ft “unit” are as big as many houses. Even divided in 3, each “unit” in the main “unit” is nearly a thousand square feet. Why so big? The 2,437 sq ft “rental cottage/massage room” also seems unnecessarily large. As a former massage therapist with my own office, I worked in a space of less than 200 sq ft. And a 3,338 sq ft “common and service area”—besides a lobby, what else is necessitates such space? And do guests really need a 1,479 sq ft garage?

Do other inns provide garages for transient guests?

Scaling down the project to decrease the visual impacts would still provide a positive experience for guests and would go a long way to bringing it into compliance.

In approving this proposal with such huge “units” the Commission risks setting a precedent for future development of “units” of unlimited size and numbers of bedrooms/bathrooms which could, as in this instance, make it very difficult to protect the natural resource values of the coast.

Additionally, it is assumed such large units will be unaffordable to most visitors to the coast, thereby violating the spirit of another Coastal Act principle.

By limiting the size of the “units” or the number of elements “units” can contain, the Commission can better control the level of impact to coastal resources. It makes no sense to leave this decision to the County—as suggested by Staff-- given the Commission oversees local decisions for Coastal Act compliance.

A final procedural point. Because this is an entirely new project from the one appealed to the Commission, shouldn't it revert back to the County for review as a application for a Coastal Development Use Permit?

Thank you for you close attention to this important issue.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above the typed name.

Judith Vidaver, Chief Environmental Officer



**SIERRA
CLUB**
FOUNDED 1892

Sierra Club, Mendocino Group, Coastal Comm.
27401 Albion Ridge Rd.
Albion, CA 95410

Nov. 2, 2009

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

RECEIVED

NOV 02 2009

CALIFORNIA
COASTAL COMMISSION

RE A-1-Men-07-28 Jackson-Grube

Commissioners and Staff,

Since the hearing on the biggest resort in Mendocino County is not going to be held in Northern California, we will have to comment by letter.

The proposed Orca/Newport Inn is far too large to be considered a "10-unit inn" as is appropriate to the zoning. In fact the main unit is 3 times as big as my house; with kitchen, dining room, 3 bedrooms and baths making it a single family residence within the boundaries of this "inn". Along with the other proposed units, managers unit, barn, shop and pump shed, one could imagine a huge development. If there were story poles erected we could see the visual impact of the buildings, but inexplicably, no story poles were required or placed.

The *1c designation is the lowest visitor-serving designation in the Local Coastal Plan, yet the largest physical plant may be built under this designation if this application is allowed. What will that do to the other designations, such as *2c? Will twenty 2900 sq. ft. three-bedroom units with kitchen and dining be allowed? Until there is a clear definition of the "suite", such large units should not be permitted.

The code recommends 3 dining seats per unit. This would indicate that approx. 3 people would stay in a "unit". Historically a 'suite' was one or two bedrooms with a sitting room. The current proposal is more

appropriately termed a "resort" and the owners must apply for that zoning before attempting such a huge project.

