

CALIFORNIA COASTAL COMMISSION

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 addendum posted on November 3, 2009

Filed:	July 23, 2007
49 th Day:	September 10, 2007
Hearing Opened:	September 7, 2007
Staff:	Robert S. Merrill
Staff Report:	October 22, 2009
Hearing Date:	November 4, 2009

STAFF REPORT: APPEAL
DE NOVO HEARING

APPEAL NO.:	A-1-MEN-07-028
APPLICANTS:	Jackson-Grube Family, Inc.
LOCAL GOVERNMENT:	County of Mendocino
DECISION:	Approval with Conditions
PROJECT LOCATION:	Approximately four miles south of Westport, on the west side of Highway One, at 31502 North Highway One (APNs 015-380-03; 015-380-04; 015-380-05; 015-330-05; 015-330-13; 015-330-19X; 015-330-26; 015-070-45; 015-070-49X; 015-070-51X 015-070-47X; and 015-070-52X.).
PROJECT DESCRIPTION (as approved by the County):	Build a 10-unit inn in 2 phases. Phase I to consist of (1) the demolition and reconstruction of the former Orca Inn into a main unit of 2,961 sq. ft., an upstairs unit of 1,089 sq. ft. and a downstairs unit of 833 sq. ft., (2) a 1,276 sq. ft. two floor manager's unit, (3) 1,269 sq. ft. equipment barn, 648 sq. ft. maintenance shop, and (4) a 240 sq. ft. generator/pump shed. Phase II would consist of (1) 7 units with 3 added to the main building in two storied units of 954 sq. ft., 951 sq. ft., and 820 sq. ft., (2) 2 units within a detached bunkhouse of 531 sq. ft. and 757 sq. ft., and (3) 2 separate cottages of 835 sq. ft. and 915 sq. ft., respectively. A 778 sq. ft.

spa, wells, septic system, roads and underground utilities are also proposed within the approximate 3.7-acre area of development.

PROJECT DESCRIPTION
(as amended *de novo*):

Redevelop an existing complex of ranch buildings and develop 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 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.

APPELLANTS:

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

SUBSTANTIVE FILE DOCUMENTS:

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

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

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

For the purposes of *de novo* review by the Commission, the applicants submitted a revised project description and revised plans (See Exhibit Nos. 5, 6, and 7) that make changes to the development originally approved by the County. The revised project description 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 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 principal issues raised by the application concerns the visual impacts of the development and whether sufficient well water is available to serve the proposed development.

With regard to the visual issue, the project site is located within a highly scenic area on a gently-sloping open coastal terrace that extends approximately one-quarter mile from the coastal hills east of Highway One to the ocean bluff edge west of Highway Ones. The terrace and hillsides are predominately vegetated with low-growing grasses and are largely used for agricultural grazing which contributes to the rural agricultural character of the area. Due to the flat terrain of the terrace, and lack of tall vegetation or varied topography, the development site is highly visible from Highway One in both directions. The lack of trees and the very limited and widely scattered development in the immediate vicinity of the development site gives the landscape a very open appearance. The views to and along the coast from narrow two-lane Highway One in this area are sweeping and

vast (See Exhibit 2). There is very little development located on either side of the highway in the immediate vicinity of the development site with the exception of a few scattered residences on the east side of the highway, three houses and a winery scattered along the west side of the highway beginning approximately a mile north of the applicant's ranch, and several homes west of the highway on parcels within a half mile south of the proposed development site. A larger concentration of approximately 30 homes exists along the west side of the highway approximately two miles south of the proposed development south of Abalobadiah Creek. This concentration of houses two miles south of the development site is largely screened from view from Highway One in the vicinity of the development site by intervening vegetation and a topographical break in the terrace formed by the Abalobadiah Creek drainage.

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

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

To help the Commission assess the visual impacts of the development and the consistency of the proposed development with the visual policies of the certified LCP, the applicant provided for purposes of the Commission's *de novo* review a visual impact study, attached as Exhibit 22. The study includes a compendium of aerial and landward views of the site comparing existing views with views from the same locations showing superimposed simulations of the proposed development as revised for purposes of the Commission's *de novo* review. The photos show how the development will establish a more compact and consolidate compound of buildings on the site than the compound of existing buildings, reducing the spread of the development on the site to better preserve views. The before and after comparison photos on pages 6-15 of Exhibit 22 illustrate how the proposed development as viewed from Highway One will appear bulkier and taller than the existing compound of buildings. In addition, some additional blue water

view available now from Highway One over and through the existing compound will be blocked by the taller structures. However, the comparison photos also demonstrate that when taking into account the large expanse of open space owned by the applicant that surrounds the development site, particularly the large open space area that extends north from the development site west of the highway, the individual visual impacts of the proposed development itself are not significant. The large expanse of uninterrupted view counter-balances the blockage of additional view and the greater massing of development that results from the project proposal. The fact that the new development will be located in the same part of the viewscape as the existing compound of buildings will also help retain the character of the existing views, which is comprised of a complex of building in this location set against vast open space area west of the highway. In this context, the development as proposed for the Commission's de novo review does not significantly affect views to and along the ocean and the development is subordinate to the character of its setting.

This determination that the visual impacts would not be significant and the development would be subordinate to the character of its setting is dependent on retaining the agricultural and open space use around the site without significant new structures, particularly the open space west of the highway and north of the development site. If this rural residential-zoned area were developed with new homes and accessory structures and driveways, the cumulative impact of the proposed inn development together with this additional residential development would be significant. The cumulative impacts of such development would block proportionately more of the ocean views and prominently break up the large expanse of open space, thereby eliminating the current open space's value in counter-balancing the blockage of additional view and the greater massing of development that results from the project proposal.

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

submittal of a landscaping plans to help screen the development, undergrounding of utilities and would restrict the colors and materials to be used, lighting, special event parking and tent locations to further minimize the visual impacts of the development. Staff believes that as conditioned, the development is consistent with the visual resource policies of the LCP.

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

In its findings for approval of the project, the County indicated that a hydrological report was prepared in 1994 for the previous inn project approved for the site, and that the 1994 study estimated that "well yield in the area to be more than 8,000 gpd, significantly exceeding the proposed water demand for the inn." The County did not require a new hydrological study for the current project based on the results of the 1994 study. Three of the four sets of appellants raised contentions about the adequacy of water to serve the development, and challenged the continuing validity of the old 1994 report. In finding substantial issue on the appeal, the Commission requested the applicant to provide a current hydrological study demonstrating that the quantity and quality of water yielded by the proposed well(s) (or some other source available to the applicant) meets the standards of the County Health Department in order to evaluate whether adequate water will be available to serve the proposed development. The requested hydrological study was to evaluate (1) the adequacy of the on-site water source(s) to serve the proposed development, (2) potential impacts to surface and groundwater supplies at and surrounding the project site, and (3) potential impacts to coastal resources from surface and/or groundwater extraction (i.e., impacts to surrounding wetlands or watercourses, geologic stability, etc.).

Pursuant to this request, the applicant hired Questa Engineering Corporation to perform a hydrological study of the site. Questa Engineering Corporation conducted the investigation and prepared a report dated January 10, 2008. (Excerpts of the report are included as Exhibit 16). The hydrological study first determined the average daily water demand for the project, establishing this demand based on the size of the inn, County policies for water and wastewater flow estimation, assumptions regarding extra water use for incidental water uses that do not result in wastewater flow, and assumptions regarding occupancy rates at the inn. The investigation then examined existing information about the hydrologic setting for the project and the well, before conducting a 72-hour pumping test during the dry season between October 9-12, 2007 to determine the sustained yield and drawdown characteristics of the well and the local aquifer. The study did not perform direct measurements of drawdown of the wells of neighbors as the nearest neighboring wells are located more than ¼- mile away. According to the study, a well

located ¼-mile away is well beyond the expected zone of influence of the test well. Water table drawdown effects were, however, calculated for the observation well and for a point 400 feet away which corresponds with the westerly property line of the well parcel. In addition, the study analyzed the effects of the proposed groundwater extraction on the local groundwater aquifer. Finally, the hydrologic study sampled the water quality of the well water to determine whether the extracted groundwater would be suitable for the proposed uses.

The study determined that the maximum daily water use of a 10 unit inn and the caretaker's residence would be 3,800 gallons per day (gpd). This volume is equivalent to a continuous pumping rate of about 2.64 gallons per minute. As noted above, the project as revised for purposes of the Commission's de novo review involves the installation of a seven unit inn rather than a 10 unit inn so the average daily water demand estimate will be a corresponding lesser amount. The pumping test demonstrated a stabilized yield of 6.26 gallons per minute over a sustained 72-hour pumping period which occurred at the end of a below average rainfall year. This rate corresponds to a daily pumping volume of 9,014 gallons per day. As discussed above, the maximum daily water use demand for a 10-unit inn with a caretaker's residence at the proposed site is estimated to be 3,800 gallons per day and the average daily water demand estimate of approximately 3,000 gallons per day. Therefore, the report concludes that the well has more than ample capacity to serve the proposed development. As the pumping test results indicate that the well will yield a volume of 9,014 gallons per day, the development will only use approximately 30% of the capacity of the well.

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

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

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

The motion to adopt the staff recommendation of approval with conditions is on pages 12 and 13.

STAFF NOTES:

1. Procedure

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

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

For the purposes of *de novo* review by the Commission, the applicants have submitted a revised project description and revised plans (See Exhibit Nos. 5-8) that make changes to the development originally approved by the County. The applicant has submitted revisions to the project description for purposes of the Commission's *de novo* review on two separate occasions. First, a revised project description dated May 13, 2009, and revised plans dated May 1, 2009 were transmitted to the Commission on May 13, 2009 (See Exhibit Nos. 5 and 6). This set of revisions made comprehensive changes to the number, size, arrangement, and design of the proposed buildings. Second, a supplement to revised project description dated October 21, 2009 and a revised plan dated October 15, 2009 for the Cottage/Massage Room building first proposed in the May revisions to the project was transmitted to the Commission on October 21, 2009 (See Exhibit No. 5 and Sheet 9 of 9 of Exhibit No. 6), subsequent to publication of the Commission staff report published for the October 2009 hearing that was postponed by the applicant. The changes to this structure primarily involve adding a loft to the building which results in an increase in the square footage of the building of 735 square feet with only a minor increase in lot coverage or building footprint of 270 square feet and no increase in the height of the structure.

The project revisions are designed to address concerns raised in the appeal that the project (1) did not conform to the definition of an inn contained in the certified LCP, (2) did not conform to the height limits for structures within designated highly scenic areas, and (3) was not subordinate to the character of its setting. The new information addresses both contentions raised specifically in the appeals as well as other issues of conformance

with the policies of the certified LCP that were not raised in the appeals but which also affect the consistency of the proposed project with the certified LCP.

A. Project Revisions

The proposed project description as revised for the Commission's *de novo* review 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 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.

In its review of the substantial issue portion of the appeal, the Commission found that the appeal raised a substantial issue as to whether the development approved by the County was consistent with the *1C overlay and meets the definition of an inn or whether the approved development should more properly be classified as a resort under the LUP, given the large overall size of the development, the facilities that would be available at the inn, and the large size of the units. The revisions to the project for the purposes of *de novo* review by the Commission 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, reducing the number of structures containing visitor serving accommodations, and (3) eliminating a previously proposed separate spa structure and consolidating a massage room onto a rental cottage.

With regard to conformance with the 18-foot height limit for development in highly scenic areas, the revisions to the project for the purposes of *de novo* review by the Commission reduced the height of all those new structures approved by the County to 18 feet except the portion of the main building currently occupied by the historic ranch house structure. Instead of being demolished and removed, the historic ranch structure would be renovated in a manner that would retain at least 50% of the existing structure. The 26-foot height of this structure would thus be permissible to retain as part of the retention and expansion of a legal non-conforming structure pursuant to the Coastal Zoning Code.

To address the substantial issue raised in the appeal as to whether the development would be subordinate to the character of its setting, the applicant has proposed various project changes to make the development more subordinate. As described above, these changes include remodeling and expanding the existing ranch house building rather than demolishing and replacing the ranch house with an entirely new building to retain the historic character of the building as part of the visual character of the area, reducing the number and floor area of buildings, reducing the width, length, and overall size of the footprint of the building complex, and reducing the height of all those buildings that exceeded the 18-foot height limit except for the portion of the main building occupied by the ranch house structure which will be renovated and retained as a legal non-conforming structure.

B. Supplemental Information

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

- (i.) Engineering Geologic Reconnaissance Report. The report, prepared by BACE Geotechnical and dated January 10, 2008 (Exhibit No. 15), evaluates geologic hazards to demonstrate that the development would be safe from bluff retreat concerns;
- (ii.) Hydrological Study Report. The hydrological report presents the results of a well pumping test and hydrological study to evaluate the adequacy of groundwater to serve the development to demonstrate that the proposed withdrawal of groundwater will not have a significant adverse effect on water supplies serving neighboring properties, prepared by Questa Engineering Corporation dated January 10, 2008 (Exhibit No. 16);
- (iii) Traffic Analysis. The traffic analysis, prepared by Whitlock & Weinberger Transportation, Inc. and dated January 14, 2008, evaluates the effects of the development on motor vehicle and bicycle use of Highway One to demonstrate that the development would not reduce service levels on the highway (Exhibit No. 18); and
- (iv) ESHA and Westland Delineation. The updated survey of environmentally sensitive habitat areas and wetland delineation, prepared by Redwood Coast Associates dated August, 2008, surveys rare plant and wetlands on the site and provides recommendations for establishing buffers adequate to protect these resources and achieve consistency with the ESHA buffer policies of the LCP (Exhibit No. 17).

