

## CALIFORNIA COASTAL COMMISSION

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## RECORD PACKET COPY

## F8a

DATE: February 2, 2001

TO: COASTAL COMMISSIONERS AND INTERESTED PARTIES

FROM: Peter M. Douglas, Executive Director  
Steven F. Scholl, Deputy Director  
Robert Merrill, District Manager

SUBJECT: **Mendocino Co. LCP Amendment No. 2-98 (Major: Gualala Town Plan and Zoning) Certification Review:** Extension of time for Mendocino County to accept and agree to the Commission's certification of Mendocino County LCP Amendment No. 2-98 with suggested modifications.  
(For the Commission meeting of February 16, 2001, Item F8a)

On September 16, 1999, the Coastal Commission denied Mendocino Co. LCP Amendment No. 2-98 (Major: Gualala Town Plan and Zoning) as submitted by Mendocino County, and then certified the amendment if modified as suggested to incorporate various revisions.

The Commission's action differed substantially from the written staff recommendation that had been mailed prior to the hearing. The Commission made numerous changes to the suggested modifications that had been recommended by staff. Some of the changes involved adding or changing suggested modifications for which the exact wording of the suggested modifications was not articulated at the September, 1999 meeting. Because the Commission's action differed substantially from the written staff recommendation, it was necessary for the Commission to hold a hearing to adopt revised findings. At the hearing on revised findings on October 11, 2000, the Commission confirmed the specific wording of those suggested modifications for which exact wording had not been fully specified at the September, 1999 meeting and adopted revised findings to support the entire action the Commission took on September 16, 1999 to certify the amendment with the suggested modifications.

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At the February 16, 2001 Commission meeting, staff is recommending that the Commission extend the time for Mendocino County to accept and agree to the Commission's certification of the amendment with suggested modifications.

Proposed LCP Amendment

The proposed amendment would establish a Gualala Town Plan (GTP) consisting of: (1) proposed revisions to the text and land use maps of the Coastal Element of the County's General Plan (LUP) providing specific goals and policies guiding development in Gualala and the southernmost portion of the Mendocino County coastal zone; (2) the associated changes to the zoning maps; and (3) an ordinance amendment providing revisions as necessary to maintain consistency with the proposed general plan and zone changes, incorporate four newly-created zoning districts, and provide for development of a limited number of second residential units in the GTP planning area.

Effective Certification Process.

Pursuant to Section 13544 of the Commission's regulations, the certification of an LCP amendment shall not be deemed final and effective until: (a) the local government acknowledges receipt of the Commission's resolution, accepts and agrees to the modifications, takes whatever formal action is required to satisfy the modifications, and agrees to issue coastal development permits for the total area included in the certified local coastal program; (b) the Executive Director determines in writing that the local government's actions take to satisfy the above requirements are legally adequate, (c) the Executive Director reports the determination to the Commission and the Commission does not object to the determination, and (d) notice of the certification of the LCP amendment is filed with the Secretary of the Resources Agency

Deadline for Effective Certification

Pursuant to Section 13542(b) of the Commission's regulations, the Commission's certification of an LCP amendment with suggested modifications expires six months from the date of the Commission's action. Therefore, the local government must accept and agree to the Commission's certification of an LCP amendment with suggested modifications within six months unless the Commission extends the six-month deadline. Section 13535(c) of the Commission's Regulations provides that the Commission may extend for good cause the deadline for a period not to exceed one year.

As the Commission's original action to certify the LCP amendment with suggested modifications occurred on September 16, 1999, and consistent with the majority of the Commission's previous actions, staff interpreted Section 13542(b) to mean that the Commission's certification would expire six months from September, 16, 1999, or March 16, 2000. However, given the number and complexity of changes the Commission made to the staff recommendation at the September 16, 1999 meeting, having an adopted set of revised findings would greatly assist the County in taking the required actions under Section 13544 of the Commission's regulations for effective

certification of the LCP amendment. Due to staffing constraints, staff was not able to prepare revised findings for the Commission's consideration prior to the scheduled expiration date that staff understood applied to the Commission's certification of the amendment. Therefore, staff recommended at the March 2, 2000 Commission meeting that the Commission vote to extend the deadline for the County to accept and agree to the Commission's certification of LCP Amendment 2-98 with suggested modifications for one year. The Commission adopted this recommendation and voted to extend the deadline until March 16, 2001.

