

**CALIFORNIA COASTAL COMMISSION**

NORTH COAST DISTRICT OFFICE  
1385 8<sup>TH</sup> STREET • SUITE 130  
ARCATA, CA 95521  
VOICE (707) 826-8950  
FAX (707) 826-8960



# Th9f

**DATE:** May 26, 2017

**TO:** Coastal Commissioners and Interested Persons

**FROM:** Alison Dettmer, Deputy Director  
Robert S. Merrill, North Coast District Manager  
Tamara Gedik, Coastal Program Analyst

**SUBJECT:** **Mendocino County LCP Amendment LCP-1-MEN-14-0840-1  
(Mendocino Town LCP Update)**

For the Commission meeting of June 8 in Arcata

---

## SUMMARY OF STAFF RECOMMENDATION

On January 8, 2016, the County of Mendocino (County) transmitted to the Commission a revised version of LCP Amendment Application No. LCP-1-MEN-14-0840 (“LCP Update Amendment”). The proposed LCP Update Amendment would comprehensively update the Land Use Plan and Implementation Plan Town for the Town of Mendocino segment of the Mendocino County LCP. Before its transmittal to the Commission, the proposed LCP Update Amendment had been the subject of local hearings commencing in 2011.

The Mendocino Town LCP Amendment includes numerous proposed changes to the certified Mendocino Town Plan (LUP) and Town Zoning Code (IP), primarily relating to visitor serving facilities, land use designations, permitted and conditionally-permitted use types, water quality provisions, and policy formatting in the LUP. Much of the text of the Land Use Plan was extensively updated and revised.

Commission staff believes that a number of suggested modifications to the LCPA are needed to ensure that: (a) the amended Town Land Use Plan (LUP) meets the requirements of, and is in conformity with, the policies of Chapter 3 of the Coastal Act, and (b) the amended Town Zoning Code (IP) and supporting maps conforms with, and adequately carries out the provisions of the amended Town Plan as modified.

### **October 2016 Hearing and Subsequent Discussions with County**

The Commission opened the hearing on the Mendocino Town LCP amendment on October 5, 2016 in Ukiah and presented a staff recommendation with preliminary recommended suggested modifications. The public hearing was set up as the first of a two-meeting process with no Commission action to be taken until the second meeting to afford the local Mendocino County community an opportunity to comment to the Commission about the LCPA and the preliminary staff recommendation. The two-meeting Commission review process has enabled Commission staff to take into account comments on the preliminary recommended suggested modifications from the public and the Commission as it has prepared the current recommendation for Commission action. The two-meeting process also provided more time after the initial hearing for the Board of Supervisors and County staff to review the preliminary suggested modifications, provide input to Commission staff, and facilitate discussions between Commission staff and the County to help resolve issues of concern before Commission action.

County staff, working with the Board of Supervisor's Mendocino Town Plan Ad Hoc Committee prepared a memorandum to the Commission dated March 3, 2017 (see Exhibit 12) presenting the Ad Hoc Committee's comments on the preliminary suggested modifications presented in the September 23, 2016 Coastal Commission staff report. Subsequently, the Executive Director and other Coastal Commission staff met with County planning staff and the Ad Hoc committee on April 5, 2017 in Ukiah to discuss the County's comments and identify additional solutions that would ensure conformity with the Coastal Act.

### **Remaining Issues**

Through review of the County's comments, the discussions at the April 5<sup>th</sup> meeting with the Ad Hoc Committee, and the subsequent conversations with County staff, the major issues of controversy have been reduced to two issues: (1) redesignation and rezoning of the Mendocino Fire Protection District (MFPD) property off of Little Lake Road from open space to public facilities; and (2) legalization of certain existing but unpermitted visitor serving facility lodging units without requiring those facilities to obtain coastal development permits.

#### *Proposed Redesignation and Rezone of MFPD Property from Open Space to Public Facilities*

The LCPA changes the land use designation and zoning of an approximately 9.78-acre property located approximately 500 feet east of Highway 1, at 44700 Little Lake Road. Known as "Grindle Park," the property is currently designated as Open Space (OS), held in trust by Mendocino Fire Protection District (MFPD). The parcel contains the volunteer fire department's headquarters-fire station on the lower portion of the property; the remainder of the property is an undeveloped woodland hillside area that extends north and east of the intersection of Little Lake and Hills Ranch roads. Although the current open space land use designation would allow the desired water tank on a portion of the site for firefighting purposes because the current open space designation already allows for fire and police protection services as a conditional use, MFPD has requested the rezoning/redesignation of the property from OS to Public Facilities (PF). Public input to Commission staff has indicated that two wells and a water treatment facility may also being contemplated for the site.

Commission staff visited the site on October 7, 2014, and again with staff Ecologists, and staff from Mendocino County, MPFD, and California Department of Fish and Wildlife on June 2,

2016. The subject woodland hillside property contains a mixed stand of Northern Bishop Pine forest. Additionally, Exhibit D of Commission Permit 1-84-87A depicts the presence of springs occurring on the subject property. Evidence of Pacific Reedgrass Meadows, the springs and other wetland features were observed during the June 2, 2016 site visit. Northern Bishop Pine Forest, Pacific Reedgrass Meadows, and wetlands (including but not limited to seeps and springs) are recognized in the Town of Mendocino as environmentally sensitive habitat areas (ESHAs).

The 1992 certified Town Plan identifies the intent of the Open Space land use classification in part as applying “to lands held in public ownership for recreational use and to lands most valuable in their undeveloped natural state such as those lands which contain rare and endangered species and habitat, riparian vegetation zones, sites of historic or archaeological significance, or scenic areas...” Commission staff believes the currently certified open space designation remains the most appropriate land use designation for the subject site due to the extent of wetlands and other ESHAs on the subject property. Designation of the entire site for Public Facilities as proposed under the LCPA would allow for an expanded range of uses that would be incompatible and inconsistent with the protection of sensitive resources known to occur on the undeveloped portions of the property.

After visiting the site, Commission staff believes that a water tank could be sited outside of ESHA and ESHA buffers, though infrastructure necessary to connect the water tank to a hydrant downslope and near the fire department would need to be sited and designed to avoid encroaching within ESHA and/or ESHA buffers. To allow for potential development of a fire protection water tank at the site while ensuring conformity with the resource protection policies of the Coastal Act as described above, **Suggested modifications 3, 9, 16, and 28** would: (a) retain the currently certified open space land use classification and zoning district designation within the Town narratives, policies, and land use and zoning maps, and (b) add language to Town Policy PF-5.1 (**Appendix A page 123**) requiring that any development associated with any services extensions, including but not limited to equipment and infrastructure to support a water storage tank for fire-fighting services, shall be undertaken in a manner (such as by horizontal directional drilling) that avoids encroachment into environmentally sensitive habitat areas and prevents impacts which would significantly degrade land adjacent to environmentally sensitive habitat areas.

The specific siting and design of the service extensions as well as the water tank itself would occur and be reviewed at the stage when the MPFD applies for a coastal development permit for the development from the County. While the need for and feasibility of specific siting and design measures would be addressed at the CDP application stage independent of the land use designation that applies to the site, staff notes that the Commission has approved projects in the past that imposed provisions requiring horizontal directional drilling to install utility lines underneath ESHAs as a means of avoiding encroachment into ESHA and/or ESHA buffers. The use of horizontal directional drilling for installation of infrastructure at the Grindle Park site would similarly ensure that encroachment into ESHA and/or ESHA buffers could be avoided, if necessary, at this location.

Staff also notes that any challenges associated with the siting and design of the utility lines or other infrastructure would occur whether the site is designated Open Space as currently certified or Public Facilities as proposed under the LCPA by the County. In fact, the extent to which there

are siting and design challenges associated with rerouting utility lines or using directional drilling to avoid the ESHA on the site only highlights the need to limit the range of potential uses that could be allowed on the site by retaining the currently certified Open Space designation. The much greater range of public facilities uses that could be allowed under the Public Facilities designation than under the Open Space designation would only increase the design challenges that would be faced in trying to avoid the ESHA because structures that cover a greater land area face much greater siting and design constraints than narrow pipelines that can be positioned underground.

#### *Legalization of unauthorized visitor serving facility lodging units without CDPs*

As proposed, the LCPA includes “amnesty” provisions (e.g., Policies GM-13(b), GM-15(c)) that would legalize a number of visitor serving facility lodging units added to existing inns over the years without the benefit of coastal development permits. The County indicates that innkeepers have been paying transient occupancy taxes to the County on these units, and have annually obtained a Mendocino County Business License to operate their visitor serving facility.

These “amnesty” provisions would conflict with Coastal Act Section 30600 which requires that any person wishing to undertake development, as defined in Section 30601, shall obtain a coastal development permit. Even if some of the visitor serving facility structures may have existed prior to enactment of the Coastal Act in 1973, Commission regulations provide a mandatory procedure by which a property owner must obtain a vested rights determination from the Commission. Such a determination must be based on evidence that any development undertaken prior to the enactment of the Coastal Act or its predecessor statute was completed with all other required approvals and permits. Also, any future modifications to development that was the subject of a vested rights claim is also subject to existing law at the time those modifications take place. Furthermore, any new development, such as but not limited to the addition of new units, enlargement or expansion of facilities, and/or other changes in the density or intensity of use requires a coastal development permit as described above. In addition, although Section 30610(e) excludes certain developments from coastal development permit requirements, there is no Commission-approved categorical exclusion for the unpermitted visitor serving units.

Therefore, to ensure conformity with the relevant Coastal Act policies (including but not limited to Sections 30600, 30601 and 30610), staff continues to recommend suggested modifications **3**, **4**, and **14** which would eliminate the blanket exemptions from coastal development permit requirements for any visitor serving facility that simply exists now or may have existed in the past even if the requisite coastal development permit had not been obtained. As modified, all unpermitted visitor serving accommodations with existing allocations would have until December 2018 to submit a complete CDP application and until June 30, 2019 to obtain the required CDP before their existing allocation would be forfeited.

#### **Issues Resolved Since the October 2015 Hearing**

The staff report prepared for the October hearing the County’s comment memorandum identified a number of other issues of controversy that, to the best of staff’s knowledge, have been resolved by discussions with the Ad Hoc Committee and County Staff. Four such issues that have been resolved include: (1) the extent of hydrological testing that should be required for development with only limited increases; (2) the zoning that should be applied to the Williams property; (3)

whether to require that new low cost visitor serving facilities be allowed within the Commercial Land Use Designation; and (4) how best to avoid all uses in a zoning district being appealable to the Commission.

*The Extent of Hydrological Testing Required For Development Involving Only limited Increases.*

The Town of Mendocino is very unusual among most coastal towns and cities in that no community (public) water system exists to serve the Town. Property owners instead rely on individual on-site water wells for their source of water. There are over 400 privately owned water wells within the Town. As a result of the discontinuous, highly fractured bedrock and shallow terrace deposits that retain groundwater, groundwater supply is trapped within “pockets” between bedrock fractures. Supply is not evenly distributed throughout Town and some individual wells have failed.

Coastal Act Section 30250(a) requires that new development shall be located within or near existing developed areas able to accommodate it or in other areas with adequate public services and where it will not have significant adverse effects, whether individually or cumulatively, on coastal resources. The currently certified Mendocino Town Plan requires that any new or expanded development within the Town of Mendocino must demonstrate that an adequate on-site water supply exists to serve existing and new development, through submittal of a hydrological study, unless it can be demonstrated on a case-by-case-basis that no increase in water use will occur. However, as currently certified and again proposed in the Town Plan Update, Section 20.744.015 allows for an exception to the hydrological study requirement as provided for in Section 20.744.025. Section 20.744.025 provides that a hydrological study will not be required in cases where it has been determined by the Mendocino City Community Services District or Health Officer that the development will not have any foreseeable impact on hydrologically contiguous wells. As the exception provision does not specifically take into account whether adequate water is available from a well to adequately serve the proposed development, only whether it would have any foreseeable impact on contiguous wells, some proposed development that would result in an increase in water use has not been required to perform a hydrological study which would demonstrate that an adequate supply exists. The staff recommendation prepared for the October hearing included recommended suggested modifications that would have modified the exception provision to expressly require hydrological testing for any development that would result in an increase in water use.

The County has expressed concerns about requiring very costly hydrological studies for limited development such as adding an extra bedroom in an existing home. The County points out that development involving more than limited increases has not been granted exceptions to the need to perform full hydrological studies. Only development defined by the MCCSD as involving a limited increase in development and demand for water has not had to perform hydrological tests.

As the issue centers on development with only limited increases in water demand over the demand for the existing development at the site, staff believes that if the existing development on the site is served by a functioning well that produces sufficient water to serve the existing amount of development at the site, the well would likely have enough capacity to serve expansion of development at the site that only involves a limited increase in the demand for water.

Over the last several years the MCCSD has required the installation of water meters at each development in Town and the monthly submittal of metering data to the District. The data provides information that could help applicants demonstrate that they have a functioning well that is serving their existing development. Given the availability of the metering data and the presumption that a functioning well would in most cases be able to serve a limited increase in development, staff has revised its suggested modifications related to the method of demonstrating proof of water for development.

Suggested Modification 26 modifies the proposed exception to the requirement for a hydrological study so that a hydrological study would not be required where: (1) the District has determined that the development will not have any foreseeable impact on hydrologically continuous wells; (2) the proposed development would have no more than a limited increase in total water demand as specifically provided in Section 20.744.025; and (3) monthly well metering data demonstrates that the subject lot has an existing well that produces enough water to serve the existing development on the lot with or without conservation measures and without reliance on off-site water sources. The new provisions added to Section 20.744.025 by Suggested Modification 26 thereby limits the exception to the requirement for a hydrological study to situations wherein the additional water demand resulting from the limited increase would likely be accommodated by the well on-site. The “limited increase” in water use is defined in TZC Section 20.744.025(A)(2) and matches the threshold for exempting development from the hydrological studies used by MCCSD when issuing MCCSD Groundwater Extraction Permits in the District’s adopted Ordinance 07-1, as calculated from the water use standards included in Appendix C of Ordinance 07-1.

#### *Zoning for the Williams House Property*

A second area of controversy that has been resolved involves the zoning of a property with a historical structure known as the “Williams House” (Category I Landmark Structure). The approximately 0.31-acre parcel is split-zoned parcel with Multi-Family Residential (MRM) and Commercial. The split zoning makes it difficult to improve the site. The LCPA proposes to allow a discretionary selection of uses permissible under the two different land use and zoning designations applied to the site. In its staff recommendation prepared for the October hearing, staff recommended against the proposed “optional” selection of permissible uses under the two different designations for the site as the proposed amendment would not specify the kind, location, and intensity of land use that would be applicable to the property as required by Coastal Act Section 30108.5.

At the October hearing, staff recommended an alternative approach to the proposed optional zoning, instead recommending that the site be redesignated and rezoned to Mixed Use, which is a transitional zone providing space for offices and retail uses that do not generate heavy automobile traffic or generally operate between the hours of 6:00 p.m. and 7:00 a.m. and encouraging the preservation and construction of moderately priced residential dwelling units. The County objected to the designation of the site as Mixed Use, because the district standards for the Mixed Use zone which include a requirement that more than 50% of the gross floor area of all development shall be devoted to residential dwelling units. The site is currently developed with a small historic structure making it difficult for the owners to meet the gross floor area

requirement. The County proposes instead that the site be designated as Commercial rather than the Mixed Use Zone.

Because the relatively small parcel (0.31-acre) is currently partially-designated Commercial on an already developed site, staff believes that changing the land use classification to entirely Commercial would afford at least some of the range of uses envisioned in the Commercial land use classification on a site able to accommodate it. The Williams House site would be limited in its ability to accommodate the full range and intensity of uses allowable within the Commercial land use and zoning designations because the site is uniquely constrained by lot size, historical status, traffic circulation, and setback requirements (among others). Therefore, many of the uses allowable within the Commercial District would not be appropriate for the site. On the other hand, Commission staff believes that some limited uses, such as administrative offices or limited retail uses not otherwise allowable within the MRM District could be appropriate at the site (subject to demonstrating conformity with all LCP policies).

For these reasons, Commission staff has revised **Suggested modifications 3, 16, 17, and 18** to (a) redesignate and rezone the Williams House” parcel from the split land use classification of Rural Residential (RM) and to an entirely Commercial (C) Use designated parcel, and (b) delete the optional zoning provision of TZC Section 20.604.050(D) from the LCPA.

*Whether to Require that Low Cost Visitor Serving Facilities be Allowed in the Commercial Land Use Designation*

A third area of controversy that has been resolved relates to whether it is necessary to require that new visitor serving facilities be allowed in the Commercial Land Use Designation. The Town is a popular visitor destination point for recreational uses and has been designated in the certified LCP as a “special community, as described in Coastal Act Section 30253(e). Although the Town is very small (population of 894 according to 2010 Census data for the Town), the amount of visitor overnight accommodations within the Town is relatively high. Based on information provided by the County, the ratio of residential units to visitor accommodations units in the Town of all types (including inns, hotels, bed and breakfasts, vacation rentals, and single unit rentals) is 1.58:1 (422 residential units to 267 visitor accommodation units).

Despite the proportionally large amount of visitor serving accommodations to residential units compared to other coastal locations, the Town of Mendocino itself does not currently have many lower cost visitor serving units. However, lower cost visitor serving lodging units are relatively abundant in nearby Fort Bragg. In addition, a number of campgrounds in the greater Mendocino/Fort Bragg area such as Van Damme State Park, Russian Gulch State Park, MacKerricher State Park provide opportunities for lower cost stays in the area.

The proposed LCPA continues to limit the number of visitor serving accommodations. The Town Plan limits the total number of allowable visitor lodging units (includes hotels, inns, and bed and breakfast accommodations, but not vacation rentals or single unit rentals) within the Town to 237 units. The 237 units are allocated to specific lots within the Town in various zoning district through use of a combining zone that designates the location of the allocated lodging facilities with an asterisk (\*, for hotel or inn units) or with an asterisk-B (\*B, for bed-and-breakfast accommodations). The specific number of individual lodging units allowed at each designated site is established in a table in the LUP. No additional visitor serving lodging

units could be developed within the Town that would exceed the 237 unit total or be built in a different location without an LCP amendment allowing for such a change. The LCPA would separately limit the number of vacation rentals to 10, and the number of single unit rentals to 20 (Town Policy GM-15(a)). In response to community desires to shift vacation home rentals (VHRs) out of designated residential areas, the LCPA would also eliminate through attrition those VHRs located in designated residential areas and require all new VHRs to be located within the Mixed Use and Commercial District zoning districts (Town Policy GM-3(b)).

Commission staff supports most of the proposed amendments to the visitor serving facility and visitor accommodation policies of the LCPA. Staff believes that retaining a cap on the total number of visitor serving lodging units in the Town can be found consistent with Coastal Act visitor serving facilities priority use policies in this case because of the proportionally high number of visitor serving units to residential units in this small community. In addition, shifting some of the visitor accommodations from vacation home rentals and single unit rentals to visitor serving lodging units will help ensure that the visitor accommodation units are more consistently available for visitors.

Staff had recommended several suggested modifications at the October hearing to ensure consistency with Coastal Act policies. Section 30213 of the Coastal Act states in applicable part that lower cost visitor and recreational facilities shall be protected, encouraged, and where feasible, provided. Even though lower cost visitor accommodations are available along this portion of the Mendocino coast in the surrounding area, very few lower cost visitor accommodations are available directly within the Town of Mendocino itself. Under both the certified LCP and the LCPA, the only locations where visitors serving lodging units may be developed is at the particular lots designated on the Mendocino Town Plan and Zoning Map with an asterisk (\*) or asterisk-B (\*-B). Virtually all of these sites are existing visitor serving facilities. No new visitor serving facilities can be built anywhere else in Town without first obtaining an LCP amendment, even if an allocation of units under the cap in visitor serving lodging facilities is available. To encourage the development of lower cost visitor serving facilities in the Town, the previously recommend suggested modifications would have modified the LCP to allow new hostels, hotels, inns, and B&Bs as permitted uses within the Commercial District without increasing the total cap on visitor serving facility lodging units within the Town.

The County objected to the suggested modifications adding new visitor serving facilities as permitted uses in the Commercial District, expressing concerns that visitor accommodations would displace other businesses in the Commercial District that are needed to serve both residents and visitors alike. Commission staff has considered the County's concerns and reexamined its recommendation. Staff notes that the previously recommended modifications would not have increased the total number of visitor serving facility lodging units available in the town. In addition, even though adding the use in the Commercial District would create an opportunity for a new visitor serving facility to be established that might be lower cost, the change in allowable uses would not ensure that any additional visitor serving facilities built would be lower cost. Furthermore, staff notes that the greatest concentration of failed water wells in the Town are located in and around portions of the Commercial District. This fact indicates that development of visitor serving lodging units is not feasible throughout the Commercial District. Therefore, the current staff recommendation does not include suggested modifications allowing for visitor serving facilities as a new use in the Commercial District.

*How Best To Avoid All Uses Being Appealable to the Commission*

Finally, Commission staff believes the issue relating to how the certified LCP lists principally permitted and conditional uses for each land use classification and zoning district also has been resolved. Conditional uses require a use permit from the County, where as principally permitted uses do not. The LCPA would characterize multiple uses currently listed as conditional uses in many zoning districts as “principal permitted uses” within a single zoning district. For example, revised Town Zoning Code Chapter 20.664 now proposes Residential, Civic, and Visitor Accommodations as principally permitted uses within the Commercial District. Based on discussions with County staff, it appears that part of the reason to recharacterize many of the conditional uses as principally permitted is to reduce the burdens on property owners of having to go through a use permit process for many different uses.

However, Section 30603(a)(4) of the Coastal Act provides that local approval of any development in a Coastal county (i.e., unincorporated areas) that is not designated as *the* principal permitted use results in an action that is appealable to the Commission. Accordingly, unless a single use is designated as the principally permitted use in a particular zoning district, all development approved by the County in that particular zoning district is appealable to the Commission. This creates an unnecessary problem easily rectified by identifying one use as principally permitted in each zoning district. One way to identify a single use as principally permitted in each zoning district that satisfies the goal of reducing the number of uses that would require a conditional use permit and also avoids the result of rendering all development in a particular zoning district appealable to the Commission would be to characterize the uses in each zoning district in one of three categories: “permitted,” “conditionally permitted,” and “principally-permitted” uses. A single use would be designated as the principally permitted use and would neither require a use permit nor be appealable to the Commission. Other uses listed as “permitted” would not require a conditional use permit, although these uses would be appealable. And those uses listed as conditionally permitted would continue to require a use permit and be appealable to the Commission.

Staff continues to recommend **Suggested modification 2** to characterize the “permitted,” “conditionally permitted,” and “principally-permitted” uses in each zoning district in a manner that would avoid both the need for conditional use permits as well as a result in which all development in a particular zoning district is appealable to the Commission because a single use has not been designated as principally permitted that particular zoning district. **Suggested modifications 4, 13 and 21** would also change the relevant policies, land use classifications, and zoning district uses to specify those developments that would be a permitted use, rather than the principally-permitted use, in conformity with Coastal Act Section 30603.

Commission staff and the Ad Hoc Committee discussed this issue during the April 5<sup>th</sup> meeting, focusing on the advantages of identifying a single principally-permitted use so as not to unnecessarily render more projects approved by the County appealable to the Commission with the attendant burdens that places on applicants. The County has not since expressed objections to the approach recommended by Commission staff.

## **Conclusion**

Commission staff recommends that the Commission, upon completion of a public hearing, deny the LCP amendment as submitted, but certify both portions of the requested LCP amendment if modified as suggested by staff.

**The appropriate motions and resolutions to adopt the staff recommendation are on [page 13](#).**

## **DEADLINE FOR COMMISSION ACTION**

On January 8, 2016,<sup>1</sup> the County of Mendocino transmitted its request to update the Mendocino Town Segment of the certified LCP by amending both the certified Town Land Use Plan and Implementation Plan (“Mendocino Town Plan Update”). The County’s proposed LCP Amendment (LCPA) was filed on March 14, 2016. The 90-day time limit for the Commission to act on the proposed LCPA was June 12, 2016. A one-year time extension was granted by the Commission on May 11, 2016. As such, the last date by which the Commission must act on this item is June 12, 2017.

## **ADDITIONAL INFORMATION**

The appendices containing the proposed LCP amendments (Appendices A - F) with suggested modifications and supporting documentation (Appendices G – J) are not included in their entirety as appendices to save paper. The staff report available on-line at the Commission’s website contains Appendices A-J in their entirety, and color versions of the proposed Town Land Use Plan map and Town Zoning map included as Appendices E and F, respectively.

For additional information about the LCP amendment, please contact Tamara Gedik at the North Coast District Office at (707) 826-8950. Please mail correspondence to the Commission at the letterhead address.

---

<sup>1</sup> The January 8, 2016 transmittal of the Town of Mendocino LCP Update Amendment revises the version previously adopted by the County on December 9, 2014 and transmitted to the Commission’s North Coast District office one year earlier, on January 5, 2015.

## TABLE OF CONTENTS

<b>I.</b>	<b><u>MOTIONS AND RESOLUTIONS</u></b>	<b>13</b>
<b>II.</b>	<b><u>PROCEDURAL ISSUES</u></b>	<b>15</b>
	A. <u>STANDARD OF REVIEW</u>	15
	B. <u>PROCEDURAL REQUIREMENTS</u>	15
<b>III.</b>	<b><u>SUGGESTED MODIFICATIONS</u></b>	<b>16</b>
<b>IV.</b>	<b><u>FINDINGS AND DECLARATIONS</u></b>	<b>21</b>
	A. <u>DESCRIPTION OF PROPOSED AMENDMENT</u>	24
	B. <u>CONSISTENCY ANALYSIS</u>	32
	1. <u>ENVIRONMENTALLY SENSITIVE HABITAT AREAS (ESHAs)</u>	32
	2. <u>PRIORITY USES, PUBLIC ACCESS, AND RECREATION</u>	44
	3. <u>PLANNING AND LOCATING NEW DEVELOPMENT</u>	76
	4. <u>VISUAL RESOURCES</u>	122
	5. <u>ARCHAEOLOGICAL RESOURCES</u>	43
	6. <u>WATER QUALITY</u>	47
	7. <u>HAZARDS</u>	146
	C. <u>CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)</u>	152

## **APPENDICES**

Proposed LCP with Suggested Modifications:

Appendix A – Proposed LUP amendments with suggested modifications

Appendix B – Proposed Appendix 2 with suggested modifications

Appendix C – Proposed IP amendments with suggested modifications

Appendix D – Appendices to Town LUP

Appendix E – Proposed LUP map

Appendix F – Proposed IP map

Other Supporting Documentation:

Appendix G – Substantive File Documents

Appendix H – Public Participation and Agency Coordination

Appendix I – MCCSD 2013-2014 Water Demand and User Standards

Appendix J – Estimated Additional Town Water Demand, Build-Out Scenarios

## **EXHIBITS**

Maps & Tables:

Exhibit 1 – Regional Map

Exhibit 2 – Aerial Vicinity Map

County Resolution and Supporting Correspondence:

[Exhibit 3 – January 8, 2016 LCP Amendment Transmittal Letter](#)

[Exhibit 4 – January 8, 2016 LCP Amendment Consistency Analysis Summary](#)

[Exhibit 5 – County Resolution No. 15-180](#)

[Exhibit 6 – County Correspondence Regarding Resolution No. 15-180](#)

Supporting Documentation

[Exhibit 7 – Water Supply Excerpts from Consistency Analyses Prepared by Dall and Associates](#)

[Exhibit 8 – November 16, 2006 Drought Scenarios Technical Memo Prepared for MCCSD](#)

[Exhibit 9 – Traffic Excerpts from Consistency Analysis Prepared by Dall and Associates](#)

[Exhibit 10 – Visitor Serving and Recreational Opportunities memo by Mendocino County, May 16, 2013](#)

Correspondence Received:

[Exhibit 11 – Correspondence received prior to preparation of September 23, 2016 staff report](#)

[Exhibit 12 – Correspondence received from Mendocino County March 8, 2017](#)

[Exhibit 13 – Correspondence received after preparation of September 23, 2016 staff report](#)

**Figures**

Figure 1. – State Parks Camping Rates

Figure 2. – Average Daily Occupancy Rates at State Parks Campgrounds within coastal Mendocino County in the Month of August, 2010 through 2014.

Figure 3. – MCCSD Informal Groundwater Zones for Aquifer Budget Analysis

Figure 4. – Estimates and Projections of the Town of Mendocino and Mendocino County Population 2000-2050

**Tables**

Table 1. – Summary of Unit Count and Ratios of Residential to Visitor Serving Uses

## **I. MOTIONS, RECOMMENDATIONS, AND RESOLUTIONS**

### **A. DENIAL OF LUP AMENDMENT NO. LCP-1-MEN-14-0840-1 AS SUBMITTED**

#### **Motion A:**

*I move that the Commission certify Land Use Plan Amendment No. LCP-1-MEN-14-0840-1 as submitted by the County of Mendocino.*

Staff recommends a **NO** vote. Passage of the motion will result in certification of the land use plan amendment as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

#### **Resolution A to Deny Certification of the LUP Amendment as submitted:**

*The Commission hereby denies certification of the Land Use Plan Amendment No. LCP-1-MEN-14-0840-1 as submitted by the County of Mendocino and adopts the findings set forth below on the grounds that the land use plan as amended does not meet the requirements of and is not in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan amendment would not meet the requirements of the California Environmental Quality Act, as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Land Use Plan Amendment.*

### **B. CERTIFICATION OF LUP AMENDMENT NO. LCP-1-MEN-14-0840-1 WITH SUGGESTED MODIFICATIONS**

#### **Motion B:**

*I move that the Commission certify Land Use Plan Amendment No. LCP-1-MEN-14-0840-1 for the County of Mendocino if it is modified as suggested in this staff report.*

Staff recommends a **YES** vote. Passage of the motion will result in the certification of the land use plan amendment with suggested modifications and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of the majority of the appointed Commissioners.

#### **Resolution B to Certify the LUP Amendment with suggested modifications:**

*The Commission hereby certifies Land Use Plan Amendment No. LCP-1-MEN-14-0840-1 for the County of Mendocino if modified as suggested and adopts the findings set forth below on the grounds that the Land Use Plan amendment with suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan*

*amendment if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Land Use Plan Amendment if modified.*

**C. DENIAL OF IP AMENDMENT NO. LCP-1-MEN-14-0840-1 AS SUBMITTED**

**Motion C:**

*I move that the Commission reject Implementation Program Amendment No. LCP-1-MEN-14-0840-1 for the County of Mendocino as submitted.*

Staff recommends a **YES** vote. Passage of this motion will result in rejection of the Implementation Program Amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**Resolution C to Deny the IP Amendment as submitted:**

*The Commission hereby denies certification of the Implementation Program submitted for the County of Mendocino and adopts the findings set forth below on grounds that the Implementation Program Amendment as submitted does not conform with and is inadequate to carry out the provisions of the Land Use Plan as certified. Certification of the Implementation Program Amendment would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program as submitted.*

**D. CERTIFICATION OF IP AMENDMENT NO. LCP-1-MEN-14-0840-1 WITH SUGGESTED MODIFICATIONS**

**Motion D:**

*I move that the Commission certify the Implementation Program Amendment No. LCP-1-MEN-14-0840-1 for the County of Mendocino if it is modified as suggested in this staff report.*

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Program with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**Resolution D to Certify the IP Amendment with Suggested Modifications:**

*The Commission hereby certifies the Implementation Program Amendment for the County of Mendocino if modified as suggested on the grounds that the Implementation Program Amendment with the suggested modifications conforms with and is adequate to carry out the provisions of the Land Use Plan as certified. Certification of the Implementation Program if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.*

**II. PROCEDURAL ISSUES**

**A. STANDARD OF REVIEW**

The standard of review for land use plan amendments is found in Section 30512 of the Coastal Act. This section requires the Commission to certify an LUP amendment if it finds that it meets the requirements of, and is in conformity with, the policies of Chapter 3 of the Coastal Act. Specifically, Section 30512 states: “(c) *The Commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200). Except as provided in paragraph (1) of subdivision (a), a decision to certify shall require a majority vote of the appointed membership of the Commission.*”

---

To certify the amendment to the Implementation Plan (IP) portion of the County of Mendocino’s Mendocino Town Plan Local Coastal Program (LCP), the Commission must find that the amended IP will conform with and adequately carry out the provisions of the certified Land Use Plan (LUP).

**B. PROCEDURAL REQUIREMENTS**

Pursuant to Section 13551(b) of Title 14 of the California Code of Regulations, the County resolution for submittal may specify that a LCP Amendment will either require formal local government adoption after the Commission approval, or that it is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code Sections 30512, 30513, and 30519. In this case, the County’s Resolution of Transmittal No. 15-180, adopted December 8, 2015 (**Exhibit 5**) states that the LCP Amendment will require final County approval after noticed local public hearing, following Coastal Commission certification before it takes effect. In this case, Commission staff is recommending denial of the LCP Amendment as submitted, and certification with suggested modifications. If the Commission approves the proposed amendment pursuant to the staff recommendation, the County must act to accept the certified suggested modifications within six months from the date of Commission action in order for the amendment to become effective (California Code of Regulations, Title 14, Sections 13544 & 13544.5; and Sections 13542(b) and 13537(b)). If the County acts to accept

the suggested modifications, then pursuant to Section 13544 of the Code of Regulations, the Executive Director shall determine whether the County's action is adequate to satisfy all requirements of the Commission's certification order and report on such adequacy to the Commission. If the Commission certifies the LCP amendment as submitted, the amendment would not be effective until the Board of Supervisors holds a notice local public hearing and approves the action. Should the Commission deny the LCP Amendment, as submitted, without suggested modifications, no further action is required by either the Commission or the County, and the LCP amendment is not effective.

### III. SUMMARY OF SUGGESTED MODIFICATIONS

#### Key for Modifications to County Language:

The revised text deletions and additions proposed by the County are shown in ~~striketrough~~ and underline, respectively. Text deletions and additions suggested by the Commission are formatted in ~~**bold double striketrough**~~ and **bold double-underlined** text, respectively.

#### A. SUGGESTED MODIFICATIONS TO THE MENDOCINO TOWN LAND USE PLAN (LUP)

The following 17 suggested modifications to the LUP are needed to ensure that the LUP is consistent with the Coastal Act. The attached **Appendix A** presents the complete land use plan amendments as proposed by the County in the context of all the related Town LUP policies, showing in ~~striketrough~~ and underline how the proposal would alter the existing Town LUP text. The language in **Appendix A** shown in **bold double underline** represents language that the Commission suggests be added and the language shown in ~~**bold double striketrough**~~ represents language that the Commission suggests be deleted from the language as originally submitted. Suggested Modification Nos. 15, 16, and 17 also include directives to the County. These suggested modifications are shown in *bold italics*. Because of the length of each suggested modification, Suggested Modification Nos. 1-17 are not reproduced here.

##### 1. Suggested Modification No. 1: (Town Plan Introduction)

All changes to the Town Plan Introduction shown in Section 1 ("Introduction") of **Appendix A**.

##### 2. Suggested Modification No. 2: (Definitions)

All changes to Definitions in Section 2 of the Town Plan as shown in Section 2 of **Appendix A**.

##### 3. Suggested Modification No. 3: (Town Background, Setting, and Description)

All changes to Section 3 of the Town Plan ("Town Background, Setting, and Description") are shown in Section 3 of **Appendix A**.

##### 4. Suggested Modification No. 4: (Town Growth Management Policies)

All changes to the introductory narrative in Section 4.1 and the Town Growth Management Policies in Section 4.2 as shown in Town Plan Sections 4.1 and 4.2 of **Appendix A**.

**5. Suggested Modification No. 5: (Mendocino Design Guidelines Policies)**

All changes to Town Plan Section 4.3, “Mendocino Design Guidelines,” as shown in Town Plan Section 4.3 of **Appendix A**.

**6. Suggested Modification No. 6: (Circulation and Parking Policies)**

All changes to the Circulation and Parking policies shown in Section 4.4 of **Appendix A**.

**7. Suggested Modification No. 7: (Affordable Housing Policies)**

All changes to the Affordable Housing policies shown in Town Plan Section 4.5 of **Appendix A**.

**8. Suggested Modification No. 8: (Sustainability Policies)**

All changes to the Sustainability policies shown in Town Plan Section 4.6 of **Appendix A**.

**9. Suggested Modification No. 9: (Public Facilities Policies)**

All changes to the Public Facilities policies shown in Town Plan Section 4.7 of **Appendix A**.

**10. Suggested Modification No. 10 (Public Access and Recreation Policies)**

All changes to the Public Access and Recreation policies shown in Town Plan Section 4.8 of **Appendix A**.

**11. Suggested Modification No. 11 (Conservation Policies)**

All changes to the Conservation policies shown in Town Plan Section 4.9 of **Appendix A**.

**12. Suggested Modification No. 12 (Mendocino Town Plan Administration Policies)**

All changes to the Town Plan Administration policies shown in Town Plan Section 4.6 of **Appendix A**.

**13. Suggested Modification No. 13 (Mendocino Town Land Use Classifications)**

All changes to the Town Land Use Classification descriptions and policies shown in Town Plan Section 5 of **Appendix A**.

**14. Suggested Modification No. 14 (Town Plan Implementation Policies)**

All changes to the Town Plan Implementation provisions shown in Town Plan Section 6 of **Appendix A**.

**15. Suggested Modification No. 15 (Appendices)**

*Revise Appendix 2, “Mendocino Town Plan Visitor Serving Facilities,” as depicted in Appendix B.*

**16. Suggested Modification No. 16 (LUP Map)**

All changes to the LUP Map as follows:

- a. *Revise map text as follows: ~~pursuant to Public Resources Code Section 30603(a)~~ **Boundaries shown on this map do not establish or depict State of California ownership boundaries or Post-Town of Mendocino Local Coastal Program certification permit and appeal jurisdiction.***

- b. *Revise map text as follows: ~~(Mean High Tide Line, Ordinary High Water Mark)~~ The Town of Mendocino boundary along the Pacific Ocean, Mendocino Bay, and tidal lower Big River follows the shoreline. (Government Code Section 23123).*
- c. *Revise the land use map to eliminate the Public Facilities (PF) land use classification from Highway 1.*
- d. *Revise the land use map to change the approximately 9.78-acre Grindle Park parcel located at 44700 Little Lake Road (APN 119-090-07) from the newly-proposed Public Facilities (PF) land use classification to the as-certified Open Space (OS) land use classification.*
- e. *Revise the land use map to change the approximately 0.31-acre “Williams House” parcel located at 10575 Lansing Street (APN 119-150-01) from the split land use classification of Multiple Family Residential (RM) and Commercial (C) to an entirely Commercial (C) designated parcel.*
- f. *Remove “mark-up” version of Town Plan land use map from the Town Plan and update Table of Contents accordingly.*

**17. Suggested Modification No. 17 (Organization)**

All changes to the organization of the LCP as follows:

- a. *Eliminate references to hyperlinked text (“[\\]”) throughout LUP and IP text*
- b. *Re-number relevant policies, definitions, and sections in appropriate sequential order and correct all policy cross-references prior to submission to the Commission for certification pursuant to Sections 13544 and 13544.5 of the California Code of Regulations.*
- c. *Eliminate redundant reference to “(parcels)” throughout LUP and IP text*
- d. *Revise descriptive narrative text as necessary to conform narrative text to any associated policy(ies) that have been added or revised through suggested modifications.*
- e. *Update Town Plan Update references from “2011-2015 update” to date of certification throughout document.*
- f. *Universally delete “updated” from “Mendocino Town Plan” references*
- g. *Correct all document formatting as necessary including typographical errors, headers/footers, page numbers, tables of contents, etc.*
- h. *Universally correct references throughout LCP to the “the Mendocino Headlands State Park Preservation and Recreation Plan (General Plan) by the California Department of Parks and Recreation.” To either reference the 1971 CA Coastline Preservation and Recreation Plan, or the 1976 Mendocino Headlands SP General Plan (both are authored by State Parks).*

- i. *Revise acreages included in Sections 3.4.2 (Commercial), 3.4.3 (Mixed Use), 3.4.5 [sic] (Public Facilities), and 3.4.6 (Open Space) to reflect suggested modifications to land use and zoning designations of Williams House, Highway 1, and Grindle Park.*
- j. *Add missing pages to Appendix 3 (“Big River Estuary Marine Protect Area Limitations on Fishing”)*

## **B. SUGGESTED MODIFICATIONS TO THE MENDOCINO TOWN IMPLEMENTATION PROGRAM (IP)**

The following 12 suggested modifications to the IP are needed to ensure that the IP conforms with and is adequate to carry out the policies of the Town LUP as modified. The attached **Appendix C** presents the complete zoning code amendments as proposed by the County in the context of all the related zoning standards, showing in ~~striketrough~~ and underline how the proposal would alter the existing text of the Town Zoning Code (TZC). The language in **Appendix C** shown in **bold double underline** represents language that the Commission suggests be added and the language shown in ~~**bold double striketrough**~~ represents language that the Commission suggests be deleted from the language as originally submitted. Because of the length of each suggested modification, Suggested Modification Nos. 18-29 are not reproduced here. Suggested Modification Nos. 28 and 29 include directives to the County that are shown in *bold italics*.

### **18. Suggested Modification No. 18: (Chapter 20.604, Basic Provisions)**

All changes to Chapter 20.604 shown in Chapter 20.604 of **Appendix C**.

### **19. Suggested Modification No. 19: (Chapter 20.608, Definitions)**

All changes to Chapter 20.608 shown in Chapter 20.608 of **Appendix C**.

### **20. Suggested Modification No. 20: (Chapters 20.612 – 20.636, Use Classifications and Use Types)**

All changes to Chapters 20.612 – 20.636 shown in Chapters 20.612 – 20.636 of **Appendix C**.

### **21. Suggested Modification No. 21: (Chapters 20.640 – 20.688, Zoning Districts.)**

All changes to Chapters 20.640 – 20.688 shown in Chapters 20.640 – 20.688 of **Appendix C**.

### **22. Suggested Modification No. 22: (Chapters 20.704 – 20.708; 20.740; 20.748, Standards for Specific Land Uses)**

All changes to: Chapters 20.704 (“Accessory Use Regulations”), 20.708 (“Temporary Use Regulations”), 20.740, and 20.748 shown in 20.704 – 20.708, 20.740 (“Second Residential Units”), and 20.748 (“Single Unit Rentals and Vacation Home Rentals”) of **Appendix C**.

### **23. Suggested Modification No. 23: (Chapters 20.712 – 20.716, Site Planning and Project Design Policies)**

All changes to Chapters 20.712 – 20.716 shown in Chapters 20.712 – 20.716 of **Appendix C**.

**24. Suggested Modification No. 24: (Chapters 20.717 – 20.719, Resource Management Policies)**

All changes to Chapters 20.717 – 20.719 shown in Chapters 20.717 – 20.719 of **Appendix C**.

**25. Suggested Modification No. 25: (Chapters 20.720 – 20.736, Coastal Land Use and Zoning Code Administration Policies)**

All changes to Chapters 20.692, and 20.720 – 20.736 shown in Chapters 20.720 – 20.736 of **Appendix C**.

**26. Suggested Modification No. 26: (Chapter 20.744, “Groundwater Evaluation”)**

All changes to Chapter 20.744 shown in Chapter 20.744 of **Appendix C**.

**27. Suggested Modification No. 27 (Chapter 20.760, “Historical Preservation District for Town of Mendocino”)**

All changes to Chapter 20.760 shown in Chapter 20.760 of **Appendix C**.

**28. Suggested Modification No. 28 (Zoning Map)**

- a. *Revise zoning map text as follows: ~~pursuant to Public Resources Code Section 30603(a)~~ **Boundaries shown on this map do not establish or depict State of California ownership boundaries or Post-Town of Mendocino Local Coastal Program certification permit and appeal jurisdiction.***
- b. *Revise zoning map text as follows: ~~(Mean High Tide Line, Ordinary High Water Mark)~~ **The Town of Mendocino boundary along the Pacific Ocean, Mendocino Bay, and tidal lower Big River follows the shoreline. (Government Code Section 23123).***
- c. *Revise the land use map to eliminate the Public Facilities (PF) land use classification from Highway 1.*
- d. *Revise the land use map to change the approximately 9.78-acre Grindle Park parcel located at 44700 Little Lake Road (APN 119-090-07) from the newly-proposed Public Facilities (PF) land use classification to the as-certified Open Space (OS) land use classification.*
- e. *Revise the land use map to change the approximately 0.31-acre “Williams House” parcel located at 10575 Lansing Street (APN 119-150-01) from the split-zoning district of Mendocino Multiple Family Residential (MRM) and Commercial (C) to an entirely Commercial (C) designated parcel.*
- f. *Remove “mark-up” version of zoning map from the Town Zoning Code and update Table of Contents accordingly.*

**29. Suggested Modification No. 29 (Organization/Recodification)**

All changes to the organization of the IP as follows:

- a. *Revise descriptive narrative text as necessary to conform narrative text to any associated policy(ies) that have been added, revised, or relocated through suggested modifications.*

- b. *Number all chapters and sections, including table entries, in appropriate sequential order and correct all policy and standards cross-references prior to submission to the Commission for certification pursuant to Sections 13544 and 13544.5 of the California Code of Regulations.*
- c. *Universally correct references throughout LCP to the “the Mendocino Headlands State Park Preservation and Recreation Plan (General Plan) by the California Department of Parks and Recreation.” To either reference the 1971 CA Coastline Preservation and Recreation Plan, or the 1976 Mendocino Headlands SP General Plan (both are authored by State Parks).*

## IV. FINDINGS AND DECLARATIONS

### *Setting and Existing Conditions*

The Town of Mendocino was founded in 1851 as a lumber town, and was established by settlers from New England primarily pursuing lumber and fishing interests. The 19<sup>th</sup> century architecture of the town, set against the forested mountains and rocky shoreline, is reflective of the New England roots of its original residents. Situated approximately 150 miles north of San Francisco, the Town’s remote rugged coastline, scenic vistas, historical architectural features, small shops, and friendly small-town ambience account for much of the Town’s character. The Town of Mendocino has been described as a “mystical village” that is among the most photographed and the most visited coastal destinations north of San Francisco. In 2014, The New York Times listed the Mendocino County Coast as the No. 3 most desirable “Places to Visit”<sup>2</sup> out of its annual 52 featured destinations<sup>3</sup>.

The Town of Mendocino (formerly known as Mendocino City) contains unique natural, cultural, and historical features. Because of its unique characteristics, the Town is a popular visitor destination point for recreational uses and has been designated in the certified LCP as a “special community,” as described in Coastal Act Section 30253(e). Highway 1 bisects the Town, and west of Highway One the Town is bounded to the north, west, and south by predominantly undeveloped headlands. The public has access to the majority of the headlands (approximately 165 acres) as part of the larger Mendocino Headlands State Park, which draws over 1 million visitors per year. The Town also includes two geographic historical zones (Zone A and Zone B) that have been designated as part of the Mendocino Historical Preservation District (a registered national landmark) and are subject to additional review and approval requirements of the Town’s Mendocino Historic Review Board to ensure all work (including painting, replacing siding, etc.) and development preserves the historical integrity of the area.

The Town of Mendocino is situated on the Mendocino Headlands, an uplifted marine terrace comprised of shallow, unconsolidated marine terrace deposits atop fractured bedrock. The Town is bounded by steep sea cliffs ranging from 40 to 100 feet, and an average elevation within the Town of 140 feet. The headlands reach a height of 160 feet at Hillcrest Cemetery west of

---

<sup>2</sup> <http://www.nytimes.com/interactive/2014/01/10/travel/2014-places-to-go.html>

<sup>3</sup> [http://www.co.mendocino.ca.us/administration/pdf/01-13-14\\_Press\\_Release\\_-\\_3\\_on\\_Places\\_to\\_Visit\\_NYTimes\\_-\\_DRA.pdf](http://www.co.mendocino.ca.us/administration/pdf/01-13-14_Press_Release_-_3_on_Places_to_Visit_NYTimes_-_DRA.pdf)

Highway 1, and 220 feet at the western edge of Grindle Park (located approximately 500 feet east of Highway 1).

The population of the Town has varied over the years. The 1985 Town of Mendocino Groundwater Study<sup>4</sup> described the total resident population as 900, “which may exceed 1,500 on holidays and during the summer tourist season.” 2010 Census data<sup>5</sup> reported the Town population at 894 people and a total of 617 housing units. The Mendocino City Community Services District 2012 Groundwater Management Plan<sup>6</sup> indicates that the permanent population of the Town of Mendocino is approximately 1,000 people.

Mendocino City Community Services District (MCCSD) has provided wastewater management services to Town residents since 1975. The wastewater treatment plant is located on the Mendocino Headlands at 10500 Kelley Street. During 2013-2014, the MCCSD reported service connections for 422 residences, 9 guest cottages, and 4 other sleeping units.

As discussed further below, no community water system exists to serve the Town. The unique geology of the Town’s shallow marine terrace formations above highly fractured bedrock severely limit groundwater availability, and California Department of Water Resources has designated the entire Town as an area of “Critical Water Resources, bedrock” (CWRbr). Percolation of rainfall into the shallow groundwater basin provides over 98% of the Town’s water supply before it discharges to springs along the cliffs and bluff faces. There are over 400 privately-owned water wells within the Town that supply water to individual residences and businesses. MCCSD does have groundwater management authority over the Mendocino Headlands aquifer to prevent depletion of the Town’s limited groundwater resources. MCCSD’s groundwater management program includes monitoring of water levels in several groundwater monitoring wells throughout Town, and regulating groundwater extraction from privately-owned and operated wells on individual lots through its groundwater extraction permit process.

