

CALIFORNIA COASTAL COMMISSION

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Filed: November 10, 2009
Staff: Robert S. Merrill
Staff Report: December 23, 2009
Hearing Date: January 15, 2010

STAFF REPORT: REQUEST FOR RECONSIDERATION

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

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

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 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.

Commission Action and Date:

On November 4, 2009, the Commission denied the proposed development for redeveloping an existing complex of ranch buildings and developing a five unit inn (that can be used as a seven unit inn)

Summary of Staff Recommendation:

Staff recommends that the Commission **grant** the request for reconsideration because because there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter and that an error of fact has occurred which has the potential of altering the initial decision.

PROCEDURAL NOTE:

The Commission regulations provide that at any time within thirty (30) days following a final vote to deny a coastal development permit, the applicant of record may request that the Commission reconsider the denial. (14 C.C.R. section 13109.2(a).)

The grounds for reconsideration of a permit denial are provided in Coastal Action 30627, which states, in part:

The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the initial decision. (Section 30627(b)(3).)

If the Commission grants reconsideration, the de novo hearing would be scheduled for a subsequent Commission hearing.

STAFF NOTE: [Viewing the Commission's November 4, 2009 Continued Public Hearing on Appeal No. A-1-MEN-07-028](#)

The Commission denied Appeal No. A-1-MEN-07-028 at the Commission meeting of November 4, 2009. The continued public hearing was web-streamed over the internet. A recording of the web-streamed hearing is contained in the Commission's video archives at the Commission's internet web site accessible via the following link:

<http://www.cal-span.org/cgi-bin/archive.php?owner=CCC&date=2009-11-04>.

Instructions for viewing the November 4, 2009 hearing on Appeal No. A-1-MEN-07-028 are as follows:

- When connected to the internet, open <http://www.cal-span.org/cgi-bin/archive.php?owner=CCC&date=2009-11-04> in Internet Explorer.
- In the frame on the right side, go to item 15a.
- Click on the tape reel icon right after the a. to see the proceedings.
- The video will load in the left hand frame.
- To see the motion and vote click on the tape reel icons so labeled immediately following the description of the item.

A written transcript of the hearing is not available as no court reporter was present at the hearing.

APPLICANT'S CONTENTIONS:

In the attached letters dated November 9, 2009 and November 18, 2009, the applicant asserts the following four contentions in support of the applicant's request: (1) the Commission's failure to grant as much time to the applicant to address the Commission as it did to the appellants, allowing the applicant a total of 15 minutes to present its case and respond to comments while allowing the appellants up to 30 minutes, prejudiced the applicant's position; (2) in determining that the proposed project would provide insufficient public access to the shoreline, the Commission misunderstood that the applicant had already provided public access mitigations for the previously approved inn at the site which was never constructed; (3) the Commission's decision to deny the project was influenced by misunderstandings by Commissioners that the applicant had threatened to sue the Commission over special conditions recommended by staff requiring acknowledgement that portions of the applicant's property constitute one legal parcel and requiring open space restrictions; and (4) in determining that the proposed inn development was inconsistent with the visual resource protection policies of the certified LCP, the Commission misunderstood the relative size and visual impact of the proposed inn buildings because the applicant's architect was precluded from effectively addressing these issues in his presentation to the Commission as a result of the

Commission's video technician's inability to display on the meeting room screen a key slide the architect had intended to show and use for this purpose.

- I. MOTION:** *I move that the Commission grant reconsideration of Coastal Development Permit Appeal No. A-1-MEN-07-028.*

STAFF RECOMMENDATION TO GRANT RECONSIDERATION:

Staff recommends a **YES** vote on the motion. Passage of this motion will result in grant of reconsideration and adoption of the following resolution and findings. Failure of the motion will result in denial of the request for reconsideration. The motion passes only by an affirmative vote of a majority of Commissioners present.

RESOLUTION TO GRANT RECONSIDERATION:

The Commission hereby grants the request for reconsideration of the Commission's decision on Coastal Development Appeal No. A-1-MEN-07-028 on the grounds that:

- (a) there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing; and/or,
- (b) an error of fact has occurred which has the potential of altering the initial decision; and/or,
- (c) an error of law has occurred which has the potential of altering the initial decision.

II. FINDINGS AND DECLARATIONS:

The Commission finds and declares as follows:

A. Project and Site Description.

The applicant is requesting that the Commission reconsider its denial of the applicant's request to 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 (see Exhibit 2-4).

The project 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 and the area is designated in the certified Mendocino LCP as a highly scenic area.

The project was originally approved as a 10-unit inn by Mendocino County in June of 2007, and was appealed to the Commission by four separate appellants, including : (1) Molly Warner & Britt Bailey; (2) Commissioners Pat Kruer and Sara Wan; (3) the Mendocino Group of the Sierra Club; and (4) the Margery S. Cahn Trust, Deborah Cahn, Trustee & the Whiting Family Revocable Trust, Judith Whiting, Trustee. On September 7, 2007, the Commission opened the hearing on the appeal and found that the appeals raised a Substantial Issue of conformance with the policies of the certified LCP and public access policies of Chapter 3 of the Coastal Act. The applicant revised the project for purposes of the Commission's de novo review of the appeal, reducing the number of inn units, the number of buildings, and the footprint of the ranch and inn complex resulting in the project described above.

B. Commission Action on Application

On November 4, 2009, the Commission considered the application de novo and denied the proposed development by a final vote of 4-6. The six Commissioners on the prevailing side voting against the project included Commissioners Kruer, Mirkarimi, Sanchez, Shallenberger, Stone, and Wan. The four Commissioners voting for the project included Commissioners Achadjian, Blank, Kram, and Neely. The Commission has not yet adopted Revised Findings in support of its action to deny the project. However, based on Commissioner comments made during the hearing, the Commission's denial of

the application request was based primarily on a determination that the mass of the proposed inn development created adverse visual impacts in the project's highly scenic setting that were inconsistent with the visual resource protection policies of the certified LCP. In addition, Commission determined that the proposed development did not provide sufficient public access to the shoreline. The Commission also expressed concerns over the relatively large size of the proposed inn units and the potential for units to be used for residential purposes rather than for transient occupancy.

C. Reconsideration Request.

The applicant's request for reconsideration (see Exhibit 1) contends that errors of law and fact occurred which have the potential for altering the Commission's decision, particularly in light of the close 4-6 final vote to deny the application. The applicant asserts the following four contentions in support of the applicant's request: (1) the Commission's failure to grant as much time to the applicant to address the Commission as it did to the appellants, allowing the applicant a total of 15 minutes to present its case and respond to comments while allowing the appellants up to 30 minutes, prejudiced the applicant's position; (2) in determining that the proposed project would provide insufficient public access to the shoreline, the Commission misunderstood that the applicant had already provided public access mitigations for the previously approved inn at the site which was never constructed; (3) the Commission's decision to deny the project was influenced by misunderstandings by Commissioners that the applicant had threatened to sue the Commission over special conditions recommended by staff requiring acknowledgement that portions of the applicant's property constitute one legal parcel and requiring open space restrictions; and (4) in determining that the proposed inn development was inconsistent with the visual resource protection policies of the certified LCP, the Commission misunderstood the relative size and visual impact of the proposed inn buildings because the applicant's architect was precluded from effectively addressing these issues in his presentation to the Commission as a result of the Commission's video technician's inability to display on the meeting room screen a key slide the architect had intended to show and use for this purpose.

D. Analysis of Reconsideration Request.

The grounds for reconsideration of a permit denial are provided in Coastal Action 30627, which states, in part:

The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the initial decision. (Section 30627(b)(3).)

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to the contention concerning the possible misunderstanding by the Commission of the relative size and visual impact of the proposed inn buildings based on technical difficulties outside the applicant's control that precluded the applicant's architect from showing a key slide to effectively address the mass and visual impact of the proposed inn buildings grounds for reconsideration of the permit application exist because there is relevant new evidence that could not have been presented at the hearing in the exercise of due diligence and on errors of fact occurred which has the potential of altering the Commission's decision to deny the permit application.

1. Applicant's Contentions Satisfying Criteria for Reconsideration.

a. Size and Visual Impact of Inn Buildings.

As noted previously, based on Commissioner comments made during the hearing, the Commission's denial of the application request was based primarily on a determination that the mass of the proposed inn development created adverse visual impacts in the project's highly scenic setting that were inconsistent with the visual resource protection policies of the certified LCP. The staff recommendation had identified the visual impacts of the development and consistency with the visual resource protection policies of the LCP as one of two principal issues raised by the application, the other being the sufficiency of well water to serve the proposed development. As noted in the staff recommendation on the project, the project site is located within a highly scenic area and due to the flat terrain and openness of the rangeland setting, the development site is highly visible from Highway One in both directions. The views to and along the coast from narrow two-lane Highway One in this area are sweeping and vast and there is very little development located on either side of the highway in the immediate vicinity of the development site. The certified 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 clustering them near existing vegetation, natural landforms or artificial berms.

The applicant claims that in determining that the proposed inn development was inconsistent with the visual resource protection policies of the certified LCP, the

Commission misunderstood the relative size and visual impact of the proposed inn buildings due to technical difficulties at the hearing outside of the applicant's control that precluded the applicant from displaying and presenting critical information concerning the visual impact of the proposed development.

The applicant was allotted 15 minutes of presentation time at the public hearing. The applicant's presentation was made by a team of presenters, including the applicant's attorney, Mr. Alan Block and the principal from the applicant's architectural firm, Mr. David Sellers. The principal focus of Mr. Seller's portion of the presentation concerned the visual impacts of the proposed development. Mr. Sellers made his presentation relying upon the display and discussion of visual images that were projected on the video screens at the hearing room and transmitted as part of the video web stream of the proceedings by the Commission's video technicians.

