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# F10a

Appeal Filed: 4/25/2022  
Action Deadline: 7/5/2022  
Staff: Peter Benham - SF  
Staff Report: 5/20/2022  
Hearing Date: 6/10/2022

## STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

**Appeal Number:** A-2-SON-22-0015

**Applicant:** Vincent Chang

**Appellant:** Margaret Briare

**Local Government:** Sonoma County

**Local Decision:** County Coastal Development Permit application number CPH 18-0009 approved by the Sonoma County Board of Zoning Adjustments on April 22, 2021, and upheld by the Sonoma County Board of Supervisors on April 5, 2022

**Location:** Undeveloped roughly 1.5-acre property adjacent to and inland of Highway 1 overlooking Bodega Bay, at 153 Harbor View Way (APN 100-100-031), in the unincorporated Bodega Bay area of Sonoma County

**Project Description:** Construction of a 3,754 square-foot and single-story, single-family residence, 600 square-foot and detached garage, a driveway, landscaping, and related development.

**Staff Recommendation:** No Substantial Issue Exists

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### IMPORTANT HEARING PROCEDURAL 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, appellant(s), aggrieved persons, the local government, and their proxies/representatives are qualified to testify during this substantial issue phase of the hearing, and other interested parties 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 it 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

Following a local appeal, the Sonoma County Board of Supervisors upheld the Sonoma Board of Zoning Adjustments' approval of a coastal development permit (CDP) authorizing the construction of a new 3,754 square foot, single-family dwelling with a 600 square foot, detached garage, associated landscaping, and driveway improvements on a roughly 1.5-acre parcel fronting on Highway 1 above Bodega Bay. The property is adjacent to a series of mostly undeveloped lots that are part of the Harbor View subdivision located on a knoll above the bay. The Appellant contends that the approved development raises Sonoma County Local Coastal Program (LCP) consistency issues related to wetlands, sensitive habitats, seismic constraints, and building heights. Specifically, the Appellant contends that the proposed development is inconsistent with the LCP because it adversely affects wetlands and ESHA, it cannot be approved due to seismic issues, and it exceeds the LCP's maximum height limit.

In terms of the wetland contentions, the LCP prohibits all construction within 100 feet of wetlands, and allows development between 100 and 300 feet of wetlands where it is determined that such development would not adversely impact the wetlands. The approved residence is located higher up on the slope, well above any wetland areas, and all proposed development is set back approximately 200 feet from the subject wetlands in the vicinity of the project site. The Applicant's biological resource assessment analysis shows that such siting and design, including in terms of best management practices (BMPs) to avoid any impacts, is adequate to protect the wetlands in this case. As a result, the approved residence does not raise significant LCP consistency issues as it relates to wetlands.

In terms of the ESHA contentions, the downcoast portion of the property includes a scrub area within which the biological resource assessment for the project identifies the potential for four sensitive plant species. Given the project's plant surveys were during the non-blooming season, it is difficult to know if the species are present. That said, and even presuming these plants are present in the scrub area and that the area constitutes ESHA, the project includes adequate setbacks from the majority of this area that are sufficient to protect such ESHA as required by the LCP. Therefore, the approved residence does not raise any significant LCP consistency issues relating to ESHA.

In terms of seismic constraint contentions, the property is located near a seismically active fault line and the LCP requires development in such areas be sited and designed to minimize risks associated with such active faults, which is accounted for by the County's approval. The Appellant's seismic contention, however, is much more specific, and notes that the LCP also requires conformance with the Alquist-Priolo Act. To this point, the approved development is single-story and woodframed, and such development is actually exempted from any additional Alquist-Priolo requirements

beyond what the County approved. Thus, the approved residence does not raise any significant LCP consistency issues as it relates to seismic constraints.

Finally, in terms of structural height, the LCP allows development up to a maximum height of 24 feet at this location. The approved development would be just under 24 tall in this case, and thus does not raise any LCP consistency issues as it relates to the height limit.

As a result, staff recommends that the Commission find that **no substantial issue** exists with respect to the County-approved project's conformity with the wetland and ESHA protections, and the height and seismic constraints of the LCP, and the Coastal Act's public access provisions. The single motion and resolution to do so is found on **page 5** below.

