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# F9a

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Staff Report: 1/21/22  
Hearing Date: 2/11/22

## STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

**Appeal No.:** A-1-HUM-21-0079

**Applicant:** Gavin Hone

**Agent:** Brendan Reilly

**Appellant:** Commissioners Wilson and Escalante

**Local Government:** County of Humboldt

**Local Decision:** Approved with Conditions

**Project Location:** 3480 Letz Avenue, within the unincorporated community of McKinleyville, Humboldt County (APN 511-061-009).

**Project Description:** (1) Demolish an existing 3,360-sqaure-foot (sf.) single-family residence, detached shed, and gazebo, and (2) construct a new 9,800-sf. residence, 1,700-sf. attached garage, 876-sf. covered porch, 728-sf. attached port-au cochere, 1,340-sf. outdoor swimming pool, hot tub, and outdoor shower, and 5,000 sf. recreational basketball and tennis courts.

**Staff Recommendation:** Substantial Issue

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**IMPORTANT HEARING PROCEDURE NOTE**

Please note that at the hearing for this item the Commission will not take testimony on staff's "substantial issue" recommendation unless at least three Commissioners request it. The Commission may ask questions of the Applicant, aggrieved persons (i.e., generally persons who participated in some way in the local permitting process), the Attorney General, the Executive Director, and their proxies/representatives prior to determining whether or not to take such testimony. If the Commission does decide to take testimony, then it is generally limited to three minutes total per side (although the Commission's Chair has the discretion to modify these time limits). Only the Applicant, persons who opposed the application before the local government, the local government, and their proxies/representatives shall be qualified to testify during this substantial issue phase of the hearing. Others may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, then the Commission takes jurisdiction over the underlying coastal development permit (CDP) application and will then review that application at a future Commission meeting, at which time all persons are invited to testify. If the Commission finds that the appeal does not raise a substantial issue, then the local government CDP decision stands, and is thus final and effective.

## **SUMMARY OF STAFF RECOMMENDATION**

On November 4, 2021 the Humboldt County Planning Commission approved a coastal development permit to demolish an existing 3,360-square-foot (sf.) single-family residence constructed in the 1980s and construct a new 9,800-sf. residence and various amenities on a five-acre bluff-top lot in the McKinleyville area of Humboldt County. The property is near the County's commercial airport within a designated urban area under the certified McKinleyville Area Plan LUP. The lot is bordered to the west by the Mad River and to the east by the California Coastal Trail (known locally as the Hammond Trail).

The primary issues raised in the appeal relate to protection of ESHA, compatibility with the certified land use and zoning designations for the site, and visual resource issues. The County's approval authorizes approximately 20,000 square feet of existing undeveloped, open grassy portions of the property to be developed with new impervious surfaces. Open, grassy coastal prairie and meadow habitats in the McKinleyville area and elsewhere in the County contain documented populations of rare plants, including (but not limited to) two rare species of checkerbloom (*Sidalcea* spp.) that have been documented in the open, grassy meadow habitat on the County airport property directly east of the subject site. The County did not require submittal of a botanical survey in support of the CDP application, and the County's approval as conditioned allows the applicant to defer the necessary botanical survey until prior to commencement of construction. If at that time rare plants are discovered in the project footprint, the County's approval authorizes the removal and relocation of rare checkerbloom plants to an unspecified "equivalent area." Thus, the County's approval does not sufficiently demonstrate that rare plant ESHA would be protected against any significant disruption of habitat values, that only uses dependent on such resources would be allowed within such areas, or that development approved in areas adjacent to ESHA would be sited and designed to prevent impacts that would significantly degrade such areas.

The appeal's second contention alleges that the approved development is inconsistent with the permitted uses allowed in the Residential Estates (RE)/Residential Single-Family (RS) zone where vacation rentals are not an allowable use. The County's approval authorizes an uncharacteristically large residence with extensive amenities not commonly associated with residential development in the Humboldt County coastal zone but more typically associated with commercial hotels and vacation rentals. In addition to the approved 9,800-square-foot house with ~1,700-square-foot attached three-car garage, seven bedrooms, eight bathrooms, a ~720-square-foot media room and bar, and a ~625-square-foot indoor gym, approved amenities include a 728-sf attached "port au cochere," a 1,340-sf outdoor swimming pool and hot tub, a sauna and outdoor shower, and 5,000 square feet of outdoor recreational courts. Given the property's bluff top location adjacent to the Coastal Trail with expansive views of the ocean and the site's proximity to public beaches and the County airport, the approved development could be highly desirable to market as an investment opportunity for future owners desiring to use the authorized development as a vacation home rental. Hotels and vacation home rentals are not allowable uses on the site, and while the County did not expressly approve a vacation rental or other commercial use, and although the applicant may not intend to use the authorized development for anything other than the permissible residential use, the approved development as conditioned does not prohibit the use of the site for transient and commercial uses in the future (e.g., by a future property owner).

Finally, the appeal contends that the approved project will not be sited or designed to protect public views or be visually compatible with the character of the surrounding area. The property is partially visible from Highway 101 and from the Coastal Trail, and the development approved by the County would be significantly more visible from these public vantage points. The County's findings state that the new development meets the required setbacks, height restrictions, and allowable lot coverage, and will be screened from the public view by existing vegetation. However, the findings do not include visual stimulations or descriptions of design or materials to demonstrate visual compatibility with the character of the surrounding area.