- (v) Supplemental Parcel Information. The applicant has submitted various documents concerning the legality and existing configuration of the contiguous parcels at or adjoining the project site owned by the applicant. This information is submitted to establish the legal development potential of the subject property. These documents include (1) copies of County approved Certificates of Compliance (COCs) for the property owned by the applicant, (2) several property maps depicting the property owned by the applicant, the zoning designations for the different APNs, the patent deed areas, and the COC boundaries, and (3) copies of the chain of title for each parcel owned by the applicant (See Exhibits 19-21).
- (vi) Evidence of County Department of Environmental Health Approval of Septic System. The applicant submitted a copy of the first page of the sewage disposal system site evaluation report prepared for the project stamped "Approved" by the County of Mendocino Environmental Health Department. The Approval is dated October 31, 2007. The stamped document was submitted to demonstrate that the project site has the necessary sewage disposal septic capacity to serve the proposed development.
- (vii) Williamson Act Contract Information. The applicant has submitted a copy of an Agricultural Preserve Contract entered into between the applicant and Mendocino County and the supporting County staff report recommending approval of the contract by the County Planning Commission and Board of Supervisors. The contract placed approximately 1,339.31 acres of the ranch into a Type II Agricultural Preserve and includes mainly the portions of the ranch east of Highway One and an 8-acre APN west of the highway that is immediately south of the APN where the inn development is proposed. The agricultural preserve information was submitted to demonstrate that the Williamson Act contract would preclude developing the inn on the portions of the ranch east of the highway.
- (viii) Visual Impact Study. The study, prepared by Sellers & Company Architects, dated May 27, 2009, includes a compendium of aerial and landward views of the site comparing existing views with views from the same locations showing superimposed simulations of the proposed development as revised for purposes of the Commission's de novo review. The visual study was submitted to demonstrate that the development would not have significant adverse visual impacts and would be subordinate to the character of its setting (See Exhibit 22).

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

3. Revised Staff Report

This item was last scheduled for a public hearing at the October 7, 2009 Commission meeting in Oceanside and a written staff recommendation was published and mailed on

September 24, 2009. The applicant exercised his right under Section 13073 of the Commission's regulations for a one-time postponement of the hearing and the matter was rescheduled for the November 4, 2009 Commission meeting. In addition, the applicant has amended the project description to increase the size of the proposed cottage/spa unit by approximately 735 square feet to 2,437 square feet. This revised staff report differs from the report mailed on September 24, 2009 in that it includes (1) minor revisions to Special Condition Nos. 5, 6, 7, and 15 to clarify condition requirements, (2) revisions to the Staff Notes and to Findings D and H to revise the description of the proposed cottage spa unit, incorporate responses to comments received since publication of the September 24, 2009 staff report, and add supplemental information, (3) adding portions of findings that were not included in the September 24, 2009 staff report, including Findings E, I, and J, and (4) changes and additions to the exhibits, including Exhibits 2, 5, 6, 8, 19, and 24-29. Exhibit 28 includes additional correspondence received since publication of the September 24, 2009 staff report.

4. Addendum

This staff report does not contain the complete findings for approval of the project. Staff was unable to complete the findings prior to the mailing of the staff report. However, staff will present the remaining portion of the recommended findings for approval of the project as part of the addendum at the Commission meeting. The findings contained in both this staff report and its addendum will reflect the basis for approval with conditions.

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

Motion:

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

Staff Recommendation of Approval:

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

Resolution to Approve Permit:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the certified Mendocino County LCP. Approval of the permit complies with the California Environmental Quality Act because either: 1) feasible mitigation measures and/or alternatives have been incorporated to substantially

lessen any significant adverse effects of the development on the environment; or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS: See Appendix A.

III. SPECIAL CONDITIONS:

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

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

2. No Future Bluff or Shoreline Protective Device

- A. By acceptance of this permit, the applicant agrees, on behalf of himself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the new main inn building, rental cottage and massage room, ranch manager's unit, ranch equipment barn, generator/.pump shed, garage for inn guests, septic system, rerouted driveway, and utility lines authorized pursuant to Coastal Development Permit No. A-1-MEN-07-028, in the event that the main inn building, rental cottage and massage room, ranch manager's unit, ranch equipment barn, generator/.pump shed, garage for inn guests, septic system, rerouted driveway, and utility lines are threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, ground subsidence, or other natural hazards in the future. By acceptance of this permit,

- the applicant hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices to protect the main inn building, rental cottage and massage room, ranch manager's unit, ranch equipment barn, generator/.pump shed, garage for inn guests, septic system, rerouted driveway, and utility lines that may exist under Public Resources Code Section 30235 or under Mendocino County Land Use Plan Policy No. 3.4-12, and Mendocino County Coastal Zoning Code Section 20.500.020(E)(1).
- B. By acceptance of this Permit, the applicant further agrees, on behalf of himself and all successors and assigns, that the landowner shall remove the main inn building, rental cottage and massage room, ranch manager's unit, ranch equipment barn, generator/.pump shed, garage for inn guests, septic system, rerouted driveway, and utility lines authorized by this permit if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the main inn building, rental cottage and massage room, ranch manager's unit, ranch equipment barn, generator/.pump shed, garage for inn guests, septic system, rerouted driveway, and utility lines fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.
- C. In the event the edge of the bluff recedes to within 10 feet of the main inn building, rental cottage and massage room, ranch manager's unit, ranch equipment barn, generator/.pump shed, garage for inn guests, septic system, rerouted driveway, and utility lines but no government agency has ordered that the structures not be occupied, a geotechnical investigation shall be prepared by a licensed geologist or civil engineer with coastal experience retained by the applicant, that addresses whether any portions of the structures are threatened by waves, erosion, storm conditions, or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the main inn building, rental cottage and massage room, ranch manager's unit, ranch equipment barn, generator/.pump shed, garage for inn guests, septic system, rerouted driveway, and utility lines without shore or bluff protection, including but not limited to, removal or relocation of portions of the main inn building, rental cottage and massage room, ranch manager's unit, ranch equipment barn, generator/.pump shed, garage for inn guests, septic system, rerouted driveway, and utility lines. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the main inn building, rental cottage and massage room, ranch manager's unit, ranch equipment barn, generator/.pump shed, garage for inn guests, septic system, rerouted driveway, and utility lines is unsafe for use, the permittee shall, within 90 days of submitting the report, apply for a coastal development permit amendment to remedy the hazard which shall include removal of the threatened portion of the main inn building, rental cottage and massage room, ranch manager's unit, ranch

equipment barn, generator/pump shed, garage for inn guests, septic system, rerouted driveway, and utility lines.

3. Assumption of Risk, Waiver of Liability and Indemnity

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

4. Deed Restriction

PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-07-028 and consistent with the applicant's implementation of Special Condition No. 6, the applicant shall submit for the review and approval of the Executive Director, documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

5. Open Space Restriction

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

1. The following development, if approved by the Coastal Commission as an amendment to this coastal development permit: agricultural fences, corrals, and other accessory agricultural development not including any residences, barns, or other significant new above-ground structures; installation of utilities; removal of non-native, invasive vegetation and planting of native plants; removal of vegetation for compliance with Cal-Fire defensible space requirements; and improvement and use for public access purposes.

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

6. **Limitations on APN 015-380-005, APN 015-380-003, and APN 015-380-004/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 acknowledge, agree to, and have 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 one single legal parcel; (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 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 and as generally depicted on Exhibit 27.

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

7. Future Development Restrictions

- A. This permit is only for the development described in Coastal Development Permit No. A-1-MEN-07-028. Any future improvements to the authorized structures and other approved development and any changes in use of the structures will require a permit amendment or a new coastal development permit.
- B. The approved inn units are intended to be used for commercial transient occupancy purposes only. When and if any of the inn units cease to be used for commercial transient occupancy purposes, a coastal development permit amendment or new coastal development permit application shall be obtained to either remove the unit or convert the unit to a use consistent with the certified Mendocino County LCP.

8. Protection of Archaeological Resources

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

construction may not recommence until after an amendment to this permit is approved by the Commission.

9. Landscaping Plan

A. PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO.

A-1-MEN-07-028, the applicant shall submit to the Executive Director, for review and written approval, a final landscaping plan that provides for the following:

- i. Native trees that will grow to a height of at least 15-20 feet shall be planted along the eastern perimeter fence of the inn complex at a spacing of approximately 10-foot centers to partially screen the development from Highway One;
- ii. A landscaped berm at least three feet high and planted with native trees and shrubs shall be planted along the perimeter of the overflow parking area. The density and mature heights of plantings shall be sufficient to screen vehicles using the parking area from view from Highway One;
- iii. Unless required to abate a nuisance consistent with Coastal Act Section 30005(b), no limbing or pruning of the visually screening trees and shrubs planted pursuant to the approved landscaping plan shall occur unless a permit amendment is obtained and issued prior to the commencement of limbing and pruning;
- iv. All plantings shall be maintained in good condition throughout the life of the project to ensure continued compliance with the approved final landscape plan. If any of the plants to be planted according to the plan die, become decadent, rotten, or weakened by decay or disease, or are removed for any reason, they shall be replaced no later than May 1st of the next spring season in-kind or with another native species common to the coastal Mendocino County area that will grow to a similar or greater height;
- v. All proposed plantings shall be obtained from local genetic stocks within Mendocino County. If documentation is provided to the Executive Director that demonstrates that native vegetation from local genetic stock is not available, native vegetation obtained from genetic stock outside the local area, but from within the adjacent region of the floristic province, may be used. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or by the State of California shall be planted or allowed to naturalize or persist on the parcel. No plant species listed as a 'noxious weed' by the

State of California or the U.S. Federal Government shall be utilized within the property;

- vi. Rodenticides containing any anticoagulant compounds, including but not limited to, Bromadiolone, Brodifacoum, or Diphacinone, shall not be used;
- vii. A final landscape site plan showing the species, size, and location of all plant materials that will be planted on the developed site, the size and location of the required landscaped berm, any irrigation system, delineation of the approved development, and all other landscape features such as, but not limited to, site topography, horticultural plantings, decorative rock features, pathways, and berms and/or raised beds.

- B. The permittees shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

10. Landscaping Restrictions

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

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

11. Erosion and Runoff Control Plan

A. **PRIOR TO ISSUANCE OF THE PEMRIT**, the applicant shall submit to the Executive Director, for review and written approval, an erosion and runoff control plan demonstrating the following:

- (1) Straw bales and/or silt fencing shall be installed to contain runoff from construction areas;
- (2) Native on-site vegetation shall be maintained to the maximum extent feasible during construction;
- (3) Any disturbed areas shall be replanted or seeded with native vegetation of local genetic stock following project completion;
- (4) All on-site stockpiles of construction debris shall be covered and contained to prevent polluted water runoff; and
- (5) Runoff from the roofs and other impervious surfaces of the development shall be collected and directed away from bluffs and the wetland environmentally sensitive habitat areas (ESHA) and ESHA buffer area as shown on Exhibit No. 4 in a non-erosive manner into pervious areas of the site (i.e. undeveloped areas, landscaped areas) to achieve infiltration to the maximum extent practicable.
- (6) All grading and excavation work shall only occur during the summer months from April 15 through October 31

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

12. Design Restrictions

- A. All exterior siding and roofing of the proposed structures shall be composed of the colors proposed in the application or darker earth tone colors only. The current owner or any future owner shall not repaint, resurface, or stain the inn buildings or other approved structures with products that will lighten the colors of the approved structures without an amendment to this permit. In addition, all exterior materials, including roofs, windows, and solar panels shall be non-reflective to minimize glare;
- B. All exterior lights, including any lights attached to the outside of the buildings, shall be the minimum necessary for the safe ingress, egress, and use of the structures, and shall be low-wattage, non-reflective, shielded, and have a

directional cast downward such that no light will be directed to shine beyond the boundaries of the subject parcel.

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

13. Caltrans Encroachment Permit

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

14. Protection of Environmentally Sensitive Habitat

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

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

15. Temporary Events

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

16. Final Plans for Remodeling Existing Ranch House

- A. **PRIOR TO ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. 1-08-011**, the applicant shall submit, for review and approval of the Executive Director, a final construction plans for remodeling and expansion of the existing ranch house building and converting the structure into the main inn building.
 - 1) The final construction plans shall demonstrate the following:
 - a. Fifty percent of the existing walls of the existing structure will be retained.
 - b. The structure will be built consistent with the revised project description and plans submitted for purposes of the Commission's de novo review.
 - 2) The plan shall include, at a minimum, the following components:
 - a. Final construction plans for the structure including final framing, roofing, and floor plans, building elevations. The plans shall clearly distinguish the portions of the walls and other elements of the existing building that have been retained from the portion of the proposed remodeled structure that will be new.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

17. Conditions Imposed By Local Government

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

IV. FINDINGS & DECLARATIONS

The Commission hereby finds and declares as follows:

A. Incorporation of Substantial Issue Findings

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

B. Project History

1. Previous Inn Development Approvals

Coastal development permits were approved for development of an inn facility at the subject property twice previously. In September 1984, prior to certification of the Mendocino LCP, the Coastal Commission granted Coastal Development Permit No. 1-83-278 for conversion of an existing residence into a four-unit bed and breakfast inn, subject to conditions, including conditions requiring recordation of an offer to dedicate coastal access. The prior to issuance conditions of this permit were never met, the approval expired, and the permit was never issued.