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EXHIBITS

- Exhibit 1 – Location Map
- Exhibit 2 – Site Photos
- Exhibit 3 – County-Approved Project Plans
- Exhibit 4 – County Notice of Final Local CDP Action
- Exhibit 5 – Appeal of County CDP Action to the Coastal Commission
- Exhibit 6 – Prior Commission Staff Comments

## 1. MOTION AND RESOLUTION

Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of no substantial issue would mean that the Commission will not hear the application de novo and that the local CDP action will become final and effective. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in a finding of no substantial issue and adoption of the following resolution and findings, and the local action will become final and effective. Failure of this motion will result in a substantial issue finding and a future de novo hearing on the CDP application. The motion passes only by an affirmative vote of a majority of the Commissioners present.

***Motion:*** *I move that the Commission determine that Appeal Number A-2-SON-22-0015 raises **no substantial issue** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act, and I recommend a **yes** vote.*

***Resolution to Find No Substantial Issue:*** *The Commission hereby finds that Appeal Number A-2-SON-22-0015 presents no 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 Sonoma County Local Coastal Program and/or the public access policies of the Coastal Act.*

## 2. FINDINGS AND DECLARATIONS

### A. Project Location and Description

The proposed project is located on a 1.48-acre vacant parcel at 153 Harbor View Way (APN 100-100-031) in the unincorporated Bodega Bay area of Sonoma County (see **Exhibit 1** for a location map). The site fronts on Highway 1, at the intersection of Highway 1 and Harbor View Way, and slopes upward and away from the highway.<sup>1</sup> The site is located adjacent to a series of mostly undeveloped lots that are part of the Harbor View subdivision that itself is located on a knoll above the Bay. The parcel is LCP-zoned Planned Community (PC) Coastal Combining (CC), which allows for single-family residences as one of several permitted uses.

The property is made up of three distinct areas, with the lower upcoast corner of the property near Highway 1 including a wetland area that straddles this property as well as the upcoast property. Another third of the property along Harbor View Way and extending up the slope includes a northern coastal scrub community. The remaining third of the property is occupied by mostly ruderal vegetation and located at a higher elevation than the other two areas of the site, and the approved residence would be sited in this area. The site is also located in the state-designated Alquist-Priolo earthquake area, with active fault traces approximately 500 feet west of the proposed

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<sup>1</sup> The lot slopes down towards Highway 1 with an elevation ranging from approximately 30 feet above mean sea level (MSL) at its bay side to approximately 80 feet above MSL at its inland boundary, with the residential footprint located at the top of the slope.

development, roughly along the Bodega Bay Harbor shoreline and seaward of Highway 1. See **Exhibit 2** for photographs of the site and surrounding area.

The County-approved project includes a 3,754 square-foot single-story, single-family dwelling with a flat roof (that extends along a shoreline orientation some 150 feet); a 600 square-foot single-story, detached garage reached by a some 300-foot long gravel driveway from Harbor View Way; associated native landscaping; and other related development. See **Exhibit 3** for the County-approved project plans.

### **B. Sonoma County CDP Approval**

On April 22, 2021, the Sonoma County Board of Zoning Adjustments (BZA) approved a CDP authorizing the above-described residential development, subject to conditions.<sup>2</sup> This approval was appealed locally, by the current Appellant before the Commission, to the County Board of Supervisors on April 29, 2021, citing concerns regarding the presence of wetlands and sensitive habitat area, seismic constraints, and building heights inconsistent with LCP requirements. The Board upheld the BZA decision, and denied the appeal on April 5, 2022. Notice of the County Board's final action on the CDP was received in the Coastal Commission's North Central Coast District Office on April 11, 2022 (see **Exhibit 5**) and the Coastal Commission's ten-working-day appeal period for this action began on Tuesday, April 12, 2022, and concluded at 5 p.m. on April 25, 2022. One valid appeal was received during the appeal period (see **Exhibit 6**).

### **C. Appeal Procedures**

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) 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, whichever is the greater distance, (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. This County CDP decision is appealable because the development, a residential use, is not the principally permitted use under the LCP because the LCP does not designate a principally permitted use in this zoning district.

For appeals of a CDP approval, grounds for appeal are limited to allegations that the approved development does not conform to the LCP and/or to Coastal Act public access provisions. For appeals of a CDP denial, where allowed (i.e., only allowed in extremely limited circumstances – see description of appealable actions, above), the

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<sup>2</sup> Note that Commission staff sent comments (on October 23, 2019) as the project was pending locally, asking that the County confirm that the project met LCP wetland tests (see **Exhibit 6**), which County staff subsequently confirmed.

grounds for appeal are limited to allegations that the development conforms to the LCP and to Coastal Act public access provisions.