Staff believes the degree of legal and factual support for the County's decision is low, the appeal raises issues of statewide concern, and there is precedential value to the County's decision with respect to future interpretations of the LCP. Staff therefore recommends that the appeal raises substantial LCP conformance issues and that the Commission take jurisdiction over the CDP application for the proposed project. If the Commission does so, then the de novo hearing on the merits of the CDP application would be scheduled for a future Commission meeting after the applicant provides certain information requested in Section G of this report.

The motion to adopt the staff recommendation of Substantial Issue as is found on [Page 5](#).

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### APPENDICES

[Appendix A – Substantive file documents](#)

### EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – Notice of Final Location Action](#)

[Exhibit 4 – Appeal filed by Commissioners Wilson and Escalante](#)

## I. Motion and Resolution

Staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the CDP application for the proposed project under the jurisdiction of the Commission for de novo hearing and action. To implement this recommendation, staff recommends a NO vote on the following motion. Failure of this motion will result in a future de novo hearing on the CDP application and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue, and the local action will become final and effective. The motion passes only by affirmative vote of a majority of the Commissioners present.

**Motion:** I move that the Commission determine that Appeal Number A-1-HUM-21-0079 raises no substantial issue with respect to the grounds on which the appeals have been filed under section 30603 of the Coastal Act, and I recommend a **NO** vote.

**Resolution:** The Commission hereby finds that Appeal Number A-1-HUM-21-0079 presents a **substantial issue** with respect to the grounds on which the appeals have been filed under section 30603 of the Coastal Act regarding consistency with the certified Local Coastal Program and the public access and recreation policies of the Coastal Act.

## II. Findings and Declarations

### A. Local Government Action

On November 4, 2021 the Humboldt County Planning Commission approved Coastal Development Permit No. PLN-2021-17105 with special conditions for applicant Gavin Hone to (1) demolish an existing 3,360-square-foot (sf.) single-family residence, detached shed, and gazebo, and (2) construct a new 9,800-sf. residence, 1,700-sf. attached garage, 876-sf. covered porch, 728-sf. attached port-au cochere, 1,340-sf. outdoor swimming pool, hot tub, and outdoor shower, and 5,000-sf. recreational basketball and tennis courts. The County granted its approval subject to nine Special Conditions including, but not limited to, conditions related to minimizing risks of geologic hazards; botanical survey requirements; standards for exterior lighting; and procedures for the inadvertent discovery of archaeological resources.

### B. Project Setting

The County approved project site is a five-acre bluff-top lot located at 3480 Letz Avenue (APN 511-061-009), within the unincorporated community of McKinleyville, approximately nine miles north of Arcata. The property is within a designated urban area under the certified McKinleyville Area Plan LUP with water, sewer, and other municipal services provided by the McKinleyville Community Services District. The land use designation of the subject lot under the certified LCP is Residential Estate (RE), and the certified zoning is Residential Single Family (RS) with Airport Safety Review (AP),

Alquist-Priolo Fault Hazard Regulations (G), and Noise Impact (N) combining zones (RS-X/AP,G,N). The site is a half-mile west of the California Redwood Coast Humboldt County Airport.

The lot is bordered to the west by the Mad River, a sandy spit of public beach, and the Pacific Ocean. The lot is bordered to the east by the California Coastal Trail (known locally as the Hammond Trail) and Letz Avenue, and Highway 101. The lot is bordered to the north and south by other developed low-density (average 5-acre) residential lots.

The subject lot is relatively flat, sloping gently to the west from a high point at the east boundary of the property west to the bluff edge. An open, undeveloped, grassy field covers most of the lot and drains toward the bluff edge. The property extends approximately 700 feet east to west, from Letz Avenue to the bluff edge. The ~100-foot-high bluff face consists of a near vertical drop and in some areas is absent of vegetation due to recent sloughing.

The existing residence to be demolished is located approximately 75 feet from the bluff edge, and the proposed new residence as approved by the County would be required to be set back approximately 181 feet from the bluff edge.

### **C. Appeal Procedures**

The Coastal Commission effectively certified Humboldt County's local coastal program (LCP) in 1986. After certification of an LCP, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on CDPs. Section 30603 states that an action taken by a local government on a CDP 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 300 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 100 feet of any wetland or stream, or within 300 feet of the top of the seaward face of any coastal bluff, or those located in a sensitive coastal resource area. 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.

The County's action is appealable to the Commission pursuant to section 30603(a) of the Coastal Act, because the approved development is located (1) between the first public road (Highway 101) and the sea, and (2) within 300 feet of the top of the seaward face of a coastal bluff.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that the appeal raises no substantial issue with respect to the grounds on which the appeal has been filed pursuant to section 30603(a) of the Coastal Act. The term "substantial issue" is not defined in the Coastal Act or its

implementing regulations. Section 13115(c) of the Commission regulations provides that the Commission may consider the following five factors when determining if a local action raises a significant issue:

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

The Commission may, but need not, assign a particular weight to a factor.

