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W10a

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 Hearing Date: 08/07/19

STAFF REPORT: APPEAL – NO SUBSTANTIAL ISSUE

Appeal No.: A-1-MEN-19-0046

Applicant: AT&T Mobility

Local Government: County of Mendocino

Local Decision: Approval with Conditions

Location: 30660 Navarro Ridge Road, Albion, Mendocino County (APN: 126-230-33).

Project Description: Coastal Development Use Permit for construction and operation of a wireless communication facility consisting of a 135-foot-tall monopine (monopole designed to resemble a pine tree) with various appurtenant equipment and associated improvements within a 1,800 square-foot fenced compound.

Appellant: Annemarie Weibel

Staff Recommendation: No Substantial Issue

IMPORTANT HEARING PROCEDURE NOTE

This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally, and at the discretion of the Chair, testimony is limited to 3 minutes total per side. Please plan your testimony accordingly. Only the applicant, persons who opposed the application before the local government (or their representatives), and

the local government shall be qualified to testify. Others may submit comments in writing. If the Commission determines that the appeal does raise a substantial issue, the *de novo* phase of the hearing will occur at a future Commission meeting during which it will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

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 County's approval authorizes the construction and operation of a wireless communication facility (WCF) consisting of a 135-foot-tall "monopine" (a telecommunication structure consisting of a steel pole designed to resemble a conifer tree) with the objective of providing wireless hi-speed broadband internet and cellular services to an underserved area. The County's approval also includes removal of a shed, grading of a gravel driveway, and construction of accessory equipment within a 1,800-square-foot fenced compound. The project site is located in a rural residential area, and the authorized development would occupy a small portion of the subject parcel which is otherwise developed with rural residential and "religious assembly" uses.

The appeal raises contentions related to visual resources, biological resources, water quality, hazards, cultural resources, land use compatibility, County procedure, and public safety related to electromagnetic frequencies (EMF). Regarding visual resources, the appeal contends that the proposed development would degrade the visual quality of the site and be out of character with the rural area. Staff believes that this appeal contention raises no substantial issue because (1) the approved structure is not located in a Highly Scenic Area and will not be visible from public coastal vantage points, such as Highway 1, Highway 128, or from public beaches or coastal access points; (2) the monopine would be designed to blend in with surrounding forest vegetation; and (3) the County has various conditions of approval limiting the size of the WCF, tree removal, and exterior lighting, and requiring yearly reports demonstrating that the structures continue to blend in with the surrounding area. Staff therefore believes that there is a high degree of legal and factual support for the County's decision that the development as approved would be sited and designed to protect views, to minimize the alteration of natural land forms, and to be visually compatible with the character of the surrounding area.

Regarding biological issues, the appeal contends that the County's approval does not adequately protect environmentally sensitive habitat areas (ESHA) or water quality, because sound and artificial light pollution from the WCF could have adverse impacts on animal life and habitats, and because the County's approval fails to address the potential for accidental diesel spills that could pollute Big Salmon Creek. Staff believes that these appeal contentions raise no substantial issue because, in part, (1) the project area is located within a disturbed, previously developed area and not within or adjacent to known ESHA; (2) the County's approval minimizes the potential for impacts to nesting birds by requiring pre-construction surveys should construction occur during breeding periods; (3) noise impacts would be minimal; (4) the project area is over 1,300 feet south of (and upslope from) Big Salmon Creek, exceeding the minimum 100-foot buffer required under the LCP; and (5) the County's approval includes numerous conditions related to proper fuel storage, implementation of Best Management Practices (BMPs), and dust control standards.

Regarding hazards, the appeal contends that the County-approved project does not minimize hazard risks associated with fire, high winds, and seismic events. However, the County's approval requires (1) compliance with CalFire requirements; (2) automatic fire extinguishing systems in the authorized equipment building enclosures ; and (3) submittal of reports by a licensed engineer every ten years and following significant storm or seismic events to assess and verify ongoing structural integrity.

Regarding cultural resources, the appeal contends that the approved project will not adequately protect cultural resources. However, the County required a Cultural Resources Investigation by a qualified archaeologist who determined that there is no evidence of archaeological resources at the project site. In addition, the County conditioned its approval with a standard inadvertent discovery requirement that requires, in the event of a discovery, that ground disturbance be halted until the County Coroner and a qualified archaeologist evaluate the remains consistent with local code requirements.

The appeal contends that the County-approved project is incompatible with adjacent land uses. The County has numerous special conditions that require construction BMPs and limit potential coastal resource impacts related to aesthetics, noise, air quality, biological resources, and water quality. The approved project as conditioned meets all required yard setbacks and other zoning standards. Therefore, staff believes that the appeal contentions related to land use compatibility raise no substantial issue regarding conformance of the approved project with the certified LCP.

Finally, the appeal contends that the project approved by the County does not protect public health and safety because it fails to consider electromagnetic (EMF) radiation impacts. Staff believes that the appeal contention related to EMFs is not valid grounds for an appeal and that the approved project raises no substantial issue because (1) the appellant does not allege an inconsistency of the local approval with the certified LCP; (2) federal law prevents state and local governments from regulating WCFs on the basis of EMF emissions if they comply with FCC regulations with respect to such emissions; and (3) the County's local file demonstrates that the project will not result in unsafe emission levels for the general public and is consistent with FCC regulations.

In summary, staff believes that there is a high degree of factual and legal support for the County's decision that the approved development, as conditioned (a) protects visual resources, biological resources, water quality, and archaeological resources; and (b) minimizes risks to life and property and ensures structural stability. Therefore, staff recommends that the Commission find that the appeal raises no substantial issue regarding conformance of the approved project with the certified LCP. **The motion to adopt the staff recommendation of No Substantial Issue is found on [Page 5](#).**

TABLE OF CONTENTS

I. MOTION AND RESOLUTION	<u>5</u>
II. FINDINGS AND DECLARATIONS	<u>5</u>
A. APPEAL JURISDICTION AND PROCEDURES	<u>5</u>
B. LOCAL GOVERNMENT ACTION	<u>6</u>
C. FILING OF APPEAL	<u>8</u>
D. PROJECT DESCRIPTION	<u>9</u>
E. ENVIRONMENTAL SETTING	<u>10</u>
F. ANALYSIS OF APPELLANT’S CONTENTIONS	<u>10</u>

APPENDICES

[Appendix A – Commission’s Appeal Jurisdiction over Project](#)

[Appendix B – Substantive File Documents](#)

[Appendix C – Excerpts from the Mendocino County Local Coastal Program](#)

EXHIBITS

[Exhibit 1 – Regional Location Map](#)

[Exhibit 2 – Vicinity Map](#)

[Exhibit 3 – Map of Highly Scenic Area](#)

[Exhibit 4 – Aerial Map](#)

[Exhibit 5 – Land Use Designation and Zoning Classification Map](#)

[Exhibit 6 – Excerpts from County-approved Plans](#)

[Exhibit 7 – Visual Assessment](#)

[Exhibit 8 – CCC Staff – Street View Photos](#)

[Exhibit 9 – Cultural Resources Report](#)

[Exhibit 10 – Notice of Final Action, Staff Report, and Initial Study Excerpts](#)

[Exhibit 11 – Appeal](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission determine and resolve that Appeal No. A-1-MEN-19-0046 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 with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion by voting “Yes” as is recommended by staff will result in a finding of **No Substantial Issue** and adoption of the following resolution and findings. The local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution:

The Commission hereby finds that Appeal No. A-1-MEN-19-0046 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 development with the certified LCP and/or the public access policies of the Coastal Act.

II. FINDINGS AND DECLARATIONS

A. APPEAL JURISDICTION AND PROCEDURES

Pursuant to Coastal Act Section 30603(a), Mendocino County’s approval is appealable to the Coastal Commission because the development approved by the County is not designated as the “principal permitted use” under the certified LCP, because wireless communication facilities require a conditional use permit. The Commission’s appeal jurisdiction is further discussed in **Appendix A**, which is hereby incorporated by reference. The grounds for an appeal are limited to an allegation that the approved development does not conform to the standards set forth in the certified Local Coastal Program (LCP).

