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Staff: T. Garcia
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Hearing Date: 3/8/2023

STAFF REPORT: APPEAL SUBSTANTIAL ISSUE DETERMINATION ONLY

Appeal No.: A-1-MEN-23-0001

Applicant: Julia Carson

Local Government: County of Mendocino

Local Decision: Approval with Conditions

Location: 45380 Caspar Point Road, Caspar, Mendocino County
(APN: 118-010-27)

Project Description: Coastal Development Permit to renovate an existing residence, add decking, and install a generator, roof-mounted solar, and replacement leach field, and construct a detached guest cottage. Development would be phased, including temporary occupancy of the Guest Cottage during renovation of the existing residence.

Appellants: Ray and Loraine Duff

Staff Recommendation: No Substantial Issue

IMPORTANT HEARING PROCEDURE NOTE

This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeals raise a substantial issue. Generally, and at the discretion of the Chair, testimony is limited to 3 minutes total per side (although the Chair has the discretion to modify these time limits). Please plan your testimony accordingly. Only the applicant, appellants, persons who opposed the application before the local government

(or their representatives), and the local government shall be qualified to testify; others may submit comments in writing (14 CCR § 13117.) The Commission will accept the appeal for a full de novo review unless it determines that the appeal raises no substantial issue. Otherwise, the Commission takes jurisdiction over the underlying coastal development permit (CDP) application and will 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

The County of Mendocino approved a CDP to renovate an existing single-family residence (SFR), construct a detached guest cottage, add decking, and install a generator, roof-mounted solar, and replacement leach field at 45380 Caspar Point Road in Mendocino County. The approved project would be phased, including temporary occupancy of the guest cottage during renovation of the SFR. An appeal was filed by Ray and Loraine Duff raising contentions that concern temporary use of the guest cottage as a residence, visual resource protection, adequacy of water supply to serve the proposed use, issues related to a private road used to access the site, and alleging application inconsistencies and public noticing errors.

Staff recommends that none of the contentions raise a substantial issue as to the approved project's consistency with the certified LCP. In terms of land use, residences and associated accessory uses and structures, including guest cottages, are principally permitted in RR-designated districts. Further, temporary occupancy of a guest cottage while renovating a primary dwelling is permitted under the County's IP. The remodeled SFR and new guest cottage are consistent with rural zoning standards and are within the scope and character of neighboring development. The project as proposed has adequate drinking water, sewer, and road services at the site. Adequate avoidance and mitigation measure to protect onsite ESHA are in place, including identification of the 100-foot ESHA buffer using orange construction fencing, submittal of a construction Staging Area Plan, and measures to reduce invasive plant intrusion into the project site. Condition 13 stipulates that the proposed generator shall be installed with noise-dampening features and located outside of ESHA and ESHA buffers. Overall, there is a high degree of legal and factual support for the County's decision that the approved project as conditioned is an allowable use, will continue to protect the visual resources of the site, and includes measures to conserve groundwater and minimize adverse environmental effects. The extent and scope of the project is relatively limited in scale, and due to this limited scope, the significance of affected coastal resources is minimal. Staff therefore recommends that the Commission, after public hearing, determine that the appeal contentions do not raise a substantial issue of LCP conformance, and staff recommends the Commission decline to take jurisdiction over the CDP application for this project.

The motion to adopt the staff recommendation of No Substantial Issue is found on page 4.

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APPENDICES

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EXHIBITS

[Exhibit 1 – Project Site Maps](#)

[Exhibit 2 – Mendocino County Final Action Notice dated 1.2.2023](#)

[Exhibit 3 – Appeal File Packet dated 1.11.2023](#)

I. 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 would not take jurisdiction over the underlying CDP application for the proposed project and would not conduct further hearings on this matter, and that the local government CDP decision stands and is thus final and effective. To implement this recommendation, staff recommends a **yes** vote on the following motion which, if passed, will result in the recommended no substantial issue finding. If the motion fails, then the Commission will have found a substantial issue and will take jurisdiction over the subject CDP application; however, the de novo portion of the hearing will be held at a future date. 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-1-MEN-23-0001 **raises no substantial issue** with respect to the grounds on which the appeal has been filed under Section 30603, and I recommend a **yes** vote.