A diversity of unique natural resources exist within and adjacent to the Town. The Town is bordered to the north by Slaughterhouse Gulch and to the south by the northern bank of Big River. The Big River Estuary is a designated State Marine Conservation Area within the network of Marine Protected Areas (MPAs) managed by California Department of Fish and Wildlife. Offshore rocks, including Goat Island, provide valuable bird breeding and nesting habitat. Sea caves encourage recreation and exploration. The blufftops support various sensitive native plant communities such as coastal terrace prairie areas and the rare Mendocino coast paintbrush (*Castilleja mendocinensis*). Wetlands, seeps, and springs also exist in various parts of the Town, in addition to forested areas near the banks of Big River and along the eastern part of the Town that transition in some places into pygmy forest areas.

---

<sup>4</sup> California Department of Water Resources, "Town of Mendocino Ground Water Study." June 1985.

<sup>5</sup> <http://www.census.gov/2010census/popmap/ipmtext.php>

<sup>6</sup> Mendocino Community Services District (MCCSD) Groundwater Management Plan and Programs. Adopted by the MCCSD Board of Directors February 25, 1990; Amended May 30, 2012. Accessed online at: [http://www.co.mendocino.ca.us/planning/pdf/MCCSD\\_Groundwater\\_Management\\_Plan\\_and\\_Programs\\_2012.pdf](http://www.co.mendocino.ca.us/planning/pdf/MCCSD_Groundwater_Management_Plan_and_Programs_2012.pdf)

## ***Mendocino Town Background***

### **i. 1985 Land Use Plan**

In November 1985, the Commission certified the Coastal Element of the Mendocino County land use plan, which included a separate chapter with policies specific to the Town of Mendocino. A key tenet of the 1985 Mendocino Town Plan was ensuring the maintenance of community character. To accomplish this goal, Policy 4.13-2 required that the plan be reviewed after approval of 50 additional housing units, 25,000 square feet of nonresidential floor area, or after 5 years, whichever comes first, to determine the effect of development on town character.

### **ii. Implementation Plan and Town Periodic Review**

A draft of the zoning code that would implement the Town Plan policies was released for public review in 1987. During the Planning Commission's review of the draft Town zoning code in 1988, a question was raised regarding the effect of approved developments in the Town on community character. In 1989, County staff reviewed Town development that had occurred since 1985 and determined that more than 25,000 square feet had been approved.

The Mendocino County Board of Supervisors subsequently appointed seven individuals to serve on a Citizen's Advisory Committee (CAC) to review the Town Plan and prepare recommendations to the Board of Supervisors for further action. The Planning Commission had completed its review of the draft zoning code (Implementation Plan) for the entire County during the same time period that the CAC was conducting public meetings and recommending revisions to the Town land use plan. Both the draft zoning code and the recommended revisions to the Town Plan chapter of the Coastal Element of the County General Plan were transmitted to the Board of Supervisors.

### **iii. Mendocino Town Segmentation**

In order to pursue completion of the Coastal Zoning Ordinances for the remainder of the Coastal Element outside the Town of Mendocino, in 1990 the Board of Supervisors requested that the Coastal Commission authorize segmentation of the Mendocino Town Plan from the Coastal Element. Coastal Act Section 30511(c) provides that an LCP can be submitted in separate geographic segments provided the Commission finds the areas proposed for separate review can be analyzed for potential cumulative development impacts on coastal resources and access independent of the remaining jurisdiction. On June 13, 1990, the Commission approved the County's request to segment the Mendocino Town Plan from the Mendocino County land use plan, finding in part that the requirements of Section 30511(c) could be "easily met because the Town Plan primarily applies to a geographic area that is defined by its development pattern and community character."

### **iv. Mendocino Town LCP Certification**

In 1992, the Commission approved, and the County accepted, the Mendocino Town Plan Amendment 1-92 (Major) with suggested modifications, resulting in a number of changes to the certified Town Plan. The Mendocino Town draft zoning code changes were delayed due to local committee-level policy disagreements, and once resolved, in 1995 the County took action to approve the Mendocino Town Implementation Program. The Commission subsequently approved the Mendocino Town Implementation Program with suggested modifications that the County accepted, and the Mendocino Town LCP was effectively certified December 9, 1996.

**v. Amendments to the Certified Town LCP**

Following effective certification of the Mendocino Town LCP, the Commission certified Categorical Exclusion Order E 96-1 for Mendocino County, Town Segment, which allows certain specified types of development to occur in specified geographic areas, if among other requirements, the development proposed is consistent with Mendocino County's certified Town LCP policies. Additionally, the Commission has certified three amendments to the Town LCP since its effective certification in 1996, including LCPA 3-99 (Major, effectively certified upon Commission action on March 15, 2000), LCP Amendment No. 1-03 (de minimis, effective November 6, 2003), and LCP Amendment No. 1-08 (minor amendment, effective March 2, 2015).

**vi. Mendocino Town LCP Periodic Review**

The 1992 amended Town Plan included a revision to Town Plan Policy 4.13-2 requiring:

*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.*

In 1999, Mendocino County planning staff conducted an administrative review of the Town LCP. As a result of ongoing community concern over maintenance of Town character, a Citizens' Advisory Committee (CAC) was formed in 1999 to identify specific policy recommendations on the following issues:

- The number of vacation home rentals and single unit rentals;
- Incentives for second residential units;
- Cottage Industries and home occupations;
- Parking and circulation; and
- Formation of a Municipal Advisory Council.

The 1999 CAC provided recommendations to the Board of Supervisors but no action was taken at that time. On December 6, 2006, the Board of Supervisors directed Mendocino County Planning and Building Services staff to process a Town Plan amendment. The County formally launched into a process to develop an updated Mendocino Town Plan LCP in 2011.

**A. DESCRIPTION OF PROPOSED AMENDMENT**

**1. Purpose of Proposed LCPA**

Nearly 20 years have passed since the effective certification of the Mendocino Town LCP. The proposed LCP amendment would update the Mendocino Town Plan LCP that was effectively certified in 1996 to reflect current conditions and community goals. As described in Section 1.6 of the revised Town Plan, the County seeks to update the Mendocino Town Plan LCP to: a) identify planning issues specific to the Town; b) describe various land use and coastal resource components within the Mendocino Town Plan area; c) establish required policies and actions that address the planning issues and provide for balance to protect significant coastal resources; and d) provide for implementation of these policies and actions through the conformed updated Mendocino Town Zoning Code and Mendocino Town Zoning Map.

The County seeks to update the Mendocino Town Plan LCP with changes that include: adding contemporary policies<sup>7</sup>; modifying existing policies and certain land use designations<sup>8</sup>; and eliminating policies and goals that have either been accomplished since certification of the LCP, or are otherwise no longer relevant.<sup>9</sup> The County has additionally re-formatted the Town Land Use Plan to follow the General Plan system of presenting policies and action items.

## **2. Summary of LCPA**

The LCPA proposes numerous changes to the certified Mendocino Town Plan (LUP) and Town Zoning Code (IP), primarily relating to visitor serving facilities, changes to certain land use designations, revised permitted and conditionally-permitted use types, new water quality provisions, and new policy formatting in the LUP to follow the General Plan and Gualala Town Plan formats. Additionally, the version of the Town LCP Amendment adopted by the BOS on December 8, 2015 substantively modifies the Board's previous December 9, 2014 Town LCP Amendment transmitted to the Commission on January 5, 2015. For example, the proposed LCPA contains in many instances, entirely- new language, including but not limited to: (a) more than 70 new Land Use Plan (LUP) definitions, (b) new narratives<sup>10</sup>, (c) new policy sections and sub-sections,<sup>11</sup> (d) new policies within previously-presented subsections<sup>12</sup>, (e) 7 new appendices; and (f) newly added and deleted policies within the Town Zoning Code, including but not limited to new provisions within Chapter 20.716 "Water Quality Protection," Chapter 20.718 "Public Access," and Chapter 20.719 "Environmentally Sensitive Habitat Areas."

As proposed, LCP-1-MEN-14-0840-1 would include the following changes, among others:

### Land Use Plan Re-Formatting

- The proposed Town LUP would follow a format similar to the newer formatting of the County's General Plan and of the Gualala Town Plan chapter of the Coastal Element of the County General Plan. The format would establish policy statements with associated "implementation actions" or action items.

### New Definitions

- The Town LCPA contains a new Town Plan Section 2 with more than 70 new definitions of terms used within the Town Plan (**Appendix A**). Many definitions are adapted and modified from definitions provided within Chapter 2 of the Coastal Act, and from the Commission's administrative regulations (14 CCR, Division 5.5). Other definitions have

---

<sup>7</sup> E.g., formula restaurant prohibitions (MTP Policy GM-8.1), sustainability policies (MTP Section 4.5)

<sup>8</sup> E.g., updated visitor serving facility provisions (MTP Section 4.1), OS to PF redesignations

<sup>9</sup> E.g., the 1992 Town Land Use Plan directive to acquire the historic Grammar School Building (MTP Policy 4.13-24) has been realized.

<sup>10</sup> New narrative language includes, but is not limited to: Section 1.1 "Introduction," Subsection 3.1 "Introduction," Subsection 3.2 "Background," Subsection 3.3 "Planning Process"; Section 3.5 "Public Access; and Section 3.6 "Town Plan Administration."

<sup>11</sup> New subsections include, but are not limited to: Subsection 4.8 "Town Public Access and Recreation" containing more than 20 new public access policies and actions; Subsection 4.9 "Town Conservation" containing 23 new policies and actions; and Subsection 4.10 "Town Plan Administration" containing 11 new policies.

<sup>12</sup> New policies within previously-presented subsections include, but are not limited to: approximately 20 new policies and actions within Subsection 4.2 "Town Growth Management;" and several new policies within Subsections 4.3 "Town Design Guidelines," 4.4 "Town Circulation and Parking," 4.5 "Town Housing," 4.6 "Town Sustainability," and 4.7 "Town Public Facilities."

been adapted from definitions previously contained in the 1996 certified Town Zoning Code. Additional new definitions have been included to address Formula Restaurants, Lodging, and other “Standardized Features” that would be regulated as part of the proposed LCPA. New and revised definitions in the Town Zoning Code (Chapter 20.608, **Appendix C**) similarly introduce terminology used in the IP, including but not limited to a new definition for “community gardens,” and revised definitions of active and passive recreation, among others.

#### New Narratives and Revisions to Background and Community Issues

- The LCPA has added a new “Introduction” Section 1 to the Town LUP (**Appendix A**) that details the history of the Town of Mendocino, its LCP certification background, the LCP certification process, Coastal Act standards, and current community issues that have been updated from the 1992 certified Town Plan. The current community issues identified in the Town LUP are: (1) Preservation of the Town’s special community character; (2) Parking, public access, and traffic; (3) Economic revitalization; (4) Public facility strategic planning; (5) Community amenity & community space; (6) Sustainability; (7) Local Control and Coastal Act standards; (8) Sensitive Coastal Resource Area; (9) Vacation Home Rentals and Single Unit Rentals; (10) Public noticing of County/Mendocino Historical Review Board meetings and proceedings; (11) Visitor-serving facility authorizations; (12) Comprehensive storm water management; and (13) Groundwater resources management. The proposed changes to the Town LUP also include an expanded “Town Plan Setting, Description and Background” Section 3 (**Appendix A**) to provide context for the goals and policies of the Town Plan.

#### Revisions to Visitor Serving Accommodations Policies

- The LCPA contains numerous new and revised policies relating to the use, geographic distribution, allocation, number, and authorization of visitor serving facilities (e.g., hotels, inns, B-and-Bs) and other lodging units (e.g., vacation home rentals and single unit rentals) within the Town. Many of the proposed changes respond to community sentiments to retain the overall numbers of Town visitor serving accommodations, but reallocated in a distribution pattern that could improve the Town balance between residential, commercial, and visitor serving uses. Table 1 summarizes the ratios of uses based on counts provided by the 1989 Citizens’ Advisory Committee that were considered in the Commission’s findings for approval of the 1992 Town Plan subject to adoption of suggested modifications, and compared to 2013-2014 residential units identified by the MCCSD and current LCPA-proposed visitor serving facilities.

**Table 1. Summary of Unit Count and Ratios of Residential to Visitor Serving Uses.**

	1992 Town Plan	1992 Ratio of Uses	Town LCPA	Town LCPA Ratio of Uses
# Residential Units	306		422	
# Commercial Uses	182		Not specified	
Ratio of Residential to Commercial Uses		1.68: 1	Not specified	
# visitor serving accommodation uses (including VHRs and SURs)	274*		267	
<b>Ratio of Residential to Visitor Serving Accommodation Uses (including VHRs &amp; SURs)</b>		<b>1.11: 1</b>	<b>1.58: 1</b>	
# visitor serving accommodation uses (excluding VHRs and SURs)	228		237	
<b>Ratio of Residential to Visitor Serving Accommodation Uses (excluding VHRs &amp; SURs)</b>		<b>1.34:1</b>	<b>1.78:1</b>	
# VHRs/SURs	46		30	
<b>Ratio of Residential to VHR/SUR Uses</b>		<b>7: 1</b>	<b>14: 1</b>	

\*The 274 visitor-serving lodging units counted by the 1989 Citizens' Advisory Committee differs slightly from the 280 recognized by the certified Town LCP count of 280 (306/280= 1.09:1 ratio)

The 1992 Town Plan identified an allocation of 234 visitor serving lodging units to sites designated on the Town land use and zoning maps with an asterisk (\*, for hotel or inn units) or with an asterisk-B (\*B, for bed-and-breakfast accommodations). The total allocation included 19 visitor serving lodging units identified for the Mendocino Art Center. As discussed further under "Revised Affordable Housing Policies" below, The Mendocino Art Center (MAC) is an educational, exhibition, and resource center that includes studios and classrooms for the visual and performing arts, and that provides thirteen (13) Art Center Student/Instructor Housing units for class participants as well as other visitors to Mendocino on a limited basis. Transient occupancy of the MAC units by the general public may occur, subject to payment of business license and transient occupancy taxes for stays of less than 30 days. The remaining six (6) units allocated for the Mendocino Art Center under the 1992 certified Town Plan were never built.

Town Plan Policy GM-15(b) (**Appendix A**) would reclassify the existing 13 Art Center Student/Instructor Housing units as "Affordable Housing," and would reallocate the 6 additional units allocated to the Art Center in 1992, but not constructed, to existing visitor serving facility lodging units depicted with an asterisk (\*) or asterisk-B (\*B) on the Mendocino Town Land Use and Zoning Maps and as identified in Town Plan Appendix 2.

- Town Policy GM-3, which supersedes the 1992 certified Town Plan Policy 4.13-4(2), would limit new or expanded overnight visitor serving facility lodging units to a maximum of 25 units operated as one business entity, and authorize a total of 237 lodging units on specified sites that the Town Land Use Map denotes with an asterisk (\*), or asterisk-B (Town Policy GM-3(a), **Appendix A**). Town Plan Policy GM-3(a) would also

allow an increase above 237 lodging units at asterisk-designated sites subject to obtaining an amendment to the LCP.

- The Town LCPA would also add a new Visitor Serving Facility asterisk (\*) Combining District designation to the Nicholson House Inn, located at 44861 Ukiah Street, and would temporarily allocate seven (7) lodging units to the site, subject to obtaining the necessary coastal development permits (Town Plan Section 6.7, **Appendix A**; Town Zoning Code Section 20.684.030(H), **Appendix C**).
- As discussed further below under “Revised Permitted and Conditionally-permitted Use Types,” the proposed Town LCPA also includes new policies that would establish development of any lodging unit on sites designated on Mendocino Town Land Use and Zoning Maps with an asterisk (\*) or an asterisk-B (\*B), as a principal permitted use in the respective Town Land Use Classifications, Mendocino Visitor Serving Facility Combining District, and Mendocino Town Zoning Districts (Town Policy GM-24(b), **Appendix A**).
- The LCPA would also reduce the 23 Single Unit Rentals and 23 Vacation Home Rentals allowed by the 1992 Mendocino Town Plan to 20 Single Unit Rentals and 10 Vacation Home Rentals (Town Policy GM-3(c)). In response to community desires to shift vacation home rentals (VHRs) out of designated residential areas, the LCPA would also eliminate through attrition those VHRs located in designated residential areas (Town Policy GM-3(b)). The remaining 16 units would be reallocated to visitor serving facility sites designated with an asterisk (\*) or asterisk-B (\*B) (Town Policy GM-15(a), **Appendix A**) on the Mendocino Town Land Use and Zoning Maps and as identified in Town Plan Appendix 2 (**Appendix D**).
- The Town LCPA additionally contains new provisions for reallocating lodging units that were initially assigned to sites specified in Town Plan Appendix 2, to other visitor serving facility sites designated with an asterisk (\*) or asterisk-B (\*B) on the Mendocino Town Land Use and Zoning Maps, as they become available under a range of scenarios (Town Policy GM-15(d), **Appendix A**; Town Plan Section 6.7, **Appendix A**; and TZC Section 20.684.030(H), **Appendix C**).
- New policies proposed in the LCPA would also legitimize those existing but unauthorized visitor serving facilities operating since 1992, without further regulatory review (Town Policies GM-13 **Appendix A**; GM-15(c), **Appendix A**; Town Plan Section 6.7, **Appendix A**; and TZC Section 20.684.030(H)).

#### Revisions to “Design Guidelines” Policies

- The Design Guidelines Section 4.3 proposed in the Town LUP (**Appendix A**) retains many of the policies of the 1992 certified Town Plan, but includes revisions that would ensure development within the Town -- and particularly within the Historical Zones A and B -- would be designed to be compatible with the historical design character of the Town. Additional Town Plan policies require protection of views to and along the coast. Revised LCP policies also include provisions requiring consideration of open space areas, locations of structures and clustering of development to protect public views, and limiting

the scale of development design to maintain the existing character of the Town (e.g., Town Plan Policy DG-2, **Appendix A**; Town Zoning Code Section 20.692.020, **Appendix C**). Design Guideline policies such as Actions DG-4.1 and DG-5.1 encourage revisions to the 1987 Mendocino Historical Review Board Guidelines, incorporating provisions for the use of native, drought-tolerant landscaping, and revised lighting restrictions. Additionally, the revised Town Plan includes a provision encouraging the County to certify the Town as a “Dark Sky Community” (Action DG-5.3, **Appendix A**).

#### Revised Circulation and Parking Policies

- The proposed LCPA addresses pedestrian safety, circulation, and parking in Town Plan Section 4.4 (**Appendix A**) and in a number of Town Zoning Code provisions, including but not limited to Section 20.664.055 (**Appendix C**) and Chapter 20.714 (**Appendix C**). During the community hearing process, public sentiments expressed certain Town pedestrian and circulation features as contributing to Town character, including but not limited to curb-less streets and a variety of walkway materials. The need for more parking and flexible parking standards was also expressed. The proposed LCPA includes a number of changes to the circulation and parking policies to reflect current conditions and provide flexibility through shared parking agreements as well as in-lieu fee provisions where off-street parking requirements cannot be met.

#### Revised Second Residential Unit Policies

- To address the need for more affordable housing within the Town, the proposed LCPA would expand opportunities for second residential units into an additional residential zoning district (MRR-1 Zoning District on parcels larger than forty thousand (40,000) square feet) on lots that are able to accommodate them. New and revised policies in Town Plan Section 4.5 (**Appendix A**) and Town Zoning Code Chapter 20.740 (**Appendix C**) would encourage and streamline permitting for the development of second residential units in areas able to accommodate them (subject to meeting the standards contained in TZC Section 20.740.015), and restrict the use of second residential units to long-term non-transient residential habitation (e.g., Action AH-2.2, **Appendix A**).

As proposed, the LCPA would also revise the classification of the Mendocino Art Center from its former consideration as a visitor serving facility to a civic use type allowed within the Public Facilities Zoning District. The Mendocino Art Center (MAC) is an educational, exhibition, and resource center that includes studios and classrooms for the visual and performing arts, and that provides thirteen (13) Art Center Student/Instructor Housing units for class participants as well as other visitors to Mendocino on a limited basis. The LCPA reclassifies the 13 Art Center Student/Instructor Housing units as “Affordable Housing” (Town Plan Action AH-2.3, **Appendix A**), although transient occupancy of the MAC units by the general public may occur, subject to business license and transient occupancy taxes for stays of less than 30 days.

#### New Water Quality and “Sustainability” Policies

- The LCPA includes a new Town Plan Sustainability Section 4.6 (**Appendix A**) and a new Town Zoning Code (TZC) Chapter 20.717 (**Appendix C**) that contain new water conservation, stormwater management, and energy conservation measures. The LCPA

includes revised provisions that would lessen requirements associated with water storage tanks (e.g., TZC Sections 20.608, and 20.760.040(O), **Appendix C**), and that would encourage use of rainwater harvesting, greywater systems, and stormwater management techniques. Other provisions would encourage the use of pervious surfaces to protect existing marine terrace soils that allow water infiltration and percolation to recharge groundwater. The Town Zoning Code policies are also intended to be used together with the Grading, Erosion, and Runoff provisions found in the Coastal Zoning Code provisions of the balance of the County (Title 20, Division II, Chapter 20.492), as provided in TZC Section 20.717.005(B), among other policies.

#### Newly-Designated Public Facilities

- The LCPA contains several changes affecting designated Public Facilities within the Town. The LCPA proposes designating the Highway 1 right-of-way as a part of the “Public Facilities” Land Use Classification (Action PF-1.4), and revising the land use and zoning maps accordingly.

Additionally, the new Town Plan Public Facilities Section 4.7 (**Appendix A**), Town Zoning, and revised land use and zoning maps redesignate and rezone several parcels comprising 33 acres east of Highway 1 and north of Big River that are now owned by California State Parks, from Forestlands (FL) to the more relevant Open Space (OS) designation (Town Plan Action PF-3.1), and delete the FL Zoning District (Chapter 20.670) from the Town Zoning Code.

The LCPA also proposes to rezone two properties from their current designation as Open Space, to Public Facilities (Town Plan Policies PF-4 and PF-5, and Actions PF-4.1 and PF-5.1). One property proposed for rezoning is a 1.8-acre parcel located west of and adjacent to Highway 1 at 10705 Palette Drive and identified as Assessor’s Parcel (APN) 119-140-31. The Mendocino City Community Services District (MCCSD) acquired the property through eminent domain in 2013. As part of its conditional approval of CDP A-150-75 authorizing a hotel expansion on a portion of the property (“Hill House”), the Coastal Commission had previously required recordation of an open space easement on the remaining undeveloped portion of the property, disallowing any development other than landscaping within the open-space-restricted area to protect the introductory view of the Town for the traveler entering Mendocino on Highway 1 from the north. The eminent domain acquisition extinguished the recorded open space easement from the property. Although no official plans have been presented, MCCSD has expressed at public hearings various potential uses of the property that could benefit the community public services it provides. The County staff report prepared for the October 22, 2013 Board of Supervisors hearing indicates that MCCSD would like to develop the subject property “for use as storage, office space, and potentially water storage.”

A second parcel proposed for redesignation and rezoning is Grindle Park, which is situated approximately 500 feet east of Highway 1, at 44700 Little Lake Road (APN 119-090-07), and is held in trust by Mendocino Fire Protection District (MFPD). That parcel contains the Mendocino Fire Protection District/Mendocino Volunteer Fire Department’s headquarters-fire station on the lower portion of the property. Because the property rises to one of the highest elevations within the Town (approximately 240 feet elevation),

MFPD has requested rezoning/redesignation of the approximately 9.78-acre property from OS to PF to accommodate the potential future site of an elevated water tank.

#### New Public Access Policies, Definitions, and Maps

- The public currently has access to the majority (approximately 98%) of the Mendocino Headlands as part of approximately 165 acres of the larger Mendocino Headlands State Park that extends beyond Town boundaries. The LCPA introduces an entirely new Town Plan Public Access and Recreation Section 4.8 (**Appendix A**), and new Town Zoning Code policies contained in Chapter 20.718 (**Appendix C**). The 1992 certified Town Plan did not include policies addressing Public Access, and the 1996 certified Town Zoning Code incorporated by reference the public access provisions found in the Coastal Zoning Code for the balance of the County (Title 20, Division II, Chapter 20.528). New Town Plan policies incorporate new public access maps (Appendix 5, and Figure 4.13-6), and memorialize in narrative the known existing and envisioned networks of vehicular and public access ways (Town Actions PAR-1.1 and PAR-1.2, **Appendix A**), and outline priorities for public access uses and land acquisition.

#### New Conservation and ESHA Policies

- The LCPA also introduces an entirely new Town Plan Conservation Section 4.9 (**Appendix A**), and new Town Zoning Code policies contained in Chapter 20.719 (**Appendix C**) pertaining to Environmentally Sensitive Habitat Areas (ESHAs). The 1992 certified Town Plan did not include policies addressing ESHAs, and the 1996 certified Town Zoning Code incorporated by reference the ESHA provisions found in the Coastal Zoning Code for the balance of the County (Title 20, Division II, Chapter 20.496). In addition to wetland and other ESHA protection policies (e.g. Town Policies CNS-3, CNS-6, and CNS-7), policies contained in Section 4.9 provide the County direction on understanding and identifying the Town’s Marine Protected Areas (e.g., Town Actions CNS-4.1 and CNS-4.2), require protection of visual resources (Town Policy CNS-10, **Appendix A**), and highlight other Town standards valued by the community as part of Town character, such as but not limited to ambient noise standards and recognition of community temporary events.

#### Town Plan Administration Provisions and Implementation Standards

- The LCPA additionally introduces a new Town Plan Administration Section 4.10 that would establish: coastal development permit requirements (Town Policy TPA-1, **Appendix A**), noticing and public participation/access requirements (Town Policies TPA-2, TPA-3, and TPA-7), appeal procedures (Town Policy TPA-5, **Appendix**), and local coastal program amendment procedures (Town Policy TPA-6, **Appendix A**).

#### Revised Permitted and Conditionally-permitted Use Types

- As proposed, the revised LCPA adds several new conditionally-permitted and principally-permitted uses within the use types (**Appendix C**, Town Zoning Code Chapters 20.612-20.636) allowed in the various land use classifications (**Appendix A**, Town Plan Section 5) and zoning districts (Town Zoning Code Chapters 20.640-20.668). For example, “Community Gardens” have been added within the Civic Use Types. The LCPA also adds new uses and/or multiple use types as “principally permitted” within

each land use classification and zoning district. Additionally, the proposed Town LCPA includes new policies that would establish development of any lodging unit on sites designated on Mendocino Town Land Use and Zoning Maps with an asterisk (\*) or an asterisk-B (\*B), as a principal permitted use in the respective Town Land Use Classifications, Mendocino Visitor Serving Facility Combining District, and Mendocino Town Zoning Districts (Town Policy GM-24(b), **Appendix A**).

#### Home Occupations and Cottage Industries

- The LCPA would amend Chapter 20.696 of the Town Zoning Code (**Appendix C**) to allow home occupations to occur in accessory structures. The County indicates this would harmonize the provisions within the Town with policies certified in the balance of the coastal zone, and would incorporate the recommendations of the 1999 Citizens' Advisory Committee. Proposed revisions to Town Zoning Code Section 20.700.025 would also allow for certain uses not allowed as Home Occupations to be permitted within certain specified zoning districts upon securing of a use permit.

#### New Exhibits and Appendices

- The LCPA includes a number of new exhibits, including but not limited to: Figure 4.13-1 "Current Conditions;" Figure 4.13-4 "Historical Maps/Charts of the Town;" Figure 4.13-7 "California Coastal Trail Emblem;" and Figure 4.13-8 "Town of Mendocino Categorical Exclusion Zones. Additionally, the revised Town Plan as proposed includes 8 new appendices: Appendix 2 that depicts "Visitor Serving Facilities" lodging units temporarily allocated to specified sites; Appendix 3 that contains the Big River Estuary "Marine Protection Area Limitations on Fishing;" Appendix 4 ("Coastal Commission Categorical Exclusion Order E-96-1 and Public Resources Code Section 30610 Statutory Exemptions"); Appendix 5 "Public Access Component Aerial Maps;" Appendix 6, Illustrative Excerpt of post-certification map number 32 adopted by the Coastal Commission on May 14, 1992; Appendix 7 ("1987 Mendocino Historic Review Board Design Guidelines"); Appendix 8 ("Town of Mendocino Traffic Data November 23-30, 2015"); and Appendix 9 ("California Coastal Commission Repair, Maintenance and Utility Hook-up Exclusion Guideline (1978)"). **Appendix D** contains all LCP appendices.

## **B. CONSISTENCY ANALYSIS**

### **1. Environmentally Sensitive Habitat Areas (ESHAs)**

#### **A. Applicable Policies**

Section 30107.5 of the Coastal Act states that:

*"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

Section 30230 of the Coastal Act states that:

*Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Section 30231 of the Coastal Act states that:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Section 30233(a) of the Coastal Act states, in part:

*The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged depths on existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (6) Restoration purposes.*
- (7) Nature study, aquaculture, or similar resource dependent activities.*

Section 30240 of the Coastal Act states:

*(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*

*(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

## **B. Background**

As described above, the proposed Town LCPA would introduce an entirely new Town Plan Conservation Section 4.9 (**Appendix A**) that includes policies pertaining to wetlands (e.g., Town Policy CNS-3 and CNS-6, **Appendix A**) and other Environmentally Sensitive Habitat Areas (ESHAs) (e.g. Town Policy CNS-7, **Appendix A**). The proposed new policies have been adapted from Coastal Act Policies 30233, 30231, and 30240, respectively, but have been modified in ways that are not in conformity with the Coastal Act. **Suggested modification 11** would remedy the discrepancies in the proposed new policies to ensure conformity with the natural resource protection policies above.

The 1992 certified Town Plan did not include policies addressing ESHAs, and the 1996 certified Town Zoning Code incorporated by reference the ESHA provisions found in the Coastal Zoning Code for the balance of the County (Title 20, Division II, Chapter 20.496). In its findings for approval of certifying the Town Implementation Program subject to adoption of suggested modifications, the Commission noted that:

*Neither the Town Plan nor the proposed Implementation Plan include any language regarding protection of any sensitive habitat. As explained above, Section 20.604.010, “Necessity and Purpose,” states that the Zoning Ordinance supplements the policies of Division II, the Zoning Ordinance for the rest of the County of Mendocino, which does include standards on protection of environmentally sensitive habitat areas. The Commission finds it necessary to add a new chapter to the Town Zoning Code that expressly incorporates the ESHA standards of Division II. Thus, a new chapter is added to the Town Zoning Code that states that the provisions of Chapter 20.496, “Environmentally Sensitive Habitat and Other Resources Areas” of the Mendocino County Zoning Code Title 20, Division II of the Mendocino County Code shall also apply to the Town of Mendocino and shall be incorporated into the Town Zoning Code.*

The proposed LCPA includes a revision to Town Zoning Section 20.604.010(A) “Necessity and Purpose” (page 1) that specifies the Town Zoning Code (TZC) supplements, as proposed, “the regulations of Division II, as provided herein.” The TZC continues to incorporate by reference the provisions of Division II, Chapter 20.496<sup>13</sup> in several sections.

---

<sup>13</sup> The provisions of Mendocino County Division II, Chapter 20.496 “Environmentally Sensitive Habitat Areas” are incorporated by reference into the Town Zoning Code (Appendix 3), including but not limited to: TZC Sections 20.644.065, 20.656.070, 20.660.075, 20.664.075; 20.668.070; 20.672.070; Sec. 20.676.010; 20.676.015; 20.692.025 – “Additional Requirements for All Districts,” 20.719.005; and 20.720.035.

## C. LUP Consistency Analysis

### 1. Findings for Denial of Specified LUP Changes

#### *New ESHA Policies and Definitions*

As described above, the proposed Town LCPA would introduce an entirely new Town Plan Conservation Section 4.9 (**Appendix A**) that includes policies pertaining to wetlands (e.g., Town Policy CNS-3 and CNS-6, **Appendix A**) and other Environmentally Sensitive Habitat Areas (ESHAs) (e.g. Town Policy CNS-7, **Appendix A**). The proposed new policies have been adapted from Coastal Act Policies 30233, 30231, and 30240, respectively, but have been modified in ways that are not in conformity with the Coastal Act and must therefore be denied as submitted.

The proposed LUPA would also add and modify a number of definitions pertaining to wetlands and other environmentally sensitive habitat areas. As proposed, many of the definitions included in Town LUP Section 2 (such as but not limited to, “major vegetation harvesting or removal,” and “wetland”) must be denied because as proposed, the definitions would conflict with Coastal Act policies and administrative regulations (Division 5.5, 14 CCR).

#### *Grindle Park/ MFPD Land Use Designation Change*

The LUPA narratives, policies, and land use map propose to change the land use designation of an approximately 9.78-acre property located approximately 500 feet east of Highway 1, at 44700 Little Lake Road. Known as “Grindle Park,” the property is currently designated as Open Space (OS), and held in trust by Mendocino Fire Protection District (MFPD). The parcel contains the volunteer fire department’s headquarters-fire station on the lower portion of the property; the remainder of the property is an undeveloped woodland hillside area that extends north and east of the intersection of Little Lake and Hills Ranch roads. MFPD has requested the rezoning/redesignation of the property from OS to Public Facilities (PF) to accommodate the potential future siting of an elevated water tank for the purpose of fire safety services. Additional sources have indicated contemplation of two wells and a water treatment facility at the site.<sup>14,15</sup>

Commission staff visited the site on October 7, 2014, and again with staff Ecologists, and staff from Mendocino County, MFPD, and California Department of Fish and Wildlife on June 2, 2016. The subject woodland hillside property contains a mixed stand of Northern Bishop Pine (*Pinus muricata*) forest. Additionally, Exhibit D of Commission Permit 1-84-87A depicts the presence of springs occurring on the subject property. Evidence of Pacific Reedgrass (*Calamagrostis nutkaensis*), the springs and other wetland features also were observed during the June 2, 2016 site visit. Northern Bishop Pine Forest, Pacific Reedgrass Meadows, and wetlands (including but not limited to seeps and springs) are recognized in the Town of Mendocino as environmentally sensitive habitat areas (ESHAs). Although Commission staff requested a biological report documenting site conditions on November 17, 2014, the County indicated in 2016 that the results of the biological assessment conducted in 2015-2016 for the site will not be forthcoming.

---

<sup>14</sup> June 12, 2014. “Public vents to MCCSD about meters.” Mendocino Beacon. Accessed online September 1, 2016 at: <http://www.mendocinobeacon.com/article/ZZ/20140612/NEWS/140618541>

<sup>15</sup> July 3, 2014. “Services, Fire district strike deal for emergency water.” Advocate-News.com. Accessed online August 31, 2016 at <http://www.advocate-news.com/article/ZZ/20140703/NEWS/140708860>

The question before the Commission is the Coastal Act-consistent land use designation for the site given the range of uses permitted by the land use designation and the extent of wetlands and other ESHAs on the property. The 1992 certified Town Plan identifies the intent of the Open Space land use classification in part as applying “to lands held in public ownership for recreational use and to lands most valuable in their undeveloped natural state such as those lands which contain rare and endangered species and habitat, riparian vegetation zones, sites of historic or archaeological significance, or scenic areas...” Due to the extent of wetlands and other ESHAs on the subject property, the Commission finds that the currently certified open space designation remains the land use designation consistent with the natural resource protection policies of the Coastal Act. The redesignation of the entire site for Public Facilities as proposed by the LCPA would allow for an expanded range of uses that could not be supported consistent with the protection of coastal resources as required by Coastal Act Sections 30240, 30231, and 30233. Moreover, the currently certified OS designation already allows for development of the use that is the stated reason for the proposed redesignation. The currently certified OS designation allows for the development of a water tank on a portion of the site for firefighting purposes because the current OS designation allows for fire and police protection services as a conditional use. Therefore, the Commission finds that redesignating a site containing wetland and ESHA resources to expand the range of uses that could be allowed is not consistent with the natural resource protection policies of the Coastal Act and must be denied as submitted.

## 2. Findings for Approval of LUP Amendment if Modified

### *New ESHA Policies and Definitions*

**Suggested modifications 2 and 11** remedy the discrepancies in the proposed new “Conservation” policies contained in Town LUP Section 4.9 and revise definitions to resolve conflicts with the Coastal Act. As modified, the Town LUP conservation policies and definitions ensure conformity with the natural resource protection policies, including but not limited to Sections 30230, 30231, 30233, and 30240.

### *Grindle Park/ MFPD Land Use Designation Change*

Although the Commission finds that placement of a water tank to support fire-fighting services is within the range of allowable uses envisioned within the Open Space District, and could be accommodated consistent with the purpose and intent of the Open Space zoning district, Coastal Act section 30240 requires that all development be sited and designed to avoid the sensitive resources known to occur on the site, regardless how the site is designated. Installation of a water line or other infrastructure within ESHA only would be consistent with Section 30240(b) if the development was sited and designed to avoid the ESHA and was performed in a manner that would prevent impacts that would significantly degrade any adjacent ESHA. Therefore, the Commission finds that to allow for potential development of a fire protection water tank at the Grindle Park site while ensuring conformity with the resource protection policies of the Coastal Act as described above, and since the current OS designation would already allow for fire and police protection services as a conditional use, **Suggested modifications 3, 9, and 16** are needed to: (a) retain the currently certified open space land use classification and zoning district designation within the Town narratives, policies, and land use map, and (b) add language to Town Policy PF-1.3 requiring that any development associated with any services extensions, including but not limited to equipment and infrastructure to support a water storage tank for fire-

fighting services, shall be undertaken in a manner (such as by horizontal directional drilling) that avoids encroachment into environmentally sensitive habitat areas and prevents impacts which would significantly degrade land adjacent to environmentally sensitive habitat areas.

### ***Conclusion***

New Town Plan Definitions Section 2, and new Conservation Section 4.9 (**Appendix A**) include definitions and policies pertaining to wetlands (e.g., Town Policy CNS-3 and CNS-6) and other Environmentally Sensitive Habitat Areas (ESHAs) (e.g. Town Policy CNS-7). The proposed new policies have been adapted from Coastal Act Policies 30233, 30231, and 30240, respectively, but have been modified in ways that are not in conformity with the Coastal Act and must therefore be denied as submitted.

Furthermore, the proposed redesignation from OS to PF of the 9.78-acre property known as “Grindle Park” would allow for a range of allowable uses that are incompatible with known environmentally sensitive habitat areas (ESHAs) on the site, inconsistent with the Coastal Act, including but not limited to Section 30240.

**Suggested modifications 2 and 11** remedy the discrepancies in the proposed new “Conservation” policies contained in Town LUP Section 4.9 and revise definitions in LUP Section 2 to resolve conflicts with the Coastal Act. Additionally, **Suggested modifications 3, 9, and 16** will: (a) retain the currently certified open space land use classification and zoning district designation within the Town narratives, policies, and land use map, and (b) add language to Town Policy PF-1.3 requiring that any development associated with any services extensions, including but not limited to equipment and infrastructure to support a water storage tank for fire-fighting services, shall be undertaken in a manner (such as by horizontal directional drilling) that avoids encroachment into environmentally sensitive habitat areas and prevents impacts which would significantly degrade land adjacent to environmentally sensitive habitat areas. Also, **Suggested Modification 17** corrects the total acreage calculations in Town LUP Section 3.4 for Open Space, Public Facility, and other land use designations on parcels including but not limited to Grindle Park.

As modified, the Town LUP conservation policies and definitions ensure conformity with the natural resource protection policies, including but not limited to Sections 30230, 30231, 30233, and 30240. Therefore, the Commission finds the Town LUP conservation policies and definitions as modified are consistent with the natural resource protection policies of the Coastal Act.

### **D. Applicable Land Use Plan Policies**

**CNS-3** The diking, filling, dredging, or excavation of any wetland, stream, or estuary the Town shall be permitted in accordance with all other applicable provisions of this plan, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(6) Restoration purposes.

(7) Nature study, aquaculture, or similar resource dependent activities.

**CNS-5** Consistent with Coastal Act Section 30235, development that alters natural processes along the Town shoreline shall be permitted only when (1) required to (a) serve coastal-dependent uses, or (b) to protect existing structures or public beaches in danger from erosion, and (2) when such development is designed, constructed, and implemented, including, but not limited to, through monitoring and reporting to the County during the economic life of the development, to eliminate or mitigate any significant adverse impacts on local shoreline sand supply to below a level of significance.

**CNS-6** Consistent with Coastal Act Sections 30231 and Town Plan Policy S-1, and Coastal Act Section 30236, (a) the biological productivity and the quality of coastal waters, streams, wetlands, and estuaries shall be maintained and, where feasible, restored, and (b) substantial alteration of any stream within the Town shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

**CNS-7** (a) Environmentally sensitive habitat areas, as defined in Mendocino Town Plan Section 2.28, shall be protected against any significant disruption of habitat values. (b) Only uses dependent on environmentally sensitive habitat area resources, and for which there is no less environmentally damaging location, shall be allowed within those areas.

(c) Development in areas adjacent to (1) an environmentally sensitive habitat area, (2) Mendocino Headlands State Park, or (3) other public parks and public recreation areas in the Town shall be sited and designed to avoid any significant adverse impacts that would significantly degrade those areas, and shall be compatible with the continuance of such habitat and recreation areas.

**Action PF-1.3:** New public facilities and all other development on the Mendocino City Community Services District parcel between Palette Drive and Highway 1, and on the Grindle Park parcel for which the Mendocino Fire District is the trustee, shall avoid or mitigate all potentially significant effects on coastal resources to below a level of significance, including, as applicable, through (1) on-site screening with a native vegetation buffer in relation to Highway 1 and any adjacent County road, (2) avoidance or full mitigation of any

unavoidable potentially significant effect from development on the environment, including, but not limited to, coastal resources, (3) utilization of exterior finishes in any structure that conform to and protect the historical Town character.

**PF-5** The Mendocino Fire Protection District, which provides critical community-wide public service benefits in the Town of Mendocino, holds the parcel at 44700 Little Lake Road in trust. That parcel contains the Mendocino Fire Protection District/Mendocino Volunteer Fire Department's headquarters-fire station, Grindle Park, and the potential future site of a water tank that is part of the Department's functional planning for fire safety services to minimize risk to life and property in areas with high structural and wildland fire danger in and adjacent to the special historical community that is the Town of Mendocino.

**Action PF-5.1:** Future development of the parcel at 44700 Little Lake Road, identified as Mendocino County Assessor's Parcel Number 119-090-07 by the Fire District/Department shall (a) be consistent with the conservation and development and all other policies and standards of the Town Local Coastal Program, (b) be limited to a water tank and associated facilities; (c) utilize the minimum area in Grindle Park necessary to install such a water tank and associated facilities, and (d) ensure development associated with any services extensions, including but not limited to equipment and infrastructure to support a water storage tank for fire-fighting services, shall be undertaken in a manner (such as by selection of service extension alignment and/or horizontal directional drilling) that avoids encroachment into environmentally sensitive habitat areas and prevents impacts which would significantly degrade land adjacent to environmentally sensitive habitat areas.

In addition to the policies specified above, the definitions contained in Section 2 and the Town Land Use Map are also applicable. The standard of review for the proposed Town IP Update is that it be consistent with and adequate to carry out the conditionally certified (i.e., as modified above) Town LUP Update. In this case, the County's proposed Town LUP Sustainability Policies changes have been denied, and thus this evaluation is based on the as-modified Town LUP (see preceding section).

### **E. IP Consistency Analysis**

The Town IPA proposes to implement the aforementioned Town LUPA policies primarily through Town Zoning Code Chapter 20.719 and through the Town Zoning Map, as discussed below. In addition to the Town zoning map and provisions, the Town IPA proposes to implement the Town LUPA definitions primarily through Town Zoning Code Chapter 20.608.

#### **1. Findings for Denial of Specified IP Changes as Submitted**

##### ***New ESHA Policies and Definitions***

As proposed, the LCPA has added several new provisions that would substantively modify the provisions of Town Zoning Code Chapter 20.719 "Environmentally Sensitive Habitat Areas"<sup>16</sup> (**Appendix C**). Most of the proposed additions to TZC Chapter 20.719 have been adapted and

---

<sup>16</sup> New Town Zoning Code Chapter 20.719 was introduced in "workshop version" of Town Zoning Code "Hearing Draft" received November 19, 2015 and prepared for December 8, 2015 Board of Supervisors Hearing.

further modified from Division II, Chapter 20.496. However, the proposed IPA does not include a biological analysis or any factual support for the proposed changes that would affect mitigation ratios, allowable uses in ESHA and ESHA buffers, and minimum buffer requirements, among others. Therefore, the proposed zoning code provisions are inadequate to carry out the certified land use plan as amended and must be denied as submitted. Further, while the proposed new provisions have been adapted from certified LUP policies, they have been modified in ways that are not in conformity with the LUP as amended and must therefore be denied as submitted.

The proposed LCPA would also add and modify a number of definitions pertaining to wetlands and other environmentally sensitive habitat areas. As proposed, many of the definitions included in the LCPA (such as but not limited to, “major vegetation harvesting or removal”<sup>17</sup>, and “wetland”<sup>18</sup>) would conflict with Coastal Act policies and administrative regulations (Division 5.5, 14 CCR). Some Town Plan and Town Zoning Code definitions conflict with each other, due to inconsistent additions or revisions between the two documents. Additionally, the newly-added definition of “pygmy forest” (Town Zoning Code Section 20.608.035(Q)) is an outdated definition from the 1992 certified Coastal Zoning Code (Division II, Section 20.308.095(Q)). As proposed, the new definitions and policies do not conform with or adequately carry out the definitions in LUP Section 2, and Town LUP provisions, including but not limited to Town LUP Policies CNS-3, CNS-6, and CNS-7. Therefore, the Town IP definitions and policies pertaining to ESHAs must be denied as submitted.

### ***Grindle Park/ MFPD Zoning District Change***

As discussed above, the LCPA proposes to rezone the 9.78-property known as “Grindle Park” from Open Space to Public Facilities to accommodate the potential future siting of an elevated water tank for the purpose of fire safety services. Additional sources have indicated contemplation of two wells and a water treatment facility at the site.<sup>19, 20</sup> The parcel contains the volunteer fire department’s headquarters-fire station on the lower portion of the property; the remainder of the property is an undeveloped woodland hillside area.

Commission staff visited the site on October 7, 2014, and again with staff Ecologists, and staff from Mendocino County, MFPD, and California Department of Fish and Wildlife on June 2, 2016. Commission staff and staff Ecologists observed evidence of Northern Bishop Pine (*Pinus muricata*) forest, Pacific Reedgrass (*Calamagrostis nutkaensis*), springs and other wetland features during the June 2, 2016 site visit. Northern Bishop Pine Forest, Pacific Reedgrass Meadows, and wetlands (including but not limited to seeps and springs) are recognized in the Town of Mendocino as environmentally sensitive habitat areas (ESHAs).

As does the currently certified land use designation discussed above, the current Open Space zoning designation on the certified Town Zoning Map also allows for the development of a water storage tank at the site for the purposes of fire protection services. While Commission staff believes the site could accommodate a water tank and associated infrastructure outside of ESHA

<sup>17</sup> Town Zoning Code Section Sec. 20.608.032(D))

<sup>18</sup> Town Zoning Code Section 20.608.042(C)

<sup>19</sup> June 12, 2014. “Public vents to MCCSD about meters.” Mendocino Beacon. Accessed online September 1, 2016 at: <http://www.mendocinobeacon.com/article/ZZ/20140612/NEWS/140618541>

<sup>20</sup> July 3, 2014. “Services, Fire district strike deal for emergency water.” Advocate-News.com. Accessed online August 31, 2016 at <http://www.advocate-news.com/article/ZZ/20140703/NEWS/140708860>

and ESHA buffers and consistent with Town LUP requirements (including but not limited to Policies CNS-3, CNS-6, CNS-7, PF-5, and Actions PF-1.3 and PF-5.1), the extent of ESHAs on the property would limit most development opportunities to only uses dependent on ESHA resources. Town Zoning Code Section 20.672.005 as proposed to be amended states the intent of the Open Space zoning district as follows:

*This District is intended to be applied to lands held in public ownership for recreational use, including Mendocino Headlands State Park, and Friendship Park, and to lands most valuable in their undeveloped and/or natural state, including, but not limited to, lands which contain rare and endangered species and habitat, riparian vegetation zones, sites of historical or archaeological significance; public highly scenic areas; and which, because of their value, have been dedicated under Government Code Section 51050 or 51080 as privately owned open space to a public or nonprofit organization which qualifies under Internal Revenue Code Section 501(c)(3) or through an easement which ensures the retention of the land in open space.*

The presence of rare plant communities, wetlands, and seeps on the undeveloped portions of Grindle Park renders the site most valuable in its current undeveloped state, and consistent with the OS land use designation depicted on the Town Land Use Map.

In contrast, the Town Zoning Code Section 20.668.005 states the intent of the Public Facilities zoning district as follows: “This district is intended to apply to ...lots which are used for, or would properly be used for, public purposes and, as specified, for public utility purposes.” Thus, the Public Facilities zoning designation proposed under the LCPA would allow for an expanded range of potential uses that could not be supported consistent with the protection of coastal resources required under the Town LUP, including but not limited to Policies CNS-3, CNS-6, and CNS-7, given the extent of ESHA and wetland resources on the site. Therefore the proposal to designate the Grindle Park site as Public Facilities on the Town Zoning map must be denied as submitted.

