

Brent Anderson

General Contractor

P.O. Box 53

Fort Bragg, California 95437

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July 31, 2007

Editor

Advocate News

P.O. Box 1188

Fort Bragg, California 95437

This is in response to Ms. Vidaver's comments in the Community Forum on July 26th, in which she vehemently objects to the Inn at Newport Ranch project

This project has been in the planning stages for many years. It has seen numerous revisions, changes and modifications to bring it to its present condition. Through compromise and negotiation with the various agencies involved, a design has been agreed upon and approved by the County Planning Commission. It is not the 'massive in scale' project depicted in the recent Community Forum article.

I will begin by addressing some of the issues in Ms. Vidaver's letter:

Ms. Vidaver states that there is no commercial development in the area. I guess the popular Pacific Star Winery directly north of the project doesn't count.

Also, the area is nearly free of any development. I can count seven homes in the immediate area, with another one being built at this very moment.

Then, the building facade is 275 feet long. Wow! If you added up all the facades of all the buildings visible from route one they might total 275 feet. However that's a speck on the 1660-acre ranch with one and a quarter miles of oceanfront bluffs. The panoramic views will remain and be enhanced, in my opinion, by the attractive new buildings replacing the existing ones, which are falling down.

Next, there will be ten units. Well, no. Although the land is zoned for a ten-unit inn, there will only be seven units. At the most recent hearing, the owner agreed to reduce the size from ten units to seven, three of which are consolidated within the main structure.

Finally, the ranch manager's house will not be occupied, and there will be no responsible party on the property. Well, the ranch manager already lives on the property, already manages the property, and the owners would like to upgrade his living arrangements. I think the manager would take offense to saying there is no responsible party present.

I also love the description of the 'coastal terrace with a lone cypress to soften its impact ...' What about the dilapidated farm house, collapsing barns, rotting outbuildings, utility poles and fences? Did you miss seeing them in your idyllic painting of a pristine setting?

Yes, the owners live out of this area, but they have owned the ranch for over twenty years and are heavily invested and respected in our community. They are willing to spend

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anderson@mcn.org

EXHIBIT NO. 25

APPEAL NO.

A-1-MEN-07-028

JACKSON-GRUBE FAMILY, INC.

CORRESPONDENCE

Brent Anderson

General Contractor

Page two

several millions of dollars to improve what is now a very run down ranch complex on the verge of collapsing. They are not some ruthless developers trying to build a high rise hotel amongst the pristine beauty of our coast.

This project has been tastefully designed by a group of outstanding architects. The grading plan lowers the visual impact of the structures, and the materials chosen for use have been selected to blend in with the surroundings.

Ms. Vidaver would have you believe that Cal-Trans would need to build a cloverleaf intersection to handle the hundreds of cars and thousands of people flocking to this mega-resort, spewing tons of 'carbon emissions' into our sky. The image boggles my mind! Then there is the sentence 'As a high-end visitor service facility it conflicts with the Coastal Plan mandate to provide "affordable" facilities for visitors'. Well, it may interest you to know that it is less expensive for families vacationing together to rent a vacation facility, complete with those objectionable kitchens, than it is to stay at motels and eat in restaurants.

The phrases 'massive scale', 'unlimited size', 'dangerous precedent', 'precious pristine areas' used in the article sure does evoke a feeling of dread. One look at the plans gives an entirely different picture.

I have been associated with the owners for over twenty years in this community.

Recently, I have remodeled their personal home (designed by the same architects) just south of the inn - a home that blends in with its surroundings and virtually disappears from view from the highway. The owners are, indeed, committed to this coastal area.

We no longer have a lumber industry in this area. The commercial fishing business is all but non-existent. We only have tourists and a building trade that issues from those same tourists and retirees that decide this would be a nice place to live. People like Ms.

Vidaver have already chased off the film industry with their 'head in the sand' attitude about development of any nature. I've lived here for thirty years and watched those who would like no development, to those who want to build their dream homes on the ocean's edge. Change is inevitable. Instead of saying no to these changes, make suggestions to improve the situation. Stop trying to turn back the clock to 1967. It was a bad year.

Ms. Vidaver is wrong. This is a worthwhile and attractive project that will bring much needed monetary resources to our local struggling economy.

Yes, I have a personal interest in this project, just as Ms. Vidaver has her interest in keeping any development away from her back yard. I have a set of plans that show me a very different picture than the one painted in the article. They are here at my home for anyone to view, if they so desire. And yes, I would also like to build this project, in the process employing many local tradesmen, subcontractors and building suppliers.

Brent Anderson

Member

Friends for a Healthier Local Economy

(707) 964-1832

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707 964-3670
Facsimile: 707 964-4396
harvalan@mcn.org

Harvey Alan Hoechstetter

8/2/2007

California Coastal Commission
North Coast District Office
Attn: Bob Merrill
710-F Street, Suite 200
Eureka, CA 95501

RECEIVED

AUG 06 2007

CALIFORNIA
COASTAL COMMISSION

Dear Mr. Merrill,

I have enclosed a paper with my opinion on a project that was recently decided by the Mendocino County Planning Commission. Please add this letter to an appropriate file related to the Inn at Newport Ranch project.

I have also submitted this opinion to for the Community Forum in the Fort Bragg Advocate local newspaper.

I am supporting the CCC's decision and Will Jackson's plan for a B&B on his lands along the coastline south of Westport.

Cordis

Signature on File

harvey Hoechstetter

A Practical Approach to Preventing Further Development

By Harvey Hoechstetter

As much as I respect Judith Vidivar's opinions and admire her hard work to keep our north coast unspoiled, I strongly disagree with her regarding the proposed Inn at the site of the old town of Newport. I do agree with the Mendocino County Planning Commission decision that the project, called the Inn at Newport Ranch should go forward. The property owner has owned this land for 20 years. He has not logged or developed his property. He keeps the fire roads open and leases grazing rights to a neighboring rancher. He's actively protected those 1600 hundred acres from development, logging, and subdivision. His purpose and goal in building a small Inn on 4 of his acres is to create just enough income to pay the taxes and upkeep for all the acreage, so that his heirs will not feel pressured to log the redwood forests or sell off the lands to developers. Thoughts of preserving this land as a whole for the future are on his mind.

The reason that he's designed multi-roomed units is that he wants to create a family-friendly place for folks to share the joys and beauty of these unspoiled lands he's protecting for all of us to enjoy seeing in perpetuity. Even though the County planners approved "unlimited events with up to 99 people", the owner's intent is much more limited in number and size, primarily for smaller groups such as family occasions like weddings and reunions. No rock and roll concerts!

The mile and a quarter of road frontage on both sides of Hwy 1 will be kept undeveloped as cattle grazing lands, with views over the Pacific unblocked except for in the area which traditionally has had many more buildings than exist there today. As a matter of fact, the building envelope is only 335 feet wide north to south, out of the mile and quarter (almost 7000 feet) of water frontage views. Landscaping will not be manicured, with only approximately 60 x 40 feet of irrigated lawn, and mowed trails through the natural fields. The town of Newport once housed over 5000 people. Gradually everything either burned or rotten down, except the four buildings left. The footprint of the Inn at Newport Ranch project will occupy just a miniscule part of the old settlement. This is a practical way to prevent this beautiful section of highway from Abalobadia Gulch to the rental properties just south of Pacific Star Winery from ever being developed. The many rental houses and the winery do constitute other low impact, environmentally sensitive "commercial" uses of land between Ingleook and Westport.

If you'd like an idea of the owner's low impact aesthetics of design, you should look at his own house, which is due south of the old Orca Inn homestead. I'll bet you never noticed it and might not even be able to find it if you look! It's built to be practically invisible, uses re-cycled and natural local materials, and literally melts into the landscape. I've seen the designs for his cozy Inn at Newport Ranch, and think it will fit in nicely. In truth, if the owner were to put in a camp ground, or log his lands, or sell off the various parcels separately to numbers of other families, these options would create much more damaging or even dangerous traffic on our Highway 1, and change our local environment to a much greater degree. My hope is that this family is able to complete their small dream project without any further delays, so that their many hundreds of acres of lands remain unspoiled for years to come.

Harvey Hoechstetter is a Westport resident and a member of Friends of the Ten Mile

PETER T. PARKER 1929 MEADOWBROOK ROAD ALTADENA, CA 91001

November 20, 2007

Robert Merrill, North Coast District Manager
California Coastal Commission
PO Box 4908
Eureka, CA 95502-4908
RE: Appeal # A-1-MEN-07-028, Jackson-Grube Family, Inc.

Dear Mr. Merrill:

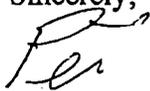
I am writing this letter in support of the Willard Jackson Inn Project at the old Orca Inn, Newport site. As a landowner on the north coast and a senior citizen, I am very aware of the challenges existing to keeping private land open, financially viable and within family ownership. Today in California there are great pressures to sell off and subdivide larger land parcels, seriously compromising wild life habitat and light agricultural use. The inn project on this property, to which Mr. Jackson has added acreage over the years, is an effort on his family's part to counter this trend.

The 1,650 acre property is a combination of forested and open grazing land upon which he proposes to develop only 3.5 acres. The developed area will be 383 feet from north to south out of a total of 7000 feet of coastline measured "as the crow flies." The inn will, I understand, be behind a fence.

In the late nineteen eighties, our family spent several weekends at the old Orca Inn. While the setting was magnificent, the inn itself was very old and in need of major repairs. Indeed, the building we stayed in was beyond repair in my opinion, and is one of the six buildings to be removed.

I urge the commission to look favorably upon this project which can give Mr. Jackson and his children income necessary to maintain the 1,646.5 undeveloped acres in their pristine, beautifully natural and undivided condition. I hope that you and the commission will recommend approval of this inn project.

Sincerely,



Signature on File

Signature on File

Peter T. Parker

Robert Mervell, North Coast District Manager

California Coastal Commission

P.O. Box 4908

Eureka, CA. 95502-4908

RE: Appeal # A-1-MEN-07-028, Jackson-Grube Family, Inc.

Mr. Robert Mervell,

11-28-07

I am writing in support to build the ten units at the Sun at Newport.

The buildings that will be removed, are an eyesore as they stand.

Will has always done beautiful work, and I feel that having what

is planned for that place, Actually built, would be a definite

improvement for the property. I am eager to see it built, finished,

and used for what it is intended. I am not opposed to the project.

Sincerely,

MM. Signature on File ^{pick}

Marzel Klugnierz-Zetwick

Robert Merrill
North Coast District Manager
California Coastal Commission
P.O. Box 4908
Eureka, CA. 95502-4908

Robert Merrill -

11-28-07

Page 1

Regarding the Orca Inn project. My wife Margal and I each drive past it at least twice a day, unlike some people opposed to the project who never see it. There is nothing romantic or charming about half a dozen rundown old farm buildings. If we had our way we would choose to have a modern code complying set of buildings. Knowing Will Jackson and the quality of work the local contractors do, we are confident it will be a nice looking group of buildings. The percentage of property covered compared to available land is very small.

I would also remind people of the benefit to the local economy. From the very start, locals will have earned money that changes hands six times before it leaves the Coast.

- The building and health dept. staff
- The inspectors who check to make sure everything is done correctly.
- The backhoe and truck operators and the people they buy fuel from will benefit.
- The lumberyard workers, their office people, and the delivery men who come to the site.
- The engineers and architects
- Foundation crews and the concrete company, their office people and drivers.
- The carpenters who will frame the units.
- The plumbers and their suppliers.
- The heating and Ventilation crews.

Page 2.

- The electricians, and their support crews.
- The drywall crew.
- The local trash collectors who supply large dumpsters.
- The local portable toilet company and his dog yoda!
- The roofers and rain gutter crews.
- The painters, interior and exterior.
- The landscapers and gardeners and their suppliers.

These people will spend their money at markets, restaurants, places of entertainment. These businesses will show a better profit. That will not only benefit their employees, but the very people who oppose this project, by keeping the business from raising prices to show the same amount of profit.

Marzel and I, Robert Zetwick, fully endorse and promote this project. Thank you for your time, Mr. Merrill.

Sincerely,

R

Signature on File

Robert E. Zetwick

RECEIVED

DEC 04 2007

CALIFORNIA
COASTAL COMMISSION

Robert Merrell, North Coast District Manager

California Coastal Commission

P.O. Box 4908

Eureka, CA 95502-4908

RE: Appeal # A-1-MEN-07-028, Jackson-Grube Family, Inc.

Mr. Robert Merrell,

11-28-07

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The buildings that will be removed, are an eyesore as they stand.

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improvement for the property. I am eager to see it built, finished,

and used for what it is intended. I am not opposed to the project.

Sincerely,

M. Signature on File vick

Marzel Klugherz-Zetwick

Dec. 7, 2007

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DEC 10 2007

CALIFORNIA
COASTAL COMMISSION

TO: Robert Merrill, North Coast District Manager
FR: Hal and Nancy Matthewson
RE: Appeal # A-1-Men-07-028, Jackson-Grube Family, Inc.

Nancy and I have lived at 32501 N. Hwy. One which is in full view of the Orca Inn (proposed site, Will Jackson property) for the last 15 years. We have also known Will Jackson, our neighbor, for the same 15 years.

We are familiar with the proposed project and are in support of it for the following reasons:

- 1) Based on our past experience with Will Jackson we believe that his intention to replace the current dilapidated buildings means that they will be replaced with quality structures that blend in with the natural surroundings and create a minimal visual impact. Although we currently enjoy our southern view which includes the old Orca Inn, Will Jackson will create improvements that will enhance the views.
- 2) Also based on our experience we believe Will and Carolyn have a deep admiration and respect for the property, the coastal environment in which they live, and land that we all share. From our discussions with them, we believe they are intent on preserving this unique treasure of which they are the current stewards.

Please consider our support of Will's proposed project.

Signature on File

Signature on File

Subject: Regarding Will Jackson's Inn at Newport Ranch
From: Lari Shea <larishea@horse-vacation.com>
Date: Mon, 18 May 2009 14:12:39 -0700
To: feedback@westportca.org
CC: Sally Grigg <lostcst@mcn.org>, howardcreekranch@mcn.org, Doreen Tepper <dorine@mcn.org>

Letter to the Westport Village Society

Dear friends,

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

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

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

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

The reason that he's designed multi-roomed units is that he wants to create a family-friendly place for folks to share the joys and beauty of these unspoiled lands he's protecting for all of us to enjoy seeing in perpetuity. Even though the County planners originally approved "unlimited events with up to 99 people", Will and his wife Carolyn never had that intent, and have reapplied for a much more limited project in number and size. It's primarily for smaller family groups such as reunions. No rock and roll concerts!

The 1 1/4 mile of road frontage on both sides of Hwy 1 will be kept undeveloped as cattle grazing lands, with views over the Pacific unblocked except for the area which traditionally has had many more buildings than exist there today. As a matter of fact, the building envelope is only 335 feet wide north to south, out of the almost 7000 feet of water overviews. Landscaping will not be manicured, with only approximately 60 x 40 feet of irrigated lawn, and mowed trails through the natural fields. The town of Newport once housed thousands of people. Gradually everything burned or rotted, except the four buildings left. The footprint of the Inn at Newport Ranch will occupy just a minuscule part of the old settlement. This is a practical way to prevent this beautiful section of highway from Abalobadia Gulch to the rental properties just south of Pacific Star Winery from ever being further developed. By the way, the nearby rental houses and winery do constitute other low impact, environmentally sensitive "commercial" uses of land between Inglenook and Westport.

If you'd like an idea of the owners' aesthetics of design, you should look at their

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

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

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

Lari Shea & Harvey Hoechstetter

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

Harvey Hoechstetter is a Westport resident since 1994 and a member of Friends of Ten Mile

Letter to the Westport Village Society

May 18, 2009

Dear friends,

As much as we respect the opinions and admire the hard work of those who struggle to keep our coast unspoiled, we strongly disagree with those who oppose Willard Jackson's proposed Inn at the site of the old town of Newport. We think that The Inn at Newport Ranch project should go forward. Will bought this land more than 20 years ago. Although he certainly could have, he has not logged it at all. Other individuals and companies over the years have attempted to buy all or part of it from him, to log and/or to develop in various ways. Will leases grazing rights to a neighboring rancher whose family has been in the cattle business for generations. He keeps the fire roads open, protecting neighboring land owners.

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

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

The reason that he's designed multi-roomed units is that he wants to create a family-friendly place for folks to share the joys and beauty of these unspoiled lands he's protecting for all of us to enjoy seeing in perpetuity. Even though the County planners originally approved unlimited events with up to 99 people, Will and his wife Carolyn never had that intent, and have reapplied for a much more limited project in number and size. Its primarily for smaller family groups such as reunions. No rock and roll concerts!

To whom it may concern,

I am writing in regards to the Jackson Grube project. I have known Will Jackson for over fifteen years as a personal friend and business associate. I would like to say that during the time I have known Will he has always acted as a responsible steward of his properties especially in regard to the esthetics and use of the lands natural resources.

I have been able to review the proposed plans for the Inn and it is my interpretation that the view of the horizon (ocean view) will not be affected by new construction as building will only be to the east of an existing home and outbuildings. Also, the design of the proposed addition is complimentary to existing buildings and the properties natural surroundings.

Will has gone through great expense and time to reassure his neighbors and interested parties that his project will have minimal impact on already existing visual and environmental resources. As a small business owner, I understand the many issues that have to be resolved in order to begin a new project and I feel that Will has fulfilled all his obligations and should be granted permitting without further delay.

Sincerely,

Ronelle McMahan

May 23, 2007

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

RECEIVED
MAY 26 2009
CALIFORNIA
COASTAL COMMISSION

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

Dear Mr. Merrill and Members of the Coastal Commission:

I am writing as an expert in archaeological and historical resources to express concern about the inadequacy of the consideration given to impacts of this proposed development on archaeological and other historical resources. The Commission found substantial issues with the project approved by the County of Mendocino on appeal and is now engaged in *de novo* review. In that role, the Commission is charged with determining the adequacy of efforts to comply with the California Coast Act, its implementing regulations, and Mendocino County's approved Local Coastal Program. I will explain the basis for my concerns and offer informal advice on typical mitigation measures employed to mitigate impacts to such resources.

Public Resources Code (PRC) 30244, an implementing guideline for the Coastal Act, specifies "where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required." The SHPO has established that archaeological resources are part of a broader group of "historical resources" that require protection under State law. The SHPO's implementing guidelines (PRC 5020-5029) do not separately define archaeological resources because all types of historical require protection by State agencies and commissions. In addition, the California Environmental Quality Act (Sections 21084.2-21084.3) require consideration of impacts to archaeological and historical resources.

The term historical resource "includes, but is not limited to, any object, building, structure, site, area, place, record, or manuscript which is historically or archaeologically significant, or is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California" according to PRC 5021(j). A resource qualifies as a historical resource if it meets the criteria established in PRC 5024.1.

The Negative Declaration (ND) prepared by the County of Mendocino to support approval of this proposed undertaking is seriously flawed with regard to the evaluation of historical and archaeological resources as they are defined by the SHPO. An investigation by Jay Flaherty (1990) used to support Mendocino County's findings failed to complete these analyses:

- 1.) The surviving historic buildings were neither recorded or evaluated by a professional architectural historian or historian to determine if they qualify as historical resources as defined by the SHPO, and impacts to them have not been assessed.

Letter to Robert Merrill
California Coastal Commission

May 23, 2009
page 2

2) Archaeological remains of the historic town of Newport, its shipping chute, and the historic farm were neither recorded or evaluated to determine if they qualify as historical resources as defined by the SHPO, nor have impacts to this site been assessed.

Archaeologists are well aware that the presence of a nineteenth century town and later use as a farm strongly imply the presence of buried archaeological deposits and features, even when surface indications are scarce. That expectation is clearly set forth in SHPO guidance prepared cooperatively with Caltrans for agricultural sites (http://ohp.parks.ca.gov/?page_id=24544). Despite that widely accepted fact, Flaherty's report fails to recommend any reasonable follow up measures to verify whether or not any qualifying buried archaeological resources are present.

With no characterization or evaluation of the historic buildings and the associated archaeological resource, there are no grounds for assessing the significant adverse impacts this project is likely to cause. It is reasonable to observe that the scope of the proposed development will radically alter the historical setting, rendering the historic buildings unrecognizable. It will also create a great deal of ground disturbance that can irreparably destroy the fragile and non-renewable archaeological deposits and features likely to be present under the ground surface.

The presence of historical and archaeological resources cannot be left to speculation. Instead, the issue must be competently evaluated by trained professionals in architectural history and historical archaeology. Only then can issues of impact and mitigation be satisfactorily addressed under the Coastal Act to provide a solid foundation for either approving or denying a coastal development use permit. I therefore strongly urge you and the Coastal Commission to postpone approval of the project until that evaluation has taken place to inform your decision.

If eligible historical resources are present and will be impacted, suitable mitigation measures should be enforced as a condition of project approval. Typical mitigation for historic buildings might include historical research, architectural renderings, and photography. Mitigation for buried archaeological resources is normally accomplished with a scientific investigation carried out by a professional historical archaeologist under the terms of an approved treatment plan prepared and implemented prior to any demolition or other soil disturbance.

Because this matter is scheduled for a hearing in Marina del Rey, I am unable to personally appear to express my concerns. I request that this matter be continued until suitable investigations have been completed and respectfully ask that it be rescheduled for a hearing in northern California where it may be more practical for concerned local citizens and appellants to attend. If I can clarify any matters raised in this letter, please do not hesitate to contact me at (707) 964-7272. Thank you for considering my views.

Sincerely,

Signature on File

Thad M. Van Bueren, M.A.
Registered Professional Archaeologist
P.O. Box 326
Westport, CA 95488

Mrs. Peter J. Whiting - 31448 N. Hwy. 1 - Fort Bragg, CA. 95437

CALIFORNIA COASTAL COMMISSION

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

RECEIVED

MAY 26 2009

CALIFORNIA
COASTAL COMMISSION

May 19, 2009

Re: Jackson - Grube Family Inn Project A-1-MEN-07-028

Dear Mr. Merrill;

On May 18, I received a call from Thad Van Buren – the monthly meeting of the WESTPORT MAC (Municipal Advisory Committee) was scheduled and Thad did not have my Email address, but wanted to notify me of the Meeting. I went with 3 others from Ocean Meadows. We were amazed when pulling up in front of the very small church where the meetings are held to find a scarcity of parking. The room was crowded with about 20 – 25 people – the Jackson Group had banded together. (There are seldom more than 7 to 10 folks at these meetings.)

There were no members of Mr. Jackson's family there – just those who could/would directly benefit from the building of this project, those who currently are in debt to Mr. Jackson or paid by him such as: Mattson Building Supply/owner; Brent Anderson/contractor; Lari Shea & husband/horsewoman & trail boss; Michael Thomas/replacing Bud Kamb as project mgr; the particularly voracious and bombastic, Gary Quentin a resident of the area; and several others living in many of the older homes on Jackson's properties. They plan to pass a petition in favor of the project all extolling the philanthropy and goodwill of Mr. Jackson, who is now in his 80's. All of the proponents stated repeatedly, that Mr. Jackson wants to perpetuate the "open space and forest lands" – yet he has declined to place these in the Nature Conservancy or other such agency, thus assuring such future use. Who knows what will occur in later years? The property in question is now owned by Mr. Jackson's heirs – his children and their respective spouses, each taking their place on their "Board of Directors" – none living locally, with the majority in the East Coast. It will not be a family operated facility.

Mr. Thomas brought forth large scale maps, photos, and diagrams indicating and stating that the project has been scaled down considerably from that which the County had approved originally. In questioning both Michael Thomas & Brent Anderson, they indicated the "foot-print" of the area to be developed was indeed much smaller, the number of buildings fewer and less expansive. I asked specifically just how many "BEDROOMS" were planned. Anderson said 9... ??? Is that in Phase 1 with more to come later? They are still referring to "UNITS" here, so **We** still do not know. Presumably, the number of kitchens & baths has been decreased as well, yet it is impossible to tell from the reduced size of the drawings & elevations presented, what may have been actually been revised. The County originally approved parties & gatherings of up to 99 people, with no additional notice or permits, yet I find no mention of this in either the Hydrology Report or the very brief Traffic Report, nor was there any mention that this sort of activity would **NOT** be occurring there. Surely an increase of numbers in such magnitude must enter into the calculations and evaluations given in both of these reports. They are not. I am still greatly concerned over the water issues in

Mrs. Peter J. Whiting - 31448 N. Hwy. 1 - Fort Bragg, CA. 95437

this Critical Water Area, and feel that if the project has indeed been changed, we should certainly have been informed officially by Coastal.

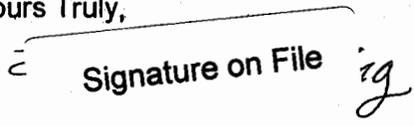
Although Gary Quentin was aggressively antagonizing, trying to pick a fight with anyone who opposed his viewpoint, the MAC Board responded very civilly and explained that it was not their place to propose anything to Coastal Com. in the way of opinions nor advice, as this matter has gone beyond the Mendocino Board of Supervisors and Planning Departments. The MAC only serves to advise their locally appointed officials.

Guess it all boils down to this: If the project has been reduced in size greatly, as indicated just last night by those representing Mr. Jackson, thus somewhat lessening the demand on resources, and there are no expansion plans lurking around the corner, we should have been made aware of this officially. In past statements, references have been made to Phase 1 and Phase 2 of this project. Therefore, please give us a definite answer concerning the exact number/s of: BEDROOMS, BATHS, & KITCHENS including the Caretaker's House which are officially included in the current plan as submitted to Coastal? Also, we need a translation of "UNIT" and what that means? This ambiguous term has been used and abused substantially by both the Developer and Mendocino County. If 3 Bedrooms/ 3baths/ and a kitchen having one outside door comprises "ONE UNIT", then why not 6 or 10? (A single "UNIT" was 3600 Square feet - much larger than many homes in this area! Is this still the case?)

We have been given very short notice of this important meeting of the Coastal Committee with little time to evaluate the Reports just received (although these were requested in writing months ago). Marina Del Rey is more than 600 miles away from here, making transportation lengthy and costly for us. I ask that this item be removed from the Agenda of the June 10 -12th Meeting and calendared at a later date - preferably in Northern Calif. which is far more accessible for us, also giving time to resolve the issues defined above. Any revisions, alterations, or additions to the original plans should have been Noticed for Public comment as an un-informed public cannot make thorough decisions without being fully appraised of all facts. Only with these facts plainly stated and truthfully defined, can this issue be evaluated and dealt with fairly.

Please send your reply to me with Copy to attorney, Jared Carter, of Carter & Momsen in Ukiah. Thanking you for your time and consideration,

Yours Truly,

 Signature on File

Judith G. Whiting

9-24-09
Frank Maurice
247 N. Main St.
Fort Bragg, Ca. 95437

Dear Coastal Commission:

My name is Frank Maurice and I am writing this letter in support of the Jackson Family Proposed Inn project near Westport on the Mendocino Coast.

The Jacksons have designed a beautiful small Inn for this coastal property that they own and I believe that it will have a positive effect on this stretch of coast and for the community.

I also live in Westport and have worked well with the Coastal Planners developing my own home.

Thank You for considering my support for the Jackson's Planned Project.

Sincerely

Fma
Frank Ma

Signature on File

e

RECEIVED

SEP 28 2009

CALIFORNIA
COASTAL COMMISSION



Thad M. Van Bueren, M.A.