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

The applicants sued the County, challenging the condition requiring coastal access on the grounds that a nexus did not exist between the impacts of the project on public access and the exaction of property for public access purposes. Eventually a settlement of the law suit was reached between the applicants and the County that provide for the County to drop the condition requiring the offer of dedication of public access in exchange for the applicants (1) conveying fee title to the County of a one-acre portion of the

approximately 400-acre subject property, (2) paying the County \$25,000 toward the development of coastal access in the area, and (3) dedicating an easement for public access through property along a 15-foot strip on the west side of the Highway One right-of-way. On August 3, 2000, the County then approved Coastal Development Use Permit Modification #CDUM 9-95/2000 as a means of implementing the terms of the settlement agreement.

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

2. Current Permit Application

On June 21, 2007, the Mendocino County Planning Commission conditionally approved the coastal development permit for the project (CDU #6-2006) (Exhibit No. 10). As discussed above, the development, as approved by the County, consisted of the establishment of a 7-unit inn with an additional manager's unit in two phases on a portion of a 400-acre parcel located in the rural and sparsely developed northern Mendocino coast approximately four miles south of Westport, on the west side of Highway One, at 31502 North Highway One.

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

The decision of the Planning Commission was not appealed at the local level to the County Board of Supervisors. The County then issued a Notice of Final Action, which was received by Commission staff on July 13, 2007 (Exhibit No. 11). Section 13573 of the Commission's regulations allows for appeals of local approvals to be made directly to

the Commission without first having exhausted all local appeals when, as here, the local jurisdiction charges an appeal fee for the filing and processing of local appeals.

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

First, the Commission determined that the project as approved by the County, raised a substantial issue of conformance regarding allowable development under the *1C land use designation that applies to the subject property which allows for development of a 10-unit inn. 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 Commission found that a substantial issue was raised as to whether the approved development is consistent with the *1C overlay and meets the definition of an inn or whether the approved development should more properly be classified as a resort under the LUP, given the activities the development is designed to accommodate, the large overall size of the development, the facilities that would be available at the inn, and the large size of the units.

Second, the Commission determined that the project as approved by the County, raised a substantial issue of conformance with the requirements of LUP Policies 3.5-1 and 3.5-3 and Coastal Zoning Ordinance Section 20.504.015(C)(3) that new development be subordinate to the character of its setting. Given (a) the large size of the development (approximately 16,000 square feet) in this sparsely developed area, (b) the appearance of the fenced inn compound, (c) the visual effect of planting a number of trees for screening purposes in the middle of a largely treeless terrace where the planted tree themselves would appear out of character with the landscape around it, and (d) the visual prominence and glare from cars parked at the site, portable restrooms, signs, lighting, tents, and other temporary structures that would be associated with the unlimited number of weddings and other special events accommodating up to 99 people that the County approval would allow to occur on the grounds of the facility, the Commission found that the approved project raised a substantial issue of whether the development would be subordinate to the character of its setting.

Third, the Commission determined that the project as approved by the County, raised a substantial issue of conformance regarding LCP height requirements for development in designated highly scenic areas. The LCP limits the height of structures within highly scenic areas west of highway one to 18 feet and one story, unless the development would

not affect views to the ocean and would be compatible with surrounding development. The Commission noted that the main building of the approved project included elements that are 25 feet tall and two stories. Further, portions of the approved building above 18 feet and containing two stories would obstruct blue water view from Highway One.

Fourth, the Commission determined that the project as approved by the County, raised a substantial issue of conformance with LCP policies requiring the protection of views to the ocean and scenic coastal areas. The Commission noted that the development would obstruct some blue water view. The view blockage would result not just from the 25-foot high structures but also from the approved fence that would surround the 3.4-acre inn complex and the required landscaping that includes trees to screen the development.

Fifth, the Commission determined that the project as approved by the County, raised a substantial issue of conformance with LCP policies regarding the provision of lower cost visitor serving facilities. Policy 3.7-5 of the LUP states, in applicable part, that lower-cost visitor and recreational facilities for persons and families of low and moderate income shall be protected, encouraged and, where feasible provided. This determination was based on the fact that as the large size of the units to be provided at the inn with multiple bedrooms, bathrooms, sitting rooms, and kitchens are much larger than most visitor accommodations along the Mendocino coast, the units would likely be rented at the high end of the price range for visitor accommodations found on the Mendocino Coast.

Sixth, the Commission determined that the project as approved by the County, raised a substantial issue of conformance with LCP policies regarding the protection of Environmentally Sensitive Habitat Areas (ESHA) from the impacts of approved development. The Commission found that as (1) the County's approval relied on 15-year old botanical surveys that cannot possibly identify plants on the property determined to be to be ESHA within the last 15 years and identify the current extent of Mendocino paintbrush and other rare plants, and (2) the wetland delineations performed in the past indicating no wetlands existed on the site were not based on LCP and Coastal Act wetland definitions, the project as approved by the County raised a substantial issue of conformance with the provisions of LUP Policy 3.1-7, and Coastal Zoning Code Section 20.496.020 as the protection of ESHA on the site in a manner consistent with the policies has not been assured.

Seventh, the Commission determined that the project as approved by the County, raised a substantial issue of conformance with LCP policies regarding the provision of adequate water and septic services to accommodate approved development. The approved development would rely on groundwater pumped from wells on the property and the site is designated in the LCP as a critical water area where groundwater is relatively scarce. The Commission found that the County findings did not demonstrate that sufficient ground water exists to both serve the anticipated demand for water at the development and avoid depleting groundwater reserves to an extent that would adversely affect wetlands fed by the groundwater or the water supply of neighboring residents..

Finally, the Commission determined that the project as approved by the County raised a substantial issue of conformance with LCP policies regarding traffic impacts on the use of Highway One, including, but not limited to, LUP Policy 3.8-1 and CZC Section 20.532.095(A)(6). The Commission found that as the County did not require a project-specific traffic study, the potential impacts to Highway One from the increase in intensity of use of the site as an inn, and for special events at the inn, have not been adequately considered.

The Commission continued the *de novo* portion of the appeal hearing so that the applicant could provide additional information relating to the substantial issue. The applicant has provided Commission staff with supplemental information consisting of the following:

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

- (6) Evidence of County Department of Environmental Health Approval of Septic System. The applicant submitted a copy of the first page of the sewage disposal system site evaluation report prepared for the project stamped “Approved” by the County of Mendocino Environmental Health Department. The Approval is dated October 31, 2007. The stamped document was submitted to demonstrate that the project site has the necessary sewage disposal septic capacity to serve the proposed development.
- (7) Williamson Act Contract Information. The applicant has submitted a copy of an Agricultural Preserve Contract entered into between the applicant and Mendocino County and the supporting County staff report recommending approval of the contract by the County Planning Commission and Board of Supervisors. The contract placed approximately 1,339.31 acres of the ranch into a Type II Agricultural Preserve and includes mainly the portions of the ranch east of Highway One and an 8-acre APN west of the highway that is immediately south of the APN where the inn development is proposed. The agricultural preserve information was submitted to demonstrate that the Williamson Act contract would preclude developing the inn on the portions of the ranch east of the highway.
- (8) Visual Impact Study. The study, prepared by Sellers & Company Architects, dated May 27, 2009, includes a compendium of aerial and landward views of the site comparing existing views with views from the same locations showing superimposed simulations of the proposed development as revised for purposes of the Commission’s *de novo* review. The visual study was submitted to demonstrate that the development would not have significant adverse visual impacts and would be subordinate to the character of its setting (See Exhibit No. 22).

The supplemental information addresses issues raised by the appeal and provides additional information that was not a part of the record when the County originally acted to approve the coastal development permit. For purposes of the Commission’s *de novo* review, the applicant has also submitted a revised project description and revised plans (Exhibit Nos. 5-7) designed to address the issues raised on appeal, which are discussed below in the Project Description Finding.

C. Site Description

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

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

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

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

The project site is located on APN 015-380-05, which is located west of Highway One (See Exhibits Nos. 1-2). APN 015-380-05 is contained within a larger area that was recognized as a legal parcel by Certificate of Compliance #CC 39-90 granted by the County in April 1995 (See Exhibit No. 20). The irregularly-shaped COC area extends across a coastal terrace from the ocean approximately 800 feet eastward to Highway One and beyond the highway as much as 1,600 feet farther east. The COC area extends approximately one half mile along Highway One. CC 39-90 includes a statement that the COC area exists as one legal parcel. The applicant contends that the different APNs within the COC area are separate legal parcels (See July 9, 2009 letter from Alan Block to Bob Merrill attached to the Addendum to this staff report as Exhibit 30.). However, the applicant has provided no evidence to counter the statement in the County's COC that the APNs are part of one legal parcel. The applicant also owns extensive adjoining area north, south, and east of the CC 39-90 area that is contained within 11 different COCs. (See Exhibit No. 21) and extends approximately 1.25 miles along Highway One. The applicant also owns APN 015-380-06, a separate legal parcel that covers most of the point that extends west of the development site.

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

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

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

Botanical surveys conducted in 1991 and 1992 and relied upon by the County in its approval of the project indicated that the only environmentally sensitive habitat (ESHA) on the property consisted of a rare plant population of Mendocino paintbrush located along the bluffs. The updated biological report submitted for the Commission's de novo review of the project indicates that the subject property contains four types of ESHAs, including habitats for two special status plant species, one special status plant community, four wetlands, and one ephemeral stream.

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

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

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

The biological report also identified an ephemeral stream and four freshwater wetland areas on the subject property, including a northwest wetland, a northeast wetland, and two southern wetlands (See Exhibit No. 4). The northwest wetland is approximately 0.67-acres in size and extends from just inside the northwest corner of the existing fenced compound to an area to the northwest close to the bluff. The northeast wetland extends east west across a portion of the property approximately 125 feet north of the proposed new driveway connection to Highway 1. The northerly extent of the wetland has not been mapped as only the southern edge borders the project site. The ephemeral stream identified by the botanical report also extends east west across the property more than 100 feet south of the development site from a culvert under Highway One just south of the current connection of the driveway to the highway to a cove along the bluff edge. The stream ranges in width from bank to bank from 3-20 feet and in depth from the bottom of the channel to the top of the bank from 2-10 feet. The channel supports some

wetland vegetation, but the stream is not surrounded by riparian vegetation. The two southern wetlands connect to this stream south of the existing driveway and east of the development site.

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

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

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

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

D. Project Description

The development as originally proposed and approved by the County consists of the establishment of a 7-unit inn with an additional manager's unit in two phases. The inn complex would be constructed within an area of approximately 277-feet wide by 335-

feet-long, approximately 150 feet from the bluff edge at its closest point. The inn complex would be surrounded by new fencing on the three sides and a sunken wall “ha-ha” on the westernmost (as well as a portion of the southern boundary). The “ha-ha” is a sunken wall and hedge arrangement that would serve as a barrier to the livestock that is raised on the property without impairing views from the inn complex to the ocean.

For the purposes of *de novo* review by the Commission, the applicants have submitted a revised project description and revised plans (See Exhibit Nos. 5-8) that make changes to the development originally approved by the County. The applicant has submitted revisions to the project description for purposes of the Commission’s *de novo* review on two separate occasions. First, a revised project description dated May 13, 2009, and revised plans dated May 1, 2009 were transmitted to the Commission on May 13, 2009 (See Exhibit No. 5). This set of revisions made comprehensive changes to the number, size, arrangement, and design of virtually all of the proposed buildings. Second, a revised plan dated October 15, 2009 for the Cottage/Massage Room building first proposed in the May revisions to the project was transmitted to the Commission on October 21, 2009 (See Exhibit No. 5), subsequent to publication of the Commission staff report published for the October 2009 hearing that was postponed by the applicant. The changes to this structure primarily involve adding a loft to the building which results in an increase in the square footage of the building of 735 square feet with only a minor increase in lot coverage or building footprint of 270 square feet and no increase in the height of the structure (See Exhibit No. 5 and Sheet 9 of 9 of Exhibit No. 6).

The revised project description 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 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.

In its review of the substantial issue portion of the appeal, the Commission determined that the appeal raised a substantial issue as to whether the development approved by the County was consistent with the *1C overlay and meets the definition of an inn or whether the approved development should more properly be classified as a resort under the LUP, given the large overall size of the development, the facilities that would be available at the inn, and the large size of the units. The revisions to the project for the purposes of *de*

*nov*o review by the Commission 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, reducing the number of structures containing visitor serving accommodations, and (3) eliminating a previously proposed separate spa structure and consolidating a massage room onto a rental cottage.