Since staff is recommending substantial issue, unless three or more Commissioners object, it is presumed that the appeal raises a substantial issue, and the Commission may proceed to its *de novo* review at the same or subsequent meeting. The Commission will not take public testimony during this phase of the appeal hearing unless three or more Commissioners request it.

If three or more Commissioners request it, the Commission will hear arguments and vote on the substantial issue question. Proponents and opponents will have three (3) minutes total per side (at the discretion of the Chair) 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 applicants, appellants, and persons who made their views known to the local government (or their representatives). 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 raised by the appeal, the Commission will proceed to the *de novo* portion of the appeal hearing and review the merits of the proposed project. The *de novo* phase of the hearing will occur at a future Commission meeting, during which the Commission will take oral and written public testimony.

#### **D. Filing of Appeal**

The Commission's North Coast District Office received the County's Notice of Final Local Action (Exhibit 3) on November 29, 2021. The Commission's ten-working-day appeal period began on November 30, 2021, and Day 10 was December 13, 2021. On December 13, 2021, the Commission received a timely appeal of the County's approval from Commissioners Wilson and Escalante (Exhibit 4).

## **E. Summary of Appeal Contentions**

The appeal raises three main contentions:

1. The approved project authorizes a non-resource dependent use in/adjacent to ESHA and is therefore inconsistent with the ESHA policies of the certified LCP.
2. The approved project is incompatible with the Residential Estates/Residential Single Family land use and zoning designations.
3. The approved project is inconsistent with visual resource policies of the certified LCP, because it does not protect views to and along the ocean and is not visually compatible with the character of surrounding areas.

All of the contentions raised in the appeal present valid grounds for appeal in that they each allege the project's inconsistency with policies of the certified LCP, which in this case includes the certified McKinleyville Area Plan (MAP) LUP and the certified Coastal Zoning Regulations (CZR).

## **F. Substantial Issue Analysis**

As stated in Section C of this report, the grounds for an appeal of a CDP issued by the local government are the project's conformity with the policies of the LCP and (if applicable) with the public access policies of the Coastal Act. As discussed in detail below, each of the appeal contentions raises a substantial issue regarding consistency with the policies of the certified LCP.

### **1. Protection of ESHA**

The first contention of the appeal is that the County approved development is inconsistent with the LCP's ESHA protection policies. Although the subject 5-acre bluff-top lot is developed with an existing 3,360-square-foot single family residence and gravel driveway, the County's approval authorizes approximately 20,000 square feet of existing undeveloped, open grassy portions of the property to be developed with new impervious surfaces, including a new 9,800-square-foot residence, 728-square-foot port au cochere, 1,340-square-foot outdoor swimming pool/hot tub, new paved driveway spur and parking area, and 5,000-square-foot tennis/basketball court. Open, grassy coastal prairie and meadow habitats in the McKinleyville area and elsewhere in the County contain documented populations of rare plant species, including, but not limited to, coast checkerbloom (*Sidalcea oregana* ssp. *eximia*) and Siskiyou checkerbloom (*Sidalcea malviflora* ssp. *patula*). Both checkerbloom species have a California rare plant rank of 1B.2 (i.e., considered "rare throughout their range" in California and elsewhere and "moderately threatened in California" according to the CDFW and California Native Plant Society). Documented occurrences of both rare plant species are present in the open, grassy meadow habitat on the County airport property directly east of the subject site, approximately a half mile to the east.

McKinleyville Area Plan (MAP) Policy 3.40 includes Coastal Act section 30240 as an enforceable policy, which provides that only resource-dependent uses shall be allowed

in ESHA, and development adjacent to ESHA shall be sited and designed to prevent degradation of ESHA resources:

- \*\*\* 30240. (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

MAP Policy 3.41 lists various types of ESHA in the planning area, including, but not limited to, rare plant habitat areas (emphasis added):

- A. Identification of Wetlands and other Environmentally Sensitive Habitats
  - 1. Environmentally sensitive habitats within the County McKinleyville planning area shall include:
    - (a) Rivers, creeks, and associated riparian habitats including Little River, Widow White Creek, and other streams.
    - (b) Wetlands, estuaries, including the Clam Beach ponds and the mouths of Little River, Widow White Creek, and Mad River
    - (c) Vegetated dunes at Clam Beach, Little River Beach, and the banks of the Mad River
    - (d) Other critical habitats for rare and endangered species listed on state or federal lists.

CZR section 313-143 defines ESHA consistent with the Coastal Act definition (sec. 30107.5) and specifically lists a number of additional types of ESHA in the area (emphasis added):

**313-136–161 DEFINITIONS (A - Z)**

...

**313-143 DEFINITIONS (H)**

...

**Habitat Areas, Environmentally Sensitive:** Any area 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, including:

- A. Areas of special Biological Significance as identified by the State Water Resources Control Board;
- B. Rare and endangered species listed in Sections 670.2 or 670.5 of Title 14 of the California Code of Regulations, or Sections 17.11 or 17.12 of Title 50 of the Code of Federal Regulations, pursuant to

the Federal Endangered Species Act as rare, threatened or endangered;

- C. All coastal wetlands and lagoons;
- D. Tidepools and near-shore reefs;
- E. Sea caves, islets and offshore rocks;
- F. Kelp beds;
- G. Indigenous dune plant habitat;
- H. Federally designated wilderness and primitive areas;
- I. Rivers, creeks, and associated riparian habitats; and
- J. Rookeries for herons and egrets.