## 2. Findings for Approval of IP Amendment if Modified

### *New ESHA Policies and Definitions*

Commission staff has discussed the conflicts and discrepancies of the new Town IP ESHA definitions and provisions with County staff, and has recommended that the provisions of Division II, Chapter 20.496 continue to address those ESHAs located within the Town. Furthermore, continued reliance on Chapter 20.496 would enable County staff to consistently apply the ESHA policies both within the Town and the balance of the County without the risk of confusing ESHA policy differences between the two Divisions. Commission staff understands County staff is supportive of this recommendation. Therefore, **Suggested modification 24** deletes most of the revisions to Town Zoning Chapter 20.719, and re-instates the provisions of Chapter 20.496 into the Town Zoning Code. Commission staff has additionally discussed with County staff opportunities to further update the ESHA policies in the future, either as an amendment to Division II, Chapter 20.496, and/or to Division III (Town Plan).

The California Department of Fish and Wildlife (CDFW) is currently leading an effort in Mendocino and Sonoma Counties to map pygmy habitats, soils, and vegetation. Commission

staff contacted CDFW staff on August 23, 2016 and was informed that a new definition of “pygmy forest” is underway that incorporates newly-discovered information about these features. However CDFW staff anticipates that a new definition will not be released to the public before the Commission’s action on the Proposed LCPA. The Commission therefore deletes the outdated definition of “pygmy forest” from the Town Zoning Code. Revisions to definitions included as **Suggested modifications 2 and 19** will: (a) remedy conflicts with the Coastal Act, (b) remedy conflicts between the Town Plan and Town Zoning Code, and (c) eliminate outdated definitions accordingly.

### ***Grindle Park/ MFPD Zoning District Change***

To ensure the IP conforms with and adequately carries out the Town LUP, **Suggested modification 28** will retain the currently certified open space zoning district designation on the Town IP zoning map. The Commission finds that the Town IP zoning map can be approved consistent with the Town LUP definitions, land use map, and policies if modified as discussed further below.

Commission staff prepared a preliminary suggested modification to retain the Open Space zoning map designation, which was included in a September 23, 2016 report<sup>21</sup> prepared for an initial Commission hearing on the Mendocino Town LCP amendment held October 5, 2016. Public testimony and comments from commissioners were received at the Coastal Commission’s October 5, 2016 preliminary hearing but no action was taken on the Mendocino Town LCP amendment at the time. Additional comments have also been received following the hearing, including comments received from Mendocino Fire Protection District. Common sentiments are supportive of the County’s proposal to change the land use and zoning designations of the Grindle Park site from Open Space to Public Facilities, noting that the fire station is situated on the Grindle Park site, a water tank is necessary to provide water for fire-fighting purposes, and that potential impacts to ESHAs would be evaluated at the time of application for a coastal development permit.

Additionally, a memorandum dated March 3, 2017 and prepared by Mendocino County Planning and Building Services staff was presented to Commission staff summarizing the Mendocino County Board of Supervisor’s Mendocino Town Plan (MTP) Ad Hoc Committee concerns pertaining to preliminary suggested modifications presented in the September 23, 2016 Coastal Commission staff report. The memo indicates that the Ad Hoc Committee opposes the suggested modification to retain the Grindle Park site as Open Space, expressing that concerns regarding avoidance of ESHAs “would be addressed at the time the Mendocino Fire Protection District sought a coastal development use permit.”

However, the fact that siting concerns can be addressed at the CDP stage does not support the requested change in land use designation. The Commission finds that while an applicant must submit an evaluation of the potential for impacts to ESHA and adjacent areas at the time of application for a coastal development permit for any proposed development, such studies are necessary at the time of CDP application whether the site is designated for open space or Public Facilities. The question before the Commission now is the appropriate range of allowable uses on a site with wetland and ESHA resources given that both Coastal Act and LUP resource protection policies require that ESHA and parks and recreation areas shall be protected against

<sup>21</sup> <https://documents.coastal.ca.gov/reports/2016/10/w13a-10-2016.pdf>

any significant disruption of habitat values consistent with requirements of Coastal section 30240. The need for and feasibility of specific siting and design measures at the CDP stage exists independent of the land use designation.

Finally, the local coastal program planning stage is the appropriate time to evaluate whether a proposed land use zoning designation at any given site could accommodate the range of potential uses permitted by the proposed land use designation. The Commission finds that placement of a water tank to support fire-fighting services is within the range of allowable uses envisioned within the Open Space District, and could be accommodated consistent with the purpose and intent of the Open Space zoning district. In addition, after visiting the Grindle Park site and the location of the proposed water tank that MFPD envisions developing on the property in the future, Commission staff believes that a water tank could be sited on a portion of the site located upslope of the fire department and outside of ESHA and ESHA buffers. While no design plans have been prepared for the site and thus the exact location of any future infrastructure in relation to ESHAs is unknown at this time, it is possible that infrastructure needed to connect the water tank to a hydrant downslope will need to be sited and designed to avoid encroaching within ESHA. While the need for and feasibility of specific siting and design measures will be addressed at the CDP independent of the land use designation, the Commission notes it has approved projects in the past that imposed provisions requiring horizontal directional drilling to install utility lines underneath ESHAs as a means of avoiding encroachment into ESHA and/or ESHA buffers<sup>22</sup>. The use of horizontal directional drilling for installation of infrastructure at the Grindle Park site would similarly ensure that encroachment into ESHA and/or ESHA buffers could be avoided, if necessary, at this location.

### ***Conclusion***

Proposed Town IP definitions and policies do not conform with or adequately carry out the definitions in LUP Section 2, and Town LUP provisions, including but not limited to Town LUP Policies CNS-3, CNS-6, and CNS-7. And some Town Plan and Town Zoning Code definitions conflict with each other, due to inconsistent additions or revisions between the two documents. Therefore, the Town IP definitions and policies pertaining to ESHAs must be denied as submitted.

The Public Facilities designation would allow an expanded range of potential uses on the property that could not be supported consistent with the protection of coastal resources required under the Town LUP, including but not limited to Policies CNS-3, CNS-6, and CNS-7, and therefore the proposal to designate the Grindle Park site as Public Facilities on the Town Zoning map must be denied as submitted.

**Suggested modifications 2 and 19** will: (a) remedy conflicts with the Coastal Act, (b) remedy conflicts between the Town Plan and Town Zoning Code, and (c) eliminate outdated definitions accordingly. Additionally, **Suggested modification 28** will retain the currently certified open space zoning district designation on the Town IP zoning map. The Commission finds that the Town IP zoning map, and Town IP definitions and provisions pertaining to ESHAs can be approved consistent with the Town LUP definitions, land use map, and policies if modified as suggested.

---

<sup>22</sup> Examples include but are not limited to: LCP-1-DNC-13-210-1, CDP 6-16-0099, A-1-MEN-10-001.

## **2. Priority Uses, Public Access, and Recreation**

### **A. Applicable Policies**

Section 30210 of the Coastal Act states:

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30211 of the Coastal Act states:

*Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Section 30212 of the Coastal Act states, in relevant part:

*(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) Adequate access exists nearby*

Section 30212.5 of the Coastal Act states:

*Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.*

Section 30213 of the Coastal Act states:

*Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.*

Section 30220 of the Coastal Act states:

*Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

Section 30221 of the Coastal Act states:

*Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or*

*commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

Section 30222 of the Coastal Act states:

*The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

## **B. Background**

### ***Visitor Serving Facilities***

The Town of Mendocino is located approximately 150 miles north of San Francisco (Exhibit 1) along a very scenic, remote, and rugged stretch of Mendocino County coastline. The Town is noted for its well-preserved historic 19th century architecture that reflects the Town's beginnings as redwood lumber port. The Town's setting, architecture, scenic vistas, small shops, and friendly small-town ambience account for much of the Town's character. Highway 1 bisects the Town, and west of Highway One the Town is bounded to the north, west, and south by predominantly undeveloped headlands. The public has access to the majority of the headlands (approximately 165 acres) that are part of the larger Mendocino Headlands State Park extending beyond Town boundaries, and which draws over 1 million visitors per year. The Town of Mendocino has been described as a "mystical village" that is among the most photographed and the most visited coastal destinations north of San Francisco. In 2014, The New York Times listed the Mendocino County Coast as the No. 3 most desirable "Places to Visit"<sup>23</sup> out of its annual 52 featured destinations<sup>24</sup>. And in March 2017, AAA's Via Magazine rated Mendocino one of "The 11 Most Beautiful Places on the Pacific Coast."<sup>25</sup>

Because of its unique characteristics, the Town is a popular visitor destination point for recreational uses and has been designated in the certified LCP as a "special community," as described in Coastal Act Section 30253(e). The Town citizens also have a strong sense of community. A fundamental community objective, and a key tenet of the policies contained within the previously-certified Town Plan, has been ensuring the maintenance of community character. Prior to certification of the Mendocino Town LCP in 1996, concerns were raised that the increasingly large amount of overnight visitor serving accommodations within the Town was changing the community character in a negative way. Conversion of residences to visitor serving accommodations resulted in the perception that there had been a reduction in the number of permanent residents relative to the increasing number of visitors coming to Town for short term stays.

---

<sup>23</sup> <http://www.nytimes.com/interactive/2014/01/10/travel/2014-places-to-go.html>

<sup>24</sup> [http://www.co.mendocino.ca.us/administration/pdf/01-13-14\\_Press\\_Release\\_-\\_3\\_on\\_Places\\_to\\_Visit\\_NYTimes\\_-\\_DRA.pdf](http://www.co.mendocino.ca.us/administration/pdf/01-13-14_Press_Release_-_3_on_Places_to_Visit_NYTimes_-_DRA.pdf)

<sup>25</sup> Hall, Christopher. March 2017. "The 11 Most Beautiful Places on the Pacific Coast: Eleven magnificent spots that showcase the wonder of the West Coast." Published in Via Magazine. Accessed online April 18, 2017 at <https://www.viamagazine.com/outdoors/most-beautiful-places-pacific-coast>

Although the Town is very small (population of 894 according to 2010 Census data for the Town), the amount of overnight visitor serving accommodations within the Town is relatively high. Based on information provided by the County, the ratio of residential units to lodging units in the Town of all types (including inns, hotels, bed and breakfasts, vacation rentals, and single unit rentals) is 1.58:1 (422 residential units to 267 lodging units).

### *Certified LUP*

The LUP certified for the Town in 1992 includes limits on the number of visitor serving accommodations. The 1992 Town Land Use Plan limits the total number of allowable visitor serving facility lodging units (this includes hotels, inns, and bed and breakfast accommodations, but not vacation rentals or single unit rentals) within the Town to 237 units. The 237 units are allocated to specific lots within the Town in various zoning districts through use of a combining zone that designates the location of the allocated lodging facilities with an asterisk (\*, for hotel or inn units) or with an asterisk-B (\*B, for bed-and-breakfast accommodations). The specific number of individual lodging units allowed at each designated site is established in a table in the LUP. As currently certified, no additional visitor serving facility lodging units can be developed within the Town that would exceed the 237 unit total or be built in a different location without an LCP amendment allowing for such a change.

The 1992 Town LUP also limited the number of vacation home rentals (VHRs) to 23 units and the number of single unit rentals (SURs) also to 23. At the time of certification of the 1992 Town LUP, the ratio of residential units (306) to VHRs and SURs (46) was approximately 7:1, and the Town LUP was certified to allow development of one additional VHR or SUR for every 13 new residential units constructed after certification of the 1992 Town LUP (13:1 ratio). VHRs and SURs are currently allowed within any zoning district.

The LCPA contains new narratives, such as but not limited to language contained within Section 1.4 that presents new procedures for allocating visitor serving lodging units to existing designated visitor serving facilities. The LCPA also contains many new and revised policies relating to the use, geographic distribution, allocation, number, and authorization of visitor serving facility lodging units (e.g., hotels, inns, B-and-Bs) and other visitor serving accommodations (e.g., vacation home rentals and single unit rentals) within the Town. Many of the proposed changes respond to community sentiments to retain the overall numbers of Town visitor serving facilities but reallocated in a distribution pattern that could improve the Town balance between residential, commercial, and visitor serving uses.

### *Short Term Rentals: Reclassify and Reallocate 16 Units from VHRs & SURs to VSFs*

Chief among the changes is shifting 16 lodging units from vacation home rentals (VHRs) and single unit rentals (SURs) to inns, hotels, and bed and breakfast facilities. These 16 units would be reallocated to visitor serving facility (VSF) sites designated with an asterisk (\*) or asterisk-B (\*B) (Town Policy GM-15(a), in **Appendix A**) on the Mendocino Town Land Use and Zoning Maps and as identified in Town Plan Appendix 2 (**Appendix D**).

The number of vacation rentals would drop from 23 to 10, and the number of single unit rentals would drop from 23 to 20 (Town Policies GM-15(a), GM-3(b) and GM-3(c)), resulting in a reduction of the number of Single Unit Rentals and Vacation Home Rentals allowed by the 1992

Mendocino Town Plan. In response to community desires to shift vacation home rentals (VHRs) out of designated residential areas, the LCPA would also eliminate through attrition those VHRs located in designated residential areas and require all new VHRs to be located within the Mixed Use and Commercial District zoning districts (Town Policy GM-3(b)). Furthermore, the previously certified provision that would allow development of one additional VHR or SUR for every 13 new residential units constructed after certification of the 1992 Town Plan (13:1 ratio) would be deleted.

Table 2 below summarizes the ratios of uses based on counts provided by the 1989 Citizens’ Advisory Committee that were considered in the Commission’s findings for approval of the 1992 Town Plan subject to adoption of suggested modifications, and compared to 2013-2014 residential units identified by the MCCSD and current LCPA-proposed visitor serving facilities.

**Table 2. Summary of Unit Count and Ratios of Residential to Visitor Serving Uses.**

	1992 Town Plan	1992 Ratio of Uses	Town LCPA	Town LCPA Ratio of Uses
# Residential Units	306		422	
# Commercial Uses	182		Not specified	
Ratio of Residential to Commercial Uses		1.68: 1	Not specified	
# visitor serving accommodation uses (including VHRs and SURs)	274*		267	
<b>Ratio of Residential to Visitor Serving Accommodation Uses (including VHRs &amp; SURs)</b>		<b>1.11: 1</b>	<b>1.58: 1</b>	
# visitor serving accommodation uses (excluding VHRs and SURs)	228		237	
<b>Ratio of Residential to Visitor Serving Accommodation Uses (excluding VHRs &amp; SURs)</b>		<b>1.34:1</b>	<b>1.78:1</b>	
# VHRs/SURs	46		30	
<b>Ratio of Residential to VHR/SUR Uses</b>		<b>7: 1</b>	<b>14: 1</b>	

\*The 274 visitor-serving lodging units counted by the 1989 Citizens’ Advisory Committee differs slightly from the 280 recognized by the certified Town LCP count of 280 (306/280= 1.09:1 ratio)

*Mendocino Art Center: Reclassify and Reallocate 19 Units to VSFs*

The 1992 Town LUP identified an allocation of 237 lodging units to sites designated on the Town land use and zoning maps with an asterisk (\*, for hotel or inn units) or with an asterisk-B (\*B, for bed-and-breakfast accommodations). The total allocation included 19 visitor serving lodging units identified for the Mendocino Art Center. As discussed further in Section 1, The Mendocino Art Center (MAC) is an educational, exhibition, and resource center that includes studios and classrooms for the visual and performing arts, and that provides thirteen (13) Art Center Student/Instructor Housing units for class participants as well as other visitors to Mendocino on a limited basis. Transient occupancy of the MAC units by the general public may occur, subject to payment of business license and transient occupancy taxes for stays of less than 30 days. The remaining six (6) units allocated for the Mendocino Art Center under the 1992 certified Town Plan were never built.

Town Plan Policy GM-15(b) (**Appendix A**) would reclassify the existing 13 Art Center Student/Instructor Housing units as “Affordable Housing,” and would reallocate the 6 additional units allocated to the Art Center in 1992, but not constructed, to existing visitor serving lodging units depicted with an asterisk (\*) or asterisk-B (\*B) on the Mendocino Town Land Use and Zoning Maps and as identified in Town Plan Appendix 2.

*Visitor serving lodging units: Distribution, Caps and Allocation to VSFs*

The LCPA also makes accounting adjustments to the total number of visitor accommodations (inns, hotels, B&Bs, VHRs, and SUR) and the total of visitor serving facility lodging units (inns, hotels, B&Bs). These adjustments would change the total allowable number of visitor serving lodging units in town from 234 to 237.

Town Policy GM-3, which supersedes the 1992 certified Town Plan Policy 4.13-4(2), would limit new or expanded overnight lodging units to a maximum 25 units operated as one business entity, and authorize a total of 237 lodging units on specified sites that the Town Land Use Map denotes with an asterisk (\*), or asterisk-B (Town Policy GM-3(a), in **Appendix A**). Town Plan Policy GM-3(a) would also allow an increase above 237 lodging units at asterisk-designated sites subject to obtaining an amendment to the LCP.

The Town LCPA would also add a new visitor serving facility asterisk (\*) designation to the Nicholson House Inn, located at 44861 Ukiah Street, and would temporarily reserve seven (7) visitor serving lodging units to the site, subject to obtaining the necessary coastal development permits (Town Plan Section 6.7, **Appendix A**; Town Zoning Code Section 20.684.030(H), **Appendix C**).

The Town LCPA additionally contains new provisions for reallocating visitor serving lodging units that were assigned to sites specified in the original Town LCP to other visitor serving lodging unit sites designated with an asterisk (\*) or asterisk-B (\*B) on the Mendocino Town Land Use and Zoning Maps, as they become available under a range of scenarios (Town Policy GM-15(d), in **Appendix A**; Town Plan Section 6.7, in **Appendix A**; and TZC Section 20.684.030(H), in **Appendix C**). These new policies provide for a more streamlined process for transferring unused visitor serving lodging units from one recognized visitor serving facility to another by not requiring an LCP amendment.

*Other New VSF Policies*

As discussed further below under “Permitted, Principally-Permitted, and Conditionally-permitted Use Types,” the proposed Town LCPA also includes new policies that would establish development of any visitor serving lodging unit on sites designated on Mendocino Town Land Use and Zoning Maps with an asterisk (\*) or an asterisk-B (\*B), as a principal permitted use in the respective Town Land Use Classifications, Mendocino Visitor Serving Facility Combining District, and Mendocino Town Zoning Districts (Town Policy GM-24(b), **Appendix A**; and Sections 5.2, 5.5, 5.6, 5.7, and 5.8 of **Appendix A**).

New policies proposed in the LCPA would also legalize certain existing but unauthorized visitor serving facility lodging units without requiring those visitor serving facilities to obtain coastal development permits (Town Policies GM-13 in **Appendix A**; and GM-15(c) in **Appendix A**;

Town Plan Sections 3.3.1(b) in **Appendix A**, and Section 6.7 in **Appendix A**; and TZC Section 20.684.030(H).

### ***Public Recreation and Public Coastal Access***

The public currently has access to the majority (approximately 98%) of the Mendocino Headlands as part of approximately 165 acres of the larger Mendocino Headlands State Park that extends beyond Town boundaries. The LCPA introduces an entirely new Town Plan Public Access and Recreation Section 4.8 (**Appendix A**), and new Town Zoning Code policies contained in Chapter 20.718 (**Appendix C**). The 1992 certified Town Plan did not include policies addressing Public Access, and the 1996 certified Town Zoning Code incorporated by reference the public access provisions found in the Coastal Zoning Code for the balance of the County (Title 20, Division II, Chapter 20.528). New Town Plan policies incorporate new public access maps (Appendix 5, and Figure 4.13-6; see **Appendix D** of this staff report), memorialize in narrative the known existing and envisioned networks of vehicular and public access ways (Town Actions PAR-1.1 and PAR-1.2, **Appendix A**), and outline priorities for public access uses and land acquisition.

## **C. LUP Consistency**

### **1. Findings for Approval of Specified LUP Changes as Submitted**

#### **a) Visitor-Serving Facilities**

##### ***Visitor Serving Facilities: Background***

##### ***Affordability of Overnight Accommodations***

Despite the proportionally large amount of visitor serving accommodations to residential units compared to other coastal locations, the Town of Mendocino itself does not currently have many lower cost visitor serving lodging units. However, lower cost visitor serving lodging units are relatively abundant in nearby Fort Bragg. In addition, a number of campgrounds in the greater Mendocino/Fort Bragg area such as Van Damme State Park, Russian Gulch State Park, Navarro River Redwoods State Park, Jug Handle Creek Farm and Nature Center, and MacKerricher State Park provide opportunities for lower cost stays in the area.

##### **Lower-Cost Overnight Accommodations in Town of Mendocino and Surrounding Areas**

In response to Commission staff's comments submitted to County staff on February 27, 2013 (requesting an analysis of lower cost visitor serving facilities within the Town and surrounding areas), the County presented information to its Planning Commission in a memorandum dated May 16, 2013 (**Exhibit 10**). County staff utilized data obtained from previous studies conducted in 2008<sup>26</sup> and 2005<sup>27</sup>, and summarized lodging inventory and room rates as presented in **Exhibit**

---

<sup>26</sup> Randall Travel Marketing. October 27, 2008. "Mendocino County Travel Research Study." Commissioned by Mendocino County Lodging Association in partnership with the County Promotional Alliance and the Wine Growers Association Commission. Executive available online at <http://mendocinotourism.org/wp-content/uploads/executive-summary.pdf>

<sup>27</sup> Economic Planning Systems, Inc. December 2005. "Mill Site Market Study Update/Land Use Program." Prepared for City of Fort Bragg. EPS #15113. Draft Report available online at [http://www.co.mendocino.ca.us/planning/pdf/EPS\\_Mill\\_Site\\_Market\\_Study\\_Update\\_-\\_Land\\_Use\\_Program\\_December\\_2005.pdf](http://www.co.mendocino.ca.us/planning/pdf/EPS_Mill_Site_Market_Study_Update_-_Land_Use_Program_December_2005.pdf)

10. In 2008, the statewide average room rate was \$124.57. County staff concluded that lodging rates summarized in Exhibit 10 indicated 14% of visitor serving facilities within the Town qualified as “budget” accommodations, compared to nearly 60% in Fort Bragg.

### Short-Term Rentals

Short-term rentals in Mendocino County include vacation home rentals (VHRs) and single unit rentals (SURs). Short-term rentals are not viewed as traditional visitor serving facilities because the use typically occurs within an existing residential or commercial structure that may not be available full-time as a visitor serving accommodation, and most typically do not have an on-site manager to assist guests. Whereas an entire house is rented in the case of VHRs, SURs can comprise one room in a house, or a portion of a commercial facility (such as an upstairs space above a retail space). Most VHRs would not fall within the range of “low-cost” visitor serving accommodations, although some SURs may offer more affordable rates; furthermore, it should be noted that in some cases renting one VHR may be more affordable overall than reserving multiple units within a hotel or B&B. It is difficult to determine the exact number of short-term rentals operating within the Town, because not all facilities advertise with their address, and not necessarily all facilities have County business licenses; however, the certified LCP and the LCPA as proposed do impose limits on the number of VHRs and SURs allowable within the Town.

Based upon information available from various sources including AirBnb and VRBO<sup>28</sup>, 39 short-term rentals exist either within the Town or in the immediate surrounding area, with prices ranging from \$64 (SUR) to \$700 (ocean-front VHR, weekend rate) per night, and averaging \$271 per night. An additional 52 short-term rentals are available 1 mile or greater outside the Town limits, and average \$272 per night. Various accommodation sites referenced above also advertise 99 short-term rentals within Fort Bragg and the immediate surrounding area, with an average daily rate of \$222. Other nearby “specialty” short-term rentals include 30-day minimum stays (\$8,500 per month), and cottages and houses available within Point Cabrillo Light Station State Historic Park (managed separate from the Park and ranging from \$158 to \$1,163 per night).

### Campgrounds, Cabins, Hostels, & RV Parks

Several public and private campgrounds occur within the vicinity of the Town. Russian Gulch State Park is located immediately north of the Town, and Van Damme State Park is located 3 miles south of Mendocino. A summary of current State Park camping fees for selected campgrounds near Town is presented in **Figure 1**.

Private campgrounds near the Town of Mendocino include, but are not limited to: Caspar Beach RV Park and Campground (4 mi.), Mendocino Grove (1.4 mi.), and Albion River Campground and Marina (7.3 mi.). These facilities offer RV sites, cabins, traditional tents, teepees, and safari

<sup>28</sup> Sites used: <https://www.visitmendocino.com/mendocino-county-directory/directory-category/hotels-motels-inns/>, <https://www.airdna.co/city/us/california/fort-bragg>, <https://www.airdna.co/city/us/california/mendocino>, <https://www.vrbo.com/vacation-rentals/usa/california/north-coast/mendocino/@39.32470722502909,-123.77665094680117,39.29362709361481,-123.79870943373965,14z/>, and [https://www.airbnb.com/s/Mendocino--CA--United-States/homes?allow\\_override%5B%5D=&ne\\_lat=39.33489221890533&ne\\_lng=-123.75970300626568&search\\_by\\_map=true&sw\\_lat=39.28026654763898&sw\\_lng=-123.8061374087315&zoom=14&s\\_tag=0veMipmz](https://www.airbnb.com/s/Mendocino--CA--United-States/homes?allow_override%5B%5D=&ne_lat=39.33489221890533&ne_lng=-123.75970300626568&search_by_map=true&sw_lat=39.28026654763898&sw_lng=-123.8061374087315&zoom=14&s_tag=0veMipmz)

tents, with fees ranging from \$42 to \$185 (cabin) per night. A number of RV sites are also available within the City of Fort Bragg.

Additionally, Jug Handle Creek Farm and Nature Center (JHCFNC) is a nonprofit 501(c)(3) organization offering private rooms, cabins, and campsites at its eco-hostel located less than 5 miles from the Town for \$45-\$50 per night, with discounts available for students and children. According to a report prepared by the California State Coastal Conservancy,<sup>29</sup> JHCFNC “provides environmental education programs for 800 to 1,000 Mendocino County students each year, including a summer day camp for 100 students sponsored by the Mendocino Coast Recreation and Park District. In addition, approximately 2,000 people stay overnight at JCFNC’s farmhouse and campground each year. These overnight visitors range from tourists seeking affordable accommodations along the Mendocino coast to volunteers engaged in ecological restoration projects in the area.”

	Type of Fee	Category	Peak Season Rate	Non-Peak Season Rate
<b>MacKerricher</b>	Drive-In	Developed	\$45.00	\$40.00
	Hike & Bike	Special	\$5.00	\$5.00
	Walk-In	Special	\$25.00	\$25.00
<b>Russian Gulch</b>	Drive-In	Developed	\$45.00	\$40.00
	Group	Developed	\$140.00	\$ 140.00
	Hike & Bike	Special	\$5.00	\$ 5.00
	Horse	Special	\$35.00	\$ 35.00
<b>Van Damme</b>	Drive-In	Developed	\$45.00	\$40.00
	Enroute	Primitive	\$35.00	\$35.00
	Environmental	Special	\$25.00	\$25.00
	Group	Developed	\$160.00	\$160.00
	Hike & Bike	Special	\$5.00	\$5.00

**Figure 1.** State Parks Camping Rates. *Source:* [http://www.parks.ca.gov/pages/737/files/current\\_geoloc%20web\\_camping.pdf](http://www.parks.ca.gov/pages/737/files/current_geoloc%20web_camping.pdf)

*Currently Available Overnight Accommodations*

In a memorandum dated May 16, 2013 (**Exhibit 12**), County staff presented visitor serving facility data obtained from previous studies conducted by City of Fort Bragg in 2008<sup>30</sup> and

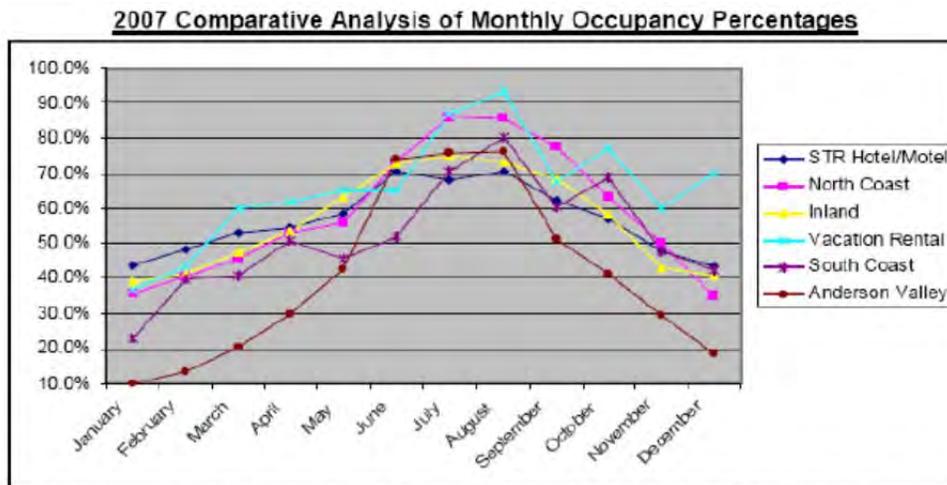
<sup>29</sup> State Coastal Conservancy. October 21, 2010. “Staff Recommendation: Jughandle Creek Farm and Nature Center Enhancement Planning, Phase II.” Project No. 07-061-02. Project Manager: Joel Gerwein.

<sup>30</sup> Randall Travel Marketing. October 27, 2008. “Mendocino County Travel Research Study.” Commissioned by Mendocino County Lodging Association in partnership with the County Promotional Alliance and the Wine Growers Association Commission. Executive available online at <http://mendocinotourism.org/wp-content/uploads/executive-summary.pdf>

2005<sup>31</sup> for the Mendocino Town-Fort Bragg area. The information indicated that at the time, over 1,800 lodging rooms and more than 1,100 camp sites existed along that stretch of coastline. While the County was unable to obtain occupancy rates for individual visitor serving facilities, information provided by the commissioned studies revealed general occupancy rates and seasonal trends. The County states in part the following:

*According to the study, the average annual occupancy rate for the market area is about 50%, however, for properties located in the Town of Mendocino, with an average daily rate of \$200, reach the “healthy” occupancy threshold of 70% year round. Anecdotal accounts confirm the annual average occupancy rate for the area, with the comment that properties closer to the ocean as well as properties closer to Town of Mendocino have higher occupancy rates. Conversations with innkeepers in the Town of Mendocino have indicated that in the summer months most, if not all, of the inns are full, with about a 30% vacancy rate in the winter months.*

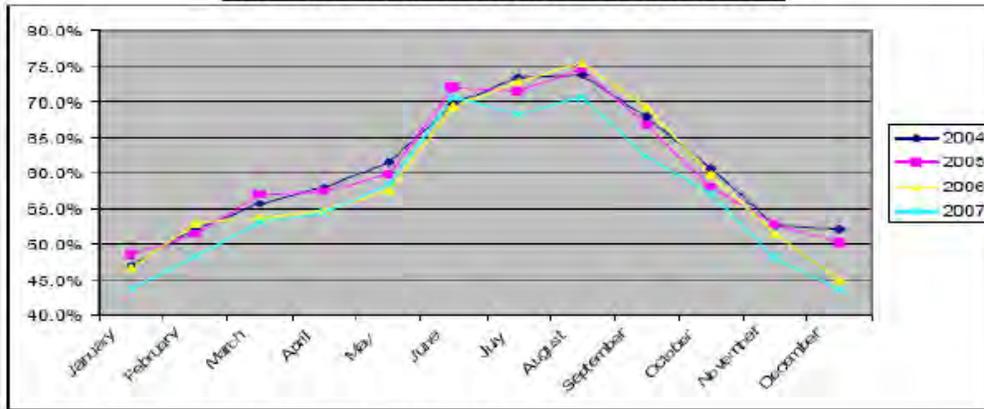
The County additionally notes that the studies revealed a drop in occupancy rates to below 50% from November to about February or March. As part of the May 16, 2013 staff report, County staff presented the following lodging occupancy patterns obtained from the aforementioned studies:



Sources: STR Hotel/Motel from Smith Travel Research, all other data from RTM Lodging Survey

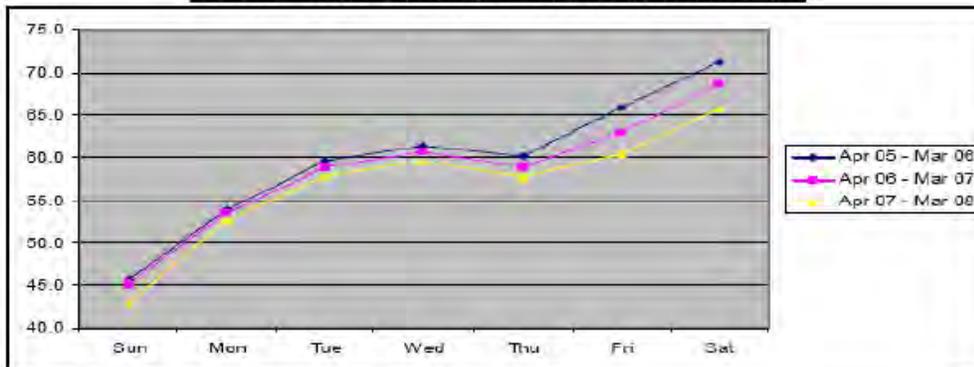
<sup>31</sup> Economic Planning Systems, Inc. December 2005. “Mill Site Market Study Update/Land Use Program.” Prepared for City of Fort Bragg. EPS #15113. Draft Report available online at [http://www.co.mendocino.ca.us/planning/pdf/EPS\\_Mill\\_Site\\_Market\\_Study\\_Update\\_-\\_Land\\_Use\\_Program\\_December\\_2005.pdf](http://www.co.mendocino.ca.us/planning/pdf/EPS_Mill_Site_Market_Study_Update_-_Land_Use_Program_December_2005.pdf)

**Four-Year Monthly Lodging Occupancy Trend**



Source: STR Six-Year Trend Report – Mendocino County

**Mendocino County Occupancy by Day of the Week**



Source: STR Six-Year Trend Report – Mendocino County

Although Commission staff has requested more current occupancy rate information from Mendocino County for the Town and surrounding area, more recent data has not been forthcoming. County staff has indicated in the past that much of the occupancy rate data is protected as proprietary information by local lodging facilities. Furthermore, transient occupancy tax records available from the County Treasurer/Tax Collector’s office only summarize revenue by quarter for the entire county, rather than by facilities. Therefore, Commission staff examined general occupancy rate information for the “North Coast Rural Area” (includes Humboldt, Del Norte, and Mendocino Counties) during peak (July 2016) and off-peak (March 2017) seasons,<sup>32</sup> which reveals 74.5% occupancy in July 2016 and 60.9% occupancy in March 2017 for lodging facilities in Mendocino County and surrounding areas.

Commission staff also examined general information accessed from Air BnB, AirDNA, and VRBO to evaluate general occupancy trends of short-term rentals within the Town and immediately surrounding area (north to Doyle Creek and south to Little River) compared to the City of Fort Bragg. Additionally, Commission staff examined a snapshot of availability on a given day of short-term rentals within and immediately surrounding the Town of Mendocino for

<sup>32</sup> Available online at: [http://industry.visitcalifornia.com/media/uploads/files/editor/VisitCalifornia\\_201607.pdf](http://industry.visitcalifornia.com/media/uploads/files/editor/VisitCalifornia_201607.pdf) and [http://industry.visitcalifornia.com/media/uploads/files/editor/VisitCalifornia\\_201703.pdf](http://industry.visitcalifornia.com/media/uploads/files/editor/VisitCalifornia_201703.pdf)

all available days between April 15 and September 30, 2017, revealing 63% vacancy of the specified short-term rentals as of April 14, 2017.

In addition to occupancy rates for short-term rentals and hotels, motels, inns, and B&Bs as described above, Figure 2 presents average daily occupancy rates for selected State Parks facilities nearby the Town of Mendocino. Notably, Russian Gulch State Park (immediately north of the Town) experienced 89% average daily occupancy, and Van Damme State Park experienced 79% average daily occupancy in 2014.

	Distance to Town of Mendocino (mi.)	2010	2011	2012	2013	2014
MACKERRICHER SP	15.5	82%	77%	82%	81%	87%
MANCHESTER SP	29.6	35%	58%	0%	32%	55%
RUSSIAN GULCH SP	1.6	87%	85%	0%	89%	89%
VAN DAMME SP	3.3	71%	72%	70%	73%	79%

**Figure 2.** Average Daily Occupancy Rates at State Parks Campgrounds within coastal Mendocino County in the Month of August, 2010 through 2014. *Source: CA State Parks*

*Current and Foreseeable Demand for New Accommodations*

Overall, a proportionally high number of visitor serving facility lodging units (excluding short term rentals) to residential units (1 visitor serving facility lodging unit for every 1.78 residences as proposed) exists in this small community. With such a high ratio of visitor serving facilities within the Town, and a described occupancy rate of approximately 70% nearly year-round (as stated in the May 16, 2013 County staff report), it appears in general that current and foreseeable demand for new accommodations within the Town overall is nominal. Nonetheless, it appears from the analysis presented above that there could be a potential increase in demand for additional low-cost overnight accommodations within the Town in the near future.

Although narratives and goals within the proposed LCPA suggest “collaborative funding opportunities by which State Parks may provide affordable hostel, cabin, or campground facilities in Mendocino Headlands State Park,<sup>33</sup>” no such project proposals are anticipated as forthcoming in the near future. Furthermore, it is unknown where such projects would be envisioned to be located within the Town boundaries, given known environmental resource constraints that include but are not necessarily limited to wetland, riparian, and rare community ESHAs, and adequacy of public services.

Some proprietors of existing visitor serving facilities have expressed interest in either adding new units to their facilities, or authorizing after-the-fact those units that were added without the necessary coastal development permit(s). Additionally, one proprietor has requested, and the County has proposed as part of the Town LCPA, (a) the addition of a new visitor-serving facility asterisk (\*) designation to the Nicholson House Inn, located at 44861 Ukiah Street, and (b) the temporary reservation of seven (7) visitor serving facility lodging units (previously allocated to short-term rentals) to the site. The shifting of some lodging units from vacation home rentals and

<sup>33</sup> From LCPA Section 1.2

single unit rentals to visitor serving facilities will afford some proprietors an opportunity to add visitor-serving facility lodging units that may be more consistently available for visitors (compared to sporadically-available short-term rentals). Furthermore, the reallocation of units from short-term rentals to existing visitor serving facilities could serve to satisfy current and foreseeable demand for lower-cost overnight accommodations, depending on the class of visitor accommodations proposed and approved at any given location.

### ***Comments Received***

During preliminary public hearings at the County level, the most common expressed sentiments included requests that: (a) vacation home rentals should be phased out of designated residential districts; (b) proposed amnesty provisions for unauthorized visitor serving facility developments and expansions were unfair and opposed; (c) designation of the Mendocino Art Center should accurately reflect its role as student-instructor housing and/or as a visitor serving facility, and questioned its designation as “affordable housing;” and (d) the process for reallocation of visitor serving facility lodging units to existing facilities should be fair and equitable. Additional comments questioned the need for low-cost visitor serving overnight accommodations, given the prevalence of public access recreational opportunities along the bulk of the headlands surrounding the Town.

Members of the public commented on the Mendocino Town Plan LCP Update during the initial Coastal Commission public hearing held October 5, 2016 in Ukiah. Public comments included concerns that community “balance” had been lost to tourism through increased visitor serving facilities and particularly the conversion of residential units to VSFs. During the October 5, 2016 initial hearing, several Commissioners expressed interest in knowing the exact number of lower cost accommodations within Town, and in seeing more low-cost visitor serving accommodations provided within the Town itself rather than just in surrounding areas outside the Town boundaries. Commissioners inquired about the role of the Mendocino Art Center relative to overnight accommodations. Commissioners were also supportive of the concept of limiting short-term rental opportunities within the Town, and reallocating units from short-term rentals to visitor serving facilities. Some Commissioners expressed interest in tracking short-term rentals through websites such as VRBO. While some Commissioners supported the concept of expanding visitor serving facilities onto any parcels within the Commercial District, others deferred to the local government’s existing proposal to limit visitor serving facilities to asterisk-designated sites.

### ***Visitor-Serving Facilities Designed to Enhance Public Opportunities for Coastal Recreation***

Coastal Act Section 30222 gives priority to the use of land suitable for visitor serving recreational facilities over private residential, general industrial, or general commercial development. Consistent with Section 30222, the newly-proposed policies GM-12, GM-14, and GM-15 specify the framework that identifies sites designated on Mendocino Town Land Use and Zoning Maps with an asterisk (\*) or an asterisk-B (\*B) as suitable locations where the LCP authorizes the development of visitor serving facilities, subject to securing a coastal development permit and any other necessary approvals.

Policies GM-3(a) and GM-13(a) would establish caps on the total number of visitor serving lodging units that are allowed within the Town (237), and replace similar policies included in the

1992 certified LUP (e.g., LUP Policies 4.13-1, and 4.13-4(3)). Additionally, Policies GM-15(a) and GM-15(b) shift additional lodging units from vacation home rentals, single unit rentals, and the Mendocino Art Center into designated visitor serving facility locations, while GM-3(a) and GM-13(a) limit the number of visitor serving lodging units allocated to any particular site. Policy GM-14.1(a) specifies that vacation home rentals and single unit rentals are not visitor serving facilities, and limits the number and location of these short-term accommodations as provided in Policies GM-3(b) and (c).

Retaining a cap on the total number of visitor serving lodging units in the Town can be found consistent with Coastal Act visitor serving facilities priority use policies in this case because of the proportionally high number of visitor serving units to residential units (1 lodging unit, excluding short term rentals, for every 1.78 residences as proposed) in this small community. In addition, shifting some of the visitor accommodations from vacation home rentals and single unit rentals to visitor serving lodging units will help ensure that the visitor accommodation units are more consistently available for visitors. Property owners do not always choose to make their homes available to visitors as a vacation home rental. Sometimes owners will use the home instead for their personal residential use.

Coastal development permits are generally not required to rent an existing home as a vacation rental if no physical changes to the structure are proposed, as rental of the home has not been considered to constitute a change in the density or intensity of use and thus is not considered to be development for which a coastal development permit would be required. In contrast, converting an established inn, bed and breakfast, or hotel from a visitor serving use to a residential use does constitute a change of use requiring a coastal development permit. Thus, a permit would be required to change a visitor serving lodging unit to some other use.

#### **b) Public Recreation and Coastal Access**

##### *LUP Policies Protecting Lower Cost Visitor Serving Recreational Opportunities*

The narrative contained within the Town LUPA indicates that approximately 25% of the Town is preserved as open space west of Highway 1 along the headlands, and east of Highway 1 adjacent to and north of Big River, all as part of the larger Mendocino Headlands State Park that extends beyond the Town boundaries.

Action GM-22.6 requires in part that pedestrian access to and through Mendocino Headlands State Park, and vehicular access along (1) Heeser Drive between Lansing Street and Little Lake Street, and (2) Big River Road within the Mendocino Town boundaries shall remain without cost to the recreational public, thereby ensuring conformity with Coastal Act policies requiring protection and encouragement of low-cost recreational facilities.

In addition to free parking along the Mendocino Headlands, low-cost transit options offer another means of accessing the Town of Mendocino. Mendocino Transit Authority (MTA)<sup>34</sup> provides several bus routes connecting from areas as far south as Bodega Bay and Santa Rosa, inland from Hopland, Boonville, Ukiah, and Willits, and north from Fort Bragg, in addition to serving other connecting areas in between. Additionally, Visit Mendocino tourism indicates that

---

<sup>34</sup> <http://mendocinotransit.org/>

MTA offers customized drop offs at specified locations, including State Parks facilities and the Town of Mendocino:<sup>35</sup>

*Visit Mendocino coast parks and attractions without the hassle and expense (Russian Gulch State Park) of parking a car. Just hop on the MTA Route 5 BraggAbout bus and the MTA Route 60 Coaster bus and ask the driver to drop you off at your choice of the following destinations: Point Cabrillo Lighthouse, the Mendocino Coast Botanical Gardens, Caspar Beach, Russian Gulch State Park, Jughandle State Park, and Town of Mendocino.*

Narratives and goals within the proposed LCPA suggest “collaborative funding opportunities by which State Parks may provide affordable hostel, cabin, or campground facilities in Mendocino Headlands State Park<sup>36</sup>,” and Policy GM-22 specifies in part that “Lower-cost overnight visitor accommodations shall be protected, encouraged, and where feasible provided through, including, but not limited to, intergovernmental agency cooperation to sustainably implement nearby campground, cabin, and hostel facilities...” No such project proposals are anticipated as forthcoming in the near future, and it is unknown where such projects would be envisioned to be located within the Town boundaries, given known environmental resource constraints that include but are not necessarily limited to wetland, riparian, and rare community ESHAs, and adequacy of public services. Although hostel and campground facilities do not exist within Town and are not envisioned within the foreseeable future, several hostel and campground accommodations do occur within 5 miles of Town and on lands subject to coastal development permit jurisdiction under the Coastal Element (Division II) for the balance of Mendocino County’s LCP.

Therefore, despite limited access to lower cost *overnight accommodations* within Town, lower cost *recreational opportunities* are readily accessible within Town. Additionally, other lower cost accommodations exist adjacent to the Town (within Mendocino County jurisdiction) and nearby the Town (within the city of Fort Bragg), offering an increased supply of readily available affordable overnight accommodations nearby.

Newly-added Town LUP Section 4.8 contains public access and recreation policies that identify and protect existing public accessways and encourage development of new public access trails, consistent with the Coastal Act. For example, Town LUP Action PAR-1.1 identifies existing segments of the California Coastal Trail that braid through Town. Furthermore, Policy PAR-2(e) and Actions PAR-1.1(b) and PAR-1.3 encourage the use of low-stature or in-ground way markers, signage, and environmental education information, consistent with Section 30210.

Consistent with Sections 30211, 30212, and 30221, Town LUP Policy PAR-2 encourages public access and public recreational support facilities within designated Open Space areas, including but not limited to trails that: (a) provide continuous access in proximity to the coastal bluff edge, consistent with public safety and coastal resource protection; and (b) establish or restore vertical (seaward) linkages from lateral coastal trails within Mendocino Headlands State Park to the shoreline of Agate Beach.

---

<sup>35</sup> <https://www.visitmendocino.com/bus-hike-bike/>

<sup>36</sup> From LCPA Section 1.2

## 2. Findings for Denial of Specified LUP Changes

### *Visitor Serving Facilities*

#### Designation of Visitor-Serving Facilities as Principally-Permitted in Specified Districts

The Town LCPA adds new uses and/or multiple use types as “principally permitted” within each land use classification and zoning district. Additionally, the proposed Town LCPA includes new policies that would establish development of any visitor serving facility lodging unit on sites designated on Mendocino Town Land Use and Zoning Maps with an asterisk (\*) or an asterisk-B (\*B), as a principal permitted use in the respective Town Land Use Classifications, Mendocino Visitor Serving Facility Combining District, and Mendocino Town Zoning Districts (Town Policy GM-24(b), **Appendix A**). As discussed further in Section 1 (“Planning and Locating New Development”), Section 30603(a)(4) of the Coastal Act provides that local approval of any development in a Coastal county (i.e., unincorporated areas) that is not designated as *the* principal permitted use results in an action that is appealable to the Commission. Accordingly, unless a single use is designated as the principally permitted use in a particular land use classification and zoning district, all development approved by the County in that particular land use classification is appealable to the Commission.

#### Visitor-Serving Facilities Designed to Enhance Public Opportunities for Coastal Recreation

Certain new provisions proposed in the Town LUPA must be denied as submitted because they create inconsistencies within the Town LUP and/or the Coastal Act. For example, Policy GM-12 describes sites that are “approved” for visitor accommodations, potentially suggesting that no coastal development would be required when developing new lodging units at designated locations. Similarly, Action GM-14.1(d) contains language that could be misconstrued to mean that only a “certification” rather than a coastal development permit would be necessary for certain forms of development. As proposed, Policy GM-12 and Action GM-14.1(d) conflict with the coastal development permit requirements of Coastal Action Section 30603(d) and must be denied as submitted.

The Town LUPA proposes a new administrative system for allocating available units (Policy GM-15(d)), which should help ensure that the units available under the numeric cap are more consistently available for visitors. The administrative allocation system would replace the system in the certified LCP which permanently fixes allocated numbers of lodging units to particular designated visitor serving facilities. An LCP amendment would no longer be required to reallocate units that are withdrawn from use by visitor serving facility owners to another site designated for visitor serving facility use. While some of the provisions within Town LUP Policy GM-15 will improve the administrative system used to allocate visitor serving facilities to designation locations, the proposed language is internally inconsistent and includes provisions such as Policy GM-15(c) authorizing visitor serving facilities operating since 1992 to continue operating without further regulatory review, regardless of whether a coastal development permit was obtained and inconsistent with Section 30603(d).

Newly-proposed Policy GM-24(a) would allow the reservation and designation of sites for visitor serving facilities to be preempted by conversion to residential uses and “other principal permitted uses of the base Zoning District...” Policy GM-24(a) would allow the reallocation of units from a converted VSF site to be redistributed to other sites within Town but would also

authorize the conversion to residential or other uses those parcels that are suitable for, and designated for visitor serving facilities, inconsistent with Coastal Act Section 30222.

#### Existing but Unauthorized Visitor Serving Facilities

As proposed, the LCPA's proposed "amnesty" provisions (e.g., Policies GM-13(b), GM-15(c)) would conflict with Coastal Act Section 30600 which requires that any person wishing to undertake development, as defined in Section 30601, shall obtain a coastal development permit.

#### ***Public Recreation and Public Coastal Access***

The Town LUP as proposed to be amended contains new definitions and provisions that are not Coastal Act consistent because they are either internally inconsistent or need further refinement in order to achieve consistency with the requirements of the Coastal Act. For example, newly-added definitions for "lateral access" and "vertical access," and Town Policies PAR-1 and PAR-3 include references to the Town of Mendocino and other modifying language that is not consistent with Sections 30211 and 30212 because it would unduly limit the public's right of access to the sea and along the coast. Other modifying language included in Town LUP provisions would either suggest limitations on free public access to certain user groups (e.g., Actions PAR-1.1(f)), or could be misconstrued to allow inappropriate uses in the name of public access<sup>37</sup>.

