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# Th9a

**Prepared August 20, 2021 for the September 9, 2021 Hearing**

**TO:** Coastal Commissioners and Interested Persons

**FROM:** Kate Huckelbridge, Deputy Director  
Robert S. Merrill, North Coast District Manager

**SUBJECT:** **County of Mendocino LCP Amendment No. LCP-1-MEN-20-0021-1  
(Accessory Dwelling Units)**

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## **SUMMARY OF STAFF RECOMMENDATION**

The County of Mendocino (County) is proposing to amend the County's certified Land Use Plan (LUP) and Implementation Program (IP) to regulate accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs).

Given the rural nature of Mendocino County and the fact that the proposed ADU LCP amendment does not apply to the separately certified Mendocino Town segment of the County's LCP, the proposed LCP amendment primarily raises service capacity issues and issues regarding the protection of agricultural lands and timberlands. Highway capacity is perhaps the greatest constraint to expanded residential development because of the limited capacity of Highway 1 to accommodate additional growth and remain a scenic two-lane road in the rural County, consistent with Coastal Act section 30254. During the development of Mendocino County's LCP between 1985 and 1992, the limited capacity of Highway 1 caused the Commission to significantly reduce allowable residential buildout under the LCP. As a result, the currently certified LCP prohibits second residential units outside of the Gualala Town Plan area and Town of Mendocino until service capacity issues are addressed and resolved after preparation of an updated highway capacity study.

The County has provided evidence on traffic and housing volumes and growth rates and previous traffic studies to demonstrate that a 500-unit cap on ADUS will not result in a significant impact on Highway 1 traffic capacity. As proposed, the LCP amendment would allow a total of 500 ADUs (with no limit on JADUs) and require that prior to the submittal of any further LCP amendment to change to the 500-unit cap, an analysis of Highway 1 capacity must be performed to evaluate impacts associated with future growth on the capacity of Highway 1. The proposed amendment attempts to harmonize

state ADU law requirements with Coastal Act requirements in the County's LCP in a way that continues to protect coastal resources while also reducing and eliminating barriers to the construction of ADUs.

The proposed LCP amendment would allow ADUs and JADUs in any zoning district where residences are allowed, including within agricultural and timberlands. As proposed and modified, requirements would be imposed to cluster ADU development around existing residential development on these parcels and minimize encroachment into the areas of such parcels that are used for productive agricultural operations or would be viable for timber production consistent with the resource protection policies of the Coastal Act.

The County and Commission staffs have met numerous times and collaborated closely on the proposed LCP amendment since the early stages of the County's consideration of the LCP amendment to address the unique resource concerns associated with ADU development in the Mendocino County coastal zone. Recent changes to state ADU law since the County's initial adoption of the LCP amendment have led to further collaboration on how to modify the amendment as adopted by the County to conform the amendment to state ADU law while at the same time addressing coastal resource concerns. County staff has submitted a letter indicating its support for the Commission staff recommended suggested modifications. Thus, staff recommends that the Commission reject the proposed LUP and IP amendments as submitted and approve the amendments only as modified to ensure that the LUP amendment is consistent with the Chapter 3 policies of the Coastal Act and the IP amendment is in conformance with and adequate to carry out the certified LUP policies.

The resolutions and motions are located on Pages 4 and 5. See [Appendices B and C](#) for suggested modification language.

**Staff Note: LCP Amendment Action Deadline**

The County transmitted the subject LCP amendment application to the Commission on March 19, 2020. The LCP amendment submittal was filed as complete by the North Coast District Office on November 17, 2020. On February 12, 2021, the Commission granted a one-year extension to the 90-day time limit for Commission action on the proposed LCP amendment. The new deadline for action is April 1, 2022.

**Additional Information**

For further information, please contact Bob Merrill at the Commission's North Coast District Office in Arcata at [Bob.Merrill@coastal.ca.gov](mailto:Bob.Merrill@coastal.ca.gov). If you wish to provide written comments, please do so via regular mail (directed to the North Coast District Office) or email (by emailing [NorthCoast@coastal.ca.gov](mailto:NorthCoast@coastal.ca.gov)). Commission staff will distribute to the Commissioners any copies of written materials received from interested parties by 5:00 pm on the Friday before the scheduled Commission meeting.

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## I. MOTIONS AND RESOLUTIONS

Staff recommends that the Commission, after public hearing, first reject the LUP and IP components of the amendment as submitted and then approve both components if modified as suggested in the staff report. The Commission needs to make four motions in order to adopt the staff recommendation.

### A. Denial of the LUP Amendment as Submitted

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

**Motion 1:** I move that the Commission certify Land Use Plan Amendment No. LCP-1-MEN-20-0021-1 as submitted by the County of Mendocino.

**Resolution 1:** The Commission hereby denies certification of the Land Use Plan Amendment No. LCP-1-MEN-20-0021-1 as submitted by the County of Mendocino and adopts the findings set forth below on the grounds that the submitted land use plan amendment fails to meet the requirements of and does not conform to the policies of Chapter 3 of the California Coastal Act. Certification of the land use plan amendment would not comply with the California Environmental Quality Act because there are feasible alternatives or 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 the LUP Amendment with Suggested Modifications

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

**Motion 2:** I move that the Commission certify Land Use Plan Amendment No. LCP-1-MEN-20-0021-1 for the County of Mendocino if modified as suggested in this staff recommendation.

**Resolution 2:** The Commission hereby certifies the Land Use Plan Amendment No. LCP-1-MEN-20-0021-1 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 the 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 and 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 the IP Amendment As Submitted**

Staff recommends a **YES** vote. Passage of this motion will result in rejection of the implementation program amendment as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**Motion 3:** I move that the Commission reject Implementation Program Amendment No. LCP-1-MEN-20-0021-1 as submitted by the County of Mendocino.

**Resolution 3:** The Commission hereby denies certification of Implementation Program Amendment No. LCP-1-MEN-20-0021-1 as submitted by the County of Mendocino on grounds that the implementation program amendment as submitted does not conform with, and is inadequate to carry out the provisions of the certified land use plan as amended. 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 amendment as submitted.

### **D. Certification of the IP Amendment with Suggested Modifications**

Staff recommends a **YES** vote. Passage of this motion will result in certification of the implementation program amendment 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.

**Motion 4:** I move that the Commission certify Implementation Program Amendment No. LCP-1-MEN-20-0021-1 for the County of Mendocino if modified in accordance with the suggested changes recommended by staff.

**Resolution 4:** The Commission hereby certifies the Implementation Program Amendment No. LCP-1-MEN-20-0021-1 for the County of Mendocino if modified as suggested on grounds that the implementation program, as amended, conforms with and is adequate to carry out the provisions of the certified land use plan as amended. Certification of the implementation program amendment will comply 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. SUGGESTED MODIFICATIONS**

The Commission hereby suggests the modifications to the proposed LCP amendment described below and presented in full in Appendices A and B, which are necessary to make the requisite Coastal Act and LUP consistency findings. If the County accepts the suggested modifications within six months of Commission action, by formal resolution of the County Board of Supervisors, the modified amendment will become effective once the Executive Director has determined that the County's action is legally adequate and reported that determination to the Commission at a Commission meeting.

### **1. Suggested Modification 1: Modifications to the LUP Amendment**

All suggested modifications to the LUP amendment are shown in [Appendix B](#).

### **2. Suggested Modification 2: Modifications to the IP Amendment**

All suggested modifications to the IP amendment are shown in [Appendix C](#).

## **III. PROCEDURAL ISSUES**

### **A. Standard of Review**

Pursuant to Coastal Act section 30512(c), to certify the proposed amendment to the LUP portion of the Mendocino County LCP, the Commission must find that the LUP as amended meets the requirements of, and is in conformity with, the policies of Chapter 3 of the Coastal Act. Pursuant to Coastal Act section 30513, to certify the proposed amendment to the IP portion of the Mendocino County LCP, the Commission must find that the IP as amended would be in conformity with and adequate to carry out the policies of the certified LUP.

### **B. Public Participation**

Section 30503 of the Coastal Act requires public input in preparation, approval, certification, and amendment of any LCP. The County Planning Commission and County Board of Supervisors held public hearings on the subject amendment on July 18, 2019 and November 5, 2019, respectively. The hearings were noticed to the public consistent with sections 13551 and 13552 of Title 14 of the California Code of Regulations. Notice of the subject amendment has been distributed to all known interested parties.

### **C. Procedural Requirements**

Pursuant to Section 13544 of the Commission's regulations, if the Commission denies the LCP amendment as submitted, but then approves it with suggested modifications, as recommended by staff, the LCP amendment will not take effect until the City accepts and agrees to the Commission's suggested modifications, the Commission Executive Director determines that the City's acceptance is consistent with the Commission's action, and the Executive Director reports the determination to the Commission at the next regularly scheduled public meeting. If the City does not accept the suggested

modifications within six months of the Commission's action, then the LCP amendment is not effective within the coastal zone.

## IV. CONSISTENCY ANALYSIS

### A. Amendment Description

Mendocino County proposes to amend the County's certified Land Use Plan<sup>1</sup> (LUP) and Implementation Plan<sup>2</sup> (IP) to regulate accessory dwelling units (ADUs)<sup>3</sup> and junior accessory dwelling units (JADUs)<sup>4</sup> in the unincorporated areas of the Mendocino County coastal zone. The amendment does not affect the Town of Mendocino segment of the certified LCP.<sup>5</sup> The currently certified LCP expressly prohibits ADUs (called second residential units) outside of the Town of Mendocino and Gualala Town Plan areas because of concerns regarding water supply, sewage disposal, and traffic capacity of Highway 1, which is intended by Section 30254 of the Coastal Act to remain a scenic two-lane road. The proposed LCP amendment would remove this prohibition and allow up to 500 ADUs and an unlimited number of JADUs in the coastal zone outside of the Gualala and Mendocino Town Plan areas. The amendment would also retain an existing certified 100-unit cap on the number of permitted ADUs allowed within the Gualala Town Plan Area, with clarification that this cap does not apply to JADUs. The proposed amendment indicates that any change to the ADU cap requires a subsequent LCP amendment. Prior to adopting such an amendment, a traffic analysis must be prepared to evaluate the impacts associated with the proposed ADU allowances and future growth on Highway 1 capacity. An amendment to the cap applicable to the Gualala Town Plan area also requires demonstration that the plan area has adequate water and sewer capacity to accommodate the proposed ADU allowances.

Under the proposed amendment, ADUs and JADUs would be permitted in any zone that allows residential uses, including the County's resource lands (the Agriculture, Range Land, Forest Lands, and Timber Production Zones). The existing ADU regulations for the Gualala Town Plan area would be updated and combined with new regulations for

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<sup>1</sup> Mendocino County General Plan.

<sup>2</sup> Mendocino County Coastal Zoning Code (Title 20 Division II of the Mendocino County Code).

<sup>3</sup> The proposed amendment defines ADUs consistent with Government Code section 65852.2 as follows: an attached or detached residential dwelling which provides complete independent living facilities for one or more persons, and includes separate permanent provisions for entry, living, sleeping, eating, cooking and sanitation on the same parcel as a single-family dwelling.

<sup>4</sup> The proposed amendment defines JADUs consistent with Government Code section 65852.22 as follows: A living space not exceeding five hundred square feet in size and contained entirely within a fully permitted single-family dwelling. A JADU shall include an efficiency kitchen and may include separate sanitation facilities or share sanitation facilities with the existing structure.

<sup>5</sup> The Town of Mendocino is a separate geographic segment of the LCP with its own certified LUP and IP sections. The Town of Mendocino has its own ADU provisions that are not implicated by the subject amendment (see Mendocino County Code, Title 20, Division III).

## LCP-1-MEN-20-0021-1 (Accessory Dwelling Units)

ADUs and JADUs in the remainder of the unincorporated County's coastal zone (outside of the Town of Mendocino). However, certain existing Gualala Town Plan area standards would continue to apply only in the Gualala Town Plan, including a prohibition on ADUs and JADUs located west of Highway One.

Proposed standards (including but not limited to building and zoning standards related to setbacks, building square footage, parking, rental and sale, and deed restrictions) were intended to follow the provisions of state ADU and JADU law (CA Government Code sections 65852.2 and 65852.22), as they existed at the time the County initially approved the amendment in November of 2019. The proposed amendment also includes "public health and safety requirements" that: (1) require Division of Environmental Health review and approval of the availability and adequacy of water supply and sewage disposal systems; (2) require a preliminary clearance letter from CalFire and/or the local fire district in fire-prone areas, and (3) prohibit ADUs in designated flood hazard areas.<sup>6</sup>

The County's proposed ADU regulations strive to harmonize the state ADU law with the Coastal Act in a way that continues to protect coastal resources while also reducing and eliminating barriers to the construction of ADUs. As many areas of the County's coastal zone are subject to significant coastal resource and hazard constraints, determining whether individual ADUs and JADUs are consistent with the coastal resource and hazard policies of the LCP could result in the need for significant discretionary analysis. To instead help streamline ADU permitting through a more ministerial process, the County proposes a checklist of "objective" coastal resource protection standards that ADUs must meet. The proposed coastal resource protection standards include standards related to environmentally sensitive habitat areas (ESHA), designated highly scenic areas, landform alteration, agricultural and timber resources, public access, and minimizing risks of geologic and flood hazards associated with development near coastal bluffs, fault zones, flood plains, and other hazardous locations.

The proposed amendment states that a JADU developed consistent with the proposed new JADU regulations would be exempt under existing permit (CDP) requirements. The proposed amendment also states that detached ADUs are not exempt from CDP requirements. Attached ADUs and structural and exterior improvements associated with ADUs and JADUs are not expressly addressed under the proposed amendment but may be exempt under the Coastal Act and LCP under certain circumstances.

Non-exempt ADUs and JADUs would require a ministerial CDP not subject to a public hearing if all applicable proposed ADU/JADU standards and requirements are met.<sup>7</sup> An exception could be granted to a number of the proposed coastal resource protection standards through an administrative or standard CDP process, including but not limited

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<sup>6</sup> This is consistent with CA Government Code section 65852.2(a)(1)(A), which allows local jurisdictions to designate areas where ADUs may be permitted based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.

<sup>7</sup> CA Government Code section 65852.2(a)(4) requires that the approval of ADUs shall include only ministerial provisions.



to exceptions to standards prohibiting ADUs within 100 feet of an ESHA, within 125 feet of the edge of a coastal bluff, in publicly visible locations within highly scenic areas, on prime agricultural soils, and in hazard combining districts. If certain discretionary findings demonstrating consistency with the certified LCP can be made.

Under the proposed amendment, ministerial CDPs for ADUs would be approved by the Director or his/her designee without a local public hearing or the ability for local appeals to the Board of Supervisors. However, ministerial CDPs would be appealable to the Coastal Commission in the same circumstances as standard CDPs and would be noticed<sup>8</sup> at least ten calendar days prior to issuance so that members of the public have an opportunity to submit comments and establish standing for Commission appeals.

Finally, under the proposed amendment, renting of an ADU or JADU for occupancy by transient guests for compensation or profit (e.g., use as a vacation home rental) would be prohibited. However, outside of the Gualala Town Plan area, the main residence could still be used as a vacation rental. Prior to obtaining a building permit for an ADU or JADU, a recorded deed restriction would be required to include the prohibition on renting the unit for transient occupancy and other pertinent restrictions.

## **1. Proposed LUP Changes**

LUP Policies 3.2-1 and 3.3-5 currently state in part that one housing unit is allowed for each existing agricultural and timberlands parcel, and LUP Policy 3.9-1 currently states in part that one housing unit shall be authorized on every legal parcel provided that adequate services exist and the proposed development is consistent with the LCP. The proposed LUP amendment would add language to these three LUP policies clarifying that ADUs may also be permitted on legal parcels, including agricultural and timberland parcels.

## **2. Proposed IP Changes**

The proposed IP amendment would rewrite certified IP chapter 20.458 (“second residential units”) with proposed new allowances and standards for ADUs and JADUs. More specifically, the proposed amendment would: (1) retitle IP chapter 20.458 “accessory dwelling units;” (2) remove language prohibiting accessory dwelling units in the coastal zone outside of the Mendocino and Gualala Town Plan areas; (3) establish a cap of 500 accessory dwelling units (except in the Gualala Town Plan area where the existing cap of 100 ADUs would remain in place); (4) establish permit requirements for accessory dwelling units; and (5) establish standards and limitations for ADUs and JADUs, including but not limited to standards pertaining to health and safety, coastal

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<sup>8</sup> Notice would be provided to: (1) the applicant; (2) all property owners within three hundred (300) feet of the property lines of the project site, and to each occupant of property within one hundred (100) feet of the property lines of the project site. Where the applicant is the owner of all properties within three hundred (300) feet of the property lines of the project site, notice shall be provided to all property owners within three hundred (300) feet and to all occupants within one hundred (100) feet of the applicant's contiguous ownership; (3) any person who specifically requested, in writing, notice of such final action; the Coastal Commission; and the County Assessor.

resource protection, and parking. Certain proposed standards and limitations would only apply to ADUs, JADUs, or ADUs and JADUs within the Gualala Town Plan area.

