

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE
1385 8th STREET, SUITE 130
ARCATA, CA 95521
VOICE (707) 826-8950
FAX (707) 826-8960



W11a

Filed: 8/28/2023
49th Day: 11/2/2023
Staff: B. Jansen
Staff Report: 9/21/2023
Hearing Date: 10/11/2023

STAFF REPORT: APPEAL SUBSTANTIAL ISSUE DETERMINATION ONLY

Appeal No.: A-1-MEN-23-0036

Applicant: AT&T California

Local Government: County of Mendocino

Local Decision: Approval with Conditions

Location: Along the Navarro Ridge Road right-of-way from 33810 to 30660 Navarro Ridge Road, Albion.

Project Description: After-the-fact approval for the construction of 43 new utility poles to accommodate new aerial fiber optic cable leading to an existing cell site. Associated work includes anchors and down guys, total ground beds, and clearing of vegetation.

Co-appellants: Victor Simon, Annemarie Weibel, and Rifaat Daymen

Staff Recommendation: Substantial Issue

IMPORTANT HEARING PROCEDURE NOTE

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

SUMMARY OF STAFF RECOMMENDATION

On July 27, 2023, the Mendocino Coastal Permit Administrator approved an after-the-fact coastal development permit to install 43 new AT&T utility poles and associated infrastructure along an approximately three-mile stretch of Navarro Ridge Road in Albion, Mendocino. Most of the southern side of Navarro Ridge Road is within a designated Highly Scenic Area (HSA). In 2020, the applicants applied for an Encroachment Permit with the Mendocino County Department of Transportation (DOT) to install 40± new poles with aerial fiber optic cable within the County Road right-of-way along Navarro Ridge Road (CR 518). The County DOT issued the Encroachment Permit since the applicant stated the project was exempt from the need for a Coastal Development Permit due to a "utility exemption". After installation of the poles, complaints were received from the public, and County staff reviewed the circumstances surrounding the issuance of the Encroachment Permit in relation to CDP requirements and determined that a CDP was required for the new poles and aerial fiber optic cable.

The primary issue raised in the appeal relates to the protection of visual resources. The County's approval authorized the installation of utility infrastructure in an LCP-designated Highly Scenic Area (HSA) where the Mendocino County certified LCP requires such infrastructure to be placed underground where feasible. Most of the utility poles are visible from public vantage points along the road itself as well as beaches and vantage points along Highway 1. The LCP includes various policies and standards that require new development in HSAs to be subordinate to the character of the surrounding setting and to protect scenic and coastal views. Lands on the southern side of Navarro Ridge Road within the HSA contain open fields and/or low density residential and agricultural uses, and the placement of new poles in these open views disrupt the

landscape and rural setting of the surrounding area. Much of the existing electrical utility infrastructure along the road (PG&E power poles) is not directly adjacent to the roadway or is limited to the northern side of the road, outside the designated HSA. In contrast, most of the new AT&T poles are located on the south side of Navarro Ridge Road and many of these poles are the only utility poles in the nearby vicinity.

The County's findings for approval acknowledge that development located within the designated HSA interferes with the scenic qualities of the area, inconsistent with the highly scenic policies of the certified LCP. The County did not require the applicant to explore the feasibility of relocating utility poles on the south side of the road (within the HSA) to the north side of Navarro Ridge Road (outside of the HSA) or the possibility of undergrounding utility infrastructure in visually sensitive areas. Thus, there is a low degree of legal and factual support for the County's findings that the approved project as conditioned is sited and designed to protect visual resources and be visually compatible with the character of the area consistent with the certified LCP.

Staff believes the degree of legal and factual support for the County's decision is low, and that the project raises issues of regional or statewide significance, including the protection of public views in a designated sensitive coastal resource area. Staff therefore recommends that the appeal raises substantial LCP conformance issues and that the Commission take jurisdiction over the CDP application for the proposed project. If the Commission does so, then the de novo hearing on the merits of the CDP application would be scheduled for a future Commission meeting after the applicant provides certain information requested in section G of this report.

