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Filed:	January 28, 2005
49th Day:	March 18, 2005
Staff:	Ruby Pap
Staff Report:	February 25, 2005
Hearing Date:	March 17, 2005
Commission Action:	

STAFF REPORT: APPEAL

SUBSTANTIAL ISSUE

LOCAL GOVERNMENT:	County of Mendocino
DECISION:	Approval with Conditions
APPEAL NO.:	**A-1-MEN-05-002**
APPLICANTS:	**U.S. Cellular Corporation; Jeff & Joan Stanford**
PROJECT LOCATION:	Approximately ½ mile south of the town of Mendocino and 0.1 mile east of Highway One at 44850 Comptche-Ukiah Road, Mendocino (Mendocino County)
PROJECT DESCRIPTION:	Establishment of a wireless telecommunications (cellular) service facility with a stealth design to be concealed within two of six existing 35-foot chimney structures of a resort within the coastal zone. The proposed facility will include two four-panel antennas, two global positioning antennas, and associated electronic equipment to be housed within the main structure.
APPELLANTS:	1) Mona Lisa Perez; 2) Antonia Lamb; and 3) Donna Schuler

SUBSTANTIVE FILE DOCUMENTS:	1) Mendocino County CDU No. 11-2003; and 2) Mendocino County Local Coastal Program

SUMMARY OF STAFF RECOMMENDATION:

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

The development, as approved by the County, consists of the establishment of a wireless telecommunications (cellular) service facility with a stealth design to be concealed within two of six existing 35-foot chimney structures of a resort within the coastal zone. The proposed facility will include two four-panel antennas, two global positioning antennas, and associated electronic equipment to be housed within the main structure. The project site is located on and within a hotel property, "The Stanford Inn by the Sea" located at 44850 Comptche-Ukiah Road just south of the town of Mendocino.

The appellants pose two separate contentions that the project as approved is inconsistent with the certified Mendocino Local Coastal Program. These contentions include: (1) that it is not permissible to permit the installation of a micro-wave antenna in land use designation Rural Residential – 5-Acre Minimum Lot Area with Visitor Accommodations and Services – Existing Resort Combining District (RR-5 *5), because there is no provision that allows the development of wireless telecommunication facilities, a form of "Minor Impact Utility" under the Coastal Civic Use Type category, within RR-5 *5-designated areas; and (2) that the permit was issued in violation of the Mendocino Town Plan portion of the LCP, specifically those policies that address the preservation of the town's "character," asserting that the use of cell phones within the Town of Mendocino will significantly change and modify the protected historic character of the town.

Staff recommends that the Commission find that both contentions are valid grounds for an appeal, but do not raise a substantial issue of conformity of the approved development with the certified LCP.

Staff recommends that the Commission find that the contention regarding project inconsistency with the RR-5 *5 district standards does not raise a substantial issue because the project does conform with the rural residential base designation, and is consistent with the provisions regarding combining districts as set forth in the LCP.

Staff recommends that the contention regarding conformance with the Mendocino Town Plan does not raise a substantial issue because the facility is not located in the Town of Mendocino, and hence is not subject to the Coastal Element policies in the Town Plan.

Moreover, if the project *was* subject to the policies of the Mendocino Town Plan, the project does not propose development that would be inconsistent with the historic character of the town.

For all of the above reasons, staff recommends that the Commission find that the appeal raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved project with the certified LCP and the public access policies of the Coastal Act. The motion to adopt the staff recommendation of No Substantial Issue is found on page no. 4.

STAFF NOTES:

1. Appeal Process

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

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

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

The subject development is appealable to the Commission because the proposed hotel is: (1) within a sensitive coastal resource area; and (2) not the principal permitted use. Section 20.308.110(6) of the Mendocino County Zoning Code and Section 30116 of the Coastal Act define sensitive coastal resource areas as “those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity,” including, among other categories, “highly scenic areas.” The approved development is located within an area designated in the LCP on the certified land use

map as a "highly scenic area," and, as such, is appealable to the Commission. The subject development is also appealable to the Commission because the approved telecommunications facility is not the principal permitted use under either the RR-5 base zoning district or the Visitor Accommodations and Services combining district designations.