The proposed amendment would also: (1) add and revise definitions pertaining to ADUs and JADUs in the IP's list of definitions (in certified IP chapter 20.308); (2) amend explanations of existing residential use types to clarify their relationship to ADUs/JADUs (in certified IP chapters 20.316 and 20.456); (3) revise the IP's parking requirements (in certified IP section 20.458.050) to reference the new parking provisions in the ADU chapter; (4) add a new listed exemption to CDP requirements for JADUs (in certified chapter 20.532); (5) establish a "coastal development ministerial permit" (ministerial CDP) for ADUs (in certified chapter 20.532); and (6) outline procedures and timelines for notice, action, effectiveness, amendments, and appeals of ministerial CDPs (in certified IP chapters 20.532, 20.536, and 20.544).

### 3. Friendly Modifications

Although the County originally transmitted the subject LCP amendment to the North Coast District Office in March 2020, the amendment was approved by the Board of Supervisors in November 2019 before recent updates to CA Government Code sections 65852.2 and 65852.22 took effect. As a result, there are inconsistencies between the proposed amendment as adopted by the County and the new provisions of state ADU and JADU law that the County would like to address through "friendly modifications." These friendly modifications include but are not limited to modifications regarding to floor area limitations, lot coverage requirements, setbacks requirements, separate sale and conveyance, definitions (e.g., efficiency kitchen), parking requirements, owner-occupancy requirements for residences with JADUs, permitting deadlines, and allowances for ADUs on properties with multi-family residences.

In addition, the County also requests modifications to provide for other minor corrections and changes to clarify requirements for ADUs, including:

- (1) using the abbreviations "ADU" and "JADU" rather than the full terms throughout the proposed IP amendment;<sup>9</sup>
- (2) clarifying that JADUs are exempt from the 100-unit ADU cap in the Gualala Town Plan area (proposed IP section 20.458.010);
- (3) clarifying that certain provisions apply to JADUs as well as ADUs, such as the stipulation that ADUs qualify as accessory living units;<sup>10</sup>
- (4) fixing erroneous numbering and cross-references;
- (5) updating the existing definition of accessory buildings to clarify that the prohibition on sleeping quarters does not apply to accessory living units;
- (6) clarifying that ADUs and JADUs may be permitted in any zone that allows residential uses as a permitted or conditional use;

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<sup>9</sup> This change would affect proposed IP sections 20.308.035(A); 20.308.035(I); 20.308.065(A); 20.316.010; 20.316.010(D) and (E); 20.456.015(G) and (H); 20.458.005; 20.458.010; 20.458.015; 20.458.020; 20.472.015(E) and (F); 20.532.015(B); 20.532.020; 20.536.001(A); and 20.544.010(A).

<sup>10</sup> These changes affect proposed or amended sections 20.308.020(H); 20.308.035(I); and 20.458.005.

- (7) adding a procedural section describing the effective date of a ministerial CDP (to IP section 20.536.001);
- (8) clarifying the time-frame for approvals of applications for ADUs and JADUs; and
- (9) updating existing provisions that describe the process that occurs when the County fails to act on an application within the time limits set forth in Government Code sections 65950-65957.1.

As the aforementioned changes are consistent with and adequate to carry out the certified LUP and will help ensure consistency with state ADU law, which, in turn, complements and furthers the Coastal Act policy to encourage affordable housing (section 30604(f)), the County's friendly modifications are included in **Suggested Modification 2**.

Please note that additional modifications of the proposed IP amendment discussed between Commission and County staff that implicate LUP and Coastal Act Chapter 3 policy issues are discussed in the following sections. [Appendix C](#) includes all of the suggested modifications in **red** font.

#### **4. Permitting & Development Implications for Residential Development**

While ADUs are currently prohibited outside of the Town of Mendocino and the Gualala Town Plan area, the County's certified IP does allow for more than one dwelling unit<sup>11</sup> per legal parcel in various zoning districts in the form of farm employee housing, farm labor housing, family care units (a temporary use), dwelling groups, and residential clustering. The certified IP also allows for one "accessory living unit" for each legal parcel in all zoning districts which allow a single-family residence. An "accessory living unit" is either a "detached bedroom" or a "guest cottage." Detached bedrooms and guest cottages do not contain kitchens (detached bedrooms also do not contain bathrooms) and are not intended for use by people other than family members or guests of occupants of the primary dwelling. Because detached bedrooms and guest cottages do not contain complete independent living facilities, they are not considered a type of dwelling unit under the County's code and would not qualify as ADUs under California Government Code section 65852.2.

Under the proposed amendment, ADUs and JADUs would be treated as an accessory use to a single-family residence rather than a listed permitted or conditional use. ADUs and JADUs would be characterized as a new type of accessory living unit (in addition to guest cottages and detached bedrooms). Instead of changing allowed density in specific zoning districts, the ADU amendment would modify the definition of density to clarify that ADUs and JADUs are not considered to be dwelling units for the purpose of density calculations.<sup>12</sup>

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<sup>11</sup> A dwelling unit is defined by the County to be a single residential unit containing complete, independent living facilities for a family.

<sup>12</sup> This provision is consistent with CA Government Code section 65852.2(a)(8) which establishes that an ADU shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located.

Under the proposed amendment, each legal parcel would be allowed one ADU and one JADU. However, ADUs and JADUs would not be allowed on any parcel that already contains a second dwelling unit in the form of farm employee housing, farm labor housing, or a temporary family care unit, or where a dwelling group or parcel clustering has been approved. Outside of the Gualala Town Plan area, in addition to an ADU and/or JADU, each legal parcel would be allowed one guest cottage or detached bedroom. Within the Gualala Town Plan area, an ADU or JADU would not be allowed on a parcel that already contains a guest cottage or detached bedroom.

## **5. Impetus for LCP Amendment**

The proposed LCP amendment is spurred by both increasingly strong state mandates to allow for ADUs and the severe lack of long-term rental housing in the County's coastal zone. The development of housing, especially affordable housing, in rural, coastal Mendocino County is constrained in part because of development limitations designed to protect the area's bountiful coastal resources that must be protected, including many rare species that have been extirpated elsewhere, extensive agricultural lands, timberlands, and scenic public views to and along the coast. However, the largest historic and current impediment to developing housing in the County's coastal zone is limited service capacity, including water supply, sewage disposal, and traffic capacity on rural Highway One, which must remain a two-lane road consistent with Coastal Act section 30254.

In acknowledgement of these service limitations, certified IP chapter 20.458 currently prohibits the creation and/or construction of a second residential unit as defined in CA Government Code section 65852.2 based on the potential for adverse impacts on the public health, safety, and welfare, including water supply, septic capability and traffic. The code section indicates the prohibition is considered temporary until such time as water supply, septic capability and traffic issues can be adequately resolved to assure that there will be no adverse impacts to the public health, safety, and welfare.

This prohibition on ADUs has been in place for over 30 years during which time the lack of affordable housing in the coastal zone has become a serious social and economic issue. The new State legislation on ADUs has altered the regulatory landscape such that State law now requires the County to establish regulations to allow development of ADUs in the coastal zone where they can be appropriately accommodated by adequate public services, and development without conflicting with Coastal Act protections for coastal resources.

## **6. Area of Impact**

As described above, under the proposed amendment, ADUs and JADUs would be permitted in any zone that allows residential uses. The land use designations and corresponding zoning districts where single-family residences are allowed are listed in Table 1 below. These districts comprise 93% of the APNs<sup>13</sup> and 88% of the land area in

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<sup>13</sup> It is important to note that APNs do not necessarily constitute legal parcels.

Mendocino’s coastal zone. See [Exhibits](#) for a map of the lands where ADUs and JADUs would be allowed under the proposed amendment.

**Table 1. Land Use Designations and Zoning Districts Where Single-Family Residences are Permitted** (Mendocino County GIS; April 2020)

Land Use Designation	Zoning District	ZD Acreage	Number of ZD APNs
Agriculture (AG)	Agricultural (AG)	5,516	148
Forest Lands (FL)	Forest Lands (FL)	1,392	83
	Timberland Production (TP)	26,328	452
Range Lands (RL)	Range Lands (RL)	19,193	465
Rural Residential (RR-1;RR-2; RR-5;RR-10)	Rural Residential (RR)	13,569	4,837
Remote Residential (RMR 20 acres; 40 acres)	Remote Residential (RMR)	11,894	1,667
Suburban Residential (SR, SR 6,000; SR 12,000; SR 40,000)	Suburban Residential (SR)	208	477
Rural Village (RV)	Rural Village (RV)	168	326
Gualala Village Mixed Use (GVMU)	Gualala Village Mixed Use District (GVMU)	40	82
Gualala Highway Mixed Use (GHMU)	Gualala Highway Mixed Use District (GHMU)	30	25
<b>TOTAL</b>		<b>78,338 acres</b>	<b>8,562 APNs</b>

ADUs would not be permitted in the Open Space, Public & Semi-public Facilities, Commercial, Industrial, Fishing Village, Gualala Industrial, and Gualala Planned Development Districts. The coastal zone districts where ADUs would not be permitted comprise 617 APNs on 10,530 acres.

**B. LUP Consistency Analysis**

**1. Locating New Development**

Coastal Act section 30250 states in applicable part:

(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...

Coastal Act section 30254 states:

New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with

## LCP-1-MEN-20-0021-1 (Accessory Dwelling Units)

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. 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.

Coastal Act section 30250 is implemented in part through existing LUP Policy 3.9-1 which states:

- 3.9-1 An intent of the Land Use Plan is to apply the requirement of Section 30250(a) of the Act that new development be in or in close proximity to existing areas able to accommodate it, taking into consideration a variety of incomes, lifestyles, and location preferences. Consideration in allocating residential sites has been given to:
- each community's desired amount and rate of growth.
  - providing maximum variety of housing opportunity by including large and small sites, rural and village settings, and shoreline and inland locations.

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

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

The proposed amendment would amend LUP Policy 3.9-1 to add the following statement:

Accessory dwelling units may also be permitted consistent with California Government Code Section 65852.2 and with standards established in the Implementation Plan (Mendocino County Code, Title 20, Division II).

### Consistency Analysis: Traffic Capacity

A major constraint to residential development in Mendocino County's coastal zone is the need to limit residential density to levels which are compatible with water availability, septic capacity, and highway capacity. Very little of the County's coastal zone is served

with municipal sewer and water systems. Most development relies on the use of septic systems and water wells in areas that sometimes have inadequate soils and limited groundwater. Highway capacity is perhaps the greatest constraint to expanded residential development because of the limited capacity of Highway 1 to accommodate additional growth and remain a scenic two-lane road in the rural County, consistent with Coastal Act section 30254.<sup>14</sup> During the development of Mendocino County's LCP

(1985-1992),<sup>15</sup> the capacity of Highway 1 was a major issue affecting certification, resulting in the Commission changing proposed land use designations and/or maximum densities to significantly reduce allowable residential buildout. As a result, the currently certified LCP prohibits second residential units outside of the Gualala Town Plan area and Town of Mendocino until service capacity issues are addressed and resolved after preparation of an updated highway capacity study.

Although the certified IP explicitly requires analysis of traffic impacts before an LCP amendment can be approved to allow second residential units outside of the Gualala and Mendocino Town Plan areas, the County is proposing to allow ADUs without this analysis and instead address concerns about traffic capacity by adding a 500-unit cap on the number of ADUs to the proposed IP regulations. According to the County's application submittal, an allowance for 500 ADUs is being proposed as an interim measure necessary to aid with the housing crisis until such time as a comprehensive Highway 1 corridor study can be prepared. The County is not proposing to cap the number of JADUs allowed under the LCP Amendment, as JADUs are contained entirely within existing single-family dwellings and often result from repurposing an existing bedroom as a long-term rental. Dwelling units occupied by owners or long-term renters arguably have the same intensity of use and thus conversion of owner-occupied living space to long-term renter-occupied living space would not affect water and septic services or traffic capacity.

The County is deferring undertaking the corridor study update until the County is prepared to use vehicle miles traveled (VMT) as the metric of analysis in the update. The County has historically used level of service (LOS) as a metric of traffic impacts and highway capacity. However, pursuant to SB 743 (Steinberg, 2013), lead agencies analyzing the transportation impacts of new projects under CEQA must now use VMT to evaluate impacts, rather than LOS (this requirement became effective July 1, 2020).<sup>16</sup>

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<sup>14</sup> See findings for the May 8 and September 26, 1985 Commission hearings on LUP certification.

<sup>15</sup> The County's LUP was certified with suggested modifications on September 26, 1985 and effectively certified on November 20, 1985. The IP was certified with suggested modifications on March 15, 1991 and the total LCP was effectively certified on September 10, 1992. The County assumed permit-issuing authority on October 13, 1992.

<sup>16</sup> Traditionally, transportation impacts have been evaluated by examining whether the project is likely to cause automobile delay at intersections and congestion on nearby individual highway segments, and whether this delay will exceed a certain amount (this is known as "level of service"). VMT instead measures how much actual automobile travel (additional miles driven) a proposed project would create on public roads. If the project adds excessive car travel, the project may cause a significant transportation impact.

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The County is currently developing vehicle miles traveled (VMT) thresholds of significance and establishing methodologies for performing VMT analysis on the rural coastline. Use of VMT as a metric to evaluate the traffic impacts of projects is consistent with Coastal Act section 30253(d) which explicitly requires new development to minimize VMT (as well as energy consumption). Use of VMT is also consistent with Coastal Act section 30250 as minimization of VMT requires concentration of development. While use of LOS to evaluate the traffic impacts of new development may discourage development in more urban areas of the County like the Fort Bragg area where automobile delay at intersections is greatest, a study that utilizes VMT to evaluate impacts is likely to have the opposite result, encouraging housing near urban services where vehicle trips can be reduced in distance or avoided through alternative means of transportation.

The correlation between development of ADUs and population growth and increased traffic volumes in coastal Mendocino is unknown. The amendment is precipitated by a dire shortage of affordable, long-term rental housing for the County's coastal workforce. Some ADUs may accommodate tenants who are currently in overcrowded and substandard rental units with no accompanying increase in population and traffic volumes. In fact, by increasing the availability of rental housing, ADU development may permit people to live closer to their workplaces, thereby decreasing VMT and traffic on Highway One. On the other hand, ADUs may accommodate population growth but result in increased traffic volumes.

Allowing 500 units prior to a comprehensive traffic analysis allows the County to base the future study on actual data on the rate of development and location of ADUs and their associated travel characteristics in the County's coastal zone. To ensure data is collected, the County's Planning & Building Services proposes to keep a log of permits issued for JADUs and ADUs in the County's database and transmit an annual report to Coastal Commission staff.

The County has provided evidence demonstrating that amending the LCP to allow for 500 units distributed along the 80-mile length of the Highway 1 corridor in Mendocino County's coastal zone will not result in a significant impact on highway capacity. Since certification of its LCP in 1985, the County has prepared two studies of Highway One capacity: the "State Route (SR) 1 Corridor Study" (Whitlock & Weinberger; 1993) and the "SR 1 Corridor Study Update" (WTrans; 2008). The 2008 update found that, "existing traffic counts in the corridor revealed that 2007 traffic counts were either slightly higher, similar, or in some cases lower than the 1993 traffic counts." The very minimal change in traffic volumes is consistent with the "Market Area Buildout"<sup>17</sup>

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<sup>17</sup> "Market Area Buildout" analyses have been performed periodically by County staff since the LCP was certified (last prepared in 2009). The analysis tracks housing development outside of urban-rural boundaries in the coastal zone (i.e., outside of Fort Bragg and vicinity; Town of Mendocino area; Point Arena; Gualala area, and outside of areas that are zoned Rural Village). The analysis originally involved querying County Assessor's records to determine parcels "under the same ownership with deeds recorded on the same day" (which are considered to be one parcel for the purpose of the analysis); and ascertaining the number of developed parcels based on the Assessor's valuation of structural



numbers maintained by the County which indicate an average annual growth rate of only 0.83% in residential housing units in the coastal zone (outside of urban centers) between 1997 and 2009 and is consistent with the understanding that some homes constructed during this period are likely second homes only occupied part-time.

As a result of slow population growth, while there are real service limitations on maximum buildout in the County, available capacity remains on Highway 1. In 2016, Caltrans prepared a transportation concept report (TCR) for Highway 1 in Mendocino that anticipated low traffic growth rates over the report’s 20-year planning horizon and found that projected future traffic volumes (for the year 2032) can be accommodated by a two-lane highway except in the urban area south of Fort Bragg where a four-lane section may be needed in the future (Caltrans, District 1; 2016; see **Table 2** below and [Exhibit 2](#)). Such capacity improvements would be within the urban area defined by the urban/rural boundary around the greater Fort Bragg area and, thus, would be consistent with the mandate that Highway 1 remain a scenic two-lane highway. The TCR concludes:

Growth and development along Route 1 is strongly influenced by economic conditions and tourism. Route 1 serves as an essential lifeline for residents of the Mendocino Coast. Due to the rural nature of the Mendocino Coast and low anticipated growth, no major long-term right-of-way needs are anticipated.