According to a letter dated December 16, 2009 submitted by Scott Baker, an associate of Mr. Sellers, technical difficulties precluded a key visual image of Mr. Seller's presentation from being displayed. Mr. Baker explains in his letter that upon arrival at the hearing room prior to the start of that day's Commission meeting, he spoke with the Commission's video technicians about displaying Mr. Sellers' images during the presentation Mr. Sellers later made. Mr. Baker was told that the video technicians were only able to display files in certain formats, including PowerPoint, JPEG, TIF, and PDF. Mr. Baker then generated his file of images in PDF format and submitted the file to the technician via a flash drive. The technician downloaded the file to his computer and indicated to Mr. Baker that the file was ready to display during the hearing.

The PDF file contains only seven images which constituted Mr. Sellers entire graphic presentation. One of the most important of the seven images is a site plan, which was planned as the 6th image in the sequence. Mr. Sellers used the assistance of the video technicians to advance the images in the PDF file during his presentation. At the point of his presentation when Mr. Sellers asked for the 6th image to be displayed, the image did not load immediately. The image is a relatively large file, and such files often take longer to load than smaller files. Instead of waiting a sufficient period of time to allow the image to load, the technician proceeded to the 7th image on the next page, bypassing the site plan image Mr. Sellers intended to show to the Commission. This sequence of events resulted in a pause in Mr. Sellers' presentation followed by Mr. Seller abruptly presenting his closing remarks without having had the opportunity to present and discuss the 6th image.

According to the applicant's reconsideration request, the principal use of the site plan image that was not displayed was to demonstrate to the Commission that the proposed development was modest in size and efficient in scale. The applicant indicates that Mr. Sellers would have used the site plan to compare the proposed size, number, and arrangement of proposed buildings at the development site with the same features of the existing ranch complex at the site. Mr. Sellers has indicated to staff that he would have

pointed out how (a) the development site is part of an existing ranch operation with a number of existing ranch buildings that would be replaced as part of the project with four buildings of similar size, (b) the two new proposed buildings that would be used for the inn would be located on the seaward side of the agricultural buildings and thus would be largely screened from view from Highway One by the agricultural buildings, and (c) the proposed new buildings would be modest in size. Without the slide available to show the size and relationship of the various buildings to each other and the setting, the applicant contends that it was extremely difficult to address the issue of building mass and visual impact which had been identified by staff as a principal issue in the Commission's review of the project and which had been raised in testimony at the hearing by the appellants..

A review of the video recording of the Commission hearing indicates that that some of the Commissioners may have had a difficult time comparing the visual impact of the proposed development with the impact of the existing ranch complex at the site from the visual images that were presented at the meeting both by the applicant's team and the staff. For example, during the Commissioners deliberations after public testimony had concluded, Commissioner Wan addressed her concerns about the visual impacts of the development. At one point Commissioner Wan stated "my principal concern here is again the massive development and the increase in the visual impact. By the way, the visual presentation of those units was from so far away, I couldn't see the existing [structures], so technically I can't tell the distinction between the existing units and the proposed units."

The relative visual impact of the proposed redeveloped complex of buildings versus the existing complex of ranch buildings could reasonably be viewed as a major factor in a determination as to whether the proposed development is consistent with the visual resource protection policies of the LCP. The extent to which the proposed development blocks more or less view of the ocean and the scenic coast than the existing compound could influence a determination whether that development is sited and designed to protect views to and along the ocean and scenic coastal areas as required by LUP Policy 3.5-1 and CZC Section 20.504.020. In addition, as the existing complex forms part of the character of the project site and surrounding area, the relative difference in form and appearance of the proposed complex of buildings versus that of the existing compound could influence a determination that the development is visually compatible and subordinate with the character of the surrounding area as required by LUP Policy 3.5-1 and CZC Section 20.504.020.

The staff report published and distributed prior the meeting does contain a site plan and several other sheets that show the general arrangement of existing and proposed buildings. Thus, even without the slide having been presented, the record contained plans presenting information about the mass and positioning of the buildings. However, the plans in the staff report are displayed at a scale approaching 1"=50,' a much reduced scale over what could be displayed in a plan image projected on a screen, and thus much more difficult to interpret and understand. More significantly, the site plans in the staff

report cannot convey the commentary that Mr. Sellers would have provided to explain what is shown in the plans, interpret their significance, and to point out key factors in the evaluation of the visual impacts of the project at a key point in the proceedings when the applicant had a limited opportunity to present its case to the Commission and rebut comments made by opponents of the project.

As noted above, the relative visual impact of the proposed redeveloped complex of buildings versus the existing complex of ranch buildings could reasonably be viewed as a major factor in a determination as to whether the proposed development is consistent with the visual resource protection policies of the LCP, one of the principal issues raised by the project. The denial of the permit application was the result of a close 4-6 vote. Thus, even if just two of the Commissioners who had voted to deny the permit application would have been persuaded by the applicant's presentation on the consistency of the project with visual resource policies of the LCP that was precluded by the technical presentation difficulties that occurred at the hearing, the omission of this part of the presentation could have altered the Commission's decision.

The failure of the image to appear on the screen was not under the control of the applicant. The image had been provided to the technicians in advance of the hearing and the presenter requested that the image be displayed at the particular point in his presentation when he intended to discuss the visual impacts of the proposed development. After the technician had forward past the critical image, given the fact that the applicant's presentation time was limited, it was reasonable for the presenter to feel that he could not stop his presentation and take the time to attempt to sort out with the technician why the critical image had not appeared on the screen without compromising other parts of the teams presentation to the Commission.

Therefore, for all of the above reasons, the Commission finds that grounds for reconsideration of the permit application exist because there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter and that an error of fact has occurred which has the potential of altering the initial decision.

2. Applicant's Contentions That Do No Satisfy Criteria for Reconsideration.
 - a. Public Access.

Based on Commissioner Comments made during the hearing, the Commission's denial of the application request appears to have been based in part on a determination that the proposed development did not provide sufficient public access to the shoreline.

The applicant claims that in determining that the proposed project would provide insufficient public access to the shoreline, the Commission misunderstood that the applicant had already provided public access mitigations for the previously approved inn at the site which was never constructed.

The current application to redevelop an existing complex of ranch buildings and develop a five unit inn (that can be used as a seven unit inn) was preceded by a previous permit approved by Mendocino County for an inn development on the same APN in 1996. Although the applicant provided certain public access benefits as a result of a settlement of litigation between the County and the applicant over the terms and conditions of the permit, the permit itself was never utilized by the applicant to construct an inn or any other development before the permit expired.

The Mendocino County Board of Supervisors approved Coastal Development Permit No. CDU 9-95 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 on May 13, 1996. The County's approval included conditions requiring recordation of an offer to dedicate coastal access to and along the bluff edge near the approved inn. On July 10, 1996, the Coastal Commission determined that an appeal of the approval to the Commission (Appeal No. A-1-MEN-96-028) raised no substantial issue, allowing the County's approval of CDU 9-95 to stand.

The applicant then 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 to and along the bluff edge in the immediate vicinity of the approved inn in exchange for the applicant (1) dedicating a one-acre site between Highway One and the ocean approximately ¼ mile south of the inn site for public access parking and access to the bluff, (2) contributing \$25,000 toward the development of coastal access in the area, and (3) offering to dedicate an approximately half-mile-long easement for lateral public access along a 15-foot strip along the west side of the Highway One right-of-way extending northward from near the existing driveway to the existing ranch complex approximately half a mile to the north. 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 Mendocino Land Trust has accepted the public access easements and received the funds provided by the applicant to plan and construct a trail within the 15-foot strip along the west side of the Highway One right-of-way. Mendocino County is currently reviewing a coastal development permit for development of the trail.

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. In the meantime, Coastal Development Use Permit CDUM 9-95/2000 expired without the applicant having built the inn or any of the authorized development.

In its reconsideration request, the applicant states that based on Commissioner comments after the public hearing on the current permit application, the Commissioners were unaware that the applicant had provided the public access benefits described above as part of the previous permit. The applicant implies that had the Commission been fully aware that such access has already been provided and that the applicant had not taken advantage of the previous permit to build the inn, the Commission would not have voted to deny the current application because of inadequate public access.

The applicant did not list the previously granted public access benefits as part of the project description for the current permit application. The applicant appears to have erroneously assumed that since the applicant had already dedicated the public access areas and paid the \$25,000 required by the terms of the settlement agreement signed by the applicant to provide public access for the previous inn project, that the public access benefits cannot be revoked by the applicant even if the applicant never builds an inn at the site and that therefore it was not necessary to list these public access benefits as new public access improvements in the project description for the current permit application. After the hearing, the applicant indicated to Commission staff that the applicant would have included the public access benefits in the project description for the current application if the applicant thought there was any question whether those benefits were intended to be provided as part of the current inn project.

Because the applicant did not propose access as part of the project description of the current application, the project description findings of the staff recommendation dated October 22, 2009 and the public access finding in Addendum B correctly indicate that no new public access is proposed as part of the current application. In addition, Finding IV.B.1, "Previous Inn Development Approvals," of the October 22, 2009 staff recommendation and the public access finding in Addendum B also correctly discuss how as a result of settlement of the litigation over the permit for inn development previously granted by the County, the applicant provided the specific public access benefits described above. In addition, a review of the hearing video indicates that during his final comments made after the close of the public testimony portion of the hearing, North Coast District Manager Bob Merrill expressly discussed how the public access benefits associated with the settlement of the lawsuit over the previous inn project had been provided. Furthermore, there were a number of exchanges during the hearing between Commissioners Blank and Achadjian and the applicant and his representatives about whether the applicant would be willing to newly provide as part of the coastal development permit before the Commission, a parking lot to serve the portion of the lateral public access trail that was to be provided as part of the previous inn permit

approval along Highway One. Moreover, both Mr. Merrill and the applicant's attorney Mr. Block responded to Commissioner questions during the hearing about public access benefits that had been provided as part of the previous project. Mr. Block stated the following in response to a question of Commissioner Wan about parking for public access:

“As part of the trail that Mr. Jackson gave previously along with the \$25,000, he gave one acre of his land, which is a quarter of a mile south, and that acre was to be used for parking. It's not used yet, but it has been dedicated to the County.”

