

CALIFORNIA COASTAL COMMISSION

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| Filed: | November 14, 2005 |
| 49 th Day: | Waived |
| Staff: | Ruby Pap |
| Staff Report: | December 23, 2005 |
| Hearing Date: | January 12, 2005 |

STAFF REPORT: APPEAL

SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: County of Mendocino

DECISION: Approval with Conditions

APPEAL NO.: **A-1-MEN-05-057**

APPLICANTS: **John & Judy Reynen, Reynen & Bardis Development, L.L.C.**

AGENT: Sean J. Hogan, CPA

PROJECT LOCATION: Approximately 1 mile north of the Town of Mendocino, approximately 1,000 feet west of Highway One at 45134 Brest Road (a private drive) (APN 118-270-01) (Mendocino County)

PROJECT DESCRIPTION: Construct a detached accessory building which consists of the following: 1) a 1,850-square-foot outdoor stone patio area with full kitchen (barbeque) amenities including a trellis covering and a hot tub; 2) a 1,105-square-foot indoor yoga room with a half bathroom; and 3) an attached 237-square-foot meditation view tower with an average height of 27 feet above natural grade. Secondary improvements would include a new propane tank and septic system.

APPELLANT: Martha Beihl

SUBSTANTIVE FILE 1) Mendocino County CDP No. 74-04; and
DOCUMENTS: 2) Mendocino County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that NO SUBSTANTIAL ISSUE exists with respect to the grounds on which the appeal has been filed.

The development, as approved by the County, consists of the construction of a detached accessory building which consists of the following: 1) a 1,850-square-foot outdoor stone patio area with full kitchen (barbeque) amenities including a trellis covering and a hot tub; 2) a 1,105-square-foot indoor yoga room with a half bathroom; and 3) an attached 237-square-foot meditation view tower with an average height of 27 feet above natural grade. Secondary improvements would include a new propane tank and septic system.

The appellant poses two separate contentions that the project as approved is inconsistent with the certified Mendocino Local Coastal Program. These contentions include: (1) that the approved development would negatively impact coastal visual resources by its size, location, and character would be highly visible from Russian Gulch State Park, would not be subordinate to the natural landscape because it would expand the existing “artificial” landscaping out onto the ocean bluff; and (2) that the proposed development has all the amenities that would qualify it as an illegal separate dwelling, most likely a vacation rental.

Staff recommends that the Commission find that both contentions are based on valid grounds for an appeal, but do not raise a substantial issue of conformity of the approved development with the certified LCP and the public access policies of the Coastal Act.

Regarding the visual issue, the project as approved would be located approximately 80-feet west of the current residence, and set against a backdrop of and partially surrounded by a stand of tall mature trees. Some of these trees would provide a visual backdrop for the project as viewed from the Park, and some would be located between the public view and the structure. In addition, there is a neighboring residence immediately behind the subject development that would serve as backdrop to the building. Visitors to Russian Gulch State Park would need to be standing in the northernmost portion of the park, out on the westernmost point in order to view the project site. At this northernmost point where the subject project would be visible through some trees and shrubs on the bluff edge, one can also see many more prominent homes in the Coast Highlands residential subdivision. The subject property is not located in a LUP-designated highly scenic area.

The project as approved by the County would be compatible with the character of its surroundings, in size, design, and location, would not impact views to and along the ocean, and does not raise a substantial issue of conformance with the visual resource policies of the LCP. In this case, the surroundings include a built-out residential subdivision, which is highly visible from many vantage points within Russian Gulch State Park. Therefore, the significance of the particular coastal resource affected by the development, the view shed looking northeast from the Park towards the Coast Highlands subdivision, is low when compared with other visual coastal resource areas that are located close by, within LUP designated highly scenic areas, that are virtually undeveloped and pristine. Further, the extent and scope of the development as approved by the County is small, as it is a 3,192-square-foot accessory structure (1,342 square feet of which is actually an enclosed building), which is clearly subordinate to the larger residence on the property, and the other larger houses in the surrounding subdivision.

Therefore, Staff recommends that the Commission find that the contention regarding visual impacts does not raise a substantial issue because the significance of the coastal resource affected by the County's decision is low and the extent and scope of the development is small, and no substantial issue is raised with regard to the conformance of the project as approved with the visual resource provisions of the LCP.

Regarding the second dwelling contention, Staff notes that an issue is raised with respect to the project's consistency with the LCP definition of "accessory building," which states that accessory buildings shall not contain kitchen facilities and are therefore not intended for human occupancy except as provided in Chapter 20.456, the LCP accessory use regulations. The project as approved includes an outdoor patio area with full kitchen (barbeque) amenities, including a prep/clean area with sink and counters, and a barbeque area. However, the County went to great measure determining the exact intended use of the approved development. The County obtained an applicant's statement clarifying the proposed use of the accessory building, which was incorporated into the approved project description. This letter stated that the building would be used primarily as a refuge for the owner's daily meditation and yoga exercises and secondarily as an outdoor barbeque area for small evening gatherings. This statement does not indicate or imply that the approved accessory building would be intended for human occupancy. Any conversion of the development to a residential or guest cottage use would require additional coastal development permit authorization. Therefore the approved project is not inconsistent with the intent for "accessory buildings" as described in the LCP definition.