With regard to conformance with the 18-foot height limit for development in highly scenic areas, the revisions to the project for the purposes of *de novo* review by the Commission reduced the height of all those new structures approved by the County to 18 feet except the portion of the main building currently occupied by the historic ranch house structure. Instead of being demolished and removed, the historic ranch structure would be renovated in a manner that would retain at least 50% of the existing structure. The 2_-foot height of this structure would thus be permissible to retain as part of the retention and expansion of a legal non-conforming structure pursuant to the Coastal Zoning Code.

To address the substantial issue raised in the appeal as to whether the development would be subordinate to the character of its setting, the applicant has proposed various project changes to make the development more subordinate. As described above, these changes include remodeling and expanding the existing ranch house building rather than demolishing and replacing the ranch house with an entirely new building to retain the historic character of the building as part of the visual character of the area, reducing the number and floor area of buildings, reducing the width, length, and overall size of the footprint of the building complex, and reducing the height of all those buildings that exceeded the 18-foot height limit except for the portion of the main building occupied by the ranch house structure which will be renovated and retained as a legal non-conforming structure.

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

LCP Policies and Standards:

LUP Policy 3.7-1 states:

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

LUP Policy 3.7-2 states:

Because unrestricted development of visitor facilities would destroy those qualities that attract both residents and tourists, limitations on visitor facilities by type and location shall be as set by Policy 3.7-1 and illustrated by Table 3.7-2 which reflects a tabulation

based on land use maps (see footnotes) to avoid highway congestion, degradation of special communities, and disruption of enjoyment of the coast.

LUP Policy 3.7-3 states:

Visitor serving facilities and proposed sites where the Coastal Commission has approved the issuance of permits are designated on the land use maps, and are reserved for those visitor accommodations as defined in Chapter 2. Provision has also been made for the following visitor services: boat launching or rental, visitor-oriented and handicraft shops. Precise intensity of visitor accommodations and development standards shall be specified by zoning regulations so the developments will be compatible with the natural setting and surrounding development. Visitor serving facilities which might occur in commercially designated areas have not been specifically designated, except for the Mendocino Town Plan. (See Appendix 10 for listing of privately operated visitor serving facilities.)

LUP Policy 3.7-4 states:

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

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

Policy 3.7-4.1 states:

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

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

Sec. 20.332.005 General Description of Visitor Serving Use Types.

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

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

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

*Sec. 20.332.015 Inn - *1.*

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

*Sec. 20.332.020 Hotel - *2.*

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

*Sec. 20.332.025 Inn - *2.*

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

*Sec. 20.332.030 Motel - *2.*

Any building or portion thereof or group of buildings containing five (5) but no more than twenty (20) guest rooms or suites where such rooms or suites are directly accessible

from an outdoor parking area and where each is used, designed or intended to be used, let or hired out for occupancy by transient guests for compensation or profit. (Ord. No. 3785 (part), adopted 1991)

*Sec. 20.332.035 Campground - *3.*

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

*Sec. 20.332.040 Hostel - *3.*

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

*Sec. 20.332.045 Organized Camp - *3.*

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

(A) Camp is located on a permanent site.

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

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

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

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

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

(1) The American Camping Association;

(2) The Christian Camp and Conference Association;

(3) The California Association of Private Camps;

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

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

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

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

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

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

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

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

*CZC Sec. 20.332.065 Resort - *5.*

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

CZC Sec. 20.436.005 Intent.

The VAS Combining District is intended to allow visitor accommodations and services to be developed on selected sites designated by the asterisk () symbol on the land use plan*

maps of the Coastal Element of the General Plan and Coastal Zoning Maps. Additional sites for visitor accommodations outside of Commercial and Rural Village land use designations shall be the subject of a Local Coastal Program amendment. A single family residence may be developed in conjunction with or prior to the establishment of visitor accommodations and services if the site/parcel is not preempted for VAS facilities by such action. Preemption analysis will be performed prior to approval of a development permit pursuant to Chapter 20.532. (Ord. No. 3785 (part), adopted 1991)

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

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

(B) Visitor Accommodations and Services Use Types.

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

CZC Sec. 20.436.015 Conditional Uses for VAS Combining Districts.

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

(A) Coastal Residential Use Types.

Employee Caretaker Housing.

(B) Visitor Accommodations and Services Use Types.

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

*Bed and Breakfast Accommodation - *1C;*
*Inn - *1C;*
*Hotel - *2C;*
*Inn - *2C;*
*Motel - *2C;*
*Campground - *3C;*
*Hostel - *3C;*
*Organized Camp - *3C;*
*Recreational Vehicle Campground - *3C;*
*Visitor-Oriented Eating and Drinking Establishments - *4C;*
*Visitor-Oriented Retail Sales - *4C;*
*Resort - *5C.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Proposed tree removal and grading shall be shown on the site development plans but shall be minimized to that which is necessary for accommodation of the main and accessory structures. Where there are alternatives to development which minimize tree removal and/or grading, the development proposal shall be modified as necessary such as in location, siting, size, design, and bulk, in order to incorporate the alternative.

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

CZC Sec. 20.436.030 Maximum Density for VAS Combining Districts.

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

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

(1) Inns.

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

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

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

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

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

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

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

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

*(8) Visitor-Oriented Retail Sales - *4 or *4C: When developed as an accessory use to visitor accommodation services, the gross floor area shall not exceed twenty (20) percent of the gross floor area of the visitor accommodation on the site but in no case shall exceed six-hundred forty (640) square feet maximum.*

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

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

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

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

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

Discussion:

Exhibit No. 28, "Correspondence," contains a submittal received by the Commission on September 30, 2009 by 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. Among other comments, the submittal contends that the development is not consistent with the use limitations of the LCP regarding the *1C designation. This 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 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. Commission staff has reviewed the comment and continues to believe that the project as conditioned is consistent with the visitor accommodation and services policies of the certified LCP listed above. The comment will be addressed in an addendum that will be presented at the Commission meeting.

F. Adequacy of Available Services

1. Adequacy of Available Water

LCP Policies and Standards:

LUP Policy 3.8-1 states in applicable part:

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

LUP Policy 3.8-9 states in applicable part:

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

Coastal Zoning Coastal Zoning Code Section 20.532.095 states:

Section 20.532.095 Required Findings for all Coastal Development Permits.

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

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

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

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

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

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

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

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

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

Project Consistency with Applicable LCP Provisions:

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

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

The project site lies within an area containing “Critical Water Resources” as designated by the 1982 Mendocino County Coastal Ground Water Study, which when combined with Coastal Groundwater Development Guidelines adopted by the County in 1989, requires a hydrological study for commercial projects proposing 1,500 gallons per day

(gpd) or more. The County staff report for the project as approved by the County indicates that the approved project would have an estimated maximum demand of approximately 2,600 gpd.

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

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

The Commission determined that the appeals raised a substantial issue of conformance with the LCP polices regarding the provision of adequate groundwater to serve new development in that the County findings did not demonstrate that sufficient ground water exists to both serve the anticipated demand for water at the development and avoid depleting groundwater reserves to an extent that would adversely affect wetlands fed by the groundwater or the water supply of neighboring residents. In addition, the Commission determined that an updated hydrological study would be necessary to review the project de novo for consistency with the LCP polices regarding the provision of adequate groundwater to serve new development. The Commission requested the applicant to provide a current hydrological study demonstrating that the quantity and quality of water yielded by the proposed well(s) (or some other source available to the applicant) meets the standards of the County Health Department in order to evaluate whether adequate water will be available to serve the proposed development. The requested hydrological study was to evaluate (1) the adequacy of the on-site water source(s) to serve the proposed development, (2) potential impacts to surface and groundwater supplies at and surrounding the project site, and (3) potential impacts to

coastal resources from surface and/or groundwater extraction (i.e., impacts to surrounding wetlands or watercourses, geologic stability, etc.).

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

Project Water Demand.

The water demand was determined based on a project description that entailed development of a 10-unit inn and a caretaker's unit. Since the study was conducted, the applicant has revised the project description to reduce the maximum number of inn units to seven. The revised project description describes the inn as a five unit inn while acknowledging that the 2,989-square-foot main unit can either be rented as a single unit or as three separate units by using internal doors to divide the space. Thus a maximum of seven units could be occupied at any one time. The hydrologic study took into account that most of the inn units are suites with multiple bathrooms and containing kitchen

facilities and that the number of bedrooms is larger than the number of units. Water demand was projected on the basis that there would be 16 total bedrooms.

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

Hydrogeologic Setting

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

Study Results

The results of the pumping test performed for the hydrologic study are shown in Table 2 of the report (See Exhibit No. 16). As discussed in the report, the pumping test demonstrated a stabilized yield of 6.26 gallons per minute over a sustained 72-hour pumping period which occurred at the end of a below average rainfall year. This rate corresponds to a daily pumping volume of 9,014 gallons per day. As discussed above, the maximum daily water use demand for a 10-unit inn with a caretaker's residence at the proposed site is estimated to be 3,800 gallons per day and the average daily water

demand estimate of approximately 3,000 gallons per day. Therefore, the report concludes that the well has more than ample capacity to serve the proposed development.

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

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

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

The Commission's geologist, Dr. Mark Johnsson, has reviewed the hydrological report and concurs with the overall conclusion that the proposed water supply well will provide sufficient water to serve the needs of a 10-unit inn and caretaker's residence development. As noted above, since the hydrological study was conducted, the applicant has revised the project description to reduce the number of inn units to a maximum of seven. Thus the maximum and average daily water use demands for the current development may be as much as 25-30% less than the 3,800-gallons-per-day maximum and 3,000-gallons-per-day average daily water demand calculated by the hydrological study for a 10-unit inn with a caretaker's residence at the proposed site. As the pumping test results indicate that the well will yield a volume of 9,014 gallons per day, the

development will only use approximately 30% of the capacity of the well. Therefore, the Commission finds that an adequate water supply is available to serve the proposed development.

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

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

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

Highway One Capacity

Exhibit No. 28, "Correspondence," contains a submittal received by the Commission on September 30, 2009 by 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. Among other comments, the submittal contends that the cumulative traffic impacts to Highway One from the applicant's project have not been adequately addressed. Commission staff has reviewed the comment and continues to believe that the project as conditioned is consistent with the policies of the certified LCP including LUP Policy 3.8-1 and Coastal Zoning Coastal Zoning Code Section 20.532.095. The comment will be addressed in an addendum that will be presented at the Commission meeting.

G. Geologic Hazards

Summary of Applicable LCP Provisions:

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

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

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

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

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

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

...

LUP Policy 3.4-8 states the following:

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

LUP Policy 3.4-9 states the following:

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

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

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

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

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

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

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

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

(2) Assure structural integrity and stability; and

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

CZC Section 20.500.015 states the following:

(A) Determination of Hazard Areas.

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

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

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

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

...

(B) Bluffs.

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

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

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

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

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

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

...

(E) Erosion.

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

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

Project Consistency with Applicable LCP Provisions:

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

As discussed above, the approved project as 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 (current ranch house that was formerly the Orca Inn) into a 9,809-square-foot inn building; (3) constructing a 1,688-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 and rerouting a portion of the existing 14,810-square-foot driveway; and (10) burying existing overhead utility lines. All of the proposed development on the site is located more than 100 feet from the bluff edge. The portion of the new development that comes closest to the bluff edge is the northwest

corner of the main 9,809-square-foot inn building which subsumes within it the existing 2,049-square-foot existing ranch house structure. This main inn building comes to within approximately 240 feet of the bluff edge. The revised site plan for the project submitted for the Commission's de novo review shows that the five other proposed buildings will be located further back from the bluff edge than the main inn building at locations that are setback from the bluff edge by minimum distances of approximately 400 to 600 feet. The proposed septic system and the proposed section of the driveway to be rerouted come no closer than several hundred feet of the bluff edge.

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

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

The County did not require the preparation of a geotechnical report for the current project. Instead, to make findings of consistency with the geologic hazard policies of the LCP, the County relied upon a letter prepared by the engineer for the 1992 Inn project which would have been set back a similar distance from the bluff edge. The engineer determined that the proposed bluff setbacks were "more than adequate." Because this existing geotechnical information prepared for the project site was out of date, was not comprehensive, and did not address the currently proposed project as sited and designed, the Commission determined when it found that the appeals for the current project raised a substantial issue of conformance of the project as approved with the policies of the LCP and public access policies of the Coastal Act that an updated geotechnical report would be necessary to review the project de novo for consistency with the geologic hazard policies of the LCP. Pursuant to this request, the applicant hired Bace Geotechnical to perform a geotechnical investigation of the site. Bace Geotechnical conducted the investigation and prepared a report dated January 10, 2008.

The geotechnical report indicates that the materials exposed at the site consist of terrace deposits overlying sedimentary bedrock. The Pleistocene Epoch terrace deposits are composed of sand and silt, with some gravel and clay, which were deposited on the

generally flat wave-cut bedrock terrace when the terrace was submerged by elevated sea levels. The thickness of the terrace deposits varies to a maximum of approximately 10 feet. The sedimentary bedrock of the terrace is part of the Tertiary-Cretaceous Period Coastal Belt Franciscan Complex and consists of well-consolidated sandstone, minor shale and conglomerate, and occasional greenstone.