Registered Professional Archaeologist

P.O. Box 326

Westport, CA 95488

FAX by arrangement

(707) 964-7272

thadvanbueren@directv.net

RECEIVED

SEP 28 2009

September 26, 2009

California Coastal Commission
710 E Street, Suite 200
Eureka, CA 95501-1865

CALIFORNIA
COASTAL COMMISSION

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

Dear Coastal Commissioners:

I reviewed the staff report for the cited appeal scheduled for hearing at your October 7, 2009 meeting in Oceanside. I remain strongly concerned that my prior comments have been ignored and the conditions recommended for approval of this project are insufficient to avoid predictable harm to archaeological resources (Condition 8).

My prior letter of comment received by you on May 26, 2009 (appeal staff report Appendix 2) contains the full rationale for my concern, which I will not repeat here. I would, however, like to highlight the key issues since I am unable to attend the hearing:

1. A flawed archaeological survey failed to record the obvious remains of Newport Landing and a nineteenth century farm, both of which are still clearly indicated by standing structures. Buried archaeological deposits are almost certainly associated with that resource and lie under the footprint of the proposed project where foundations and utilities will be excavated.
2. Public Resources Code (PRC) 30244, an implementing guideline for the Coastal Act, specifies "where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required."
3. Condition 8 in your staff report contains no reasonable mechanism for preventing harm to this expected archaeological resource. Construction contractors and the owner are not qualified to identify an archaeological discovery, nor do they have any incentive to report a find. As written, this condition is thus predictably ineffective.

Condition 8 must be revised if the intent is to ensure this archaeological resource is not harmed. Monitoring of ground disturbing activities by a professional archaeologist should be required.

Sincerely,

Thad M. Van Bueren

1 CARTER & MOMSEN, LLP
JARED G. CARTER (#36310)
2 DANIELA M. PAVONE (#252913)
444 North State Street
3 Ukiah, CA 95482
4 Telephone: (707) 462-6694
Facsimile: (707) 462-7839
5 email: jaredcarter@pacific.net

6 Attorneys for Appellants Deborah Cahn,
7 Trustee of the Margerey S. Cahn Living Trust
and Judith Whiting, Trustee of the Whiting
8 Family Revocable Trust

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SEP 30 2009
CALIFORNIA
COASTAL COMMISSION

10 In Re the Matter of Appeal No. A-1-MEN-07-028)
11 Applicants: JACKSON-GRUBE FAMILY, INC.)
12 Appellants: DEBORAH CAHN, TRUSTEE OF)
13 THE MARGEREY S. CAHN LIVING)
14 TRUST, AND JUDITH WHITING,)
15 FAMILY REVOCABLE TRUST.)

BRIEF IN OPPOSITION
#A-1-MEN-07-028

17 A. **INTRODUCTION AND SUMMARY:**

18 Appellants Deborah Cahn, Trustee of the Margerey S. Cahn Living Trust, and Judith
19 Whiting, Trustee of the Whiting Family Revocable Trust, (“Cahn/Whiting”) oppose approval of
20 the above-referenced project.

21 Cahn/Whiting own developed parcels of residential real estate adjacent to the land upon
22 which the Jackson-Grube project will be located and, accordingly, have “property” interests
23 protected by the due process clauses of both the Federal and State Constitutions that assure them
24 reasonable notice and opportunity to be heard respecting this project, quite apart from any
25 statutory rights provided them. (See Horn v. County of Ventura (1979) 24 Cal.3d 605, 615-616;
26 Scott v. Indian Wells (1972) 6 Cal.3d 541, 548-549.) Their interests in the approval of this
27 project are, therefore, different than the interests of other appellants; though Appellants support
28 those appeals.

1 In summary, the essence of the Cahn/Whiting appeal is twofold: (i) their due process
2 rights have been violated by the two year plus delay in these proceedings and efforts of the
3 applicant to get the Commission to approve a project that is substantially different from the one
4 approved by the County without providing a timely, adequately noticed hearing; and (ii) the
5 Commission's approval of the project now proposed would be "without or in excess" of
6 jurisdiction and constitute an abuse of process in violation of the Coastal Act and the California
7 Environmental Quality Act (CEQA), whose provisions, with exception of the EIR chapter and
8 PRC §21167, apply to these proceedings and the review of the proposed project (Sierra Club v.
9 Board of Forestry (1994) 7 Cal.4th 1215; EPIC v. Johnson (1985) 170 Cal.App.3d 604) even
10 though the Coastal Commission's procedures have been exempted from the EIR requirements of
11 CEQA pursuant to Public Resources Code §21080.5. CEQA's application to these proceeding is
12 clearly and succinctly stated by Remy, et al., Guide to CEQA, 175-176 (11th Ed):

13 **Compliance with Certified Regulatory Programs**

14 As noted in section C of this chapter, *supra*, neither an agency carrying out a
15 project under a certified regulatory program nor a petitioner in litigation is exempt
16 from procedural or substantive requirements of CEQA, if such requirements are
found outside of chapters 3 and 4 of the Act, outside of Public Resources Code
section 21167, or within section 21080.5 itself.

17 **1. Procedural Requirements**

18 An agency implementing a certified regulatory program must comply with those
19 procedural requirements of CEQA from which it is not exempt. For example:

- 20 ● The agency must consult with public agencies having jurisdiction over the
proposed project. PRC §2180.5, subd. (d)(2)(C)
- 21 ● The agency must comply with the 30-day comment period for EIRs when
22 circulating an abbreviated environmental document, because Public Resources
Code section 21091, which specifies a 30-day comment period, is not found in
23 either chapters 3 or 4 of CEQA. Ultramar, Inc. v. South Coast Air Quality
Management Dist. (2nd Dist. 1993) 17 Cal.App.4th 689, 698-700 [21 Cal.Rptr.2d
24 608]
- 25 ● The agency must solicit meaningful public input on its environmental document.
Mountain Lion Coalition Foundation v. Fish and Game Commission (1st Dist.
26 1989) 214 Cal. App. 3d 1043, 1052 [65 Cal. Rptr. 2d 580]; Ultramar, *supra*. 17
Cal. app. 4th at pp. 699-700; Pub. Resources Code, §21080.5, subd. (d)(3)(B).
- 27 ● Except where their projects have "de minimis" effects on fish and wildlife or are
28 statutorily or categorically exempt, state agencies with certified regulatory
programs must pay a fee of \$850.00 to the Secretary of Resources, to be

1 forwarded to the Department of Fish and Game, when filing their notices of
2 approval or adoption. Fish & G. Code, §711.4, subds. (c), (d)(4).

3 2. Substantive Requirements

4 In implementing its program, the agency must adhere to the basic policies and
5 substantive obligations established by CEQA. Sierra Club v. State Board of
6 Forestry (1994) 7 Cal. 4th 1215, 1236-1237 [32 Cal. Rptr. 2d 19] (Sierra Club);
7 Environmental Protection Information Center, Inc. v. Johnson (1st Dist. 1985) 170
8 Cal. App. 3d 604, 618 [216 Cal. Rptr. 502] "(EPIC)"; Californians for Native
9 Salmon and Steelhead Association v. Department of Forestry (1st Dist. 1990) 221
10 Cal. App. 3d 1419, 1422 [271 Cal. Rptr. 270]; City of Arcadia v. State Water
11 Resources Control Board (4th Dist. 2006) 135 Cal. App. 4th 1392, 1422 [38 Cal.
12 Rptr. 3d 373]. Accordingly, an environmental document prepared pursuant to a
13 certified regulatory program must include a description of the project, alternatives
14 to the project, and mitigation measures to minimize any significant adverse
15 environmental impact. Pub. Resources Code, §21080.5, subd. (d) (3) (A); Schoen
16 v. California Department of Forestry & Fire Protection (1st Dist. 1997) 58 Cal.
17 App. 4th 556, 567, 572 [68 Cal. Rptr. 2d 343] (Schoen). Toward that end, the
18 agency may require the applicant to submit information necessary to determine
19 whether the project will have a significant adverse impact on the environment,
20 even if the agency's own regulations do not provide the agency with such
21 authority. Pub. Resources Code, §21160; Sierra Club, supra, 7 Cal. 4th 1215.

22 Similarly, the agency must meaningfully assess the project's cumulative
23 environmental impacts. EPIC, supra, 170 Cal. App. 3d at pp. 624-625, 631
24 (failure of California Department of Forestry to consider cumulative impacts in
25 approving a timber harvesting plan constituted prejudicial abuse of discretion
26 necessitating invalidation of the THP); Friends of the Old Trees v. Department of
27 Forestry & Fire Protection (1st Dist. 1997) 52 Cal. App. 4th 1383, 1393-1394 [61
28 Cal. Rptr. 2d 297]; Schoen, supra, 58 Cal. App. 4th at pp. 566-567, 572. In
Laupheimer v. State of California (6th Dist. 1988) 200 Cal. App. 3d 440 [246 Cal.
Rptr. 82] however, the court held that the CDF need not prepare a cumulative
impact analysis precisely as set forth in Guidelines Section 15130, which governs
EIRs. Instead, CDF must "consider" such impacts where relevant, although it
need not prepare an "analysis as such". Laupheimer, supra, 200 Cal. App. 3d at
pp. 462, 466.

29 Finally, the agency must respond in writing to all significant environmental points
30 raised by the public during the administrative evaluation process. Failure to do so
31 can be grounds for invalidating the underlying project approval. Pub. Resources
32 Code, §21080.5, subd. (d) (2) (D); Dunn-Edwards Corp. v. South Coast Air
33 Quality Management Dist. (2d Dist. 1993) 19 Cal. App. 4th 519, 533-535 [24
34 Cal. Rptr. 2d 90] (agency responded adequately to objections to its proposed rule
35 regulating volatile organic compounds in architectural coatings); EPIC, supra 170
36 Cal. App. 3d at pp. 611-612, 621-622, fn. 10, 623; Gallegos v. California State
37 Board of Forestry (1st Dist. 1978) 76 Cal. App. 3d 945, 952-955 [142 Cal. Rptr.
38 86] (State Board of Forestry's order approving THP invalidated due to agency's
failure to respond specifically to all significant environmental points in public
comments).

39 The Court of Appeal, in North Pacifica, LLC v. California Coastal Commission (2008)

40 166 Cal. App. 4th 1416, 1429-1430, has recently summarized the Coastal Act procedural

1 provisions applicable to this appeal:

2 (a) Where the local government grants a CDP, the action may be appealed to
3 the Coastal Commission by the applicant, any aggrieved person, or two
4 members of the Coastal Commission ([Pub. Resources Code,] §30625,
5 subd. (a).) On appeal, the Coastal Commission reviews the matter de novo
6 and may take additional evidence. ([Pub. Resources Code,] §30621, subd.
7 (a); City of Half Moon Bay v. Superior Court (2003) 106 Cal. App. 4th
8 795, 804 [131 Cal. Rptr. 2d 213].) Its jurisdiction, however, is limited
9 (City of Half Moon Bay, at p. 804.) 'The only grounds for appeal are that
10 the locally approved development does not conform to the standards of a
11 certified LCP or the Coastal Act's access policies. ([Pub. Resources code,]
12 §30603, subd. (b)(1).)' (Kaczorowski v. Mendocino County Bd. of
13 Supervisors, supra, 140 Cal. App. 4th at pp. 1344-1345.)

14 (b) Public Resources Code [s]ection 30621 requires the Commission to
15 provide a de novo public hearing on any appeal brought pursuant to the
16 [Coastal] Act. Section 30621 further provides that a hearing on 'an appeal
17 shall be *set* no later than 49 days' (italics added) following the date of the
18 appeal was filed with the Commission. The cited language 'a hearing'
19 includes the 'de novo public hearing' on the merits, because Section 30621
20 contemplates only one hearing as indicated by the language in Section
21 30622 which requires the Commission to act upon an appeal 'within 21
22 days after the conclusion of *the hearing* pursuant to Section 30621.'
23 (Italics added.) The failure of the Commission to either 'set' a de novo
24 public hearing within 49 days following the filing of an appeal with the
25 Commission or to act upon an appeal within 21 days after the conclusion
26 of the Section 30621 hearing results in immediate finality of the appealed
27 decision unless either time limit is waived by the applicant. ([Pub.
28 Resources Code,] § 30625, subd. (b).) (Coronado Yacht Club v. California
Coastal Com., supra, 13 Cal. App. 4th at pp. 866-867.)

17 See also McAllister v. California Coastal Comm (2009) 169 Cal. App. 4th 912; Mt.
18 Holyoke v. California Coastal Commission (2008) 167 Cal.App.4th at 830, 841; Encinitas
19 Country Day School Inc. v. California Coastal Comm. (2003) 108 Cal. App. 4th 475.

20 Specific deficiencies in these proceedings will again be discussed below in the
21 "Discussion" section of this brief, but the essence of the issues raised by Appellants can be fairly
22 simply stated: Over two years ago the County of Mendocino approved a project containing a
23 visitors serving facility with 17 or 18 bedrooms, 18-20 bathrooms, and several kitchens plus a
24 large caretakers house and several other buildings, on a piece of property zoned to allow
25 maximum development as a "10 unit Inn". Several persons appealed to this Commission raising
26 several issues outlined in the Staff Report. This Commission, as required by law, within 49 days,
27 found that the appeal presented "substantial" questions. Because applicants wanted more time to
28 submit information supporting their project no "hearing" on the merits or decision by the

1 Commission occurred within 21 days following the 49 days, as required by Sections 30621 and
2 30622. The matter has drug on for more than 2 years. Now, a new project – very incompletely
3 and confusingly described – but clearly containing more than 10 bedrooms, a large caretakers
4 house, several outhouses, perhaps 18-20 bathrooms, and several kitchens – is finally set for a “de
5 novo” hearing before this Commission. Under the case Mt. Holyoke v. California Coastal
6 Commission (2008) 167 Cal.App.4th at 842, applicants are estopped from denying this
7 Commission’s jurisdiction to hear this appeal. Cahn/Whiting did not acquiesce in this delay;
8 and, in any event, other parties cannot alter the time limits set to CEQA for public review or
9 change this Commission’s “jurisdiction.” The Commission has not met CEQA’s requirements
10 quoted, supra, during the processing of this application; and neither Appellants, much less the
11 public generally, has received the statutorily mandated 30 day opportunity to comment on what
12 must be viewed as a new project.

13 The staff report that was made available on the Commission’s website on September 24,
14 and perhaps distributed – apparently on the assumption that meeting the Coastal Commission’s
15 10 day notice requirement is adequate compliance with all notice and comment requirements –
16 does not contain any of the attachments to that report. We obtained these attachments via the
17 website on September 28th.

18 These procedures obviously violate many of the requirements quoted supra¹ and one of
19 the 3 primary purposes of CEQA – to obtain meaningful public input into the environmental
20 analysis and public decision making process. See Mountain Lion Foundation v. Fish and Game
21 Commission (1991) 16 Cal. 4th 105, 133. This Commission’s power to hold a “de novo”
22 hearing on a “project” whose approval has been appealed to the Commission obviously does not
23 allow the Commission to postpone Appellants’ right to a hearing or to hold a hearing upon, and
24 approve, a substantially different, and very poorly described, “new project,” at least without
25 going through the required CEQA processes to obtain public and agency input and without
26 giving the public and other concerned parties adequate notice of a hearing.

27
28 ¹See §2180.5(d)(2)(F) and (3); §21091; §21006; cf EPIC v. Johnson supra. Remy, et al,
supra.

1 In the case of adjoining landowners, due process of law also requires adequate notice and
2 hearing. Thus, even if the applicant argues, and even if the Commission agrees that the
3 Commission's failures to comply with the 49 day statutory requirements deprives it of
4 jurisdiction to now hold a hearing, Appellants Cahn/Whiting cannot be subjected to
5 implementation of this project without a hearing meeting due process requirements.

6 In addition to the materials in or accompanying the Staff Report, Appellants
7 Cahn/Whiting believe several other items of information are relevant to this appeal. Some have
8 previously been provided to the Commission, some have not. None are referred to in the Staff
9 Report. CEQA requires that all of them be considered and adequately responded to as they
10 constitute evidence of adverse impacts that will be caused by this project:

11 a. The first is a declaration by Deborah Cahn filed on or about May 27, 2009, a copy is
12 attached as Exhibit A;

13 b. Attached hereto as Exhibit B is an analysis prepared by Roger D. Harris, Certified
14 Wildlife Biologist of the biological study that is apparently the study attached as Exhibit 17. Mr.
15 Harris' analysis reveals several significant inadequacies in that biological study.

16 c. Attached as Exhibit C is a letter to the Commission from archeologist Thad M. Van
17 Bueren, M.A. raising substantial archeological issues.

18 d. Also attached hereto as Exhibit D are the Staff Report from the Coastal
19 Administrator's August 27, 2009 decision and the Appeal Letter of Deborah S. Cahn to the
20 Mendocino County Board of Supervisors, submitted by the undersigned, respecting project CDP
21 67-2008 dated September 1, 2009. This project, now on appeal before the Mendocino County
22 Board of Supervisors, is a project to build a walkway in the 15 - ft. strip on the west side of the
23 Highway 1 right-of-way, referred to in the Staff Report near the bottom of page 22. In our appeal
24 to the Board of Supervisors, we point out that this project is for a "walkway to nowhere" because
25 it will extend from the North to the South end of the Jackson-Grube property, with the Highway
26 1 right-of-way as the pathway on each of its ends. There are no parking facilities, bathroom
27 facilities, or further walkways provided for on either the North or the South end. In other words,
28 the walkway, which is intended to accommodate persons walking between the Pacific Star

1 Winery and the South Kibesillah Fishing Area would dump pedestrians onto the CalTrans right
2 of way without any analysis – by the County, CalTrans, or by the Mendocino County Department
3 of Transportation – whether these pedestrians will cause, or exacerbate, traffic issues in and
4 around this project area. Appellants’ concern in relation to the Jackson-Grube project is that
5 absolutely no study of the cumulative impacts of these two projects, and particularly their
6 combined impact upon traffic conditions near Appellants’ driveway south of the walkway’s
7 termination, has been attempted. EPIC v. Johnson, supra holds that failure of a certified
8 program to provide for the consideration of such cumulative impacts is a prejudicial abuse of
9 discretion.

10 The remedy here is for the Commission to deny this project and remand the applicants to
11 the County to start the proceedings over with their new project. See Las Lomas Land Company,
12 LLC v. City of Los Angeles (2d Appellate Dist., Div. 3, Sept. 17, 2009), which holds that an
13 agency can deny a project without complying with CEQA even though it had begun, but not
14 completed, the environmental review process and could not have approved the project without
15 completing CEQA review.

16
17 **B. BACKGROUND**

18 This project’s history is described at pages 22-27 of the Staff Report. Of importance,
19 under earlier applications for development of this property, which were consistent with the
20 zoning designation of “*1C” allowing a “10-unit Inn,” prior approvals allowed for 10 guestrooms
21 at the most. When the applicant proposed “significant alterations” to the project that had been
22 approved by the County in or around 2000 (CDUM 9-9/2000) “the County determined that
23 because the project changes were so substantial, an entirely new application would be required
24 for the project.” (See Staff Report at pages 22-23)

25 The current application was filed in 2006 and was approved by the County Planning
26 Commission in June 2007, before being appealed to this Commission. As the Staff Report
27 makes clear, this Commission, in September 2007, found that the appeal from the approved
28 application presented several substantial issues. The applicant was directed to supply additional

1 information and apparently applicant requested time for this purpose. There matters stood for
2 two years while Appellants were given no hearing to voice their objections and concerns about
3 the project to this Commission. On May 13, 2009, the applicant submitted to this Commission
4 "a revised project description ... and revised plans ... that make changes to the proposed ranch
5 and visitor serving development as originally approved by the County (See Exhibits 5-7)." (Page
6 8 of the Staff Report) That is, a new project was proposed for an initial hearing before the
7 California Coastal Commission, rather than before the County as had occurred when the
8 previously approved project had been amended. These new plans (described as Exhibits 5-7 of
9 the Staff Report) were never distributed to appellants, let alone the public, and apparently to any
10 other agency, before being put on line and mailed by the Commission staff on September 24.

11 Moreover, the description of the new project, which appears at page 2 of the Staff Report,
12 is very difficult to understand. It does not describe how many bedrooms are to be included in
13 this project; it doesn't describe how many kitchens are in the project, it doesn't describe how
14 many bathrooms are in the project; and it isn't until page 36 of the Staff Report, in a discussion
15 of "project water demand" that a reader can learn that, "the hydrological study [prepared for the
16 project] took into account that most of the Inn units are suites with multiple bathrooms and
17 containing kitchen facilities and that the number of bedrooms is larger than the number of units."
18 How many bathrooms, how many kitchens, are not defined. What is stated, near the top of page
19 38 of the Staff Report, is that Dr. Mark Johnsson, a Commission geologist, reviewed the
20 hydrological report and agreed that the proposed water supply "will provide sufficient water to
21 serve the needs of a 10-unit Inn and caretaker's residence development." Perhaps Dr. Johnsson
22 visited the site, perhaps he understood that the project description was for a 16 or 18 bedroom
23 development, with 16 or 18 bathrooms, and an undisclosed number of kitchens, but this
24 information isn't reported. Moreover, at page 3 of the Traffic Study, attached as Exhibit 18 to
25 the Staff Report, it is clear from the table presented that the traffic analyst assumed there were
26 "10 rooms" in this project. Exhibit 5 to the Staff Report seems to say the new project contains
27 eleven bedrooms, but the Report contains no valid explanation of why the various references to
28 the project description are so unclear and confusing, why public review has been denied, and why

1 and how a significantly changed project – in fact a new project – is being presented to the
2 Commission when the Commission’s jurisdiction is to review the approval of a project approved
3 by the County.
4

5 **C. DISCUSSION**

6 1. Appellants are Being Denied “Property” Without Due Process of Law

7 Appellants’ right to use and enjoy their homes, on the real estate that they own, and their
8 right to control the use and alienability of this real estate is “property” entitled to constitutional
9 protection. (See e.g. Horn v. County of Ventura supra.; Scott v. Indian Well supra.) Appellants
10 contend: (i) they are being “deprived” of property while the cloud of this harmful project being
11 approved hangs in the balance and that “due process” requires that this cloud be removed within
12 a reasonable time, by a noticed hearing and a lawfully rendered decision. Being delayed for such
13 an oppressive period of time as has been involved in this case, and under the procedures
14 employed in this case, has deprived them of “property” without due process of law. The relevant
15 statutory provisions – CEQA and the Coastal Act – require hearings to be held in a prompt
16 manner so that all concerned parties’ property rights are protected. (See e.g. North Pacifica LLC
17 v. California Coastal Commission (2008) 166 Cal.App.4th 1416; Mt. Holyoke supra) Moreover
18 as a general proposition, State law (see e.g. California Civil Code §711) requires the careful
19 balancing of public and private interests before the property right of alienability of real or
20 personal property can be impaired. (See e.g. Tucker v. Lassen Savings and Loan Association
21 (1974) 12 Cal.3d 629; Wellencamp v. Bank of America (1978) 21 Cal.3d 943) Here, for more
22 than two long years after the County considered this project, Appellants’ peace of mind in the use
23 and enjoyment of their residences and the alienability of their real estate has been clouded and
24 impaired. Then approximately 10 days before the appellate hearing, they receive “notice” that
25 the project that is now proposed is substantially different from the one they had previously
26 considered and been prepared to argue about on this appeal.

27 While we have found no case directly on point, we believe the unlawful and unjustified
28 delay in this case constitutes a deprivation of Appellants’ property without due process of law in

1 violation of both the Federal and State Constitutions. Even if the deficiencies in these
2 proceedings do not amount to a denial of due process, they certainly constitute the denial of a
3 “fair hearing” within the meaning of California Code of Civil Procedure §1094.5 and an approval
4 of this new project would be without, or in excess of, the Commission’s “jurisdiction.” See Mt.
5 Holyoke supra, McAllister v. California Coastal Commission (2008) 169 Cal.App.4th 912, 921.

6 2. For All the Reasons We Have Stated in Earlier and Other Filings, Approval of This
7 Project Would Violate the LCP Because it Violates the Zoning of the Project for
8 Maximum Development of a 10 Unit Inn

9 If a “Unit” can contain 2, 3, or 4 bedrooms and bathrooms; it could contain 4, 5, or 6 of
10 each. It can’t be that the zoning designation is so meaningless. “Unit” means “one.” So this
11 zoning allows the maximum of 10 bedrooms. Approval of a project containing more bedrooms
12 is inconsistent with the zoning.

13 3. Approval of The Newly Described Project Would Constitute “Abuse of Discretion”
14 Within the Meaning of California Code of Civil Procedure §1094.5 and CEQA
15 §§21168 and 21168.5 For a Number of Separate and Independent Reasons

16 As mentioned earlier, all of the provisions of CEQA other than those referenced
17 specifically in §21080.5(c) apply to these proceedings even though the Coastal Commission’s
18 “regulatory program” has been certified pursuant to Section 21080.5 (See e.g. Sierra Club v.
19 Board of Forestry; EPIC v. Johnson). Approval of this significantly amended project - indeed a
20 new project never before considered by a regulatory agency - would violate a number of
21 provisions of these statutes:

- 22 (i) The “project” being considered on this appeal has never been adequately
23 described. An adequate and timely project description is the *sine que non* of
24 CEQA. Even if the Commission thinks this project is adequately described, a
25 project description has not been distributed to the public, and other agencies,
26 until, at the very earliest, the staff report dated September 24, 2009 was made
27 available. Such efforts do not satisfy the Commission’s obligations to assure that
28 it takes every reasonable step to obtain informed public participation in the review
of projects subject to environmental review required by CEQA.

1 (ii) Adequate time for public comment upon the environmental study prepared for the
2 project or the environmental analysis accompanying the project has not been
3 provided for. As mentioned, the on-line staff report, dated September 24, 2009, is
4 the first opportunity the public would have had to understand and comment on
5 this newly designed project. Appellants' position is that provisions of CEQA
6 other than those that are exempted by Section 21080.5, require the public be given
7 an adequate time to comment upon the environmental impacts of such a project.

8 The Commission's regulations and previous decisions relating to time for public review
9 do not contemplate a project so substantially revised as to constitute, in effect, a new project.
10 Any attempt to justify the procedure for reviewing this project under those authorities will
11 subject the Commission to a determination that its regulations, as applied in this case, violate the
12 requirements of §§21080.5 (d)(2)(F) and 2180.5(d)(3)(A) and (B). Appellants, early on in this
13 case, filed a request for notification of all filings in this case; and they have received none other
14 than what have been posted on line.

15 4. The Environmental Analysis, Even Considering Exhibits 15, 16, 17 and 18, is
16 Inadequate and Erroneous

17 The most glaring deficiency in the Staff Report from an environmental perspective is the
18 lack of any protections that will be enforced once the project is completed and members of the
19 public are permitted on the property. There is discussion of a fence in one of the ESHA setbacks
20 near the parking area, but there is no discussion of any requirements that any persons be
21 prevented from traipsing through the wetland, ESHAs, disappearing bluff edges, or nesting areas
22 that are known to be on the property.