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

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

2. Filing of Appeal

One appeal was filed by: (1) Mona Lisa Perez; (2) Antonia Lamb; and (3) Donna Schuler (Exhibit No. 7). The appeal was filed with the Commission in a timely manner on January 28, 2005 within 10 working days of receipt by the Commission of the County's Notice of Final Action (Exhibit No. 5) on January 14, 2005.

I. MOTION, STAFF RECOMMENDATION AND RESOLUTION

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

MOTION:

I move that the Commission determine that Appeal No. A-1-MEN-05-002 raises NO substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

STAFF RECOMMENDATION:

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

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-1-MEN-05-002 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved project with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

II. FINDINGS AND DECLARATIONS.

The Commission hereby finds and declares:

A. APPELLANTS' CONTENTIONS.

The Commission received one appeal of the County of Mendocino's decision to approve the development from Mona Lisa Perez, Antonia Lamb, and Donna Schuler, et al. The project as approved by the County involves installation of a wireless telecommunications (cellular) facility consisting of antennas concealed within two of six existing 35-foot chimney structures of a hotel and associated electronic equipment housed within the main structure. The project is located approximately ½ mile south of the Town of Mendocino, just south of Big River on the north side of the Comptche-Ukiah Road (CR 223), approximately 250 feet east of its intersection with Highway One, located at 44850 Comptche-Ukiah Road.

The appeal raises two contentions alleging inconsistency of the approved project with the County's certified LCP. The appellants' contentions are summarized below, and the full text of the contentions is included as Exhibit No. 7.

1. Land Use Designation Conflict: Stanford Inn

The Appellants contend that it is not permissible to permit the installation of a microwave antenna in land use designation Rural Residential – 5-Acre Minimum Lot Area with Visitor Accommodations and Services – Existing Resort Combining District (RR-5 *5), because "there is no provision that allows the combination of a Minor Impact Utility with a Visitor Accommodation Serving facility."

2. Mendocino Town Plan

The Appellants further contend that the permit was issued in violation of the Mendocino Town Plan portion of the LCP, specifically those policies that address the preservation of the town's "character," asserting that the use of cell phones within the Town of Mendocino, which will be facilitated by the approved cellular facility, will significantly change and modify the protected historic character of the town, and violate the state and federal agreements formally designating the Town of Mendocino as a Historic District.

B. LOCAL GOVERNMENT ACTION.

On February 19, 2004, the Mendocino County Planning Commission approved with conditions the Coastal Development Use Permit for the project (CDU 11-2003) after a lengthy public hearing (Exhibit No. 6). The permit approved the establishment of a wireless telecommunications (cellular) service facility with a stealth design to be concealed within two of six existing 35-foot chimney structures of the Stanford Inn in the Town of Mendocino. The approved facility included two four-panel antennas, two global positioning antennas, and associated electronic equipment to be housed within the main structure. The Planning Commission's decision was appealed to the County Board of Supervisors on May 25th, 2004. The supervisors voted to uphold the appeal, voting 3-2 against the project, citing violations of the County's cellular facility guidelines, specifically the aesthetic components of the guidelines.

In July 2004, the applicant filed a lawsuit against the County, claiming, among other things that the County's action violated the federal Telecommunications Act, and that the visual/aesthetic grounds for denial were not justified given the fact that the project involved a stealth tower, concealed inside chimneys, and hence, not visible. After several months of negotiations, a settlement was reached between the County and U.S. Cellular. This settlement included, among others, that the County issue the permit for the U.S. Cellular antenna, subject to the environmental document and conditions as originally approved by the Planning Commission, and that U.S. Cellular dismiss the lawsuit. On January 4, 2005, the County Board of Supervisors reversed its original decision, and voted 4-1 to approve the project (Exhibit No. 5), and on January 11, 2005 the final settlement between the County and U.S. Cellular was filed with the U.S. District Court.

Commission staff received the Notice of Final Action of the Board's approval of the project on January 14, 2005 (Exhibit No. 5). The County's approval of the project was appealed to the Coastal Commission in a timely manner on January 28, 2005 within 10-working days after receipt by the Commission of the Notice of Final Local Action. Staff requested a copy of the local record on January 28, 2005. A copy of the local record was received on February 14, 2005.