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

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

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

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

Bluff Retreat and Slope Stability

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

Slope stability is a measure of the resistance of a slope to landsliding, and can be assessed by a quantitative slope stability analysis.

The geotechnical investigation included an analysis of vertical aerial photographs dated June 28, 1964, June 24, 1981, and April 1, 2000, as well as oblique-angle aerial photographs from the California Coastal Records Project from 2002 and 2005. The geotechnical report contains the following conclusions with respect to the rate of bluff retreat and site stability:

Our analysis of aerial photographs indicates an average bluff edge retreat rate of approximately 3.7 inches per year along the bluff top nearest to the proposed development envelope (northwest of the northwest corner, currently shown at a proposed 150-foot setback for development envelope [currently 240 feet as project has been revised for the Commission's de novo review]). This erosion rate is the average for the 36-year period between 1964 and 2000, for an area clearly notched by erosion.

The worst-case retreat rate on the bluffs in the proposed development area is the landside on the northwest bluff. A former house and outbuilding were previously located in this area; only a dilapidated remnant of the house exists today. We assume that the house was built a few feet back of the bluff edge in the 1940's or 1950's. To be conservative, we estimate that the bluff has retreated in this area 45 feet (back to the present landslide scarp) in the last 50 years. This results in a local retreat rate of 0.9 feet per year... This can be considered a "worst-case scenario" retreat rate under present conditions.

In general, the erosion/bluff retreat rates due to "grain by grain" erosion along the northwest property bluffs are relatively low. The peninsulas are comprised of hard rock beds that are generally erosion-resistant. Most of the retreat occurring along the cliff edges appears to be due to intermittent, larger scale landslides and slumps, rather than ongoing shallow loss of the upper terrace deposits. It should be noted that the retreat rates given are considered averages over the period of time covered by the aerial photos up to our 2007 study. Localized, larger scale slumps or slides could occur in the future anywhere along the bluff edge...

The large landslides we observed on the property appear to be due to saturation of the terrace deposits and upper, weathered bedrock. These conditions are occurring where concentrated surface runoff flows to the bluff edge. Because the terrace is nearly level in many areas adjacent to the bluff edge, conditions exist in which there is more time for water to seep through the bluff-edge soils and penetrate into the underlying rock. Where this has been allowed to occur over time, larger-scale slumping has been the result.

Shallow slumping of terrace deposits along the bluff edges is occurring in many places as shown on Plate 2. These smaller-scale slumps will continue to occur but should not affect the integrity of the development as it is currently sited...

Several sea caves were identified within the bluff toes along the property... We did not observe any sea caves trending towards the proposed development. Rather, the caves we observed are within the peninsulas. Therefore, no additional setbacks or recommendations regarding the sea caves are warranted at this time.

Using the worst-case scenario (the active landslide) with a retreat rate of (rounded up to) one foot per year, the bluff northwest of the proposed development (closest as currently sited) could erode back approximately 75 feet over a 75-year period (assumed by the California Coastal Commission to be the economic lifespan of a development). Since the erosion may not be uniform (some areas of erosion would be greater and some less) and considering the possible effects of sea level rise, a safety factor of 1.33 should be used in determining a minimum bluff setback of 100 feet. [emphasis added]

To reduce the contribution of the development to bluff retreat and site stability hazards, the geotechnical report makes certain recommendations with respect to drainage. The report recommends that concentrated surface flows and subsurface seepage should be intercepted and diverted away from the building foundations and the bluff edge. In addition, roof runoff water should be directed away from the structures and dispersed, as much as possible, across the property. Furthermore, drainage across the property should be by sheet-flow directed as much as practical, to the east and south of the buildings. Moreover, surface grades should maintain a recommended two percent gradient away from building foundations. Finally, irrigation near the bluff edge should be kept to an absolute minimum to avoid sloughing and accelerate bluff edge retreat.

Seismic Shaking

The geotechnical report indicates that future, large magnitude earthquakes originating on the San Andreas, Maacama, or other nearby faults are expected to cause strong ground shaking at the site. The report suggests that extending building foundations into the bedrock would reduce shaking concerns, stating: "Structures founded in bedrock or in firm, relatively shallow terrace soils over bedrock are more likely to experience short, jolting motions, rather than the prolonged, oscillatory shaking brought on by perpetuation of seismic waves in thickened, unconsolidated sediment deposits." To reduce the contribution of the development to seismic shaking hazards, the report recommends that further subsurface investigation of the soils and bedrock underlying the site will be necessary to characterize the thickness and engineering properties of the terrace deposits and bedrock. Depending on the structure type, location, and site conditions, additional investigation will be required to provide specific foundation design parameters and, as appropriate, detailed recommendations for site grading, access road construction, and surface and or subsurface drainage.

The Commission's geologist, Dr. Mark Johnsson, has reviewed the geotechnical report and has determined that the overall conclusion that the project site is geologically suitable for the proposed development and its more specific conclusions regarding bluff retreat, bluff stability, seismic shaking and its specific recommendations are reasonable.

As noted above, the geotechnical report recommends a bluff setback of 100 feet to protect against bluff retreat and bluff stability concerns. As revised for purposes of the Commission's *de novo* review, the development will be located at least 240 feet from the bluff edge at its nearest point. Therefore, the Commission finds that if the development is designed in accordance with the design recommendations of the applicant's geologist, the minimum 150-foot setbacks between the bluff edges and the new structures proposed by the applicant are sufficient to protect the new structures from bluff retreat for a 75-year design life consistent with LUP Policy 3.4-7 and CZC Section 20.500.020(B).

To ensure that the proposed project is developed consistent with the proposed 150-foot bluff setback and the design recommendations of the geotechnical report regarding site drainage and foundation designs to reduce the contributions of the development to bluff retreat, bluff instability, and seismic safety hazards, the Commission attaches Special Condition No. 1. This special condition requires that prior to permit issuance, a geotechnical engineer shall approve all final design, construction, foundation, grading and drainage plans as recommended by the geologic report. Moreover, the condition requires that all geologic setback, site grading, foundation, and site drainage recommendations included in the BACE Geotechnical report prepared for the site dated January 10, 2008 (Exhibit No. 16) have been incorporated into final plans. The Commission finds that only as conditioned to ensure that the mitigation measures are properly incorporated into the development can the project be found consistent with LUP Policies 3.4-1 and 3.4-7 and CZC Section 20.500.010(A).

Although the geotechnical report concludes that that "the site is geologically suitable for the proposed development", the applicant is nonetheless proposing to construct a new inn and ranch complex on a high uplifted marine terrace bluff that is actively eroding. Thus, as the geotechnical report demonstrates, notwithstanding the relative degree of insulation of the proposed project in its proposed location from geologic hazards, the subject site is nonetheless located in an area of high geologic hazard. New development can only be found consistent with the above-referenced LCP provisions if the risks to life and property from the geologic hazards are minimized and if a protective device will not be needed in the future. As stated above, the geotechnical report demonstrates that if the new development is set back at least 100 feet from the bluff, the development will be safe from erosion and will not require any devices to protect it during its useful economic life. As proposed, the development will be located a minimum of 240 feet from the bluff edge.

Although a comprehensive geotechnical evaluation is a necessary and useful tool that the Commission relies on to determine if proposed development is permissible at all on any given bluff top site, the Commission finds that a geotechnical evaluation alone is not a

guarantee that a development will be safe from bluff retreat. It has been the experience of the Commission that in some instances, even when a thorough professional geotechnical analysis of a site has concluded that a proposed development will be safe from bluff retreat hazards, unexpected bluff retreat episodes that threaten development during the life of the structure sometimes still do occur. Examples of this situation include the following:

- The Kavich Home at 176 Roundhouse Creek Road in the Big Lagoon Area north of Trinidad (Humboldt County). In 1989, the Commission approved the construction of a new house on a vacant bluff top parcel (CDP No. 1-87-230). Based on the geotechnical report prepared for the project it was estimated that bluff retreat would jeopardize the approved structure in about 40 to 50 years. In 1999 the owners applied for a coastal development permit to move the approved house from the bluff-top parcel to a landward parcel, because the house was threatened by 40 to 60 feet of unexpected bluff retreat that occurred during a 1998 El Niño storm event. The Executive Director issued a CDP waiver (1-99-066-W) to authorize moving the house in September of 1999.
- The Denver/Canter home at 164/172 Neptune Avenue in Encinitas (San Diego County). In 1984, the Commission approved construction of a new house on a vacant bluff-top lot (CDP No. 6-84-461) based on a positive geotechnical report. In 1993, the owners applied for a seawall to protect the home (CDP Application No. 6-93-135). The Commission denied the request. In 1996 (CDP Application No. 6-96-138) and again in 1997 (CDP Application No. 6-97-90), the owners again applied for a seawall to protect the home. The Commission denied the requests. In 1998, the owners again requested a seawall (CDP Application No. 6-98-39) and submitted a geotechnical report that documented the extent of the threat to the home. The Commission approved the request on November 5, 1998.
- The Arnold project at 3820 Vista Blanca in San Clemente (Orange County). Coastal development permit (CDP No. 5-88-177) for a bluff-top project required protection from bluff-top erosion, despite geotechnical information submitted with the permit application that suggested no such protection would be required if the project conformed to 25-foot bluff top setback. An emergency coastal development permit (CDP No. 5-93-254-G) later was issued to authorize bluff-top protective works.

The Commission emphasizes that the above examples are not intended to be absolute indicators of bluff erosion on the subject parcel, as coastal geology can vary significantly from location to location. However, these examples do illustrate that site-specific geotechnical evaluations cannot always accurately account for the spatial and temporal variability associated with coastal processes and therefore cannot always absolutely predict bluff erosion rates. Collectively, these examples have helped the Commission form its opinion on the vagaries of geotechnical evaluations with regard to predicting bluff erosion rates.

Although the project has been evaluated and designed in a manner to minimize the risk of geologic hazards, and although the Commission is requiring with Special Condition No. 1 that the applicant adhere to all recommended specifications to minimize potential geologic hazards (including recommendations on geologic setback, site grading, foundation support, and site drainage), some risk of geologic hazard still remains. This risk is reflected in the geotechnical report (Exhibit No. 16), which references various “limitations” of the analysis, such as:

“...Changes in the condition of a site can occur with the passage of time, whether they are due to natural events or to human activities on this, or adjacent sites. In addition, changes in applicable or appropriate codes and standards may occur, whether they result from legislation or the broadening of knowledge...” [p. 10]

This language in the report itself is indicative of the underlying uncertainties of this and any geotechnical evaluation and supports the notion that no guarantees can be made regarding the safety of the proposed development with respect to bluff retreat. Geologic hazards are episodic, and bluffs that may seem stable now may not be so in the future.

Therefore, the Commission finds that the subject property is an inherently hazardous piece of property, that the bluff face is clearly eroding in some areas, and that the proposed new development will be subject to geologic hazard and could potentially someday result in the applicant seeking a bluff or shoreline protective device, inconsistent with LUP Policy 3.4-7 and CZC Sections 20.500.010 and 20.500.020(B). The Commission thus finds that the proposed development could not be approved as being consistent with LUP Policy 3.4-7 and CZC Section 20.500.010 and 20.500.020(B) if projected bluff retreat would affect the proposed development and necessitate construction of a seawall to protect it.

The slope stability analysis prepared by the applicant’s geologist indicates that the risks of geologic hazard are minimized if the new development is set back at least 100 feet or more from the bluff edge. As proposed, the development will be set back a minimum of 240 feet from the bluff edge. However, given that the risk cannot be completely eliminated and the geologic report cannot assure that shoreline protection will never be sought to protect the development, the Commission finds that the proposed development is consistent with the certified LCP only if it is conditioned to provide that shoreline protection will not be constructed. Thus, the Commission further finds that (1) due to the inherently hazardous nature of this lot, (2) the fact that no geology report can conclude with any degree of certainty that a geologic hazard does not exist, (3) the fact that the approved development and its maintenance may cause future problems that were not anticipated, and (4) because new development shall not engender the need for shoreline protective devices, it is necessary to attach Special Condition No. 2 to ensure that no future shoreline protective device will be constructed.

Special Condition No. 2 prohibits the construction of shoreline protective devices on the parcel, requires that the landowner provide a geotechnical investigation and remove the permitted main inn building, rental cottage and massage room, ranch manager’s unit,

ranch equipment barn, generator/.pump shed, garage for inn guests, septic system, rerouted driveway, and utility lines if bluff retreat reaches the point where the permitted development is threatened, and requires that the landowners accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion of the site. These requirements are necessary for compliance with CZC Section 20.500.010, which states that new development shall minimize risk to life and property in areas of high geologic hazard, assure structural integrity and stability, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The Commission finds that the proposed development could not be approved as being consistent with CZC Section 20.500.010 if projected bluff retreat would affect the proposed development and necessitate construction of a seawall to protect it.

Special Condition No. 3 requires the landowner to assume the risks of extraordinary erosion and geologic hazards of the property and waive any claim of liability on the part of the Commission. Given that the applicant has chosen to implement the project despite these risks, the applicant must assume the risks. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand hazards. In addition, as discussed below, the requirement of Special Condition No. 4 that a deed restriction be recorded, will ensure that future owners of the property will be informed of the risks, the Commission's immunity from liability, and the indemnity afforded the Commission.