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

TABLE OF CONTENTS

I. MOTION AND RESOLUTION.....	5
II. FINDINGS AND DECLARATIONS.....	5
A. LOCAL GOVERNMENT ACTION	5
B. PROJECT DESCRIPTION AND BACKGROUND	5
C. APPEAL JURISDICTION AND PROCEDURES	7
D. FILING OF APPEAL	8
E. SUMMARY OF APPEAL CONTENTIONS.....	8
F. SUBSTANTIAL ISSUE ANALYSIS	9
1. Contention Related to Protection of Visual Resources	9
2. Contention Related to Public Noticing	13
3. Conclusion.....	14
G. INFORMATION NEEDED FOR DE NOVO REVIEW	15

EXHIBITS

[Exhibit 1 – Location Maps](#)

[Exhibit 2 – Project Plans](#)

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

[Exhibit 4 – Applicant’s Visual Assessment](#)

[Exhibit 5 – Filed Appeal](#)

[Exhibit 6 – Final Local Action Notice and Findings for Approval](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission determine and resolve that Appeal Number A-1-MEN-23-0036 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

Staff recommends a **NO** vote on the foregoing motion. Following the staff recommendation by voting no will result in the Commission conducting a de novo review of the application, and adoption of the following findings. Passage of this motion via a yes vote, thereby rejecting the staff recommendation, will result in a finding of No Substantial Issue, and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners.

Resolution:

The Commission hereby finds that Appeal No. A-1-MEN-23-0036 presents 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 and recreation policies of the Coastal Act.

II. FINDINGS AND DECLARATIONS

A. Local Government Action

On July 27, 2023, the County of Mendocino Coastal Permit Administrator (CPA) approved Coastal Development Permit (CDP) No. CDP_2021-0051 with conditions for applicant AT&T California for after-the-fact construction of 43 new utility poles and associated development to accommodate new aerial fiber optic cable leading to an existing wireless communications facility. The County granted its approval for the CDP subject to thirteen conditions including, but not limited to, conditions related to protection of biological resources and procedures for inadvertent discovery of archeological resources. No appeal of the CPA's project approval was filed at the local level. The Commission's North Coast District Office received the County's Notice of Final Local Action on CDP_2021-0051 on August 10, 2023 ([Exhibit 6](#)).

B. Project Description and Background

The project site is located along an approximately three-mile stretch of Navarro Ridge Road, which is approximately one mile south of the town of Albion in Mendocino County. Areas on the southern side of Navarro Ridge Road are within designated "Highly Scenic Area" (HSA) under the Mendocino County certified LCP. The County-approved project authorizes the after-the-fact development of 43 new utility poles to accommodate new aerial fiber optic cable. Associated work includes installing anchors and down guys and "total ground beds," and clearing vegetation around poles and lines.

The new utility poles, aerial fiber optic cables, and associated improvements are intended to serve an existing wireless communication facility permitted by the County of Mendocino in 2019 under Coastal Development Use Permit No. U_2017-0034.

The previously approved wireless communication facility (WCF) consists of a 135-foot-tall “monopine” (telecommunications structure consisting of a steel pole designed to resemble a conifer tree) and various accessory equipment within an 1,800-square-foot fenced compound.¹ The WCF is developed on private property located north of Navarro Ridge Road and at the easternmost end of the subject AT&T poles and is not located in an LCP-designated HSA, though it is adjacent to a designated HSA. Following the approval of the WCF in 2019, an appeal (A-1-MEN-19-0046) was filed with the Commission raising contentions related to visual resources, biological resources, water quality, hazards, cultural resources, land use compatibility, County procedure, and public safety related to electromagnetic frequencies (EMF). On August 7, 2019, the Commission found that the appeal raised no substantial issue regarding conformance of the approved project with the certified LCP.