C. PROJECT AND SITE DESCRIPTION.

Approval has been granted by the County to install a wireless telecommunications (cellular) facility with a stealth design to be concealed within two of six existing 35-foot chimney structures of a resort within the coastal zone. The facility is to be situated on and within a hotel property, "The Stanford Inn by the Sea" located at 44850 Comptche-Ukiah Road in Mendocino, California (Exhibit Nos. 1 and 2). The proposed facility would include two four-panel antennas, two global positioning satellite antennas, and associated electronic equipment to be housed within the main structure. These facilities would be located in separate areas of the hotel. The equipment would be housed within an existing interior room of the hotel on the lower level near the northern end of the building and the antennas would be mounted within and at the top of two of the existing six chimneys of the main hotel building facing in a northwesterly direction. Panel antennas would be mounted inside two existing chimneys (up to 2 panels per chimney); however, the initial installation would be one cross-polar antenna in each chimney. The front face of the wood paneling would be replaced by a fiberglass material that matches the existing paneling color and design exactly. This material allows the antenna radio signal to pass through without interference. The single sector antenna array would provide coverage to the Town of Mendocino and the areas west and northwest along the Coast Highway. An existing storage room located on the lower level near the northeastern end of the Stanford Inn would be utilized to house the electronic equipment. Cabling between the antennas and electronics would extend up the inside of the building through the attic to the antennas. Land-based electrical and telecommunication connections would be made to existing utility panels on the building.

The property contains the "Stanford Inn by the Sea", which consists of a two-story hotel containing forty-one guest rooms, an adjacent building containing the lobby, registration and restaurant, a private residence, several barns and a greenhouse.

Earthmoving associated with the project would consist of a limited amount of trenching for underground electrical lines across an existing driveway and a landscaped area from the building to an existing utility pole. The trenches would be back-filled and the surface restored to match the original surface.

The terrain of the subject property includes manicured grounds, gardens, and parking lots abutting the inn. There are no indications of Environmentally Sensitive Habitat Areas (ESHA) on the property. The trenching would disturb a minor amount of grass, but the grass would reestablish itself and no significant impacts are anticipated. No wildlife habitat would be affected by the project, and there are no towers or guy wires, which might be hazardous to birds.

The parcel is in an area along the Mendocino coastline designated as highly scenic. However, due to the siting and design of the approved development, virtually none of the facility would be visible. The antennas would be concealed inside existing chimneys. Electronic equipment would be housed in an existing storage room. Cabling between the antennas and electronics would extend up the inside of the building through the attic to the antennas. Land-based electrical and telecommunication connections would be made to existing utility panels on the building.

The County's Land Use Plan (LUP) and zoning classifications for the parcel is Rural Residential – 5-Acre Minimum Lot Area with Visitor Accommodations and Services – Existing Resort Combining District (RR-5 *5). Within the RR-5 base LUP and zoning classifications, uses allowed by conditional permit include "major impact services and utilities" and "minor impact services and utilities."

D. SUBSTANTIAL ISSUE ANALYSIS.

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

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

1. Appellants' Contentions That Are Valid Grounds For Appeal

Both contentions raised in this appeal present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP. These contentions allege that the approval of the project by the County raises significant issues related to LCP provisions regarding: (a) conformance with conditional uses of land use designations; and (b) preservation of the Town of Mendocino's character.

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

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

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

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 with the public access policies of the Coastal Act;

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, or those of regional or statewide significance.

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

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

Allegations Raising No Substantial Issue:

a. Land Use Designation Conflict.