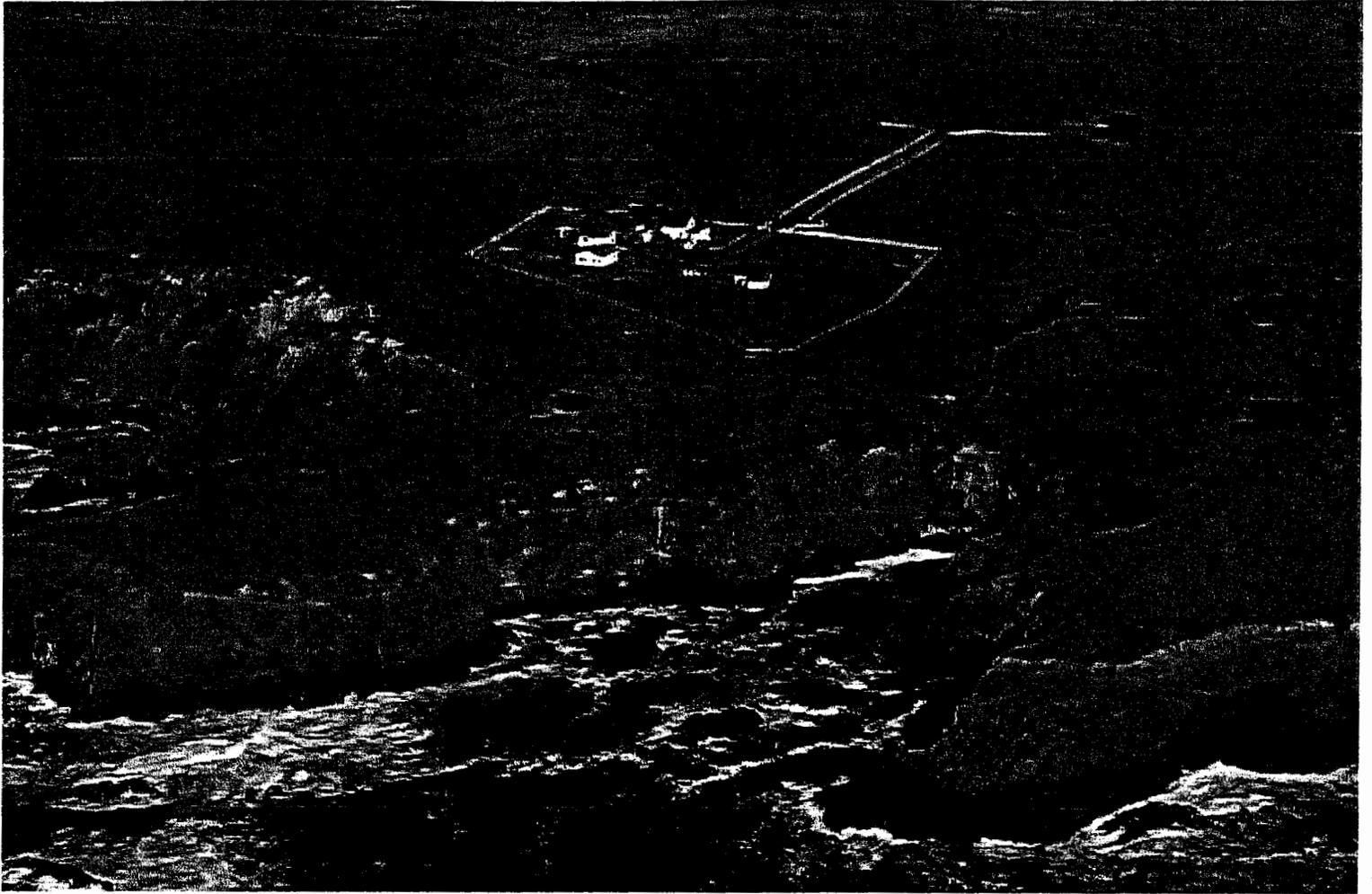
Additionally, the parcel that contains the site also continues onto the east side of the highway. In prior cases it has been shown that a large development in a highly scenic area can be required to be sited in the least obtrusive area on a parcel. In this case, the resort should be sited on the east side of the highway, against the rolling hills, instead of in the most prominent location on the land/sea horizon.

Please deny the application until the siting, visual resources and unit size issues are resolved.

Sincerely,

Signature on File

Rixanne Wehren
Coastal Committee
Sierra Club, Mendocino Group



Appeal No. A-1-MEN-07-28 (Jackson-Grube Family, Inc.)

This photo was used in presentation to Commissioner Stone on 10-28-09 by ORCA.

November Coastal Commission Meeting

RECEIVED

OCT 28 2009

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Signature on File *mc*
10-28-09

Bob Merrill

From: Vanessa Miller
Sent: Monday, November 02, 2009 9:24 AM
To: Jeff Staben; Bob Merrill; Lisa Haage; Charles Lester
Subject: FW: Ex parte November CCC meeting

-----Original Message-----

From: Steve Blank [mailto:sblank@kandsranch.com]
Sent: Saturday, October 31, 2009 10:49 PM
To: Vanessa Miller
Subject: Fwd: Ex parte November CCC meeting

email exparte from ORCA

Steve Blank
www.steveblank.com
sblank@kandsranch.com
(415) 999-9924
twitter: sgblank

Begin forwarded message:

From: Lennie Roberts <lennie@darwin.ptvy.ca.us>
Date: October 31, 2009 10:02:32 AM PDT
To: Steve Blank <sblank@kandsranch.com>
Subject: Ex parte November CCC meeting

Hello Steve, Here are three items on the November Commission Agenda that our coastal colleagues would like you to consider. If you have any questions, I would be glad to discuss or put you in touch with the appropriate most knowledgeable person.