In 2020, the applicants applied for an Encroachment Permit with the Mendocino County Department of Transportation (DOT) to install 40± new poles with aerial fiber optic cable within the County Road right-of-way along Navarro Ridge Road (CR 518). On the Encroachment Permit Application, the applicant stated the project was exempt from the need for a Coastal Development Permit due to a “utility exemption”. On January 29, 2020 the County DOT issued the Encroachment Permit, TU_2020-0007 and the contractor installed all of the poles in March and April 2020. After complaints were received from the public, County staff reviewed the circumstances surrounding the issuance of the Encroachment Permit in relation to CDP requirements. After review, on April 24, 2020 the County instructed the contractor to halt all activities until the coastal development permitting requirements were resolved. County staff determined that a CDP would be required for the new poles and aerial fiber optic cable. AT&T Counsel disagreed with the determination by County staff. On August 31, 2020, Mendocino County sought a determination from the Commission’s Executive Director, pursuant to Mendocino County Code Section 20.532.035(B). On November 17, 2020, Robert Merrill, North Coast District Manager at the time, responded to County staff, stating, in part, the following:

...the Executive Director has determined that (a) the development of the aerial fiber optic cable line on 40 new poles installed within the County Road right-of-way along Navarro Ridge Road is not exempt from coastal development permit requirements, and (b) the aerial fiber optic cable line wasn't authorized as part of Coastal Development Use Permit No. U-2017-0034 granted by the County for the related wireless communication facility at 30660 Navarro Ridge Road...

¹ Equipment attached to the monopine includes 12 antennas, 19 remote radio units (RRUs), four surge suppressors, two 4-foot microwave dishes, and 7 feet of faux “branches” making up the crown of the “tree.”

Following ongoing disputes between the applicant and the County, on July 13, 2021 the County Board of Supervisors unanimously approved entering into a settlement agreement with AT&T related to the installation of the utility poles and cable along Navarro Ridge Road while requiring AT&T to apply for an after-the-fact CDP within 60 days of execution of the settlement agreement.

C. Appeal Jurisdiction and Procedures

The Coastal Commission effectively certified Mendocino County's local coastal program (LCP) in 1992. After certification of an LCP, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (CDPs). Pursuant to Coastal Act section 30603, the County's approval is appealable to the Commission because the approved development is located within a designated "highly scenic area," which is a sensitive coastal resource area as defined under Coastal Act section 30116 and thus subject to appeal under section Coastal Act section 30603(a)(3).

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 a substantial issue is presumed and the Commission generally considers a number of factors in making that determination. The term "substantial issue" is explained in Section 13115(c) of the Commission regulations as follows:

"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 that the development is consistent or inconsistent with the certified LCP;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and

5. Whether the appeal raises local issues, or those of regional or statewide significance.

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

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 ([Exhibit 6](#)), the County’s staff report ([Exhibit 6](#)), and the appellants’ claims ([Exhibit 5](#)). Since staff is recommending that the appeal raises a substantial issue, and unless three or more Commissioners object, it is presumed that the appeal raises a substantial issue, and the Commission may proceed to its *de novo* review at the same or subsequent meeting without taking public testimony during this phase of the appeal hearing.

If three or more Commissioners request it, 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 (3) minutes total 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 applicants, appellants, persons who opposed the application before the local government, and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. The Commission will then determine whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that the grounds for the appeal raise no substantial issue.

D. Filing of Appeal

The Commission’s North Coast District Office received the County’s Notice of Final Local Action ([Exhibit 6](#)) on August 10, 2023. On August 24, 2023, the Commission received an appeal of the County’s approval from Co-Appellants Victor Simon, Annemarie Weibel and Rifaat Daymen ([Exhibit 5](#)). The appeal was filed in a timely manner, within ten working days of receipt by the Commission of the County’s Notice of Final Action. The appellant(s) participated in the local CDP application and decision-making process (i.e., submitted comments, and testified at the local hearing) and thus qualifies as an “aggrieved person” pursuant to Coastal Act Section 30801 and Title 14, California Code of Regulations, Section 13111.