Coastal Act Section 30625(b) requires the Commission to hear an appeal unless it determines that no substantial issue¹ exists with respect to the grounds on which the appeal has been filed. Even when the Commission chooses not to hear an appeal, an appellant nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of

¹ The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. In previous decisions on appeals, the Commission has generally been guided by the following factors in making substantial issue determinations: (a) the degree of factual and legal support for the local government’s decision; (b) the extent and scope of the development as approved or denied by the local government; (c) the significance of the coastal resources affected by the decision; (d) the precedential value of the local government's decision for future interpretations of its LCP; and, (e) whether the appeal raises only local issues, or those of regional or statewide significance.

mandate pursuant to Code of Civil Procedure, Section 1094.5. Commission staff has analyzed the administrative record for the approved project, including, but not limited to, the County's Notice of Final Action (NOFA) for the development (**Exhibit 10**), the appellant's claims (**Exhibit 11**), and the relevant requirements of the certified LCP (**Appendix C**). Staff is recommending that the Commission find that the appeal raises no substantial issue with respect to the grounds on which the appeal was filed.

In this case, because the staff is recommending that the appeal raises no substantial issue, the Commission will hear arguments and vote on the substantial issue question. Generally, and at the discretion of the Chair, qualified persons 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.

If the Commission determines that the appeal does not raise a substantial issue, the local government approval will stand. If the Commission determines that the appeal does raise a substantial issue, the Commission would continue the *de novo* portion of the appeal hearing to a subsequent meeting.

B. LOCAL GOVERNMENT ACTION

The Mendocino County Planning Commission approved Coastal Development Use Permit (CDP) No. U-2017-0034 with special conditions on May 16, 2019. The approved CDP authorizes the construction and operation of a wireless communication facility (WCF) consisting of a 135-foot-tall-monopine (telecommunications structure designed to resemble a conifer tree) and various accessory equipment, detailed further below (**Section II-D**). The County granted its approval of CDP No. U-2017-0034 subject to 31 special conditions, including, but not limited to, conditions concerning the protection of visual resources, biological resources, water quality, hazards, cultural resources, land use compatibility, and public safety, by requiring, in part, the following (see **Exhibit 10** , pgs. 2-6, for all required conditions):

- (1) Visual Resources (Special Conditions 1, 2, 5, 7, 8 and 9)
 - a) Limitations on the height of the monopine and diameter of the branches.
 - b) Limitations on tree removal to ensure visual screening.
 - c) Subdued colors and non-reflective materials for the approved structures.
 - d) Non-glaring exterior light fixtures.
 - e) Yearly reports assessing visual impacts to be completed for a period of five years. The reports must assess surrounding vegetation growth and provide a color assessment to determine fading of structural materials.
- (2) Biological Resources (Special Conditions 13, 14, 15, and 21)

- a) Measures to protect nesting birds and potential bat roosts by limiting the scheduling window for construction and, if necessary, requiring preconstruction surveys to be reviewed by the California Department of Fish and Wildlife.
 - b) Washing tires and heavy equipment undercarriages prior to entering the site to ensure the removal of any invasive plant seeds.
 - c) Equipping generators with mufflers and spark arrestors to ensure noise levels do not exceed 50 dBa at the nearest off site residence; limiting routine testing and maintenance to weekdays between 8:30 a.m. and 4:30 p.m.; and, if necessary, requiring the generator to be enclosed by a noise barrier shelter designed by an acoustical engineer.
- (3) Water Quality (Special Conditions 11, 18, 19, 20, and 28)
- a) Measures to contain hazardous substances by requiring a Hazardous Materials Management Plan (HMMP), should fuel storage at the site exceed safety thresholds.
 - b) Following the completion of earth disturbance, restoring all disturbed portions of the project site back to their original contours.
 - c) Limiting construction to the project footprint.
 - d) Requiring that the new access road to the project site be graveled at a bare minimum and ensuring that the materials comply with regulations regarding asbestos content.
 - e) Before the commencement of operations, requiring the removal of all surplus construction materials and debris, including cleared vegetation, to be disposed of at an authorized facility. In addition, requiring that the site be kept free of refuse.
 - f) Employing Best Management Practices, which include erosion control measures, drainage controls, minimal vegetation removal, and limiting the timing of work to be during the dry season (May 15 to October 15), unless a registered civil engineer prepares an Erosion and Sedimentation Prevention Plan, to be submitted and approved by the County Planning Department.
- (4) Hazards (Special Conditions 22, 27, and 31)
- a) Requiring compliance with CalFire safety requirements, including ensuring that equipment buildings and enclosures be equipped with automatic fire extinguishing systems acceptable to CalFire.
 - b) Requiring inspections by a licensed structural engineer to assess the structural integrity of the authorized WCF every ten years. Inspections would also be required following significant storm or seismic events.
- (5) Cultural Resources (Special Condition 17)
- a) Measures to protect archaeological resources, so that if these resources are encountered on the site during ground disturbance, further ground disturbance must be halted until Mendocino County Code requirements for inadvertent archaeological discoveries have been satisfied.
- (6) Public Safety (Special Conditions 26 and 30)

- a) Requiring one or more warning signs consistent with FCC and ANSI regulations be displayed in close proximity to the antenna tower, in addition to requiring that the WCF comply with all standards of the American National Standards Institute.
- b) Requiring an identification sign for each company responsible for operation and maintenance of facilities at the site that lists the name, address, and emergency telephone number of the responsible party. The sign be posted at a conspicuous location outside the perimeter of the WCF.

C. FILING OF APPEAL

The Coastal Commission's North Coast District Office received the County's Notice of Final Local Action on June 6, 2019 (**Exhibit 10**). On June 20, 2019, the Commission received an appeal of the County's approval from Annemarie Weibel. The appeal was filed in a timely manner, within 10 working days of receipt by the Commission of the County's Notice of Final Action (**Exhibit 11**). The appeal raises contentions related to visual resources, biological resources, water quality, hazards, cultural resources, land use compatibility, County procedure, and public safety concerns related to electromagnetic frequencies (EMF). In summary, the appeal contends the following:

- Contention #1: The project approved by the County does not adequately protect visual resources, because the "monopine" structure would degrade the visual quality of the site and be out of character with the secluded rural residential area.
- Contention #2: The project approved by the County does not adequately protect biological resources, because sound and artificial light pollution could have harmful impacts on animal life and habitats, including bald eagles and ospreys with the potential to nest in the general vicinity.
- Contention #3: The project approved by the County does not adequately protect water quality, because it fails to address the potential for accidental diesel spills that could pollute Big Salmon Creek.
- Contention #4: The project approved by the County does not address potential hazards, including (a) fire risk, (b) seismic risk, and (c) structural integrity.
- Contention #5: The project approved by the County does not adequately protect cultural resources, because the cultural resources analysis was insufficient; the County did not consider potential impacts to nearby cemeteries; and there was no requirement for tribal monitoring during ground disturbance activities.
- Contention #6: The project approved by the County is incompatible with adjacent land uses, because the County did not address the project's construction and operation impacts as they relate to (a) the number of trips to and from disposal sites; (b) the overall number of vehicles and workers; (c) the grading required for the new driveway; and (d) the amount of water that would be needed for dust control. In addition, the appeal contends that the project approved by the County (e) does not comply with applicable land use

regulations; (f) utilizes industrial type warning signs in a residential zone; and (g) would ultimately lead to lower real estate values.

- Contention #7: The County did not follow proper permit procedures resulting in a failure to maximize public participation.
- Contention #8: The project approved by the County does not protect public health and safety because it fails to consider EMF radiation impacts.