Staff recommends that the Commission find the contention regarding second dwellings does not raise a substantial issue because the County has a high degree of factual and legal support for its decision with regard to the conformance of the project as approved with the provisions of the LCP. The project as approved is not intended to be used for "human occupancy" or as a second "dwelling unit," "vacation rental," "guest cottage," or "detached bedroom," and the yoga and meditation facility as well as the outdoor patio are

consistent with the accessory use regulations and subordinate to the principal residential use of the property. The County imposed several permit conditions to ensure that the use remains as proposed, and it is not used for “human occupancy” or a “dwelling unit,” and the use as a yoga/meditation facility and outdoor barbeque area for small evening gatherings cannot be changed without a coastal development permit amendment. Further, any future proposal to enclose the outdoor kitchen area would not be exempt from coastal permitting requirements.

For all of the above reasons, staff recommends that the Commission find that the appeal raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved project with the certified LCP and the public access policies of the Coastal Act. The motion to adopt the staff recommendation of No Substantial Issue is found on page nos. 5 - 6.

STAFF NOTES:

1. Appeal Process

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within three hundred feet of the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, or within one hundred feet of any wetland or stream, or within three hundred feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area.

Furthermore, developments approved by counties may be appealed if they are not designated the “principal permitted use” under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program and, if the development is located between the first public road and the sea, the public access policies set forth in the Coastal Act.

The subject development is appealable to the Commission because the proposed development is situated on a bluff top parcel, between the sea and the first public road paralleling the sea (Highway One).

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. In this case, because the staff is recommending no substantial issue, the Commission will hear arguments and vote on the substantial issue question. Proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission on the substantial issue question are the applicant, the appellant and persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. It takes a majority of Commissioners present to find that no substantial issue is raised.

Unless it is determined that there is no substantial issue, the Commission would continue with a full public hearing on the merits of the project, which may occur at a subsequent meeting. If the Commission were to conduct a *de novo* hearing on the appeal, because the proposed development is between the first road and the sea, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program and with the public access and public recreation policies of the Coastal Act.

2. Filing of Appeal

One appeal was filed by Martha Beihl (Exhibit No. 5). The appeal was filed with the Commission in a timely manner on November 14, 2005 within 10 working days of receipt by the Commission of the County's Notice of Final Action (Exhibit No. 4) on November 10, 2005.

3. 49-Day Waiver

Pursuant to Section 30621 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally issued coastal development permit is filed. On November 17, 2005, prior to the 49th day after the filing of the appeal, the applicant submitted a signed 49-Day Waiver waiving the applicant's right to have a hearing set within 49 days from the date the appeal had been filed.

I. MOTION, STAFF RECOMMENDATION AND RESOLUTION

Pursuant to Section 30603(b) of the Coastal Act and as discussed below, the staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeal has been filed. The proper motion is:

MOTION:

I move that the Commission determine that Appeal No. A-1-MEN-05-057 raises NO substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application *de novo* and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-1-MEN-05-057 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved project with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. APPELLANT'S CONTENTIONS

The Commission received one appeal of the County of Mendocino's decision to approve the development from Martha Beihl. The project as approved by the County involves the construction of a detached accessory building which consists of the following: 1) a 1,850-square-foot outdoor stone patio area with full kitchen (barbeque) amenities including a trellis covering and a hot tub; 2) a 1,105-square-foot indoor yoga room with a half bathroom; and 3) an attached 237-square-foot meditation view tower with an average height of 27 feet above natural grade. Secondary improvements would include a new propane tank and septic system. The project is located approximately 1 mile north of the Town of Mendocino, approximately 1,000 feet west of Highway One at 45134 Brest Road (a private drive) in Mendocino County.

The appeal raises two contentions alleging inconsistency of the approved project with the County's certified LCP. The appellants' contentions are summarized below, and the full text of the contentions is included as Exhibit No. 5.

1. Visual Resources

The Appellant contends that the approved development would negatively impact coastal visual resources by its size, location, and character. The specific allegations are outlined below:

- a. The project is too large. The main house is already 5,600 square feet, which is far larger than the average house in the Brest Road area (2,000 – 3,000 square feet). The additional building would add an additional 3,000 square feet to that of the house.
- b. The development is highly visible from Russian Gulch State Park. Looking north from the walking trails along the bluff edge, this development would stick out on the headland directly across from the Park trails.
- c. The development would not be subordinate to the natural landscape. In remodeling the main house, the owners have created a totally artificial environment with corresponding landscape. This development would expand this artificial landscaping out onto the ocean bluff.

2. Second Dwelling

The Appellant further asserts that the proposed development has all the amenities that would qualify it as a separate dwelling, most likely a vacation rental. The development is too far from the main house, 200 feet west of the residence, and that any development ought to be contiguous to the main house, separated by no more than a breezeway.