23 The Biology Study also fails to adequately address the presence of additional species of
24 birds seen on the property or to adequately protect the bats that are known to be there. Ms.
25 Cahn's declaration attached as Exhibit A, stated that she had seen burrowing owls and brown
26 pelicans at or immediately adjacent to the project site, but no mention is made of these creatures
27 in the Report, nor are there any assurances that the general mitigation measure prohibiting
28 construction during nesting season will be applied to these birds. In addition, though there is

1 discussion of the likely presence of bats on the subject property (pg. 13, Section 9.2.2), as
2 complained of in the analysis of the biological study prepared by Roger D. Harris and attached at
3 Exhibit B, there is no requirement that any investigation be done to actually confirm their
4 presence at any time though given the age and condition of the structures that are to be destroyed,
5 their presence is almost guaranteed. The Study also fails to accurately study the existence of
6 plants and plant communities, relying on an unusually dry year to make its determination thereby
7 failing to provide an adequate representation of what is actually occurring at the site (see Exhibit
8 B).

9 The Staff Report also fails to adequately discuss the standards for consumption of coastal
10 resources. The coastal zone, "is a distinct and valuable resource of vital and enduring interest to
11 all the people and exists as a delicately balanced ecosystem" (California Public Resources Code
12 ("PRC") §30001 (a)). There are numerous "basic goals" expressly stated in the Coastal Act
13 designed to protect, enhance, and restore "the overall quality of the coastal zone environment and
14 its natural and artificial resources" (PRC §30001.5, (a)), to "assure orderly, balanced utilization
15 and conservation of coastal zone resources taking into account the social and economic needs of
16 the people of the state" (PRC §30001.5 (b)) and to "maximize public access to and along the
17 coast and maximize public recreational opportunities in the coastal zone consistent with sound
18 resources conservation principles and constitutionally protected rights of private property
19 owners" (PRC §30001.5 (c)). The California Legislature has expressly commanded that the
20 Coastal Act "be liberally construed to accomplish its purposes and objectives." (PRC §30009.)
21 In spite of all of this, the Staff Report fails to adequately analyze the consumption of natural
22 resources that would result from the erection of the proposed project. Specifically, it fails to
23 adequately mitigate harm to the ESHA's found on the property. PRC §30240(a) and §30107.5,
24 taken together, "limit development inside habitat areas to uses that are dependent on the
25 resources to be protected and that do not significantly disrupt habitat value. This interpretation
26 not only reflects the plain meaning of the statutory language but also harmonizes the two parts of
27 section 30240(a) in the only way that makes sense, protects habitat areas, promotes the goals of
28 the Coastal Act, and complies with our mandate to construe the Coastal Act liberally to achieve

1 its purpose and objective.” (McAllister v. California Coastal Commission (2008) 169
2 Cal.App.4th 912, 929.) Here, the Staff Report failed to implement any additional mitigation
3 measures for the intended deep intrusion of the project into an ESHA buffer zone, besides the
4 erection of a fence of some kind. There are no admonitions to ensure that there is no further
5 intrusion into the buffer zone or to prevent trespass by the public into the ESHA itself. If such
6 intrusion were to occur, any enhancement or restoration measures otherwise required for
7 approval of this project would not turn this inn into a “resource-dependent use.” Therefore, such
8 intrusion would be prohibited. (McAllister, supra, 169 Cal.App.4th at 933.) Any potential for
9 further intrusion into the ESHA buffer zone, or the ESHA itself, should be studied and mitigation
10 measures put in place.

11 Overall, the environmental studies are vague and insufficient (the Geologic and
12 Hydrological Studies obtainable online do not even include referenced illustrations or figures).
13 Additional studies should be performed and, possibly as a result, additional mitigation measures
14 imposed.

15 5. The Documentation for this Decision Does Not Include Any Study of the Cumulative
16 Impacts of this Project with Other Nearby Projects Being Considered for Approval

17 As mentioned earlier, the “walkway to nowhere” is being considered by the County and it
18 will result in some undetermined number of pedestrians walking along the westside of Highway
19 101 in front of this project. Presumably the walkway will also be used by guests at the project.
20 These users of the walkway, if they want to go to the South Kibesillah Fishing Area, as the
21 proponents of the walkway project believe, will be dumped onto the Highway 1 right-of-way at
22 approximately the northeast corner of Appellant Cahn’s property. Their presence, which will be
23 in a large dip in the Highway that is not clearly visible to Highway 1 traffic, can create
24 significantly dangerous traffic conditions. These conditions have never been studied by CalTrans
25 or the County’s Department of Transportation. Their combined effects with this project will be
26 significant.

27 EPIC v. Johnson supra, held that in a certified regulatory program, even though the
28 regulatory program itself required no study of cumulative impacts, CEQA requires such a study.

1 //

2 6. Water Availability Analysis is Inadequate

3 To the Commission's credit, it required the applicant to submit a new hydrologic study.
4 However that study is inadequate for several reasons. The first is that review of the study by the
5 Commission's own staff apparently presumed a project smaller and different than the one being
6 proposed. As mentioned earlier, Dr. Johnsson assumed a "10-unit Inn", but the water study at
7 one point seems to assume that these 10 units will include at least 16 or 17 bedrooms, plus a
8 2000 sq. ft. caretaker's house, with an undesignated number of bedrooms, and 16-18 bathrooms
9 and several kitchens. Moreover, this new hydrologic test did not test the impacts upon
10 Appellants' wells, even though Appellants had complained and expressed concern about such
11 impacts. Instead, inference and expert opinion are relied upon in the water study to say
12 Appellants will not be affected. Appellants are dissatisfied with this basis of decision and
13 believe it is the obligation of the Commission and the applicant to determine what the impacts of
14 their project will be on persons in Appellants' position. It is not Appellants' burden to incur the
15 cost of the required studies.

16 7. The Proposed Response to Environmental Issues Raised During the Review of
17 This Project is Wholly Inadequate

18 At page 62 of the Staff Report, in paragraph "H", there is a proposed response to
19 environmental points raised during this project review. That response is inadequate. It does not
20 even include a reference to the protected wildlife habitat issues raised in the declaration of
21 Deborah Cahn filed with this Commission on or about May 27, 2009. It does not deal adequately
22 with the complaints that Appellants have heretofore submitted concerning the water study. It
23 does not include any reference – it could not have because the materials had not earlier been filed
24 – to the environmental points made in the recently submitted analysis by Mr. Roger D. Harris. It
25 contains no response to the comments of Mr. Van Bueren. Other comments, presented by other
26 appellants, have not been adequately responded to. This failure to respond is a prejudicial failure
27 to proceed in a manner required by law that precludes approval of this project.

28 //

1 C. CONCLUSION

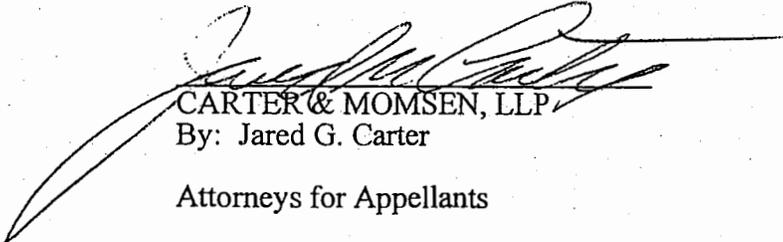
2 For all of the reasons stated, this project cannot lawfully be approved by this
3 Commission. It is a different project than the one that was appealed. Approval would involve
4 constitutional violations and clear and direct violations of CEQA and the Coastal Act.

5 On the other hand, the recent case of Las Lomas Land Company LLC v. City of Los
6 Angeles (2d Appellate Dist., Div. 3, Sept. 17, 2009), supra, holds clearly that this project can be
7 denied without CEQA compliance.

8 The remedy that this Commission should adopt is for the project to be denied and the
9 applicant remanded to the County for a complete and adequate review of his newly proposed
10 project.

11
12 Dated: September 29, 2009

Respectfully submitted,

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15 
16 CARTER & MOMSEN, LLP

By: Jared G. Carter

17 Attorneys for Appellants
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DECLARATION UNDER PENALTY OF PERJURY BY DEBORAH STERN CAHN

In the matter of California Coastal Commission Appeal No. A-1-MEN-07-028
(Jackson-Grube Family, Inc.)

I, Deborah Stern Cahn, declare:

1. I am the Trustee of the Margery S. Cahn Trust and an appellant in this matter, which is on appeal to the Coastal Commission. Margery S. Cahn is my mother, who lives at 31400 Highway 1 in Westport, immediately south of, and contiguous to the site of the proposed Inn complex that is subject to this appeal. I have visited my mother's home many times during all times of the year, over the past 30 some years, and I have walked with her many times around her property and near the project site.

2. I am knowledgeable and concerned about the proposed project. I have read all the County Staff Reports and the Commission Staff Reports as well as the four (4) documents my attorney recently (May 12, 2009) acquired, pursuant to a very old request, from Mr. Robert S. Merrill of the Coastal staff. Those documents are (i) a January 14, 2008 Traffic Study prepared by Mary Jo Young and addressed to Mr. Bud Kamb, (ii) a January 10, 2008, Hydrological study prepared by Questa Engineering Corp. for Jackson-Grube Family, Inc. (iii) an August 2008 ESHA delineation and impact assessment prepared by Matt Richmond of Redwood Coast Associates for Jackson-Grube Family, Inc. and (iv) a January 10, 2008 engineering Geological Reconnaissance prepared by Bace Geological respecting the "Proposed Inn at Newport Ranch."

3. While I have no significant education in biological or geotechnical science – I have a BA from the University of Chicago and a MA in literature from U.C. Berkeley – I have extensive experience with all aspects of complying with California's planning and environmental laws. My husband, Edward Bennett, and I founded, and have managed for over 30 years, Navarro Vineyards, LLC and Navarro Ranch LLC in Anderson Valley, Mendocino County. We farm 962 acres of land in the Anderson Valley which includes 120 acres of vineyard, with the remainder being grazing land for sheep and forest land. Navarro Vineyards was the first farm in Mendocino County to be certified as a Fish Friendly Farm. I have 35 years experience working with the County offices of the US Department of Agriculture developing an environmental quality farm plan for Navarro Vineyards.

4. None of the County or Commission staff reports, and none of the consultants' reports that have been prepared for this project, mention the fact that there are at least 4 species that I believe are protected by State or Federal law: (a) Behren's Silverspot Butterflies, protected under the Federal Endangered Species Act, (b) Brown Pelicans, protected under that Act, (c) an Osprey, listed as a sensitive species by the California Department of Fish and Game, and (d) a Western Burrowing Owl, listed as a species of special concern by that Department. I have personally seen all these species on or near my mother's property and the project site many times. I have no doubt about the identification of these species, as my mother and I each have great interest and experience in the subject matter and we have carefully checked by mother's "butterfly book" and her "bird book" to confirm our opinions.

5. I believe the impact of this proposed project upon these species cannot be correctly and adequately assessed unless this information about their presence is circulated, as required by CEQA, to all concerned agencies and persons. The information available to me is that no such circulation has occurred for 2 fundamental reasons: (1) the reports that have ever been circulated – in the past, I might add – have not included this information, and, indeed, have wrongly indicated there is no significant issue concerning species, and (2) some information (I don't know how much) that will apparently be considered by the Commission has not been circulated at all, as explained below.

6. My attorney and his staff have informed me several times since January of 2008 that they have requested from the Commission staff, copies of any reports received by the Commission since the Commission determined about a year and a half ago that this appeal presented a substantial question and that several new studies were required. Even though they offered to pay, their request was denied until early May 2009, when Mr. Merrill of your staff called my attorney's secretary, Cheryl Murphy, and informed her that he would send her four new studies (those listed as (i) - (iv) in paragraph 2 above) after he received \$60.21. She paid, and on about May 13 or 14 we received those reports. Obviously the reports have not received general circulation as required by CEQA if they were made available to an appellant only one (1) month before the Commission's scheduled hearing, if appellant would pay the cost of reproduction.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 27 day of May, 2009, at AKIAH, California.

 Signature on File

Deborah Stern Cahn

June 23, 2009

Jared G. Carter, Esq.
Carter & Momsen, LLP
444 North State Street
Ukiah, California 95482

Subject: Biological Review, Newport Ranch Project

Dear Mr. Carter:

Thank you for inviting LSA Associates, Inc. (LSA) to provide you with professional technical assistance in reviewing the Newport Ranch project. I am a Certified Wildlife Biologist with 28 years of professional experience working in the California coastal zone and adjacent areas.

I reviewed the following materials that you provided to me:

- Richmond, M. August 2008. *ESHA Delineation and Impact Assessment Subject to the Coastal Act and the Mendocino County LCP*. Redwood Coast Associates, Willits, CA.
- Merrill, R.A. July 23, 2007. *Item F8a, Staff Report: Appeal, A-1-MEN-07-028*. California Coast Commission, Eureka, CA.
- Douglas, P. and R.S. Merrill. September 6, 2007. *Addendum to Commission Meeting for Friday, September 7, 2007, North Coast District Item F8a, Appeal No. A-1-MEN-07-028 (Jackson-Grube Family, Inc.)*. California Coast Commission, Eureka, CA.
- Carter, J.G. May 27, 2009. *Appeal No. A-1-MEN-07-028 (Jackson-Grube Family, Inc.)*. Letter to R.S. Merrill, California Coastal Commission. From Carter & Momsen, LLP, Ukiah, CA. and *Declaration* by Deborah Stern Cahn, May 27, 2009.

The *ESHA Delineation and Impact Assessment* (Richmond 2008) is a generally technically sound document, but my review raises the following issues in reference to the proposed project:

- Richmond (2008, page 1) states, "ESHA surveys were focused on the area within 100 feet of the proposed development footprint." This is in keeping with the Local Coastal Program (LCP) requirement of a *minimum* 100-foot buffer from ESHAs (environmentally sensitive habitat areas). However, 100 feet is not necessarily adequate for a biological survey. The survey must encompass the entire area of potential affect (APE). As the Richmond report correctly notes, some sensitive biological resources such as active raptor nests may require a 500-foot buffer.
Recommendation: Minimally the Richmond report needs to clearly define the "Study Area." The Study Area needs to encompass the entire area of potential affect, not just the proponent's property, if adverse impacts are potentially possible beyond the legal parcel. If the Study Area has not encompassed the entire area of potential affect, then additional studies are warranted.
- Potential impacts from the proposed project may be due 1) to the immediate effect of construction activities and 2) to the long-term operation of the inn.
Recommendation: The impact analysis in the Richmond (2008) report needs to more clearly and in more detail assess construction impacts as distinguished from operational impacts. In

particular, few details are given on the operational aspects of the proposed project after the inn has been built. For instance, could special events impact wetland areas?

- The Richmond (2008) report does not consistently distinguish between native and non-native plants. This distinction is biologically important.
Recommendation: Both the text and the Appendix B should be revised to label plants as native or non-native.
- Richmond (2008, page 5) correctly notes that “The CCC considers this definition (of wetlands) as requiring the observation of one diagnostic feature of a wetland...as a basis for asserting jurisdiction under the CCA.” However, the actual wetland delineation used a “three-parameter” approach to wetlands. Richmond (2008, page 7) notes, “Areas that contained at least one of the wetland parameters but contained positive evidence of upland conditions were not identified as wetlands.” While this three-parameter approach may be adequate for the U.S. Army Corps of Engineers under their Clean Water Act authority, the approach taken may be too narrow for defining wetlands under the CCA.
Recommendation: An independent review of the Richmond data, including a field visit, should be conducted to determine if the wetland delineation is consistent with the CCA.
- Richmond (2008, page 7) conducted botanical surveys on September 1, 2007, February 26, April 3, May 6, June 2, and July 10, 2008. There is good seasonal coverage to detect potentially present special-status plant species, although some species that bloom in the very late season could have been missed. However, late 2007 and early 2008 were unusually dry times and not necessarily typical of normal conditions. In particular, due to unusually dry conditions some special-status species could have been missed and the geographic extent of populations detected in 2007-2008 may have been more restricted than they would have been in a more normal rainfall year.
Recommendation: A second year of botanical surveys should be conducted.
- Richmond (2008, page 10) identified Northern Coastal Bluff Scrub, a potential ESHA, on the property. This is an extremely sensitive and limited vegetation type.
Recommendation: The impact analysis of the project to extant Northern Coastal Bluff Scrub needs to be developed in more detail, particularly operational impacts. If warranted, additional mitigation measures need to be included to protect Northern Coastal Bluff Scrub.
- Richmond (2008, page 12) identifies the stream on the property as ephemeral “due to the observed lack of flow during the summers of 2007 and 2008.” A stream could stop flowing in the summer and still be intermittent. Under certain circumstances, intermittent streams are regulated differently than ephemeral ones, so this difference is one of substance.
Recommendation: Additional analysis is needed on the status of the stream to demonstrate whether it is ephemeral or intermittent.
- The project description in Richmond (2008) was not adequate to fully determine potential construction impacts. The illustrations in the report showed the as-built footprints for proposed structures but did not show grading limits, staging and lay-down areas, and utility corridors.
Recommendation: An illustration showing all of these potential impacts needs to be provided with an overlay of the wetlands and other ESHAs. If new impacts are identified, appropriate mitigation measures should be provided.

- Mitigation 11.1.1 (Richmond 2008, page 17) states "All activities that require *substantial* ground disturbance...(emphasis added)"
Recommendation: The term *substantial* needs to be clearly defined as it currently leaves too much latitude as to when this mitigation measure would apply.
- Mitigation 11.2.1 (Richmond 2008, page 18) states "If disturbance to potential roost sites outside of the work window is necessary, a pre-construction bat survey may be required..."
Recommendation: Given the presence of buildings to be demolished, which could potentially be used by special-status bat species, protocol-level bat surveys should be conducted as part of the environmental assessment. If bats are found, appropriate mitigation measures need to be included. Simple seasonal avoidance of bats, but destruction of their roosts, may not be adequate mitigation.
- Purple martins are known from within 1.5 miles of the project site and are known to nest generally in the coastal zone. The purple martin has recently been added to the California species of special concern list. Purple martins have experienced substantial population declines and may qualify as a *de facto* endangered species under CEQA.
Recommendation: As part of the environmental assessment, surveys should determine the presence or absence of nesting purple martins. If found, appropriate mitigation measures need to be provided.
- Richmond (2008, page 36) notes that the federally endangered lotis blue butterfly and Behren's silverspot butterfly are "moderately" likely to be present on the property.
Recommendation: If the second year of botanical surveys detects the larval food plants of either of these species in sufficient quantities to support the butterflies, supplemental surveys are warranted for presence of these butterflies. If present, appropriate mitigation measures should be included.

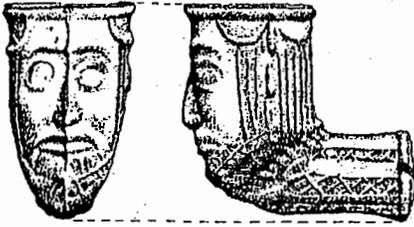
Please call if you have any questions about my comments.

Sincerely,

LSA ASSOCIATES, INC.

Signature on File

Roger D. Harris, Certified Wildlife Biologist
Principal



Thad M. Van Bueren, M.A.

Registered Professional Archaeologist

P.O. Box 326

Westport, CA 95488

FAX by arrangement

(707) 964-7272

thadvanbuercn@directv.net

September 26, 2009

California Coastal Commission
710 E Street, Suite 200
Eureka, CA 95501-1865

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

Dear Coastal Commissioners:

I reviewed the staff report for the cited appeal scheduled for hearing at your October 7, 2009 meeting in Oceanside. I remain strongly concerned that my prior comments have been ignored and the conditions recommended for approval of this project are insufficient to avoid predictable harm to archaeological resources (Condition 8).

My prior letter of comment received by you on May 26, 2009 (appeal staff report Appendix 2) contains the full rationale for my concern, which I will not repeat here. I would, however, like to highlight the key issues since I am unable to attend the hearing:

1. A flawed archaeological survey failed to record the obvious remains of Newport Landing and a nineteenth century farm, both of which are still clearly indicated by standing structures. Buried archaeological deposits are almost certainly associated with that resource and lie under the footprint of the proposed project where foundations and utilities will be excavated.
2. Public Resources Code (PRC) 30244, an implementing guideline for the Coastal Act, specifies "where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required."
3. Condition 8 in your staff report contains no reasonable mechanism for preventing harm to this expected archaeological resource. Construction contractors and the owner are not qualified to identify an archaeological discovery, nor do they have any incentive to report a find. As written, this condition is thus predictably ineffective.

Condition 8 must be revised if the intent is to ensure this archaeological resource is not harmed. Monitoring of ground disturbing activities by a professional archaeologist should be required.

Sincerely,

< Signature on File

Thad M. Van Bueren

STAFF REPORT FOR COASTAL DEVELOPMENT PERMIT

**#CDP 67-2008 Jackson Grube
August 27, 2009
Page CPA-1**

OWNER Jackson Grube Family, Inc.
P.O. Box 430
Middlebury, VT 05753

APPLICANT/AGENT: Mendocino Land Trust
PO Box 1094
Mendocino, CA 95460

REQUEST: Construct a 7,000 foot long public access trail consisting of native earth, boardwalks, and two foot-bridges. Associated development includes fencing and signage.

LOCATION: In the Coastal Zone, approximately two miles north of the Ten Mile River and five miles south of Westport, along the west side of Highway One at 31502 North Highway One (APNs 015-380-02, -04 & -05).

APPEALABLE AREA: Yes – blufftop lot, ESHA, Highly Scenic Area

PERMIT TYPE: Standard

TOTAL ACREAGE: 147± Acres

GENERAL PLAN: Remote Residential

ZONING: RMR: L-20 PD, *1C

EXISTING USES: Former site of Orca Inn

ADJACENT ZONING: **East:** Forest Lands (FL) and Timber Production (TP)
West: Ocean
North: Agricultural (AG) and Range Lands (RL)
South: Forest Lands (FL)

SURROUNDING LAND USES: **East:** Highway One; Cattle Grazing
West: Ocean
North: Pacific Star Winery
South: Cattle Grazing, Residential

SUPERVISORY DISTRICT: 4

CA COASTAL RECORDS: Images 200503011 through 200503018

OTHER RELATED APPLICATIONS:

Use Permit #U 124-81 requesting approval of an inn and recreational vehicle park was continued indefinitely by the Planning Commission in February 1982, and has since expired.

Preliminary Approval #PA 84-48 was granted in June of 1984 for use of an existing single family residence as a four unit bed and breakfast inn, subject to approval of a use permit.

In September 1984, the California Coastal Commission approved an application for conversion of a single-family residence into a four-unit bed and breakfast inn, subject to conditions including an offer of dedication of coastal access. Conditions were never met and the permit was never issued.

Certificate of Compliance #CC 39-90 resulted in certificates for four parcels of approximately 120, 160, 160 and 400 acres recorded in April 1995, on the Jackson-Grube Family property.

On February 1, 1996, the Planning Commission approved Coastal Development Use Permit #CDU 9-95, allowing for a 10 unit inn including a remodel of the former Orca Inn into two guest units and the construction of eight new individual guest cottages. The project was subsequently appealed and ultimately approved by the Board of Supervisors on May 13, 1996, with a condition added requiring a public access easement along the blufftop.

Coastal Development Permit #CDP 101-99, for storm damage repair on Highway One, was approved by the Coastal Permit Administrator on May 25, 2000. The permit was a follow-up to Emergency Permit #EM 05-98, which was granted to allow Caltrans to relocate the highway easterly due to erosion and subsidence on the bluff.

On August 3, 2000, Coastal Development Use Permit Modification #CDUM 9-95/2000 was approved by the Planning Commission as a means of implementing the terms of a settlement agreement between the County and Jackson-Grube Family. In essence, the approval by the Board of Supervisors of #CDU 9-95 was challenged in court over a condition requiring coastal access on the ground that it violated the nexus requirement of Nolan v. Coastal Commission. A settlement was reached where the condition requiring an offer of dedication was dropped in exchange for the following: (1) The Jackson-Grube Family was to execute a deed conveying fee title to the County of a one acre portion of the 400± acre property (AP# 015-330-05) and (2) The Jackson-Grube family was to pay the County the sum of \$25,000.00 toward the development of coastal access in the area. A condition was also added requiring an offer to dedicate an easement for public access through the property along a 15 foot strip on the west side of the Caltrans right-of-way of Highway One.

Coastal Development Use Permit (CDU) 6-2006 was approved by the Planning Commission on June 21, 2007. The request was to build a 10-unit inn in 2 phases. Phase I to consist of the demolition and reconstruction of the former Orca Inn into a main unit of 2,961 square feet (3 bedroom /3 bathroom/downstairs areas including a kitchen, dining and reception rooms). The north end of the structure would include an upstairs unit of 1,089 square feet (2 bedroom/2 bathroom/kitchen) and downstairs unit of 833 square feet (1 bedroom/1 bathroom/kitchen). In addition, a 1,276 square-foot two floored manager unit (2 bedroom/3 bathroom/kitchen); 1,269 square-foot equipment barn; 648 square-foot maintenance shop; and a 240 square-foot generator/pump shed are proposed as part of the first phase. Phase II would consist of 7 units with 3 added to the main building in two storied units of 954 square feet (1 bedroom/1 bathroom/kitchen); 951 square feet (1 bedroom/1 bathroom/kitchen); and 820 square feet (1 bedroom/1 bathroom/kitchen); 2 units within a detached bunkhouse of 531 square feet (1bedroom/1 bathroom/kitchen) and 757 square feet (2 bedroom/1 bathroom/kitchen); and 2 separate cottages of 835 square feet (2 bedroom/1 bathroom) and 915 square feet (2 bedroom/1 bathroom), respectively. A 778 square-foot spa, wells, septic systems, roads and underground utilities are also proposed within the approximate 3.7-acre area of development. LOCATION: Within the Coastal Zone, 4± miles south of Westport, 1± north of Abalobadiah Creek, approximately 700 feet west of Highway 1; AP#'s 015-380-03; -04; -

05, 015-330-13; -19; -27 and a portion of -28, 015-070-45; -49; -51; and portions of -47; -52. The project was appealed to the Coastal Commission.

Appeal No. A-1-MEN-07-28 (Jackson-Grube Family, Inc., Mendocino Co.) CDU 6-2006 was appeal by (1) Molly Warner & Britt Bailey, (2) Commissioners Kruer & Wan, (3) Mendocino Group Sierra Club, Friends of The Ten Mile, (4) Margery S. Cahn Trust & Whiting Family Revocable Trust from decision of County of Mendocino granting permit with conditions to Jackson-Grube Family, Inc. for building a 7-unit inn in 2 phases. Phase I consists of (1) demolition, reconstruction, and expansion of the former Orca Inn into 2,961 sq.ft., 25-ft. high 3-bedroom guest suite unit and northward extension of building containing enclosable 831 sq.ft. outdoor activity area, 255 sq.ft. caterer's kitchen, 693 sq.ft. conference room, 1,089 sq.ft. guest suite unit and 833 sq.ft. guest suite unit, (2) 1,276 sq.ft., 2-story manager's unit, (3) 1,269 sq.ft. equipment barn, 648 sq.ft. maintenance shop, and (4) 240 sq.ft. generator/pump shed. Phase II consists of (1) 2 guest suite units within detached bunkhouse of 531 sq.ft. and 757 sq.ft., (2) 2 separate guest suite cottages of 835 sq.ft. and 915 sq.ft., respectively, and (3) 778 sq.ft. spa, including wells, septic system, roads and underground utilities, at 31502 North Highway 1, (4 miles south of Westport), Mendocino County (APN 015-380-05). To date, this appeal hearing has been postponed.