Therefore, the fact that public access was provided as part of the previous inn permit is not new information that the Commission was unaware of during the de novo hearing on the appeal and there was not an error of fact concerning the public access previously provided that has the potential of altering the Commission's decision. The Commission also notes that the fact that the applicant is now willing to amend his project description to include the previously provided public access benefits as part of his current proposal is not grounds for reconsideration of the Commission's earlier decision.

b. Limitation on Presentation Time.

The applicant claims that the Commission's failure to grant as much time to the applicant to address the Commission as it did to the appellants, allowing the applicant a total of 15 minutes to present its case and respond to comments while allowing the appellants up to 30 minutes, prejudiced the applicant's position.

The Commission's long standing practice is to grant those who wish to speak in favor of a permit a total of at least 15 minutes of testimony and rebuttal time and grant at least 15 minutes of testimony to those speaking against the project. The video of the hearing indicates that the applicant was afforded this customary amount of time. A review of the video of the hearing indicates that the applicant's presentation and rebuttal time was limited to approximately 15 minutes. The representative of Appellant Margery S. Cahn Trust & Whiting Family Revocable Trust, Mr. Jared Carter, was granted and used approximately 15 minutes of time, and the representative for Appellant Mendocino Group, Sierra Club & Friends of the Ten Mile was granted additional time. The applicant's team had organized its group presentation and completed its presentation within the allotted 15 minutes. In addition, the applicant and his representative were also asked by Commissioners to respond to specific questions outside of their presentation and rebuttal time. Thus, the applicant was afforded the customary amount of time to present their case to the Commission and took advantage of the opportunity to present information into the record in support of it application.

Therefore, the Commission finds that this claim does not present grounds for reconsideration of the Commission's permit decision pursuant to 30627 of the Coastal Act.

c. Threats of Litigation.

The applicant claims that the Commission's decision to deny the project was influenced by misunderstandings by Commissioners that the applicant had threatened to sue the Commission over special conditions recommended by staff requiring acknowledgement that portions of the applicant's property constitute one legal parcel and requiring open space restrictions. The applicant asserts that Commissioners repeatedly made reference to the applicant's threatening to sue the Commission on the issue of the lot merger and open space requirement, and notes that it was only after the vote that the Executive Director advised the Commission that the applicant had not threatened to sue the Commission and had agreed with the staff's recommended conditions.

The Visual Resource finding of the staff recommendation (Finding H beginning on page 64) contains a lengthy discussion about how the APN where the development was proposed is part of a larger property addressed by a certificate of compliance that identifies the larger property as a single legal lot. The finding makes reference to how the applicant submitted a letter during the staff's review of the project asserting that there is more than one developable parcel within the COC area. The staff recommendation included recommended special conditions requiring Special Condition Nos. 5 and 6. Special Condition No. 5 would have restricted development anywhere on two Assessor's Parcel Numbers north of the inn site and owned by the applicant that are west of Highway One. Special Condition No. 6 would have ensured that the APN containing the subject development and the two APNs surrounding the development area are neither divided nor conveyed separately from the APN where the development site is located.

A review of the video of the hearing indicates that on three separate occasions reference to a possible law suit was mentioned, once each by Commissioners Wan, Kruer, and Blank. Both Commissioners Wan and Kruer voted to deny the project. However, both Commissioners made strong statements about the visual impact of the development being the major basis for their concern with the project. Commissioner Blank voted to approve the project and made the following statement after the vote was taken.

"Madam Chair – I also want to just go on the record why I voted for the motion [to approve the project]. I just want to make it clear that I seemingly disagree with Commissioner Achadjian's point not that I disagree with Commissioner Achadjian. But I don't think this Commission can be held hostage about whether we can be sued or not. And I know that wasn't your point but I just didn't want to go on a record that was not why I have a yes vote. I that this project would –

within the bounds of the amending motions is something I could support, not the fact that legal counsel could be spending more time.”

Thus, the Commissioners who referenced a possible law suit during the Commission’s deliberations on the project indicated specific grounds other than the threat of a law suit as a basis for why they voted the way they did. Therefore, the Commission finds that there is no evidence that the threat of litigation affected the outcome of the vote, and the Commission further finds that this claim does not present grounds for reconsideration pursuant to Section 30627 of the Coastal Act.

EXHIBITS

1. Reconsideration Request
2. Regional Location
3. Parcel Map
4. Current Project Plans

BLOCK & BLOCK

A PROFESSIONAL CORPORATION

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November 9, 2009

VIA FAX & OVERNIGHT MAIL

Mr. Peter Douglas
Executive Director
California Coastal Commission
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San Francisco, CA 94105-2219

EXHIBIT NO. 1
APPLICATION NO. A-1-MEN-07-028-R JACKSON-GRUBE FAMILY, INC. RECONSIDERATION REQUEST (1 of 6)

RECEIVED

NOV 10 2009

CALIFORNIA
COASTAL COMMISSION

Re:A-1-MEN-07-028 [Jackson-Grube Family, Inc.]
Property Address: 31502 North Highway One, Fort Bragg (Mendocino County)

REQUEST FOR RECONSIDERATION

Dear Mr. Douglas:

As you know, this office represents the Jackson-Grube Family ("Jackson") with regard to the above captioned coastal development permit ("CDP") denied by the Commission on November 4, 2005. Jackson hereby respectfully request that the Commission reconsider its November 4, 2009 action of denying the above referenced CDP on the basis that pursuant to the California Code of Regulations Section 13109.4 "an error of fact or law has occurred which has the potential for altering the commission's initial decision.

Applicable Law

Title 14, California Code of Regulations, §13109.2 provides in relevant part as follows under Initiation of Proceedings:

"Any time within thirty (30) days following a final vote upon an application for a coastal development, the applicant of record may request the commission to grant reconsideration of . . . any term or condition of a coastal development permit which has been granted."

The grounds for reconsideration are set out in Public Resources Code § 30627, which provides:

"The basis of the request for reconsideration shall be either that there is relevant new

Mr. Peter Douglas

Re:A-1-MEN-07-028 [Jackson-Grube Family, Inc.] Request For Reconsideration

November 9, 2009

Page 2

evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the initial decision.”

Specifically, Jackson contends that both errors of fact and law occurred during the hearing which had the potential of altering the Commission’s initial decision.

Error of Law

In the first instance, the applicable commission rules and procedures as stated in both the Commission Meeting Notice and official Commission Home Web Page provides that “[T]ime limits are determined by the Chair, but generally are 15 minutes combined total time per side”. In the public hearing of the subject appeal both of the present appellants, Jared Carter on behalf of appellants Margaret S. Cahn Trust and the Whiting Family Trust, and Mark Masara on behalf of the Mendocino Group Sierra Club, were each offered 15 minutes, for a total of 30 minutes, to present their opposition to the Jackson CDP. Jared Carter used the entire 15 minutes allocated to him, and Mark Marsara, although not using the entire 15 additional minutes, used at least half of that time, if not more, to make his presentation. To the contrary, Jackson was permitted a total of 15 minutes to respond to both presentations.

Jackson strongly contends that the Commission’s failure to allow the applicant equal time to present its case and respond to the appellants arguments prejudiced the applicant’s position and clearly had the potential of altering the commission’s initial decision. This is particularly true when one considers the final vote of 4-6.

Errors of Fact

In addition, two errors of fact occurred during the commissioners discussions, after the close of the public hearing, which also had the potential for altering the commission’s initial decision.

The first error of fact occurred as a result of the commissioners misunderstanding that the applicant had not offered any public access mitigation for the proposed inn. As you know, the applicant in its efforts to gain approval of the previously proposed inn, which was never constructed, 1) conveyed fee title to the County of a one acre portion of the property; 2) paid the County \$25,000 toward the development of coastal access in the area; and 3) dedicated an easement for public access along a 15 foot strip of the property on the west side

Mr. Peter Douglas
Re: A-1-MEN-07-028 [Jackson-Grube Family Inc.] Request for Reconsideration
November 9, 2009

Page 3

of Highway One right-of-way of the subject property. Based on the commission comments after the public hearing was closed it clearly appeared that the commissioners were unaware of this fact.

The second error of fact that occurred during staff's discussions with the commission, after the close of the public hearing, was the commissioners repeatedly made reference to the applicant's threatening to sue the commission on the issue of the lot merger and open space requirement. After the commission's close vote which resulted in the denial of the project you specifically advised the commission that the applicant had not threatened to sue the commission and had agreed with staff's recommended conditions.

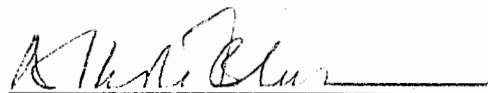
After the hearing, the commission took a short break, and I had the opportunity to speak with some of the commissioners who voted against the project. It was apparent from their comments that there was a misunderstanding of the project, and the applicant's previous offer of public access, which had the potential for altering their vote.

The applicant greatly appreciated staff's strong support for the project. We look forward to your favorable review of this request and the opportunity to bring this matter back before the commission.

Thank you in advance for your courtesy and anticipated support.

Respectfully submitted,

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



ALAN ROBERT BLOCK

ARB:cw

cc: Will Jackson
Dave Sellers
Scott Baker
Bob Merrill

BLOCK & BLOCK

A PROFESSIONAL CORPORATION

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

ALAN ROBERT BLOCK
JUSTIN MICHAEL BLOCK

SENDER'S E-MAIL
alan@blocklaw.net

November 18, 2009

RECEIVED

NOV 30 2009

CALIFORNIA
COASTAL COMMISSION

Mr. Peter Douglas
Executive Director
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

Re: A-1-MEN-07-028 [Jackson-Grube Family, Inc.]
Property Address: 31502 North Highway One, Fort Bragg (Mendocino County)

REQUEST FOR RECONSIDERATION ADDENDUM

Dear Mr. Douglas:

As you know, this office represents the Jackson-Grube Family ("Jackson") with regard to the above captioned coastal development permit ("CDP") denied by the Commission on November 4, 2005. On November 9th this office forwarded correspondence to your attention requesting that the Commission reconsider its November 4, 2009 action of denying the above referenced CDP. The request was made pursuant to Public Resources Code Section 30627 and California Code of Regulations Section 13109.4 which provides that reconsideration is appropriate when "an error of fact or law has occurred which has the potential for altering the commission's initial decision.