B. LOCAL GOVERNMENT ACTION.

On September 22, 2005, the Mendocino Coastal Permit Administrator opened the public hearing for the proposed development. In response to several concerns raised, the project was continued to October 27th, with direction to planning staff to (1) refer the project to the Mendocino Fire Department; (2) to review the physical adequacy of the road, driveway, and parking; (3) to obtain a written statement from the applicant as to the intended use of the proposed development; and (4) to review alleged building violations at the site.

In advance of the October 27th hearing, Mendocino County planning staff issued an addendum to the staff report, which addressed the four issues raised. The memo stated that (1) although the fire department declined to comment on the project, the project received a fire safety clearance from the California Department of Forestry and Fire Protection; (2) the proposed project would be located off a privately maintained, narrow, mostly single lane road, but the site would be provided with parking at the residence by way of a wide circular parking area in front of the main entrance, which would have ample room to park several vehicles; (3) the owner, Judy Reynen, provided an explanation of her intended use of the proposed building in a letter, which stated that it would be used primarily as a daily meditation and yoga refuge and secondarily as an

outdoor barbeque area for small evening gatherings; and (4) to address alleged violations at the existing residence (not the subject of the current appeal), the applicant provided a list of construction projects that had been undertaken in the last two years, which showed upon preliminary review that the work would be exempt from coastal development permitting requirements, as additions to single family homes and repair and maintenance activities, as stipulated in the Mendocino County LCP and Title 14, Chapter 6, Subchapters 6 & 7 of the California Administrative Code.

On October 27, 2005, the Mendocino County Coastal Permit Administrator approved the project with several standard and special conditions. The special conditions stipulated that the applicant eliminate the proposed skylights and Plexiglas railing panels and use dark earth tone color window frames and building trim, to reduce the potential visual impacts of glare and color from the proposed building; that all recommendations of the geological report be adhered to; that the owner execute and record a deed restriction that runs with the land, providing that the owners assume the risks and assume full responsibility associated with potential geologic hazards and property impacts, that they agree to indemnify and hold harmless the County for any damages or liability associated with the project, that no bluff or shoreline protective devices shall be constructed, and that they assume responsibility and costs associated with removal and clean up of property and debris should the bluff retreat threaten the structure.

In addition, the County imposed several standard conditions, including that the application, along with the supplemental exhibits and related material, shall be considered elements of the permit, and that compliance therewith is mandatory, unless an amendment is approved by the Coastal Permit Administrator; and that the permit shall be subject to revocation or modification if the use for which the permit was granted is so conducted as to be detrimental to the public health, welfare or safety or as to be a nuisance. In this case, the County added additional language to the latter standard condition, stating that parking of any vehicles along the access road to the subject property (beginning immediately to the east of the Reynen's easterly property line) for activities at the Reynen property would likely constitute a nuisance and be detrimental to the public health, welfare or safety due to the narrow width of the road and the lack of parking.

Commission staff received the Notice of Final Action of the Mendocino County Coastal Permit Administrator's approval of the project on November 10, 2005 (Exhibit No. 4). The County's approval of the project was appealed to the Coastal Commission in a timely manner on November 14, 2005, within ten working days after receipt by the Commission of the Notice of Final Local Action.

C. PROJECT AND SITE DESCRIPTION

Approval has been granted by the County to construct a detached accessory building which consists of the following: 1) a 1,850-square-foot outdoor stone patio area with full

kitchen (barbeque) amenities including a trellis covering and a hot tub; 2) a 1,105-square-foot indoor yoga room with a half bathroom; and 3) an attached 237-square-foot meditation view tower with an average height of 27 feet above natural grade. The approved detached accessory building would be built approximately 80 feet west of an existing residence. A new propane tank would be installed north of the proposed building and a new septic disposal system would be installed southwest of the new building. Water would be provided from an existing water well and storage tanks on the eastern end of the property.

The structure would be clad with a combination of horizontal wood siding (to match the main residence) painted green and natural stone. The roof would be natural cedar wood shakes (to match the main residence). The window frames and building trim would be dark earth tone colors. The patio would be made of three-river rock and the trellis would be natural untreated redwood.

The approved project is located on a five-acre bluff top parcel, located approximately one mile north of the Town of Mendocino. The property is not located in a LUP-designated “highly scenic area.” It is currently developed with an approximately 6,500-square-foot single-family residence and associated infrastructure on the eastern side of the property, and is characterized by a maintained lawn and ornamental landscaping around the residence, as well as a natural undeveloped meadow on the western portion of the property extending to the bluff edge. The property affords ocean views to the west and north, is neighbored by several residences to the north and east, and Russian Gulch State Park flanks the property on the south. The Park contains several trails and natural features (such as blowhole), which attract hikers and other visitors. The trails extend out onto two points, or “fingers”, directly west, and facing the subject property. However, the existing residence is shielded by trees from these vantage points.