PROJECT DESCRIPTION: The applicant describes the project as follows:

The Kibesillah Public Trail will be placed within a 15-foot wide lateral public access easement on the west side of State Route 1 at the Jackson-Grube Family Trust property. The Jackson-Grube PAE is approximately 7,000 feet long (APN 015-380-02, -04, & -05). The establishment of this trail entails clearing vegetation to establish the trail route, fencing the boundary between the easement and adjacent private lands, installation of two foot bridges at drainage crossings, install signs, and constructing boardwalks in wet areas. Fencing: A peeler pole and t-stake wire fence will be installed along the boundary of the easement, 15-feet west of the eastern property boundary. Six inch diameter treated peeler poles will be placed 20-feet apart with t-stakes every 10-feet with wire fencing to keep cattle out of the easement. Approximately 7000 feet of fencing will be installed. Boardwalks: Segments of boardwalk will be installed in wet areas (approximately 365 feet in total). These segments will be constructed on 4"x8" stringers with Trex overlaid. Boardwalks will be 48" wide. Signs: Two management signs and four directional signs will be installed on 8'x6" posts. Private property signs will be placed along the west side of the easement. Bridges: An 18 foot long fiberglass bridge will be placed on an unnamed creek (Area 8) to cross an entrenched channel. Both bridges will span from bank to bank with abutments outside the stream channel. Bridges will be assembled on site.

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

Earth (Item 1):

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

Any increase in wind or water erosion of soils, either on or off the site: At PM 72.47, erosional headcutting is present just beyond the existing box culvert. This may be an indication of an accumulation of sediment due to inadequate functioning of the box culvert. The applicant currently proposes to leave the box culvert as is, and

allow pedestrian access to pass over the box culvert. Pedestrian impacts to the box culvert over time may result in a cave-in, which would contribute to the existing erosion problem at this location. Staff includes Recommended Condition Number 1 to require revisions to the proposed crossing which would assure the pedestrian trail would not result in increased erosion at this location.

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

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

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

Water (Item 3):

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

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

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

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

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

wetland and stream channels. Culvert-based crossings may be appropriate for smaller channel crossings provided that the design minimizes fill and allows for maintenance of natural stream channel function. Full span design will be required for more significant stream channels and wetland areas. Damaged and other substandard crossings that currently exist within the project areas shall be upgraded to meet the above stated standards.

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

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

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

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

Plant Life (Item 4):

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 20.496.025 Wetlands and Estuaries.

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

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

(10) Nature study purposes and salmon restoration projects.

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

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

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

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

Sec. 20.496.035 Riparian Corridors and other Riparian Resource Areas.

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

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

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

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

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

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

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

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

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

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

1. To minimize impacts to wetland, riparian and stream habitats, trail sections that intercept these sensitive habitats shall incorporate design features that allow for continued function including water ponding and ground saturation, sediment transport, riparian cover and natural stream channel formation. When crossing wetlands and stream channels, span-design crossings shall be used instead of installing rock, dirt or other fill on top of wetland and stream channels. Culvert-based crossings may be appropriate for smaller channel crossings provided that the design minimized fill and allows for maintenance of natural stream channel function. Full span design will be required for more significant stream channels and wetlands areas. Damaged and other

substandard crossings that currently existing within the project areas shall be upgraded to meet the above stated standards.

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

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

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

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

Animal Life (Item 5):

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

Noise (Item 6):

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

Land Use (Item 8):

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

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

The parcels are classified on the Coastal Plan Map and zoned as Remote Residential (RMR), 20 acre minimum lot size, with a Planned Development (PD) Combining Zoning District. Parcel 015-380-05 is additionally designated with a *1C, indicating that visitor accommodations (conditionally approved Bed and Breakfast/Inn) are to be considered the primary permitted use, and that visitor serving use is to be the priority for the site (page 104 in Section 3.7 of the Coastal Element, version 11-5-85). The proposed use as a public access trail meets the definition of Active Recreation as outlined in Section 20.340.020 as follows:

Establishment of facilities which constitute "development" as defined in Section 20.308.035(D), and that may have the potential for environmental impacts requiring mitigation or which may involve hazards, generate noise, dust, additional traffic, or have other potential impacts. Examples include construction of spectator sports facilities, recreational boating facilities, shooting ranges, rodeo facilities and recreational trails. (Ord. No. 3785 (part), adopted 1991)

Active Recreation is listed as a conditionally permitted use type in the Remote Residential District, however, as clarified in the July 14, 2004 memorandum by Rick Miller, to address listing inconsistencies¹, staff is processing applications for the construction of recreational trails as Coastal Development Permits, unless development is proposed on a bluff face, in which case those applications would be processed as Use Permits (Miller 2004).

Policy 3.6-26 of the Coastal Element states:

Prior to the opening, advertising or use of any accessway, the responsible individuals or agency shall prepare a management plan for that accessway, which is acceptable to the County of Mendocino, sufficient to protect the natural resources and maintain the property.

Section 20.528.045 of the Mendocino County Coastal Zoning Code requires an Accessway Management Plan before any accessway can be opened up to the public. As outlined in the code the plan must include the following provisions:

No accessway shall be opened for public use until an Accessway Management Plan has been prepared by the managing agency and accepted by the Director. At a minimum, the Plan shall:

- (A) Provide for a design which avoids or mitigates any public safety hazards and any adverse impacts on agricultural operations or identified coastal resources;*
- (B) Set forth the agency(ies) responsible for operating, maintaining and assuming liability for the accessway;*
- (C) Set forth any other known provisions such as facilities to be provided, signing, use restrictions and special design and monitoring requirements; and*
- (D) Set forth provisions for protecting the accessway from vandalism and/or improper use (e.g., guarded gate, security patrol, hours of operation or period/seasons of closure and fees, if any). (Ord. No. 3785 (part), adopted 1991)*

Recommended Condition Number 4 is included to require the Accessway Management Plan as a condition of approval. As conditioned, the proposed public access trail would not substantially alter or detrimentally impact the present or planned uses of these parcels.

¹ Active Recreation is not an allowable use type in the Suburban Residential (SR), Rural Village (RV), Fishing Village (FV), Commercial (C), Industrial (I), or Public Facilities (PF) districts. Conflicts therefore arise when public access, in compliance with the Coastal Act, is pursued in these districts.

The project is located in an area served by the Westport Municipal Advisory Council (WMAC). WMAC considered the project at their regularly scheduled meeting held March 25, 2009. As outlined in the minutes, GMAC voted unanimously in favor of recommending approval of the project, noting that the surface of the trail is not described and that WMAC would prefer that the trail not be paved.

As conditioned, the project complies with the zoning requirements for the Remote Residential District set forth in Chapter 20.380, and with all other zoning requirements of Division II of Title 20 of the Mendocino County Code.

Transportation/Circulation (Item 12):

Effects on existing parking facilities, or demand for new parking?

Chapter 20.472 of the Mendocino County Coastal Zoning Code sets requirements for off-street parking for all land uses in sufficient numbers to accommodate vehicles which will be congregated at a given location, in order to minimize on-street parking, increase traffic and pedestrian safety and promote the general welfare. General requirements are outlined as follows:

Sec. 20.472.010 General.

(B) At the time of initial occupancy of a site or of construction of a structure or of a major alteration or enlargement of site or structure, there shall be provided off-street parking facilities for automobiles in accordance with the regulations prescribed in this Chapter. For the purposes of this Chapter the term "major alteration or enlargement" shall mean a change of use or an addition which would increase the number of parking spaces required by more than ten (10) percent of the total number required.

(I) Parking areas shall, at a minimum, be surfaced with gravel; however, the approving authority may require a hard surface such as road oil mix, or other surfacing of a more durable type such as a bituminous plant mix, asphaltic concrete or concrete as a condition of the Coastal Development Permit.

(J) All required parking spaces shall be at least nine (9) by twenty (20) feet, unless otherwise provided for under this section.

The zoning code does not outline specific parking requirements for recreational trails, however, reasonable parking accommodations have been provided in the past for recreational trail locations, and Section 30212.5 of the Coastal Element states:

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

The proposed trail is likely to be utilized in the short term by guests of the Pacific Star Winery, located approx. ¼ mile north (APN 015-370-11), and visitors to the South Kibesillah Gulch Fishing Access approximately ¼ mile south (APN 015-330-05). In the long term, the trail has potential to be part of a larger coastal trail, providing an alternate route for hikers to this stretch of Highway One, which does not currently have paved shoulders. Parking is available at the Pacific Star Winery for their guests, and there are six parking spaces at the South Kibesillah Gulch Fishing Access. Since the trail would provide for lateral pedestrian access along the west side of the highway, and does not start or terminate at any "destination" point, it is unlikely that users would drive specifically to utilize this trail section, and therefore parking in addition to existing parking in the near vicinity is unwarranted. Therefore, the proposed trail would not significantly impact existing parking facilities, nor would it create the need for new parking facilities.

Public Services (Item 13):

Will the proposal have an effect upon, or result in a need for new or altered government services in any of the following areas:

Fire protection, police protection, schools, parks and other recreational facilities, other governmental services:

The property is in an area that has a "moderate" fire hazard severity rating as determined by the California Department of Forestry and Fire Prevention (Calfire). An application was submitted to Calfire (CDF# 264-08) for address standards, driveway standards, setbacks, and defensible space standards. Calfire responded that the proposed project is exempt from Calfire requirements.

Maintenance of public facilities, and roads? The proposed trail would be located along the west side of Highway One. Caltrans was sent a referral and Jesse Robertson commented that work or trail facilities within the State right of way will require review by Caltrans and/or an encroachment permit. Jesse Robertson also commented:

If the trail design proposes attachments to Caltrans structures, including pedestrian bridges or causeways over concrete box culverts, for example, the applicant may need to submit plans for review by the Caltrans Structures Office in Sacramento (Robertson 2009).

According to the recorded Irrevocable Offer to Dedicate Easement and Declaration of Restrictions for the public access easement in which the trail is to be located, the boundaries of the easement are defined relative to the County Right of Way. Specifically, on page 2 of 12, second paragraph of VI, the easement document defines the location as: "...located on the subject property on the westerly edge of said property abutting the Caltrans right-of-way, 15 feet in width along the entire length..." The trail will therefore be entirely located outside of the Caltrans right of way. The applicant has indicated that a crossing structure may be attached to the Caltrans box culvert located at PM 72.47. Recommended Condition Number 6 is included to ensure that any plans to attach to Caltrans structures are cleared by Caltrans.

Utilities (Item 15):

Will the project result in a need for new systems or substantial alterations to the following:

Sewerage, Energy or information transformation lines:

Sewerage -

The project was referred to the Division of Environmental Health. The Division of Environmental Health responded that they could give clearance to this permit application, noting that trail and fence posts must meet an eight foot setback to any existing or proposed primary or replacement septic leachfields. Recommended Condition Number 5 is included to ensure compliance with this requirement.

The project does not propose connections to or development of new utilities, and as conditioned, will not result in significant impacts to existing utilities.

Aesthetics (Item 17):

Obstruction of any scenic vista or view open to the public, or create an aesthetically offensive site open to public view? The subject property is located in a designated highly scenic area according to the Land Use Plan Map. Highly Scenic Area policies outlined in Chapter 20.504 of the Mendocino County Coastal Zoning Code are generally directed toward assuring that structural developments are visually compatible with public view areas

such as public trails, beaches, and the highway. The subject project consists of the development of a public trail. Most of the proposed development consists of "flat work," including pathways, boardwalks under three feet in height, and footbridges. Other development consists of peeler pole and t-stake wire fencing to allow for appropriate separation of public access and agricultural uses, and two management and four directional signs to indicate appropriate use of the trail area, including natural resources protection information.

The sign regulations outlined in Chapter 20.476 of the Mendocino County Coastal Zoning Code do not apply to the proposed management and directional signs, as they are authorized by law and would be erected by State officials – the trail is jointly managed by the California Coastal Conservancy, the California Coastal Commission and the Mendocino Land Trust. Section 20.476.035 of the Mendocino County Coastal Zoning Code provides for the exemption from sign regulations as follows:

Sec. 20.476.035 General Regulations

The following shall apply in the construction and maintenance of on-site and off-site signs.

(A) Special Purpose Signs. The following special purpose signs shall be exempt from these regulations:

(1) Directional, warning or informational signs required or authorized by law which are erected by federal, state, county, municipal officials or special district officials;

The proposed signs include two management signs, similar to the one shown as Exhibit H, and three directional (arrow) signs.

The proposed trail and associated development would not result in significant impacts to visual resources.

Public Access & Recreation (Item 18):

Impact upon the quality or quantity of existing recreational opportunities? The proposed public access trail would span laterally along the west side of Highway One.

The nearest public access area is shown on the LUP map as the South Kibesillah Gulch Fishing Access. Regarding the South Kibesillah Gulch Fishing Access, the Coastal Element states as follows:

South Kibesillah Gulch Fishing Access

Location: West of Highway 1; .5 miles north of Abalobadiah Creek.

Ownership: Wildlife Conservation Board (WCB), California Department of Fish and Game--6 acres.

Existing Development: Restrooms, picnic tables, and improved trail down the bluff to the beach are maintained by the Mendocino County Department of Parks and Beaches.

*Policy:
4.2-13*

Existing offers of lateral access dedication on 2 parcels north of South Kibesillah Gulch Fishing Access, one for 25 feet from the property boundary, the other for 25 feet from the mean high tide, by Cronemiller and Garcia, are found inappropriate because there is sufficient public access at the Fishing Access, a continuous blufftop trail is not proposed by the Coastal Element, and no beach exists. These offers shall be relinquished.

Potential Development: An access stairway should be provided.

Ownership in the vicinity of the South Kibesillah Fishing Access Shoreline area is currently shared by the County and the Department of Fish and Game. Parcel 015-330-04, zoned Open Space (OS) with a Flood Plain (FP) combining zoning district, is owned by the Department of Fish and Game, and is 4.08 acres in size. Parcel 015-330-05, zoned Rural Residential 5 acre minimum (RR-5), with a Flood Plain (FP) combining zoning district, is owned by the County of Mendocino, and is 2.07 acres in size². Staff noted that the trail down the bluff on APN 015-330-05 is currently inaccessible due to overgrowth of vegetation, including poison oak. There is currently one picnic table and no restroom facility. Six parking spaces are present within the County owned parcel.

The Land Use Map shows a proposed lateral access along the bluff edge on the subject parcels. Additionally, the Coastal Element describes the Chadbourne Gulch to Newport area, including Policy 4.2-12 as follows:

Chadbourne Gulch to Newport

Location: Caltrans scenic easement (Chadbourne Gulch property) to Newport.

Ownership: Private.

Potential Development: Blufftop trail on Caltrans easement and along the blufftop of privately owned parcels consistent with 3.2-14, access in agricultural areas.

Policy:

4.2-12

Offers to dedicate an easement for public access shall be obtained for those areas shown on the Land Use Plan Map and as described above. A vertical access at Newport and south laterally along the bluff top shall also be required.

A course of events since the writing of this section of the Coastal Element has occurred, resulting in a dedication of a lateral trail easement along the Highway, and dedication of a one acre property to the County for public access:

On February 1, 1996, the Planning Commission approved Coastal Development Use Permit #CDU 9-95, allowing for a 10 unit inn including a remodel of the former Orca Inn into two guest units and the construction of eight new individual guest cottages. The project was subsequently appealed and ultimately approved by the Board of Supervisors on May 13, 1996. The Planning Commission originally approved the project with the condition of no access and then the Board of Supervisors approved the project with the condition for access on the bluff and vertical access.

On August 3, 2000, Coastal Development Use Permit Modification #CDUM 9-95/2000 was approved by the Planning Commission as a means of implementing the terms of a settlement agreement between the County and Jackson-Grube Family. In essence, the approval by the Board of Supervisors of #CDU 9-95 was challenged in court over a condition requiring coastal access on the ground that it violated the nexus requirement of Nolan v. Coastal Commission. A settlement was reached where the condition requiring an offer of dedication was dropped in exchange for a 1+- acre portion of the subject property (APN 015-330-05) between Highway One and the ocean, and \$25,000 to the County for development of coastal access, with the Planning Commission noting:

1. Although not designated Rangeland or Agriculture, the majority of the applicant's parcel west of the highway is used for grazing cattle. Development of a trail along the bluff top could interfere with continued use of the land as grazing land. The deletion of the requirement of an offer of dedication of an access easement along the bluff top would avoid possible future interference with the cattle operation, and support the continued agricultural use of the land, a high priority use as specified in the Coastal Act.

² As discussed below, this parcel was deeded to the County as a condition of approval of CDU 9-95(00).

2. As shown in the video presentation at Planning Commission hearing for #CDU 9-95, the bluffs along the shoreline on the applicant's parcel are steep and fragile, and could pose a hazard to the general public if access along the bluff top were available. Along much of the property there is little or no beach, making a fall down the bluff even more hazardous. Deletion of the requirement for an offer of dedication would be consistent with policies in the plan aimed toward protecting people from hazardous areas.

3. Due to the limited number of guests that will be able to stay at the inn, it may be difficult to demonstrate that the impact posed to areas of public recreation warrants the requirement of an offer of dedication to provide additional public access, the nexus required by the Nolan decision.

4. Within a mile and a quarter north of the inn site, and two miles south of the inn site there is a substantial amount of public beach available. To the north a two-mile stretch of land west of the highway is owned by Caltrans. To the south are the Ten Mile Dunes and MacKerricher State Park. Ample opportunity for public access to the shoreline exists in the vicinity.

5. The applicant's parcel has approximately three quarters of a mile of ocean frontage. Due to the limited amount of the parcel affected by the proposed inn, and the limited number of guests that will be accommodated by the inn, it may be found that the requirement for an access easement along the entire bluff together with an easement from the bluff to the highway exceeds the "rough proportionality" required by the Dolan decision.

6. Deletion of the requirement for an offer of dedication of an access easement in compliance with the settlement agreement will allow the County to obtain \$25,000 to be used toward access improvements. Failure to implement the settlement agreement would leave the access issue at the discretion of the court, with no guarantee that the ultimate decision would be in the County's favor (Planning Commission minutes, August 3, 2000).

To CDUM 9-95(00), the following conditions were added to this effect:

19. Prior to this use permit being deemed effective, the applicant shall execute a deed conveying fee title to the one-acre parcel bearing Assessor's Parcel Number 015-330-05 to the County.

20. Prior to this use permit being deemed effective, the applicant shall pay to the County the sum of \$25,000 as a contribution toward the construction of a stairway, or like facility, from the bluff top to the beach on Assessor's Parcel Number 015-330-05. Alternatively, the County may, in its discretion, use these funds to improve beach access or trails in the area.

21. Prior to this use permit being deemed effective, the applicant shall execute and record a document in form and content approved in writing by the Director of Planning and Building Services irrevocably offering to dedicate to a public agency or a private association approved by the Director of Planning and Building, an easement for public access and passive recreational use through the 400 acre parcel along the west side of Highway One. The easement shall be 15 feet wide located long the west side of Highway One as measured from the westerly edge on the Caltrans right-of-way. As the right-of-way edge may vary and may move western over time, the location on the easement will change over time with the right-of way edge.

On August 7, 2002, the County received a \$25,000 check from Willard Jackson. Parcel 015-330-05 was deeded to the County, and the 15 foot easement west of the highway was recorded on May 7, 2002.

On October 16, 2006, the County granted the Mendocino Land Trust the dedicated 15 foot wide public access easement along the west side of Highway One for the subject parcels. On April 7, 2008, the Mendocino Land Trust requested that the \$25,000 be made available to them for public access planning and implementation in the general area. On September 15, 2008, a Memorandum of Understanding was reached between the County and the Mendocino Land Trust, where the County agreed to make available \$22,500 of the funds (retaining \$2500 for contract administration) and MLT agreed to the following:

1. Provide a workplan and budget to the County as a basis for invoices to the County for materials.

2. Enter into a contract with the County to perform the work specified in the workplan before issuance of any funds.
3. Apply for a Coastal Development Permit for work to be performed on the public access trail. A management plan will be drafted and approved by the County before the trail is open to the public.
4. MLT shall operate and maintain the public access trail in accordance to its approved Management Plan.

The subject Coastal Development Permit is to address work to be performed on the public access trail, and a Management Plan is required as a condition of approval.

Shoreline access policies set forth in the Coastal Element include the following:

3.6-18 Along sections of the highway where development intensity will result in pedestrian use, or where this is the siting of the County designated coastal trail, a 15-foot accessway measured from the right-of-way of Highway 1 shall be offered for dedication as a condition of permit approval if the topography is deemed suitable for pathway development. Coastal trail includes trails identified in Table 3.6-1 and portions of Highway 1 and Usal Road that are necessary to connect these trail segments. All such access offers that have been recorded shall be offered to Caltrans for acceptance. Prevailing acquisition methods for acquiring public right-of-way by Caltrans shall apply to this section.

3.6-21 The County of Mendocino coastal trail shall be integrated with the coastal trails in the cities of Fort Bragg and Point Arena, and with Humboldt County to the north and Sonoma County to the south so as to provide a continuously identifiable trail along the Mendocino County coast.

3.6-22 In carrying out the coastal access policies of this Coastal Element, the county or other appropriate designated management agency shall consider and encourage the utilization of innovative access management techniques including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

Section 3.6 of the Coastal Element, states in part:

The Access Component required in every LCP must contain policies concerning provision, maintenance, and management of public shoreline access and must designate existing and proposed accessways for public use. Access must be provided for viewing, active recreation and scientific research at the water's edge of the ocean and tidal rivers. The coast should be available to users of all transportation modes including drivers, bus riders, bicyclists, hikers, equestrians, and the handicapped. The Coastal Act's requirement for "maximum public access implies that all coastal environments capable of tolerating use at a reasonable risk to both humans and habitat be open.

Shoreline access policies outlined in the Coastal Zoning Code include:

3.6-16 Access to the beach and to blufftop viewpoints shall be provided for handicapped persons where parking areas can be close enough to beach or viewing level to be reachable by wheelchair ramp. The wheelchair symbol shall be displayed on road signs designating these access points where the means of access is not obvious from the main road.

For the proposed trail, parking areas are not close enough to allow access for handicapped persons. Section 1132B.2.6 of the California Disabled Accessibility Guidebook (CalDAG) outlines requirements for trails and paths as follows:

Trails, paths and nature walk areas, or portions of these, shall be constructed with gradients which will permit at least partial use by wheelchair occupants. Hard surface paths or walks shall be provided to serve buildings and other functional areas (CalDAG 2002).

There are no feasible locations for closeby parking areas to allow wheelchair access to the trail. Consequently, enforcement of this requirement is not reasonably feasible, therefore the project is subject to the following exception:

3. Automobile access shall not be provided or paths of travel shall not be made accessible when the enforcing agency determines that compliance with these regulations would create an unreasonable hardship.

The proposed management sign (Exhibit H) indicates that no bicycles are allowed on the trail. This section of Highway One does not have bike lanes, although it is a part of the Caltrans "Pacific Coast Bicentennial Bike Route." This bike route is popular with touring bicyclists. Staff suggested to the applicant that the trail may be utilized by some touring bicyclists for this stretch as an alternative to travel within the roadway, since there are no bike lanes. Recommended Condition Number 5 is included to allow bicycle access to the trail, consistent with the "maximum access" intent of the Coastal Act, and to allow for a safe alternative route for bicyclists equipped for off-road conditions.

Cultural Resources (Item 19):

Alteration or destruction of a prehistoric or historic archaeological site? An archaeological survey report by Thad Van Bueren, *Archaeological Survey of the Ottoson and Jackson Public Access Easements near Westport, Mendocino County, California, dated April 16, 2007*, was received with the project application. The project was referred to the Mendocino County Archaeological commission, and was considered at their April 8, 2009 hearing. The Arch Commission accepted the survey (3-0), noting that no sites were observed. Nevertheless, the applicant is advised by Recommended Condition Number 14 of the County's "discovery clause" which establishes procedures to follow should archaeological materials be unearthed during project construction.

Adverse physical or aesthetic effects to a prehistoric or historic building or structure? There are no known historic or prehistoric structures in the vicinity. The project would not impact any prehistoric or historic structures.

ENVIRONMENTAL RECOMMENDATION:

No significant environmental impacts are anticipated which cannot be adequately mitigated, therefore, a Mitigated Negative Declaration is recommended.

GENERAL PLAN CONSISTENCY RECOMMENDATION: The proposed project is consistent with applicable goals and policies of the General Plan.

RECOMMENDED MOTION:

General Plan Consistency Finding: As discussed under pertinent sections of this report, the proposed project is consistent with applicable goals and policies of the General Plan as subject to the conditions being recommended by staff.

Environmental Findings: The Coastal Permit Administrator finds that no significant environmental impacts would result from the proposed project which can not be adequately mitigated through the conditions of approval, therefore, a Negative Declaration is adopted.

Coastal Development Permit Findings: The Coastal Permit Administrator finds that the application and supporting documents and exhibits contain information and conditions sufficient to establish, as required by Section 20.532.095 of the Coastal Zoning Code, 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 the Coastal Zoning Code, 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.
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.
7. 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.
8. Resource protection findings:
 - (a) The resource identified will not be significantly degraded by the proposed development.
 - (b) There is no feasible less environmentally damaging alternative.
 - (c) All feasible mitigation measures capable of reducing or eliminating project related impacts have been adopted.

RECOMMENDED ACTION FOR CDP 67-2008: Staff recommends that the Planning Commission approve Coastal Development Permit CDP 67-2008, subject to the conditions of approval recommended by staff.

RECOMMENDED CONDITIONS:

- ** 1. Prior to the issuance of the Coastal Development Permit, the applicant shall submit revisions to proposed crossing designs for crossings located at Post Mile 72.47 and 73.53, to the satisfaction of the Coastal Permit Administrator. The revised crossing designs shall consist of span crossings, or if deemed adequate by the Department of Fish and Game, culvert based crossings.
- ** 2. The recommendations in the geotechnical investigation prepared by SHN Consulting Engineers and Geologists, Inc., dated May 2009, shall be incorporated into the design and construction of the proposed project. The project shall be overseen during design and construction phases for the proposed foot bridges by a qualified engineer. Prior to issuance of the building permit for the foot bridges, the applicant shall submit evidence that a qualified geotechnical or civil engineer has reviewed the final grading and building plans.
- ** 3. The Environmentally Sensitive Habitat Areas as located on the ESHA map (Exhibit G) shall be protected in perpetuity from development and disturbance. The following measures are required to ensure protection of ESHAs during and after development activities:

- (a) Prior to final building inspection of the foot bridges, the applicant shall plant a minimum of 228 square feet or area equivalent to the ratio of area displaced by fencing, boardwalk and sign footings, of hydrophytic vegetation adjacent to the existing wetlands, with a species composition similar to that of the wetland being impacted. All planted species are to be native, non-invasive plants.
- (b) Prior to final building inspection of the foot bridges, to the extent reasonably feasible, all invasive plant species within the trail easement shall be removed, and the areas replanted with appropriate native plants or seed. Riparian areas shall be replanted with native riparian plants outlined in Table 1 and wetlands shall be replanted with native wetland plants outlined in Table 2. To the extent feasible, plants used for wetland enhancement shall be of stock from within the immediate locale and shall be planted at the most appropriate time to achieve the highest survival rate.

Table 1. Riparian replanting list.

Common Name	Latin Name
Sitka willow	<i>Salix sitchensis</i>
Hooker's willow	<i>Salix hookeriana</i>
red alder	<i>Alnus rubra</i>
California blackberry	<i>Rubus ursinus</i>
sword fern	<i>Polystichum munitum</i>

Table 2. Wetland replanting list.