Town LUP Action PAR-1.2 contains new provisions directing Caltrans to identify, improve, and maintain certain specified pedestrian and bicycle accessways, including but not limited to along the Highway 1 bridge over Big River. New provisions within Town LUP Action PAR-1.2 also mandate that Caltrans should, to the maximum extent feasible, maintain two-way traffic over Big River Bridge during any bridge upgrade, repair, replacement or retrofit projects. Commission staff sent a referral letter to Caltrans staff on March 8, 2016 informing Caltrans of Mendocino County's Town Plan Update process, and inviting feedback regarding proposed LCPA policies that could affect future planning projects envisioned by Caltrans. Commission staff also met with Caltrans staff on June 14 and September 2, 2016 to discuss proposed Town Plan LCP changes that could affect the Highway 1 right-of-way and/or Big River bridge. Caltrans staff responded in writing with comments on March 8, 2016 (page 7 of Exhibit 7). Caltrans staff have expressed concerns that Town LUP policies dealing with the feasibility of highway construction "preemptively impose highway design mandates" on Caltrans. As the proposed provisions are more advisory in nature and would not directly govern the issuance of coastal development permits, the Commission finds LUP Action PAR-1.2 must be denied as submitted.

The Town LCPA also includes newly-added Action PAR-3.1 that would allow "structures necessary for the public health and safety... to continue, or be replaced..." on Town beaches. Although Action PAR-3.1 is included within the newly-added "Public Access and Recreation" Section 4.8, the policy does not address public access. Instead, Action PAR-3.1 conflicts with the Coastal Act and creates internal conflict with other Town LUP provisions such as Town LUP Policies GM-9(a) through GM-9(d). Based upon information provided by the County's

---

<sup>37</sup> e.g., as written Action PAR-1.2 suggests that a roadway for motorists through Mendocino Headlands State Park could be encouraged, and Policy PAR-4 suggests supporting uses at Fire District facilities and Public Facilities that are unrelated to coastal recreation

consultants<sup>38</sup>, it appears that Action PAR-3.1 was added to address infrastructure located on the beach and shoreline area, in association with the wastewater treatment plant's ocean outfall structure. However, the location of the structure referenced by the County's consultants is located within the Coastal Commission's retained jurisdiction where any coastal development permit application would be reviewed by the Coastal Commission under the Coastal Act, and not the Town LCP, as the standard of review. To the extent that coastal development permit authorization would be sought for an existing structure within the County's delegated jurisdiction, the provisions of new Town LUP Policies GM-9(a) through GM-9(d) would serve as the standard of review, in conformity with Coastal Act Sections 30253(a) and (b). In contrast, proposed Town LUP Action PAR-3.1 presents additional standards not considered under Section 30253, and must therefore be denied.

Additionally, although new Town provisions support certain public access and recreational opportunities, as submitted the Town LUP does not explicitly require that: (a) development shall not interfere with the public's right of access to the sea where acquired through use; (b) wherever appropriate and feasible, public facilities shall be distributed throughout an area so as to avoid overcrowding or overuse of any particular area; and (c) lower cost visitor and recreational facilities shall be protected, encouraged, and where feasible provided, inconsistent with Sections 30211, 30212.5, and 30213. While much of the area surrounding the Town is currently accessible to the public as part of Mendocino Headlands State Park, not all lands between the First Public Road and the sea are publicly-owned, and any proposed development on property located between the First Public Road and the sea must be evaluated for conformity with all the public access and recreation policies of the Coastal Act.

For all of the reasons described above, the Commission finds the Town LUP Access Section 4.8 and definitions contained in Section 2 must be denied as submitted.

### 3. Findings for Approval of LUP Amendment if Modified

#### *Visitor Serving Facilities*

##### Designation of Visitor-Serving Facilities as Principally-Permitted in Specified Districts

**Suggested Modifications 4 and 13** would change the relevant policies and land use classifications to specify those developments that would be a permitted use, rather than the principally-permitted use, in conformity with Coastal Act Section 30603.

Minor suggested modifications to Policy GM-12 would clarify the designation of sites where hotel and inn visitor serving facility lodging units are *allowable*, rather than "approved." Similar clarifying modifications are suggested for Policy GM-14 and Action GM-14.1(d). The suggested modifications would ensure conformity with provisions requiring a coastal development permit for new development (Coastal Act Section 30600(d)).

---

<sup>38</sup> Dall and Associates. "Mendocino Town Local Coastal Program Update Amendment (LCP-1-MEN-14-0840) Town LCP Update Amendment- Coastal Act Consistency Analysis." File name "20160226.MTLCPUA-COASTALACTSupplementalConsistencyAnalysis,1-227." Received March 1, 2016 at Coastal Commission North Coast District Office, Arcata.

Suggested modifications to Policy GM-15(d) would clarify initial allocation procedures and the process for reallocating units under various circumstances.

Therefore, **Suggested Modification 4** would delete Policy GM-24(a) to ensure conformity with Coastal Act Section 30222.

#### Existing but Unauthorized Visitor Serving Facilities

As proposed, the LCPA's proposed "amnesty" provisions (e.g., Policies GM-13(b), GM-15(c)) would conflict with Coastal Act Section 30600 which requires that any person wishing to undertake development, as defined in Section 30601, shall obtain a coastal development permit. **Suggested modifications 3, 4, and 14** would revise and delete those policies to ensure conformity with the permit requirements of Coastal Act Section 30600.

A memorandum dated March 3, 2017 and prepared by Mendocino County Planning and Building Services staff summarizes the Mendocino County Board of Supervisor's Mendocino Town Plan (MTP) Ad Hoc Committee concerns pertaining to preliminary suggested modifications presented in the September 23, 2016 Coastal Commission staff report, opposing Commission staff's proposed elimination of the described "blanket exemptions" and stating in part:

*The lodging units in question were not listed in the in the 1992 certified Mendocino Town Plan Table 4.13-1, but were identified during a 2012 lodging-unit count included in the MTP Amendment and listed the proposed amendments to Table 4.31-1 (and retitled as Appendix 2 Mendocino Town Plan Visitor Serving Facilities). Notably, many of these structures existed prior to promulgation of the California Coastal Act. For more than twenty years, Innkeepers have paid Mendocino County Transit Occupancy Taxes for these lodging units and have annually obtained a Mendocino County Business License to operate their visitor serving facility. The MTP Ad Hoc Committee opposes any changes to the detailed procedures, adopted by Mendocino County Board of Supervisors on December 8, 2015, intended to regulate new and existing lodging units at sites currently designated for Visitor Serving Facilities.*

Even if some of the visitor serving facility structures may have existed prior to enactment of the Coastal Act in 1973, Commission regulations provide a mandatory procedure by which a property owner must obtain a vested rights determination from the Commission. Such a determination must be based on evidence that any development undertaken prior to the enactment of the Coastal Act or its predecessor statute was completed lawfully (i.e. with all other required approvals and permits) Also, any future modifications to development that was the subject of a vested rights claim is also subject to existing law at the time those modifications take place. Furthermore, any new development, such as but not limited to the addition of new units, enlargement or expansion of facilities, and/or other changes in the density or intensity of use require a coastal development permit as described above.

In addition, although Section 30610 exempts certain developments from coastal development permit requirements there is no Commission-approved categorical exclusion for the unpermitted visitor serving units. Categorical Exclusion Order E-96-1 exempts from coastal development permit requirements within the Town certain specified single-family residences, improvements to categorically-excluded single family residences, and certain specified well and septic systems,

subject to the criteria and special conditions specified in the Order. However, Categorical Exclusion Order E-96-1 does not authorize any of the “blanket exemptions” proposed by the LCPA.

Therefore, to ensure conformity with the relevant Coastal Act policies (including but not limited to Sections 30600, 30601 and 30610), suggested modifications eliminate the blanket exemptions from coastal development permit requirements for any visitor serving facility that simply exists now or may have existed in the past even if the requisite coastal development permit had not been obtained. As modified, all unpermitted visitor serving accommodations with allocations would have until December 2018 to submit a complete CDP application and until June 30, 2019 to obtain the required CDP before their existing allocation would be forfeited.

#### *LUP Policies Protecting Lower Cost Visitor Serving Accommodations*

Section 30213 of the Coastal Act states in applicable part that lower cost visitor and recreational facilities shall be protected, encouraged, and where feasible, provided. Section 30213 helps ensure maximum public recreational access because without lower cost visitor serving facilities, some members of the public with lower incomes would be more limited in their ability to access and recreate at the coast, as compared to others who may be able to afford to pay more to access such coastal facilities. When planning and development does not adequately address these lower cost needs, it is inconsistent with the Coastal Act’s requirement to protect, provide and maximize access for all.

Section 30213 also promotes environmental justice, which is defined as “the fair treatment of people of all races, cultures, and income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies” in Government Code Section 65040.12(e). Lower cost facilities ensure members of the public with lower incomes or other financial constraints, and including those that live further from the coast, have options that enable them to access and recreate at the coast. The Coastal Act’s requirement to encourage, protect and where feasible provide lower cost visitor and recreational facilities is critical in providing opportunities for individuals and families from underserved communities to visit the coast when they might not be able to do so otherwise due to costs, including the lack of affordable lodging.

As noted previously, even though lower cost visitor serving accommodations are available along this portion of the Mendocino coast in the surrounding area, very few lower cost visitor accommodations are available directly within the Town of Mendocino itself. Based upon August 2015 data accessed from STR, no visitor serving facilities occur in Town within the “economy class” described by STR. Only 1 of 24 visitor serving facilities within Town provides average room costs per night that are below 75% of the peak season statewide ADR ( $\$171 \times 0.75 = \$128.25$ ), and only 2 facilities provide average room rates below 75% of the statewide off-peak ADR ( $\$159 \times 0.75 = \$119.25$ ). However, if one examines individual (non-average) rates within Town facilities, some nightly rates ranging from \$70-\$120 (non-peak) and \$75-\$128 (peak) can be located. For example, Commission staff observed 3 of the 24 hotel, inn, and B&B facilities within Town offering individual room rates below \$119 for “off-peak” weekends between April 28, 2017 and May 10, 2017, and 5 facilities offering room rates below \$128.25 during “peak-season” weekends in July (not July 4). And while the Mendocino Art Center primarily offers

student and instructor housing for art classes, rooms starting at \$80 per night are accessible to the general public when not in use by artists.

Whether to Require that New Low Cost Visitor Serving Accommodations be Allowed in the Commercial Land Use Designation

Under both the certified LCP and the proposed LCPA, the only locations where visitor serving facility lodging units may be developed is at the particular lots designated on the Mendocino Town Plan and Zoning Map with an asterisk (\*) or asterisk-B (\*-B). Virtually all of these sites are existing visitor serving facilities. No new visitor serving facilities can be built anywhere else in Town without first obtaining an LCP amendment, even if an allocation of units under the cap in visitor serving lodging facilities is available. Furthermore, while Policy GM-22 requires the protection of low-cost visitor serving accommodations through interagency coordination to encourage new campground and hostel construction, the LCPA does not include any requirements that would ensure development of new visitor serving facility lodging units within hotels, inns, and B&Bs in the Town would be affordable to people with lower incomes. Thus, a question is raised whether the LCPA as proposed encourages, protects, and where feasible provides low-cost visitor serving accommodations consistent with the requirements of Section 30213 of the Coastal Act.

As part of its preliminary suggested modifications presented during the Coastal Commission meeting held October 5, 2016, Commission staff recommended several suggested modifications to ensure consistency with Coastal Act policies. As initially recommended, **Suggested Modification Nos. 13 and 21** would modify the LCP to allow new hostels, hotels, inns, and B&Bs as permitted uses within the Commercial District. The suggested modifications would not increase the total cap on visitor serving lodging units within the Town, and therefore no such facility could be approved within the Commercial District unless the property owner obtains an allocation of the necessary units from within the cap. However, adding visitor serving lodging units as a permitted use would enable any property owner of land within the Commercial District to consider establishing a new visitor serving facility. The ability to develop a new visitor serving facility within the Commercial District could create the opportunity for new lower cost visitor serving facilities to be established within the Town. In addition to allowing visitor serving facilities as an allowable use in the Commercial District, Suggested Modification Nos. 4, 20, and 21 would modify the Visitor Serving Facility Combining Zone to limit its applicability to areas outside the Commercial District.

A memorandum dated March 3, 2017 and prepared by Mendocino County Planning and Building Services staff summarizes the Mendocino County Board of Supervisor's Mendocino Town Plan (MTP) Ad Hoc Committee concerns, opposing Commission staff's preliminary suggested modifications to allow visitor serving facilities as a Permitted use within the Commercial District, and stating in part the following:

*The location and number of Visitor Serving Facilities in the Town was the planning issue most reviewed and debated by the community. Mendocino County Board of Supervisors, on the recommendation of the Planning Commission, propose amending the LUP and IP to allow new Visitor Serving Facility designated sites (marked by an asterisk or asterisk-b) at locations only after an amendment to the LCP has been approved and a Coastal*

*Development Permit granted (see proposed amendment to MTZC Section 20.684.030(F) on page 111 of 248 of the Mendocino Town Zoning Code).*

*Coastal Commission Staff's preliminary recommended suggested modifications to the process for locating new lodging uses in the MC District, and the zoning districts where the Mendocino Visitor Serving Facility Combining District would apply, are land use changes that have not received public input nor do they reflect Mendocino County Board of Supervisor's preferred policies and regulations of lodging land uses.*

Other public comments received by the Commission and discussed elsewhere in this report emphasizes known site constraints within the Commercial District, such as but not limited to adequacy of services. As discussed elsewhere in this report, the Commercial District contains some of the highest density of shallow water wells with limited groundwater supply and the greatest concentration of failed water wells in the Town are located in and around portions of the Commercial District. Section 30250 of the Coastal Act requires that new development shall be located only in areas where it can be accommodated and where it will not have significant adverse impacts, individually or cumulatively, on coastal resources. Because there is an inadequate water supply in the Commercial District, the Commission finds that authorizing new development potential for overnight visitor serving accommodations within the Commercial District would be inconsistent with the requirements of Section 30250 of the Coastal Act. In addition, even though adding the use in the Commercial District would create an opportunity for a new visitor serving facility to be established that might be lower cost, the change in allowable uses would not ensure that any additional visitor serving facilities built would be lower cost. The Commission therefore finds that a suggested modification requiring new overnight visitor serving accommodations within the Commercial District is not necessary to find the proposed LCPA consistent with section 30213 of the Coastal Act because the feasibility of providing new visitor serving accommodations within the Commercial District is not assured.

### ***Public Recreation and Public Coastal Access***

The Commission finds that certain modifications are necessary to ensure internal consistency and to bring Town definitions and provisions pertaining to public access into conformity with the Coastal Act. **Suggested Modification 2** revises public access definitions consistent with the Commission's model LCP Public Access Ordinance and the Coastal Act. **Suggested Modification 10** revises and/or deletes modifying language that conflicts with Coastal Act provisions. For example, changes to LUP Policy PAR-1 are intended to make the language more consistent with Section 30210 which calls for maximizing recreational opportunities as well as public access, but Section 30210 does not say access must be provided consistent with protecting historical and community resource areas from overuse.

The suggested modifications also correct erroneous and misleading provisions and omissions that would conflict with the Coastal Act. For example, **Suggested Modification 10** revises LUP Policy PAR-4 to: (a) remove references to uses that are not associated with the support of coastal recreation, and (b) clarify that abandonment of a public right of way is a change in the intensity or density of use and is development that always requires a CDP. **Suggested Modification 10** also deletes Action PAR-3.1 from Section 4.8 ("Public Access and Recreation"), to ensure internal consistency with the Town LUP and conformity with Coastal Act Section 30253.

To ensure conformity with Coastal Act Sections 30211, 30212.5, and 30213, **Suggested Modification 10** also adds new Town LUP Policies PAR-6, PAR-7, and PAR-8. For those provisions that are more advisory in nature and do not directly govern the issuance of coastal development permits, **Suggested Modification 10** additionally label specified “policies” and “actions” as “advisory goals” or measures. As modified, the County’s expressed goals for public access along Highway 1 at Big River Bridge are retained without preemptively imposing design mandates that could conflict with federal or state highway standards. As modified, the Commission finds the public access and recreation standards of the Town LUP are internally consistent and conform with the Coastal Act.

### ***Conclusion***

The proposed amendments to the visitor serving facility and visitor accommodation policies of the LCPA, including retaining a cap on the total number of visitor serving lodging units in the Town is consistent with Coastal Act visitor serving facilities priority use policies in this case because of the proportionally high number of lodging units to residential units in this small community.

In addition, shifting some of the visitor accommodations from vacation home rentals and single unit rentals to visitor serving facility lodging units will help ensure that the visitor accommodation units are more consistently available for visitors. Furthermore, the proposed administrative system for allocating available units will help increase availability of overnight lodging accommodations to visitors. The administrative allocation system will replace the system in the certified LCP which permanently fixes allocated numbers of units to particular designated visitor serving facilities. An LCP amendment would no longer be required to reallocate units that are withdrawn from use by visitor serving facility owners to another site.

Finally, as proposed, the LCPA’s proposed “amnesty” provisions conflict with Coastal Act Section 30600 which requires that any person wishing to undertake development, as defined in Section 30610, shall obtain a coastal development permit. **Suggested modifications 3, 4, and 14** revise and delete those policies to ensure conformity with the permit requirements of Coastal Act Section 30600. The suggested modifications modify the LCPA to eliminate the blanket exemptions from coastal development permit requirements for any visitor serving facility that simply exists now or may have existed in the past even if the requisite coastal development permit had not been obtained. As modified, all unpermitted visitor serving accommodations with existing allocations would have until December 2018 to submit a complete CDP application and until June 30, 2019 to obtain the required CDP before their existing allocation would be forfeited.

The Town LUP as proposed to be amended contains new definitions and provisions that are not Coastal Act consistent because they are either internally inconsistent or need further refinement in order to achieve consistency with the requirements of the Coastal Act. The Commission finds that certain modifications are necessary to ensure internal consistency and to bring Town definitions and provisions pertaining to public access into conformity with the Coastal Act. **Suggested Modifications 2 and 10:** (a) revise public access definitions consistent with the Commission’s model LCP Public Access Ordinance and the Coastal Act; (b) correct erroneous and misleading provisions and omissions; and (c) label specified “policies” and “actions” as “advisory goals” or measures.

As modified, the Commission finds the visitor serving, public access, and recreation standards of the Town LUP are internally consistent and conform with the Coastal Act, including but not limited to Sections 30210, 30211, 30212, 30212.5, 30213, 30220, 30221, and 30222. Therefore, the Commission recommends approval as modified and as discussed above.

#### **D. Applicable Land Use Plan Policies**

**GM-3.** To maintain the Town's historic scale and character, no new or expanded visitor accommodations (overnight lodging units) operated as one business entity shall exceed 25 overnight units (guest rooms or suites).

(a) The total number of authorized visitor serving facility lodging units in the Town shall not exceed 237 and shall be limited to sites listed in Appendix and marked on the Mendocino Town Land Use Map by an asterisk (\*) or asterisk-B (\*B). Any increase above that total number of units or any proposed new location for a visitor serving facility shall require an amendment to the certified Mendocino Town Plan before the County may accept an application for development of any additional visitor serving facility lodging units above that fixed number. Visitor serving lodging units may be developed at sites designated on the Mendocino Town Land Use Plan and Zoning Maps by an asterisk (\*) or asterisk – B (\*B) and only in the amounts allocated pursuant to the Visitor Serving Lodging Unit Allocation Implementation Procedure in Mendocino Town Plan Section 6.7 and Mendocino Town Zoning Code Section 20.684.030(H).

(b)(1) The total number of Vacation Home Rentals (VHR) shall not exceed ten (10) establishments in the Town. (2) No new Vacation Home Rental establishments shall be permitted in any residential land use designation or zoning district. (3) Any existing permitted or legal-nonconforming Vacation Home Rental establishments located in a residential land use classification or zoning district, or in any land use classification or district in excess of the limit of ten (10) establishments, shall be phased out as business licenses are abandoned or expire.

(c) The total number of Single Unit Rentals (SUR) shall not exceed twenty (20) units in the Town.

**GM-12.** The certified Mendocino Town Plan Land Use Map (Figure 4.13-3) designates sites where hotel and inn visitor serving facility lodging units are allowable with an asterisk (\*) and each site where bed and breakfast visitor serving lodging units are allowable with an asterisk-B (\*B). The certified Town Zoning Map shall contain conformed designations.

**GM-13.** (a) Additions to or expansion of legally existing visitor serving facility (VSF) lodging units on a site that is designated for such use on the Town Land Use Map and Town Zoning Map may be permitted, provided that (1) any addition of VSF lodging units does not exceed the total limit (cap) for hotel, inn, and bed and breakfast VSF lodging units listed in Appendix 2; (2) any addition of VSF lodging units does not exceed the allocated number of units for the designated site pursuant to Appendix 2 and the VSF Lodging Unit Allocation Implementation Procedure in Mendocino Town Plan Section 6.7 and Mendocino Town Zoning Code Section 20.684.030(H), and (3) such addition or expansion is in conformity with the certified Mendocino Town Plan and certified Mendocino Town Zoning Ordinance.

(b) Any visitor serving lodging unit that is operating without a valid coastal development permit where one is necessary must submit an application for a coastal development permit deemed complete by the Department of Planning and Building Services by December 31, 2018 and obtain a coastal development permit by June 30, 2019. If either a complete application is not submitted by December 31, 2018 or a coastal development permit is not obtained by June 30, 2019, any existing allocation for the visitor serving lodging unit shall be forfeited and shall become available for reallocation to another visitor serving facility pursuant to the Visitor Serving Facility Lodging Unit Allocation Implementation Procedure in Mendocino Town Plan Section 6.7 and Mendocino Town Zoning Code Section 20.684.030(H).

**GM-14** Visitor Serving Facilities are designated for such use on the certified [\] Mendocino Town Plan Land Use Map with an asterisk or asterisk-B. All new visitor serving facility development that is proposed to be located on one or more parcels not specifically designated for such use on the certified Mendocino Town Plan Land Use Map with an asterisk or asterisk-B, shall only be allowed in the Commercial and Mixed Use District pursuant to an amendment to the certified Mendocino Town Local Coastal Program

**Action GM-14.1.** (a) Vacation Home Rentals and Single Unit Rentals are not Visitor Serving Facilities. Approval of any new [\] Vacation Home Rentals and [\] Single Unit Rentals shall be pursuant to GM-3(b) and (c), and Mendocino Town Zoning Code Chapter 20.748.

(b) Single Unit Rental Licenses are not transferable to another location, person, or entity, except that Single Unit Rental license rights shall attach to ownership of the property on which the licensed unit is located, subject to all other Town Plan policies and applicable license requirements. A new owner of property on which a licensed unit is located shall be eligible to continue to license and operate the unit without cessation of use or relegation to a waiting list, if, upon sale or transfer of the property on which the licensed unit is located, the new owner shall provide proof of ownership and compliance with other requirements of Chapter 6.04.080(a), to the satisfaction of the Department of Planning and Building Services, and the Treasurer-Tax Collector pursuant to Chapters 5.20 and 6.04 of the County Municipal Code. Single Unit Rental rights shall cease to attach to the unit at such point as the licensing is allowed to expire or is revoked.

(c) Vacation Home Rental licenses shall not be transferable to another location, person, or entity, except that the property owner may transfer the license to a spouse/domestic partner, child, parent, or, for estate planning purposes, to a trust in which the property owner serves as a trustee, which shall not be deemed a change in ownership for purposes of Section 6.04.070(g) of the County Municipal Code.

(d) Operation of Single Unit Rentals and Vacation Home Rentals is subject to the licensing requirements of Chapter 6.04 (Business License tax) of the Mendocino County Code. Prior to the issuance of any new license for a Single Unit Rental or Vacation Home Rental, the Applicant must first apply to the Department of Planning and Building Services for certification that the operation is authorized by any required coastal development permit and is in conformity with all planning and building standards, including, but not limited to, the location and number of such authorizations allowed pursuant to the Mendocino Town LCP.

The owner of a licensed Single Unit Rental or Vacation Home Rental is liable for regular payment of Transient Occupancy Tax pursuant to Chapter 5.20 (Uniform Transient Occupancy Tax) of the Mendocino County Code. The required business license must be renewed annually, pursuant to Mendocino County Code Chapter 6.04.

(e) The Department of Planning and Building Services shall maintain a status log of all licensed Single Unit Rentals and Vacation Home Rentals in the Town. If there are more applicants for Single Unit Rental and Vacation Home Rental licenses than the number allowed pursuant to the Town LCP, the Department of Planning and Building Services shall also maintain a waiting list from which future vacancies shall be filled. The Department of Planning and Building Services shall receive notification if a licensee fails to remit payment of Transient Occupancy Tax or fails to renew said license. At such point as the license expires without renewal, or is revoked for failure to pay the required tax, or in the case of a Vacation Home Rental, a change in the ownership of the licensed property to other than a party described in GM 14.1(c) occurs, application for that license shall become available to the waiting list in the order received.

**GM-15** (a) The Mendocino Town Plan Update reduces the 23 Single Unit Rentals and 23 Vacation Home Rentals allowed by the 1992 Mendocino Town Plan to 20 Single Unit Rentals and 10 Vacation Home Rentals, and reallocates the reduced 16 units to existing visitor serving facilities that are (1) listed in [ ] Mendocino Town Plan Appendix 2 and (2) mapped as asterisks (\*) or as asterisk-B (\*B) on the [ ] Mendocino Town Land Use Map and [ ] Mendocino Town Zoning Map.

(b) The updated Mendocino Town Plan (1) reclassifies the existing thirteen (13) Art Center Student/Instructor Housing units as a housing use where priority is given for housing students, instructors, artist-in-residence, staff, and scholar art program members, although transient occupancy of the units by the general public may occur, and (2) reallocates the six additional visitor serving facility lodging units allocated to the Art Center in 1992, but not constructed, to existing visitor serving lodging units located outside the Commercial Land Use Classification and Zoning District that are listed in Appendix 2 and mapped as asterisk (\*) or as asterisk-B (\*B) on the Mendocino Town Land Use Map and Mendocino Town Zoning Map.

(c) Appendix 2 identifies the 1992 allocation of 215 visitor serving facility lodging units allowed at sites designated for visitor serving facility lodging units by an asterisk (\*) or asterisk-B (\*B). The remaining 22 of the total of 237 visitor serving facility lodging units that may be allowed in the Town pursuant to Policy GM-3 shall be made available by the Planning and Building Services Department for application, permitting, and use, by other existing Visitor Serving Facilities on sites designated with an asterisk (\*) or asterisk-B (\*B) and that can accommodate them consistent with the conservation and development standards of the Mendocino Town LCP, the Visitor Serving Facility Unit Allocation Implementation Procedure in Mendocino Town Plan Section 6.7 and certified Mendocino Town Zoning Code Section 20.684.030(H). As any allocated visitor serving lodging unit becomes abandoned, fails to timely obtain any necessary coastal development permit or other necessary approvals, or when any such permits or approval for an allocated unit has expired or been revoked, the Planning and Building Services Department shall reallocate the

unit pursuant to Mendocino Town Plan Section 6,7 and Mendocino Town Zoning Code Section 20.684.030(H).

**GM-22** Lower-cost overnight visitor accommodations shall be protected, encouraged, and where feasible provided through, including, but not limited to, intergovernmental agency cooperation to sustainably implement nearby campground, cabin, and hostel facilities as proposed in the 1976 Mendocino Headlands State Park General Plan, consistent with the certified Mendocino Town LCP.

**GM-29** Residential dwelling units in the Town shall not be converted to any nonresidential use except in the Commercial "C" zone, as provided pursuant to Section 6.7, or as provided in Mendocino Town Zoning Code Section 20.660.075(E)

**Section 4.8**, the Public Access Chapter of the Mendocino Town Zoning Code, the Mendocino Town Public Access Map (Figure 4.13-6), the detailed Public Access Maps (Appendix 5), and the parts of the Mendocino Town Land Use Map that depict Highway 1, public roads, streets, and alleys, Mendocino Headlands State Park, passive and active local parks, and recreation facilities constitutes the specific Public Access Component of the Town of Mendocino Local Coastal Program.

PAR-1 Maximum public access to and along the coast and public recreational opportunities shall be provided, consistent with public safety, private and public rights, and the protection of natural-resource areas in the Town from overuse.

**Action PAR 1.1:** The Mendocino Town Public Access Map ([\] Figure 4.13-6) and detailed Public Access Maps ([\] Appendix 5) depict, within the Town, the extensive network of vehicular and pedestrian public access ways that contribute substantially to the Town's special community character. The maps are illustrative and do not necessarily include all areas that provide public access to the coast. The maps shall be interpreted consistent with the text of the policies of the Mendocino Town Plan and the standards of the Public Access Chapter of the Mendocino Town Zoning Code. Featured public access ways include: (1) State Highway 1, including the northerly part of the Big River highway bridge, which serve as the major transportation link of the Town with population centers in the San Francisco Bay Area, the Central Valley, and California further to the south and east; (2) the Lansing Street, Little Lake Street, Ukiah Street, and Main Street primary vehicular, bicycle, and pedestrian access ways from Highway 1 into the historic Town and to Mendocino Headlands State Park; (3) Heeser Drive, which extends through the State Park between Lansing Street and Little Lake Street; (4) east-west and north-south streets that provide pedestrian and vehicular access to the State Park, other open space areas, visitor-serving facilities, and the historical buildings and structures in the Town; (5) paths, trails, and upland public access/recreational support facilities (Ford House Visitor Center, older improved and unimproved parking, lavatories), (6) the Big River beaches east and west of the Highway 1 Bridge, and (7) the sandy pocket beaches that occur between it and the north end of Mendocino, where the blue line "Slaughterhouse Gulch" stream discharges to Agate Beach.

(b) Low stature or in-ground way markers, signage, and environmental educational information should be provided and maintained, including through electronic messaging,

consistent with the history of Mendocino Headlands State Park, the historical character of the Town, and coastal resource protection.

(c) The County and State Parks should cooperatively monitor the stability of the segment of northeasterly Heeser Drive and ensure continuous public access inside and adjacent to Mendocino Headlands State Park, where landform destabilization has occurred adjacent to the upper coastal bluff. Provide for the eventual inland relocation of the road and the trail as necessary.

(d) The County shall encourage State Parks to evaluate the condition of coastal trails, paths, and upland support facilities where they are located above or near areas of active shoreline erosion, including, but not limited to, caving and landsliding, and relocate such trail or path segments landward to stable areas.

(e) Relocated coastal trails, paths, and upland support facilities shall be consistent with the coastal resource protection standards of the Mendocino Town Local Coastal Program.

(f) Pedestrian day use of Mendocino Headlands State Park shall remain free to the public.

**Action PAR 1.2:** Continuous lateral public recreational access for pedestrians, bicyclists, and motorists shall be maintained (1) within and/or adjacent to Mendocino Headlands State Park, (2) from Mendocino Headlands State Park to the north, east, and south of the Town along Lansing Street (former Highway 1), Heeser Drive, and Big River Road; (2) the designated east-west coastal access routes in Town along Main Street, Little Lake Street, and Ukiah Street, (3) on the Highway 1 bridge over Big River, and (4) over the Slaughterhouse Gulch drainage. Continuous lateral public recreational access shall also be maintained from Highway 1 along Big River Road, the Big River Flat east of Highway 1, and the Big River Estuary Beach west of Highway 1 to Main Street.

(a) The County, in coordination with the California Department of Parks and Recreation, shall encourage the California Department of Transportation (District 1) to identify and improve a safe pedestrian crossing or undercrossing of Highway 1 between the areas of Mendocino Headlands State Park east and west of Highway 1. Completion of a coastal resource-protective pedestrian and bicycle trail between the beach at Big River Flats, east of Highway 1, and Main Street near the Mendocino Headlands State Park Ford House Museum and Visitor Center is a priority to complete inland links to the Coastal Trail.

(b) The County, in coordination with the California Department of Parks and Recreation, shall encourage the California Department of Transportation (District 1) to identify, improve, and maintain a safe pedestrian and bicycle crossing of the Highway 1 bridge over Big River.

...

(d) Any replacement of the Highway 1 bridge shall comply with the conservation, development, historic preservation, public access, and all other policies and standards of the Mendocino Town Local Coastal Program.

**Action PAR 1.3:** Way-finding signage to and along public access ways shall (1) harmonize with the historic character of the Town, (2) be located to avoid visual clutter, and (3) where located on the seaward side of Highway 1, Lansing Street, Heeler Drive, or Main Street, avoid intrusion to the maximum extent feasible into public views to and along the sea.

**PAR-2** Public access and public recreational support facilities, including, but not limited to roads, trails, paths, parking, lavatories, and other use areas within designated public Open Space areas, shall be:

(a) located to mitigate against potentially significant impacts from overcrowding or overuse by the public of any single area;

(b) attractively designed, constructed, and maintained to be accessible by all the people, including, but not limited to, persons with disabilities, and conform, to the maximum feasible extent, to [X] Mendocino Town Zoning Code Chapter 20.760 and to the [X] Mendocino Historic Review Board Design Guidelines; and,

(c) implemented to (1) provide a continuous walking and hiking trail or path in proximity to the coastal bluff edge, consistent with public safety and coastal resource protection, (2) include alternative trail or path segments, where feasible, to facilitate a variety of non-motorized public access opportunities, (3) establish or restore vertical (seaward) linkages from lateral coastal trails or paths to trailheads, vista points, and parking areas in Mendocino Headlands State Park and to the shoreline at Agate Beach, (4) avoid the interruption of ocean views and scenic coastal vistas from the first continuous public road or street by locating new parking or other upland recreational support facilities on the inland side of such road or street, where feasible, and (5) provide for cultural, environmental, and historic educational and interpretive information through minimized structures and other facilities that harmonize with the historic character and open space preservation of the Mendocino Headlands.

(d) All trail or path segments that comply with the Americans with Disabilities Act, as amended, should be clearly indicated.

(e) Way finding markers for the California Coastal Trail in the Town should utilize the adopted Coastal Conservancy trail emblem (Figure 4.13-7); provided that the emblem may (1) be part of a sign or structure, (2) be embedded in a sidewalk, path, trail, or in pavement, and (3) shall be displayed consistent with the requirements of the Town Local Coastal Program and Mendocino Historic Review Board Design Guidelines.

**PAR-3** The Big River beach and pocket beaches on Mendocino Bay and along the Pacific Ocean shoreline of the Town, all of which are owned by the State of California and are suited for water-oriented recreation, shall be protected for such uses, including, but not limited, for, their continued sustainable public accessibility, water quality, and beach sand supply.

**PAR-4** Consistent with Coastal Act Section 30221, the certified Town Local Coastal Program reserves upland areas in the Town, inland of Mendocino Headland State Park, that support coastal recreation. These upland areas include, but are not limited to, the Highway 1 right-of-

way and County road and street rights-of-way that connect the State Park with other areas of the coastal zone, the County, State, and United States.

(a) Any abandonment, closure, or conversion of any public right-of-way in the Town shall require approval by the County of a coastal development permit and as applicable, an application to the County for an amendment of the certified Town Local Coastal Program.

**PAR-5** Consistent with Coastal Act Section 30224, the County shall encourage the California Department of Parks and Recreation to provide a public small boat launching facility and upland support facilities, including, but not limited to, sustainable parking and lavatories, at Big River Flats within the Town, east of the Highway 1 Bridge.

**PAR-6** As required by Coastal Act Section 30211, development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

**PAR-7** As required by Coastal Act Section 30212.5, wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

**PAR-8** As required by Coastal Act Section 30213, lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. The Commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

In addition to the policies specified above, the definitions contained in Section 2 are also applicable. The standard of review for the proposed Town IP Update is that it be consistent with and adequate to carry out the conditionally certified (i.e., as modified above) Town LUP Update. In this case, the County's proposed Town LUP policies related to visitor serving facilities and public recreation and coastal access and have been denied, and thus this evaluation is based on the as-modified Town LUP (see preceding section).

#### **E. IP Consistency Analysis**

The proposed IP implements these LUP policies primarily through Chapter 20.684 ("Visitor Serving Facilities Combining District"), which establishes the requirements to provide for, and protect visitor serving accommodations within the Town.

## 1. Findings for Denial of Specified IP Changes as Submitted

### ***Visitor Serving Facilities***

Revised Town Zoning Code Chapter 20.664 now proposes Residential, Civic, and Visitor Accommodations as principally permitted uses within the Commercial District. Based on discussions with County staff, it appears that part of the reason to re-characterize many of the conditional uses as principally permitted is to reduce the burdens on property owners of having to go through a use permit process for many different uses. However, unless a single use is designated as the principally permitted use in a particular zoning district, all development approved by the County in that particular zoning district is appealable to the Commission. This creates an unnecessary problem easily rectified by identifying one use as principally permitted in each zoning district. As submitted, the proposal to designate multiple use types as principally-permitted does not conform with and adequately carry out the Town LUP provisions, including but not limited to Section 5. Therefore, Town Zoning Code Chapter 20.664 must be denied as submitted.

Newly-added Town Zoning Code Section 20.684.030(H) includes new provisions for reallocating lodging units that were initially assigned to sites specified in Town Plan Appendix 2, to other visitor serving facility lodging unit sites designated with an asterisk (\*) or asterisk-B (\*B) on the Mendocino Town Land Use and Zoning Maps, as they become available under a range of scenarios. TZC Section 20.684.030(H) would also legalize certain existing but unauthorized visitor serving facilities without requiring those facilities to obtain coastal development permits, inconsistent with Town Policies GM-13 and GM-15(c), and inconsistent with Town Plan Sections 3.3.1(b), and 6.7. Thus, the IP provisions relating to “blanket exemptions” from coastal development permit requirements for certain specified visitor serving facilities do not adequately carry out or conform with the Town LUP, and must be denied as submitted.

### ***Public Recreation and Coastal Access***

The LCPA introduces entirely new Town Zoning Code policies contained in Chapter 20.718 (**Appendix C**). The 1996 certified Town Zoning Code did not include policies addressing Public Access, but instead incorporated by reference the public access provisions found in the Coastal Zoning Code for the balance of the County (Title 20, Division II, Chapter 20.528). Town Zoning Code Section 20.692.025 of the certified LCP requires in part that all development within all Town zoning districts shall, as applicable, comply with the provisions found in Section 20.532.095 (“Required Findings for all Coastal Development Permits”) and 20.532.100 (“Supplemental Findings”) of the certified Coastal Zoning Code provisions of the balance of the County (Title 20, Division II). Coastal Zoning Code Section 20.532.095(B) states: “If the proposed development is located between the first public road and the sea or the shoreline of any body of water, the following additional finding must be made: The proposed development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act and the Coastal Element of the General Plan.” The certified Town IP requires as part of Town Zoning Code Section 20.720.035 findings for all coastal development permits similar language, but the County has proposed updates to specify that proposed development between the first public road and the sea must also be consistent with the “certified Town Plan of the Coastal Element of the General Plan.”

The Town IP as submitted is inconsistent with the Town LUP because the Town Zoning Code contains inconsistencies with Town LCP provisions, and lacks fundamental provisions necessary to adequately carry out the Town LUP policies. For example, the provisions pertaining to trail signage contained in Town Zoning Code Section 20.718.010(H) are inconsistent with the provisions of Town LUP Action PAR-1.3 and Policy PAR-2(e). Additional provisions contained in TZC Section 20.718.010(A) unnecessarily limit where public access may occur, in conflict with the Town LUP provisions including but not limited to LUP Policies PAR-1, PAR-2, and Actions PAR-1.1 and PAR-1.2.

Additionally, the Town IP as submitted lacks provisions previously incorporated by reference in the certified IP, in conflict with Coastal Act policies and administrative regulations (Division 5.5, 14 CCR). The incorporation by reference of Coastal Zoning Code Section 20.532.095 creates further conflict because it unnecessarily incorporates all the provisions of the balance of the County for those developments located between the first public road and the sea. The Town IP also lacks minimum public access standards needed to fully carry out and conform with Town LUP policies and actions, including but not limited to LUP Policy PAR-6. For all of the above reasons, the Commission finds that the Town IP policies pertaining to public recreation and coastal access must be denied as submitted.

## 2. Findings for Approval of IP Amendment if Modified

### *Visitor Serving Facilities*

To ensure conformity with the land use classifications contained within Section 5 of the Town LUP, **Suggested Modification 21** has been added to identify within the Town Zoning Code Chapter 20.664 a single principal permitted use for each zoning district.

Therefore, **Suggested Modification 21** would revise TZC Section 20.684.030(H) to ensure that Section 20.684.030(H) adequately carries out and conforms to Town Policy GM-15(d) and Town Plan Section 6.7. Additionally, **Suggested Modification 21** would eliminate the blanket exemptions from coastal development permit requirements for any visitor serving facility that simply exists now or may have existed in the past even if the requisite coastal development permit had not been obtained, to ensure conformity with Town Policies GM-13 and GM-15(c).

To ensure conformity with Action GM-14.1, **Suggested Modification 22** revises policies contained within Town Zoning Chapter 20.748 to clarify that approval of any single unit rental or vacation home rental shall be consistent with the requirements of the Coastal Act, and in some instances the creation of a SUR or VHR constitutes development that would require a coastal development permit pursuant to Section 30600 of the Coastal Act. In its memorandum dated March 3, 2017, the Mendocino County Board of Supervisor's MTP Ad Hoc Committee expressed objection to suggested modifications that would add the phrase "consistent with the requirements of the Coastal Act," asserting that such a statement is redundant with any LCP the Commission certifies as consistent with the requirements of the Coastal Act. However, the County has added numerous references to other authorizations within their LCP that are separate from and unrelated to Coastal Act requirements, including but not limited to references to Mendocino Historical Review Board approval, and issuance of building permits and business licenses. Therefore, the Commission finds it necessary in some instances to underscore Coastal Act requirements where the approving authority is less clear.

### ***Public Recreation and Coastal Access***

The Commission finds that certain suggested modifications to the Town IP are necessary to adequately carry out and conform with the Town LUP. Therefore, **Suggested Modifications 24** and **25** have been added to revise and/or delete internally inconsistent provisions, and to correct errors and omissions. For example, as modified TZC Section 20.718.035 incorporates those portions of Section 20.532.085 from the balance of the County Coastal Zoning code that were previously incorporated by reference and that are not otherwise addressed in the proposed IP. Similarly, **Suggested Modification 25** eliminates incorporation of Coastal Zoning Code Section 20.532.095 by reference from the balance of the County, as the Town IP as proposed and modified has its own required findings in TZC Section 20.720.035 that is largely duplicative of CZC Section 20.532.95. **Suggested Modification 24** also adds a number of provisions necessary to ensure conformity with the minimum public access standards required by Town LUP Policy PAR-6.

As modified, the language contained in zoning provisions such as but not limited to TZC Sections 20.718.010(F) and (L) would also more closely match similar language contained within Coastal Act Sections 30210, 30212, and 30212.5 which are part of the standard of review for CDPs in these instances because the policies address property located between the First Public Road and the sea. Other terminology has been modified to ensure internal consistency within the Town IP and LUP (e.g., revising “visitor accommodations” to “visitor serving facilities” in TZC Section 20.718.010(D)).

Certain “friendly modifications” have also been included following discussion with County staff. For example, as modified Town Zoning Code Section 20.718.005 specifies that Chapter 20.718 applies to all projects in the Town of Mendocino Local Coastal Program segment of the coastal zone, to distinguish from development outside of the Town of Mendocino but within the coastal zone that is not subject to the provisions of the Mendocino Town LCP. Additionally, as modified TZC Section 20.718.010(K) references “public pedestrian accessway” rather than “sidewalk” as originally proposed, in order to achieve harmony with Mendocino Historical Review Board requirements.

### ***Conclusion***

The Town IP policies pertaining to visitor serving facilities, public recreation, and coastal access must be denied as submitted because they contain internal inconsistencies, errors, or omissions, and/or do not conform with or adequately carry out the Town LUP policies. For example, the proposal to designate multiple use types, including the Visitor Accommodation Use Type, as principally-permitted does not conform with and adequately carry out the Town LUP provisions, including but not limited to Section 5. Therefore, Town Zoning Code Chapter 20.664 must be denied as submitted. Proposed TZC Section 20.684.030(H) would legalize certain existing but unauthorized visitor serving facilities without requiring those facilities to obtain coastal development permits, inconsistent with Town Policies GM-13 and GM-15(c), and inconsistent with Town Plan Town Plan Sections 3.3.1(b), and 6.7. The provisions pertaining to trail signage contained in Town Zoning Code Section 20.718.010(H) are inconsistent with the provisions of Town LUP Action PAR-1.3 and Policy PAR-2(e). Additional provisions contained in TZC Section 20.718.010(A) unnecessarily limit where public access may occur, in conflict with the Town LUP provisions including but not limited to LUP Policies PAR-1, PAR-2, and Actions PAR-1.1 and PAR-1.2. The Town IP also lacks minimum public access standards needed to fully

carry out and conform with Town LUP policies and actions, including but not limited to LUP Policy PAR-6.

**Suggested Modification 21** has been added to ensure conformity with the provisions of the Town LUP, including but not limited to: (a) listing within Town Zoning Code Chapter 20.664 a single principal permitted use for each zoning district, and (b) eliminating the blanket exemptions from coastal development permit requirements for any visitor serving facility that simply exists now or may have existed in the past. To ensure conformity with Action GM-14.1, **Suggested Modification 22** revises policies contained within Town Zoning Chapter 20.748 to clarify that approval of any single unit rental or vacation home rental shall be consistent with the requirements of the Coastal Act, and in some instances the creation of a SUR or VHR constitutes development that would require a coastal development permit pursuant to Section 30600 of the Coastal Act. As modified, the Town IP conforms with and adequately carries out the Town LUP policies pertaining to the protection and provision of visitor serving facilities.

**Suggested Modification 24** has been added to revise and/or delete internally inconsistent provisions, and to correct errors and omissions in the provisions pertaining to public access and recreation. For example, as modified TZC Section 20.718.035 incorporates those portions of Section 20.532.085 from the balance of the County Coastal Zoning code that were previously incorporated by reference and that are not otherwise addressed in the proposed IP. Suggested Modification 24 also adds a number of provisions necessary to ensure conformity with the minimum public access standards required by Town LUP Policy PAR-6.

The Commission finds that with incorporation of suggested modifications as described above, the Town IP policies pertaining to visitor serving facilities, public recreation, and coastal access conform with and adequately carry out the provisions of the Town LUP as amended.

### **3. Planning and Locating New Development**

#### **A. Applicable Policies**

Section 30243 of the Coastal Act states:

*The long-term productivity of soils and timberlands shall be protected, and conversions of coastal commercial timberlands in units of commercial size to other uses or their division into units of noncommercial size shall be limited to providing for necessary timber processing and related facilities.*

Section 30250 of the Coastal Act states, in applicable part, as follows:

*(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources...*

Section 30254 of the Coastal Act states, in applicable part, as follows:

*New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division; provided, however, that it is the intent of the Legislature that State Highway Route 1 in rural areas of the coastal zone remain a scenic two-lane road. New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division;.... Special districts shall not be formed or expanded except where assessment for, and provision of, the service would not induce new development inconsistent with this division. Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.*

Section 30254.5 of the Coastal Act states as follows:

*Notwithstanding any other provision of law, the commission may not impose any term or condition on the development of any sewage treatment plant which is applicable to any future development that the commission finds can be accommodated by that plant consistent with this division. Nothing in this section modifies the provisions and requirements of Sections 30254 and 30412.*

Section 30412 of the Coastal Act states, in applicable part, as follows:

- (a) In addition to Section 13142.5 of the Water Code, this section shall apply to the commission and the State Water Resources Control Board and the California regional water quality control boards.*
- (b) The State Water Resources Control Board and the California regional water quality control boards are the state agencies with primary responsibility for the coordination and control of water quality. The State Water Resources Control Board has primary responsibility for the administration of water rights pursuant to applicable law. The commission shall assure that proposed development and local coastal programs shall not frustrate this section. The commission shall not, except as provided in subdivision (c), modify, adopt conditions, or take any action in conflict with any determination by the State Water Resources Control Board or any California regional water quality control board in matters relating to water quality or the administration of water rights.*

*Except as provided in this section, nothing herein shall be interpreted in any way either as prohibiting or limiting the commission, local government, or port governing body from exercising the regulatory controls over development pursuant to this division in a manner necessary to carry out this division.*

Section 30603 of the Coastal Act states, in applicable part, as follows:

*(a) After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments:*

...

*(4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500).*

## **B. Background**

### ***Adequacy of Services***

The Town of Mendocino is very unusual among most coastal towns and cities in that no community (public) water system exists to serve the Town. Property owners instead rely on individual on-site water wells for their source of water. There are over 400 privately owned water wells within the Town. As a result of the discontinuous, highly fractured bedrock and shallow terrace deposits that retain groundwater, groundwater supply is trapped within “pockets” between bedrock fractures. Since supply is not evenly distributed throughout Town and some individual wells have failed, Mendocino City Community Services District (MCCSD) has groundwater management authority over the Mendocino Headlands aquifer to prevent depletion of the Town’s limited groundwater resources. However, MCCSD exercises discretion on whether to require demonstration that an adequate on-site water supply exists to serve existing and proposed development, whereas the Coastal Act mandates that all development shall be located on sites able to accommodate it.