Appellants contend that the cellular facility is not an allowable use in the land use category where it is proposed.[1] The appellants contend that "there is no provision (in the LCP) that allows the combination of a minor impact utility with a visitor accommodation serving facility." Therefore, the appellants argue that it is not permissible to authorize the installation of microwave telecommunication facilities on properties with a Rural Residential – 5-Acre Minimum Lot Area with Visitor Accommodations and Services – Existing Resort Combining District (RR-5 *5) land use designation. The appellants cite Mendocino County Coastal Zoning Code sections regarding the conditional uses enumerated for Visitor Accommodations and Services combining districts, sections of the

[1] The Commission notes that while the appellants have specifically framed this appellate point in terms of Land Use Plan nonconformance, the contention more precisely alleges inconsistencies with both the Land Use Plan (land use category) and Implementation Plan (base and combining zoning districts) designations of the subject property. As a result, LCP citations supporting this contention consist of a mixture of both land use plan policies and zoning regulations.

LUP regarding the Rural Residential land use category, and a section of the Coastal Zoning Code titled "Additional Requirements for the VAS Combining District."

LCP Policies and Standards

Section 2.2 of the LUP, "Descriptions of Land Use Plan Map Classifications: Rural Residential," states:

> ***Intent:*** *The Rural Residential classification is intended to encourage local small scale food production (farming) in areas which are not well suited for large scale commercial agriculture, defined by present or potential use, location, mini-climate, slope, exposure, etc. 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.*
> ***Principal Permitted Use:*** *Residential and associated utilities, light agriculture, home occupation.*
> ***Conditional Uses:*** *Cottage industry; conservation and development of natural resources; public facilities and utilities determined to be necessary on Rural Residential lands; recreation-education.* [Emphasis added.]

Section 2.2 "Visitor Accommodations and Services" Combining Districts' of the LUP states:

> ***Principal Permitted Uses - Existing Facilities:*** *In addition to the uses permitted in the classification with which the Visitor Accommodation and Services designation is combined, the appearance of an *1, *2, *3, *4 or *5 on a parcel allows continuation of the visitor serving facility of the category indicated, and the expansion of the use within the specified density limits. Resource land encroachment shall be minimized. Categories 1, 2, 3 and 5 may have a Category 4 use as an accessory use."*
>
> ***Conditional Uses - Existing Facilities:*** *In addition to the conditional uses permitted in the classification with which the Visitor Accommodation and Services designation is combined, housing for employees may be provided.* [Emphasis added.]

Coastal Zoning Code Section 20.376.010, "Principal Permitted Uses for Rural Residential Districts," states:

> *The following use types are permitted in the Rural Residential District:*
> ***(A) Coastal Residential Use Types.***
> *Family Residential: Single-family;*
> *Vacation Home Rental.*

(B) ***Coastal Agricultural Use Types.***
Light Agriculture;
Row and Field Crops;
Tree Crops.

Coastal Zoning Code Section 20.376.015, " Conditional Uses for Rural Residential Districts," states:

> *The following are permitted uses upon the issuance of a coastal development use permit: …*
> ***(B)*** ***Coastal Civic Use Types.***
> *Alternative Energy Facilities: On-site;*
> *Alternative Energy Facilities: Off-site;*
> *Community Recreation;*
> *Day Care Facilities/Small School;*
> *Educational Facilities;*
> *Group Care;*
> *Lodge, Fraternal and Civic Assembly;*
> *Major Impact Services and Utilities;*
> *<u>Minor Impact Utilities</u>;*
> *Religious Assembly.* [Emphasis added.]

Coastal Zoning Code Sec. 20.320.080 defines "minor impact utilities" as:

> *Public utilities which have a local impact on surrounding properties and are necessary to provide essential services. Typical uses are electrical and gas distribution substations, transmission distribution lines, microwave transmitting/receiving stations and relay stations.*

Coastal Zoning Code Section 20.308.030 defines a "combining district" as:

> *'Combining District' means a zoning district established by this Division which may be applied to a lot or portion thereof only in combination with a base zoning district.*

Section 20.436.015, "Conditional Uses for Visitor Accommodations and Services Combining Districts," states:

> *The following use types may be permitted in the Visitor Accommodations and Services Combining District with a coastal development use permit:*
>
> *(A)* *Coastal Residential Use Types.*
> *Employee Caretaker Housing.*