E. Summary of Appeal Contentions

The appeal raises two main contentions:

1. The development approved by the County does not protect visual resources or conform with the policies set forth to protect highly scenic areas, including, but not limited to, policies requiring new development to be subordinate to the character of its setting and to protect scenic and coastal views.
2. The County failed to adequately notice all interested parties of the public hearing as required by the LCP.

The first contention raised by the appellants presents valid grounds for appeal in that it alleges the project's inconsistency with policies of the certified LCP.

F. Substantial Issue Analysis

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

1. Contention Related to Protection of Visual Resources

The appeal contends that the project is inconsistent with the visual resources protection policies of the LCP, specifically the visual compatibility and subordination requirements for designated Highly Scenic Areas.

Applicable LCP Policies

Land Use Plan (LUP) Policy 3.5-1 states (Emphasis added):

State Highway 1 in rural areas of the Mendocino County coastal zone shall remain a scenic two-lane road. The scenic and visual qualities of Mendocino County coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting.

LUP Policy 3.5-3 states, in applicable part:

The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as "highly scenic areas," within which new development shall be subordinate to the character of its setting. Any development permitted in these areas shall provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.

...

- Portions of the coastal zone within the Highly Scenic Area west of Highway 1 between the Ten Mile River estuary south to the Navarro River as mapped with noted exceptions and inclusions of certain areas east of Highway 1.

...

....New development should be subordinate to natural setting and minimize reflective surfaces...

LUP Policy 3.5-4 states in applicable part (Emphasis added):

...

Minimize visual impact of development on ridges by (1) prohibiting development that projects above the ridgeline; (2) if no alternative site is available below the ridgeline, development shall be sited and designed to reduce visual impacts by utilizing existing vegetation, structural orientation, landscaping, and shall be limited to a single story above the natural elevation; (3) prohibiting removal of tree masses which destroy the ridgeline silhouette. Nothing in this policy shall preclude the development of a legally existing parcel. [emphasis added]

Coastal Zoning Code Section 20.504.010 states in applicable part:

Purpose.

The purpose of this section is to insure that permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas.

LUP Policy 3.5-8 states:

Power transmission lines shall be located along established corridors. Elsewhere transmission lines shall be located to minimize visual prominence. Where overhead transmission lines cannot be located along established corridors, and are visually intrusive within a "highly scenic area", the lines shall be placed underground west of Highway One and below ridgelines east of Highway One if technically feasible. Certain lines shall, over time, be relocated or placed underground in accord with PUC regulations (see Big River Planning Area Policy 4.7-3 and Policy 3.11-9). Distribution lines shall be underground in new subdivisions.

Mendocino County Coastal Zoning Code (CZC) Section 20.504.015 states, in applicable part:

Highly Scenic Areas

(A) The visual resource areas listed below are those which have been designated highly scenic and in which development shall be subordinate to the character of its setting:

...

(2) Portions of the Coastal Zone within the Highly Scenic Area west of Highway 1 between the Ten Mile River estuary south to the Navarro River as mapped with noted exceptions and inclusions of certain areas east of Highway 1.

...

(C) Development Criteria.

(1) Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.

...

(3) New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings.

...

(8) Minimize visual impact of development on ridges by the following criteria:

(a) Prohibiting development that projects above the ridgeline;

(b) If no alternative site is available below the ridgeline, development shall be sited and designed to reduce visual impacts by utilizing existing vegetation, structural orientation, landscaping, and shall be limited to a single story above the natural elevation;

(c) Prohibiting removal of tree masses which destroy the ridgeline silhouette.

...

(11) Power distribution lines shall be located along established corridors where possible and where the corridors are not visually intrusive.

(12) Power distribution lines shall be placed underground in designated "highly scenic areas" west of Highway 1 and in new subdivisions. East of Highway 1, power lines shall be placed below ridgelines if technically feasible.

...