Resolution:

The Commission finds that Appeal No. A-1-MEN-23-0001 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved development with the certified Local Coastal Program and/or the public access policies of the Coastal Act.

II. Findings & Declarations for No Substantial Issue

A. Project Description

Approved Project

The approved project is described in the County staff report, in part, as follows:

.... minor additions (48 square-feet) and substantial interior renovations to the existing residential home. New entryway decking, roof-mounted solar arrays, and replacement composition roof shingles on the existing residential home. A new 623 square-foot guest cottage with a 672 square-foot wrap-around deck is proposed south of the home. The application includes phasing of development, including, construction of the guest cottage, followed by temporary occupancy of the guest cottage while commencing interior renovations to the existing residence, and finally re-occupying the residence once renovations are complete.

A 100 square-foot shed and a 32 square-foot generator (with noise-dampening cabinets) will be installed outside of ESHA and ESHA buffers. Although the

proposed development does not immediately require a new leach field, a replacement leach field location has been identified in compliance with Mendocino County Department of Environmental Health. The new leach field location is outside of ESHA, ESHA buffers, and the bluff setback area, and it may be installed during the effective period of the approved project (within two years). Deferred installation will require a new Coastal Development Permit or permit amendment.

Mitigation and avoidance measures for the project include a.) seasonal and nest avoidance of birds, b.) pre-construction surveys for bats and limiting construction activities during daylight hours, c.) measures to avoid amphibians, d.) employing a 100-foot buffer, orange construction fencing, and Best Management Practices to protect Tufted Hairgrass Meadow ESHA, and e.) measures to reduce invasive plant encroachment and encourage native vegetation plantings.

The full project description is provided as Exhibit 2.

Related Permits

In addition to the project that is the subject of this appeal (CDP 2021-0002) two other CDP applications for projects on the subject site are on file or in process with Mendocino County, CDPs 2019-0003 and 2019-0027. CDP 2019-0003, approved in 2021, authorized subdivision of the subject 4.67-acre parcel into a 2.67-acre parcel (the western portion of the parcel, where the existing residence and proposed development subject to this appeal is proposed) and a 2-acre undeveloped parcel. The subdivision was approved June 17, 2021, was not appealed, and the new parcel recordation was finalized in January 2023. Proposed CDP 2019-0027, still in process with the County, proposes to construct a single-family residence on the newly created 2-acre parcel. Neither the subdivision permit (CDP 2019-0003) nor the permit for the new residential development on the 2-acre parcel (CDP 2019-0027) is functionally dependent on the subject permit that was appealed (CDP 2019-0002).

B. Project Location and Environmental Setting

The project site is located west of Highway 1 on a blufftop lot in the community of Caspar, approximately five miles south of the City of Fort Bragg (Exhibit 1). The zoning of the subject site and the majority of the surrounding properties in the immediate vicinity is Rural Residential 5-acre minimum, with 2-acre variable density (RR5 [RR2]) (Exhibits 1 and 2). The site is designated "Highly Scenic" under the County's certified Local Coastal Program (LCP) where a number of policies and standards to protect visual resources apply. Nearby public areas include Jug Handle State Natural Reserve and Jug Handle Beach to the north and Caspar Headlands State Natural Reserve and Caspar Beach to the south.

C. Local Government Action

On December 22, 2022, the Mendocino County Coastal Permit Administrator (CPA) approved Coastal Development Permit (CDP) no. CDP_2021-0002 with conditions. The

CDP authorized the project as described above. The County granted its approval for the CDP subject to twenty-six (26) conditions including, but not limited to conditions related to procedures for inadvertent discovery of archaeological resources, implementation of mitigation and avoidance measures, ensuring all structures and building materials are subordinate to the highly scenic natural setting, water conservation technology and groundwater recharge measures, and recordation of a deed restriction prohibiting shoreline protective devices, removal of structures when bluff retreat threatens development, limiting activities within identified environmentally sensitive habitat areas, and use the guest cottage as a subordinate structure incidental to the primary residence.

The County's Notice of Final Action is attached as Exhibit 2.