(B) Visitor Accommodations and Services Use Types.
*(1) The following Visitor Accommodations and Services Use Types may be permitted where the corresponding symbol (*1C, *2C, 3C, *4C, *5C) is found on the Land Use Plan Maps and Coastal Zoning Maps:*
*Bed and Breakfast Accommodation - *1C;*
*Inn - *1C;*
*Hotel - *2C;*
*Inn - *2C;*
*Motel - *2C;*
*Campground - *3C;*
*Hostel - *3C;*
*Organized Camp - *3C;*
*Recreational Vehicle Campground - *3C;*
*Visitor-Oriented Eating and Drinking Establishments - *4C;*
*Visitor-Oriented Retail Sales - *4C;*
*Resort - *5C.*
*(2) The following Visitor Accommodations and Services Use Types may be permitted as an accessory use with *1, *2, *3 or *5 uses:*
*Visitor-Oriented Eating and Drinking Establishments - *4;*
*Visitor-Oriented Retail Sales - *4.*
*(3) The following Coastal Commercial Use Types may be permitted as an accessory use with *5 uses:*
Commercial Recreation: Outdoor Sports and Recreation.

Coastal Zoning Code Sec. 20.436.025 "Additional Requirements for the VAS Combining District," states:

(A) No development more intense than a single-family residence shall be allowed on a parcel within the VAS Combining District prior to the parcel being developed with a Coastal Visitor Accommodations and Services Use Type…

(B) Approval of visitor accommodation and service facilities shall be based upon the suitability of the site to accommodate the use(s) proposed, including water availability, septic disposal capability, environmental constraints, the number of visitor serving uses existing or approved in the immediate vicinity and in the planning area, and consistency with all other regulations of this Division…

(H) Expansion and development of visitor serving facilities, including restaurants, shall be compatible with the character of their surroundings.

A site plan, grading plan, landscaping plan, and outdoor lighting plan shall be submitted and shall illustrate the following.

(1) Building materials shall be natural, such as wood or stone, and shall utilize primarily earth-tone colors.

(2) Proposed tree removal and grading shall be shown on the site development plans but shall be minimized to that which is necessary for accommodation of the main and accessory structures. Where there are alternatives to development which minimize tree removal and/or grading, the development proposal shall be modified as necessary such as in location, siting, size, design, and bulk, in order to incorporate the alternative.

(3) The design and scale of individual proposed structures shall be subordinate to surrounding landforms.

Discussion

Appellants contend that County's approval of the project was in violation of the zoning code, because cellular facilities meet the definition of "minor impact utilities" found in Section 20.320.080 of the Coastal Zoning Code (CZC), and "minor impact utilities" are not considered "conditional uses" under the Visitor Accommodations Serving facility (VAS) combining district. However, the proposed site has a base zone designation of Rural Residential – 5-Acre Minimum Lot Area (RR-5). The combination of a "minor impact utility" with a Rural Residential district is permitted under the CZC. Mendocino Coastal Zoning Code Section 20.376.015 allows major and minor impact utilities as conditional uses in Rural Residential zoning districts. While the appellants are correct that minor impact utilities are not referenced under the VAS designation, this combining district cannot be considered on its own as listing all of the allowable uses for the particular base zoning district to which the VAS designation is applied. Combining districts are defined in Section 20.308.030 of the CZC as designations applied to lots *only* in combination with another base zoning district. Section 2.2 "Visitor Accommodations and Services Combining District" of the LUP also states that uses permitted in combining districts are in addition to those permitted within the base zoning districts.

Thus, "minor impact utilities" are permissible conditional uses for the Rural Residential district. Therefore, the local government has a high degree of factual and legal support for its decision, and no substantial issue is raised with regard to the conformance of the project as approved with the provisions of the LCP's Rural Residential – 5-Acre Minimum Lot Area with Visitor Accommodations and Services – Existing Resort Combining District (RR-5 *5) land use and/or zoning designations. Therefore, the Commission finds that the contention raised by the appellants does not raise a substantial issue of conformance of the approved project with provisions of the Certified Local Coastal Program and the public access policies of the Coastal Act.

b. Preservation of the Town of Mendocino's Character

The appellants assert that the County should have reviewed the Mendocino Town Plan and the LCP policies contained within it and made a determination on the preservation of the town's character. Appellants assert that the use of cell phones within the Town of Mendocino (presumably facilitated by the project) will significantly change and modify the protected historic character of the town, and that by not considering these impacts, the application was incomplete and incorrect and should not have been accepted by the County.