The appellant submitted supplemental information to the appeal letter on July 12, 2019, after the close of the appeal period (see **Exhibit 11**, pgs. 12-21). The Commission may only accept information after the close of the appeal period that clarifies existing contentions; the Commission cannot accept any new appeal contentions. The clarifying statements that relate to existing contentions are incorporated into the analysis of appellant's contentions discussed further below (**Section II-F**).

D. PROJECT DESCRIPTION

The approved CDP authorizes the construction and operation of a wireless communication facility (WCF) consisting of a 135-foot-tall "monopine" (telecommunications structure consisting of a steel pole designed to resemble a conifer tree) and various accessory equipment, detailed below. The tower itself would be 128 feet in height with 12 antennas, 19 remote radio units (RRUs), four surge suppressors, two 4-foot microwave dishes, and 7 feet of faux "branches" making up the crown of the "tree," resulting in a total height of 135 feet. Additional project elements approved under the County CDP include (1) removing an existing shed; (2) establishing a gravel driveway for site access; (3) trenching of power/telco fiber optic to the site; (4) constructing a 6-foot high wooden fence; (5) pre-manufactured walk-in equipment cabinet with two shielded downcast lights with motion sensors and auto shutoff timers; (6) constructing a 66-foot high by 34-foot and 6-inch-long retaining wall at the southeast corner of the facility; and (7) use of a 15KW DC diesel generator, which would require 54 gallons of diesel fuel, and would be used as a backup for emergency power only. All approved facilities would be located within a 1,800-square-foot fenced compound.

The facility would operate 24 hours a day, 7 days a week. Maintenance workers would visit the site approximately once a month. The generator would emit minimal noise, turning on once a week for 15 minutes for maintenance purposes, limited to Monday through Friday between 8:30 a.m. and 4:30 p.m. and during emergency power outages. The project footprint would be located within a 1,800 square-foot fenced compound. The tower would be built to provide colocation opportunities for future carriers or public safety entities.

AT&T's objective for the proposed WCF is to provide wireless hi-speed broadband internet to nearby residences and to fill a significant mobility coverage gap in the subject rural area. In order to execute this objective, AT&T requires a direct line of site from the WCF to residences, which can be achieved with a taller tower that reaches as many homes in the targeted areas as possible. AT&T's goal is to not only meet its minimum coverage objective, but to exceed that goal to maximize the amount of houses that would receive its internet and cellular services.

E. ENVIRONMENTAL SETTING

The approved project site is located at 30660 Navarro Ridge Road on Navarro Ridge, approximately 5 miles southeast of the unincorporated community of Albion in Mendocino County (APN 126-230-33) (see **Exhibits 1-4**). The subject property is owned by Lord's Land Ministries, which is associated with the organization titled "Youth with a Mission Mendocino Coast²." The property is used as a Christian retreat center, where the maximum height of existing structures is approximately 30 feet. AT&T Mobility would lease an approximately 1,800 square-foot portion of the 29-acre property for the proposed WCF project.

The site is surrounded by second growth redwoods, Douglas-firs, and an assortment of existing structures on the north side of Navarro Ridge Road. The development would be located within a disturbed area of the parcel that is not mapped as an Environmentally Sensitive Habitat Area (ESHA). The site's elevation is approximately 656 feet, which maximizes coverage capabilities, allowing AT&T to exceed its FCC coverage objective. The nearest residence is approximately 680 feet south of the tower location. The subject parcel is located near the inland edge of the coastal zone boundary, which bisects the northeastern corner of the parcel.

The parcel has two land use plan designations, which includes Rural Remote Residential Minimum 20-Acre Parcel Size (RMR 20) and Forest Land (FL 160), and three zoning classifications, including Rural Remote Residential (RMR 20), Forest Land, and Timber Production (see **Exhibit 5**). The approved development would be located entirely within the portion of the property with the RMR 20 designation and zoning classification (see **Exhibit 10**, pg. 10).

The property is not located in an LCP-designated "Highly Scenic Area" (HSA), though it is adjacent to a designated HSA (see **Exhibit 3**). The proposed development would not be visible from significant coastal public vantage points, including from either Highway 1 or Highway 128 (see **Exhibit 8**), because the site is naturally shielded due to topography and intervening forest vegetation from those vantage points (see **Exhibits 7 and 8**).

F. ANALYSIS OF APPELLANT'S CONTENTIONS

The appeal filed by Annemarie Weibel is attached as **Exhibit 11**. The appeal raises contentions related to visual resources, biological resources, water quality, hazards, cultural resources, land use compatibility, County procedure, and public safety related to electromagnetic frequencies (EMF). As set forth in Section 30603 of the Coastal Act, after certification of its LCP, an appeal of a local government-issued CDP for a development that is not located between the first public road and the sea is limited to allegations made on the grounds that the approved development does not conform to the standards set forth in the certified LCP. As discussed below, the Commission finds that all but one (Contention #8) of the contentions raised by the appellant presents valid grounds for appeal, but none raise a substantial issue of conformance of the approved development with the policies of the certified LCP. The different contentions are discussed in greater detail below. The relevant policies are shown in **Appendix C**.

² More information on the organization can be found here: <https://ywammendocino.org/>
The history of the site's use is available here: <https://ywammendocino.org/history/>

1. Contentions Related to Visual Resources

The appeal contends that the project approved by the County does not adequately protect visual resources, because the monopine structure would degrade the visual quality of the site and would be incompatible with the character of the surrounding rural residential area.

Applicable Policies

The Mendocino County Land Use Plan (LUP) has several policies protecting visual resources that are applicable to the proposed development. Specifically, LUP Policy 3.5-1 states (emphasis added):

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 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 addition, Mendocino County Coastal Zoning Code (CZC), which makes up the Implementation Plan (IP) of the certified LCP, adds to the above-mentioned LUP policies. Specifically, CZC Section 20.504.020 states, in part, as follows:

...
(C) Development Criteria.

(1) The scale of new development (building height and bulk) shall be within the scope and character of existing development in the surrounding neighborhood.

...
(4) *Building materials and exterior colors shall be compatible with those of existing structures.*

(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...*

Discussion

The proposed development is not located in a designated Highly Scenic Area (HSA) or within a designated conditional HSA under the County's certified LCP (see **Exhibit 3**). HSAs have been identified on the certified LUP maps. The certified LUP maps also include conditional HSAs, which are designated areas that are east of Highway 1 that would be designated as an HSA *if* the new development would be visible from Highway 1. Based on the County's visual analysis and Commission staff's street view photos (**Exhibits 7 and 8**), the approved development would not be visible from Highway 1 and therefore would not fall within a conditional HSA. Because the site does not fall within a designated HSA or within a conditional HSA, the various LCP policies that relate to development in such designated HSAs do not apply to the subject development.

Although not subject to the policies governing HSAs, the certified LCP incorporates Section 30251 of the Coastal Act as enforceable LCP policies (such as LUP Policy 3.5-1 and IP Sec. 20.504.020(D), see **Appendix C** for the full list of applicable policies). LUP Policy 3.5-1 requires in part that permitted development be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, and to be visually compatible with the character of surrounding areas.

Because the approved WCF would be located on a forested ridge surrounded by conifer trees, the applicant is proposing to design the tower with a monopine design, which is meant to resemble a conifer tree, in order to reduce aesthetic impacts. The applicant prepared a visual assessment for the proposed monopine structure (see **Exhibit 7**, pgs. 1-5), which demonstrates that only limited portions of the structure would be visible above existing vegetation in the project vicinity. The visual assessment shows that with the approved siting of the WCF monopine, the structure would be slightly visible from the following vantage points: (1) the driveway looking southeast at the site; (2) Navarro Ridge Road looking northeast at site; and (3) Navarro Ridge Road looking southeast at the site. The subject site is approximately three miles inland from the coast near the inland boundary of the coastal zone. The monopine would not be visible from public vantage points, such as Highway 1, Highway 128, or from public beaches or coastal access points (see **Exhibit 2** and **Exhibit 8**, pgs. 1-7). The proposed development is naturally shielded from coastal vantage points due to topography and existing trees in the area.