D. Filing of Appeal

On January 6, 2023, the Commission received the County's Notice of Final Action (Exhibit 2), and on January 17, 2022, the Commission received an appeal of the County's approval from Ray and Lorraine Duff (Exhibit 3). The appeal was filed in a timely manner, within 10 working days of receipt by the Commission of the County's Notice of Final Action.

E. Appeal Jurisdiction and Procedures

Pursuant to section 30603(a), the County's approval is appealable to the Commission, because the approved development is (a) located between the sea and the first public road (Highway 1), (b) within 300 feet of the top of the seaward face of any coastal bluff and (c) located in an area designated Highly Scenic under the LCP and therefore 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 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. The Commission is required to begin its hearing on an appeal, addressing 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. The Coastal Act and the Commission's implementing regulations are structured such that there is a presumption of a substantial issue when the Commission acts on this question, and the Commission generally considers a number of factors in making that determination. The term "substantial issue" is defined in section 13115 of the Commission's regulations:

“When determining whether the appeal raises a substantial issue, the Commission may consider factors, including but not limited to:

- (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 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 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.”

At this stage, the Commission may only consider issues brought up by the appeal.

Commission staff has analyzed the County’s record for the approved project, including, but not limited to the County’s Notice of Final Action for the approval, the County’s staff report, and the appellants’ claims. Staff is recommending that the Commission find that the appeal of the County’s action raises no substantial issue with respect to the grounds on which the appeal was filed.

In this case, because staff is recommending that the appeal raises no substantial issue, the Commission will hear arguments and vote on the substantial issue question. Generally, and at the discretion of the Chair, qualified persons will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission on the substantial issue question are the applicant, the appellants, persons who opposed the subject application before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. It takes a majority of Commissioners present to find that no substantial issue is raised.

If, following testimony 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 approval will stand. However, if the Commission finds a substantial issue, the Commission takes jurisdiction over the underlying CDP application for the proposed project, and the appeal heads to the second phase of the hearing on the appeal. In this case, the Commission would continue the de novo portion of the appeal hearing to a subsequent meeting.

F. Summary of Appeal Contentions

Listed below is a summary of the contentions raised by the appeal (in no particular order). The full appeal document is included as Exhibit 3.

1. Temporary occupancy of the guest cottage and use as a 'dwelling' is inconsistent with the County's certified LCP because it is not a permitted land use.
2. The project is not compatible with the scope and character of the surrounding area.
3. The project is inconsistent with the County's certified LCP because there was not an adequate determination of water, sewer, and road capacity to serve the temporary occupancy of the guest cottage and subsequent use as a subordinate structure (without kitchen and not to be rented).
4. The project as approved is inconsistent with the ESHA protection policies of the LCP because the proposed generator exceeds acceptable residential noise levels.

For the reasons discussed below, the Commission finds that none of the above contentions raise a substantial issue of conformance of the approved development with the policies and standards of the County's LCP or with the public access policies of the Coastal Act.

G. Substantial Issue Determination

1. Analysis of Contentions

a. Contentions Regarding Land Use

The appeal contends that construction and use of the guest cottage, including temporary occupancy, is not a permitted land use intended for Rural Residential designated areas.

The project proposes to renovate an existing single-family residence (SFR) and construct a new guest cottage on a parcel designated Rural Residential. First, the guest cottage structure will be constructed and temporarily occupied and used as a temporary dwelling (with kitchen and cooking facilities) while the existing SFR is renovated. Once the renovations to the residence are complete, the property owner will reoccupy the SFR and convert the temporary dwelling to a guest cottage (without kitchen and cooking facilities). The LCP defines a guest cottage as follows:

IP Section 20.308.050(l):

"a detached building (not exceeding six hundred forty (640) square feet of gross floor area), of permanent construction, without kitchen, clearly subordinate and incidental to the primary dwelling on the same lot, and intended for use without compensation by guests of the occupants of the primary dwelling."