Our November 9th correspondence set forth three reasons for reconsideration based on both errors of fact and law which denied the applicant of both the protections of procedural due process and a reasonable opportunity to respond to erroneous statements made after the close of the public hearing, which had the potential of altering the initial decision. Due process requires a relatively level playing field, the so-called "constitutional floor" of a "fair trial in a fair tribunal", in other words, a fair hearing before a neutral or unbiased decision maker. *Bracy v. Gramley* (1997) 520 U.S. 899, 904-905; *Withrow v. Larkin* (1975) 421 U.S. 35, 46. The Commission's unintentional failure to allow the applicant the same amount of time as the project appellants, and the applicant's inability to respond to patent misunderstanding of facts of some of the Commissioners severely prejudiced the applicant and denied it due process.

Mr. Peter Douglas

Re: A-1-MEN-07-028 [Jackson-Grube Family Inc.] Request for Reconsideration

November 18, 2009

Page 2

As I also advised you by email on November 9th, Dave Sellers, the project architect, during his presentation was further severely prejudiced during his portion of the applicant's presentation due to the Commission's technician teams inability to get the slides of the project plans on the screen, as he provided the technicians prior to the hearing, and which he requested during his presentation, which resulted in substantial delays in getting any slides on the screen for the Commission's view, and, more importantly, the slide showing the site plan for the proposed inn buildings being both modest in size and located behind the new agricultural (ranch) buildings which merely replace existing agricultural buildings. The major basis for Mr. Selier's presentation was to visually show the Commissioners that the project was modest in size and efficient in scale. With the inability of getting the slides on the screen, there was a substantial time delay that took time away both Mr. Sellers presentation and the remaining time for rebuttal. Without the slide mentioned above of the site plan, it was extremely difficult to rebut the issue of the size brought up by project appellants.

The applicant contends that the technicians inability to show the slides provided to him by Mr. Sellers eliminated essential information critical to the Commissions understanding of the project and its decision making capability. By the elimination of the slide of the site plan and location of proposed buildings the applicant was unable to visually evidence the size of the project and location of buildings when viewed from Highway One.

This office has been advised by Bob Merrill that a hearing on the applicants reconsideration request will be scheduled as part of the Commissions agenda in January 2010. This consider this correspondence as including an additional basis for reconsideration.

Thank you in advance for your courtesy and anticipated support.

Respectfully submitted,

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


ALAN ROBERT BLOCK

ARB:cw

Mr. Peter Douglas

Re: A-1-MEN-07-028 [Jackson-Grube Family Inc.] Request for Reconsideration

November 18, 2009

Page 3

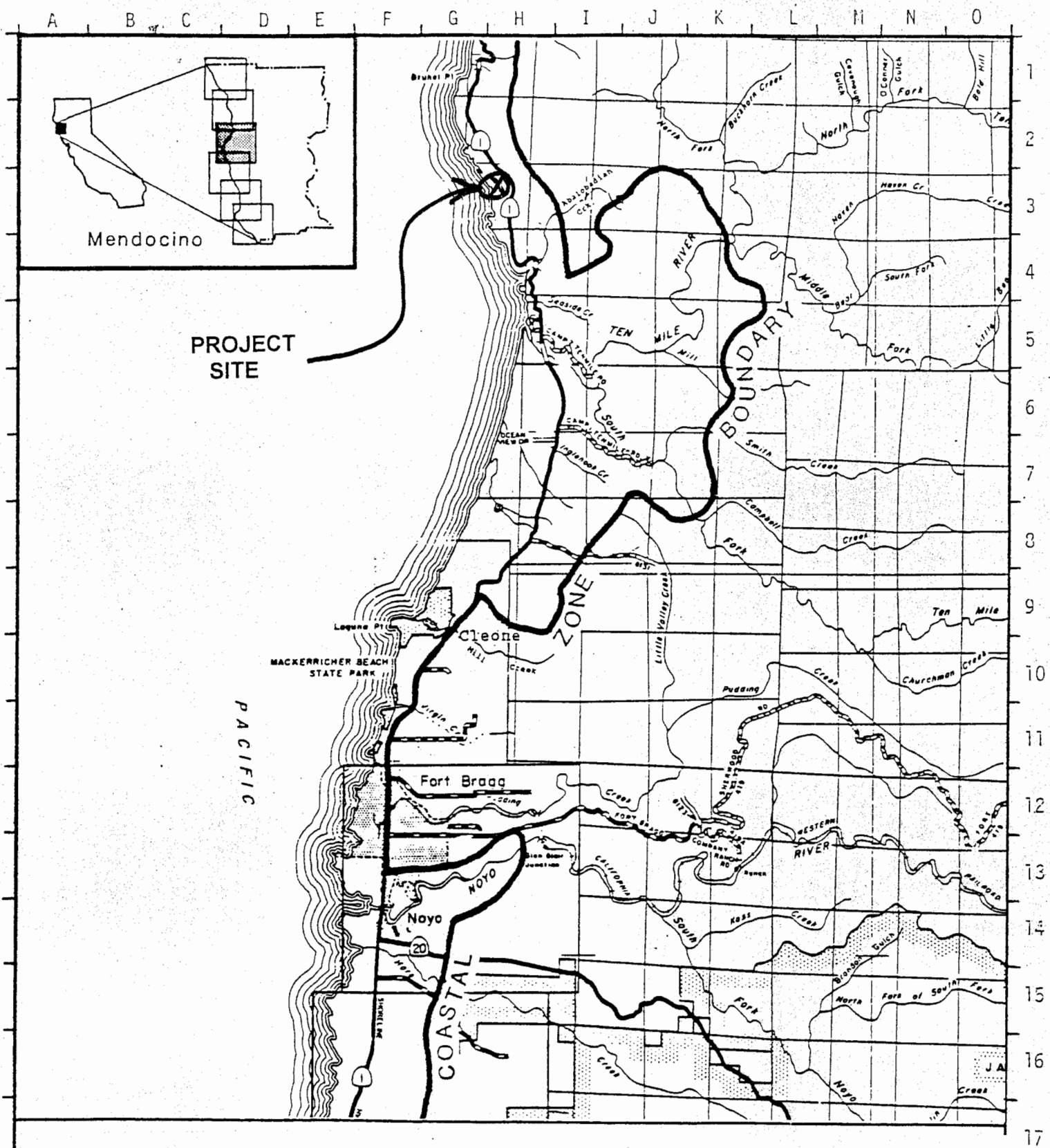
cc: Will Jackson


Dave Sellers

Scott Baker

Bob Merrill

Hope Schmeltzer, Esq.



 California Coastal Commission

LOCATION MAP



County of Mendocino

EXHIBIT NO. 2
APPLICATION NO.
 A-1-MEN-07-028-R
 JACKSON-GRUBE FAMILY, INC.
 REGIONAL LOCATION

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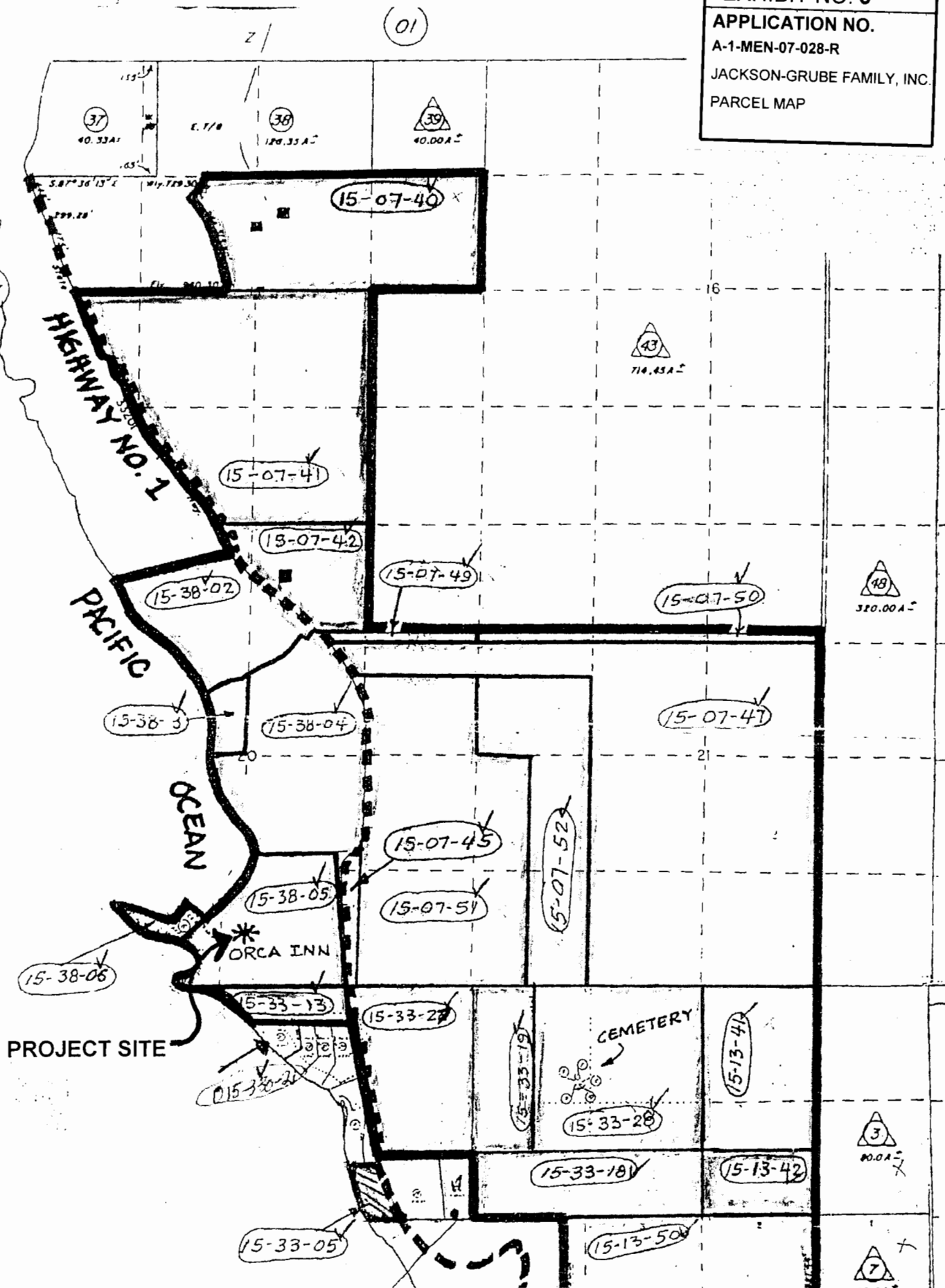
EXHIBIT NO. 3

APPLICATION NO.