In addition, as noted above, some risks of an unforeseen natural disaster, such as massive slope failure, erosion, etc., could result in destruction or partial destruction of the inn or other development approved by the Commission. Furthermore, the development itself and its maintenance may cause future problems that were not anticipated. When such an event takes place, public funds are often sought for the clean-up of structural debris that winds up on the beach or on an adjacent property. As a precaution, in case such an unexpected event occurs on the subject property, Special Condition No. 2(B) requires the landowner to accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion on the site, and agree to remove the main inn building, rental cottage and massage room, ranch manager's unit, ranch equipment barn, generator/.pump shed, garage for inn guests, septic system, rerouted driveway, and utility lines and other permitted development should the bluff retreat reach the point where a government agency has ordered that the structures not be occupied.

The Commission finds that Special Condition No. 4 is required to provide notice of potential hazards of the property and help eliminate false expectations on the part of potential buyers of the property, lending institutions, and insurance agencies that the property is safe for an indefinite period of time and for further development indefinitely into the future, or that a protective device could be constructed to protect the approved

development. The condition requires that the applicant record and execute a deed restriction approved by the Executive Director against the property that imposes the special conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property.

The Commission further notes that Sections 30610(a) and 30610(b) of the Coastal Act and Chapter 20.532 of the County's Coastal Zoning Code exempt certain additions to existing single family residential structures and additions to structures other than single-family residences from coastal development permit requirements. Pursuant to these exemptions, once a house or other building has been constructed, certain additions and accessory buildings that the applicant might propose in the future are normally exempt from the need for a permit or permit amendment. An exempt development cannot be reviewed by the County or the Commission for conformance with the geologic hazard policies of the LCP to ensure that the development would be sited and designed in a manner that would avoid contributing to geologic hazards.

However, in this case because the development is located in an area designated as highly scenic in the certified Mendocino County LCP, future improvements to any of the structures that are approved pursuant to this authorization will not be exempt from permit requirements pursuant to Sections 30610(a) and 30610(b) of the Coastal Act and Sections 13250 and 13253 of the Commission's regulations. Sections 30610(a) and 30610(b) require the Commission to specify by regulation those classes of development which involve a risk of adverse environmental effects and require that a permit be obtained for such improvements. Pursuant to Section 30610(a) and 30610(b) of the Coastal Act, the Commission adopted Sections 13250 and 13253 of Title 14 of the California Code of regulations, respectively. Sections 13250 and 13253 specifically authorize the Commission to require a permit for additions to existing single-family residences and structures other than single-family residences that could involve a risk of adverse environmental effect.

In addition, Sections 13250(b)(1) and 13253(b)(1) indicate that improvements to a single-family structure and structures other than single-family residences in an area designated as highly scenic in a certified LCP involve a risk of adverse environmental effect and therefore are not exempt. As discussed previously, the approved development is located in an area designated as highly scenic in the certified Mendocino County LCP. Therefore, pursuant to Sections 13250(b)(1) and 13253(b)(1) of the Commission's regulations, Special Condition No. 7 expressly requires all future improvements to the approved development to obtain a coastal development permit so the County and the Commission would have the ability to review all future development on the site to ensure that future improvements will not be sited or designed in a manner that would result in an adverse environmental impact. As discussed above, Special Condition No. 4 also requires that the applicant record and execute a deed restriction approved by the Executive Director against the property that imposes the special conditions of this permit as covenants,

conditions and restrictions on the use and enjoyment of the property. Special Condition No. 4 will also help assure that future owners are aware of these CDP requirements applicable to all future development.

The Commission thus finds that the proposed development, as conditioned, is consistent with the policies of the certified LCP regarding geologic hazards, including LUP Policies 3.4-1, 3.4-7, 3.4-12 and CZC Sections 20.500.010, 20.015.015, and 20.500.020, since the development as conditioned will not contribute significantly to the creation of any geologic hazards, will not have adverse impacts on the stability of the coastal bluff or on erosion, and will not require the construction of shoreline protective works. Only as conditioned is the proposed development consistent with these LCP policies on geologic hazards.

The Commission thus finds that the proposed development, as conditioned, is consistent with the policies of the LCP regarding geologic hazards since the development as conditioned (1) will not contribute significantly to the creation of any geologic hazards, (2) will not have adverse impacts on the stability of the coastal bluff or on erosion, and (3) will not require the construction of shoreline protective works. Only as conditioned is the proposed development consistent with the LCP.

H. Visual Resources

LCP Policies and Standards

LUP Policy 3.5-1 states in applicable part:

The scenic and visual qualities of Mendocino County coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting.[emphasis added]

LUP Policy 3.5-3 states:

The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as "highly scenic areas," within which new development shall be subordinate to the character of its setting. Any development permitted in these areas shall provide for the protection of ocean

and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes. ...

- *The entire coastal zone from the Ten Mile River estuary (including its wooded slopes, wetlands, dunes and ocean vistas visible from Highway 1) north to the Hardy Creek Bridge, except Westport Beach Subdivision which is a recognized subdivision...*

In addition to other visual policy requirements, new development west of Highway One in designated "highly scenic areas" is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Variances from this standard may be allowed for planned unit development that provides clustering and other forms of meaningful visual mitigation. New development should be subordinate to natural setting and minimize reflective surfaces. All proposed divisions of land and boundary line adjustments within "highly scenic areas" will be analyzed for consistency of potential future development with visual resource policies and shall not be allowed if development of resulting parcel(s) could not be consistent with visual policies. [emphasis added]

LUP Policy 3.5-4 states:

Buildings and building groups that must be sited within the highly scenic area shall be sited near the toe of a slope, below rather than on a ridge, or in or near the edge of a wooded area. Except for farm buildings, development in the middle of large open areas shall be avoided if an alternative site exists.

Minimize visual impact of development on hillsides by (1) requiring grading or construction to follow the natural contours; (2) resiting or prohibiting new development that requires grading, cutting and filling that would significantly and permanently alter or destroy the appearance of natural landforms; (3) designing structures to fit hillside sites rather than altering landform to accommodate buildings designed for level sites; (4) concentrate development near existing major vegetation, and (5) promote roof angles and exterior finish which blend with hillside. Minimize visual impacts of development on terraces by (1) avoiding development in large open areas if alternative site exists; (2) minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms; (3) provide bluff setbacks for development adjacent to or near public areas along the shoreline; (4) design development to be in scale with rural character of the area. Minimize visual impact of development on ridges by (1) prohibiting development that projects above the ridgeline; (2) if no alternative site is available below the ridgeline, development shall be sited and designed to

reduce visual impacts by utilizing existing vegetation, structural orientation, landscaping, and shall be limited to a single story above the natural elevation; (3) prohibiting removal of tree masses which destroy the ridgeline silhouette. Nothing in this policy shall preclude the development of a legally existing parcel.
.[emphasis added]

LUP Policy 3.5-5 states in applicable part:

Providing that trees will not block coastal views from public areas such as roads, parks and trails, tree planting to screen buildings shall be encouraged. In specific areas, identified and adopted on the land use plan maps, trees currently blocking views to and along the coast shall be required to be removed or thinned as a condition of new development in those specific areas. New development shall not allow trees to block ocean views.

Section 20.504.015, “Highly Scenic Areas”, of the Coastal Zoning Code states in applicable part:

(C) Development Criteria.

(1) Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.

(2) In highly scenic areas west of Highway 1 as identified on the Coastal Element land use plan maps, new development shall be limited to eighteen (18) feet above natural grade, unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures.

(3) New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings.

(5) Buildings and building groups that must be sited in highly scenic areas shall be sited:

(a) Near the toe of a slope;

(b) Below rather than on a ridge; and

(c) In or near a wooded area.

...

(7) Minimize visual impacts of development on terraces by the following criteria:

(a) Avoiding development, other than farm buildings, in large open areas if alternative site exists;

(b) Minimize the number of structures and cluster them near existing vegetation, natural landforms or artificial berms;

(c) Provide bluff setbacks for development adjacent to or near public areas along the shoreline;

(d) Design development to be in scale with rural character of the area.

(10) Tree planting to screen buildings shall be encouraged, however, new development shall not allow trees to interfere with coastal/ocean views from public areas.

(11) Power transmission lines shall be located along established corridors where possible and where the corridors are not visually intrusive.

(12) Power distribution lines shall be placed underground in designated "highly scenic areas" west of Highway 1 and in new subdivisions. East of Highway 1, power lines shall be placed below ridgelines if technically feasible.

(13) Access roads and driveways shall be sited such that they cause minimum visual disturbance and shall not directly access Highway 1 where an alternate configuration is feasible. (Ord. No. 3785 (part), adopted 1991)

Section 20.504.020 of the Coastal Zoning Code states in applicable part:

(D) The scenic and visual qualities of Mendocino County Coastal Areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting. (Ord. No. 3785 (part), adopted 1991)

Discussion:

The project site is located within a highly scenic area on a gently-sloping open coastal terrace that extends approximately one-quarter mile from the coastal hills east of Highway One to the ocean bluff edge west of Highway Ones. The terrace and hillsides are predominantly vegetated with low-growing grasses and are largely used for agricultural grazing which contributes to the rural agricultural character of the area. Due to the flat terrain of the terrace, and lack of tall vegetation or varied topography, the development site is highly visible from Highway One in both directions. The lack of trees and the very limited and widely scattered development in the immediate vicinity of the development site gives the landscape a very open appearance. The views to and along the coast from narrow two-lane Highway One in this area are sweeping and vast (See Exhibit Nos. 3 and 22) and the area is designated in the certified Mendocino LCP as a highly scenic area.

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

The proposed development would be visible from an approximately one-mile- long stretch of Highway One, which is the primary public vantage point. Northbound travelers on the highway would first see the development several hundred feet to the south of the site. Southbound travelers would first see the development across the gently-sloping coastal terrace a location along the highway nearly a mile north of the site.

As cited above, the LCP sets forth numerous policies regarding the protection of visual resources, including several policies specific to development in designated highly scenic areas, and several policies specific to development on coastal terraces. LUP Policy 3.5-1 states that the scenic and visual qualities of Mendocino County coastal areas must be considered and protected by requiring that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas. Additionally, LUP Policy 3.5-1 requires that in highly scenic areas, new development must be subordinate to the character of its setting.

LUP Policy 3.5-3 similarly requires that new development located within areas designated highly scenic must be subordinate to the character of its natural setting and requires any development permitted in these areas to provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes. Coastal Zoning Code (CZC) Section 20.504.015 reiterates these requirements. LUP Policy 3.5-4 and Zoning Code Section 20.504.015(C)(8) require that the visual impacts of development on terraces be minimized by (a) avoiding development, other than farm buildings, in large open areas if alternative site exists, and (b) minimizing the number of structures and cluster them near existing vegetation, natural landforms or artificial berms.

1. Protection of Coastal Views, Ensuring Development is Subordinate to the Character of its Setting, and Minimizing Development on Terraces in Highly Scenic Areas.

In its review of the substantial issue portion of the appeal, the Commission determined that the appeal raised a substantial issue as to whether the development approved by the County was consistent with the LCP requirements cited above that new development be subordinate to the character of its setting, and requiring the protection of views to the ocean and scenic coastal areas. Given (a) the large size of the development (approximately 16,000 square feet) in this sparsely developed area, (b) the appearance of the fenced inn compound, (c) the visual effect of planting a number of trees for screening purposes in the middle of a largely treeless terrace where the planted tree themselves would appear out of character with the landscape around it, and (d) the visual prominence and glare from cars parked at the site, portable restrooms, signs, lighting, tents, and other temporary structures that would be associated with the unlimited number of weddings and other special events accommodating up to 99 people that the County approval would allow to occur on the grounds of the facility, the Commission determined that the approved project raised a substantial issue of whether the development would be subordinate to the character of its setting. The Commission also determined that the project as approved by the County, raised a substantial issue of conformance with LCP policies requiring the protection of views to the ocean and scenic coastal areas, noting that the development would obstruct some blue water view, not just by the approved 25-foot high structures, but also from the approved fence that would surround the 3.4-acre inn complex and the required landscaping that includes trees to screen the development. The Commission found that given the wide-open landscape of the site that is largely devoid of trees, the 277-foot by 335-foot inn complex would block a significant amount of view.

For the purposes of *de novo* review by the Commission, the applicants submitted a revised project description and revised plans (See Exhibit Nos. 5-8) that make changes to the development originally approved by the County. The revised project description 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 1,688-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 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.

To address the substantial issue raised in the appeal as to whether the development would be subordinate to the character of its setting, the applicant has proposed various project changes to make the development more subordinate. These changes include: (1) reducing the overall size of the development both in terms of floor area and footprint of the building complex, (2) consolidating the proposed visitor serving units into fewer dispersed buildings, reducing the number of structures containing visitor serving accommodations, and (3) remodeling and expanding the existing ranch house building rather than demolishing and replacing the ranch house with an entirely new building to retain the historic character of the building as part of the visual character of the area.