The subject parcel is zoned RR-5[2], meaning that there may be one parcel for every five acres, or one parcel for every two acres, with proof of water. LUP Policy 3.9-1 states as follows:

“An intent of the Land Use Plan is to apply the requirement of Section 30250(a) of the Act that new development be in or in close proximity to existing areas able to accommodate it, taking into consideration a variety of incomes, lifestyles, and location preferences. Consideration in allocating residential sites has been given to:

- each community's desired amount and rate of growth.*
- providing maximum variety of housing opportunity by including large and small sites, rural and village settings, and shoreline and inland locations.*

In addition to the considerations pertaining to the allocation of residential sites listed above, all development proposals shall be regulated to prevent any significant adverse effects, either individually or cumulatively, on coastal resources.

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

Consistent with LUP Policy 3.9-1, one residential unit is permitted per parcel. The intent of lands designated Rural Residential (RR) is to “encourage local small scale food production (farming) in areas not well suited for large scale commercial agriculture... The Rural Residential classification is not intended to be a growth area and residences should be located as to create minimal impact on agricultural viability.” Principally permitted uses in RR zones are residences, associated utilities, light agriculture, and home occupation. Conditional uses are cottage industry, recreation, education, conservation and development of natural resources, and public facilities and utilities. Although light agriculture for small scale food production is principally permitted in RR districts, development of housing within designated parcels is not contingent on concurrent use of the land for agricultural uses, such as those designated Agriculture (AG) or Rangelands (RL).

A guest cottage is an accessory living unit, a subset of accessory buildings and structures permitted with residential development per MCC 20.308.020 (H). Up to one guest cottage per parcel is permitted in zoning districts which allow development of single-family residences. MCC Sec 20.456 Accessory Use Regulations, elaborates, *emphasis added*:

MCC Sec 20.456.010- Accessory Uses Encompassed by Principal Permitted Use.

(A) “In addition to the principal permitted uses expressly included in the zoning districts such use types shall be deemed to include such accessory uses”

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which are specifically identified by these Accessory Use Regulations; and such other accessory uses which are necessarily and customarily associated with, and are appropriate, incidental, and subordinate to, such principal permitted uses...

MCC Sec 20.456.015- Residential and Agricultural Use Types.

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

...

(G) Accessory Living Unit. Not more than one (1) guest cottage or detached bedroom may be permitted on each legal parcel...”

Thus, as discussed in the County’s findings for approval, redevelopment of the residence and associated accessory uses and structures, including up to one guest cottage, is principally permitted in RR-designated districts.

The County’s findings discuss the relevant regulations regarding temporary occupancy of accessory structures, including an allowance for temporary occupancy of buildings during construction (emphasis added):

MCC Sec 20.456.010- Accessory Uses Encompassed by Principal Permitted Use.

“...

(B) An accessory structure may be constructed prior to the construction of a dwelling on the premises. An accessory structure shall not be used for temporary or permanent occupancy as a residence, without compliance with Section 20.460.025 (Construction Support). Accessory uses and structures shall be subject to the provisions of Chapter 20.532 (Permit Regulations) and where applicable Chapter 20.504 (Visual Resource and Special Treatment Areas”

MCC Sec 20.460.010- Identification of Permitted Temporary Uses.

“The following temporary uses and associated development may be permitted as specified by these regulations:

...

(B) Construction Support. Temporary building and structures supporting residential development and/or major construction.”

MCC Sec 20.460.025- Construction Support.

“The temporary occupancy of buildings during the course of construction may be permitted upon the issuance of a Coastal Development Administrative Permit pursuant to Chapter 20.532.

...
(B) *Minor Construction. Temporary use and occupancy of an existing dwelling while constructing a new residence.”*

As cited above, the proposal to construct the guest cottage structure and occupy it as a temporary dwelling with kitchen and cooking facilities prior to reconstruction of the SFR complies with the temporary use regulations of the certified LCP, which allow (1) construction of an accessory structure prior to the construction of a dwelling on the premises; and (2) the permitting of temporary structures supporting residential development and/or major construction. Moreover, the phased aspect of the project (first, construction of the guest cottage structure as a temporary dwelling while occupying the SFR followed by occupation of the guest cottage while renovating the SFR and then re-occupying the SFR upon completion of work) ensures that only one dwelling unit will occupy the subject parcel at any given time, consistent with LUP Policy 3.9-1 and the temporary occupancy regulations cited above.