Thanks,

Lennie

W.9.b. Appeal No. A-3-SLO-09-058 (DeCicco, San Luis Obispo Co.)
San Luis Obispo colleagues oppose the staff recommendation for finding of No Substantial Issue, and recommend that the Commission find Substantial Issue

based on inconsistency with LCP and Coastal Act Visual and Scenic Resources policies. The project, a three story, 220-foot long mass, is considered by them to be inconsistent with the Cayucos Area Plan, which requires new development to be compatible with existing development. Its mass and bulk would appear to be out of scale with the neighborhood which is composed of small one and two story houses . Other issues raised in the appeal include parking, traffic safety, inadequate fire protection, and toxics remaining in the soil from the old gas station. There is substantial community opposition to the project.

W.12.5 Commission Cease and Desist Order Consent Amendment No. CCC-09-CD-03-A and Restoration Order Consent Amendment No. CCC-09-RO-02-A (Mills PCH, LLC - Huntington Beach, Orange County)

Orange County colleagues support the staff recommendation, and strongly support the financial penalty. There is a concern that unpermitted fill remains on the property which must be completely removed. The order calls for removal of all unpermitted development, including fill. The staff report finds that the restoration has not yet been completed, or even planned completely.

W.15.a. Appeal No. A-1-MEN-07-28 (Jackson-Grube Family, Inc., Mendocino Co.)

While the overall footprint of the project has been reduced through proposed conditions per staff, appellants feel that the project needs to be further scaled down in order to be fully in compliance with the *1C zoning and that, if approved, the project would still set a troubling precedent for other large coastal properties designated as *1C.

**FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATION**

Date and time of communication:
(For messages sent to a Commissioner by mail or
facsimile or received as a telephone or other
message, date time of receipt should be indicated.)

November 2, 2009, 10:00 a.m.

Location of communication:
(For communications sent by mail or facsimile, or
received as a telephone or other message, indicate
the means of transmission.)

Commissioner Neely's Eureka Office

Person(s) initiating communication:

Maggy Herbelin, ORCA Representative

Person(s) receiving communication:

Commissioner Bonnie Neely

Name or description of project:

Nov Agenda Item W15a. Jackson-Grube Family, Inc.,
Mendocino Co. Appeal from decision of Mendocino
County granting permit with conditions to build a 7-
unit inn in 2 phases.

Detailed substantive description of content of communication:

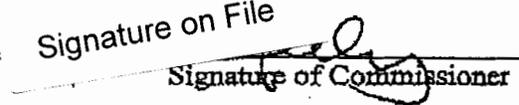
(If communication included written material, attach a copy of the complete text of the written material.)

ORCA believes that approval would allow serious misinterpretation of 1C zoning regulations. It is doubtful that the drafters of the 1C designation considered 3 bedroom, 3 bathroom, kitchen, living room, dining room with a total of 2600 sq ft one suite. One of the problems with this project is that there does not seem to be a good definition of what constitutes a suite. Since the zoning limits the number of suites, how the term is defined could make a difference in whether the project fits within the zoning. Some of the proposed suites are the equivalent of a 3-bedroom house. Some of them can be split and rented out as more than one unit.

The Jackson-Grube project should be considered to be more of a resort than an Inn and as such should carry the proper zoning. The proposed development is too big and the increased intensity of use is too great. The project should be scaled down even more and sent back to the county.

Date: November 2, 2009

 Signature on File


Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceedings and provide the Executive Director with a copy of any written material that was part of the communication.

Coastal Commission Fax: 415 904-5400