To help the Commission assess the visual impacts of the development and the consistency of the proposed development with the visual policies of the certified LCP, the applicant provided for purposes of the Commission’s de novo review a visual impact study, attached as Exhibit 22. The study includes a compendium of aerial and landward views of the site comparing existing views with views from the same locations showing superimposed simulations of the proposed development as revised for purposes of the Commission’s de novo review. Page 1 of Exhibit 22 shows an overview aerial of the project site that clearly shows the sparse development pattern and expansive open space in the vicinity of the project site, labeled “Newport Ranch.” Pages 4 and 5 of Exhibit 22 provide a comparison of the existing compound of buildings at the site with the redeveloped compound. The existing ranch house along the inland side of the compound shown on Page 4 will be retained and remodeled. In the proposed photo, Page 5, the ranch house is located on the seaward side of the compound, as the compound boundary will be shifted approximately 90 feet inland as well as condensed. All other existing buildings will be removed and replaced with the buildings shown on Page 5.

The before and after comparison photos on pages 6-15 of Exhibit 22 illustrate how the proposed development as viewed from Highway One will appear bulkier and taller than the existing compound of buildings. In addition, some additional blue water view available now from Highway One over and through the existing compound will be blocked by the taller structures. However, the comparison photos also demonstrate that taking into account the large expanse of open space owned by the applicant that surrounds the development site, particularly the large open space area that extends north

from the development site west of the highway, the individual visual impacts of the proposed development itself are not significant. The large expanse of uninterrupted view counter-balances the blockage of additional view and the greater massing of development that results from the project proposal. The fact that the new development will be located in the same part of the viewscape as the existing compound of buildings will also help retain the character of the existing views, which is comprised of a complex of building in this location set against vast open space area west of the highway. In this context, the development as proposed for the Commission's de novo review does not significantly affect views to and along the ocean and the development is subordinate to the character of its setting.

This determination that the visual impacts would not be significant and the development would be subordinate to the character of its setting is dependent on retaining the agricultural and open space use around the site without significant new structures, particularly the open space west of the highway and north of the development site. If this rural residential-zoned area were developed with new homes and accessory structures and driveways, the cumulative impact of the proposed inn development together with this additional residential development would be significant. The cumulative impacts of such development would block proportionately more of the ocean views and prominently break up the large expanse of open space, thereby eliminating the current open space's value in counter-balancing the blockage of additional view and the greater massing of development that results from the project proposal. Unless individual and cumulative impacts are examined taking into account the totality of the project area, the Commission could not ensure that the approved development was subordinate to the character of its setting because every development would change the character of its setting. In order to find the proposed development consistent with the applicable LCP policies, the Commission must ensure that there is no proliferation of development surrounding the project site.

The certified LCP policies for development on coastal terraces in highly scenic area require the retention of open space and minimizing development on the terraces to protect views. As noted above, LUP Policies 3.5-1 and 3.5-3 and CZC Section 20.504.015 state that the scenic and visual qualities of Mendocino County coastal areas must be considered and protected by requiring that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas and requires that in highly scenic areas, new development must be subordinate to the character of its setting. In addition, LUP Policy 3.5-4 and Zoning Code Section 20.504.015(C)(8) specifically require that the visual impacts of development on terraces be minimized by (a) avoiding development, other than farm buildings, in large open areas if alternative site exists, and (b) minimizing the number of structures and cluster them near existing vegetation, natural landforms or artificial berms. To ensure that the cumulative visual impacts of the proposed development will be reduced to a level of insignificance, the development will be subordinate to the character of its setting, and impacts of development on the coastal terrace will be minimized by minimizing the number of structures in large open areas, the Commission finds that it is essential to limit development on the large open space area

owned by the applicant west of Highway One, both surrounding and north of the development site. Therefore, the Commission attaches Special Condition Nos. 5 and 6. Special Condition No. 5 prohibits all development, as defined in Section 30106 of the Coastal Act, anywhere on APN 015-380-003 and APN 015-380-004 west of Highway One except for: (a) agricultural fences, corrals, and other accessory agricultural development not including any residences, barns, or other significant new above-ground structures; (b) installation of utilities; (c) removal of non-native, invasive vegetation, planting of native plants; (d) removal of vegetation for compliance with Cal-Fire defensible space requirements; and (e) improvement and use for public access purposes, if approved by the Coastal Commission as an amendment to this coastal development permit. As discussed further below, Special Condition No. 6 ensures that the APN containing the subject development and the two APNs surrounding the development area are neither divided nor conveyed separately.

The Commission finds that only as conditioned is the development consistent with the visual resource protection policies of the certified LCP regarding development on coastal terraces in highly scenic areas. Without the imposition of Special Conditions 5 and 6, this finding could not be made. As the expansive views to the ocean north of the development site will be protected by the requirements of Special Condition No. 5 that the use of certain lands north of the development site be restricted to agriculture and open space without significant structures that could block views, the development as conditioned will protect views to and along the ocean and a scenic coastal area from the cumulative impacts of the development consistent with the requirements of LUP Policies 3.5-1 and 3.5-3 and CZC Section 20.504.015. Similarly, as Special Condition No. 6 will continue to limit the perceived magnitude of the development by ensuring the development will always be located in a setting of significant open space and minimize the cumulative impacts of the development, the development will be subordinate to the character of its setting consistent with the requirements of LUP Policies 3.5-1 and 3.5-3 and CZC Section 20.504.015 that development in highly scenic areas be subordinate to the character of its setting. Finally, by restricting development of the northerly APNs, the development as conditioned will avoid development in large open areas and minimize the number of structures within a coastal terrace that is designated as highly scenic, the development as approved is consistent with the requirements of LUP Policy 3.5-4 and Zoning Code Section 20.504.015(C)(8).

Special Condition Nos. 5 and 6 would affect development on two APNs north of APN 015-380-005 where the inn development is proposed. The conditions would preclude most development on APN 015-380-003 and 015-380-004. These APNs are shown in Exhibits 19 and 23. APN 015-380-003 and 015-380-004 as well as the APN where the proposed development is located, APN 015-380-005, are all contained within a much larger area that extends across the highway that was recognized as one legal parcel by Certificate of Compliance #CC 39-90 granted by the County in April 1995 (See Exhibit 20). Certificate of Compliance #CC 39-90 includes a statement that the COC area containing numerous APNs exists as one legal parcel. The applicant contends that the

different APNs within the COC area are separate legal parcels (See July 9, 2009 letter from Alan Block to Bob Merrill attached to the addendum to this staff report as exhibit 30.). However, the applicant has provided no evidence to counter the statement in the County's COC that the APNs are part of one legal parcel. In addition, even if the applicant could substantiate the assertion, there is evidence to support the proposition that the Commission can aggregate at least these three APNs into one property for the purpose of defeating any taking claim.

As a threshold matter, before a taking claim can be analyzed, it is necessary to define the parcel of property against which the taking claim will be measured. In most cases, this is not an issue because there is a single, readily identifiable parcel of property on which development is proposed. The issue is complicated in cases where the landowner owns or controls adjacent or contiguous parcels that are related to the proposed development. In these circumstances, courts will analyze whether the lots are sufficiently related so that they can be aggregated as a single parcel for takings purposes. In determining whether lots should be aggregated, courts have looked to a number of factors such as unity of ownership, the degree of contiguity, the dates of acquisition and the extent to which the parcel has been treated as a single unit (e.g., *District Intown Properties, Ltd. v. District of Columbia* (D.C.Cir.1999) 198 F.3d 874, 879-880 [nine individual lots treated as single parcel for takings purposes]; *Ciampitti v. United States* (Cl.Ct. 1991) 22 Cl.Ct. 310, 318).

In this case, the applicant owns the subject APN (015-380-005) which is already developed with a ranch house and associated agricultural buildings and proposes to redevelop the site into an inn and ranch complex. The two APNs to the north that are restricted by the limitations of Special Condition Nos. 5 and 6 are vacant of structures, but have been used as agricultural grazing land. If all three APNs are aggregated as a single economic unit, the developed APN would provide the applicant with an economic use for all 3 APNs if the applicant could establish that the 3 APNs are separate legal parcels and the agricultural use of the 2 northern APNs was not economically viable.

The Commission concludes that even if the applicant can establish that the three APNs are separate legal parcels, which the applicant has not, the evidence supports that at least these three APNs can be aggregated as a single parcel for takings purposes for the following reasons. First, these three APNs are contiguous, owned by the applicant, and are subject to the same local land use designation (Mendocino Rural Residential, MRR). Second, all three APNs were acquired by the applicant at the same time pursuant to the same deed. (See Exhibit 19). Notably, this deed does not describe the three APNs separately, rather the property is described as a whole without reference to separate individual APNs. Third, all three APNs have followed similar conveyance patterns dating back through their chain of title to 1914, including to the applicant in 1986. Fourth, as discussed above, all three parcels are addressed by the same COC legalizing one parcel (See Exhibit 20). This COC addresses twelve separate APNs, all of which follow similar conveyance patterns dating back through their chain of title to 1914. Fifth, all three APNs appearing as a single legal parcel on the County issued COC along with

other APNs owned by the applicant have historically been managed together as a ranch. Finally, as discussed below, APNs 015-380-003, 015-380-004, and 015-380-005 have been treated as part of a single parcel by the applicant, the prior owner, the County, and the Coastal Commission in the submittal and the review of coastal development permit applications since at least 1984.

As noted above, in September 1984, prior to certification of the Mendocino LCP, the Coastal Commission granted Coastal Development Permit No. 1-83-278 for conversion of the existing residence on the site into a four-unit bed and breakfast inn. This residence is the same residence on APN 15-380-05 proposed to be converted to an inn under the current permit application. As the prior to issuance conditions of CDP No. 1-83-278 this permit were never met, the approval expired, and the permit was never issued. The property was owned at the time by James and Josephine Lindsey. The coastal development permit application submitted by the applicants for the project described the parcel as containing 832 acres and included exhibits showing the parcel boundaries (See Exhibit 24). The parcel exhibits indicate the subject parcel included (1) the area of APNs 015-380-003, 015-380-004, and 015-380-005, (2) all of the additional area covered by COC 39-90, and (3) additional lands inland of COC 39-90 approximately as large as the area covered by COC 39-90.

In 1996, four years after certification of the LCP, the County Planning Commission approved Coastal Development Permit No. CDU 9-95, allowing for a 10-unit inn involving the remodeling of the existing large ranch house into two guest units and manager's quarters and the construction of eight new individual guest cottages. The Planning Commission approval was subsequently appealed to the Board of Supervisors and approved by the Board on May 13, 1996. The permit application submitted for the project was submitted by the new owner, Jackson Grube Family, Inc. after the County issued COC 39-90 in 1995. Both the application submitted by Jackson Grube Family Inc. and the County staff report for CDU 9-95 described the parcel as being approximately 400 acres in size and included exhibits showing the parcel boundaries. These parcel boundaries shown in the exhibits coincide with the boundaries of the COC approved by the County. (See Exhibit 25).

The Board's approval of CDU 9-95 was later appealed to the Coastal Commission (Appeal No. A-1-MEN-96-028). One of appellants was the applicant, Jackson-Grube Family, Inc., who appealed the County's approval to challenge the County's imposition of a condition requiring the recordation of an offer to dedicate a lateral public access easement along the bluff edge and a vertical public access from Highway One to the lateral access easement. In the appeal, the applicant's representative indicates that the project site involved only 34 acres, but that the entire parcel was approximately 400 acres. The appeal states that "imposition of the access condition on the entire parcel, when less than ten percent (10%) of the entire parcel is actually committed to the development, is unreasonable, burdensome, and unnecessary to effectuate any applicable policies." [emphasis added]. Based on these statement in the applicant's appeal, the applicant clearly considered APNs 015-380-003, 015-380-004, and 015-380-005 as well

as other APNs to be part of a single parcel and treated these APNs as if they were part of just one parcel. On July 10, 1996, the Coastal Commission determined that the appeal raised no substantial issue, allowing the County's approval of CDU 9-95 to stand.

The applicants subsequently sued the County, challenging the condition requiring coastal access on the grounds that a nexus did not exist between the impacts of the project on public access and the exaction of property for public access purposes. Eventually a settlement of the law suit was reached between the applicants and the County that provide for the County to drop the condition requiring the offer of dedication of public access in exchange for the applicants (1) conveying fee title to the County of a one-acre portion of the approximately 400-acre subject property, (2) paying the County \$25,000 toward the development of coastal access in the area, and (3) dedicating an easement for public access through property along a 15-foot strip on the west side of the Highway One right-of-way. On August 3, 2000, the County then approved Coastal Development Use Permit Modification #CDUM 9-95/2000 as a means of implementing the terms of the settlement agreement. The application submitted by the applicant indicates that the subject property was approximately 400 acres. Exhibits in the County staff report for the project show the parcel boundary again coinciding with the boundaries of the County approved COC 39-90, which as discussed above, includes APNs 015-380-003, 015-380-004, and 015-380-005 as well as substantial additional property. (See Exhibit 26).