At the Commission meeting of October 11, 2000, the Commission acted to adopt revised findings without changes to the staff recommendation mailed to the Commission, the County, and interested parties on September 29, 2000. Although staff orally informed the County of the results of the Commission's action several days after the October 11, 2000 meeting, formal written notice of this action was not provided to the County until much later. County staff raised concerns about the limited time remaining for County consideration of the suggested modifications before the extended March 16, 2001 deadline.

Based on the specific factual circumstances more fully identified herein, staff has determined that in this case, pursuant to Section 13537(b) of the Commissioner's regulations, the six month time period for the County to accept and agree to the Commission's certification of LCP Amendment 2-98 with suggested modifications did not actually start until the Commission took action to confirm the exact wording of its suggested modifications when it adopted revised findings on October 11, 2000. Section 13537(b) states in applicable part:

- (b) *Except as provided in Public Resources Code Section 30512(a)(3), a decision to certify a land use plan or LRDP shall require a majority vote of the appointed membership of the Commission...Modifications to the land use plan or LRDP shall be proposed in the staff recommendation. Any vote on the addition or deletion of modifications, including the specific terms or wording of a modification, may be carried by a majority of the commissioners present. Any suggested modifications adopted by the Commission shall be specific and susceptible to objective review and verification by the executive director of the Commission, by the local government or governing authority and by any interested person or public agency...(emphasis added)*

As noted previously, the Commission made numerous revisions to the suggested modifications proposed in the staff recommendation. The LCP amendment was one of the first LCP amendments throughout the state where the Commission adopted a suggested modification establishing a standard for the treatment of non-point source pollution in stormwater runoff. The Commission spent considerable time at the hearing considering revisions to the staff proposed suggested modifications to provide for such a standard and revise other LCP policies and standards. Although the specific wording for the non-point source pollution suggested modification was read into the record, the exact wording for other revisions to the staff proposed modifications was left unspecified, including portions of Suggested Modification No. 12. This suggested modification would prohibit new development requiring water hookups from being

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approved when the North Gualala Water Company reaches 80 percent of service capacity unless certain actions have been taken to expand water service capacity without violating the Endangered Species Act. The suggested modification addresses concern that development not be approved without adequate services and that actions to expand water capacity by increasing diversion of water from the Gualala River would not occur if they would harm threatened salmonid species that use the river. The subject matter addressed by this and other suggested modifications was complex and very technical. For suggested modification #12, and to a lesser degree for several other suggested modifications, the Commission discussed the resource concerns that must be addressed by the suggested modification but directed staff to develop the specific wording to accomplish each requirement.

Thus, as adopted by the Commission on September 16, 1999, these latter suggested modifications were not specific and susceptible to objective review and verification as required by Section 13537(b) of the Commission's regulations. The specific wording was not fully adopted until the Commission acted on the revised findings at the meeting of October 11, 2000. Therefore, in this case, the six month time period for effective certification specified by Section 13542(b) of the Commission's regulations did not properly start until that date. As a result, the Commission's previous action on March 15, 2000 to extend the deadline for effective certification was in error, and is of no effect, as the six month time period for effective certification had not actually begun at that time. The six month time period actually ends on April 11, 2001, six months after adoption of the revised findings on October 11, 2000.

**Current Proposed Extension**

As noted above, Section 13535(c) of the Commission's Regulations provides that the Commission may extend for good cause the deadline for the County to accept and agree to the Commission's certification of LCP Amendment 2-98 with suggested modifications for a period not to exceed one year. As the original action of the Commission to extend the deadline in March of 2000 is of no effect, the Commission still has the ability to extend the deadline pursuant to Section 13535(c) of the Commission's Regulations. Given the extensive nature of the suggested modifications, the complexity of subject matter addressed by the suggested modifications, and the limited time that the adopted findings and the exact wording of all of the adopted suggested modifications have been available to the County to review, staff believes good cause exists for the Commission to extend the deadline for the County to accept and agree to the Commission's certification of LCP Amendment 2-98 with suggested modifications and proposes that the Commission grant such an extension. An extension would change the expiration date of the Commission's certification to April 11, 2002.

**Staff Recommendation**

Staff recommends that the Commission vote to extend the deadline for the County to accept and agree to the Commission's certification of LCP Amendment 2-98 for up to a year.

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**MOTION:**

I move that the Commission extend the six month time limit for Mendocino County to accept and agree to the Commission's certification of Mendocino County LCP Amendment No. 2-98 (Major: Gualala Town Plan and Zoning) with suggested modifications for a period not to exceed one year.

Staff recommends a YES vote. An affirmative vote of a majority of the Commissioners present is needed to pass the motion.