In addition to the "stealth" monopine design to promote compatibility with the character of the surrounding area, the County's approval includes enforceable conditions (compiled in **Exhibit 10**, pgs. 2-6) related to the protection of visual resources, including: (1) limitations regarding height of the monopine structure and the diameter of the faux "branches;" (2) limitations on tree removal to ensure visual screening; (3) subdued colors and non-reflective materials for the approved structures; (4) non-glaring exterior light fixtures; and (5) required submittal of yearly monitoring reports to the County for a period of five years to assess potential visual impacts. County condition #8 specifically requires that the monitoring report "assess surrounding vegetation growth, including height and density in the vicinity, and a color assessment to assess fading of material." The condition states that the "replacement or remediation of the wireless facility shall be performed by the applicant if required by the [County]."

The County's conditions of approval regarding the limitations on the height and diameter of the monopine also include a provision that states that the structure cannot be modified without a

permit amendment or a new coastal development use permit (see conditions #1 and #4, provided in **Exhibit 10**, pg. 2). The limitations on tree removal help ensure that the structure would continue to be shielded by existing vegetation and it also includes a provision that states future tree removal cannot occur without a permit amendment or a new CDP (see condition #2, provided in **Exhibit 10**, pg. 2). The requirement that the proposed structures utilize subdued colors and non-reflective materials to blend in with its surroundings is reinforced by the fact that the County Planning Department staff would need to approve color samples for these structures prior to construction to ensure the condition requirements are met. Non-glaring exterior light fixtures also limits the potential for adverse visual impacts. The required yearly reports would ensure that visual impacts would be assessed on an ongoing basis, with requirements that the applicant replace or remediate the structures should the colors undergo fading or if surrounding vegetation no longer screens the development.

Finally, the appellant suggests various project alternatives that have the potential to avoid adverse impacts on visual and other coastal resources. The appellant argues that adequate cell reception and broadband exist within the project vicinity, because a Verizon tower is located 0.5-mile away, and AT&T has already planned another tower just 2.5 miles west of the subject site. In addition, the appellant asserts that U.S. Cellular, Verizon, Further Reach and Mendocino Satellite all provide sufficient phone and internet service for the community as well as emergency response capabilities. The appellant contends that other towers planned for Potter Valley and Manchester communities could provide these services. The appellant suggests the use of fiber-optic cables, which the appellant asserts are safer and provide faster service than WIFI (see **Exhibit 11**).

In support of the subject CDP application, the applicant prepared a “Project Support Statement” that describes the project’s objectives and includes an alternative site analysis. As previously stated in **Section II-D** of this report, AT&T’s objectives are to provide high-speed internet and cellular service to underserved areas. During the design phase, radio frequency engineers study many variables including surrounding tree heights and densities, neighboring hill tops, and population densities to achieve FCC’s track census block mandates of reaching precise coverage objectives per designated area. AT&T considered one potential co-location opportunity in the vicinity but found that it would not meet its FCC coverage objective. AT&T also considered siting the WCF on another property on Navarro Ridge Road zoned for Rangelands uses, but it was not chosen because: (1) there were more residences in the neighboring vicinity; (2) there was less tree canopy at that site to reduce potential visual impacts; (3) the site would require multiple setback waivers; and (4) the coverage capability was lower than what could be achieved at the subject site. The applicant’s alternatives analysis helps demonstrate that the alternative site would have potentially resulted in more significant visual impacts as well as the conversion of agricultural lands to a non-agricultural use. The selected project site is evidentially the less environmentally damaging feasible alternative. Thus, the County’s approval demonstrates that while project alternatives were considered, the approved project, as conditioned, both protects visual resources and satisfies the project objective.

Therefore, for the reasons discussed above, there is a high degree of legal and factual support for the County’s decision that the development as approved would be sited and designed to protect views, to minimize the alteration of natural land forms, and to be visually compatible with the

character of the surrounding area. In addition, the approved CDP includes enforceable conditions limiting the size of the monopine structure, total amount of tree removal allowed, the colors and reflectivity of materials for the approved structures, and exterior light fixtures, which together protect visual resources consistent with the LCP. As such the Commission finds that the contentions related to visual resources discussed above do not raise a substantial issue of conformance of the project as approved with the policies and standards of the certified LCP.

2. Contentions Related to Biological Resources

The appeal contends that the project approved by the County does not adequately protect ESHA, because sound and artificial light pollution from the WCF could have adverse impacts on animal life and habitats, including bald eagles and osprey with the potential to nest in the general project vicinity.

Applicable Policies

The County's certified LCP has numerous policies that govern the protection of ESHA, including specific policies related to the protection of wetlands, dunes, riparian areas, and pygmy forest habitat. Page 40 of the LUP defines ESHA similar to how it is defined under Section 30107.5 of the Coastal Act:

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

LUP Policy 3.1-2 states in part (emphasis added):

Development proposals in environmentally sensitive habitat areas such as wetlands, riparian zones on streams or sensitive plant or wildlife habitats (all exclusive of buffer zones) including, but not limited to those shown on the Land Use Maps, shall be subject to special review to determine the current extent of the sensitive resource...

In addition, LUP Policy 3.1-5 requires the establishment of buffer areas adjacent to all ESHA, and CZC Section 20.496.015 states that development has the potential to impact an ESHA if the development is proposed to be located within 100 feet of an ESHA or has the potential to negatively impact the long-term maintenance of the habitat (see **Appendix C** for all applicable LCP policies).

Discussion

The County-approved project is not within or adjacent to a mapped ESHA, according to both the County's certified LUP resource maps and current maps from the California Natural Diversity Database (CNDDDB).³ The approved WCF would be constructed adjacent to existing trees, specifically second-growth redwoods and Douglas Firs. As noted in the Cultural Resources Report, "The project vicinity has been impacted by disturbances such as logging virgin growth

³ RareFind 5 and BIOS 5, accessed by Commission staff July 23, 2019 (<https://www.wildlife.ca.gov/Data/CNDDDB/Maps-and-Data#43018407-rarefind-5>).

redwoods, the construction of a religious camp and roads, plus the placement of existing utilities” (see **Exhibit 9**, pg. 6). There also are nearby existing structures on the property, including (as described in the appeal and shown on the applicant’s plan set) a pig pen, chicken coop, sandbox, swing set, volleyball net, horse shoe pit and fire pit. Essentially, the surrounding property outside of the approved project area is already developed with a variety of structures supporting religious assembly, and residential and accessory uses (see **Exhibit 4** and **6**).

The appellant contends that the County-approved project has the potential to impact animal life and degrade its habitat, because of sound pollution and light pollution. Specifically the appeal states that “constant humming up to 50 dBA is definitely way louder (by 20 dBA) than the sounds in a quiet rural area.” The power supply components needed to support the WCF are the aspects of the approved project that involve new sound levels in the area. The County’s analysis of the project’s noise impacts in its adopted environmental document found that noise levels would not permanently increase under the project, because the proposed generator to support the power supply for the facility would only be needed for emergency situations during periods of energy transmission interruption and for routine testing purposes. The approved County permit includes a special condition to limit noise impacts, specifically condition #21, which requires that the generator be equipped with mufflers and spark arrestors and is not to produce noise levels exceeding 50 decibels (dBA) at the nearest off-site residence, which is approximately 680 feet away (see **Exhibit 10**, pg. 5). For comparison, the specified noise level in the condition (50 dBA) is equivalent to the noise level of a refrigerator, an office work environment, or a quiet residential neighborhood.⁴ The County’s condition also limits routine testing and maintenance of equipment to weekdays between 8:30 a.m. and 4:30 p.m., and if necessary, the noise barrier shelter would need an enclosure designed by an acoustical engineer that would be oriented and screened to limit excessive noise to surrounding residences. Although the appellant asserts that 50 dBA is louder than the noises in the surrounding rural area, there is no evidence to support that these noise levels would have adverse impacts on biological resources.