...

Although the proposed project would disturb open grassy coastal terrace habitat similar to the nearby open grassy habitat with known populations of rare checkerbloom plants on the County airport property a half mile to the east, the County did not require submittal of a botanical survey in support of the CDP application. Instead, the County deferred that requirement to prior to commencement of construction. CDP condition of approval #5 states:

“Prior to any ground disturbance occurring in association with this permit a qualified botanist shall review the site to determine if Siskiyou checkerbloom is present. If found to be present within the proposed disturbed areas the checkerbloom shall be relocated and an equivalent area of the species shall be created or restored on-site at the direction of a qualified botanist.”

The County’s findings for approval do not explain how the development as conditioned protects ESHA and prevents its degradation consistent with the LCP requirements. Instead, with the inclusion of condition #5, the County’s approval authorizes the destruction of rare plant ESHA (the removal and relocation of checkerbloom plants), if located in the approved building footprint, and the siting of new residential development within rare plant ESHA. Although the CDP condition may have been included with the intention of protecting individual rare plants by allowing for their relocation to an unidentified “equivalent area”, the findings do not explain how the allowance of a residential use in ESHA conforms with the LCP policies that disallow residential uses in ESHA.

Additionally, there is no evidence in the County’s findings that the approved development would be sited and designed to protect adjacent rare plant ESHA that may be located on the property as a result of the botanical survey required by condition #5. As discussed above, despite known nearby populations of rare checkerbloom plants on County airport property in the vicinity of the project site, the County did not require submittal of a site-specific botanical survey prepared by a qualified botanist to establish whether rare plant ESHA occurs on or adjacent to the approved development footprint. Additionally, the County’s findings for approval do not discuss whether the approved

development as sited and designed would provide an adequate buffer from any rare plant ESHA identified on the property outside of but adjacent to the approved development footprint. As noted above, the County's approval authorizes almost a half-acre of new impervious surfaces on the lot with no evaluation of how such development may affect adjacent ESHA (including the bluffs and waters of the Mad River, west of the site) and does not include special conditions related to protection of surrounding ESHA other than problematic condition #5 discussed above.

Thus, the degree of legal and factual support for the County's decision is low and does not sufficiently demonstrate that rare plant ESHA would be protected against any significant disruption of habitat values, that only uses dependent on such resources would be allowed within such areas, or that development approved in areas adjacent to ESHA would be sited and designed to prevent impacts that would significantly degrade such areas. In addition, the ESHA issues raised by this appeal are issues of statewide significance. Therefore, the Commission finds that the approved project raises a substantial issue of conformance with the ESHA protection provisions of the certified LCP, including, but not limited to, the provisions of MAP sec. 3.40 and 3.41.

## **2. Permitted uses in lands planned and zoned for residential use**

The second contention raised in the appeal is that the County's approval authorizes a non-residential use in a residential zone, because the large size of the house with its extensive accessory amenities and location with ocean views and proximity to the airport makes the development as approved by the County particularly-well suited for short term vacation rental, commercial retreat or similar transient habitation use. As there are no certified vacation rental regulations authorizing vacation rentals in this part of the coastal zone, and because the County's approval lacks conditions that would restrict such a use, the contention is that the development as approved by the County is inconsistent with the purpose and uses allowed in the RE/RS designation/zone.

The County-approved CDP authorizes demolition of an existing 3,360-square-foot residence (constructed in the 1980s)<sup>1</sup> and construction of a total development area covering almost 20,000 square feet or approximately 0.45 acres. The new 9,800-square-foot house (with ~1,700-square-foot attached three-car garage) includes seven bedrooms, eight bathrooms, a ~720-square-foot media room and bar, a ~625-square-foot indoor gym, and numerous accessory amenities not commonly associated with residential development in the Humboldt County coastal zone but more typically associated with commercial hotels and vacation rentals. These include a 728-sf attached "port au cochere," a 1,340-sf outdoor swimming pool and hot tub, a sauna and outdoor shower, and 5,000 square feet of outdoor recreational courts for basketball and tennis. Given the extensive amenities included with the proposed, sprawling residence, the subject property's bluff top location adjacent to the Coastal Trail with expansive views of the ocean and Mad River, and the site's proximity to public beaches, parks, Highway 101, and the County's commercial airport, the approved development could be

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<sup>1</sup> To date, the Commission has been unable to locate records in its electronic or paper files of any CDP issued by either the County or the Commission for the construction of the existing residence.

highly desirable to market as an investment opportunity for future owners desiring to use the authorized development as a vacation home rental. The County-approved development is similar to listed vacation rentals in other parts of the coast (outside of Humboldt County) that advertise similar “luxury” rentals complete with a pool, tennis courts, and game room. These types of luxury estate short-term rentals are often used for commercial purposes, such as corporate retreats, classes and seminars, as well as for visitor-serving uses.<sup>2</sup>

The certified land use plan designation of the site is Residential Estates (RE), the purpose and uses of which are described in MAP section 5.20 as follows:

Purpose: To allow residential development of areas within Urban Limits where community objectives, including resource protection, limit density of potential development, but where urban services are required.