The Commission's consideration of appeals is a two-step process. The first step is determining whether the appeal raises a substantial issue that the Commission, in the exercise of its discretion, finds to be significant enough to warrant the Commission taking jurisdiction over the CDP application. This step is often referred to as the "substantial issue" phase of an appeal. The Commission is required to begin its hearing on an appeal and address at least the substantial issue question within 49 working-days of the filing of the appeal unless the applicant has waived that requirement, in which case there is no deadline for Commission action. In this case, the Applicant has not waived the 49 working day requirement, and thus the substantial issue determination deadline is July 5, 2022.<sup>3</sup>

The Coastal Act and the Commission's implementing regulations are structured such that a substantial issue is presumed when the Commission acts on this question unless the Commission finds that an appeal does *not* raise a substantial issue, and the Commission considers a number of factors in making that determination.<sup>4</sup> At this stage, the Commission may only consider contentions raised by the appeal. At the substantial issue hearing, staff will make a recommendation for the Commission to find either substantial issue or no substantial issue. If staff makes the former recommendation, the Commission will not take testimony at the hearing on the substantial issue recommendation unless at least three Commissioners request it, and, if no testimony is requested, a substantial issue is automatically found. If the Commission does take testimony, it is generally (and at the discretion of the Commission Chair) limited to three minutes total per side, and only the Applicant, Appellant, persons who opposed the application before the local government, the local government, and their proxies/representatives are allowed to testify, while others may submit comments in writing.

If, following any testimony (as applicable) and a public hearing, the Commission determines that the appeal does not raise a substantial issue, then the first step is the only step, and the local government's CDP decision stands. However, if the Commission finds a substantial issue, the Commission takes jurisdiction over the

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<sup>3</sup> July 5, 2022 falls after the Commission's June meeting and before the Commission's July meeting, meaning that the Commission needs to act on this part of the appeal by the June meeting.

<sup>4</sup> The term substantial issue is not defined in the Coastal Act. The Commission's regulations indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (California Code of Regulations, Title 14, Section 13115(b)). Section 13115(c) of the Commission regulations provides, along with past Commission practice, that the Commission may consider the following five factors when determining if a local action raises a substantial 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 and the Coastal Act's public access provisions; (2) the extent and scope of the development; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the local government's decision for future interpretation of its LCP; and (5) whether the appeal raises only local issues, or 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.

underlying CDP application for the proposed project for a full de novo review of the application.

In the second phase of the appeal, if applicable, the Commission must determine whether the proposed development is consistent with the applicable LCP (and, where applicable, the Coastal Act's public access and recreation provisions). This step is often referred to as the "de novo" review phase of an appeal, and it entails reviewing the proposed project in total. Staff will make a CDP decision recommendation to the Commission, and the Commission will conduct a public hearing to decide whether to approve, approve with conditions, or deny the subject CDP. Any person may testify during the de novo phase of an appeal hearing.

#### **D. Summary of Appeal Contentions**

The Appellant contends that the County-approved project raises LCP consistency issues related to wetlands, environmentally sensitive habitat areas (ESHA), seismic constraints, and building height. Specifically, the Appellant contends that: the presence of protected wetland habitat within the property is incompatible with the proposed development; the project's biological report recommends springtime surveys to determine the presence of four sensitive plant species that, if identified on the property, could establish ESHA and as a result, appropriate, LCP-consistent buffers would need to be provided; the property lies within the seismically active Alquist-Priolo Special Studies Zone Act area and this development is incompatible with the Act's established restrictions on development; and the building height is not consistent with LCP height limitations. See **Exhibit 6** for the full appeal contentions.

#### **E. Standard of Review**

The standard of review for considering whether these appeal contentions raise a substantial issue is the certified Sonoma County LCP (which is made up of a certified Land Use Plan (LUP) and a certified Implementation Plan (IP)) and the public access policies of the Coastal Act (which include Coastal Act Sections 30210 through 30224).