A-1-MEN-07-028-R

JACKSON-GRUBE FAMILY, INC.

PARCEL MAP



NOTE
 1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
 2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
 3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
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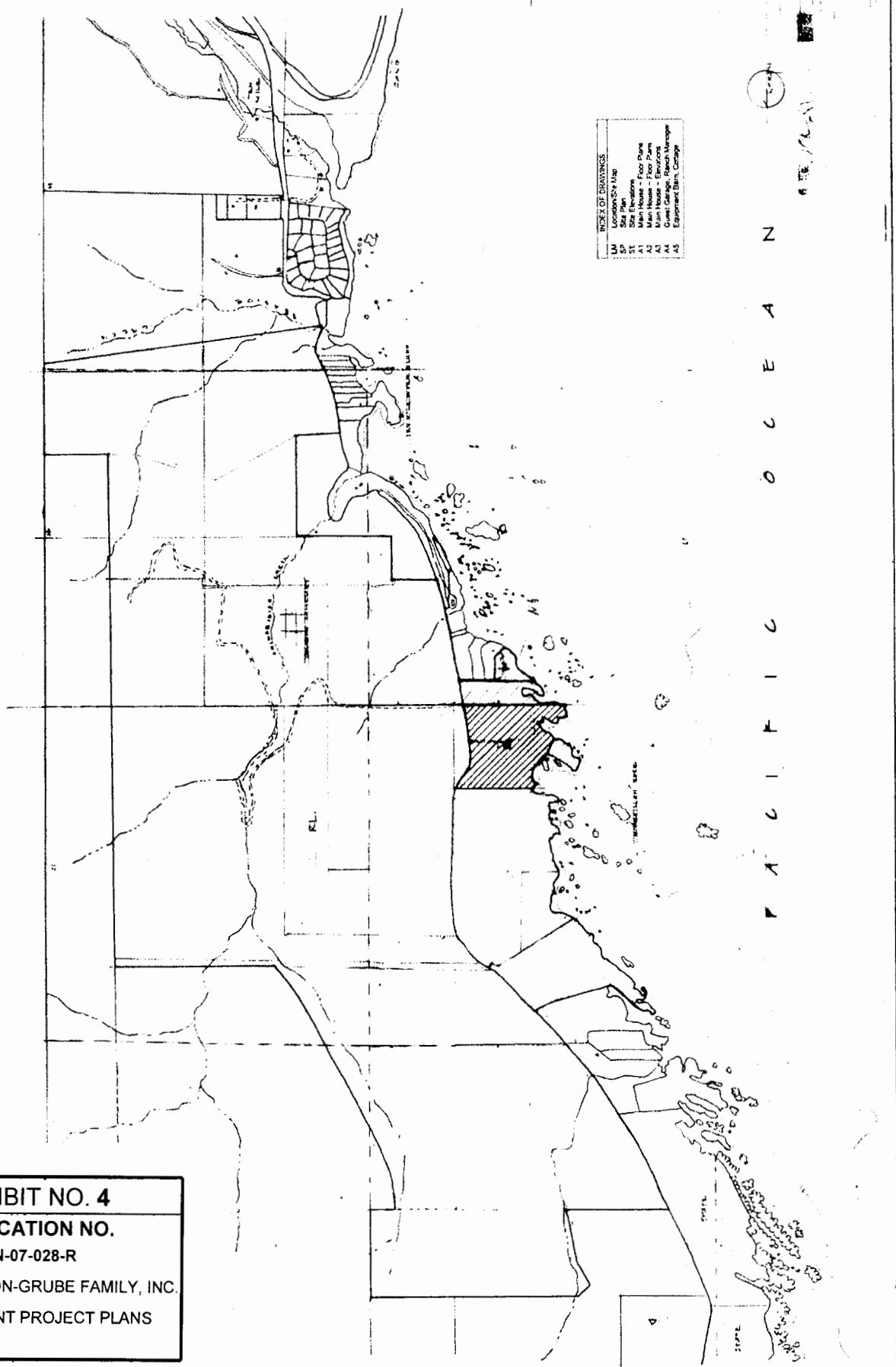
INN AT NEWPORT RANCH
Fort Bragg, California
SELLERS & COMPANY ARCHITECTS
 SANFORD STRAUSS ARCHITECTS
 1111 1/2 BROADWAY, SUITE 1000, SAN FRANCISCO, CALIFORNIA 94103
 TEL: 415.774.1111 FAX: 415.774.1112

DATE: 05.01.09
 VERSION:

PARCEL MAP
 SHEET NO. 10

COVER SHEET

EXHIBIT NO. 4
APPLICATION NO.
A-1-MEN-07-028-R
JACKSON-GRUBE FAMILY, INC.
CURRENT PROJECT PLANS
(1 of 9)



INDEX OF DRAWINGS

MM	CONTRACT MAP
SM	Site Map
SE	Site Elevation
A1	Main House - Floor Plans
A2	Main House - Elevations
A3	Main House - Sections
A4	Guest Cottage - Ranch Manager
A5	Equipment Barn, Garage



P A C I F I C O C E A N

SEPT

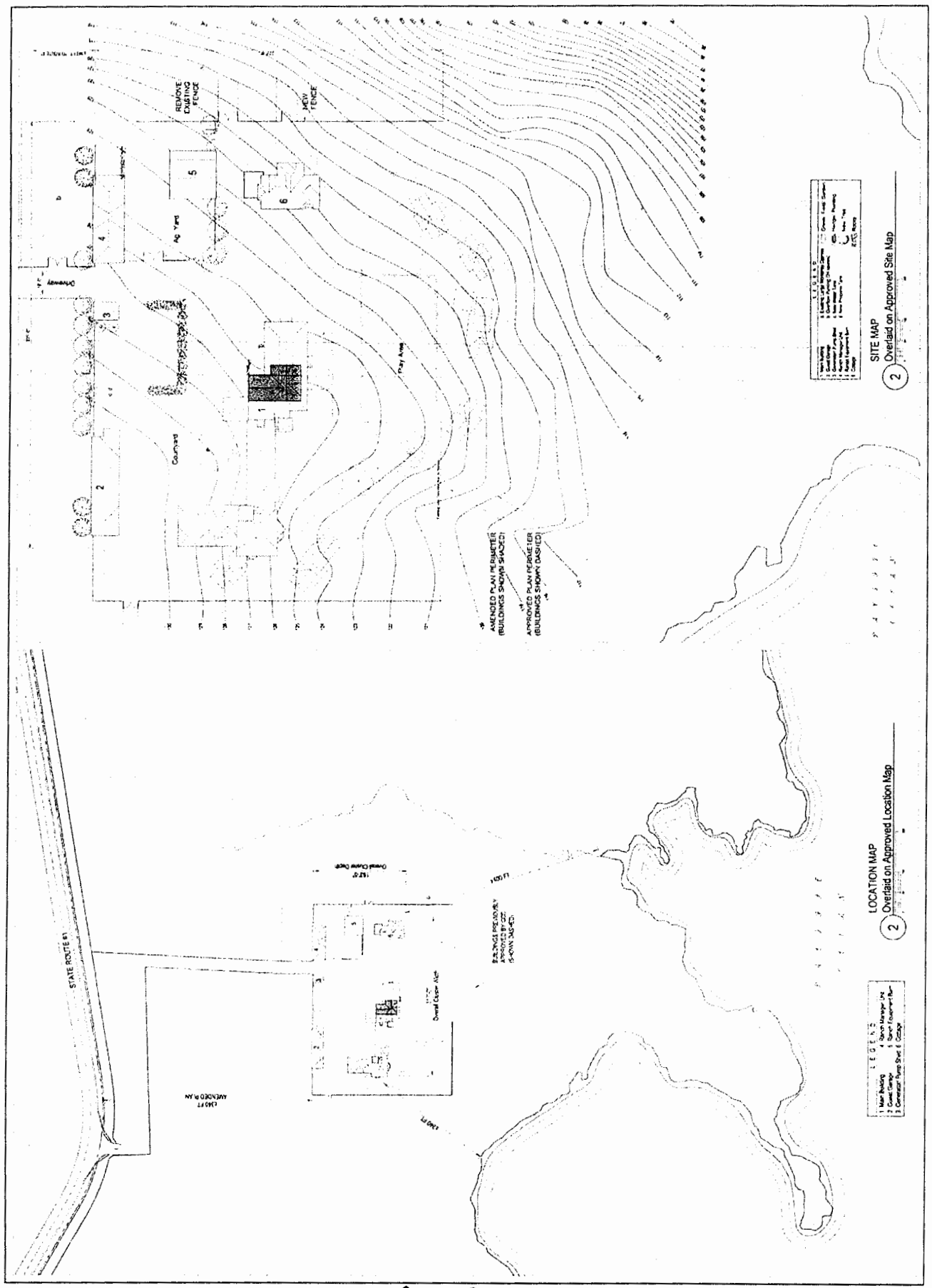
DATE: 05.01.09
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 PROJECT: INN AT NEWPORT RANCH