On June 21, 2007, the Mendocino County Planning Commission conditionally approved the coastal development permit for the project that is the subject of the current appeal (CDU #6-2006) (Exhibit No. 10). The exhibits in the application and the County staff report do not clearly distinguish the subject parcel from other adjoining property owned by the applicant (See pages PC-17 and PC-18 of Exhibit No. 14 of this Coastal Commission staff report). However, the County staff report consistently refers to the parcel where the development was approved as a 400-acre parcel, the same size as the approved COC and the same size used to describe the parcel by the County in CDU 9-95 and CDUM 9-95/2000 and by the Commission in Appeal No. A-1-MEN-96-28. Thus, APNs 015-380-003, 015-380-004, and 015-380-005 have been treated as part of a single parcel by the applicant, the prior owner, the County, and the Coastal Commission in the submittal of applications for and the review of coastal development permit applications since at least 1984.

Therefore, even if the applicant can establish that the three APNs are separate legal parcels, which the applicant has not, the evidence establishes that the Commission should treat Because APNs 015-380-003, 015-380-004, and 015-380-005 as a single parcel for the purpose of determining whether a taking occurred. Because APN 015-380-005 is currently developed and as approved by Coastal Development Permit A-1-MEN-07-028 will be redeveloped into a commercial inn and ranch complex, the combined parcel of APN 015-380-005, 015-380-003 and 0-15-380-004 has an economic use and restricting further development on the two northern APNs does not constitute a taking. The Commission also notes that the APNs restricted by Special Conditions 5 and 6 would increase the value of the coastal inn and ranch by preserving both privacy and views.

To ensure that APNs 015-380-003, 015-380-004, and 015-380-005 are always considered a single economic unit for purposes of determining whether a taking has occurred, as well as ensure that the affected property is never placed into divided ownership with a future owner separately owning the agricultural and open space areas over which development has been restricted, the Commission attaches Special Condition No. 6. Special Condition No. 6 requires that the County of Mendocino and the applicant to acknowledge and agree that APNs 015-380-003, 015-380-004, and 015-380-005 will be treated as part of a single legal parcel of land for all purposes. The County's acknowledgement and agreement in the implementation of Special Condition 6 is necessary if the applicant continues to assert that the three APNs are separate legal parcels rather than part of one single legal parcel as indicated by COC 39-90, issued by the County in 1995 (See Exhibit 20). Special Condition No. 6 also requires that APNs 015-380-003, 015-038-004, and 015-380-005 never be divided or sold separately. As such, Special Condition No. 6 will ensure that (1) all portions of the three APNs, APNs 015-380-003, 015-380-004, and 015-380-005 will be considered and treated as part of a single legal parcel of land for all purposes, including but not limited to sale, conveyance, development, taxation or encumbrance, and (2) the single legal parcel will not be divided or otherwise alienated. The condition requires the applicant to execute and record a deed restriction, free and clear of prior liens, and including a legal description and graphic depiction, reflecting the restrictions set forth above. The imposition of this condition by the Commission is necessary to ensure both that the restricted property is never conveyed separately and that the areas restricted to agriculture and open space are never the subject of a takings challenge by the current or future owner.

I. Protection of Environmentally Sensitive Habitat

LCP Policies and Standards:

Environmentally Sensitive Habitat Areas (ESHA) are defined on page 38 of the Mendocino County LUP as:

Any areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Coastal Zoning Code Section 20.496.010 "Environmentally Sensitive Habitat and other Resource Areas—Purpose" states (emphasis added):

...Environmentally Sensitive Habitat Areas (ESHA's) include: anadromous fish streams, sand dunes, rookeries and marine mammal haul-out areas, wetlands, riparian areas, areas of pygmy vegetation which contain species of rare or endangered plants and habitats of rare and endangered plants and animals.

LUP Policy 3.1-7 states: (emphasis added)

A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area and the adjacent upland transitional habitat function of the buffer from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the environmentally sensitive habitat areas and shall not be less than 50 feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent environmentally sensitive habitat area and must comply at a minimum with each of the following standards:

- 1. It shall be sited and designed to prevent impacts which would significantly degrade such areas;*
- 2. It shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity; and*
- 3. Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.*

Coastal Zoning Code Section 20.496.020 “Environmentally Sensitive Habitat and other Resource Areas—Development Criteria” states (emphasis added):

***(A) Buffer Areas.** A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from degradation resulting from future developments and shall be compatible with the continuance of such habitat areas.*

***(1) Width.** The width of the buffer area shall be a minimum of one hundred (100) feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning staff, that one hundred (100) feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the Environmentally Sensitive Habitat Areas and shall not be less than fifty (50) feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area.*

Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent Environmentally Sensitive Habitat Area.

Standards for determining the appropriate width of the buffer area are as follows:

(a) Biological Significance of Adjacent Lands. *Lands adjacent to a wetland, stream, or riparian habitat area vary in the degree to which they are functionally related to these habitat areas. Functional relationships may exist if species associated with such areas spend a significant portion of their life cycle on adjacent lands. The degree of significance depends upon the habitat requirements of the species in the habitat area (e.g., nesting, feeding, breeding, or resting).*

Where a significant functional relationship exists, the land supporting this relationship shall also be considered to be part of the ESHA, and the buffer zone shall be measured from the edge of these lands and be sufficiently wide to protect these functional relationships. Where no significant functional relationships exist, the buffer shall be measured from the edge of the wetland, stream, or riparian habitat that is adjacent to the proposed development.

(b) Sensitivity of Species to Disturbance. *The width of the buffer zone shall be based, in part, on the distance necessary to ensure that the most sensitive species of plants and animals will not be disturbed significantly by the permitted development. Such a determination shall be based on the following after consultation with the Department of Fish and Game or others with similar expertise:*

(i) Nesting, feeding, breeding, resting, or other habitat requirements of both resident and migratory fish and wildlife species;

(ii) An assessment of the short-term and long-term adaptability of various species to human disturbance;

(iii) An assessment of the impact and activity levels of the proposed development on the resource.

(c) Susceptibility of Parcel to Erosion. *The width of the buffer zone shall be based, in part, on an assessment of the slope, soils, impervious surface coverage, runoff characteristics, and vegetative cover of the parcel and to what degree the development will change the potential for erosion. A sufficient buffer to allow for the interception of any additional material eroded as a result of the proposed development should be provided.*

(d) Use of Natural Topographic Features to Locate Development. *Hills and bluffs adjacent to ESHA's shall be used, where feasible, to buffer habitat areas. Where otherwise permitted, development should be located on the sides of hills*

away from ESHA's. Similarly, bluff faces should not be developed, but shall be included in the buffer zone.

***(e) Use of Existing Cultural Features to Locate Buffer Zones.** Cultural features (e.g., roads and dikes) shall be used, where feasible, to buffer habitat areas. Where feasible, development shall be located on the side of roads, dikes, irrigation canals, flood control channels, etc., away from the ESHA.*

***(f) Lot Configuration and Location of Existing Development.** Where an existing subdivision or other development is largely built-out and the buildings are a uniform distance from a habitat area, at least that same distance shall be required as a buffer zone for any new development permitted. However, if that distance is less than one hundred (100) feet, additional mitigation measures (e.g., planting of native vegetation) shall be provided to ensure additional protection. Where development is proposed in an area that is largely undeveloped, the widest and most protective buffer zone feasible shall be required.*

***(g) Type and Scale of Development Proposed.** The type and scale of the proposed development will, to a large degree, determine the size of the buffer zone necessary to protect the ESHA. Such evaluations shall be made on a case-by-case basis depending upon the resources involved, the degree to which adjacent lands are already developed, and the type of development already existing in the area...*

***(2) Configuration.** The buffer area shall be measured from the nearest outside edge of the ESHA (e.g., for a wetland from the landward edge of the wetland; for a stream from the landward edge of riparian vegetation or the top of the bluff).*

***(3) Land Division.** New subdivisions or boundary line adjustments shall not be allowed which will create or provide for new parcels entirely within a buffer area.*

***(4) Permitted Development.** Development permitted within the buffer area shall comply at a minimum with the following standards:*

(a) Development shall be compatible with the continuance of the adjacent habitat area by maintaining the functional capacity, their ability to be self-sustaining and maintain natural species diversity.

(b) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.

(c) Development shall be sited and designed to prevent impacts which would degrade adjacent habitat areas. The determination of the best site shall include consideration of drainage, access, soil type, vegetation, hydrological characteristics, elevation, topography, and distance from natural stream channels. The term "best site" shall be defined as the site having the least impact

on the maintenance of the biological and physical integrity of the buffer strip or critical habitat protection area and on the maintenance of the hydrologic capacity of these areas to pass a one hundred (100) year flood without increased damage to the coastal zone natural environment or human systems.

(d) Development shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity.

(e) Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.

(f) Development shall minimize the following: impervious surfaces, removal of vegetation, amount of bare soil, noise, dust, artificial light, nutrient runoff, air pollution, and human intrusion into the wetland and minimize alteration of natural landforms.

(g) Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of one to one (1:1) to restore the protective values of the buffer area.

(h) Aboveground structures shall allow peak surface water flows from a one hundred (100) year flood to pass with no significant impediment.

(i) Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.

(j) Priority for drainage conveyance from a development site shall be through the natural stream environment zones, if any exist, in the development area. In the drainage system design report or development plan, the capacity of natural stream environment zones to convey runoff from the completed development shall be evaluated and integrated with the drainage system wherever possible. No structure shall interrupt the flow of groundwater within a buffer strip. Foundations shall be situated with the long axis of interrupted impermeable vertical surfaces oriented parallel to the groundwater flow direction. Piers may be allowed on a case by case basis.

(k) If findings are made that the effects of developing an ESHA buffer area may result in significant adverse impacts to the ESHA, mitigation measures will be required as a condition of project approval. Noise barriers, buffer areas in permanent open space, land dedication for erosion control, and wetland

restoration, including off-site drainage improvements, may be required as mitigation measures for developments adjacent to environmentally sensitive habitats. (Ord. No. 3785 (part), adopted 1991)

Discussion

Exhibit No. 28, "Correspondence," contains a submittal received by the Commission on September 30, 2009 by 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. Among other comments, the submittal contends that the development does not adequately protect wildlife habitat. Commission staff has reviewed the comment and continues to believe that the project as conditioned is consistent with the ESHA protection policies of the certified LCP listed above. The comment will be addressed in an addendum that will be presented at the Commission meeting.

J. Archaeological Resources

LCP Policies and Standards:

LUP Policy 3.5-10 states as follows:

The County shall review all development permits to ensure that proposed projects will not adversely affect existing archaeological and paleontological resources. Prior to approval of any proposed development within an area of known or probable archaeological or paleontological significance, a limited field survey by a qualified professional shall be required at the applicant's expense to determine the extent of the resource. Results of the field survey shall be transmitted to the State Historical Preservation Officer and Cultural Resource Facility at Sonoma State University for comment. The County shall review all coastal development permits to ensure that proposed projects incorporate reasonable mitigation measures so the development will not adversely affect existing archaeological/paleontological resources. Development in these areas are subject to any additional requirements of the Mendocino County Archaeological Ordinance.[emphasis added]

Coastal Zoning Code Section 20.532.095(A)(5) states in applicable part:

Section 20.532.095 Required Findings for all Coastal Development Permits.

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

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

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

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

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

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

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

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

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

Discussion:

Exhibit No. 28, "Correspondence," contains a submittal received by the Commission on September 30, 2009 by 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. Among other comments, the submittal contends that the development does not adequately protect archaeological resources. Commission staff has reviewed the comment and continues to believe that the project as conditioned is consistent with the archaeological resource protection policies of the certified LCP listed above. The comment will be addressed in an addendum that will be presented at the Commission meeting.

K. California Environmental Quality Act

Mendocino County, as the lead agency, adopted a Negative Declaration for the Project on June 21, 2007.

Section 13096 of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding

showing the application, as modified by any conditions of approval, to be consistent with any applicable requirement of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect the proposed development may have on the environment.

The Commission incorporates its findings on conformity with Coastal Act policies at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed herein, in the findings addressing the consistency of the proposed project with the certified Mendocino County LCP, the proposed project has been conditioned to be found consistent with the certified Mendocino County LCP. All feasible mitigation measures, which will minimize all significant adverse environmental impacts have been required. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

EXHIBITS:

1. Regional Location Map
2. Parcel Map
3. Photos of Site
4. ESHA Locations
5. Revised Project Description
6. Current Project Plans
7. Changes to Proposed Project
8. Project Comparison Information
9. County Approved Project Plans
10. Appeal No. 1 (Warner & Bailey)
11. Appeal No. 2 (Commissioners Kruer and Wan)
12. Appeal No. 3 (Sierra Club and Friends of Ten Mile River)
13. Appeal No. 4 (Margery S. Cahn Trust & Whiting Family)
14. Notice of Final Local Action
15. Geologic Report

16. Hydrological Study
17. Biological Study
18. Traffic Study
19. Property Deed
20. Certificate of Compliance
21. Boundaries of Applicant's COCs
22. Visual Impact Study
23. Open Space Deed Restriction Area Pursuant to Special Condition No. 5
24. Parcel Boundaries Used for Commission Coastal Development Permit 1-83-278
25. Parcel Boundaries Used for County Coastal Development Use Permit No. 9-95
26. Parcel Boundaries Used for County Coastal Development Use Permit Modification No. 9-95/2000
27. APNs to be Combined Pursuant to Special Condition No. 6
28. Correspondence
29. Ex Parte Communication Disclosures