The County’s approval includes multiple conditions to enforce phased development and to ensure that use of the guest cottage as a dwelling is consistent with the above referenced policies. First, Special Condition 11 permits temporary occupancy of the guest cottage while the SFR undergoes renovations for a maximum of 2 years, after which time further occupancy of the guest cottage will require a new or amended CDP. The condition further requires County Building Inspection approval to confirm the reconversion of the guest cottage to its intended subordinate use before authorizing reoccupation of the SFR. Special Condition 10 specifies the definition of guest cottage in compliance with MCC Section 20.308.050(I), which prohibits the structure from containing kitchen/cooking facilities (after it is converted from its temporary dwelling use to a guest cottage following completion of construction). Special Condition 15 (g) requires that the use limitations of the guest cottage (limitations on size and kitchen/cooking facilities) be recorded against the property in a deed restriction running with the land.

Thus, there is a high degree of legal and factual support for the County’s decision that the project as conditioned conforms with the land use policies of the certified LCP, and this contention does not raise a substantial issue of LCP conformity.

b. Contention Regarding Visual Resources Impacts

The appeal contends the project is inconsistent with Caspar community compatibility standards and is out of scope and character with the low-density neighborhood that is planned under the LCP to serve as a buffer to Jug Handle Reserve.

The subject parcel is designated “Highly Scenic” in the certified LCP (LUP Map 15, Exhibit 1). Projects within mapped Highly Scenic Areas are subject to the development

criteria prescribed in section 20.504.015(C) of the IP. The development criteria require projects to protect coastal views from public areas (including highways), generally limit new development to less than 18 feet above natural grade and require new development to be subordinate to the natural setting by, for example minimizing reflective surfaces.

The existing single-family residence is not currently visible from Jug Handle or Caspar Beach to the north and south, respectively. However, the subject property, surrounding residential uses, and the ocean, are visible from Highway 1 to the east. The appeal asserts that the project is inconsistent with the Caspar community compatibility standard of IP section 20.504 Visual Resource and Special Treatment Areas:

LUP Policy 3.5-2 states, in applicable part:

...
Other communities and service centers along the Mendocino Coast including Westport, Caspar, Little River, Albion, Elk and Manchester shall have special protection to the extent that new development shall remain within the scope and character of existing development by meeting the standards of implementing ordinances.

Sec 20.504.020 - *Special Communities and Neighborhoods.*

“...
(B)The communities and service centers, designated as CRV or CFV, of Westport, Caspar, Albion, Elk and Manchester, and the additional areas of Little River, Anchor Bay and Gualala, as described below, shall have special protection as set forth in Section 20.504.020(C):

...
(C)Development Criteria. (1) The scale of new development (building height and bulk) shall be within the scope and character of existing development in the surrounding neighborhood. (2) New development shall be sited such that public coastal views are protected... (4) Building materials and exterior colors shall be compatible with those of existing structures.”

However, section 20.504.020 applies to certain communities and service centers designated as CRV or CFV, and the project is not located within or adjacent to areas of Caspar zoned CRV or CFV. Therefore, this policy is not applicable to the approved project. Nevertheless, the only additional structure permitted under this CDP is a 623-square-foot accessory guest cottage, which conforms with the maximum size allowed for guest cottages under the LCP (640 square feet). The cottage will be constructed using design and color schemes similar to the SFR, and it will be located in close proximity to the residence (clustered) and at sufficient setback distances away from property boundaries as required by the LCP. The proposed development also meets lot coverage limits (less than 15 percent), consistent with the RR land use designation. Guest cottages are a permitted use on RR lands and do not represent an increase in density. The past subdivision of the subject property that was permitted in 2021 under CDP 2019-0003 is not within the scope of the current County action, and proposed CDP 2019-0027 proposing to construct a single-family residence on the newly created

adjacent 2-acre parcel is still in process. As noted in the County's findings for approval, and as required by Special Conditions 17 and 20, the project design will minimize visual impacts in the designated Highly Scenic Area by (1) limiting the colors and materials used in the renovation of the SFR and new guest cottage to a natural palette that is subordinate to its setting, (2) limiting structure height to a maximum height of 18 feet, and (3) minimizing reflective surfaces and outdoor lighting.