**Table 2. Transportation Concept Report (TRC) Traffic Volumes.** Traffic volumes are shown as Annual Average Daily Traffic (AADT) for seven segments of SR 1 in Mendocino County (AADT is a measure of year-round average daily traffic volumes and does not account for seasonal peaks. 2012 AADT is based on 2012 traffic volumes and 2032 AADT is based on Caltrans District 1 growth factors).

	<b>SR 1 Segment</b>	<b>2012 AADT*</b>	<b>2032 AADT</b>
1	Sonoma Co Line to SR 128	1,750	1,850
2	SR 128 to Little River	3,200	3,400
3	Little River to Fort Bragg (SR 20)	9,500	10,000
4	City of Fort Bragg	18,500	19,400
5	Fort Bragg to MacKerricher SP	5,950	5,250
6	MacKerricher SP to Westport	1,150	1,200
7	Westport to Leggett	750	800
	Total	40,800	41,900

In addition, 500 ADUs is not a substantial number of units when considering the amount of housing in the Highway 1 “traffic shed.” In 2019, an estimated 13,316 housing units

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improvements, excluding agricultural outbuildings. Updates are performed by adding new parcels that have been created since the last update (either by recorded land divisions or certificates of compliance); eliminating parcels that have been merged; and utilizing building permit records to identify previously undeveloped parcels upon which an improvement has been constructed that is valued at least \$5000 by the Assessor.

were located within the Highway 1 traffic shed which comprises the coastal region of Mendocino County including areas on both sides of the coastal zone boundary and within the incorporated cities of Fort Bragg and Point Arena.<sup>18</sup> 500 ADUs represent a 3.8% increase in the total number of units in this coastal region.<sup>19</sup> As a result, trip generation from 500 ADUs is small when put in the context of overall daily traffic on Highway 1. Based on a trip generation rate of 4.8 daily trips per ADU,<sup>20</sup> 500 ADUs would generate 2,400 trips, which represents a 5.9% increase over 2012 AADT. It is important to remember that this number of trips (a) is a maximum number (assuming more housing will generate new trips) and (b) would be spread along the 80-miles of Highway One in the coastal County.

As noted above, the County is not proposing to cap the number of JADUs allowed under the LCP amendment. Based on the 'Market Area Buildout' analyses which have been performed periodically since the LCP was certified (last prepared in 2009), there are approximately 4,390 legal parcels and roughly 2,945 residences outside of urban-rural boundaries in the coastal zone (i.e., outside of Fort Bragg and vicinity; Town of Mendocino area; Point Arena; Gualala area, and outside of areas that are zoned Rural Village). As a result, full buildout of JADUs could result in 3,000 JADUs outside of urban boundaries. The Commission finds, however, that it is not necessary to extend the proposed cap to JADUs as JADUs are contained entirely within existing single-family dwellings and often result from repurposing an existing bedroom as a long-term rental. Dwelling units occupied by owners or long-term renters arguably have the same intensity of use and thus conversion of owner-occupied living space to long-term renter-occupied living space would not affect water and septic services or traffic capacity.

The Commission finds that for the reasons discussed above, a 500 ADU cap would avoid significant cumulative impacts on the traffic capacity of two-lane Highway 1, while at the same time opening up significant portions of Mendocino County to ADU development.

While previous traffic studies show that Highway 1 can remain a two-lane road into the future, the last study was performed in 2008, and it largely extrapolated data from the earlier 1993 study. Furthermore, the County has used this traffic data and other housing data to demonstrate that 500 ADUs will not have a significant impact on traffic and has not explored the impacts of additional units. Removing the prohibition on ADUs outside

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<sup>18</sup> Housing data was obtained by the County from the California HomeTown Locator tool which uses US Census data; searched for the 10 coastal zip codes from Westport to Gualala.

<sup>19</sup> Because of its remoteness, Highway One in coastal Mendocino predominantly serves local traffic as opposed to interregional traffic; therefore, it makes sense to focus on local land use when considering trip generation (TRC, 2016).

<sup>20</sup> This generation rate corresponds to the lower end of the range for single family residences identified by the Institute of Transportation Engineers (ITE). Given the rural character of the Mendocino Coast, trips are more likely to be combined due to distances between destinations. Plus, restrictions on the size of ADUs may correlate to smaller household size, also lowering trip generation rates. This approach was confirmed by the author of the 1994 SR 1 Corridor Study and the 2008 Update (verbal communication between County staff and Steve Weinberger, WTrans; April 16, 2020).

of the Gualala and Mendocino Town Plan areas would result in an ADU and/or JADU being allowed in addition to one detached bedroom or guest cottage on parcels containing an existing or approved single-family dwelling in all zoning districts which allow single-family dwellings. Because the vast majority of coastal zone lands are zoned to allow single-family dwellings (78,338 acres on 8,562 APNs), removing the current prohibition on ADUs (without imposing a cap) could significantly increase the potential residential development buildout in the County and thus significant impact service capacity.

The County has not provided evidence demonstrating the availability of services for buildout of ADUs in all zones that allow single-family dwellings; as a result, the 500-unit cap is necessary to establish conformance with Coastal Act sections 30250 and 30254 until the County performs additional studies. As proposed, the cap would only be included in the County's IP.

Although the necessary cap is included in the IP, the LUP needs to contain detail and specificity sufficient to conform to the Chapter 3 policies of the Coastal Act and effectively guide the IP, as the standard of review for future IP amendments will be the LUP. LUP Policy 3.9-1 already prohibits houses from being developed if adequate access, water, and sewage disposal capacity does not exist, but does not specifically address the cumulative impacts of housing development on Highway 1 capacity. Highway capacity is correlated with cumulative traffic volumes and cannot be addressed on a parcel-by-parcel bases. Because the proposed LUP amendment would add a broad allowance for ADUs without addressing cumulative impacts on highway capacity, the proposed LUP amendment considered separately from the proposed IP amendment does not ensure that Highway 1 will remain a two-lane scenic highway consistent with Coastal Act section 30254 or will be able to accommodate the increased traffic generated by proposed increases in residential buildout, consistent with Coastal Act section 30250.

**Suggested Modification 1** adds the proposed ADU caps to LUP 3.9-1, indicating that any change to the caps on the number of ADUs shall require an LCP amendment. As described in detail above, this ensures that adequate studies are conducted to evaluate potential impacts prior to development of ADUs at a level that could have significant cumulative impacts on traffic capacity on two-lane Highway 1. It is important to note that ADU law allows local governments to designate areas within the jurisdiction where ADUs may be permitted based on adequacy of water and sewer services and the impact of ADUs on traffic flow and public safety [§65852.2(a)(1)(A)]. With the incorporation of Suggested Modification 1, the proposed LUP amendment is consistent with Coastal Act sections 30250 and 30254.

## **2. Agricultural and Timber Resources**

### Relevant Coastal Act Policies

Coastal Act section 30241 states:

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The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the area's agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:

- (a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.
- (b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.
- (c) By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.
- (d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands.
- (e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.
- (f) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.

Coastal Act section 30242 states:

All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.

Coastal Act section 30243 states, in applicable part:

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.

Under the County's certified LUP, all agricultural lands are designated either Agriculture (AG) or Range Land (RL), and all timberlands are designated Forest Lands (FL). Under the certified IP, there are corresponding AG and RL Districts that implement the AG and RL designations, respectively, as well as Forest Lands (FL) and Timber Production (TP) Districts that both implement the FL designation. Within the coastal zone, these "resource lands" (AG, RL, FL, and TP District lands) cover a total of 52,435 acres on

1,148 APNs, representing 59% of the land area and 14% of the APNs in the unincorporated County's coastal zone (See [Exhibit 4](#) for a map of resource lands). The proposed amendment would permit ADUs and JADUs in all land use designations and zoning districts which allow single-family dwellings, including on all agricultural lands, rangelands, and timberlands.

Under the currently certified LCP, one single-family residence is permitted in the AG, RL, FL, and TP Districts and use of the residence as a vacation home rental is also permitted.<sup>21</sup> While the currently certified IP expressly prohibits ADUs outside of the Gualala and Mendocino Town Plan areas, a guest cottage or detached bedroom is allowed on resource lands as an accessory use to the primary single-family residence, a family care unit is allowed as a temporary use, and farm employee housing<sup>22</sup> and farm labor housing<sup>23</sup> are allowed as conditional uses.<sup>24</sup> The certified IP limits AG, RL, FL, and TP lands to four or less dwellings per parcel whether single family residential, farm employee housing, farm labor housing, accessory living unit, or family care unit. However, farm labor housing may exceed the four dwellings per parcel limitation in the AG District.

Existing LUP Policies 3.2-1 and 3.3-5 currently state in part that one housing unit is allowed for each existing agricultural and timberland parcel. The proposed amendment modifies these two LUP policies to clarify that ADUs may also be permitted on agricultural and timberland parcels.

While the proposed amendment would affect development allowances on 52,435 acres of resource lands, only 296 resource land APNs (covering 12,773 acres) currently

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<sup>21</sup> Single-family residences and vacation home rentals are listed as principally permitted uses in the AG and RL Districts in addition to agricultural uses, passive recreation, and, in the RL District, fish and wildlife habitat management. Because the certified IP fails to identify one principally permitted use (or use type) for the purposes of Commission appeals pursuant to Coastal Act section 30603(a)(4), these uses are not considered "principally permitted" under 30603(a)(4) and are thus always appealable to the Commission.

<sup>22</sup> Mendocino Coastal Zoning Code §20.316.020 defines "farm employee housing" as occupancy by a farm employee and his/her family within a single-family dwelling, or trailer coach which occurs exclusively in association with the performance of agricultural labor for a bona-fide agricultural operation. Mendocino Coastal Zoning Code §20.308.045(E) defines "farm employee" as any person who derives employment in the service of another person as an employee engaged in farming in any of its branches, including cultivation and tilling of the soil, timber production, dairying, the production, cultivation, growing and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry, and the preparation of farm products for market and delivery to storage or to market or to carriers for transportation to market.

<sup>23</sup> Pursuant to Mendocino Coastal Zoning Code §20.316.020, housing for more than one farm employee and his/her family is classified as farm labor housing.

<sup>24</sup> Dwelling groups are also conditionally permitted in all four resource land districts, and cluster development is allowed in all but the TP District.

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include structures over \$5,000 in value.<sup>25</sup> As a result, at most, 296 parcels<sup>26</sup> have existing residences and would be eligible now for ADUs and JADUs as accessory uses to existing and proposed residences. In addition, large expanses of timberlands are maintained by institutional timber companies and non-profit organizations that are not anticipated to engage in significant residential development, including 173 timberlands APNs covering approximately 12,812 acres under five such owners.<sup>27</sup> As discussed previously, the IP amendment as proposed and the LUP amendment as modified also includes 500-unit caps on the total number of ADUs allowed outside of the Mendocino and Gualala Town Plan areas. All the designated resource lands would be subject to this cap. The cap can only be modified with a further amendment to the LCP.

In addition, under the proposed amendment, the maximum number of residential structures allowed on each resource land parcel does not increase. Under the proposed ADU regulations, an ADU and JADU may be allowed on a parcel in addition to one single-family dwelling and a maximum of one other accessory living unit (i.e., a detached bedroom or guest cottage). Farm employee housing, farm labor housing, and temporary family care units are not allowed on parcels with ADUs and/or JADUs. As a result, while AG, RL, FL, and TP parcels are currently allowed up to four residential structures per legal parcel, only three residential structures could be developed on any parcel with a permitted ADU [(1) the ADU, (2) one single-family residence with a JADU contained entirely inside, and (3) one detached bedroom or guest cottage]. Therefore, the amendment would not increase the maximum number of residential structures allowed on resource lands.

### Agricultural Resources

Approximately 24,709 acres or 27.8% of the total acreage in Mendocino County's coastal zone is designated either AG or RL. Coastal agriculture in Mendocino County consists primarily of cattle, dairy farms, nursery products, irrigated and range pasture, and specialty vegetable crops including beans, potatoes, and peas. Coastal agriculture represents a relatively small portion of the County's total gross value of agricultural production, which totaled \$131 million in 2001.<sup>28</sup>

Coastal Act sections 30241-30243 are intended to maintain land in agricultural production and protect the viability of agricultural lands from direct, indirect, and cumulative impacts of land uses not directly related to the primary use of agricultural lands for the production of agricultural commodities. Coastal Act sections 30241 and

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<sup>25</sup> 45 APNs in the AG District, 154 APNs in the RL District, 49 APNs in the TP District, and 48 APNs in the FL District include structures over \$5,000 in value.

<sup>26</sup> It is important to note that APNs do not necessarily represent legal parcels.

<sup>27</sup> These top five owners are Mendocino Redwood Company, Soper Company, Lyme Redwood Timberlands, Parker Ten Mile Ranch, and R.D. Beacon.

<sup>28</sup> Information on the agricultural economy is from the Mendocino County Coastal Conservation Plan (Mendocino Land Trust, April 2003).

30242 strictly limit the circumstances under which agricultural land can be converted to non-agricultural land uses.

Development of a non-agricultural use or structure proposed on land suitable for agriculture could constitute a conversion of agricultural land that must meet the strict conversion criteria of Coastal Act sections 30241 and 30242. In contrast, the development of a farm-related structure does not constitute an agricultural conversion and thus does not trigger the need for an analysis of consistency with the conversion criteria. Single-family dwellings including ADUs are considered farm-related structures only if they are farmer-occupied or farm labor housing necessary for the performance of agricultural operations.

In contrast to residential development that is incidental to and/or in support of agricultural production such as farm employee housing, development of residential uses on agricultural lands that are not in direct support of continued agricultural use of the property is a growing trend threatening agricultural land viability. Non-agricultural residential development has the potential to change the real estate values in agricultural areas in ways that negatively affect the viability of continuing agriculture. Such development can also conflict with on-going surrounding agriculture practices (e.g., due to noise, odors, or dust generated from agricultural activities), potentially placing pressure on agricultural productivity to be reduced. And, of course, non-agricultural residential development occupies agricultural land that might otherwise be available for production or other agricultural uses.

The proposed LUP amendment would allow ADUs on lands designated agricultural and rangeland without any explicit requirement that the ADUs be used by a farm owner, manager, or employee engaged in agricultural use of the land (or family member thereof), and thus raises issues of consistency with Coastal Act sections 30241 and 30242.<sup>29</sup>

Under the certified LUP, consistent with the Coastal Act, residences on AG and RL lands must be agricultural in nature (i.e., constitute farm dwellings) or meets the strict agricultural land conversion criteria of Coastal Act sections 30241 and 30242, as these sections of the Coastal Act are incorporated into LUP Policies 3.2-4, 3.2-5, and 3.2-16. However, this is a point of contention between the County and Commission.<sup>30</sup> The County has in the past asserted that every agricultural parcel is allowed by right one

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<sup>29</sup> It is important to note that the County has locally adopted (not certified by the Commission) policies and procedures for agricultural preserves and Williamson Act contracts, that require second residential units to be occupied by the farm operator or an immediate family member of the landowner or farm operator in order to qualify as a compatible use on agricultural land under a Williamson Act contract. Sixty percent of AG and RL lands in the coastal zone (14,687 acres on 283 APNs) are under Williamson Act contracts. While this is a strong standard preventing ADUs from resulting in an agricultural conversion, it only applies to 60% of AG and RL lands and is a local standard that could change at any time without Commission review.

<sup>30</sup> See, for example, Commission Appeal Nos. A-1-MEN-09-034 and A-1-MEN-09-052 of residential development on agricultural land in Mendocino County.

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single family home regardless of whether the owner/occupier of that home farms or manages a farm, resulting in past development on AG and RL lands inconsistent with the Coastal Act. As a result, without additional LUP policy clarification, there is the potential that the proposed ADU allowance will be carried out inconsistent with Coastal Act sections 30241 and 30242.

In addition, even structures that are associated with agriculture, such as farm dwellings, can harm the long-term productivity of agricultural soils, and the cumulative effect of these structures may encourage urbanization or industrialization of an area. As proposed, the LUP amendment would allow detached ADUs to be located anywhere on AG and RL parcels, and thus could result in ADUs being developed far from existing residential structures, potentially requiring significant new driveway construction, vegetation maintenance, utility trenching, leach fields, water wells, etc. Such development would not maximize the amount of prime agricultural land in production or be protective of the long-term productivity of the soils, inconsistent with Coastal Act sections 30241 and 30243. Although the IP includes a clustering requirement, the LUP needs to contain specificity sufficient to conform to the Chapter 3 policies of the Coastal Act and effectively guide the IP, as the standard of review for future IP amendments will be the LUP.

For all the reasons described above, the LUP amendment as proposed is inconsistent with the agricultural resource protection policies of the Coastal Act.