INN AT NEWPORT RANCH
 Fort Bragg, California
 Sellers & Company Architects
 SANFORD STRAUSS ARCHITECTS

DATE: 05.01.09
 DRAWN BY: [Name]

LOCATION:
 SITE MAP

LM



299

INN AT NEWPORT RANCH
 Fort Bragg, California
 SELTERS & COMPANY ARCHITECTS
 SANFORD STRAUS ARCHITECTS

DATE 05.01.09
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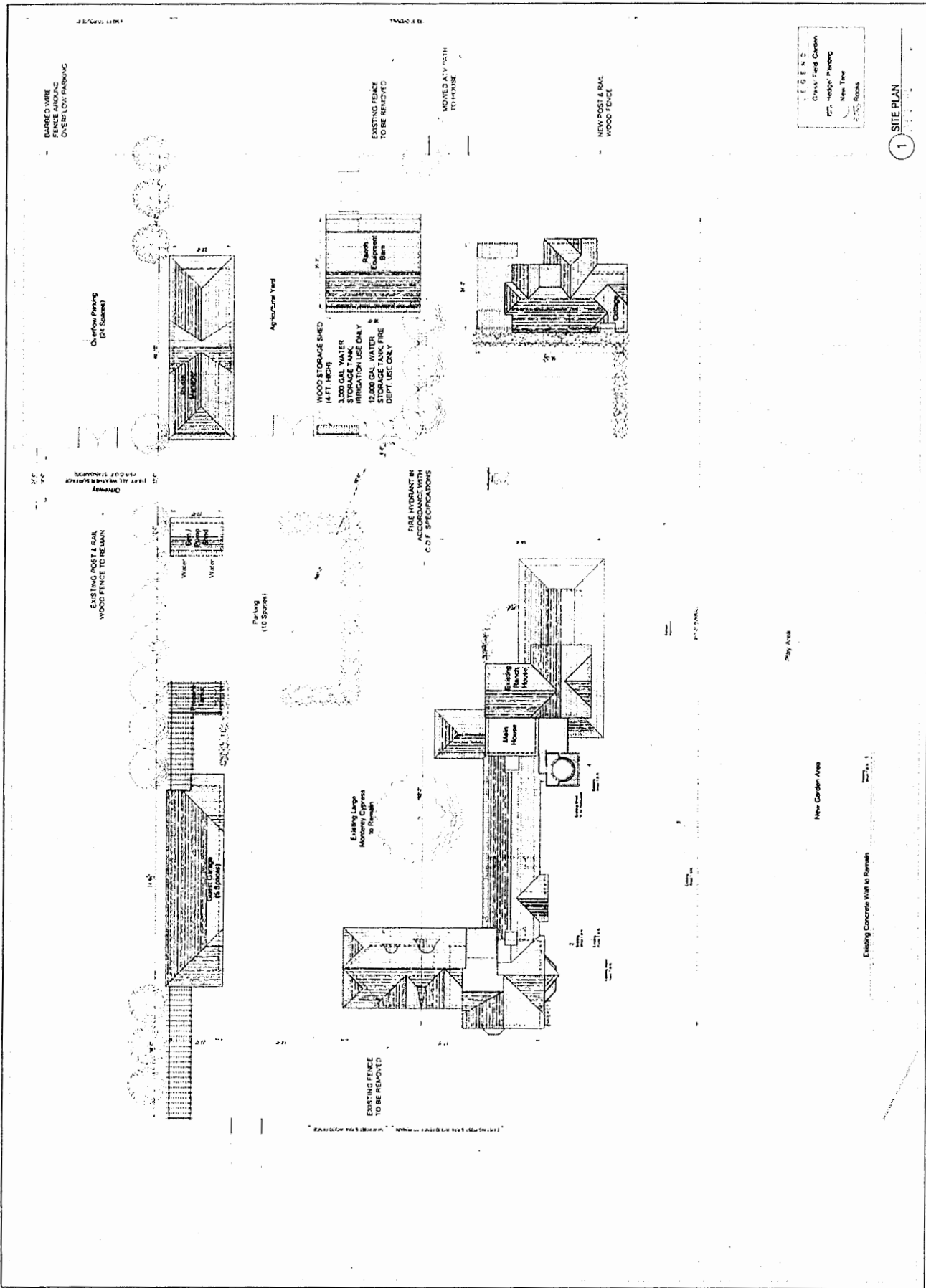
SCALE 1" = 20'
SP

NOTE: CONSULT LOCAL AND STATE REGULATIONS FOR ALL PERMITS AND APPROVALS. THIS PLAN IS BASED ON THE INFORMATION PROVIDED BY THE CLIENT AND IS NOT TO BE USED FOR ANY OTHER PURPOSES WITHOUT THE WRITTEN CONSENT OF THE ARCHITECTS.

1 SITE PLAN

LEGEND

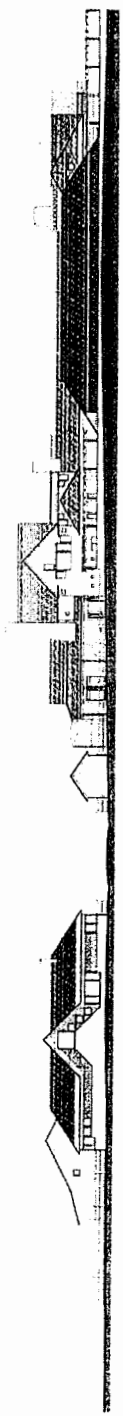
- Grass Field Caden
- Existing Paving
- New Tree
- Rocks



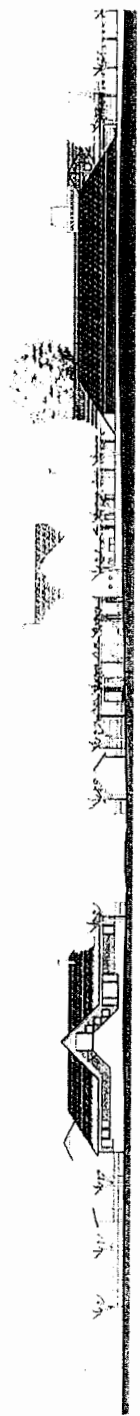
3 of 9



NOT TO SCALE
 THESE ELEVATIONS ARE FOR INFORMATION ONLY
 AND SHOULD NOT BE USED FOR CONSTRUCTION
 WITHOUT THE ARCHITECT'S APPROVAL
 ALL RIGHTS RESERVED



EAST ELEVATION (View from Route #1)
 1 Trees not shown



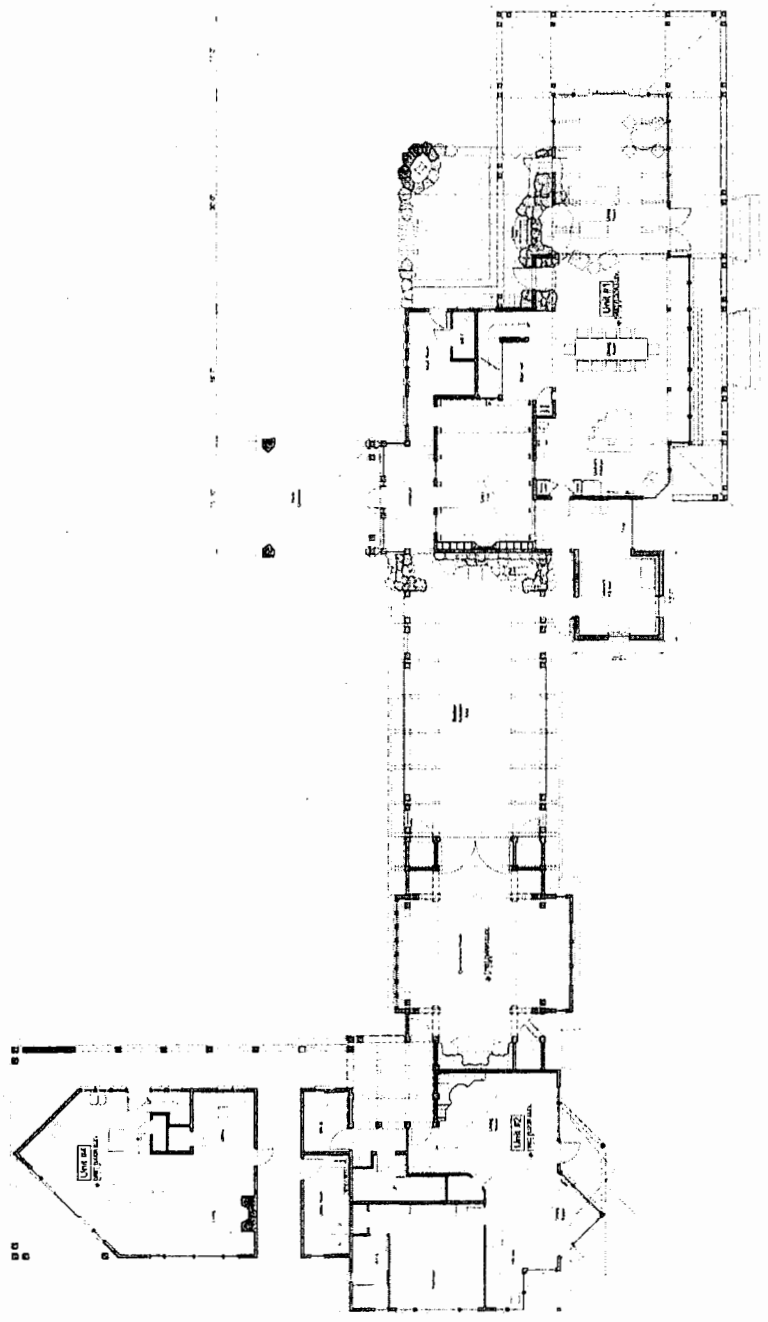
EAST ELEVATION (View from Route #1)
 2 Trees shown