Thus, there is a high degree of legal and factual support for the County's finding that the project as conditioned protects visual resources as required by the LCP.

c. Contention Regarding Adequate Services

The appeal contends there was not proof of adequate services to support approval of the proposed project as required in the LCP, specifically, (1) proof of water and sewer capacity to serve the continued use of the primary residence and use of the new proposed guest cottage and (2) continued access to the site via the existing private road to the property.

Water Supply

As discussed, the proposed project includes construction of a new guest cottage and redevelopment of an existing single-family residence on a residentially zoned parcel. The guest cottage, once constructed, will be connected to the existing well on the property that currently provides sufficient water supply to the SFR.

The property is located in a Critical Water Resource Area. LUP Policy 3.9-1 allows one SFR per parcel, provided there are adequate services. The LCP requires that proof of water be demonstrated consistent with County Department of Environmental Health (DEH) guidelines. IP sec. 20.308.095(M) clarifies that demonstrating proof of an "adequate water supply" involves testing and evaluating an aquifer to determine if it is possible to produce and store sufficient quantities of water to support proposed uses which will not adversely affect contiguous or surrounding uses. IP section 20.308.095(M) incorporates by reference the DEH minimum water supply requirements necessary for single family residences. According to these requirements, the minimum water supply for an individual residence should be 1.0 gallons per minute (gpm) but could be reduced to between 0.5 and 1.0 gpm if supplemented with water storage capacity of 2,500 gallons or more. The requirements further state that "in no case will a supply of less than 0.5 gpm be considered acceptable for individual residences."

The County's findings for approval note that water studies were completed on the subject property a couple of years ago in support of the subdivision of the parcel under CDP 2019-0003. These studies confirmed that the existing well and water storage tank on the subject property adequately serve the SFR (0.8 gpm + onsite storage). Proof of additional adequate water supply, however, is not required under the LCP for development of a guest cottage, which is an accessory use to residential development, does not increase the density of development, and generally does not cause a substantial increase in use of water since it is, by definition, prohibited from being

separately rented or from having kitchen and cooking facilities that would allow for permanent residency.

Moreover, as the applicants temporarily occupy the guest cottage structure during renovation of the SFR, the SFR in renovation will be vacant. Thus, no intensification of the use of water on the site will occur during the temporary occupancy phase. Lastly, the County imposed Special Conditions 23-26, which require the project to comply with various water conservation measures intended to minimize use of water associated with the guest cottage and increase groundwater recharge.

Septic System

The existing septic system requires minor repairs to the septic tank and pump chamber and replacement leach field lines. Repairs will not increase the capacity of the system. Replacement leach lines are required because the current leach line location has become oversaturated. The new leach field lines will be same size as the existing lines.

Mendocino County Division of Environmental Health (DEH) has approved the connection between the existing septic system and the proposed guest cottage, indicating the existing septic system can adequately serve the guest cottage without increasing the size of the system. Additionally, the future location for replacement leach lines has been identified and approved by DEH (and is outside of ESHA, ESHA buffers, and the geologic blufftop setback). Therefore, adequate proof of sewer system capacity exists, satisfying LUP policy 3.9-1.

Special Conditions 21 and 22 recommend sewer connections are finalized prior to the issuance of the building permit for the Guest Cottage and that repairs to the septic system are made during the effective period of the approved permit, otherwise repair will require a new amendment CDP.

Road Access

The property is accessed via Caspar Frontage Road, a small private road used to access about 12 residential parcels west of Highway 1. Property owners in this area have begun collaborations to replace a culvert located underneath Caspar Frontage Road near its intersection with the County-maintained road, Caspar Road. Culvert replacement has not yet occurred, however, and the appellants contend that the road in its current state cannot support the proposed project and that, if the project is approved, the road should first be improved to accommodate it. However, continued use of the road to access the subject property which already contains an existing SFR will not be substantially affected by the project. First, the culvert is not within or directly adjacent to the subject parcel. Project activity will primarily take place at the subject site, over 300 feet away from the culvert location. Project activity will cause only temporary and minor traffic increases and will not feasibly degrade the existing condition of the road or damage the underlying culvert. Furthermore, the road culvert functions to transport accumulated water from wetlands on either side of Caspar Frontage Road. Road

maintenance and culvert replacement would require detailed studies on impacts to wetland ESHA and other potential ESHA in and near the culvert as well as other specific plans relating to culvert replacement, including project design and funding. These details have not been finalized as they are part of the larger neighborhood-scale plan to maintain the road. Thus, replacement of the culvert is both unnecessary for and out of scope with the proposed project.