The County’s LUP and zoning classification for the parcel is Rural Residential – 5-acre minimum (RR-5) (RR-1). This designation permits one dwelling unit per 5-acre legally created parcel (this may apply to a one-acre parcel if proof of adequate water supply is substantiated). Accessory buildings and uses are also permitted in accordance with the accessory use regulations of the LCP (see below).

D. SUBSTANTIAL ISSUE ANALYSIS.

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

1. **Appellants' Contentions That Are Valid Grounds For Appeal**

Both contentions raised in this appeal present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP. These contentions allege that the approval of the project by the County raises significant issues related to LCP provisions regarding: (a) visual resources and (b) second dwellings.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (California Code of Regulations, Title 14, Section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

- The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
- The extent and scope of the development as approved or denied by the local government;
- The significance of the coastal resources affected by the decision;
- The precedential value of the local government's decision for future interpretations of its LCP; and
- Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to all of the allegations below, the appeal raises **no substantial issue** with regard to the approved project's conformance with the certified Mendocino County LCP and the public access and recreation policies of the Coastal Act.

2. Allegations Raising No Substantial Issue:

A. Visual Resources

The Appellant contends that the County approved accessory building would negatively impact coastal visual resources due to its size, location, and character. The specific allegations are outlined below:

- The project would be too large. The main house is already 5,600 square feet, which is far larger than the average house in the Brest Road area (2,000 – 3,000 square feet). The additional building would add an additional 3,000 square feet to that of the house.
- The development is highly visible from Russian Gulch State Park. Looking north from the walking trails along the bluff edge of the park, the development would stick out on the headland directly across from the Park trails.
- The development would not be subordinate to the natural landscape. In remodeling the main house, the owners have created a totally artificial environment with the landscaping. The subject accessory building would expand this artificial landscaping out onto the ocean bluff.

LCP Policies and Standards

LUP Policy 3.5-1 states in applicable part:

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

LUP Policy 3.5-5 states in applicable part:

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

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

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

Discussion

Although the subject parcel is not located in an LUP-designated “highly scenic area,” LUP Policy 3.5-1 and Section 20.504.020 of the Coastal Zoning Code require permitted development to be sited and designed to protect views to and along the ocean and to be visually compatible with the surrounding area. The appeal states that the development as approved by the County would impact coastal visual resources due to its large size, its visibility from the neighboring State Park, and its incompatibility with the character of its surroundings, especially in regards to its “artificial” landscaping.

Regarding the size issue, the approved 3,192-square-foot (which includes the 1,850-square-foot stone patio area) accessory building would be located approximately 80-feet northwest from an existing 6,000 square foot residence, set against, and partially surrounded by a group of mature cypress trees. While the accessory building would be larger than some, the Commission notes that 1,850-square-feet of the total project size is an open stone patio area, and only 1,342 square feet would be an enclosed building, diminishing the appearance of its size somewhat. Further, this accessory building would be appropriately proportional to and compatible with the character with the large residence on the property and other residences in the neighboring subdivision. For example, there is an existing neighboring residence that is larger than the approved development that would be located in the background of the subject development, and would serve to provide backdrop that would mitigate any visual impacts of the subject development. Therefore, the project as approved would be compatible with the character of the surrounding development, consistent with LUP Policy 3.5-1 and CZC Section 20.504.020.

The approved accessory building, along with a number of other existing residences in surrounding subdivision, would indeed be visible from the far northern point in Russian Gulch State Park. As stated in the County findings of approval and as observed by Commission staff on a recent site visit, visitors to the Park would need to be standing in the northernmost portion of the park, out on the westernmost point in order to view the

project site. The picnic area and many of the other park views are oriented to the south towards the Town of Mendocino and the Russian Gulch arched bridge along Highway One. At this northernmost point where the subject project would be visible through some trees and shrubs on the bluff edge, one can also see several homes in the Coast Highlands residential subdivision. These houses can also be seen from several other points in the Park along the trails, while the subject development (as well as the existing residence on the subject property) would not be visible from other Park locations. As discussed above, the subject 27-foot-tall building would be set against a backdrop of and partially surrounded by a stand of tall mature trees. Some of these trees would provide a visual backdrop for the project as viewed from the park, and some more trees would be located between the public view and the structure. Further, even if there were no trees surrounding the approved structure, the neighboring residence immediately behind the subject development would serve as backdrop to the building, and this residence is more visible from the Park. The accessory building as approved would not block any public views to the ocean but would rather be within the field of view as one looked north from the park at the residential subdivision. Moreover, the approved colors of the subject development would be natural earth tones, such as green and natural stone, and the roof would be made of natural cedar wood shakes, and these would serve to blend the development into surrounding area, rather than causing it to stand out in the view shed. Therefore, the project as approved would not block views to or along the ocean, and does not raise a substantial issue of compatibility with the character of its surroundings, as required by LUP Policy 3.5-1 and CZC Section 20.504.020.