The LUP as proposed contains newly-added provisions that substantially modify the 1992 Commission-certified Town LUP requirements for adequate services and new development. Specifically, Policy 4.13-22 of the certified 1992 Mendocino Town LUP requires the following:

*All new development shall be contingent upon proof of an adequate water supply during dry summer months which will accommodate the proposed development and will not deplete the ground water table of contiguous or surrounding uses. The findings of the Coastal Ground Water Study of June 1982 shall be incorporated in the Mendocino Town Plan.*

A newly-added narrative in Section 3.3.1(d) of the proposed Town LCPA describes water supply issues and background for the area, including documentation of MCCSD modeled hydrologic budgets and calculations about water hauling. The County has proposed modifications to former Policy 4.13-22 in the form of new Action Item S-1.1, which as proposed requires that “development applications shall submit proof of an adequate water supply throughout the year, including the dry season...” Additionally, newly-added Policy GM-8 would require that new development either be served by adequate public services or by “private services determined to be adequate by the Mendocino City Community Services District (MCCSD) and the Mendocino County Department of Environmental Health with regard to potable water and wastewater, as

applicable.” New narrative language presented in Section 5 (“Land Use Classifications”) further specifies demonstration of an adequate water supply in association with building permit review.

The certified Town Zoning Code Section 20.744.015 states that a hydrological study shall be required in the Town of Mendocino for all development as defined in the code. However, as currently certified and again proposed in the Town LCP Update, Section 20.744.015 allows for an exception to the hydrological study requirement as provided for in Section 20.744.025. Section 20.744.025 provides that a hydrological study will not be required in cases where it has been determined by the Mendocino City Community Services District or Health Officer that the development will not have any foreseeable impact on hydrologically contiguous wells.

Newly-added Policy GM-10 would require public works facilities to be designed, limited, and operated to accommodate capacity demands generated by permitted development. New Policy GM-11 proposes prioritization of public works facility service allocation to certain development types, and specifies in part that when such facilities can only accommodate a limited amount of new development, services shall “preserve the balance between residential and visitor uses within the Town.”

New Policy GM-32 presents regulatory requirements for demonstrating MCCSD approval of groundwater extraction permits and wastewater service connections prior to approval of any division of land. Policy GM-32 further requires that land divisions shall not individually or cumulatively adversely impact coastal resources or public access.

New Policy AH-4 and Action AH-4.1 would modify the 1992 certified Town Policy 4.13-21 regarding requirements for demonstrating adequate water supply in second residential units, and would require that second residential units conform to certain specified standards of the certified Town Plan.

Additional new policies require the use of various water conservation and harvesting techniques. New Action Items S-1.2 and S-1.3 require compliance with applicable regulations, standards, and water conservation measures of MCCSD, County Division of Environmental Health, and the State of California for all new and existing development. New Action S-1.4 requires use of drought-tolerant landscaping and reclaimed water for irrigation. New Action S-1.5 specifies water conservation and reuse measures for the County’s consideration in adding to building code provisions, and New Action S-1.6 directs MCCSD to pursue grant funding sources and investigate specified water reclamation concepts, such as utilization of dual-plumbing for non-potable water uses and providing public access to reclaimed water sources. Policy S-5 requires rain water harvesting for any new development with more than 500 square feet of impervious surface, “for both stormwater management and water conservation.” Actions S-5.1 and S-5.2 provide specifications for water storage tanks in relation to siting water tanks and calculating lot coverage. Policy S-6 further requires utilization of landscape-based storm water management and water conservation techniques. Additionally, new Policy S-1 requires management and augmentation of available water supplies by requiring the use of reclaimed water or stormwater runoff where feasible. New Town Zoning Code (TZC) Chapter 20.717 (**Appendix C**) contains new water conservation measures, among others.

### *Changes to Land Use Classifications*

The proposed Town LUP amendments include a number of land use changes that would: (a) modify the Open Space land use classification and eliminate forestry-related uses as a permitted use, (LUP Section 5.1), (b) eliminate the Forest Lands land use classification, and (c) reclassify approximately 33 acres from Forestlands (FL) to the more relevant Open Space (OS) designation (Town Plan Action PF-3.1). The LCPA also proposes to rezone from Open Space, to Public Facilities the following two sites: (a) a 1.8-acre parcel located west of and adjacent to Highway 1 at 10705 Palette Drive owned by Mendocino City Community Services District (Town LUP Policy PF-4, and Action PF-4.1), and (b) an approximately 9.78-acre property located approximately 500 feet east of Highway 1, at 44700 Little Lake Road that is known as “Grindle Park” and held in trust by Mendocino Fire Protection District (MFPD) (Town LUP Policy PF-5). Additionally, the revised Town LCPA would add a land use classification and zoning district designation to Highway 1 where none currently exists. As proposed, Highway 1 right-of-way would be designated as Public Facilities.

The Town LCPA adds several new conditionally-permitted and principally-permitted uses within the use types (**Appendix C**, Town Zoning Code Chapters 20.612-20.636) allowed in the various land use classifications (**Appendix A**, Town Plan Section 5) and zoning districts (Town Zoning Code Chapters 20.640-20.668). For example, “Community Gardens” have been added within the Civic Use Types presented in the Town Zoning Code. Additionally, revised Town Zoning Code Chapter 20.664 now proposes Residential, Civic, and Visitor Accommodation Use Types as principally permitted uses within the Commercial District. Chapters 20.640 through 20.688 similarly list multiple principle permitted uses in other zoning districts. The proposed LCPA would also amend Section 20.604.050(D) to add an “optional zoning” provision allowing development on split-zoned parcel on the basis of either zoning district, subject to issuance of a conditional use permit.

As proposed, the LCPA would also revise the classification of the Mendocino Art Center from its former consideration as a “Student/Instructor Temporary Housing Facility” visitor serving facility listed in the “visitor accommodation” use type to an “art center” use listed in the civic use types and allowed within the Public Facilities Zoning District, subject to approval of a conditional use permit. Within the “art center” civic use type category, ancillary uses and activities are listed as including: (1) cultural exhibits and library services, (2) events and gatherings, and (3) student-instructor housing. The new classification of allowable uses within the civic use type more closely aligns with the Public Facilities land use and zoning designation of the Mendocino Art Center.

## **C. LUP Consistency**

### **1. Findings for Approval of Specified LUP Changes as Submitted**

#### **a) Adequacy of Services**

Coastal Act Section 30250(a) requires that new development shall be located within or near existing developed areas able to accommodate it or in other areas with adequate public services and where it will not have significant adverse effects, whether individually or cumulatively, on coastal resources. In areas with limited public services, Section 30254 explicitly requires that service capacity be reserved for certain priority land uses, including public recreation and visitor-

servicing uses. In reviewing proposed changes to the Mendocino Town certified LCP, the Commission must evaluate whether the LCP as amended would conform with the Coastal Act, including but not limited to Sections 30250, and 30254 regarding adequacy of services to support all development envisioned within the provisions of the Town LCP as amended.

### ***Town of Mendocino Water Supply: Background***

#### Town Water Supply

As stated in the background information above, no community (public) water system exists to serve the Town, and there are over 400 privately owned water wells within the Town. The unique geology of the Town's shallow marine terrace formations above highly fractured bedrock severely limit groundwater availability, and California Department of Water Resources has designated the entire Town as an area of "Critical Water Resources." Additionally, the Mendocino Headlands aquifer that supplies water is unique among other California aquifers in that it functions as an "open system" surrounded by cliffs: rainfall percolates into the shallow groundwater basin, providing over 98% of the Town's water supply before it discharges to springs along the cliffs and bluff faces<sup>39</sup>. This open aquifer creates a limited groundwater supply and leads to severe water shortages during drought years and the dry summer months every year, particularly for residents with marginal wells. In a technical memorandum prepared as part of an analysis of drought scenarios prepared for the Town of Mendocino (**Exhibit 8**), the author states in part the following:

*Because of these low yields, most properties employ storage tanks and, through the MCCSD, the community has implemented significant water conservation measures. Even so, some wells run dry in the late fall months, especially in drier than normal years, and water is trucked in to replenish storage tanks at several properties on a regular basis in the Fall. This practice becomes more widespread during periods of drought.*

#### Mendocino City Community Services District: Wastewater Services & Groundwater Extraction Oversight

The Town of Mendocino (formerly known as Mendocino City) was established in 1851. The public managed its wastewater for the first 120 years using private septic systems, cesspools, and private collectors who would discharge waste over the bluff. Mendocino City Community Services District (MCCSD) was formed in 1971 to address the community's wastewater issues after a 1971 study conducted by Mendocino County Department of Environmental Health (DEH) detected coliform bacteria contaminations in many of the wells. MCCSD has provided wastewater management services to Town residents since 1975, but does not provide water supply services to the community.

MCCSD was granted authority in 1985 to establish programs for managing the groundwater resources within the District<sup>40</sup>. According to the MCCSD<sup>41</sup>, the District assumed responsibility

---

<sup>39</sup> November 16, 2006. "Mendocino Drought Scenarios." Technical memorandum prepared by Michael Maley for Mendocino City Community Services District. Kennedy/ Jenks Consultants. K/J Project No. 0664003.

<sup>40</sup> Authority to establish programs for the management of groundwater was granted by the Legislature via [Water Code Sections 10700-10717](#)

for groundwater management in 1990, and entered into an agreement with Mendocino County DEH to enforce the groundwater extraction provisions of Policy 4.13-6 of the 1992 certified Mendocino Town Plan. MCCSD states in their 2012 Groundwater Management Plan (GMP)<sup>42</sup> that “Groundwater management authority was considered an interim program, which was to be dismantled following the development of a community water system. The District was unsuccessful in locating an adequate water source for a municipal system, so Mendocino residents and business owners continue to rely on approximately 400 privately owned wells for their water supply. MCCSD has since used its GMP to extend and protect the Town’s groundwater supply.”

### MCCSD Groundwater Extraction Permit Requirements and Exemptions

Although no public water works facility currently exists to supply water to the Town of Mendocino, MCCSD does have groundwater management authority over the Mendocino Headlands aquifer to prevent depletion of the Town’s limited groundwater resources, and limits groundwater extraction from privately-owned and operated wells on individual lots through its groundwater withdrawal program. MCCSD has established various Groundwater Extraction Permit Ordinances since 1990.

The ordinances establish the District’s criteria in determining when a groundwater extraction permit would be required. However, the County has never applied for an LCP amendment to incorporate any of the MCCSD groundwater management extraction permit provisions into the certified Town LCP.

### *Hydrologic Budget “Water Demands” vs. User “Allotments”*

MCCSD distinguishes between “water demand” and “water allotments,” explaining that Groundwater Extraction Permits (GEPs) are issued based on the anticipated total “water demand standard” that MCCSD has calculated under specified “water user” categories (**Appendix I**). As described further below, at times MCCSD will approve a different “water allotment” to an applicant than the “water demand” allocates for a particular use. However, MCCSD manages aquifer capacity using water supply calculations based upon the water demand.

MCCSD issues GEPs with water allotments that typically match the water demand for a given user category, which the District expresses in the form of “equivalent single-family dwelling” (ESD). The ESD “allotments” enable the District to calculate both a proportionally-equivalent “loading” on the wastewater treatment plant for each “water user” category, while also calculating the maximum allowable water use for each ESD. For example, MCCSD’s Ordinance 07-1, Appendix C lists the “Water Use Standard” for a 1-2-bedroom single family residence as 200 gallons per day (gpd), per unit, which is equivalent to one ESD. Other use types (e.g. commercial businesses, schools, hotels, inns, and B&B’s) are rated a fraction or multiple of one ESD based on their estimated load on the District’s wastewater system.

---

<sup>41</sup> Mendocino City Community Services District (MCCSD) Groundwater Management Plan and Programs. Adopted by MCCSD Board of Directors February 25, 1990; Amended May 30, 2012. Accessed online at: [http://www.co.mendocino.ca.us/planning/pdf/MCCSD\\_Groundwater\\_Management\\_Plan\\_and\\_Programs\\_2012.pdf](http://www.co.mendocino.ca.us/planning/pdf/MCCSD_Groundwater_Management_Plan_and_Programs_2012.pdf)

<sup>42</sup> Mendocino City Community Services District (MCCSD) Groundwater Management Plan and Programs. Adopted by MCCSD Board of Directors February 25, 1990; Amended May 30, 2012. Accessed online at: [http://www.co.mendocino.ca.us/planning/pdf/MCCSD\\_Groundwater\\_Management\\_Plan\\_and\\_Programs\\_2012.pdf](http://www.co.mendocino.ca.us/planning/pdf/MCCSD_Groundwater_Management_Plan_and_Programs_2012.pdf)

In the December 13, 2014 memo<sup>43</sup> prepared in response to Commission staff's request for additional information, MCCSD describes the water use demand standard applied for various Town uses (e.g., single family residence, 2-bedroom house) as follows:

*A typical US residence for a family of four uses 400 gallons of water per day (US EPA). On average, approximately 70 percent of that water is used indoors. Since Mendocino outdoor use is very limited, based on the EPA estimate 280 gallons per day would be a fair approximation of average water usage for a family of four. MCCSD's Water Use Standards estimate a 1 or 2 bedroom residence will use 200 gal/day, and each additional bedroom will use an additional 60 gal/day. Determination of water allocation by other uses is calculated by a variety of formulas (see Table 2, MCCSD Water Use Standards). The District's Water Use Standards were adopted primarily from Mendocino County Division of Environmental Health Policy No. 910.6 (o), which also uses the 200 gal/day figure for a residence in the County's Water Use Standards.*

As discussed further below under "Safe Yield and Buildout Potential," the District manages allotments by assessing water supply and demand based on the pattern of precipitation and groundwater levels, and using a combination of modeling and regular groundwater monitoring from 24 monitoring wells distributed throughout Town. During declared water shortage drought scenarios, the District can mandate reductions in water allotments by water users to ensure demands on the aquifer do not exceed the water available for withdrawal.

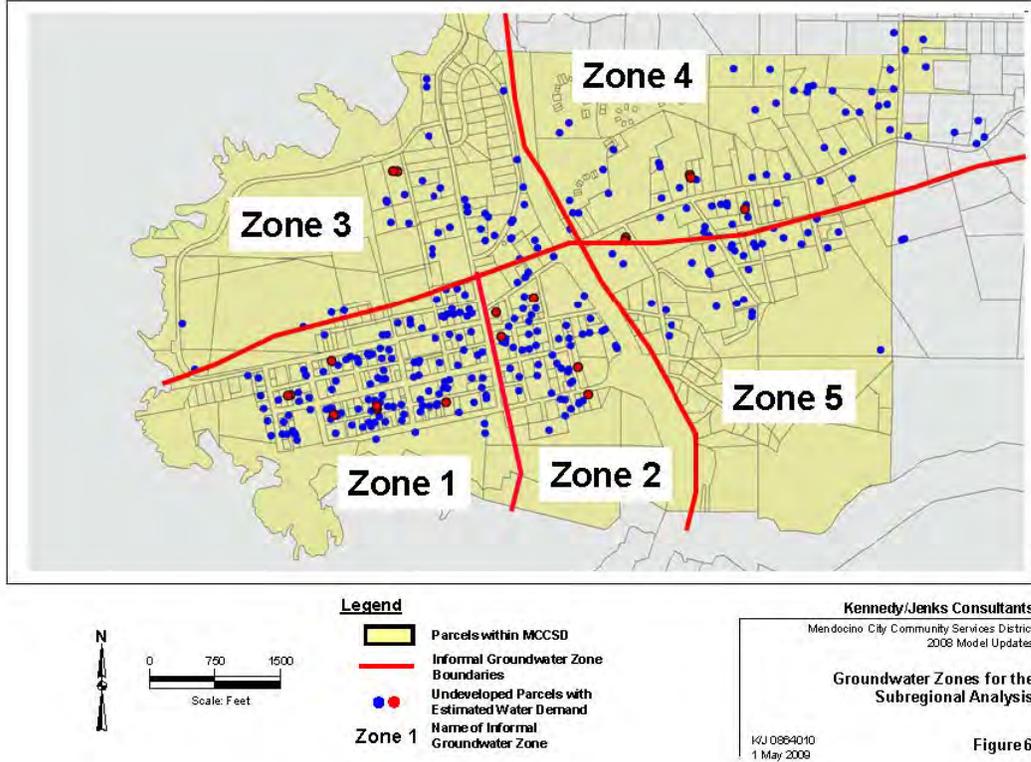
#### Pervasive Drought Conditions and Water Shortage Contingency Plan

The Town of Mendocino is particularly vulnerable to extended periods of drought because the Mendocino Headlands aquifer receives 98% of its water supply from precipitation. In January 2014, Mendocino County was the first county in the state to declare a water drought emergency and to request state assistance. Even during normal water years, groundwater levels within the Town can severely drop during the dry summer months.

As part of its Groundwater Management Plan, MCCSD monitors the groundwater levels of the Mendocino Headlands aquifer from 24 monitoring wells distributed throughout Town that have been determined to be representative of the vertical and lateral dimensions of the aquifers. Using data collected from the monitoring wells in a variety of modeling scenarios, MCCSD has further evaluated groundwater hydrologic budgets in recent years for five (5) informal subregional zones within the Town based upon a combination of natural (e.g. depth of terrace deposits) and manmade (e.g., proximity of wells) conditions (**Figure 3**). The model outputs have been used to evaluate possible aquifer responses to drought conditions and appropriate management response scenarios under the Water Shortage Contingency Plan.

---

<sup>43</sup> December 12, 2014. Memo prepared by Mike Kelley, District Superintendent, Mendocino City Community Services District. Re: November 17, 2014 Coastal Commission Letter.



**Figure 3. MCCSD Informal Groundwater Zones for Aquifer Budget Analysis**

The Water Shortage Contingency Plan<sup>44</sup> establishes four stages of water shortage and corresponding action plans based upon groundwater supply levels at various times of the year: Stage 1 is “mild drought (alert),” Stage 2 is “moderate drought (warning),” Stage 3 is “severe drought (emergency),” and Stage 4 is considered “historic drought (crisis).” In February 2014, MCCSD declared a Stage 4 water shortage that remained in effect through November 2014. A Stage 2 water shortage was in effect from April 2015 through August 2015, and from November 2015 through December 2015.

Alternative Water Sources Considered

In a memorandum prepared December 13, 2014, Mike Kelly, District Superintendent of MCCSD addressed some of the water supply information requested by Commission staff in their November 17, 2014 letter regarding water resource alternatives by stating the following:

*The District, for many years, has pursued the issue of finding a water source suitable both in quantity and quality to provide a municipal water system for the Town of Mendocino. Some efforts of the MCCSD include; drilling water wells at the mouth of Big River and mudflat #6, inventory of major fresh water recharge along the Big River*

<sup>44</sup> December 29, 2006. Water Shortage Contingency Plan, Mendocino City Community Services District. Prepared by Questa Engineering Corporation. Revised March 25, 2009.

*watershed, preliminary discussions regarding a desalination process to make potable water from sea water and/or brackish water, discussion of possible groundwater and surface water uses in the Caspar Creek drainage area near Caspar, investigation and long term yield analysis of the lower gulches and Dry Dock Gulch Reservoir Tributary to the Big River as a source of water and proposed drilling near the Woodlands for exploratory purposes.*

*The District has an extensive library of old water system development studies dating back to the 1960s available for review. The reason a water system was never constructed was due to failure to identify and develop a water source. Today, high system costs may also be an issue for blocking construction of a municipal water system.*

Mr. Kelly further notes that the debt citizens would be required to pay for development of a municipal water system that would be substantially greater than the cost of operating a privately owned well. For a Town with an average population of approximately 1,000 residents in addition to tourists, the cost per household for a municipal water system could be quite high.

### ***Water Supply and Build-Out Capacity***

#### **Safe Yield, Buildout Potential**

As described above, MCCSD evaluates and manages the hydrologic budget of the Mendocino Headlands aquifer by assessing water supply and demand based on the pattern of precipitation and groundwater levels. Extensive groundwater modeling and analysis compares these measurable “inflows” to estimated “outflows” (including estimates from annual outflow quantities from the MCCSD sewage treatment facility, plus natural seepage to the bluffs, and evapotranspiration). Using various modeling scenarios, MCCSD can assess various water supply and demand scenarios, including seasonal demand fluctuations relative to timing and amount of rainfall, and extended drought conditions.

#### ***Safe Yield***

In 2008, Mendocino City Community Services District (MCCSD) obtained a Safe Yield Analysis (Maley, January 17, 2008) as part of its 2007 Groundwater Model Update. The safe yield analysis evaluates “the annual amount of water that can be taken from an aquifer over a period of years without depleting it beyond its ability to be replenished naturally” (Todd 1980, in Maley 2008). The Safe Yield Analysis estimated a Safe Yield (also referred to as “perennial yield”) for groundwater extraction from the Mendocino Headlands aquifer of 242 acre-feet per year (AF/Y) (Kelley, December 13, 2014).

As stated in the 2008 memo, the safe yield analysis has limited utility as a groundwater management tool for the Town because the Mendocino Headlands aquifer is an “open system” that does not contain or store groundwater. Instead, Maley recommends utilizing a more dynamic groundwater management system as represented by the Water Shortage Contingency Plan (Questa 2006, revised 2009) rather than the safe yield concept. In addition to specifying the required water demand reduction requirements (including but not limited to conservation measures), the Water Shortage Contingency Plan evaluates seasonal and episodic water supply fluctuations and outlines drought stages of action and water shortage condition criteria.

Estimated Water Use Trends

Albeit less than perfect, the safe yield concept does present a baseline threshold for evaluating water demand in terms of the Town ground water extraction and budgeted water allotments relative to aquifer capacity. Based on the total 16-year model-based budgeted outflow, groundwater pumping during the 16 years through 2013 has averaged 218 AF/Y, and since 2005 has not exceeded 200 AF/Y. (Kelley, December 13, 2014). The Water Shortage Contingency Plan recommends planning for a forty (40)-percent water demand reduction during a severe or historic Stage 4 drought (based upon climate records suggesting that a minimum available groundwater supply of 40-percent was reached near the end of the 1977 drought after two water shortage years). Forty percent of the perennial yield of 242 AFY is 96.8 AFY.

*Buildout Potential*

The population of the Town has varied over the years. The 1985 Town of Mendocino Groundwater Study<sup>45</sup> described the total resident population as 900, “which may exceed 1,500 on holidays and during the summer tourist season.” 2010 Census data<sup>46</sup> reported the Town population at 894 people and a total of 617 housing units. The Mendocino City Community Services District 2012 Groundwater Management Plan<sup>47</sup> indicates that the permanent population of the Town of Mendocino is approximately 1,000 people. During 2014-2015 hydrologic budget period, the MCCSD reported service connections for 428 residences, 9 guest cottages, and 4 other sleeping units. **Figure 4** summarizes the Mendocino County’s projections of population changes through the year 2050. Based upon projections, population in the Town of Mendocino would increase by 291 persons (32 percent) from 2010 to 2050.

Area	2000	2010	2020	2030	2040	2050
Mendocino County	86265	88292	90411	93577	95207	96751
Town of Mendocino	824	894	967	1076	1132	1185

Sources: U.S. Census Bureau, 2000 and 2010 Census. Demographic Research Unit, California Department of Finance, December 2014. Planning and Building Services, 2015.

**Figure 4. Estimates and Projections of the Town of Mendocino and Mendocino County Population 2000-2050.** Source: Mendocino County Planning and Building Services.

Minimum Buildout Potential

The County and its consultants have evaluated projected buildout scenarios based upon 2010 census data and growth rate trends (3.45 percent growth) throughout Mendocino County during the past 10-year census period. The scenarios mark a 25-year LCP “planning period” (from census year 2010 through 2035) along with the anticipated horizon for full build out (2112), and

<sup>45</sup> California Department of Water Resources, "Town of Mendocino Ground Water Study." June 1985.

<sup>46</sup> <http://www.census.gov/2010census/popmap/ipmtext.php>

<sup>47</sup> Mendocino Community Services District (MCCSD) Groundwater Management Plan and Programs. Adopted by the MCCSD Board of Directors February 25, 1990; Amended May 30, 2012. Accessed online at: [http://www.co.mendocino.ca.us/planning/pdf/MCCSD\\_Groundwater\\_Management\\_Plan\\_and\\_Programs\\_2012.pdf](http://www.co.mendocino.ca.us/planning/pdf/MCCSD_Groundwater_Management_Plan_and_Programs_2012.pdf)

with the most ambitious scenario accounting for “up to 161 residential equivalents, including 2<sup>nd</sup> residential dwelling units allowed in the RR-1 and SR 2000 Districts pursuant to the Board adopted Town LCP Update by the year 2112. However, the actual allowed number of residential equivalents may be smaller as a result of economic conditions during the 25-year period and for other factors.<sup>48</sup>” This calculation is based in part on an average annual increase of 1.66 residences between 2000 and 2015 as recorded by MCCSD, requiring 97 years to reach minimum buildout by their calculations (**Appendix J**). Buildout assessment assumptions and methodologies, such as but not limited to evaluated parcel use types within each zoning district, and calculated water usage rates are included in **Exhibit 7**.

Under the minimum buildout that would be reached in 2112, additional water usage would increase 24.3 AF/Y. Using previous modeling calculations relying on estimated water demand from wastewater outflow, the minimum build out scenario would exceed the current calculated safe yield by 0.3 AF/Y<sup>49</sup>. Similarly, if all water users were to use the current maximum water usage allotted by MCCSD water user categories, the minimum build out scenario would exceed safe yield by 4.47 AF/Y<sup>50</sup>.

#### Maximum Buildout Potential

The county’s consultants have also determined that under the maximum build-out scenario, “an additional 303 residential equivalents, using 200 gallons of water per day per unit, could be developed. Approximately one-half of the new development would occur in areas classified (designated) and zoned RR-2-PD and RR-2, both located in Historical Zone B. Water usage in this maximum build-out scenario would increase by 72 AF/Y...” (**Appendix J**). The consultant’s minimum and maximum build out scenarios also anticipate that future implementation of additional water reduction measures (such as envisioned injection of reclaimed water produced by MCCSD into the aquifer, retained stormwater, and beneficial reuse of reclaimed treated wastewater) proposed in the Town LCP Update could reduce this demand by 20%.

Using previous modeling calculations relying on estimated water demand from wastewater outflow, the maximum build out scenario would exceed the current calculated safe yield by 48 AF/Y<sup>51</sup>. Similarly, if all water users were to use the current maximum water usage allotted by MCCSD water user categories, the maximum build out scenario would exceed safe yield by 52.17 AF/Y<sup>52</sup>.

#### Water Recycling and Conservation Measures

The Mendocino City Community Services District promotes water conservation by both voluntary water conservation education program and a mandatory water conservation

---

<sup>48</sup> Dall and Associates. “Supplemental Response to Coastal Commission Staff Comments re: New Development and Public Services: Water.” Received January 29, 2016. Coastal Commission North Coast District Office. Arcata.

<sup>49</sup> 16-year model-based budgeted outflow calculates groundwater pumping during the 16 years through 2013 as averaging 218 AF/Y, + 24.3 AF/Y at minimum buildout = 242.3 AF/Y

<sup>50</sup> 2014-2015 MCCSD hydrologic budget allotment calculated water usage of 222.17 AF/Y, +24.3 AF/Y at minimum buildout = 246.47 AF/Y

<sup>51</sup> 16-year model-based budgeted outflow calculates groundwater pumping during the 16 years through 2013 as averaging 218 AF/Y, + 72 AF/Y at minimum buildout = 290 AF/Y

<sup>52</sup> 2014-2015 MCCSD hydrologic budget allotment calculated water usage of 222.17 AF/Y, +72 AF/Y at minimum buildout = 294.17 AF/Y

requirement as part of its groundwater management program. The District's Water Conservation Program has been in place since 1991, and its ordinance requires that water conservation devices be installed for all new development as a condition of permit approval<sup>53</sup>. The District's water conservation measures incorporate CA Department of Water Resources recommendations that indicate certain measures could reduce water consumption by 50% (E.g., low-flush toilets, low-flow shower heads, single faucets with aerators, water-efficient clothes washer and dishwashers, hot-water pipe insulation, water reclamation, water storage, drought-tolerant landscaping, and installation of efficient irrigation systems).

The District also implements a water recycling program. In 1997 the District installed a recycled water system that pumps treated effluent to the Mendocino High School to irrigate the athletic fields, providing approximately two million gallons of water per year to the High School. The District has envisioned expanding the water recycling system to include: 1) a recycled water fire hydrant system, 2) an irrigation system for the middle and grammar schools, and 3) an irrigation system for Friendship Park. New Town Sustainability policies and advisory goals in Town LUP Section 4.6 memorialize the Town's goals to expand water reclamation and reuse. The Town's efforts towards this goal are currently underway: MCCSD is in the process of applying to expand the recycled water system by adding a new 6-inch recycled water line up Ukiah and Kasten Streets to the high school, and increasing recycled water storage from its existing 30,000 gallons capacity to a total of up to 135,000 gallons.

#### Metered Water Use Data and Water Allotments

As part of MCCSD's Groundwater Management Plan in effect since 1990, issuance of a Groundwater Extraction Permit for new development is contingent in part on installation of a water meter at the site. In 2006, less than half of the Town parcels had water meters installed on wells. MCCSD estimated there were 427 residential well users, in addition to 254 guest units in hotels, bed and breakfasts, and motels that relied on well water<sup>54</sup>. During the 2014 Stage 4 Drought, MCCSD required all properties that did not currently have a water meter to install one. Property owners and occupants must read and self-report their water meter reading monthly to MCCSD.

Water usage information obtained from water meter readings does not account for imported water, only water extracted from private wells. Thus, water meter readings are not fully representative of all year-round water demand within the Town. Self-reporting by water users of their water meter reading system may not be as reliable as readings that could otherwise be conducted routinely by CSD staff. However, with most private wells now connected to a meter device, and with a new database to track data more accurately, it is anticipated that the District will have more detailed analysis of overall water supply and demand within the aquifer in the near future.

If all water users extracted their total water "allotment" calculated for their particular user category, the total water demand to the aquifer for the 2014-2015 hydrologic budget period

<sup>53</sup> Mendocino Community Services District (MCCSD) Groundwater Management Plan and Programs. Adopted by the MCCSD Board of Directors February 25, 1990; Amended May 30, 2012. Accessed online at: [http://www.co.mendocino.ca.us/planning/pdf/MCCSD\\_Groundwater\\_Management\\_Plan\\_and\\_Programs\\_2012.pdf](http://www.co.mendocino.ca.us/planning/pdf/MCCSD_Groundwater_Management_Plan_and_Programs_2012.pdf)

<sup>54</sup> Mendocino City Community Services District (MCCSD) Groundwater Management Plan and Programs. Adopted by MCCSD Board of Directors February 25, 1990; Amended May 30, 2012. Accessed online at: [http://www.co.mendocino.ca.us/planning/pdf/MCCSD\\_Groundwater\\_Management\\_Plan\\_and\\_Programs\\_2012.pdf](http://www.co.mendocino.ca.us/planning/pdf/MCCSD_Groundwater_Management_Plan_and_Programs_2012.pdf)

would have been 222.17 AF/Y. However, some users have agreed to use a smaller allotment than the budgeted amount in lieu of conducting a hydrological study when approved for limited increases in water demand associated with new development. Additionally, year-round water conservation measures and mandated additional 20% water reduction efforts imposed during the 2014 declared Stage 4 drought have resulted in a significant reduction of water demand according to reported water meter readings.

Based on new information provided by MCCSD and the County's consultants in January 2016, it does appear that the reported metered water usage in the Town of Mendocino is less than originally estimated (56 AF/Y average from January-December 2015, and 59 AF/Y average from January-December 2016), and the aquifer appears to have more than sufficient supply to serve the Town at maximum build-out projections, with the caveat that analysis uses the estimated Safe Yield of 242 AF/Y described above.

Therefore, sufficient water exists to accommodate build-out of the Town under the Town LCP as amended, if modified as detailed below.

### ***Sewer Capacity***

The Mendocino City Community Services District provides septic services for an approximately 1-square-mile area, including all of the Town of Mendocino, and extending outside the Town boundaries with service to certain additional properties (including but not limited to Russian Gulch State Park north of the Town). The MCCSD wastewater treatment plant was completed in 1975 and has a total plant capacity of 300,000 gallons per day or 0.3 Million Gallons per Day (MGD). The plant provides a tertiary wastewater treatment system, and water recycling that irrigates the High School athletic fields, as discussed above.

MCCSD calculates sewer fees and monthly plant loading using the "Equivalent Single Dwelling Unit" (ESD) metric described above. The ESD unit assumes that an average residential water use is 200 gallons per day, and that one ESD generally represents one household and the amount of water discharged by two people. MCCSD provides sewer services to approximately 554 parcels within Town. The Mendocino Local Agency Formation Commission (LAFCO) evaluated the MCCSD plant capacity and loading in 2008 as part of its Sphere of Influence/Municipal Service Review report<sup>55</sup>. Its analysis determined that if an ESD is equivalent to 200 gallons per day, then the total plant capacity could accommodate 1500 ESDs. In 2008, connection fees had been collected for 1,047.23 ESDs, which amounts to a plant loading of 209,000 gallons per day (gpd). Based on calculated ESDs, the plant in 2008 was at approximately 70% of its capacity.

The newly-added narrative contained in Town LUP Section 3.3.1(d) indicates that the remaining unutilized capacity of the treatment plant is 80,200 gallons per day (MCCSD, 2015), and concludes this amount is "adequate to serve both the visitor-serving and residential uses allowed by the updated Town LCP during its 10-year planning horizon." The 2015 data provided by MCCSD indicates an increase in plant loading since 2008 from 209,000 gpd (70% of total capacity) to 219,800 gpd (73% of total capacity). As described in the water supply analysis detailed above, the county's consultants have also determined that under the maximum build-out scenario for water supply, "an additional 303 residential equivalents, using 200 gallons of water

---

<sup>55</sup> LAFCO SOI/MSR report adopted November 2008 for Mendocino CSD and available online at: [http://mendolafco.org/msr/Mendocino%20City%20CSD\\_MSR-SOI%202008.pdf](http://mendolafco.org/msr/Mendocino%20City%20CSD_MSR-SOI%202008.pdf)

per day per unit, could be developed.” This would amount to 60,600 gpd, which is below the total 80,200-gpd unutilized capacity that MCCSD recognized in 2015.

Therefore, the marginal increase in plant loading over the past 7 years and the maximum build-out analysis prepared by the County’s consultants demonstrate that septic services in Town are adequate to serve Town development envisioned within the Town LCP as amended.

### *Traffic Capacity*

In addition to Section 30250 requirements that development shall occur in areas able to accommodate it, Coastal Act Section 30254 requires that State Highway 1 in rural areas of the coastal zone shall remain a scenic two-lane road. Traffic analyses provided by the County’s consultants<sup>56</sup>, and from a 2008 Route 1 Corridor Study Update for Mendocino County<sup>57</sup> indicate that Highway 1 and connecting streets within the Town can accommodate existing and projected growth under the Town LCPA.

Highway 1 bisects the Town of Mendocino and serves as the primary transportation corridor connecting travelers from north and south of the Town. The City of Fort Bragg is located approximately 10 miles north of the Town of Mendocino, and inland routes connecting to Highway 1 include Route 20 immediately south of Fort Bragg, and Route 128 approximately 10 miles south of the Town of Mendocino. Most of Highway 1 is a two-lane road throughout this rural area, with exception to areas within the urban limit in the City of Fort Bragg, and a short, four-lane segment of Highway 1 passing through the Town of Mendocino.

Three key streets connecting the Town to Highway 1 include Main Street/Jackson Street to the south, Little Lake Road in the middle of the Town, and Lansing Street to the north. The intersection at Little Lake Road and Highway 1 is controlled by a traffic signal. Near the intersection with Little Lake Road, turn and merge lanes along Highway 1 facilitate through traffic flow and turning maneuvers.

Regional vehicle miles traveled (VMT) data was not available for the Town LCP update. Instead, the County’s consultants evaluated the most recently-available data from Caltrans (2014) for peak hour, peak day, peak month, and annual average daily traffic (AADT) at the Main Street/Jackson Street and Lansing Street intersections. Additionally, the County conducted a 1-week traffic study during Thanksgiving week (a peak use period) in 2015, examining traffic counts at Main Street, Little Lake Road, and Lansing Street, and noting peak traffic volumes in both directions of 720 trips, 970 trips, and 1150 trips, respectively (**Exhibit 9**). The 1-week study also examined peak hour traffic volumes in each direction at each location, but was unable to analyze the Level of Service for the data. The County’s consultants conclude from “impressionistic observations” of the data that both Highway 1 and the three key streets into the Town can accommodate the peak hour traffic volumes recorded.

Level of Service (LOS) criteria serve as a metric for ranking traffic flows based on traffic volumes, roadway capacity, and duration of delays that affect traffic flows. Generally, LOS A represents free flow conditions and LOS F represents forced traffic flow or breakdown

<sup>56</sup> Dall and Associates. “Supplemental Response to Coastal Commission Staff Comments re: New Development and Public Services: Water.” Received January 29, 2016. Coastal Commission North Coast District Office. Arcata.

<sup>57</sup> Whitlock and Weinberger Transportation, Inc. September 18, 2008. “State Route 1 Corridor Study Update for the County of Mendocino.” Available online at:

<http://www.mendocinocog.org/pdf/SR%201%20Corridor%20Study%20Update.9-18-08.pdf>

conditions. According to the 2008 State Route 1 Corridor Study Update, on sections of State Highways such as Highway 1, it is not unusual to have two-way stop-controlled side street intersections operating at LOS E, with long traffic delays. Because these situations are often physically infeasible to mitigate, LOS E for side street left turns was considered acceptable for the purposes of the 2008 study.

The 2008 study was conducted to update the State Route 1 Corridor Study prepared in 1994 by TJKM Transportation Consultants, and to project future traffic volumes that could be generated by potential development allowed by the Mendocino County LCP and from growth areas outside of the coastal zone that affect traffic conditions on Highway 1 (W-Trans, 2008). The 1994 study included a comprehensive traffic modeling process with land use development projections focused on anticipated residential development. The 2008 study noted that traffic volumes predicted by the 1994 study for the year 2007 had not been realized, and therefore used 1994 data but with growth increment calculations that more closely matched historical growth trends, and using a mix of development scenarios that included commercial, residential, and other forms of development.

The 2008 study collected peak period traffic intersection counts in July 2007 (W-Trans, 2008), which indicated that the signalized intersection at Little Lake Road was operating acceptably at a Level of Service (LOS) C at that time. Intersections at Main Street/ Jackson Street and Lansing Street were operating at LOS B and C, respectively. Traffic projections under the 2008 study concluded that the signaled intersection at Little Lake Road would continue to operate at LOS C through Year 2020 and Year 2030 scenarios. Year 2020 and 2030 scenarios project a LOS E at Lansing Street (and at Main Street/ Jackson Street by 2030), which the study deems acceptable, but approaching a critical threshold.

As discussed in the minimum build out projections for water supply above, the County's consultants noted an average annual increase of 1.66 residences between 2000 and 2015 as recorded by MCCSD, thus requiring 97 years to reach minimum buildout by their calculations. If growth rates continue at a similar pace, the effects on Highway 1 traffic capacity will be nominal. If the pace of development instead matched projections calculated by the 2008 study, measures could be introduced to enhance Highway 1 capacity. The 2008 study recommends that capacity enhancing measures be implemented at Lansing Street at Year 2020 (or at such time that LOS E is reached), by either installing a northbound left turn or prohibiting left turn movements at this location. Should an increased LOS be observed in the future, additional mitigation measures could include encouraging rideshare programs and providing transit passes to reduce traffic flows and further enhance Highway 1 capacity.

Thus, current data, observed growth trends, and growth projections for the Town of Mendocino suggest that Highway 1 and connecting streets within the Town can accommodate existing and projected growth under the Town LCPA while maintaining the highway as a scenic two-lane road, consistent with the Coastal Act.

### ***Summary***

The Mendocino Town LCPA contains policy revisions and new provisions affecting visitor-serving, public access, recreational, residential, commercial, public facilities, and open space land uses, among others. Although the Town has a limited water supply due to physical

constraints of the shallow headlands aquifer, buildout projections suggest that enough water supply exists within the aquifer to accommodate all development envisioned by the Town LUPA. The Mendocino City Community Services District oversees groundwater management and limits the quantity of water that can be extracted for new development, changes of use, or expansion of an existing use. In addition to MCCSD's groundwater management authority, new Town LUP water conservation and recycling provisions and minimum standards for demonstration of an adequate on-site water supply will ensure that Town development subject to coastal development permit requirements will occur on sites able to accommodate it, as required by the Coastal Act. Town buildout projections also show that septic services in Town, and Highway 1 capacity are adequate to serve Town development envisioned within the Town LCP as amended.

Therefore, the Commission finds that development under the Mendocino Town LUP as amended will be accommodated by adequate public services where it will not have significant adverse effects consistent with Sections 30250 and 30254 of the Coastal Act.

#### **b) Changes to Land Use Classifications**

##### *Land Use Designation Changes*

##### Forest Lands to Open Space to Land Use Classification and Designation Changes to APNs 119-280-10, 119-280-11, 119-290-04, and 119-440-11 (Mendocino Headlands State Park)

The proposed Town LUP amendments would: (a) modify the Open Space land use classification and eliminate forestry-related uses as a permitted use, (LUP Section 5.1), (b) eliminate the Forest Lands land use classification, and (c) reclassify approximately 33 acres from Forestlands (FL) to the more relevant Open Space (OS) designation (Town Plan Action PF-3.1).

The Commission finds that the proposal to change the land use designation from Forest Lands (FL) to Open Space (OS) on approximately 33 acres of lands now owned by CA State Parks is consistent with the Coastal Act, including but not limited to Sections 30243 and 30250. The lands are located east of and adjacent to Highway 1 and the northern bank of Big River, and within an area of high scenic and recreational value. A portion of the lands are mapped as a "Special Treatment Area" as defined by Coastal Act Section 30118.5, which states:

*"Special treatment area" means an identifiable and geographically bounded forested area within the coastal zone that constitute a significant habitat area, area of special scenic significance, and any land where logging activities could adversely affect public recreation area or the biological productivity of any wetland, estuary, or stream especially valuable because of its role in a coastal ecosystem.*

As part of its recommendations to designate the Big River unit as a Special Treatment Area, the Coastal Commission stated in part that "The forested character of the river's slopes should be retained continuing to provide the visitor to Mendocino, the traveler along State Highway 1 and the recreationist on the river itself an exciting panorama..."<sup>58</sup> To protect natural and scenic values within Coastal Commission Special Treatment Areas (STAs), California Forest Practice Rules require additional silvicultural methods and restrictions within STAs.

<sup>58</sup> California Coastal Commission. July 20, 1977. "Forestry Special Treatment Areas" Adopted mapped Special Treatment Areas and Recommended Guidelines for Timber Operations in STAs presented to CA Board of Forestry.

In 2002, Mendocino Land trust acquired the lands from the Campbell-Hawthorne Timber Company and transferred the property to CA State Parks for inclusion as part of the Big River Unit of the Mendocino Headlands State Park. Since its acquisition, the property is no longer available for commercial timber operations, as such operations would not be consistent with the mission of State Parks. In fact, State Parks has obtained coastal development permits from Mendocino County to decommission logging roads, and convert the roads to recreational trails. Additional authorized development has included watershed management (such as fish habitat restoration and stream crossing improvements), and public access improvements (such as the placement of a restroom facility and informational kiosk in the existing parking area, improvement to the existing parking area and access road, and the placement of interpretive signs along public access areas).

In a recent County action approving a CDP for restoration and public access improvements (CDUM 2015-0001), County staff described the presence of numerous ESHAs, including a boggy area, the Big River riparian corridor, and several wetlands and watercourse crossings within the subject lands. The staff report also described several landslide and erosional issues associated with legacy logging practices.

The intent of the Open Space land use classification, as proposed to be amended is to apply to:

*(1) lands held in public ownership for recreational use, (2) lands most valuable in their undeveloped natural state, such as those lands which contain rare and endangered species and habitat, riparian vegetation zones, sites of historic or archaeological significance, or public scenic areas, (3) lands which, because of their value, have been dedicated under Government Code Sections 51050 or 51080 as privately owned open space to a public or nonprofit organization that qualifies under Internal Revenue Code Section 501(c)(3), or (4) easements that have been dedicated by owner(s) of private property to a public agency or non-profit organization, or been reserved by deed restriction, for open space.*

Consistent with Section 30243, the proposed change to the Open Space land use classification from the Forest Lands classification would ensure the protection of the long-term productivity of soils that have been compromised by legacy forestry practices. In addition, since the change in land use classification would not affect lands that are available for commercial timber operations any longer, the proposed change in land use classification will not result in the conversion of coastal commercial timberlands in units of commercial size to other uses consistent with Section 30243 of the Coastal Act. Consistent with Section 30250(a), the redesignation from FL to OS will protect sensitive coastal resources, including but not limited to known ESHAs, by protecting the Parks in a predominantly undeveloped state. Therefore, the Commission finds the proposed changes to the OS designation as submitted are consistent with Coastal Act Sections 30243 and 30250(a).

Open Space to Public Facility Land Use Designation Changes to 10705 Palette Drive (Mendocino City Community Services District)

The LUPA also proposes to rezone from Open Space, to Public Facilities (Town Plan Policy PF-4, and Action PF-4.1), a 1.8-acre parcel located west of and adjacent to Highway 1 at 10705 Palette Drive and identified as Assessor's Parcel (APN) 119-140-31. Although no official plans

have been presented, MCCSD has expressed at public hearings various potential uses of the property that could benefit the community public services it provides. The County staff report prepared for the October 22, 2013 Board of Supervisors hearing indicates that MCCSD would like to develop the subject property “for use as storage, office space, and potentially water storage.”

As discussed further in **Section 3** (“Visual Resources: MCCSD Land Use Designation Change”), the Commission finds that the proposed redesignation of the property from OS to PF can be supported consistent with the requirements of the Coastal Act. Coastal Act Section 30250(a) states that new development shall be located within or near existing developed areas able to accommodate it or in other areas with adequate public services and where it will not have significant adverse effects, whether individually or cumulatively, on coastal resources. The subject property is situated between (and adjoining) Highway 1 and Palette Drive, on the west side of Highway 1. Residential development borders the property to the south and west, and the Hill House hotel borders the property to the north. The property consists primarily of a maintained lawn and a few trees and shrubs, but no evidence of the presence of ESHAs on site. Therefore, the proposed redesignation to PF and related uses on the property, such as the envisioned office space and potentially water storage, could be sited near existing developed areas able to accommodate it, consistent with Section 30250(a).

### *New Uses*

The County has added to the Town LUPA certain new allowable uses in specified land use classifications that can be found Coastal Act consistent because as proposed, the uses would occur in areas able to accommodate the development, consistent with Coastal Act Section 30250(a). For example, community gardens have been added as an allowable use in all land use classifications (Sections 5.1-5.9). Additionally, secondary dwelling units are now listed as an allowable use on Suburban Residential lands (Section 5.3) that were not allowed previously under the certified LUP. New affordable housing policies AH-3, and Actions AH-2.1 and 2.2 encourage second residential dwelling units on sites able to accommodate them as a means of providing affordable non-transient housing opportunities within the Town. Therefore, the Commission finds that (1) the inclusion of community gardens as an allowable use in all classifications and (2) the addition of secondary dwelling units as proposed are consistent with Section 30250(a).

## 2. Findings for Denial of Specified LUP Changes

The LUP as proposed contains elements that are not consistent with Coastal Act requirements regarding siting new development in areas with adequate services able to accommodate it. Therefore those portions of the LUPA must be denied as submitted as specifically discussed below.

### *Public Works Facilities*

In areas with limited public services, Section 30254 explicitly requires that service capacity be reserved for certain priority land uses, including coastal dependent land use, public recreation, and visitor-serving uses. The newly-proposed policies GM-10 and GM-11 as submitted are not consistent with Section 30254 of the Coastal Act as the policies rephrase the requirements of Section 30254 inconsistent with Section 30254. For example, proposed Policy GM-11 states in part “...consistent with Public Resources Code Section 30254, services to coastal dependent land

uses, essential public services, basic industries vital to the economic health of the Town, region, state or nation, public recreation, commercial recreation, historic preservation...and visitor serving land uses shall not be precluded by other development.” Section 30254 protects regional, but not local economic health, and does not explicitly protect historic preservation. As submitted, Policies GM-10 and GM-11 conflict with Section 30254 and must be denied as submitted.

### ***Evidence of Adequate Water Supply***

#### **Approval At Time of CDP Application**

Town LUP revisions and new policies do not require demonstration of adequacy of water supply at the time of approval of a CDP for development. For example, Action Item S-1.1 would eliminate the provision in the certified 1992 Town Land Use Plan requiring that *approval of all* new development be contingent upon proof of an adequate water supply and instead limit the requirement to supplying proof of an adequate water supply as part of the development application. The submitted information may meet the filing requirement in terms of providing water supply information, but may not sufficiently demonstrate that sufficient water is actually available to serve the new development at the time the CDP is approved. These policy changes could result in approval of new development that does not have sufficient water to serve it, inconsistent with Coastal Act Section 30250(a).

Proposed Policies GM-8 and GM-32, and Action AH-4.1 would further modify the requirements for demonstrating an adequate water supply, instead requiring that new development shall be served by adequate public services or by “private services determined to be adequate by the Mendocino City Community Services District and the Mendocino County Department of Environmental Health.” Furthermore, Policy GM-8 and Action AH-4.1 do not specify whether requirements apply to approval of a coastal development permit. Similarly, other proposed new policies and narratives do not specify that a coastal development permit would be required and instead reference at a minimum, building permit review (e.g., Section 5.1, and Policy GM-13). New policies GM-8 and GM-32, and Action AH-4.1 would remove the final decision making authority from the County coastal permit reviewing authorities with regard to whether the adequacy of water supply to serve a proposed development has been demonstrated consistent with the LCP, and place it solely in the hands of MCCSD and County Environmental Health, even though neither agency is governed by the certified Town LCP.