Therefore, because use of the existing private road will not substantially degrade the condition of the road there is a high degree of legal and factual support for the County's finding that the project as conditioned, includes adequate access able to accommodate the proposed project. Furthermore, as previously discussed, there is a high degree of legal and factual support for the County's decision that the project as conditioned includes adequate water and onsite wastewater services as required by the LCP.

d. Contention Regarding ESHA

The subject site contains Tufted Hair Grass Meadow ESHA along the western blufftop. The existing residence and septic system are within the ESHA buffer, ranging from approximately 30-80 feet away from ESHA in some places. The appeal asserts the proposed generator will be within the ESHA buffer, however, according to the County's findings and conditions, the proposed guest cottage, shed, and generator with noise-dampening features will not be within the ESHA or buffer. Special Condition 13(b) requires the generator, its cement pad, and noise-dampening cabinet to be located entirely outside of ESHA and ESHA buffer areas. Required ESHA mitigation and avoidance measures are identified in Special Condition 14 of the County's approved permit and include measures to identify the 100-foot ESHA buffer using orange construction fencing, submit a construction Staging Area Plan, and measures to reduce invasive plant intrusion into the project site. Special Condition 13 limits development within the ESHA and ESHA buffer and requires a CDP or CDP amendment for any future development within ESHA and ESHA buffers. Special Condition 13 also stipulates that the proposed generator shall be installed with noise-dampening features and located outside of ESHA and ESHA buffers. Special Condition 15 records the boundaries of the ESHA and ESHA buffer in the deed restriction. Thus, the County's findings for approval demonstrate that the approved project as conditioned will not degrade the quality of and is compatible with ESHA and ESHA buffers.

2. 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, such as in this case) 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 to, assign a particular weight to a factor when making a substantial issue determination. The Commission may also consider other determinants as well. In this case, these five factors considered together support a conclusion that the appeal does not raise a substantial issue as to the County-approved project's consistency with the LCP.

In this case, the County approved the proposed development with findings and conditions sufficient to demonstrate that the guest cottage will not represent an increase in density in this low density area that borders Jug Handle Reserve, there are adequate services to serve the proposed guest cottage, and the temporary occupancy of the structure during the permitted home renovation is allowed under the LCP. As sited and designed, the guest cottage will protect scenic and visual resources by (1) limiting the colors and materials used in the renovation of the SFR and new guest cottage to a natural palette that is subordinate to its setting, (2) limiting structure height to a maximum height of 18 feet, and (3) minimizing reflective surfaces and outdoor lighting.

The extent and scope of the project is relatively limited in scale as it merely consists of a 623-square-foot accessory guest cottage, which conforms with the maximum size allowed for guest cottages under the LCP (640 square feet) and which meets lot coverage limits. Due to this limited scope, the significance of affected coastal resources is minimal. In addition, the County's approval as conditioned conforms with setback requirements for ESHA and blufftop hazards, as required by the LCP. The County's decision does not involve any novel LCP interpretive issues and would not set an adverse precedent for future interpretations of the County's LCP. Finally, while the project does raise issues of regional or statewide significance (primarily protection of visual and groundwater resources and ESHA), as previously discussed, there is a high degree of legal and factual support that the approved project as conditioned will continue to protect coastal resources consistent with the LCP.

Therefore, especially given the high 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 as conditioned does not raise a substantial issue of LCP conformance. For the reasons stated above, the Commission finds that Appeal Number A-1-MEN-23-0001 does not present a substantial issue with respect to the grounds upon which the appeal was filed under section 30603 of the Coastal Act, and the Commission declines to take jurisdiction over the CDP application for this project.

APPENDIX A
SUBSTANTIVE FILE DOCUMENTS

- Appeal File No. A-1-MEN-23-0001, including local record
- Relevant policies and standards of Mendocino County certified LCP
- LCP Map 15 (Caspar)