The Commission also notes that the project location, as approved by the County, is a change from two previously proposed locations for the accessory building. The first submittal would have placed the development close to the northwestern bluff edge. The project was then revised to a location in a meadow-area approximately 200-feet west of the current residence. Neighboring property owners, including State Park officials, subsequently voiced concerns about this location, claiming the project would have negative visual impacts on public views from Russian Gulch State Park. These previously proposed locations were in the open area on the western portion of the property, called "Fawn Meadows", an area that is more visible from the Park. As a result of these visual concerns, the project was moved to the east, and sited amongst mature trees off of the meadow, and located only 80-feet from the residence. Therefore, statements within the appeal that allege that the project is 200-feet from the residence, and that the development would be located in the meadow area are inaccurate and dated, as the location of the approved project has changed.

In regards to the allegation that the "artificial" landscaping associated with the approved project would negatively impact views and that this landscaping would extend onto the bluff, the project as approved by the County did not include a specific landscaping plan besides a depiction on the project plans of some planters on the stone patio itself. The existing residence does have a manicured lawn and several ornamental gardens. The development as approved would be located close to the residence, amongst some existing

trees. The development's close proximity to the residence and manicured areas, as well as the neighboring house to the north, serves to cluster the development, leaving the natural areas, such as "Fawn Meadow" undeveloped, thereby blending the development with the surroundings and protecting views from the State Park.

In summary, the project as approved by the County does not raise a substantial issue of compatibility with the character of its surroundings, in size, design, and location, and would not impact views to and along the ocean, as required by LUP Policy 3.5-1 and CZC Section 20.504.020. In this case, the surroundings include a built-out residential subdivision, which is highly visible from many vantage points within the Park. Therefore the significance of this particular coastal resource, the view shed from the Park looking northeast towards the Coast Highlands subdivision, is low when compared with other visual coastal resource areas that are located close by, within LUP-designated highly scenic areas, that are virtually undeveloped and pristine. Further, the extent and scope of the development as approved by the County is small, as it is a 3,192-square-foot accessory structure (1,342 square feet of which is actually an enclosed building), which is clearly subordinate to the larger residence on the property, and the other larger houses in the surrounding subdivision. Therefore, the significance of the particular visual resource affected by the County's decision is low and the extent and scope of the development is small, and no substantial issue is raised with regard to the conformance of the project as approved with the visual resource provisions of the LCP. Therefore, the Commission finds that the contention raised by the appellants does not raise a substantial issue of conformance of the approved project with provisions of the Certified Local Coastal Program and the public access policies of the Coastal Act.

B. Second Dwelling

The Appellant further asserts that the approved development has all the amenities that would qualify it as a separate dwelling, most likely a vacation rental, which is inconsistent with LCP policies regarding second dwellings. The appeal states that the development is too far from the main house, 200-feet west of the residence, and that any development ought to be contiguous to the main house, separated by no more than a breezeway.

LCP Policies and Standards

LUP Policy 3.9-1 states in applicable part:

...One housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate access, water, and sewage disposal capacity exists and proposed development is consistent with all applicable policies of this Coastal Element and is in compliance with existing codes and health standards...

CZC Section 20.458.010 states:

The creation and/or construction of a second residential unit as defined in Section 65852.2 of the California Government Code is prohibited. This prohibition does not apply in the Town of Gualala Plan planning area and to farm employee housing, farm labor housing, family care units, dwelling groups or residential clustering where such dwelling units are specifically provided for in other sections of this Division.

Section 20.456.015 of the Accessory Use chapter, “Residential and Agricultural Use Types” states in applicable part [emphasis added]:

Subject to the restrictions and limitations of this Chapter, including the granting of a Coastal Development Permit, where applicable, the following accessory buildings and uses shall be permitted in all zoning districts which allow a single-family residence:

- (A) Private Garages.*
- (B) Children's playhouse, patios, porches, gazebos, etc.*
- (C) Windmills.*
- (D) Shops (non-business purposes).*
- (E) Barns.*
- (F) Private swimming pools and hot tubs (not subject to setback requirements in the side or rear yards of any district).*
- (G) Accessory Living Unit. Not more than one accessory living unit for each legal parcel.*
- (H) Room and Board. The renting of not more than one (1) room for occupancy by transient guests for compensation or profit.*
- (I) Day care center, family care home, or school, for six (6) or less persons.*
- (J) Travel Trailer or Camper. The maintaining of one (1) travel trailer or camper in dead storage where it is not used for occupancy or business purposes. All stored travel trailers or campers in excess of one (1) shall be stored out of sight from a public right-of-way. The connection, for any continuous period exceeding forty-eight (48) hours, of any utility or service such as electrical, water, gas or sewage to the travel trailer or camper shall be prima facie evidence that it is being used for habitation or business purposes.*
- (K) Home Occupations. Subject to [Chapter 20.448](#).*
- (L) Household Pets. The keeping of dogs and cats and other household pets, but not including kennels.*
- (M) Accessory Parking...*

(N) Public Access. The offer to dedicate and acceptance of a dedication for an accessway except that the construction of a public access trail and/or construction of a staircase accessway on a bluff face (as determined by the Department of Planning and Building Services) will require a Coastal Development Use Permit.