Common Name	Latin Name
common rush	<i>Juncus effusus</i>
spreading rush	<i>Juncus patans</i>
pacific reed grass	<i>Calamagrostis nutkaensis</i>
lady fern	<i>Athyrium filix-femina</i>
giant horsetail	<i>Equisetum telmateia ssp. braunii</i>
water cress	<i>Rorippa nasturtium-aquaticum</i>
California oatgrass	<i>Danthonia californica</i>
creeping spike rush	<i>Eleocharis macrostachya</i>
California hair-grass	<i>Deschampsia caespitosa</i>
pacific silverweed	<i>Potentilla anserina ssp. pacifica</i>
blue-eyed grass	<i>Sisyrinchium bellum</i>
cows clover	<i>Trifolium wormskioldii</i>

- (c) The applicant shall monitor planted/enhanced wetland and riparian areas within the trail easement at intervals of 1, 3 and 5 years. If during the monitoring, native plant survivorship success rates have dropped below the recommended 75% level, the applicant shall replant until the minimum 75% goal has been achieved for a minimum period of at least five years.
- (d) Invasive plants shall be removed to the extent reasonably feasible from the entire public access easement area on a bi-annual basis as long as the easement area is actively managed.
- (e) All ground disturbance shall occur during the dry season, which generally runs from April 15 through October 31. All soil shall remain on site.
- (f) To minimize impacts to wetland, riparian and stream habitats, trail sections that intercept these sensitive habitats shall incorporate design features that allow for continued function

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

- **
4. Prior to the issuance of the Coastal Development Permit, the applicant shall provide for acceptance by the Director of Planning and Building Services, an Accessway Management Plan. At a minimum, the Plan shall:
 - (a) Provide for a design which avoids or mitigates any public safety hazards and any adverse impacts on agricultural operations or identified coastal resources;
 - (b) Set forth the agency(ies) responsible for operating, maintaining and assuming liability for the accessway;
 - (c) Set forth any other known provisions such as facilities to be provided, signing, use restrictions and special design and monitoring requirements; and
 - (d) Set forth provisions for protecting the accessway from vandalism and/or improper use (e.g., guarded gate, security patrol, hours of operation or period/seasons of closure and fees, if any).
 5. Prior to posting, "No Bicycles" shall be removed from the management signs.
 6. This permit is subject to the securing of all necessary permits for the proposed development and eventual use from County, State and Federal agencies having jurisdiction. Any requirements imposed by an agency having jurisdiction shall be considered a condition of this permit.
 7. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Game filing fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Mendocino County Department of Planning and Building Services. Said fee of \$2,043 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services prior to September 11, 2009. If the project is appealed, the payment will be held by the Department of Planning and Building Services until the appeal is decided. Depending on the outcome of the appeal, the payment will either be filed with the County Clerk (if the project is approved) or returned to the payer (if the project is denied). Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void. **The applicant has the sole responsibility of timely compliance with this condition.**
 8. This permit shall become effective after all applicable appeal periods have expired, or appeal processes have been exhausted, and after any fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Department of Planning and Building Services. Failure of the applicant to make use of this permit within 2 years or failure to comply with payment of any fees within specified time periods shall result in the automatic expiration of this permit.

To remain valid, progress towards completion of the project must be continuous. The applicant has sole responsibility for renewing this application before the expiration date. The County will not provide a notice prior to the expiration date.

- 9. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Division II of Title 20 of the Mendocino County Code.
- 10. The application, along with supplemental exhibits and related material, shall be considered elements of this permit, and that compliance therewith is mandatory, unless an amendment has been approved by the Planning Commission.
- 11. The applicant shall secure all required building permits for the proposed project as required by the Building Inspection Division of the Department of Planning and Building Services.
- 12. This permit shall be subject to revocation or modification upon a finding of any one or more of the following:
 - a. The permit was obtained or extended by fraud.
 - b. One or more of the conditions upon which the permit was granted have been violated.
 - c. The use for which the permit was granted is conducted so as to be detrimental to the public health, welfare or safety, or to be a nuisance.
 - d. A final judgment of a court of competent jurisdiction has declared one or more conditions to be void or ineffective, or has enjoined or otherwise prohibited the enforcement or operation of one or more such conditions.

Any revocation shall proceed as specified in Title 20 of the Mendocino County Code.

- 13. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.
- 14. If any archaeological sites or artifacts are discovered during site excavation or construction activities, the applicant shall cease and desist from all further excavation and disturbances within one hundred feet of the discovery, and make notification of the discovery to the Director of the Department of Planning and Building Services. The Director will coordinate further actions for the protection of the archaeological resources in accordance with Section 22.12.090 of the Mendocino County Code.

August 10, 2009

DATE

(Original Signed)

TERESA SPADE
PLANNER II

Appeal Period: Ten calendar days for the Mendocino County Board of Supervisors, followed by ten working days for the California Coastal Commission following the Commission's receipt of the Notice of Final Action from the County.

Appeal Fee: \$945 (For an appeal to the Mendocino County Board of Supervisors.)

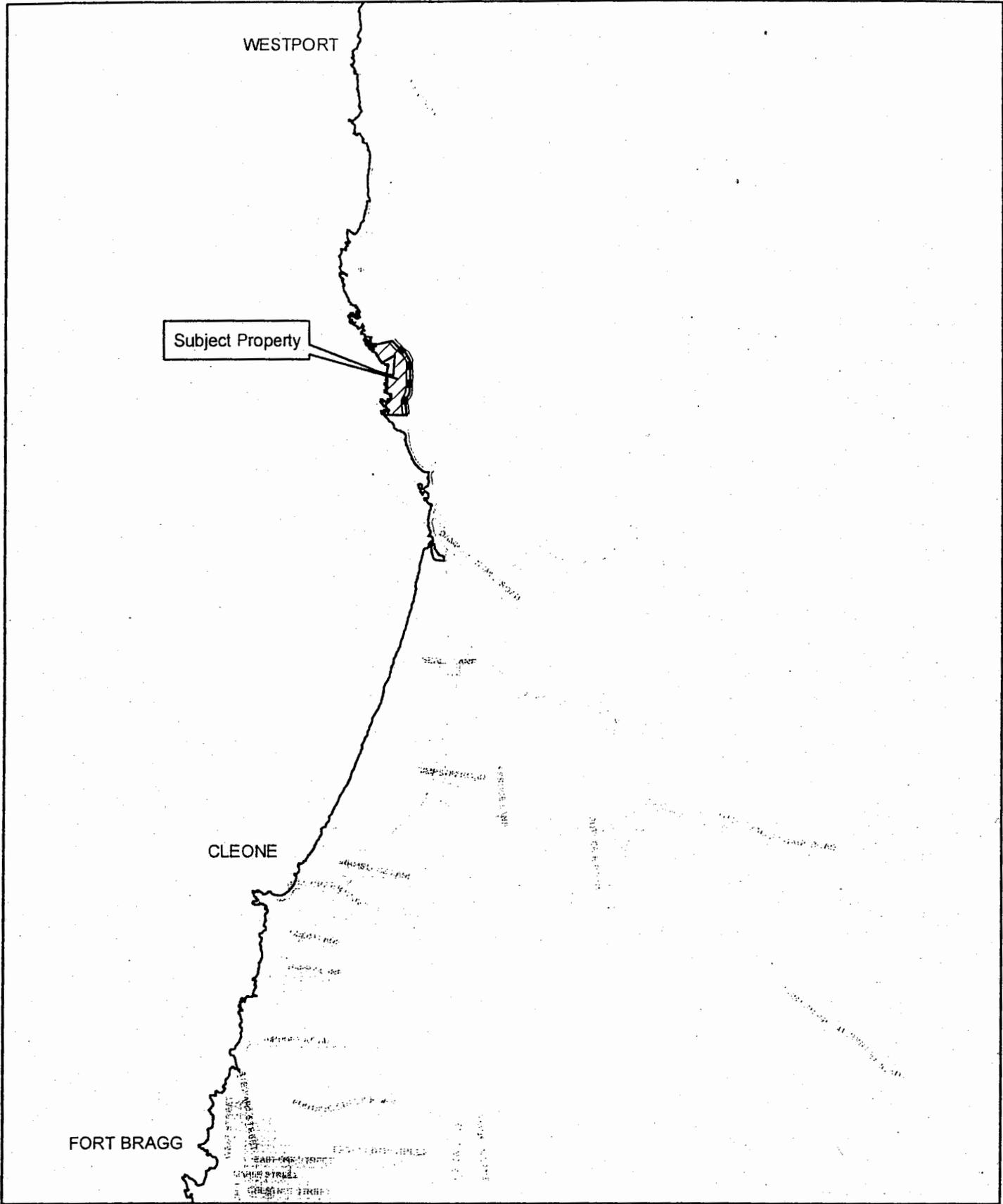
** Indicates conditions relating to Environmental Considerations - deletion of these conditions may affect the issuance of a Negative Declaration.

ATTACHMENTS:

- Exhibit A: Location Map
 - Exhibit B: Zoning Display Map
 - Exhibit C: Topographic Map
 - Exhibit D: Orthophoto
 - Exhibit E: California Natural Diversity Database Map
 - Exhibit F: Public Trail Map
 - Exhibit G: ESHA Map
 - Exhibit H: Management Sign
-
- Appendix A: Reduced Buffer Analysis
 - Appendix B: Mitigation Measures Outlined in the Biological Report

SUMMARY OF COMMENTS:

- | | |
|-----------------------------------|---|
| Westport MAC | Support approval – information regarding paving has not been provided, and WMAC would prefer that the trail not be paved. |
| Westport Fire | No comment. |
| Environmental Health – Fort Bragg | DEH clearance. Fence posts must meet 8' setback to any existing or proposed primary or replacement septic leachfields. |
| Building Inspection – Fort Bragg | The two foot bridges will require permits with an architect or engineer's approval. |
| Assessor | No response. |
| Caltrans | Response outlined in the Public Services (Item 13) section of this report. |
| Coastal Commission | No response. |
| Department of Fish and Game | Outlined in the Natural Resources section of this report. |



Subject Property

WESTPORT

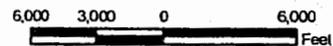
CLEONE

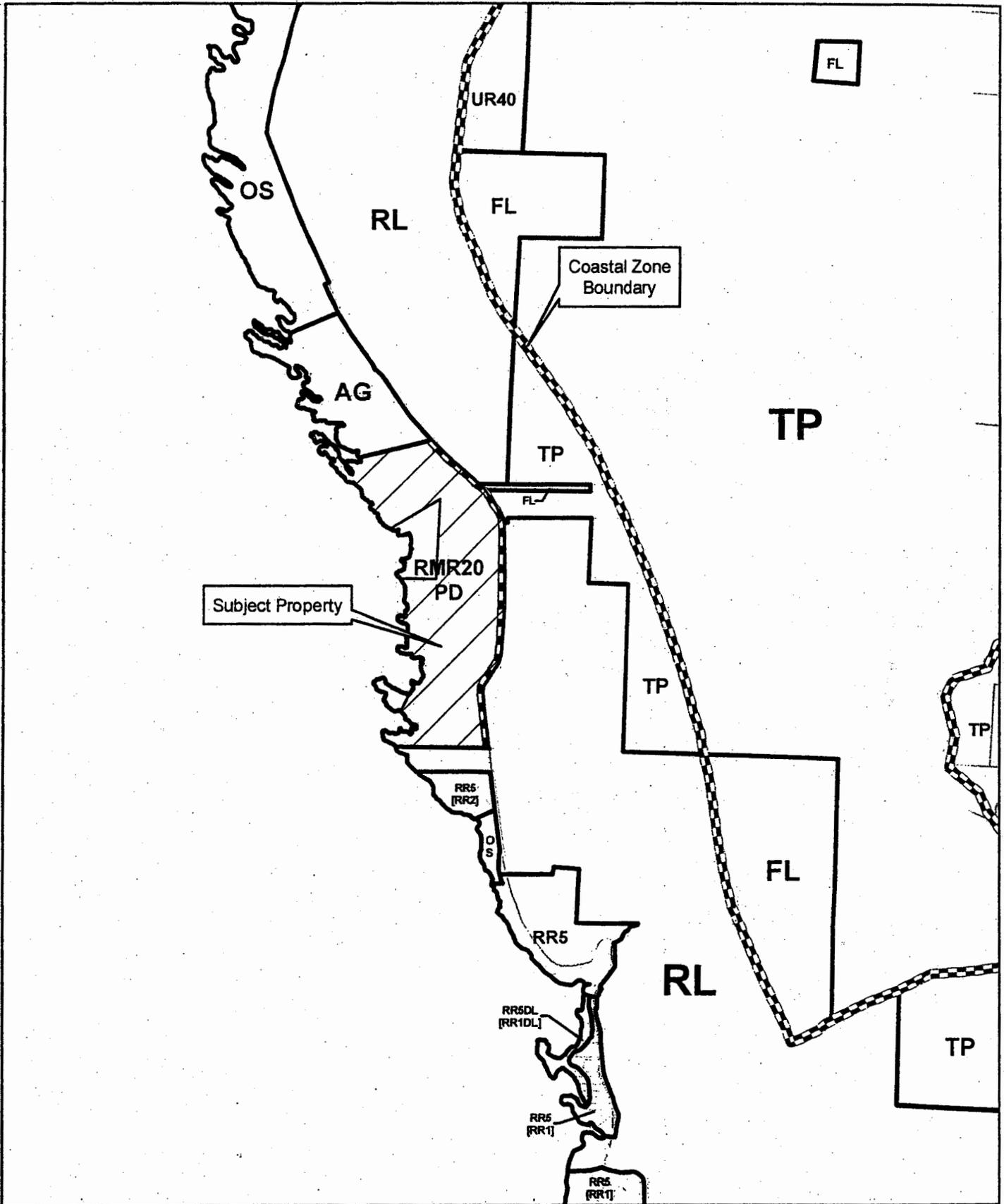
FORT BRAGG

LOCATION MAP

OWNER: GRUBE, Jackson
 CASE #: CDP 67-2008
 APNs: 015-380-02, 015-380-04 & 015-380-05
 Trail along west side of Highway 1

Parcel lines are approximate. Parcel lines on this map are NOT SURVEY LINES, they are for viewing purposes only and should not be used to determine legal boundary lines. Parcel line can be over 200 feet off. (Parcel lines are as of September 2007)

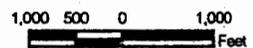


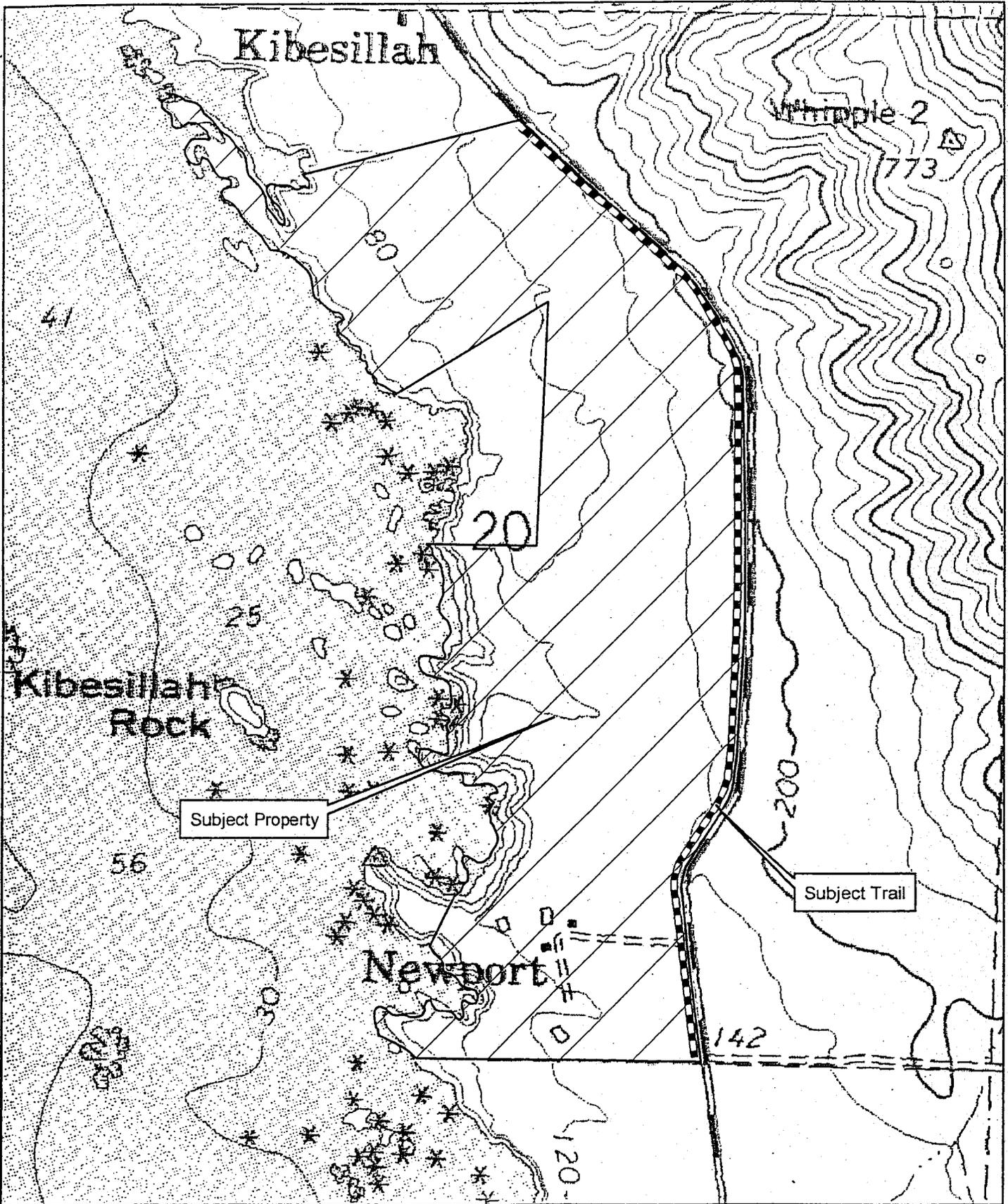


OWNER: GRUBE, Jackson
 CASE #: CDP 67-2008
 APNs: 015-380-02, 015-380-04 & 015-380-05
 Trail along west side of Highway 1

ZONING DISPLAY MAP

Parcel lines are approximate. Parcel lines on this map are NOT SURVEY LINES, they are for viewing purposes only and should not be used to determine legal boundary lines. Parcel line can be over 200 feet off. (Parcel lines are as of September 2007)

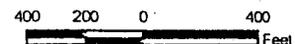


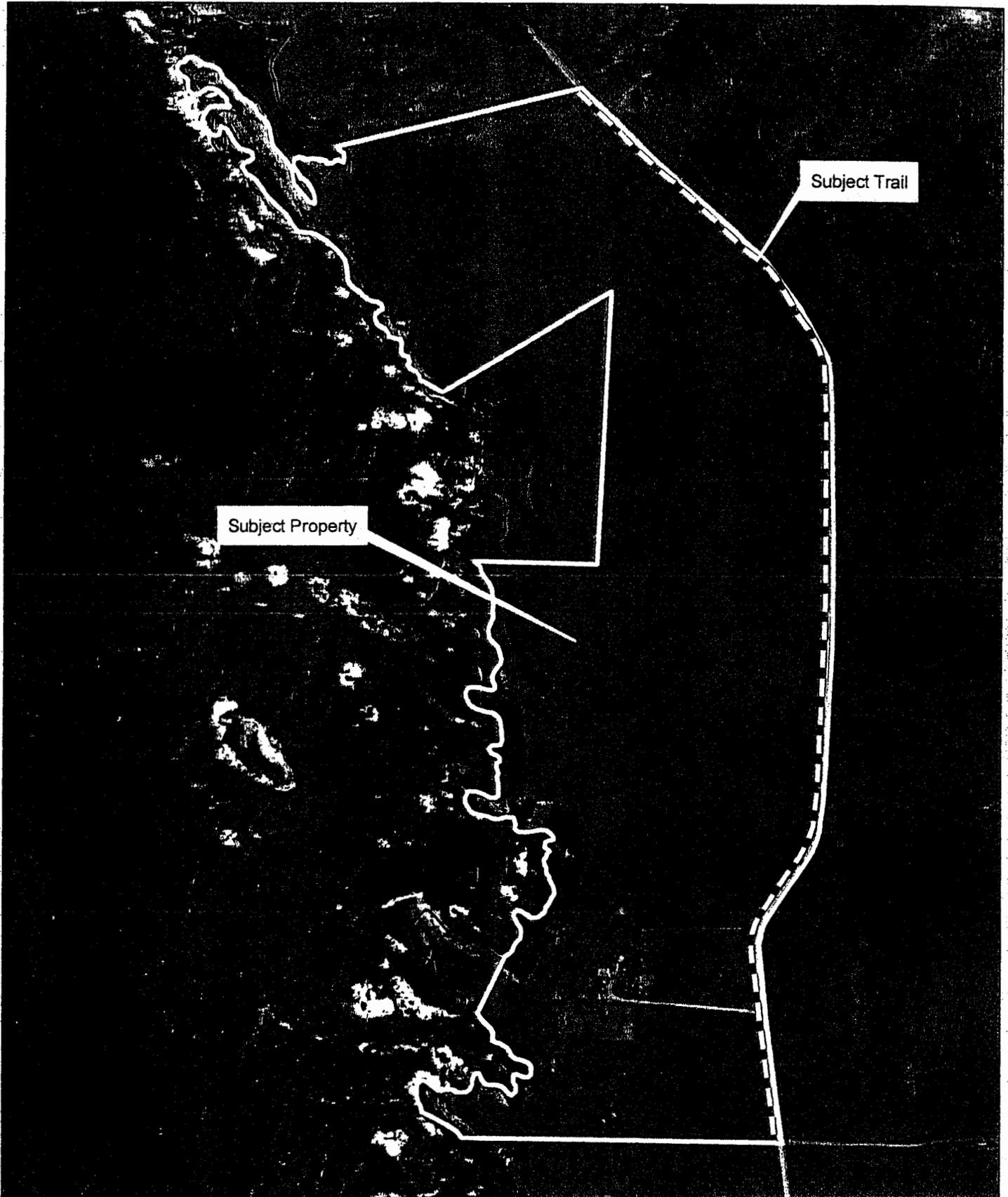


OWNER: GRUBE, Jackson
 CASE #: CDP 67-2008
 APNs: 015-380-02, 015-380-04 & 015-380-05
 Trail along west side of Highway 1

USGS MAP
 CONTOUR INTERVAL 40 FEET

Parcel lines are approximate. Parcel lines on this map are NOT SURVEY LINES, they are for viewing purposes only and should not be used to determine legal boundary lines. Parcel line can be over 200 feet off. (Parcel lines are as of September 2007)



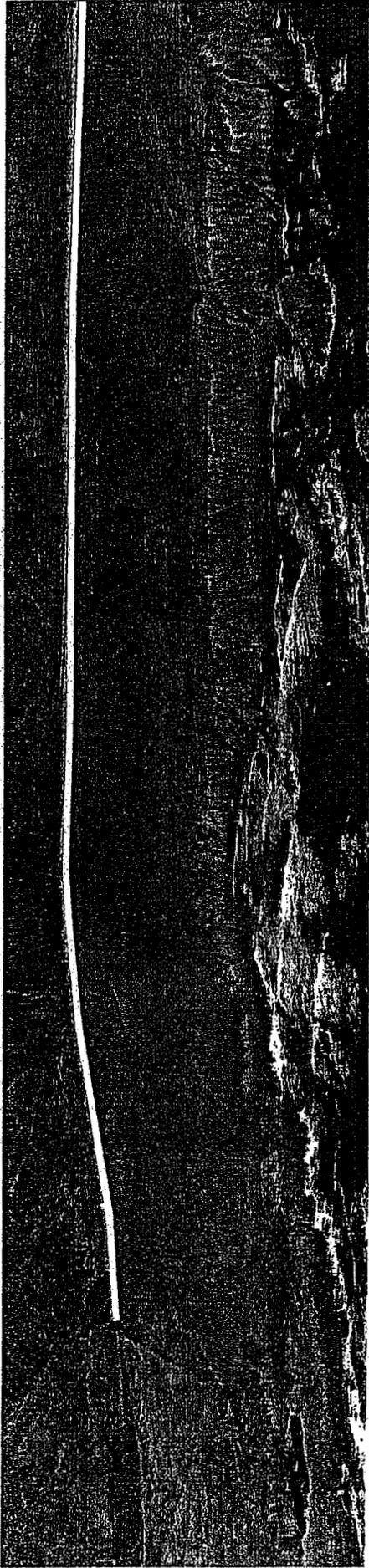


OWNER: GRUBE, Jackson
CASE #: CDP 67-2008
APNs: 015-380-02, 015-380-04 & 015-380-05
Trail along west side of Highway 1

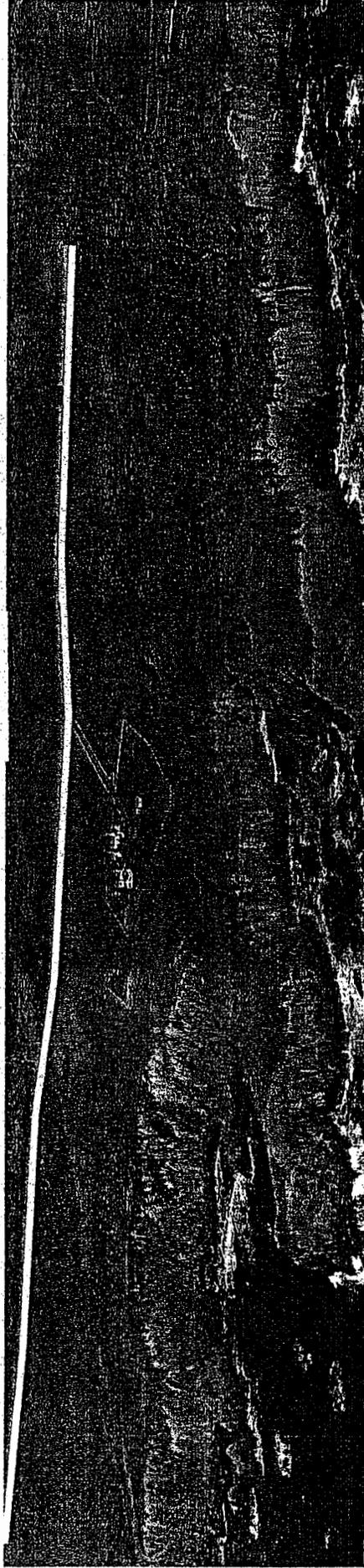
ORTHOPHOTO - August 2005

Parcel lines are approximate. Parcel lines on this map are NOT SURVEY LINES, they are for viewing purposes only and should not be used to determine legal boundary lines. Parcel line can be over 200 feet off. (Parcel lines are as of September 2007)





NORTH END OF TRAIL



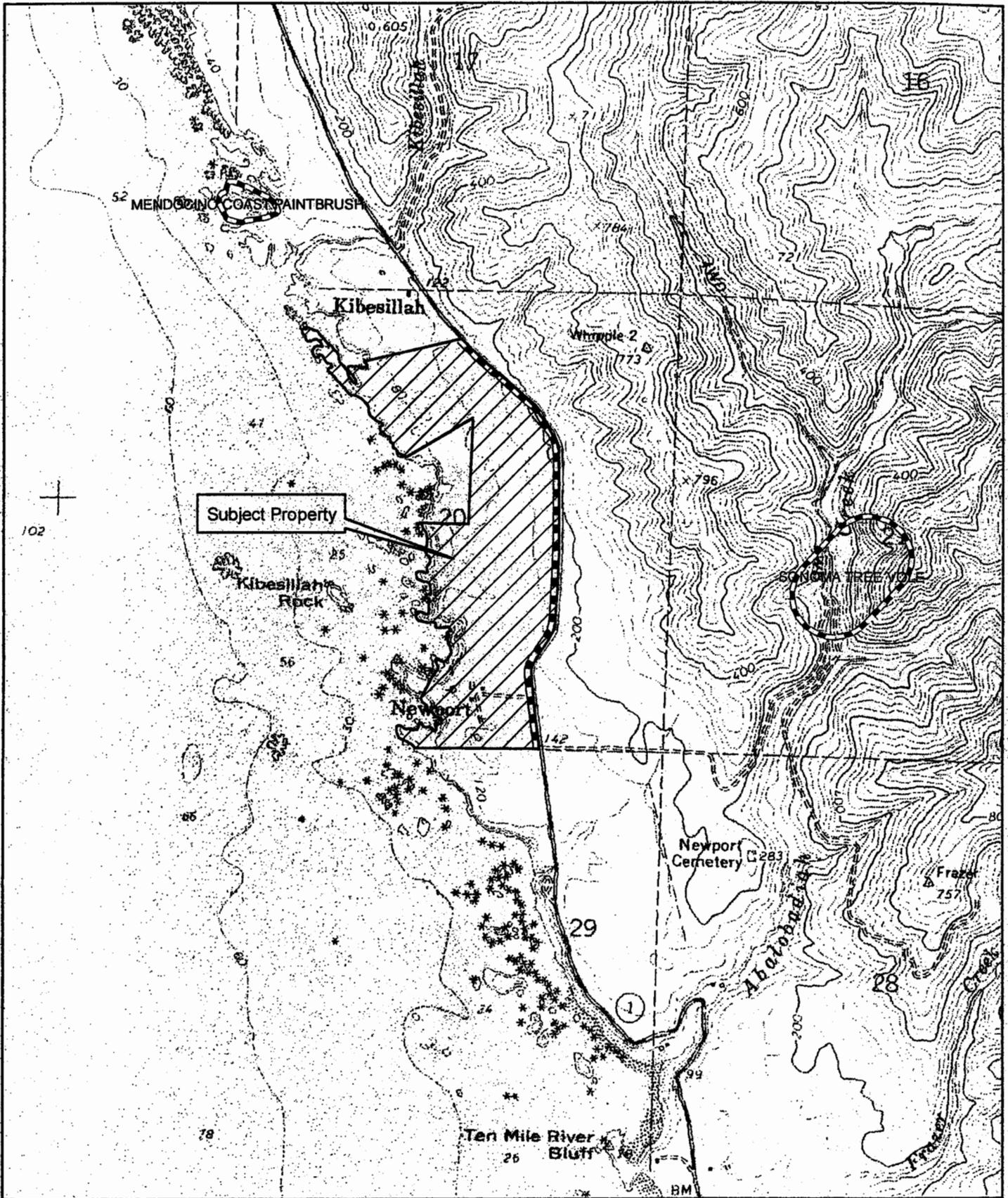
SOUTH END OF TRAIL

OWNER: GRUBE, Jackson
CASE #: CDP 67-2008
APNs: 015-380-02, 015-380-04 & 015-380-05
Trail along west side of Highway 1

PHOTO OCTOBER 4, 2005
CALIFORNIA COASTAL RECORDS PROJECT
COPYRIGHT resourcestrategies@usa.net

The Trail along Highway 1 is only approximate, this is for viewing purposes only and should not be used to determine legal location of trail.