Discussion

The County-approved development is located east of Highway 1 along Navarro Ridge Road, which is situated approximately 440 feet above sea level and within a designated Highly Scenic Area ([Exhibits 2 and 3](#)). Navarro Ridge is an east-west trending ridge that forms the north side of the deep valley carved by the Navarro River as it makes its way west to the Mendocino coast ([Exhibit 1](#)). Navarro Ridge, especially houses and structures south of Navarro Ridge Road, is highly visible from public vantage points including from Navarro Beach (which is part of Navarro River Redwoods State Park) and from public vantage points along Highway One.

The Mendocino County certified LCP requires that any new development in highly scenic areas shall be subordinate to the character of its setting (LUP Policies 3.5-1 and 3.5-3; CZC Section 20.504.015). Mendocino County LUP Policy 3.5-4 and CZC Section 20.504.015(C) prohibit development that projects above ridgelines unless no alternative building site is available. In those instances where alternative building sites are unavailable, CZC Section 20.504.015(C)(8) further requires that such developments utilize existing vegetation, structural orientation, and landscaping; and shall be limited to a single story above the natural elevation. Lastly, LUP Policy 3.5-4 and CZC Sections 20.504.015(C)(11) and – (12) require that where overhead transmission lines cannot be located along established corridors and are visually intrusive within a "highly scenic area", the lines shall be placed underground west of Highway One and below ridgelines east of Highway One if technically feasible.

Although the visual assessment prepared for the project application ([Exhibit 4](#)) found that all poles visible from the Navarro River Redwoods State Park and Highway 1 are not owned by AT&T, many of the poles are visible from Navarro Ridge Road, which is an established corridor that has pocket views of the coast south of the roadway. Navarro Ridge Road provides stunning public views of the coastline from above the river valley. Much of the existing electrical utility infrastructure (PG&E power poles) is not directly adjacent to the roadway or is limited to the northern side of the road. In contrast, most of the new AT&T poles are located on the south side of Navarro Ridge Road and many of these poles are the only utility poles in the nearby vicinity. Lands on the southern side of Navarro Ridge Road also contain open fields and/or low density residential and agricultural uses, and the placement of new poles in these open views disrupts the landscape and rural setting of the surrounding area.

The County's findings ([Exhibit 6](#)) for approving the project acknowledged that development located within the designated highly scenic areas interferes with the scenic qualities of those areas, inconsistent with the highly scenic policies of the certified LCP. The County staff report states in part:

Staff has reviewed the submitted plans and visited the project area to observe the location of the poles in relation to the highly scenic area. Much of the project has poles located on the north side of Navarro Ridge Road, outside the highly scenic area, or collocated with existing PG&E facilities. The remainder of the project has poles located on the south side of Navarro Ridge Road within the highly scenic area that, in Staff's opinion, interfere with the scenic qualities of those areas...

As stated above, MCC section 20.504.015(C)(1) provides that any development in highly scenic areas shall provide for the protection of coastal views from public areas including roadways. The poles located south of the road in the designated highly scenic area are visually incompatible with the character of surrounding areas and degrade the visual quality of the area. Staff finds that the poles located on the south side of the roadway within the designated highly scenic area are inconsistent with the highly scenic policies of the Local Coastal Program.

Originally, County staff had recommended that all utility poles on the south side of the road either be relocated to the north side of Navarro Ridge Road or be undergrounded in these areas. However, at the hearing that condition was eliminated from the County's final action at the request of the applicant. As a result, there is a low degree of legal and factual support for the County's determination that the approved project as conditioned is consistent with the County's LCP, including, but not limited to, LUP policies 3.5-1, 3.5-3, 3.5-4, and 3.5-8 and CZC section 20.504.015. Moreover, the County's approval lacks findings demonstrating how siting visually incompatible development within a designated highly scenic area could be approved consistent with the certified LCP. Furthermore, the approval fails to analyze alternatives to siting utility poles within designated highly scenic areas, such as but not limited to relocating poles to the north side of Navarro Ridge Road (outside the designated HSA) or undergrounding utility lines.