(O) Other Necessary and Customary Uses. Accessory non-residential uses and non-residential structures, in addition to those identified above, which are necessarily and customarily associated with, and are appropriate, incidental, and subordinate to a principal permitted use, as determined by the Director of Planning and Building Services. (Ord. No. 3785 (part), adopted 1991)

Section 20.456.010 of the Mendocino County Coastal Zoning Code, “Accessory Uses Encompassed by Principal Permitted Use” states in applicable part:

(A) In addition to the principal permitted uses expressly included in the zoning districts such use types shall be deemed to include such accessory uses which are specifically identified by these Accessory Use Regulations; and such other accessory uses which are necessarily and customarily associated with, and are appropriate, incidental, and subordinate to, such principal permitted uses. When provided by these regulations, it shall be the responsibility of the Director to determine if a proposed accessory use is necessarily and customarily associated with, and is appropriate, incidental, and subordinate to the principal permitted use, based on the Director's evaluation of the resemblance of the proposed accessory use to those uses specifically identified as accessory to the principal permitted uses and the relationship between the proposed accessory use and the principal use. Accessory uses shall not include manufacturing, processing or transportation of flammable, combustible, explosive, toxic or other hazardous materials. Such determinations which are made by the Director may be appealed pursuant to the administrative appeal procedure commencing at [Chapter 20.544](#).

(B) An accessory structure may be constructed prior to the construction of a dwelling on the premises. An accessory structure shall not be used for temporary or permanent occupancy as a residence, without compliance with [Section 20.460.025](#) (Construction Support). Accessory uses and structures shall be subject to the provisions of [Chapter 20.532](#) (Permit Regulations) and where applicable [Chapter 20.504](#) (Visual Resource and Special Treatment Areas). (Ord. No. 3785 (part), adopted 1991)

Chapter 20.376, RR-Rural Residential District, states in applicable part [*emphasis added*]:

Sec. 20.376.005 Intent.

This district is intended to encourage and preserve local small scale farming in the Coastal Zone on lands which are not well-suited for large scale commercial agriculture. Residential uses should be located as to create minimal impact on the agricultural viability. (Ord. No. 3785 (part), adopted 1991)

Sec. 20.376.010 Principal Permitted Uses for RR Districts.

The following use types are permitted in the Rural Residential District:

(A) Coastal Residential Use Types.

*Family Residential: Single-family;
Vacation Home Rental.*

(B) Coastal Agricultural Use Types.

*Light Agriculture;
Row and Field Crops;
Tree Crops.*

(C) Coastal Open Space Use Types.

Passive Recreation. (Ord. No. 3785 (part), adopted 1991)

Sec. 20.376.015 Conditional Uses for RR Districts.

The following are permitted uses upon the issuance of a coastal development use permit:

(A) Coastal Residential Use Types.

*Family Residential: Cluster Development (RR:L-10
Districts Only);
Mobile Home Park.*

(B) Coastal Civic Use Types.

*Alternative Energy Facilities: On-site;
Alternative Energy Facilities: Off-site;
Community Recreation;
Day Care Facilities/Small School;
Educational Facilities;
Group Care;
Lodge, Fraternal and Civic Assembly;*

Major Impact Services and Utilities;
Minor Impact Utilities;
Religious Assembly.

(C) Coastal Commercial Use Types.

Animal Sales and Services: Horse Stables;
Cottage Industries.

(D) Coastal Agricultural Use Types.

Forest Production and Processing: Limited;
Forest Production and Processing: Commercial Woodlots;
Horticulture;
Packing and Processing: Limited.

(E) Coastal Open Space Use Types.

Active Recreation.

(F) Coastal Extractive Use Types.

Mining and Processing.

(G) Coastal Natural Resource Use Types.

Fish and Wildlife Habitat Management;
Watershed Management. (Ord. No. 3785 (part), adopted
1991)

Sec. 20.376.020 Minimum Lot Area for RR Districts.

(C) RR:L-5: Five (5) acres.

Sec. 20.376.025 Maximum Dwelling Density for RR Districts.

(C) RR:L-5: One (1) unit per five (5) acres except as provided pursuant to Section 20.456.015 (Accessory Uses), Section 20.460.035 (Use of a Trailer Coach) and Section 20.460.040 (Family Care Unit).

Sec. 20.376.030 Minimum Front and Rear Yards for RR Districts.

(B) RR:L-5: Thirty (30) feet each.

Sec. 20.376.035 Minimum Side Yards for RR Districts.

(B) RR:L-5: Thirty (30) feet each.

Sec. 20.376.045 Building Height Limit for RR Districts.

Twenty-eight (28) feet above natural grade for non-Highly Scenic Areas... Thirty-five (35) feet above natural grade for uninhabited accessory structures not in an area designated as a Highly Scenic Area (See Section 20.504.015(C)(2)).

Sec. 20.376.055 Minimum Lot Width for RR Districts.