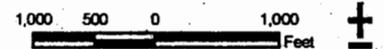
Not To Scale +H

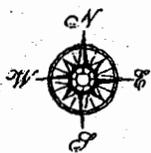
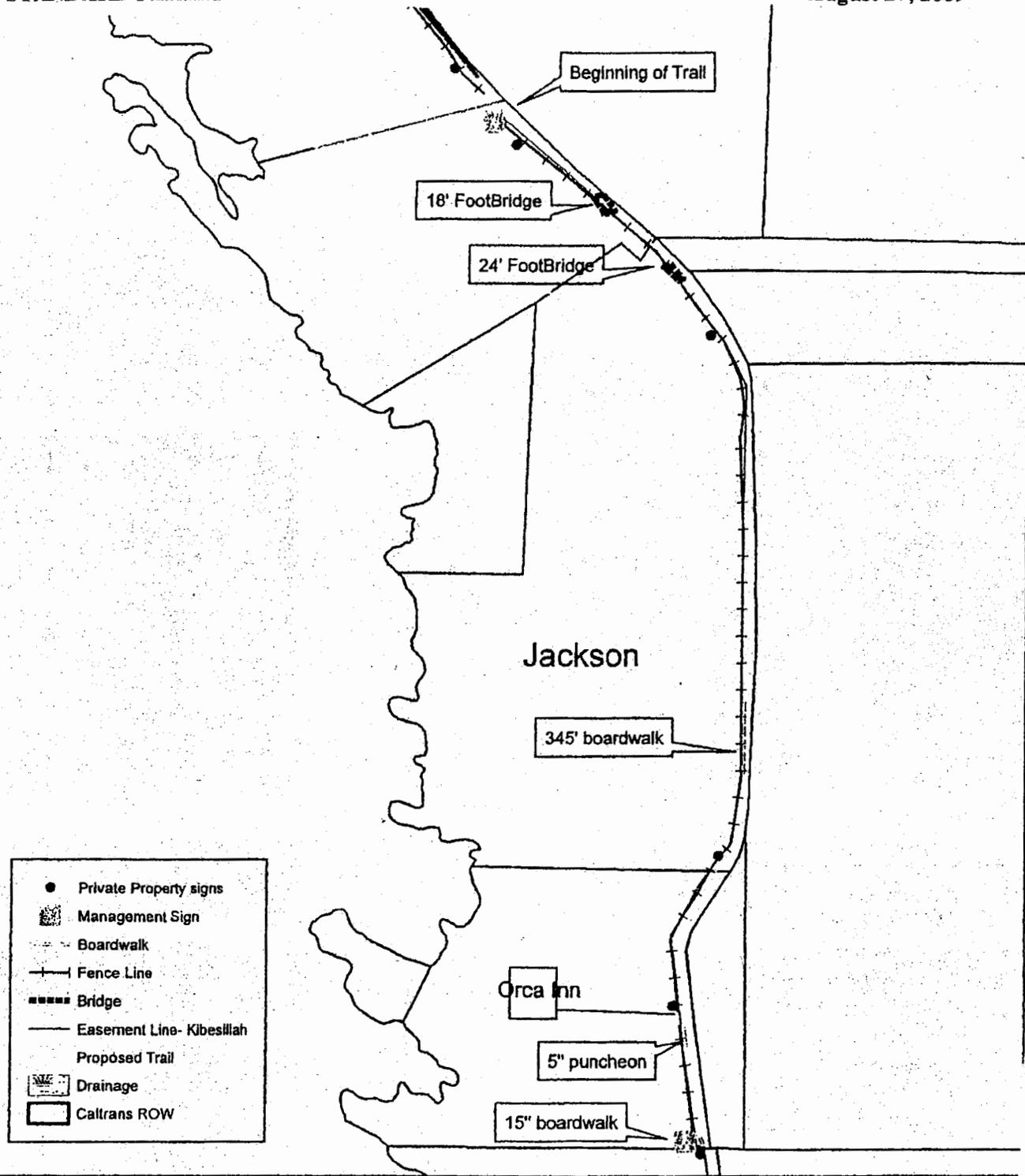


OWNER: GRUBE, Jackson
 CASE #: CDP 67-2008
 APNs: 015-380-02, 015-380-04 & 015-380-05
 Trail along west side of Highway 1

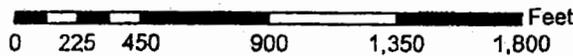
CALIFORNIA NATURAL DIVERSITY
 DATABASE RAREFIND July 2009)

Parcel lines are approximate. Parcel lines on this map are NOT SURVEY LINES, they are for viewing purposes only and should not be used to determine legal boundary lines. Parcel line can be over 200 feet off. (Parcel lines are as of September 2007)





Proposed Kibesillah Public Trail Mendocino Land Trust



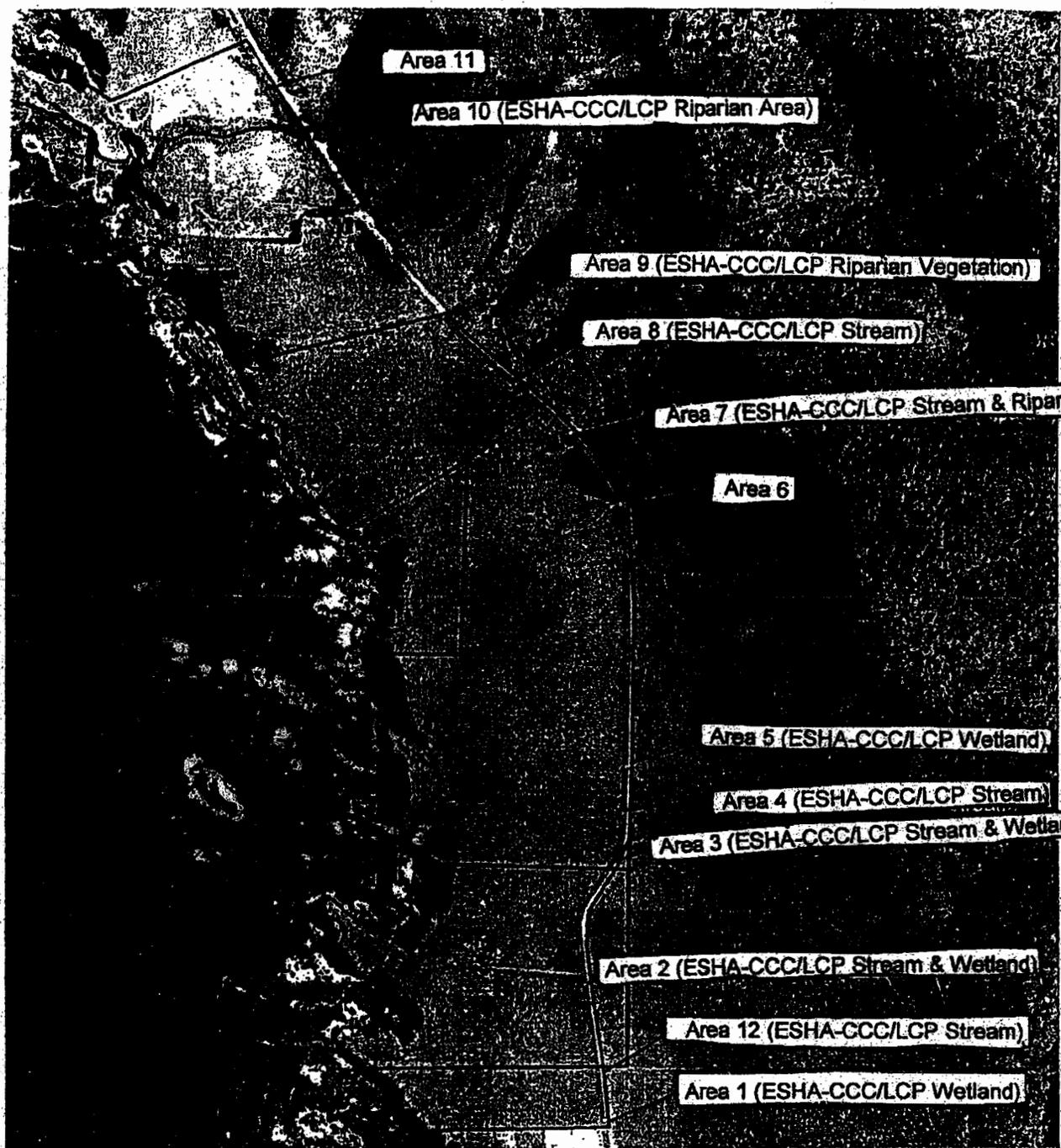


Figure 3. Area 1-11 and designated ESHA's. Includes the new ESHA area for the addendum.

Prepared for Mendocino Land Trust
Coastal trail
Westport/Kibisillah Highway One laterals



	Study area
	Parcel Boundary

REDWOOD
COAST
ASSOCIATES

KIBESILLAH PUBLIC TRAIL

Conserved and Managed by:



Please help us conserve the unique habitats and beauty of this area
by staying on designated trails.

Pedestrian Day Use Only • Dogs on Leash • No Camping
No Fires • No Bicycles or Motorized Vehicles on Trail
Do Not Disturb Plant or Animal Life

For more information, please contact the Mendocino Land Trust at (707) 962-0470

APPENDIX A

Appendix A. An analysis of the proposed project utilizing the Mendocino County LCP ordinance section 20.496.02 (a) through (k).

Development Criteria	
<p>(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.</p> <p>Standards for determining the appropriate width of the buffer area are as follows:</p>	<p>There is no feasible alternative to proposed developments within the ESHA buffer given site and legal constraints. Impacts are considered to be of minor significance due to the specific characteristics of the ESHA's being impacted and the enhancement of the ESHA's.</p> <p>No new land division is proposed.</p>
<p>(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.</p>	<p>No significant relationship exists between the lands to the north and south of the ESHA's within the Study Area. However, several of the ESHA's do have a functional relationship to east and west as the continuance of the ESHA's outside of the Study Area exists.</p>
<p>(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</p>	<p>No rare, threatened, or endangered plants or animals are known to utilize the existing wetland areas as habitat. The potential impacts associated with the trail and infrastructure will not significantly disturb other "sensitive" species which may be associated with the ESHA's.</p>

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;	Habitat is of poor quality for fish and wildlife species. Habitat will be enhanced to improve the nesting, feeding, breeding, resting and other habitat requirements of both resident and migratory wildlife species, no ESHA's support fish habitat.
(ii) An assessment of the short-term and long-term adaptability of various species to human disturbance;	Associated species are considered to be highly adaptable to disturbance at the levels expected.
(iii) An assessment of the impact and activity levels of the proposed development on the resource.	Impacts will be less significant than the current impacts from cattle.
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.	The installation of the boardwalks, rock fords and puncheon will substantially reduce the potential for erosion and compaction. The removal and of invasive species and replanting of natives, and the fencing of the Study Area will significantly reduce the susceptibility to erosion.
(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.	The trail is restricted to the 15 foot wide easement. The topographical features have been utilized to the greatest extent feasible.
(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.	The use of rip-rap in streams utilizes the existing cultural feature to create stream fords and prevents the need to input additional material into the streams. No additional existing cultural features provide added buffering capabilities.
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.	Mitigation measures outlined in section 11.0 are designed to account for potential impacts to the wetlands and associated buffers.
(g) Type and Scale of Development	The type and scale of the proposed

<p>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.</p>	<p>developments are such that only minor impacts to the ESHA's are expected.</p>
<p>(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).</p>	<p>Buffer areas have been measured from the nearest outside edge of the ESHA's.</p>
<p>(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.</p>	<p>No new subdivisions or boundary line adjustments are proposed.</p>
<p>(4) Permitted Development. Development permitted within the buffer area shall comply at a minimum with the following standards:</p>	
<p>(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.</p>	<p>A boardwalk design will be utilized to ensure the continuance of the adjacent habitat area. The functional capacity and ability of the wetlands to be self-sustaining will be maintained through this design. Natural species diversity will be enhanced and sustained through proposed enhancement, monitoring, and management activities.</p> <p>The current location of the trail is also compatible with the continuance of the adjacent habitat area and will maintain the functional capacity, their ability to be self-sustaining and maintain natural species diversity.</p>
<p>(b). Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel.</p>	<p>No other feasible site is available within the Study Area.</p>
<p>(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 the natural stream channels.</p>	<p>The installation of the raised boardwalk will prevent impacts which would degrade adjacent habitat areas. Mitigation will enhance the habitat area and offset any impacts due to shading.</p>
<p>(d). Same as 4 (a)</p>	
<p>(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.</p>	<p>No other feasible site available on the parcel as the easement is limited to a 15 foot corridor along the parcel boundary. Mitigation measures outlined in Section 11.0 will replace habitat potentially lost to shading and displacement at a 1:1 ratio with in-kind mitigation to include additional areas.</p>

<p>(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.</p>	<p>Proposed development minimizes all of the listed activities, to the greatest extent feasible.</p>
<p>(g). Where riparian vegetation is lost due to development, such vegetation shall be replaced at a minimum ratio of 1: 1 to restore protective values of the buffer area.</p>	<p>No riparian vegetation will be lost.</p>
<p>(h). Aboveground structures shall allow peak surface water flows from a 100 year flood to pass with no significant impediment.</p>	<p>The streams and wetlands connected to culverts which may or may not be rated for a 100 year storm</p>
<p>(i). Hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic, shall be protected.</p>	<p>No impacts to hydraulic capacity, subsurface flow patterns, biological diversity, and/or biological or hydrological processes, either terrestrial or aquatic are projected.</p>
<p>(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 whenever possible. No structure shall interrupt the flow of ground water with in a buffer strip. Foundations shall be situated with the long axis of interrupted impermeable vertical surfaces oriented parallel to the ground water flow direction. Piers may be allowed on a case by case basis.</p>	<p>No structure shall interrupt the flow of ground water.</p>
<p>(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 dedicated for erosion control, and wetland restoration, including offsite drainage improvements, may be required as mitigation measures for development adjacent to environmentally sensitive habitats.</p>	<p>Mitigation measures outlined in section 11.0 are designed to account for potential impacts to the ESHA's and associated buffers.</p>

APPENDIX B

establishing the trail and the installation of fencing. Two peeler poles will create approximately one square foot of structural fill, per wetland (2).

10.0 ALTERNATIVES

Potential alternatives to the proposed project include:

Install a raised boardwalk constructed of steel mesh to reduce shading impacts and use a less impactful pier system. This alternative is not cost effective; the MLT has limited funding for this project and does not allow for this type of custom steel manufacturing and pier design system. Several types of boardwalk designs were explored; the system the applicant proposes to install was found to have the least amount of impact and is within the project budget.

Move the trail outside of the easement to avoid ESHA. The easement has been recorded on the title report for the property, so the trail is restricted by the width of the easement and can not avoid the wetland and riparian areas.

No-project. The no-project alternative does not meet the project goals and denies coastal access as required in the Coastal Act. Currently, undefined and unimproved trails crossing private property existing ESHA's place those ESHA's at continued risk of degradation and impact due to cattle trampling and compacting, which disrupts the hydrology, increases erosion rates, and encourages growth of non-native/invasive plants.

We conclude that there is no feasible, less environmentally damaging alternative that meets project goals than the one proposed.

11.0 MITIGATION

Since there is no feasible, less environmentally damaging alternative, mitigation measures have been identified in order to minimize the minor potentially adverse environmental effects of the proposed project. The proposed project has the potential to adversely impact the CCC/LCP wetland areas. *The CCC/LCP streams and riparian vegetation will not be impacted;* therefore the following analysis deals directly with the CCC/LCP wetland areas.

The following mitigation alternatives are proposed in order to compensate for the impacts to the CCC/LCP wetlands subject to a replacement value of 1:1. The impacts from the stringers associated with the boardwalks and the installation of peeler poles and stakes were considered structural fill and will occupy 228 square feet. An additional 1,090 square feet of shading is also expected. The impacts from shading are expected to be minor. In order to mitigate for these shading impacts, the CCC/LCP stream and riparian areas will be enhanced at a ratio of 4:1.

Alternative 1. Excavate 228 square feet of soil to a depth of 6-10 inches and plant hydrophytic vegetation with a similar species composition to that of the wetland being impacted, in an attempt to create wetland hydrology and hydric soils within the buffer(s) adjacent to the wetland area being impacted.

Alternative 2. Plant 228 square feet of hydrophytic vegetation adjacent to the existing wetlands with a species composition similar to that of the wetland being impacted.

Given the type and scale of development, RCA recommends that Alternative 2 be implemented. Alternative 1 has a greater probability of creating potentially detrimental impacts to the existing wetland and is not considered to be the least environmentally damaging alternative. Alternative 2 is considered the least invasive alternative and is more easily verifiable with regards to yearly monitoring and survivorship goals.

To offset potential adverse impacts to the 228 square feet over the current low quality wetland areas (Areas 1, 2, & 5), the applicant proposes to plant hydrophytic vegetation adjacent to the wetlands within the buffers. The purpose of the planting is to compensate at a 1:1 ratio for the potential impacts to CCC/LCP wetlands and to enhance to surrounding buffer. The MLT also proposes to enhance the remaining areas of degraded wetlands by eradicating invasives and replanting with native wetland species. In addition the MLT proposes to remove the invasive and non-native species along the banks of the CCC/LCP streams and to replant them with riparian species.

The end result would be potential loss of 228 square feet of moderately low quality wetland habitat and the creation of 228 square feet of high quality wetland. In addition the MLT proposes to enhance the remaining 3,047 square feet of degraded wetland and the 1,020 square feet of DFG jurisdictional area which consists of the banks of the CCC/LCP streams in Areas 2, 4, 7 and 8 in order to compensate for the shading impacts.

Wetland, riparian areas and the associated buffer enhancement/creation activities would involve the eradication of non-native species and replanting with native wetland and riparian species typically associated with coastal riparian areas and prairies. See recommendations 12.2 for revegetation specifications.

After the completion of the wetland/buffer enhancement/creation activities, monitoring shall be conducted at intervals of 1, 3, and 5 years. If, during the monitoring, survivorship success rates have dropped below the recommended 75% level, the applicant shall replant until the 75% goal has been achieved.

In addition to the proposed wetland and riparian buffer enhancement/creation activities, the applicant proposes to eradicate *invasive* species from the entire public access easement area on a bi-annual basis for as long as they actively management the easement.

12.0 DISCUSSION AND RECOMMENDATIONS

12.1 Discussion

The purpose of the proposed trail developments are part of an ongoing effort to expand the California Coastal Trail and is intended to provide for public access to the coastline for nature study and related recreational experiences. The nature study purposes include but are not limited to whale watching, bird watching, botanizing, as well as wetland, riparian habitat, and coastal prairie habitat enhancement and education. The MLT proposes to include an educational sign at the Fort Bragg office and to conduct interpretive walks on this trail annually. The proposed trail requires that relatively minor development activities within wetlands, streams, and riparian areas are necessary in order to create and maintain a safe, designated trail for the public to use for nature study purposes and coastal views.

The Mendocino County Local Coastal CP (MCLCP) cites allowable uses (for development or activities within wetlands). Under section Section 20.496.025 Wetland and Estuaries part A number 10, of the Mendocino County Coastal Zoning Code lists "Nature studies..." as an allowable activity permitted within wetland and stream (development permitted in Wetlands and Estuaries are also permitted in Open Coastal water, Lakes, and Streams under Section 20.496.030 part A number 1.

Section 20.496.025 (Wetlands and Estuaries) lists three "Requirements for Permitted Development in Wetland and Estuaries". *The project has been designed to conform with and adhere to sections 20.496.025 part B (a,b).*

Section 20.496.30 (Open Coastal Waters, Lakes Streams, Rivers) part D lists two "Requirements for permitted development in Streams and Rivers". *The project has been designed to conform with and adhere to sections 20.496.030 part D numbers 1 and 2 (a,b).*

Section 20.496.35 (Riparian Corridors and other Riparian Resource Areas) part B lists four "Requirements for development in riparian habitat areas". Other than minor pruning to the willow canopies, no development related impacts to riparian habitat areas are proposed at this time.

The proposed project will result in unavoidable impacts to the wetlands and minor alterations to stream and riparian areas. These impacts will result from vegetation clearing, filling, shading and development within those areas and their associated buffers. Measures for mitigating these impacts will include removal of invasive plants and planting of native vegetation to restore the ecological integrity of the ESHA's. RCA has helped MLT design trails and other facilities that are consistent with the typical mitigation hierarchy: avoidance of impacts, reduction of the extent or intensity of impacts, or specific mitigation measures (e.g., habitat enhancements) and monitoring, as appropriate, designed to "compensate for" unavoidable impacts.

Proposed developments have been designed so as to minimize both the area and intensity of impacts to wetland, stream, and riparian areas. Since minor impacts are unavoidable, wetland enhancement/creation and monitoring activities have been recommended to compensate for those impacts. The fencing off of the Study Area will substantially improve and protect the ESHA's which are currently severely impacted.

12.2 Recommendations

In addition to the enhancement activities and protection measures being proposed for the wetland/riparian and buffer areas, RCA recommends the following measures to further minimize the potential for negative impacts, and to maximize potential benefits, associated with the project:

- All work involving associated with the trail and infrastructure, including soil movement and or digging should occur during the dry season.
- Plants used for wetland enhancement shall be of stock from within immediate locale and should be planted at the most appropriate time to achieve the highest survival rate as possible, *to the extent feasible.*

- All construction activities should occur offsite and be transported to site only for assembly and installation.
- All soil should remain on site.
- Enhance and create the designated wetland and buffer areas according to the following guidelines:
 - Use non-mechanical means to eradicate 90-100% of the vegetation cover consisting of non-native plant species within the designated wetland areas.
 - Create the wetland by removing non-native species and replant with native wetland species. Refer to wetland planting list below for species composition.
 - Create/enhance the *wetland areas* by planting with the following native plant species, using seeds, plugs, and/or cuttings as appropriate and available: common rush (*Juncus effusus*), spreading rush (*Juncus patans*), Pacific reed grass (*Calamagrostis nutkaensis*), lady fern (*Athyrium filix-femina*), giant horsetail (*Equisetum telmateia* ssp. *braunii*), water cress (*Rorippa nasturtium-aquaticum*) California oatgrass (*Danthonia californica*), creeping spike rush (*Eleocharis macrostachya*), California hair-grass (*Deschampsia caespitosa*), Pacific silverweed (*Potentilla anserina* ssp. *pacifica*), blue-eyed-grass (*Sisyrinchium bellum*), cows clover (*Trifolium wormskioldii*).
 - Replant the *CCC/LCP stream banks* with the following native north coast riparian plant species, using seeds, plugs, and/or cuttings as appropriate and available: sitka willow (*Salix sitchensis*), Hooker's willow (*Salix hookeriana*), red alder (*Alnus rubra*), California blackberry (*Rubus ursinus*), sword fern (*Polystichum munitum*).
 - Monitor annually to determine the percent of each wetland area that is covered by: a) native and non-native plant species (i.e. total vegetation cover); b) native plant species; and c) non-native species.
 - Annually remove non-native plants that have re-established or colonized each wetland and associated buffer sites, and replant and/or reseed the site until at least 75% of the designated wetland and associated buffer area is covered by native species.
 - Continue this management regime as necessary to maintain native species cover at the 75% level or higher for a period of at least 5 years.

13.0 REFERENCES

California Coastal Commission. 1981. Statewide interpretive guidelines for wetlands and other wet environmentally sensitive habitat areas.