**Suggested Modification 1** modifies amended LUP Policy 3.2-1, adding a requirement that detached ADUs may only be permitted if located within an existing legally-authorized residential structure and/or clustered with the primary residence. As discussed above, if the ADU is a farm dwelling accessory to and in support of active agricultural operations onsite, the ADU would not result in agricultural conversion regardless of its location. However, if an ADU does not constitute a farm dwelling, it could result in the conversion of land suitable for agriculture, and if so, must meet the strict conversion criteria outlined in Coastal Act sections 30241 and 30242.

JADUs, ADUs attached to the primary residence, and detached ADUs placed within an existing legally-authorized residential structure avoid land that is in active agricultural production. Detached ADUs clustered with the primary residence may also be located within a portion of the agricultural parcel that is not in active agriculture production because of its residential use. Given that the subject land is already covered by, directly adjacent to, or otherwise clustered with, a permanent residential structure, the suitability of the site for agriculture and the feasibility of renewed agriculture may also be severely limited. Thus, locating ADUs on AG and RL lands within or attached to existing residential structures or clustered with the primary residence can be found consistent with Coastal Act section 30241 because this siting can avoid and thus maintain prime agricultural lands in production, and can result in the development of available lands not suited for agriculture prior to the conversion of agricultural lands. This siting can also be found consistent with Coastal Act section 30242 because it likely avoids lands in agricultural production and instead places ADUs where renewed agriculture may not be feasible due to existing development.



Furthermore, the requirement to site ADUs in existing residential structures or clustered with the primary residence minimizes the amount of additional AG and RL lands that would be covered by residential development and associated infrastructure. Siting ADUs in or clustered with residential structures allows detached ADUs to rely on the same driveways and other exterior residential improvements developed for the single-family residence, minimizing the need to develop additional agricultural lands for additional external residential improvements. These limitations maximize the amount of prime agricultural land in production protects the long-term productivity of the soils, consistent with Coastal Act sections 30241 and 30243.

As a result, as modified by Suggested Modification 1, the proposed LUP amendment is consistent with the agricultural resource protection policies of the Coastal Act.

#### Consistency Analysis: Timberlands

Coastal Act section 30243 requires that the long-term productivity of soils and timberlands be protected, and conversions of coastal commercial timberlands in units of commercial size to other uses or their division into units of noncommercial size be limited to providing for necessary timber processing and related facilities.

Within Mendocino's coastal zone, 27,725 acres on 533 APNs are designated as TP. While an ADU and associated external improvements are not likely to convert coastal commercial timberlands in units of commercial size, they could be sited in such a way that would compromise the utility of the remainder of a parcel for commercial harvesting (e.g., sited in the middle of an otherwise contiguous stand of trees), threatening the productivity of timberlands. As a result, the LUP amendment as proposed is inconsistent with Coastal Act section 30243.

**Suggested Modification 1** modifies amended LUP Policy 3.3-5, adding a requirement that detached ADUs may only be permitted on timberland parcels if located within an existing legally-authorized residential structure and/or clustered with the primary residence. Clustering the ADU with existing residential structures would likely avoid any impact on the ability of the remainder of the land to be harvested commercially. As discussed above, locating an ADU in existing residential structures or otherwise clustering also minimizes the need for any new external development associated with the ADU (e.g., driveway access), further minimizing encroachment onto productive timberlands.

As a result, as modified by Suggested Modification 1, the proposed LUP amendment is consistent with the timber resource protection policies of the Coastal Act.

### **3. References to Government Code 65852.2 & Minor Correction**

#### References to Government Code 65852.2

The proposed amendment would add the following statement to LUP Policies 3.2-1, 3.3-5, and 3.9-1:

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Accessory dwelling units may also be permitted consistent with California Government Code Section 65852.2 and with standards established in the Implementation Plan (Mendocino County Code, Title 20, Division II).

The proposed reference to Government Code section 65852.2 is unclear and could result in interpretation of the LUP inconsistent with the Chapter 3 policies of the Coastal Act. While it is true that the intent of the amendment is to implement state ADU law, the County's proposed ADU standards may not be fully consistent with Government Code section 65852.2 as amended overtime.

Government Code section 65852.2(l) clarifies that nothing in the law supersedes or in any way alters or lessens the effect or application of the Coastal Act, except that the local government shall not be required to hold public hearings for CDP applications for ADUs. As a result, the stated intent of the County's LCP regulations is to protect coastal resources when regulating ADUs in the coastal zone, while also complying with the standards in section 65852.2 to the greatest extent feasible (proposed IP section 20.458.005).

The proposed reference to Government Code section 65852.2 could be misinterpreted as an intent to incorporate by reference this state code section into the LCP. This is problematic because (1) the government code section may contain provisions that are not in conformance with the certified LCP and (2) the code section can be changed without Commission knowledge or approval, creating additional inconsistency with the certified LCP or the Coastal Act.

Therefore, the LUP amendment as proposed with reference to Government Code section 65852.2 is inconsistent with the Coastal Act. To address this inconsistency, **Suggested Modification 1** removes the reference.

### Minor Correction

The purpose of the proposed amendments to LUP Policies 3.2-1, 3.3-5, and 3.9-1 is to clarify that ADUs and JADUs may be allowed on legal parcels, including agricultural and timberland parcels. However, the proposed amendment language only references ADUs ("Accessory dwelling units may also be permitted"). The omission of JADUs from this language could become a point of confusion since ADUs and JADUs are treated as two separate dwelling types in the IP regulations (i.e., references to ADUs are not intended to apply to JADUs; JADUs are explicitly mentioned when standards apply to JADUs). Therefore, **Suggested Modification 1** adds explicit references to JADUs into the proposed amendment of LUP policies.

As modified by Suggested Modification 1, the LUP amendment meets the requirements of, and is in conformity with, the policies of Chapter 3 of the Coastal Act.

## C. IP Consistency Analysis

### 1. Adequacy of Services

#### Relevant LUP Policies

LUP Chapter 3, Subchapter 3.5 (Visual Resources, Special Communities and Archaeological Resources), Policy 3.5-1 includes the following relevant language:

- 3.5-1 State Highway 1 in rural areas of the Mendocino County coastal zone shall remain a scenic two-lane road...

LUP Chapter 3, Subchapter 3.8 (Transportation, Utilities and Public Services) includes the following relevant policies:

- 3.8-1 Highway 1 capacity, availability of water and sewage disposal system and other known planning factors shall be considered when considering applications for development permits.

On the rural side of the Urban/Rural Boundary, consideration shall be given to Land Use Classifications, 50% buildout, average parcel size, availability of water and solid and septage disposal adequacy and other Coastal Act requirements and Coastal Element policies.

Highway capacity impacts shall be considered in determining land use classifications and density changes.

- 3.8-3 Caltrans shall be requested to conduct a study within two years after the certification of this Plan based on a detailed origin and destination survey, trip generation data from different types of housing and accommodations, and new traffic counts. Safety shall be a major consideration in any Highway 1 study.
- 3.8-4 Caltrans and/or the Coastal Commission shall be requested to monitor Highway 1 usage at two-year intervals. The Coastal Act's requirement that the highway remain a two-lane scenic road in rural areas creates an obligation to maintain accurate data on highway capacity for planning purposes.
- 3.8-7 Land divisions and subdivisions creating new parcels or building sites or other proposed development, including lot line adjustments, mergers and issuance of conditional certificates of compliance shall be approved only where a community sewage disposal system with available capacity exists and is obligated to provide service or where a satisfactory site for a sewage system exists. Leach field approval shall require satisfactory completion of a site evaluation on the site of each proposed septic system. A leach field shall not be located where the natural grade exceeds 30 percent slope or where there is less than 5 feet of soil below the trench if natural grade exceeds 20 percent slope. This septic system policy is

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consistent with the Minimum Guidelines for the Control of Individual Wastewater Treatment and Disposal Systems adopted by the Regional Water Quality Control Board on April 17, 1979.

3.8-8 Newly constructed public water supply and sewage disposal systems and expansion of existing systems should be designed to serve development consistent with that permitted by the Land Use Plan, provided that a reasonable capacity should be reserved for potential industrial development at locations designated by the plan.

3.8-9 Approval of the creation of any new parcels shall be contingent upon an adequate water supply during dry summer months which will accommodate the proposed parcels and will not adversely affect the groundwater table of contiguous or surrounding areas. Demonstration of the proof of water supply shall be made in accordance with policies found in the Mendocino Coastal Groundwater Study dated June 1982, as revised from time to time and the Mendocino County Division of Environmental Health's Land Division requirements as revised.

Commercial developments and other potential major water users that could adversely affect existing surface or groundwater supplies shall be required to show proof of an adequate water supply, and evidence that the proposed use shall not adversely affect contiguous or surrounding water sources/supplies. Such required proof shall be demonstrated prior to approval of the proposed use.

LUP Chapter 3, Subchapter 3.9 (Locating and Planning New Development) includes the following existing policy:

3.9-4 Following approval of each 500 additional housing units in the coastal zone, or every 5 years, whichever comes first, the Land Use Plan shall be thoroughly reviewed to determine:

- Whether the Highway 1 capacity used by non-resident travel and visitor accommodations is in scale with demand or should be increased or decreased.
- Whether the plan assumptions about the percentage of possible development likely to occur are consistent with experience and whether the allowable buildout limits should be increased or decreased.
- Whether any significant adverse cumulative effects on coastal resources are apparent.

LUP Chapter 3, Subchapter 3.9 (Locating and Planning New Development) also includes existing LUP Policy 3.9-1 which would be changed by the proposed LUP amendment and **Suggested Modification 1**. The policy as amended and modified reads as follows:

3.9-1 An intent of the Land Use Plan is to apply the requirement of Section 30250(a) of the Act that new development be in or in close proximity to existing areas able to accommodate it, taking into consideration a variety of incomes, lifestyles, and location preferences. Consideration in allocating residential sites has been given to:

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

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

One housing unit shall be authorized on every legal parcel existing on the date of adoption of this plan, provided that adequate access, water, and sewage disposal capacity exists, and proposed development is consistent with all applicable policies of this Coastal Element and is in compliance with existing codes and health standards. Accessory dwelling units (ADUs) and/or junior accessory dwelling units (JADUs) may also be permitted consistent with standards established in the Implementation Plan (Mendocino County Code, Title 20, Division II). The number of permitted ADUs within the Coastal Zone outside of the Gualala Town Plan area shall be limited to five hundred (500) units. Within the Gualala Town Plan area, a maximum of one hundred (100) ADUs shall be permitted. Any change to the caps on the maximum number of ADUs shall require a Local Coastal Program amendment. Determination of service capacity shall be made prior to the issuance of a coastal development permit.

#### Consistency Analysis: Traffic Capacity

As discussed in more detail earlier in Section IV(B) above, Highway 1 capacity was determined to be a density-limiting factor during Mendocino County's LCP certification process, resulting in the Commission changing proposed land use designations and/or maximum densities to significantly reduce allowable residential buildout in the County's coastal zone. As a result, Mendocino's certified IP currently prohibits ADUs (which are referred to as "second residential units") in the coastal zone except in the Gualala Town Plan area and Town of Mendocino.<sup>31</sup>

Removing this prohibition and instead allowing ADUs on all parcels with existing or proposed residences would significantly increase allowable buildout, potentially compounding existing capacity issues. The County has not prepared any updated

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<sup>31</sup> Second residences (i.e., independent living units) are also allowed throughout the County's coastal zone in cases where they are permitted as farm employee housing, farm labor housing, or family care units, or through LCP provisions for dwelling groups and residential clustering (where increased residential density is offset by surrounding open space).

service studies to demonstrate that either (1) traffic capacity issues are not as great as previously believed, or (2) that the unique characteristics of ADU development will result in ADUs having negligible impacts on capacity. Therefore, there are significant questions about whether and how ADU development will impact coastal resources, suggesting that a cautious approach to expanding ADUs in Mendocino County is warranted.

To that end, the proposed IP amendment establishes a 500-unit cap on ADUs outside of the Gualala Town Plan area and the Town of Mendocino. As discussed in the LUP consistency findings in Finding B above, the proposed cap: (1) ensures there will be no significant cumulative impacts on traffic capacity; and (2) is necessary to finding consistency with Coastal Act section 30250 and 30254, which are carried out in part through the LUP Policies listed above.

As discussed in the LUP consistency findings, the County has provided evidence on traffic and housing volumes and growth rates and previous traffic studies to demonstrate that a 500-unit cap will not result in a significant impact on traffic capacity. As proposed, any change to the cap would require an LCP amendment, and would require a traffic analysis to be prepared prior to such an amendment, to evaluate impacts associated with future growth on the capacity of Highway 1 in the coastal zone of Mendocino County. This requirement is consistent with LUP Policy 3.8-1 which specifies that highway capacity impacts shall be considered in determining density changes. The trigger of 500-units also aligns with LUP Policy 3.9-4, which requires a thorough review of Highway 1 capacity following approval of each 500 additional housing units in the coastal zone.

As adopted by the County, the traffic analysis required before any change in the 500-unit cap could be approved would evaluate impacts associated with future growth on the capacity of Highway 1, but would not necessarily be required to evaluate the specific impacts of ADUs on traffic capacity. The development and use of ADUs approved under the current amendment will provide a source of data regarding the numbers and locations of ADUs and their associated travel characteristics in the County's coastal zone that will facilitate the future studies to evaluate the impacts on Highway 1 capacity. Therefore, **Suggested Modification 2** ensures that any future traffic analysis used to lift or adjust the 500-unit ADU cap evaluates impacts on highway capacity associated specifically with proposed ADU allowances in addition to general growth projections.

Ultimately, the main reason to allow ADU development now ahead of an updated traffic analysis is to address an immediate and critical need for affordable housing in the coastal zone. Due to factors such as small size limitations on ADUs and the inability to subdivide and separately sell ADUs, ADUs can be a source of affordable, long-term rental housing. With this in mind, the state legislature has recently amended the state ADU law to further limit local restrictions on ADUs and streamline and facilitate the permitting and construction of more ADUs. The proposed amendment attempts to harmonize state ADU law requirements with Coastal Act requirements in the County's LCP in a way that continues to protect coastal resources while also reducing and eliminating barriers to the construction of ADUs.

The proposed amendment does not allow ADUs or JADUs to be used as vacation home rentals but does not otherwise restrict vacation home rentals on parcels with ADUs (except within the Gualala Town Plan area, where use of any dwelling as a vacation home rental on a property with an ADU or JADU is prohibited). As a result, property owners could choose to live within their ADU or JADU and rent out their primary residence to transient guests as a vacation home rental, thereby not creating any new long-term housing in the coastal zone. This proposed allowance for vacation home rentals on properties with ADUs and/or JADUs could thus defeat the purpose of the amendment to help address the housing crisis.

In addition, the premise that the 500-unit ADU cap is consistent with and adequate to carry out the policies of the LUP regarding Highway 1 and service capacity is predicated in part on the presumption that ADU development will in fact provide long-term housing for Mendocino's workforce. Given the housing shortage, many employees on the coast are currently living in crowded and/or substandard rental units and/or far from their place of employment. As a result, creating more affordable, long-term housing could result in no change in VMT (as additional units are utilized by people already driving coastal roads) or could reduce VMT (by allowing people to live closer to where they work). If instead the proposed amendment is used to create more vacation home rentals, there would likely be an increase in VMT on Highway One with additional tourists generating additional tourist traffic. As a result, the IP amendment as proposed to allow vacation home rentals on parcels with ADUs and JADUs is inadequate to carry out the LUP as conditionally amended and modified.

It is important to note that while the Coastal Act and certified LUP prioritize visitor-serving accommodations, the purpose of this particular amendment is to encourage necessary housing. Vacation home rentals are allowed on the County's resource lands and most of its residential districts,<sup>32</sup> and the County has no cap on the number of vacation rentals allowed outside of the Mendocino Town Plan area. As a result of the certified IP's existing provisions for vacation rentals and other visitor-serving accommodations, the proposed amendment does not need to allow for vacation rental development for the IP to be consistent with and adequate to carry out the LUP's visitor-serving policies.

**Suggested Modification 2** broadens the proposed restriction on vacation rentals so that, on a property with an ADU and/or JADU, use of any dwelling as a vacation rental is prohibited. This suggested modification ensures that the proposed new ADU allowance increases long-term housing stock, meeting the intent of the amendment and preventing increases in VMT that could result in inadequate Highway One capacity.

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<sup>32</sup> The LCP defines vacation rentals as a Coastal Residential Use Type and vacation rentals are allowed as a permitted use in all districts except the following: Open Space, Fishing Village, Commercial, Industrial, Public Facilities, Gualala Village Mixed Use, Gualala Highway Mixed Use, Gualala Planned Development and Gualala Industrial (i.e., vacation rentals are allowed in the RR, RMR, SR, RV, AG, FL, TP, and RL Districts). Currently there are 382 vacation home rentals within the County's coastal zone outside the Town of Mendocino (Mendocino County TOT data and GIS, April 2020).

As suggested to be modified, the proposed IP amendment is consistent with and adequate to carry out LUP policies related to limiting development to what can be accommodated by a two-lane Highway One in rural Mendocino.