Principal Use: Detached single family residences

Conditional Uses: Same as RL.

Gross Density: 0-2 units per acre.

The certified zoning district for the subject site is “RS: Residential Single Family.” section 313-6.1 of the CZR describes the uses allowed within the RS zoning district as follows (in applicable part):

<b>313-6.1</b>		<b>RS: Residential Single Family</b>	
<b>Use Type</b>		<b>Principal Permitted Use</b>	
		Residential Single Family Principal permitted Use (See Section 313-163.1.9 for description)	
<b>Use Type</b>		<b>Conditionally Permitted Use</b>	
Residential Use Types		Manufactured Home Park; subject to the Manufactured Home Park Regulations	
Civic Use Types		Guest House Essential Services Community Assembly Public Recreation and Open Space Oil and Gas Pipelines; subject to the Oil and Gas Pipelines Regulations Major Electrical Distribution Lines; subject to the Electrical Distribution Lines Regulations Minor Generation and Distribution Facilities	
Commercial Timber Use Type		Timber Production	

<sup>2</sup> The popular vacation-rental service Airbnb has a website (Airbnb.com/luxury) devoted entirely to “a selection of pristine, expertly designed homes with high-end amenities, services, and dedicated trip designers”. These homes include amenities like in-home gyms and pools, as well as services like housekeeping, personal chefs, and childcare.

Industrial Use Types*	Cottage Industry; subject to the Cottage Industry Regulations
Extractive Use Types	Surface Mining - 2; subject to the Surface Mining Regulations
Natural Resource Use Types	Fish and Wildlife Management Watershed Management Wetland Restoration Coastal Access Facilities
Use Types Not Listed in This Table**	Any use not specifically enumerated in this Division, if it is similar to and compatible with the uses permitted in the RS zone.

Section 313-163.1.9 of the CZR describes the principal permitted use for the RS zone district as including the following uses: Single Family Residential, Second Residential Unit, Cottage Industry; subject to the Cottage Industry Regulations, and Minor Utilities to serve these uses.

Sections 312-17 through 312-49 of the CZR describe the various required and supplemental findings that must be made for the County to approve a CDP. The section states, in applicable part, as follows (emphasis added):

312-17 REQUIRED FINDINGS FOR ALL PERMITS AND VARIANCES

17.1 REQUIRED FINDINGS FOR ALL PERMITS.

Unless waived by State law, the Hearing Officer may approve or conditionally approve an application for a Special Permit, Use Permit, Coastal Development Permit, or Planned Unit Development Permit only if all of the following findings, in addition to any applicable findings in Sections 312-18 through 312-49, Supplemental Findings, are made:

...

17.1.2 The proposed development is consistent with the purposes of the existing zone in which the site is located, or when processed in conjunction with a zone reclassification, is consistent with the purposes of the proposed zone;

...

Hotels and vacation home rentals are not allowable uses on the subject parcel. Hotels, motels, and similar transient habitation facilities are allowed on commercially zoned properties but not on residential lands. Therefore, under current regulations, visitor serving facilities are not a permissible use and are not covered in the MAP regulations.

While vacation rentals are a visitor-serving use in the coastal zone, the conversion of residential parcels to vacation rental and transient habitation uses, particularly where such uses are not consistent with the zoning, can have adverse impacts on housing availability in the coastal zone.<sup>3</sup> Vacant residential parcels that can be developed for residential use are in short supply and are an important resource for addressing housing

<sup>3</sup> The State Legislature has acknowledged that California is facing a severe housing crisis, and that current and future demands are exceeding the availability of housing units.

shortages throughout the coastal zone, which serves numerous Coastal Act and LCP policies relating to concentrating development in existing developed areas to minimize impacts to coastal resources (e.g., Coastal Act section 30250 and MAP sec. 3.21), as well as the protection of community character (Coastal Act sec. 30251 and MAP sec. 3.42).<sup>4</sup> The County's approval raises a significant question as to the development's consistency with these policies. Therefore, the County's authorization of a residence suited to commercial rental uses raises issues of regional and statewide significance.

The County's approval raises a significant question as to the development's consistency with these policies. Therefore, the County's authorization of a residence suited to commercial rental uses raises issues of regional and statewide significance.

Although the County did not expressly approve a vacation rental or commercial use on the subject property, and although the applicant may not intend to use the authorized development for anything other than the permissible residential use, the County's approval includes no findings discussing how the development is consistent with the purpose and uses allowed in the RE/RS designation/zone and the MAP and CZR regulations cited above. Further, the approved development as conditioned does not prohibit the use of the site for transient and commercial uses in the future (e.g., by a future property owner). As such, the degree of legal and factual support for the County's decision that the development is consistent with the permitted uses on the RE lands is low.

For all of these reasons, the Commission finds that the approved project raises a substantial issue of conformance with the land use provisions of the certified LCP cited above.

### **3. Visual Impacts**

The final contention raised in the appeal is that the approved development is inconsistent with the visual resource policies of the certified LCP, because the approved project will not be sited or designed to protect public views or to be visually compatible with the character of the surrounding area.