#### **F. Substantial Issue Determination**

##### ***Applicable LCP and Coastal Act Provisions***

The LCP provides guidance on protection and identification of wetlands and ESHA, includes policies designed to establish buffers for wetlands as well as ESHA, enforces the requirements of the Alquist-Priolo Special Studies Zone Act, and establishes height limits for development. The LCP also contains Coastal Act Provisions regarding development adjacent to ESHA. Provisions are as follows:

***LCP LUP Environmental Resources Management Recommendations (ERMR) #25.*** Prohibit construction of agricultural, commercial, industrial and residential structures within 100 feet of wetlands.

***LCP LUP Environmental Resources Management Recommendations (ERMR) #26.*** Between 100 and 300 feet of wetlands, prohibit construction of agricultural, commercial, industrial and residential structures unless an



*environmental assessment finds the wetland would not be affected by such construction.*

**LCP LUP Environmental Resources Management Recommendations (ERMR) #58.** *Protect designated sites of rare or endangered plants. Prior to any development in or adjacent to designated sites, conduct precise botanical surveys to determine the distribution of any rare or endangered plants. Botanical surveys should be conducted during natural blooming season of species in question. Development should be sited and designed and constructed to prevent impacts of grading, paving, construction of roads or structures, runoff, and erosion from significantly degrading rare or endangered plant habitats, and shall be compatible with the continuance of such habitat areas.*

**LCP Administrative Manual, Attachment "M", Page 67.** *A buffer area should be established for each development adjacent to environmentally sensitive habitat areas based on the standards enumerated below. The width of a buffer area will vary depending upon the analysis. The buffer area should be a minimum of 100 feet for small projects on existing lots (such as one single family home or one commercial office building) unless the applicant can demonstrate that 100 feet is unnecessary to protect the resources of the habitat area.*

**LCP LUP Geologic Hazards Recommendations (GHR) #3.** *Enforce the requirements of the Alquist-Priolo Special Studies Zone Act for protection from fault rupture hazard.*

**LCP IP Section 26C-125(c)(4), PC (Planned Community).** *East of Highway 1 and visible from designated scenic roads: Residential and commercial height limits are twenty-four feet (24').*

**Coastal Act Section 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.*

## **Analysis**

### Wetlands

The LCP prohibits residential development within 100 feet of a wetland, and only allows such development between 100 and 300 feet from a wetland when an environmental assessment determines that the wetland would not be affected by the development. In this case, the Applicant's biological report<sup>5</sup> identified a small area (0.04-acres) of seasonal wetland, supported by groundwater seepage, where this wetland extends onto

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<sup>5</sup> Prepared by WRA Environmental Consultants, Inc (January 2018).

the upcoast property in the lower portion of the site near its western corner.<sup>6</sup> However, the development footprint ranges from 100 to 300 feet in distance from identified wetlands, thus meeting the LCP's required 100-foot minimum wetland setback, and averages roughly a 200-foot setback. The Applicant's report concluded that the project could be constructed within 100 to 300 feet of the wetland without affecting it, and the County concurred. Given the horizontal distances between the development footprint and the wetland, the roughly 50-foot in elevation distance between the development footprint and the wetland, the various siting and design standards approved by the County to avoid wetland impacts (e.g., filtering, treating, and directing residential drainage away from the wetland), and the status of the wetland as a fringe of a larger wetland, the County's determination appears reasonable, satisfies LCP wetland requirements, and does not raise a substantial issue regarding protection of wetlands.

### ESHA

The LCP protects ESHA, and suggests that surveys for potential sensitive plant species be undertaken during the relevant blooming period for relevant plants in order to make accurate ESHA determinations. Where ESHA is determined to be present, the LCP requires a buffer between development and the identified ESHA. The LCP suggests a 100-foot buffer but also allows for smaller buffers if it can be demonstrated that a smaller buffer is sufficient to protect the resource. In this case, the Applicant's biological report notes a northern coastal scrub community on a portion of the site nearest Harbor View Way, but the report did not identify any special status species during site surveys. Rather, the report identified that four sensitive plant species and one sensitive animal species had a "moderate potential"<sup>7</sup> to occur in the project area.<sup>8</sup> Given that the survey for these plant species was completed during a November time period, the project biologist recommended a follow-up survey during the appropriate blooming seasons of the relevant plant species.<sup>9</sup> It is worth noting, however, that CalFlora and the California Native Diversity Database (CNDDDB)<sup>10</sup> do not have records of these sensitive plant species occurring on the site.

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<sup>6</sup> The report relied on USFWS wetland delineation parameters, which use the same one-parameter metric as the LCP and the Coastal Act (i.e., where the presence of either hydrophytic plant species, hydric soils, or hydrology are enough to qualify an area as a wetlands).