2. Contention Related to Public Noticing

The appeal contends that the public did not have the widest opportunity for public participation and that the County failed to adequately notice all interested parties of the public hearing, inconsistent with public noticing requirements of the certified LCP.

Applicable LCP Policies

CZC Section 20.532.025 states, in applicable part:

Application and Fee

...

The application shall include the following information:

...

(D) Stamped envelopes addressed to each owner of property situated within three hundred (300) feet of the property lines of the project site (excluding roads), along with a list containing the names, addresses and Assessor's parcel numbers of same. Where the applicant is the owner of all properties within three hundred (300) feet of the project site, stamped envelopes shall be provided and addressed to owners, of property situated within three hundred (300) feet of the applicant's contiguous ownership.

(E) Stamped envelopes addressed to each occupant of property situated within one hundred (100) feet of the property lines of the project site (excluding roads), along with a list containing the names, addresses and Assessor's parcel numbers of same. Where the applicant is the owner of all properties within one hundred (100) feet of the project site, stamped envelopes shall be provided and addressed to each occupant of property situated within one hundred (100) feet of the applicant's contiguous ownership.

(F) Stamped, addressed envelopes and a list of names and addresses of all other parties known to the applicant to have an interest in the proposed development...

CZC Section 20.536.015 states, in applicable part:

Coastal Development Permit Hearing and Notice Requirements.

...

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

Discussion

Section 30603(b)(1) of the Coastal Act states that the grounds for an appeal 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 of Chapter 3 of the Coastal Act. The appellant's contention does not assert that the approved project is inconsistent with the standards of the certified LCP but rather relates to the permit process. Therefore, this contention is not a valid ground for appeal and does not raise a substantial issue of LCP conformance.

Although this contention is not valid grounds for an appeal under section 30603(b)(1) of the Coastal Act, according to evidence in the local record, the County provided notice of the pending application for the proposed development at least 10 days prior to the first public hearing on the proposed development, consistent with Coastal Zoning Code Section 20.536.015(C).

3. Conclusion

Applying the five factors listed above clarifies that the appeal raises a "substantial issue" with respect to the project's consistency with the visual resources protection policies of the Mendocino County LCP. Mendocino County CZC section 20.532.095(A) requires among other things that the granting of any coastal development permit by the approving authority shall be supported by findings which establish that the proposed development is in conformity with the certified LCP. The County's findings (1) fail to demonstrate how the telecommunication poles projecting above the ridgeline within a designated highly scenic area and visible from public vantage points of the coastline will be subordinate to the natural setting; and (2) fail to analyze alternatives, including but not limited to relocating poles to the north side of Navarro Ridge Road (outside the designated HSA) or undergrounding utility lines. Thus, there is a low degree of legal and

factual support for the County's decision that the approved project as conditioned will protect visual resources as required by the visual resource protection policies of the LCP.

In addition, the project extends along nearly the entire length of Navarro Ridge Road in the coastal zone for three miles. With many poles visible from public vantage points all along this stretch, the extent and scope of the project is significant, especially considering the significant portion of the development in the designated HSA and the low degree of factual and legal support for the County's decision that there are no project alternatives available that would provide for locating development outside of the HSA.

Moreover, the coastal resources affected by the development are significant, and the project raises issues of regional or statewide significance, including the protection of public views in a designated sensitive coastal resource area (SCRA). Mendocino County is one of only four local governments that has a certified LCP that includes a SCRA (which is defined under the LCP essentially the same as the SCRA definition under section 30116 of the Coastal Act).² The SCRA segment includes areas outside of the town of Mendocino designated and mapped as "highly scenic areas." Chapter 5 of the certified LUP and CZC section 20.308.110(6) define "Sensitive Coastal Resource Areas" as "those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity" and include "highly scenic areas."