Consistency Analysis: Water Supply and Sewage Disposal Capacity

Most properties in the County's coastal zone are served by individual water wells and septic systems, although there are a number of community water and sewer systems that serve particular areas in the unincorporated County's coastal zone.<sup>33</sup> The County's coastal groundwater supply is limited, with the vast majority of the coastal zone mapped as areas of critical and marginal water resources. Although the 500-unit ADU cap is proposed by the County to address a lack of an updated comprehensive traffic analysis, the cap is also necessary to find that the proposed amendment will not have significant cumulative impacts on water supply.

According to the Mendocino County Division of Environmental Health (DEH), in addition to areas where groundwater availability is limited, there are also parcels scattered throughout the coast region where expanding septic capacity may be an issue due to high groundwater levels or lack of adequate soil depth. As a result of scattered water and septic limitations, DEH determines the adequacy of water and septic capacity on a parcel-by-parcel basis. These studies are essential to protecting existing users and the groundwater resource.

Proposed IP sections 20.458.040(B) and 20.458.040(C) require that the Division of Environmental Health (DEH) review and approve all ADU applications for the availability and adequacy of water and sewage disposal systems in accordance with standards established in DEH's "Guidelines for Accessory Dwelling Units," and, for water systems, also in accordance with the County's "Coastal Groundwater Development Guidelines." Under these provisions, all applications for an ADU would be referred to DEH and, if adequate water and sewer capacity cannot be demonstrated, the ADU would not be approved.

The proposed standards are problematic because they require demonstration of service in accordance with uncertified local guidelines. Even if these documents were reviewed by the Commission and found to be consistent with the Coastal Act, the documents could be changed at any time without Commission knowledge or approval. Such uncertified changes could adversely affect the implementation of the LCP. In addition, water and sewer standards as proposed only apply to ADUs and not to JADUs. As JADUs (by definition) must be contained entirely within an existing single-family dwelling unit, many JADUs will just be repurposed existing bedrooms that would not increase

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<sup>33</sup> Community water and/or sewer systems include: the North Gualala Water Company (water), Gualala Community Services District (sewer), Anchor Bay County Waterworks (sewer), Point Arena Water Works (water), Irish Beach Water Company (water), Elk Community Services District (water), Pacific Reefs California Water District (water), Albion Mutual Water Company (water), Mendocino City Community Services District (sewer), Surfwood Mutual Water Corporation (water), Caspar South Water District (water), City of Fort Bragg (water), Fort Bragg Municipal Improvement District (sewer), and Westport County Water District (water and sewer).



septic and water service demands. However, there could be cases where JADUs, for example, are created in an attached garage, converting a currently non-habitable space into an independent dwelling unit and thus increasing service demands. In such cases, where a JADU intensifies the use of an existing residence, service capacity issues may arise or existing issues may be compounded. As a result, the IP ADU regulations as proposed are inadequate to carry out the certified LUP policies that require adequate water and sewer capacity to serve proposed residential development.

**Suggested Modification 2** retains the requirement for DEH to review and approve the availability and adequacy of water and sewage disposal systems for all ADUs, but removes the references to uncertified County guidelines and extends the DEH review and approval requirement to any JADUs that result in the creation of additional bedrooms. Using additional bedrooms as a trigger for DEH review and approval ensures that any JADU that could increase service demand is referred to DEH, and is consistent with DEH's current guidelines, which base septic requirements on the net increase in bedrooms on a property. The County's uncertified guidelines require property owners located in water or sewer service districts to provide written approval from the service district specifically authorizing the connection of an ADU; Suggested Modification 2 would incorporate this requirement directly into the ADU regulations of the IP. Suggested Modification 2 would also add statements that adequate water supply and sewage capacity must be available to serve the proposed new ADU or JADU as well as existing residences on the property. These requirements will ensure that adequate services are provided regardless of whether and how DEH guidelines change overtime.

Thus, the proposed IP amendment, as modified, is consistent with and adequate to carry out the water and sewer capacity requirements of the LCP.

#### Consistency Analysis: Gualala Existing 100-Unit Cap and Service Capacity

The North Gualala Water Company, which serves the Gualala Town Plan area, has known capacity issues and is under a State-issued water connection moratorium relating to pumping restrictions on its two water wells on the North Fork Gualala River. As a result, any increase in the number of residential structures in Gualala would be inconsistent with the service capacity policies of the certified LUP.<sup>34</sup> However, the proposed amendment maintains the existing certified 100-unit cap on ADUs in Gualala as well as the prohibition on ADUs west of Highway One and the prohibition on ADUs on any parcel with a guest cottage, detached bedroom, or second dwelling unit. As a result, the proposed amendment would not allow for development of additional residential structures beyond what is currently allowed under the certified LCP in Gualala. In addition, the proposed IP amendment as modified would require written approval from the service district specifically authorizing the connection of any ADU and would otherwise require demonstration of the availability of water supply and sewage

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<sup>34</sup> To date, the County has maintained a manual log (Excel spreadsheet) of ADU permits issued in the Gualala Town Plan area. Unfortunately, due to staff turnover, the log has been misplaced. It is estimated that, at most, three ADU permits have been issued since adoption of the Gualala Town Plan in 2002.

capacity before approval. Pursuant to the proposed amendment as modified, prior to any LCP amendment to modify the 100-unit cap, the County would be required to provide information that demonstrates that the plan area has adequate water and sewer capacity for projected buildout and to prepare a traffic analysis to evaluate impacts associated with proposed ADU allowances and future growth on the capacity of Highway One in Gualala and the surrounding coastal zone. As a result, the proposed IP amendment to the ADU provisions for the Gualala Town Plan area is consistent with and adequate to carry out the LUP.

For all the reasons described above, the proposed IP amendment as suggested to be modified is consistent with and adequate to carry out the service capacity policies of the certified LUP as amended and modified.

## **2. Agricultural and Timber Resources**

### Relevant LUP Policies

The AG and RL Districts carry out the AG and RL Designations, respectively. The FL and TP Districts carry out the FL Designation. The stated intents of the AG, RL, and FL Designations [included in LUP Chapter 2 (The Land Use Plan), Subchapter 2.2 (Description of Land Use Plan Map Designations)] are as follows:

**AG Designation Intent:** The Agricultural Lands classification is intended to be applied to lands which are suited for and are appropriately retained for production of crops. The classification should include lands presently under Type I Agricultural Preserve contracts, lands having present or future potential for significant agricultural production, and contiguous or intermixed smaller parcels on which non-compatible uses could jeopardize the agricultural use of agricultural lands. Permitted non-agricultural uses, to the greatest extent possible, should not occur on lands that might otherwise be devoted to crop production. Prime and non-prime lands and existing Agricultural Preserves are included. Reconsolidation of agricultural parcels into larger units shall be encouraged, especially where prime soils exist or where there are larger parcels that would be more likely to support agriculture. Encouragement shall consist of the following: A positive effort by the County of Mendocino to provide information, explaining the advantages of reconsolidation (i.e. increased agricultural potential and possible tax advantages).

**RL Designation Intent:** The Range Lands classification is intended to be applied to lands which are suited for and are appropriately retained for the grazing of livestock and which may also contain some timber producing areas. The classification includes land eligible for incorporation into Type II Agricultural Preserves, other lands generally in range use, intermixed smaller parcels and other contiguous lands, the inclusion of which is necessary for the protection and efficient management of range lands.

**FL Designation Intent:** The Forest Lands classification is intended to be applied to lands which are suited for and are appropriately retained for the growing, harvesting and production of timber and timber related products. The classification

includes lands eligible to be zoned Timberland Production (TPZ); intermixed smaller parcels and other contiguous lands, the inclusion of which is necessary for the protection and efficient management of timber resource lands.

The FL land use classification standards included in LUP Chapter 2, Subchapter 2.2 also state in applicable part:

No use permit shall be granted for areas designated FL in TPZ until a specific finding has been made that the proposed use is compatible with the growing and harvesting of timber and timber products.

No use permit shall be granted for areas designated FL until a specific finding has been made that the proposed use is compatible with the long-term protection of timber resource lands.

LUP Chapter 3, Subchapter 3.2 (Agriculture) includes the following relevant policies:

3.2-4 Zoning regulations shall not discourage compatible activities that enhance the economic viability of an agricultural operation. These may include cottage industry, sale of farm products, timber harvesting, not subject to the Forest Practices Act and limited visitor accommodations at locations specified in the plan. Visitor accommodations shall be secondary to the agricultural activity. Proposed projects shall be subject to a conditional use permit. Granting of the permit shall require affirmation findings to be made on each of the following standards. The project shall:

- maximize protection of environmentally, sensitive habitats;
- minimize construction of new roads and other facilities;
- maintain views from beaches, public trails, roads and views from public viewing areas, or other recreational areas;
- ensure adequacy of water, sewer and other services;
- ensure preservation of the rural character of the site; and
- maximize preservation of prime agricultural soils;
- ensure existing compatibility by maintaining productivity of on site and adjacent agricultural lands.

No permit shall be issued to convert prime land and/or land under Williamson Act to non-agricultural uses, unless all of the following criteria are met:

- a) all agriculturally unsuitable lands on the parcel have been developed or determined to be undevelopable; and
- b) agricultural use of the soils cannot be successfully continued or renewed within a reasonable period of time, taking into account economic, environmental, social, and technological factors (Section 30108 of the Coastal Act); and
- c) clearly defined buffer areas are developed between agricultural and nonagricultural uses (see Policies 3.2-9, 3.2-12 and 3.2-13); and

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- d) the productivity of any adjacent agricultural lands is not diminished, including the ability of the land to sustain dry farming or animal grazing; and
- e) public service and facility expansions and permitted uses do not impair agricultural viability, either through increased assessment costs or degraded air and water quality; and
- f) in addition, for parcels adjacent to urban areas, the viability of agricultural uses is severely limited by conflicts with urban uses, and the conversion of land would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.

3.2-5 All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.

3.2-9 In order to minimize agricultural-residential conflicts, land divisions or site plans in a residential area shall not result in a residential structure being closer than 200 feet from a parcel designated for agricultural use unless there is no other feasible building site on the parcel.

3.2-16 All agricultural lands designated AG or RL shall not be divided nor converted to non-agricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or (3) concentrate development consistent with Section 30250. Any such permitted division or conversion shall be compatible with continued agricultural use of surrounding parcels. "Feasible", as used in this policy, includes the necessity for consideration of an economic feasibility evaluation containing both the following elements: 1. An analysis of the gross revenue from the agricultural products grown in the area for the five years immediately preceding the date of the filing of proposed local coastal program or an amendment to any local coastal program. 2. An analysis of the operational expenses beyond the control of the owner/operator associated with the production of the agricultural products grown in the area for the five years immediately preceding the date of the filing of a proposed local coastal program or an amendment to any local coastal program. For purposes of this policy, "area" means a geographic area of sufficient size to provide an accurate evaluation of the economic feasibility of agricultural uses for those lands included in the local coastal plan.

LUP Chapter 3, Subchapter 3.2 also includes existing LUP Policy 3.2-1 which would be changed by the proposed LUP amendment and **Suggested Modification 1**. The policy as amended and modified reads as follows:

- 3.2-1 All agricultural land use, as represented within the agriculturally designated boundaries on the land use maps, shall be designated AG 60 or RL 160 for the purpose of determining density. This will support continued coastal agriculture use. One housing unit will be allowed for each existing parcel. Additional dwellings for resident agricultural workers shall be considered as conditional uses, subject to the provisions of this plan. Accessory dwelling units (ADUs) and/or junior accessory dwelling units (JADUs) may also be permitted consistent with standards established in the Implementation Plan (Mendocino County Code, Title 20, Division II). Detached ADUs may only be permitted if located within an existing legally-authorized residential structure and/or clustered with the primary residence.

LUP Chapter 3, Subchapter 3.3 (Forestry and Soils Resources) includes the following relevant policies:

- 3.3-2 Timberlands of commercial size have been designated FL on the Land Use Plan Maps.
- 3.3-3 A timberland unit of commercial size shall not be divided into parcels smaller than 160 acres, and shall not be converted to uses other than the growing of timber and those compatible uses as identified in Chapter 2 under the Forest Land Classification.
- 3.3-8 In order to minimize forest land-residential conflicts, site plans in a residential area shall not result in a residential structure being closer than 200 feet from a parcel designated for forest lands use, unless there is no other feasible building site on an existing residential parcel.

LUP Chapter 3, Subchapter 3.3 also includes existing LUP Policy 3.3-5 which would be changed by the proposed LUP amendment and **Suggested Modification 1**. The policy as amended and modified reads as follows:

- 3.3-5 TPZ lands or parcels entirely occupied by timberlands of commercial size shall have not more than one housing unit per 160 acres; county review and approval is required for more than one dwelling per legally created parcel. Accessory dwelling units (ADUs) and/or junior accessory dwelling units (JADUs) may also be permitted consistent with standards established in the Implementation Plan (Mendocino County Code, Title 20, Division II). Detached ADUs may only be permitted if located within an existing legally-authorized residential structure and/or clustered with the primary residence. Housing units on a timberland parcel, portions of which are not timberland, shall be subject to the density regulations prescribed for the land use shown on the Land Use Maps. Such housing units shall be located, when feasible, on non-Timberland soils.

A full list of relevant LUP policies is included in [Appendix B](#).

Consistency Analysis: Agricultural Resources

The proposed amendment would allow up to 500 ADUs and an unlimited number of ADUs in the County's coastal zone outside of the Gualala and Mendocino Town Plan areas, including on lands designated and zoned AG and RL. To protect agricultural resources, the proposed IP amendment would include standards (1) requiring detached ADUs on AG and RL parcels to be located within 150 feet of an existing legally-authorized structure [IP section 20.458.045(E)(1)]; and (2) prohibiting ADUs on non-prime soils [IP section 20.458.045(E)(2)]. An exception to the second standard could be allowed through an administrative or standard CDP process when it can be found that the ADU will not impact the long-term productivity of the agricultural land.

The stated purpose of the AG and RL land use classifications are to retain AG and RL lands for the growing of crops and raising of livestock, respectively. In addition, LUP Policies 3.2-5 and 3.2-16 only allow development on any lands suitable for agricultural use (or, in LUP Policy 3.2-16, designated AG or RL) if it is demonstrated that the development does not convert agricultural lands to a non-agricultural use, unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or (3) concentrate development consistent with Coastal Act Section 30250. LUP Policy 3.2-5 further requires that any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.

As discussed in the LUP consistency findings above, farmer-occupied or farm labor housing necessary for the performance of ongoing agricultural operations onsite or on parcels in contiguous ownership is considered a supplemental agricultural use. In contrast, residential development that is not incidental to and in support of onsite agriculture (or grazing on RL lands) is not a supplemental agricultural use and instead may represent a conversion of agricultural lands to a nonagricultural use.<sup>35</sup> Because the County's proposed amendment does not explicitly require ADUs and JADUs to be farm dwellings, unless ADUs and JADUs and their associated development completely avoid lands suitable for agriculture, the development of ADUs and JADUs could potentially result in agricultural conversion inconsistent with the intent of the AG and RL land use classifications and the agricultural resource protection policies of the certified LUP as amended and modified.

In addition, even structures that are associated with agriculture, such as farm labor housing, can reduce the amount of land available for agricultural production and harm the long-term productivity of agricultural soils, hindering rather than supporting

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<sup>35</sup> For example, in Humboldt County, the certified LUP allows two dwelling units incidental to agricultural operations on parcels zoned as Agriculture Exclusive, but only if the dwellings are occupied by the owner/operator and the parent or child of the owner/operator. Similarly, Marin County's LCP allows for one intergenerational home in addition to a farmhouse per "farm tract" for the farm operator or owner, as a principally-permitted agricultural use. Intergenerational homes are intended to allow for the preservation of family farms by facilitating multi-generational operation and succession by allowing family members to live on the farm.

continued agricultural use of a property. Therefore, whether or not structures are considered agricultural in nature, standards must be included in the certified LCP to maximize land available for agricultural production, limit the impact of structures on agricultural viability, and maintain the long-term productivity of agricultural soils consistent with Coastal Act sections 30240-30243 and implementing LUP policies.

The proposed requirement to cluster new detached ADUs with existing structures on AG and RL lands helps reduce the footprint of structural improvements on agricultural land and potentially reduces the size of any conversion of agricultural land to a non-agricultural residential use. However, the proposed clustering requirement does not go far enough to ensure consistency with the agricultural resource protection policies of the LUP described above.<sup>36</sup>

First, the proposed standard only requires clustering with existing structures, not necessarily residential structures. Clustering with a barn, greenhouse, stable, or some other agricultural outbuilding defeats the intent of the regulation to avoid encroachment into agricultural areas of the property.

Second, the required 150-foot clustering distance is too large. Although the AG and RL Districts have minimum lot sizes of 60 and 160 acres, respectively, there are many existing legal nonconforming lots that are smaller than the minimum parcel size where productive agricultural land area is more limited and the certified LCP affords legal nonconforming lots all the same uses as conforming lots. With the understanding that APNs do not necessarily correspond to separate, legal parcels, only 17 of the 467 RL District APNs and 31 of the 148 AG District APNs in the coastal zone conform to the minimum lot size standard for their respective district. According to the County, 52 of the nonconforming RL District APNs are between five and ten acres in size and 110 are less than five acres. In the AG District, 16 APNs are between five and ten acres and 47 are less than five acres. While a 150-foot spacing between two residential structures on a 160-acre RL District parcel may not seem significant, on smaller parcels, the resulting expansion of the residential use could result in grazing no longer being economically viable.