One hundred (100) feet. (Ord. No. 3785 (part), adopted 1991)

Sec. 20.376.060 Maximum Lot Depth for RR Districts.

Three (3) times the lot width. (Ord. No. 3785 (part), adopted 1991)

Sec. 20.376.065 Maximum Lot Coverage for RR Districts.

Twenty (20) percent for parcels less than two (2) acres in size. Fifteen (15) percent for parcels from two (2) acres to five (5) acres in size. Ten (10) percent for parcels over five (5) acres in size. (Ord. No. 3785 (part), adopted 1991)

Chapter 20.308 Definitions [*emphasis added*]:

"Accessory Building" means a detached subordinate structure, the use of which is incidental to the established primary use or main structure located on the same lot or building site; i.e., private garage, storage shed, farm outbuildings, etc. In no case shall such accessory structure dominate, in purpose, the principal lawful structure or use. This definition, by itself, is not intended to prohibit an accessory structure which is greater in size than the main structure. Accessory buildings shall not contain any sleeping quarters or kitchen facilities and are therefore not intended for human occupancy except as provided in Chapter 20.456.

"Accessory Living Unit" means a detached bedroom as defined in [Section 20.308.035\(B\)](#) or a guest cottage as defined in [Section 20.308.050\(I\)](#).

"Accessory Structure". See Accessory Building.

"Accessory Use" means a use of land or of a structure incidental or subordinate to the principal use located upon the same lot.

"Building" means a structure having a roof, and which is constructed in a permanent position upon the ground and is designed and intended to be used for the shelter or enclosure of persons, animals or property. This definition does not include any type of recreational vehicle, boat or tent.

"Detached Bedroom" means a separate incidental structure containing one

(1) room only without a kitchen or sanitation facilities, designed for and intended to be used as a sleeping or living facility for family members to be used in conjunction with a main structure which includes kitchen and sanitation facilities. A detached bedroom shall be located no farther than one hundred fifty (150) feet from the main structure, and shall not exceed five hundred (500) square feet of floor area. See [Chapter 20.456](#) Accessory Use Regulations.

"Dwelling Unit" means a single unit containing complete, independent living facilities for a family, including permanent provisions for living, sleeping, eating, cooking, and sanitation, and having only one (1) kitchen. (Ord. No. 3785 (part), adopted 1991)

"Guest Cottage" means a detached building (not exceeding six hundred forty (640) square feet of gross floor area), of permanent construction, without kitchen, clearly subordinate and incidental to the primary dwelling on the same lot, and intended for use without compensation by guests of the occupants of the primary dwelling. (Ord. No. 3785 (part), adopted 1991)

"Kitchen" or "Kitchenette" means any room or portion of a building used or intended or designed to be used for cooking or the preparation of food, whether the cooking unit be permanent or temporary and portable, including any room having a sink and cooking stove that has a flat top with plates or racks to hold utensils over flames or coils. (Ord. No. 3785 (part), adopted 1991)

Discussion

The project as approved by the County includes the construction of a detached accessory building which consists of the following: 1) a 1,850-square-foot outdoor stone patio area with full kitchen (barbeque) amenities including a trellis covering and a hot tub; 2) a 1,105-square-foot indoor yoga room with a half bathroom; and 3) an attached 237-square-foot meditation view tower with an average height of 27 feet above natural grade. The appellant alleges that due to the size, location, and amenities associated with this development, such as an outdoor kitchen, half-bath, and hot tub, that this is actually an illegal second dwelling, and inconsistent with the LCP.

Under LUP Policy 3.9-1, the LCP's rural residential (RR-5) designation, and CZC Section 20.458.010, only one dwelling unit (residence) is permitted per parcel. Under the accessory use provisions of the LCP, accessory living units, such as detached bedrooms and guest cottages are permitted, but they cannot be larger than 500 or 640 square feet respectively, and cannot contain a kitchen (the subject development would be 3,192 square-feet, including the stone patio w/outdoor kitchen/barbeque area).

The County's findings of approval for the subject development state that the outdoor kitchen does not constitute a new "dwelling unit," as defined by the LCP, because it lacks

complete, independent living facilities for a family. Further, the findings state that it does not constitute a new “accessory living unit” (it is not a guest house or a detached bedroom) and that the approved improvements are permitted accessory uses to the existing residential use of the property pursuant to CZC Section 20.456.015, the accessory use regulations of the Mendocino County Coastal Zoning Code. These regulations list out the accessory buildings and uses that can be permitted, subject to a coastal development permit, where applicable in residential areas. While meditation and yoga facilities are not listed, 20.456.015(B) lists “children’s playhouse, patios, porches, gazebos, etc.” and (F) lists hot tubs. Further, Section 20.456.010 of the regulations states that in addition to those uses that are specifically identified, the accessory use regulations includes “such other accessory uses which are necessarily and customarily associated with, and are appropriate, incidental, and subordinate to, such principal permitted uses” in this case, the residential use of the property. As an addendum to the staff report, the County included a letter of intended use from the applicant/owner of the property, which stated that the building would be used primarily as a refuge for her daily meditation and yoga exercises and secondarily as an outdoor barbeque area for small evening gatherings.