The property is partially visible from Highway 101 and from the California Coastal Trail (known locally as the Hammond Trail), which follows Letz Avenue directly adjacent to the property. Although there is some existing vegetation that borders the subject parcel, there are gaps between trees that do afford partial views across the lot towards the ocean. The existing residence, which is colored light brown and set back approximately

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<sup>4</sup> Section 3.21 of the MAP includes Coastal Act section 30250 as an enforceable policy, which provides:

\*\*\* 30250. (a) New development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively on coastal resource.

450 feet from Letz Avenue, is currently visible from multiple points along Letz Avenue, the Hammond Trail, and the highway.

The certified LCP includes in MAP sec. 3.42 sec. 30251 of the Coastal Act as an enforceable policy (emphasis added):

\*\*\* 30251. The scenic and visual qualities of 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...

The development approved by the County is much larger than existing surrounding residential development. The approved development is three times the size (9,800-sf) of the existing residential development on site and (as previously discussed) also includes a new 1,700-sf attached garage, 876-sf attached covered porches, 728-sf attached port au cochere, 1,340-sf swimming pool and hot tub, and 5,000 sf of recreational basketball and tennis courts. Existing houses on surrounding lots range in size from approximately 3,360 square feet to 4,140 square feet.<sup>5</sup>

The County's findings for approval do not support the determination that the approved development will be visually compatible with the character of the surrounding area, stating in part the following:

The size of the proposed residence and the associated accessory structures and recreational developments are significantly larger than is typical for the area. While this particular neighborhood consists of larger than average lots and houses, the proposed 9,800 square foot residence and 5,000 square foot recreational facility is still significantly larger than the surrounding developments. Approval of this project has the potential to change the character of the neighborhood. The residence would be screened from most public views due to a large row of trees along the frontage of the property.

However, because (a) the project conforms with the required setbacks, height restrictions, and allowable lot coverage for the RS zone, (b) there is some existing vegetation that borders the eastern end of the lot to partially screen the lot from adjacent public roads, and (c) the site is not within a mapped Coastal Scenic Area or Coastal View Area, the findings conclude that the development is consistent with the visual resources protection policies of the LCP.

The development approved by the County would be significantly more visible from public vantage points, including from Letz Avenue, the Hammond Trail, and the highway. As approved by the County, the main structure and sports court would be located significantly closer to the public road and trail than the existing development to

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<sup>5</sup> The Commission approved the ~4,000-square-foot house on the lot to the north in 2000 under CDP No. A-1-HUM-00-001. The other size estimates are from zillow.com.

be demolished (the sports court will be only 40 feet from the eastern property line, which itself is immediately adjacent to the Coastal Trail).

Although the County's findings state that the development would be screened from public view by existing vegetation, there is a lack of legal and factual support in the local record to support that conclusion. First, the applicant did not provide visual simulations to demonstrate that the new development would protect public views and be visually compatible with the character of the surrounding area. As discussed above, the approved development would be significantly larger than surrounding single-family residences, which are characterized by modest-sized homes on large (~5-acre) lots with substantial open space (open grassy meadow habitat) and, on some lots, existing blue water ocean views. Second, the subject lot slopes from east to west downward towards the bluff, and, according to topographic contours, the new 9,800-square-foot structure would be located approximately 10-20 feet higher and at least 100 feet closer to the public trail and roads than the existing residence. Not only would the approved development be more visually prominent due to being at a higher elevation and closer to the roads and Hammond Trail, but the new 5,000-sf sport court, which may include amenities like fencing and overhead structures, would be only 40 feet away from the Coastal Trail and located on the highest portion on the property. Third, while the County's findings state that "the project... is otherwise compatible with the styles and visible materials of existing development in the immediate neighborhood...", the County's findings do not describe the specific style or materials of the proposed development (and this information could not be located in the local record materials provided by the County), nor do they consider alternative building designs or configurations that may involve smaller development footprints or reduced visual impacts.

Thus, the degree of legal and factual support for the County's decision is low and is not sufficient to demonstrate that the approved development as conditioned will be sited and designed to protect public views or to be visually compatible with the character of the surrounding area. Therefore, the Commission finds that the approved project raises a substantial issue of conformance with the visual resource protection provisions of the certified LCP, including, but not limited to, the provisions of MAP sec. 3.42.

#### **4. Conclusion**

When considering a project on appeal, the Commission must first determine whether the project raises a substantial issue of LCP conformity, such that the Commission should assert jurisdiction over the CDP application for such development. At this stage, the Commission has the discretion to find that the project does or does not raise a substantial issue of LCP and Coastal Act (where applicable) conformance. The Commission has in the past and, pursuant to section 13115(c) of its regulations, considered the following five factors in its decision of whether the issues raised in a given case are "substantial": (1) the degree of factual and legal support for the local government's decision; (2) the extent and scope of the development as approved or denied by the County; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the County's decision for future interpretations of

its LCP; and, (5) whether the appeal raises only local issues as opposed to those of regional or statewide significance. The Commission may, but need not, assign a particular weight to a factor, and may make a substantial issue determination for other reasons as well. In this case, these five factors considered together support a conclusion that the appeals do raise a substantial issue as to the County-approved project's consistency with the LCP.