<sup>7</sup> Moderate potential is defined by the report as "Some of the habitat components meeting the species requirements are present, and/or only some of the habitat on or adjacent to the site is unsuitable. The species has a moderate probability of being found on the site."

<sup>8</sup> Sensitive plants were the Coastal Bluff Morning-glory (*Calystegia purpurata* ssp. *saxicola*), Bakers Goldfields (*Lasthenia californica* ssp. *bakeri*), Perennial Goldfields (*Lasthenia californica* ssp. *macrantha*), and Oregon Polemonium (*Polemonium carneum*), and sensitive wildlife was the Bryant's savannah sparrow (*Passerculus sandwichensis alaudinus*). The plants are identified by the California Native Plant Society as rare, threatened, or endangered, but none of the species (neither plants or animals) are listed under the Federal or California Endangered Species Act.

<sup>9</sup> Blooming seasons for the four identified plant species overlap from the months of April to June.

<sup>10</sup> CalFlora (a non-profit organization) and CNDDDB (a nationwide network run by NatureServe) are biological resource databases that provide indications of plant presence in a given area, and are used by Commission staff to compare presence/absence against the on-the-ground biological resource assessments. They are not considered comprehensive records and should not replace any resource assessments required otherwise.

Ultimately, however, the County did not require further surveys, and did not treat the area in question as ESHA. There is some factual support for the conclusion that ESHA is not located on the site, including the Applicant's biological report and the aforementioned plant databases. However, given the LCP's ESHA protections emanate from appropriate ESHA identification in the first place, the County's approach to evaluating the project's potential impacts to ESHA on site is problematic in this case. Despite this, in terms of the contentions on appeal, even presuming for the sake of argument that this area is ESHA, there is support in the County's record for the conclusion that any undetected ESHA that may potentially exist on the site would be adequately protected. Although the LCP requires a 100 foot buffer from ESHA, reduced buffers are allowed if 100 feet is "unnecessary to protect the resources of the habitat area." Here, although the development footprint overlaps with about 10 feet of coastal bluff scrub, the coastal bluff scrub is unlikely to constitute ESHA on its own. The configuration of the rest of the potential ESHA extending down the slope and away from the development footprint, and the various siting and design provisions adopted by the County (e.g., pre-construction nesting bird surveys, drainage and water quality BMPs, etc.) will minimize potential impacts of development on any adjacent ESHA. In short, although the County's decision may not be fully consistent with the LCP's process for determine if sensitive plant ESHA exists on the site, there is factual and legal support for the conclusion that ESHA is adequately protected as the LCP requires in this case, and this does not raise a substantial issue of LCP conformance regarding ESHA protections.

#### Seismic Concerns

The LCP requires development to follow Alquist-Priolo Special Studies Zone Act requirements, which, as applicable to the appeal contentions, prohibits construction of certain houses within identified active fault zones without a comprehensive geologic investigation in certain circumstances. In this case, the project's geotechnical investigation<sup>11</sup> determined that the property is located within 500 feet of active fault traces, and therefore falls within the purview of Alquist-Priolo. Thus, to be LCP consistent, the project has to meet Alquist-Priolo requirements that adhere to it. However, Alquist-Priolo does not have any requirements for this type of development,<sup>12</sup> and thus the approved project meets LCP seismic tests, and does not rise to a level of substantial issue on appeal.

#### Maximum Building Height

The LCP allows buildings in this Planned Community zoning district east of Highway 1 up to 24 feet in height. The approved development has a maximum height of 23 feet 5/8 inches, and thus is consistent with LCP maximum height requirements. Thus, the

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<sup>11</sup> Prepared on March 21, 2018, by PJC & Associates.

<sup>12</sup> Specifically, Alquist-Priolo Sections 2621.6.(a)(2)(A) and 2621.6.(a)(2)(B) create exceptions from the requirements of the Act for "single-family wood frame dwellings not exceeding two stories when such dwelling is not part of a development of four or more dwellings." The approved development here is wood-framed, single-story and single-family that is not part of a multi-unit development, thus meeting the exception criteria.

approved development meets LCP maximum height requirements, and this is not a substantial issue with regard to LCP conformance.