A memorandum dated March 3, 2017 and prepared by Mendocino County Planning and Building Services staff summarizes the Mendocino County Board of Supervisor’s Mendocino Town Plan (MTP) Ad Hoc Committee concerns pertaining to preliminary suggested modifications presented in the September 23, 2016 Coastal Commission staff report. The Ad Hoc Committee notes that the County defers to MCCSD and the authority granted under the District’s Groundwater Extraction Permit Ordinance in determining adequacy of water for development, stating in part:

*The MTP Ad Hoc Committee agrees with Coastal Commission Staff that proof of water should be provided for new development, but considers the 1992 certified policies and procedures in the Town Plan and Town Zoning Code to be sufficient. The Mendocino Town Zoning Code (MTZC) defers to MCCSD and Mendocino County Department of Environmental Health for hydrological studies, which “shall be performed according to approved methods and procedures as determined by the District [MCCSD], or the Health*

Officer, and published in the Environmental Health’s “Land Division Requirements” as revised.

*MCCSD’s Groundwater Extraction Permit Ordinance (Ordinance NO. 07-1) requires a Groundwater Extraction Permit: 1) prior to issuance of a Mendocino County Use Permit; or Coastal Development Permit; 2) prior to the issuance of a Mendocino County Building Permit for other than minor repair and maintenance; 3) prior to the issuance of a Mendocino County Well Permit; or 4) following the sale of real property within the boundaries of the MCCSD (MCCSD Ordinance NO. 07-1 Groundwater Extraction Permit).*

*The Groundwater Extraction Permit Ordinance provides exceptions to the hydrological study requirements [including] where there is: a) no increase in water extraction; b) limited increase in water extraction; [and] c) modification in the structure or depth of an existing well or drilling a new well....*

*The exception from hydrological study requirements for limited increase in water extraction is allowed for a) 30% of an existing water demand that is less than or equal to 320 gallons per day; and b) 10% of an existing water demand that is greater than 320 gallons per day. However, as a condition of approval for an exception to the hydrological study requirement, **the applicant agrees not to exceed the water use allotment for current and present use** (MCCSD Ordinance NO. 07-1 Groundwater Extraction Permit).*

*As noted in MCCSD’s Groundwater Management Plan and Programs (MCCSD, 2012), the California Legislature in 1987 passed Water Code Section 10700-10717, which provided MCCSD with the authority to establish programs for the management of groundwater resources in the Town of Mendocino. MCCSD assumed responsibility of groundwater management from Mendocino County in 1990, as authorized by AB 786, and adopted a Groundwater Management*

While the MCCSD and Environmental Health can contribute their expertise, ultimately, the CDP reviewing authorities (County Coastal Permit Administrator, Planning Commission, Board, or Commission on appeal) are the entities with authority to determine that a development is consistent with Town LCP and Coastal Act policies regarding adequacy of services to accommodate development. MCCSD does not have the authority to act on CDP’s, but even if it did, MCCSD does not make a finding of consistency with the LCP in its approval of groundwater extraction permits as its review of proposed water extraction is for different purposes. MCCSD’s review is not focused on demonstrating adequate water from a well, just that allotments are not exceeded and there is a big difference between the two.

Since 1990, MCCSD has assumed responsibility for groundwater management from Mendocino County and through careful planning and oversight has managed the hydrologic budget of the Mendocino Headlands aquifer. MCCSD’s Board of Directors oversees the issuance of groundwater extraction permits that serve to place a cap on the amount of water used at any given location, as a means of managing the Mendocino Town aquifer as a whole.

The aquifer as a whole can be healthy while a specific site may be unable to provide adequate on-site water, which the Coastal Act mandates. Coastal Act Section 30250 requires that new residential, commercial, and industrial development be located in a manner that does not significantly and adversely affect coastal resources, either individually or cumulatively.

The granting of allotments for a specified water use standard may ensure accounting of water use for the aquifer, but it does not guarantee that the site can generate any or all of the water allotted to the site. Even when an applicant agrees to use their current allotment instead of the increased allotment otherwise allowed for the proposed new development, absent a test demonstrating an adequate on-site water supply, there is no assurance that water is not being hauled to the site from another watershed to serve existing or new development within the Town.

The CSD has passed several ordinances over the years that have revised Groundwater Extraction Permit (GEP) and hydrological study requirements. Changes to MCCSD's GEP requirements are not reported to the Coastal Commission and have not been submitted by the County for certification as part of the certified Town LCP. Therefore, Town LUP provisions including but not limited to Policies GM-8 and GM-32, and Action AH-4.1 are not consistent with 30250(a) as they would not require the coastal permit authority to determine whether the development will be located in an area able to accommodate it as required by 30250(a). Therefore, this portion of the amended LUP as submitted must be denied.

### *Land Use Designation Changes*

#### Highway 1 Designation to "Public Facilities" and Related Land Use Classification Changes

The revised Town LCPA would add a land use classification and zoning district designation to Highway 1 where none currently exists. As proposed, the Highway 1 right-of-way would be designated as Public Facilities. Commission staff sent a referral letter to Caltrans staff on March 8, 2016 informing Caltrans of Mendocino County's Town Plan Update process, and inviting feedback regarding proposed LCPA policies that could affect Caltrans right-of-way and/or future planning projects. Commission staff also met with Caltrans staff on June 14 and September 2, 2016 to discuss proposed Town Plan LCP changes that could affect the Highway 1 right-of-way. Caltrans staff responded in writing with comments on July 15, 2016 (**page 7 of Exhibit 11**), expressing concern that the State Route 1 and the state-owned right-of-way are not "uses" requiring a use permit, in conflict with changes proposed in Policy PF-5 and LUP Section 5.9.

The proposal to add a land use classification and zoning designation to the highway right-of-way would allow a potential range of uses within the highway right-of-way that would interfere with the use of Highway 1. For example, the proposed LCPA Public Facilities designation (LUP Section 5.9) would allow community gardens as a principal permitted use within the Highway 1 right-of-way, and cemeteries, religious assembly, day care facilities, and the (newly added) public highways, roads, and streets and public parks as conditionally-permitted uses, among others. Such land use designations and zoning also raise questions as to how the County would find any development within the right-of-way – including road improvements – consistent with lot coverage, maximum lot size, and height requirements, among others.

Furthermore, the proposed designation and zoning of Highway 1 would not be consistent with the public access policies of the Coastal Act, because potential developments within the Highway 1 right-of-way that would be allowed within the Public Facilities Zoning District could

interfere with the public's right of access to the sea, inconsistent with Section 30211. For all of these reasons, the request to add the "Public Facilities" land use and zoning designation to the Highway 1 right-of-way (as presented on the Town Land Use Map and Action PF-1.4), and the proposal to designate State Highway 1, roads, and streets as conditionally-permitted uses within the PF land use classification must be denied.

Open Space to Public Facility Land Use Designation Changes to 44700 Little Lake Road (Grindle Park/ Mendocino Fire Protection District).

The LCPA changes the land use designation and zoning of an approximately 9.78-acre property located approximately 500 feet east of Highway 1, at 44700 Little Lake Road. Known as "Grindle Park," the property is currently designated as Open Space (OS), and held in trust by Mendocino Fire Protection District (MFPD). MFPD has requested the rezoning/redesignation of the property from OS to Public Facilities (PF) to accommodate the potential future siting of an elevated water tank for the purpose of fire safety services. Newly-proposed "Public Facilities" Policy PF-5 acknowledges the goal of a future water tank at the Grindle Park site. Additional sources have indicated contemplation of two wells and a water treatment facility at the site.<sup>59,60</sup>

The proposed change from OS to PF would be inconsistent with Coastal Act Section 30250 requiring that new development shall be sited within existing areas able to accommodate it, and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. As discussed further in **Section 1** ("ESHAs: Grindle Park/ MFPD Land Use Designation Change"), designation of the entire site for Public Facilities as proposed under the LCPA would suggest capacity for an expanded range of potential uses that could not be supported consistent with the protection of coastal resources as required by Coastal Act Sections 30240, 30231, and 30233. Moreover, the current OS designation would not preclude the opportunity for developing a water tank on a portion of the site for firefighting purposes, because the current OS designation already allows for fire and police protection services as a conditional use. For all of these reasons, the proposal to reclassify the Grindle Park site from OS to PF must be denied.

***Principally-Permitted, Permitted, and Conditionally-Permitted Uses***

The LCPA would characterize multiple uses that are currently listed as conditional uses in many land use classifications and zoning districts as "principal permitted uses" within a single land use classification and zoning district. For example, revised Town land use classifications now propose Residential, Civic, and Visitor Serving Accommodations as principally permitted uses within each of the Mixed Use, Commercial, and specified Residential (RR-1, RR-2, R+, and RM) land use classifications. Based on discussions with County staff, it appears that part of the reason to recharacterize many of the conditional uses as principally permitted is to reduce the burdens on property owners of having to go through a use permit process for many different uses.

<sup>59</sup> June 12, 2014. "Public vents to MCCSD about meters." Mendocino Beacon. Accessed online September 1, 2016 at: <http://www.mendocinobeacon.com/article/ZZ/20140612/NEWS/140618541>

<sup>60</sup> July 3, 2014. "Services, Fire district strike deal for emergency water." Advocate-News.com. Accessed online August 31, 2016 at <http://www.advocate-news.com/article/ZZ/20140703/NEWS/140708860>

However, Section 30603(a)(4) of the Coastal Act provides that local approval of any development in a Coastal county (i.e., unincorporated areas) that is not designated as *the* principal permitted use results in an action that is appealable to the Commission. To avoid the unintended result wherein any use not designated as *the* principal permitted use would be appealable to the Coastal Commission, the proposed listing of multiple principally-permitted uses must be denied.

### Mendocino Art Center

As proposed, the LCPA revises the classification of the Mendocino Art Center from its former consideration as a “Student/Instructor Temporary Housing Facility” visitor serving facility listed in the “visitor accommodation” use type to an “art center” use listed in the civic use types and allowed within the Public Facilities Zoning District, subject to approval of a conditional use permit. Within the “art center” civic use type category, ancillary uses and activities are listed as including student-instructor housing. The new classification of allowable uses within the civic use type more closely aligns with the Public Facilities land use and zoning designation of the Mendocino Art Center.

However, Town Plan Policy GM-15(b) would reclassify the existing 13 Art Center Student/Instructor Housing units as “Affordable Housing,” and Action AH-2.3 would recognize the Mendocino Art Center’s existing student-instructor facilities as a form of affordable housing. A number of comments in the local record received during preliminary public hearings at the County level requested that designation of the Mendocino Art Center should accurately reflect its role as student-instructor housing and/or as a visitor serving facility, and also questioned its designation as “affordable housing.”

The Mendocino Art Center (MAC) is an educational, exhibition, and resource center that includes studios and classrooms for the visual and performing arts, and that provides thirteen (13) Art Center Student/Instructor Housing units for class participants as well as other visitors to Mendocino on a limited basis. Transient occupancy of the MAC units by the general public may occur, subject to payment of business license and transient occupancy taxes for stays of less than 30 days. Thus, the Mendocino Art Center serves as an educational facility with short-term housing options that function much like dormitory housing on a traditional school campus, and that can occasionally become available for non-student transient visitors. As a civic “art center” use type on a Public-Facilities-designated site with short-term housing for students and teachers, the Mendocino Art Center does not function in the traditional sense as “affordable housing” available to low- and very-low income households. For all of these reasons, Town LUP Policy GM-15(b) and Action AH-2.3 must be denied as submitted.

### 3. Findings for Approval of LUP Amendment if Modified

#### ***Public Works Facilities***

**Suggested modification 4** eliminates from newly-added policies GM-10 and GM-11 those references and phrases that are inconsistent with Coastal Act Section 30254, such as but not limited to prioritization of services that would preserve the balance between residential and visitor uses within the Town. **Suggested modification 4** attempts to retain as much of the County’s proposed LUPA language as possible while correcting errors and omissions that would

conflict with the Coastal Act provisions, including but not limited to requiring that service capacity be reserved for certain priority land uses such as coastal dependent land use, public recreation, and visitor-serving uses. As suggested to be modified, Policies GM-10 and GM-11 eliminates language that conflicts with Section 30254 to ensure conformity with the Coastal Act.

### ***Evidence of Adequate Water Supply***

#### Approval At Time of Application

**Suggested modifications 4, 8, and 13** add and modify the proposed LUPA policies to ensure conformity with Coastal Act Section 30250(a) by requiring that, prior to approval of a coastal development permit, all coastal development permit applications for development that would result in an increase in water use shall include evidence demonstrating (a) that an adequate on-site water supply exists that will accommodate the proposed development throughout the year, including the dry season; and (b) that the proposed extraction of groundwater to serve the development will neither (1) deplete the ground water table of contiguous or surrounding uses, nor (2) have a significant direct or cumulative adverse effect on coastal resources.

### ***Land Use Designation Changes***

#### Highway 1

As discussed above, assigning any land use designation onto Highway 1 and the associated right-of-way would allow a range uses on the state highway that are incompatible with the use of the highway as a transportation corridor, and that could not be sited in an area able to accommodate it within the highway, in conflict with Coastal Act policies that include but are not limited to Sections 30250, 30254 and 30211. **Suggested modifications 3, 9, 13, 16, and 17** will: (a) remove the newly-added Public Facilities land use designation from the land use plan policies and map, (b) revise the specified range of allowable uses in the Public Facilities land use classification to remove references to State Highway 1, roads, and streets as conditionally-permitted uses; and (c) update narrative text pertaining to Public Facilities acreage references (e.g., Section 3.4.[4]) that include Highway 1 in the land base.

Comments provided March 3, 2017 by County staff on behalf of the BOS Town LCP Ad Hoc committee expressed opposition to removal of the land use designation from State Highway 1, roads, and streets, expressing the intent of the BOS to require coastal development *use* permits for any development proposed within the public right of way. Additionally, public comments were received May 4, 2017 (**Exhibit 13**) requesting the retention of language in Action PF-1.4 that directs the “Public Facilities” designation of Highway 1 right-of-way on the Town Land Use Map. Removal of the Public Facilities designation from Highway 1 will not eliminate the need for Caltrans to obtain a coastal development permit for improvements to Highway 1 through the Town of Mendocino. As discussed in the public access findings below, the LCPA includes a number of new policies that require that pedestrian accessways and bicycle ways be provided with new highway improvement projects such as replacement of the Highway 1 bridge at Big River To be approved as consistent with the LCP, a future coastal development permit application submitted for highway improvements would need to be found in conformance with these policies.

Therefore, the Commission finds that as modified as suggested to remove the newly-proposed land use designation from State Highway 1 and to revise or eliminate accordingly those policies,

actions, and narratives pertaining to designating Highway 1 within the Public Facilities land use classification, as described above, these portions of the LCPA are consistent with Section 30250, 30254, and 30211 of the Coastal Act.

#### Grindle Park/ Mendocino Fire Protection District

To allow for potential development of a fire protection water tank at the site while ensuring conformity with the development and resource protection policies of the Coastal Act as described above, and since the current OS designation would already allow for fire and police protection services as a conditional use, **Suggested modifications 3, 9, and 16** will: (a) retain the currently certified open space land use classification within the Town narratives, policies, and land use maps, and (b) add language to Town Policy PF-1.3 requiring that any development associated with any services extensions, including but not limited to equipment and infrastructure to support a water storage tank for fire-fighting services, shall be undertaken in a manner (such as by horizontal directional drilling) that avoids encroachment into environmentally sensitive habitat areas and prevents impacts which would significantly degrade land adjacent to environmentally sensitive habitat areas. Thus, as modified the LUP policies affecting the Grindle Park site are consistent with Section 30250 of the Coastal Act.

#### Williams House (10575 Lansing Street, APN 119-150-01)

As discussed further in the IP findings below, the LCPA includes new provisions in the Town IP that are not represented in the LUP and that would allow “optional zoning” on split-zoned properties (as proposed by modifications to Town Zoning Code Section 20.604.050), inconsistent with Coastal Act Section 30801.5. Based on discussions with County staff, the amendment appears to have been included to address a particular property in Town that is split zoned. The parcel, which is currently for sale, is located at the intersection of Little Lake Road and Lansing Streets, and at the intersection of designated Multifamily Residential, Commercial, and Public Facilities Zoning Districts, at 10575 Lansing Street (APN 119-150-01). To address inconsistencies of the split-zoning provision with the Town Land Use Plan, **Suggested modifications 16 and 17** reclassify the site on the Town Land Use Map from its current split land use classification of MRM/C to an entirely Commercial land use classification. As modified and as discussed further below, reclassifying the Williams House property to entirely Commercial achieves the property owner’s desired land use designation of the site in a manner that conforms with the Coastal Act.

Commission staff evaluated possible alternatives to the “optional zoning” provision proposed in the Town IP, taking into consideration other land use classifications that could be more appropriately assigned to the site to eliminate the current split zoning constraints. The Williams House is situated on Lansing Street in a transitional area between residential and commercial areas, and is uniquely constrained by lot size, historical status, traffic circulation, and setback requirements (among others). Although the site could not accommodate the full range and intensity of uses allowable within the Commercial Zoning District and available under TZC Section 20.604.050(D), some limited uses, such as administrative offices or limited retail uses not otherwise allowable within the MRM District could be accommodated at the site (subject to demonstrating conformity with all LCP policies).

An alternative approach to the proposed optional zoning policy would be to redesignate and rezone the site to Mixed Use. The intent of the Mixed Use land use classification is:

To provide a transition between commercial development on Lansing Street and Main Streets and residential areas; to provide space for offices and retail uses that do not generate heavy automobile traffic or generally operate between the hours of 6:00 p.m. and 7:00 a.m.; and to encourage preservation and construction of moderately priced residential dwelling units.

Commission staff recommended in its September 23, 2016 staff report prepared for the October 5, 2016 preliminary Town Plan LCPA hearing certain suggested modifications that would: (a) redesignate and rezone the approximately 0.31-acre “Williams House” parcel located at 10575 Lansing Street (APN 119-150-01) from the split land use classification of Rural Residential (RM) and Commercial (C) to an entirely Mixed Use designated parcel, and (b) delete the optional zoning provision of TZC Section 20.604.050(D) from the LCPA.

Comments received March 3, 2017 from Mendocino County staff on behalf of the Board of Supervisors (BOS) Ad-Hoc committee indicated that the County was supportive of deleting the optional zoning provision of TZC Section 20.604.050(D), indicating that the optional zoning provisions “could potentially result in entire parcels being developed as Commercial, thus eliminating the intended residential buffer between Commercial and Town Residential Districts.” However, the County’s memo expressed opposition to Commission staff’s preliminary suggested modifications to change the land use and zoning designation of the Williams House to entirely Mixed Use, stating in part that:

*...The Mixed Use designation might be appropriate if the property were not developed. With an existing structure on the property, it would be difficult for the owners to meet the additional requirements for MMU Districts as stated by LCP Amendment MTZC Section 20.660.075(B). LCP Amendment MTZC Section 20.660.075(B) would read:*

*“(B) Fifty (50) percent or more of the gross floor area of all development shall be devoted to residential dwelling units; provided, that this requirement shall not apply to existing visitor serving facilities in the Visitor Serving Facilities Combining District on parcels (lots) depicted with an asterisk (\*) or asterisk-B (\*B) on the certified Town Zoning Map.”*

*The “Williams House” property fronts two of the Town’s busiest roads on the north and west sides (Little Lake Road and Lansing Street), the Town’s busiest commercial use (Harvest at Mendosa’s) on the south side and an employee parking area on the east side. PBS Staff note that the 10575 Lansing Street would be suitable for commercial land uses. The Mendocino Commercial District requires a Major Use Permit for high intensity commercial use types (e.g., Eating and Drinking Establishments, Automotive and Equipment: Gasoline Sales) and a Minor Use Permit for moderate intensity commercial use types (e.g., Food and Beverage Retail Sales, Business Equipment Sales and Services). Given the locational characteristics of the property and the requirements for Major or Minor Use Permits for many commercial uses, Commercial is the more appropriate land use designation and zoning district.*

Coastal Commission staff met with County planning staff and the Ad Hoc committee on April 5, 2017 in Ukiah to discuss the County’s March 3, 2017 comments. Following discussions on April

5, Commission staff believes the County is amenable to revisions to the suggested modification to entirely rezone the Williams House as Commercial rather than Mixed Use.

The Williams House site will be limited in its ability to accommodate the full range and intensity of uses allowable within the Commercial land use and zoning designations because the site is uniquely constrained by lot size, historical status, traffic circulation, and setback requirements (among others). Therefore, many of the uses allowable within the Commercial District would not be appropriate for the site. On the other hand, Commission staff believes that some limited uses, such as administrative offices or limited retail uses not otherwise allowable within the MRM District could be appropriate at the site (subject to demonstrating conformity with all LCP policies). Because the relatively small parcel (0.31-acre) is currently partially-designated Commercial on an already developed site, the Commission finds that changing the land use classification to entirely Commercial would afford at least some of the range of uses envisioned in the Commercial land use classification on a site able to accommodate it. Thus, as modified, the change to the Town Land Use Map reclassifying the Williams House site to the Commercial land use designation is consistent with Section 30250(a).

#### ***Principally-Permitted, Permitted, and Conditionally-Permitted Uses***

Unless a single use is designated as the principally permitted use in a particular zoning district, all development approved by the County in that particular zoning district is appealable to the Commission. This creates an unnecessary problem easily rectified by identifying one use as principally permitted in each land use classification and zoning district.

One way to identify a single use as principally permitted in each land use classification and zoning district that satisfies the goal of reducing the number of uses that would require a conditional use permit and also avoids the result of rendering all development in a particular zoning district appealable to the Commission would be to characterize the uses in each land use classification and zoning district in one of three categories: “permitted,” “conditionally permitted,” and “principally-permitted” uses. A single use would be designated as the principally permitted use and would neither require a use permit nor be appealable to the Commission. Other uses listed as “permitted” would not require a conditional use permit, although these uses would be appealable. And those uses listed as conditionally permitted would continue to require a use permit and be appealable to the Commission.

**Suggested modification 2** has been added to characterize the “permitted,” “conditionally permitted,” and “principally-permitted” uses in each zoning district in a manner that both would avoid the need for conditional use permits in more instances and avoid a result in which all development in a particular zoning district is appealable to the Commission because a single use has not been designated as principally permitted that particular zoning district. **Suggested modifications 4 and 13** also changes the relevant policies, land use classifications, and zoning district uses to specify those developments that would be a permitted use, rather than the principally-permitted use, in conformity with Coastal Act Section 30603.

A memorandum dated March 3, 2017 and prepared by Mendocino County Planning and Building Services staff summarizes the Mendocino County Board of Supervisor’s Mendocino Town Plan (MTP) Ad Hoc Committee concerns pertaining to preliminary suggested modifications presented in the September 23, 2016 Coastal Commission staff report, including but not limited to the

highlights that are summarized as follows. In the memorandum (page 14 of **Exhibit 12**), the Ad Hoc committee expressed opposition to suggested modifications that would eliminate the County's proposed listing of multiple principal permitted uses in Open space (e.g., "passive recreation," "landscape conservation, restoration, and preservation," "renovation of existing structures," and "sustainable grazing").

The County also opposes the separation of certain civic use types within the Public Facilities land use classification as Principally Permitted (e.g., "native vegetation landscaping"), from other civic use types as Permitted ("temporary events" and "community gardens"), stating "There is no evidence that establishing *Civic Use Types* as principal permitted use types in a Public Facilities land use classification would conflict with the Coastal Act." The LUP as proposed separately lists "public and semi-public facilities" civic use types as conditional uses.

The Ad Hoc Committee also expressed opposition against: (a) separately distinguishing Principally Permitted, Permitted, and Conditionally Permitted Use categories, (b) identifying a singular, Principally Permitted Use, and (c) suggested modifications on page 142 of Appendix A that would specify that permitted uses are appealable to the Coastal Commission:

*In residential areas, designating principal permitted uses and conditional uses is sufficient. In Open Space and Public Facility land use designations and zoning districts almost all uses require a coastal development use permit. In the Commercial and Mixed Use land use designations and zoning districts, there are already principal permitted uses, permitted uses, uses subject to a Minor Use Permit and uses subject to a Major Use Permit. The MTP Ad Hoc Committee does not see the necessity of further divisions...*

*...On Appendix A page 142 and Defining Mendocino Town LCP Principal Permitted Use Types, a suggested modification includes adding a statement "Coastal development permits for permitted uses are appealable to the Coastal Commission wherever they are located." This statement reflects information contained in Coastal Act Section 30603(a)(4); Mendocino County Board of Supervisor's [sic], in consideration of the recommendations of Mendocino County Planning Commission, chose not to include such statement and remind Coastal Commission staff that local authority to determine the exact content of the Mendocino Town Local Coastal Plan is solely theirs. Further, this statement does not require inclusion (as it is already a part of the Coastal Act, which is amended from time to time).*

With regard to the "divisions" of use categories within each land use classification, none of the classifications presently proposed in the Town LUP separately identify "Principal permitted" and "permitted" uses. Although the certified Town Zoning Code Sections 20.660.010(C) and 20.664.010(C) did specify a principal permitted use for the purposes of appeal to the Coastal Commission, the LCPA as submitted proposes elimination of those policies. As suggested to be modified, the same organizational structure specifying principally-permitted, permitted, and conditionally-permitted uses would apply to each land use classification, thereby ensuring internal consistency throughout the LUP.

Coastal Commission staff met with County planning staff and the Ad Hoc committee on April 5, 2017 in Ukiah to discuss the County's comments provided in the March 3, 2017 letter.

Commission staff acknowledged during the meeting that if the County prefers, the LUPA proposal to list multiple uses within each land use classification could be accepted as submitted without conflict with the Coastal Act. However, the County's proposed approach would expand the range of developments that would be appealable to the Coastal Commission because absent a single designated Principal Permitted use, all listed uses would be appealable to the Coastal Commission, creating additional permit processing time and expense for applicant for projects that otherwise would not be appealable.

**Suggested modification 2** has been added to characterize the "permitted," "conditionally permitted," and "principally-permitted" uses in each zoning district in a manner that both would avoid the need for conditional use permits in more instances, and avoid a result in which all development in a particular zoning district is appealable to the Commission because a single use has not been designated as principally permitted that particular zoning district. **Suggested modifications 4 and 13** also change the relevant policies, land use classifications, and zoning district uses to add internal consistency and to specify those developments that would be a permitted use, rather than the principally-permitted use, in conformity with Coastal Act Section 30603.

### ***Conclusion***

The Commission finds that for all the reasons discussed above, the LUP's policies affecting land use planning and new development as modified are consistent with the Coastal Act, including but not limited to Sections 30211, 30240, 30243, 30254.5, 30254, 30253, 30250, 30412, and 30603.

### **D. Applicable Land Use Plan Policies**

**GM-8.1** Prior to approval of a coastal development permit for any development in the Town, the applicant shall demonstrate that: (a) adequate sewage capacity exists to accommodate the proposed development; and (b) an adequate on-site water supply exists during the dry season to accommodate the proposed development without adversely affecting the water supply for hydrologically contiguous wells. Demonstration of an adequate on-site water supply shall be made in accordance with the provisions of Mendocino Town Zoning Code Chapter 20.744.

**GM-8.2** Development shall not have a significant direct or cumulative adverse effect on coastal resources, public coastal access, or coastal recreational use.

**GM-32** Approval of any division of land within the Town, as shown on the Town Land Use Map, shall require (a) demonstration prior to coastal development permit approval that an adequate water supply exists to serve existing and newly created lots, such demonstration made in accordance with the provisions of Mendocino Town Zoning Code Chapter 20.744; (b) proof that the Mendocino City Community Services District (1) has issued a groundwater extraction permit, or will issue a groundwater extraction permit as a condition precedent to issuance of the coastal development permit for the land division, for each newly created lot, and (2) has, or will as a condition precedent to issuance of the coastal development permit

for the land division, provide wastewater service for each newly created lot; (b) demonstration, by a qualified professional, that the division of land, including any hydromodification and any future construction and use of structures on each newly created lot, will not have any significant adverse effects, either individually or cumulatively, on coastal resources or coastal public access; and (c) demonstration that the division of land, including any hydromodification and any future construction and use of structures on each newly created lot is in conformity with all standards of the certified Mendocino Town Local Coastal Program.

**Action 2.1:** All coastal development permit applications shall include evidence demonstrating (a) ~~of~~ that an adequate on-site water supply exists that will accommodate the proposed development throughout the year, including the dry season; and (b) that the proposed extraction of groundwater to serve the development will neither (1) deplete the ground water table of contiguous or surrounding uses, nor (2) have a significant direct or cumulative adverse effect on coastal resources. Demonstration of an adequate on-site water supply shall be made in accordance with the provisions of Mendocino Town Zoning Code Chapter 20.744. Adequate on-site water shall be demonstrated prior to approval of the coastal development permit.

**Action S-2.2:** All new and existing development shall, in addition, (a) comply with all applicable adopted Mendocino City Community Services District water conservation regulations and standards, and (b) incorporate all water conservation measures required by the State of California.

**Action S-2.3:** All new and existing development shall also comply with all applicable regulations and standards of the County Environmental Health Department for potable water production by wells.

Action S-2.4: Gray water systems shall be designed, installed, operated, and maintained in full compliance with all applicable health and safety regulations of the County Department of Environmental Health, and all other applicable standards.

**Action S-2.5:** Permitted horticultural landscaping shall be drought-tolerant, and, when irrigation is required, shall minimize the use of potable water, as feasible, and use, to the maximum extent feasible, (a) efficient watering techniques (such as drip irrigation), (b) retained stormwater, and (c) reclaimed water that is available from the Mendocino City Community Services District.

**PF-1** Significant public open spaces provided in the Town by Mendocino Headlands State Park, Heider Field, Memorial Triangle, Friendship Park and Little League Field, and the area within Grindle Park not required for critical Mendocino Fire Protection District/Mendocino Volunteer Fire Department facilities, and significant public views and public vistas shall be preserved as part of the Town's unique character.

**Action PF-1.3:** New public facilities and all other development on the Mendocino City Community Services District parcel between Palette Drive and Highway 1, and on the

Grindle Park parcel for which the Mendocino Fire District is the trustee, shall avoid or mitigate all potentially significant effects on coastal resources to below a level of significance, including, as applicable, through (1) on-site screening with a native vegetation buffer in relation to Highway 1 and any adjacent County road, (2) avoidance or full mitigation of any unavoidable potentially significant effect from development on the environment, including, but not limited to, coastal resources, (3) utilization of exterior finishes in any structure that conform to and protect the historical Town character.

**Action PF-1.4:** The Mendocino Town Plan Land Use Map (Figure 4.13-3) shall designate (a) Mendocino Headlands State Park and other publicly owned open space, exclusive of the area referenced in Action PF-1.3, in the Town as within the “Open Space” Land Use Classification, and (b) public streets, roads, and alleys in the Town as within their respective adjacent Land Use Classification.

**PF-3.** The State of California has acquired the former lumber company parcel within the Town that fronts on Big River, east of the Highway 1 bridge, as an addition to Mendocino Headlands State Park for open space, public recreation, and resource conservation.

**Action PF-3.1:** The Mendocino Town Local Coastal Program redesignates and rezones, for Coastal Act purposes, the parcels identified as Mendocino County Assessor’s Parcel Numbers 119-280-10, 119-280-11, 119-290-04, and 119-440-11, owned by the State of California, from the Forest Lands land use and zoning classification to the Open Space land use and zoning classification.

**PF-4.** The Mendocino City Community Services District, which provides critical community-wide public service benefits, has acquired the parcel at 10705 Palette Drive, identified as Assessor’s Parcel Number 119-140-31 by eminent domain for future development and use with ancillary facilities that support the Community Services District’s public agency mission, and thereby extinguished a prior easement recorded against the property.

**Action PF-4.1:** In recognition of the public agency acquisition and extinguished easement, Town Local Coastal Program designates and zones, for Coastal Act purposes, the 1.8 acre parcel identified as Mendocino County Assessor’s Parcel Number 119-140-31, owned by the Mendocino City Community Services District, from the Open Space land use district and zoning district classification to the Public Facility land use district and zoning district classification; provided that (a) new development shall be sited and designed to minimize the number of structures and shall cluster all new development with existing structures rather than siting development within open areas, and (b) regionally native vegetation landscaping shall substantially screen any future development from the public view of travelers on Highway 1.

**PF-5** The Mendocino Fire Protection District, which provides critical community-wide public service benefits in the Town of Mendocino, holds the parcel at 44700 Little Lake Road in trust. That parcel contains the Mendocino Fire Protection District/Mendocino Volunteer Fire Department’s headquarters-fire station, Grindle Park, and the potential future site of a water tank that is part of the Department’s functional planning for fire safety

services to minimize risk to life and property in areas with high structural and wildland fire danger in and adjacent to the special historical community that is the Town of Mendocino.

Action PF-5.1: Future development of the parcel at 44700 Little Lake Road, identified as Mendocino County Assessor's Parcel Number 119-090-07 by the Fire District/Department shall (a) be consistent with the conservation and development and all other policies and standards of the Town Local Coastal Program, (b) be limited to a water tank and associated facilities; (c) utilize the minimum area in Grindle Park necessary to install such a water tank and associated facilities, and (d) ensure development associated with any services extensions, including but not limited to equipment and infrastructure to support a water storage tank for fire-fighting services, shall be undertaken in a manner (such as by selection of service extension alignment and/or horizontal directional drilling) that avoids encroachment into environmentally sensitive habitat areas and prevents impacts which would significantly degrade land adjacent to environmentally sensitive habitat areas.

The standard of review for the proposed Town IP Update is that it be consistent with and adequate to carry out the conditionally certified (i.e., as modified above) Town LUP Update. In this case, the County's proposed Town LUP policies related planning and locating new development, including but not limited to adequate services to support new development, and land use classification and zoning district changes have been denied, and thus this evaluation is based on the as-modified Town LUP (see preceding section). In addition to the policies specified above, the narrative and policies of land use plan Section 5 are also applicable.

### **E. IP Consistency Analysis**

The LCP also identifies nine (9) land use classifications within Town as presented in Town LUP Sections 5.1 through 5.9, and a development limitations (DL) combining district within LUP Section 5.10 intended for use in conjunction with other land use classifications to signify substantial constraints that may prevent or severely limit development. The Town IP implements these land use classifications through Town Zoning Code Chapter 20.640, "Establishment of Zoning Districts." In addition to eight zoning districts correlating with the LUP's land use classifications, the Town IP presents four combining districts: "Planned Development" (in association with LUP Section 5.4 "Residential Planned Unit Development"), "Development Limitation" (in association with LUP Section 5.10), and two Visitor Serving Facility asterisk-Combining Districts applicable to those designated properties within all land use classifications and zoning districts where a hotel, inn, or motel are allowable ("\*"), and where bed-and-breakfast accommodations are allowable ("\*B"). The Town Zoning Map (**Appendix F**) further carries out the land use classifications presented on the Town Land Use Map as discussed further below.

#### **1. Findings for Approval of Specified IP Changes as Submitted**

##### ***Changes to Zoning District and Zoning Designations at Specified Locations***

The Commission finds that the Town IP adequately carries out and conforms with LUP policies that eliminate the Forest Lands (FL) District presented in LUP Policy PF-3, Action PF-3.1, and Section 5 by eliminating Town Zoning Code (TZC) Chapter 20.670 and removing the FL District from the list of zoning districts contained in TZC Section 20.640. Furthermore, the Town IP adequately carries out the LUP proposal to change the land use classification on the Parks

lands described above from FL to Open Space (OS) through its modifications to the Town Zoning Map depicted in **Appendix F**. The Town IP as submitted also carries out the LUP provisions that reclassify from OS to PF the 1.8-acre parcel located at 10705 and owned by Mendocino City Community Services District (MCCSD). Specifically, the OS zoning designated on Assessor Parcel Number (APN) 119-140-31 of the Town Zoning Map conforms with the OS land use classification designated on the Town Land Use Map.

***Proposed Changes to Use Types within Zoning Districts***

The Town LCPA presents several changes to use types and uses listed within the zoning districts that conform with and adequately carry of the Town LUP. Specifically, the Town Zoning Code (TZC) now includes those Visitor Serving Accommodation Use Types (e.g., VHRs, SURs, hotels, inns, and B & Bs) that are allowable within each zoning district. The TZC also adds community gardens as a new civic use type allowable in all zoning districts. Additionally, secondary dwelling units are now specified as an allowable use on lands zoned Rural Residential (MRR), and on Suburban Residential lands (MSR) that were not allowed previously under the certified LCP.

The LCPA would also amend Chapter 20.696 of the Town Zoning Code to allow home occupations to occur in accessory structures. The County indicates this would harmonize the provisions within the Town with policies certified in the balance of the coastal zone, and would incorporate the recommendations of the 1999 Citizens' Advisory Committee. Proposed revisions to Town Zoning Code Section 20.700.025 would also allow for certain uses not allowed as Home Occupations to be permitted within certain specified zoning districts upon securing of a use permit.

As proposed, the LCPA would also revise the classification of the Mendocino Art Center from its former consideration as a "Student/Instructor Temporary Housing Facility" visitor serving facility listed in the "visitor accommodation" use type to an "art center" use listed in the civic use types and allowed within the Public Facilities Zoning District, subject to approval of a conditional use permit. Within the "art center" civic use type category, ancillary uses and activities are listed as including: (1) cultural exhibits and library services, (2) events and gatherings, and (3) student-instructor housing. The new classification of allowable uses within the civic use type more closely aligns with the Public Facilities land use and zoning designation of the Mendocino Art Center.

The Commission finds that the specified new uses listed within the Town zoning districts as described above conform with and adequately carry out the LUP as amended.

**2. Findings for Denial of Specified IP Changes as Submitted**

***Adequacy of Services***

The Coastal Act requires new development to be served by adequate public services, including water, sewer, and traffic (Coastal Act Section 30250). In areas with limited public services, Section 30254 explicitly requires that service capacity be reserved for certain priority land uses, including public recreation and visitor-serving uses. To conform with and adequately carry out the requirements of the Town LUP and Section 30250 of the Coastal Act, all proposed development must demonstrate whether: (a) an adequate on-site water supply exists; (b) new

development would adversely affect the adjacent water users; and (c) new development would adversely affect the aquifer.

These Coastal Act requirements are mostly embodied in LUP Policies GM-8.1, GM-8.2, GM-32, and Action S-2.1 as modified by the commission. Town Zoning Code Section 20.692.025 of the certified LCP requires in part that all development within all Town zoning districts shall, as applicable, comply with the provisions found in Section 20.532.095 (“Required Findings for all Coastal Development Permits”) and 20.532.100 (“Supplemental Findings”) of the certified Coastal Zoning Code provisions of the balance of the County (Title 20, Division II). Detailed implementing language in Town Zoning Code Chapter 20.744 (“Ground Water Evaluation”) further articulates the process by which determinations would be made including specific findings for new or increased well productions, and areas with limited water supply.

Based on new information provided by the Mendocino City Community Services District (MCCSD) and the County’s consultants in January 2016, water usage in the Town of Mendocino appears to be less than originally calculated, and the aquifer has sufficient supply to serve the Town at maximum build-out projections under the LCPA. However, some water production systems, including some older, shallow (20-25 feet depth), and/or deteriorated/poorly maintained wells that serve residential or commercial users have been reported to have failed or been discontinued for other reasons, during previous droughts (e.g., 1975-1977, 1988-1989, 1994, 2000-2001, and 2007-2009) and the most recent (2011-2016) drought. As indicated above, because groundwater supply is trapped within “pockets” between bedrock fractures, supply is not evenly distributed through Town.

As discussed further below, many of the property owners with shallow wells and/or wells that have failed have relied on the trucked importation of water from other locations. For example, some Town residents and business proprietors consistently rely on water importation (by truck from sources primarily in Fort Bragg and Elk) to supply basic water needs, at a minimum during the dry season. Other sources have also documented water hauling in the past from Ft. Bragg and Elk to serve out-of-area home owners.<sup>61</sup>

The Town IP as submitted is inconsistent with the Town LUP because the Town Zoning Code does not adequately carry out the Town LUP policies requiring demonstration of adequate water to serve new development in all cases. For example, Town Zoning Code Section 20.744.025 of the IP allows for exceptions to the hydrological study requirements of Town Zoning Code Section 20.744.015 in a manner that does not require the applicant to demonstrate they have a functioning well that could conceivably provide enough water to serve the water demand of the new development. MCCSD includes within its groundwater management program a process for exempting from hydrological study requirements those new developments that are determined by the District to result in a *de minimis* increase in water use, based upon the District’s evaluation of total aquifer supply and calculated water demands for various development types (MCCSD, 2012). In particular, the most recent Groundwater Extraction Permit Ordinance (Ordinance No.

---

<sup>61</sup> July 26, 2007. “Council agrees to sell surplus water.” Advocate-News.com. Accessed online June 17, 2014 at <http://www.advocate-news.com/article/ZZ/20070726/NEWS/707269685>

07-1<sup>62</sup>), adopted by the MCCSD Board of Directors January 29, 2007, Part 4(b) states the following:

*Based on the information contained in the Groundwater Extraction Permit application, the Board may issue a Groundwater Extraction Permit without requiring an applicant to submit a hydrological study if the proposed change results in a limited increase in water demand. A limited increase is the quantity of water required for “new development,” “change in use,” or “expansion of existing use,” as defined by the Water Use Standard adopted by the Board. A limited increase is determined by the increased water demand for the proposed project. As calculated from the Water Use Standard, a limited increase shall not exceed:*

- a. 30% of an existing water demand that is less than or equal to 320 gallon[s] per day.*
- b. 10% of an existing water demand that is greater than 320 gallons per day.*

Examples of MCCSD approvals without hydrological studies under the “Policy 4(b)” exemption criteria include the following, as described in MCCSD public hearing minutes:

- A Groundwater Extraction Permit Application was submitted for the addition of a 1,384 sq. ft. classroom/studio, a 400 sq. ft. studio, and one apartment. The change of use represented an 8.2% increase in the water demand, which allowed for approval under Section 4(b), which was an exception to the hydrological study requirement. The applicant agreed to stay within the existing allotment which was 3,309 gallons per day.<sup>63</sup>*
- A Groundwater Extraction Permit Application was submitted for conversion of a 413 sq. ft. commercial retail shop to a 360 sq. ft. personal services hair salon. The change of use represented a 7.5% increase in the water demand, which allowed for approval in accordance with Ordinance 07-1, Section 4(b), which was an exception to the hydrological study requirement. The applicant agreed to stay within the existing extraction allotment of 3,961 and comply with all permit conditions.<sup>64</sup>*
- The Application for a Groundwater Extraction Permit ... was carried over from the meeting of June 27, 2016. The floor plans were re-submitted for conversion of one of the four existing bedrooms in the residence to a private studio, and the addition of a Guest Cottage. The elimination of a bedroom (60 gpd) and the addition of a Guest Cottage (100 gpd) resulted in a limited increase of 40 gallons per day. Ordinance No. 07-1 Section 4(b) allowed for a 30% limited increase when the water demand was less than or equal to 320 gallons per day. The applicant agreed to stay within the existing allotment of 320 gallons per day.<sup>65</sup>*

---

<sup>62</sup> Mendocino City Community Services District (MCCSD) Groundwater Management Plan and Programs. Adopted by MCCSD Board of Directors February 25, 1990; Amended May 30, 2012. Accessed online at: [http://www.co.mendocino.ca.us/planning/pdf/MCCSD\\_Groundwater\\_Management\\_Plan\\_and\\_Programs\\_2012.pdf](http://www.co.mendocino.ca.us/planning/pdf/MCCSD_Groundwater_Management_Plan_and_Programs_2012.pdf)

<sup>63</sup> Mendocino City Community Services District (MCCSD) Minutes of September 29, 2009 Public Meeting. Accessed online at: <http://www.mccsd.com/>

<sup>64</sup> MCCSD Minutes of September 29, 2009 Public Meeting. Accessed online at: <http://www.mccsd.com/>

<sup>65</sup> MCCSD Minutes of July 25, 2016 Public Meeting. Accessed online at: <http://www.mccsd.com/>

- *Application was made for conversion of an existing storage unit to a commercial office. In 2009, MCCSD approved a Groundwater Extraction Permit under section 4(b) of Ordinance 07-1, and an exception to the Hydrological Study Requirement. The property owner had a 598 gallons per day water demand and allotment. They qualified for an expansion of their existing use if the proposed increase did not exceed the existing water demand by more than 10%. The applicant was approved for an increase of 4.18% or 25 gallons per day. To prevent incremental development by multiple 4(b) approvals the Board may require approval of a Hydrological Study prior to issuance of a Groundwater Extraction Permit. The property owner was asking for approval of a 20 gpd increase. The total increase in the water demand from both 4(b) GWEP applications totaled 7.52%. Staff recommended approval since the increase in the water demand for both 4(b) approvals totaled less than the 10% limit for an exception to the hydrological study requirement.<sup>66</sup>*

An applicant might qualify for an exception to a hydrological test as discussed above and even though an applicant might agree to not increase a current “allotment” of daily groundwater use granted by MCCSD, they could be importing water currently and thus not using any of their current water allotment. Without demonstrating that the existing well produces water, it is difficult to know whether a user relies on imported water to serve current and/or proposed new development.

New state requirements enacted into California Water Code Section 106.4 and effective January 1, 2017 require in part that a city, including a charter city, or a county shall not issue a building permit for the construction of a new residential development where a source of water supply is water transported by a water hauler, bottled water, a water-vending machine, or a retail water facility.

Reports of the demand for imported water have varied over the years, and validation of actual imported water amounts cannot be established as water haulers claim this is proprietary information. Anecdotal information indicates that imported water has consistently been delivered to the Town from public water sources within City of Ft. Bragg and Elk Community Water District, and from private wells in Caspar. Water trucks, generally capable of transporting 3,000 gallons, have been reported in Town on the order of three days per week during the fall of 2015.

In late 2014, MCCSD conducted a voluntary customer survey requesting property owners to provide estimates of the quantity of imported water they had purchased in 2014. MCCSD received responses for 296 of the 404 developed parcels, of which 32 respondents reported purchasing one or more truckloads of water in 2014. Reported water imports for the time period totaled 526,450 gallons (1.62 AF/Y). While the volunteer survey results reveal some of the water importation demands within the Town, it is unknown whether the 108 property owners who did not respond to the survey had imported more, less, or no water compared to other survey respondents. Unless imported water volume data is provided by all water haulers, it is unknown what the total demand for trucked water is within the Town.

Public testimony received at the Coastal Commission’s October 5, 2016 preliminary hearing on the Mendocino Town Plan LCP amendment indicated concern that Elk Community Water

---

<sup>66</sup> MCCSD Minutes of March 28, 2016 Public Meeting. Accessed online at: <http://www.mccsd.com/>

District, located 15 miles south of the Town of Mendocino, could only provide two truckloads of water to the Town per day. Other public comments in the local record have indicated concern over the amount of imported water deliveries occurring within the Town. For example, the public comments published in the April 28, 2014 MCCSD meeting minutes reference an increased presence of water truck haulers providing water to businesses and residents during the drought.

In the December 13, 2014 memo<sup>67</sup> prepared in response to Commission staff's request for additional information, MCCSD described water imports within the Town as follows:

*Property owners with marginal wells have historically purchased water from adjacent municipal water systems and private well owners to supplement their water supply during the dry season. Importing water was discussed in the 1985 DWR Town of Mendocino Groundwater Study, and the practice continues today. The fact that water is imported by a small portion of property owners is not an indication that there is an inadequate water supply to support current uses [sic] the Town. In the Mendocino Headlands aquifer, usable amounts of groundwater are not evenly distributed vertically or laterally. As a result, there are wells in use in Mendocino with very low or inadequate yields. Property owners with marginal wells generally import truckloads of water in the dry season for the following reasons:*

- 1. A property owner may not be able to drill a new well, since they cannot meet sewer and property line setback requirements due to small lot size.*
- 2. There is very limited or no access to a drill site on the owners parcel.*
- 3. Cost of the replacement well and water system is more than they can afford.*
- 4. Dry deep well was drilled.*
- 5. Parcel was overdeveloped for the available water supply prior to District groundwater management authority.*
- 6. County Well Standards require a 50 foot annular seal for a commercial well, and much of the available groundwater west of Highway 1 in the commercial zone of Mendocino is less than 50 feet below grade.*

It is unknown what individual and cumulative effects to coastal resources may be occurring in other watersheds where imported is drawn to serve Town development, and without accurate reporting of water hauling amounts and sources, the total potential effects cannot be fully evaluated.

Section 3.3.1(d) of the proposed Town LCPA states in part that "Water importation (by truck from sources in Fort Bragg and Elk, pursuant to State licensing and when potable water is available) has to-date constituted the episodic/seasonal source of supplemental water for such users, at an estimated 11 AF/Y. (MCCSD, 2012.)" Other sources have also documented water hauling in the past from Ft. Bragg and Elk to serve out-of-area home owners.<sup>68</sup>

---

<sup>67</sup> December 12, 2014. Memo prepared by Mike Kelley, District Superintendent, Mendocino City Community Services District. Re: November 17, 2014 Coastal Commission Letter.