As mentioned above, the project is not located within a mapped ESHA, and the subject site is disturbed and has been previously cleared. Furthermore, the project area is not sited adjacent to known ESHA, such as a rare forest type or rare species habitat based on information included with the local record that describes the surrounding habitat as second-growth redwood forest (**Exhibit 9**, pg. 3) and based on the mapping resources discussed above. Finally, the County referred the project to CDFW for review and comment, and CDFW staff did not raise any specific concerns on the proposal with respect to effects on biological resources.

The appellant also contends that artificial lights would have a “negative and deadly effect” on biological resources, because these lights can cause birds to migrate at unnatural times and thereby impact nesting and foraging behaviors and opportunities. The appellant also asserts that artificial light at night has exposed seabirds to increasing threat, causing disorientation that makes them vulnerable to predation, vehicle collisions, starvation, dehydration, or poaching. According to information included in the local record and in the CEQA document adopted for the project by the County, the project includes the installation of two new exterior lights, which would be down-tilt lights with motion sensors and automatic shutoff timers located within the walk-in equipment cabinet within the fenced lease area. The County’s approval includes a

⁴ See <https://chchearing.org/noise/common-environmental-noise-levels/>.

special condition requiring that exterior light fixtures be non-glaring, not visible beyond the immediate vicinity of the site, and turned off except when in use by facility personnel (see condition #6, provided in **Exhibit 10**, pg. 2).

In addition to contentions related to sound and light pollution, the appellant also contends that the County-approved project may cause adverse impacts on bald eagle and osprey nests and individuals in the general area. The appellant provided a list of bald eagle sightings in the general project vicinity (see **Exhibit 11**, pg. 18), none located on the subject parcel itself and none related to nests. The appellant also asserts that ospreys are sensitive to human disturbance and pollution, with specific vulnerability during timber harvesting operations. The appellant claims that trees would be removed to eliminate safety hazards. Condition #2 of the County's approval limits tree removal and trimming and requires that future tree removal on the site obtain a new CDP or an amendment to the subject CDP "to ensure that local policies and ordinances are adhered to." Such future CDP authorization for major vegetation removal could require updated surveys for sensitive nesting birds and be conditioned to avoid impacts to nesting birds. Moreover, County condition #13 requires that any vegetation clearing and construction must be conducted during the bird non-breeding season (between September-January). If this is not possible, then a qualified biologist must perform a preconstruction breeding bird survey within 14 days of the onset of vegetation clearing and construction (see **Exhibit 10**, pg. 3). The survey would be required to be submitted to CDFW for review and approval.

Other conditions required by the County related to ESHA protection include, but are not limited to (1) County condition #14, which states that if development commences between September-October, a preconstruction survey for bat roost sites must be conducted; and (2) County condition #15, which requires heavy equipment undercarriages and tires to be washed prior to entering the site to avoid the introduction of invasive plant species in the project area (see **Exhibit 10**, pg. 3).

Therefore, the Commission finds that there is factual and legal evidence in the record to support the County's approval of the subject CDP, which includes enforceable conditions to limit the impacts of exterior light fixtures and noise on environmentally sensitive species and habitats. As such, the Commission finds that the contentions related to biological resources discussed above do not raise a substantial issue of conformance of the project as approved with the policies and standards of the certified LCP.

3. Contentions Related to Water Quality

The appellant contends that the project approved by the County does not adequately protect water quality, because it failed to address the potential for accidental diesel spills that could pollute Big Salmon Creek.

Applicable Policies

The Mendocino County LCP has policies that govern the protection of water quality. Specifically, LUP Policy 3.1-25 states (emphasis added):

The Mendocino Coast is an area containing many types of marine resources of statewide significance. Marine resources shall be maintained, enhanced and,

where feasible, restored; areas and species of special biologic or economic significance shall be given special protection; and the biologic productivity of coastal waters shall be sustained.

The IP contains policies that provide standards for grading, erosion control, and runoff, which serve to protect water quality. Specifically, CZC Section 20.492.010 calls for keeping grading to an absolute minimum, while requiring that erosion and sediment control measures are installed as soon as possible following soil disturbance. CZC Section 20.492.015 sets erosion control standards, which include limiting vegetation removal and reseeded disturbed areas as soon as possible (see **Appendix C** for all applicable LCP policies).

Discussion

The project area is over 1,300 feet south of (and upslope from) Big Salmon Creek. This distance greatly exceeds the minimum 100-foot buffer area around creek and riparian ESHA required by the certified LCP. Based on the type and scale of development proposed, the potential for project-related water quality impacts to Big Salmon Creek is unlikely. The project involves minimal grading, vegetation removal, landform alteration, or installation of new impervious surfaces. As noted in the CEQA environmental document adopted for the project, the transport of diesel fuel to the site is not expected to create a significant hazard to the public or the environment. Any diesel fuel needed for the project would be associated with the back-up generator, which is only to be used for providing emergency power during periods of energy transmission interruption and for routine testing. County staff determined that utilization of a generator as a back-up power source for WCFs is common, and the County is unaware of any fuel spills associated with any existing WCFs in the County (see **Exhibit 10**, pg. 21). In addition, the County found the project would not violate any water quality standards or waste discharge requirements, nor would it substantially alter existing drainage patterns, result in substantial erosion or pollution discharge and would therefore not result in any degradation of water quality within the vicinity of the project (see **Exhibit 10**, pg. 21).

To ensure that the approved project protects water quality, the County's approval includes special conditions to minimize the potential for diesel spills. County condition #20 requires the preparation of a Hazardous Materials Management Plan (HMMP) should fuel storage at the site exceed safety thresholds. The HMMP must be submitted to the County Division of Environmental Health (DEH) for approval prior to the issuance of any building permits reliant on the subject CDP. If the applicant believes a HMMP is not necessary, the applicant would need to furnish evidence supporting that determination and submit it DEH for approval (see **Exhibit 10**, pg. 5). Furthermore, County condition #19 requires the applicant to adhere to Best Management Practices (BMPs), including temporary erosion control measures that must be in place at the end of each work day, and permanent erosion control measures, such as seeding and mulching, strategic placement of hay bales, and the installation of bioengineering materials where necessary, which must be in place prior to October 1. The condition also requires the construction and maintenance of adequate drainage controls to prevent surface and/or ground water contamination and to prevent erosion, in addition to ensuring water flows into a functioning storm drain system or natural drainage area away from the top of banks. Vegetation removal must be minimized as much as possible, allowing only as much as required to facilitate the development. Construction must be limited to the dry season (May 15 to October 15), unless

a registered civil engineer prepares an Erosion and Sedimentation Prevention Plan, which must be approved by the County Planning Department to provide adequate wet weather earthmoving and drainage control protocols. Also, the condition specifies that grading permits are required by the County Building Department unless otherwise exempt (see **Exhibit 10**, pgs. 4-5). Finally, condition #28 requires proper disposal of constructed-related debris, which would minimize the potential for such debris to pollute downstream waters (see **Exhibit 10**, pg. 6).

Therefore, for the reasons discussed above, there is a high degree of legal and factual support for the County's decision that the approved development as conditioned will protect water quality. The approved CDP includes enforceable conditions limiting the impacts of grading, surface water runoff, and the potential for hazardous waste spills. As such, the Commission finds that the contentions related to water quality discussed above do not raise a substantial issue of conformance of the project as approved with the policies and standards of the certified LCP.

4. Contentions Related to Hazards

Applicable Policies

The County's LCP has several policies that address hazards. Specifically, LUP Policy 3.4-1 states, in part, (emphasis added):

The County shall review all applications for Coastal Development permits to determine threats from and impacts on geologic hazards arising from seismic events, tsunami runup, landslides, beach erosion, expansive soils and subsidence and shall require appropriate mitigation measures to minimize such threats...