As discussed in the above findings, the degree of legal and factual support for the County's decision is not sufficient to demonstrate that rare plant ESHA would be protected against any significant disruption of habitat values, that only uses dependent on such resources would be allowed within such areas, or that development approved in areas adjacent to ESHA would be sited and designed to prevent impacts that would significantly degrade such areas. Legal and factual support also is lacking in the County's findings to support the County's conclusion that the approved development as conditioned is consistent with the permitted uses on residential lands and will be sited and designed to protect public views or to be visually compatible with the character of the surrounding area.

As to project scope, while the approved development is limited to new development on a single residential lot, the County approved a structure that is significantly larger than surrounding houses with numerous outdoor amenities not commonly associated with residential development in the Humboldt County coastal zone. As the County's findings do not support the conclusion that the extent of the authorized development is appropriate for the site in terms of ESHA buffers and visual compatibility, this factor also supports a finding of substantial issue.

The third factor (the significance of coastal resources affected) also supports a finding of substantial issue. The project, as approved by the County, could significantly degrade rare plant ESHA inconsistent with LCP policies cited above. These inconsistencies have far-reaching consequences and thus, when considered cumulatively throughout the limited extent of checkerbloom habitat, raise a substantial issue.

Fourth, the County's decision could set an adverse precedent for future interpretations of the County's LCP. The County's approval authorizes residential development in ESHA, inconsistent with the resource protection policies of the LCP, and the approved house is much larger than those in the surrounding area.

Finally, the project raises issues of regional or statewide significance, including the protection of ESHA and the protection of public visual resources.

Therefore, especially given the low degree of factual and legal support for the County's decision and conditions of approval, consideration of the five factors together support a conclusion that the County's approval of a CDP for this project raises a substantial issue of Coastal Act and LCP conformance. For the reasons stated above, the Commission finds that Appeal Number A-1-HUM-21-0079 presents a substantial issue with respect to the grounds on which the appeals have been filed under section 30603 of the Coastal Act.

## **G. Information Needed for De Novo Review**

Section 30621 of the Coastal Act instructs the Commission to provide for a de novo hearing on all appeals where it has determined that a substantial issue exists with respect to the grounds on which an appeal has been filed. If the Commission finds substantial issue as recommended above, staff also recommends that the Commission continue the de novo hearing to a subsequent date. The de novo portion of the appeal hearing must be continued because the Commission does not have sufficient information to determine what, if any, development can be approved, consistent with the certified LCP.

The LCP contains policies addressing rare plant ESHA, allowable uses on residential lots, visual resources, geologic hazards, airport safety, and water quality. However, as discussed above, and in other respects not directly related to the appeal contentions, the County's record does not contain critical information needed for a full de novo review of the application. Given that the project the Commission will be considering de novo has come to the Commission after an appeal of the local government action, the Commission has not previously been in the position to request information from the applicant needed to determine if the project can be found to be consistent with the certified LCP. This section identifies information the Commission will need to evaluate the development under de novo review for consistency with the certified LCP.

### **1. Rare Plant Survey and Report**

As discussed in the findings above, rare plant ESHA has been documented in open, grassy meadow habitat within a half mile of the project site, and similar open, grassy, meadow habitat is present on the subject lot. However, no biological or botanical studies were completed in support of the proposed development application. In order to determine whether the proposed development is consistent with the LCP's ESHA protection policies, the applicant must provide a detailed botanical analysis that addresses the presence of rare plant ESHA in the area and where such ESHA is located on and/or adjacent to the project area. Any areas of sensitive habitat should be identified, delineated, described in detail, and depicted on an ESHA map prepared for the subject site. Additionally, significant site features should be shown in relation to the mapped ESHA including existing roads and development, 100-foot ESHA buffer boundaries, proposed residential and accessory structures, and other proposed development. The report should explain what the proposed buffer will be, whether it conforms with minimum buffers required by the LCP, and how it will be sufficient to protect the ESHA resources. The rare plant survey should be completed by a qualified botanist in compliance with agency accepted survey protocols (e.g., see <https://wildlife.ca.gov/Conservation/Survey-Protocols>).

### **2. Clarification on Proposed Use**

The subject site is designated and zoned for residential uses, but the development approved by the County proposes many amenities more typical of transient habitation uses. The Commission needs to understand whether the development is

proposed for use as a vacation rental or similar commercial use (e.g., business retreats, trainings, etc.), either on a part-time or full-time basis. The applicant should provide a narrative project description clarifying the intended use of the proposed development and explaining how the proposed use is consistent with the residential land designation and zoning of the site.

### 3. Visual Assessment

For a de novo review of the project's consistency with LCP visual resource protection policies, the Commission will need a visual assessment that includes information relating to: 1) what components of the project will be visible from the public road/trail and highway, 2) the styles and materials of the proposed development, and whether it is compatible with existing development in the immediate neighborhood, and 3) an assessment of the overall height and bulk of the proposed development compared to existing residences in the immediate neighborhood. The analysis should include visual simulations of the project from key and representative public viewpoints, including the adjacent coastal trail, Letz Avenue, and the highway. A comparison table or list comparing the existing sizes and designs of houses along Letz Avenue should also be included.