Gretag-Macbeth. 2000. Munsell Soil Color Charts. New Windsor, NY

Holland, R.F. 1986. Preliminary Descriptions of the Terrestrial Plant Communities of California. Unpublished report. State of California, The Resources Agency, Department of Fish and Game, Natural Heritage Division, Sacramento, CA

INITIAL STUDY ENVIRONMENTAL CHECKLIST

Will the project result in the following environmental effects:	No	Yes			
		Not Significant	Significant Unless It is Mitigated	Significant - No Apparent Mitigation	Cumulative
1. EARTH:					
A. Unstable earth conditions or changes in geologic substructures.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Disruptions, displacements, compaction, or overcovering of the soil.	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Change in topography or ground surface relief features.	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. The destruction, covering, or modification of any unique geologic or physical features.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Any increase in wind or water erosion of soils, either on or off the site. <i>See Condition No. 1</i>	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>
F. Changes in deposition or erosion of beach sands, or changes in siltation, deposition, or erosion that may modify the channel of a river, stream, inlet, or bay? <i>See Condition No. 1</i>	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>
G. Exposure of people or property to geologic hazards such as earthquakes, ground failure, or other hazards. <i>See Condition No. 2</i>	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>
2. AIR:					
A. Substantial air emissions or deterioration of ambient air quality.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. The creation of objectionable odors.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Alteration of air movement, moisture, or temperature, or any change in climate, either locally or regionally?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. WATER:					
A. Changes in currents, or the course of water movements, in either fresh or marine waters. <i>See Condition No. 1</i>	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>
B. Changes in absorption rates, drainage patterns, or the rate and amount of surface runoff.	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Alterations to the course of flow of flood waters.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Change in the amount of surface water in any water body.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Discharge into surface waters, or in any alteration of surface water quality, including but not limited to temperature, dissolved oxygen or turbidity.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Will the project result in the following environmental effects:	No	Yes			
		Not Significant	Significant Unless It is Mitigated	Significant - No Apparent Mitigation	Cumulative
F. Alteration of the direction or rate of flow of ground water.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
G. Change in the quantity of ground water, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavations	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H. Substantial reduction in the amount of water otherwise available for public water supplies.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I. Exposure of people or property to water related hazards such as flooding or tsunamis.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. PLANT LIFE:					
A. Change in the diversity of species, or number of any species of plants including trees, shrubs, grass, crops, and aquatic plants. <i>See Condition No. 3</i>	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>
B. Reduction of the numbers of any unique, rare, or endangered species of plants	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Introduction of new species of plants into an area, or in a barrier to the normal replenishment of existing species. <i>See Condition No. 3</i>	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>
D. Reduction in acreage of any agricultural crop.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. ANIMAL LIFE:					
A. Change in the diversity of species, or number of any species of animals including birds, land animals, reptiles, fish, shellfish, insects, and benthic organisms.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Reduction in the number of any unique, rare, or endangered species of animals.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Introduction of new species of animals into an area, or in a barrier to the migration or movement of animals.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Deterioration of existing fish or wildlife habitat.	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>
6. NOISE:					
A. Increases in existing noise levels.	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Exposure of people to severe noise levels.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Will the project result in the following environmental effects:	No	Yes			
		Not Significant	Significant Unless It is Mitigated	Significant - No Apparent Mitigation	Cumulative
7. LIGHT AND GLARE:					
A. Production of new light and glare.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. LAND USE:					
A. Substantial alteration of the present or planned land use of a given area. <i>See Condition No. 4</i>	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>
9. NATURAL RESOURCES:					
A. Increase in the rate of use of any natural resources.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. POPULATION:					
A. Alterations in the location, distribution, density, or growth rate of human populations.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. HOUSING:					
A. Will the proposal affect existing housing or create a demand for new housing?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. TRANSPORTATION/ CIRCULATION:					
A. Generation of substantial additional vehicular movement?	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Effects on existing parking facilities, or demand for new parking?	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Substantial impact upon existing transportation systems?	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Alterations to present patterns of circulation or movement of people and/or goods?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Alterations to waterborne, rail, or air traffic?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F. Increase in traffic hazards to motor vehicles, bicyclists or pedestrians.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. PUBLIC SERVICES:					
A. Will the proposal have an effect upon, or result in a need for new or altered government services in any of the following areas:					
Fire protection?	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Police protection?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Schools?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parks and other recreational facilities?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maintenance of public facilities, and roads?	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other governmental services?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Will the project result in the following environmental effects:	No	Yes			
		Not Significant	Significant Unless It is Mitigated	Significant - No Apparent Mitigation	Cumulative
14. ENERGY:					
A. Use of substantial amounts of fuel or energy?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Substantial increase in demand upon existing sources of energy, or require the development of new energy sources?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. UTILITIES:					
A. Will the project result in a need for new systems or substantial alterations to the following:					
Potable water?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sewerage?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Energy or information transmission lines?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. HUMAN HEALTH:					
A. Creation of any health hazard or potential health hazard?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Exposure of people to any existing health hazards?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. A risk of an explosion or the release of hazardous substances (including oil, pesticides, chemicals, or radiation) in the event of an accident or upset conditions.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Possible interference with an emergency response plan or evacuation plan.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. AESTHETICS:					
A. Obstruction of any scenic vista or view open to the public, or create an aesthetically offensive site open to public view?	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. RECREATION:					
A. Impact upon the quality or quantity of existing recreational opportunities?	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. CULTURAL RESOURCES:					
A. Alteration or destruction of a prehistoric or historic archaeological site?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Adverse physical or aesthetic effects to a prehistoric or historic building or structure?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Will the project result in the following environmental effects:	No	Yes			
		Not Significant	Significant Unless It is Mitigated	Significant - No Apparent Mitigation	Cumulative
C. Cause a physical change that would affect the unique ethnic cultural values?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Restrict existing religious or sacred uses within the potential impact area?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Section III	Responses to Environmental Checklist.
	For a discussion of each of the environmental effects listed in the Environmental Checklist along with related goals and policies of the General Plan, see the Environmental Review section of the attached staff report.

Section IV	Mandatory Findings of Significance.
	<p>A. As discussed in the preceding sections, the project <input type="checkbox"/>does ✓does not have the potential to significantly degrade the quality of the environment, including effects on animals or plants, or to eliminate historic or prehistoric sites.</p> <p>B. As discussed in the preceding sections, both short-term and long-term environmental effects associated with the project will be <input type="checkbox"/>significant ✓will be less than significant.</p> <p>C. When impacts associated with the project are considered alone or in combination with other impacts, the project-related impacts are <input type="checkbox"/>significant ✓insignificant.</p> <p>D. The above discussions <input type="checkbox"/>do ✓do not identify any substantial adverse impacts to people as a result of the project.</p>

Section V	Determination.
	<p>On the basis of this initial evaluation, it has been determined that:</p> <p><input type="checkbox"/> The proposed project will not have a significant effect on the environment, and it is recommended that a NEGATIVE DECLARATION be adopted.</p> <p>✓ Although the project, as proposed, could have had a significant effect on the environment, there will not be a significant effect in this case because mitigation measures required for the project will reduce potentially significant effects to a less than significant level, therefore, it is recommended that a NEGATIVE DECLARATION be adopted.</p> <p><input type="checkbox"/> The proposed project may have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.</p>

INITIAL STUDY ENVIRONMENTAL CHECKLIST

Will the project result in the following environmental effects:	No	Yes			
		Not Significant	Significant Unless It is Mitigated	Significant - No Apparent Mitigation	Cumulative
1. EARTH:					
A. Unstable earth conditions or changes in geologic substructures.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Disruptions, displacements, compaction, or overcovering of the soil.	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Change in topography or ground surface relief features.	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. The destruction, covering, or modification of any unique geologic or physical features.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Any increase in wind or water erosion of soils, either on or off the site. <i>See Condition No. 1</i>	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>
F. Changes in deposition or erosion of beach sands, or changes in siltation, deposition, or erosion that may modify the channel of a river, stream, inlet, or bay? <i>See Condition No. 1</i>	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>
G. Exposure of people or property to geologic hazards such as earthquakes, ground failure, or other hazards. <i>See Condition No. 2</i>	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>
2. AIR:					
A. Substantial air emissions or deterioration of ambient air quality.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. The creation of objectionable odors.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Alteration of air movement, moisture, or temperature, or any change in climate, either locally or regionally?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. WATER:					
A. Changes in currents, or the course of water movements, in either fresh or marine waters. <i>See Condition No. 1</i>	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>
B. Changes in absorption rates, drainage patterns, or the rate and amount of surface runoff.	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Alterations to the course of flow of flood waters.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Change in the amount of surface water in any water body.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Discharge into surface waters, or in any alteration of surface water quality, including but not limited to temperature, dissolved oxygen or turbidity.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Will the project result in the following environmental effects:	No	Yes			
		Not Significant	Significant Unless It is Mitigated	Significant - No Apparent Mitigation	Cumulative
F. Alteration of the direction or rate of flow of ground water.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
G. Change in the quantity of ground water, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavations	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H. Substantial reduction in the amount of water otherwise available for public water supplies.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I. Exposure of people or property to water related hazards such as flooding or tsunamis.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. PLANT LIFE:					
A. Change in the diversity of species, or number of any species of plants including trees, shrubs, grass, crops, and aquatic plants. <i>See Condition No. 3</i>	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>
B. Reduction of the numbers of any unique, rare, or endangered species of plants	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Introduction of new species of plants into an area, or in a barrier to the normal replenishment of existing species. <i>See Condition No. 3</i>	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>
D. Reduction in acreage of any agricultural crop.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. ANIMAL LIFE:					
A. Change in the diversity of species, or number of any species of animals including birds, land animals, reptiles, fish, shellfish, insects, and benthic organisms.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Reduction in the number of any unique, rare, or endangered species of animals.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Introduction of new species of animals into an area, or in a barrier to the migration or movement of animals.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Deterioration of existing fish or wildlife habitat.	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>
6. NOISE:					
A. Increases in existing noise levels.	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Exposure of people to severe noise levels.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Will the project result in the following environmental effects:	No	Yes			
		Not Significant	Significant Unless It is Mitigated	Significant - No Apparent Mitigation	Cumulative
7. LIGHT AND GLARE:					
A. Production of new light and glare.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. LAND USE:					
A. Substantial alteration of the present or planned land use of a given area. <i>See Condition No. 4</i>	<input type="checkbox"/>	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>
9. NATURAL RESOURCES:					
A. Increase in the rate of use of any natural resources.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. POPULATION:					
A. Alterations in the location, distribution, density, or growth rate of human populations.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. HOUSING:					
A. Will the proposal affect existing housing or create a demand for new housing?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. TRANSPORTATION/ CIRCULATION:					
A. Generation of substantial additional vehicular movement?	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Effects on existing parking facilities, or demand for new parking?	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Substantial impact upon existing transportation systems?	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Alterations to present patterns of circulation or movement of people and/or goods?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Alterations to waterborne, rail, or air traffic?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F. Increase in traffic hazards to motor vehicles, bicyclists or pedestrians.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. PUBLIC SERVICES:					
A. Will the proposal have an effect upon, or result in a need for new or altered government services in any of the following areas:					
Fire protection?	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Police protection?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Schools?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parks and other recreational facilities?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maintenance of public facilities, and roads?	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other governmental services?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Will the project result in the following environmental effects:	No	Yes			
		Not Significant	Significant Unless It is Mitigated	Significant - No Apparent Mitigation	Cumulative
14. ENERGY:					
A. Use of substantial amounts of fuel or energy?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Substantial increase in demand upon existing sources of energy, or require the development of new energy sources?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. UTILITIES:					
A. Will the project result in a need for new systems or substantial alterations to the following:					
Potable water?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sewerage?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Energy or information transmission lines?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. HUMAN HEALTH:					
A. Creation of any health hazard or potential health hazard?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Exposure of people to any existing health hazards?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. A risk of an explosion or the release of hazardous substances (including oil, pesticides, chemicals, or radiation) in the event of an accident or upset conditions.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Possible interference with an emergency response plan or evacuation plan.	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. AESTHETICS:					
A. Obstruction of any scenic vista or view open to the public, or create an aesthetically offensive site open to public view?	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. RECREATION:					
A. Impact upon the quality or quantity of existing recreational opportunities?	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19. CULTURAL RESOURCES:					
A. Alteration or destruction of a prehistoric or historic archaeological site?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Adverse physical or aesthetic effects to a prehistoric or historic building or structure?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Will the project result in the following environmental effects:	No	Yes			
		Not Significant	Significant Unless It is Mitigated	Significant - No Apparent Mitigation	Cumulative
C. Cause a physical change that would affect the unique ethnic cultural values?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Restrict existing religious or sacred uses within the potential impact area?	✓	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Section III	Responses to Environmental Checklist.
	For a discussion of each of the environmental effects listed in the Environmental Checklist along with related goals and policies of the General Plan, see the Environmental Review section of the attached staff report.

Section IV	Mandatory Findings of Significance.
	<p>A. As discussed in the preceding sections, the project <input type="checkbox"/>does ✓does not have the potential to significantly degrade the quality of the environment, including effects on animals or plants, or to eliminate historic or prehistoric sites.</p> <p>B. As discussed in the preceding sections, both short-term and long-term environmental effects associated with the project will be <input type="checkbox"/>significant ✓will be less than significant.</p> <p>C. When impacts associated with the project are considered alone or in combination with other impacts, the project-related impacts are <input type="checkbox"/>significant ✓insignificant.</p> <p>D. The above discussions <input type="checkbox"/>do ✓do not identify any substantial adverse impacts to people as a result of the project.</p>

Section V	Determination.
	<p>On the basis of this initial evaluation, it has been determined that:</p> <p><input type="checkbox"/> The proposed project will not have a significant effect on the environment, and it is recommended that a NEGATIVE DECLARATION be adopted.</p> <p>✓ Although the project, as proposed, could have had a significant effect on the environment, there will not be a significant effect in this case because mitigation measures required for the project will reduce potentially significant effects to a less than significant level, therefore, it is recommended that a NEGATIVE DECLARATION be adopted.</p> <p><input type="checkbox"/> The proposed project may have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.</p>



**MENDOCINO COUNTY BOARD OF SUPERVISORS
PLANNING APPEAL FORM**

Appeals must be received in the Clerk of the Board's Office within the appeal period, typically 10 days from the date of the hearing*. The Clerk of the Board or Planning and Building Services will verify appeal fee amounts*. The appeal fee must accompany the appeal letter/form in order to be considered valid.

*Verify with Planning and Building Services or with the Clerk of the Board of Supervisors

Date Appeal Submitted: 9-1-09	Appeal Fee*: \$ 865.00
Case No.:	<input type="checkbox"/> Verified <input type="checkbox"/> Receipt Generated Applicant: Margeray S. Cahn Living Trust
Heard by:	Hearing Date: August 27, 2009
<small>Source: Planning Commission • MFRB • Zoning Administrator • Administrative (Planning) • Coastal Permit Administrator</small>	

Printed Name, Address, and Phone No. of Appealing Party:
 Margeray S. Cahn Living Trust
 c/o Jared G. Carter, Esq.

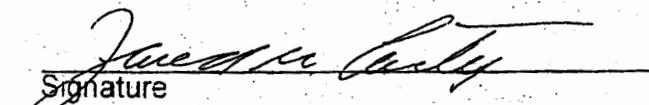
Carter & Momsen, LLP
444 North State Street, Ukiah, CA 95482
(707) 462-6694

Basis for Appeal (Please provide sufficient detail to describe the nature of the appeal. Letters describing appeal may also be attached):

Please see attached letter

Staff Use:

- Obtain Agenda for meeting/appeal verification (distribute with appeal form to all parties listed below)
- Appeal period verified and confirmed
- Appeal fee verified and confirmed
- Form distribution completed/Date Stamp form
- Copy of receipt and check attached to original appeal form and provided to DCOB
- Other _____


 Signature

Submit completed form and fee to:
 Mendocino County Clerk of the Board
 501 Low Gap Road, Room 1090
 Ukiah, CA 95482
 (707) 463-4221

CARTER & MOMSEN, LLP

444 NORTH STATE STREET
POST OFFICE BOX 1709
UKIAH CALIFORNIA 95482

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

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

September 1, 2009

VIA U.S. MAIL

Mendocino County Board of Supervisors
501 Low Gap, Rm. 1090
Ukiah, CA 95482

Re: Case # CDP 67-2008

Dear Supervisors:

The purpose of this letter is to appeal the decision of the Coastal Administrator of August 27, 2009, approving application # CDP 67-2008, an application by the Mendocino Land Trust to build a pedestrian trail or walkway on the west side of Highway 1 along the Jackson-Grube property, about ten miles north of Fort Bragg.

The grounds for the appeal are set forth in the attached letters previously written by me to the Coastal Administrator and incorporated hereby by reference.

The problem here is an obvious one. This is an application to build a costly and elaborate pedestrian walkway that starts nowhere and goes nowhere. Existence of the walkway ("build it and they will come") will result in funneling some undetermined number of pedestrians onto the CalTrans right of way south of the walkway on the east side of appellant's residential lot, without providing appellant's property any of the protections property owners are assured by the Coastal Act, the Mendocino Local Coastal Plan, and by constitutional requirements for due process and equal protection of the law.

Moreover, the record reveals clearly that neither CalTrans nor the County Transportation Department have given any serious consideration to the policy implications of approving such a project, nor to the significant health and safety issues presented by the individual facts of this case. Not one word of the staff report discusses whether pedestrians, particularly those with any physical limitations, can safely use the CalTrans right of way to reach the South Kibesillah Fishing Area. Can a lady in a wheelchair make it from the south end of the walkway to the South Kibesillah Fishing Area; and is there a place for a vehicle to pick her up if she can't?

Mendocino County Board of Supervisors
September 1, 2009
Page Two

While appellant is generally supportive of the activities of the Mendocino Land Trust and of the policies of the Coastal Act and the Local Coastal Plan, this particular application is simply so far out of sync with the Local Coastal Plan and the Coastal Act and commonsense that denial without prejudice is appropriate.

Respectfully submitted,

Signature on File

JAMES G. CARTER

JGC:gtv
Enclosures

cc: (w/enclosures)
County Counsel
CalTrans
Mendocino County Transportation Department
Tamira Jones (Land Trust)
Client

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PROOF OF SERVICE BY PERSONAL DELIVERY

STATE OF CALIFORNIA :

COUNTY OF MENDOCINO :

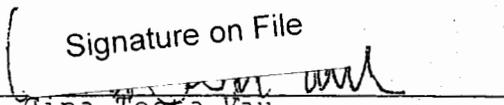
I am employed in the County of Mendocino, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 444 North State Street, Ukiah, California.

On September 1, 2009, I served the document entitled **MENDOCINO COUNTY BOARD OF SUPERVISORS PLANNING APPEAL FORM** on the interested parties by placing delivering a true and complete copy thereof as follows:

Mendocino County Board of Supervisors
501 Low Gap Road, Rm. 1090
Ukiah, CA 95482

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is executed on September 1, 2009, at Ukiah, California.

Signature on File


Gina Testa Vau

LAW OFFICES OF

CARTER & MOMSEN, LLP

444 NORTH STATE STREET
POST OFFICE BOX 1709
UKIAH CALIFORNIA 95482

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

PHONE 707-462-9694
FAX 707-462-7839
E-MAIL bcarter@pacific.net

August 12, 2009

VIA U.S. MAIL

Coastal Administrator
Mendocino County Planning
and Building Department
501 Low Gap, Room 1440
Ukiah, CA 95482

Re: August 27, 2009 Public Hearing - Case # CDP 67-2008

Dear Coastal Administrator:

I represent the Margerey S. Cahn Living Trust, which owns Lot #15-330-24. I write to oppose approval, at this time, of this application. The Trust's Lot is on Highway 1 located between the Jackson-Grube property referred to in your Notice of Hearing and the South Kibesillah Gulch Fishing Access immediately to the south.

In the past, a representative of the Mendocino Land Trust, has had discussions with me, as counsel for the trust, about the possibility of obtaining an easement on the east side of this parcel to facilitate access connection between the Kibesillah Gulch Fishing Access and the Jackson-Grube trail. Neither the Land Trust nor any government entity now has any such access right.

Approval of the permit would be contrary to law. The Staff Report does not contain substantial evidence to support proposed findings 2, 3, 6 or 7. The following points support these conclusions and explain why the Trust opposes approval of the trail at this time:

1. There are inaccuracies and instances of incompleteness in the Staff Report (referred to as CPA) that render it inadequate as a basis for a decision:

a. Most importantly, the section on "Transportation/Circulation" at CPA 10, says at the bottom of the page, that this trail will link the Pacific Star Winery and the South Kibesillah Gulch Fishing Access. Other sections talk about safety of use of the trail; and at CPA 11 it is stated, and clearly erroneously stated, that: "the trail will therefore be entirely located outside the Cal Trans right of way."

b. The attached photos and maps completely ignore the question of how the trail takes people south of the south border of the Jackson-Grube property to the South

c. The discussion of "Public Access and Recreation" (CPA 12 and following) is very confusing and misleading. It refers to policy 4.2 -13, which says the offer to dedicate an easement on my client's Lot, which was a lateral access easement that would not have served this trail, "shall be relinquished." But, nowhere does the report indicate that the Land Trust and the Coastal Commission are not complying with a request for such a relinquishment, and nowhere does the report say there is no easement west of Highway 1, south of the Jackson-Grube property, along the east side of my client's Lot, to the South Kibesillah Gulch Fishing Area.

d. The report implies that Cal Trans and the Public Works Department understand the facts relevant to the use of this trail and agree that this project poses no safety issues and is consistent with all coastal policies. But, there is no indication that these Departments were apprised of the fact that there will be no public easement between the Cal Trans right-of-way and my client's Lot.

2. It would be a huge mistake for the County to grant this permit, and it would be a huge mistake for the Trust and any public agency to spend money to build a trail in front of the Jackson-Grube property, until and unless the question of the southerly extension of that trail to the South Kibesillah Gulch Fishing Access has been resolved. The trail will be similar to the "bridge to nowhere" in Alaska.

3. The Margerey S. Cahn Living Trust has not made a policy decision of whether, and upon what terms, to grant or otherwise convey an access easement along the eastern side of Lot 15-330-24 for the benefit of such a trail. Unilateral efforts such as the proposed approval and construction of the trail on the Jackson-Grube property would, it seems clear, only complicate and make more unlikely the resolution of this issue in a prompt and consensual manner.

4. Construction of the trail in front of the Jackson-Grube property, without resolution of the issue of access along the east side of Lot 15-330-24, would be very harmful to the owners of Lot 15-330-24. Trespassers would be encouraged to travel along that portion of the Lot, between the South Kibesillah Gulch Fishing Area and the Jackson-Grube property, giving rise to not only complaints about garbage, trespass, unlawful or inappropriate parking, etc., but also likely to give rise to legal difficulties between the parties. Several sections of the Coastal Act and the County's Coastal Plan are designed to protect private property from harm such as this. The provisions of the proposed permit would protect the Jackson-Grube property by requiring a fence and other mitigations. No facts or policy justifies subjecting my client's property to such harm.

California Coastal Commission
North Coast District Office
August 12 2009
Page 3

5. Contrary to the Staff Report, which says this project will be consistent with the Coastal Plan, approval of a project to serve the public when it is obvious that the project cannot be safely implemented and utilized by the public, would not be consistent with the Coastal Act or Coastal Plan. This project would also be inconsistent with the Coastal Act because it would consume coastal resources (wetlands, ESHA) without serving a public purpose.

6. It is highly unlikely that the State of California, or any of its subsidiary entities with the power of eminent domain, is going to authorize the condemnation of an easement along the east side of Lot 15-330-24, given the State's precarious financial position and the fact that it can't keep open its existing park lands for benefit of the public.

Given these circumstances, the action by the Coastal Administrator at this time should be to deny any permit for this trail, without prejudice, so that this issue can be taken up again when and if the proponents can explain how the public can use this trail without injury to my client's interests, and other issues are resolved.

It is unlikely that I or another Trust representative will show up at your hearing, but please make sure this input is included in your record of hearing so that these points may be brought to the attention of any appropriate reviewing authority. I strongly recommend that Cal Trans and the Department of Public Works be requested to address the safety issue I've highlighted. It is unclear why this issue was not addressed earlier, but clearly it must be addressed.

Sincerely,

Signature on File

JARED G. CARTER

JGC:gtv

cc: County Counsel
Cal Trans
Department of Public Works
Tamira Jones (Land Trust)
Client

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August 17, 2009

VIA U.S. MAIL

Coastal Administrator
Mendocino County Planning
and Building Department
501 Low Gap, Room 1440
Ukiah, CA 95482

Re: Case # CDP 67-2008

Dear Coastal Administrator:

Please Note the attached letter from Tamira Jones to me, received after I mailed my earlier letter to you on August 12, opposing approval of the above referenced application.

I think the significance of Tamira Jones' attached letter, her organization is the applicant in the pending permit application, is that her letter is inconsistent with the Staff Report prepared for this item. The inconsistency lies in her express statement that it is Mendocino Land Trust's understanding that people utilizing the trail for which the Land Trust seeks a permit will walk from the southern end of that trail to the South Kibesillah Gulch Fishing Access in the Cal Trans right of way. You will remember from my earlier letter that the Staff Report says that there will be no foot traffic in the Cal Trans right of way as a result of this application.

This is a highly significant point because of physical characteristics on the ground in the immediate area between the southern end of this planned trail and the South Kibesillah Gulch Fishing Access. As you, Cal Trans, and the County Transportation Department are all aware, I am sure, almost immediately south of the southern end of the proposed trail there is a large dip in the highway which interferes with the line of sight for northbound and southbound traffic on the Highway and very much complicates the ability of anyone turning to the west into the roadway leading to the three houses south of the Jackson-Grube property. One of those houses is owned by my client, the Margerery S. Cahn Living Trust, as you know.

It would appear that this project channels people walking south along the proposed trail into this highly dangerous situation and that the Staff Report inaccurately or at least incompletely portrays the facts on the ground. Our request is that Cal Trans

Coastal Administrator
Mendocino County Planning
and Building Department
August 17, 2009
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and the County Transportation Department specifically consider this issue and make a report on this safety concern.

~~Sincerely~~

Signature on File

JARED G. CARTER

JGC:gtv
Enclosure

cc: (w/enclosure)
County Counsel
Cal Trans
Department of Public Works
Tamira Jones (Land Trust)
Client



Conserving Land in Mendocino County since 1976

August 11, 2009

Jared Carter
PO Box 1709
Ukiah, CA 95482

Re: August 10, 2009 letter

Dear Mr. Carter:

This letter is to respond to your comments and questions regarding the Land Trust's proposed public access trail coastal development permit application on Will Jackson's property and the existing, legal offer-to-dedicate easement on Margerey Cahn's property in Mendocino County. I will address your remarks in the order in which they appear in your letter.

As I stated to you on the phone, the Land Trust is the holder of the easement on Ms. Cahn's property and has no authority to terminate an offer-to-dedicate public access easement. I have asked Coastal Commission legal staff to respond to your request to terminate the easement and they indicated that they would do so.

The pending permit for a trail located on an easement located on Will Jackson's property does not transit the Cahn property and is entirely on Will Jackson's property. In order for people to access the pedestrian trail from Kibesillah Board Launch they may do so by walking along the highway right-of-way which is the public's legal right. Your client has a fence along the property boundary with the highway right-of-way and I see no conflict between the proposed public access and your client's private property rights.

The existing 25' wide easement along the bluff of the Cahn property may not be feasible to formally open due to its physical location. The Land Trust had offered to negotiate an alternative easement location on the eastern boundary of your client's property which would be less obtrusive to the landowner and more valuable as a trail corridor. We remain interested in this resolution.

To be clear, the pending trail permit for which your client received notice is in no way related to your assertion that the recorded easement on the Cahn property (Garcia OTD) has not been legally accepted. I recommend that you follow-up with the Coastal Commission to clarify the legal status of this easement.

Best Regards

 Signature on File

Tamira Jones, Coastal Access Program Manager

A-1-MEN-07-028

Molly Warner, Appellant

In favor of approval as
conditioned

RECEIVED

OCT 01 2009

CALIFORNIA
COASTAL COMMISSION

September 29, 2009

Dear Commissioners,

The Jackson-Grube Family project as amended is far superior to the first proposed project.