Therefore, especially given the low degree of factual and legal support for the County's decision and conditions of approval, consideration of the five factors together support a conclusion that the County's approval of a CDP for this project raises a substantial issue of Coastal Act and LCP conformity. For the reasons stated above, the Commission finds that Appeal Number A-1-MEN-23-0036 presents 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.

G. Information Needed for De Novo Review

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

The LCP contains policies addressing visual resources, and allowable uses in Highly Scenic Areas. However, as discussed above, and in other respects not directly related

² The other local governments with designated SCRA's are City of Grover Beach, San Luis Obispo County, the City of Dana Point.

to the appeal contentions, the County's record does not contain critical information needed for a full de novo review of the application. Given that the project the Commission will be considering de novo has come to the Commission after an appeal of the local government action, the Commission has not previously been in the position to request information from the applicant needed to determine if the project can be found to be consistent with the certified LCP. This section identifies information the Commission will need to evaluate the development under de novo review for consistency with the certified LCP.

1. Alternatives Analysis

LUP Policy 3.5-4 and CZC Sections 20.504.015(C)(11) and – (12) require that where overhead transmission lines cannot be located along established corridors and are visually intrusive within a "highly scenic area," the lines shall be placed underground west of Highway One and below ridgelines east of Highway One if technically feasible. As discussed in the findings above, most of the new AT&T poles are located within a designated Highly Scenic Area. However, no alternative analysis was prepared for the project application. To determine whether the development is consistent with the LCP's visual resource policies, the applicant must provide a detailed alternatives analysis that investigates the alternatives of either placing all AT&T facilities underground, co-locating lines with existing utility poles (e.g., PG&E poles), and/or relocating AT&T facilities to the north side of Navarro Ridge Road. The alternatives analysis should identify the least environmentally damaging alternative that would avoid or reduce siting new development within the designated highly scenic area.

2. Updated Biological Survey

The County staff report acknowledges that a Biological Resource Assessment dated September 22, 2022 was prepared that surveyed impacted areas associated with the after-the-fact development. The staff report states in part "Several recommendations were made for any future work that may be required in order to protect sensitive and rare plants including the Harlequin lotus (*Hosackia gracilis*) and the Dwarf checkerbloom (*Sidalcea malviflora* ssp. *Rostrata*) as well as any wetland areas that may be encountered." It is unclear from the biological report where wetland and other ESHAs occur in relation to project alternatives. Therefore, for a de novo review of the project's consistency with certified LCP ESHA policies, the Commission will need an updated biological survey that addresses the presence of any wetlands and rare plant ESHA that may exist in the areas of proposed alternatives. Any areas of sensitive habitat should be identified, delineated, described in detail and depicted on an ESHA map prepared for the subject sites. Additionally, significant site features should be shown in relation to the mapped ESHA including existing roads and development, 100-foot ESHA buffer boundaries, and the proposed development. The report should explain what the proposed buffer will be, whether it conforms with the minimum buffers required by the LCP, and how it will be sufficient to protect the ESHA resources. The biological survey should be completed by a qualified biologist in compliance with agency accepted survey protocols (e.g. <https://wildlife.ca.gov/Conservation/Survey-Protocols>).

3. Updated Visual Assessment

The local application included a visual assessment ([Exhibit 4](#)) that investigated the visibility of the AT&T poles from Highway 1, Highway 128 and Navarro Beach, however, the visual assessment did not provide any visual analysis of views impacted from Navarro Ridge Road or from Navarro Point Preserve. Navarro Point Preserve is a popular public trail that offers spectacular views of the Mendocino Coast. Therefore, for a de novo review of the project's consistency with LCP visual resource protection policies, the Commission will need a visual assessment that includes information relating to what components of the project and project alternatives will be visible from the public road/trail and highway. The analysis should include visual simulations of the project from key and representative public viewpoints, including the public views of the coastline as seen from multiple public vantage points along Highway 1, Highway 128, Navarro Beach, Navarro Point Preserve and from Navarro Ridge Road.