6 of 7

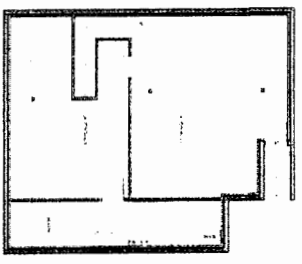


NOTES:
 1. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
 2. FINISH FLOOR IS INDICATED BY A DOTTED LINE.
 3. ALL WALLS ARE 12" THICK UNLESS NOTED OTHERWISE.
 4. ALL DOORS ARE 36" WIDE UNLESS NOTED OTHERWISE.
 5. ALL WINDOWS ARE 60" WIDE UNLESS NOTED OTHERWISE.
 6. ALL CEILING HEIGHTS ARE 8' UNLESS NOTED OTHERWISE.
 7. ALL STAIRS ARE 36" WIDE UNLESS NOTED OTHERWISE.
 8. ALL ELEVATIONS ARE TO FACE UNLESS NOTED OTHERWISE.
 9. ALL FINISHES ARE TO BE DETERMINED BY THE ARCHITECT.
 10. ALL MATERIALS ARE TO BE APPROVED BY THE ARCHITECT.
 11. ALL WORK IS TO BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES.
 12. ALL WORK IS TO BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE MECHANICAL, ELECTRICAL AND PLUMBING CODES.
 13. ALL WORK IS TO BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE FIRE AND LIFE SAFETY CODES.
 14. ALL WORK IS TO BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE ENERGY EFFICIENCY CODES.
 15. ALL WORK IS TO BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE ACCESSIBILITY STANDARDS.
 16. ALL WORK IS TO BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE ENVIRONMENTAL STANDARDS.
 17. ALL WORK IS TO BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE SUSTAINABILITY STANDARDS.
 18. ALL WORK IS TO BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE HEALTH AND SAFETY STANDARDS.
 19. ALL WORK IS TO BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE QUALITY STANDARDS.
 20. ALL WORK IS TO BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE PROFESSIONAL STANDARDS.

1 FIRST FLOOR PLAN



2 BASEMENT PLAN



599

NOTES:
 1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
 2. FINISHES TO BE DETERMINED BY THE ARCHITECT.
 3. SEE SCHEDULE FOR MATERIALS AND FINISHES.
 4. SEE SCHEDULE FOR MECHANICAL AND ELECTRICAL REQUIREMENTS.
 5. SEE SCHEDULE FOR SPECIALTY CONTRACTOR REQUIREMENTS.
 6. SEE SCHEDULE FOR SPECIALTY TRADE REQUIREMENTS.
 7. SEE SCHEDULE FOR SPECIALTY EQUIPMENT REQUIREMENTS.
 8. SEE SCHEDULE FOR SPECIALTY FURNITURE REQUIREMENTS.
 9. SEE SCHEDULE FOR SPECIALTY FIXTURES REQUIREMENTS.
 10. SEE SCHEDULE FOR SPECIALTY LIGHTING REQUIREMENTS.
 11. SEE SCHEDULE FOR SPECIALTY PAINTS AND COATINGS REQUIREMENTS.
 12. SEE SCHEDULE FOR SPECIALTY GLASS AND GLAZING REQUIREMENTS.
 13. SEE SCHEDULE FOR SPECIALTY METALS AND FABRICATION REQUIREMENTS.
 14. SEE SCHEDULE FOR SPECIALTY WOODWORK AND MILLWORK REQUIREMENTS.
 15. SEE SCHEDULE FOR SPECIALTY STONE AND TILE REQUIREMENTS.
 16. SEE SCHEDULE FOR SPECIALTY PLASTER AND CONCRETE REQUIREMENTS.
 17. SEE SCHEDULE FOR SPECIALTY ROOFING REQUIREMENTS.
 18. SEE SCHEDULE FOR SPECIALTY EXTERIOR FINISHES REQUIREMENTS.
 19. SEE SCHEDULE FOR SPECIALTY INTERIORS REQUIREMENTS.
 20. SEE SCHEDULE FOR SPECIALTY EXTERIORS REQUIREMENTS.

SCALE

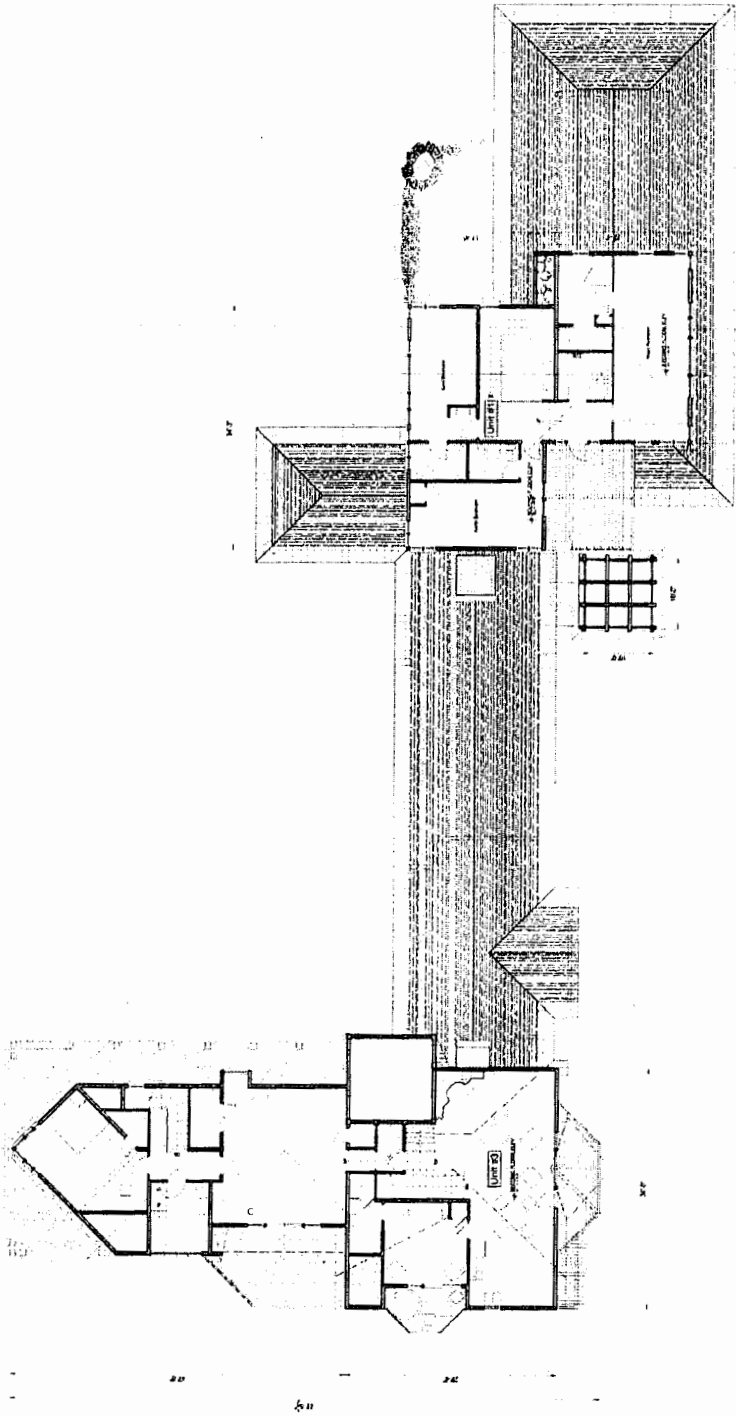
INN AT NEWPORT RANCH
 Fort Bragg, California
 Sellers & Company Architects
 SANFORD STRAUSS ARCHITECTS

DATE: 05.01.09
 REVISIONS



THIS
 MAIN
 BUILDING -
 FLOOR PLANS
 SHEET NO.

A-2



1 SECOND FLOOR PLAN

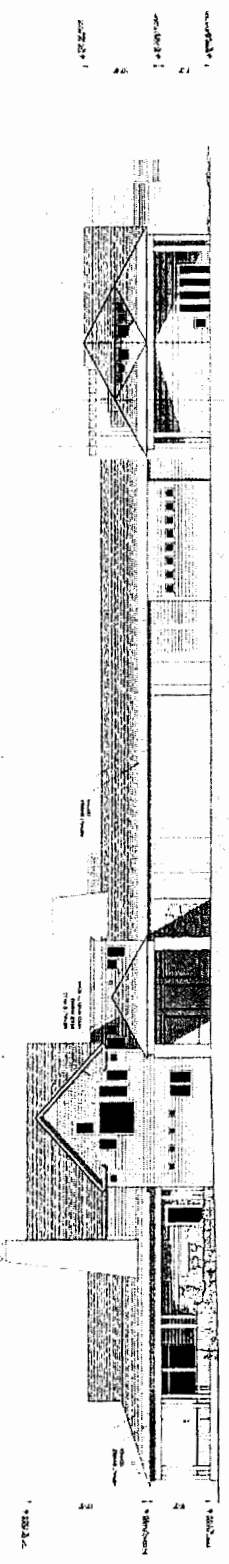
Loop 9

INN AT NEWPORT RANCH
Fort Bragg, California
Sellers & Company Architects
SANFORD/ STRAUSS ARCHITECTS

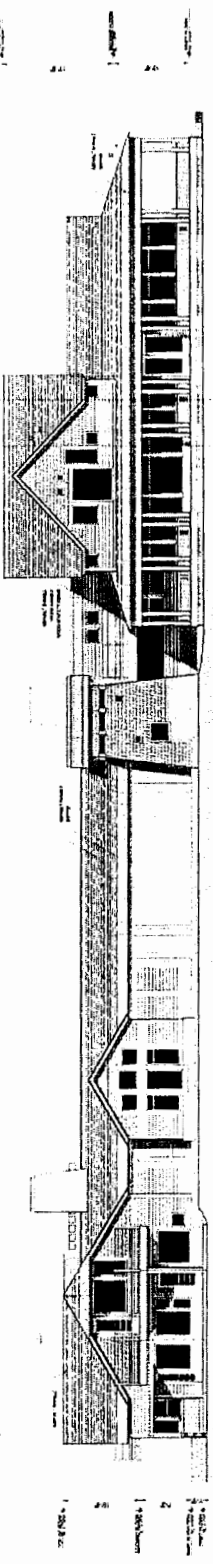
DATE: 05.01.09
 REVISIONS:

TYPE: MAIN BUILDING - ELEVATIONS
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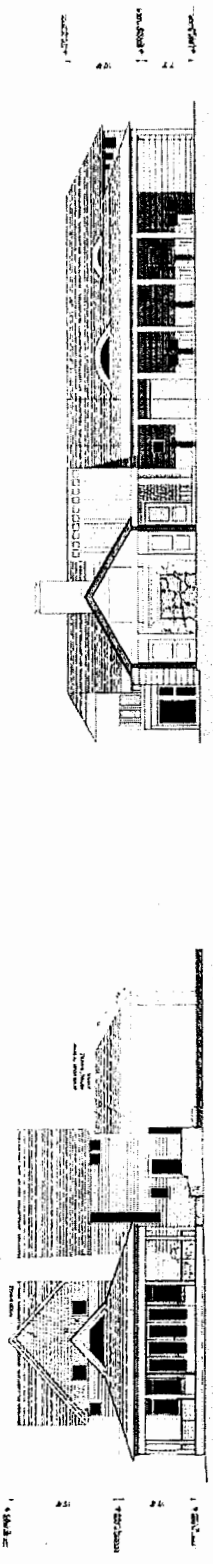
NOTE: SEE SHEET A-1 FOR GENERAL NOTES AND SPECIFICATIONS.
 ALL DIMENSIONS ARE IN FEET AND INCHES.
 UNLESS OTHERWISE NOTED, FINISHES ARE AS SHOWN.
 MATERIALS TO BE USED AS SHOWN OR APPROVED BY ARCHITECT.
 CONTRACTOR TO VERIFY ALL CONDITIONS AND CONDITIONS OF WORK.
 ALL WORK TO BE DONE IN ACCORDANCE WITH LOCAL, STATE AND FEDERAL CODES.
 ALL WORK TO BE DONE IN ACCORDANCE WITH LOCAL, STATE AND FEDERAL CODES.



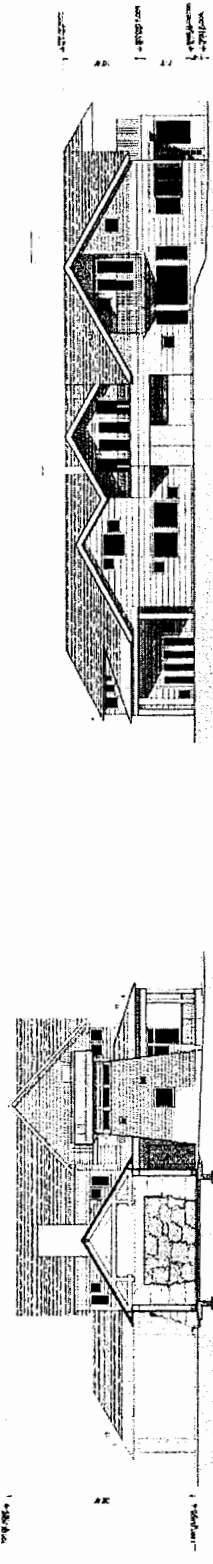
1 EAST ELEVATION



2 WEST ELEVATION



3 SOUTH ELEVATION - at Main House



4 NORTH ELEVATION - at Main House

602

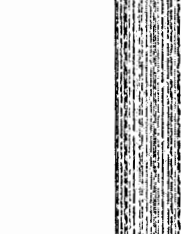
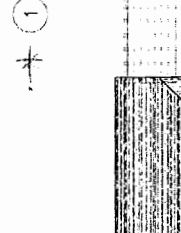
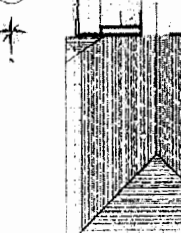
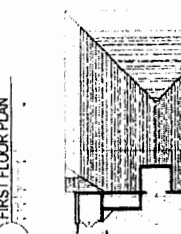
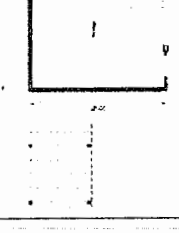
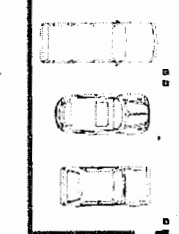
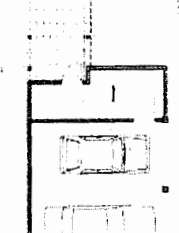
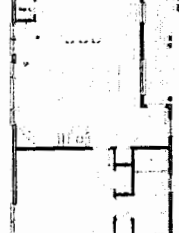
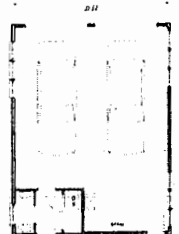
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 REVISIONS:

INN AT NEWPORT RANCH
 Fort Bragg, California
 Sellers & Company Architects
 SANFORD STRAUSS ARCHITECTS

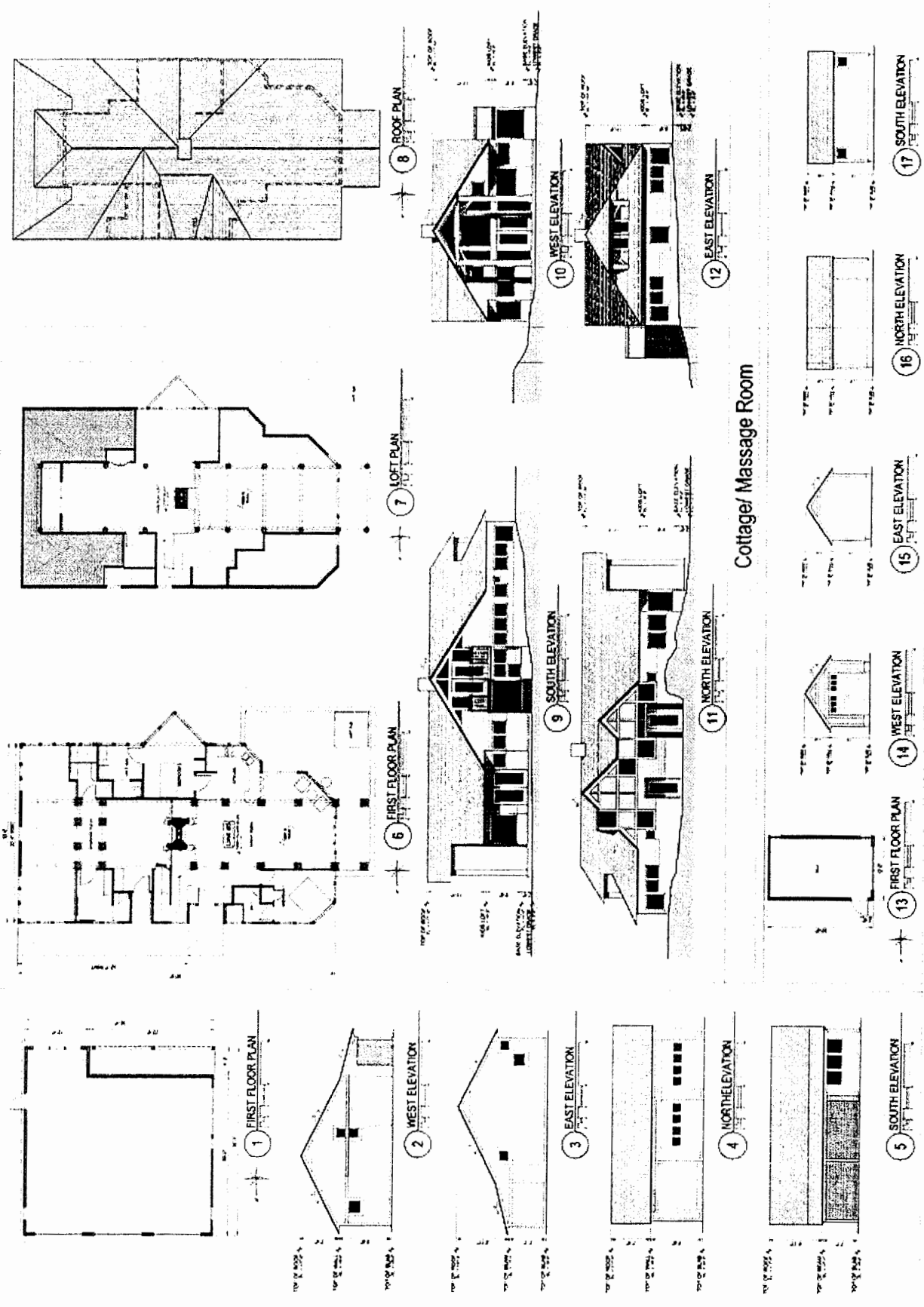
TITLE: GUEST GARAGE & RANCH MGR.
 SHEET NO: A-4

Ranch Manager

Guest Garage



6 of 9



1. All drawings are to be read in conjunction with the General Notes and Specifications. 2. The Contractor shall be responsible for obtaining all necessary permits. 3. The Contractor shall maintain access to all existing utilities. 4. The Contractor shall protect all existing structures and landscaping. 5. The Contractor shall be responsible for the disposal of all construction waste. 6. The Contractor shall maintain the site in a safe and clean condition at all times. 7. The Contractor shall be responsible for the completion of all work within the specified time frame. 8. The Contractor shall be responsible for the payment of all subcontractors and suppliers. 9. The Contractor shall be responsible for the completion of all required inspections. 10. The Contractor shall be responsible for the final cleanup of the site.