In addition, while two structures sited immediately adjacent to one another can largely rely on the same fire clearance area, driveway access, and other exterior improvements, 150 feet is potentially too large a distance to afford this benefit of clustering. Furthermore, any encroachment onto agricultural lands by a non-agricultural use is a conversion of agricultural land. For ADUs that do not constitute farm dwellings,

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<sup>36</sup> The existing certified IP has a maximum lot coverage standard in the RL and AG Districts of 20% for parcels less than two acres in size, fifteen percent for parcels from two to five acres in size, and ten percent for parcels over five acres in size. While this standard limits the amount of overall structural development, it does not require clustering of non-agricultural structures to minimize encroachment onto productive lands and conflict with agricultural use of the site. In addition, lot coverage is defined in the certified IP [section 20.308.075(12)] to include area covered by buildings and structures, but not, for instance, gravel driveways.

the clustering requirement is intended not just to limit but to completely avoid displacement of agricultural land by siting the ADU fully within an existing developed area of the property. As a result, the proposed IP amendment is inadequate to carry out the agricultural resource provisions of the certified LUP as amended and modified.

**Suggested Modification 2** modifies the proposed clustering requirement so that a detached ADU may only be permitted on AG and RL lands if it is located (1) within an existing legally-authorized residential structure; or (2) set back no greater than 100 feet from the existing or proposed legally-authorized primary residence and relies on the primary residence's driveway or another legally authorized driveway.

The proposed ADU clustering requirement as modified ensures that detached ADUs either replace or are clustered with existing residential structures in a manner that allows co-reliance on associated external improvements and thus minimizes any additional residential development footprint associated with the ADU. JADUs, ADUs attached to the primary residence, and detached ADUs placed within an existing legally-authorized residential structure avoid land that is in active agricultural production. Detached ADUs clustered with the primary residence may also be located within an existing residential development compound that is not in active agriculture use. Given that the subject land is already covered by, directly adjacent to, or otherwise clustered with, a permanent residential structure, the suitability of the site for agriculture and the feasibility of renewed agriculture may also be severely limited. Thus, the clustering requirement not only minimizes structural encroachment onto agricultural lands, but also helps ensure consistency with the agricultural land conversion policies in cases where ADUs do not constitute farm dwellings. The proposed standard as modified is also consistent with the clustering requirement in LUP Policy 3.2-1 as amended and modified.

Determining whether an ADU and associated development constitutes an agricultural conversion (i.e., whether the ADU is a farm dwelling in support of an active agricultural operation), and if so, whether such a conversion meets the conversion criteria of LUP Policies 3.2-5 and 3.2-16, requires discretionary review. **Suggested Modification 2** therefore adds a standard that on parcels zoned AG or RL, development associated with ADUs and JADUs (well, water storage, septic improvements, parking and driveways, vegetation removal for fire safety, etc.) shall not encroach beyond the existing residential development footprint onto lands suitable for agriculture. An exception to this standard can be secured through the administrative or standard CDP process if findings are made that the ADU will not impact the long-term productivity of the agricultural land. This standard ensures that any potential conversion of agricultural land is reviewed through a discretionary permit process to ensure consistency with all of the agricultural resource protection provisions of the certified LCP.

i. Protection of Prime Agricultural Lands

As described above, any development associated with an ADU or JADU that is not a farm-dwelling could constitute a conversion of agricultural land. LUP Policy 3.2-4 severely limits the conversion of prime agricultural land (See **Exhibit X** for a map of prime farmland in the County's coastal zone as mapped in the LCP Land Capabilities



and Natural Hazards maps).<sup>37</sup> Whether a particular non-agricultural use meets the conversion criteria of LUP Policy 3.2-4 is highly context-specific, and thus a standard requiring discretionary review for ADUs on prime land is critical to ensure that the approval process for ADU development adequately carries out the LUP. However, the proposed IP standard 20.458.045(E)(2) prohibits ministerial CDPs for ADUs on non-prime “soils” rather than “lands.” Because the definition of prime agricultural land includes more than just soil types,<sup>38</sup> the proposed standard as written is inadequate to carry out the LUP. Therefore, **Suggested Modification 2**) clarifies that this standard applies to all land designated prime agricultural land.

In conclusion, the proposed IP amendment as modified to strengthen standards for ADUs on AG and RL lands is consistent with and adequate to carry out the AG and RL land use designations and agricultural resource protection policies of the certified LUP as amended and modified.

#### Consistency Analysis: Timberlands

Coastal Act section 30243 is carried out by the County’s LCP in part through the Forest Lands (FL) land use designation (and corresponding FL and TPZ Districts), the intent of which is to designate lands which are suited for and are appropriately retained for the growing, harvesting and production of timber and timber-related products. In addition, the LUP prohibits conversion of timberland to incompatible uses (LUP Policy 3.3-3) and requires avoidance of timberlands soils in housing development (LUP Policy 3.3-5), among other protective policies.

Proposed IP section 20.458.045(E)(3) prohibits ADUs on parcels zoned FL or TPZ in locations where “timber removal is necessary,” although an exception can be granted through an administrative or standard CDP process if it can be found that the ADU will

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<sup>37</sup> According to the County, approximately nine percent (8,617 acres) of Mendocino County’s coastal zone is prime agricultural land, and approximately 30 percent (approximately 2,500 acres) of these lands are under active agricultural management. The 2003 Mendocino County Coastal Conservation Plan further clarifies that prime and active agricultural lands are highly concentrated between Elk and Point Arena, particularly in the Manchester farming area. Approximately 20 percent of eligible prime farmland and 50-60 percent of agricultural lands (active agricultural lands identified by CALVEG) in the coastal zone have been designated as Agricultural Preserves and are under Williamson Act contracts (a program which provides a preferential tax based on agricultural value in exchange for prohibitions to development for a period of 10 years).

<sup>38</sup> Coastal Act section 30113 and Mendocino Coastal Zoning Code section 20.308.095(J) define “prime agricultural land” to include land with any of the follow characteristics: (1) a rating as class I or class II in the Natural Resource Conservation Service land use capability classifications; or (2) a rating 80 through 100 in the Story Index Rating; or (3) the ability to support livestock used for the production of food and fiber with an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture; or (4) the ability to normally yield in a commercial bearing period on an annual basis not less than two hundred dollars (\$200) per acre of unprocessed agricultural plant production of fruit- or nut-bearing trees, vines, bushes or crops which have a nonbearing period of less than five years.

not impact the long-term productivity of soils and timberlands and that the ADU is compatible with the commercial growing and harvesting of timber.

As timber removal is not defined elsewhere in the certified LCP, it is unclear whether the proposed standard prevents any tree or any tree that is a commercially harvested species from being removed, prevents a unit of commercial size from being harvested, or has some other meaning. As a result of this lack of clarity, this standard is inadequate to carry out the certified timberlands LUP policies as amended and modified. Therefore, **Modification 2** clarifies that ADUs are only permitted in areas where no major vegetation removal is required. Major vegetation removal is defined in certified IP section 20.308.080(C).

This proposed regulation severely limits tree removal directly associated with the establishment of an ADU; however, this regulation does not preclude a property owner from constructing an ADU in an area where trees were previously removed (such as through a timber harvest plan), preventing their reestablishment. The aforementioned LUP policies protecting the long-term productivity of timberlands and limiting conversion of commercial timberlands apply regardless of whether trees were recently harvested on a site. Development of an ADU could temporarily prevent the reestablishment of trees on commercial timberlands and could have long-term impacts on underlying soils. As a result, IP section 20.458.045(E)(3) as proposed is insufficient by itself to adequately carry out the timberlands LUP policies as amended and modified.

The proposed amendment includes an additional timberlands protection standard [section 20.458.045(E)(1)] that only allows detached ADUs in the FL and TP Districts if located within 150 feet of an existing legally-authorized structure. While an ADU itself is limited in size by the proposed regulations, additional space around the ADU must be maintained free of trees for access, fire safety, and other improvements. If clustered with other structures, the ADU can take advantage of the existing structure's accessway, fire clearance, etc., minimizing additional displacement of timberlands. However, a requirement to simply cluster with existing structures does not prevent encroachment into areas that would otherwise be used for forest production and processing (e.g., siting adjacent to structures used for forestry equipment). In addition, 150 feet is potentially too large a distance to reap the intended benefits of clustering, such as preventing encroachment beyond existing residential areas and allowing reliance on existing driveways and other exterior improvements associated with residential development. These limitations therefore do not adequately ensure that detached ADUs, and cumulative structural development associated with ADUs, will avoid significant further encroachment onto viable timberlands.

An ADU that results in additional displacement of area that could otherwise be used for the growing of timber could compromise use of the remainder of a FL or TP parcel for commercial timber operations. While the FL and TP Districts have a 160-acre minimum parcel size, there are many nonconforming parcels in the coastal zone with respect to minimum parcel size where productive timberlands are more limited. With the understanding that using APNs as a proxy for legal parcels may result in an overestimation of the number of nonconforming parcels, none of the 83 FL District

APNs and only 30 of the 450 TP District APNs in the coastal zone meet the minimum 160-acre parcel size. Under the County's LCP, existing legal nonconforming lots are allowed all the same uses as conforming lots and would be allowed ADUs and JADUs under the proposed amendment. As a result, there may be smaller FL and TP parcels that are just large enough to be harvested commercially, where any additional displacement of timberlands could threaten the commercial growing, harvesting and production of timber and timber-related products.

The amendment as proposed is therefore inadequate to carry out the timber resource protection policies of the certified LUP as amended and modified.

**Suggested Modification 2** modifies proposed section 20.458.045(E)(1) to require detached ADUs to be set back no greater than 100 feet from the primary residence and to be reliant on the primary residence's driveway or another legally authorized existing driveway. These requirements would not apply if the detached ADU is located in an existing legally-authorized residential structure. As modified, this IP standard is consistent with LUP Policy 3.3-5 as amended and modified, which requires clustering with the primary residence unless located in a legally-authorized residential structure. The reduced minimum clustering distance imposed by Suggested Modification 1, along with the County's proposed restrictions on the maximum size of ADUs, ensure that ADUs will not significantly increase existing or proposed residential development footprints within timberlands.

**Suggested Modification 2** also modifies proposed section 20.458.045(E)(3) to prohibit the issuance of ministerial CDPs where development associated with ADUs and JADUs (wells, water storage facilities, septic improvements, parking and driveways, vegetation removal for fire safety, etc.) encroaches beyond the existing residential development footprint onto lands suitable for timber production. Unless an ADU or JADU and all exterior improvements associated with the ADU or JADU do not result in the conversion of additional timberlands, such development could compromise commercial timber operations. The suggested modification ensures discretionary review occurs in such cases so that potential impacts on the commercial growing, harvesting and production of timber and timber-related products can be fully evaluated, including potentially through economic analysis of timber production feasibility.

For all the reasons discussed above, the proposed IP amendment as modified by Suggested Modification 2, is consistent with and adequate to carry out the timber resource protection policies of the LUP as amended and modified.

### **3. Hazards**

#### Relevant LUP Policies

LUP Chapter 3, Subchapter 3.4 (Hazard Management) includes the following relevant policies:

- 3.4-1 The County shall review all applications for Coastal Development permits to determine threats from and impacts on geologic hazards arising from

seismic events, tsunami runup, landslides, beach erosion, expansive soils and subsidence and shall require appropriate mitigation measures to minimize such threats. In areas of known or potential geologic hazards, such as shoreline and bluff top lots and areas delineated on the hazards maps the County shall require a geologic investigation and report, prior to development, to be prepared by a licensed engineering geologist or registered civil engineer with expertise in soils analysis to determine if mitigation measures could stabilize the site. Where mitigation measures are determined to be necessary, by the geologist, or registered civil engineer the County shall require that the foundation construction and earthwork be supervised and certified by a licensed engineering geologist, or a registered civil engineer with soil analysis expertise to ensure that the mitigation measures are properly incorporated into the development.

- 3.4-7 The County shall require that new structures be set back a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (75 years). Setbacks shall be of sufficient distance to eliminate the need for shoreline protective works. Adequate setback distances will be determined from information derived from the required geologic investigation and from the following setback formula:  $\text{Setback (meters)} = \text{Structure life (years)} \times \text{Retreat rate (meters/year)}$  The retreat rate shall be determined from historical observation (e.g., aerial photographs) and/or from a complete geotechnical investigation. All grading specifications and techniques will follow the recommendations cited in the Uniform Building Code or the engineering geologists report.
- 3.4-11 No development, except flood control projects, to protect existing structures, nonstructural agricultural uses, and seasonal uses shall be permitted in the 100-year floodway unless mitigation measures in accordance with FEMA regulations are provided.
- 3.4-12 Seawalls, breakwaters, revetments, groins, harbor channels and other structures altering natural shoreline processes or retaining walls shall not be permitted unless judged necessary for the protection of existing development or public beaches or coastal dependent uses. Allowed developments shall be processed as conditional uses, following full environmental geologic and engineering review...
- 3.4-13 All new development shall meet the requirements for fire protection and fire prevention as recommended by responsible fire agencies.

### Consistency Analysis

Consistent with Coastal Act section 30253, the hazard management policies of the County's certified LUP require minimization of risk to life and property in areas of high geologic, flood, and fire hazard. Regarding fire hazards, LUP Policy 3.4-13 requires all new development to meet the requirements for fire protection and fire prevention as

recommended by responsible fire agencies. To carry out LUP Policy 3.4-13, the proposed amendment includes a standard which requires ADU applications to include a preliminary clearance letter from CalFire and/or a local fire district depending on whether a property is within a State Responsibility Area or a Local Responsibility Area [IP section 20.458.040(D)].

Regarding geologic and flood hazards, proposed IP section 20.458.045(H) prohibits ADUs in areas designated as Floodplain ("FP") Combining District, Development Limitations ("DL") Combining District and/or Seismic Study ("SS") Combining District (see [Exhibit 7](#) for a map of these hazardous areas). These combining districts cover areas mapped as having significant flood, seismic, and/or geophysical hazards. An exception to this prohibition is allowed through a discretionary CDP review process where a licensed engineer can demonstrate that the proposed development is consistent with the IP standards established for these hazard combining districts. In addition, proposed section 20.458.040(E) prohibits ADUs without exception in designated special flood hazard areas which are shown on FEMA Flood Insurance Rate Maps.<sup>39</sup>

While the proposed standards reduce risks of geologic, flooding, and fire hazards, proposed IP section 20.458.040(E) appears to conflict with proposed section 20.458.045(H), because section 20.458.040(E) prohibits ADUs in designated special flood hazard areas, while section 20.458.045(H) allows ADUs in areas designated FP Combining District (which applies to special flood hazard areas) through an administrative or standard CDP process. Such an internal inconsistency can affect implementation of the ADU regulations and thus can result in the proposed amendment being inadequate to carry out the certified LUP. **Suggested Modification 2** addresses this discrepancy by fully prohibiting ADUs without exception in special flood hazard areas and the FP Combining District (which both cover the same area).

#### Consistency Analysis: Blufftop Development

Certified LUP Policy 3.4-7 requires that new structures be set back a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans and to eliminate the need for shoreline protective works, with adequate setback distances derived from a site-specific geologic investigation. Certified LUP Policy 3.4-12 prohibits shoreline protection structures unless necessary for the protection of existing development or public beaches or coastal dependent uses and only if approved as conditional uses, following full environmental, geologic, and engineering review.

In the Gualala Town Plan area, ADUs and JADUs are prohibited on parcels that are located west of Highway One, largely ensuring their safety from bluff erosion and cliff

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<sup>39</sup> JADUs are not prohibited in hazard areas because, pursuant to Government Code section 65852.22(d), "For the purposes of any fire or life protection ordinance or regulations, a JADU shall not be considered a separate or new dwelling unit."

retreat consistent with LUP Policy 3.4-7. To address bluff stability in the remainder of the unincorporated County where ADUs would be allowed on blufftop parcels, the County proposes a standard that prohibits ADUs within 125 feet of the edge of a coastal bluff unless contained entirely within an existing legally-authorized structure [proposed IP section 20.458.045(B)]. As proposed, an exception to this bluff setback standard can be authorized through the standard coastal development permit process. According to County staff, the proposed 125-foot setback standard was adopted based in part on the fact that the largest bluff setback ever recommended by a geotechnical report in unincorporated Mendocino County was 100 feet.<sup>40</sup>

To approve a ministerial CDP for an ADU, the County must find the ADU consistent with all applicable standards of the LCP (in addition to the ministerial standards proposed in the ADU chapter). However, in practice, hazard issues may be inadequately considered through a ministerial review process, and therefore a bluff setback standard is necessary to adequately carry out the hazard policies of the certified LUP.