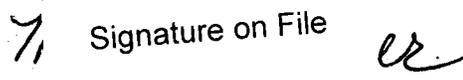
The visual impacts are reduced in several ways, such as no height limits being exceeded except for the historic roof line and the elimination or consolidation of some buildings and, most importantly, Special Conditions Nos. 5 and 6. To be subordinate to the setting, that of rural agriculture, it is essential to counter balance the blocking of views at the Inn site with permanent open space to the immediate north. This concept was discussed at the county review level, but with no results.

The updated studies appear to be thorough and informing for planning purposes.

The impacts from special events, ie. traffic on Hwy 1 and visuals of car parking/tents will be reduced with approval of Special Condition 15 to a level that may be acceptable.

I believe that by having this project redesigned and conditioned as it is by your staff, the County of Mendocino and the residents and visitors of the coast will be better served.

Sincerely,

 Signature on File

Molly E. Warner

BLOCK & BLOCK

A PROFESSIONAL CORPORATION

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LOS ANGELES, CALIFORNIA 90067-1604
TELEPHONE (310) 552-3336
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ALAN ROBERT BLOCK
JUSTIN MICHAEL BLOCK

June 28, 2010

RECEIVED

JUN 30 2010

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

CALIFORNIA
COASTAL COMMISSION

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

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

Scheduled: July 7, 2010

Agenda Item: 10(a)

Dear Commissioners:

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

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

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

Background Information

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

California Coastal Commission

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

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

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

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

Surrounding Area

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

The Originally Proposed, Denied and Revised Projects

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

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

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

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

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The Previous Commission Approvals

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

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

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

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

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

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

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

Coastal Act and LCP Issues

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

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

Visitor-Serving Uses Are a Favored Utilization of Coastal Resources

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

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

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

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

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

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

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

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

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

The Project Will Be Subordinate To The Character Of Its Setting

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

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

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

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

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

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

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

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

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

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

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

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

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

Botanical Resources In and Around the Building Area Were Adequately Considered

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

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

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

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

California Coastal Commission

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

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

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

Traffic Impacts

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

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

Engineering Geological Reconnaissance

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

Fire Protection and Emergency Response

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

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

Alleged Archaeological and Historical Resources Impacts

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

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

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

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

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

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

Conclusion

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

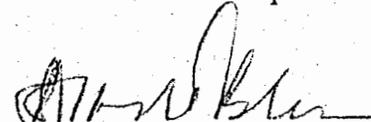
The applicant respectfully requests approval pursuant to staff's vigorous review and strong recommendation for approval.

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

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

Very truly yours,

LAW OFFICES
BLOCK & BLOCK
A Professional Corporation


ALAN ROBERT BLOCK

ARB/cw

California Coastal Commission

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

June 28, 2010

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cc: Will Jackson
Bob Merrill
Dave Sellers
Scott Baker

LAW OFFICES OF

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June 28, 2010

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CALIFORNIA
COASTAL COMMISSION

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

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

Dear Members of the Commission:

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

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

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

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

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

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

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

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

Respectfully submitted,

Signature on File

JARED G. CARTER

JGC:kp

Encls.

ccc-jackson-grube2.ltr.

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6 Attorneys for Intervenor

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

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

18
19 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD: PLEASE TAKE NOTICE
20 THAT on June 29, 2010, at 1:30 p.m., or as soon thereafter as the matter may be heard, in
21 Department E of the above titled court, located at 100 North State Street, in Ukiah, California, before
22 the Honorable John Behnke, Intervenor Deborah Cahn, Trustee of the Margery S. Cahn Living Trust
23 ("Intervenor"), will, and hereby does, apply ex parte for a motion for reconsideration of this court's
24 order of June 17, 2010, or in the alternative, to stay the enforcement of that order. The motion will
25 be made pursuant to California Code of Civil Procedure ("CCP") §1008 on the ground that there are
26 new circumstances and facts sufficient to warrant a revocation of the order, or in the alternative, that
27 enforcement of the order be stayed pursuant to CCP §918.

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

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

6 Dated: June 25, 2010

CARTER & MOMSEN, LLP

7
8 BY Signature on File Daniela Pavone
9 For ~~WED G. CARTER~~, Attorneys for
Intervenor DEBORAH CAHN, Trustee of the
Margery S. Cahn Living Trust
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1 potential settlement, pursuant to which, Petitioner and Respondent have negotiated to revise the
2 Application yet again and Respondent has been directed to hold another public hearing, this time to
3 approve the Application pursuant to the terms of the settlement offer. There is no indication that the
4 Commission, as opposed to its Staff, ever agreed to this settlement. Indeed, it could not legally have
5 done so without affording Cahn notice and a fair hearing.

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

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

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

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

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

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

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

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

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

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

28 //

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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6 Attorneys for Intervenor

7 SUPERIOR COURT OF CALIFORNIA, COUNTY OF MENDOCINO

8 UKIAH BRANCH
9

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

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

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

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

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Dated: June 25, 2010

CARTER & MOMSEN, LLP

Signature on File

Daniela Pavone

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

1 MEMORANDUM OF POINTS AND AUTHORITIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 Dated: June 25, 2010

CARTER & MOMSEN, LLP

Signature on File

Daniela Pavone

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

PROOF OF SERVICE BY FEDERAL EXPRESS

I declare that:

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

On June 25, 2010, I caused the attached:

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

to be served on all parties as follows:

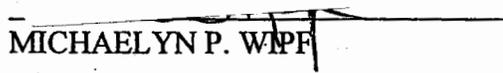
On the date written below, at Ukiah, California, I placed true copies of the above-described documents in sealed envelopes for priority overnight delivery by Federal Express, that said envelopes were deposited for collection with Federal Express in the ordinary course of business on said date, and that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

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

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

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

Signature on File


MICHAELYN P. WIPF

LAW OFFICES OF

CARTER & MOMSEN, LLP

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

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

RED G. CARTER
IAN C. CARTER
IAN S. MOMSEN
WIELA M. PAVONE
VITISSE M. KNIGHT

July 2, 2010

VIA FAX AND OVERNIGHT MAIL

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

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

Dear Members of the Coastal Commission:

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

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

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

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

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

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

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

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

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

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

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

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

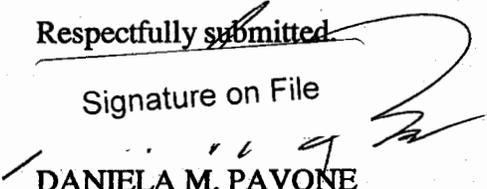
It should also be noted that Jackson-Grube has offered to put a deed restriction on the real property at issue in the project, limiting the ability of itself, and future owners, to erect any structures beyond what is contained in the revised project currently before this Commission, with the notable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

D. Conclusion.

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

~~Respectfully submitted~~

Signature on File


DANIELA M. PAVONE

June 28, 2010

To: California Coastal Commission

Attn: Bob Merrill

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

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

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

Sincerely,

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

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JUN 29 2010

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COASTAL COMMISSION

JUDITH G. WHITING
6764 CALLE LAS BRISAS - SANTA BARBARA, CA. 93110

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

BY FAX to: 707-445-7877

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

July 1, 2010

Dear Mr. Merrill;

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

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

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

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

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

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

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

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

Yours Truly,

Judith G. Whiting

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

July 6, 2010

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

Appeal #A-1-MEN-07-28

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

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

31502 N. Highway 1, Four miles south of Westport

To whom it may concern:

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

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

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

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

Signature on File

Carolyn Tett

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Forrest Tancer
Cynthia Ariosta
PO Box 2
Elk, CA 95432

July 4, 2010

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JUL 06 2010

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

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

CALIFORNIA
COASTAL COMMISSION

Fax 707-445-7877

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

To whom it may concern:

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

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

Signature on File

Tancer

Signature on File

Forrest Tancer and Cynthia Ariosta

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

Lari Shea**RICOCHET RIDGE RANCH**

24201 North Highway One

Fort Bragg, CA 95437

Ph 707 964-7669 707 964-9669 Fax

<http://www.horse-vacation.com> larishea@horse-vacation.com**RECEIVED**

July 4, 2010

JUL 06 2010

California Coastal Commission

PO Box 4908

Eureka, CA 95502-4908

Fax 707-445-7877

Appeal #A-1-MEN-07-28

Lari Shea and Harvey Hoechstetter

Oppose the Appeal:

In FAVOR of Jackson-Grube Family projectCALIFORNIA
COASTAL COMMISSION

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

To whom it may concern:

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

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

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

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

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



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

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

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

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

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

Sincerely,

Signature on File

Signature on File

Lari Shea & Harvey Hoechstetter

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

RECEIVED

OCT 01 2009

CALIFORNIA
COASTAL COMMISSION

FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATIONS

Name or description of project, LCP, etc.: Appeal No. A-1-MEN-07-28
(Jackson-Grube Family, Inc.,
Mendocino County)

Date and time of receipt of communication: 9/30/09, 1:00 pm

Location of communication: Board of Supervisor's Office, Santa
Cruz, California

Type of communication: In-person meeting

Person(s) initiating communication: Sarah Corbin
Grant Weseman

Person(s) receiving communication: Mark Stone

Detailed substantive description of content of communication:
(Attach a copy of the complete text of any written material received.)

Sarah and Grant were here representing ORCA. They represent a number of environmental organizations. They said that the remaining issue is the zoning designation of the property. The current zoning is supposed to be the lease intensive zoning for visitor accommodation and it does not match the scope of the project. To allow a variance for this project may open the door for variances on similarly zoned properties in the area which would have a negative impact on the coast.

Date: 9/30/09 Signature of Commissioner: [Signature] Signature on File

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

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

EXHIBIT NO. 26

APPEAL NO.

A-1-MEN-07-028

JACKSON-GRUBE FAMILY, INC.

EX-PARTE COMMUNICATIONS

(1 of 3)

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

**FORM FOR DISCLOSURE OF
EX-PARTE COMMUNICATIONS**

Name or description of the project: Agenda Item W 18.b.

Appeal No. A-1-MEN-07-28 (Jackson-Grube Family, Inc., Mendocino Co.) Appeal by (1) Molly Warner & Britt Bailey, (2) Commissioners Kruer & Wan, (3) Mendocino Group Sierra Club, Friends of the Ten Mile, (4) Margery S. Cahn Trust & Whiting Family Revocable Trust from decision of County of Mendocino granting permit with conditions to Jackson-Grube Family, Inc. to build 7-unit inn in 2 phases.

Time/Date of communication: Friday, October 2nd, 2009, 9:00 am

Location of communication: La Jolla

Person(s) initiating communication: Dave Grubb, Bruce Reznik, Liva Borak (for Mendocino Sierra Club)

Person(s) receiving communication: Patrick Kruer

Type of communication: Meeting

Oppose the staff recommendation of approval with conditions, and urge denial.

Approval would allow serious misinterpretation of *1C zoning regulations.

The proposed development is too big and the increased intensity of use too great.

Date: October 2, 2009

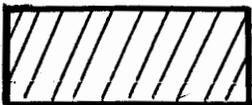
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OCT 05 2009

CALIFORNIA
COASTAL COMMISSION

(Signature on File

Patrick Kruer

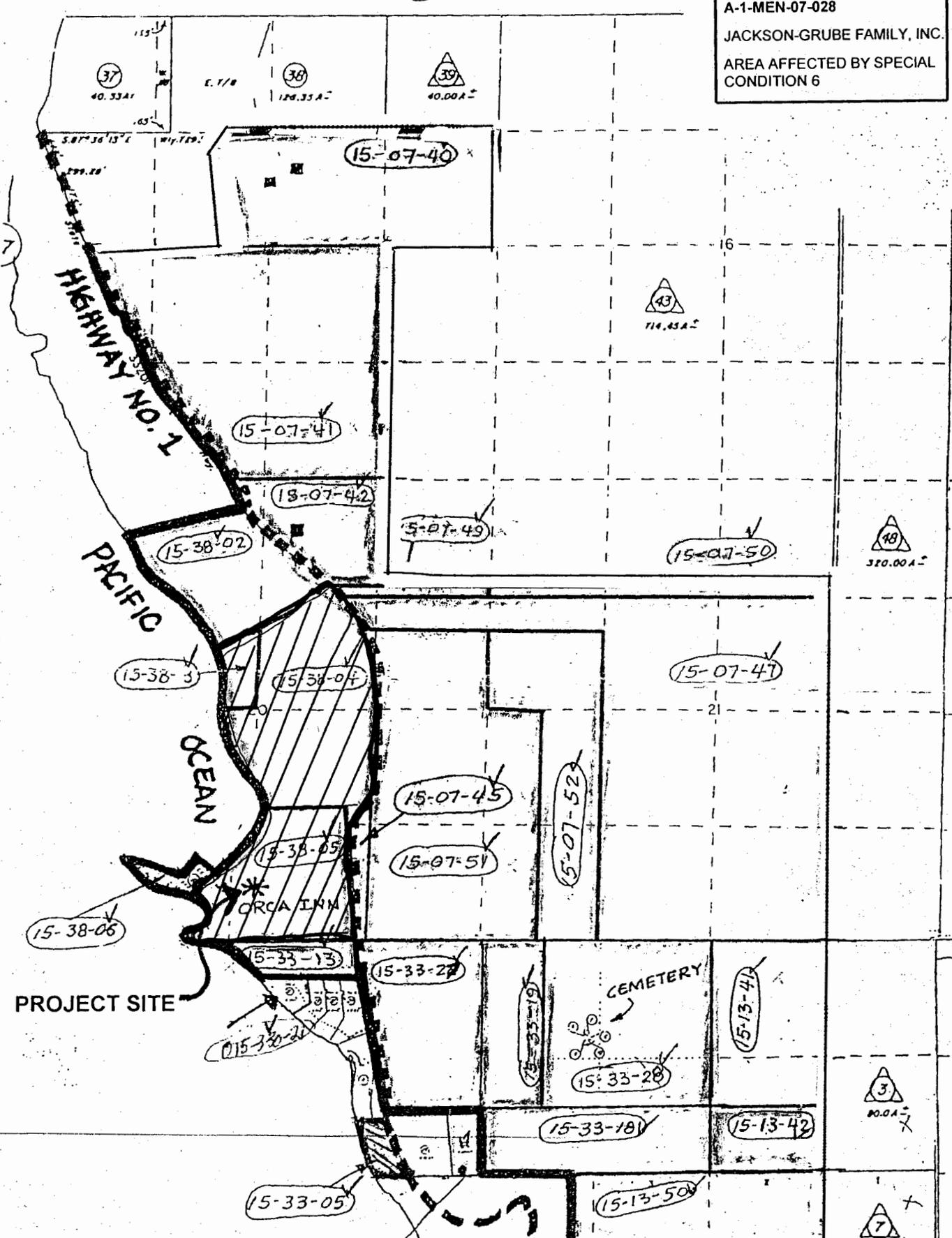


PORTION OF COC 39-90-D AFFECTED BY SPECIAL CONDITION 6

EXHIBIT NO. 27

APPEAL NO. A-1-MEN-07-028
JACKSON-GRUBE FAMILY, INC.
AREA AFFECTED BY SPECIAL CONDITION 6

(01)



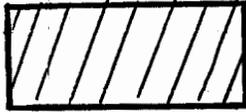
PROJECT SITE

HIGHWAY NO. 1

PACIFIC OCEAN

CORCA INN

CEMETERY



EXTENT OF PROJECT SITE

EXHIBIT NO. 28

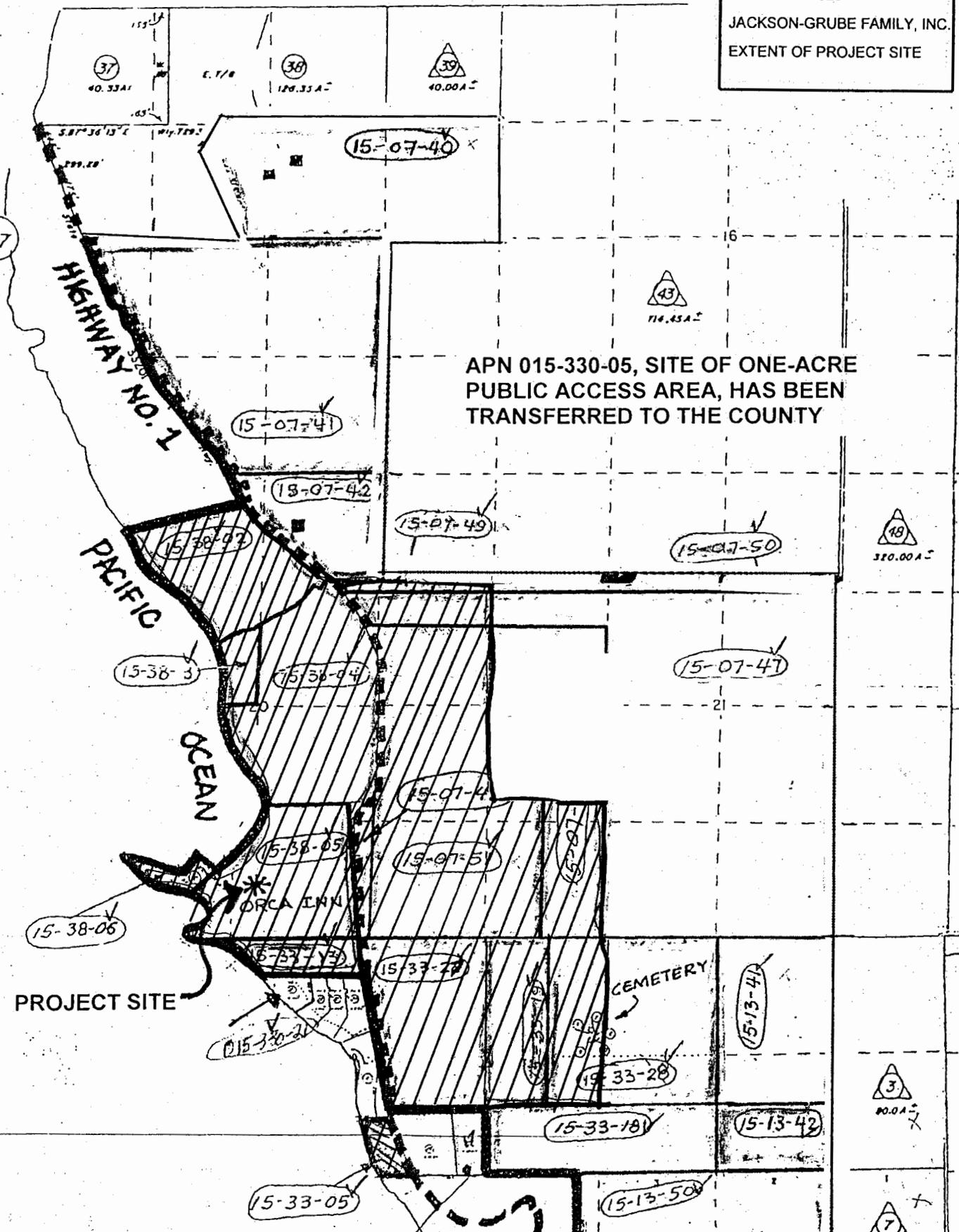
APPEAL NO.

A-1-MEN-07-028

JACKSON-GRUBE FAMILY, INC.

EXTENT OF PROJECT SITE

(01)



SETTLEMENT AGREEMENT

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

RECITALS

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

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

AGREEMENT

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

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

EXHIBIT NO. 29
APPEAL NO. A-1-MEN-07-028
JACKSON-GRUBE FAMILY, INC.
SETTLEMENT AGREEMENT (1 of 6)

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

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

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

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

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

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

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

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

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

Dated: 6/16/10

Willard Jackson

Willard Jackson for
Petitioner Jackson-Grube Family, Inc.

Dated:

Peter Douglas, Executive Director
California Coastal Commission

Approved as to form::

Dated:

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

Dated:

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

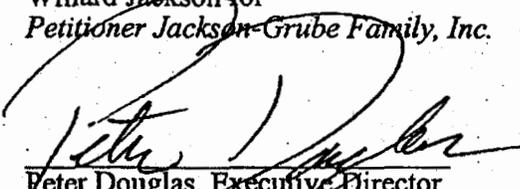
3 of 4

Dated:

Willard Jackson for
Petitioner Jackson-Grube Family, Inc.

Dated:

July 6, 2010


Peter Douglas, Executive Director
California Coastal Commission

Approved as to form::

Dated:

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

Dated:

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

Dated:

Willard Jackson for
Petitioner Jackson-Grube Family, Inc

Dated:

Peter Douglas, Executive Director
California Coastal Commission

Approved as to form::

Dated: 7/1/2010

Christiana Tiedemann

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

Dated:

Alan Robert Block

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

**ATTACHMENT A
REVISED PROJECT DESCRIPTION**

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

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

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

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

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

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

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

Alan Robert Block, Esq., SB #053179
Justin Michael Block, Esq., SB #236558

BLOCK & BLOCK
A Professional Corporation
1880 Century Park East, Suite 415
Los Angeles, California 90067-1604
TEL (310) 552-3336
FAX (310) 552-1850

Attorneys for Petitioner
JACKSON-GRUBE FAMILY, INC.

EXHIBIT NO. 30
APPEAL NO. A-1-MEN-07-028
JACKSON-GRUBE FAMILY, INC.
REMAND ORDER FOR NEW DE NOVO HEARING (1 of 6)

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR MENDOCINO COUNTY**

JACKSON-GRUBE FAMILY, INC.

Petitioners,

vs.

CALIFORNIA COASTAL
COMMISSION,

Respondent.

CASE NO. SCDKCVG-0955369

**STIPULATION AND ORDER
REMANDING PETITIONER'S
APPLICATION FOR A COASTAL
DEVELOPMENT PERMIT BACK TO
RESPONDENT FOR A NEW DE
NOVO PUBLIC HEARING**

BLOCK & BLOCK
A PROFESSIONAL CORPORATION
1880 Century Park East, Suite 415
LOS ANGELES, CALIFORNIA 90067-1604
TELEPHONE (310) 552-1336
FACSIMILE (310) 552-850

THE PARTIES HERETO, by and through their undersigned attorneys of record, stipulate and agree to the following recitals:

1. This action seeks judicial review of respondent's denial of petitioner's application for a Coastal Development Permit ("CDP") No. A-1-MEN-07-028, and the subsequent motion to reconsider said denial. The action was filed on December 29, 2009.

2. A settlement offer has been made by petitioner to resolve the litigation. Final approval of the offer and issuance of a CDP, requires respondent to hold a new public hearing on the modified project. The respondent, on May 12, 2010, in closed session agreed to consider the revised application as promptly as possible.

3. The next public hearing at which petitioner's revised CDP application can be heard is scheduled for July 7-9, 2010.

1 4. A Status Conference in this matter was previously scheduled for July
2, 2010, which the parties request be continued to July 16, 2010 in order to allow
2 the respondent time to hear petitioner's revised CDP application. No hearing
3 date on the petition for writ of mandate has been scheduled by the court and the
4 parties are still awaiting the preparation of the administrative record.

5 **BASED UPON THE FOREGOING**, the parties hereto, by and through their
6 undersigned attorneys of record, stipulate and agree to the following orders:

7 1. Petitioner's application for CDP No. A-1-MEN-07-028 is remanded to
8 the respondent for a public hearing on petitioner's settlement offer during it's
9 scheduled meeting of July 7-9, 2010, and the approval of a CDP on the terms of
10 the settlement offer.

11 2. The status conference presently scheduled for July 2, 2010 at 2:00
12 p.m. is continued to July 16, 2010, at 2:00 p.m. at which time the parties will update the court on
13 the status of the settlement and approval of the CDP.

14 **IT IS SO STIPULATED:**

15 DATED: May __, 2010

16 EDMUND G. BROWN, Attorney General
17 of the State of California

18 CHRISTIANA TIEDEMANN,
19 Deputy Attorney General

20 By: _____
21 CHRISTIANA TIEDEMANN
22 Deputy Attorney General
23 Attorneys for Respondent
24 CALIFORNIA COASTAL COMMISSION

25 DATED: May __, 2010

26 LAW OFFICES OF
27 BLOCK & BLOCK
28 A Professional Corporation

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By: ALAN ROBERT BLOCK
Attorneys for Petitioner
JACKSON-GRUBE FAMILY, INC.

IT IS SO ORDERED:

DATED: JUDGE OF THE SUPERIOR COURT

BLOCK &
BLOCK
A PROFESSIONAL CORPORATION
1880 Century Park East, Suite 415
LOS ANGELES, CALIFORNIA 90067-604
TELEPHONE (310) 552-3336
FACSIMILE (310) 552-850

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JUN 11 2010
JUN - 9 2010

COPY

FILED

JUN 17 2010

CLERK OF SUPERIOR COURT
SUPERIOR COURT OF CALIFORNIA
[Signature]

Alan Robert Black, Esq. 26,000,000
John Michael Black, Esq. 58,200,000
Black & Black
A Professional Corporation
1830 Century Park East, Suite 415
Los Angeles, California 90067-1804
TEL (310) 552-5338
FAX (310) 552-4850

Attorneys for Petitioner
JACKSON GRUBE FAMILY, INC.

**SENIOR COURT OF THE STATE OF CALIFORNIA
FOR SHERIDANO COUNTY**

JACKSON GRUBE FAMILY, INC.

CASE NO. SOCMCVG-056306

Petitioner,

**STIPULATION AND ORDER
CONFIRMING PETITIONER'S
APPLICATION FOR A CENTRAL
VALLEY REGIONAL WATER TO
BE CONSIDERED AS A
NON-PUBLIC HEARING**

vs.

**CALIFORNIA COASTAL
COMMISSION**

Respondent.

BLACK & BLACK
Attorneys for Petitioner
26,000,000
58,200,000

THE PARTIES HERETO, by and through their undersigned attorneys of record, stipulate and agree to the following recitals:

1. This action seeks judicial review of respondent's denial of petitioner's application for a Coastal Development Permit (CDP) No. A-1-61EN-07-022, and the subsequent motion to reconsider said denial. The action was filed on December 23, 2009.

2. A settlement offer has been made by petitioner to resolve the litigation. Final approval of the offer and issuance of a CDP, requires respondent to hold a new public hearing on the modified project. The respondent, on May 12, 2010, in closed session agreed to consider the renewed application as promptly as possible.

a. The next public hearing at which petitioner's renewed CDP application

06/17/2010

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06/17/2010 15:10

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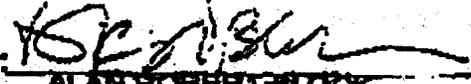
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DATED: May 13 2010

LAW OFFICES OF
BLOCK & BLOCK
A Professional Corporation

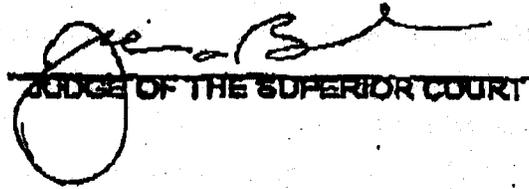
By



ALAN ROBERT BLOCK
Attorneys for Petitioner
JACKSON GRUBE FAMILY, INC.

IT IS SO ORDERED:

DATED: 6/17/10


JUDGE OF THE SUPERIOR COURT

BLOCK & BLOCK
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
1000 WEST 10TH AVENUE
SUITE 1000
DENVER, CO 80202
TEL: 303.733.1113
FAX: 303.733.1114

STIPULATION AND ORDER FOR GRAND

6 of 6