LUP Policy 3.4-13 states (emphasis added):

All new development shall meet the requirements for fire protection and prevention as recommended by responsible fire agencies.

CZC Section 20.500.010 states (emphasis added):

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

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

(2) Assure structural integrity and stability; and

(3) Neither create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

CZC Section 20.500.025 provides further guidance on how to determine fire hazard areas and ensure new development is sited in a way that considers risk levels (see **Appendix C** for all applicable LCP policies).

Discussion

The appellant contends that the County-approved project does not adequately address potential hazards. Specifically, the appellant describes limited site exit opportunities in the event of a fire, risk associated with the wooden fence, the potential for high winds on the ridgetop site to exacerbate fire risk as well as the potential for structure collapse, the potential for lightning damage, and concerns that the WCF would not be safe because the subject site is within an area mapped as having the potential for significant seismic shaking levels.

The County's CEQA document adopted for the project includes an analysis of hazards and determined that the proposed project includes adequate emergency access. In addition, the County staff report states that the County referred the project to the California Department of Forestry and Fire Protection (CalFire) and the Albion Little River Fire District (ALRFD) for comment. According to the local record, ALRFD did not provide any comments, but CalFire responded with preliminary clearance and recommended conditions of project approval related to address posting, minimum driveway standards, and minimum defensible space standards for vegetation and other combustible material within 100 feet of the development site. The County incorporated the recommendations from CalFire into an enforceable CDP condition (CDP condition #22, see **Exhibit 10**, pg. 5). To further ensure adequate defensible space, condition #28 requires removal of all surplus debris following completion of construction, including any vegetation spoils related to ground disturbance, which will reduce fuel hazards. Condition #31 also addresses fire risks by requiring equipment buildings and enclosures to be equipped with automatic fire extinguishing systems acceptable to CalFire (see **Exhibit 10**, pg. 6). These same conditions could also mitigate any fire risk stemming from lightning damage. Therefore, the project approved by the County meets the requirements for fire protection and prevention as recommended by responsible fire agencies.

The County staff report states that the development is not located within or adjacent to a fault zone, but it acknowledges that the site is within an area designated as having potential intermediate shaking levels in terms of seismicity. Regardless, the County findings for project approval indicate that the project would not conflict with any state or local seismic hazard regulations (see **Exhibit 10**, pg. 11). The County addresses hazard-related risks by including special condition #27, which requires that the WCF structure be inspected every ten years (and following significant storm or seismic events) by a licensed structural engineer to assess and verify ongoing structural integrity. The engineer would need to state their findings a report to be submitted to the County Planning Department (see **Exhibit 10**, pg. 6). As conditioned, the approved development would minimize risk to life and property associated with geologic hazards and assure the facility's structural stability and integrity.

Therefore, for the reasons discussed above, there is a high degree of legal and factual support for the County's decision that the development as approved minimizes risk to life and property and ensures structural stability. As such, the Commission finds that the contentions related to hazards

discussed above do not raise a substantial issue of conformance of the project as approved with the policies and standards of the certified LCP.

5. Contentions Related to Cultural Resources.

The appellant contends that the project approved by the County does not adequately protect cultural resources, because the County did not (1) conduct an in-depth analysis on cultural resources, as requested by the Northwest Information Center; (2) consider potential impacts to nearby cemeteries; and (3) require tribal monitoring during ground disturbance activities.

Applicable Policies

The County's LCP has standards to help protect archaeological resources. Specifically, LUP Policy 3.5-10 states (emphasis added):

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

CZC Section 20.532.095 implements this policy by requiring that the County find that new development would not have any adverse impacts on any known archaeological or paleontological resources when approving all CDPs.

Discussion

The appellant contends that County did not pursue the archaeological analysis required by the Northwest Information Center (NWIC) in its letter to the County, dated May 22, 2018. The NWIC of the California Historical Resources Information System is one of nine information centers affiliated with the State Office of Historic Preservation (OHP). In response to the County's referral of the CDP application, the NWIC recommended that a qualified archaeologist conduct further archival and field study research to identify cultural resources, in addition to recommending further consultation with local Native American tribes. The County addressed this request by coordinating with the applicant to obtain an archaeological survey. The County also referred the project application to numerous tribes who have expressed interest in the general project area.⁵ The County did not receive any comments on the project from any of the tribes.

⁵ The County referred the project to: (1) the Redwood Valley Rancheria; (2) the Cloverdale Rancheria; and (3) the Sherwood Valley Band of Pomo Indians.

A report titled “Cultural and Historical Resources Investigation” was prepared on November 29, 2018. The Mendocino County Archaeological Commission ultimately accepted the report at its hearing held on February 13, 2019. The report was completed by a qualified archaeologist and involved both a records search of the site and field investigation. The report does not document any evidence of sensitive archaeological resources on the site. However, the report includes a recommendation that a standard discovery clause should be included as a condition of project approval. The clause essentially states that if artifacts are inadvertently discovered during ground disturbing activities, work must stop until a qualified archaeologist assesses the artifacts and conducts a preliminary evaluation. If human remains are encountered, all work would need to stop within the immediate vicinity of the discovery until the County Coroner and a qualified archaeologist evaluate the remains. The County required the standard inadvertent discovery measures, referenced in condition #17 (see **Exhibit 10**, pg. 4). Given that neither the archaeologist nor the tribes requested a tribal monitor be present during ground disturbing activities, the County’s approval does not include the requirement that a tribal monitor be present during ground disturbing activities.

The appellant also contends that the County did not address the project’s potential impacts to nearby cemeteries. The County’s environmental document determined that because no remains or cemeteries have been documented at the site, no human remains would be impacted by the proposed development. Nevertheless, condition #17 described above would ensure that any inadvertent discovery of human remains as a result of project ground disturbance would comply with strict protocols to stop work and evaluate the sensitive resources.

Therefore, for the reasons discussed above, there is a high degree of legal and factual support for the County’s decision that the approved development protects archaeological resources. The Commission finds that the contentions related to cultural resources discussed above do not raise a substantial issue of conformance of the project as approved with the policies and standards of the certified LCP.

6. Contentions Related to Land Use.

The appellant contends that the project approved by the County is incompatible with adjacent land uses, because the County did not address the project’s construction and operation impacts as they relate to (a) the number of trips to and from disposal sites; (b) the overall number of vehicles and workers; (c) the grading required for the new driveway; and (d) the amount of water that would be needed for dust control. In addition, the appeal contends that the project approved by the County (e) does not comply with applicable land use regulations; (f) utilizes industrial type warning signs in a residential zone; and (g) would ultimately lead to lower real estate values.

Applicable Policies

The proposed development is located on property designated and zoned for Rural Remote Residential (RMR) uses under the certified LCP. The LCP provides development standards for the RMR zone in Chapter 20.380 (see **Appendix C** for applicable LCP policies). The intent of the RMR zone is to support coastal lands that have constraints for commercial agriculture or timber production, but which are well-suited for light agriculture and low density residential uses, or lands that have already been divided and where substantial development has occurred.

Principally permitted uses within the RMR zone include single-family residential, vacation home rentals, light agricultural, and open space use types.

CZC Section 20.380.015 defines conditional uses, described in part, as follows (emphasis added):

...
(B) Coastal Civic Use Types.
Alternative Energy Facilities: On-site;
Cemetery Services;
Community Recreation;
Education Facilities;
Group Care;
Lodge, Fraternal and Civic Assembly;
Major Impact Services and Utilities;
Minor Impact Utilities;
Religious Assembly.
...

Discussion

The appellant contends that the project approved by the County is incompatible with local land use regulations, leading to inconsistencies with land uses adjacent to the project site, which could real estate values to lower. The appellant also expresses confusion regarding the zoning regulations applicable to the proposed development and asserts that the project would not comply with “regulations for a retreat center and the Remote Residential and Forest Land zoning” (see **Exhibit 11**, pgs. 8 and 12). As mentioned above, the development is located within the Rural Remote Residential land use designation and zoning district. The County staff report clearly describes the zoning for the project (see **Exhibit 10**, pg. 10).