LCP Policies and Standards

Mendocino Town Plan Growth Management Policy 4.13-1 states:

> *The town of Mendocino shall be designated a special community and a significant coastal resource as defined in Coastal Act Section 30251. New development shall protect this special community which, because of its unique characteristics, is a popular visitor destination point for recreational uses.*
>
> *Mendocino shall be recognized as a historic residential community with limited commercial services that are important to the daily life of the Mendocino Coast.*
>
> *The controlling goal of the Town Plan shall be the preservation of the town's character. This special character is a composite of historic value, natural setting, attractive community appearance and an unusual blend of cultural, educational and commercial facilities.*
>
> *The preservation of the town's character shall be achieved, while allowing for orderly growth. This shall be done by careful delineation of land uses, provision of community services and review and phasing of development proposals. Balance shall be sought between residential units, visitor accommodations and commercial uses. Provision of open space and siting of structures to retain public views of the sea shall be considered as part of all new development proposals. The objective shall be a Town Plan which retains as much as possible the present physical and social attributes of the Mendocino Community.*
>
> *'Balance' between residential uses, commercial uses and visitor serving uses shall be maintained by regulating additional commercial uses through development limitations cited in the Mixed Use and Commercial Land Use Classifications; and, by limiting the number of visitor serving uses.*

> *Visitor Serving Units listed on Table 4.13-1 (234) shall remain fixed, and a ratio of thirteen long term dwelling units to one Vacation Home Rental or one Single Unit Rental (Tables 4.13-2 and 4.13-3) shall remain fixed; until the plan is further reviewed and a plan amendment is approved and certified by the California Coastal Commission.*
>
> *For example, an increase in long term residential dwelling units from the current count of 306 to 319, would allow an increase of one short term rental, whether Single Unit Rental or Vacation Home Rental.*
> *Tables 4.13-2 (Single Unit Rentals) and 4.13-3 (Vacation Home Rentals) shall be flexible as to location and such changes of location shall not require a plan amendment.*

Mendocino Town Plan Policy 4.13-2 states:

> *This amended plan shall be reviewed three years after certification of this plan amendment date to determine the effect of development on town character. The plan shall be revised, if necessary, to preserve town character consistent with Policy 4.13-1.*

Mendocino Town Plan Policy 4.13-3 states:

> *To preserve town character, commercial development shall be limited as mapped and shown in the plan, though at some point the amount of commercial space will be less than the market could support.*

Mendocino Town Plan Policy 4.13-27 states:

> *Because Mendocino is a registered historic district, categorical exemptions within the California Environmental Quality Act shall not apply unless it can be clearly demonstrated that there is no potential for adverse impact. The County shall amend the County's California Environmental Quality Act (CEQA) Guidelines to provide specificity for the Town of Mendocino.*

Mendocino Town Zoning Code Section 20.604.015 states, in applicable part:

> *These Zoning Regulations shall be applicable to all of the unincorporated areas of the Town of Mendocino as delineated on Map 32 of the Coastal Element of the General Plan …*

Mendocino Town Zoning Code Section 20.608.023(C) defines “development” as:

> *On land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).*
>
> *As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.*

Mendocino Town Zoning Code Section 20.608.005, as cited by the appellants, states:

> *The provisions of this Chapter shall be known as the Definitions. The purpose of these provisions is to promote consistency and precision in the interpretation of this Division. The meaning and construction of words and phrases as set forth shall apply throughout this Division, except where the context of such words or phrases clearly indicates a different meaning or construction. Definitions contained in the Uniform Building Code shall be applicable except when in conflict with definitions contained in this Division, in which case the Division definition shall prevail.*

Mendocino Town Zoning Code Section 20.760.005 states:

> *The Board of Supervisors of the County of Mendocino find and declare that <u>the Town of Mendocino and its immediate environs represents a unique and outstanding example of early California architecture and town development</u> associated with the redwood lumber industry along the Mendocino Coast in the last half of the 19th century. The Town of Mendocino exhibits those qualities typical of a small Northern California coastal lumber town from that era by combining a balance of residential and commercial development with the forces of nature and the natural environment.*