The proposed 125-foot bluff setback standard does not apply to JADUs or ADUs contained entirely within an existing legally-authorized structure. If the existing structure within 125 feet of the bluff edge is a non-residential space (such as a shed), conversion to an ADU would constitute an intensification of use in a potentially hazardous area. The proposed use of a structure may be taken into consideration during geotechnical review of a site, and a non-habitable space may be allowed a smaller setback because the risk to life and property is lower. Therefore, the County cannot assume that prior geotechnical review for a non-habitable structure is adequate when that space is converted to an independent living space. In addition, an existing structure within 125 feet of the bluff edge could be nonconforming with the hazard management policies of the LUP, such as a single-family dwelling or accessory living unit constructed prior to the Coastal Act without an adequate bluff setback. Allowing conversion to an ADU or addition of a JADU could significantly extend the expected lifetime and economic value of the nonconforming structure as well as increase the intensity of use of the structure and risks to life and property.

Finally, the proposed bluff setback standard does not apply to exterior development associated with ADUs and JADUs, including but not limited to wells, water storage, septic improvements, parking and driveways, and vegetation removal for fire safety. Exterior improvements associated with the ADU or JADU near the bluff edge could contribute to destabilization and erosion of the bluff or could themselves be compromised by bluff retreat. If external improvements such as water wells and leach fields are compromised, that could render the ADU or JADU unusable during its anticipated lifetime. As a result, the IP bluff setback standard as proposed does not minimize geologic threat consistent with LUP Policy 3.4-1.

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<sup>40</sup> The geotechnical report that recommended the 100-foot setback did not include a factor of safety and therefore was likely not conservative enough to ensure safety. For this reason, the County proposes a 125-foot setback for ADUs rather than a 100-foot setback.

**Suggested Modification 2** would narrow the exception to the 125-foot bluff setback standard to only cover an ADU or JADU contained entirely within an existing legally-authorized residential structure that will not be repaired or improved to the extent that it constitutes a replacement structure under section 13252 of Title 14, California Administrative Code. At the County's request, Suggested Modification 2 also adds a definition of "legally-authorized residential structure" to the definitions section of the IP, as this is a term that is not otherwise defined or utilized in the certified IP. In addition, Suggested Modification 2 also requires all new development associated with an ADU or JADU to be located more than 125 feet from the bluff edge, unless an exception is granted through the standard CDP process.

As modified, the bluff setback exception would only apply in situations where an existing residential space is converted into an ADU or JADU, avoiding situations where sheds and other non-habitable structures are converted and result in a significant intensification of use in a hazardous area without adequate geotechnical review. The bluff setback exception as modified would also prevent JADU and ADU improvement that result in redevelopment/replacement of a nonconforming structure within 125 feet of the bluff edge. This limit on the amount of structural improvements allowed limits the extent to which development associated with an ADU or JADU extends the life and economic value of nonconforming structures. Allowing use of existing nonconforming structures without potential for redevelopment is consistent with LUP Policy 3.4-7 which requires new structures to be set back a sufficient distance from the edge of bluffs to ensure their safety during their economic lifespans. In addition, as modified, the bluff setback requirement covers all potential external development associated with JADUs and ADUs such as new driveways, septic systems, and wells that could be threatened by bluff erosion and/or could cause or contribute to bluff instability.

As suggested to be modified, the proposed amendment minimizes risk to life and property in areas of high geologic, flood, and fire hazard consistent with the hazard management policies of the certified LUP.

#### **4. Environmentally Sensitive Habitat Area**

##### Relevant LUP Policies

LUP Chapter 3, Subchapter 3.1 (Habitats and Natural Resources) includes resource protection policies that (1) define environmentally sensitive habitat areas (ESHA) to include wetlands, riparian zones on streams, and other sensitive plant or wildlife habitats; and (2) limit development in and adjacent to ESHA consistent with Coastal Act section 30240. LUP Policy 3.1-2 and 3.1-7 outline protocols that must be followed when development is proposed in or near ESHA to ensure consistency with Coastal Act section 30240:

- 3.1-2 Development proposals in environmentally sensitive habitat areas such as wetlands, riparian zones on streams or sensitive plant or wildlife habitats (all exclusive of buffer zones) including, but not limited to those shown on the Land Use Maps, shall be subject to special review to determine the current extent of the sensitive resource. Where representatives of the

County Planning Department, the California Department of Fish and Game, the California Coastal Commission, and the applicant are uncertain about the extent of sensitive habitat on any parcel such disagreements shall be investigated by an on-site inspection by the landowner and/or agents, County Planning Department staff member, a representative of California Department of Fish and Game, a representative of the California Coastal Commission. The on-site inspection shall be coordinated by the County Planning Department and will take place within 3 weeks, weather and site conditions permitting, of the receipt of a written request from the landowner/agent for clarification of sensitive habitat areas.

If all of the members of this group agree that the boundaries of the resource in question should be adjusted following the site inspection, such development should be approved only if specific findings are made which are based upon substantial evidence that the resource as identified will not be significantly degraded by the proposed development. If such findings cannot be made, the development shall be denied. Criteria used for determining the extent of wetlands and other wet environmentally sensitive habitat areas are found in Appendix 8 and shall be used when determining the extent of wetlands.

- 3.1-7 A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area and the adjacent upland transitional habitat function of the buffer from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the environmentally sensitive habitat areas and shall not be less than 50 feet in width. New land division shall not be allowed which will create new parcels entirely within a buffer area. Developments permitted within a buffer area shall generally be the same as those uses permitted in the adjacent environmentally sensitive habitat area and must comply at a minimum with each of the following standards: 1. It shall be sited and designed to prevent impacts which would significantly degrade such areas; 2. It shall be compatible with the continuance of such habitat areas by maintaining their functional capacity and their ability to be self-sustaining and to maintain natural species diversity; and 3. Structures will be allowed within the buffer area only if there is no other feasible site available on the parcel. Mitigation measures, such as planting riparian vegetation, shall be required to replace the protective values of the buffer area on the parcel, at a minimum ratio of 1:1, which are lost as a result of development under this solution.



In addition, LUP Policies 3.1-4 and 3.1-13 limit development in wetlands consistent with Coastal Act section 30233, and LUP Policy 3.1-8 provides direction for future implementation of the wetland protection policies of the LUP:

- 3.1-8 The implementation phase of the LCP shall include performance standards and mitigating measures necessary to reduce adverse impacts on wetlands and wetland buffer areas from permitted developments. Such standards and mitigating measures shall be consistent with those recommended in the California Coastal Commission's Statewide Interpretive Guidelines for Wetland and Other Wet Environmentally Sensitive Habitat Areas, adopted February 4, 1981.

### Consistency Analysis

Coastal Act section 30240 requires that development in areas adjacent to ESHA be sited and designed to prevent impacts which would significantly degrade such areas and be compatible with the continuance of such habitat areas. LUP Policy 3.1-7 implements this policy in part by requiring a minimum 100-foot-wide buffer area adjacent to all ESHA, with allowance to reduce the buffer down to 50 feet if the applicant can demonstrate, after consultation and agreement with the California Department of Fish and Wildlife (CDFW), and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area and the adjacent upland transitional habitat function of the buffer from possible significant disruption caused by the proposed development. The ESHA protection policies of the LUP are in part implemented through existing certified IP chapter 20.496, which outlines detailed application procedures and development criteria for proposed development in and adjacent to ESHA, as well as IP section 20.532.100, which includes supplemental findings required for development in ESHA.

The proposed ADU regulations attempt to carry out LUP Policy 3.1-7 by prohibiting ADUs within 100 feet of the boundary of an ESHA unless contained entirely within an existing legally authorized structure, only if all external development associated with an ADU (well, water storage, septic improvements, parking and driveways, vegetation removal for fire safety, etc.) is located more than 100 feet away from any ESHA [proposed IP section 20.458.045(A)]. The proposed standard allows exceptions to these requirements through an administrative or standard CDP process. These requirements ensure adequate discretionary review in consultation with CDFW and County Planning staff when a smaller buffer is requested, consistent with LUP Policy 3.1-7.

The proposed setback standard does not apply to JADUs or ADUs contained entirely within an existing legally-authorized structure. This exception is problematic because conversion of a non-habitable structure such as a shed to a living space is an intensification of use that could result in additional impacts to biological resources if located in or within 100 feet of ESHA. For example, converting a shed to an ADU may increase the amount of exterior lighting, noise, and physical (human, vehicular, and pet) encroachment into ESHA and necessitate ground disturbance and vegetation removal for fire safety, utility improvements, driveways, etc. In addition, the repair, maintenance, and improvements to existing legally authorized nonconforming structures for purposes

of creating an ADU or JADU could significantly extend the expected lifetime of the structures and/or increase the degree of nonconformity with respect to habitat protections, resulting in new and extended impacts to ESHA. As a result, the proposed IP amendment as submitted is inadequate to carry out the ESHA protection policies of the certified LCP.

**Suggested Modification 2** would narrow the exception to the 100-foot setback standard to only cover an ADU or JADU contained entirely within an existing legally-authorized residential structure that will not be repaired or improved to the extent that it constitutes a replacement structure under section 13252 of Title 14, California Administrative Code. At the County's request, Suggested Modification 2 also adds a definition of "legally-authorized residential structure" to the definitions section of the IP, as this is a term that is not otherwise defined or utilized in the certified IP. As modified, the ESHA setback exception would only apply in situations where an existing residential space is converted into an ADU or JADU, avoiding situations where sheds and other non-habitable structures are converted and result in a significant intensification of use in a sensitive area. Limiting the amount of improvement allowed also limits the extent to which development associated with an ADU or JADU extend the life of nonconforming structures in and adjacent to ESHA and prevents redevelopment of such structures.

For all the reasons discussed above, the proposed IP amendment, as suggested to be modified, is consistent with and adequate to carry out the ESHA protection policies of the certified LCP.

## 5. Visual Resources

### Relevant LUP Policies

LUP Chapter 3, Subchapter 3.5 (Visual Resources, Special Communities and Archaeological Resources) includes the following relevant policies:

- 3.5-1 State Highway 1 in rural areas of the Mendocino County coastal zone shall remain a scenic two-lane road. The scenic and visual qualities of Mendocino County coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas designated by the County of Mendocino Coastal Element shall be subordinate to the character of its setting.
  
- 3.5-3 The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as "highly scenic areas," within which new development shall be subordinate to the character of its setting. Any development permitted in these areas shall provide for the protection of ocean and coastal views from public areas

including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes...

- The entire coastal zone from the Ten Mile River estuary (including its wooded slopes, wetlands, dunes and ocean vistas visible from Highway 1) north to the Hardy Creek Bridge, except Westport Beach Subdivision which is a recognized subdivision containing parcels of approximately 20 acres in size covered by Policy 4.2-1 and is East of Highway 1.
- Portions of the coastal zone within the Highly Scenic Area west of Highway 1 between the Ten Mile River estuary south to the Navarro River as mapped with noted exceptions and inclusions of certain areas east of Highway 1.
- Portions of the coastal zone within the Highly Scenic Area west of Highway 1 between the Navarro River and the north boundary of the City of Point Arena as mapped with noted exceptions and inclusions of certain areas east of Highway 1.
- Portions of the coastal zone within the Highly Scenic Area west of Highway 1 between the south boundary of the City of Point Arena and the Gualala River as mapped with noted exceptions and inclusions of certain areas east of Highway 1.

In addition to other visual policy requirements, new development west of Highway One in designated "highly scenic areas" is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. Variances from this standard may be allowed for planned unit development that provides clustering and other forms of meaningful visual mitigation. New development should be subordinate to natural setting and minimize reflective surfaces. All proposed divisions of land and boundary line adjustments within "highly scenic areas" will be analyzed for consistency of potential future development with visual resource policies and shall not be allowed if development of resulting parcel(s) could not be consistent with visual policies.

#### Consistency Analysis: Highly Scenic Areas

As described in the County's Coastal Element, Mendocino's coastal zone includes beaches, dunes, high bluffs, sea stacks, jutting headlands, wetlands, heavily wooded gulches, grassy upland terraces, pygmy forests, serene river estuaries and rocky streams as well as small coastal villages with distinct character. To protect the coast's remarkable visual quality, the County has mapped specific geographic areas on the certified Land Use Maps as "highly scenic," and consistent with Coastal Act section 30251, LUP Policies 3.5-1 and 3.5-3 require that new development in highly scenic areas be subordinate to the character of its setting. LUP Policy 3.5-3 also requires that any development permitted in highly scenic areas provide for the protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points,

beaches, parks, coastal streams, and waters used for recreational purposes. These policies are carried out largely through certified IP chapter 20.504, section 20.504.015, which includes detailed development criteria for any development permitted in highly scenic areas. See [Exhibit 8](#) for a map of designated highly scenic areas.

Given that the standard of requiring subordination of development to the character of the setting is highly subjective, the proposed amendment includes a coastal resource protection standard prohibiting ministerial CDPs for ADUs located in highly scenic areas, unless the ADU is not visible from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes [proposed section 20.458.045(C)]. Any proposed ADU in a designated highly scenic area that would be visible from public areas may instead be authorized through the standard coastal development permit process to ensure consistency with the detailed standards established in Chapter 20.504. Although consistency with the entirety of the LCP is required even for ADUs approved ministerially, the ministerial CDP process does not afford the detailed, discretionary review necessary to ensure ADUs are truly subordinate to the character of the setting consistent with the aforementioned certified LUP policies.

The proposed standard is contingent on whether the ADU would be visible from public areas. The standard is problematic in that visibility can change overtime, depending on what is shielding the ADU from view. For example, vegetative screening can die or easily be removed for other reasons, making a previously invisible ADU a prominent feature in a highly scenic area, inconsistent with the requirements of LUP Policy 3.5-3. As a result, the standard as proposed is inadequate to carry out the highly scenic area policies of the LUP.

**Suggested Modification 2** modifies the standard to require that an ADU is only eligible for a ministerial CDP in a highly scenic area if it is “permanently and entirely blocked from view.” This stronger standard requires the reviewing authority to consider how the ADU is being screened from view and whether that invisibility will be permanently maintained. As modified, the proposed IP amendment is consistent with and adequate to carry out the highly scenic policies of the LUP.

#### Consistency Analysis: Outside of Highly Scenic Areas

LUP Policy 3.5-1, consistent with Coastal Act section 32051, requires all development, regardless of whether or not it is proposed within a highly scenic area, to be sited and designed to protect views to and along the ocean and scenic coastal areas,<sup>41</sup> minimize the alteration of natural landforms, and be

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<sup>41</sup> It is important to note that in the Gualala Town Plan area, ADUs are prohibited west of Highway One which will help ensure that ADUs do not block views to and along the ocean and scenic coastal areas.

visually compatible with the character of the surrounding area. To minimize alteration of landform, the proposed ADU amendment includes a standard prohibiting ministerial CDPs for ADUs if the total amount of grading associated with the construction of an ADU is more than 20 cubic yards [20.458.045(D)]. As a result, any ADU development that may result in significant alteration of a natural landform will require discretionary review with the certified LCP's existing strong visual standards.

However, the ADU standards as proposed are inadequate to carry out the provisions of LUP Policy 3,5-1 requiring that development be compatible with the character of the surrounding area. To ensure that permitted development outside of highly scenic areas is consistent with LUP Policy 3.5-1 and Coastal Act section 32051, the County proposes a "friendly modification" to proposed IP section 20.458.045(C) (incorporated into **Suggested Modification 2**) that requires ADUs located outside of highly scenic areas but that are visible from a public viewpoint to be of a similar architectural style, building materials and colors as the primary residence on a property. Thus, as modified, the proposed ministerial CDP standards for ADUs ensure visual resource protection both within and outside of designated highly scenic areas, consistent with and adequate to carry out the visual resource protection policies of the LUP.

## 6. Archaeological Resources

### Relevant LUP Policies

LUP Chapter 3, Subchapter 3.5 (Visual Resources, Special Communities and Archaeological Resources) includes the following relevant policies:

- 3.5-10 The County shall review all development permits to ensure that proposed projects will not adversely affect existing archaeological and paleontological resources. Prior to approval of any proposed development within an area of known or probable archaeological or paleontological significance, a limited field survey by a qualified professional shall be required at the applicant's expense to determine the extent of the resource. Results of the field survey shall be transmitted to the State Historical Preservation Officer and Cultural Resource Facility at Sonoma State University for comment. The County shall review all coastal development permits to ensure that proposed projects incorporate reasonable mitigation measures so the development will not adversely affect existing archaeological/paleontological resources. Development in these areas are subject to any additional requirements of the Mendocino County Archaeological Ordinance.

### Consistency Analysis

As discussed extensively above, the proposed ADU regulations include a list of "objective" coastal resource protection standards to be used in the review of ministerial CDPs for ADUs (and in certain cases JADUs). As proposed, no archaeological resource standards are included in this list.