The proposed WCF is allowed as a conditionally permitted use under the certified LCP as “Major Impact Services and Utilities.” CZC Sec. 20.320.075 describes Major Impact Services and Utilities as follows:

Services or utilities which may have a substantial impact. Such uses may be conditionally permitted when the public interest supercedes the usual limitations placed on land use and transcends the usual restraints of zoning for reasons of necessary location and community wide interest. Typical places or uses are power generating facilities, sewage disposal facilities, septage disposal facilities and sites, sanitary landfills (including recycling operations), water treatment plants, and natural gas pipelines.

In its approval of the project, the County found that the WCF would serve the community with “high-speed broadband wireless internet, mobile phone services, and enhanced public safety.” The County’s findings indicate (and the applicant’s plans and supporting documents show) that the project footprint is in a disturbed, developed area of the subject parcel, the project would not impact Grazing Land, and the project would not convert agricultural or timberland resources (see **Exhibit 10**, pg. 16). The property owner of the subject site has consented to lease a portion of the

property to the applicant for the WCF, and the approved facility conforms with all development standards and yard setbacks required for the RMR zone. As previously discussed, the development would be provided with adequate utilities, which would be extended to the site, and would establish site access that meets CalFire standards.

The County's approval requires the facility to have public safety signage posted consistent with FCC and American National Standards Institute (ANSI) regulations (see special condition #30, **Exhibit 10**, pg. 6). Although the appellant expresses concerns over the appearance of such signage in a residential neighborhood, the informational and warning signage is a standard safety precaution and it does not raise any visual resources issues (see **Exhibit 6**, pgs. 22-23). Also as previously discussed, the approved development footprint is not located within a designated Highly Scenic Area or within or adjacent to ESHA. Noise levels resulting from the project would not permanently increase, because the proposed generator to support the power supply for the facility would only be needed for emergency situations during periods of energy transmission interruption and for routine testing purposes. In addition, as discussed above, noise levels would be minimal, essentially equivalent to typical noises in a quiet residential neighborhood. The County approved permit includes various conditions to ensure the protection of visual resources and potential nesting birds, as previously discussed.

The appellant also expresses general and specific concerns about the project's construction and operation impacts. The appellant poses a series of questions in the appeal related to (a) the number of construction truck trips to and from disposal sites; (b) the overall number of vehicles and workers; (c) the grading required for the new access driveway; and (d) the amount of water that would be needed for dust control. Although the County did not specify the number of trips to and from disposal sites, according to the County's adopted environmental document, construction impacts would be short-term, the number of trips to refuel diesel storage would not be significant, and there would be no change in service levels as a result of the project. After construction is complete, maintenance workers are anticipated to visit the site approximately once per month, resulting in few additional vehicle trips per day than what presently exists from existing uses on the parcel and in the surrounding area. County conditions 10-12 also address the potential for dust emissions by requiring compliance with Mendocino County Air Quality Management requirements (see **Exhibit 10**, pg. 3). In addition, as previously discussed in the water quality and hazard sections of this report, the County has numerous special conditions to ensure that that grading is kept to a minimum and that adequate BMPs are followed to address construction and operation impacts. In summary, the County's required conditions of approval ensure that the approved development will conform to the applicable zoning district standards, and impacts from construction and operation of the facility would be minimized.

Therefore, for the reasons discussed above, there is a high degree of legal and factual support for the County's decision that the development as approved is compatible with surrounding land uses. The Commission finds that the contentions related to compatible land uses discussed above do not raise a substantial issue of conformance of the project as approved with the policies and standards of the certified LCP.

7. Contentions Related to County Procedure.

The appellant contends that the County's did not follow proper permit procedures resulting in a failure to maximize public participation.

Applicable Policies

The certified LCP describes noticing procedures for various coastal permit actions. Specifically, CZC Section 20.536.010 refers to standard CDPs and CDUPs, and it states, in part, as follows (emphasis added):

...

(B) Hearing.

The approving authority shall hold at least one public hearing on each coastal development application for an appealable development or for a non-appealable development which requires a public hearing pursuant to other provisions of this Division. The public hearing may be conducted in accordance with existing local procedures or in any other manner reasonably calculated to give interested persons an opportunity to appear and present their viewpoints, either orally or in writing. The hearing shall occur no earlier than ten (10) calendar days following the mailing of the notice required in Subsection (C) below.

(C) Notice.

At least ten (10) calendar days prior to the first public hearing on the development proposal, the Coastal Permit Administrator shall provide notice by first class mail of a pending application for a development subject to this section. This notice shall be provided to each applicant, to all persons who have requested to be on the mailing list for that development project or for coastal decisions, to all property owners within three hundred (300) feet of the perimeter of the parcel on which the development is proposed, to all occupants of property within one hundred (100) feet of the perimeter of the parcel on which the development is proposed, and to the Coastal Commission. Where the applicant is the owner of all properties within three hundred (300) feet of the property lines of the project site, notice shall be provided to all property owners within three hundred (300) feet and to all occupants within one hundred (100) feet of the applicant's contiguous ownership.

(D) Content of Notice.

The notice shall contain the following information:

- (1) A statement that the development is within the coastal zone;*
- (2) The date of filing of the application and the name of the applicant;*
- (3) The number assigned to the application;*
- (4) A description of the development and its proposed location;*
- (5) The date, time and place at which the application will be heard by the approving authority;*

- (6) *A brief description of the general procedure concerning the conduct of hearing and local actions; and*
- (7) *The system for local and Coastal Commission appeals, including any fee(s) that may be required.*

...

Discussion

The appellant cites Coastal Act Section 30006⁶ and its call for the “widest opportunity for public participation.” The appeal claims that the only noticing that occurred was a small notice in one local newspaper. The appellant also believes that neither the Planning Commission nor the public was able to read comments from referral agencies, because this information was not published online or included in the Planning Commissioner packets, which means people would be forced to travel to Ukiah from the coast to see those documents.⁷ The appellant also states that although she was later told that public comment letters were provided to the Planning Commission, she had to notify the Planning Department that they had not been posted to the website and that they should have been available online to maximize public participation.

The County staff confirmed in a July 16, 2019 email to Commission staff that the County met all legal noticing requirements. A public hearing for the CDP application was held on May 16, 2019, which gave interested persons an opportunity to appear and present their viewpoints. The local record indicates that the County’s noticing process conformed with the noticing requirements of CZC Section 20.536.010 cited above related to timing of publication and noticing content. Included in the local record are receipts for advertising in the Fort Bragg Advocate-News and the Mendocino Beacon, two local newspaper publications. The receipts demonstrate that the information was published on April 18, 2019, more than 10 calendar days prior to the public hearing, and in the publication included the content required for notices pursuant to CZC Section 20.536.010(D) (see **Appendix C** for applicable LCP policies). Moreover, pursuant to the requirements of CZC Section 20.532.025(H), the applicant posted a laminated notice on a utility pole near the project site (the corner of Navarro Ridge Road and the access road to the property) on December 19, 2017, according to the Declaration of Posting form completed for and included with the CDP permit application (included with the local record materials). Finally, the County posted the staff report, resolution, and the environmental document on the website prior to the public hearing held on May 16, 2019⁸. In summary, there is legal and factual support in the local record confirming that the County’s CDP process provided adequate opportunity for public participation consistent with the noticing requirements in the certified LCP. Therefore, the Commission finds that the contentions related to County procedure

⁶ Coastal Act Section 30006 states: “The Legislature further finds and declares that the public has a right to fully participate in decisions affecting coastal planning, conservation and development; that achievement of sound coastal conservation and development is dependent upon public understanding and support; and that the continuing planning and implementation of programs for coastal conservation and development should include the widest opportunity for public participation.