> *This Board further finds that much of the unique character of this community rests with the style of architecture which dominates the town and which is representative of early northern California architecture, to the extent that it has achieved recognition by being placed on the National Register of Historic Places. This character is reflected by the Town's distinctive mixture of weathered wooden commercial and residential structures sited to allow some unobstructed views of the ocean, bay and river from public streets, by the balance of the size and scale of its buildings, by its foot paths and back streets, by the presence of native vegetation, and by the architectural mix of its structures which contributes to the historical quality of the community.*
>
> *Therefore, the Board finds that a Historical Preservation District is needed to preserve the architecture and character of this community. It further finds that the preservation of many buildings, representative of early northern California architecture within the Town of Mendocino is essential to the economic and cultural development of Mendocino, and to the economy of the Town and of the County, which is in large measure based on tourism and visitors who have been attracted to the town in substantial numbers.* [Emphases added.]

Mendocino Town Zoning Code Section 20.760.065 (B) states, in applicable part:

> *The granting or modification of any application by the Review Board shall be supported by findings which establish that:*
>
> *(A) The exterior appearance and design of the proposed work is in harmony with the exterior appearance and design of existing structures within the District and with that of the existing subject structure, if any; and*
> *(B) The appearance of the proposed work will not detract from the appearance of other property within the District; and*
> *(C) Where the proposed work consists of alteration or demolition of an existing structure, that such work will not unnecessarily damage or destroy a structure of historical, architectural or cultural significance.*
> [Emphases added.]

Discussion

The appellants contend that the project is inconsistent with the provisions of the Mendocino Town Plan, regarding the preservation of the town's historical character. Specifically, the appellants contend that the adverse impacts on the Town of Mendocino by the use off cell phones were not considered. Appellants assert that the appearance of

cell phones in use would detract from the appearance of the protected character of the Town of Mendocino. However, the facility is not located in the Town of Mendocino as delineated on the applicable Land Use Plan Map[2], and hence is not subject to the policies in the Town Plan. The Mendocino Town Plan is a separate segment of the County's LCP. Its policies only apply to development within the Town and are focused primarily upon the architectural compatibility and design consistency of new or modified structures, and the protection of open space and scenic views. Further, even if the approved project *was* located in the Town of Mendocino, no substantial issue is raised with regard to conformance of the approved project with the policies and standards of the Town Plan segment of the LCP. The project was not categorically exempted from environmental review pursuant to CEQA, so it would not be in violation of Mendocino Town Plan Policy 4.13-27 above.

Moreover, the personal use of cell phones is not prohibited in the Mendocino Town Plan, its associated zoning ordinance, or any other portion's of the County's LCP. Additionally, the personal use of cell phones is not a "development," as defined in the LCP and Section 30106 of the Coastal Act, and hence would not be subject to Mendocino Town Plan Policy 4.13-3, cited above. Furthermore, the LCP does not govern other activities that may not be considered consistent with the town's historical character, or the activities of the residents of the town in the 1800s, such as the use of motorized vehicles, modern clothing and electricity.

Because the policies cited by the appellants do not apply to the development in question, there is a high degree of legal and factual information supportive of the local government's decision with regard to the contention raised about conformance with the Mendocino Town Plan. Therefore, the Commission finds that the contention raised by the appellants does not raise a substantial issue of conformance of the approved project with the Certified Local Coastal Program and the Public Access policies of the Coastal Act.

Conclusion

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

EXHIBITS

1. Location Map

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[2] Due to it large format and small scale (1:2,400), a copy of certified Land Use Map No. 32 was not included with this report. Nonetheless, the delineated boundaries of the Mendocino Town Plan area do not extend beyond the northern shoreline of the Big River. As further described in Project and Site Description Findings Section II.C and as illustrated on Exhibit Nos. 1 and 2, the subject development is located on the southern side of the Big River

2. Zoning Map
3. Project Plans
4. Photographs
5. Notice of Final Action
6. Approved Conditional Use Permit
7. Appeal