The County plans to use the proposed objective ADU standards as an LCP conformance checklist to ensure that ADUs approved under the ministerial CDP process are consistent with the Coastal Act and LCP's resource protection policies. While ADUs and JADUs must also comply with all applicable standards of the certified LCP,<sup>42</sup> including LUP Policy 3.5-10, in practice, the ministerial CDP process may result in inadequate consideration of Coastal Act and LCP coastal resource protection policies not specifically addressed in the ADU checklist standards. In addition, the proposed ministerial CDP process does not allow for local public hearings or local appeals and includes a shortened permitting timeline which could hinder adequate archaeological resource investigation and tribal consultation in sensitive areas. As a result, the proposed ADU provisions are inadequate to carry out certified LUP Policy 3.5-10 which requires protection of archaeological resources.

County staff has requested a friendly modification (included in **Suggested Modification 2**) to amend the proposed ADU coastal resource protection checklist standards (proposed IP section 20.458.045) to require ADUs<sup>43</sup> on properties with known archaeological resources to obtain an administrative or standard CDP. The Commission further modifies this friendly modification to require that development of ADUs on properties with known archaeological resource may only be approved under an administrative or standard coastal development permit review process and only where reasonable mitigation measures are employed to protect archaeological resources. This required discretionary review process will ensure that the provisions of LUP Policy 3.5-10 are carried out in sensitive areas, including requirements for a field survey by a qualified professional and the incorporation of reasonable mitigation measures. Thus, the proposed IP amendment as suggested to be modified is consistent with and adequate to carry out the archaeological resource protection provisions of the certified LUP.

## 7. Public Access

### Relevant LUP Policies

LUP Chapter 3, Subchapter 3.6 (Shoreline Access and Trail/Bikeway System) is the public access component of the certified LUP and includes among other relevant policies, the following policies:

- 3.6-27 No development shall be approved on a site which will conflict with easements acquired by the public at large by court decree. Where evidence of historic public use indicates the potential for the existence of prescriptive rights, but such rights have not been judicially determined, the County shall apply research methods described in the Attorney General's

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<sup>42</sup> Certified IP section 20.532.095 lists required findings for all coastal development permits including that the proposed development is in conformity with the certified LCP and will not have any adverse impacts on any known archaeological or paleontological resources.

<sup>43</sup> As JADUs by definition must be contained entirely within an existing legally-authorized single-family dwelling, JADUs should not themselves result in ground disturbance that could impact buried archaeological resources and thus have not been included in this standard.

"Manual on Implied Dedication and Prescriptive Rights". Where such research indicates the potential existence of prescriptive rights, an access easement shall be required as a condition of permit approval. Development may be sited on the area of historic public use only if: (1) no development of the parcel would otherwise be possible, or (2) proposed development could not otherwise be sited in a manner which minimizes risks to life and property, or (3) such siting is necessary for consistency with the policies of this plan concerning visual resources, special communities, and archaeological resources. When development must be sited on the area of historic public use an equivalent easement providing access to the same area shall be provided on the site.

- 3.6-28 New development on parcels containing the accessways identified on the land use maps shall include an irrevocable offer to dedicate an easement, as required by other policies in this Chapter, for public use. Such offers shall run for a period of 21 years and shall be to grant and convey to the people of the State of California an easement for access over and across the offeror's property.

#### Consistency Analysis

LUP Policy 3.6-28 requires new developments on parcels containing accessways identified on the County's land use maps to provide an irrevocable offer to dedicate a public access easement, and LUP Policy 3.6-27 does not allow interference with the public's right of access to the sea, including when acquired by use. These policies are carried out in part by chapter 20.528 of the certified IP, "Coastal Access Regulations and Open Space Easements."

The proposed ADU regulations retain an existing prohibition on ADUs and JADUs on parcels that are located west of Highway One in the Gualala Town Plan area. As a result, ADU development in Gualala does not have the potential to impact shoreline access. In contrast, the proposed IP amendment would allow ADUs and JADUs developed outside of the Gualala Town Plan area to be located west of Highway One where access to and along the shoreline could be implicated. However, the proposed ADU regulations include a coastal resource protection checklist standard (proposed IP section 20.458.045) prohibiting ADUs from interfering with a public or prescriptive easement for access to the blufftop and/or shoreline. In addition, to approve any coastal development permit, whether for a new ADU or JADU, or other proposed development, the existing IP requires that the approving authority to make findings of consistency with the certified LCP, and if the proposed development is located between the first public road and the sea or the shoreline of any body of water, the public access and recreation policies of Chapter 3 of the Coastal Act. To clarify these requirements apply to ministerial coastal development permits approved for ADUs, the County staff has suggested amending the proposed ministerial CPD approval provisions for ADUs to expressly require the approving authority (the Director or his designees) make findings of consistency with the existing required findings sections of the certified LCP (Chapter 458 and sections 20.532.095 and 20.532.100) that require consistency with the certified

LCP and the public access and recreation policies of the Coastal Act for development between the first public road and the sea. The change is incorporated into **Suggested Modification 2**.

As locally approved development between the first public road and the sea is appealable to the Commission, ADU development within those areas that raises issues of conformance with LCP and Coastal Act public access policies could be considered by the Commission through the CDP appeal process.

In many communities along the California coast, the public must sometimes compete with residents for parking near public access points, and the lack of parking can discourage public access use. Mendocino County's IP, like most LCPs, includes requirements that residential properties account for their parking needs on their own properties, often referred to as 'off-street' parking requirements (e.g., typically in garages, carports, covered parking, etc.). Under the proposed LCP amendment, Mendocino County would require one off-street parking space per ADU, except where state ADU law precludes off-street parking requirements, such as within half a mile of a public transportation stop, within designated historic districts, and in other specialized situations. No additional parking is required for JADUs.

The proposed ADU amendment should not result in significant impacts on public access parking. As discussed previously, Mendocino County is predominantly rural and residential densities are very low, limited for the most part to one residential unit per parcel except for the opportunity afforded by the proposed amendment to provide for a limited number of ADUs with the aforementioned off-street parking. Thus, the demand for on-street parking to serve residential uses within the County's coastal zone is very low in comparison to many parts of the California coast. In addition, the proposed amendment does not provide for ADUs and JADUs within the few areas of the County's coastal zone where residents and public access users are likely to compete for parking. The two incorporated cities in the Mendocino coastal zone, Fort Bragg and Point Arena, have their own separate certified LCPs. As discussed previously, the Town of Mendocino is covered by a separate segment of the Mendocino County LCP that is unaffected by the proposed ADU amendment. Also as discussed previously, the certified LCP does not allow for ADUs west of Highway 1 in the community of Gualala, and the proposed amendment would not change that existing requirement. Although there is a scattering of additional rural villages elsewhere along the Mendocino coastal zone, the populations are very small and opportunities for parking on streets or in other public areas are generally plentiful.

Therefore, the proposed IP amendment as submitted is consistent with and adequate to carry out the public access provisions of the certified LUP and Coastal Act.

## **8. Coastal Development Permit Requirements**

### Relevant LCP Sections

The County's Coastal Zoning Code (certified IP) section 20.532.010 requires coastal development permit authorization for proposed development within the Coastal Zone:



Any person, partnership, corporation, state or local agency or special district proposing to undertake any development as defined in Section 20.308.035(D) shall obtain a coastal development permit in accordance with the provisions of this Chapter, in addition to any other permit or discretionary approval required by any local agency or special district or any State or Federal agency as authorized by law or ordinance. If a coastal development permit is required pursuant to this section, no building permit, water well permit, septic permit, business license, grading permit, transient occupancy registration certificate, encroachment permit, occupancy permit or other entitlement for use shall be issued prior to the issuance of a coastal development permit.

Certified IP section 20.308.035(D) broadly defines "development" as follows:

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

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

As used in this section, removal or harvesting of major vegetation is further defined in Section 20.308.080.

Certified IP section 20.532.020 sets forth provisions for exempting certain types and classes of development from the need to obtain a CDP:

The following developments shall be exempt from this Chapter:

- (A) Repair and maintenance activities which do not result in an addition to or enlargement or expansion of the object of such activities, except as otherwise specified in Subchapter 7, Title 14, California Administrative Code and any amendments thereafter adopted;

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- (B) Activities of public utilities as specified in the Repair, Maintenance and Utility Hookup Exclusion adopted by the Coastal Commission on September 5, 1978;
- (C) Improvements to single family residences except as otherwise specified in Subchapter 6, Title 14, California Administrative Code and any amendments thereafter;
- (D) Improvements to any structure other than single family residence or a public works facility, except as otherwise specified in Subchapter 7.5, Title 14, California Administrative Code and any amendments thereafter;
- (E) The replacement of any structure, other than a public works facility, destroyed by a disaster. The replacement structure shall conform with Section 20.480.020, shall be for the same use as the destroyed structure, shall not exceed either the floor area, height, or bulk, of the destroyed structure by more than ten percent (10%) and shall be sited in the same location on the affected property as the destroyed structure;
- (F) Within the Gualala Town Plan planning area, structures which are destroyed by involuntary means or forces out of control of the owner(s), provided that the structure reconstructed after involuntary loss does not exceed the floor area, height, or bulk of the previously existing structure by more than ten percent (10%), restoration is started within one (1) year of the destruction, and the structure conforms to this Division;

As used in this section "disaster" means any situation in which the force or forces which destroyed the structure to be replaced were beyond the control of its owners.

As used in this section, "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

As used in this section "structure" includes landscaping and any erosion control structure or device which is similar to that which existed prior to the occurrence of the disaster.

The County also has an adopted a categorical exclusion order (Categorical Exclusion Order No. E-91-2A) which was approved in 1992 and amended in 1995. The order excludes the following categories of development from the requirement to obtain a CDP: (1) single family residences in mapped exclusion areas; (2) water wells throughout the coastal zone subject to certain criteria; and (3) septic systems throughout the coastal zone subject to certain criteria.

Consistency Analysis: Proposed Permit Exemption for JADUs

The proposed IP amendment would add an additional CDP exemption to certified IP section 20.532.020 exempting JADUs which are consistent with the requirements of IP

chapter 20.458 (i.e., the proposed ADU/JADU regulations) from the need for a CDP. In contrast, section 20.458.020 would be amended to state that ADUs located within an existing legally permitted detached bedroom, guest house, or non-residential structure shall not be exempted from CDP requirements.

Minor changes to an existing legally established residential structure that do not involve the removal or replacement of major structural components (i.e. roofs, exterior walls, foundations, etc.) and that do not change the size or the intensity of use of the structure may not qualify as development as defined by the certified LCP and Coastal Act, or may qualify as development that is exempt from coastal permit requirements. In many instances, JADU creation and use either doesn't constitute development or is development that is exempt from CDP requirements under Coastal Act section 30610 and the Commission's regulations. However, determinations as to whether JADU creation and use either don't constitute development or are exempt are very fact specific and must be based on an interpretation of the Coastal Act and the Commission's regulations. For example, even if the JADU use does not constitute development, physical improvements associated with the JADU (e.g., structural improvements to the residence or external improvements such driveway improvements, water storage, well, or septic improvements) may rise to the level of development. This associated development may still fall under permitting exemptions for repair and maintenance or improvement to an existing single-family residence or may be exempted from permitting by the County's categorical exclusion order. However, in certain circumstances, such as where there is a risk of substantial adverse environmental impact or future development restrictions imposed on a parcel through previous permit conditions, this associated development would require a CDP.<sup>44</sup> As a result, the JADU exemption as written is too broad to be consistent with the permitting requirements of the LCP and Coastal Act. Although ADU creation and use is more likely to constitute development which is not exempt from CDP requirements than JADU creation and use under the Coastal Act and the Commission's regulations, there may be instances where aspects of ADU creation and use could be found not to require CDP authorization. An LCP cannot exempt development that is not exempt under the Coastal Act and the Commission's regulations.

**Suggested Modification 2** deletes the proposed CDP exemption language that would be added to section 20.532.020 by the amendment. This modification ensures that section 20.532.020 remains consistent with the permitting and exemption provisions of the certified IP and Coastal Act. As a result, the proposed IP amendment as modified is consistent with and adequate to carry out the certified LUP.

### Consistency Analysis: Proposed Findings of Approval of a Ministerial CDP

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<sup>44</sup> For instance, Title 14 of the Government Code, section 13250(b)(1) (incorporated by reference into certified IP section 20.532.020) requires a CDP for "improvements to a single-family structure if the structure or improvement is located: on a beach, in a wetland, seaward of the mean high tide line, in an environmentally sensitive habitat area, in an area designated as highly scenic in a certified land use plan, or within 50 feet of the edge of a coastal bluff."

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Proposed IP section 20.532.015(B) states that the purpose of a ministerial CDP is to provide for the administrative issuance of CDP for ADUs which comply with the objective requirements specified in proposed section 20.458.045. This proposed purpose statement could be misinterpreted to mean that the proposed ADU-specific standards in IP chapter 20.458 outside of section 20.458.045 or other LCP standards beyond chapter 20.458 do not apply.

Certified IP section 20.532.095 includes a list of required findings that must support granting or modification of any coastal development permit by the approving authority. Among other findings, this list requires a finding that the proposed development is in conformity with the certified LCP. Certified IP section 20.532.100 also includes a list of supplemental findings that are required for CDPs in certain circumstances (e.g., development in environmentally sensitive habitat areas, development on resource lands, development that converts agricultural lands, etc.). Because these sections apply to any coastal development permit approval, they should apply to ministerial CDPs for ADUs. This is consistent with Government Code section 65852.2(l), which states that nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act, except that the local government shall not be required to hold public hearings.

As proposed, the ministerial CDP provisions could be misinterpreted to mean that the rest of the LCP (beyond the checklist coastal resource standards in proposed section 20.458.045) do not apply to ministerially approved ADU, and thus are inadequate to carry out the certified LUP. To address this issue, **Suggested Modification 2** adds a sentence to proposed IP section 20.532.015(B) stating that approval of a ministerial CDP requires findings of consistency with the entirety of the ADU IP chapter as well as the required and supplemental findings in certified sections 20.532.095 and 20.532.100 as applicable. This friendly modification clarifies that ministerially approved ADUs must be consistent with all applicable policies of the LCP and not just with the proposed “objective” ADU checklist standards. As a result, the proposed IP amendment as modified is consistent with and adequate to carry out the certified LCP.

### Consistency with State ADU Law Prohibition on Local Public Hearing

Among other requirements, Government Code Section 65852.2(a) prohibits local government from holding a public hearing on permit applications for ADUs and JADUs. Although Section 65852.2(a) states that the section shall not be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act, an exception is made regarding the prohibition on local public hearings on applications for ADUs and JADUs. Local public hearings are not required for CDP applications for ADUs and JADUs.

The proposed IP amendment would preclude public hearings for ministerial coastal CDP applications for ADUs and JADUs, but would not preclude public hearings for administrative or standard CDP applications for ADUs and JADUs, inconsistent with Section 65852.2(a). Therefore, Suggested Modification 2 modifies the IP amendment to preclude public hearing requirements for all CDP applications the County process for ADUs and JADUs. The County and Commission staffs have collaborated on developing

the suggested modification language contained in Suggested Modification 2 that would make minor changes to the IP amendment to incorporate the prohibition on local public hearings for all CDP applications for ADUs and JADUs. As modified, the proposed IP amendment is consistent with the prohibition of Government Code Section 65852.2(a) against local public hearings on CDP applications for ADUs and JADUs, and is consistent with and adequate to carry out the certified LUP.

#### **D. California Environmental Quality Act (CEQA)**

As set forth in section 21080.9 of the California Public Resources Code, 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 LCP.<sup>45</sup> The Commission's LCP review and approval program has been found by the Resources Agency to be the functional equivalent of the environmental review required by CEQA, pursuant to CEQA section 21080.5. Therefore, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required, in approving an LCP amendment, to find that the approval of the proposed LCP, 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 alternatives or feasible mitigation measures available that would substantially lessen any significant adverse impact which the activity may have on the environment [14 CCR §§13542(a), 13540(f), and 13555(b)].

The City's LCP amendment consists of both LUP and IP amendments. The Commission incorporates its findings on Coastal Act and LUP conformity into this CEQA finding as it is set forth in full. As discussed throughout the staff report and hereby incorporated by reference, the LUP amendment as originally submitted does not meet the requirements of or conform with the Chapter 3 policies of the Coastal Act, and the IP amendment does not conform with and is not adequate to carry out the policies of the certified LUP. The Commission, therefore, has suggested modifications to bring the LUP and IP amendments into full conformance with the Coastal Act and LUP, respectively. 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 LCP amendment, as well as potential alternatives to the proposed amendment, including the no project alternative.

As modified, the Commission finds that approval of the LCP amendment will not result in significant adverse environmental impacts within the meaning of CEQA. Therefore, the Commission finds that there are no other feasible alternatives or mitigation

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<sup>45</sup> In addition, pursuant to CEQA Guidelines section 15282(h), "the adoption of an ordinance regarding second units in a single-family or multi-family zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code" is statutorily exempt from CEQA, based on Public Resources Code section 21080.17.

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measures which would substantially lessen any significant adverse impact which the activity may have on the environment [14 CCR §§ 13542(a), 13540(f), and 13555(b)].