#### Five Factors

When considering a project that has been appealed to it, the Commission must first determine whether the local government's decision on the project raises a substantial issue of LCP conformity, such that the Commission should assert jurisdiction over the CDP application 'de novo' (i.e., completely reviewing the project for LCP and Coastal Act consistency, as appropriate) 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 conformance. 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: the degree of factual and legal support for the County's decision; the extent and scope of the development as approved or denied by the County; the significance of the coastal resources affected by the decision; the precedential value of the County's decision for future interpretations of its LCP; and, 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 County's approval of a CDP for the proposed project does not raise a substantial issue of LCP conformance. First, in terms of factual and legal support, the County's record includes information regarding wetland delineation, identification of potential sensitive species, and details regarding both the exceptions to the Alquist-Priolo Special Studies Zone Act and the maximum height requirements for this zoning designation, all of which support County findings for LCP consistency. While the County did not require surveys that would have more precisely determined ESHA, a biological survey was conducted that did not identify ESHA on site and the project was designed and conditioned in a way that appears likely to protect any potential ESHA that might not have been detected by the Applicant's survey. In short, there is factual and legal support for the County's decision to approve the project as consistent with the certified LCP. Thus, the degree of support for the County's decision is adequate in this case, and the first factor weighs in favor of finding no substantial issue.

Second, regarding the extent and scope of the County-approved development, the proposed development is limited to a single-family, single-story residence and associated development. While this single-family residence is relatively large, at 3,754 square-feet, it is confined to one area of the property, and the County verified the flat roof design that runs parallel to the contours of the parcel kept "the profile of the residence low and nestled into the site", therefore the project as approved by Sonoma County is limited in scope. Therefore, the second factor weighs in favor of finding no substantial issue.

With respect to the significance of the coastal resources affected, the County's findings demonstrate the primary coastal resources that may be affected by the proposed project are biological resources. While there is the potential for nesting birds on the site,

the County's approval incorporates mitigation measures accounting for nesting birds.<sup>13</sup> There is also the potential for sensitive species to occur on the site, however, the project is not expected to result in any type of significant impact to them, given the moderate likelihood of presence of these species, the location in which they are expected to be found, the small area of theoretical impact, and the required BMPs. Therefore, the third factor also weighs in favor of a finding of no substantial issue.

Further, with regard to the fourth factor, the potential for the local decision to set an adverse precedent for future interpretations of the LCP, the County's decision sets no particular precedent for LCP interpretation, as the project does not differ in any significant way from other proposed residential housing developments. While a more complete survey during the blooming period of the identified sensitive plant species would have been preferred, the lack of one here does not change required LCP outcomes. The Commission believes that it has made its point clear for future projects that it is important for the County to make ESHA determinations conclusively as part of project review, including so that LCP requirements can be addressed appropriately. Even in this regard, this particular project will not result in any significant adverse coastal resource impacts, and a finding of no substantial issue will not create an adverse precedent for future interpretation of the LCP. Therefore, the fourth factor also weighs in favor of finding no substantial issue.

Finally, as to the fifth factor, the project raises primarily local issues relevant to the potential impacts of one residence on discontinuous wetlands and potential ESHA on a single site. Given the conditions of the local permit, the siting of the proposed development to avoid impacts to wetlands and ESHA, and the low risk of harm to ESHA, the issues raised by the appeal do not rise to the level of statewide significance. Therefore, the fifth factor supports a no substantial issue determination.

In this case, these five factors, considered together, support a conclusion that the County's approval of a CDP for this project does not raise a substantial issue of LCP conformance. There is adequate factual and legal support for the County's decision to approve the project and the scope of the approved development, potential harm to coastal resources, and potential precedential value of the local decision are all relatively minor.

#### Substantial Issue Conclusion

For the reasons stated above, the Commission finds that Appeal Number A-2-SON-22-0015 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, and the Commission declines to take jurisdiction over the CDP application for this project.

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<sup>13</sup> Including requiring that a wildlife biologist conduct a survey of the site within 14 days of the start of work to determine the potential presence of active nests of migratory birds if construction is initiated between February 1 and August 31.

### 3. APPENDICES

#### **A. Substantive File Documents<sup>14</sup>**

- County Council Resolution
- WRA, Inc. Biological Resources Assessment
- Sonoma County File for CPH 18-0009

#### **B. Staff Contact with Agencies and Groups**

- Sonoma County Planning Department
- Save the Sonoma Coast

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<sup>14</sup> These documents are available for review from the Commission's North Central Coast District office.