<sup>68</sup> July 26, 2007. "Council agrees to sell surplus water." Advocate-News.com. Accessed online June 17, 2014 at <http://www.advocate-news.com/article/ZZ/20070726/NEWS/707269685>

Regardless of whether a water hauler has a license from California Department of Public Health authorizing the hauling of potable water, the State Water Resources Control Board (“State Water Board”) Division of Appropriative Rights<sup>69</sup> holds authority over the issuance and terms of appropriative water right permits, and typically limits the appropriation of water to its “place of use” within the watershed of the water source, meaning that water cannot be hauled to other communities unless authorized by the Division of Appropriative Rights. For the Community of Elk, State Water Board staff<sup>70</sup> indicated that:

*Elk County has two appropriative water rights for municipal use from Greenwood Creek. If they are selling bulk water, there are two provisions in their permit/license that may be problematic. First, their place of use is limited to the community of Elk. Second, they have [permit requirements] that must be met downstream of their point of diversion.*

Regardless of the regulatory requirements of other agencies, the Coastal Commission has routinely interpreted “adequate water supply” to mean an on-site source, such as connection to a community water system, a well, or a spring<sup>71</sup>. In previous correspondence to Mendocino County Supervisors on the topic of “Water Supply Requirements in the Coastal Zone,” Commission staff have further advised in part the following:

*Commission staff is particularly concerned that a parcel that does not have a reliable on-site water source and instead uses trucked-in water is especially vulnerable to fire hazards (e.g., not having enough water on-site to fight a fire). There are numerous cases where trucked-in water can be seen to be less than reliable, such as during periods when roads are closed to landslides, labor strikes prevent delivery, or water companies cancel deliveries due to non-payment of bills. For these and other reasons, trucked-in water would not be considered “adequate,” and has not been viewed as consistent with the LCP policies cited above...[Emphasis added].*

*...Commission staff [also] points out that merely specifying the source of water is not equivalent to demonstrating an adequate water supply, consistent with the requirement of the certified LCP, even if that water supply consists of a water storage tank and trucked-in water. Simply specifying a location on a plan for a water tank sets no standard for how much water should be in the storage tank at any time. Similarly, merely identifying the location of a well on a site plan does not guarantee the volume or quality of water produced by the well is sufficient to serve a residence.*

Such health and safety concerns make demonstration of an adequate water supply before approval of development particularly important. Coastal Act Section 30250(a) requires that new development shall be located within or near existing developed areas able to accommodate it or in other areas with adequate public services and where it will not have significant adverse effects, whether individually or cumulatively, on coastal resources. Thus, the exception provision of Town Zoning Code Section 20.744.015 to the hydrological study that allows exceptions to the

<sup>69</sup> [http://www.waterboards.ca.gov/waterrights/board\\_info/water\\_rights\\_process.shtml](http://www.waterboards.ca.gov/waterrights/board_info/water_rights_process.shtml)

<sup>70</sup> November 6, 2015. Correspondence from Kathy Bare, State Water Resources Control Board Division of Water Rights, via electronic mail re: Elk water appropriative rights.

<sup>71</sup> March 17, 1997. Letter to Mendocino County Board of Supervisors re: “Water Supply Requirements in the Coastal Zone.” Prepared by Steven Scholl, District Director, CA Coastal Commission North Coast District.

hydrological study or other evidence of a functioning well that could possibly serve new development does not conform with the requirements of Policies S-1.1 and GM-8.1, as amended and modified by the Commission, that an adequate water supply be demonstrated at the time of approval of the CDP for the project, and must therefore be denied as submitted.

Additionally, certain definitions included in Town Zoning Code (TZC) Section 20.744.010 do not conform with the provisions of the Town LUP. For example, the definition of “Adequate Water Supply” in Section 20.744.010 as previously certified and proposed includes a clause allowing adequacy to be determined by the MCCSD. As proposed, the standard does not conform with Town LUP Policy GM-8.1 as modified, because determining whether a development is consistent with the LCP and Coastal Act policies regarding adequacy of services to accommodate development is the ultimate responsibility of the CDP reviewing authorities (County Coastal Permit Administrator, Planning Commission, Board, or Commission on appeal).

Other definitions in TZC Chapter 20.744 either conflict with other definitions in the Town Zoning Code, or carry forward from the certified LCP out of date standards that make implementation of the LUP proof of water policies problematic. Therefore, TZC Chapter 20.744 must be denied as submitted because these IP provisions are inadequate to carry out the LUP policies.

#### ***Changes to Zoning District and Zoning Designations at Specified Locations***

Certain specified changes to the Town Zoning Map do not conform with the Town Land Use Classification Map as modified and must therefore be denied. Specifically, applying the Public Facilities (PF) zoning district designation to Highway 1 and state right-of-ways does not conform with the land use classification map, which as modified would leave Highway 1 without a specified land use designation. Assigning any land use designation onto Highway 1 and the associated right-of-way could present a range of allowable uses onto the state highway that are incompatible with the use of the highway as a transportation corridor, and that could not be sited in an area able to accommodate it within the highway. Similarly, the proposed rezoning from OS to PF of the 9.78-acre “Grindle Park” parcel held in trust by Mendocino Fire Protection District (APN 119-090-07) could present a range of allowable uses that are incompatible with known environmentally sensitive habitat areas (ESHAs) on the site, as discussed further in **Section 1**.

#### **Split Zoning**

The LCPA proposes to amend Section 20.604.050 of the certified Town Zoning Code. This section addresses situations where uncertainties exist as to zoning district boundaries. The certified section applies rules for resolving such uncertainty. The proposed LCPA would amend Section 20.604.050(D) to add a provision stating that where a legal non-conforming structure lies in part within two zoning districts or where the setbacks applicable to each zoning district cannot be reasonably achieved on a bifurcated lot, the entire lot may be used and developed on the basis of either zoning district, subject to issuance of a conditional use permit.

Based on discussions with County staff, the amendment appears to have been included to address a particular property in Town that is split zoned. The parcel, which is currently for sale, is located at the intersection of Little Lake Road and Lansing Streets, and at the intersection of designated Multifamily Residential, Commercial, and Public Facilities Zoning Districts, at 10575 Lansing Street (APN 119-150-01). The owners of a property with a historical structure known as

the “Williams House” (Category I Landmark Structure) would like to convert use of their approximately 0.31-acre split-zoned parcel from Multi-Family Residential (MRM) and Commercial to entirely Commercial land use classification and zoning district. Previous efforts to rezone the parcel to Commercial have been denied by the County Board of Supervisors (e.g., Rezone Application No. R 20-91).

The proposed LCPA amendment to Town Zoning Code Section 20.604.050(D) would create internal inconsistencies with other provisions of the Town Zoning Code, and would not conform with and carry out policies within the Town LUP, including but not limited to the land use classifications contained within Section 5. The “optional zoning” provision would broaden the range of envisioned uses allowable under specified land use classifications in LUP Section 5 beyond those specified for any singular land use classification. Section 30108.5 of the Coastal Act defines “Land Use Plan,” in part, as the portion of the local coastal element of the general plan that is sufficiently detailed to indicate the kinds, location, and intensity of land uses. Rather than specify the kind, location, and intensity of land use that would be applicable to the property consistent with Coastal Act Section 30108.5, the proposed LCPA would allow a discretionary selection of uses permissible under two different land use and zoning designations. Uses allowed under one of the two land use designations that apply to a split-zoned site could be allowed in the portion of the site designated for the other land use, even if that land use designation would not allow those particular uses. The split-zoning provisions would therefore not conform with and carry out the land use designation that applies to at least a portion of the split zoned property. Therefore, the newly-added policies presented in Town Zoning Code Section 20.604.050(D) must be denied.

### ***Proposed Changes to Use Types within Zoning Districts***

The LCPA includes certain new uses that must be denied as submitted because they are either internally inconsistent, or need further refinement in order to conform with and adequately carry out the Town LUP. In particular, the Town Zoning Code now lists “groundwater monitoring,” “Protected Natural Area,” “Public Park,” “Public Highways, Roads, and Streets,” and “stormwater management” as allowable “civic use types” within various zoning districts, but some of these “uses” are not listed in Town Zoning Code Chapter 20.620 “Civic Use Types” (e.g., “groundwater monitoring,” “Public Highways, Roads, and Streets,” and “stormwater management”), while others (e.g., “Protected Natural Area”) are not listed in any of the other use types enumerated in TZC Chapter 20.612.

Furthermore, some listed “uses” are narrower than the categories of civic uses listed within the Civic Use Types (e.g., “Public Park” is a type of use enumerated in the “community recreation” civic use type). Moreover, even though “Student/Instructor Temporary Housing Facility” was eliminated from the list of visitor serving accommodation use types, the LCPA proposal to add “Student/Instructor Temporary Housing Facility” as a separate use in both the residential and civic use types creates an unnecessary confusion and duplication with the newly-added “art center” civic use type that already includes student-instructor housing as an enumerated use.

Stormwater management is not a use per se, and would customarily be addressed as part of best management practices associated with a coastal development permit. Similarly, “Public

Highways, Roads, and Streets” is not a “use” per se, but any development occurring on public highways, roads, and streets would be subject to coastal development permit requirements.

Therefore the internal conflicts and inconsistencies of certain newly added uses to the Town Zoning Code must be denied as submitted because the changes would conflict with and not adequately carry out the Town LUP and must be denied.

### 3. Findings for Approval of IP Amendment if Modified

#### *Adequacy of Services*

As modified by **Suggested Modification 26**, the definition of “Adequate Water Supply” in Section 20.744.010 conforms with and adequately carries out Town LUP policies GM-8.1 because the reference to MCCSD (rather than the CDP reviewing authority) as responsible for determining the adequacy of the water supply has been deleted. **Suggested Modification 26** also adds new definitions, and deletes or revises those definitions that are internally inconsistent with other Town LCP definitions, and/or are inadequate to carry out the Town LUP. The suggested modifications harmonize the definitions and clarify and update the Town LCP standards, thus allowing for adequate implementation of the LUP policies.

Town Zoning Code Section 20.744.015 requires a hydrological study for all development in the Town of Mendocino except as provided for in TZC Section 20.744.025. To ensure conformity with the proof of water requirements of the Town LUP as modified, including but not limited to Town LUP policies GM-8.1, 8.2, and Action S-2.1, Suggested Modification 26 modifies the proposed exception to the requirement for a hydrological study so that a hydrological study would not be required where: (1) the District has determined that the development will not have any foreseeable impact on hydrologically continuous wells; (2) it has been determined that the proposed development would have no more than a limited increase in total water demand as specifically provided in Section 20.744.025; and (3) it has been demonstrated based on monthly well metering data that the subject lot has an existing well that produces enough water to serve the existing development on the lot with or without conservation measures and without reliance on off-site water sources. The new provisions added to Section 20.744.025 by Suggested Modification 26 create a reasonable presumption that the additional water demand resulting from the minor increase could likely be accommodated by the well on-site.

The “limited increase” in water use is defined in TZC Section 20.744.025(A)(2) and is intended to match the threshold for exempting development from the hydrological studies used by MCCSD in their adopted Ordinance 07-1, as calculated from the water use standards included in Appendix C of Ordinance 07-1.

Suggested Modification 26 is not intended to replace or supersede other requirements beyond the coastal development permit requirements of the Coastal Act and LCP that are imposed by the MCCSD in association with its issuance of a Groundwater Extraction Permit (such as, but not limited to the MCCSD requirement that GEPs issued for limited increases in water use must maintain water use under the current rather than increased water allotment).

### Analysis of Alternatives

The unique constraints of the Town limit the range of options for demonstrating that an adequate on-site water supply exists to serve existing and proposed development without impacting adjacent property. Commission staff evaluated a range of options and discussed with County staff what feasible alternatives if any could ensure that the proposed Town Plan LCP Update demonstrates adequate public services exist in areas of proposed new development.

#### Water Test Limitations: 17-hr. vs. 72-hr. Pump Tests

Commission staff met with Mendocino County Department of Environmental Health (DEH) and with County Planning Staff on July 22, 2016 to better understand the range of potential opportunities and constraints for demonstrating evidence of adequate on-site water supply to serve proposed developments within the Town. Additionally, MCCSD provided information through County staff to explain the difference between an “abbreviated hydrological quantity test” (referenced in older definitions) as compared to a standard hydrological study. MCCSD Superintendent Mike Kelley responded on July 21, 2016 to explain that, under a previous ordinance for the MCCSD, a 17-hour test referred to as an “abbreviated hydrological quantity test” was considered. The test was defined as follows:

*Proof of water test: An abbreviated hydrological quantity test used to determine “adequate water supply” as defined by this ordinance. This test will be run for 17 consecutive hours or until drawdown stabilizes, whichever is greater. This is in addition to the time required to dewater the casing storage above the pump intake... Test to be conducted during Hydrological Testing Period.*

Mr. Kelley has indicated that “all that was required [of the Limited proof of Water Requirement] was an opinion from a hydrologist that the new development did not impact adjacent wells. That criteria ignored possible impacts to adjacent well[s] solely based on an opinion from a hydrologist without actual field testing to support that determination.”

As part of the June 29, 1992 MCCSD public meeting, the Board of Directors decided to delete the 17 hour proof of water test and require 72 hour testing within the Town of Mendocino, as recommended by Mendocino County DEH.

Mr. Kelley additionally states:

*This abbreviated test did not protect nearby wells, since adjacent wells were not monitored. In addition, no monitoring well was required for this type of test, so the aquifer characteristics could not be determined. These calculations are necessary to determine drawdown at any distance from the test well at any time in the future. You cannot do this type of analysis without a monitoring well. Drawdowns in adjacent wells during drought conditions could not be determined. The radius of influence of the test well could not be established.*

*The County allows this test in some areas, and on large parcels without nearby wells that could be impacted by the test well this is a non-issue. A 17-hour test can establish that the test well can be pumped for 17 hours without running out of water. Great! If the well reaches equilibrium and drawdown ceases at some point during the test, you get a good*

*idea of the sustained yield of the well. But when wells are completed in fractured rock or in a terrace deposit that may not be laterally extensive, there is no guarantee the well will pump at the 17-hour sustained yield beyond 17 hours.*

*In Mendocino, where low yield wells are closely spaced (420 wells in one square mile), a 72-hour constant rate test is required to determine if there is adequate groundwater for a project, and that the additional extraction will not adversely affect nearby wells or the aquifer. MCCSD hydrological study and aquifer testing criteria are designed for the site specific conditions in the District. In 1992, the abbreviated test was removed from the ordinance for those reasons.*

Dave Jensen, County DEH staff, reiterated many of the same points, emphasizing that the less costly 17-hour Proof of water test, while relevant on many parcels with a minimum size of approximately 2 acres in the balance of the County, would not be appropriate within the Town of Mendocino due to the close proximity of wells to each other. According to Mr. Jensen, the 1989 Groundwater Development Guidelines require that *all* development in the Town of Mendocino shall have a hydrological study. Without demonstrating that an on-site water ground water source is functioning and providing water, there is no assurance that an adequate on-site water supply would serve existing and new development without relying on importing water and risking the potential for significant adverse individual and/or cumulative effects to surrounding watersheds. Therefore, the County's proposed LUP must be denied as submitted and only approved if modified.

Coastal Commission staff met with County planning staff and the Ad Hoc committee on April 5, 2017 in Ukiah to discuss the Commission's preliminary suggested modifications and the County's March 3, 2017 comments. The County reiterated concerns regarding the costs of various studies. As described above, application of the policies as proposed by the County could result in approval of additional new development without proof of water (if the development meets MCCSD's hydrological study exception criteria), at sites without sufficient water to serve the development, inconsistent with Coastal Act Section 30250(a). Even if the current applicant agrees to use the same amount of water as they are currently "allotted," there is no assurance that an adequate on-site water supply would serve the development rather than relying on importing water- even to support current development. The Commission has considered a range of alternatives to requiring a hydrological test for all development, as discussed further below.

Alternative A: Approve Preliminary Suggested Modifications Requiring Hydrological Studies for All New Development.

Preliminary suggested modifications included in the September 23, 2016 Commission staff report prepared for the October 5, 2016 hearing recommended requiring a hydrological study (also referred to as a "72-hr. Pump Test") for all new development, consistent with Mendocino County Division of Environmental Health's "Land Division Requirements" and with the 1989 "Mendocino County Coastal Groundwater Development Guidelines" adopted by the Board of Supervisors on November 21, 1989. The County has expressed concerns because the Town's unique geology and close proximity of development necessitate a specific type of water availability test, a hydrological study (which includes a 72-hour pump test), which can be very costly.

Alternative B: Approve Suggested Modifications Requiring 17-hour Test for Limited New Development.

As described above, MCCSD exempts from hydrological study requirements those new developments determined to have a “limited increase” in water demand, as specified in Section 4(b) of the CSD’s Groundwater Extraction Permit Ordinance 07-1. MCCSD has determined through its groundwater monitoring at various locations within Town and extensive modeling of various scenarios, that these limited increases would not adversely affect the aquifer or the adjacent water users if the applicant agrees to not exceed their “current and present” water allotment. In these instances however, MCCSD calculates the hydrologic budget based upon the increased water demand, but none of these calculations can assure that an adequate on-site water source exists to serve proposed development. To additionally address whether an adequate on-site water supply exists to serve existing and proposed new development, a 17-hr. test could be required. However, 17-hr. tests can also be quite costly and would only reveal conditions at one moment in time, and do not assess the impact of well draw down effects on adjoining wells.

Alternative C: Approve Suggested Modifications Requiring 17-hour Test for Limited New Development at Minimum 4-year Intervals.

Although Alternative B would represent a substantial cost savings compared to requiring hydrological studies for all new development, repeated proof of water requirements could remain cost-intensive for those applicants who might frequently add new developments or modify or change the intensity of use of existing structures. Alternative C would impose the same requirements of Alternative B, but allow flexibility if evidence of adequate water supply had been demonstrated on-site within the past 4 years. This alternative would also be costly, but less frequently.

The Commission finds that **Suggested Modification 26** will provide more cost-effective measures for demonstrating an adequate on-site water source in certain limited circumstances. As suggested to be modified by **Suggested Modification 26**, an applicant must demonstrate through monthly well metering data, and only in those circumstances where only a “limited increase” in water demand (as specified in the LCP) would occur, evidence that an existing on-site well produces enough water to serve the existing development on the lot with or without conservation measures and without reliance on off-site water sources. This alternative creates a reasonable presumption that given the limited increase in water demand proposed, the well could likely accommodate the limited new development. Any development proposed in an amount that is greater than the “limited increase” thresholds would still require a hydrological study, similar to current requirements.

As modified, the provisions to TZC Section 20.744.025 requiring demonstration of an adequate water supply prior to approval of new development conform to and adequately carry out Town LUP Policies GM-8.1 and GM-8.2, and Action S-1.1.

Additionally, **Suggested Modification 25** adds permit application filing requirements to Section 20.720.025 relative to demonstrating conformance with the requirements of Chapter 20.744 to better carry out the LUP policies requiring demonstration of adequate water to serve development. The Commission finds that as modified by Suggested Modifications 25 and 26, the

Town IP policies pertaining to proof of water and associated definitions conform with and adequately carry out the Town LUP provisions, and recommends approval.

***Changes to Zoning District and Zoning Designations at Specified Locations***

**Highway 1 and Grindle Park**

**Suggested Modification 28** revises the Town Zoning Map to: (a) eliminate the Public Facilities zoning district designation from Highway 1 and state rights-of-way; and (b) retain the currently certified open space zoning district designation at Grindle Park. As modified, the Commission finds the Town Zoning Map as modified fully conforms with and adequately carries out the changes to the Town land use map, narratives, and policies affecting land use classifications and zoning districts.

**Williams House: Rezone to Resolve Constraints of Split Zoning**

The LUP amendment as modified, applies a Commercial land use designation over the entire Williams House site.

**Suggested Modifications 18 and 28** will: (a) delete the optional zoning provision of TZC Section 20.604.050(D) from the LCPA and (b) rezone the approximately 0.31-acre “Williams House” parcel located at 10575 Lansing Street (APN 119-150-01) from the split zoning designation of Rural Residential (RM) and Commercial (C) to an entirely Commercial zoning district designation.. As modified, the rezoning of the Williams House property to Commercial, and deletion of TZC Section 20.604.050(D) conforms with and adequately carries out the Town LUP land use designations for the site, as amended.

**Changes to Use Types within Zoning Districts**

**Suggested modification 21** removes “stormwater management” from the list of allowable uses in all zoning districts because stormwater management should be addressed as best management practices evaluated for consistency with all LCP policies and in association with the review of any coastal development permit application. Similarly, **Suggested modification 21** eliminates “Protected Natural Area,” “Public Park,” and “Public Highways, Roads, and Streets” from the list of allowable uses in all zoning districts. Because “Public Park” is a type of use enumerated in the “community recreation” civic use type, **Suggested modification 21** replaces references to “Public Park” with “community recreation,” thereby ensuring internal consistency throughout the IP. **Suggested modifications 20 and 21** also eliminate the “Student/Instructor Temporary Housing Facility” from both the list of use types presented in Chapters 20.612 and 20.616 to ensure internal consistency throughout the IP. **Suggested modification 21** also adds “private water facilities” to the list of “major impact services and utilities” and “groundwater monitoring well installation and management” within the list of “minor impact utilities” included in the civic use types. As modified, “groundwater monitoring” and related activities within the IP are included in a manner that ensures internal consistency with the organizational schema of the document.

The Commission finds that incorporation of suggested modifications 20 and 21 ensure the IP is internally consistent and thus adequately carries out the Town LUP provisions, including but not limited to Section 5.

Permitted, Principally-Permitted, & Conditionally-Permitted Uses

Revised Town Zoning Code Chapter 20.664 now proposes Residential, Civic, and Visitor Serving Accommodation Use Types as principally permitted uses within the Commercial District. Chapters 20.640 through 20.688 similarly list multiple principle permitted uses in other zoning districts. Based on discussions with County staff many of the conditional uses were recharacterized as principally permitted uses to reduce the burdens on property owners of having to go through a use permit process for many different uses. However, as discussed above, unless a single use is designated as the principally permitted use in a particular zoning district, all development approved by the County in that particular zoning district is appealable to the Commission, raising the possibility of appeal of more County approved projects to the Commission and resulting in more permit processing time and expense for certain applicants. Furthermore, the proposal to list multiple principal permitted uses in the Town IP does not conform with or adequately carry out the Town LUP policies as modified, including but not limited to Section 5 and must therefore be denied as submitted.

The Commission finds that the IP can be approved if modified by identifying one use as principally permitted in each zoning district. Therefore, to ensure conformity with the land use classifications contained within Section 5 of the Town LUP, **Suggested Modification 21** has been added to list a single principal permitted use for each zoning district. Other uses listed as “permitted” would not require a conditional use permit, although these uses would be appealable. And those uses listed as conditionally permitted would continue to require a use permit and be appealable to the Commission. As modified, the Town IP conforms with and adequately carries out the Town LUP policies pertaining to land use classifications.

***Conclusion***

The Commission finds that for the reasons stated above, the Town IP as modified conforms with and adequately carries out the Town LUP policies pertaining to planning and locating new development (including but not limited to Town LUP Sections 2, 4, and 5).

**4. Visual Resources**

**A. Applicable Policies**

Section 30251 of the Coastal Act states:

*The scenic and visual qualities of 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 such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

Section 30253 of the Coastal Act states, in applicable part, as follows:

*New development shall do all of the following:*

...

- (e) *Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.*

Section 30254 of the Coastal Act states:

*New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division; provided, however, that it is the intent of the Legislature that State Highway Route 1 in rural areas of the coastal zone remain a scenic two-lane road. ...[Emphasis added]*

## **B. Background**

The Town of Mendocino contains unique natural, cultural, and historical features. Because of its unique characteristics, the Town is a popular visitor destination point for recreational uses and has been designated in the certified LCP as a “special community,” as described in Coastal Act Section 30253(e). A fundamental community objective, and a key tenet of the policies contained within the previously-certified Town Plan, has been ensuring the maintenance of community character.

New narrative language has been included in the Town LUP<sup>72</sup> describing the Town’s background and current community issues. In particular, Town LUP Section 3.3.1(c) describes community planning issues related to Town design, character, and views of the Town from Highway 1 and from within the Town itself. Newly-added Town LUP Section 4.9 contains provisions requiring, among other things, protection of visual resources (e.g., Town Policy CNS-10, **Appendix A**), and highlights other Town standards valued by the community as part of Town character, such as but not limited to ambient noise standards and recognition of community temporary events.

The Design Guidelines Section 4.3 proposed in the Town LUP (**Appendix A**) retains many of the policies of the 1992 certified Town Plan, but includes revisions that would ensure development within the Town -- and particularly within the Historical Zones A and B -- would be designed to be compatible with the historical design character of the Town. Additional Town Plan policies require protection of views to and along the coast. Revised LCP policies also include provisions requiring consideration of open space areas, locations of structures and clustering of development to protect public views, and limiting the scale of development design to maintain the existing character of the Town (e.g., Town Plan Policy DG-2, **Appendix A**; Town Zoning Code Section 20.692.020, **Appendix C**). Additionally, the revised Town Plan includes a provision encouraging the County to certify the Town as a “Dark Sky Community” (Action DG-5.3, **Appendix A**).

---

<sup>72</sup> New narrative language includes, but is not limited to: Section 1.1 “Introduction,” Subsection 3.1 “Introduction,” Subsection 3.2 “Background,” Subsection 3.3 “Planning Process.”

The LCPA also proposes to rezone a 1.8-acre parcel located west of and adjacent to Highway 1 at 10705 Palette Drive and identified as Assessor’s Parcel (APN) 119-140-31 (Town Plan Policy PF-4 and Action PF-4.1). The Mendocino City Community Services District (MCCSD) acquired the property through eminent domain in 2013. As part of its conditional approval of CDP A-150-75 authorizing a hotel expansion on a portion of the property (“Hill House”), the Coastal Commission had previously required recordation an open space easement on the remaining undeveloped portion of the property, and disallowing any development other than landscaping within the open-space-restricted area to protect the introductory view of the Town for the traveler entering Mendocino on Highway 1 from the north. The eminent domain acquisition extinguished the recorded open space easement from the property. Although no official plans have been presented, MCCSD has expressed at public hearings various potential uses of the property that could benefit the community public services it provides. The County staff report prepared for the October 22, 2013 Board of Supervisors hearing indicates that MCCSD would like to develop the subject property “for use as storage, office space, and potentially water storage.”

**C. LUP Consistency Analysis**

*\* To Be Added as Part of an Addendum \**

**D. Applicable Land Use Plan Policies**

*\* To Be Added as Part of an Addendum \**

**E. IP Consistency Analysis**

*\* To Be Added as Part of an Addendum \**

**5. Archaeological Resources**

**A. Applicable Policies**

Section 30244 of the Coastal Act states that:

*Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.*

## B. Background

The Pomo people have a long history of occupying what is now described as Mendocino County prior to the arrival of Europeans in California. Numerous local accounts have described the coastal area within and surrounding the Town of Mendocino as part of the traditional territory of the Northern Pomo indigenous peoples. In particular, the coastal camp of Buldam was located at the mouth of Big River and belonged to the Mitom tribelet of Pomo. Pomo territory extends from the west shore of Clear Lake to the Pacific Ocean, encompassing coastal lands from Cleone south to the vicinity of the Navarro River. Archaeological reports prepared for previous nearby projects<sup>73</sup> have described the non-indigenous settlement of the surrounding area as initiated in the 1840s in connection with Mexican land grants, at which time some effort was made to harvest and mill coastal redwoods. It was around this time that the Mitom tribelet more permanently occupied Buldam. Additional Pomo encampments and gathering spots have been documented throughout the area now described as the Town of Mendocino.

The Town LCP Update amendment as proposed includes the addition of narratives describing tribal history and uses of the area underlying the Town and surrounding areas by indigenous people from coastal and inland areas. The new narratives contained in Section 3.2 (“Background”) also list seventeen federally recognized tribes with traditional shore fishing rights recognized along the Big River Estuary State Marine Conservation Areas, as part of the California Department of Fish and Wildlife Marine Protected Areas.

The Town LCPA also introduces a new definition for “archaeological site” into Section 2 (“Definitions”) of the Town LUP (**Appendix A**) and in Town Zoning Code Section 20.608.020(T) of the Town IP (**Appendix C**), and adds a revised version of the certified IP’s definition of “paleontological site” into both the Town LUP and IP. Additionally, new Town LUP Policy CNS-9 (**Appendix A**) adds provisions previously lacking in the certified LUP that would require mitigation measures for any development or work that may impact archaeological or paleontological resources, including, but not limited to, as identified by the County or the State Historic Preservation Officer.

As a result of these proposed changes, Commission staff initiated consultations with Tribal Historic Preservation Officers, as required of local governments under Government Code section 65352.3, and requested comments from California Native American tribes traditionally and culturally affiliated with the Town of Mendocino and surrounding environments<sup>74</sup>. Outreach occurred to those tribal contacts known from consultation efforts for previous nearby projects, and included the most recent tribal consultation list contacts received from the Native American

---

<sup>73</sup> Van Buren, Thad. December 6, 2013. Archaeological Survey of the Holmer Property in Mendocino County, California. Prepared for Ken and Debbie Holmer by Thad Van Buren, Registered Professional Archaeologist, Westport, CA.

Van Buren, Thad. March 26, 2005. Archaeological Survey of the Marr Property in Albion, Mendocino County, California. Prepared for Michael Marr by Thad Van Buren, Registered Professional Archaeologist, Westport, CA.

<sup>74</sup> Correspondence was sent March 28, 2016 to 11 federally-recognized and 3 non-federally-recognized (“NFR”) tribal contacts, including: Coyote Valley Band of Pomo Indians, Guidiville Band of Pomo Indians, Hopland Band of Pomo Indians, Laytonville Rancheria/Cahto Indian Tribe, Manchester-Point Arena Rancheria, Noyo River Indian Community (NFR), Pinoleville Pomo Nation, Potter Valley Tribe, Redwood Valley Rancheria of Pomo, Round Valley Reservation/Covelo Indian Community, She Bel Na Band of Pomo Indians (NFR), Sherwood Valley Rancheria of Pomo, Stewart Point Rancheria, and Yokayo Tribe (NFR).

Heritage Commission. Commission staff also met with a representative of the Sherwood Valley Band of Pomo Indians on December 13, 2016 to discuss the details of the Mendocino Town LCPA and to receive preliminary comments, as discussed further below.

### C. LUP Consistency Analysis

#### 1. Findings for Approval of Specified LUP Changes as Submitted

The Town LUPA introduces into LUP Section 2 (“Definitions”) a newly-added definition for “paleontological site” as follows: “**Paleontological Site:** A site containing fossil remains of life from geological periods generally predating the Holocene Epoch.” The new definition adapts from and slightly modifies the certified Town IP’s definition, which states: ““Paleontological Site” means a site containing fossil remains of life from geological periods predating mankind.”

Laws for the protection of paleontological resources in California include, but are not limited to: (1) The *Paleontological Resources Protection Act*; (2) *Public Resources Code* (PRC) Sections 5097 - 5097.7; (3) *California Code of Regulations* (CCR) Section 4307; and (4) *Penal Code* (PC) Section 623.

The federal Paleontological Resources Preservation Act (PRPA) defines a paleontological resource in part as the “fossilized remains, traces, or imprints of organisms, preserved in or on the earth’s crust, that are of paleontological interest and that provide information about the history of life on earth<sup>75</sup>”.

Section 30244 of the Coastal Act requires reasonable mitigation measures to protect archaeological and paleontological resources from development impacts, but neither term is defined in the Coastal Act. As submitted, the proposed definition would reasonably encompass the range of potential paleontological resources occurring within the Town. Therefore, the Commission finds that the proposed new definition of “paleontological site” added to the Town LUP would not conflict with the Coastal Act and may be approved as submitted.

#### 2. Findings for Denial of Specified LUP Changes

The Town LUPA introduces a new definition for “archaeological site” into Section 2 (“Definitions”) of the Town LUP (**Appendix A**) as follows:

*6. Archeological Site: The concentration of material remains that mark the location of past human activities that typically (a) contain material that is at least forty-five years old, and (b) consist of thirty or more artifacts of a single class within a fifty foot diameter area; or twenty or more artifacts of two or more classes within a fifty foot diameter area; or one or more archeological features in association with artifacts; or two or more temporally associated features without associated artifacts; or a single linear feature, such as a road or historic power line. Archeological sites include agricultural sites (agricultural fields and/or agriculture-related features such drainages, rock piles, and rock alignments); artifact scatters (sites composed entirely of artifacts and lacking associated features); habitation sites (including ephemeral campsites, hamlets, and*

<sup>75</sup> 16 United States Code [U.S.C.] 470aaa[1][c]

*villages); kill sites (comprised of artifacts and features indicating the successful kill of one or more animals, and often the subsequent butchering processes); resource procurement, processing, and disposal sites; and rock art (painted art (pictographs) or pecked art (petroglyphs) on rock faces and cave walls.*

The newly-proposed definition for “archeological site” must be denied as submitted because it conflicts with the Coastal Act by unnecessarily limiting the conditions that would signify a site as an archaeological resource. For example, as defined, a site might not be treated as an “archeological site” if it contained fewer than twenty artifacts within a fifty-foot diameter.

The Town LUPA also includes a new Policy CNS-9 (**Appendix A**) that adds provisions previously lacking in the certified LUP requiring mitigation measures for any development or work that may impact archaeological or paleontological resources, including, but not limited to, as identified by the County or the State Historic Preservation Officer. Town LUP Policy CNS-9 also requires the applicant to provide any required “investigation monitoring.” While LUP Policy CNS-9 introduces provisions necessary to conform with Coastal Act Section 30244, the provision does not specify what, if any, qualifications would be necessary to investigate and/or monitor archaeological or paleontological resources at a site. As written, LUP Policy CNS-9 instead indicates that “The project applicant shall provide any required investigation monitoring.” As written, the provision allowing an applicant to provide any required investigation and/or monitoring in association with archaeological or paleontological resources without requiring minimum professional qualifications in the field of archaeology or paleontology, as applicable, could undermine the integrity of those resources, in conflict with Section 30244.

Therefore, Commission finds that for the reasons described above, the new language presented in the Town LUPA definition for “archeological site” and newly-added LUP Policy CNS-9 does not conform with Coastal Act Section 30244 as proposed, and must be denied.

### 3. Findings for Approval of LUP Amendment if Modified

It is not known what basis the County’s consultants used for drafting the newly-proposed Town LUP definition of “archeological site.” Mendocino County’s inland municipal code Chapter 22.12 (“Archaeological Resources”) is not part of the certified Town LCP, but describes in part within Section 22.12.010 (“Purpose and Findings”), and within the context of Chapter 22.12 that:

*The Board of Supervisors of the County of Mendocino hereby finds and declares that there exists in the County of Mendocino areas of great importance for the study of the prehistoric and historic human past of the State of California. The resources are hereinafter referred to as “archaeological sites,” or “sites.”*

The County Municipal Code Chapter 22.12 additionally describes within Section 22.12.030 that “archaeological site” refers to any area containing significant or important archaeological resources within the meaning of CEQA.<sup>76</sup>

---

<sup>76</sup> Mendocino County Ordinance 3657, which established the above-described provisions of Municipal Code Chapter 22.12, was adopted in 1987 and therefore the references within CEQA (to Appendix K Section III) are

On December 1, 2016, Commission staff contacted representatives from both the State Historic Preservation Office (SHPO)<sup>77</sup> and the Northwest Information Center (NIC)- California Historical Resources Information System (CHRIS),<sup>78</sup> inquiring about whether a statewide definition for “archeological site” exists. According to CA State Parks SHPO Archaeology Unit Supervisor Anmarie Medin, no statewide definition of “archeological site” exists. According to NIC Coordinator Bryan Much, the Operations Manual for CHRIS includes a definition of “archaeological resources” adapted from the National Register<sup>79</sup> as follows:

*Archaeological Resources. As used in this Manual, term refers to historical properties recorded as comprising physical remains of past human activity and are included under the broader definition of historical resources. Pursuant to federal (National Historic Preservation Act, 16 U.S.C. 470w-3[a]) and state (California Government Code § 6254.10) law, information within the CHRIS pertaining to historical resources identified as of an archaeological nature is managed as confidential, with access to and release of said information determined as specified in Section III of this Manual.*

Laws for the protection of archaeological resources in California include, but are not limited to: (1) The *Archaeological Resource Protection Act (ARPA)*<sup>80</sup>; (2) *National Historic Preservation Act (NHPA)*; (3) *Public Resources Code (PRC)* Sections 5020 (“State Historical Resources and Commission”), and 5097 - 5097.7 (“Archeological Sites”); and (4) *Penal Code (PC)* Section 622.5.

The Advisory Council on Historic Preservation provides a guidance document<sup>81</sup> for completing the requirements of Section 106 of the NHPA<sup>82</sup>, and includes a definition of “archeological site that follows National Register Bulletin No. 36 “Guidelines for Evaluating and Registering Archaeological Properties<sup>83</sup>” as “a location that contains the physical evidence of past human behavior that allows for its interpretation.”

On March 28, 2016, Commission staff initiated consultations with Tribal Historic Preservation Officers, as required of local governments under Government Code section 65352.3, and requested comments from California Native American tribes traditionally and culturally affiliated with the Town of Mendocino and surrounding environments. As part of the preliminary draft suggested modifications prepared September 23, 2016 for the initial Commission hearing on the Mendocino Town LCP Update held October 5, 2016, Commission staff recommended deleting the definition of “archeological site” in its entirety. On September 27, 2016, the Tribal Historic Preservation Officer for Sherwood Valley Band of Pomo (SVBP) contacted

---

outdated. Although not specified within Chapter 22.12, archaeological resources are addressed in part in PRC §21083.2 et seq and 14 CCR §15064.5(c).

<sup>77</sup> December 1, 2016. Personal communication between Tamara Gedik, Coastal Program Analyst, CA Coastal Commission, and Anmarie Medin, Archaeology Unit Supervisor, State Historic Preservation Office, CA State Parks.

<sup>78</sup> December 1, 2016. Personal and electronic communication between Tamara Gedik, Coastal Program Analyst, CA Coastal Commission, and Bryan Much, Coordinator, Northwest Information Center, C.H.R.I.S., Sonoma State University.

<sup>79</sup> U.S. Department of the Interior, National Park Service Cultural Resources

<sup>80</sup> 16 U.S.C. 470aa-mm

<sup>81</sup> Available online at <http://www.achp.gov/docs/ACHP%20ARCHAEOLOGY%20GUIDANCE.pdf>

<sup>82</sup> 16 U.S.C. 470f

<sup>83</sup> Available online at <https://www.nps.gov/nr/publications/bulletins/pdfs/nrb36.pdf>

Commission staff expressing interest in further reviewing and understanding the context of proposed changes. The SVBP tribal representative also provided public testimony at the October 5, 2016 hearing and requested that SVBP be consulted regarding any revisions to the certified Town LCP and its applicability within the Town.

In addition to various telephone conversations<sup>84</sup>, Commission staff met in Ukiah on December 13, 2016 with Misty Meadlin, Tribal Historic Preservation Officer for SVBP, to provide an overview of proposed changes to the Town LCP and to receive additional feedback on the tribe's interests. As discussed further below, issues identified on behalf of SVBP included: (1) concern over the use and interpretation of terminology such as "cultural" throughout the document; (2) concern that definitions such as "archeological site" could be interpreted to exclude cultural resources; and (3) an expressed desire to memorialize outreach efforts to the Tribe during the coastal development permit review process.

Ms. Meadlin further expressed that terms such as "cultural" and "archaeology" do not explicitly reference the indigenous cultures and People's view of "cultural resource" as their way of life. Several policies within the Town LCPA reference the term "cultural"<sup>85</sup> in the context of "facilities," "sites," or "exhibits," but none of the provisions would necessarily limit the term's use to a particular interpretation. Coastal Act Section 30244 refers to "archaeological" and "paleontological" resources, but the Coastal Act does not include provisions addressing "cultural resources." Therefore, the Commission's authority to modify Town LUP provisions referring to "cultural" is limited.

Although written comments have not been provided, Commission staff understands from discussions with Ms. Meadlin that SVBP would be supportive of deleting the definition of "archeological site." Commission staff has also discussed the proposal with County staff and believes the County is amenable to this change. Therefore, **Suggested Modification 2** eliminates the definition of "archeological site" rather than introducing new terminology that might misconstrue or unintentionally limit the provisions of Section 30244.

As discussed above, new Town LUP Policy CNS-9 requires mitigation measures for any development or work that may impact archaeological or paleontological resources, including, but not limited to, as identified by the County or the State Historic Preservation Officer. However, LUP Policy CNS-9 must be denied as submitted because the provision would allow an applicant to provide any required investigation and/or monitoring in association with archaeological or paleontological resources. Allowing an applicant to investigate or monitor a site without possession of minimum professional qualifications in the field of archaeology or paleontology, as applicable, could undermine the integrity of those resources, in conflict with Section 30244.

Although state law does not identify any qualifications to practice archaeology in the state, the Archaeological Resources Committee (ARC) of the CA State Historical Resources Commission, in its authority granted pursuant to PRC Section 5020.5(a), is working to establish best practices standards for professional archaeological investigations in California. Comments received March

---

<sup>84</sup> Telephone conversations between Commission staff and SVBP THPO Misty Meadlin include, but are not limited to: September 27, 2016, October 19, 2016, and March 23, 2017.

<sup>85</sup> References to "cultural" within the Town LUP include, but are not limited to: LUP Policies GM-2(a), GM-23, PAR-2; Actions GM-22.2 and DG-2.3; and Sections 5.7 and 5.8.

23, 2017 via telephone with SVBP THPO Misty Meadlin recommended modifying LUP Policy CNS-9 to specify that the project applicant shall be responsible for retaining a qualified registered professional archaeologist to provide any required archaeological investigation monitoring. The proposed modification would be consistent with recommendations of the ARC and professional archaeological societies such as but not limited to the Society for California Archaeology. Therefore, **Suggested Modification 11** retains most of new LUP Policy CNS-9 but requires the applicant to retain a qualified professional archaeologist rather than conducting investigations or monitoring on their own.

As modified, LUP Policy CNS-9 would ensure archaeological and paleontological resources are properly identified and monitored to ensure effective mitigation against potential impacts, in conformance with Section 30244. Therefore, the Commission finds that as modified as described above, LUP Policy CNS-9 can be approved consistent with the Coastal Act.

### ***Conclusion***

The Town LUPA introduces into LUP Section 2 (“Definitions”) a newly-added definition for “paleontological site.” As submitted, the proposed definition would reasonably encompass the range of potential paleontological resources occurring within the Town. Therefore, the Commission finds that the proposed new definition of “paleontological site” added to the Town LUP would not conflict with the Coastal Act and may be approved as submitted.

However, the Commission finds that the newly-proposed definition for “archeological site” must be denied as submitted because it conflicts with the Coastal Act by unnecessarily limiting the conditions that would signify a site as an archaeological resource. For example, as defined, a site might not be treated as an “archeological site” if it contained fewer than twenty artifacts within a fifty-foot diameter.

Additionally, the Town LUPA includes a new Policy CNS-9 (**Appendix A**) that adds provisions previously lacking in the certified LUP requiring mitigation measures for any development or work that may impact archaeological or paleontological resources, including, but not limited to, as identified by the County or the State Historic Preservation Officer. As written, LUP Policy CNS-9 also indicates that “The project applicant shall provide any required investigation monitoring.” While LUP Policy CNS-9 introduces provisions necessary to conform with Coastal Act Section 30244, the provision allowing an applicant to provide any required investigation and/or monitoring in association with archaeological or paleontological resources without requiring minimum professional qualifications in the field of archaeology or paleontology, as applicable, could undermine the integrity of those resources, in conflict with Section 30244. Therefore, LUP Policy CNS-9 must be denied as submitted.

As suggested to be modified, **Suggested Modification 2** eliminates the definition of “archeological site” rather than introducing new terminology that might misconstrue or unintentionally limit the provisions of Section 30244. **Suggested Modification 11** retains most of new LUP Policy CNS-9 but requires the applicant to retain a qualified professional archaeologist rather than conducting investigations or monitoring on their own. Commission staff has discussed the proposed changes with County staff and with the Tribal Historic Preservation Officer of the Sherwood Valley Band of Pomo and believe all are supportive of the suggested modifications.

Therefore, the Commission finds that as modified, the Town LUP policies affecting the protection of archaeological and paleontological resources are consistent with Coastal Act Section 30244.

#### **D. Applicable Land Use Plan Policies**

**59. Paleontological Site:** A site containing fossil remains of life from geological periods generally predating the Holocene Epoch.

**CNS-9.** Where development may have a direct, indirect, or cumulative impact on archaeological or paleontological resources, including, but not limited to, as identified by the County or the State Historic Preservation Officer, mitigation measures, consistent with all applicable California and federal laws and regulations, shall be required as a condition of County approval of any application for development or for work that is subject to Mendocino Historical Review Board review. The project applicant shall be responsible for retaining a registered professional archaeologist to provide any required archaeological investigation monitoring.

The standard of review for the proposed Town IP Update is that it be consistent with and adequate to carry out the conditionally certified (i.e., as modified above) Town LUP Update. In this case, the County's proposed Town LUP Policy CNS-9 has been denied, and thus this evaluation is based on the as-modified Town LUP (see preceding section).

#### **E. IP Consistency Analysis**

The certified Town IP requires as part of Town Zoning Code Section 20.720.035 findings for all coastal development permits that the proposed development will not have any adverse impacts on any known archaeological or paleontological resource. Town Zoning Code Section 20.692.025 of the certified LCP additionally requires in part that all development within all Town zoning districts shall, as applicable, comply with the provisions found in Section 20.532.095 ("Required Findings for all Coastal Development Permits") of the certified Coastal Zoning Code provisions of the balance of the County (Title 20, Division II). The requirements of Coastal Zoning Code Section 20.532.095(A)(5) reiterate the requirements of TZC Section 20.720.035(A)(5). The Commission finds TZC Section 20.720.035 and Coastal Zoning Code Section 20.532.095 (as incorporated by reference in TZC Section 20.692.025) conform with Town LUP Policy CNS-9, and therefore recommends approval as submitted. Additionally, TZC Section 20.608.035(A) defines "paleontological site" consistent with the definition of "paleontological site" included in Town LUP Section 2 and can therefore be approved as submitted.

However, as submitted, the Town IP does not adequately carry out all requirements of LUP Policy CNS-9 and must therefore be denied because reasonable mitigation measures that would implement LUP Policy CNS-9 are lacking. For example, none of the Town LCP policies require outreach or referral to Native American tribal groups to solicit input on whether a proposed development subject to coastal development permit requirements would have the potential to adversely impact archaeological or paleontological resources. Although the California Environmental Quality Act (CEQA) contains recently-added provisions requiring consultation

with California Native American tribes and consideration of tribal cultural resources<sup>86</sup>, none of these provisions are included as part of the Town LCP.

Additionally, the newly-proposed definition for “archeological site” included in Town Zoning Code Section 20.608.020(T) must be denied as submitted because it would unnecessarily limit the conditions that would signify a site as an archaeological resource, in conflict with LUP Policy CNS-9.

Comments received from the Tribal Historic Preservation Officer of the Sherwood Valley Band of Pomo have requested that the Town LCP include in its policies requirements to send all coastal development permit project referrals to CA Native American Tribes during the CDP review process. **Suggested Modification 25** adds provisions to TZC Section 20.720.030 (“Processing of Applications”) explicitly requiring that during the County’s “Application Check” (wherein they review an application for completeness before officially filing the application as complete), “the Department shall also refer copies of the application to the designated contact or tribal representative of traditionally and culturally affiliated California Native American tribes that requested, in writing, to be notified of proposed projects in the geographic area with which the tribe is traditionally and culturally affiliated.” As modified, the language would also specify the required contents of the notification, and provide 30 days for the tribe to request a consultation. Commission staff has discussed the proposed changes with the Tribal Historic Preservation Officer of the Sherwood Valley Band of Pomo and with Mendocino County Planning staff who have expressed support of the suggested modification. Additionally, **Suggested Modification 19** deletes the newly-added definition of “archeological site” from the definitions. As suggested to be modified, the Town IP conforms with, and adequately carries out the Town LUP, including but not limited to definitions contained in Section 2, and Town LUP Policy CNS-9.

Therefore, the Commission finds that the Town IP conforms with and adequately carries out the Town LUP archaeological resource protection policies if approved as modified.

### ***Conclusion***

Town IP provisions including but not limited to Town Zoning Code Section 20.720.035 require findings for all coastal development permits that the proposed development will not have any adverse impacts on any known archaeological or paleontological resource, in conformity with Town LUP Policy CNS-9. Additionally, TZC Section 20.608.035(A) defines “paleontological site” consistent with the definition of “paleontological site” included in Town LUP Section 2 and can therefore the Commission finds these policies can be approved as submitted.

However, as submitted, the Town IP does not adequately carry out all requirements of LUP Policy CNS-9 and must therefore be denied because reasonable mitigation measures that would implement LUP Policy CNS-9 are lacking. Additionally, the newly-proposed definition for “archeological site” included in Town Zoning Code Section 20.608.020(T) must be denied as submitted because it would unnecessarily limit the conditions that would signify a site as an archaeological resource, in conflict with LUP Policy CNS-9.

---

<sup>86</sup> PRC §§21073, 21074, 21080.3.1, 21080.3.2, 21082.3, 21083.9, 21084.2, and 5097.94

**Suggested Modification 25** adds provisions to TZC Section 20.720.030 (“Processing of Applications”) requiring notification of traditionally and culturally affiliated California Native American tribes within 14 days of deeming coastal development permit applications complete, and providing 30 days for the tribe to request a consultation. Suggested modification 25 provides a reasonable mitigation measure for avoiding potential impacts to archaeological and paleontological sites by inviting interested tribes to notify the County of potential adverse effects of a project proposal prior to local action on a coastal development permit. Additionally, **Suggested Modification 19** deletes the newly-added definition of “archeological site” from the definitions. As suggested to be modified, the Town IP conforms with, and adequately carries out the Town LUP, including but not limited to definitions contained in Section 2, and Town LUP Policy CNS-9. Commission staff has discussed the proposed changes with the Tribal Historic Preservation Officer of the Sherwood Valley Band of Pomo and with Mendocino County Planning staff who have expressed support of the suggested modifications.