The Commission notes that an issue is raised with respect to the project’s consistency with the LCP definition of “accessory building,” which states that accessory buildings shall not contain kitchen facilities and are therefore not intended for human occupancy except as provided in Chapter 20.456, the LCP accessory use regulations. The definition of an “accessory building” was not addressed in the County’s findings of approval. The project as approved includes an outdoor patio area with full kitchen (barbeque) amenities, including a prep/clean area with sink and counters, and a barbeque area. However, the County did go to great measure determining the exact intended use of the approved development. As a result of public comments regarding noise concerns associated with the original project description as an outdoor/indoor entertainment area, the County sought to obtain an applicant’s statement clarifying the proposed use of the accessory building, which was incorporated into the project description. As described above, the applicant Judy Reynen submitted a letter stating that the building would be used primarily as a refuge for her daily meditation and yoga exercises and secondarily as an outdoor barbeque area for small evening gatherings. The Commission notes that this statement does not indicate or imply that the approved accessory building would be intended for human occupancy, and therefore the approved project is not inconsistent with the intent for “accessory buildings” as described in the LCP definition.

Further, the County imposed conditions on the permit regulating the use of the subject development. First, Standard Condition No. 2 states that the use and occupancy of the premises shall be established and maintained in conformance the Mendocino County Coastal Zoning Code, which includes all the policy provisions regarding second dwelling units and accessory uses described above. Second, Standard Condition No. 3 states that the application, along with the supplemental exhibits and related material, shall be considered elements of the permit, and that compliance therewith is mandatory, unless an amendment is approved by the Coastal Permit Administrator. Therefore, the applicant’s

letter of intended use is considered part of the application, and the use of the building primarily as the owner's yoga and meditation facility and secondarily for outdoor barbecue gatherings is mandatory, and any change in use would require a permit amendment. This further assures that the approved development would not be used for "human occupancy" or a "dwelling unit," consistent with the RR-5 district and the accessory use regulations of the LCP." Third, Standard Condition No. 6 states that the permit shall be subject to revocation or modification if the use for which the permit was granted is so conducted as to be detrimental to the public health, welfare or safety or as to be a nuisance. In this case, the County added additional language to this latter standard condition, stating that parking of any vehicles along the access road to the subject property (beginning immediately to the east of the Reynen's easterly property line) for activities at the Reynen property would likely constitute a nuisance and be detrimental to the public health, welfare or safety due to the narrow width of the road and the lack of parking. This further assures that the use of the approved accessory building would be for small, residentially oriented gatherings, which can be accommodated by the existing residential parking facilities, and not for large parties, or illegal vacation rentals, consistent with the accessory use regulations of the LCP.

The Commission also notes that any future proposal to enclose the outdoor kitchen/barbeque area, thereby creating a potential second "dwelling unit" would be subject to a coastal development permit, and the construction of such addition without a CDP would be a violation of the Mendocino County LCP. The enclosure of the outdoor kitchen/barbeque area would not be exempt from coastal permitting requirements as an addition to a single family residence, as per Section 20.532.020 of the Mendocino County Coastal Zoning Code and Subchapter 6, Title 14, of the California Administrative Code, which is incorporated by reference into the County LCP. This is because the enclosure of the kitchen/barbeque area would likely result in more than a ten percent increase of internal floor area, and Section 13250(b)(4) of the CA Administrative Code states that only developments located between the sea and the first public road paralleling the sea, improvements that would result in an increase of ten percent or more of internal floor area of an existing structure requires a coastal development permit because they involve risk of environmental effects. This provides further assurance that the accessory building as approved could not at a future date be used for "human occupancy" or as a "dwelling unit," consistent with the Mendocino County LCP.

In summary, due to the fact that the project as approved is not intended to be used for "human occupancy" or as a second "dwelling unit," "vacation rental," "guest cottage," or "detached bedroom," that the yoga and meditation facility as well as the outdoor patio are consistent with the accessory use regulations and subordinate to the principal residential use of the property, and that the County imposed several permit conditions to ensure that the use remains as proposed, and it is not used for "human occupancy" or a "dwelling unit, and the use as a yoga/meditation facility and outdoor barbeque area for small evening gatherings cannot be changed without a coastal development permit amendment, the County has a high degree of factual and legal support for its decision, and no

substantial issue is raised with regard to the conformance of the project as approved with the provisions of the LCP. Therefore, the Commission finds that the contention raised by the appellant does not raise a substantial issue of conformance of the approved project with provisions of the Certified Local Coastal Program and the public access policies of the Coastal Act.

Conclusion

The Commission finds that for the reasons stated above the appeal raises no substantial issue with respect to conformance of the approved project with the certified LCP and the public access policies of the Coastal Act.

EXHIBITS

1. Regional Location Map
2. Vicinity Map
3. Project Plans
4. Notice of Final Local Action
5. Appeal