⁷ The County Planning Department has offices in Ukiah and Fort Bragg, but Ukiah serves as the headquarters for most County functions. Planning Commission and Board of Supervisors’ meetings are held in Ukiah.

⁸ The County’s webpage for Planning Commission agendas:

<https://www.mendocinocounty.org/government/planning-building-services/meeting-agendas/planning-commission>

The County included a link to the specific project-related documents:

<https://www.mendocinocounty.org/home/showdocument?id=28027>

discussed above do not raise a substantial issue of conformance of the project as approved with the policies and standards of the certified LCP.

8. Contentions Related to Public Safety and Electromagnetic Frequencies (EMFs)

Background on State and Local Regulatory Limitations of EMFs

A public entity's power to regulate the placement of telecommunication facilities is limited by the Federal Communications Commission ("FCC") under federal law, specifically the Telecommunications Act of 1996 ("TCA"). First, the TCA precludes state and local governments from enacting ordinances that prohibit or have the effect of prohibiting the provision of telecommunications services, including "personal wireless services." The U.S. Code Title 47, Section 253 preempts state and local regulations that maintain the monopoly status of a telecommunications service provider. Section 253(a) states: "No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." Second, the TCA also contains provisions applicable only to *wireless* telecommunications service providers. 47 USC Section 332(c)(7) preserves the authority of local governments over zoning decisions regarding the placement and construction of wireless service facilities, subject to enumerated limitations in Section 332(c)(7)(B). One such limitation is that regulations "shall not prohibit or have the effect of prohibiting the provision of personal wireless services." (47 USC Section 332(c)(7)(B)(i)(II).) An agency runs afoul of either 47 USC Section 253 or 47 USC Section 332(c)(7) if (1) it imposes a "city-wide general ban on wireless services" or (2) it actually imposes restrictions that amount to an effective prohibition (47 USC Section 253(a); 47 USC Section 332(c)(7)(B)(i)(II)). A public entity also can run afoul of TCA's effective prohibition clause if it prevents a wireless service provider from closing a significant gap in service coverage, taking into account the feasibility of alternative facilities or site locations.

Finally, state and local governments cannot "regulate the placement, construction and modification of cellular facilities on the basis of environmental effects of radio frequency emissions" if the facilities comply with the FCC regulations with respect to such emissions. (47 USC Section 332(c)(7)(B)(iv).) If an agency denied or regulated a cell phone tower on the basis of the environmental effects of radio frequency emissions, (also known as electromagnetic frequencies or EMFs) that comply with the federal regulations, then that agency action is preempted.

The limitations upon a state and local government's authority with respect to telecommunications facilities contained within the TCA do not state or imply that the TCA prevents public entities from exercising their traditional prerogative to restrict and control development based upon aesthetic or other land use considerations. Other than the above-identified enumerated exceptions, the TCA does not limit or affect the authority of a state or local government. Though Congress sought to encourage the expansion of telecommunication technologies, the TCA does not federalize telecommunications land use law. Instead, Congress struck a balance between public entities and telecommunication service providers. Under the TCA, public entities retain control "over decisions regarding the placement, constructions, and modification of telecommunication facilities." (47 USC § 332(c)(7)(A).)

In summary, while state and local governments continue to have the right to regulate telecommunications facilities, consistent with the existing limitations within the TCA, a state or local government may not: (1) unreasonably discriminate among providers of functionally equivalent services; (2) prohibit the provision of personal wireless services; or (3) regulate the placement, construction, or modification on the basis of environmental effects of electromagnetic frequency emissions if in compliance with FCC regulations.

Discussion

The appellant contends that the County's approval does not maximize public safety because it failed to consider EMF impacts in its decision-making responsibility under the County's Precautionary Principle Policy #43, adopted on June 27, 2006.⁹ The Precautionary Principle Policy is an uncertified guidance document that calls for a careful analysis of a wide range of alternatives of alternatives based on the best available science. The Policy encourages maximum public participation to ensure the selection of the alternative that presents the least potential threat to human health and the County's natural systems. The County Precautionary Principle Policy is meant to serve as guidance for decision-makers, but it is not the standard of review for the issuance of CDPs under the certified LCP.

The appellant contends that the project would not "make it possible for people who are sensitive to this technology, older people, children, and all who are already being radiated through space to survive." The appellant asserts that "no one guarantees that this new technology is safe for people, plants, and animals even though the radio frequency engineers make sure to not design a system that would be stronger than the FCC allows. Does that make it safe?" The appellant goes on to argue that there are data to support the harmful impacts of EMFs on children, adults, and animal life.

The appellant supported these concerns by asserting the particular importance of the County's action on the subject CDP. The underlying reasons for this significance include: (1) the County has not yet adopted an LCP amendment that incorporates guidelines for approving WCFs on the coast, so the County's action is premature; and (2) the number of forthcoming WCF projects within the County implies the precedential nature of the County's action on subject CDP.

As discussed above, and as mentioned in the County's findings for approval of the CDP, federal law prevents state and local governments from regulating "the placement, construction and modification of cellular facilities on the basis of environmental effects of radio frequency emissions" if the facilities comply with the FCC regulations with respect to such emissions. (47 USC Section 332(c)(7)(B)(iv).) If an agency denied or regulated a cell phone tower on the basis of the environmental effects of EMFs that comply with the federal regulations, then that agency action is preempted.

The applicant analyzed EMF impacts in a report titled "Radio Frequency Emissions Compliance Report for AT&T Mobility," dated December 8, 2017. The report studied the WCF equipment and its compliance with FCC rules and regulations for preventing human exposure in excess of the applicable Maximum Permissible Exposure ("MPE") limits. The FCC rules define two tiers

⁹ The County's Precautionary Principle Policy can be viewed here: <https://www.mendocinocounty.org/home/showdocument?id=1926>

of permissible exposure: (1) general population/uncontrolled exposure, which relates to situations where individuals may not be aware of the presence of EMFs, where they cannot exercise control over their exposure, or where exposure is not employment-related; and (2) occupational/controlled exposure, which relates to situations where individuals are exposed as a consequence of their employment, have been made fully aware of potential exposure, and can exercise control over their exposure. The compliance report found that the proposed operation would not expose members of the general public to hazardous levels of EMFs. The report went on to recommend that signage displaying personnel contact information and other basic precautionary measures.

The County conditioned the permit to comply with the signage recommendations provided in the above-mentioned report. Condition #30 requires one or more warning signs consistent with FCC and American National Standards Institute (ANSI) to be displayed in close proximity to the WCF. Condition #26 requires signage listing each company responsible for operation and maintenance of facilities at the site that provides the name, address, and emergency telephone number of the responsible party. The sign would need to be posted at a conspicuous location outside the perimeter of the WCF (see **Exhibit 10**, pg. 6). The County's approval followed FCC requirements to ensure that public health and safety would not be jeopardized by the proposed project.

The concerns raised by the appellant do not allege an inconsistency of the local approval with the certified LCP, but rather, the appellant raises general concerns about the detrimental health effects posed from EMFs. The County's and the Commission's review of this issue is limited by the requirements of federal law. Thus, because the contention does not allege an inconsistency of the local approval with the certified LCP, the Commission finds that this contention is not valid grounds for an appeal.

Conclusion

Therefore, for the reasons discussed above, there is a high degree of legal and factual support for the County's decision that the development considered public safety through its findings and conditions of approval. In addition, as discussed in the contention related to visual resources, the County considered project alternatives and made findings that the approved project, as conditioned, both protects coastal resources and satisfies the project's objectives. The Commission finds that the contention related to EMFs discussed above is not valid grounds for an appeal and does not raise a substantial issue of conformance of the project as approved with the policies and standards of the certified LCP.

CONCLUSION

For the reasons stated above, the Commission finds that there is factual and legal evidence in the record to support the County's approval of a CDP. The Commission therefore finds that the appeal raises no substantial issue with respect to the grounds on which it was filed.