Therefore, the Commission finds that the Town IP as modified is consistent with and adequate to carry out the LUPA as modified regarding the protection of archaeological resources.

## **6. Water Quality**

### **A. Applicable Policies**

Section 30230 of the Coastal Act states that:

*Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Section 30231 of the Coastal Act states that:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Section 30233(a) of the Coastal Act states, in part:

*The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*

- (1) *New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) *Maintaining existing, or restoring previously dredged depths on existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) *In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (4) *Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (5) *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (6) *Restoration purposes.*
- (7) *Nature study, aquaculture, or similar resource dependent activities.*

Coastal Action Section 30240 requires that:

*(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*

*(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

## **B. Background**

The Coastal Act requires the protection and enhancement of marine and coastal water resources, including water quality. The water quality protection policies of the certified Town LCP were limited to Town LUP Policy 4.13-22 (which requires in part that development shall not deplete the ground water table of contiguous or surrounding uses), and through incorporating into the Town IP by reference the natural resource and water quality protection requirements of the previously certified Zoning Code for the balance of the County (such as but not limited to Coastal Zoning Code Chapters 20.492 and 20.496). As part of the Town LCP Update process, the County identified the need for more specific “Town Sustainability” policies to address water quality and other resource protection measures.

Commission staff coordinated extensively with County staff during the Town Plan Update process to assist with development of new policies to protect water quality and control runoff. Following early guidance provided in 2013 and 2014, Commission staff Vanessa Metz, Ph.D. from the Water Quality Unit participated in meetings with County staff and their consultants on March 26, 2015 and May 22, 2015 to discuss the County’s recently-proposed changes to water quality provisions that would incorporate measures associated with the countywide Stormwater Management Program. On June 2, 2015, Commission staff provided additional comments and suggested revisions to the Town Plan LUP and IP. The Commission’s Water Quality Unit staff reviewed the new additions and revisions to the water quality policies of the December 8, 2015

Board-adopted version of the LCPA, and identified a number of new policies, definitions, and reorganization that substantially deviate from documents that were previously reviewed.

The LCPA includes a new Town Plan Sustainability Section 4.6 (**Appendix A**) and a new Town Zoning Code (TZC) Chapter 20.717 (**Appendix C**) that contain new water conservation, stormwater management, and energy conservation measures. The LCPA also introduces an entirely new Town Plan Conservation Section 4.9 (**Appendix A**) pertaining to water quality, protection of environmentally sensitive habitat areas, and other resource protection policies and measures. Newly-added definitions presented in Section 2 govern the interpretation and implementation of stormwater management and other water quality terminology used throughout the Mendocino Town Plan.

The LCPA also includes revised provisions that would lessen maximum lot coverage and historical design review requirements associated with water storage tanks (e.g., LUP Actions S-5.1 and S-5.2, and TZC Sections 20.608 and 20.760), and that would encourage – and in some cases, require use of rain water harvesting (LUP Policies S-2, S-5, and S-6), greywater and reclaimed water systems (e.g., Actions S-1.4 and S-6.4), and landscape-based stormwater management techniques (e.g., LUP Policies S-2, S-3, S-4, and S-6, and Actions S-3.1, S-2.1, S-4.1, S-6.1). Other provisions would encourage development to minimize impervious surfaces to allow stormwater infiltration to reduce runoff and recharge groundwater (e.g., LUP Policy S-4 and Action S-4.1). The Town Zoning Code policies are also intended to be used together with the Grading, Erosion, and Runoff provisions found in the Coastal Zoning Code provisions of the balance of the County (Title 20, Division II, Chapter 20.492), as provided in TZC Section 20.717.005(B), among other policies.

### **C. LUP Consistency Analysis**

#### **1. Findings for Approval of Specified LUP Changes as Submitted**

The County has included within the newly-added Sustainability Policies (LUP Section 4.6) certain provisions requiring compliance with all applicable regulations of both the State of California and specified local governments. For example, LUP Action S-1.1<sup>87</sup> requires that all new and existing development shall comply with all applicable water conservation regulations and standards of the Mendocino City Community Services District (MCCSD), and shall incorporate all water conservation measures required by the State of California. Action Item S-1.2 (renumbered to Action S-2.2) requires that all new and existing development shall comply with Mendocino County Department of Environmental Health (DEH) standards pertaining to potable water well production requirements. Action S-1.3 (renumbered to Action S-2.3) requires the design, installation, operation, and maintenance of greywater systems in compliance with DEH and other applicable standards.

For the purposes of reviewing and processing coastal development permits, the Town of Mendocino's certified LCP serves as the standard of review for all proposed development within the Town of Mendocino (upon final effective certification by the Coastal Commission of the Town LCP, as amended). New Town LUP policies as suggested to be modified, as discussed

---

<sup>87</sup> As submitted, the content of Actions S-1.1, S-1.2, and S-1.3 would not be modified. However modifications include renumbering such that new numbers would be S-2.1, S-2.2, and S-2.3, respectively.

below, specify those water conservation, water reclamation, runoff control, and water quality provisions (among others) required as part of the CDP application process and consistent with Coastal Act requirements, including but not limited to the protection of water quality as required in part by Section 30231.

The kinds, intensities, and locations of the use of land and water may also be subject to other regulatory requirements, such as but not limited to those specified in the newly-added introductory narrative presented in Town LUP Section 1.1. Town LUP Actions S-1.1, S-1.2, and S-1.3 specifically highlight that new development within the Town must additionally comply with all applicable state and local regulations, including but not limited to requirements of DEH and MCCSD.

Therefore, the Commission finds Town LUP Actions S-1.1, S-1.2, and S-1.3 are consistent with the Coastal Act and can be approved as submitted.

## 2. Findings for Denial of Specified LUP Changes

As indicated above, new policies and actions within the Town LUPA encourage use of rain water harvesting (LUP Policies S-2, S-5, and S-6), greywater and reclaimed water systems (e.g., Policy CNS-1, and Actions S-1.4 and S-6.4), and landscape-based stormwater management techniques (e.g., LUP Policies CNS-1, S-2, S-3, S-4, and S-6, and Actions S-3.1, S-2.1, S-4.1, S-6.1). Other provisions would encourage development to minimize impervious surfaces to allow stormwater infiltration to reduce runoff and recharge groundwater (e.g., LUP Policy S-4 and Action S-4.1). Among other newly added sustainability policies, the Town LUPA also includes new provisions requiring site design and landscaping that ensures the preservation, enhancement, and planting of native vegetation (Actions S-1.4, S-3, S-6.2, and 6.3). Additionally, newly-added definitions presented in Section 2 govern the interpretation and implementation of stormwater management and other water quality terminology used throughout the Mendocino Town Plan.

Many of the newly-added Town LUP definitions and policies will improve the Town LCP by codifying water resource conservation and protection measures required as part of any development requiring a coastal development permit. However, the Town LUP as submitted lacks certain policies needed to ensure conformity with all Coastal Act requirements regarding the protection of water quality and coastal waters, and must therefore be denied. For example, it appears that none of the Town LUP policies specifically require that development shall protect and, where feasible, restore the quality of coastal waters, and is therefore inconsistent with Sections 30230 and 30231. The proposed Town LUP policies also create some internal confusion and inconsistencies between: (a) terminology used within policies<sup>88</sup>, and (b) redundant topics covered in multiple policies<sup>89</sup>.

Additionally, some LUP Actions<sup>90</sup> would encourage the County to consider or support specified measures, but do not represent actual “standards” that must be evaluated in considering whether

---

<sup>88</sup> E.g., Town LUP Policy S-1 refers to “conserved storm water,” whereas LUP Actions S-1.4 and S-6.3(b) refer to “retained storm water,” and Policy S-2 refers to “conserved retained storm water.”

<sup>89</sup> E.g., Actions S-1.4, S-6.2, and S-6.3 contain overlapping requirements regarding use of retained stormwater, efficient irrigation/watering techniques, and drought-tolerant native vegetation.

<sup>90</sup> E.g., Actions S-1.5 and S-1.6.

a proposed development is in conformity with the certified local coastal program for any action on a coastal development permit. As proposed, these LUP provisions conflict with Coastal Act policies and administrative regulations (Division 5.5, 14 CCR) requiring the protection of water quality and coastal water and as submitted must be denied.

### 3. Findings for Approval of LUP Amendment if Modified

**Suggested modifications 2, 3, 8, and 11** attempt to retain as much of the County’s proposed LCPA language as possible, while correcting errors and omissions that would conflict with the Coastal Act provisions requiring protection and restoration of coastal waters, including but not limited to Sections 30230, 30231, 30233, and 30240.

Suggested modifications include, but are not limited to: (a) removing development standards from definitions; (b) adding definitions for water quality terms used within the LUPA; (c) modifying definitions and policy terminology for consistency with Town LUPA water quality provisions<sup>91, 92</sup>; (d) adding fundamental provisions requiring protection and restoration of coastal waters and ESHA in conformity with Coastal Act Sections 30230, 30231, 30233, and 30240<sup>93</sup>; and (e) eliminating or clarifying redundant or confusing language<sup>94</sup>.

Comments received March 3, 2017 from Mendocino County staff on behalf of the Board of Supervisors (BOS) Ad-Hoc committee expressed opposition to suggested modifications that would “wholesale change adopted policies to advisory goals and measures.”

Coastal Commission staff met with County planning staff and the Ad Hoc committee on April 5, 2017 in Ukiah to discuss the County’s March 3, 2017 comments. During the meeting, Commission staff explained the reasons for suggested modifications that would change the labeling of certain Town LUP “policies” or “actions” to “advisory goals” or measures. As suggested to be modified, the content of those specified provisions would not change. Instead, suggested modifications would clarify all of the following: policies and actions (a) directly govern the issuance of coastal development permits through the setting of development limitations, requirements, or prohibitions; and (b) provide the basis for reviewing the consistency of a land use plan or zoning amendment with the Coastal Act. In contrast, advisory goals or measures do not govern the issuance of coastal development permits or provide the basis for reviewing a land use plan or zoning amendment for Coastal Act consistency. Advisory goals or measures state County-adopted positions on various issues, encourage particular actions by other entities, make pledges of support for certain outcomes of endeavors, or commit the County to pursuing future measures or practices.

---

<sup>91</sup> E.g., Town LUP Definition 45, “Low Impact Development” was modified to remove development standards and to ensure consistency with policies such as but not limited to Action S-3.1 (which as modified has been elevated to stand-alone Policy S-7).

<sup>92</sup> E.g., Suggested Modification 2 includes adding a definition for “hydromodification,” because the term is used in newly-added Growth Management Policy GM-32.

<sup>93</sup> E.g., newly-added/numbered Town Policies S-1, and S-11 through S-14 in Appendix A.

<sup>94</sup> E.g., modifications to LUP Policies S-1 (renumbered to S-2) and S-2 (renumbered to S-3), and Action S-1.4 (renumbered to Action S-2.5) are modified to consistently refer to “retained” rather than “conserved” stormwater, and actions that were in inappropriate locations have been reorganized to relocate them under the relevant policy. Also as modified, Action S-6.3 is deleted because it is mostly redundant with Action S-2.5 (non-redundant portions were moved into Action S-2.5).

Following Commission staff's explanation with the County's Ad Hoc committee and planning staff on April 5 that explained of these limitations, Commission staff believes the County is amenable to revising the suggested modification to relabel specified water quality policies to advisory goals or measures.

Therefore, the Commission finds the Town LUPA is consistent with the Coastal Act if modified as described above, including but not limited to: (a) correcting errors and omissions that would conflict with the Coastal Act provisions requiring protection and restoration of coastal waters, including but not limited to Sections 30230, 30231, 30233, and 30240, (b) resolving internal inconsistencies and conflicting language, and (c) labeling specified "policies" and "actions" as "advisory goals" or measures.

### ***Conclusion***

The Commission finds that the newly-added water quality definitions and new Town Sustainability provisions will add necessary improvements to water quality requirements that are not currently well-articulated in the certified Town LUP. Town LUP Actions S-1.1, S-1.2, and S-1.3 can be approved as submitted because these provisions specifically highlight that in addition to coastal development permit requirements, new development within the Town must comply with all applicable state and local regulations, including but not limited to requirements of DEH and MCCSD.

The Town LUP as proposed to be amended also contains newly-added water quality narratives, definitions, and provisions that are not Coastal Act consistent because they are either internally inconsistent or need further refinement in order to achieve consistency with the requirements of the Coastal Act. Additionally, the Town LUP as submitted lacks certain policies<sup>95</sup> needed to ensure conformity with all Coastal Act requirements regarding the protection of water quality and coastal waters, and must therefore be denied.

As suggested to be modified, **Suggested Modification 2** will: (a) remove development standards from definitions; (b) add definitions for water quality terms used within the LUPA; and (c) clarify definitions in Section 2 to ensure consistency with terminology used in LUP provisions. **Suggested modification 3** will modify narrative language, such as but not limited to Section 1.6, to direct the interpretation of (a) policies and actions as governing the issuance of coastal development permits, and (b) advisory goals or measures as County-adopted positions that pledge support for certain actions or commit the County to pursuing future practices but that do not govern the issuance of coastal development permits. **Suggested modifications 8 and 9** will add fundamental provisions requiring protection and restoration of coastal waters in conformity with Coastal Act Sections 30230 and 30231, eliminate or clarify redundant or confusing language, and create consistent use of terminology between the Town Sustainability section and with other Town LUPA policies.

---

<sup>95</sup> E.g., new policies were added that address: minimizing post-development changes in the runoff flow regime; minimizing the transport of pollutants into coastal waters; using a Low Impact Development approach to stormwater management; managing and maintaining Best Management Practices for the life of the development; and additional requirements for Developments of Water Quality Concern.

The Commission finds that as modified, the Town LUP's policies water quality narratives, definitions, and policies as described above are consistent with the Coastal Act, including but not limited to Sections 30230, 30231, 30233, 30240, and 30603.

#### **D. Applicable Land Use Plan Policies**

**S-1:** Development shall protect and, where feasible, restore the quality of coastal waters consistent with Coastal Act policies, in particular Sections 30230 and 30231. Coastal waters include the ocean, rivers, streams, wetlands, estuaries, lakes, and groundwater.

§ 30230. Marine resources shall be maintained, enhanced, and, where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

§ 30231. The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

**Action S-1.1:** A post-development stormwater management plan shall be submitted to the County by applicants for all development or redevelopment projects that (a) have the potential for adverse impacts to coastal waters from nonpoint source pollution and/or changes in runoff flows resulting from the development, and (b) require a Coastal Development Permit. The plan shall describe the stormwater management strategies for site design, pollutant source control, and other measures the development will implement to protect coastal waters after the development is completed. The level of detail provided to address the plan's requirements shall be commensurate with the type and scale of the project, and the potential for adverse water quality or hydrologic impacts to coastal waters. If the development entails activities or changes in land use other than construction, including subdivision or re-division of land, the scope of the plan may be reduced accordingly.

**Action S-1.2:** A construction-phase pollution prevention/erosion control plans shall be submitted by development or redevelopment project applicants to the County for all development that (a) proposes construction, that has the potential for adverse impacts to coastal waters from nonpoint source pollution and/or changes in runoff flows during construction, and (b) requires a Coastal Development Permit. The plan shall describe the temporary BMPs the development will implement to minimize erosion and sedimentation during construction, and to minimize pollution of runoff and coastal waters by construction chemicals and materials. The level of detail provided to address the plan's requirements shall be commensurate with the type and scale of the development, and the potential for adverse water quality impacts to coastal waters. For the purposes of Section 4.6., Sustainability Policies, construction includes clearing, grading, or other activities that involve ground

disturbance; building, reconstructing, or demolishing a structure; and creation or replacement of impervious surfaces.

S-2 The water supply in the Town of Mendocino shall be managed and augmented in a sustainable manner to (a) support the special community, (b) optimize available water supplies for all human and natural system uses through concerted groundwater replenishment, and (c) strictly avoid the waste of potable water in uses that do not require it, by utilization of reclaimed water or retained stormwater runoff, where feasible.

**Action S-2.1:** All coastal development permit applications shall include evidence demonstrating (a) that an adequate on-site water supply exists that will accommodate the proposed development throughout the year, including the dry season; and (b) that the proposed extraction of groundwater to serve the development will neither (1) deplete the ground water table of contiguous or surrounding uses, nor (2) have a significant direct or cumulative adverse effect on coastal resources. Demonstration of an adequate on-site water supply shall be made in accordance with the provisions of Mendocino Town Zoning Code Chapter 20.744. Adequate on-site water shall be demonstrated prior to approval of the coastal development permit.

**Action S-2.2:** All new and existing development shall, in addition, (a) comply with all applicable adopted Mendocino City Community Services District water conservation regulations and standards, and (b) incorporate all water conservation measures required by the State of California.

**Action S-2.3:** All new and existing development shall also comply with all applicable regulations and standards of the County Environmental Health Department for potable water production by wells.

**Action S-2.4:** Gray water systems shall be designed, installed, operated, and maintained in full compliance with all applicable health and safety regulations of the County Department of Environmental Health, and all other applicable standards.

**Action S-2.5:** Permitted horticultural landscaping shall be drought-tolerant, and, when irrigation is required, shall minimize the use of potable water, as feasible, and use, to the maximum extent feasible, (a) efficient watering techniques (such as drip irrigation), (b) retained stormwater, and (c) reclaimed water that is available from the Mendocino City Community Services District.

**S-3 (a)** Permitted development shall, to the maximum extent appropriate and feasible, maintain or enhance on-site infiltration of stormwater, to reduce runoff, remove pollutants, and recharge groundwater.

(b) Retention and use of intercepted, retained, and filtered, or otherwise treated stormwater, including to recharge the aquifer, shall be implemented (1) on the site of the development, or (2) in combination with other parcel owners, non-profit organizations, or public agencies, if an on-site location is infeasible or if an approved stormwater management system that serves more than one lot (parcel) is available.

**S-4:** Permitted development shall minimize water quality impacts during construction by minimizing erosion and non-stormwater runoff, minimizing the discharge of sediment and other pollutants resulting from construction activities, and minimizing land disturbance and soil compaction.

**S-5** Permitted development shall address runoff management early in site design planning and alternatives analysis, integrating existing site characteristics that affect runoff (such as topography, drainage patterns, vegetation, soil conditions, natural hydrologic features, and infiltration conditions) in the design of strategies that minimize post-development changes in the runoff flow regime, control pollutant sources, and, where necessary, remove pollutants.

**Action S-5.1:** Permitted development shall (a) be sited and designed to preserve or enhance native and non-invasive vegetation to achieve water quality benefits such as transpiration, interception of rainfall, pollutant uptake, shading of waterways to maintain water temperature, and erosion control, (b) utilize drought-tolerant native vegetation in all landscaping, and (c) effectively remove any invasive non-native vegetation from the lot (parcel).

**Action S-5.2:** Permitted development shall be sited and designed to avoid disturbance of, and where feasible restore, natural drainage features and associated vegetation, such as stream corridors, drainage swales, topographical depressions, groundwater recharge areas, floodplains, and wetlands.

**S-6** Permitted development shall be sited and designed to minimize post-development changes in the stormwater runoff flow regime (i.e., volume, flow rate, timing, and duration) discharged from the site.

**Action S-6.1:** Permitted development shall implement either (a) site design measures to reduce stormwater runoff from the lot (parcel) and increase groundwater recharge in comparison to pre-development stormwater runoff conditions, to the extent feasible, or (b) participate in a stormwater runoff control program that serves more than one lot (parcel).

**S-7** A Low Impact Development (LID) approach to stormwater management shall be used in all new development and redevelopment, where appropriate and feasible.

**Action S-7.1:** Landscape-based stormwater management and water conservation techniques, including, but not limited to, rain gardens, ~~(bio-retention basins)~~, dry wells, or vegetative swales, shall be utilized, where appropriate and feasible, to infiltrate runoff and facilitate aquifer recharge.

**S-8** Impervious surfaces shall be minimized in new development and redevelopment, to the extent feasible, including, but not limited to, through (1) minimizing the installation of new impervious surfaces, especially impervious areas directly connected to the storm drain system, and, (2) where feasible, increasing the area of pervious or semi-pervious surfaces in redevelopment.

**Action S-8.1:** Installations of new pavement shall, where appropriate and feasible, use a permeable pavement system (e.g., interlocking concrete pavers, porous asphalt, permeable

concrete, or reinforced grass or gravel) or natural pervious materials, consistent with requirements of the Americans with Disabilities Act, as amended. Permeable pavements shall be designed so that runoff infiltrates into a subsurface recharge bed and the underlying soil, if feasible, to reduce runoff, filter out pollutants, and enhance groundwater recharge.

**S-9** Rain water harvesting for later on-site non-potable use, as provided in Mendocino Town Zoning Code Chapter 20.717, shall be required in permitted development with more than five hundred (500) square feet of total impervious surface, for both storm-water management and water conservation.

**Action S-9.1:** New water storage tanks shall be: (a) located behind or within existing buildings, wherever feasible, or underground, (b) clad in unpainted wooden materials, and (c) exempt from Mendocino Historical Review Board review pursuant to the Mendocino Historical District Preservation Ordinance. A coastal development permit shall be obtained for any development not exempt pursuant to Section 30610 of the Coastal Act.

**Action S-9.2:** Water storage tanks shall not count against lot coverage; provided that where lot coverage on a lot (parcel) exceeds 50%, new above-ground water storage tanks in the Mendocino Historic Preservation District shall require Mendocino Historical Review Board review and approval in addition to any required coastal development permit.

**S-10** Permitted development shall be sited, designed, and managed to minimize the transport of pollutants in runoff from the development into coastal waters.

**Action S-10.1:** Permitted development shall use Source Control BMPs, which can be structural features or operational actions, to minimize the transport of pollutants in runoff from the development.

**S-11** In areas in or adjacent to an Environmentally Sensitive Habitat Area (ESHA), permitted development shall be sited and designed to protect the ESHA from any significant disruption of habitat values resulting from the discharge of stormwater or dry weather runoff flows.

**S-12** Permitted development shall avoid construction of new stormwater outfalls, and direct stormwater to existing facilities with appropriate treatment, where feasible. Where new stormwater outfalls cannot be avoided, outfalls shall be sited and designed to minimize adverse impacts to coastal resources from outfall discharges.

**S-13** Permitted development shall implement appropriate protocols to manage BMPs (including installation and removal, ongoing operation, inspection, maintenance, and staff training), to protect coastal water resources for the life of the development.

**S-14** Developments of Water Quality Concern are certain categories of development, identified in the Zoning Code, that have a greater potential for adverse impacts to water quality and hydrology due to the extent of impervious surface area, type of land use, and/or proximity to coastal waters. Applicants for a Coastal Development Permit for a Development of Water Quality Concern shall be required to comply with the following additional requirements:

- a) Conduct a polluted runoff and hydrologic site characterization by a qualified licensed professional, early in the development planning and design stage, and document the expected effectiveness of the proposed BMPs.
- b) Size Low Impact Development (LID), Runoff Control, and Treatment Control BMPs to infiltrate, retain, or treat, at a minimum, the runoff produced by the 85<sup>th</sup> percentile 24-hour storm event for volume-based BMPs, or two times the 85<sup>th</sup> percentile 1-hour storm event for flow-based BMPs.
- c) Use an LID approach that gives priority to preventive Site Design strategies to minimize post-development changes in the site's stormwater flow regime, supplemented by structural BMPs to retain on-site (by means of infiltration, evapotranspiration, or harvesting for later on-site use), at a minimum, the runoff produced by the 85<sup>th</sup> percentile 24-hour design storm, to the extent appropriate and feasible.
- d) Conduct an alternatives analysis to demonstrate that there are no appropriate and feasible alternative project designs that would substantially improve runoff retention, if a proposed development will not retain on-site the runoff produced by the 85<sup>th</sup> percentile 24-hour design storm using an LID approach.
- e) Use a Treatment Control BMP (or suite of BMPs) to remove pollutants of concern from any portion of the runoff produced by the 85<sup>th</sup> percentile 24-hour design storm that will not be retained on-site, or if additional pollutant removal is necessary to protect coastal waters.
- f) If a proposed development will add a net total of more than 15,000 ft<sup>2</sup> of impervious surface area, and any portion of the runoff produced by the 85<sup>th</sup> percentile 24-hour design storm will not be retained on-site, use a structural Runoff Control BMP to minimize adverse post-development changes in the runoff flow regime.

In addition to the policies specified above, the definitions contained in Section 2 are also applicable. The standard of review for the proposed Town IP Update is that it be consistent with and adequate to carry out the conditionally certified (i.e., as modified above) Town LUP Update. In this case, the County's proposed Town LUP Sustainability Policies changes have been denied, and thus this evaluation is based on the as-modified Town LUP (see preceding section).

#### **E. IP Consistency Analysis**

The proposed Town IP implements the aforementioned Town LUP policies primarily through new Town Zoning Code (TZC) Chapter 20.717 (**Appendix C**). The LCPA implements revised Town LUP provisions that would lessen maximum lot coverage and historical design review requirements associated with water storage tanks (e.g., TZC Sections 20.608 and 20.760), and that would encourage use of rain water harvesting, greywater and reclaimed water systems, and landscape-based stormwater management techniques. Other provisions would encourage development to minimize impervious surfaces (e.g., TZC Section 20.717.020(B)) to allow stormwater infiltration to reduce stormwater runoff and recharge groundwater. The Town Zoning Code policies are also intended to be used together with the Grading, Erosion, and Runoff

provisions found in the certified Coastal Zoning Code provisions of the balance of the County (Title 20, Division II, Chapter 20.492), as provided in TZC Section 20.717.005(B), among other policies.

### 1. Findings for Denial of Specified IP Changes as Submitted

The Town IP as submitted is inconsistent with the Town LUP because the Town Zoning Code lacks fundamental provisions necessary to adequately carry out the Town LUP policies. For example, Town LUP Action S-1.2 requires in part that coastal development permit applicants shall submit a construction-phase pollution prevention/erosion control plan for all development. LUP Action S-1.2 further requires that the plan shall describe temporary best management practices (“BMPs”) to minimize erosion and sedimentation during construction, and to minimize pollution of runoff and coastal waters by construction chemicals and materials. The Town IP also lacks adequate BMP policies and performance standards needed to fully carry out and conform with Town LUP policies and actions, including but not limited to LUP Action S-10.1 and Policies S-13 and S-14. Furthermore, although TZC Section 20.717.025 (“Application Submittal Requirements”) describes general information necessary for submittal, the policies lack the necessary specific development performance standards requiring development to minimize erosion, pollutant discharge, and non-stormwater runoff during construction as required by LUP Policy S-4, among others.

The Town Zoning Code also contains internal inconsistencies in the use of water quality concepts and terminology, such as intermixing construction-phase and post-development water quality protection strategies (e.g., TZC Section 20.717.025(A)(1)), and including definitions for certain terms that do not conform with the definitions in the Town LUP (e.g., “Impervious Surface<sup>96</sup>” and “Low Impact Development<sup>97</sup>”). Therefore, the Commission finds that the Town IP as submitted must be denied because it does not adequately carry out and conform with the water quality definitions and provisions of the Town LUP.

### 2. Findings for Approval of IP Amendment if Modified

**Suggested Modifications 19, 23, and 24** include, but are not limited to: (a) removing development standards from definitions; (b) adding definitions to the IP for water quality terms that were used within the LUPA; (c) modifying definitions and policy terminology for consistency with Town LUPA water quality provisions<sup>98</sup> and with other Town LCPA policies<sup>99</sup>; (d) adding fundamental provisions requiring protection and restoration of coastal waters in

<sup>96</sup> Town Zoning Code Section 20.717.015(F), and Town Land Use Plan Section 2.

<sup>97</sup> Town Zoning Code Section 20.717.015(G), and Town Land Use Plan Section 2.

<sup>98</sup> E.g., Town Zoning Code Section 20.608.022(K) in Appendix C was modified to ensure consistency with TZC Chapter 20.717.

<sup>99</sup> E.g., suggested modifications to Town Zoning Code Section 20.714.050 (Appendix C) would ensure consistency with the wording of Section 20.714.030 and incorporate the commonly-used term “permeable pavers” rather than “semi-pervious pavers.” Suggested modifications also recognize other allowable types of permeable pavement in addition to permeable pavers.

conformity with LUP Sustainability Policies<sup>100</sup>; and (e) eliminating or clarifying redundant or confusing language<sup>101</sup>.

Additionally, **Suggested Modification 24** relocates certain provisions to the relevant location (e.g., “Hydromodification BMPs” standards were relocated from TZC Section 20.717.010(A)(4) “Applicability” to within the more relevant TZC Section 20.717.020(C)(8) “Water Quality Protection Requirements: Runoff Controls” standard), and renumbers sections and subsections within Chapter 20.717 accordingly. Commission staff discussed these suggested modifications with County staff in 2016, and believes County staff are supportive of the Town LCPA water quality provisions as modified.

The incorporation of suggested modifications 19, 23, and 24 ensure that the IP is internally consistent and thus adequately carries out the Town LUP water quality narratives, definitions, and policies, including but not limited to LUP Sections 1.6 (“Organization”), 2 (“Definitions”), 4.6 (“Town Sustainability”), and 4.9 (“Conservation”). Therefore, the Commission finds that the Town IP conforms with and adequately carries out the Town LUP water quality policies, if approved as modified.

### ***Conclusion***

The Town Zoning Code policies are intended to be used together with the Grading, Erosion, and Runoff provisions found in the certified Coastal Zoning Code provisions of the balance of the County (Title 20, Division II, Chapter 20.492), as provided in new TZC Section 20.717.005(B), among other policies. Although the Mendocino Town IP implements the Town LUP water quality policies primarily through new Town Zoning Code (TZC) Chapter 20.717, the Town IP as submitted is inconsistent with the Town LUP because the Town Zoning Code lacks fundamental provisions necessary to adequately carry out the Town LUP policies. For example, BMP policies and performance standards are needed to fully carry out and conform with Town LUP policies and actions, including but not limited to LUP Action S-10.1 and Policies S-13 and S-14. Specific development performance standards are also lacking requiring development to minimize erosion, pollutant discharge, and non-stormwater runoff during construction as required by LUP Policy S-4, among others. Furthermore, the Town Zoning Code contains internal inconsistencies in the use of water quality concepts and terminology, such as intermixing construction-phase and post-development water quality protection concepts. Therefore, the Commission finds that the Town IP as submitted must be denied.

**Suggested Modifications 19, 23, and 24** ensure conformity with Town LUP water quality provisions by: (a) removing development standards from definitions; (b) adding definitions to the IP for water quality terms that are used within the LUPA; (c) modifying definitions and policy terminology for consistency with Town LUPA water quality provisions<sup>102</sup> and with other Town

---

<sup>100</sup> E.g., Town Zoning Code Section 20.717.020 as modified conforms with and carries out Town Sustainability Policies that include but are not limited to Policies S-7, S-8, S-9, S-11, S-13, and S-14; and Actions S-1.1, S-1.2, and S-8.1; and S-11 through S- in Appendix A.

<sup>101</sup> E.g., newly-numbered Town Zoning Code Section 20.717.015(L) in Appendix C.

<sup>102</sup> E.g., Town Zoning Code Section 20.608.022(K) in Appendix C was modified to ensure consistency with TZC Chapter 20.717.

LCPA policies<sup>103</sup>; (d) adding fundamental provisions requiring protection and restoration of coastal waters in conformity with LUP Sustainability Policies<sup>104</sup>; (e) eliminating or clarifying redundant or confusing language<sup>105</sup>, and (f) relocating provisions to the relevant sections and renumbering the policies within Chapter 20.717 accordingly. Commission staff discussed these suggested modifications with County staff in 2016, and believes County staff are supportive of the suggested modifications to the Town LCPA water quality provisions.

As modified, the Town IP water quality policies located in Town Zoning Code (TZC) Chapter 20.717 and Sections 20.608 and 20.760 adequately carry out and conform with the Town LUP water quality narratives, definitions, and policies, including but not limited to LUP Sections 1.6 (“Organization”), 2 (“Definitions”), 4.6 (“Town Sustainability”), and 4.9 (“Conservation”). Therefore, the Commission finds that the water quality IP policies as modified are adequate to carry out and consistent with the LUP as modified.

## 7. Hazards

### A. Applicable Policies

Section 30235 of the Coastal Act states that:

*Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible.*

Section 30236 of the Coastal Act states that:

*Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.*

Section 30253 of the Coastal Act states in applicable part as follows:

*New development shall do all of the following:*

---

<sup>103</sup> E.g., suggested modifications to Town Zoning Code Section 20.714.050 (Appendix C) would ensure consistency with the wording of Section 20.714.030 and incorporate the commonly-used term “permeable pavers” rather than “semi-pervious pavers.” Suggested modifications also recognize other allowable types of permeable pavement in addition to permeable pavers.

<sup>104</sup> E.g., Town Zoning Code Section 20.717.020 as modified conforms with and carries out Town Sustainability Policies that include but are not limited to Policies S-7, S-8, S-9, S-11, S-13, and S-14; and Actions S-1.1, S-1.2, and S-8.1; and S-11 through S-14 in Appendix A

<sup>105</sup> E.g., newly-numbered Town Zoning Code Section 20.717.015(L) in Appendix C

- (a) *Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (b) *Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

...

## **B. Background**

The geologic and physical setting of the Town of Mendocino present a number of coastal hazards with the potential to affect the area, such as but not limited to seismic activity, landslides, shoreline and bluff erosion, fire, and flooding. The Town of Mendocino is situated on the Mendocino Headlands, an uplifted marine terrace bounded by steep sea cliffs ranging overall from 40 to 100 feet, and an average elevation within the Town of 140 feet. Highway 1 bisects the Town, and west of Highway One the Town is bounded to the north, west, and south by predominantly undeveloped headlands. The seacliffs surrounding the Town are comprised of unique features such as sea caves and blow holes that are the result of countless years of wave action.

Although the Pacific Ocean surrounds much of the Town, the effects of sea level rise, storm surges, and wave action are less of a direct threat to the Town due in part to the uplifted terrace that elevates the Town to an average of 140 feet, and the extensive buffer of undeveloped headlands surrounding much of the Town. The public currently has access to the majority (approximately 98%) of the Mendocino Headlands as part of approximately 165 acres of the Mendocino Headlands State Park. Heeser Drive and Main Street serve as the first public roads paralleling the sea and separate most of the Town developments and infrastructure from the bluff edges.

Mendocino City Community Services District (MCCSD) wastewater treatment plant is located on the western edge of the Town, at 10500 Kelly St. The services district provides sewer services to approximately 553 parcels within and immediately surrounding the Town. Construction of the wastewater treatment plant was completed in 1975, and the facility provides tertiary wastewater treatment before discharging into the Pacific Ocean through a 996-foot outfall pipe. The treatment plant is situated more than 200 feet from the closest bluff edge toward the southwest portion of the site, and more than 400 feet from the bluff edge at the northwestern corner.

Some of the publicly-owned lands within the Town could be vulnerable to flooding during episodic events. Big River borders the Town to the south, and Big River Bridge connects travelers along Highway 1 across the river. Since 2002, CA State Parks has owned the land adjacent to the north bank of Big River, which is now part of the Big River Unit of the Mendocino Headlands State Park. Public access improvements in the low-lying areas adjacent to Big River include public parking, a restroom facility, and access trails.

The Town LCPA as proposed includes newly-added Town LUP Policy GM-9 that would require in part the minimization of risks in areas of high geologic, flood, and fire hazard, and the avoidance of substantial alteration of natural landforms. Newly-added LUP Policy CNS-5 would

incorporate the requirements of Coastal Act Section 30235, requiring that development that alters the shoreline shall only be allowed when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, provided that such projects are designed to avoid or mitigate adverse impacts on local shoreline sand supply.

New Town LUP Policy CNS-6 would authorize the substantial alteration of “blue-line” streams when required to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply, water quality, or biological resources. The Town LCPA also includes newly-added Action PAR-3.1 that would allow “structures necessary for the public health and safety... to continue, or be replaced...” on Town beaches.

### **C. LUP Consistency Analysis**

#### **1. Findings for Approval of Specified LUP Changes as Submitted**

The Town LCPA as proposed includes newly-added Town LUP Policy GM-9 that contains among other items, provisions previously lacking in the certified Town LUP pertaining to the management of environmental hazards. Town LUP Policy GM-9 is consistent with Coastal Act Section 30253 in that LUP Policies GM-9(a) through GM-9(d) would require in part the minimization of risks in areas of high geologic, flood, or fire hazard, and the avoidance of substantial alteration of natural landforms. LUP Policies GM-9(a) through GM-9(d) further mirror Section 30253 in part by specifying that new development shall assure stability and structural integrity, and shall neither create nor contribute significantly to erosion, geologic instability, or destruction of the development site or surrounding area. Therefore, the Commission finds that LUP Policies GM-9(a) through GM-9(d) conform with Coastal Act Sections 30253(a) and (b), and can be approved as submitted.

#### **2. Findings for Denial of Specified LUP Changes**

The Town LUPA introduces newly-added LUP Policy CNS-5 that would incorporate the requirements of Coastal Act Section 30235, which was previously lacking in the certified LUP. As submitted, LUP Policy CNS-5 would allow development that alters the shoreline only when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, provided that such projects are designed to avoid or mitigate adverse impacts on local shoreline sand supply. Although the policy is generally consistent with Section 30235, as proposed the policy introduces certain new language not found in Section 30235. Therefore, LUP Policy CNS-5 must be denied as submitted.

As discussed above, newly-added policy GM-9 is generally consistent with Coastal Act Section 30253. However, LUP Policy GM-9(g) must be denied because it introduces new provisions not included in Section 30253 that specify certain types of development requiring a permit. None of the provisions of Section 30253 specify or limit in any way the provisions of Section 30600 requiring a coastal development permit for development (as defined in Section 30106). LUP Policy GM-9(g) could be misinterpreted as limiting coastal development permit requirements to only those developments listed, and would create internal inconsistencies within the LCP, particularly with LUP Policy TPA-1 and Town Plan Implementation Section 6.5.

New Town LUP Policy CNS-6 incorporates by reference Sections 30231 and 30236, and would authorize the substantial alteration of “blue-line” streams when required to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply, water quality, or biological resources. As proposed, LUP Policy CNS-6 intermixes and misconstrues Coastal Act mandates, and introduces new language that conflicts with the Coastal Act, including but not limited to Section 30236. For example, as proposed LUP Policy CNS-6 would allow substantial alteration of a blue-line stream “when required to serve coastal dependent uses or protect existing structures or public beaches in danger from erosion...”

Similarly, the Town LCPA also includes newly-added Action PAR-3.1 that would allow “structures necessary for the public health and safety... to continue, or be replaced...” on Town beaches. Based upon information provided by the County’s consultants<sup>106</sup>, it appears that Action PAR-3.1 was added to address infrastructure located on the beach and shoreline area, in association with the wastewater treatment plant’s ocean outfall structure. However, the location of the structure referenced by the County’s consultants is located within the Coastal Commission’s retained jurisdiction where any coastal development permit application would be reviewed by the Coastal Commission under the Coastal Act, and not the Town LCP, as the standard of review. To the extent that coastal development permit authorization would be sought for an existing structure within the County’s delegated jurisdiction, the provisions of new Town LUP Policies GM-9(a) through GM-9(d) would serve as the standard of review, in conformity with Coastal Act Sections 30253(a) and (b). In contrast, proposed Town LUP Action PAR-3.1 presents additional standards not considered under Section 30253, and must therefore be denied.

For all of the reasons described above, newly-proposed LUP Policies GM-9(g), CNS-5, CNS-6, and Action PAR-3.1 do not conform with the Coastal Act, including but not limited to Sections 30235, 30236, and 30253. Therefore, the Commission finds that the policies described above relating to the management of environmental hazards must be denied as submitted.

### 3. Findings for Approval of LUP Amendment if Modified

**Suggested Modifications 4 and 10** delete standards added to certain environmental hazard management policies proposed in Section 4.2 (“Growth Management”) and Section 4.8 (“Public Access and Recreation”), to ensure conformity with Coastal Act Section 30253. To conform with Coastal Act Sections 30235 and 30236, **Suggested Modification 11** revises redundant and confusing language, and deletes certain inconsistent Conservation Policy provisions related to management of environmental hazards.

As modified, the Commission finds that the Town LUP policies addressing environmental hazards, including but not limited to LUP Policies GM-9(g), CNS-5, CNS-6, and Action PAR-3.1 described above, can be approved consistent with the Coastal Act.

---

<sup>106</sup> Dall and Associates. “Mendocino Town Local Coastal Program Update Amendment (LCP-1-MEN-14-0840) Town LCP Update Amendment- Coastal Act Consistency Analysis.” File name “20160226.MTLCPUA-COASTALACTSupplementalConsistencyAnalysis,1-227.” Received March 1, 2016 at Coastal Commission North Coast District Office, Arcata.

**Conclusion**

The Town LUPA introduces new policies previously lacking in the certified Town LUP addressing minimization of risks related to coastal hazards. In particular, LUP Policies GM-9(a) through GM-9(d) require in part that new development shall: (a) minimize risks in areas of high geologic, flood, or fire hazard, (b) assure stability and structural integrity, (c) neither create nor contribute significantly to erosion, geologic instability, or destruction of the development site or surrounding area, and (d) not require the construction of protective devices that would substantially alter natural landforms or movement of sand along coastal bluffs, sea cliffs, and beaches. Therefore, the Commission finds LUP Policies GM-9(a) through GM-9(d) can be approved as submitted, in conformity with Coastal Act Sections 30253(a) and (b).

However, newly-proposed LUP Policies GM-9(g), CNS-5, CNS-6, and Action PAR-3.1 introduce new language that either directly conflicts with the Coastal Act or that intermixes and misconstrues Coastal Act mandates. As submitted, the new environmental hazards management policies are inconsistent with the Coastal Act, including but not limited to Sections 30235, 30236, and 30253, and must be denied.

**Suggested Modifications 4, 10, and 11** revise and delete those Town LUP provisions that conflict with the Coastal Act requirements, while retaining essential hazard management provisions previously lacking in the certified Town LUP. The Commission finds that as modified, the Town LUP hazard minimization policies conform with the Coastal Act by requiring that new development: (a) minimizes risks to life and property in areas of high geologic, flood, and fire hazard, and (b) avoids substantial alteration of natural landforms. Therefore, the Commission finds that the proposed LUPA is consistent with the hazard policies of the Coastal Act if modified.

**D. Applicable Land Use Plan Policies**

**GM-9** Consistent with Public Resources Code Section 30253, new development in the Town shall meet all of the following requirements, while assuring protection of the Town's unique characteristics as a special community:

- (a) Minimize risk to life and property in areas of high geologic, flood, or fire hazard;
- (b) Assure stability and structural integrity;
- (c) Neither create nor contribute significantly to erosion, geologic instability, or destruction of the development site or surrounding area;
- (d) Not require the construction of protective devices that would substantially alter natural landforms or movement of sand along coastal bluffs, sea cliffs, and beaches;

**CNS-5** Consistent with Coastal Act Section 30235, development that alters natural processes along the Town shoreline shall be permitted only when (1) required to (a) serve coastal-dependent uses, or (b) to protect existing structures or public beaches in danger from erosion, and (2) when such development is designed, constructed, and implemented, including, but not limited to, through monitoring and reporting to the County during the

economic life of the development, to eliminate or mitigate any significant adverse impacts on local shoreline sand supply to below a level of significance.

**CNS-6** Consistent with Coastal Act Section 30231 and Town Plan Policy S-1, and Coastal Act Section 30236, (a) the biological productivity and the quality of coastal waters, streams, wetlands, and estuaries shall be maintained and, where feasible, restored, and (b) substantial alteration of any stream within the Town shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

The standard of review for the proposed Town IP Update is that it be consistent with and adequate to carry out the conditionally certified (i.e., as modified above) Town LUP Update. In this case, the County's proposed Town LUP policies related to hazards have been denied, and thus this evaluation is based on the as-modified Town LUP (see preceding section).

#### **E. IP Consistency Analysis**

Town Zoning Code Section 20.692.025 of the certified LCP requires in part that all development within all Town zoning districts shall, as applicable, comply with the provisions found in Section 20.532.095 ("Required Findings for all Coastal Development Permits") and 20.532.100 ("Supplemental Findings") of the certified Coastal Zoning Code provisions of the balance of the County (Title 20, Division II). The Town Zoning Code policies are also intended to be used together with the with the provisions of Chapter 20.420 (Flood Plain Combining District), Chapter 20.500 (Hazard Areas), and Section 20.532.070 (Geologic Hazards- Evaluation and Supplemental Application Information) of the balance of the County (Title 20, Division II), as provided in TZC Sections 20.692.025 and 20.720.035(D).

Chapter 20.420 of the Mendocino County Coastal Zoning Code (CZC) establishes requirements for those coastal areas subject to inundation in order to prevent loss of life and property damage, consistent with Town LUP Policy GM-9(a). County CZC Chapter 20.500 establishes criteria for development in relation to geologic, fire, flood, and other environmental hazards, consistent with Town LUP Policies GM-9(a) through GM-9(d). Section 20.532.070 establishes additional criteria for geotechnical studies for certain specified types and locations of development in relation to geologic hazards.

#### **Conclusion**

As submitted, the Town LCPA retains without modifications the hazard management provisions incorporated by reference from the balance of the County, pursuant to TZC Sections 20.692.025 and 20.720.035(D). The Commission finds that the Town IP conforms with and adequately carries out the Town LUP hazards management policies and can be approved as submitted.

## **C. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The Mendocino County Board of Supervisors conducted public hearings on February 28, 2013, May 16, 2013, July 11, 2013, August 29, 2013, October 22, 2013, February 25, 2014, April 8, 2014, June 17, 2014, September 23, 2014, December 9, 2014, July 21, 2015, August 18, 2015, October 20, 2015, and December 8, 2015, and approved the submittal to the Commission of the proposed LCP Update amendments to the Mendocino Town Plan Segment of the County of Mendocino LCP on December 8, 2015. As part of their local action on the subject LCP Update amendments, on December 8, 2015, the County of Mendocino determined per Title 14, Sections 15250 and 15251(f) of the California Code of Regulations (“CEQA Guidelines,”) that the preparation, approval, and certification of the Local Coastal Program Amendment is exempt from the requirement for preparation of an Environmental Impact Report (EIR) because the California Coastal Commission’s review and approval process has been certified by the Secretary of Resources as being the functional equivalent of the EIR process required by CEQA in Sections 21080.5 and 21080.9 of the Public Resources Code. (See Appendix H for a summary of the local hearing process.)

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) – exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission and the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required, in approving an LCP submittal to find that the approval of the proposed LCPA, as amended, does conform with CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternative or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. 14 C.C.R. §§ 13540(f) and 13555(b).

The County’s LCP Update consists of a Land Use Plan amendment (LUP) and an Implementation Plan (IP) amendment to the Mendocino Town Plan Segment of the County of Mendocino LCP. As discussed herein, the Land Use Plan amendment as originally submitted does not conform with, and is not adequate to carry out Chapter 3 of the Coastal Act. The Commission conditionally certified, with modifications, the LUP Amendment and hereby incorporates its findings on Coastal Act and LUP conformity into this CEQA finding as it is set forth in full. The Commission has, therefore, modified the proposed Land Use Plan to include all feasible measures to ensure that such significant environmental impacts of new development are minimized to the maximum extent feasible consistent with requirements of the Coastal Act. These modifications represent the Commission’s detailed analysis and thoughtful consideration of all public comments received, including with regard to potential direct and cumulative impacts of the proposed LUP amendments, as well as potential alternatives to the proposed amendment, including the no project alternative. As discussed in the preceding sections, the Commission’s suggested modifications represent the most environmentally protective alternative to bring the proposed amendment into conformity with the policies of the Coastal Act

Further, the Implementation Plan amendment as originally submitted does not conform with, and is not adequate to carry out, the policies of the conditionally certified LUP. The Commission has, therefore, modified the proposed Implementation Plan to include all feasible measures to ensure that such significant environmental impacts of new development are minimized to the maximum extent feasible consistent with the requirements of the Coastal Act. These modifications represent the Commission's detailed analysis and thoughtful consideration of all public comments received, including with regard to potential direct and cumulative impacts of the proposed IP amendments, as well as potential alternatives to the proposed amendment, including the no project alternative. As discussed in the preceding sections, the Commission's suggested modifications represent the most environmentally protective alternative to bring the proposed amendment into conformity with the conditionally certified LUP consistent with the requirements of the Coastal Act. As modified, the Implementation Plan code provisions and zoning maps carry out the policies and programs in the LUP by indicating which land uses are appropriate in each part of the Coastal Zone.

The Implementation Plan Amendment also contains specific requirements that apply to development projects and detailed procedures for applicants to follow in order to obtain a coastal permit. Thus, future individual projects would require coastal development permits, issued by the County of Mendocino, and in the case of areas of original jurisdiction, by the Coastal Commission. Throughout the coastal zone, specific impacts to coastal resources resulting from individual development projects are assessed through the coastal development review process; thus, any individual project will be required to undergo environmental review under CEQA. Therefore, the Commission finds that there are no other feasible alternatives or mitigation measures under the meaning of CEQA which would further reduce the potential for significant adverse environmental impacts.