### 4. Geologic Hazards

For a de novo review of the project's consistency with certified LCP hazards policies, the Commission will need revised plans to verify that all proposed development can conform with minimum yard setbacks required under the LCP. In addition, the Commission's geologist has reviewed the applicant's geologic report and determined that the following additional information is needed to fully evaluate whether the proposed development will minimize geologic risks consistent with LCP requirements<sup>6</sup>:

- a. A revised site plan showing available topographic information and all development sited in conformance with recommended setbacks in the report. The plan should indicate the location of the bluff cross-section evaluated for slope stability.
- b. A geologic cross section of the bluff indicating elevations relative to an identified datum (e.g., MSL, NAVD88, etc.)

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<sup>6</sup> Section 3.28 of the MAP includes coastal act section 30253 as an enforceable policy, which provides:  
\*\*\* 30253. New Development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding areas or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

- c. The shear strength values used to characterize the bluff materials in the slope stability analysis, and a discussion of the basis for the values chosen (e.g., direct testing, previously published results, etc.)
- d. Figures showing the critical surfaces (minimum factor of safety) for the static and pseudostatic cases as well as the modeled surfaces with a 1.5 FS (static) and 1.1 FS (pseudostatic), and that indicate the distance from the bluff edge where these surfaces daylight on the bluff top.
- e. A discussion of the conditions under which direct wave attack and marine erosion of the bluff has occurred in the past, including an analysis of whether marine erosion has contributed appreciably to bluff retreat.
- f. An analysis to support the conclusion that the existing sandbar/spit would “persist ... and generally function in the same capacity” in the future, even with significant sea level rise.
- g. An evaluation of whether future sea level rise of up to 7 feet by 2100 would increase the frequency of wave attack at the bluff toe and contribute to higher bluff retreat rates than have been observed historically.

5. Conformance with Airport Compatibility Regulations

The certified zoning for the property includes an Airport Safety Review (AP) combining zone. Additional information is required to understand how the proposed project conforms with the Airport Safety Review policies of the LCP (313-16.3) and with the most recent Humboldt County Airport Land Use Compatibility Plan (2021). For example, under the safety compatibility policies of the updated (yet to be certified) Airport Land Use Compatibility Plan mapping, the subject property appears to be in Safety Zones 2 (Inner Approach/Departure Zone) and/or 3 (Inner Turning Zone). Different safety zones specify different maximum lot coverage (building footprint) allowances, allowances on accessory structures, and other restrictions. For a de novo review of the application, the Commission will need an analysis of how the proposed development conforms with the certified and upcoming (soon to be submitted for certification) airport safety regulations.

6. Updated exterior lighting plans

Given the potential visual and ESHA resources impacts associated with the project and the LCP policy directives to protect public views and ESHA, for a de novo review of the application the Commission will need exterior lighting plans for the project to understand whether proposed lighting may affect public views or sensitive habitats on the property and in the project vicinity.

7. Landscaping plan

For a de novo review of the project’s consistency with LCP visual resource and water quality protection policies, the Commission will need a preliminary landscaping

plan for the subject site that identifies the type, number, and location of proposed plantings and any irrigation system proposed.

#### 8. Drainage and Runoff Control Plan

To properly address potential impacts to water quality and to ensure that site drainage is managed in a manner that directs site runoff to adequately sized (for the amount of expected runoff) permeable areas outside of ESHA and away from the bluff (which could otherwise lead to increased erosion of the bluff face), the applicant must provide a Drainage and Runoff Control Plan. The plan should include measures to control runoff and minimize the potential for erosion both during construction and post-construction with the goal of protecting water quality and sensitive habitat on the site, including the areas associated with the Mad River bluffs. During construction, the plan must include provisions for all of the following: (a) minimizing the potential for discharge of sediment off-site or to coastal waters during construction by use of appropriate BMPs; (b) managing construction materials, equipment, and waste to minimize the potential for pollutant discharge; and (c) minimizing soil compaction and the removal of non-invasive vegetation during construction to retain the natural stormwater infiltration capacity of the soil and other water quality benefits. The drainage plan component should address drainage and runoff associated with the proposed new impermeable surfaces (paved areas, building areas) as well as drainage associated with periodic maintenance of the pool, hot tub, outdoor shower, and any proposed landscaping irrigation system.

#### 9. Debris Disposal Plan

No debris disposal plan has been included with the local application materials. Therefore, the applicant should provide a debris disposal plan, which outlines the types of debris that will be generated by the project, how debris will be handled during the demolition period, where discarded materials will be disposed of (identification of authorized disposal sites capable of receiving the materials), and a schedule for debris disposal.

#### 10. Updated Project Plans

For a de novo review of the application, the Commission will need an updated site plan that shows all proposed development located outside of mapped site constraints listed above. Additional site plans should be provided to incorporate the above-requested items, including geologic features, landscaping, drainage/runoff control measures, and exterior lighting. Finally, the Commission needs to review a foundation plan that conforms with the recommendations outlined in the geologic assessment.

Without the above information, the Commission cannot reach a final determination concerning the consistency of the project with the natural resources protection policies of the LCP. Therefore, before the Commission can act on the proposed project de novo, the applicant must submit all the above-identified information.

A-1-HUM-21-0079 (Hone)

APPENDIX A

Humboldt County Local Coastal Program (McKinleyville Area Plan and Coastal Zoning Regulations)

File for Coastal Development Permit Appeal Number A-1-HUM-21-0079